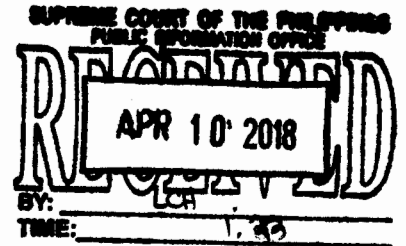




Republic of the Philippines
Supreme Court
Baguio City

EN BANC

NOTICE



Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated APRIL 3, 2018, which reads as follows:

“G.R. No. 234359 (AILEEN ALMORA, ET AL. v. DIRECTOR GENERAL RONALD DELA ROSA, in his capacity as Chief of the Philippine National Police, ET AL.)

G.R. No. 234484 (SR. MA. JUANITA R. DAÑO, RGS, RSW, ET AL. v. THE PHILIPPINE NATIONAL POLICE represented by PDG RONALD DELA ROSA, ET AL.)

X-----X

RESOLUTION

Factual Antecedents

During the oral arguments on 5 December 2017, this Court, through its Justices, specifically, Associate Justices Antonio T. Carpio, Samuel R. Martires, Alfredo Benjamin S. Caguioa, Noel G. Tijam, Marvic M.V.F. Leonen, Andres B. Reyes, Jr., Teresita J. Leonardo-De Castro, and Chief Justice Maria Lourdes P. A. Sereno, asked the Office of the Solicitor General (OSG), as represented by Solicitor General Jose C. Calida, to submit certain information and documents within a period of sixty days.

This Court also issued a Resolution on the same date. The Resolution read in part:

After the interpellation, the Court directed the Solicitor General to submit the following information/documents in connection with the police drug operations conducted from July 1, 2016 to November 30, 2017, to wit:

1. Place, date and time of the drug operation;
2. Names of the PNP team leaders and team members who participated in the operations;

3. Pre-operation plan;
4. Whether search warrants or warrants of arrest were issued;
5. Names of representatives of the media, non-governmental organizations (NGOs) and barangay officials present during the operation;
6. Names, addresses, gender and ages of those killed; and
7. Post-operation reports.

The following information/documents relative to 'deaths under investigation' from July 1, 2016 to November 30, 2017 were likewise required, to wit:

1. Names, addresses, gender and ages of those killed;
2. Date, time and place of the killings;
3. Names of the team leader and members who investigated the killing;
4. Investigation reports; and
5. Charges, if any, filed against the suspects.

The following reports were likewise required in connection with the Daño petition (G.R. No. 234484):

1. Lists of buy-bust operations conducted in San Andres Bukid from the beginning of Operation *Tokhang* up to the present; and
2. Pre-operation and post-operation reports for the twenty-five (25) buy-bust operations that resulted in the deaths of twenty-five (25) residents of San Andres Bukid.

The Court Resolved, in open court, to require the parties to SUBMIT simultaneously their respective MEMORANDA and all required information and documents, including power point presentations not yet submitted to the Clerk of Court, within thirty (30) days from date. However, the period was extended to sixty (60) days upon motion of the Solicitor General who requested the longer period on account of the voluminous documents required to be attached to their memorandum. Thereafter, the cases shall be deemed SUBMITTED for resolution.¹

The OSG filed a Motion for Reconsideration, which was dated 18 December 2017 but received by this Court only on 11 January 2018. The OSG admitted that it did not comment on this Court's directive during the oral arguments, but was compelled to file the said motion "after reviewing the relevant laws and jurisprudence."² The OSG claimed that "[b]y requiring the respondents to submit the aforementioned information and documents, the Court has ventured into unwarranted factual inquiries. It cannot go beyond determining the textual commitment of PNP CMC No. 16-2016 and DILG MC No. 2017-112 to the Constitution."³

¹ *Rollo*, Vol. II (G.R. No. 234484), pp. 681-682.

² *Id.* at 698.

³ *Id.* at 700.

9

Grounds in Support of the Motion

The OSG put forward five grounds against their submission of **ALL** of the required information and documents, thus:

1. The information and documents required are not relevant to the issue on the constitutionality of CMC No. 16-2016 in the petition for prohibition;
2. The Rule on the Writ of Amparo limits the production of documents to those that constitute or contain evidence relevant to the petition;
3. The documents required involve sensitive information that have national security implications;
4. The petitioners failed to comply with Section 5 of the Rule on the Writ of Amparo; and
5. The Honorable Court's December 5, 2017 Order might set a dangerous precedent for pending and future amparo petitions.

In its Comment dated 8 February 2018 and received by this Court on even date, petitioners Almora, Aparri and Soriano argued that: (1) the documents and information are relevant to the question of the constitutionality of the circulars; (2) the petition is both a facial challenge of the circulars and a challenge to its implementation and enforcement; (3) the Court's directive does not go beyond the issues defined in the Advisory; (4) the order to submit the documents and information is not based merely on Sec. 14 (c) of the Amparo Rule, and even assuming that this provision applies, the documents and information are relevant to the petition; (5) the documents and information are covered by the people's right to information on matters of public concern, and there is no basis for the claim that national security prevents the respondents from producing the required documents and information; (6) the Solicitor General can request the Court to examine the documents and information *in camera*; (7) the petition meets all the requirements of the Amparo rule; and (8) the Court's directive sets a good precedent.

On the other hand, in their Comment received by this Court on 20 February 2018, petitioners Daño, et. al. alleged that: (1) the Court's jurisdiction over the prohibition and amparo cases necessarily require it to make factual inquiries; (2) respondents only made general allegations about the supposed lack of relevance of the documents or information to the issues of the case and its alleged national security implications; (3) considering that there are ambiguity in the terms, such as "neutralize" and "negate," used in the circular, it is reasonable to test the actual meaning of the provision in the way it has been interpreted and implemented by the police; (4) the national security argument does not have factual and legal basis since the drug watch lists and lists of High Value Target arrests are not included in the

information or documents required by the Court in its 5 December 2017 Resolution; (5) the information required pertained to drug operations that were presumably concluded already; (6) considering that most of the actual or threatened violations were products of, supposedly, officially sanctioned police operations, the information and documents generated are relevant subjects of a production order; and (7) the production of the information and documents will go a long way in ridding the police organizations of the scalawags among its ranks.

The OSG submitted its consolidated reply on 16 March 2018. The OSG reiterated its previous arguments: (1) there is no lawful justification to compel the respondents to submit documents enumerated in the 5 December 2017 directive of the Honorable Court because (a) they are not relevant to the issues, or (b) the petitioners are not entitled to the production of said documents; (2) the *Tagitis* ruling finds no application in the present motion for reconsideration; and (3) the disclosure of the information contained in the documents required to be submitted has national security implications.

This Court's Ruling

We deny the OSG's motion for reconsideration. When this Court required information and documents from the OSG, we asked it to establish its claim of legitimacy of police operations. The OSG's continued refusal to submit to this Court's requirement will lead this Court to presume that these information and documents, because they are willfully suppressed, will be adverse to the OSG's case.⁴

The Requested Information and Documents

The OSG's Motion for Reconsideration enumerated the requested information and documents, thus:

1. List of persons killed in legitimate police operations from 1 July 2016 to 30 November 2017;
2. List of deaths under investigation from 1 July 2016 to 30 November 2017;
3. List of Chinese and Fil-Chinese drug lords who have been neutralized;
4. List of drugs involved whether shabu, cocaine, marijuana, opioids, etc.;
5. Comparative tables on index crimes;
6. Statistics of internal cleansing within the police force;

⁴ Rule 131, Sec. 3(e).

7. Drug watchlist in the affected areas;
8. Reports and documents regarding Almora, Aparri and Soriano;
9. Pre- and post-operation reports in all the Daño incidents;
10. Number of buy-bust incidents in San Andres Bukid from 1 July 2016 to 30 November 2017;
11. List of warrants and warrantless arrests in High Value Target (HVT) police operations; and
12. List of cases under investigation under Internal Affairs Service.⁵

For context, pertinent portions of the exchanges between the Justices and the Solicitor General in the order of questioning during the oral arguments are quoted below:

A. Justice Carpio

JUSTICE CARPIO:

x x x Now, how many have been killed since July 1, 2016 when CMC 16-2016 was promulgated? How many have been killed in drug operations?

SOLICITOR GENERAL CALIDA:

I think it's Three Thousand Eight Hundred (3,800), Your Honor.

JUSTICE CARPIO:

Three Thousand Eight Hundred (3,800). And how many were killed under the so-called deaths under investigation?

x x x x

SOLICITOR GENERAL CALIDA:

x x x Your Honor, our statistics refers [sic] only to Three Thousand Eight Hundred (3,800) x x x.

JUSTICE CARPIO:

Okay, but, I understand about Four Thousand falls under x x x deaths under investigation, but anyway, can you submit the correct figure as of the end of November for both x x x those killed under so-called legitimate drug operations and those killed under so-called deaths under investigation? So we have the figure from July 1, 2016 up to November 2017.

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE CARPIO:

Okay. In CMC 16-2016, in Section, Item 3, the last paragraph, can you take a look? It says here, "There are three (3) trans-national drug

⁵ Rollo, Vol. II (G.R. No. 234484), pp. 697-698.

organizations operating in the Philippines, namely: A. the Chinese or Filipino Chinese drug syndicates dominate the drug market in the country. These activities are largely concentrated within their group, these are Chinese-Filipino or Chinese, with the inclusion of very few and well-selected locals." Very few who are selected Filipinos. Now, x x x who are these x x x two kinds of Chinese mentioned here. The Chinese or Filipino-Chinese drug syndicates, what are the purely Chinese syndicate? Are these the drug syndicates from Mainland China?

SOLICITOR GENERAL CALIDA:

I'll try to answer it, Your Honor, but we have also a resource person here who has (interrupted)

JUSTICE CARPIO:

Can you ask the resource person?

SOLICITOR GENERAL CALIDA:

Now, the Chinese referred to here, Your Honor, in letter A, the Chinese refers to the Mainland Chinese, Your Honor.

JUSTICE CARPIO:

Okay. So, the Chinese - the Mainland Chinese and the Filipino Chinese in the Philippines - dominate the drug market in the country?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE CARPIO:

That's the meaning, okay. I agree with you. Now, the President, if you recall the President said that the drug-lords are there in Mainland China, do you remember that?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE CARPIO:

Okay. And the Chinese in Mainland China and the Chinese Filipinos here in the Philippines dominate the drug market?

SOLICITOR GENERAL CALIDA:

Yes. And may I add, Your Honor, there are also Mainland Chinese who were, who are now languishing in jail, Your Honor, and they also operate, conduct the drug operations, Your Honor, selling and trading.

JUSTICE CARPIO:

So, you have here Three Thousand Eight Hundred Six (3,806) Filipinos who were killed in drug operations?

SOLICITOR GENERAL CALIDA:

And legitimate drug operations, Your Honor.

{

JUSTICE CARPIO:

Legitimate drug operations as you say it. **How many Chinese or Filipino Chinese drug lords have been neutralized by the PNP since July 1, 2016?**

SOLICITOR GENERAL CALIDA:

May I again refer, Your Honor

JUSTICE CARPIO:

Yes.

SOLICITOR GENERAL CALIDA:

....to our resource person. **Just for clarity[’s] sake, Your Honor, what do you mean by neutralized, arrested?**

JUSTICE CARPIO:

Arrest.

SOLICITOR GENERAL CALIDA:

Incapacitated?

JUSTICE CARPIO:

Surrendered, or killed in so-called legitimate drug operation?

SOLICITOR GENERAL CALIDA:

Your Honor, based on the statistics, there were Four Hundred Nineteen (419) Chinese who were arrested, Your Honor.

JUSTICE CARPIO:

Not killed?

SOLICITOR GENERAL CALIDA:

Arrested, Your Honor.

JUSTICE CARPIO:

x x x Are they users, or pushers, chemists or drug-lords?

SOLICITOR GENERAL CALIDA:

It’s a mixture actually, Your Honor. We don’t know the exact role that they played in the drug operations but according to the PDEA, Your Honor, some are users, some are pushers, some are drug-lords, Your Honor.

JUSTICE CARPIO:

Okay. **Can you submit to us that list with an indication as to their participation or what are the charges against them?**

SOLICITOR GENERAL CALIDA:

We will in due time, Your Honor.

JUSTICE CARPIO:

Okay. You see SolGen, I’ve been in this Court for almost seventeen (17) years and almost every time that we meet in Division, we affirm the conviction in a drug case. And almost always, we convict either pusher or

user, mostly, pusher. There are very few, I can remember only one (1) drug-lord and he's not even a big time drug-lord, because he is not a Chinese or Filipino-Chinese drug-lord, (who) has been convicted by the Court. In other words, as Tokhang itself says, the thrust of the operation (is) x x x to go after the street level pushers. But this circular says, the drug trade in the Philippines, illegal drug trade, is dominated by Mainland Chinese and Filipino-Chinese locals and it says here, "they engaged in bulk smuggling of dangerous drugs in the country," paragraph, letter A. They are the ones who engaged in bulk smuggling. Now, can you explain to me why PNP in this Circular 16-26 is concentrating on street level operations and x x x practically ignoring the big-time drug-lords? Recently, we read in the papers Six Hundred Forty (640) x x x kilograms of shabu were imported, and this is not only the third or fourth importation. So, tons of these illegal drugs have been imported and it's correct, it's here, bulk smuggling of dangerous drugs. They are the ones engaged. How come the flagship project of the President is concentrated on going after the small time peddlers? Why not the big-time drug-lords?

SOLICITOR GENERAL CALIDA:

Actually, Your Honor, the instruction of the President is to go after all of them, Your Honor. However, the big-time Chinese drug-lords are outside of our jurisdiction, Your Honor. They are in China, and the first version of the CMC 16, Your Honor, considering that the drug of preference among Filipinos is shabu or methamphetamine hydrochloride. Unfortunately, this is what others called it poor man's cocaine, so, it proliferates in communities like the barangays, Your Honors, and these are the people who also peddle this shabu and therefore, that was the first concern, to stop all of these peddling and then we go after the big-time drug-lords, Your Honor, and some of them were, some of them are, in fact, languishing in jail even before President Duterte's time, Your Honor.

JUSTICE CARPIO:

Okay. In this circular, CMC 16-2016, it says here, "there were around 1.8 Million drug users as of 2015 (interrupted)

SOLICITOR GENERAL CALIDA:

Actually (interrupted)

JUSTICE CARPIO:

What is the figure now?

SOLICITOR GENERAL CALIDA:

It's around 4 Million, Your Honor.

JUSTICE CARPIO:

It's 4.8 Million, actually, 4.7 according to the latest figure, is that correct? Can you ask the scorekeeper there? What's the latest figure of the drug users in the country?

SOLICITOR GENERAL CALIDA:

It's 4 Million, Your Honor.

JUSTICE CARPIO:

According to the PDEA, it's 4.7 Million as of May 2017?

1

SOLICITOR GENERAL CALIDA:

Based on PDEA's assessment, Your Honor, 4 Million, Your Honor.

JUSTICE CARPIO:

4 Million only, okay. So, that's as of 2017 but as of 2015 per the CMC 16-2016, it was 1.8 Million. So, it actually increased during the time of President Duterte, is that correct?

SOLICITOR GENERAL CALIDA:

Well, maybe the first number of 1.8 Million was not really accurate, Your Honor.

JUSTICE CARPIO:

So, this is understated?

SOLICITOR GENERAL CALIDA:

Understated, Your Honor.

JUSTICE CARPIO:

Okay. Let us assume 4 Million is correct, if you go after the 4 Million street level addicts and pushers, how many more people will be killed if you project it, x x x if we take the lower figure of Three Thousand Eight Hundred (3,800) for one and a half years. That means there will be more Filipinos who will be killed if we go after street level addicts, is that correct?

SOLICITOR GENERAL CALIDA:

Well, not necessarily, Your Honor, because there is no government policy to kill the addicts (interrupted)

JUSTICE CARPIO:

Yes, I know that there is no government policy. Let us assume that the Three Thousand Eight Hundred (3,800) were killed in legitimate operations of the police, assuming, so, if you project it up to the end of the term of the President because there are 4 Million, we expect several thousands more to be killed, correct?

SOLICITOR GENERAL CALIDA:

I hope not, Your Honor.

JUSTICE CARPIO:

You hope not. Okay, I'm asking that question because why is the policy to go after the retail and not after the bulk importation? It's here in the circular. The bulk importers of drugs are Filipino-Chinese and Chinese Mainland drug lords and you can easily control that at Customs. And if you stop the supply, then there is no more demand, I mean, they can demand but there is no one to service them, is that correct?

SOLICITOR GENERAL CALIDA:

Unfortunately, Your Honor, our country is an archipelago. All these shabu or methamphetamine hydrochloride are dumped into the sea, Your Honor, and somebody will get them from the high-seas and bring them to the coastal areas and into the land. So, we cannot police an archipelago, Your

Honor. There are so many places where it can be transported to, Your Honor. It need not pass the Bureau of Customs, Your Honor.

JUSTICE CARPIO:

But I don't think they have to resort to dumping the goods, the precursors in the sea because they can easily get out of customs, as we have seen. I mean, they don't have to go to the trouble. I think if you police the customs area you can catch a lot of them already.

SOLICITOR GENERAL CALIDA:

Well, Your Honor, I cannot answer why there was this alleged transshipment or importation of drugs in the Bureau of Customs. It's still under investigation, Your Honor, so I cannot answer that, Your Honor.

JUSTICE CARPIO:

But you agree with me that if you close the entry of precursors of illegal drugs from the ports and from the seas there will be no supply locally?

SOLICITOR GENERAL CALIDA:

Well, the problem Your Honor, some of the precursors are also needed in legitimate, by the legitimate drug industry, Your Honor.

JUSTICE CARPIO:

Well, but as we have seen, as you said, they are dumping it in the sea?

SOLICITOR GENERAL CALIDA:

Those are already the shabu, Your Honor.

JUSTICE CARPIO:

Okay, the shabu.

SOLICITOR GENERAL CALIDA:

Manufactured shabu, Your Honor.

JUSTICE CARPIO:

x x x So, because it's difficult to stop them at the customs area or the sea, you now concentrate on going after the peddlers in the streets, is that what you're saying?

SOLICITOR GENERAL CALIDA:

Because statistically, Your Honor, there are more people living in the barangays than in Forbes Park or other swanky.....

JUSTICE CARPIO:

But if you catch the drug, the big drug lords...

SOLICITOR GENERAL CALIDA:

...villages, Your Honor.

JUSTICE CARPIO:

...then you stop the supply?

1

SOLICITOR GENERAL CALIDA:

Unfortunately, Your Honor, the big time drug lords are not in our jurisdiction.

JUSTICE CARPIO:

But it says here Filipino-Chinese, there are two?

SOLICITOR GENERAL CALIDA:

Well, some of them are here, Your Honor, and some of them are haut [sic] also, Your Honor.

JUSTICE CARPIO:

Okay. Let's go to the big time Chinese mainland drug lords. Do you think the Chinese government, the communist Chinese government will allow these mainland Chinese drug personalities to manufacture shabu in their land for export to the Philippines?

SOLICITOR GENERAL CALIDA:

No, Your Honor, but criminals are criminals. There are Chinese criminals then...

JUSTICE CARPIO:

Do you think these Chinese mainland drug lords can manufacture shabu without the knowledge of the Chinese government considering that they have very tight security there?

SOLICITOR GENERAL CALIDA:

I cannot answer for them, Your Honor.

JUSTICE CARPIO:

You cannot. Okay, Counsel, can you submit to the Court the following data or reports on the 3,806 who were killed in supposedly legitimate police drug operations since July 1, 2016 and include also up to end of November 2017, the following: (1) the names, addresses, gender and ages of those who were killed. Can you take it down? (2) the place, date and time of the drug operation; (3) the names of the PNP team leader and team members who participated in the operation; (4) the pre-operation plan or whatever is the pre-operation preparations which you normally take; (5) the post operation report whether search warrants or warrants of arrest were issued and the names of representatives from media, NGOs and barangay who were present during the operation.

SOLICITOR GENERAL CALIDA:

Are we referring, Your Honor, to the two petitions here? Referring to the place, Your Honor...

JUSTICE CARPIO:

No, this one is the total. No, I'm referring to the total, because you mentioned there are 3,806 who were killed in legitimate police operations, I am referring to those.

SOLICITOR GENERAL CALIDA:

Your, Honor, the petitions refer to, like the Almora petition refers to alleged three deaths, Your Honor, two of them...

JUSTICE CARPIO:

That would be included...

SOLICITOR GENERAL CALIDA:

...Aileen Almora and Rowena Aparri through buy-bust operation. The other one is not dead actually, he's Jefferson Soriano but the assailant is unidentified.

JUSTICE CARPIO:

Counsel...

SOLICITOR GENERAL CALIDA:

In the Daño petition, Your Honor, the petitioners alleged that there were 27 who were killed but they were not killed through the tokhang project but through the buy-bust operation, Your Honor. And there are four under investigation, the alleged death of Edwin Eduardo, SPO 2 Dennis Padpad, Gelbert, this is the spelling, Your Honor, Gelbert Beguelme, Alvin John Mendoza, four of them. And there is one shooting incident, a certain Jeffrey Degala who was shot in his lower extremities, Your Honor, if I'm not mistaken x x x But this is not in relation to drug operations.

JUSTICE CARPIO:

Yes...(interrupted)

SOLICITOR GENERAL CALIDA:

And there is one alleged death, Manuel Mañalac, in a buy-bust shooting operation in Makati, not in San Andres, Bukid, Your Honor.

JUSTICE CARPIO:

Yeah, I'm not...(interrupted)

SOLICITOR GENERAL CALIDA:

So, I believe this is the thrust of this petition.

JUSTICE CARPIO:

x x x I'm not only talking of the San Andres, Bukid incidents. Because you said there are 3,806 who were killed in legitimate drug operations under CMC 16-2016. Now, I want the names, addresses and all these reports regarding these 3,806 killed in legitimate drug operations. So, the records must be there because these are supposedly legitimate drug operations, okay. On the deaths under investigation, since they are under investigation, you must have the names, give me, you submit the names, addresses, gender and ages of those who were killed under deaths under investigations. You must know them because you are investigating them. The date, time and place of their, of the killing, the names of the SOCO team leader and members in charge of investigation, the investigation reports and whether charges have been filed against the suspects. So, please submit that together with your memorandum.

SOLICITOR GENERAL CALIDA:

Yes, Your Honor, we will embody them in our memorandum, Your Honor.

JUSTICE CARPIO:

Okay, that is all for now, Counsel. Thank you.

SOLICITOR GENERAL CALIDA:

Thank you, Your Honor.⁶

B. Justice Martires**JUSTICE MARTIRES:**

You have always been telling this Court that the police operations in Aparri, Almora and Soriano or Almora and Aparri were legitimate police operations, these were buy-bust operations. Let's go to Almora first. **Would you know if the police officers were able to recover from Almora a sachet of shabu or any prohibited drug in his possession?**

SOLICITOR GENERAL CALIDA:

In the case of Almora, Your Honor, it happened in Baguio City, I have no personal knowledge of the case.

JUSTICE MARTIRES:

Did you not ask your clients about the incident in Upper Crystal Cave in Baguio City? What they did during that police operations?

SOLICITOR GENERAL CALIDA:

Well, we asked the Internal Affairs but unfortunately we were not given the nitty-gritty of the operations, Your Honor.

JUSTICE MARTIRES:

I was an RTC judge for five and a half years before my appointment to the Sandiganbayan and a lot of drug cases fell into Branch 32 of the Regional Trial Court of Agoo. When you talk of buy-bust operations you talk of a poseur-buyer, you talk of the boodle money, or real money, you talk of the drug or a sachet of shabu that was retrieved from the suspect. **My question is was there or who was the poseur buyer in Almora? There were two (2) police chief inspectors involved, eight (8) units from the PNP in a buy-bust operation. Was this not an overkilled [sic]? Eight (8) units not eight (8) personnel, eight (8) units, meaning to say eight (8) different units from the Philippine National Police. Who are these or what are these units if you know?**

SOLICITOR GENERAL CALIDA:

Unfortunately, I have no personal knowledge about it, Your Honor.

JUSTICE MARTIRES:

Can you please ask your clients what are these units that got involved in the Almora case and who was the poseur-buyer? Where is that boodle money?

⁶ TSN, 5 December 2017, pp. 11-24.

SOLICITOR GENERAL CALIDA:

Okay.

JUSTICE MARTIRES:

Can you present to us a photocopy of that boodle money? Can you give us now?

SOLICITOR GENERAL CALIDA:

Your Honor, I was handed a spot report on the buy-bust operation. I can submit this to you, Your Honor, if...

JUSTICE MARTIRES:

Can I see that spot report?

SOLICITOR GENERAL CALIDA:

Spot report, Your Honor. I can read it also, Your Honor, if you wish.

JUSTICE MARTIRES:

Please read it. For the record.

SOLICITOR GENERAL CALIDA:

This is a memorandum for the City Director. Attention: Operations Intel, Investigations and TOC from the Officer-in-Charge. Subject: Spot Report Re: Buy-bust operation resulted in armed encounter with an alleged illegal drug personality. Date, July 28, 2016. References: (a) Oplan Eagle Claw (b) PDEA Operation Control No. 10002-072016-0108 and (c) BE No. 08127 pages 0024-0026 dated July 29, 2016.

No. 2. This pertains to the drug buy-bust operation at No. 183 Muller Subdivision Crystal Cave, Bakakeng, Central, Baguio City by the joint elements of R ID, RAIDU, CAIDU, CPSC, NLCIDU, CIU and BCPO and Station 10 BCPO on or about 7:10 pm of July 28, 2016 against Ryan Dave Tuazon Almora of legal age, married, businessman and a resident at the place of the incident.

No. 3. That during the conduct of said operation the suspect upon sensing that he was dealing with the PNP Anti Illegal Drugs Operatives opted to shoot the operatives which resulted to a fire fight/gunfire that eventually resulted to the instantaneous death of the said suspect. Said suspect is listed on the watch list No. 3 Level 1 of BCPOs Illegal Drugs Personalities.

No. 4. Personnel of PNP CLO Baguio (SOCO) led by a Police Superintendent Rodrigo Leal processed the crime scene in the presence of Punong Barangay Daniel, Bakakeng Central, Christine Kim of ABS CBN Baguio and Duty Inquest Prosecutor Farah C. Agunos. Recovered from the crime scene was one (1) Astra caliber 22 Magnum Revolver with serial number 131356 loaded with two (2) fired case cartridges, One (1) misfired and four (4) live ammos, Four (4) Caliber 22 Magnum Revolver.

Further the following items were confiscated/seized and which were properly marked; to wit: Exhibit "A" RDT 07-28-18 One (1) piece One (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride suspected to be shabu with an approximate weight of 1.46 grams; Exhibit "B" RDT 07-28-16 One (1) piece One (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride suspected to be shabu with an approximate weight of 0.55 grams; Exhibit "C" RDT 07-28-16 One (1) piece One (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride suspected to be shabu with an approximate weight of 0.41 grams; Exhibit "D" RDT 07-28-16 One (1) piece One (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride suspected to be shabu with an approximate weight of, this was not in the document, Your Honor. Maybe when they xeroxed it, it was ah....

JUSTICE MARTIRES:

Anyway...

SOLICITOR GENERAL CALIDA:

I'll go next page, Your Honor.

JUSTICE MARTIRES:

...that, that Spot Report did you notice any inconsistency or that the Report itself is contradicting, contradictory. One says it's a buy-bust operation and another paragraph says when the suspect sensed that they were approaching... so in short that was not a buy-bust operation. No one was acting as a poseur-buyer. They were all in combat uniforms. How could one act as a poseur-buyer if you are in a police uniform?

SOLICITOR GENERAL CALIDA:

Actually, Your Honor, there's no mention that they were in police uniform.

JUSTICE MARTIRES:

Could you please ask your clients the weighing scale, kind of weighing [scale that] they used in weighing the heat-sealed plastic sachet containing the alleged methamphetamine hydrochloride? *Anong klaseng weighing scale ang ginamit ninyo? Kasi alam na namin kung ano ang nababasa ng weighing scale?"*

SOLICITOR GENERAL CALIDA:

Well, the operation was in Baguio, Your Honor, so he doesn't know. But maybe, Your Honor, let me present another side to the facts, Your Honor. Maybe it was really a buy-bust operation but when the suspect sensed that it will be a buy-bust operation he pre-empted the buy-bust operation by drawing his firearm and shooting at the civilian clothe[s] operatives, Your Honor. That could be another version.

JUSTICE MARTIRES:

Who was the contact person between Almora and the police officers?

SOLICITOR GENERAL CALIDA:

Maybe it was with the operatives, there was with this contact person with them. And maybe he has the sixth sense, Your Honor, that maybe these are policemen out to buy-bust him.

JUSTICE MARTIRES:

Were you informed that Almora was sitting when he was killed? When he was shot?

SOLICITOR GENERAL CALIDA:

It's not...

JUSTICE MARTIRES:

That the Media in Baguio has reported that Almora was sitting when he was shot and in fact he was still sitting when he died?

SOLICITOR GENERAL CALIDA:

I'm not aware of that, Your Honor. It's not stated in...

JUSTICE MARTIRES:

You ask your client about it.

SOLICITOR GENERAL CALIDA:

Well, unfortunately, he's based in...

JUSTICE MARTIRES:

Let us go to Aparri. The police officers, there were six (6) of them. Five (5) were in civilian clothes. Why?

SOLICITOR GENERAL CALIDA:

Why are they wearing civilian clothes, Your Honor.

JUSTICE MARTIRES:

Yes.

SOLICITOR GENERAL CALIDA:

I don't know, Your Honor.

JUSTICE MARTIRES:

And how much drug was recovered from Aparri?

SOLICITOR GENERAL CALIDA:

I have here, Your Honor, a photocopy of an incident report as well as memorandum, Your Honor. If you wish I can read them also, Your Honor.

JUSTICE MARTIRES:

No more.

9

SOLICITOR GENERAL CALIDA:

Okay, Your Honor.

JUSTICE MARTIRES:

Anyway, can you please submit to this court that memorandum you are supposed to, you wanted to read?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE MARTIRES:

And can you please ask your clients to identify who was the contact person of Aparri, who was the contact person of Almora? And why there was a need for eight (8) different units of the PNP including the PDEA to conduct this buy-bust operation when Aparri was all alone in his house and it was just a buy-bust operation?

SOLICITOR GENERAL CALIDA:

We will do that, Your Honor. I was just handed a note that the operation was not necessarily against Almora alone but against the *Lakay* group, a drug syndicate, Your Honor.

JUSTICE MARTIRES:

Lakay group that's new twist in the Almora case. I have not heard of *Lakay* group when I was reading the newspapers in Baguio.

SOLICITOR GENERAL CALIDA:

Well, it is what it is, Your Honor.

JUSTICE MARTIRES:

I hope the *Lakay* group will be identified also. The reason I am asking these questions, Solicitor General, is because we have always been asking about you used the word neutralize but the way you look at it some of these were silenced by police officers. Silencing and neutralizing are two different things. To neutralize is not to silence and to silence is that the police officers are involved in drug operations and you want to silence the alleged suspects.

SOLICITOR GENERAL CALIDA:

I understand your point, Your Honor. But until they are convicted....

JUSTICE MARTIRES:

And I hope there will...

SOLICITOR GENERAL CALIDA:

...presumed innocent, Your Honor.

JUSTICE MARTIRES:

...the IAS will have positive results in the investigation they are conducting.

SOLICITOR GENERAL CALIDA:

Yes...

9

JUSTICE MARTIRES:

All fingers point to the Office of the President as the one involved in these Extra Judicial Killings.

SOLICITOR GENERAL CALIDA:

Definitely...

JUSTICE MARTIRES:

That's why I've been asking if investigation had been conducted in Almora, Aparri and Jefferson Soriano? I don't want to deal anymore into the killings in San Andres, Bukid. It will take us ten (10) hours discussing these matters. But please look into that Almora case, the Jefferson Soriano and the Aparri case. Thank you very much.

SOLICITOR GENERAL CALIDA:

Thank you also, Your Honor.⁷

C. Justice Caguioa**JUSTICE CAGUIOA:**

...we are just talking about users, we are not talking about a pusher, we are not talking about a drug manufacturer, we are not talking about a person maintaining a drug den, is that correct?

SOLICITOR GENERAL CALIDA:

Mainly, it's the users, but some pushers can also mend their ways, Your Honor.

JUSTICE CAGUIOA:

Okay, but in general, it's really following what Justice Carpio had mentioned, it's the street-level drug user.

SOLICITOR GENERAL CALIDA:

Well, initially, yes, Your Honor. Because later there was another memorandum circular that expanded this Project Tokhang. And it involves also residential villages, as well as, condominiums, Your Honor.

JUSTICE CAGUIOA:

Focused on users, or pushers?

SOLICITOR GENERAL CALIDA:

Well, the objective is both, Your Honor, actually.

JUSTICE CAGUIOA:

Both.

SOLICITOR GENERAL CALIDA:

Yeah.

⁷ Id. at 52-60.

JUSTICE CAGUIOA:

What circular would that be, if you can tell me?

SOLICITOR GENERAL CALIDA:

Okay, the circular is called "Double Barrel Alpha," Your Honor.

JUSTICE CAGUIOA:

Double Barrel Alpha?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor. This is Command Memorandum Circular No. 01-217, Your Honor, 2017.

JUSTICE CAGUIOA:

Can I ask you to submit that to the Court?

SOLICITOR GENERAL CALIDA:

Yes.

JUSTICE CAGUIOA:

As part of the document that you have been...

SOLICITOR GENERAL CALIDA:

Yes, we will do that in our memorandum.

JUSTICE CAGUIOA:

Alright. I heard you make a distinction between *Tokhang* and legitimate police operations.

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE CAGUIOA:

And therefore, by that I understand Stage 4, therefore means in a Tokhang Operation, Stage 4 means a case build-up against the person that has been visited. Meaning that person you have heard news about but you still do not have proof on, and therefore, you need to build a case against him, is that correct?

SOLICITOR GENERAL CALIDA:

It will be submitted to another drug unit, Your Honor, and they will be the one to validate and conduct additional strengthening of their evidence, Your Honor.

JUSTICE CAGUIOA:

Meaning part and parcel of the monitoring is the collation and the compiling of the evidence can be used against that personality, is that correct?

x x x x

9

JUSTICE CAGUIOA:

And you read earlier upon the interpellations of Justice Martires, a spot report, I'm imagining that's the post-operations report?

SOLICITOR GENERAL CALIDA:

Most likely...

JUSTICE CAGUIOA:

Akin to, because the drug bust did not push through as resulted into death. That's why it's not a post operations report, it's a spot report.

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE CAGUIOA:

But for each of these 25 deaths that happened in San Andres Bukid, they would have all these documentation for the buy-bust operations, correct?

SOLICITOR GENERAL CALIDA:

I supposed [sic] so, Your Honor.

JUSTICE CAGUIOA:

So, on that note, again, focusing only on San Andres Bukid and following the lead of Justice Carpio, can I request the lists, all the reports for each of the 25 people who have claimed to have been killed through a valid police operation?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE CAGUIOA:

As a separate submission, separate from the 3,000 deaths that Justice Carpio had mentioned, I'd like to focus only on the Daño Petition.

SOLICITOR GENERAL CALIDA:

Yes, Your Honor, we will do it.⁸

D. Justice Tijam

JUSTICE TIJAM:

So, when a person who is the subject of a drug operation is arrested or he surrenders, he is definitely frisked by the police for weapons, correct?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

9

⁸ Id. at 80-82, 85-86.

JUSTICE TIJAM:

So, it is correct to state that it is unlikely that a person already in police custody would be armed, correct? If he has been frisked for weapons, it is unlikely that he would be armed.

SOLICITOR GENERAL CALIDA:

Under normal situation, yes, Your Honor, but...

JUSTICE TIJAM:

What could be an abnormal situation in that instance, Mr. Solicitor General? Or better still, what is the procedure when a person arrested dies in police custody or when a suspect dies in a drug operation? What is the procedure there?

SOLICITOR GENERAL CALIDA:

The SOCO will investigate it, Your Honor.

JUSTICE TIJAM:

Is this strictly being followed?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor, and then the body will be autopsied, Your Honor, by the Crime Laboratory...

JUSTICE TIJAM:

The evidence, the firearms allegedly taken from the deceased person, is it preserved?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE TIJAM:

The medico-legal reports and ballistics are being done?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE TIJAM:

Alright. **Are the evidence and reports, as well as the results of PNP investigations available for inspection?**

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE TIJAM:

As in these cases, subject matter of these two petitions?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

9

JUSTICE TIJAM:

Alright. And finally, the PNP circular requires the submission of daily, weekly, and monthly reports on Anti-Illegal Drug Operations, it also requires an assessment and evaluation by a PNP Oversight Committee on the implementation of the circular and the establishment of a database for the reports submitted. Were these reports duly submitted to the best of your knowledge?

SOLICITOR GENERAL CALIDA:

I think so, Your Honor.

JUSTICE TIJAM:

Are periodic assessments being made by the PNP Oversight Committee?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE TIJAM:

Was the PNP database established that this matter that should be brought to the attention of the court? Can you make these reports and contents of the database available for inspection or production?

SOLICITOR GENERAL CALIDA:

I was informed there is a database on that, Your Honor.⁹

E. Justice Leonen

JUSTICE LEONEN:

Okay. Now, going to another point, I mentioned that, am I correct or is my interpretation correct that you did say that the war on drugs is only focused on shabu, or is that inaccurate on my part to understand you are having...

SOLICITOR GENERAL CALIDA:

No, Your Honor, drugs, illegal drugs, there are many illegal drugs, Your Honor.

JUSTICE LEONEN:

And you have said that this focus seems to be on shabu, only because it is something which is prevalent among many.

SOLICITOR GENERAL CALIDA:

It is the drug of choice among the addicts, Your Honor.

JUSTICE LEONEN:

Yes, but that doesn't mean that you are not going after let us say, marijuana, correct? Marijuana users and pushers.

SOLICITOR GENERAL CALIDA:

All illegal drugs, Your Honor...

⁹ Id. at 91-94.

JUSTICE LEONEN:

Okay.

SOLICITOR GENERAL CALIDA:

...should be...

JUSTICE LEONEN:

That includes also cocaine?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE LEONEN:

Yes. Has there been...

SOLICITOR GENERAL CALIDA:

Even the ecstasy drugs, Your Honor.

JUSTICE LEONEN:

Okay. Has there been any individual that has been killed in police operations involving cocaine?

SOLICITOR GENERAL CALIDA:

I don't have any information yet, but I'm not ruling it out, Your Honor.

JUSTICE LEONEN:

Yes. When you submit the statistics, as requested by Justice Carpio, would you be so kind enough to distinguish the kind of drugs that are involved so that we know?

SOLICITOR GENERAL CALIDA:

Definitely, Your Honor.

JUSTICE LEONEN:

Yes. Are you also focused on opioids, which is the drug of choice in developed countries like the United States, I heard?

SOLICITOR GENERAL CALIDA:

Well, we have the law, Your Honor, it lists all the dangerous drugs there.

JUSTICE LEONEN:

Okay, so, there are Tokhang Operations also with respect to opioid users or only shabu?

SOLICITOR GENERAL CALIDA:

Well, I think that is not the drug of choice in the Philippines, Your Honor.

JUSTICE LEONEN:

Yes, but there are opioid users in the Philippines, correct?

SOLICITOR GENERAL CALIDA:

Maybe, Your Honor, but I don't know.

9

JUSTICE LEONEN:

Oxycontin, fentanyl, and even heroin, correct? That's opioids, correct?

SOLICITOR GENERAL CALIDA:

Frankly speaking, Your Honor, I do not know the correct terminology of that, Your Honor.

JUSTICE LEONEN:

Again, probably you can break it down for the Court and specifically for my information when you submit the statistics. You see because they always say that the current war on drugs is anti-poor. Not simply because it is incidentally, anti-poor, but the focus seems to be of the policemen, as mentioned by some of my colleagues, on the low-lying fruits, the retail part. That most of the police are actually focused on only those that are in the streets rather than in the manufacturing. I suppose you do not agree with that observation.

SOLICITOR GENERAL CALIDA:

Well, there were drug labs that were dismantled by the operatives, Your Honor. We have one in Catanduanes, another one in Pampanga, Your Honor...

JUSTICE LEONEN:

Okay.

SOLICITOR GENERAL CALIDA:

...so, they are not exempt to the operations of the police on war on drugs, Your Honor.

JUSTICE LEONEN:

Okay. That there are thousands upon thousands of people who are killed, okay, either not in police operations found on the side of the road, etcetera, would you say that we are now suffering a crime wave, consisting of a lot of murders? Because you mentioned there were, I think 4,000, that were not parts of police operations, but there are reportedly 4,000 or more that have been killed, not involving the police. So, would you say that we are now in a crime wave?

SOLICITOR GENERAL CALIDA:

I'm not an expert on that, Your Honor.

JUSTICE LEONEN:

But the 4,000 murders within a period of one year, don't you think that that is something that we should worry about? Regardless of who these people are that there are with impunity, so many people that are killed. And that the police, of course, might be investigating them, but it worries, of course, everybody that there is such a breakdown in law and order.

SOLICITOR GENERAL CALIDA:

There is a nexus or connection between the prevalence of drugs and these index crimes, Your Honor.

JUSTICE LEONEN:

But the numbers shot up after, it went up after 2016, July, am I not correct?

9

SOLICITOR GENERAL CALIDA:

Because then, Your Honor, before the Duterte administration, some of the police officers and generals were in cahoots with the drug lords, Your Honor.

JUSTICE LEONEN:

Okay, which makes me to my next point I'm glad you admitted that. **So, there are presently, you have identified or has the administration identified the persons who are corrupt within the police organization. Have you identified all of those who are corrupt within the police organization?**

SOLICITOR GENERAL CALIDA:

Personally no, Your Honor, not...

JUSTICE LEONEN:

No, I mean has the police?

SOLICITOR GENERAL CALIDA:

Your Honor, I have here a comparative statistics on the eight focus crimes or the index crimes.

JUSTICE LEONEN:

Let us look at murder...

SOLICITOR GENERAL CALIDA:

Would you like me to...

JUSTICE LEONEN:

Yes, can you just submit to us the comparative tables so I will know whether the impression is correct or wrong? Thank you.

SOLICITOR GENERAL CALIDA:

We will, Your Honor.

JUSTICE LEONEN:

Yes. Now, let's go to cleansing operations of the police. So, you mentioned that there are policemen that were in cahoots with the drug pushers and the drug syndicates, am I not correct?

SOLICITOR GENERAL CALIDA:

When I said that, Your Honor, in the context of, prior to, the Duterte administration, there were high-ranking police officials linked to illegal drugs, Your Honor.

JUSTICE LEONEN:

As a matter of fact, the CMC, that Order that is in question now, has a portion in cleansing operations within the police, am I not correct?

SOLICITOR GENERAL CALIDA:

I think that is a perpetual...

JUSTICE LEONEN:

That is perpetually a concern of the police.

SOLICITOR GENERAL CALIDA:

...a concern of the police, Your Honor, wherever, you know, not only in the Philippines, but in other countries, Your Honor.

JUSTICE LEONEN:

Can you inform the Court now, at what stage are those cleansing operations at? Have you been able to identify all the police that are involved in illegal drugs?

SOLICITOR GENERAL CALIDA:

Me, Your Honor? I don't know, Your Honor.

JUSTICE LEONEN:

Has the government been able to identify all the policemen, substantially all the police that are involved in illegal drugs?

SOLICITOR GENERAL CALIDA:

Well, in this CMC 16-2016, Your Honor, in page 7, there is here a provision on PNP Internal Cleansing, Your Honor.

JUSTICE LEONEN:

Yes, that was what I mentioned.

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE LEONEN:

Now, I'm asking whether that program, as part of the order, because I'm sure that Tokhang took off quite aggressively. I'm a bit sure that perhaps the second barrel also took off, but there is this other program on internal cleansing.

SOLICITOR GENERAL CALIDA:

Yes.

JUSTICE LEONEN:

We would like to know the progress of the police in terms of being able to cleanse their own ranks. Would you have the statistics, Mr. SolGen?

SOLICITOR GENERAL CALIDA:

I think... there are, I believe statistics on this specially there is a PNP Internal Affairs Unit investigating all of these scalawags, Your Honor.

JUSTICE LEONEN:

Okay, would you hazard a guess, what is the percentage of the police force that is involved in these cleansing operations? In other words, what percentage of the police force would be the target of these cleansing operations?

SOLICITOR GENERAL CALIDA:

May I refer to a resource person, Your Honor?

9

JUSTICE LEONEN:

Just a rough estimate and then probably you can just submit the...

SOLICITOR GENERAL CALIDA:

I cannot hazard a guess, Your Honor.

JUSTICE LEONEN:

Yes, kindly consult.

(Solicitor General consulting with resource person.)

SOLICITOR GENERAL CALIDA:

According to the information relayed to me, there are about 1,000 police personalities.

JUSTICE LEONEN:

Okay, and this involved...

SOLICITOR GENERAL CALIDA:

Point twenty five percent (.25%), Your Honor.

JUSTICE LEONEN:

Yes, it involves people who are high ranking as well as the ordinary PO1 police.

SOLICITOR GENERAL CALIDA:

I believe so, Your Honor.

JUSTICE LEONEN:

Yes, but you know, even just point something percent, is worrisome because police who are involved are the worst kinds of individuals because it produces mistrust on the entire organization. For so long as they will have victims, am I not correct?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor, that's why this is included in the CMC 16-2016, the Internal Cleansing, Your Honor.¹⁰

F. Justice Reyes, Jr.

JUSTICE REYES, JR.:

Some questions, how many barrios were...did you implement the *Tokhang*?

SOLICITOR GENERAL CALIDA:

Referring to barangays, Your Honor?

JUSTICE REYES, JR.:

Barangays, yes.

SOLICITOR GENERAL CALIDA:

About 42,000 in the Philippines, Your Honor.

¹⁰ Id. at 98-106.

9

JUSTICE REYES, JR.:

In those 42,000 barrios, how much do they comprise the population, 60%, 70%?

SOLICITOR GENERAL CALIDA:

Your Honor, may I read this Barangay Drug Clearing. As of October 17, 2017, this came from the PDEA...PNP, Your Honor. Total number of barangays all over the Philippines is 42,036; total number of drug-unaffected barangays is 12,259; total number of drug affected barangays is 29,777; the number of cleared barangays through the barangay anti-drug council, Your Honor, is 15,483. The PDEA...number of cleared barangays currently is 5,561.

JUSTICE REYES, JR.:

Thank you. **My question really is about, how many residents are those in those barangays, the 42,000 barangays. How many...how much percent of the population resides in those barangays? Maybe it's not available.**

SOLICITOR GENERAL CALIDA:

I don't have it right now, Your Honor.

JUSTICE REYES, JR.:

Yes, another question, my last question is, **how many surrendered under this Operation Tokhang?**

SOLICITOR GENERAL CALIDA:

It's 1.2 million plus, Your Honor.

JUSTICE REYES, JR.:

Of the 1.2 million surrenderees or those who have confessed that they are drug addicts, are there measures being done by the PNP or the PDEA to address their reverting back to drug addiction or going back to the life of a drug addict or drug pusher?

SOLICITOR GENERAL CALIDA:

Well, some of them were referred to rehabilitation centers but unfortunately because of their number, Your Honor, the unprecedented number, we have only a few rehab centers so many of them went back to their communities, Your Honor.

JUSTICE REYES, JR.:

I just do hope that you have a database so that you can monitor their life later on because we do want them to become better members of our society.¹¹

G. Justice De Castro**JUSTICE DE CASTRO:**

Question, I would just like to ask you to submit the references mentioned in the CMC No. 16-2016. There are twelve references, twelve items under references in this CMC except for the...(interrupted)

¹¹ Id. at 98-106.

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE DE CASTRO:

...except for Republic Act 9165, will you provide us copies of ... from A to K? These are executive issuances, which we need to look into to be able to understand better...(interrupted)

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE DE CASTRO:

...this circular and how it is being implemented.

SOLICITOR GENERAL CALIDA:

We will submit it, Your Honor, in our memorandum also.¹²

H. Chief Justice Sereno

CHIEF JUSTICE SERENO:

Can you ask one of your...the representative of the IAS and General Bato to answer the question. **Why is there a seeming change of pattern? Why are drug operations that are usually fatal are occurring at these times at dawn?** Can you please request them to come to the podium.

SOLICITOR GENERAL CALIDA:

Well, their answer is my answer, Your Honor. I speak for them, I'm the lawyer of the PNP.

CHIEF JUSTICE SERENO:

They are requested here to be resource persons; please let them answer. Director Marquez, please, approach the podium.

(At this juncture, Director Marquez approached the podium.)

DIRECTOR MARQUEZ:

Your Honor, I'm Police Director Augusto Marquez, Jr., the Director for Investigation of the PNP. In the reports that we receive from all over the country, the operations conducted against illegal drugs are actually done at night and at day time. But in areas where there are plenty of people, most of these cases are done at night.

CHIEF JUSTICE SERENO:

Now, many of the testimonies that have accompan[ie]d the complaints regarding th[ese] dawn raids, past midnight raids say that the residents are already all sleeping. So what do you have to say with that because that's the common answer and statement that we keep on reading now?

DIRECTOR MARQUEZ:

The operations, Your Honor, against high-value target and those who are pushers are done in several ways. One is, of course, buy-bust operation;

¹² Id. at 119-121.

9

another one is by implementation or service of search warrant. And in the implementation of search warrants, normally police operations are conducted early in the morning because...to surprise the subject and that operation will be more positive.

CHIEF JUSTICE SERENO:

Are small-time peddlers high-value targets?

DIRECTOR MARQUEZ:

I mean those who are not...who are not users only. Because we have separate operation[s] for users and separate operations against those pushers.

CHIEF JUSTICE SERENO:

Okay, separate operations for pushers, these are sometimes small-time peddlers, are they high-value targets?

DIRECTOR MARQUEZ:

We consider high-value targets, Your Honor, these are the top level of pushers so...(interrupted)

CHIEF JUSTICE SERENO:

Top level meaning what, Director Marquez? What will qualify to be a top level target?

DIRECTOR MARQUEZ:

May I ask... (interrupted)

CHIEF JUSTICE SERENO:

Yes, please, those who are involved in the operations, can you request them to come?

(Director Marquez confers with the other resource persons.)

DIRECTOR MARQUEZ:

Your Honor, high-value targets, it says here, "...play a vital role in the manufacturing and the bulk distribution of dangerous drugs, therefore, their arrest will certainly break the supply chain of illicit drug activities. Classification of high-value targets, target-listed personalities; No. 2, Wanted listed personalities, those who have warrants of arrest...(interrupted)

CHIEF JUSTICE SERENO:

Those who?

DIRECTOR MARQUEZ:

...have warrants of arrest, subject of warrants of arrest; leader or members of drug groups, foreign nationals, members of African drug syndicates; six, members of armed groups; seven, government officials and employees; eight, celebrities and other well-known personalities; nine, personalities arrested in high impact operations; and ten, other high value targets.

CHIEF JUSTICE SERENO:

So small time peddlers, where do they fall under your categorization? Can they be possibly high-value target so that you could conduct operations at 2:00 a.m.?

DIRECTOR MARQUEZ:

Street peddlers, Your Honor, are not listed in these high-value target; but as what the Solicitor said, they operate at night.

CHIEF JUSTICE SERENO:

So you already have important information sufficient for you to conduct an operation. You have information that can already serve sufficient basis for a warrant of arrest. Why do you not get warrants of arrest?

DIRECTOR MARQUEZ:

Actually, Your Honor, the practice in the field is that even if they have already have the warrant of arrest, they still conduct buy-bust operation if only to prove that they are indeed pushers.

CHIEF JUSTICE SERENO:

For all of those where you conducted operations in, were these enabled by warrants of arrest?

DIRECTOR MARQUEZ:

Those that we can, by chance for example, or if we have the opportunity or ready to implement or serve the warrants of arrest, that's what we also do.

CHIEF JUSTICE SERENO:

But you already are conducting a quite complicated operation, you cordon off an area, you bring in one or two or in fact eight units. That means that you can actually secure a warrant of arrest. Why do you not go through that as a matter of procedure?

DIRECTOR MARQUEZ:

We have, Your Honor, operations that were conducted in that manner.

CHIEF JUSTICE SERENO:

What percentage of your operations were conducted in that manner?

DIRECTOR MARQUEZ:

Right now, ma'am, I don't have the data but we can definitely produce...(Interrupted)

CHIEF JUSTICE SERENO:

Can you produce that list for us because what is happening right now is that there are allegations, I do not know if there is any basis for those allegations, that these are really conducted at 2:00 a.m. with a specific intention to neutralize in whatever way you want to call it. And we have to come to the point where we will really understand what the anti-drug war operations consist of. Is there already a change of procedure that you have already conducted, that you have many operations like this in poor communities that end in a lot of deaths? And do you automatically conduct investigations, as we had been requesting before on any death that is resulting from an operation...from a police operation?

DIRECTOR MARQUEZ:

Yes, Your Honor, in fact, right after an operation ends, discharge of firearms is observed or this result to death, this is automatically investigated by our internal affairs.

9

CHIEF JUSTICE SERENO:

So, we will be requiring the PNP, IAS, to submit a list of all investigations that it is conducting, whether those conducted under a legitimate “police operation” or a death under investigation, we will expect that?

DIRECTOR MARQUEZ:

Yes, Your Honor, we will do that.¹³

x x x x

CHIEF JUSTICE SERENO:

Okay. Now in relation to this I would like to find out, is the drug watch lists that is being generated by the PNP, is it a confidential list?

SOLICITOR GENERAL CALIDA:

It must be confidential, Your Honor, because if it is published, we cannot be able to catch the drug lords and the drug peddlers, Your Honor.

CHIEF JUSTICE SERENO:

Is it subject to the freedom of information of our citizens?

SOLICITOR GENERAL CALIDA:

Come again, Your Honor?

CHIEF JUSTICE SERENO:

Is the freedom of information guaranteed by the Constitution, does it impact the drug war lists?

SOLICITOR GENERAL CALIDA:

There are certain matters that cannot be divulged like secrets, top secrets, Your Honor.

CHIEF JUSTICE SERENO:

Is it top secret? Are these lists top secrets?

SOLICITOR GENERAL CALIDA:

For the PNP, yes, Your Honor. This is top secret, we cannot divulge the intelligence information, Your Honor.

CHIEF JUSTICE SERENO:

So, these are just intelligence reports? The PNP does not act on these or the PNP act on these?

SOLICITOR GENERAL CALIDA:

They are acting on it, Your Honor.

CHIEF JUSTICE SERENO:

In what way are these lists being acted on?

¹³ Id. at 126-130.

9

SOLICITOR GENERAL CALIDA:

Well, they have their own operational guidelines, Your Honor, and they are doing their jobs as police officers, Your Honor.

CHIEF JUSTICE SERENO:

Can we have the PNP submit the drug watch lists or in the communities that are mentioned in the petitions?

SOLICITOR GENERAL CALIDA:

We will study that carefully, Your Honor, before I commit to anything.

CHIEF JUSTICE SERENO:

Including the status of those who are in the lists whether they have been arrested, they have surrendered, or they have been killed. Can you do that, Mr. Solicitor General, please?

SOLICITOR GENERAL CALIDA:

We will assess our position, Your Honor, before we comply.

CHIEF JUSTICE SERENO:

Okay. Now, can you describe again a process to which a private individual request to be removed from that drug war list?

SOLICITOR GENERAL CALIDA:

Well, there is a process now, Your Honor, if a person believes that he's on the drug list, he can go to the police station and ask if his name is there.

CHIEF JUSTICE SERENO:

I think one of the petitioner[s] said that they attempted but it was futile, there is nothing in the system that allows for the removal?

SOLICITOR GENERAL CALIDA:

That's what I said, there are certain matters that are secret, top secret...

CHIEF JUSTICE SERENO:

So...

SOLICITOR GENERAL CALIDA:

... we cannot compromise the operation by divulging it to the public, Your Honor.

CHIEF JUSTICE SERENO:

... is the lists subject to habeas data petition?

[SOLICITOR GENERAL CALIDA]:

The list, Your Honor?

CHIEF JUSTICE SERENO:

Yes, if someone believes that he is in the list, can he file a petition for the writ of habeas data? So that the police can inform him whether he is in the list or not and he can take protective measures to protect himself?

9

SOLICITOR GENERAL CALIDA:

We will invoke national security, Your Honor.

CHIEF JUSTICE SERENO:

So, the drug war list is a matter of national security and no one can fully know whether he is in the lists?

SOLICITOR GENERAL CALIDA:

Well, if the police will...

CHIEF JUSTICE SERENO:

Can there be just confirmation, "yes" or "no"? Can someone write a letter to the PNP: Please confirm if I am or I am not in the list. Can that be done?

SOLICITOR GENERAL CALIDA:

Well, he can write, Your Honor.

CHIEF JUSTICE SERENO:

And then what will happen to that writing?

SOLICITOR GENERAL CALIDA:

Well, if he is not in the lists, the police will say, "no you're not in the lists."

CHIEF JUSTICE SERENO:

So is that a guarantee that is the process that the police will follow?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

CHIEF JUSTICE SERENO:

And if he's on the list, what will the police say?

SOLICITOR GENERAL CALIDA:

Well, that's another thing, Your Honor.

CHIEF JUSTICE SERENO:

Which is? What is the other thing?

SOLICITOR GENERAL CALIDA:

May we, they are still validating the intelligence information, so we cannot divulge it, Your Honor.

CHIEF JUSTICE SERENO:

Is it the same things as a notice or a sign saying: "This is a drug-free house," when there is a *barangay* or the LGUs says, "we declare this as drug-free house." Is that the same thing?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor, there are pronouncements that certain *barangays* that are drug-free.

CHIEF JUSTICE SERENO:

No houses, where LGU projects that are designed to pronounce houses, the residents in certain houses as drug-free?

SOLICITOR GENERAL CALIDA:

We cannot say that, Your Honor, because we don't know whose [sic] residing in the houses, especially in the *barangays*.

CHIEF JUSTICE SERENO:

Okay. So, the implication of a non-answer from the police, can the police, can anyone already presume that he is in the lists?

SOLICITOR GENERAL CALIDA:

Well, ah...

CHIEF JUSTICE SERENO:

Under the Code of Public Ethics and Accountability, if a citizen writes, a public official, that public official has 15 days to respond. If no answer is forthcoming within 15 days, can that citizen presume that he is in the drug lists?

SOLICITOR GENERAL CALIDA:

There will be a response to it, Your Honor, but I cannot predict what will be the response, Your Honor.

CHIEF JUSTICE SERENO:

Okay. So, kindly please describe in detail the process through which private individuals can request that they be removed from the drug watch lists or have a confirmation of whether they're "in" or "not" in the lists?

SOLICITOR GENERAL CALIDA:

We will discuss that in our Memorandum, Your Honor.

CHIEF JUSTICE SERENO:

Discuss it in your Memo.

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

CHIEF JUSTICE SERENO:

Now, is this drug watch list, is that the one that finally is generated and given to the President? Is that the one that President says, which he has been brandishing on T.V. As, "This is my list." Is that related, the neighborhood drug war lists and the President's lists, are they related?

SOLICITOR GENERAL CALIDA:

The President's lists is [sic] different, Your Honor.

CHIEF JUSTICE SERENO:

So, it is not generated from the *barangays*?

SOLICITOR GENERAL CALIDA:

No, Your Honor.

CHIEF JUSTICE SERENO:

Where is it generated from?

SOLICITOR GENERAL CALIDA:

From other intelligence sources, Your Honor.

CHIEF JUSTICE SERENO:

That only the President knows?

SOLICITOR GENERAL CALIDA:

He has shown it to top officials, Your Honor.

CHIEF JUSTICE SERENO:

Can this be subject to a habeas data petition?

SOLICITOR GENERAL CALIDA:

No, Your Honor.

CHIEF JUSTICE SERENO:

Why not, Solicitor General?

SOLICITOR GENERAL CALIDA:

National security, Your Honor.

CHIEF JUSTICE SERENO:

National security reasons, but he has been announcing the names?

SOLICITOR GENERAL CALIDA:

The information pertains to classified law enforcement matters, Your Honor.

CHIEF JUSTICE SERENO:

But if he has been announcing the names, does it become...

SOLICITOR GENERAL CALIDA:

It is an exception to the writ of habeas data...

CHIEF JUSTICE SERENO:

So he says, if I remember right that there are thousands of names there, so he can just pick and choose which name he will announce?

SOLICITOR GENERAL CALIDA:

Come again, Your Honor.

CHIEF JUSTICE SERENO:

So, only the President can pick and choose which name he will announce?

SOLICITOR GENERAL CALIDA:

Well, he has the discretion whether to divulge it or not but he cannot be compelled by a writ of habeas data, Your Honor.

CHIEF JUSTICE SERENO:

So, you are now saying again, the President cannot be required to release the lists neither can he be compelled to identify where the lists comes from or how it is generated?

9

SOLICITOR GENERAL CALIDA:

Well, in *Chavez vs. PCGG*, Your Honor, that's the rule of the Honorable Court, Your Honor.

CHIEF JUSTICE SERENO:

Which is?

SOLICITOR GENERAL CALIDA:

If the information requested, it pertains to classified to law enforcement matters, such as those relating to apprehension, prosecution and detention of criminals, these courts may not inquire into prior to such arrests, detention and prosecution. This is one of the governmental secrets that should not be divulged, Your Honor.

CHIEF JUSTICE SERENO:

So, the President then can choose which names in the lists to publish?

SOLICITOR GENERAL CALIDA:

That is his discretion, Your Honor.

CHIEF JUSTICE SERENO:

And he cannot be sued in any capacity?

SOLICITOR GENERAL CALIDA:

No, Your Honor.

CHIEF JUSTICE SERENO:

To find out the basis of that lists?

SOLICITOR GENERAL CALIDA:

Definitely not, Your Honor.¹⁴

I. Reiteration by Justices Carpio and Caguioa**JUSTICE CARPIO:**

I [sic] just repeat, on those who were killed in supposedly legitimate police drug operations from July 1, 2016 to November 30, 2017, please submit the following:

1. Names, addresses, gender, ages of those killed;
2. Place, date and time of drug operations;
3. Names of PNP team leader and team members who participated in the operation;
4. The pre-operation plan;
5. The post-operation reports;
6. Whether search warrants or warrants of arrest were issued; and
7. The names of representatives of media, NGOs and barangay officials who were present during the operation.

¹⁴ Id. at 121-122.

Now, on those who were killed under the so-called “deaths under investigation,” so from July 1, 2016 to November 30, 2017, we require the following:

1. Names, addresses, gender, ages of those killed;
2. Date, time and place of the killing;
3. Names of the so-called [sic] team leader and members who investigated the killing;
4. Investigation reports; and
5. Whether the charges have been filed against the suspects.

Thank you, that’s all.

SOLICITOR GENERAL CALIDA:

Can I be excused now, Your Honor?

CHIEF JUSTICE SERENO:

Justice Caguioa, please, just one matter.

JUSTICE CAGUIOA:

Can I just add that, I also request that some reports from the Solicitor General specific reference to the place of subject matter of the Daño petition namely: the lists of all the buy-bust operations that were conducted in San Andres Bukid from the beginning of Operation *Tokhang* to the present, as well as, all the operation reports, pre-operation and post-operation reports for the 25 buy-bust situations that resulted in the deaths of 25 residents of San Andres Bukid. Thank you.¹⁵

Given the quoted portions of the transcripts, the actual requested data and documents are as follows:

A. Justice Carpio

1. List of Chinese and Filipino-Chinese drug lords who have been arrested, as well as their participation and the charges filed against them; and
2. List of the persons who were killed in supposedly legitimate police operations from 1 July 2016 to 30 November 2017. The list should consist of:
 - a. Names, addresses, gender, ages of those killed;
 - b. Place, date, and time of the drug operation;
 - c. Names of the Philippine National Police (PNP) team leader and members in charge of the investigation;
 - d. Pre-operation plan;
 - e. Post-operation report;
 - f. Whether search warrants and/or warrants of arrest were issued; and

¹⁵ Id. at 142-143.

- g. Names of the representatives from media, non-government organizations (NGOs), and barangay officials who were present during the operation.
3. List of the persons who were killed under *deaths under investigation* from 1 July 2016 to 30 November 2017. The list should consist of:
 - a. Names, addresses, gender, ages of those killed under *deaths under investigation*;
 - b. Date, time, and place of the killing;
 - c. Names of the Scene of the Crime Operative (SOCO) team leader and members in charge of the investigation;
 - d. Investigation reports; and
 - e. Whether charges have been filed against the suspects.

B. Justice Martires

1. On the *Almora* Petition
 - a. Whether shabu had been recovered;
 - b. Poseur buyer and boodle money;
 - c. Spot report;
 - d. Kind of weighing scale used; and
 - e. Contact person between Almora and the police officers.
2. On the *Aparri* Petition
 - a. Amount of drugs;
 - b. Incident report;
 - c. Contact person between Aparri and the police officers; and
 - d. Justification for eight different units of the PNP.

C. Justice Caguioa

1. Copy of Double Barrel Alpha, or Command Memorandum Circular No. 01-2017; and
2. Reports for each of the 25 San Andres Bukid cases [Daño petition]: The data should include:
 - a. Lists of all buy-bust operations that were conducted in San Andres Bukid from the beginning of Operation Tokhang to the present; and
 - b. All operation reports, pre-operation reports, and post-operation reports for the 25 buy-bust situations that resulted in the deaths of 25 residents of San Andres Bukid.

D. Justice Tijam

1. Daily, weekly, and monthly reports submitted to the PNP Anti-Illegal Drugs Group;
2. Assessment and evaluation reports made by the PNP Oversight Committee; and
3. Contents of the PNP database related to Project Tokhang.

E. Justice Leonen

1. Inclusion of kind of drugs involved in A2 and A3 [list requested by Justice Carpio];
2. Comparative statistics on the eight focus crimes or index crimes [volunteered by Solicitor General Calida]; and
3. Identification of policemen involved in illegal drugs, and statistics, including percentage, of internal cleansing of the police.

F. Justice Reyes, Jr.

1. Database of the 1.2 million surrenderees under Operation *Tokhang* and the measures undertaken for their rehabilitation.

G. Justice Leonardo-De Castro

1. Copies of the references mentioned in CMC-16-2016
 - a. Pronouncement of President Rodrigo R. Duterte to get rid of illegal drugs during the first six months of his term;
 - b. Memorandum Circular (MC) No. 89 entitled "Implementation and Institutionalization of the National Anti-Drug Plan of Action" dated December 17, 2015;
 - c. NAPOLCOM Resolution No. 2015-547, creating the PNP Anti-Illegal Drugs Group dated October 30, 2015;
 - d. DILG MC No. 2015-63, "Revitalization of the Barangay Anti-Drug Abuse Council (BADAC) and Their Role in Drug Clearing Operations," dated August 20, 2015;
 - e. PNP Manual on Illegal Drugs Operation and Investigation dated September 2014;
 - f. US International Drug Control Strategy Report for 2012;
 - g. Letter of Instruction (L01) "Kontra Droga Charlie" dated July 2, 2012;
 - h. PDEA and DDB Guidelines and Operational Policies;

- i. NAPOLCOM MC No. 2009-01 re One Strike Policy on Illegal Drugs dated March 28, 2009; and
- j. Dangerous Drugs Board (DDB) Regulation No. 2, Series of 2007, Revised Guidelines in the Conduct of Barangay Drug Clearing Operations dated June 6, 2007.

H. Chief Justice Sereno

1. Percentage of operations conducted by securing a warrant of arrest;
2. List of all investigations being conducted, whether under a legitimate police operation or a *death under investigation*;
3. Drug watchlist in the communities mentioned in the present petitions, including the status of those who are in the lists, whether they have been arrested, they have surrendered, or they have been killed; and
4. Detailed description of the process of removal from the Operation Tokhang watchlist.

The OSG **has no intention** of submitting before this Court any of the information and documents requested by Members of this Court. The OSG instead preferred to formalize its **wholesale and generic refusal to submit the required information and documents** of Justices Carpio, Martires, Caguioa, Tijam, Leonen, Reyes, Jr., Leonardo-De Castro, and Chief Justice Sereno. In its presentation of an incomplete enumeration of the required information and documents, the OSG effectively ignored the request of Justice Leonardo-De Castro. **The OSG categorized Justice Leonardo-De Castro's request for the references mentioned in CMC 16-2016, as well as Justice Caguioa's request for an official copy of PNP's Double Barrel Alpha, or Command Memorandum Circular No. 01-2017, among this Court's "unwarranted factual inquiries."**

The OSG underscored its adamant refusal of this Court's requirement when it concluded its Motion for Reconsideration by stating:

At bottom, the respondents have no intention of disregarding or defying the Honorable Court's order by filing this motion for reconsideration. On the contrary, they filed the motion to strengthen the rule of law and prevent an abuse of judicial processes. By recalling the Order, the Court will not have to evaluate the evidence to [be] presented by the respondents: it will not be unduly forced to sift through facts that are not even relevant to the resolution of the constitutionality of the assailed issuances.¹⁶

¹⁶ *Rollo*, Vol. II (G.R. No. 234484), p. 707.

Apart from its arrogation to itself the determination of relevant facts, the OSG asked for an exception to the application of the Constitution **without even providing any sound legal basis.**

***The Powers of the Supreme Court
and Constitutional Rights***

In the face of the OSG's weak and belated protestations, there should be no question that this Court has the **inherent power** to require the production of the requested information and documents. Various sections in Article VIII of the Constitution provide for the powers and duties of the Judiciary, and specifically, that of the Supreme Court.

The Supreme Court *en banc* is expressly mandated, under Section 4(2), Article VIII of the 1987 Constitution, to hear cases involving the “constitutionality, **application or operation of** presidential decrees, proclamations, orders, instructions, ordinances, and **other regulations.**”¹⁷ In short, there can be no dispute that the Court *en banc* has jurisdiction to hear cases involving **not only the constitutionality, but also the “application or operation,”** of CMC 16-12016 and DILG Memorandum Circular (MC) 2017-112, which both fall under the term “other regulations.”

This Court's Advisory issued on 17 November 2017 made it clear that this Court was interested in (1) the legal basis for the issuance of PNP Command Memorandum Circular (CMC) No. 16-2016 and DILG Memorandum Circular 2017-112; (2) **whether the acts authorized, or conducted under the authority of the PNP's CMC 16-2016, as well as the DILG's MC 2017-112, violate certain constitutional, statutory, and administrative provisions;** and (3) **whether the acts authorized, or conducted under the authority of the PNP's CMC 16-2016, as well as the DILG's MC 2017-112, violate the Philippines' international legal obligations.**¹⁸

¹⁷ Art. VIII, Sec. 4(2).

¹⁸ The following issues were contained in the Advisory dated 17 November 2017:

A. Main Issues in General

1. Whether PNP Command Memorandum Circular (CMC) 16-2016, and DILG Memorandum Circular (MC) 2017-112, are constitutional.

2. Whether the petitions, on their faces, show that the Writ of *Amparo* ought to issue.

B. Sub-Issues

1. Procedural

a. Whether a class suit is proper in *Amparo* proceedings.

b. Whether petitioners have standing to file the instant petitions.

c. Whether the Supreme Court has jurisdiction over the instant petitions.

d. Whether a petition for Prohibition and *Amparo* can be joined in one petition.

e. Whether the petitions are formally defective for want of proper verification and certification against forum shopping.

f. Whether the petitions are sufficient in form and in substance.

Any impartial, bona-fide and genuine judicial review of, or inquiry into, the “**constitutionality, application or operation**” of PNP CMC 16-2016 and the DILG’s MC 2017-112 must logically start, **first and foremost**, with the police reports on the conduct of these drug operations which resulted in the deaths of thousands of citizens. The police reports would show, *facially*, whether the police complied with PNP CMC 16-2016, DILG’s MC 2017-112, and other police regulations governing the arrest of suspects. In these petitions which are original actions for prohibition, injunction, and writ of *amparo*, **the veracity of the facts contained in the police reports is not in issue before this Court**. What is in issue is the existence of the police reports, whether the police reports have been prepared as mandated by regulations, and whether the police reports *facially* show that the “application or operation” of PNP CMC 16-2016, as well as of DILG’s MC 2017-112, adhered to the Constitution, existing laws and regulations. **In short, the faces of these police reports, both pre-operations and post-operations, would show whether the “application or**

2. Substantive

a. Whether PNP Command Memorandum Circular (CMC) 16-2016, and DILG Memorandum Circular (MC) 2017-112, have legal basis for their issuance.

1. Whether the PNP Chief and DILG Secretary are authorized to issue CMC 16-2016 and MC 2017-112, respectively.

2. Whether CMC 16-2016 and DILG MC 2017-112 can be construed as directing the performance of any unlawful act.

b. Whether the acts authorized, or conducted (as alleged in the petitions for Writ of *Amparo* in G.R. Nos. 234359 and 234484), under the authority of the PNP’s CMC 16-2016, as well as the DILG’s MC 2017-112, violate the following constitutional, statutory, and administrative provisions:

1. 1987 Constitution, Art. II, Sec. 11 on the state policy on human rights;

2. 1987 Constitution, Art. III, Sec. 1 on the right to life and liberty;

3. 1987 Constitution, Art. III, Sec. 2 on the right against unreasonable searches and seizures;

4. 1987 Constitution, Art. III, Sec. 12 on the rights of persons under investigation or persons arrested;

5. 1987 Constitution, Art. III, Secs. 14 and 17 on the rights of the accused;

6. Republic Act No. 7438, or the Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and providing penalties for violations thereof;

7. The case law in *People v. Doria* (G.R. No. 125299, 22 January 1999) and other cases which laid down tests to determine whether a buy-bust operation was properly conducted;

8. The case law on “stop and frisk” as laid down in *Malacat v. CA* (G.R. No. 123595, 12 December 1997) and *People v. Chua* (G.R. Nos. 136066-7, 4 February 2003) and other cases adopting *Terry v. Ohio* (392 US 1, 10 June 1968);

9. The Revised Penal Code, Art. 125 on inquest/delivery of detained persons to the proper judicial authorities;

10. Revised Philippine National Police Operational Procedures (PNP-OP), Chapter 3, Rule 15.4 on the submission to the prosecutor for inquest proceedings of incidents of armed confrontation wherein the suspect dies; and

11. Department of Justice (DOJ) Circular No. 61 (21 December 1993) on the duty of the inquest prosecutor to take the initiative of making a procedural investigation whenever a dead body is found and there might be foul play.

c. Whether the acts authorized, or conducted (as alleged in the petitions for Writ of *Amparo* in G.R. Nos. 234359 and 234484), under the authority of the PNP’s CMC 16-2016, as well as the DILG’s MC 2017-112, violate the Philippine’s international legal obligations, such as those found in the International Covenant on Civil and Political Rights (ICCPR) as well as the Minnesota Protocol.

d. Whether petitioners are entitled to the interim reliefs prayed for until the instant petitions are resolved.

operation” of PNP CMC 16-2016, as well as of DILG’s MC 2017-112, was constitutional and in accordance with law and regulations.

This Court also has the power to “promulgate rules concerning the protection and enforcement of constitutional rights.”¹⁹ The Constitutional provisions enumerated in the Advisory are quoted below:

Art. II, Declaration of Principles and State Policies

Sec. 11. The State values the dignity of every human person and guarantees full respect for human rights.

Art. III, Bill of Rights

Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

Sec. 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the

¹⁹ Art. VIII, Sec. 5(5).

absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

Sec. 17. No person shall be compelled to be a witness against himself.

The resolution of the present petitions by this Court, if made with the benefit of a facial perusal of the pre- and post-operations police reports relating to the 20,322 officially confirmed deaths²⁰ in the anti-drug war from July 1, 2016 to November 27, 2017, will allow this Court to perform its constitutional duty to “promulgate rules concerning the protection and enforcement of constitutional rights.” The unusually high number of deaths in the anti-drug war requires a deeper understanding of the “**application or operation**” of PNP CMC 16-12016 and DILG Memorandum Circular (MC) 2017-112 in order to devise a more effective protection, and a more enhanced enforcement, of fundamental constitutional rights.

Apart from these rights, this Court is also mandated to protect and enforce the people’s right to information. Article III, Section 7 states that “[t]he right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions x x x shall be afforded the citizen x x x.” The undeniable fact that thousands of ordinary citizens have been killed, and continue to be killed, during police drug operations certainly is a matter of grave public concern.

There is no doubt that the OSG’s generic and unsubstantiated refusal to submit information prepared in the ordinary course of business as well as documents that are officially issued is **unacceptable** to the members of this Court. It would be the height of absurdity for this Court, with all its powers, to uphold such refusal. If this Court cannot obtain the regularly-prepared information from the OSG as well as from the rest of the respondents, by what other means can ordinary citizens get information about their relatives who were killed during anti-drug operations of the police?

Relevance: The Supreme Court and its “unwarranted factual inquiries”

The OSG’s main argument that this Court has ventured into “unwarranted factual inquiries” holds no water. The OSG’s argument denies this Court its discretion to determine the relevance of the information and documents required.

²⁰ The Duterte Administration Year-End Report: 2017 Key Accomplishments, p. 22; see also footnote 23.

9

The relevance of the required information and documents lies within the discretion of this Court. Section 4, Rule 128 of the Rules of Court provides that “(e)vidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence.” This simply means that relevancy is determinable by the rules of logic and human experience. There is no precise and universal test of relevancy provided by law. However, **the determination of whether particular evidence is relevant rests largely at the discretion of this court**, which must be exercised according to the teachings of logic and everyday experience.²¹ Evidence is relevant if it tends in any reasonable degree to establish the probability or improbability of a fact in issue.

During the oral arguments, the OSG argued that the deaths were pursuant to legitimate police operations. In their Memorandum, the OSG reiterated that “the deaths of suspected drug personalities adverted to by petitioners as deprivation of life were the result of **legitimate police operations** x x x.”²²

Aside from the OSG’s submissions in the present cases, we take judicial notice of the Duterte Administration’s 2017 Yearend Report where deaths in cases related to illegal drugs and the internal cleansing conducted within the Philippine National Police are touted as accomplishments. **The government’s inclusion of these deaths among its other accomplishments may lead to the inference that these are state-sponsored killings.** In the section “Fighting Illegal Drugs,” and subsection “#RealNumbers,” we find the following figures:

79,193
Anti-drug operations conducted | July 1, 2016 to November 27, 2017

118,287
Drug personalities arrested | July 1, 2016 to November 27, 2017

1,308,078
Surrenderers facilitated | July 1, 2016 to July 26, 2017

3,967
Drug personalities who died in anti-drug operations
July 1, 2016 to November 27, 2017

P18.92-billion
Value of seized illegal drugs including drug paraphernalia
July 1, 2016 to November 27, 2017

16,355

²¹ *People of the Philippines v. Galleno*, 353 Phil. 942 (1998).

²² Respondents’ Memorandum, p. 19.

Homicide Cases under Investigation | July 1, 2016 to September 27, 2017

4,747 barangays declared drug-free | as of November 27, 2017²³

In the section “Philippine National Police,” and subsection “PNP Internal Cleansing,” we find the following information:

- Recommended for dismissal from service during the period of **July 2016 to December 2016** is 51, while during the period of **January 2017 to December 2017** is 375. Total of 426.
- Dismissal of two cops involved in the death of 19-year-old Carl Arnaiz. (November 2017)
- Dismissal PCSupt. Edgardo G. Tinio and PDir. Joel Pagdilao due to drug-related charges (5 October 2017)
- The National Capital Region Police Office (NCRPO) relieved **1,000** police personnel of the Caloocan City Police Station in batches to undergo retraining and reorientation at Camp Bagong Diwa in Taguig City on 2 October 2017.
- More than **1,900 drug-related investigations** have been carried out against law enforcers during the period of 1 July 2016 and 15 June 2017.²⁴

Apart from these numbers and their bare allegations, there is nothing else to substantiate the OSG’s claim of legitimate police operations. The lack of any submission of the required information and documents leads this Court to believe that there is no basis to the OSG’s claim. It is hornbook doctrine that bare allegations, unsubstantiated by evidence, are not equivalent to proof, i.e., mere allegations are not evidence.²⁵

The PNP cannot claim the presumption of regularity in official functions because deaths are not supposed to occur during any of their operations. The presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof.²⁶ The presumption also cannot prevail over positive

²³ The Duterte Administration Year-End Report: 2017 Key Accomplishments, p. 22 (Boldface added).

²⁴ *Id.* at 25 (Boldface in the original).

²⁵ *Castillo v. Republic of the Philippines*, G.R. No. 214064, 6 February 2017; *Government Service Insurance System v. Prudential Guarantee and Assurance, Inc.*, 721 Phil. 740 (2013); *Real v. Belo*, 542 Phil. 109, 122 (2007).

²⁶ *People v. Lorena*, 654 Phil. 131 (2011); *People v. Obmiranis*, 594 Phil. 561 (2008).

avermments concerning violations of the constitutional rights of the accused.²⁷

The Duterte Administration’s 2017 Yearend Report states that there were “3,967 drug personalities who died in anti-drug operations (from) July 1, 2016 to November 27, 2017,” and “16,355 homicide cases under Investigation (from) July 1, 2016 to September 27, 2017.” This is a total of 20,322 deaths during the Duterte Administration’s anti-drug war from July 1, 2016 to November 27, 2017, or an average of 39.46 deaths every day. This Court wants to know why so many deaths happened as expressly reported under the section “Fighting Illegal Drugs” of the Duterte’s Administration 2017 Yearend Report.

The PNP’s issuances recognize that observance of procedure is imperative. Under the PNP Operations Manual, the police officers must prepare reports about their operations to serve as a check whether those involved followed proper procedure. On the other hand, CMC 16-2016’s purpose is to set forth the **“general guidelines, procedures and tasks of police officers/units/stations** in the conduct of the Philippine National Police (PNP) Anti-Illegal Drugs Campaign Plan – PROJECT: “DOUBLE BARREL” in support to the Barangay Drug Clearing Strategy of the government and the neutralization of illegal drug personalities nationwide.” There is nothing unusual about the preparation of these reports. In fact, it is the preparation of these reports that should be regular and done in the ordinary course of business.

The OSG quoted this Court’s pronouncement in *David v. Macapagal-Arroyo*:²⁸

[C]ourts are not at liberty to declare statutes invalid **although they may be abused and misabused** and **may afford an opportunity for abuse in the manner of application**. The validity of a statute or ordinance is to be determined from its general purpose and its efficiency to accomplish the end desired, **not from its effects in a particular case.** x x x.

x x x x

Now, may this Court adjudge a law or ordinance unconstitutional on the ground that its implementor committed illegal acts? The answer is no. The criterion by which the validity of the statute or ordinance is to be measured is the essential basis for the exercise of power, **and not a mere incidental result arising from its exertion**. This is logical. Just imagine the absurdity of situations when laws maybe declared unconstitutional just because the officers implementing them have acted arbitrarily. If this were so, judging from the blunders committed by policemen in the cases passed upon by the Court, majority of the provisions of the Revised Penal Code

²⁷ *People v. Cañete*, 433 Phil. 781 (2002).

²⁸ 522 Phil. 705 (2006).

9

would have been declared unconstitutional a long time ago.²⁹ (Emphasis supplied)

However, the OSG made an incomplete presentation of our pronouncements in *David*, and conveniently overlooked our ruling in the same case: we declared **constitutional** *the issuances of the President* (PP 1017 and GO 5), and declared **unconstitutional** *the acts committed under the auspices of these issuances*. Specifically, this Court declared the following acts as unconstitutional:

1. The warrantless arrest of petitioners Randolph S. David and Ronald Llamas;
2. The dispersal of the rallies and warrantless arrest of the KMU and NAFLU-KMU members;
3. The imposition of standards on media or any prior restraint on the press; and
4. The warrantless search of the *Tribune* offices and the whimsical seizures of some articles for publication and other materials.

This Court is inclined to do *no less* in the present case. We further stated:

Other than this declaration of invalidity, this Court cannot impose any civil, criminal or administrative sanctions on the individual police officers concerned. They have not been individually identified and given their day in court. The civil complaints or causes of action and/or relevant criminal Informations have not been presented before this Court. Elementary due process bars this Court from making any specific pronouncement of civil, criminal or administrative liabilities.

It is well to remember that military power is a means to an end and substantive civil rights are ends in themselves. How to give the military the power it needs to protect the Republic without unnecessarily trampling individual rights is one of the eternal balancing tasks of a democratic state. During emergency, governmental action may vary in breadth and intensity from normal times, yet they should not be arbitrary as to unduly restrain our people's liberty.

Perhaps, the vital lesson that we must learn from the theorists who studied the various competing political philosophies is that, it is possible to grant government the authority to cope with crises without surrendering the two vital principles of constitutionalism: **the maintenance of legal limits to arbitrary power, and political responsibility of the government to the governed.**³⁰ (Emphasis supplied)

²⁹ Id. at 795-796.

³⁰ Id. at 810.


Moreover, memorandum circulars are mere administrative rules. Administrative rules cannot prevail over the Constitution, and, in the hierarchy of laws, rank even lower than those of laws and of ordinances. CMC 16-2016 and MC 2-17-112 fall outside the ambit of the protection granted to laws and ordinances in *David*.

To clarify, lest the OSG be confused, the order to produce the information and documents is about the existence of the requested information and documents. This Court would like to determine for itself, through the existence of the requested information and documents, whether the conduct of operations were indeed done in the performance of official functions. Indeed, this Court is not a trier of facts, and it is not within our jurisdiction to determine questions of fact and evaluate the truthfulness of the contents. In ordering the production of the documents, the Court exercises its judicial power to protect and enforce inherent rights.

Contrary to the claim of the Solicitor General, the requested information and documents do not obviously involve state secrets affecting national security. The information and documents relate to routine police operations involving violations of laws against the sale or use of illegal drugs. There is no showing that the country's territorial integrity, national sovereignty, independence, or foreign relations will be compromised or prejudiced by the release of these information and documents to this Court or even to the public. These information and documents do not involve rebellion, invasion, terrorism, espionage, infringement of our sovereignty or sovereign rights by foreign powers, or any military, diplomatic or state secret involving national security. It is simply ridiculous to claim that these information and documents on police operations against drug pushers and users involve national security matters so sensitive that even this Court cannot peruse these information and documents in deciding constitutional issues affecting the fundamental right to life and liberty of thousands of ordinary citizens.

WHEREFORE, the motion for reconsideration filed by the Office of the Solicitor General is **DENIED**. The Office of the Solicitor General is hereby directed to submit legible certified true copies of the required information and documents within fifteen (15) days from receipt of this Resolution." Sereno, C.J., on leave. Perlas-Bernabe and Reyes, Jr., J.J., on wellness leave. (adv 30)

Very truly yours,


EDGAR O. ARICHETA
Clerk of Court *mcbmc*

ATTYS. JOSE MANUEL I. DIOKNO, PABLITO V. SANIDAD, ARNO V. SANIDAD, ALEXANDER PADILLA, PABLITO E. SANIDAD II & FELIX J. MARIÑAS, JR. (x)
Free Legal Assistance Group
Counsel for Petitioners in G.R. No. 234359
c/o Sanidad Law Office
77 Malakas Street
Brgy. Pinyahan, Quezon City

ATTYS. RUIZ BUTUYAN, ROGER R. RAYEL, GILBERT TERUEL ANDRES, GEEPEE A. GONZALES, ETHEL C. AVISADO, ZHARMAI C. GARCIA, CRISTINA I. ANTONIO, GIL ANTHONY E. AQUINO, CRISPIN FRANCIS M. JANDUSAY and KIMBERLY ANNE M. LORENZO (x)
Counsel for Petitioners in G.R. No. 234484
Center for International Law Philippines
1105 Antel Corporate Center
121 Valero Street, Salcedo Village
Makati City 1227

ATTY. ROGELIO CASURAO (x)
Chairperson
National Police Commission
Napolcom Bldg., Edsa-Quezon Avenue
Footbridge, Quezon City

ATTY. ALFEGAR TRIAMBULO (x)
PNP Internal Affairs Service
PNP Headquarters, Colonel Delgado St.
Quezon City 111

PO2 RHAFEL RODRIGUEZ (x)
PO2 PRINCETON FELIA (x)
PO1 HARRY ALLAN R. CRUZ (x)
PO1 KENNITH A. GAA (x)
PO1 EFREN G. GUITERING (x)
PO2 JOCELYN M. SAMSON (x)
PO3 ALLAN ESCRAMOSA (x)
PO2 FRANCISCO MENDOZA (x)
PO2 ROESTRELL OCAMPO (x)
PO3 RODOLFO OCAMPO, JR. (x)
PSI CONCORCIO PANGILINAN (x)
Police Officer known as ALIAS "HARRY" (x)
Police Officer known as ALIAS "JR" (x)
Police Officer known as ALIAS "IVAN" (x)
Police Officers JOHN AND JANE DOES (x)
c/o Manila Police District (MDP) Police Station 6
Sta Ana, Manila

~~PUBLIC INFORMATION OFFICE (x)~~
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-1-SC]

G.R. Nos. 234359 & 234484
kat 4/3/18 (URes30) 4/6/18

Sol. Gen. JOSE C. CALIDA (x)
Asst. Sol. Gen. RENAN E. RAMOS (x)
ASG REX BERNARDO L. PASCUAL (x)
ASG MA. CIELO SE-RONDAIN (x)
ASG MYRNA N. AGNO-CANUTO (x)
ASG MARISSA MACARAIG-GUILLEN (x)
ASG HENRY S. ANGELES (x)
134 Amorsolo St., Legaspi Village
Makati City

DIRECTOR GENERAL RONALD DE LA ROSA (x)
Chief, Philippine National Police
Philippine National Police Headquarters
Camp Crame, Quezon City

HON. CATALINO CUY (x)
Officer-in-Charge
Department of Interior and Local Government (DILG)
DILG NAPOLCOM Center
EDSA corner Quezon Avenue, Quezon City

POLICE SENIOR SUPERINTENDENT JOEL NAPOLEON M. CORONEL (x)
District Director of the Manila Police District (MPD)
MPD Headquarters, U. N. Avenue, Manila

POLICE SUPERINTENDENT OLIVIA ANCHETA SAGAYSAY (x)
Station Commander of MPD Police Station 6
Plaza Hugo, Sta Ana, Manila

POLICE SUPERINTENDENT JERRY B. CORPUZ (x)
MPD Headquarters, U. N. Avenue, Manila

POLICE SUPERINTENDENT ROBERT C. DOMINGO (x)
MPD Headquarters, U. N. Avenue, Manila

Director General AARON N. AQUINO (x)
Philippine Drug Enforcement Agency
NIA Northside Road
National Government Center
EDSA, Brgy. Pinyahan, Diliman, Quezon City

ATTY. FLODELIZA C. VARGAS-TRINIDAD (x)
Director
Office of the National Administrative Register
Rm. 208 Bocobo Hall
University of the Phils. Law Center
Diliman, Quezon City

Undersecretary JOSE MARLOWE S. PEDREGOSA (x)
Officer-in-Charge
Dangerous Drugs Board
NIA Northside Road
National Government Center
EDSA, Brgy. Pinyahan, Diliman, Quezon City

