

**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, ...**

G.R. No. 183711. July 05, 2011

Ponente: BRION, J.

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BRION, J.:

We review, [1] in light of the latest developments in this case, the decision [2] dated July 17, 2008 of the Court of Appeals (CA) in the consolidated petitions for Habeas Corpus, [3] Contempt [4] and Writ of Amparo [5] filed by Edita T. Burgos (petitioner). The assailed CA decision dismissed the 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. [6]

On June 22, 2010, we issued a Resolution [7] referring the present case to the Commission on Human Rights (CHR), as the Court's directly commissioned agency tasked with the continuation of the investigation of Jonas Joseph T. Burgos' abduction and the gathering of evidence, with the obligation to report its factual findings and recommendations to this Court. We found the referral necessary as the investigation by the PNP-CIDG, by the AFP Provost Marshal, and even by the CHR had been less than complete; for one, there were very significant lapses in the handling of the investigation. In particular, we highlighted 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. [8] We held:

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. 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.

...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.

Following the CHR's legal mandate, we gave the Commission the following specific directives: [9]

- (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.

In this same Resolution, we also affirmed the CA's dismissal of the petitions for Contempt and for the issuance of a Writ of Amparo with respect to President Macapagal-Arroyo, as she is entitled as President to immunity from suit. [10]

On March 15, 2011, the CHR submitted to the Court its Investigation Report on the Enforced Disappearance of Jonas Burgos (CHR Report), in compliance with our June 22, 2010 Resolution. [11] In this Report, the CHR recounted the investigations undertaken, whose pertinent details we quote below:

On June 26, 2010, the CHR issued Resolution CHR IV No. A2010-100 to intensify the investigation of the case of the Burgos enforced disappearance; and for this purpose, created a Special Investigation Team...headed by Commissioner Jose Manuel S. Mamauag.

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In compliance with the directive mentioned in the above-quoted En Banc Resolution of the Supreme Court, the Team conducted field investigations by: (1) interviewing a) civilian authorities involved in the first

investigation of the instant case; b) military men under detention for alleged violations of Articles of War; c) Security Officers of Ever Gotesco Mall, Commonwealth Avenue, Quezon City; d) two (2) of the three (3) CIDG witnesses; e) two (2) eyewitnesses who described to the police sketch artist two (2) faces of a male and female abductors of Jonas Burgos; f) Rebel-Returnees (RRs); g) officers and men in the military and police service; h) local officials and other government functionaries; and i) ordinary citizens; (2) inquiring into the veracity of CIDG witnesses 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; (3) securing case records from the prosecution service and courts of law; (4) visiting military and police units. Offices, camps, detention centers, and jails and requesting copies of documents and records in their possession that are relevant to the instant case; (5) searching for and interviewing witnesses and informants; and (6) pursuing leads provided by them.

S. Email's "Star-Struck"

38. Pursuing the lead mentioned in the anonymous e-mail, which was attached to the Burgos petition as Exhibit "J", "that the team leader (T.L.) in the Jonas Burgos abduction was a certain Army Captain, (promotable to Major), a good looking guy (tisoy), and a potential showbiz personality known otherwise as Captain Star-struck," the Team requested the CHR Clearance Section, Legal Division for any information leading to T.L. or to all Philippine Army applicants for CHR clearance whose ranks are Captains or Majors promoted during the years 2007 to 2009.

39. Sometime in November 2010, the Team was able to track down one CHR clearance-applicant who most likely possesses and/or matches the information provided in the said lead. But when his photo/picture was presented to the eyewitnesses, they failed to identify him.

40. Undaunted with the negative identification, the Team suspected that the "team leader" might not have participated in the actual abduction inside Hapag Kainan Restaurant, the scene of the crime, but most probably was in one of the "three cars" allegedly used during the operation while giving orders or commanding the actual abductors.

41. In relation to the above suspicion, the Team has theorized that officers below the rank of Captain might have perpetrated the actual abduction.

42. The Team explored this possibility and focused its attention on the officers of the 7[th] ID, PA, namely: Lt. Vicente O. Dagdag, Jr., the S-4 of 65 IB who executed an affidavit relative to the alleged stolen Plate No. TAB-194; 2Lt. Rey B. Dequito of 56[th] IB, the witness against Edmond Dag-Uamn for the alleged crime of murder; and 1Lt. Usmalik Tayaban, the Team Leader with the 56[th] IB who issued a Custody Receipt in connection with the Petition for Habeas Corpus filed in Angeles City relative to the 2006 Emerito Lipio abduction case against the police and military personnel.

T. Face-book account

43. Google search of the names of the above mentioned individuals yielded negative result except for 1Lt. Usmalik Tayaban, whose name was connected to a social networking site, the Face-book account of PMA BATCH SANGHAYA 2000.

44. In the Facebook account Sanghaya, the contents of which is categorized as "PUBLIC" or open to public viewing, it appears that "Malik" Tayaban is a graduate of the Philippine Military Academy (PMA) Batch Sanghaya of 2000. Other leads were also discovered, such as the following: vernacular description of "tisoy" which was mentioned by one of the users in the "comment portion" of the account which incidentally was also mentioned in the anonymous e-mail as the "team leader" (T.L.); the picture of a man sporting a "back-pack", which was also mentioned by witness Elsa. Per Elsa's account, the person in the cartographic sketch was wearing a "back-pack."

45. Aware of the intricacies of the above-mentioned leads, the Team caused the reproduction of all pictures in

the Facebook account for future reference; and requested the NBI (Burgos) Team for a copy of the PMA Sanghaya Batch 2000 Year Book, also for future reference.

U. The PMA Year Book

46. Through the efforts of the NBI (Burgos) Team, the Team was able to get the PMA Year Book of Sanghaya Batch 2000 and the location of one important eyewitness in the abduction.

V. JEFFREY CABINTOY

47. On December 1, 2010, the Team together with the NBI Team were able to locate Jeffrey Cabintoy (Jeffrey), one of the two (2) eyewitnesses who provided the police cartographic artist with the description of two (2) principal abductors of Jonas Burgos. Jeffrey narrated in details (sic) the circumstances that happened before and during the abduction.

48. On December 7, 2010, the Team and Jeffrey went to the place of incident at Ever Gotesco Mall, Quezon City to refresh his memory and re-enact what transpired. In the afternoon of the same date, the Team invited Jeffrey to the CHR Central Office in Quezon City, where he was shown for identification twenty (20) copies of colored photographs/pictures of men and the almost two hundred forty-four (244) photographs/pictures stored in the computer and lifted from the profiles of the Philippine Military Academy Year Book of Batch Sanghaya 2000.

49. Jeffrey pointed to a man in the two (2) colored group pictures/photographs, that he identified as among the 8-man group who abducted Jonas Burgos. For record and identification purposes, the Team encircled the face that Jeffrey identified in the two pictures; then he affixed his signature on each picture. Also, while leafing through the pictures of the PMA graduates in the Year Book of Sanghaya 2000 Batch, the witness identified a picture, with a bold and all-capitalized name HARRY AGAGEN BALIAGA JR and the words Agawa, Besao, Mt. Province printed there under the capitalized words PHILIPPINE ARMY written on the upper portion, as the same person he pointed out in the two group pictures just mentioned above. Immediately thereafter, the Team caused the production of the photo identified by Jeffrey and asked him to affix his signature, which he also did.

50. After examining each of these pictures, Jeffrey declared that it dawned on him that based on his recollection of faces involved in the abduction of Jonas Burgos, he now remembers the face of a man, other than the two (2) faces whose description he already provided before to a police sketch artist, who was part of the 8-man group of abductors. And he also confirms it now that the person he is referring to was indeed seen by him as one of those who abducted Jonas Burgos at Hapag Kainan Restaurant of Ever Gotesco Mall, Commonwealth Avenue, Quezon City.

51. When asked how certain he was of the person he identified, considering that the printed copy of the photo lifted from the Face-book Sanghaya Account was taken sometime in the year 2010; while the picture appearing in the computer was lifted from the PMA Sanghaya 2000 Batch Year Book, Jeffrey replied "Ang taong ito ay aking natatandaan sa kadahilanan na nuong una siya ay nakaupo na katabi sa bandang kaliwa nang taong dumukot at natapos silang mag usap lumapit sa akin at pilit akong pinipigilan na wag daw makialam at ang sabi nya sa akin ay "WAG KA DITONG MAKIALAM KASI ANG TAONG ITO AY MATAGAL NA NAMING SINUSUBAYBAYAN DAHIL SA DROGA" kahit pa halos nagmamakaawa na nang tulong ang taong dinukot; at matapos nuon ay sapilitan na nilang binitbit sa labas ang biktima." (I remember this man for the reason that at first he was seated at the left side of the person abducted; and after they talked, he approached me and was preventing me forcefully saying not to interfere and he said to me: "DON'T YOU INTERFERE HERE SINCE WE HAVE BEEN DOING SOME SURVEILLANCE ON THIS MAN FOR SOME TIME ALREADY BECAUSE OF DRUGS" despite that the man was already pleading for help, and after that, they forcibly dragged the victim outside.)

52. When asked if he could identify the picture of Jonas Burgos, Jeffrey affirmed that the person in the picture is the person referred to by him as the victim of abduction and his name is Jonas Burgos. He further stated that he learned of the victim's name when he saw his picture flashed on TV and hear his name. When asked if he is willing to execute an affidavit on the facts that he has just provided, he answered yes and at that juncture the Team assisted him in the preparation of his "Sinumpaang Salaysay" based on his personal knowledge and in a language known to him. After which, the Team asked Jeffrey to read, examine and determine whether all the information he just provided are reflected in his "Sinumpaang Salaysay" and Jeffrey answered yes. Thereafter, Jeffrey affixed his signature after being sworn to before a lady CHR lawyer and a duly commissioned Notary Public for and in Quezon City.

W. Daguman confirmed Tayaban's and Baliaga's actual affiliation with the military and their assignment at the 56[th] Infantry Battalion, 7[th] ID

53. On December 10, 2010, the Team went to the Bulacan Provincial Jail to visit Edmond Dag-Uman and asked him to identify his former Company Commander at the 56[th] IB, 71 ID, Lt. Usmalik Tayaban and to identify the pictures.

54. Edmond Dag-uman identified the encircled in the picture as LT. HARRY A. BALIAGA, JR., and the man with a receding hair as LT. USMALIK TAYABAN, his former Company Commander.

55. When asked if he was willing to reduce in writing his precious statements and those that just mentioned, he replied "BAKA MAPAHAMAK AKO NYAN! (That might endanger me!). Following a lengthy discussion on the pros and cons of executing a sworn statement and the assurance of the Team to exclude his statements that are critical to the military establishment, it dawned on Dag-uman that his statement would be of help to the Commission in bringing his case to the proper authorities for review and appropriate action, that he eventually expressed his willingness to do so.

56. After which the Team immediately went to a "Computer Café" nearby to encode the "Salaysay", then the printed copy was presented to him for his determination whether he is in full accord with the contents therein. Edmond spent about thirty (30) minutes reading it and changed the word "Charlie" to "Bravo" and then affixed his initial on it. He also signed the "Sinumpaang Salaysay" after being sworn to before a team member authorized to administer oath.

X. Second visit to ELSA AGASANG and her Supplemental Sworn Statement

57. On January 26, 2011, the Team along with witness Jeffrey went to Bicol to meet witness Elsa. The aim was to help Elsa recall the faces of those she saw in the abduction by showing to her recently-acquired pictures of suspects.

58. For the first time they would re-unite, after almost four years since that fateful day of April 28, 2007, when both of them had the experience of witnessing an abduction incident, which rendered them jobless and unsafe.

59. The Team told Jeffrey to sit in front of Elsa without introducing him to her. After about half an hour into the conversation, she expressed disbelief when she realized that she was facing in person he co-worker that she knew very well.

60. On January 29, 2011, Elsa executed her Karagdagang Sinumpaang Salaysay affirming her Salaysay given before PCI Lino DL Banaag at the CIDU, Quezon City Police District Office, Camp Karingal, Quezon City; and corroborating the material allegations contained in the Sinumpaang Salaysay of Jeffrey.

On the basis of the evidence it had gathered, the CHR submitted the following findings: [12]

Based on the facts developed by evidence obtaining in this case, the CHR finds that the enforced disappearance of Jonas Joseph T. Burgos had transpired; and that his constitutional rights to life liberty and security were violated by the Government have been fully determined.

Jeffrey Cabintoy and Elsa Agasang have witnessed on that fateful day of April 28, 2007 the forcible abduction of Jonas Burgos by a group of about seven (7) 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.

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The eyewitnesses mentioned above were Jeffrey Cabintoy (Jeffrey) and Elsa Agasang (Elsa), who at the time of the abduction were working as busboy and Trainee-Supervisor, respectively, at Hapag Kainan Restaurant.

In his Sinumpaang Salaysay, Jeffrey had a clear recollection of the face of HARRY AGAGEN BALIAGA, JR. as one of the principal abductors, apart from the faces of the two abductors in the cartographic sketches that he described to the police, after he was shown by the Team the pictures in the PMA Year Book of Batch Sanghaya 2000 and group pictures of men taken some years thereafter.

The same group of pictures were shown to detained former 56[th] IB Army trooper Edmond M. Dag-uman (Dag-uman), who also positively identified Lt. Harry Baliaga, Jr. Daguman's Sinumpaang Salaysay states that he came to know Lt. Baliaga as a Company Commander in the 56[th] IB while he was still in the military service (with Serial No. 800693, from 1997 to 2002) also with the 56[th] IB but under 1Lt. Usmalik Tayaban, the Commander of Bravo Company. When he was arrested and brought to the 56[th] IB Camp in April 2005, he did not see Lt. Baliaga anymore at the said camp. The similar reaction that the pictures elicited from both Jeffrey and Daguman did not pass unnoticed by the Team. Both men always look pensive, probably because of the pathetic plight they are in right now. It came as a surprise therefore to the Team when they could hardly hide their smile upon seeing the face of Baliaga, as if they know the man very well.

Moreover, when the Team asked how Jeffrey how certain was he that it was indeed Baliaga that he saw as among those who actually participated in Jonas' abduction, Jeffrey was able to give a graphic description and spontaneously, to boot, the blow by blow account of the incident, including the initial positioning of the actors, specially Baliaga, who even approached, talked to, and prevented him from interfering in their criminal act.

A Rebel-returnee (RR) named Maria Vita Lozada y Villegas @KA MY, has identified the face of the female in the cartographic sketch as a certain Lt. Fernando. While Lozada refuses to include her identification of Lt. Fernando in her Sinumpaang Salaysay for fear of a backlash, she told the Team that she was certain it was Lt. Fernando in the cartographic sketch since both of them were involved in counter-insurgency operations at the 56[th] IB, while she was under the care of the battalion from March 2006 until she left the 56[th] IB Headquarters in October 2007. Lozada's involvement in counter-insurgency operations together with Lt. Fernando was among the facts gathered by the CHR Regional Office 3 Investigators, whose investigation into the enforced disappearance of Jonas Joseph Burgos was documented by way of an After Mission Report dated August 13, 2008.

Most if not all the actual abductors would have been identified had it not been for what is otherwise called as evidentiary difficulties shamelessly put up by some police and military elites. The deliberate refusal of TJAG Roa to provide the CHR with the requested documents does not only defy the Supreme Court directive to the AFP but ipso facto created a disputable presumption that AFP personnel were responsible for the abduction and that their superiors would be found accountable, if not responsible, for the crime committed. This observation finds support in the disputable presumption "That evidence willfully suppressed would be adverse if produced." (Paragraph (e), Section 3, Rule 131 on Burden of Proof and Presumptions, Revised Rules on Evidence of the Rules of Court of the Philippines).

In saying that the requested document is irrelevant, the Team has deemed that the requested documents and profiles would help ascertain the true identities of the cartographic sketches of two abductors because a certain Virgilio Eustaquio has claimed that one of the intelligence operatives involved in the 2007 ERAP 5 case fits the description of his abductor.

As regards the PNP CIDG, the positive identification of former 56[th] IB officer Lt. HARRY A. BALIAGA, JR. as one of the principal abductors has effectively crushed the theory of the CIDG witnesses that the NPAs abducted Jonas. Baliaga's true identity and affiliation with the military have been established by overwhelming evidence corroborated by detained former Army trooper Dag-uman.

For lack of material time, the Commission will continue to investigate the enforced disappearance of Jonas Burgos as an independent body and pursuant to its mandate under the 1987 Constitution. Of particular importance are the identities and locations of the persons appearing in the cartographic sketches; the allegations that CIDG Witnesses Emerito G. Lipio and Meliza Concepcion-Reyes are AFP enlisted personnel and the alleged participation of Delfin De Guzman @ Ka Baste in the abduction of Jonas Burgos whose case for Murder and Attempted Murder was dismissed by the court for failure of the lone witness, an army man of the 56[th] IB to testify against him.

Interview with Virgilio Eustaquio, Chairman of the Union Masses for Democracy and Justice (UMDJ), revealed that the male abductor of Jonas Burgos appearing in the cartographic sketch was among the raiders who abducted him and four others, identified as Jim Cabauatan, Jose Curament, Ruben Dionisio and Dennis Ibona otherwise known as ERAP FIVE.

Unfortunately, and as already pointed out above, The Judge Advocate General (TJAG) turned down the request of the Team for a profile of the operatives in the so-called "Erap 5" abduction on the ground of relevancy and branded the request as a fishing expedition per its Disposition Form dated September 21, 2010.

Efforts to contact Virgilio Eustaquio to secure his affidavit proved futile, as his present whereabouts cannot be determined. And due to lack of material time, the Commission decided to pursue the same and determine the whereabouts of the other members of the "Erap 5" on its own time and authority as an independent body.

Based on the above-cited findings, the CHR submitted the following recommendations for the Court's consideration, viz: [13]

- i. To DIRECT the Department of Justice (DOJ), subject to certain requirements, to immediately admit witnesses Jeffrey T. Cabintoy and Elsa B. Agasang to the Witness Protection, Security and Benefit Program under Republic Act No. 6981;
- ii. To DIRECT the Department of Justice (DOJ) to commence the filing of Criminal Charges for Kidnapping/Enforced Disappearance and/or Arbitrary Detention against 1LT. HARRY AGAGEN BALIAGA, JR. of the Philippine Army, as Principal by Direct Participation in the abduction of Jonas Joseph T. Burgos on April 28, 2007 from Ever Gotesco Mall, Commonwealth Avenue, Quezon City;
- iii. To DIRECT the Department of Justice to cause the filing of Obstruction of Justice against Emerito Lipio y Gonzales; Marlon Manuel y de Leon; and Meliza Concepcion-Reyes for giving false or fabricated information to the CIDG and for their willful refusal to cooperate with the CHR Team in the investigation of the herein enforced disappearance;
- iv. To DIRECT Cavite Provincial Prosecutor Emmanuel Velasco to appear before the Supreme Court and to divulge his source/informant as the same does not fall under the privilege communication rule;
- v. To DIRECT the PNP-CIDG RC, NCRCIDU, Atty. Joel Napoleon M. Coronel, to explain his Memorandum to the CIDG-CIDD stating that "the witnesses were reportedly turned over by the Bulacan PPO and Philippine Army to the CIDG for investigation...", considering that said witnesses were not under police or military custody at the time of the supposed turn-over in the evening of August 22, 2007 and to identify the PNP officer who directed the CIDG operatives to fetch Emerito G. Lipio in Bulacan and the two other CIDG witnesses for tactical interrogation;
- vi. To REQUIRE General Roa of the Judge Advocate General Office, AFP, and the Deputy Chief of Staff for

Personnel, JI, AFP, to explain their failure and/or refusal to provide the CHR with copies of documents relevant to the case of Jonas T. Burgos, particularly the following: (a) Profile and Summary of Information and pictures of T/Sgt. Jason Roxas (Philippine Army) and three (3) other enlisted personnel mentioned in paragraph (1) of the dispositive portion of the Supreme Court En Banc Resolution issued on 22 June 2010 in the instant consolidated cases, including a certain 2Lt. Fernando, a lady officer involved in the counter-insurgency operations of the 56th IB in 2006 to 2007; (b) copies of the records of the 2007 ERAP 5 incident in Kamuning, Quezon City and the complete list of the intelligence operatives involved in that said covert military operation, including their respective Summary of Information and individual pictures; and (c) complete list of the officers, women and men assigned at the 56th and 69th Infantry Battalion and the 7th Infantry Division from January 1, 2004 to June 30, 2007 with their respective profiles, Summary of Information and pictures; including the list of captured rebels and rebels who surrendered to the said camps and their corresponding pictures and copies of their Tactical Interrogation Reports and the cases filed against them, if any;

vii. To DIRECT the PNP-CIDG to comply with its mandate under paragraph (3) of the dispositive portion of the Supreme Court En Banc Resolution promulgated on 22 June 2010 in the instant consolidated cases;

viii. To DIRECT Harry A. Baliaga, Jr., the Philippine Army's 56th Infantry Battalion in Bulacan and 7th Infantry Division at Fort Magsaysay in Laur, Nueva Ecija to produce the living body of the victim Jonas Joseph T. Burgos before this Court;

ix. To DIRECT the Department of Justice to review and determine the probable liability/accountability of the officers and enlisted personnel concerned of the Philippine Army's 56th IB and the 7th ID, relative to the torture and/or other forms of ill-treatment of Edmond M. Dag-uman, while he was in detention at Fort Magsaysay sometime in October 2005, as part of the collateral discoveries in the conduct of this investigation;

x. To DIRECT the Department of Justice to review the case filed against Edmond Dag-uman alias DELFIN DE GUZMAN with the Regional Trial Court Branch 10 in Malolos City docketed as Criminal Case Nos. 1844-M-2005 and 186-M-2006; and the legal basis, if any, for his continued detention at the Bulacan Provincial Jail in Malolos City; and

xi. To DIRECT the Department of Interior and Local Government (DILG) to study the probable liability of Adelio A. Asuncion, former Jail Warden of Bulacan Provincial Jail for his failure to account the records of the inmates more specifically the records of turn-over Edmond Dag-uman from the 7th ID.

Pursuant to our June 22, 2010, the CHR furnished the petitioner with the copy of its report, which the petitioner apparently relied upon in filing a criminal complaint against Lt. Harry A. Baliaga, Jr. and other members of the military. [14]

OUR RULING

A. Amparo

After reviewing the evidence in the present case, the CA findings and our findings in our June 22, 2010 Resolution heretofore mentioned, including the recent CHR findings that Lt. Harry A. Baliaga, Jr., (Lt. Baliaga) of the 56th Infantry Battalion, 7th Infantry Division, Philippine Army is one of the abductors of Jonas, we resolve to hold in abeyance our ruling on the merits in the Amparo aspect of the present case and refer this case back to the CA in order to allow Lt. Baliaga and the present Amparo respondents to file their respective Comments on the CHR Report within a non-extendible period of fifteen (15) days from receipt of this Resolution. The CA shall continue with the hearing of the Amparo petition in light of the evidence previously submitted, the proceedings it already conducted and the subsequent developments in this case, particularly the CHR Report. Thereafter, the CA shall rule on the merits of the Amparo petition. For this purpose, we order that Lt. Baliaga be

impleaded as a party to the Amparo petition (CA-G.R. SP No. 00008-WA). This directive to implead Lt. Baliaga is without prejudice to similar directives we may issue with respect to others whose identities and participation may be disclosed in future investigations.

We also note that Office of the Judge Advocate General (TJAG) failed and/or refused to provide the CHR with copies of documents relevant to the case of Jonas, and thereby disobeyed our June 22, 2010 Resolution. To recall, we issued a Resolution declaring the CHR as the Court's directly commissioned agency tasked with the continuation of the investigation of Jonas' abduction and the gathering of evidence, with the obligation to report its factual findings and recommendations to this Court. In this same Resolution, we required the then incumbent Chiefs of the AFP and the PNP to make available and to provide copies to the CHR, of all documents and records in their possession and as the CHR may require, relevant to the case of Jonas, subject to reasonable regulations consistent with the Constitution and existing laws.

In its March 15, 2011 Report, the CHR recommended, for the Court's consideration: [15]

vi. To REQUIRE General Roa of the Judge Advocate General Office, AFP, and the Deputy Chief of Staff for Personnel, JI, AFP, to explain their failure and/or refusal to provide the CHR with copies of documents relevant to the case of Jonas T. Burgos, particularly the following: (a) Profile and Summary of Information and pictures of T/Sgt. Jason Roxas (Philippine Army) and three (3) other enlisted personnel mentioned in paragraph (1) of the dispositive portion of the Supreme Court En Banc Resolution issued on 22 June 2010 in the instant consolidated cases, including a certain 2Lt. Fernando, a lady officer involved in the counter-insurgency operations of the 56th IB in 2006 to 2007; (b) copies of the records of the 2007 ERAP 5 incident in Kamuning, Quezon City and the complete list of the intelligence operatives involved in that said covert military operation, including their respective Summary of Information and individual pictures; and (c) complete list of the officers, women and men assigned at the 56th and 69th Infantry Battalion and the 7th Infantry Division from January 1, 2004 to June 30, 2007 with their respective profiles, Summary of Information and pictures; including the list of captured rebels and rebels who surrendered to the said camps and their corresponding pictures and copies of their Tactical Interrogation Reports and the cases filed against them, if any.

Section 16 of the Rule on the Writ of Amparo provides that any person who otherwise disobeys or resists a lawful process or order of the court may be punished for contempt, viz:

SEC. 16. Contempt. - The court, justice or judge may order the respondent who refuses to make a return, or who makes a false return, or any person who otherwise disobeys or resists a lawful process or order of the court to be punished for contempt. The contemnor may be imprisoned or imposed a fine

Acting on the CHR's recommendation and based on the above considerations, we resolve to require General Roa of TJAG, AFP, and the Deputy Chief of Staff for Personnel, JI, AFP, at the time of our June 22, 2010 Resolution, and then incumbent Chief of Staff, AFP, [16] to show cause and explain, within a non-extendible period of fifteen (15) days from receipt of this Resolution, why they should not be held in contempt of this Court for defying our June 22, 2010 Resolution.

B. Habeas Corpus

In light of the new evidence obtained by the CHR, particularly the Cabintoy evidence that positively identified Lt. Baliaga as one of the direct perpetrators in the abduction of Jonas and in the interest of justice, we resolve to set aside the CA's dismissal of the habeas corpus petition and issue anew the writ of habeas corpus returnable to the Presiding Justice of the CA who shall immediately refer the writ to the same CA division that decided the habeas corpus petition (CA-GR SP No. 99839).

For this purpose, we also order that Lt. Baliaga be impleaded as a party to the habeas corpus petition and require him - together with the incumbent Chief of Staff, AFP; the incumbent Commanding General, Philippine Army; and the Commanding Officer of the 56[th] IB at the time of the disappearance of Jonas, Lt. Col. Feliciano - to produce the person of Jonas and to show cause why he should not be released from detention.

The CA shall rule on the merits of the habeas corpus petition in light of the evidence previously submitted to it, the proceedings already conducted, and the subsequent developments in this case (particularly the CHR report) as proven by evidence properly adduced before it. The Court of Appeals and the parties may require Prosecutor Emmanuel Velasco, Jeffrey Cabintoy, Edmund Dag-uman, Melissa Concepcion Reyes, Emerito Lipio and Marlon Manuel to testify in this case.

C. Petition for Contempt

In dismissing the petition, the CA held: [17]

Undoubtedly, the accusation against respondents is criminal in nature. In view thereof, the rules in criminal prosecution and corollary recognition of respondents' constitutional rights inevitably come into play. As held in *People v. Godoy*:

In proceedings for criminal contempt, the defendant is presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt.

Hence, assuming that there is circumstantial evidence to support petitioner's allegations, said circumstantial evidence falls short of the quantum of evidence that is required to establish the guilt of an accused in a criminal proceeding, which is proof beyond reasonable doubt.

The pertinent provision of the Rules of Court on contempt, in relation to a Habeas Corpus proceeding, is Section 16, Rule 102, which provides:

Sec. 16. Penalty for refusing to issue writ, or for disobeying the same. - A clerk of a court who refuses to issue the writ after allowance thereof and demand therefor, or a person to whom a writ is directed, who neglects or refuses to obey or make return of the same according to the command thereof, or makes false return thereof, or who, upon demand made by or on behalf of the prisoner, refuses to deliver to the person demanding, within six (6) hours after the demand therefor, a true copy of the warrant or order of commitment, shall forfeit to the party aggrieved the sum of one thousand pesos, to be recovered in a proper action, and may also be punished by the court or judge as for contempt. [emphasis supplied]

In *Montenegro v. Montenegro*, [18] we explained the types and nature of contempt, as follows:

Contempt of court involves the doing of an act, or the failure to do an act, in such a manner as to create an affront to the court and the sovereign dignity with which it is clothed. It is defined as "disobedience to the court by acting in opposition to its authority, justice and dignity." [7] The power to punish contempt is inherent in all courts, because it is essential to the preservation of order in judicial proceedings, and to the enforcement of judgments, orders and mandates of the courts; and, consequently, to the due administration of justice.

x x x

Contempt, whether direct or indirect, may be civil or criminal depending on the nature and effect of the contemptuous act. Criminal contempt is "conduct directed against the authority and dignity of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect." On the other hand, civil contempt is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein and is therefore, an offense against the party in whose behalf the violated order was made. If the purpose is to punish, then it is criminal in nature; but if to

compensate, then it is civil. [emphasis supplied]

We agree with the CA that indirect contempt is the appropriate characterization of the charge filed by the petitioner against the respondents and that the charge is criminal in nature. Evidently, the charge of filing a false return constitutes improper conduct that serves no other purpose but to mislead, impede and obstruct the administration of justice by the Court. In *People v. Godoy*, [19] which the CA cited, we specifically held that under paragraph (d) of Section 3, Rule 71 of the Rules of Court, any improper conduct tending, directly or indirectly, to impede, obstruct or degrade the administration of justice constitutes criminal contempt.

A criminal contempt proceeding has been characterized as *sui generis* as it partakes some of the elements of both a civil and criminal proceeding, without completely falling under either proceeding. Its identification with a criminal proceeding is in the use of the principles and rules applicable to criminal cases, to the extent that criminal procedure is consistent with the summary nature of a contempt proceeding. We have consistently held and established that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt; that the accused is afforded many of the protections provided in regular criminal cases; and that proceedings under statutes governing them are to be strictly construed. [20]

Contempt, too, is not presumed. In proceedings for criminal contempt, the defendant is presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt. [21] The presumption of innocence can be overcome only by proof of guilt beyond reasonable doubt, which means proof to the satisfaction of the court and keeping in mind the presumption of innocence that precludes every reasonable hypothesis except that for which it is given. It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely true than the contrary. It must establish the truth of the fact to a reasonable certainty and moral certainty - a certainty that convinces and satisfies the reason and conscience of those who are to act upon it. [22]

For the petitioner to succeed in her petition to declare the respondents in contempt for filing false returns in the habeas corpus proceedings before the CA, she has the burden of proving beyond reasonable doubt that the respondents had custody of Jonas. As the CA did, we find that the pieces of evidence on record as of the time of the CA proceedings were merely circumstantial and did not provide a direct link between the respondents and the abduction of Jonas; the evidence did not prove beyond reasonable doubt that the respondents had a hand in the abduction of Jonas, and consequently, had custody of him at the time they filed their returns to the Writ of habeas corpus denying custody of Jonas.

However, the subsequent developments in this case, specifically, the investigative findings presented to us by the CHR pointing to Lt. Baliaga as one of the abductors of Jonas, have given a twist to our otherwise clear conclusion. Investigations will continue, consistent with the nature of Amparo proceedings to be alive until a definitive result is achieved, and these investigations may yet yield additional evidence affecting the conclusion the CA made. For this reason, we can only conclude that the CA's dismissal of the contempt charge should be provisional, i.e., without prejudice to the re-filing of the charge in the future should the petitioner find this step warranted by the evidence in the proceedings related to Jonas's disappearance, including the criminal prosecutions that may transpire.

To adjust to the extraordinary nature of Amparo and habeas corpus proceedings and to directly identify the parties bound by these proceedings who have the continuing obligation to comply with our directives, the AFP Chief of Staff, the Commanding General of the Philippine Army, the Director General of the PNP, the Chief of the PNP-CIDG and the TJAG shall be named as parties to this case without need of naming their current incumbents, separately from the then incumbent officials that the petitioner named in her original Amparo and habeas corpus

petitions, for possible responsibility and accountability.

In light of the dismissal of the petitions against President Gloria Macapagal-Arroyo who is no longer the President of the Republic of the Philippines, she should now be dropped as a party-respondent in these petitions.

WHEREFORE, in the interest of justice and for the foregoing reasons, we RESOLVE to:

- IN G.R. NO. 183711 (HABEAS CORPUS PETITION, CA-G.R. SP No. 99839)
- ISSUE a Writ of Habeas Corpus anew, returnable to the Presiding Justice of the Court of Appeals who shall immediately refer the writ to the same Division that decided the habeas corpus petition;
- ORDER Lt. Harry A. Baliaga, Jr. impleaded in CA-G.R. SP No. 99839 and G.R. No. 183711, and REQUIRE him, together with the incumbent Chief of Staff, Armed Forces of the Philippines; the incumbent Commanding General, Philippine Army; and the Commanding Officer of the 56th IB, 7th Infantry Division, Philippine Army at the time of the disappearance of Jonas Joseph T. Burgos, Lt. Col. Melquiades Feliciano, to produce the person of Jonas Joseph T. Burgos under the terms the Court of Appeals shall prescribe, and to show cause why Jonas Joseph T. Burgos should not be released from detention;
- REFER back the petition for habeas corpus to the same Division of the Court of Appeals which shall continue to hear this case after the required Returns shall have been filed and render a new decision within thirty (30) days after the case is submitted for decision; and
- ORDER the Chief of Staff of the Armed Forces of the Philippines and the Commanding General of the Philippine Army to be impleaded as parties, separate from the original respondents impleaded in the petition, and the dropping or deletion of President Gloria Macapagal-Arroyo as party-respondent.
- IN G.R. NO. 183712 (CONTEMPT OF COURT CHARGE, CA-G.R. SP No. 100230)
- AFFIRM the dismissal of the petitioner's petition for Contempt in CA-G.R. SP No. 100230, without prejudice to the re-filing of the contempt charge as may be warranted by the results of the subsequent CHR investigation this Court has ordered; and
- ORDER the dropping or deletion of former President Gloria Macapagal-Arroyo as party-respondent, in light of the unconditional dismissal of the contempt charge against her.
- IN G.R. NO. 183713 (WRIT OF AMPARO PETITION, CA-G.R. SP No. 00008-WA)
- ORDER Lt. Harry A. Baliaga, Jr., impleaded in CA-G.R. SP No. 00008-WA and G.R. No. 183713, without prejudice to similar directives we may issue with respect to others whose identities and participation may be disclosed in future investigations and proceedings;
- DIRECT Lt. Harry A. Baliaga, Jr., and the present Amparo respondents to file their Comments on the CHR report with the Court of Appeals, within a non-extendible period of fifteen (15) days from receipt of this Resolution.
- REQUIRE General Roa of the Office of the Judge Advocate General, AFP; the Deputy Chief of Staff for Personnel, JI, AFP, at the time of our June 22, 2010 Resolution; and then Chief of Staff, AFP, Gen. Ricardo David, (a) to show cause and explain to this Court, within a non-extendible period of fifteen (15) days from receipt of this Resolution, why they should not be held in contempt of this Court for their defiance of our June 22, 2010 Resolution; and (b) to submit to this Court, within a non-extendible period of fifteen (15) days from receipt of this Resolution, a copy of the documents requested by the CHR, particularly:

1) The profile and Summary of Information and pictures of T/Sgt. Jason Roxas (Philippine Army); Cpl. Maria Joana Francisco (Philippine Air Force); M/Sgt. Aron Arroyo (Philippine Air Force); an alias T.L. - all reportedly assigned with Military Intelligence Group 15 of Intelligence Service of the Armed Forces of the Philippines - and 2Lt. Fernando, a lady officer involved in the counter-insurgency operations of the 56th IB in 2006 to 2007;

2) Copies of the records of the 2007 ERAP 5 incident in Kamuning, Quezon City and the complete list of the intelligence operatives involved in that said covert military operation, including their respective Summary of Information and individual pictures; and

3) Complete list of the officers, women and men assigned at the 56th and 69th Infantry Battalion and the 7th Infantry Division from January 1, 2004 to June 30, 2007 with their respective profiles, Summary of Information and pictures; including the list of captured rebels and rebels who surrendered to the said camps and their corresponding pictures and copies of their Tactical Interrogation Reports and the cases filed against them, if any.

These documents shall be released exclusively to this Court for our examination to determine their relevance to the present case and the advisability of their public disclosure.

- ORDER the Chief of Staff of the Armed Forces of the Philippines and the Commanding General of the Philippine Army to be impleaded as parties, in representation of their respective organizations, separately from the original respondents impleaded in the petition; and the dropping of President Gloria Macapagal-Arroyo as party-respondent;

- REFER witnesses Jeffrey T. Cabintoy and Elsa B. Agasang to the Department of Justice for admission to the Witness Protection Security and Benefit Program, subject to the requirements of Republic Act No. 6981; and

- NOTE the criminal complaint filed by the petitioner with the DOJ which the latter may investigate and act upon on its own pursuant to Section 21 of the Rule on the Writ of Amparo.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and Sereno, JJ., concur.

Peralta, J., on wellness leave.

[1] Pursuant to Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Rosalinda Asuncion-Vicente and with Associate Justices Remedios A. Salazar-Fernando and Myrna Dimaranan Vidal, concurring; rollo, pp. 72-119.

[3] CA-G.R. SP No. 99839.

[4] CA-G.R. SP No. 100230.

[5] CA-G.R. SP No. 00008-WA.

[6] The dispositive portion of the CA decision reads:

WHEREFORE, based on all of the foregoing premises, judgment is hereby rendered as follows:

1. The Petition for Habeas Corpus in CA-G.R. SP No. 99839 and the Petition for Contempt in CA-G.R. SP No. 100230 are both DISMISSED.

2. The Petition for Amparo in CA-G.R. SP No. 00008-WA is PARTIALLY GRANTED. The privilege of the

writ of amparo is granted as hereunder specified, viz:

1. Respondents Lt. Gen. Alexander Yano and Dir. Gen. Avelino Razon, Jr., are hereby ORDERED to make available, and provide copies to petitioner, all documents and records in their possession relevant to the case of Jonas Joseph Burgos, subject to reasonable regulations consistent with the Constitution and existing laws;
2. Respondent Commission on Human Rights, through its Chairperson, is DIRECTED to furnish petitioner documents not yet on file with this Court, pursuant to its undertaking before this Court during the hearing held on January 21, 2008;
3. Respondent Dir. Gen. Avelino Razon, Jr. is hereby DIRECTED to continue with, and conduct, a full and thorough investigation of the case of Jonas Joseph Burgos and to cause the immediate filing of the appropriate charges against all those who may be found responsible therefor with the Department of Justice;
4. Respondent Lt. Gen. Alexander Yano is likewise hereby DIRECTED conduct a thorough investigation of the circumstances surrounding the loss of license plate no. TAB 194 and the possible involvement of any AFP personnel in the alleged abduction of Jonas Joseph Burgos;
5. Respondents Lt. Gen. Yano and Dir. Gen. Razon are hereby REQUIRED to submit a compliance report to this Court, copy furnished the petitioner, within ten (10) days after completion of their respective organization.

Petitioner's Motion to Declare Respondents in Contempt is DENIED admission and ordered expunged from the records of this case.

Respondents' Manifestation and Motion dated July 1, 2008 is NOTED.

SO ORDERED.

[7] Supra note 14.

[8] Id. at 493-495.

[9] Id. at 496-498.

[10] Id. at 498.

[11] Rollo, pp. 769-897.

[12] Id. at 808-812.

[13] Id. at 812-815.

[14] On June 9, 2011, Edita Burgos filed a criminal complaint before the Department of Justice against Major Harry Baliaga Jr., Lieutenant Colonel Melquides Feliciano, Col. Eduardo Ano and several unidentified soldiers (<http://newsinfo.inquirer.net/13553/burgos%E2%80%99mom-supporters-file-criminal-raps-vs-military-officers>).

[15] Rollo, pp. 813-814.

[16] Gen. Hermogenes Esperon retired on February 9, 2008; Gen. Ricardo David was the incumbent Chief of Staff, AFP at the time we issued our June 22, 2010 Resolution.

[17] Rollo, pp. 104-106.

[18] G.R. No. 156829, June 8, 2004, 431 SCRA 415, 423-425.

[19] G.R. Nos. 115908-09, March 29, 1995, 243 SCRA 64, 80.

[20] Id. at 78-79.

[21] *Id.* at 80.

[22] *People v. Castillo*, G.R. No. 132895, March 10, 2004, 425 SCRA 136, 166, citing *United States v. Reyes*, 3 Phil. 6 (1903).

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