

On the Unlawful Searches, Arrests, and Treatment of Persons Under Custody

Reports of CHR Investigators show that at about 3 am of January 4, 2001, about 30 men in black without name plates, armed with firearms such as M16 armalite rifles and with a warrant of arrest and search warrant, kicked and forcibly opened the door of a house at No. 113 Cotabato Street,

Salam Compound, Barangay Culiati, Tandang Sora, Quezon City. Nearby houses at No. 117 and 116-A at the Mujahaden Street were also forcibly entered into. The occupants of said houses, including women and children, were herded in separate rooms. Seventeen men were tied with packaging tapes, and were boarded in a delivery van and detained at the ISAFP Detention Center. One of the detainees was Jamael Abtahi, a 13-year old boy and a native of Jolo, Sulu. Some of the detained persons received fist blows in the stomach and were forced to admit their participation in the bombing incident at the LRT Blumentritt Station and other places on 30 December 2000. Human rights lawyers who wanted to interview the persons were refused access to the detainees.

Finding that most of the detainees were not involved in the alleged bombing, they were then set free the following day except for four who were to be charged for crimes they alleged committed. Further investigation shows that the names indicated in the search warrant obtained by the arresting officers were different from those who were arrested and detained. The four detainees were also released the following day.

In a separate final report dated 12 January 2001, CHR investigators found that Emil Michael Ventura, 11 years old, residing at No. 5 Felimon Street, Mikesel Subdivision, Talon V, Las Pinas, Metro Manila, was arrested by military men and was subjected to intense questioning for 14 hours without assistance of a lawyer or a representative of the Department of Social Welfare and Development or his parents, by the Dusit Hotel security, Makati Police Investigators, and the Southern Police District investigators on his alleged involvement in the explosion of the bomb in the vicinity of the Dusit Hotel.

Pursuant to its constitutional functions of monitoring Philippine Government's compliance with international instruments of human rights, the Commission on Human Rights finds that the arresting officers have grossly violated several provisions of the International Covenant on Civil and Political Rights, the Philippine Constitution, Republic Act 7438, defining rights of persons arrested, detained, or under custodial investigation, as well as duties of the arresting, detaining and investigative officers and the Convention on the Rights of the Child.

Article 9 of the Covenant of Civil and Political Rights reads:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of the arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, and, should occasion arise, for execution of the judgment.

4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
5. *Anyone who has been the victim of the unlawful arrest or detention shall have an enforceable right to compensation.*

Article 10 of the said Covenant also reads:

"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human persons."

Republic Act No. 7438 which implements in detail the aforesaid Covenant on Civil and Political Rights provides for the rights of persons arrested or detained. Section 2 of the said act reads:

"Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officer."

(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 in 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 in private with the person arrested, detained or under custodial investigation. If such person cannot afford services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.*

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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."*

More basic are the violations of the Bill of Rights of the Philippine Constitution. Article III, Section 2 of the Constitution reads:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any person shall be inviolable, and no search warrant or warrant of arrest shall be issued except upon probable cause to be determined

personally by the judge after examination under oath and or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons and things to be seized."

Section 12 of Article III also reads:

(1) "Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waive except in writing and in the presence of counsel."

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited."

The rights of the minors who were arrested and investigated in the incident were also violated. Minors under the Convention on the Rights of the Child and Republic Act 7610 are persons below 18 years of age. The rights of the minors under Article 17 of the Convention on the Rights of the Child reads:

State parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed the offenses committed by persons below 18 years of age.

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention, or imprisonment of a child shall in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from the adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of deprivation of his or her liberty before a court or other competent, independent and impartial authority and to prompt decision on any such action.

The Commission on Human Rights observes that while the arresting officers were carrying warrants of arrest and search warrants, in their enthusiasm to apprehend the guilty persons, they have grossly abused their powers. The identity of the arresting officers, without nameplates and

were not in military uniforms. Most of the arrested were persons not even listed in the warrant of arrest which shows that there was reckless and indiscriminate implementation of the warrants. Some of the arrested persons were tortured to force them to admit in the involvement in bombing incidents.

While the Commission on Human Rights appreciates the enthusiasm of the military and police agencies to immediately arrest and bring to justice those involved in the bombing incidents, they are to be reminded of their duties and responsibilities under the aforementioned human rights instruments and the constitutional function to promote human rights of the persons who were unnecessarily arrested, detained, and even tortured.

This advisory is addressed especially to the Secretary of National Defense, the Chief of Staff of the Armed Forces of the Philippines, the Secretary of the Department of Interior and Local Government, and the Chief of Philippine National Police for their appropriate action on their gross violations of human rights.

Quezon City, 18 January 2001