

OPINION No. 9/2002 (PHILIPPINES)

Communication addressed to the Government on 18 July 2002

Concerning: Manuel Flores, Felix Cusipag, Hadji Salic Camarodin and Michael Guevarra

The State has ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

- (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
- (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
- (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply of the Government to the source, which provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information submitted to the Working Group by the source, Manuel Flores (10 years of age) and Felix Cusipag (12 years of age) have been detained at Angeles District Jail, Angeles City, for two months without charges, legal counsel or any regard for their legal rights. No arrest warrants were issued at the time of their arrest and no court order

was given for their detention. Manuel Flores is said to have spent more than five weeks in detention without knowing if his mother knew where he was. Hadji Salic Camarodin (17 years of age) had been detained, at the time of the communication, for six months in the same prison. He was found guilty of sniffing glue and was sentenced to six months' imprisonment. He is said to be serving his sentence in a prison for adults. Michael Guevarra (17 years of age) had already been in the same prison for two months when the present communication was submitted. He is on trial for attempted robbery and faces at least three more months in detention before the next hearing. He is also detained in a prison for adults. The cell next to his is occupied by a convicted drug user and dealer.

6. According to the source, the cells in which these four children are being kept are small, unventilated, dirty and located in blocks for convicted adult prisoners. They are obliged to stay 23 hours a day in those cells, without any mental stimuli. They are made to sleep on a stone floor and have been denied access to basic sanitary items like soap, toothbrushes, etc. These unsanitary conditions could be life-threatening, are psychologically very damaging and amount to torture and other cruel, inhuman or degrading treatment or punishment.

7. The source further reports that none of these children has been provided with competent legal counsel, as required by Philippine law. No birth certificates were submitted to the courts, in spite of the fact that such official documents should be easy to obtain for the prosecution officials.

8. In its reply, the Government made the following statement concerning the allegations of the source:

“As for the case of Manuel Flores (13) and Felix Cusipag (12). (For the record, Manuel Flores is 13 years of age and not 10 as reported), the two were arrested on 31 May 2002 for violation of section 2 of [Presidential Decree] 1619 (Possession and use of a volatile substance). By virtue of the confirmation of detention signed by attorney Oliver S. Garcia, they were committed to Angeles District Jail as detainees.

“On 14 June 2002, during arraignment, both of the accused pleaded guilty to a minor offence of vagrancy and were sentenced to five days' imprisonment in a court order issued by Judge Ofelia Tuayon Pinto. In that court order, the District Jail warden was also instructed to release the minors and place them in the custody of their parents. Consequently, the personnel of the Angeles District Jail tried to locate the parents of these minors at their given address but failed to find them.

“On 24 June 2002, following his release Felix Cusipag was put in the custody of his mother, Mary Jane Cusipag, while Manuel Flores was turned over to the Bahay Bata Center (Children's Home) in Kauayan, Angeles City, as his parents could not be located despite attempts to find them.

“With regard to the case of Hadji Camarodin (aged 17), he was detained at the Angeles District Jail on 15 March 2002 by virtue of an order signed by attorney Lucila Dayaon of the Office of the City Prosecutor, Angeles City, for violation of the

Penal Code No. 1619 (Possession and use of volatile substance). Subsequently, Criminal Case No. 08-80 was filed at the Regional Trial Court Branch 60, Angeles City (Family Court).

“In a court order issued on 3 April 2002 and signed by Judge Ofelia Tuazon Pinto, the accused was sentenced to an indeterminate imprisonment of a maximum of six months and one day and a minimum of four months and one day. Being a minor, the execution of his sentence was suspended and he was ordered to be placed in the Central Luzon Drug Rehabilitation Center in Magalang, Pampanga. The consent of the minor’s parents was required for admission to that centre. The transfer was delayed because the parents failed to show up until 5 July 2002 when they finally appeared and accompanied their son to the above-mentioned centre.

“As for the case of Michael Guevarra. (For the record, he is 18 years of age according to court records and, therefore, no longer a minor), who claims to be a minor, it is up to the court to decide on the truthfulness of his claim. It may be noted that none of his relatives wanted to cooperate in ascertaining his claim despite the efforts made by the Jail authorities in this regard.

“Michael Guevarra was detained at Angeles District Jail on 21 April 2002 by virtue of a confirmation of a detention order issued by investigating attorney Oliver Garcia on the same day. Charged with trespassing on a private dwelling a criminal case (No. 02-504) was filed against Michael Guevarra with the office of the court clerk on 22 April 2002. His case is pending trial before the Municipal Court Branch 2, Angeles City.”

9. In its comments on the Government’s reply, the source confirmed that since the communication was submitted Manuel Flores, Felix Cusipag and Hadji Salic Camarodin were released from detention. Still, it requested the Working Group not to file the case, but to avail itself of the power it has under rule 17 (a) of its revised methods of work to render an opinion as to whether or not the deprivation of liberty suffered by the three minors was arbitrary. In support of this request the source invoked the harsh prison conditions in the Philippines and the practice of the authorities of detaining juveniles in prisons for adults.

10. The source did not challenge the substance of the Government’s allegation that Michael Guevarra was not a minor at the time of his arrest and that he was arrested on 21 April 2002 in flagrante delicto. His arrest had been consistently confirmed by the Philippine judicial authorities. He is currently standing trial in Angeles City. The source did not invoke any specific reason to support the arbitrary nature of the detention.

11. The Working Group takes note with concern of the allegation of the source which was confirmed by the Government that because of inadequate prison facilities juveniles are quite often detained in prisons for adults, a practice obviously contrary to article 10 of the International Covenant on Civil and Political Rights. However, since the mandate of the Working Group does not extend to investigating the manner in which minors are detained, it decides to bring the case to the attention of the Committee on the Rights of the Child.

12. In the light of the foregoing, the Working Group renders the following opinion:

(a) The Working Group takes note of the release of Manuel Flores, Felix Cusipag and Hadji Salic Camarodin and decides to file their cases. A copy of this opinion will be sent to the Committee on the Rights of the Child;

(b) The Working Group concludes that the deprivation of liberty suffered by Michael Guevarra is not arbitrary within the meaning of the categories of principles applicable to the consideration of cases submitted to it.

Adopted on 11 September 2002