

Republic of the Philippines
Department of Justice
NATIONAL PROSECUTION SERVICE
OFFICE OF THE PROVINCIAL PROSECUTOR
Province of Samar
Calbayog City

PEOPLE OF THE PHILIPPINES,
Complainant,

-versus-

ERICSON ACOSTA,
Respondent.

x-----x

NPS NO. VIII-09d-INV-110-00230
For: ILLEGAL POSSESSION OF
EXPLOSIVES

COUNTER AFFIDAVIT

I, ERICSON ACOSTA, of legal age, married, and a resident of 8th Annapolis, Cubao, Quezon City, after being duly sworn in accordance with law, hereby depose and state that:

1. I am a Freelance Journalist doing research on Human Rights violations and the protection of the environment in Samar for the Alliance of Concerned Samareños (ACOS) and the Kapunungan han Gudti nga Parag-uma ha Weste han Samar (KAPAWA). Copies of some of my Research Works and Articles are hereto attached.

2. On February 13, 2011, having just completed my research task the previous day, I left the village center of Barangay Bay-ang, San Jorge, Samar at a little past 9 o' clock in the morning, and headed for what the barrio folk call their "port" – an unmarked quay by the river which was less than an hour's walk via mountain trail, where a pump boat was scheduled to pick me up at the said place and bring me to San Jorge town proper.

3. I was joined by Vicente Dacles, the Barangay Secretary, and several other residents of Bay-ang who were all going to town as well for some business.

4. Dacles was at the head of our pack, followed closely by myself, while the rest, who were mostly women and children, were falling behind by at least a hundred meters.

5. At around 10:00 am, as we were just some 200 meters away from our destination, we caught sight of a platoon of soldiers who motioned us (Dacles and myself) to stop. I at once noticed that the soldiers were resting and cooking by the left side of the trail.

6. One of them approached us alertly and asked where we came from and where we were going. Dacles said that we came from the village and that a pump boat was waiting for us nearby as we were headed for town.

7. The soldier then inquired if we knew where they could fetch water. Dacles turned around and pointed to an area somewhere, and gave the soldier brief directions on how to get there. He even added that if it became difficult to locate, the soldier could just ask the rest of our company who were lagging behind. The soldier then told us to carry on, and so we did.

8. Barely a minute after we had started walking again, another group of soldiers (this time merely a team) had appeared in front of us. One soldier asked the same questions – where did we come from? Where were we going? Dacles simply repeated the answers he gave earlier.

9. Dacles also told the soldier that we had already passed through the main body of the platoon and had in fact given the soldiers there directions where to get drinking water. The soldier told us we can go.

10. But just as we were turning our backs to him, the soldier again ordered us to halt. He was intently eyeing the mini-knapsack that I was carrying. He said: “Ano ‘yang nasa bag mo?”

11. Before I could even reply, the soldier, in brisk movements, had un-slung the knapsack from my shoulders and had zipped it open. It was my computer notebook and some other complimentary gadgets he found inside my mini-knapsack.

12. The soldier was quite surprised by what he saw. “Nasa bundok ka tapos may laptop ka?” the soldier said.

13. The soldier and his team led us quickly back to where the main body of the platoon was. There the soldiers took turns doing body search on me. They emptied my pockets and my sling pouch; they checked my sides, ran their hands through every part of my body and lifted the hem of my shirt up to my neck looking for concealed weapons. They did not find any.

14. One soldier handed me my computer and told me to turn it on. I told them that the batteries had already drained out. I pressed the power button to show them that the computer won't boot. But another soldier scolded me for pressing the button saying that I might have consciously and slyly triggered the computer to self-destruct.

15. Then the soldiers, five to seven of them at a time, started to harangue me almost in unison, with raised voices and intermittent invectives and threats. They said: “NPA ka! Mataas siguro ranggo mo kaya ka may laptop! Mag-ingat ka sa mga kilos mo baka makatikim ka! Huwag kang tumakbo! Ayusin mo ang mga sagot mo kung ayaw mong masaktan!”

16. I tried to explain to them that I was doing research in the area but whatever I said was drowned it seemed by their intense excitement to badger and harass me.

17. This went on for several minutes until our other companions from Bay-ang finally arrived at the scene.

18. A soldier asked the women of the group if they knew me. The women said yes and that they were supposed to go to town with me. Another soldier butted in and shouted and berated the group, "Mga sinungaling kayo," said the soldier, "NPA ang taong ito!"

19. An officer finally intervened. He introduced himself as the commanding officer of the platoon. He told my companions that they're all free anyway to go to where they were supposed to go, and the soldiers will only take with them the Tagalog (me).

20. When asked by the women where I would be brought to, the officer just told them to go. Hence, Barangay Secretary Dacles and the rest of the Bay-ang group were compelled to leave me with the soldiers and went straight to the port.

21. The officer approached me and gave me his name, 2nd Lieutenant Jacob Madarang. He said that they would bring me to the headquarters of the Charlie Company of the 34th Infantry Battalion in Barangay Blanca Aurora. At around 11:00 am, Madarang assigned me a place in the middle of the formation and the platoon began marching and passing through stretches of rocky and muddy terrain.

22. We would on irregular intervals stop and rest for a few minutes. I found out that Madarang was using these rests to try to contact his superiors to inform them of my arrest. The cellphone signal in the areas was so unstable or was simply absent that it took Madarang all of seven hours to finally get to a position where a cellphone call was possible.

23. At 6:00 p.m., I saw and heard Madarang talking to someone on his cellphone. He was consistent in addressing that someone as "sir" so I thought that he was in fact conversing with one of his superiors.

24. I immediately got the drift of the said conversation. It seemed that Madarang was being told not to bring me anymore to the Company headquarters, but just to "get rid" of me instead. Madarang on the other hand was sort of lobbying or politely insisting that it was wiser to bring me to headquarters for interrogation as he strongly felt that that they could extract from me some valuable information. I also heard him say: "Tagalog ito, sir. Baka taga-legal front ito ng national o mula sa isang national organ".

25. After the phone call, Madarang told his men that they would indeed bring me to the Charlie Company HQ in Blanca. He also commanded a soldier to tie me by the waist before we marched again.

26. An hour and a half later at another stop, Madarang ordered one of his men to give me a jacket, and so I was given one, a fatigue army upper garment, and I put it on. At first I thought of it as some simple gesture of humanitarian concern on the part of the young lieutenant.

27. As soon however as we entered a village center (this was the barangay immediately before Barangay Blanca), I found out what the jacket was really all about. The soldier behind me who was also the one holding my leash suddenly placed his right arm upon my shoulders. The act made it appear that this soldier and me were casually walking like pals as the platoon passed through the dimly lit streets of the village. The platoon had to make sure that no one in the barrio saw the unit with a captive.

28. We arrived finally at Charlie Company HQ in Blanca at around 9:00 pm. Madarang formally turned me and my things over to his superior. The latter introduced himself to me as the company commander. I'm not so sure now however if he had given me his name or his rank. At any rate his "welcome remarks" confirmed without doubt my earlier gut-feel. He said "Pasalamat ka binuhay ka pa. Sabi ko kanina sa mga tao ko h'wag ka nang dalhin dito at i-charge ka na lang sa encounter."

29. The company commander then told me to rest for a few minutes while waiting for the Battalion commander. Being familiar with the rights of a person under arrest, I told him that it would be best to turn me over to the nearest police detachment immediately and that I would need a lawyer. He didn't give me any answer as if he didn't hear me. Somebody then took a picture of me using a cellphone.

30. While waiting for the battalion commander, I saw and heard an army officer briefing the personnel on camp regarding my arrest and detention. The officer stressed that no one outside the HQ or the immediate community around the camp must be told the Charlie Company was holding me. The human rights groups he said would probably start searching for me the next day or the day after that and so they had to be really strict that my presence in the HQ did not leak.

31. The battalion commander and his entourage arrived at around 10:00 to 10:30 pm. This also signaled the start of my interrogation. At the outset I reiterated that my arrest, detention and interrogation were all beyond the bounds set by law. I said that if they are in any way contemplating on charging me with something, then they should just bring me to the nearest police detachment and that I would urgently be needing the assistance of my lawyer. An officer showed his irritation and loudly and emphatically said: "Legal procedure kayo nang legal procedure eh kayo nga ang ilegal!" In that case, I said it would really be best for me to refuse to answer their questions.

32. The interrogation by at least 8 military persons taking turns, commenced 10:30 p.m. of the 13th of February and stretched up to 6:00 pm of the 15th of February. Within this span (more or less 44 hours) I was only allowed two (2) hours of sleep which was actually made possible because my interrogators themselves already got too tired and sleepy.

33. I was subjected to various lines of questioning to which I would always remind my interrogators that I could only answer questions regarding basic personal data. My interrogators in turn would show gentle, patient persistence that alternated with not so veiled threats that said that the only real road to my safety is cooperation with the military.

34. On the 15th of February, at around 6:00 p.m., the colonel (whom I had only known as "William" after hearing another officer address him as such) told me that they would bring me to the San Jorge Municipal Police Headquarters. We rode an SUV and it took us less than an hour to reach San Jorge PNP.

35. Upon arriving at the vicinity of San Jorge PNP, the colonel and the other officers went straight into the headquarters building while I was left inside the vehicle with my guard soldiers.

36. After about 20 minutes, one soldier, who had earlier entered the said building with the colonel, returned to the vehicle and in an urgent tone asked my guard soldiers if they had brought "the grenade." One of the soldiers in the SUV said yes, and took out from a small bag a grenade and gave it

to the soldier who asked for it. The latter went back to the building quite in a hurry. It was at this time that I guessed and realized that I might just be charged with a crime that had something to do with the grenade.

37. A few minutes more, I was led inside the PNP building. A police officer named Lucero received me and informed me that I am being charged with illegal possession of explosive. I saw one soldier place the grenade on an office table and another police officer who was occupying the said table pick the explosive up and nonchalantly inspected it. Lucero then said that the blotter procedure could wait until morning, before the inquest in Calbayog City.

38. Meanwhile Lucero told me that I would be brought to the Gandara Hospital to be examined by a medico-legal practitioner. The colonel and his men drove me to the said hospital and there Lucero presented me to the medico-legal around 8:00 pm. They then brought me back to San Jorge PNP. The colonel and his men made sure that I was securely locked up before leaving.

39. The young San Jorge PNP chief, Pagulayan started chatting with me from outside my detention cell. I told him that I needed to contact my family by phone to inform them of my situation and whereabouts. The police chief said that he can't allow me to make that call. I pleaded using a different tact but mainly by invoking that I have the right to a phone call. He countered by saying that he can't do anything because the colonel never mentioned anything about it.

40. On the 16th of February at 7:30 a.m., I completed the blotter procedure. The police made me fill up some forms, took my fingerprints and mug shots. And around 8:00 a.m., the colonel and his men arrived at the San Jorge PNP. They were all in stylish casual civilian clothes.

41. The colonel talked briefly with the police officers then his group left for Calbayog City where the police told me earlier I would be inquest. A few minutes after the colonel left, I was made to ride the police pick-up with my hands handcuffed behind me. We arrived at the Calbayog City Hall of Justice at around 9:00 a.m.

42. At the Hall of Justice my police escorts headed by Lucero led me inside a prosecutor's office. They told me to wait while Lucero prepared the papers of my complainants. Some of the colonel's men were also in that office. Lucero never attempted to explain to me the details of the procedure on his volition. When I asked some questions while he was talking to the prosecutor's secretary, Lucero just flared up and told me to shut up. I sensed that the presence of the colonel and his men was giving the police officer some undue pressure.

43. From what I gathered from Lucero and the secretary's Winaray conversation, there was some hitch in the inquest schedule. The stenographer was not available, according to the secretary. Worse, the prosecutor was out and the secretary had no idea when he would be coming back. The secretary advised Lucero to go to another office and try to consult with some legal personnel there.

44. We went to the said office, so did the colonel and his men. It was a relatively big office space with many tables and employees. Lucero consulted with some people and I heard that, in lieu of an inquest, he was advised to facilitate the filing of the complaint directly to the office of the judge.

45. Lucero then expressed his dilemma with my custodial detention in that he was apprehensive of bringing me back to San Jorge PNP. He said that they would have a problem with my

maintenance and that furthermore, he was not sure how they would perform in case the NPA tried to rescue me.

46. Lucero then asked if it were legally possible to hand me back to the military as he had a few hours earlier been briefed by the colonel that the 8th ID was willing to take me in under some special custodial arrangements. It was here that I decided to intervene. I made sure that my voice was loud and clear for all the employees in that big office to hear. I stood up and said that the idea was highly irregular and definitely illegal. I then drew their attention towards the colonel and his men by pointing at their group while saying that these men in civilian clothes were the soldiers and officers who illegally arrested me and are now my complainants, and I would never allow them to take me into custody.

47. I heard a lady employee remark, "Ah, mga sundalo pala sila!" and I saw the approving, sympathetic glances and gestures of some of the employees. Then one employee told Lucero that I could not be brought back to the military and the best alternative was to bring me to the sub-provincial jail.

48. Then I said, in the same loud and clear voice that someone should tell Lucero that I'm entitled to a phone call, a right that the San Jorge PNP deprived of me despite my pleas and despite the very critical situation that my family was in faraway Metro Manila. Another employee told Lucero that, yes, the San Jorge PNP should have allowed me to call my family. The employee, sensing that I still had more issues to present, told Lucero to bring me to the Public Attorney's Office (PAO).

49. At the PAO, I mentioned to one of the lawyers that I might need the service of one of their attorneys especially because I have yet to contact my family and my private lawyer thanks to the police and the military's complete disregard of my rights. The colonel, as if trying to wash his hands, stood up and announced that he's willing to let me use his phone. I said OK, so the colonel and I left the PAO and went outside the Hall of Justice.

50. Outside the Hall of Justice, the colonel gave me his phone and I was able to contact my mother. But just as I was giving my mother the details of my situation, the colonel told me to end the call. He took his phone and left with his men.

51. After this the San Jorge policemen brought me to the sub-provincial jail where I was remitted around 1:30 p.m.

52. I later learned that a Complaint for Illegal Possession of Explosives was filed against me before the Regional Trial Court of Calbayog City at 10:30 a.m. of February 16, 2011 or seventy two (72) hours and thirty (30) minutes after my arrest on February 13, 2011 at 10:00 a.m.

53. I vehemently deny that "the hand grenade" was confiscated in my possession or under my control, but was in truth only planted by the military who arrested me.

54. In my arrest and continued detention, my constitutional and human rights were violated. To summarize:

- a. I was arrested without warrant while not committing any crime or doing anything illegal;

- b. I was not informed of the reason for my arrest at the time of my arrest;
- c. I was denied the right to counsel;
- d. I was denied a phone call and prevented from contacting my family or my lawyer;
- e. I was subjected to prolonged interrogation for 44 hours;
- f. During tactical interrogation, I was physically and psychologically tortured;
- g. I was deprived of sleep, threatened, intimidated, coerced and forced to admit membership in the NPA;
- h. The evidence against me, "the grenade", was planted;
- i. The complaint against me was filed in court only after 72 hours and 30 minutes after my arrest; and,
- j. I was detained in a military camp, which is not of civilian jurisdiction.

55. This Counter Affidavit is being executed to attest to the truth of all the foregoing facts and events and to disclaim all the accusations against me.

IN WITNESS WHEREOF, I have hereunto affixed my signature on this 11th day of April, 2011 at Calbayog City.

ERICSON ACOSTA *(sgd.)*

Affiant

SUBSCRIBED AND SWORN to before me this 11th day of April, 2011 at Calbayog City.

I hereby CERTIFY that I have personally examined the affiant and that I am satisfied that he has voluntarily executed and understood his Counter-Affidavit.

AGUSTIN M. AVALON *(sgd.)*

Asst. Prov. Prosecutor

(also signed by JULIAN F. OLIVA, JR., counsel)