

EN BANC

[A.M. No. 09-2-19-SC, February 24, 2009]

**IN RE: UNDATED LETTER OF MR. LOUIS C. BIRAOGO,
PETITIONER IN BIRAOGO V. NOGRALES AND LIMKAICHONG,**

DECISION

PER CURIAM:

Before this Court is the Report of the Investigating Committee created under the Resolution dated December 10, 2008, to investigate the unauthorized release of the unpromulgated *ponencia* of Justice Ruben T. Reyes in the consolidated cases of *Limkaichong v. COMELEC*, *Villando v. COMELEC*, *Biraogo v. Nograles and Limkaichong*, and *Paras v. Nograles*, docketed as G.R. Nos. 178831-32, 179240-41, 179120 and 179132-33, respectively, to determine who are responsible for the leakage of a confidential internal document of the En Banc.

The investigating committee, composed of Mr. Justice Leonardo A. Quisumbing as Chairperson and Mme. Justice Conchita Carpio Morales and Mr. Justice Renato C. Corona as Members, submitted the following report:

INVESTIGATING COMMITTEE CREATED UNDER THE
EN BANC RESOLUTION DATED DECEMBER 10, 2008

MEMORANDUM FOR:

HON. REYNATO S. PUNO, Chief Justice
HON. CONSUELO YNARES-SANTIAGO, Associate Justice
HON. ANTONIO T. CARPIO, Associate Justice
HON. MA. ALICIA AUSTRIA-MARTINEZ, Associate Justice
HON. DANTE O. TINGA, Associate Justice
HON. MINITA V. CHICO-NAZARIO, Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. ANTONIO EDUARDO B. NACHURA, Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. ARTURO D. BRION, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice

RE: Report on the Investigation of the Unauthorized Release of the Unpromulgated Ponencia of Justice Ruben T. Reyes in the Consolidated Cases of Limkaichong v. COMELEC, Villando v. COMELEC, Biraogo v. Nograles and Limkaichong, and Paras v. Nograles, Docketed as G.R. Nos. 178831-32, 179240-41, 179120 and 179132-33, Respectively, to Determine Who are Responsible for the Leakage of a Confidential Internal Document of the En Banc

Respectfully submitted for the consideration of the Honorable Chief Justice and Associate Justices of the Supreme Court the following report on the results of the investigation of the committee created under the En Banc Resolution dated December 10, 2008.

ANTECEDENT FACTS

During its session on July 15, 2008, the Court En Banc continued its deliberations on the draft of Justice Ruben T. Reyes in the consolidated cases of *Limkaichong v. Comelec*, *Villando v. Comelec*, *Biraogo v. Nograles and Limkaichong*, and *Paras v. Nograles*, docketed as G.R. Nos. 178831-32, 179240-41, 179120 and 179132-33, respectively, (Limkaichong case) which was used by this Court as a working basis for its deliberations. Since no one raised any further objections to the draft, the En Banc approved it. It having been already printed on Gilbert paper, albeit a number of Justices manifested that they were concurring "in the result," Justice Reyes immediately circulated the *ponencia* during the same session.

After the session and during lunch, Chief Justice Reynato S. Puno noted that seven of the 13 Justices (excluding Justice Reyes) concurred "in the result" with the *ponencia* of Justice Reyes (hereafter Gilbert copy or Justice Reyes's *ponencia* or *ponencia* or unpromulgated *ponencia*). Justices Minita Chico-Nazario and Teresita Leonardo-De Castro then informed the Chief Justice that they too wanted to concur only "in the result." Since nine Justices, not counting the Chief Justice, would concur only "in the result," the Justices unanimously decided to withhold the promulgation of the Gilbert copy. It was noted that if a majority concurred only "in the result," the *ponencia* would have no doctrinal value. More importantly, any decision ousting a sitting member of the House of Representatives should spell out clearly the legal basis relied upon by the majority for such extreme measure. Justice Antonio T. Carpio then volunteered to write his *Reflections* on Justice Reyes's *ponencia* for discussion in the following week's En Banc session.

During its session on July 22, 2008, the En Banc deliberated on Justice Carpio's *Reflections* which had in the meantime been circulated to the members of the Court. As a result, the En Banc unanimously decided to push through and set the date for holding oral arguments on the Limkaichong case on August 26, 2008.

On the request of Justice Reyes, however, the Limkaichong case was included in the agenda of July 29, 2008 where it was listed as Item No. 66. The decision to hold oral arguments remained, however.

On December 9, 2008, Louis C. Biraogo, petitioner in *Biraogo v. Nograles and Limkaichong*, G.R. No. 179120, held a press conference at the Barrio Fiesta Restaurant in Maria Orosa Street, Ermita, Manila, and circulated to the media an undated letter signed by him, together with what appeared to be a xerox copy of the unpromulgated *ponencia*. In his letter, Biraogo insinuated that the Court, at the instance of the Chief Justice and with the implied consent of the other Justices, unlawfully and with improper motives withheld the promulgation of the *ponencia*.

Noting that the unauthorized release of a copy of the unpromulgated *ponencia* infringed on the confidential internal deliberations of the Court and constituted contempt of court, the Court, in a Resolution dated December 10, 2008, directed

1. The creation of an Investigating Committee, chaired by Senior Associate Justice Leonardo A. Quisumbing, with Associate Justice Consuelo Ynares-Santiago, Chairperson, Third Division and Associate Justice Antonio T. Carpio, Working Chairperson, First Division, as Members to investigate the unauthorized release of the unpromulgated *ponencia* of Justice Reyes to determine who are responsible for this leakage of a confidential internal document of the En Banc, and to recommend to the En Banc the appropriate actions thereon;
2. Mr. Louis C. Biraogo to **SHOW CAUSE**, within ten (10) days from receipt of this Resolution, why he should not be punished for contempt for writing the undated letter and circulating the same together with the unpromulgated *ponencia* of Justice Reyes.

As directed, the committee, composed of the aforementioned three senior Justices, conducted initial hearings on December 15 and 16, 2008.

In the meantime, in compliance with the Court's above-quoted Resolution dated December 10, 2008, Biraogo submitted to the Court his Compliance dated December 22, 2008 to which he attached the following annexes: (1) an undated photocopy of a 3-page printed letter addressed to "Dear Mr. Biraogo" which purportedly was sent by a "Concerned Employee" as Annex "A"; (2) a June 12, 2008 note handwritten on a memo pad of Justice Reyes reading:

Re: G.R. Nos. 178831-32, etc. [the comma and "etc." are handwritten]

Dear Colleagues,

I am circulating a revised draft of the *ponencia*.

(Sgd.)

RUBEN T. REYES,

together with a copy of Justice Reyes's Revised Draft *ponencia* for the June 17, 2008 agenda as Annex "B"; (3) a photocopy of the unpromulgated *ponencia* bearing the signatures of 14 Justices as Annex "C"; and (4) a photocopy of Justice Carpio's *Reflections* as Annex "D".

Justice Ynares-Santiago later inhibited herself upon motion of Justice Ruben T. Reyes while Justice Carpio voluntarily inhibited himself. They were respectively replaced by Justice Renato C. Corona and Justice Conchita Carpio Morales, by authority of the Chief Justice based on seniority. Additional hearings were then held by the reconstituted committee on January 14, 16, 19, 20, 21 and 22, 2009.

The following witnesses/resource persons were heard:

1. **Armando A. Del Rosario**, *Court Stenographer III, Office of Associate Justice Ruben T. Reyes*
2. **Rodrigo E. Manabat, Jr.**, *PET Judicial Staff Officer II, Office of Associate Justice Ruben T. Reyes*
3. **Atty. Rosendo B. Evangelista**, *Judicial Staff Head, Office of Associate Justice Ruben T. Reyes*

4. **Associate Justice Minita V. Chico-Nazario**
5. **Associate Justice Antonio Eduardo B. Nachura**
6. **Associate Justice Teresita J. Leonardo-De Castro**
7. **ACA Jose Midas P. Marquez**, *Chief, Public Information Office*
8. **Ramon B. Gatdula**, *Executive Assistant II, Office of the Chief Justice*
9. **Atty. Ma. Luisa D. Villarama**, *Clerk of Court En Banc*
10. **Major Eduardo V. Escala**, *Chief Judicial Staff Officer, Security Division, Office of Administrative Services*
11. **Atty. Felipa B. Anama**, *Assistant Clerk of Court*
12. **Willie Desamero**, *Records Officer III, Office of the Clerk of Court*
13. **Glorivy Nysa Tolentino**, *Executive Assistant I, Office of Associate Justice Antonio Eduardo B. Nachura*
14. **Onofre C. Cuento**, *Process Server, Office of the Clerk of Court*
15. **Chester George P. Del Castillo**, *Utility Worker, Office of Associate Justice Ruben T. Reyes*
16. **Conrado B. Bayanin, Jr.**, *Messenger, Office of Associate Justice Ruben T. Reyes*
17. **Fermin L. Segotier**, *Judicial Staff Assistant II, Office of Associate Justice Antonio Eduardo B. Nachura*
18. **Retired Justice Ruben T. Reyes**

SUMMARIES OF TESTIMONIES

Below are the summaries of their testimonies:

1. ARMANDO A. DEL ROSARIO, Court Stenographer III, Office of Associate Justice Ruben T. Reyes, testified as follows:

He was in charge of circulating *ponencias* for the signatures of the Justices and of forwarding signed (by all the Associate Justices who are not on leave) *ponencias* to the Office of the Chief Justice (OCJ).

On July 15, 2008, after the En Banc session, he received from Justice Reyes the original of the unpromulgated *ponencia* (Gilbert copy). Because he was busy at that time, he instructed his co-employee Rodrigo Manabat, Jr. to bring the Gilbert copy to the Office of Justice Nachura for

signature and to wait for it. He instructed Manabat to rush to Justice Nachura's office because the latter was going out for lunch. After more than 30 minutes, Manabat returned with the Gilbert copy already signed by Justice Nachura, who was the last to sign.^[1] Del Rosario then transmitted the Gilbert copy together with the *rollo*, temporary *rollos*, and diskettes to the OCJ pursuant to standard operating procedures for the promulgation of decisions. The documents were received by Ramon Gatdula on the same day at around 3:00 p.m.

The following day, on July 16, 2008, at around 4:00 p.m., Justice Reyes instructed him to retrieve the Gilbert copy and the accompanying documents and diskettes as he was told that the promulgation of the *ponencia* had been placed on hold. He brought the Gilbert copy to Justice Reyes who told him to keep it. He then placed the Gilbert copy in a sealed envelope and placed it inside his unlocked drawer and wrote a note in his logbook when he retrieved the Gilbert copy that its promulgation was on hold and would be called again on July 29, 2008.^[2]

The Gilbert copy was in his sole custody from July 16, 2008 until December 15, 2008 (when the investigating committee held its first hearing).^[3] He never opened the envelope from the day he sealed it on July 16, 2008 until December 10, 2008, when Justice Reyes told everybody in their office that the Gilbert copy had been photocopied and leaked. He did not have any news of any leakage before then. And he also did not photocopy the Gilbert copy. The seal placed on the envelope was still intact when he opened it on December 10, 2008.^[4] Although the lawyers in their office knew that he kept original copies of drafts in his unlocked drawer, he believed that nobody in his office was interested in photocopying the Gilbert copy. He was solely responsible for keeping the Gilbert copy. He did not know any of the parties to the case and none of them ever called him. And he did not know what Gatdula did after receiving the Gilbert copy.^[5]

The Limkaichong case was called again on July 29, 2008 as Item No. 66. The Office of Justice Reyes received the En Banc agenda for the said date on July 25, 2008. Upon receipt of the said En Banc agenda and the new item number, their office prepared a new cover page and attached it to the Gilbert copy. The original cover page of the Gilbert copy for the agenda of July 15, 2008 showing the case as item number 52 was thrown away.^[6]

On being recalled on January 20, 2009, Del Rosario further testified as follows:

On July 15, 2008 when the Justices were about to leave the En Banc session room after the adjournment of the session, he entered the room just like the rest of the aides.^[7] He carried the folders of Justice Reyes, returned them to the office, and went back to, and waited for Justice Reyes until Justice Reyes finished lunch at the En Banc dining room.^[8] The Gilbert copy was left with Justice Reyes.^[9] Before 1:00 p.m., after