

JUAN DIZON AND SOLEDAD RAMOS, PETITIONERS, VS. BRIG. GEN. VICENTE EDUARDO AND COL. TEDDY CARIAN, RESPONDENTS.*G.R. No. 59118. March 03, 1988*

Ponente: TEEHANKEE, C.J.

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"This is a case of disappeared persons" (desaparecidos). This was the opening plea filed six years ago by the late Senator Jose Wright Diokno as lead counsel[1] on behalf of the parents of the two young persons Eduardo Dizon, 30 years of age at the time, single and described in the petition as "a community leader and a self-employed businessman (despite his having only one arm)" and Isabel Ramos, 22 years of age at the time, single and a former architecture student. The two had been arrested with others by the military, detained in the military camp, and then claimed by the military to have been released after nine days. But they were not released to their parents, who had been visiting them, nor to any other responsible person - and were never seen or heard from by anyone since then.

Senator Diokno passed away a year ago last February 27th. He, together with the martyred Senator Benigno "Ninoy" Aquino, Jr. were the first victims of martial law imposed in September 1972 by then President Ferdinand E. Marcos, destroying in one fell swoop the Philippines' 75 years of stable democratic traditions and established reputation as the showcase of democracy in Asia. They were the first to be arrested in the dark of the night of September 22, 1972, as the military authorities spread out through the metropolis upon orders of the President-turned-dictator to lock up the opposition together with newspaper editors, journalists and columnists and detain them at various army camps. What was the martial law government's justification for the arrest and detention of Diokno and Aquino? The government's return to their petitions for habeas corpus claimed that they were "regarded as participants or as having given aid and comfort 'in the conspiracy to seize political and state power and to take over the government by force.'"[2] The fact is that they just happened to be the foremost contenders for the Presidency of the Republic in the scheduled November 1973 presidential elections, at which time Mr. Marcos would have finished his second 4-year term and barred under the prevailing 1935 Constitution from running for a third term. In their petitions for habeas corpus, they challenged the proclamation of martial law and their arbitrary detention, invoking the Constitution and the Bill of Rights.

It was to take almost two years for Diokno to regain his liberty. No charges of any sort were ever filed against him. His continued arbitrary detention without any charges for close to two years was getting more and more untenable. As the separate opinion-resolution[3] of then Chief Justice Querube C. Makalintal stated, a vote of seven-to-five of the Court's twelve members then in favor of granting Diokno's motion to withdraw his petition filed earlier was not deemed sufficient by the majority which scheduled the promulgation of the Court's action and resolution dismissing all the petitions and upholding the validity of the martial law proclamation for September 12, 1974, which was the last day before Justice Calixto Zaldivar's compulsory retirement from the Court upon reaching the age of 70. But as the said opinion-resolution further stated: "Before they could be promulgated, however, a major development supervened: petitioner Diokno was released by the President in the morning of September 11, 1974. In view thereof all the members of this Court except Justice Castro agreed to dismiss

Diokno's petition on the ground that it had become moot, with those who originally voted to grant the motion for withdrawal citing said motion as an additional ground for such dismissal."

What is not found in the proceedings or opinions and which should now be made part of the record for the sake of historical truth is that what precipitated the sudden order releasing Diokno on September 11, 1974 was that Mme. Justice Cecilia Munoz Palma, who had been appointed to the Court with two others on October 21, 1973, had submitted a dissent with her separate opinion assailing Diokno's continued detention for two years without charges as a violation of the Universal Declaration of Human Rights. This promptly reached the big ears of Mr. Marcos and he forthwith issued the release order and aborted Justice Palma's dissent. The Courts 11-member[4] opinion-resolution dismissing all petitions and upholding the validity of the proclamation of martial law with eight separate opinions was ultimately released on September 17, 1974.[5]

Senator Ninoy Aquino underwent an even more tortuous ordeal. He was charged on August 11, 1973 with murder, subversion and illegal possession of firearms and found guilty and sentenced to death by a military commission notwithstanding his being a civilian and the fact that said general offenses were allegedly committed before the imposition of martial law, and could not fall within the jurisdiction of military commissions, which are not courts but mere adjuncts of the Commander-in-Chief to enforce military discipline. Mr. Marcos had publicly pronounced the evidence against Ninoy as "not only strong but overwhelming" in a nation-wide press conference on August 24, 1971 following the Plaza Miranda bombing three days earlier of the LP proclamation meeting, yet had not charged him before the civil courts. Ninoy had contended correctly but in vain that he had been publicly indicted and his guilt prejudged by Mr. Marcos, and he could not possibly get due process and a fair trial before a group of Mr. Marcos' military subordinates.[6] In 1980, after over eight years of detention, Ninoy Aquino was allowed to leave to undergo heart surgery in the U.S. After three years of exile, he sought to return and as is now history, he was to die within 60 seconds of his being led away by soldiers from his plane that had just landed at the MIA on August 21, 1983 at past 1 p.m.

Diokno and Ninoy had undergone untold hardships of solitary confinement and deprivation during their long detention. In fact, at one time they themselves had disappeared - were also desaparecidos. Their wives filed in early April, 1973 an urgent petition, stating that after their visitation privileges were stopped since March 10, 1973 and February 25, 1973, respectively, their husbands had disappeared from their detention cells and that they had lost all contact with them for over a month and, worse, that all their personal effects and clothes, including their eyeglasses, toothbrushes and medicines had been ominously returned without any explanation to their homes. It turned out that Ninoy had been able to smuggle out of his solitary cell a written statement critical of Mr. Marcos and his martial law regime. He and Diokno were thereafter secretly flown out, manacled and blindfolded, by the military to the army camp at Fort Magsaysay in Nueva Ecija where they were stripped naked and isolated in boarded cells with hardly any light or ventilation.

On the same day, April 6, 1973, the Court forthwith "upon humanitarian considerations resolved unanimously to grant (their) prayer to be allowed to visit their husbands, subject to such precautions as respondents may deem necessary." Again, we must record here for the sake of historical truth, and so that such undue interference and pressure upon the Court may never again come to pass, that upon the issuance of the Resolution, the then Acting Solicitor General (in the absence of then Solicitor General Mendoza), upon orders of the powers that were, sought audience with the then Chief Justice (who convened the members of the Court), in an attempt to convince the Court to recall the Resolution, citing reasons of national security and personal safety of the detainees and that "compliance with the Resolution will encroach upon and dangerously erode the martial law powers exclusively vested in the President by the 1935 and 1973 Constitution."6-a The Court, as one, maintained its Resolution (telling him to file a proper motion for reconsideration, which he did on April 10, 1973 and was to be rendered

moot afterwards). To do otherwise would have been craven submission and abdication. When their wives finally got to see Diokno and Ninoy on April 8, 1973 for thirty minutes after a four-hour automobile trip to the concentration camp at Fort Magsaysay, they were a pitiable sight, having lost about 30 to 40 pounds in weight.

After Diokno's release on September 11, 1974, in the words of living legend Justice J.B.L. Reyes "(I)t is a measure of his soul's greatness that after being unjustly imprisoned for two years and released without any charges being preferred against him, Ka Pepe wasted no time in protests or recriminations but immediately proceeded to organize and guide the Free Legal Assistance Group (FLAG) dedicated to the gratuitous defense and vindication of others who, like him, would be persecuted, oppressed and denied justice. To this task he dedicated the rest of his life, even when nailed to the bed of suffering that brought him to an early grave." [7] It is fitting that his selfless dedication to the cause of the poor, the deprived and the oppressed and to pro bono service be herein duly acknowledged, albeit posthumously. He knew only too well, having experienced it himself with his wife and family, the mental anguish and torture and the sustained shock undergone by the spouses and families of persons who have disappeared - "the crushing reality of loss coupled with the unreality of death that afflicts the families of those who have 'disappeared.' The result is a form of mental torture brought about by either the suspension of bereavement or the feeling of helplessness -- and paralyzing uncertainty about what to do to protect their loved ones." [8] He wished at the very least to alleviate their pain and anguish. Illustrious son of an illustrious father, Justice Ramon Diokno [9], he left a legacy of hope and faith in the Filipino, as he wrote:

"When martial law was imposed, what happened to the law?

"And so law in the land died. I grieve for it but I do not despair over it. I know, with a certainty no argument can turn, no wind can shake, that from its dust will rise a new and better laws: more just, more human and more humane. When that will happen, I know not. That will happen, I know." [10]

This application for the issuance of a writ of habeas corpus had been filed on December 17, 1981 by petitioners, Juan Dizon and Soledad Ramos, on behalf of their son, Eduardo Dizon and their daughter, Isabel Ramos, respectively, who were arrested on September 15, 1981 by Philippine Constabulary (PC) elements of the Pampanga PC Command then led by respondent Provincial Commander Col. Teddy Carian at Barrio Sto. Rosario, Sta. Ana, Pampanga without warrant of arrest or Presidential Order of Arrest. They were detained by the respondents at the PC Stockade at San Fernando, Pampanga under the jurisdiction of respondents Brig. Gen. Vicente Eduardo, then Regional Commander of the area, holding office at Camp Olivas, and Col. Teddy Carian for interrogation and investigation without assistance of counsel. The desaparecidos were allegedly released nine days later, or on September 24, 1981, as per their release papers of the same date. [11] However, they were never seen nor heard from since their supposed release. Alleging that the signatures of the desaparecidos on their release papers were falsified and thus, they were never released by the military - said release being a scheme of the respondents to prolong their detention, torture and interrogation, the petitioners-parents filed the petition at bar on December 17, 1981.

The Court issued the writ of habeas corpus on December 24, 1981. In the return of the writ filed on behalf of respondents on January 5, 1982, by then Solicitor General Estelito P. Mendoza, and verified by respondent, then Provincial Commander Col. Carian, respondents insisted that the detainees were indeed released on September 24, 1981, and submitted the supporting affidavits dated December 30, 1981 of Major Reynaldo C. Cabauatan and 1st Lt. Roque S. Maranon, both assigned with respondent Carian's Provincial Headquarters. [12] Respondents denied petitioners' allegation of falsification of the detainees' signatures on their release papers, claiming that the same were signed in their presence and asked for dismissal of the petition.

Diokno invoked the United Nations General Assembly Resolution expressing deep concern over such cases of involuntary disappearances and calling on all governments to stamp it out, as follows:

RESOLUTION ON DISAPPEARED PERSONS

December 20, 1978

"The General Assembly.

"Recalling the provisions of the Universal Declaration of Human Rights, and in particular articles 3, 5, 9, 10 and 11, concerning, inter alia, the right to life, liberty and security of person, freedom from torture, freedom from arbitrary arrest and detention, and the right to a fair and public trial; and the provisions of Articles 6, 7, 9 and 10 of the International Covenant on Civil and Political Rights, which define and establish safeguards for certain of these rights,

"Deeply concerned by reports from various parts of the world relating to enforced or involuntary disappearances of persons as a result of excesses on the part of law enforcement or security authorities or similar organizations, often while such persons are subject to detention or imprisonment, as well as of unlawful actions or widespread violence,

"Concerned also at reports of difficulties in obtaining reliable information from competent authorities as to the circumstances of such persons, including reports of the persistent refusal of such authorities or organizations to acknowledge that they hold such persons in their custody or otherwise to account for them.

"Mindful of the danger to the life, liberty and physical security of such persons arising from the persistent failure of these authorities or organizations to acknowledge that such persons are held in custody or otherwise to account for them,

"Deeply moved by the anguish and sorrow which such circumstances cause to the relatives of disappeared persons, especially to spouses, children and parents,

"1.

Calls upon Governments:

“(a)

In the event reports of enforced or involuntary disappearances, to devote appropriate resources to searching for such persons and to undertake speedy and impartial investigations,

“(b)

To ensure that law enforcement and security authorities or organizations are fully accountable, especially in law, in the discharge of their duties, such accountability to include legal responsibility for unjustifiable excesses which might lead to enforced or involuntary disappearances and to other violations of human rights,

“(c)

To ensure that the human rights of all persons, including those subjected to any form of detention and imprisonment, are fully respected,

“(d)

To cooperate with other Governments, relevant United Nations organs, specialized agencies,

intergovernmental organizations and humanitarian bodies in a common effort to search for, locate or account for such persons in the event of reports of enforced or involuntary disappearances;

“2.

Requests the Commission on Human Rights to consider the question of disappeared persons with a view to making appropriate recommendations;

“3.

Urges the Secretary-General to continue to use his good offices in cases of enforced or involuntary disappearances of persons, drawing, as appropriate, upon the relevant experience of the International Committee of the Red Cross and of other humanitarian organizations;

“4.

Requests the Secretary-General to draw the concerns expressed in this resolution to the attention of all Governments, regional and interregional organizations and specialized agencies for the purpose of conveying on an urgent basis the need for disinterested humanitarian action to respond to the situation of persons who have disappeared.”

--UN Document A/RES 33/173

Diokno posed on behalf of the desaparecidos the following vital questions in the case at bar: When respondents' defense to a petition for habeas corpus is that they released the detainees for whom the petition was filed, but the allegation of release is disputed by petitioners, and it is not denied that the detainees have not been seen or heard from since their supposed release, do petitioners have the burden in law of proving that the detainees are still detained by respondents or does the burden shift to respondents of proving that they did release the detainees? Secondly, if respondents have the burden of proving by clear and convincing evidence that they released the detainees, have they in fact discharged that burden in this case? And lastly, if respondents have not satisfied the Court that they released the detainees, but nevertheless refuse or are unable to produce their bodies, what relief may the Court grant petitioners?

- On the first question, we have applied the general rule in a number of cases that the release of a detained person renders the petition for habeas corpus moot and academic. Respondents make such a plea in line with their return that they had released the desaparecidos after nine days. But their return begs the question. The cited general rule postulates that the release of the detainees is an established fact and not in dispute, and that they do not continue to be missing persons or desaparecidos. Where, however, there are grounds for grave doubts about the alleged release of the detainees, which we share, particularly, where the standard and prescribed procedure in effecting the release has not been followed, then the burden of proving by clear and convincing evidence the alleged release is shifted to the respondents. Release is an affirmative defense and "each party must prove his own affirmative allegations,"[13] just as the burden of proof of self-defense in a killing rests on the accused. Moreover, evidence of release lies particularly within respondents' power.

- This brings us to the second question: Have the respondents proved the alleged release by clear and convincing evidence? Diokno submitted a negative answer thereto on the following grounds:

- The signatures of the detainees on their release papers were falsified. (Petitioners submitted specimen signatures of the desaparecidos Eduardo Dizon and Isabel Ramos, attached as Annexes "B" and "C",

respectively, of the petition. At the hearing of the case on January 7, 1982, the records of the PC/INP Command, San Fernando, Pampanga were submitted to this Court by the Solicitor General. On page 33 thereof, is found the application for registration as voter of Eduardo Dizon which was filed with the Election Registrar of Sta. Ana, Pampanga, on October 29, 1977, while on page 88-95, are found the statement of Isabel Ramos when she previously surrendered to the Bataan PC Command in 1978, the booking sheet and arrest report, and on pages 51-62 and 73-84 are copies of her statement executed on September 16, 1981, after her second arrest. A xerox copy of the voting record^[14] of Eduardo Dizon, when he voted at Sta. Ana, Pampanga in the 1981 presidential election was also submitted. The documents bear the signatures of the undisputed detainees. Diokno submitted that even the signatures of the detainees on documents that respondents themselves submitted are markedly different from the signatures on their supposed release certificates. With respect to Eduardo Dizon, Diokno noted particularly the very poor line quality of Dizon's signature on the release certificate when compared to the speed and freedom of his signature on his voter's application form.^[15] With respect to Isabel Ramos, the final letter "s" in Ramos in the waiver of detention and certificate of release do not contain any retrace or flourish, whereas in all her signatures on her statements the final letter "s" has a retrace like an "x" as the last stroke.^[16]

The Solicitor General, in turn, in the Answer filed as Supplement to the Return on behalf of respondents disputes Diokno's conclusions about the falsity of the detainees' signatures on the release certificates and questions the reliability of the specimen signatures used, adding that "it is not possible to make any comparison of signatures for the purpose of determining genuineness on the basis of xerox copies."^[17]

- Respondents did not follow the prescribed standard procedure for releasing detainees:

a) Respondents did not release the detainees to their parents, though the latter had been visiting them and, in fact, Dizon's father was in the camp on the very day he was supposedly released. Failing this, they should be released to another responsible person in the community. This is the standard practice, as shown by the certificate of release of Isabel Ramos when she was first taken into custody in 1978 as well as the certificates of release of the other alleged "Communist Terrorists" arrested with the two desaparecidos who were released a day ahead.

b) Defense Ministry regulations require that releases be reported to the Ministry within 72 hours. Respondent Carian did not report the supposed releases to the Ministry. In fact, he did not even report their "releases" to his regional commander, respondent Gen. Eduardo.

c) Respondent Carian's command could not readily furnish copies of the detainees' release certificates to their parents when the latter asked for them. They took one month to produce the certificate of Isabel and three months to produce that of Eduardo.

d) Respondent Col. Carian had no authority, inherent or delegated, to release the detainees. In respondents' return, it was stated that the two were arrested in flagrante delicto with unlicensed firearms and explosives. Under General Order No. 67 (October 8, 1980), only the President or his duly authorized representative could have released the two before trial. Respondent Carian's records also fail to show that he consulted with respondent General Eduardo, much less with Defense Minister Enrile, before he supposedly released the detainees.

- The inherent implausibility of respondent Carian's reason for supposedly releasing the detainees - that they had agreed to act as spies.

a) Respondent Carian says he knew that Isabel had once before been detained for subversive activities and, after her release, had resumed those activities. It is unlikely that Isabel would have agreed to become a spy and even more unlikely that respondent Carian would have believed her if she had.

b) Respondent Carian knew that the probability of the detainees' keeping their supposed bargain was remote.

Yet, he took no precautions to insure compliance. Worse, when they broke the supposed bargain by failing to report as he says they agreed to, he took no steps to look for them.

c) If respondent Carian wanted the detainees to become spies, he certainly made sure neither would be effective.

- He did not follow the prescribed procedure in releasing them. That made the release and consequently the detainees themselves - immediately suspect.

- He required them to report to his command twice a month. That made it virtually certain that their activities would be discovered, and soon, by their comrades.

- He eagerly revealed the supposed bargain in his defense in this case, making it a matter of public record. That effectively stifled any possibility of the supposed bargain's ever being carried out.

- It appears clear that no bargain was ever made with the detainees for them to be released in order for them to act as spies. The given reason for their release in order to act as spies appears far from credible - considering that respondents were admittedly aware of the risk that the detainees "would renege on their promise." [18] The burden of proving their actual release remains undischarged!

- What is likewise difficult of comprehension is that according to the affidavits of Major Cabauatan and Lt. Maranon, elements of their command after encountering a group of "heavily armed men" captured the detainees with other alleged Communist Terrorists; with one casualty on the latter's side, yet all of them except the two detainees "were released on or before September 23, 1981, having been found out that no sufficient evidence would be established to warrant their further detention" (see fn. 12 supra) and on September 24, 1981, the two desaparecidos were likewise supposedly released. This appears to be a result of respondents' own decision, without proper referral to the proper prosecution authorities to make the judgment. This was in effect admitted by the Solicitor General in his Supplemental Answer stating that

"The release of Eduardo Dizon and Isabel Ramos was part of a military operation against the NPA. The Pampanga PC Commander, respondent Lt. Col. Carian, had authority from higher headquarters to do what was essential in connection with that military operation. This was confirmed during the hearing by respondent Gen. Eduardo. Respondent Carian used sound discretion in releasing the two. Instead of attempting to prosecute them with evidence perhaps inadequate to convict although adequate prima facie, he decided to derive benefit from the situation by using them to obtain information on NPA activities." [19]

Having been supposedly found with explosives and unlicensed firearms in an encounter, such decision to release them instead and enlist them as spies again appears to strain credulity. More so in the case of Isabel Ramos who at 19 years in 1978 had already reneged on her alleged promise to spy for respondents. And in the case of Eduardo Dizon, while the military regarded him as a suspected "Communist Terrorist", his claim as a community leader seems to have valid basis for the Solicitor General himself had appointed him as KBL watcher in the 1980 elections and his father had sought the Solicitor General's assistance several times to find Eduardo. Nor have respondents questioned petitioners' good faith and their efforts to find their missing children.

- The Court regrets that it cannot grant the relief sought by petitioners. It is not the repository of all remedies for every grievance. But the Court does state that under the facts and circumstances above set forth, it is far from satisfied and as already indicated shares the grave doubts about public respondents' allegation that they had released the desaparecidos on September 24, 1981, nine days after they were taken into custody. Petitioners' charges of falsification of the detainees' alleged signatures on the certificates of release, compounded by the irregularities and failure of respondents to follow the prescribed procedure in effecting the release for purposes of authentication and to produce and furnish the parents upon request copies of the release certificates (taking one month in the case of Isabel Ramos and three months in the case of Eduardo Dizon)

need thorough investigation. If duly determined, they would involve, as indicated by Diokno, prosecution for criminal contempt, falsification of public documents, perjury and violation of Article 125 of the Revised Penal code requiring delivery of detained persons to the judicial authority within the periods therein fixed, and worse. This connotes that the respondents with their subordinates who executed the supporting affidavits, Major Cabauatan and Lt. Maranon, were involved in a grand conspiracy for the purpose. The Court cannot make this determination. It is not a trier of facts, nor does it have the means and facilities to conduct such investigation of the grave charges at bar as well as of the whereabouts and fate of the desaparecidos.

While the case was pending under the martial law regime of Mr. Marcos whom the people finally ousted on February 25, 1986, the Court was hard put to refer the charges to an independent government entity or agency to conduct such investigation. Diokno in his traverse of February 24, 1982 to the return had in expressing hope that the desaparecidos might still be alive as against the Solicitor General's conjecture that they may have met their death after their alleged release, cited documented cases of other detainees who were arrested and hidden by the military for periods from four months to almost a year, then allowed to surface, such as that of

"Delfin Delica, a former university student arrested on October 11, 1975, along the highway in Bulacan, Central Luzon. He was confined incommunicado for nearly a year in a 'safehouse' of the Constabulary Anti-Narcotics Unit' (CANU), which is also involved in anti-subversive operations, before his relatives were informed of his whereabouts and were allowed to see him. xxx

"Another prisoner arrested and kept in isolation by CANU was Francisco Pascual, Jr., a pastor at the Foursquare Church and student at the University of the Philippines, Los Banos. Pascual was held incommunicado for four and a half months in a 'safehouse' and tortured by CANU agents led by Lieutenant Colonel Saturnino Domingo, deputy CANU chief. Pascual, however, managed to escape from the 'safehouse' to tell of his ordeal.

"A more recent case xxx is that of Sixto Carlos, Jr. Arrested on April 23, 1979, in Mandaluyong, Metro Manila, with no witnesses, Sixto Carlos, Jr. was held incommunicado and blindfolded in a small, dark room where he was tortured for several days. His tormentors refused to allow him to take medication prescribed for his heart ailment, although they had found the results of his EKG test in his wallet. It was four months before his family learned of his whereabouts.

"xxx Sixto Carlos, Jr.'s father is a retired colonel and was at one time the armed forces Judge Advocate General. Normally the military officers who arrested Sixto, Jr. would have given due regard to this fact and informed the retired colonel of his son's whereabouts and well-being. But even the armed forces chief of staff, General Romeo Espino, and Defense Minister Juan Ponce Enrile categorically denied having Sixto, Jr. in custody despite persistent appeals by the family.

"xxx it took a personal audience by Sixto, Jr.'s wife with President Marcos to get definitive information that the prisoner was alive and in military custody. Only upon Marcos' order was the wife -- and she alone -- first allowed to visit her husband at the heavily-secured Military Security Unit detention area in Fort Bonifacio. Sixto, Jr.'s lawyer, Jose W. Diokno, later managed to see him once; Sixto, Jr. was pressured to dismiss Diokno as his lawyer, under threat of losing the visiting privilege of his wife and children if he did not do so."

-- Disappearances: A Workbook,

New York: Amnesty International USA, 1981, pp. 71-72.[20]

Fortunately, after the historic February 1986 peaceful revolution which saw the ouster of the Marcos dictatorship and the restoration of freedom and democracy in our beloved land, President Corazon C. Aquino immediately moved to restore fundamental democratic structures and processes. One such step, among many, was the creation on March 18, 1986 of the Presidential Committee On Human Rights (PCHR)[21] with Diokno himself as

chairman to affirm "the new government's commitment to 'uphold and respect the people's civil liberties and human rights,'" and "the United Nations General Assembly's Resolution of 14 December 1984, encouraging 'all member states to take steps for the establishment or, where they already exist, the strengthening of national institutions for protection of human rights,'" [22] and was primarily charged with the investigation, among others, of "complaints it may receive, cases known to it or to its members, and such cases as the President may, from time to time assign to it, of unexplained or forced disappearances (extra-judicial killings, salvaging, massacres, torture, hamletting, food blockades) and other violations of human rights, past or present, committed by officers or agents of the national government or persons acting in their place or stead or under their orders, express or implied."

More, the 1987 Constitution which was overwhelmingly ratified on February 2, 1987 expressly mandated the creation of the Commission on Human Rights as an independent office [23] in place of a mere Presidential Committee. The Constitution vested the Commission on Human Rights with broader powers than its predecessor committee, such as to investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights; to exercise visitorial powers over jails, prisons, or detention facilities; to establish a continuing program of research, education, and information to enhance respect for the primacy of human rights; to recommend to the Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, on their families; to monitor the government's compliance with international treaty, obligations on human rights and grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority. On May 5, 1987, President Corazon C. Aquino issued Executive Order No. 163 declaring the effectivity of the creation of the Commission on Human Rights as provided for in the 1987 Constitution. This case (as well as all other cases, past and present) may therefore be properly referred to said Commission for a full and thorough investigation and determination of the facts and circumstances surrounding the disappearance of Eduardo Dizon and Isabel Ramos and of the related grave charges of petitioners against the respondents and the other officers above-named.

ACCORDINGLY, the Court Resolved to refer this case to the Commission on Human Rights for investigation and appropriate action as may be warranted by its findings, and to furnish the Court with a report of the outcome of its investigation and action taken thereon. This Resolution is immediately executory.

Yap, Fernan, Narvasa, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Melencio-Herrera, J., concurs, except for the obiter in pp. 2-9,

Gutierrez, Jr., J., joins J. Melencio-Herrera in her concurrence and exception.

Griño- Aquino, J., took no part in the deliberation.

[1] The Free Legal Assistance Group (FLAG), a group of leading human rights lawyers filed the petition. Joining Senator Diokno in this case were Lorenzo M. Tanada, Joker P. Arroyo, Antonio Rosales and Procopio S. Beltran, Jr.

[2] Aquino, Jr. vs. Enrile, G.R. No. L-35546; Diokno vs. Enrile, G.R. No. L-35539; and other related cases, 59 SCRA 183, 245 (Sept. 17, 1974).

[3] The term "opinion-resolution" is deliberately used. As then Chief Justice Makalintal clarified in his separate opinion which bore no title or caption as a decision or resolution: "This is not the decision of the Court in the sense that a decision represents a consensus of the required majority of its members not only on the judgment itself but also on the rationalization of the issues and the conclusions arrived at. On the final result the vote is practically unanimous; this is a statement of my individual opinion as well as a summary of the voting on the

major issues [for varying reasons and grounds stated in eight other separate opinions filed by members of the Court, namely, Ruiz Castro, Fernando, Teehankee, Barredo, Antonio, Esguerra, Estanislao Fernandez and Munoz-Palma, JJ.]. He explained that "The writing of separate opinions by individual Justices was thus unavoidable, and understandably so far still another reason, namely, that although little overt reference to it was made at the time, the future verdict of history was very much a factor in the thinking of the members, no other case of such transcendental significance to the life of the nation having before confronted this Court." (Note in brackets supplied)

[4] The Court membership had been reduced to eleven, with Justice Calixto Zaldivar's compulsory retirement on September 13, 1974.

[5] The Court majority nevertheless proceeded to uphold the validity of the proclamation of martial law as against my dissent that Senator Aquino's petition had been rendered moot with the charges filed against him, and that the Court should abstain and not rule on constitutional issues except when necessary in an appropriate case, more so, since he had filed another petition questioning his trial by a military commission which (has) superseded his present petition and where the same constitutional issues on validity of the martial law proclamation may properly be resolve.

[6] See my dissent in *Aquino vs. Military Commission*, 63 SCRA 546 (May 9, 1975), adopted unanimously by the Court in the post-martial law case of *Olaguer vs. Military Commission No. 34*, 150 SCRA 144 (May 22, 1987).

6-a Two Resolutions of Apr. 6, 1973 in G.R. No. L-36315 (*Jose W. Diokno, Benigno S. Aquino, Jr. and Lorenzo M. Tanada vs. Juan Ponce Enrile and Rafael G. Zagala*), Rec., pp. 111, 122 & 127.

[7] *Diokno: A nation for Our Children*, 1987, Foreword.

[8] *Disappearances: A Workbook*, New York: Amnesty International USA 1981, p. 109. See my separate opinion in *Pangalunan vs. Station Commander*, 136 SCRA 594, 597 (1985).

[9] He was the 63rd Justice to sit on the Supreme Court, all too briefly from February 10, 1954 to April 21, 1954, when he died in the service.

[10] *Diokno: A Nation for Our Children*, 1987, p. 76.

[11] Annexes "A" and "D", petition.

[12] Annexes "1" and "2", respondent's Return.

Major Cabauatan's affidavit stated:

"That on or about 151300 September 1981, elements of Pampanga Constabulary Command encountered group of heavily armed men, members of the Communist Terrorists at Brgy. Sto. Rosario, Sta. Ana Pampanga, resulting to the death Virgilio Yangco alias OGA/OGIE/TERIO, confiscation of firearms and assorted voluminous subversive documents and the apprehension of several other persons two of whom were Isabel Ramos y Mendenilla and Eduardo Dizon, suspected CT regular members and supporters;

"That said apprehended persons were brought to the said headquarters for investigation/interrogation after which all other apprehended persons except Isabel Ramos and Eduardo Dizon were released on or before September 23, 1981, having been found out that no sufficient evidence would be established to warrant their further detention;

"That in the morning of September 24, 1981, the above-named persons (Isabel Ramos and Eduardo Dizon) were likewise released after they had pledged that they would help the government in the campaign against terrorist groups with the condition that they would report to the Provincial Commander at least twice a month

and to submit their respective reports/information against the Communist Terrorist's movement." (Record, p. 38)

Lt. Maranon's affidavit stated:

"That on September 15, 1981, Isabel Ramos alias KA GEL and Eduardo Dizon alias KA RICKY/PUTOL, together with four (4) Communist Terrorists sympathizers/supporters were captured at Barangay Sto. Rosario, Sta. Ana, Pampanga; xxx

"That Isabel Ramos made a twelve (12) page statement regarding her activities since 1977 up to her capture on September 15, 1981; xxx

"That Isabel Ramos and Eduardo Dizon verbally agreed that they will go back to their group and will report to the Provincial Commander at least twice a month and will provide authorities with reports regarding their group activities; xxx

That Isabel Ramos and Eduardo Dizon have not reported to the Provincial Commander since their release on September 24, 1981 and no information whatsoever regarding their whereabouts that have been received by the authorities; xxx" (Record, p. 39)

[13] Rule 131, sec. 1, Rules of Court.

[14] Annex "1", respondents' Answer.

[15] Annex "G", Reply.

[16] Annexes "H", "H-1" and "H-2", Reply.

[17] Rollo, page 51.

[18] Rollo, p. 57.

[19] Rollo, p. 57.

[20] Rollo, pp. 81-82.

[21] Executive Order No. 8.

[22] Annual Report for 1986 (PCHR), p. 3.

[23] Article XIIIIm sec, 17(1), 1987 Constitution.

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