

IN THE MATTER OF THE PETITION FOR WRIT OF AMPARO AND WRIT OF HABEAS DATA FOR ATTY. MARIA CATHERINE DANNUG SALUCON.

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

Before us is a Petition for Writ of Amparo and Writ of Habeas Data[1] under The Rule on the Writ of Amparo[2] and The Rule on the Writ of Habeas Data[3], respectively, filed on April 11, 2014 by petitioner Atty. Maria Catherine Dannug-Salucon before this Court, praying that a temporary protection order be issued for her and her immediate family's protection. In addition, she prayed that, after notice and hearing on the petition, judgment be rendered ordering the issuance of the privilege of the Writ of Amparo in her favor. Finally, petitioner prayed that the Court order the issuance of the Writ of Habeas Data, directing the respondents to: (1) disclose to petitioner and to provide her with copies of all the facts, information, statements, records, photographs, dossier and all other evidence, documentary or otherwise, pertaining to her in their files or record, including the watch list of alleged communist supporters and the Memorandum Order of the Philippine National Police (PNP); and (2) destroy any information gathered on petitioner.

On April 22, 2014, the Special Sixth Division of this Court gave due course to the instant petition and issued the writs of amparo and habeas data, ordering the respondents to make a verified return on the writ and to file a comment on the petition within five days from service of the writ.[4]

On May 5, 2014, respondents filed their Return of the Writs and Comment on the Petition[5], expressly denying the allegations in the petition and praying that the same be denied for lack of merit and/or that His Excellency President Benigno Simeon C. Aquino III be dropped as a respondent on the grounds of immunity from suit and failure by the petitioner to allege any specific unlawful act or omission on the part of the former which violated or threatened the latter's rights to life, liberty and security, or, at the least, establish any link between President Aquino and the acts which allegedly violated said rights. In addition, respondents described the respective responses made or actions taken by them upon receipt of the writs to verify the truth of petitioner's allegations.

During the preliminary hearing held on May 23, 2014, the parties stipulated on the following facts: (1) the identity and ranks of respondents; (2) that respondents are impleaded in their official capacity; and (3) that respondents knew for a fact that petitioner was a member of the Philippine bar even prior to the filing of the petition.[6] Thereafter, trial on the merits of the case ensued.

Petitioner's Allegations

Petitioner had been a human rights lawyer since her admission to the Philippine Bar in 2005, although she initially worked with the Public Attorney's Office (PAO), Ilagan District Office in Isabela. Moreover, she was one of the founding members of the National Union of People's Lawyer (NUPL), a national association of human rights lawyers, law students and paralegals who were principally engaged in public interest cases and human rights advocacy, among others. She was also the incumbent National Auditor of the NUPL and was thus visibly active in

participating in all of its activities, even from the time that she was still employed with the PAO. After resigning from government service and putting up her own law firm, she took on the defense of several political detainees, most of which were leaders and/or members of peasant and other sectoral organizations and people's organizations, including human rights defenders, who were labeled or suspected to be members of the Communist Party of the Philippines (CPP) and/or the New People's Army (NPA), and who were harassed with trumped up charges by the Government.[7]

On March 24, 2014, petitioner was at a lunch meeting with the relatives of a detained political prisoner client who was allegedly among several leaders of people's organizations/sectoral organizations who were falsely charged in a murder and frustrated murder case pending before the Regional Trial Court (RTC) of Lagawe, Ifugao. As they were discussing the security risks involved in the handling of the case, William Bugatti, her paralegal who was working with her on said case and who was also an activist and human rights defender, informed her that he had personally observed that surveillance was being conducted on them, including petitioner, especially during scheduled hearings for the above case. Thus, he suggested certain security measures for her own protection. Petitioner realized the significance of Bugatti's advice when he was fatally gunned down later that evening. Parenthetically, petitioner had tasked him early that very day to identify the names, ranks and addresses of the handler/s of the prosecution witness in the Lagawe case, whom petitioner suspected of lying on the witness stand.[8]

That same evening, petitioner was informed by a client (name withheld purportedly for security reasons) working as a civilian asset for the PNP Intelligence Section that the Regional Intelligence of the PNP, through the PNP Isabela Provincial Police Office, had issued a directive to PNP Burgos, Isabela, petitioner's hometown, to conduct a background investigation on her and to confirm whether she was a "Red Lawyer". She also learned that she was being secretly followed by agents of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) and that persons looking like military/policemen had been asking people around her office about her whereabouts and routine. Further, petitioner's name was reportedly included in the military's Watch List of so-called communist terrorist supporters rendering legal services.[9]

On March 31, 2014, petitioner again received a call from her confidential informant, confirming that she was indeed the subject of surveillance and that, in fact, he was tailed by ISAFP operatives when he came to petitioner's office a few nights earlier. The day before, the confidential informant was allegedly cornered by three ISAFP operatives who interrogated him on the purpose of his visit to petitioner's office. They also asked him why petitioner was acquainted with known NPA members such as Randy Malayao and Grace Bautista, and why she was always the lawyer of several suspected communist terrorists.[10]

Upon further investigation, petitioner discovered the following things:

1) On or about March 12, 19 and 21, 2014, when petitioner had out-of-town hearings, different individuals riding on motorcycles and appearing to be soldiers approached one of the buko and tupig vendors in front of petitioner's office. Each of them similarly questioned the vendor as to where petitioner went, with whom, what time she usually returned to the office and who stayed behind in the office whenever she left. The vendor was surprised because the questions of the individuals were uniform on all occasions and they did not go into petitioner's office despite the vendor's advice for them to talk to petitioner's secretary. The above incidents were narrated to petitioner by her driver, Regie Lutao Gamongan, who had gotten the information from the vendor.[11]

2) On March 31, 2014, a member of the Criminal Investigation Service (CIS) of the Criminal Investigation Detection Group (CIDG) came to the law office, asking for petitioner, but without telling her secretary why he

was looking for her. Upon learning that she was not there, he left, then returned again in the afternoon. However, he left again upon finding out that petitioner had decided to stay at the Hall of Justice longer than expected.[12]

3) On the same day, petitioner received a text message from the Chief Investigator of the CIDG, asking for a copy of the records of a human rights case involving three Bayan Muna members who were allegedly arbitrarily arrested on the basis of trumped up charges for two counts of frustrated murder and tortured in the hands of the 86[th] Infantry Battalion intelligence operatives. Said case was dismissed by the Office of the Provincial Prosecutor during preliminary investigation. Petitioner was surprised at the request because it was the third time that the investigator was requesting for a copy of the records and he could have readily secured the same from the Provincial Prosecutor's Office. Thus, petitioner ignored the text message.[13]

4) On or about 7:30 AM on April 3, 2014, while petitioner's driver, Gamongan, was waiting for her in front of her residence at Poblacion, Burgos, Isabela, a red "Wave" motorcycle with its plate number cased inside a tinted plastic cover, making it impossible to read the same, passed by their house. The motorcycle driver, who was of medium height, with dark complexion, a haircut and a demeanor of a military /policeman, with a tattoo on his left arm, wearing a white sando shirt and with a pistol bag slung around his shoulder, looked intently at Gamongan as he passed by, "as if he wanted to do something wrong". After passing by petitioner's compound, the motorcycle rider suddenly made a u-turn and again stared intently at Gamongan as he passed by. As he headed towards the highway, Gamongan noticed that the man was continually observing him through the side mirror. In relation to this incident, witness Gamongan executed a Judicial Affidavit[14] and testified during the trial proceedings.

5) On or about April 7 and 10, 2014, soldiers came to petitioner's office in the guise of asking her to notarize documents. Since petitioner was on out-of-town hearings, her secretary suggested names of other available notaries public. However, instead of leaving right away, the military men asked where petitioner went and with whom, and insisted on leaving the document and picking it up later on when petitioner arrived.[15]

6) On April 10, 2014, a known civilian asset of the Military Intelligence Group (MIG) in Isabela, who also happened to be the "close-in" secretary and part-time driver of an uncle who was a municipal circuit judge, came to petitioner's office, trying to convince her to meet with the head of MIG Isabela so that the latter could explain why petitioner was being watched. However, petitioner declined. The following day, the civilian asset returned and told her that she was being watched by the MIG because of a land dispute which she was handling at a court in Roxas, Isabela. Petitioner did not believe him because, just a couple of days prior to that date, the MIG operatives had talked to the client/confidential informant who had first informed petitioner of the purported surveillance operations on her, asking for petitioner's phone number and inviting him to join them as civilian asset in their anti-insurgency operations.[16]

In her Petition, petitioner posited that the above-described acts, taking into consideration previous incidents where human rights lawyers, human rights defenders, political activists and defenders, were killed or abducted after being labeled as "communists" and being subjected to military surveillance, may be interpreted as preliminary acts leading to the abduction and/or killing of petitioner. Moreover, while petitioner admitted that the purported military and police operatives who conducted, and were still conducting, surveillance and harassments on petitioner were still unidentified, she maintained that the same were identified as members of the ISAFP, the

Philippine Army and the police, and that there was no doubt that they all acted upon orders of their superiors within the chain of command.[17] Petitioner reported the incidents to the NUPL and the human rights group KARAPATAN (Alliance for the Advancement of People's Rights), who agreed to help her in filing the instant petition. She also tried reporting the incidents to the National Bureau of Investigation (NBI) in Isabela, but, as of the present, no positive report had been made identifying the individuals who conducted the alleged surveillance, although available information specifically pointed to the military and police units as the ones doing the surveillance.[18]

During trial, petitioner presented two witnesses, namely, herself and her driver, Regie Lutao Gamongan. She also formally offered in evidence her[19] and Gamongan's[20] respective Judicial Affidavits, as well as several Informations[21] in criminal cases where the accused were political detainees, leaders or members of peasant and other sectoral organizations and people's organizations, human rights defenders and/or suspected NPA members, and the private complainants were either military or police officers/personnel.

Respondents' Allegations/Comment on the Petition

The following are the respondents who were impleaded in the instant petition: (1) C/Supt. Miguel De Mayo Laurel, in his capacity as the alleged Chief of the Isabela Provincial Police Office; (2) P/Dir. Gen. Alan Purisima, in his capacity as the PNP Director General; (3) Gen. Benito Antonio T. De Leon, in his capacity as the Commanding General of the 5[th] Infantry Division; (4) Gen. Hernando Iriberry, in his capacity as the Commanding General of the Philippine Army; (5) Gen. Eduardo Año, in his capacity as the Commanding Officer of the Intelligence Service of the Armed Forces of the Philippines (ISAFP); (6) Gen. Emmanuel Bautista, in his capacity as the Chief of Staff of the Armed Forces of the Philippines; (7) Voltaire Gazmin, in his capacity as the Secretary of the Department of National Defense (DND); and (8) His Excellency President Benigno Simeon C. Aquino III, in his capacity as the Commander-in-Chief of the AFP.

Respondents categorically denied petitioner's allegation that she was ever under surveillance by the military and/or police under the command of respondents officials. Moreover, respondents asserted that respondent President Aquino should not have been impleaded as party respondent in the instant petition on the ground of immunity from suit of the President of the Philippines. In any event, petitioner failed to clearly and sufficiently establish any specific unlawful act or omission on the part of respondent President Aquino that violated or threatened petitioner's rights to life, liberty and security or, at least, establish any link between President Aquino and the acts that allegedly violated said rights.

In the same vein, respondents objected to the impleading of the other respondents in their official capacities, allegedly under the doctrine of command responsibility. Respondents maintained that the doctrine of command responsibility is a substantive rule that establishes criminal or administrative liability that is different from the purpose and approach under the Rule on the Writ of Amparo. Thus, it can only be invoked in a full-blown criminal or administrative case and not in a summary amparo proceeding.

As in the case of respondent President Aquino, respondents pointed out that the petition failed to particularize the specific acts or omissions allegedly committed by the other respondents in violation of petitioner's constitutional rights to life, liberty and security, much less establish the link between them so as to render them answerable for the same.

The foregoing notwithstanding, respondents alleged that, upon receipt of the Resolution promulgated on April 22, 2014 of this Court, they immediately exerted efforts to conduct an inquiry and to gather information about the purported threats on the life, liberty and security of petitioner, to wit:

- Respondent Secretary Gazmin maintained that, aside from sweeping allegations of surveillance and gathering of

information made by alleged unidentified operatives from the military and the police on petitioner, the latter failed to particularize the instances of respondent Sec. Gazmin's involvement in said surveillance and information gathering that would warrant his inclusion as party respondent in the case.[22]

- Upon receipt of this Court's April 22, 2014 Resolution, respondent Gen. Emmanuel T. Bautista issued a directive to the ISAFP Chief and Commander of the 5[th] Infantry Division to verify the alleged surveillance operations conducted on petitioner. In addition, he enjoined the concerned unit/s to immediately investigate and/or submit to the Higher Headquarters pertinent investigation results already conducted, if any, relative to the complained acts. Finally, respondent Gen. Bautista affirmed the continuation of efforts to establish the surrounding circumstances of petitioner's allegations and to bring those responsible, including any military personnel, if shown to have participated or to have had complicity in the commission of the alleged acts, to the court of justice.[23]

- Respondent Major Gen. Eduardo M. Año denied the ISAFP's involvement in the alleged surveillance operations on and harassment of petitioner, and the inclusion of petitioner's name in an alleged watchlist. In fact, respondent Major Gen. Año claimed that he only came to know of petitioner's name upon receipt of the Petition, which he described as a mere product of a fabricated story intended to discredit him, in particular, and the ISAFP as a whole. Nonetheless, upon obtaining a copy of the Petition from the Judge Advocate General and the AFP Radio Message directing his unit to submit results of the verification and inquiry on the Petition, respondent Major Gen. Año immediately instructed the Group Commanders of the MIG 1 and 2 to coordinate closely with the military and the PNP in the area to ensure that no harassment or surveillance will be conducted on petitioner.[24]

- Upon receipt of this Court's Resolution, respondent Lt. Gen. Hernando DCA Iriberry immediately informed the Army Judge Advocate, the legal arm of the Philippine Army, of the same. Having no information on the nature and circumstances surrounding the case, he coordinated with his staff to look into the matter. Even prior to the radio message from the Chief of Staff dated April 25, 2014, directing him to conduct verification on the alleged surveillance on petitioner, respondent Lt. Gen. Iriberry had already taken the initiative to issue a directive to the Commanding General of the 5[th] Infantry Division in Gamu, Isabela, to verify and inquire into the allegations in the Petition pertaining to any operation which may have been conducted or which was in anyway related to the transgression of human rights of petitioner. Finally, he undertook that, should there be any finding that any army personnel was involved or had committed any of the allegations in the Petition, such personnel shall be dealt with accordingly pursuant to existing laws and AFP regulations.[25]

- Respondent Major Gen. Benito Antonio T. De Leon pointed out that he assumed command of the 5[th] Infantry (STAR) Division only on April 4, 2014, thus, the alleged surveillance operations would have been conducted prior to his assumption of said office. Since he assumed command of said unit, he had not given any orders to his men to conduct surveillance or "casing" operations against any persons within the unit's area of operation, nor did he receive any similar orders from his superiors. Nonetheless, even prior to receipt of the directive from the higher headquarters and a copy of the Petition, respondent Major Gen. De Leon, on his own volition and upon gaining information through print media of the filing of the Petition, exerted efforts to verify with the intelligence unit commanders under his command whether there was any standing instruction or order for them to conduct "casing" or surveillance operations against petitioner, to which the commanders responded in the negative. In addition, he averred that he immediately sent out radio messages to his subordinates to be law-abiding and that human rights violations have no place in the military.[26]

- Respondent PCSupt. Miguel de Mayo Laurel clarified that he was currently the Acting Regional Director of the Police Regional Office 2, and not the Chief of the Isabela Provincial Police Office, as indicated in the Petition. Said Petition was only emailed by the Legal Service of Camp Crame to the Office of the Regional Legal Service,

which provided respondent PCSupt. Laurel a copy of the same. Respondent PCSupt. Laurel maintained that their Office had no memorandum order relating to petitioner's allegations, nor are there any documents in their possession concerning petitioner. Thus, PCSupt. Laurel immediately sent a Memorandum directing the Provincial Director of the Isabela Police Provincial Office and the Chief of the Regional Intelligence Division of Police Regional Office 2, two of the units mentioned in the Petition which were under his operational control, to submit their comments and all relevant information and pertinent documents relative to the allegations made by petitioner and to identify the persons who are responsible for the alleged harassment and threats on petitioner's life, liberty and security. In response thereto, PSSupt. Ramos, Jr., the Provincial Director of the Isabela Provincial Police Office, reported that no directive was ever issued to PNP Burgos, Isabela, to conduct a background investigation and to confirm petitioner's alleged status as a "Red Lawyer", or to threaten, intimidate or harass, and conduct continuous surveillance on her. He likewise denied that his office was in possession of any data or information which may or would likely violate petitioner's right to privacy or be used as a justification to harass or intimidate her. Meanwhile, the Chief of the Regional Intelligence Division likewise denied the existence of any order or directive to conduct a background investigation and to confirm petitioner as a "Red Lawyer", or that their office was in possession of any data or information on petitioner. Finally, respondent PCSupt. Laurel ordered the Isabela Provincial Police Office and the PSSupt. Ramos, Jr. to investigate the alleged threats on the life, liberty and security of petitioner, and to identify the persons, if any, who are responsible for the same.[27]

Respondents also noted that petitioner's testimony consisted of mere unverified accounts from an unknown person whose identity petitioner did not want to reveal. Moreover, petitioner's allegations against respondents and their respective offices were, at best, mere conclusions on her part, a mere impression that petitioner had based on the physical appearance of the men looking for her, as described by her staff and according to her own personal assessment of the circumstances. However, petitioner could not categorically identify and link any of the said individuals to respondents, claiming only that they were military-looking men.

During trial, respondents presented two witnesses, namely, respondent Major Gen. De Leon and PSSupt. Sotero Ramos, Jr., the Police Provincial Director of Isabela. Respondents likewise formally offered as exhibits the respective Judicial Affidavits of PSSupt. Ramos, Jr.[28] and Major Gen. De Leon[29], as well as the following memoranda, letters and/or radio messages:

- Memorandum dated April 28, 2014 issued by Acting Regional Director Laurel of PNP Region 2 to PSSupt. Ramos, Jr., directing him to submit a report on the alleged harassment and surveillance operation on petitioner.[30]
- Memorandum dated April 28, 2014 whereby PSSupt. Ramos, Jr., ordered the Burgos, Isabela Police Station and the Provincial Investigation and Detective Management Branch to investigate the allegations of petitioner and to submit a report thereon.[31]
- Memorandum dated April 28, 2014 of PSSupt. Ramos, Jr., reporting to PCSupt. Laurel that, upon verification, PNP Isabela Provincial Office did not issue a directive to conduct a background investigation of petitioner and that it has no data or information of any acts that would violate petitioner's right to privacy.[32]
- Memorandum dated May 5, 2014 of the Chief of Police, PNP Burgos, Isabela, reporting to the PNP Isabela Provincial Director concerning the investigation on petitioner's allegations.[33]
- Memorandum dated May 9, 2014 of the Provincial Investigation and Detective Management Branch, reporting to the PNP Isabela Provincial Director concerning the investigation on the alleged harassment and intimidation of petitioner.[34]

- AFP Radio Message Form dated April 25, 2014 of the AFP Chief of Staff to respondent Major Gen. De Leon of the 5th Infantry Division ordering him to verify the alleged surveillance conducted on petitioner and to submit a report thereon.[35]
- Letter dated April 29, 2014 of the Philippine Army Headquarters to the Commander of the 5th Infantry Division to investigate the alleged harassment and surveillance of petitioner and to submit a report thereon.[36]
- Radio message dated April 29, 2014 of respondent Major Gen. De Leon, ordering all units under his command to submit a report on the alleged surveillance of petitioner.[37]
- Radio message dated May 1, 2014 of the Commander of the 501st Infantry Battalion of the 5th Infantry Division to respondent Major Gen. De Leon that the 501[st] Infantry Battalion had no knowledge of AFP or PNP personnel conducting surveillance on petitioner.[38]
- Radio Message dated May 3, 2014 of the 17th Infantry Battalion to respondent Major Gen. De Leon that it had no list of elements connected with the military or the police who have conducted a surveillance against petitioner.[39]
- Radio Message dated May 4, 2014 of respondent Major Gen. De Leon reporting to the Commanding General of the Philippine Army that no elements connected with the military or the PNP has conducted a surveillance against petitioner.[40]

This Court's Ruling

Section 1 of A.M. No. 07-9-12-SC provides that the petition for a writ of amparo is “a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.” On the other hand, Section 1 of A.M. No. 08-1-16-SC describes the remedy of the petition for a writ of habeas data as “a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party”.

In *In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Noriel H. Rodriguez*, the Supreme Court described the purpose and nature of the Writs of Amparo and Habeas Data, viz:[41]

At the outset, it must be emphasized that the writs of amparo and habeas data were promulgated to ensure the protection of the people’s rights to life, liberty and security. The rules on these writs were issued in light of the alarming prevalence of extrajudicial killings and enforced disappearances. The Rule on the Writ of Amparo took effect on 24 October 2007, and the Rule on the Writ of Habeas Data on 2 February 2008.

The writ of amparo is an extraordinary and independent remedy that provides rapid judicial relief, as it partakes of a summary proceeding that requires only substantial evidence to make the appropriate interim and permanent reliefs available to the petitioner. It is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or administrative responsibility requiring substantial evidence that will require full and exhaustive proceedings. Rather, it serves both preventive and curative roles in addressing the problem of extrajudicial killings and enforced disappearances. It is preventive in that it breaks the expectation of impunity in the commission of these offenses, and it is curative in that it facilitates the subsequent punishment of perpetrators by inevitably leading to subsequent investigation and action.

Meanwhile, the writ of habeas data provides a judicial remedy to protect a person’s right to control information regarding oneself, particularly in instances where such information is being collected through unlawful means in order to achieve unlawful ends. As an independent and summary remedy to protect the right

to privacy—especially the right to informational privacy—the proceedings for the issuance of the writ of habeas data does not entail any finding of criminal, civil or administrative culpability. If the allegations in the petition are proven through substantial evidence, then the Court may (a) grant access to the database or information; (b) enjoin the act complained of; or (c) in case the database or information contains erroneous data or information, order its deletion, destruction or rectification.

As mentioned in the above-quoted case, the required quantum of evidence necessary to prove one's entitlement to the issuance of either of the writs is merely substantial evidence, or "such relevant evidence as a reasonable mind will accept as adequate to support a conclusion"[42]. After a careful review of the records of the instant case, we find that petitioner was able to prove by substantial evidence her allegation that she was subjected to surveillance operations and harassment by individuals working under the command of respondents.

To reiterate, petitioner cited the following facts and circumstances to support her petition for the issuance of the writs of amparo and habeas data, to wit:

- Petitioner is a human rights lawyer and founder of the NUPL, an organization of human rights lawyers, law students and other human rights activists and defenders, whose chosen field required her to take on many criminal cases where the accused were political detainees, most of whom were leaders and/or members of peasant and other sectoral or people's organizations, including human rights defenders and/or alleged or suspected members of the CPP-NPA, and the private complainants were military or police officials or personnel.

- William Bugatti, petitioner's paralegal, informed petitioner that he personally observed certain individuals conducting surveillance operations on them, particularly during the trial proceedings in relation to the murder and frustrated murder case in Ifugao involving a political detainee who was a leader of a people's or sectoral organization. That evening, Bugatti was fatally gunned down. Interestingly, petitioner had, that very same day, tasked him to conduct an investigation on the names, ranks and addresses of the handler/s of the prosecution witness in said Ifugao case whom petitioner suspected of lying on the witness stand.

- On the same day, a client working as a civilian asset for the PNP Intelligence Section reported to petitioner that the Regional Intelligence of the PNP, through the PNP Isabela Provincial Police Office, had issued a directive to PNP, Burgos, Isabela, to conduct a background investigation on her and to confirm whether she was a "Red Lawyer". She was also informed that she was being secretly followed by ISFP agents and that persons who appeared to be military/policemen had been asking people around her office regarding her whereabouts and routine. Her name was also allegedly included in the military's Watch List of so-called communist terrorist supporters rendering legal service. A few days later, the same client told petitioner that ISAFP operatives had tailed him to petitioner's office a few nights earlier and had interrogating him on the purpose of his visit to petitioner's office and on why petitioner was acquainted with known NPA members and was the lawyer of several suspected communist terrorists.

- Petitioner's secretary reported to her that a certain member of the CIS-CIDG and some purported members of the military went to petitioner's law office on separate instances, asking for her whereabouts and who she was with.

- On the same day that the CIS-CIDG member came to the office, petitioner received a text message from the Chief Investigator of the CIDG, requesting for a copy of the records of a human rights case involving three Bayan Muna members who were allegedly arbitrarily arrested for two counts of frustrated murder and tortured by the 86th Infantry Battalion intelligence operatives. The request struck petitioner as odd since it was the third time said investigator had asked for the copy, and he could just as easily have secured the copy from the Provincial Prosecutor's Office.

- Petitioner's driver, witness Gamongan, reported to her, and later testified during trial, that he had been informed by the vendor outside their office that several purported military members riding on motorcycles approached her on separate occasions and uniformly asked her about petitioner's whereabouts, her companions whenever she went out, her routine and schedule, and who stayed at the office when she was gone. However, said individuals did not go into the law office when the vendor advised them to talk to petitioner's secretary.

- Likewise, witness Gamongan reported and testified that, while he was waiting for petitioner outside her house on April 3, 2014, a man in a motorcycle and appearing to be a member of the military or police force due to his haircut and demeanor drove by the house twice, observing Gamongan and the house intently, "as if he wanted to do something bad".

- On April 10, 2014, a known civilian asset of the MIG tried to convince petitioner to have a meeting with the MIG Isabela so that said person could explain why she was being watched. When petitioner refused, the civilian asset returned the next day and told her that she was being watched by the MIG because of a land dispute which she was handling in Roxas, Isabela. Petitioner did not believe him because, just a couple of days before, MIG operatives had talked to same client/confidential informant who had first informed petitioner of the purported surveillance operations on her, asking him for petitioner's phone number and inviting him to join them as a civilian asset in their anti insurgency operations.

It is true that, in several of the instances above, petitioner relied heavily on hearsay evidence to relay the factual circumstances of the same. However, it has been held before that courts may consider pieces of evidence which would otherwise be inadmissible if it is consistent with the admissible evidence adduced. Thus, in the case of *Razon, Jr. vs. Tagitis*[43], the Supreme Court held, as follows:

In *Secretary of Defense v. Manalo*[44], which was the Court's first petition for a Writ of Amparo, we recognized that the full and exhaustive proceedings that the substantial evidence standard regularly requires do not need to apply due to the summary nature of Amparo proceedings. We said:

The remedy [of the writ of amparo] the rapid judicial relief as it partakes of a summary proceeding that requires only substantial evidence to make the appropriate reliefs available to the petitioner; it is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or administrative responsibility requiring substantial evidence that will require full and exhaustive proceedings. [Underscoring in the original.]

Not to be forgotten in considering the evidentiary aspects of Amparo petitions are the unique difficulties presented by the nature of enforced disappearances, heretofore discussed, which difficulties this Court must frontally meet if the Amparo Rule is to be given a chance to achieve its objectives. These evidentiary difficulties compel the Court to adopt standards appropriate and responsive to the circumstances, without transgressing the due process requirements that underlie every proceeding.

In the seminal case of *Velasquez Rodriguez*[45], the IACHR—faced with a lack of direct evidence that the government of Honduras was involved in Velasquez Rodriguez' disappearance—adopted a relaxed and informal evidentiary standard, and established the rule that presumes governmental responsibility for a disappearance if it can be proven that the government carries out a general practice of enforced disappearances and the specific case can be linked to that practice. The IACHR took note of the realistic fact that enforced disappearances could be proven only through circumstantial or indirect evidence or by logical inference; otherwise, it was impossible to prove that an individual had been made to disappear. It held:

130. The practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions

consistent with the facts.

131. Circumstantial or presumptive evidence is especially is especially important in allegations of disappearances, because this type of repression is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim.

In concluding that the disappearance of Manfredo Velasquez (Manfredo) was carried out by agents who acted under the cover of public authority, the IACHR relied on circumstantial evidence including the hearsay testimony of Zenaida Velasquez, the victim's sister, who described Manfredo's kidnapping on the basis of conversations she had with witnesses who saw Manfredo kidnapped by men in civilian clothes in broad daylight. She also told the Court that a former Honduran military official had announced that Manfredo was kidnapped by a special military squadron acting under orders of the Chief of the Armed Forces. The IACHR likewise considered hearsay testimony of a second witness who asserted that he had been told by a Honduran military officer about the disappearance, and a third witness who testified that he had spoken in prison to a man who identified himself as Manfredo.

Velasquez stresses the lesson that flexibility is necessary under the unique circumstances that enforced disappearance cases pose to the courts; to have an effective remedy, the standard of evidence must be responsive to the evidentiary difficulties faced. On the one hand, we cannot be arbitrary in the admission and appreciation of evidence, as arbitrariness entails violation of rights and cannot be used as an effective counter-measure; we only compound the problem if a wrong is addressed by the commission of another wrong. On the other hand, we cannot be very strict in our evidentiary rules and cannot consider evidence the way we do in the usual criminal and civil cases; precisely, the proceedings before us are administrative in nature where, as a rule, technical rules of evidence are not strictly observed. Thus, while we must follow the substantial evidence rule, we must observe flexibility in considering the evidence we shall take into account.

The fair and proper rule, to our mind, is to consider all the pieces of evidence adduced in their totality, and to consider any evidence otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced. In other words, we reduce our rules to the most basic test of reason—i.e., to the relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence. Thus, even hearsay evidence can be admitted if it satisfies this basic minimum test.

We note in this regard that the use of flexibility in the consideration of evidence is not at all novel in the Philippine legal system. In child abuse cases, Section 28 of the Rule on Examination of a Child Witness is expressly recognized as an exception to the hearsay rule. This Rule allows the admission of the hearsay testimony of a child describing any act or attempted act of sexual abuse in any criminal or non-criminal proceeding, subject to certain prerequisites and the right of cross-examination by the adverse party. The admission of the statement is determined by the court in light of specified subjective and objective considerations that provide sufficient indicia of reliability of the child witness. These requisites for admission find their counterpart in the present case under the above-described conditions for the exercise of flexibility in the consideration of evidence, including hearsay evidence, in extrajudicial killings and enforced disappearance cases.

In the instant case, it is all the more difficult to obtain direct evidence to prove petitioner's entitlement to the writs of amparo and habeas corpus since no actual extrajudicial killing or enforced disappearance has yet occurred. The instant petition involves acts which, as of the present, only threaten to violate petitioner's rights to life, liberty and security, or which may be interpreted as preliminary steps to the possible extrajudicial killing or enforced disappearance of petitioner. Thus, there is a need to exercise flexibility in the consideration of evidence which would otherwise not be admissible under the ordinary rules of procedure.

The above-enumerated factual circumstances which led to the instant petition will show that petitioner received several reports or observed, by herself or through others, indications that she was indeed being subjected to a surveillance operation. It started with the report of her paralegal, Bugatti, that he observed individuals watching them or conducting surveillance on them, particularly during trial proceedings in a case involving a political detainee and the military. That Bugatti was fatally gunned down the very same day he reported his observations to petitioner, and the very same day, petitioner tasked him with the high risk assignment of identifying the handler/s of the prosecution witness in the frustrated murder and murder case of her political detainee client, can only serve as a testament to the veracity, or at the very least credibility, of Bugatti's observations.

These observations were further compounded by the information relayed to petitioner by an alleged civilian asset of the PNP Intelligence Section, that there was a standing order issued by the PNP Isabela Provincial Police Office to the PNP office in Burgos, Isabela, to conduct a background investigation on her and to confirm her status as a "Red Lawyer". Moreover, said asset informed her that she was being secretly followed by ISAFP agents and was included in a military watch list of so-called communist terrorist supporters rendering legal service. Further, the same asset was allegedly interrogated by ISAFP operatives, who asked him about the purpose of his visit to petitioner's office and why petitioner was acquainted with known NPA members, even rendering legal service to them.

The civilian asset's information was later confirmed by the subsequent reports of petitioner's secretary and driver that there had been several instances in the past when different individuals who appeared to be members of the military or the police force came to petitioner's office or talked to persons around her, including the vendor outside her office, inquiring about her whereabouts and routine. Moreover, petitioner herself was contacted by a known civilian asset of the MIG to try to convince her to have a meeting with the MIG Isabela so that the latter can explain why she was under surveillance.

It cannot also be gainsaid that petitioner is engaged in a high risk profession where most of her clients are alleged political detainees who claim to be victims of human rights violations by members of the police force or the military. Taking into consideration the foregoing facts, along with previous unfortunate incidents where human rights lawyers, human rights defenders, political activists and dissenters were victims, it certainly is not difficult to believe that petitioner may be the target of covert surveillance operations and intimidation.

On the other hand, respondents failed to establish that they exercised extraordinary diligence in determining the veracity of petitioner's allegations. Sections 9 and 17 of the Rule on the Writ of Amparo, as amended by the Resolution of the Supreme Court En Banc dated October 16, 2007 read, as follows:

SEC. 9. Return; Contents. – Within five (5) working days after service of the writ, the respondent shall file a verified written return together with supporting affidavits which shall, among other things, contain the following: a. x x x

b. The steps or actions taken by the respondent to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission;

c. x x x

d. If the respondent is a public official or employee, the return shall further state the actions that have been or will still be taken; and

- to verify the identity of the aggrieved party;

- to recover and preserve evidence related to the death or disappearance of the person identified in the petition which may aid in the prosecution of the person or persons responsible;

- to identify witnesses and obtain statements from them concerning the death or disappearance;
- to determine the cause, manner, location and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance;
- to identify and apprehend the person or persons involved in the death or disappearance; and
- to bring the suspected offenders before a competent court.

The period to file a return cannot be extended except on highly meritorious ground.

The return shall also state other matters relevant to the investigation, its resolution and the prosecution of the case.

A general denial of the allegations in the petition shall not be allowed.

SEC. 17. Burden of Proof and Standard of Diligence Required. – x x x

x x x x x x x x

The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent public official or employee cannot invoke the presumption that official duty had been regularly performed to evade responsibility or liability.

A review of the records and the documentary evidence presented by respondents will show that, aside from the orders issued by respondents to the units or subordinates under their respective command, respondents did not exert greater effort in verifying the allegations of petitioner. They merely relied on the reports of their subordinates that there were no records of ongoing surveillance operations being conducted on petitioner, without undertaking a deeper investigation into the matter. It cannot be gainsaid that surveillance operations, if not officially authorized or conducted pursuant to the usual rules of procedure of the PNP and the AFP, would obviously be covert or illicit, and will probably not reflect in the usual records of the offices implicated in the petition. As held in the above case of Razon, Jr.:^[46]

As the CA found through TASK FORCE TAGITIS, the investigation was at best haphazard since the authorities were looking for a man whose picture they initially did not even secure. The returns and reports made to the CA fared no better, as the CIDG efforts themselves were confined to searching for custodial records of Tagitis in their various departments and divisions. To point out the obvious, if the abduction of Tagitis was a “black” operation because it was unrecorded or officially authorized, no record of custody would ever appear in the CIDG records; Tagitis, too, would not be detained in the usual police or CIDG detention places. In sum, none of the reports on record contains any meaningful results or details on the depth and extent of the investigation made. To be sure, reports of top police officials indicating the personnel and units they directed to investigate can never constitute exhaustive and meaningful investigation, or equal detailed investigative reports of the activities undertaken to search for Tagitis. Indisputably, the police authorities from the very beginning failed to come up to the extraordinary diligence that the Amparo Rule requires.

However, we find that respondent President Aquino was improperly impleaded in the instant petition. Well-settled is the rule that the president of the state enjoys immunity from suit during his tenure of office or actual incumbency.^[47]

In addition, petitioner failed to prove respondent Secretary Gazmin’s complicity in the above-alleged surveillance operations and harassment. As pointed out by respondent Secretary Gazmin in his Affidavit, his office or position as the Secretary of National Defense limits his function to the strategic direction and policy formulation on the defense and security of the State. Thus, he does not actually engage in military operations or participate in tactical

operations of military units nationwide.[48]

On the other hand, in the light of recent events, particularly the suspension of respondent PNP Dir. Gen. Purisima and his subsequent resignation as PNP chief, we find the case against him to be moot and academic, considering that he is no longer in the position to perform the responsibilities or obligations, if any, required by the writ of amparo and habeas data.

Considering the foregoing, we find that petitioner has substantially proven by substantial evidence her entitlement to the writs of amparo and habeas data. Moreover, she was able to substantially establish that respondents PCSupt. Laurel, Lt. Gen. Irriberi, Major Gen. Año and Gen. Bautista are responsible and accountable for the violation of respondent's rights to life, liberty and security on the basis of the unjustified surveillance operations and acts of harassment and intimidation committed against petitioner and/or lack of any fair and effective official investigation as to her allegations. On the other hand, while it is true that respondent Major Gen. De Leon assumed his office only after the occurrence of the subject incidents, he is still currently in the best position to conduct the necessary investigation and perform all other responsibilities or obligations required, if any, by the writ of amparo and habeas data. However, the instant petition should be dismissed as against respondent President Aquino on the ground of immunity from suit, against respondent Secretary Gazmin for lack of merit and against former PNP Dir. Gen. Purisima for being being moot and academic.

WHEREFORE, the instant Petition for the Issuance of the Writs of Amparo and Habeas Data is GRANTED.

Accordingly, respondents PCSupt. Miguel De Mayo Laurel, in his capacity as Acting Regional Director of the Police Regional Office 2; Gen. Hernando Irriberi, in his capacity as the Commanding General of the Philippine Army; Gen. Eduardo Año, in his capacity as the Commanding Officer of the ISAFP; and Gen. Emmanuel Bautista, in his capacity as the Chief of Staff of the AFP, are hereby DIRECTED to exert extraordinary diligence and efforts, not only to protect the life, liberty and security of petitioner Atty. Maria Catherine Dannug-Salucon and the immediate members of her family, but also to conduct further investigation to determine the veracity of the alleged surveillance operation and acts of harassment and intimidation committed against petitioner, as well as to identify and find the person/s responsible for said violations and bring them to competent court. The foregoing respondents are likewise DIRECTED to SUBMIT a quarterly report of their actions to this Court, as a way of PERIODIC REVIEW to enable this Court to monitor the action of respondents.

The above-named respondents are likewise DIRECTED to produce and disclose to this Court any and all facts, information, statements, records, photographs, dossiers, and all other evidence, documentary or otherwise, pertaining to petitioner Atty. Maria Catherine Dannug-Salucon, for possible destruction upon order of this Court.

In the event that herein respondents no longer occupy their respective posts, the directives mandated in this Decision are enforceable against the incumbent officials holding the relevant positions. Failure to comply with the foregoing shall constitute contempt of court.

Finally, the instant petition is hereby DISMISSED with respect to the following respondents: President Benigno Simeon C. Aquino III, on the ground of immunity from suits; Secretary of National Defense Voltaire Gazmin, for lack of merit; and PNP Gen. Alan Purisima, for being moot and academic.

SO ORDERED.

Barza, R.F., and [*]Galapate-Laguilles, Z.T., JJ. , concur.

[*] Vice J. R.A. Cruz, per Office Order No. 151-14-RSF dated April 21, 2014.

- [1] Rollo, pp. 3-17.
- [2] A.M. No. 07-9-12-SC which took effect on October 24, 2007.
- [3] A.M. No. 08-1-16-SC which took effect on February 2, 2008.
- [4] Id. at 21-23.
- [5] Id. at 32-57.
- [6] Id. at 129-130.
- [7] Rollo, pp. 135-136; Note 1 at 6.
- [8] Note 1 at 7; Rollo, pp. 137-138.
- [9] Rollo, p. 139.
- [10] Ibid.
- [11] Id. at 139-140.
- [12] Id. at 140.
- [13] Ibid.
- [14] Id. at 180-185.
- [15] Id. at 140-141.
- [16] Id. at 141.
- [17] Note 1 at 8-9.
- [18] Id. at 9.
- [19] Rollo, pp. 135-143.
- [20] See Note 14.
- [21] Rollo, pp. 281-314.
- [22] See Note 5 at 44.
- [23] Rollo, pp. 44-45.
- [24] Id. at 45-46.
- [25] Id. at 46-47.
- [26] Id. at 47..
- [27] Id. at 48-49.
- [28] Id. at 115-120.
- [29] Id. at 100-107.
- [30] Rollo, p. 86.
- [31] Id. at 90.

[32] Id. at 123.

[33] Id. at 367-368.

[34] Id. at 126-127.

[35] Id. at 64.

[36] Id. at 76.

[37] Id. at 110.

[38] Id. at 111.

[39] Id. at 112.

[40] Id. at 113.

[41] 660 SCRA 84, 101-102 (2011), citing *Castillo vs. Cruz*, 605 SCRA 628, 636 and other related cases.

[42] *Eijansantos vs. Special Presidential Task Force* 156, G.R. No. 203696, June 2, 2014.

[43] 606 SCRA 598, 688-693 (2009), citing *Gobind Singh Sethi, The European Court of Human Rights Jurisprudence on Issues of Enforced Disappearance*, 8 NO. 3 Hum. Rts. Brief 29 (2001).

[44] 568 SCRA 1, 57-58.

[45] I/A Court H.R. *Velasquez Rodriguez Case*, Judgment of July 29, 1988, Series C No. 4.

[46] *Razon, Jr. vs. Tagitis*, supra at 707.

[47] See *Lozada, Jr. vs. Macapagal-Arroyo*, 670 SCRA 545, 559 (2012), citing *Tapuz vs. Del Rosario*, 554 SCRA 768, 784.

[48] *Rollo*, p. 92.

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