

The Writ of Habeas Data

"It is our fervent hope that with the help of the writ of habeas corpus, the writ of amparo and the writ of habeas data, we can finally bring to a close the problem of extralegal killings and enforced disappearances in our country, spectral remains of the Martial Law regime."

Chief Justice Reynato S. Puno
Supreme Court



Darwin C. Khan
Editor-in-Chief

Atty. Roderick R.C. Salazar III
Atty. Bayani B. Loste
Managing Editors

Manny T. Tamondong
Editorial Assistant

Towards the end of the first quarter of this year, three private citizens filed a petition for a writ of habeas data with the Supreme Court. Guillermo Luz, the executive vice president of Ayala Foundation, Inc., prayed that the military be instructed to disclose and submit before the court any and all photographs, reports, or information regarding his alleged involvement in a plot to oust President Gloria Macapagal-Arroyo. Francis Saez, Anakpawis party-list member, asked for the production of documents pertaining to the "Order of Battle" which allegedly included his name. Joey de Venecia asked that the military be ordered to produce all materials, recordings and transcriptions obtained through alleged wiretapping activities and that Senator Juan Ponce Enrile be enjoined from publicly broadcasting supposed wire-tapped conversations regarding his testimony for the Senate investigation of the National Broadcasting Network-Zhong Xing Telecommunications Equipment (NBN-ZTE) deal. It appears that these cases seek not only the protection of the petitioner's image, privacy, and honor but also access to what is otherwise confidential or restricted information.

What is the writ of habeas data?

The writ of habeas data is 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. With the writ, erroneous data and information stored in files, registers or databases that threaten or violate privacy rights may be ordered updated, deleted, destroyed, suppressed or rectified by the Regional Trial Court, the Court of Appeals, the Sandiganbayan, or the Supreme Court. The rules for the writ took effect on February

2, 2008. The writ of habeas data complements several other writs being used in the Philippines to protect the rights of the individual, including the Writ of Amparo.

The literal translation from Latin of habeas data is "you should have the data". Prior to the promulgation of the rules in the Philippines, habeas data is a constitutional right already granted in several countries in South America. There are variations from country to country but it is generally designed to protect the image, privacy, honor, information self-determination and freedom of information of a person. The Federal Republic of Brazil was the first to implement habeas data in 1988. Colombia followed in 1991. Thereafter, many other countries such as Paraguay in 1992, Peru in 1993, Argentina in 1994, and Ecuador in 1996, followed and adopted it in their respective constitutions.

The petition for the issuance of a writ of habeas data may be filed with the Regional Trial Court where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored, at the option of the petitioner. The petition may also be filed with the Supreme Court or the Court of Appeals or the Sandiganbayan when the action concerns public data files of government offices. The verified petition should generally be filed by the aggrieved party. But in cases of extralegal killings and enforced disappearances, the petition may be filed by any member of the immediate family of the aggrieved party following an order of priority. A verified written petition for a writ of habeas data should contain:

The personal circumstances of the petitioner and the respondent;

The manner by which the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party;



SEE The Writ..., page 2

Employment-related Benefits for Solo Parents

Republic Act No. 8972 (also known as the Solo Parents' Welfare Act of 2000 [the "Act"]) provides for benefits and privileges to employees who qualify as solo parents and to their children. It is built on a state policy to promote the family as the foundation of the nation, strengthen its solidarity and ensure its total development.

An employee who qualifies as a solo parent is:

- A woman who gives birth as a result of rape and other crimes against chastity even without a final conviction of the offender, and she keeps and raises the child;
- A parent left solo or alone with the responsibility of parenthood due to the death of the spouse;
- A parent left solo or alone with the responsibility of parenthood while the spouse is detained or is serving sentence for a criminal conviction of at least 1 year;
- A parent left solo or alone with the responsibility of parenthood due to physical and/or mental incapacity of spouse as certified by a public medical practitioner;
- A parent left solo or alone with the responsibility of parenthood due to legal separation or de facto separation from the spouse for at least 1 year, as long as he/she is entrusted with the custody of the children;
- A parent left solo or alone with the responsibility of parenthood due to declaration of nullity or annulment of marriage as decreed by a court or by a church as long as he/she is entrusted with the custody of the children;
- A parent left solo or alone with the responsibility of parenthood due to the abandonment of the spouse for at least 1 year;
- An unmarried mother/father who has preferred to keep and rear her/his child/children instead of having others care for them or give



them up to a welfare institution;

- Any other person who solely provides parental care and support to a child or children; or
- Any family member who assumes the responsibility of head of family as a result of the death, abandonment, disappearance or prolonged absence of the parents or solo parent.

A change in the status or circumstance of the parent claiming benefits under the Act such that he/she is no longer left alone with the responsibility of parenthood, shall terminate his/her eligibility for these benefits.

Employers shall allow a flexible working schedule for solo parents, as long as it does not affect individual and company productivity. A solo parent employee may vary his/her arrival and departure time provided it does not affect the core work hours as defined by the employer. In case of certain meritorious grounds, the employer may request for exemption from DOLE.

In addition to leave privileges under existing laws, employers shall grant parental leave of not more than 7 working days to any solo parent employee. The parental leave is a leave benefit granted to a solo parent for the performance of parental duties and responsibilities where physical presence is required. The employee must have rendered service of at least 1 year, notified the employer for availment of the leave within a reasonable time period, and presented a Solo Parent Identification Card. The parental leave shall be non-cumulative. If the parental leave is not availed of, it is not convertible to cash unless agreed upon previously. If there is an existing or similar benefit under a company policy or a collective bargaining agreement, the benefit shall be credited as such. If the existing benefit is greater than the 7 days provided for in the Act, the former shall prevail.

Employers are also prohibited from discriminating against any solo parent employee with respect to the terms and conditions of employment on account of his/her status as a solo parent.

The Writ from... from page 1

The actions and recourses taken by the petitioner to secure the data or information; and

The location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information, if known:

The writ is issued as a matter of course if on its face it ought to issue and must be served within three days from its issuance. It is required that the summary hearing of the petition shall not be later than ten working days from the date of the issuance of the writ. A clerk of court who refuses to issue the writ after its allowance, or a deputized person who refuses to serve the same, shall be punished for contempt without prejudice to other disciplinary actions. If the respondent makes a false return or refuses to make a return, or if any

person disobeys or resists a lawful process or order of the court, he may be punished for contempt. When the respondent fails to file a return, the petition shall be heard *ex parte*. Judgment must be rendered within ten days from the time the petition is submitted for decision. Upon its finality, the judgment shall be enforced by the sheriff or the designated lawful officer within five working days.

Supreme Court Chief Justice Reynato Puno describes the writ of habeas data as a stopgap measure to protect privacy rights. Proposals for broader legislation are now being considered so that the right to privacy will further be protected amidst the rapid growth of technological advancements in information systems, data automation and telecommunications whereby the extent of privacy invasion or the potential to invade privacy increases correspondingly.

Transfer of PMDC to DENR

On December 27, 2007, President Gloria Macapagal-Arroyo signed Executive Order No. 689 whereby the Mining Development Corporation (PMDC) was transferred from the Office of the President to



the Department of Environment and Natural Resources. The transfer was made so that the PMDC can closely monitor and oversee the efficient utilization and development of the country's mineral resources. The PMDC is a government-owned and controlled corporation primarily tasked to conduct and carry the business of

exploring, developing, mining, smelting and producing, transporting, storing, distributing, exchanging, selling, disposing, importing, exporting, trading and promotion of gold, silver, copper, iron and all kinds of mineral deposits and substances. The PMDC will serve as a conduit to serious investors for possible development of 65 non-performing mining tenements in the country that were previously cancelled, covering a total of 68,000 hectares of mineral lands. Mining activities are projected to further increase in the coming years with more foreign direct investments coming in. The Philippines is considered to have the world's fifth biggest mineral deposits.

DOLE Suspends Implementation of POEA Circular on Direct Hiring



Philippine Overseas Employment Administration

The Department of Labor and Employment (DOLE) ordered the Philippine Overseas Employment Agency (POEA) to immediately suspend the implementation of POEA Memorandum Circular No. 4 on Direct Hiring of Filipino Workers that was

supposed to take effect on January 15, 2008.

The circular includes stricter rules for the direct hiring of Overseas Filipino workers, and documentation and processing requirements including the following:

- The direct hiring of OFWs by foreign employers will be allowed only upon approval by the Secretary of Labor and subject to screening of employers and employment contract verification by the Labor Attache or the Philippine Embassy;
- Direct hiring may be allowed only for members of the diplomatic corps and of the international organizations, government officials of ministerial level and employers who are hiring on one-time or trial basis and the number of employees to be hired shall not exceed 5;
- The posting of US\$5000 bond per employee to guarantee the repatriation of the worker or of his remains, in the event of death;
- The posting of US\$3000 performance bond per employee to guarantee payment of the employee's salary for the duration of the employment contract. The bond must be secured from local bonding companies; and
- Employers have to provide the employees with health and medical insurance.

Tax Implications of a Cost-Sharing Arrangement

The Bureau of Internal Revenue (BIR) recently clarified the tax implications of a cost-sharing arrangement between a company and its affiliates whereby the company advances the payment for expenses and seeks reimbursement from its affiliates.



In the arrangement, the company and its affiliates agree to proportionately share in the expenses for maintenance, janitorial and security services, utilities (electricity and water), and other expenditures. The billing statements and official receipts of the vendors and suppliers are in the name of the

company. The company advances the payments and subsequently seeks reimbursement from the affiliates without any mark-up.

The ruling stated that the payments will not be subject to value-added tax (VAT) because the company receiving the reimbursements is not engaged in the sale of services to its affiliates. The company does not also receive remuneration from the affiliates for the services rendered in accounting for and managing the cost-sharing arrangement.

The cost-sharing payments of the affiliates do not result in any income to the company because the payments are reimbursements of actual costs without any mark-up. Hence, the company shall not be subject to income and withholding tax on such payments. (BIR Ruling No. DA-058-2008, February 1, 2008)

Requirements for Application and Renewal of LGU Business Permits



The Bureau of Internal Revenue (BIR) recently issued Revenue Memorandum Circular No. 12-2008 dated January 8, 2008 requiring the submission of

Tax Identification Number (TIN) and other BIR-prescribed returns/documents as conditions for the issuance/renewal of the Mayor's permit /license/privilege tax receipt by the concerned local government unit (LGU).

The move is pursuant to the Memorandum of Agreement (MOA) entered into by and among the Department of Finance, BIR, Department of Interior and Local Government, League of Provinces of the Philippines, League of Cities of the Philippines, League of Municipalities of the Philippines, and Liga ng mga Barangay ng Pilipinas. The MOA aims to assist the BIR in monitoring tax compliance and enhancing tax enforcement and collection efforts.

The requirements for first-time applicants of a Mayor's permit /license/privilege tax receipt are as follows: Taxpayer's Identification Number (TIN), BIR-issued Certificate of Registration, and proof of payment of the annual registration fee of P500. For renewal, the same documents for first-time applicants plus the annual income tax return (ITR) duly filed with the BIR, and monthly/quarterly VAT declarations/returns or monthly percentage tax returns for the year immediately preceding the year of renewal.

FNS Celebrates 15 Years of Legal Excellence and Innovation



Fortun Narvasa & Salazar is proud to celebrate its 15th anniversary this year. From a core group of a handful of lawyers, the Firm has grown to be a prestigious service organization based on the highest standards of legal competence in client service. It has also established branches in the thriving commercial areas of Cavite and Baguio, and a liaison and referral office in Hong Kong. It also has links and synergetic relationships with a global network of law firms and associations as the sole Philippine correspondent of Globalaw. To commemorate the event the

Firm will be organizing a variety of activities, including a 3-day excursion to Taytay, Palawan for all employees from June 20 – 22, 2008. Managing Partner Roderick R.C. Salazar III affirms the shared vision and commitment for legal excellence and innovative service: "Our vision is for a future that's even brighter than our first 15 years. And we hope to continue our tradition of excellence for the coming years." The Firm's 15th anniversary theme is "FNS Lawyers – Focused, Newsworthy, Snappy – Sought After".

Atty. Maricar Lazaro Accepted to the Partnership

The Firm accepted Atty. Maria Carmen Babista-Lazaro as partner effective January 1, 2008. Atty. Lazaro joined the Firm as an associate on October 3, 2000. She represents Philippine and foreign clients in various cases before quasi-judicial agencies and the courts such as the Regional Trial Courts, the Court of Appeals and the Supreme Court. She regularly advises the Firm's clients on corporate matters, contracts, family law and real property transactions. Atty. Lazaro has a bachelor's degree in Political Science from the University of Sto. Tomas and a law degree from San Beda College.



Atty. Roderick R. C. Salazar III in the International Who's Who of Mining Lawyers 2008

FNS Managing Partner Dicky Salazar has been recently recognized as a leading practitioner in the field of mining law and included in *The International Who's Who of Mining Lawyers 2008*, a publication of the International Bar Association. Atty. Salazar is acknowledged in the Philippines and internationally for his mining law and natural resources law practice. He acted as counsel to the developer of the first foreign funded mining project in the country since the enactment of the Philippine Mining Act of 1995, from its exploration, project financing to its development and operating stages. He assisted the Firm's litigation senior partner, Atty. Sigfrid Fortun, in acting as counsel for the holder of the Financial and Technical Assistance Agreement (FTAA) in the Supreme Court's landmark decision in 2004 upholding the right of foreign mining companies to wholly own large-scale mining projects in the country through FTAA's. The Firm through Atty. Salazar represents foreign and Filipino mining companies involved in all aspects of mining from exploration, project financing, construction, development and processing. He is likewise active in the Philippine mining industry, lectures to lawyers and writes articles on mining law. Atty. Salazar also heads the Firm's corporate and commercial law practice fields.



LEGALADVANTAGE™
Quality MCLE, Better Lawyers

FRONTIER NEO SOLUTIONS & SYSTEMS CORPORATION
Suite 1004 Cityland 10 Tower
H.V. Della Costa corner Valero Sts., Salcedo Village, Makati City

Telephone: (02) 753 2555
Fax: (02) 893 4158



MAIN OFFICE: 23rd Floor, Multinational Bancorporation Centre, 6805 Ayala Avenue, Makati City 1277 Philippines; Mailing Address: MCPO Box 2697 Makati City 1200 Philippines; Tel. No.: (632) 8128670 (connecting all departments); Telefax: (632) 812-7199, (632) 812-4251; Email: fnslaw@info.com.ph.

CAVITE BRANCH OFFICE: 2nd Floor, DCR Center, Aquinaldo Highway, Imus, Cavite City 4102 Philippines; Tel. Nos.: (6346) 471-0123, 472-1088; Telefax: (6346) 471-0350; Email: cavite@fnslaw.com.ph.



FNS is the sole Philippine correspondent of Globalaw, an international network of law firms.
Website: www.globalaw.net

CONTACT
FNS



BENGUET BRANCH OFFICE: B-308 F. Lopez Building, 40 Session Road, Baguio City 2600 Philippines; Tel. No.: (074) 444-5724; Telefax: (074) 446-5724; Email: baguio@fnslaw.com.ph.

HONGKONG LIAISON OFFICE: Fortun Narvasa & Salazar (H.K.) Services Limited, Unit C-2 16th Floor, United Centre, 95 Queensway, Hongkong S.A.R.; Mailing Address: GPO Box 5168, Hongkong; Tel. No. (852) 2520-1976; Telefax: (852) 2865-5790; Email: lahksifn@netvigator.com.