

EN BANC

[G.R. No. 159618, February 01, 2011]

BAYAN MUNA, AS REPRESENTED BY REP. SATUR OCAMPO, REP. CRISPIN BELTRAN, AND REP. LIZA L. MAZA, PETITIONER, VS. ALBERTO ROMULO, IN HIS CAPACITY AS EXECUTIVE SECRETARY, AND BLAS F. OPLE, IN HIS CAPACITY AS SECRETARY OF FOREIGN AFFAIRS, RESPONDENTS.

DECISION

VELASCO JR., J.:

The Case

This petition^[1] for certiorari, mandamus and prohibition under Rule 65 assails and seeks to nullify the Non-Surrender Agreement concluded by and between the Republic of the Philippines (RP) and the United States of America (USA).

The Facts

Petitioner Bayan Muna is a duly registered party-list group established to represent the marginalized sectors of society. Respondent Blas F. Ople, now deceased, was the Secretary of Foreign Affairs during the period material to this case. Respondent Alberto Romulo was impleaded in his capacity as then Executive Secretary.^[2]

Rome Statute of the International Criminal Court

Having a key determinative bearing on this case is the Rome Statute^[3] establishing the International Criminal Court (ICC) with "*the power to exercise its jurisdiction over persons for the most serious crimes of international concern x x x and shall be complementary to the national criminal jurisdictions.*"^[4] The serious crimes adverted to cover those considered grave under international law, such as genocide, crimes against humanity, war crimes, and crimes of aggression.^[5]

On December 28, 2000, the RP, through *Charge d'Affaires* Enrique A. Manalo, signed the Rome Statute which, by its terms, is "subject to ratification, acceptance or approval" by the signatory states.^[6] As of the filing of the instant petition, only 92 out of the 139 signatory countries appear to have completed the ratification, approval and concurrence process. The Philippines is not among the 92.

RP-US Non-Surrender Agreement

On May 9, 2003, then Ambassador Francis J. Ricciardone sent US Embassy Note No. 0470 to the Department of Foreign Affairs (DFA) proposing the terms of the non-surrender bilateral agreement (*Agreement*, hereinafter) between the USA and the

RP.

Via Exchange of Notes No. BFO-028-03^[7] dated May 13, 2003 (E/N BFO-028-03, hereinafter), the RP, represented by then DFA Secretary Ople, agreed with and accepted the US proposals embodied under the US Embassy Note adverted to and put in effect the *Agreement* with the US government. *In esse*, the *Agreement* aims to protect what it refers to and defines as "persons" of the RP and US from frivolous and harassment suits that might be brought against them in international tribunals.

^[8] It is reflective of the increasing pace of the strategic security and defense partnership between the two countries. As of May 2, 2003, similar bilateral agreements have been effected by and between the US and 33 other countries.^[9]

The *Agreement* pertinently provides as follows:

1. For purposes of this Agreement, "persons" are current or former Government officials, employees (including contractors), or military personnel or nationals of one Party.

2. Persons of one Party present in the territory of the other shall not, absent the express consent of the first Party,

- (a) be surrendered or transferred by any means to any international tribunal for any purpose, unless such tribunal has been established by the UN Security Council, or

- (b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to any international tribunal, unless such tribunal has been established by the UN Security Council.

3. When the [US] extradites, surrenders, or otherwise transfers a person of the Philippines to a third country, the [US] will not agree to the surrender or transfer of that person by the third country to any international tribunal, unless such tribunal has been established by the UN Security Council, absent the express consent of the Government of the Republic of the Philippines [GRP].

4. When the [GRP] extradites, surrenders, or otherwise transfers a person of the [USA] to a third country, the [GRP] will not agree to the surrender or transfer of that person by the third country to any international tribunal, unless such tribunal has been established by the UN Security Council, absent the express consent of the Government of the [US].

5. This Agreement shall remain in force until one year after the date on which one party notifies the other of its intent to terminate the Agreement. The provisions of this Agreement shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

In response to a query of then Solicitor General Alfredo L. Benipayo on the status of the non-surrender agreement, Ambassador Ricciardone replied in his letter of October 28, 2003 that the exchange of diplomatic notes constituted a legally binding agreement under international law; and that, under US law, the said agreement did not require the advice and consent of the US Senate.^[10]

In this proceeding, petitioner imputes grave abuse of discretion to respondents in concluding and ratifying the *Agreement* and prays that it be struck down as unconstitutional, or at least declared as without force and effect.

For their part, respondents question petitioner's standing to maintain a suit and counter that the *Agreement*, being in the nature of an executive agreement, does not require Senate concurrence for its efficacy. And for reasons detailed in their comment, respondents assert the constitutionality of the *Agreement*.

The Issues

I. WHETHER THE [RP] PRESIDENT AND THE [DFA] SECRETARY x x x GRAVELY ABUSED THEIR DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION FOR CONCLUDING THE **RP-US NON SURRENDER AGREEMENT** BY MEANS OF [E/N] BFO-028-03 DATED 13 MAY 2003, WHEN THE PHILIPPINE GOVERNMENT HAS ALREADY SIGNED THE *ROME STATUTE OF THE [ICC]* ALTHOUGH THIS IS PENDING RATIFICATION BY THE PHILIPPINE SENATE.

- A. Whether by entering into the x x x **Agreement** Respondents gravely abused their discretion when they capriciously abandoned, waived and relinquished our only legitimate recourse through the *Rome Statute of the [ICC]* to prosecute and try "persons" as defined in the x x x **Agreement**, x x x or literally any conduit of American interests, who have committed crimes of genocide, crimes against humanity, war crimes and the crime of aggression, thereby abdicating Philippine Sovereignty.
- B. Whether after the signing and pending ratification of the *Rome Statute of the [ICC]* the [RP] President and the [DFA] Secretary x x x are obliged by the principle of good faith to refrain from doing all acts which would substantially impair the value of the undertaking as signed.
- C. Whether the x x x **Agreement** constitutes an act which defeats the object and purpose of the *Rome Statute of the International Criminal Court* and contravenes the obligation of good faith inherent in the signature of the President affixed on the *Rome Statute of the International Criminal Court*, and if so whether the x x x **Agreement** is void and unenforceable on this ground.

D. Whether the **RP-US Non-Surrender Agreement** is void and unenforceable for grave abuse of discretion amounting to lack or excess of jurisdiction in connection with its execution.

II. WHETHER THE **RP-US NON SURRENDER AGREEMENT** IS VOID *AB INITIO* FOR CONTRACTING OBLIGATIONS THAT ARE EITHER IMMORAL OR OTHERWISE AT VARIANCE WITH UNIVERSALLY RECOGNIZED PRINCIPLES OF INTERNATIONAL LAW.

III. WHETHER THE x x x **AGREEMENT** IS VALID, BINDING AND EFFECTIVE WITHOUT THE CONCURRENCE BY AT LEAST TWO-THIRDS (2/3) OF ALL THE MEMBERS OF THE SENATE x x x.^[11]

The foregoing issues may be summarized into two: *first*, whether or not the *Agreement* was contracted validly, which resolves itself into the question of whether or not respondents gravely abused their discretion in concluding it; and *second*, whether or not the *Agreement*, which has not been submitted to the Senate for concurrence, contravenes and undermines the Rome Statute and other treaties. But because respondents expectedly raised it, we shall first tackle the issue of petitioner's legal standing.

The Court's Ruling

This petition is bereft of merit.

Procedural Issue: *Locus Standi* of Petitioner

Petitioner, through its three party-list representatives, contends that the issue of the validity or invalidity of the *Agreement* carries with it constitutional significance and is of paramount importance that justifies its standing. Cited in this regard is what is usually referred to as the emergency powers cases,^[12] in which ordinary citizens and taxpayers were accorded the personality to question the constitutionality of executive issuances.

Locus standi is "a right of appearance in a court of justice on a given question."^[13] Specifically, it is "a party's personal and substantial interest in a case where he has sustained or will sustain direct injury as a result"^[14] of the act being challenged, and "calls for more than just a generalized grievance."^[15] The term "interest" refers to material interest, as distinguished from one that is merely incidental.^[16] The rationale for requiring a party who challenges the validity of a law or international agreement to allege such a personal stake in the outcome of the controversy is "to assure the concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."^[17]

Locus standi, however, is merely a matter of procedure and it has been recognized that, in some cases, suits are not brought by parties who have been personally injured by the operation of a law or any other government act, but by concerned

citizens, taxpayers, or voters who actually sue in the public interest.^[18] Consequently, in a catena of cases,^[19] this Court has invariably adopted a liberal stance on *locus standi*.

Going by the petition, petitioner's representatives pursue the instant suit primarily as concerned citizens raising issues of transcendental importance, both for the Republic and the citizenry as a whole.

When suing as a citizen to question the validity of a law or other government action, a petitioner needs to meet certain specific requirements before he can be clothed with standing. *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*^[20] expounded on this requirement, thus:

In a long line of cases, however, concerned citizens, taxpayers and legislators when specific requirements have been met have been given standing by this Court.

When suing as a *citizen*, the interest of the petitioner assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of. In fine, when the proceeding involves the assertion of a public right, the mere fact that he is a citizen satisfies the requirement of personal interest.^[21]

In the case at bar, petitioner's representatives have complied with the qualifying conditions or specific requirements exacted under the *locus standi* rule. As citizens, their interest in the subject matter of the petition is direct and personal. At the very least, their assertions questioning the *Agreement* are made of a public right, i.e., to ascertain that the *Agreement* did not go against established national policies, practices, and obligations bearing on the State's obligation to the community of nations.

At any event, the primordial importance to Filipino citizens in general of the issue at hand impels the Court to brush aside the procedural barrier posed by the traditional requirement of *locus standi*, as we have done in a long line of earlier cases, notably in the old but oft-cited emergency powers cases^[22] and *Kilosbayan v. Guingona, Jr.*^[23] In cases of transcendental importance, we wrote again in *Bayan v. Zamora*,^[24] "The Court may relax the standing requirements and allow a suit to prosper even where there is no direct injury to the party claiming the right of judicial review."

Moreover, bearing in mind what the Court said in *Tañada v. Angara*, "that it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in