

EN BANC

[G.R. No. 183711, June 22, 2010]

EDITA T. BURGOS, PETITIONER, VS. PRESIDENT GLORIA MACAPAGAL-ARROYO, GEN. HERMOGENES ESPERON, JR., LT. GEN. ROMEO P. TOLENTINO, MAJ. GEN. JUANITO GOMEZ, MAJ. GEN. DELFIN BANGIT, LT. COL. NOEL CLEMENT, LT. COL. MELQUIADES FELICIANO, AND DIRECTOR GENERAL OSCAR CALDERON, RESPONDENTS.

[G.R. NO. 183712]

EDITA T. BURGOS, PETITIONER, VS. PRESIDENT GLORIA MACAPAGAL-ARROYO, GEN. HERMOGENES ESPERON, JR., LT. GEN. ROMEO P. TOLENTINO, MAJ. GEN. JUANITO GOMEZ, LT. COL. MELQUIADES FELICIANO, AND LT. COL. NOEL CLEMENT, RESPONDENTS.

[G.R. NO. 183713]

EDITA T. BURGOS, PETITIONER, VS. CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES; GEN. HERMOGENES ESPERON, JR.; COMMANDING GENERAL OF THE PHILIPPINE ARMY, LT. GEN. ALEXANDER YANO; AND CHIEF OF THE PHILIPPINE NATIONAL POLICE, DIRECTOR GENERAL AVELINO RAZON, JR., RESPONDENTS.

R E S O L U T I O N**BRION, J.:**

On July 17, 2008, the Court of Appeals (CA) issued a decision^[1] in the consolidated petitions for the Issuance of the Writ of *Habeas Corpus*,^[2] for Contempt^[3] and for the Issuance of a Writ of *Amparo*^[4] filed by petitioner Edita T. Burgos on behalf of her son Jonas Joseph T. Burgos, who was *forcibly taken* and *abducted* by a group of four men and by a woman from the extension portion of Hapag Kainan Restaurant, located at the ground floor of Ever Gotesco Mall, Commonwealth Avenue, Quezon City, on April 28, 2007. This CA decision^[5] dismissed the petitioner's petition for the Issuance of the Writ of *Habeas Corpus*; denied the petitioner's motion to declare the respondents in contempt; and partially granted the privilege of the Writ of *Amparo* in favor of the petitioner.

The Antecedents

The established facts, as found by the CA, are summarized below:^[6]

The established facts show that at around one o'clock in the afternoon of April 28, 2007, Jonas Joseph T. Burgos - a farmer advocate and a member of *Kilusang Magbubukid sa Bulacan* (a chapter of the militant peasant organization *Kilusang Magbubukid ng Pilipinas*) - was forcibly taken and abducted by a group of four (4) men and a woman from the extension portion of Hapag Kainan Restaurant, located at the ground floor of Ever Gotesco Mall, Commonwealth Avenue, Quezon City. On his way out of the restaurant, Jonas told the manager, "Ma'am aktibista lang po ako!" When a security guard tried to intervene, after he noticed that the group was forcibly dragging a male person out of the restaurant, he was told, "Pare, pulis!" The guard then backed off but was able to see that Jonas was forced into the rear portion of a plain maroon colored Toyota Revo with plate number TAB 194. The guard then noted the plate number and reported the incident to his superiors as well as to the police on duty in the said mall.

On April 30, 2007, the petitioner held a press conference and announced that her son Jonas was missing. That same day, the petitioner sought confirmation from the guard if the person abducted was her son Jonas. Upon subsequent police investigation and LTO verification, it was discovered that plate number TAB 194 was registered to a 1991 Isuzu XLT vehicle owned by a certain Mauro B. Mudlong. It was also later confirmed by employees of the Department of Environment and Natural Resources (*DENR*) that Mudlong was arrested and his 1991 Isuzu XLT vehicle was seized on June 24, 2006 by Cpl. Castro Bugalan and Pfc. Jose Villexia of the 56th Infantry Battalion (*IB*) of the Philippine Army for transporting timber without permit. As agreed upon by the DENR employees and officers of the 56th IB, the vehicle with the license plate no. TAB 194 was impounded in the 56th IB headquarters whose commanding officer at that time was Lt. Col. Noel Clement.

The established facts also show that Lt. Col. Clement and the soldiers of the 56th IB went on retraining at the Headquarters of the First Scout Rangers Regiment (*Camp Tecson*) in *Brgy. Tartaro*, San Miguel, Bulacan starting November 28, 2006. A "left-behind force" or a squad remained in the camp of the 56th IB to secure the premises and equipment as it awaited the arrival of the 69th IB, headed by Lt. Col. Edison Caga, which took over the 56th IB's area of responsibility for the duration of the retraining. The 69th IB arrived at Camp Tecson on December 1, 2006, and remained there until March 7, 2007, when the 56th IB returned. There was no formal turnover or inventory of equipment and vehicles when the 69th IB arrived on December 1, 2006.

Meanwhile, on January 17, 2007, Lt. Col. Melquiades Feliciano took command of the 56th IB from Lt. Col. Clement. The actual turnover of command took place at Camp Tecson where the 56th IB was retraining. At the time Jonas was abducted on April 28, 2007, Lt. Col. Feliciano was the 56th IB's commanding officer. Earlier, on March 23, 2007, 2nd Lt. Dick A. Abletes, a member of the 56th IB, was caught on video talking to two persons, a male and a female, at McDonald's Bocaue. In the video, he was seen handing a document to the two persons. On March 26, 2007, 2nd Lt. Abletes was arrested and charges were soon filed against him with the Judge Advocate General for violations of Articles 82, 96 and 97 of the Articles of War.

Prior to Jonas' abduction, Mudlong's 1991 Isuzu XLT vehicle remained impounded at the 56th IB's Headquarters. In May 2007, right after Jonas' abduction was made public, it was discovered that plate number TAB 194 of this 1991 Isuzu XLT vehicle was missing, and

the engine and other spare parts were "cannibalized."

On direct examination, the petitioner testified before the CA that the police was able to generate cartographic sketches of two (one male and one female) of the abductors of Jonas based on its interview of eyewitnesses.^[7] The petitioner narrated further that these cartographic sketches were identified by State Prosecutor Emmanuel Velasco of the Department of Justice (*DOJ*); that when she went to see State Prosecutor Velasco personally, he gave her "five names" who were allegedly involved in the abduction of Jonas (namely T/Sgt. Jason Roxas, Cpl. Joana Francisco, M/Sgt. Aron Arroyo, and 1st Lt. Jaime Mendaras);^[8] and that the information from State Prosecutor Velasco's sources corroborated the same information she received earlier from her own sources.^[9] The petitioner also testified that nothing came out of the information given by State Prosecutor Velasco because he was "pulled out from the investigation by the DOJ Secretary,"^[10] and that the police, particularly P/Supt. Jonnel C. Estomo, failed to investigate and act upon these leads.^[11]

On August 30, 2007, P/Supt. Estomo (the lead investigator in the investigation conducted by the Philippine National Police-Criminal Investigation and Detection Group [*PNP-CIDG*]) testified before the CA that he did not investigate or look into the identities of the cartographic sketches of the two abductors provided by the PNP Criminal Investigation Unit, Quezon City.^[12] P/Supt. Estomo testified further that he showed the photos of Cpl. Bugalan and Pfc. Villexia to witness Larry Marquez for identification but failed to show any photos of the other officers and men of the 56th IB.^[13] Finally, P/Supt. Estomo also testified that he did not propound any clarificatory questions regarding the disappearance of Jonas Burgos to Lt. Cols. Feliciano, Clement, and Caga of the 56th IB who merely voluntarily submitted their statements.^[14]

On August 29, 2007, the PNP-CIDG presented Emerito Lipio @ KA TIBO/KA CRIS, Marlon D. Manuel @ KA CARLO, and Melissa Concepcion Reyes @ KA LISA/RAMIL to support the theory that elements of the New People's Army (*NPA*) perpetrated the abduction of Jonas.^[15] In his Sworn Statement, Lipio admitted that he is a member of the Communist Party of the Philippines (*CPP*)/*NPA* and that the *NPA* was behind the abduction of Jonas. Lipio revealed that Jonas is known as @KA RAMON in the communist movement. He claimed further that he and @KA RAMON belonged to the Bulacan Party Committee, assigned to the White Area Committee doing intelligence work for the movement under the leadership of Delfin de Guzman @ KA BASTE, and that @KA RAMON was their political instructor and head of the intelligence unit in the province.^[16]

Sometime early April of 2007, Lipio was present in a meeting between @KA BASTE and @KA RAMON. At this meeting, the two had a heated argument. For this reason, @KA BASTE instructed Lipio to place @KA RAMON under surveillance as they suspected him of pilfering funds from the party and of acting as a military agent.^[17]

Lipio further averred that upon instruction of @KA BASTE, he and a certain @KA CARLO proceeded to Ever Gotesco Mall on April 28, 2007 to monitor the reported meeting between @KA RAMON and other party members. At one o'clock in the afternoon, Lipio and @KA CARLO (who stationed themselves near the entrance/exit of the mall) saw a man, who they recognized as @KA RAMON, forcibly taken by four men, brought outside of the mall, and shoved inside a Toyota Revo. Lipio further alleged that he recognized two of the abductors as "@KA DANTE" and "@KA ENSO" who he claims to be members of the *CPP/NPA's* guerilla unit (RYG).^[18]

In his Sworn Statement, Manuel affirmed and substantiated Lipio's statement that @KA RAMON and Jonas are one and the same person and that he is a member of the communist movement in Bulacan. Manuel also corroborated Lipio's statement regarding the circumstances of the abduction of @KA RAMON at Ever Gotesco Mall on April 28, 2007; he confirmed that he and @ KA TIBO witnessed the abduction.^[19]

Reyes, a rebel-returnee, provided in her Sworn Statement additional material information regarding the disappearance of Jonas. Reyes alleged that she was supposed to meet with @KA RAMON and another comrade in the movement (whom she identified as @KA JO) to discuss the possibility of arranging a meeting with a contact in the military. She averred that she met @KA JO at about 11:30 a.m. at the Baliaug Transit Terminal, Cubao enroute to Ever Gotesco mall where they would meet with a certain @KA RAMON. Reyes further narrated that they arrived about noon at Ever Gotesco mall; @KA JO left her at McDonald's and told her to wait while he went to look for @KA RAMON. After an hour, @KA JO arrived without @KA RAMON and told Reyes to go home and just keep in touch through text messaging. Reyes alleged further that she has not heard from @KA JO since.^[20]

The CA Findings

In its July 17, 2008 decision, the CA found that the evidence the petitioner presented failed to establish her claimed direct connection between the abductors of Jonas and the military. The CA noted that the evidence does not show how license plate number TAB 194 (supposedly attached to the 1991 Isuzu XLT vehicle impounded at the 56th IB Headquarters) came to be attached to the getaway Toyota Revo on April 28, 2007, and whether the two license plates are one and the same at all. The CA emphasized that the evidence does not indicate whether the abductors are members of the military or the police or are civilians; if they are civilians, whether they acted on their own or were following orders, and in the latter case, from whom.

The CA also found that the investigations by the Armed Forces of the Philippines (*AFP*) and the PNP "leave much to be desired as they did not fully exert their effort to unearth the truth and to bring the real culprits before the bar of justice."^[21] The CA held that since the petitioner has established that the vehicle used in the abduction was linked to a vehicle (with license plate number TAB 194) impounded at the headquarters of the 56th IB, it became the burden of the *AFP* to exercise extraordinary diligence to determine the why and the wherefore of the loss of the license plate in their custody and its appearance in a vehicle (a maroon Toyota Revo) used in Jonas' abduction. The CA also ruled that the *AFP* has the burden of "connect[ing] certain loose ends"^[22] regarding the identity of @Ka Ramon (as referred to by the petitioner's witnesses) and the allegation that @Ka Ramon is indeed Jonas in the "Order of Battle."

As for the PNP-CIDG, the CA branded its investigation as "rather shallow" and "conducted haphazardly." The CA took note that P/Supt. Estomo's investigation merely delved into the *administrative liability* of Lt. Col. Clement, Lt. Col. Feliciano and Lt. Col. Caga of the 56th IB, and failed to consider them as suspects in the abduction of Jonas. The CA emphasized that the PNP-CIDG's investigation should focus on the criminal aspect of the present case pursuant to Section 24 of Republic Act No. 6975, which mandates the PNP to "investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution."

The CA also found P/Supt. Estomo's recommendation that appropriate charges be filed against Mauro Mudlong (registered owner of the impounded 1991 Isuzu XLT vehicle with plate license no. TAB 194) to be without any factual basis since no evidence was presented to connect the latter to the loss of the license plate as well as to the abduction of Jonas. The CA stressed that it could not find any valid reason why Mudlong should be treated any differently from the three 56th IB colonels whom the PNP-CIDG did not consider as suspects despite the established fact that license plate no. TAB 194 was lost while in their custody.

On the PNP-CIDG's new information from Lipio who claimed to have seen Jonas being abducted by a certain @KA DANTE and @KA ENSO of the CPP/NPA guerilla unit RYG, and on Marlon Manuel, who corroborated Lipio's statements, the CA held that steps should be taken by the PNP-CIDG to verify the veracity of these statements. Notwithstanding the new information, the CA noted that the PNP-CIDG should not discount the possible involvement of members of the AFP. Thus, the CA concluded that the PNP must exert extraordinary diligence in following all possible leads to resolve the crime committed against Jonas. Finally, the CA noted - based on the Certification issued by the Assistant Chief State Prosecutor, DOJ dated March 5, 2008 - that no case has been referred by the PNP to the DOJ for preliminary investigation in relation to the abduction and disappearance of Jonas. This is contrary to PNP's manifest representation that it had already forwarded all pertinent and relevant documents to the DOJ for the filing of appropriate charges against the suspects (*i.e.*, @KA DANTE and @KA ENSO).

The CA also held that the petitions for *habeas corpus* and contempt as against President Gloria Macapagal-Arroyo must be dropped since she enjoys the privilege of immunity from suit. The CA ruled that the President's immunity from suit is a settled doctrine citing *David v. Arroyo*.^[23]

Our Ruling

Considering the findings of the CA and our review of the records of the present case, we conclude that the PNP and the AFP have so far failed to conduct an exhaustive and meaningful investigation into the disappearance of Jonas Burgos, and to exercise the extraordinary diligence (in the performance of their duties) that the Rule on the Writ of *Amparo* requires. Because of these investigative shortcomings, we cannot rule on the case until a more meaningful investigation, using extraordinary diligence, is undertaken.

From the records, we note that there are very significant lapses in the handling of the investigation - among them the PNP-CIDG's failure to identify the cartographic sketches of two (one male and one female) of the five abductors of Jonas based on their interview of eyewitnesses to the abduction. This lapse is based on the information provided to the petitioner by no less than State Prosecutor Emmanuel Velasco of the DOJ who identified the persons who were possibly involved in the abduction, namely: T/Sgt. Jason Roxas (Philippine Army), Cpl. Maria Joana Francisco (Philippine Air Force), M/Sgt. Aron Arroyo (Philippine Air Force), and an alias T.L., all reportedly assigned with Military Intelligence Group 15 of Intelligence Service of the AFP.^[24] No search and certification were ever made on whether these persons were AFP personnel or in other branches of the service, such as the Philippine Air Force. As testified to by the petitioner, *no significant follow through was also made by the PNP-CIDG in ascertaining the identities of the cartographic sketches of two of the abductors despite the evidentiary leads provided by State Prosecutor Velasco of the DOJ.* Notably, the PNP-CIDG, as the lead investigating agency in the present case, did not appear to have lifted a finger to pursue these aspects of the case.

We note, too, that no independent investigation appeared to have been made by the PNP-CIDG to inquire into the veracity of Lipio's and Manuel's claims that Jonas was abducted by a certain @KA DANTE and a certain @KA ENSO of the CPP/NPA guerilla unit RYG. The records do not indicate whether the PNP-CIDG conducted a follow-up investigation to determine the identities and whereabouts of @KA Dante and @KA ENSO. These omissions were aggravated by the CA finding that the PNP has yet to refer any case for preliminary investigation to the DOJ despite its representation before the CA that it had forwarded all pertinent and relevant documents to the DOJ for the filing of appropriate charges against @KA DANTE and @KA ENSO.

Based on these considerations, we conclude that further investigation and monitoring should be undertaken. While significant leads have been provided to investigators, the investigations by the PNP-CIDG, the AFP Provost Marshal, and even the Commission on Human Rights (*CHR*) have been less than complete. The PNP-CIDG's investigation particularly leaves much to be desired in terms of the extraordinary diligence that the Rule on the Writ of *Amparo* requires. For this reason, we resolve to refer the present case to the CHR as *the Court's directly commissioned agency tasked with the continuation of the investigation of the Burgos abduction and the gathering of evidence, with the obligation to report its factual findings and recommendations to this Court.* We take into consideration in this regard that the CHR is a specialized and independent agency created and empowered by the Constitution to investigate all forms of human rights violations involving civil and political rights and to provide appropriate legal measures for the protection of human rights of all persons within the Philippines.^[25]

Under this mandate, the CHR is tasked to conduct appropriate investigative proceedings, including field investigations - acting as the Court's directly commissioned agency for purposes of the Rule on the Writ of *Amparo* - with the tasks of: (a) ascertaining the identities of the persons appearing in the cartographic sketches of the two alleged abductors as well as their whereabouts; (b) determining based on records, past and present, the identities and locations of the persons identified by State Prosecutor Velasco alleged to be involved in the abduction of Jonas, namely: T/Sgt. Jason Roxas (Philippine Army); Cpl. Maria Joana Francisco (Philippine Air Force), M/Sgt. Aron Arroyo (Philippine Air Force), and an alias T.L., all reportedly assigned with Military Intelligence Group 15 of Intelligence Service of the AFP; further proceedings and investigations, as may be necessary, should be made to pursue the lead allegedly provided by State Prosecutor Velasco on the identities of the possible abductors; (c) inquiring into the veracity of Lipio's and Manuel's claims that Jonas was abducted by a certain @KA DANTE and @KA ENSO of the CPP/NPA guerilla unit RYG; (d) determining based on records, past and present, as well as further investigation, the identities and whereabouts of @KA DANTE and @KA ENSO; and (e) undertaking all measures, in the investigation of the Burgos abduction that may be necessary to live up to the extraordinary measures we require in addressing an enforced disappearance under the Rule on the Writ of *Amparo*.

WHEREFORE, in the interest of justice and for the foregoing reasons, the Court **RESOLVES** to:

(1) **DIRECT** the Commission on Human Rights to conduct appropriate investigative proceedings, including field investigations - acting as the Court's directly commissioned agency for purposes of the Rule on the Writ of *Amparo* - with the tasks of: (a) ascertaining the identities of the cartographic sketches of two of the abductors as well as their whereabouts; (b) determining based on records, past and present, the identities and locations of the persons identified by State Prosecutor Velasco alleged to be involved in the abduction of Jonas namely: T/Sgt. Jason Roxas (Philippine Army), Cpl. Maria Joana Francisco (Philippine Air Force), M/Sgt. Aron Arroyo