

Republic of the Philippines
REGIONAL TRIAL COURT
Branch 78, Morong, Rizal

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

Crim. Case No. 10-9078-M

REYNALDO MACABENTA,
Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

Crim. Case No. 10-9079-M

GARY LIBERAL, ET AL.,
Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

Crim. Case No. 10-9080-M

DEL AYO AVERA,
Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

Crim. Case No. 10-9081-M

ROMEO DE LA CRUZ,
Accused.

X-----X

**MEMORANDUM
IN SUPPORT OF THE MOTION TO DEFER ARRAIGNMENT
AND SUSPEND PROCEEDINGS**

ALL ACCUSED, by way of special appearance of the undersigned counsels, to this Honorable Court, most respectfully state that:

The blatant violations of the constitutional rights of the 43 accused invalidate all proceedings and render the *Informations* filed before this Honorable Court null and void. Hence, the Honorable Court has no jurisdiction over the case.

1. For the proper guidance of this Honorable Court, it is important to state the factual background and proceedings that led to the filing of the *Informations* before the Honorable Court. Thus -
 - 1.1. 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 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.
 - 1.2. 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.

- 1.3. 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 houses where the 43 participants of the seminar were occupying.
- 1.4. When they raided the houses, some of the petitioners were still asleep; some were in the bathroom doing their daily ritual; others were having breakfast or getting ready for breakfast while the rest were doing some physical exercises.
- 1.5. 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.
- 1.6. 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.

- 1.7. 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.
- 1.8. 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.
- 1.9. Upon examination of said search warrant, Dr. Velmonte and her son protested to Col. Baladad the illegality and unconstitutionality of the same.
- 1.10. 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 since it did not describe with particularity the place to

be searched, as it only indicated therein the address "Brgy. Maybangcal, Morong, Rizal" where so many houses are located.

- 1.11. 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.
- 1.12. 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.
- 1.13. Despite their objections, the forty-three (43) men and women found within the premises were hand tied, blindfolded and forced to line up.
- 1.14. 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.
- 1.15. 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.

1.16. 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.

1.17. 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. To summarize, the following are the specific violations committed against the 43 doctors and medical workers:

be searched, as it only indicated therein the address "Brgy. Maybangcal, Morong, Rizal" where so many houses are located.

- 1.11. 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.
- 1.12. 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.
- 1.13. Despite their objections, the forty-three (43) men and women found within the premises were hand tied, blindfolded and forced to line up.
- 1.14. 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.
- 1.15. Upon learning of the illegal arrests of the forty-three (43) health workers, lawyers Ephraim Cortez and Raymundo L. Apuhin together

- 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.

- 1.18. 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.
- 1.19. 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.
- 1.20. 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.

- 1.21. 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.
2. In a long line of cases, the Supreme Court has unequivocally declared that once a violation or deprivation of a constitutional right is shown to exist, the court where the proceedings are pending or the one that rendered the challenged decision is deemed ousted of jurisdiction and habeas corpus is the appropriate remedy to assail the illegality of the detention.
3. A good example is the case of *People v. Opida*.¹ In that case, the Supreme Court found that the trial judge disregarded the constitutional safeguards in favor of the convicted person, such as the presumption of innocence and the protection against third-degree methods that law enforcers employ in order to extract confessions.

The Supreme Court pronounced therein,

*Accused-appellants Opida and Marcelo, who have been imprisoned since 1976, have sent us separate letters pleading for the resolution of their death sentences one way or the other once and for all. Considering the way they were tried, we now declare that they should not be detained in jail a minute longer. **While this is not to say that the accused are not guilty, it does mean that, because their constitutional rights have been violated, their guilt, if it exists, has not been established beyond reasonable doubt and so cannot be pronounced.** Due process has stayed the uneven hand of the quick condemnor and must set the defendants free.*

¹ G.R. No. L-46272, 13 June 1986.

4. An even more classic example is the case of ***Gumabon v. Director of Prisons***,² citing ***Conde v. Rivera***,³ ***Harden v. Director of Prisons***,⁴ ***Abriol v. Homeres***,⁵ ***Chavez v. Court of Appeals***⁶ and ***Celeste v. People***.⁷ This case involved the conviction of alleged rebels and they sought the benefits of the ruling laid down in the landmark ***People v. Hernandez***⁸ doctrine on the basis of the equal protection clause. The High Court agreed with the petitioners therein and declared in that case that,

There is the fundamental exception though, that must ever be kept in mind. Once a deprivation of a constitutional right is shown to exist, the court that rendered the judgment is deemed ousted of jurisdiction and habeas corpus is the appropriate remedy to assail the legality of the detention.

5. In this case, the 43 doctors and health workers have suffered innumerable violations and deprivations of their constitutional rights before they were even brought to the Honorable Regional Trial Court.
6. To reiterate, the violations of the constitutional rights of the 43 doctors, nurses and medical workers include,
- a.) Illegal and void Search Warrant
 - b.) Illegal implementation of the void Search Warrant
 - c.) Illegal arrest
 - d.) Planting of evidence
 - e.) Physical and psychological torture
 - f.) Detention *incommunicado* and in a facility that is not of civilian jurisdiction
 - g.) Denial of visitation rights of relatives, counsels, doctors, spiritual advisers
 - h.) Labeling as rebels and communists in violation of presumption of innocence

² G.R. No. L-30026, 30 January 1971.

³ 45 Phil. 650 (1924).

⁴ 81 Phil. 741 (1948).

⁵ 84 Phil. 525 (1949).

⁶ L-29169, Aug. 1968, 24 SCRA 663.

⁷ L-21435, Jan. 30, 1970, 31 SCRA 391.

⁸ 99 Phil. 515 (1956).

7. In view of the foregoing, the Honorable Regional Trial Court clearly has no jurisdiction over the case. Verily, therefore, it may not proceed with the proceedings of the instant cases including the arraignment of the accused.

The Honorable Court should exercise judicial courtesy and wait for the final determination of the Petition for habeas corpus filed for all the accused in this case.

8. For the information and guidance of the Honorable Court, on February 9, 2010, a Petition for habeas Corpus was filed be for all the accused in this case. The said Petition is currently pending before the Court of Appeals. And in case of an adverse decision, the petitioners in the said petition for habeas corpus will appeal to the High Court.
9. This Honorable Court, with all due respect, should defer the arraignment and refrain from continuing with the proceedings of the instant cases under the *principle of judicial courtesy* as laid down in the case of ***Eternal Gardens Memorial Park Corporation vs. Court of Appeals***⁹. In said case, the Honorable Supreme Court pronounced: Thus –

*“Although this Court did not issue any restraining order against the Intermediate Appellate Court to prevent it from taking any action with regard to its resolutions respectively granting respondents' motion to expunge from the records the petitioner's motion to discuss and denying the latter's motion to reconsider such, order, **upon learning of the petition, the appellate court should have refrained from ruling thereon** because its jurisdiction was necessarily limited upon the filing of a petition for certiorari with this Court questioning the propriety of the issuance of the above-mentioned resolutions. **Due respect for the Supreme Court and practical and ethical considerations should have prompted the appellate court to wait for the final determination of the petition before taking***

⁹ G.R. No. L-50054 August 17, 1988. (Emphasis supplied)

cognizance of the case and trying to render moot exactly what was before this court.”

10. It should be noted that in the Petition for habeas Corpus filed for all the accused in this case, the petitioners therein raised the following issues, to wit:

- I. *WHETHER OR NOT THE SEARCH CONDUCTED BY THE MILITARY AND POLICE RAIDING TEAM ON THE FARMHOUSE/COMPOUND OWNED BY DR. MELECIA VELMONTE LOCATED AT 266 DELA PAZ ST., BRGY. MAYBANGCAL, MORONG, RIZAL IS VALID.*
- II. *WHETHER OR NOT THE WARRANTLESS ARRESTS MADE ON THE 43 DOCTORS AND MEDICAL WORKERS ON FEBRUARY 6, 2010 ARE VALID.*
- III. *WHETHER OR NOT THE CONSTITUTIONAL RIGHT TO DUE PROCESS AND OTHER CONSTITUTIONAL RIGHTS OF THE 43 DOCTORS AND MEDICAL WORKERS HAVE BEEN VIOLATED DURING THE CONDUCT OF THE SEARCH, ARREST AND WHILE UNDER DETENTION.*
- IV. *WHETHER OR NOT THE HONORABLE COURT MUST AND SHOULD INQUIRE INTO THE LEGALITY OF THE PETITIONERS' ARREST AND CONTINUED DETENTION TO ENSURE THAT DUE PROCESS CLAUSE OF THE CONSTITUTION HAS IN FACT BEEN SATISFIED.*

11. Verily, therefore, so as not to render moot the issues raised before the higher court in the petition for habeas corpus and for practical and ethical considerations, the Honorable Court should wait for the final determination of the said petition before taking cognizance of the case.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Court suspend the proceedings in this case including the arraignment of all the accused and wait for the final determination of the petition for habeas corpus.

Other forms of relief just and equitable under the premises are also prayed for.

Makati City for the City of Manila. March 10, 2010.

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EXPLANATION OF SERVICE BY REGISTERED MAIL

Pursuant to Section 11, Rule 13 of the 1997 Rules of Court, the office of the undersigned served copies of this pleading on the other party through registered mail because of time, distance and manpower constraints to effect personal service.


AMYLYN B. SATO