

25 February 2010

Hon. LEILA DE LIMA
CHAIRPERSON
Commission on Human Rights

Dear Chairperson de Lima,

The undersigned are writing to Your Office on behalf of the forty-three (43) doctors, nurses and medical workers who are now detained at Camp Capinpin, Tanay, Rizal following the joint operation of some three-hundred (300) or so officers and members of the 16th Infantry Battalion, 202nd Infantry Brigade (IB), 2nd Infantry Division (ID), Philippine Army (PA), and the Rizal Provincial Police, Philippine National Police (PNP), on a farm house located at 266 Dela Paz St., Brgy. Maybangcal, Morong, Rizal, at around 6:15 a.m., 6 February 2010.

The names of the 43 doctors, nurses and medical workers, on whose behalf this Letter Complaint is written, and the marking of their respective sworn statements, are:

A	Among, Ray- om
B	Balleta, Jane B.
C	Barrientos, John Mark
D	Carandang, Elenor y Orgena
E	Castillo, Eulogio "Ely"
F	Castillo, Samson M.
G	Castro, Mercy
H	Clamor, Dr. Merry Mia
I	de la Cruz, Ramon
J	de la Cruz, Romeo
K	de Luna, Leah Cristine "Ria"
L	Dematera, Edwin
M	Doloricon, Angela M.
N	Donasco, Lilibeth
O	Duano, Julius
P	Escartin, Mark
Q	Espera, Ronilo
R	Gonzales, Jacqueline
S	Javier, Janice
T	Labrador, Sylvia P.
U	Liberal, Gary A.
V	Macabenta, Reynaldo T.
W	Marquez, Emelia
X	Marquez, Emily
Y	Martinez, Pearl Irene
Z	Millena, Ace
AA	Montes, Dr. Alexis S.
BB	Murillo, Glenda C.
CC	Obera, Lydia "Del" A.
DD	Ocasla, Delia M.

EE	Oliveros, Carina "Judilyn"
FF	Ortiz, Jovy "Marvin"
GG	Oseo, Miann E.
HH	Otanez, Linda
II	Paulino, Valentino
JJ	Piñero, Danny
KK	Pizarro, Jenelyn
LL	Quinawayan, Ma. Teresa R.
MM	Romeroso, Franco B.
NN	Saligumba, Lorelyn
OO	Serato, Maria Elena
PP	Tawagon, Chenilyn R.
QQ	Yaun, Yolanda

The President of the Republic of the Philippines herself, Her Excellency Gloria Macapagal-Arroyo is primarily responsible as Commander-in-Chief under the principle of command responsibility because she knew or, owing to the circumstances at the time, should have known that the state forces were committing or about to commit the crimes stated in this complaint.

The public officials and cabinet secretaries also responsible for gross violations of Constitutional rights following the doctrine of command responsibility include National Security Adviser Norberto Gonzales, the Department of the Interior and Local Government Secretary Ronaldo Puno.

Meanwhile, the public officers who are also exercising command responsibility over the 202nd IB, 2nd ID PA and the Rizal Provincial Police, PNP and directly responsible for the illegal search, illegal arrests, physical and mental torture and other blatant violations of the Constitutional rights of the 43 doctors and health workers are Gen. Victor Ibrado, the Chief of Staff of the Armed Forces of the Philippines; Lt. Gen. Delfin Bangit, the Commanding General of the Philippine Army; Lt. Gen. Roland Detabali, Commanding General, SOLCOM, Philippine Army; Brig. Gen. Jorge Segovia, Chief of the 2nd Infantry Division, Philippine Army; Col. Aurelio Baladad, Commander of the 202nd Infantry Brigade, Philippine Army; Lt. Col. Jaime Abawag, Commander of the 16th Infantry Battalion; Philippine National Police Director General Jesus Verzosa; and P/Supt. Marion Balonglong of the Rizal Provincial Police.

In the same vein, the Honorable Judge Cesar Mangrobang is also responsible for the issuance of the bogus and constitutionally defective Search Warrant that the military and police officers used to justify the raid of the farmhouse located at 266 Dela Paz St., Brgy. Maybangcal, Morong, Rizal.

State Prosecutor II Romeo Senson, the Department of Justice Prosecutor who conducted the defective inquest of the 43 doctors, nurses and medical workers and issued the Resolution indicting them with trumped-up charges, and Senior Assistant Chief State Prosecutor Severino Gaña, the reviewing prosecutor who signed the findings of Prosecutor Romeo Senson, and Department of Justice Secretary Agnes Devanadera are accountable for their complicity in the efforts to legitimize the military and police's commission of human rights violations.

Factual background

On 5 February 2010, P/Supt. Marion Balonglong, Commanding Officer of the Rizal Philippine National Police, filed an Application for Search Warrant ¹ before Presiding Judge Cesar A. Mangrobang of Branch 22, Regional Trial Court, Imus, Cavite, based on the alleged report of a certain Mr. Ricardo Matias, a resident of Brgy. Maybangcal, Morong, Rizal, that “one MARIO CONDES also a resident of aforementioned place is in the habit of brandishing firearms and would at times poke said firearms at who ever passes near his house.” ²

In the alleged hearing for determination of probable cause for the issuance of a search warrant, Judge Mangrobang only made routine and *pro forma* examination of the applicant and the witnesses. Judge Mangrobang simply asked the applicant’s witness Mr. Ricardo Matias to describe Mr. Mario Condes but he did not inquire on the exact address of this person; he did not clarify the place to be searched with sufficient particularity despite the statement of P/Supt. Marion D. Balonglong that “PO1 Arnel Tarasona made discreet background investigation on the subject and it was divulged by neighbors that subject has the habit of showing off his firearms and intimidate people passing by near his house.”

On the same day, i.e. 5 February 2010, Judge Cesar Mangrobang issued Search Warrant No. 1565-10, which provides that:

X x x

*“It appearing to the satisfaction of the undersigned after examining under oath PSUPT. MARION D. BALONGLONG and his witness PO1 ARNEL TARASONA that there is a probable cause to believed (sic) that Violation of RA 8294 (Illegal Possession of Firearms and Ammunition) has been committed and that there are good sufficient reason to believed (sic) that **MARIO CONDES** has his possession or control at **Brgy. Maybangcal, Morong, Rizal** the following described properties to be seized to wit:*

- a. M16 Rifle
- b. Caliber 9mm Pistol
- c. 12 Gauge Shotgun
- d. Caliber 45 Pistol

You are hereby commanded to make an immediate search at any time in the day and night of the premises above described and forthwith seized and take possession of the above described properties and bring said properties to the undersigned to be dealt as the law directs.”

X x x x

A copy of said search warrant is attached herein as Annex “SW.”

On 6 February 2010, at around 6:00 a.m., around 300 heavily-armed soldiers and policemen under the leadership of Col. Aurelio Baladad, commander of the 202nd Infantry Brigade, and P/Supt. Marion Balonglong unlawfully entered and

¹ Please see the Application for a Search Warrant attached herewith as Annex “SW-1.”

² Please see Sworn Affidavit of PO1 Arnel Tarasona attached herewith as Annex “SW-2.”

searched Dr. Melecia Velmonte's farmhouse, a renowned and respected infectious disease specialist in the medical profession, located at 266 Dela Paz St., Brgy. Maybangcal, Morong, Rizal.

During that time 43 medical doctors, nurses, midwives and community health workers from various organizations and provinces in Luzon were renting the premises for a training entitled *Community First Responders Health Training* for the period 1 to 7 February 2010. The Council of Health Development (CHD) and Community Medicine Development Foundation (COMMED) sponsored this health and medical training. Both are non-government organizations that aim, among others, to render medical and health services to poor communities through providing trainings and seminars to community health workers on how to address basic medical problems or emergency situations.

The military and police brought during the illegal search eight (8) 6 x 6 military trucks, two (2) armored personnel carriers, one (1) ambulance, one (1) KIA Pride vehicle, and an undetermined number of PNP vehicles. They purposely covered the plate numbers of all said military and police trucks and vehicles with materials to avoid identification. They also brought with them two K-9 units.

The military and police entered the premises without permission, and without informing Dr. Velmonte of their purpose and showing her a search warrant.

The military and police simultaneously barged into the two houses where the 43 participants of the seminar were occupying; Dr. Velmonte was staying in one of the houses together with the female participants. The military and police also went to the kitchen and the conference room.

When they raided the houses, some of the petitioners were still asleep; some were in the bathroom doing their daily rituals; others were having breakfast or getting ready for breakfast while the rest were doing some physical exercises.

The 43 doctors, nurses and medical workers were all herded in one corner and then ordered at gun point to line-up and go out of the houses, the kitchen and conference room where they were at the time of the raid. Thereafter, they were directed to proceed to the drive way. The participants asked for the reasons why the State security forces were holding them against their will, but no one from the military and police raiding team explained anything to them.

While the participants were all at the drive-way, the military and police went inside the two houses, the kitchen and the conference room and conducted the illegal search. Dr. Velmonte vigorously protested against the illegal search and demanded from the military and police to produce a search warrant but they merely ignored her. Dr. Velmonte, or any member of her family, was not allowed to witness the search. Instead, Dr. Velmonte was ordered together with her helper to join the participants at the drive way.

No one from the military and police asked or looked for Mr. Mario Condes. Before the illegal search, some of the participants saw the military and police enter the houses with knapsacks full of load. When they went out after the illegal search, some of the participants observed that the military were already carrying plastic bags, and the knapsacks were no longer loaded. They were surprised when the military announced that they found grenades, explosives and firearms in the houses and premises of the compound.

Upon the intervention of Dr. Velmonte's son, Mr. Jose Manuel, Col. Aurelio Baladad presented a search warrant. But it was only after they have made the illegal search that Col. Baladad eventually showed to Mr. Jose Manuel the Search Warrant apparently procured from RTC Judge Cesar Mangrobang of Branch 22, Imus, Cavite.

Upon examination of said search warrant, Dr. Velmonte and her son protested to Col. Baladad the illegality and unconstitutionality of the same due to the following matters:

- a.) The search warrant is directed against a person named MARIO CONDES, who is not a resident of the farmhouse nor known to and heard of by Dr. Velmonte and her son and the participants of the training;
- b.) The search warrant did not describe with particularity the place to be searched, as it only indicated therein the address "Brgy. Maybangkal, Morong, Rizal" where so many houses are located; and
- c.) The search warrant did not state that the house to be searched is the farmhouse of Dr. Velmonte located at 266 Dela Paz St., Brgy. Maybangkal, Morong, Rizal.

On its face, the search warrant that Judge Cesar A. Mangrobang issued is a blatant disregard and violation of Section 2, Article III of the 1987 Constitution.

The protestations of the Velmontes, however, fell on deaf ears as the military and police continued the illegal search in every inch of the whole premises without the presence of Dr. Velmonte and other lawful occupants thereof as the latter were all forcibly confined in one corner of the premises.

After the illegal search, the military and police told Dr. Velmonte about their *ridiculous* and *absurd* claim that grenades and landmines were allegedly recovered from one of the beds within the premises. Dr. Velmonte strongly denied that there were grenades and landmines in any of the rooms or in any place within the compound. The military and police, without doubt, definitely "planted" the same when they illegally searched the premises without any lawful occupant thereof to stand as witness during the search.

Despite their objections, the forty-three (43) men and women found within the premises were hand tied, blindfolded and forced to line up.

It has become apparent then that the military and police had no real intention to search and apprehend a certain MARIO CONDES for illegal possession of firearms and ammunition. Col. Baladad made the unfounded claim that the forty-three (43) men and women of the medical profession are suspected communist rebels.

The glaring truth is that the real intention of the military and the police, as seen from the foregoing circumstances, is to link the 43 doctors and medical workers who are members of progressive organizations with the CPP/NPA; harass and threaten them; illegally search the farmhouse; plant pieces of evidence and unlawfully arrest them, using a patently constitutionally defective search warrant in order for the raid to have a semblance or appearance of legality.

At around 8:00 a.m., the military and police forcibly illegally arrested the forty-three (43) men and women from the medical profession *without* informing them of the reasons for their arrests. No warrants of arrests were shown to them.

The 43 participants strongly objected to their illegal arrests since they were not then committing and have not committed any crime to justify their apprehension. They insisted on exercising their right to counsel. But the military and police raiding team did not heed their demand to allow them to call their lawyers. Instead they were blindfolded, handcuffed and forcibly placed inside the military vehicles and hurriedly left the premises.

It is important to stress that not one among them is the certain "Mario Condes" named in the patently constitutionally defective search warrant.

Dr. Velmonte and her son protested the arrests made on the forty-three (43) individuals but the military and police likewise ignored them. Col. Baladad did not say anything about the destination of the forty-three (43) individuals when Dr. Velmonte and her son asked him about it. No one explained to them the basis for the arrests; they tried to assert their constitutional right to counsel but the military and police simply disregarded them.

It was only later that Dr. Velmonte and her son overheard from a soldier that the military would bring the forty-three (43) individuals to Camp Capinpin in Tanay, Rizal.

Upon learning of the illegal arrests of the forty-three (43) health workers, lawyers Ephraim Cortez and Raymundo L. Apuhin together with the victims' relatives and human rights defenders went to Camp Capinpin in Tanay, Rizal, on the afternoon of 6 February 2010, hours after the illegal search and arrests. However, the military officers inside Camp Capinpin *prevented* and *disallowed* their entry.

Similarly, at around mid-afternoon the following day, i.e., 7 February 2010, the families and relatives of the illegally arrested 43 doctors and medical workers trooped to Camp Capinpin together with their counsels Attys. Amylyn B. Sato and Francis Anthony Principe to confer and check the condition of the 43 illegally arrested doctors and medical workers. They stayed at the gates of Camp Capinpin until around 7:00 p.m., but they were refused entry and not allowed to confer with the 43 medical workers. When Attys. Sato and Principe insisted on knowing the status of the detainees, they were even misled and informed that the 43 medical workers were scheduled for inquest proceedings at the prosecutors' office somewhere in Rizal. Attys. Sato and Principe together with some of the relatives went to the prosecutors' offices in Morong, Tanay and Taytay, Rizal only to find out that no inquest proceeding was scheduled on the said night.

During the time that the lawyers and relatives were prevented from seeing the 43 illegally arrested doctors and medical workers, they were suffering from psychological and physical torture in the hands of the military inside Camp Capinpin. The ordeal that the doctors and medical workers individually experienced at the hands of their military captors were narrated to the undersigned counsels when they were able to confer with them for the first time on 11 February 2010 or five (5) days from the time they were illegally arrested. To summarize, the following are the specific violations committed against the 43 doctors and medical workers:

- a.) All the 43 doctors and medical workers were denied their right to counsel immediately after their arrest. They were allowed to see their lawyers only five (5) days after their illegal arrest;

- b.) They were placed in *incommunicado* status;
- c.) They were subjected to prolonged and repeated interrogation to elicit information while blindfolded and in handcuffs; they were still blindfolded when their fingerprints were taken;
- d.) They were deprived of sleep, interrogated individually at odd hours, made to listen to gun shots and the unnerving screams of the other detained persons;
- e.) They were deprived of visitation rights of families and relatives.
- f.) During tactical interrogation, they were given death threats and forced to admit membership in the New People's Army; they were subjected to psychological torture; the military threatened to harm their families if they refused to cooperate;
- g.) They were threatened and convinced to cooperate with the military with a promise to help fix their cases or give rewards;
- h.) Valentino Paulino was concealed from his lawyers when they tried to confer with him on February 11, 2010; he was threatened and forced to admit membership in the New People's Army and thereafter presented to the media against his will;
- i.) Jane Balleta, an epileptic, was deprived of her medicines; Glenda Murillo suffered internal bleeding leading to a miscarriage due to the early morning raid on 6 February 2010 and was refused medical attention;
- j.) Deprived of privacy; army officers and soldiers take off their clothing and underwear every time they go to the comfort room;
- k.) Sexual harassment on Jane Balleta and Miann Oseo - soldiers took off their clothing during questioning; Mercy Castro - the soldiers express their desire to kiss her during interrogation;
- l.) Physical torture on Ramon de la Cruz, the interrogators punch him near the liver area, tight handcuffs causing wounds on the wrists, knee blows to his legs, soldiers strike at his solar plexus, back, nape and shoulders; Dr. Alex Montes, suffered electrocution, punches on the chest; Lilibeth Donasco - was hit and punched in the head by a male soldier when she would not answer during interrogation; it caused the ringing of her ears and extreme dizziness, aggravated by the tightness of the blindfold; Eulogio Castillo prior to the taking of his fingerprints and photograph, firearms were aimed at his head and back.

On the night of 7 February 2010, State Prosecutor Romeo B. Senson of the Department of Justice allegedly conducted inquest proceedings on the 43 doctors and medical workers. Instead of inquiring into the circumstances of their arrest, prosecutor Senson simply made a roll call and head count of the doctors and medical workers; thereafter, he simply announced that they were all subjected to inquest and that they are charged with illegal possession of

firearms and explosives. They were not given a chance to inform the public prosecutor of the illegality of their arrest and of the ordeal they went through while in detention; they were not given a chance to manifest their demand to see and talk to their lawyers.

This is despite the fact that at the time the alleged inquest was being conducted, the lawyers of the 43 doctors and medical workers were at the gates of Camp Capinpin demanding entry in order to confer with their clients.

Thereafter, without looking into the illegality of the arrests and the planting of evidence against the 43 health workers, State Prosecutor Romeo B. Senson, in a Resolution dated 8 February 2010, recommended the filing of charges against 40 of the 43 doctors and medical workers with illegal possession of explosives with no bail recommended under Presidential Decree 1866 (PD 1866) as amended under Republic Act 9516 (R.A. No. 9516); and Messrs. Romeo de la Cruz, Reynaldo Macabenta and Del Ayo Overa for illegal possession of firearms under P.D. 1866 and election gun ban.

On 11 February 2010 or 120 hours from the time of their illegal arrest and detention, Informations were filed against the 43 doctors and medical workers for illegal possession of explosives with no bail recommended under P.D. 1866, as amended, and illegal possession of firearms under the same law.

The 43 detained doctors, nurses and medical workers invoke the inherent jurisdiction of Your Honorable Office and the constitutional powers appurtenant thereto concerning the investigation and correction of human rights abuses obtaining under the circumstances.

Considering that the actuations of 2nd ID, PA and the Rizal Provincial Police from the acquisition of the Search Warrant at Imus, Cavite, to the illegal arrest at Morong, Rizal and up until the illegal detention at Camp Capinpin, Tanay, Rizal, are clear violations of the human rights of 43 detained doctors, nurses and medical workers, the matter is properly within the mandate of the Commission on Human Rights to investigate and to take appropriate action.

The human rights violations of the 2nd ID, PA and the Rizal Provincial Police in this case affect the civil and political rights of the 43 detained doctors, nurses and medical workers and the corresponding laws and rules that guarantee and regulate procedural due process that are part and parcel of the constitutional safeguards enshrined in the Bill of Rights.

The following discussion is the correlation of the human rights violations that the involved law enforcement agencies have committed under the circumstances and the applicable laws and rules transgressed.

Obtaining Void Search Warrant at Imus, Cavite and Planting of Evidence:

Section 2, Article III of the Constitution guarantees the fundamental right against unreasonable searches and seizures and lays down the basic conditions for the issuance of a search warrant.

In this case, the records would show that Judge Cesar A. Mangrobang did not discharge his duties before issuing the subject search warrant. The record is bereft of proof to show that he indeed conducted a probing, exhaustive and

extensive inquiry as to the matters relative to the application and issuance of the said search warrant.

The records will show that Judge Cesar A. Mangrobang conducted only a *pro forma* examination of the applicant as found in the respective depositions of P/Supt. Marion D. Balonglong, PO1 Arnel Tarasona and Ricardo Matias. The questions propounded in the said depositions were, in fact, not probing but were merely routinary.

The absence of the said probing and extensive inquiry is evident considering that the search warrant had included Caliber 9mm Pistol, 12 Gauge Shotgun and Caliber .45 Pistol as among the items for seizure when, in fact, the applicant and his witnesses in their respective depositions never mentioned the said items.

This only shows that the judge merely relied on the Application for Search Warrant without confirming the veracity thereof through the conduct of the requisite inquiry. Had he properly conducted the required inquiry, the judge would have known that the aforesaid items were included as a part of a fishing expedition.

Moreover, the search warrant did not describe the place to be searched with sufficient particularity. Hence, it is invalid. The said warrant only mentions the address to search as Brgy. Maybangcal, Morong, Rizal, where so many houses of different owners are found. The constitutional requirement is a description which particularly points to a definitely ascertainable place, so as to exclude all others.³ But, clearly, in this case, the said requirement of particularity is absent which renders the search warrant void.

The fact that the police and the military raiding teams knew of where the house is located did not justify the inadequacy of the particulars of the place to search. Otherwise, confusion would arise regarding the subject of the warrant — the place indicated in the warrant or the place that the police have identified. Such conflict invites uncalled for mischief or abuse of discretion on the part of law enforcers.⁴

The raiding team committed reprehensible acts in enforcing the search warrant. Among the irregularities are:

- a.) The raiding team failed to perform the following before breaking into the premises:
 - i. Properly identify themselves and showing necessary credentials including presentation of the Search Warrant;
 - ii. Furnishing of Search Warrants and allowing the occupants of the place to scrutinize the same; and
 - iii. Giving ample time to the occupants to voluntarily allow the raiders entry into the place and to search the premises.
- b.) Dr. Velmonte's helper was held at gunpoint to open the gate for the raiding team.

³ People v Simbahon, G.R. No. 132371, April 9, 2003.

⁴ *Id.* citing **Burgos Sr. v. Chief of Staff**, 218 Phil. 754 (1984).

- b.) The 43 participants of the training/seminar were herded out of their rooms and/or the building where they were confined for the duration of the raid.
- d.) The illegal search was conducted by the raiding team against the protests of Dr. Velmonte and her son in view of the fact that the search warrant is directed against a person not a resident of the farmhouse nor known to and heard of by Dr. Velmonte and the participants of the training. Worse, the same was done in their absence.

The government's drive against illegal possession of firearms and ammunitions deserve everybody's support. But it cannot pursue it through ignoble means which violate constitutional rights. It is precisely when the government's purposes are "beneficent" that we should stand most on our guard to protect human rights.

Illegal Arrest at Morong, Rizal

Article III, Section 2 of the Constitution explicitly guarantees the right of a person against unlawful arrests and other forms of restraint.⁵ The State cannot simply intrude indiscriminately into the houses, papers, effects, and most importantly, on the person of an individual. The constitutional provision guarantees an impenetrable shield against unreasonable searches and seizures.

A statute, rule or a situation which allows exceptions to the requirement of a warrant of arrest or search warrant are strictly construed and their application limited only to cases specifically provided or allowed under the law. To do otherwise is an infringement upon personal liberty and would set back a right so basic and deserving of full protection and vindication yet often violated.⁶

Undisputed in this case is the fact that the 43 doctors, nurses and community health workers subject of this petition were arrested in the early morning of 6 February 2010 without the benefit of a warrant of arrest. The arresting team of soldiers and policemen numbering about 300 were heavily armed with high-powered, automatic rifles with laser sights when they stormed the residence of Dr. Melecia Velmonte. But they were not at all armed with a warrant of arrest.

In a vain attempt to justify the warrantless arrest of the 43 health workers, the military and police claim that the said 43 were "caught *in flagrante delicto*" allegedly in possession of illegal firearms and explosives. Such claim is inherently incredible and totally false.

The facts and circumstances surrounding the present case do not at all show that the 43 doctors, nurses and medical workers arrested had just committed, were actually committing, or were attempting to commit a crime.

- a. The 43 were attending a week-long *Community First Responders' Health Training* organized by the Community Medicine Development Foundation (COMMED) and the Council for Health Development (CHD).

⁵ **People v. Bongalon**, G.R. No. 125025, 23 January 2002.

⁶ *Supra*, citing **People v. Argawanon**, 215 SCRA 652.

- b. It was about 6:15 in the morning of February 6, 2010 when the combined military and police teams forced their way into the compound of Dr. Melecia Velmonte. As it was early in the morning, some of the 43 participants in the stay-in training were still in bed, others were in the bathroom, some others were having coffee, outside the house to do morning physical exercise, or otherwise preparing themselves for the sixth day of the training. These are all lawful activities.
- c. Moreover, the 43 did not manifest any suspicious behavior or conduct that would clearly indicate a criminal act.
- d. Therefore, they cannot be said to be committing a crime. Neither had they just committed or attempting to commit a crime.

The military and police officers' claim that the 43 doctors, nurses and medical workers were seen in illegal possession of firearms or explosives at 6:15 in the morning of 6 February 2010 is ridiculously specious, incredible and self-serving. Immediately upon gaining entry into the property of Dr. Velmonte, the military and police raiding team held the 43 doctors, nurses and medical workers at gunpoint, herded them outside their quarters, blindfolded and handcuffed them, effectively shutting them out of the view of what the arresting officers actually did inside the premises. The military and police raiding team intentionally planted the firearms and explosives which they alleged were in the possession of the 43 doctors, nurses and medical workers.

The warrantless arrest of the 43 doctors, nurses and medical workers is not justified either under paragraph (b) of Section 5, Rule 113 of the Rules of Court.

The following circumstances are insufficient to constitute probable cause for the warrantless arrest:

- a.) Assuming without admitting the validity of the search warrant used by the arresting team, the same did not give a specific place to search. The search warrant merely stated "Brgy. Maybangcal, Morong, Rizal" without specifying the number of the house.
- b.) The arresting team did not have the names or a physical description of each of the persons to be arrested.
- c.) They rounded up all the participants in the health training who had just risen in the early morning of February 6, 2010, still asleep, or getting ready for the day's training.

As the essential element of probable cause is wanting in this case, hence, the arrest of the 43 detainees without a warrant is unjustified and illegal.

Considering that the arrest without warrant made in this case was unlawful, the seizure of the alleged firearms/explosives was rendered illegal as well for being the proverbial "fruit of the poisonous tree." Consequently, such evidence obtained in violation of Section 2, Article III of the Constitution, is inadmissible for any purpose in any proceeding.⁷

⁷ Section 3 (2), Article III of the Constitution.

In the landmark case of **Stonehill v. Diokno**,⁸ the Supreme Court observed that most jurisdictions have realized that the exclusionary rule is “the only practical means of enforcing the constitutional injunction” against unreasonable searches and seizures. Quoting Judge Learned Hand, the High Court explained that “only in case the prosecution which itself controls the seizing officials, knows that it cannot profit by their wrong, will the wrong be repressed.”

It is often stated that those who are supposed to enforce the law are not justified in disregarding the rights of the individual in the name of order. Order is too high a price for the disregard and destruction of liberty. As Justice Holmes once said, “I think it is less evil that some criminals should escape than that the government should play an ignoble part.” It is simply not allowed in a free society to violate a law to enforce another, especially if the law violated is the Constitution itself.⁹

Moreover, the military and police officers’ acts of planting evidence are crimes punishable with *reclusion perpetua* under Section 4-A of Republic Act 9516 (RA 9516) that amends Presidential Decree 1866 (PD 1866) which states,

"SEC 4-A. *Criminal Liability for Planting of Evidence.* - Any person who is found guilty of 'planting' any explosive or incendiary device or any part, ingredient, machinery, tool or instrument of any explosive or incendiary device, whether chemical, mechanical, electronic, electrical or otherwise, shall suffer the penalty of *reclusion perpetua*.

"Planting of evidence shall mean the willful act by any person of maliciously and surreptitiously inserting, placing, adding or attaching, directly or indirectly, through any overt or covert act, whatever quantity of any explosive or incendiary device or any part, ingredient, machinery, tool or instrument of any explosive or incendiary device, whether chemical, mechanical, electronic, electrical or otherwise in the person, house, effects or in the immediate vicinity of an innocent individual for the purpose of implicating incriminating or imputing the commission of any violation of this Decree.

Violations of Human Rights and Torture at Camp Capinpin, Tanay, Rizal

The 43 doctors, nurses and medical workers were brought to Camp Capinpin, Tanay, Rizal where they were subjected to physical and psychological torture. They were deprived of sleep, interrogated individually at odd hours, made to listen to gun shots and the unnerving screams of the other detained persons.

The 43 doctors, nurses and medical workers were all blindfolded and handcuffed. They cannot even relieve themselves without the assistance of their captors. The women are particularly vulnerable. The soldiers are the ones to take off the clothes of the women detainees and their underwears whenever the latter have to relieve themselves.

Some of the men, such as Mr. Ramon de la Cruz, experienced getting physically beaten up during interrogation sessions. The soldiers would punch him repeatedly at his sides and at the back, where his liver is located. The interrogators would also strike at his solar plexus and they would slap his nape and his back hard. They likewise inflict knee blows on the sides of his legs, a

⁸ 20 SCRA 383.

⁹ **People v. Laguio, Jr.**, *supra*.

torment which is excruciatingly painful. The handcuffs on Mr. Ramon de la Cruz are particularly tight, thus, causing wounds and lacerations on his wrists.

The psychological torture is no less severe upon the 43 detained doctors, nurses and medical workers. The interrogators constantly threaten them with pain, incarceration, sexual abuse, isolation, death, and other corporeal punishments not only of the detainees themselves but even of their relatives and loved ones.

On the other hand, the captors offer rewards, better treatment and the dismissal of the criminal cases to those detainees who would admit their membership in the New People's Army (NPA), surrender to the government and conform to the whims and directives of the military.

These depraved acts of torture that the military personnel inflicted upon the 43 doctors, nurses and medical workers are crimes under Article 235 of the Revised Penal Code and other pertinent laws, such as Republic Act 9745, the Anti-Torture Act of 1990, as well as the Convention Against Torture (CAT), of which the Philippines is a signatory.

The psychological and physical torture also violate the detained 43 doctors, nurses and medical workers' constitutional right against self-incrimination since the coercion and punishment inflicted upon them are intended to secure their admission of their membership with the NPA and their confession for criminal offenses charged against them.

The fundamental guarantee against torture is enshrined in Section 12 of the Bill of Rights, Article III of the 1987 Philippine Constitution,

The relatives and counsels of the 43 doctors, nurses and medical workers went to Camp Capinpin, Tanay, Rizal in order to visit them but the soldiers manning the gate refused to grant them entry. This is a clear violation of Section 2 (f) of Republic Act 7438 (RA 7438), and is a criminal offense that military and police personnel have committed for which their officers are responsible under Executive Order 226 (EO 226), a presidential issuance institutionalizing the doctrine of command responsibility. The pertinent portions of EO 226 are as follows,

Sec. 1. Neglect of Duty Under the Doctrine of "Command Responsibility". - Any government official or supervisor, or officer of the Philippine National Police or that of any other law enforcement agency shall be held accountable for "Neglect of Duty" under the doctrine of "command responsibility" if he has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge, he did not take preventive or corrective action either before, during, or immediately after its commission.

Sec. 2. Presumption of Knowledge. - A government official or supervisor, or PNP commander, is presumed to have knowledge of the commission of irregularities or criminal offenses in any of the following circumstances:

a. When the irregularities or illegal acts are widespread within his area of jurisdiction;

b. When the irregularities or illegal acts have been repeatedly or regularly committed within his area of responsibility; or

c. When members of his immediate staff or office personnel are involved.

Meanwhile, Section 2 (f) of RA 7438 provides,

Section 2. Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers. –

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(f) Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-governmental organization duly accredited by the Commission on Human Rights or by any international non-governmental organization duly accredited by the Office of the President. The person's "immediate family" shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.

In fact, the inquest proceedings were conducted during the afternoon of 7 February 2010 against the 43 doctors, nurses and medical workers without the assistance of their lawyers who were outside the gates of Camp Capinpin and who were demanding entry in order to see the detainees, as expressly provided for under the law.

This is yet another criminal violation of RA 7438, at Section 2 (a) and (b) thereof, that mandates that public officers shall ***at all times*** permit persons arrested, detained or undergoing custodial investigation access to legal assistance and to allow them to confer privately with competent counsel of their choice.

Section 2. Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers. –

(a) Any person arrested detained or under custodial investigation **shall at all times be assisted by counsel.**

(b) Any public officer or employee, or anyone acting under his order or his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who **shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation.** If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.

The detainees can singularly attest that the inquest that Prosecutor Romeo Senson conducted was grossly irregular and violates the National Prosecution Service's Manual for Prosecutors. The 43 doctors, nurses and medical workers were all made to line up at a basketball court and Prosecutor Romeo Senson initiated a head count and he merely stated that they were all charged with the

illegal possession of firearms and explosives and that he is simply submitting his findings to his boss for approval.

The very concept of an inquest is to determine if the persons arrested should remain under custody and charged in court.

Section 9 of the Manual of Prosecutors regarding Inquest directs the inquest prosecutor to recommend the release of the arrested persons if the arrest was not properly effected. Contrary to this very basic objective, Prosecutor Romeo Senson declared that the 43 doctors, nurses and medical workers are charged with crimes without even once asking them a question.

The inquest prosecutor certainly has not made any sort of inquiry as to whether the arrest of the 43 doctors, nurses and medical workers was properly conducted pursuant to Section 5 (a) and (b) of Rule 113 of the Rules of Criminal Procedure.

In Prosecutor Romeo Senson's Resolution dated 8 February 2010, he admits that he merely performed a head count of the 43 doctors, nurses and medical workers and declared that they are charged for possession of explosives and firearms.¹⁰

If Prosecutor Romeo Senson had done his task in accordance with the National Prosecution Service's Manual for Prosecutors, he would have found the arrest blatantly illegal and he would have immediately recommended the immediate release of the 43 doctors, nurses and medical workers pursuant to Section 9, Part II of their Manual, and, if he has even the slightest notion or concept at all of right and justice, he should have sternly reprimanded the military and police for their contemptible and beastly conduct in the treatment of the detainees.

It is therefore clear that Prosecutor Romeo Senson did not conduct a proper inquest of the 43 doctors, nurses and medical workers.

Prosecutor Romeo Senson and the entire office of the Department of Justice were merely used as tools in the military's attempt to give a semblance of legitimacy to the illegal arrest of the 43 doctors, nurses and medical workers herein. The complicity of Prosecutor Romeo Senson to the propensity of the military and the police to commit human rights violations is precisely the deplorable and harebrained antics that the Supreme Court censured in the cases of **Ladlad v. Velasco** and **People v. Beltran**,¹¹

Considering the foregoing blatant disregard and violations of the Constitutional rights of the 43 doctors and medical workers, it is therefore kindly implored that Your Honorable Office expeditiously look into this matter, investigate and correct the public officers named herein who are responsible for this execrable travesty of justice.

Thank You for Your kind consideration and prompt action.

Sincerely Yours,

¹⁰ Please see the Resolution of State Prosecutor Romeo Senson attached herewith as Annex "WR."

¹¹ G.R. Nos. 172070-72, G.R. Nos. 172074-76, G.R. No. 175013, 1 June 2007.

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