THE TUNNEL BEFORE THE LIGHT: THE ROLE OF *AMPARO* IN THE PHILIPPINE FRAMEWORK OF HUMAN RIGHTS*

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ABSTRACT

Extrajudicial killings and enforced disappearances have gone on with impunity for far too long. In 2007, the Supreme Court promulgated the Rule on the Writ of *Amparo* to provide a remedy for violations or threatened violations by State actors to a person's right to life, liberty, and security. The remedy covers cases of extralegal killings and enforced disappearances; it also provides for interim reliefs. The petitioner has to prove his case by substantial evidence, and the respondent has to prove that he has observed extraordinary diligence in performing his duty. Jurisprudence has shown that the doctrine of command responsibility applies in *amparo* proceedings. The *amparo* operates under certain limitations because the Rule was promulgated under the rule-making prerogative of the Supreme Court, and because of certain realities in enforcement. The writs of *amparo* and *habeas corpus* contend with different though similar problems. Statutes have also been passed to deal with extralegal killings and enforced disappearances. With the development relating to the application of the doctrine of command responsibility in *amparo* cases and the filling in of statutory gaps, it is time to expand the scope of *amparo* petitions so as to truly give life to the fundamental right to life, liberty and security of person.

I. INTRODUCTION

The purpose of this paper is to lay down the developments in the Writ of *Amparo* since the time of its promulgation in 2007, and to assess the role of the Writ in curbing the culture of impunity in human rights violations in the Philippines. More importantly, this paper seeks to reconstruct the framework of human rights, taking into account the developments identified, and to present a practical guide for private individuals and organizations interested in pursuing cases of enforced disappearances and extralegal killings.

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The writ of *amparo* was a creation of the courts of Mexico as an immediate and comprehensive recourse to remedy the transgression of constitutional rights. Today, *amparos* all over the world may be traced from two main traditions—the Latin American *amparo,* which originated from Mexico and is used in Central and South America, and the German constitutional complaint, which is the model followed in Central and Eastern European States and South Korea.[1]

In the Philippines, the Writ of *Amparo* was a reaction to growing impunity in violations of civil and political rights. The spate of extrajudicial killings and enforced disappearances, which plagued the country during the early years of the Arroyo administration, earned the Philippines a frightful reputation in the international community. The clamor for action grew louder.

In July 2007, the Supreme Court, through Chief Justice Reynato Puno, convened the National Consultative Summit on Extrajudicial Killings and Enforced Disappearances ("Summit") to assist it in its exercise of its rule-making power. The Summit was the first of its kind. It was seen as an unprecedented move on the part of the Supreme Court that displayed its initiative and resolve to take on a more activist role.[2] The improvement of existing rules and the promulgation of new ones appeared to be a solution to the culture of impunity.

The Summit was also a venue to thresh out the concept of extralegal killings and enforced disappearances. At the time, they were not legally defined in domestic laws, but were already recognized as human rights violations under international law. The Summit was also an opportunity to take a closer look at our rules on evidence and how such rules could be more responsive in light of unpunished extralegal killings and enforced disappearances. Finally, the Summit was an avenue to explore remedies for aggrieved parties other than the writ of *habeas corpus.*

With the help of the comprehensive reports and insights provided by different sectoral organizations during the Summit, the Supreme Court promulgated the Rule on the Writ of *Amparo* in October of the same year.[3]

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[1] Paulo Cardinal, *The Writ of Amparo: A New Lighthouse for the Rule of Law in the Philippines*, 87 PHIL. L.J. 229, 240 (2012).

[2] Hanns Seidel Foundation, *National Consultative Summit on Extrajudicial Killings and Enforced Disappearances - Searching For Solutions, at* http://www.hss.de/southeastasia/en/philippines/news-events/2007/national-consultative-summit-on-extrajudicial-killings-and-enforced-disappearances-searching-for-solutions.html (last visited Apr. 11, 2016).

[3] *Id.* at ¶ 3.

II. THE PROBLEM

A. A Culture of Impunity

Philippine civil society is strong, but so is the whip that attempts to suppress it. The experiences of the members of the media and activists are not unknown—stories of students who suddenly disappear without a trace and are not heard of until years later, the accounts of families of journalists who never return from their assignments, news reports of the massacre of 57 media personnel in Maguindanao and, most recently, the targeted executions of community leaders of the Lumad. Experience tells us that these disappearances and killings are probably politically motivated and will naturally be left unsolved for years to come. Such is the expectation of impunity in the Philippines.

These statements are not unfounded. Below is a rundown of findings of different bodies that conducted investigations of extralegal killings and enforced disappearances in the country.

1. The Melo Report

In 2006, then President Gloria Macapagal-Arroyo issued Administrative Order No. 157 entitled "Creating an Independent Commission to Address Media and Activist Killings."[4] The Melo Commission, the name by which it came to be known, was tasked with investigating media and activist killings and recommending policies and actions to the President.[5]

The Melo Commission gathered information through public hearings where evidence was presented, and resource persons and witnesses testified.[6] However, interviewees were mainly law enforcers from Task Force Usig ("TFU"), another administration-created body formed by President Macapagal-Arroyo to investigate extrajudicial killings and enforced disappearances. The Commission's report had a gaping hole in terms of testimonies from victims, witnesses, and non-state actors. Consequently, it was criticized for its skewed

[4] Adm. Order No. 157 (2006).

[5] Report of the Independent Commission to Address Media and Activist Killings, created under Adm. Order No. 157 [hereinafter "Melo Commission Report"], at 2 (2006).

[6] *Id.* at 3.

presentation of the data, as well as the fact that substantial public pressure had to be employed before the government permitted the release of the report.[7]

The Commission reported that the Philippine National Police (PNP) acknowledged 137 killings from 2001 to 2006,[8] only 37 of which have been brought before the prosecutor's office or the court. The low incidence is attributed to the distrust of the families of the victims of the state mechanism and their refusal to cooperate with the police. The Report further claims that the killings of activists and members of the media were systematically perpetrated by a group of people interested in the former's elimination.[9]

The Melo Report declared that TFU had failed in its objective to "establish who is responsible for these killings and to determine whether there is a pattern of serialized killings victimizing leftist activist [sic] and journalist [sic]."[10] The Report observed from the Commission's interview with General Avelino Razon, Jr., the head of TFU, that there was a reluctance to associate the rise in the political killings to the declared state policy against communist insurgents. Instead, the cause was claimed to be due to the purging within the NPA itself. It also claimed that General Razon was in agreement with General Jovito Palparan that legitimate organizations, such as Karapatan and Bayan Muna, are front organizations which provide "support, money, resources, and legal assistance to the CPP/NPA."[11]

Notably, TFU never summoned General Palparan during the course of its investigation despite widespread accounts of his involvement in the killings and disappearances of activists and journalists. It is the position of TFU that military operations are beyond its scope to investigate, and calling high-ranking officials of the armed forces for questioning would be overstepping the line of authority.[12]

Further, the Melo Commission reported that media killings, agrarian reform-related killings, and activist killings appeared to be motivated by different reasons. Media killings were attributed to local politicians, warlords, or business enterprises whose incriminating practices were probably on the brink of exposure. Agrarian reform-related killings, on the other hand, were

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[7] Theoben Jerdan Orosa, *Reinterpreting the Role of Judiciaries in Promoting Human Rights: The Philippine Supreme Court's Writ of Amparo and Writ of Habeas Data against Extrajudicial Killings and Enforced Disappearance*, 15 THAMMASAT REV. 93, 96 (2012).

[8] Consisting of 111 activists and 26 members of the media.

[9] Melo Commission Report, *supra* note 5, at 5.

[10] *Id.* at 7-8.

[11] *Id.* at 8.

[12] *Id.* at 8-9.

attributed to land owners and detractors of land reform, while the killings of activists were attributed to the military.[13]

The Melo Report claims that investigations on media killings were more successful than others, mainly because formal complaints for media killings were actually filed and prosecutors were met with cooperation from families and the media community. However, investigations on agrarian reform-related killings and activist killings were found to follow the same pattern—the belief that the victims were friends or members of the New People's Army.[14] With respect to activist killings, the Melo Commission made a significant declaration:

> [T]here is no direct evidence, but only circumstantial evidence, linking some elements in the military to the killings. [...] [T]here is certainly evidence pointing the finger of suspicion at some elements and personalities in the armed forces, in particular General Palparan, as responsible for an undetermined number of killings, by allowing, tolerating, and even encouraging the killings.[15]

2. The Alston Report

In 2007, Special Rapporteur from the United Nations (UN) Philip Alston visited the Philippines. He spoke with a wide range of actors to find out who is responsible for the extralegal killings and to formulate recommendations to bring the latter to an end. He met with key government officials, including the President and her Cabinet members, the Chief Justice, the Ombudsman, the Commissioner of the Commission on Human Rights (CHR), and members of the Armed Forces of the Philippines (AFP) and the PNP. He interviewed civil society groups from across the political spectrum and reviewed dossiers on 271 extrajudicial executions.[16]

The Alston Report identified special areas of focus. Similar to the Melo Commission Report, it distinguished the killings of journalists, agrarian reform-related killings, and activist killings. Compared to the earlier Melo Commission Report, however, the Alston Report was received more positively as it was seen as independently made. Human rights groups were more willing to grant interviews due to the guaranteed or limited anonymity.[17]

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[13] *Id.* at 48.

[14] *Id* at 49.

[15] *Id.* at 49-50.

[16] Philip Alston, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, at 6, U.N. Doc. A/HRC/8/3/Add.2 (2008).

[17] Orosa, *supra* note 7, at 96.

In his report, Alston mentioned two policy initiatives which may account for the ongoing culture of impunity in the Philippines: the military's counterinsurgency strategy which is hinged on dismantling civil society organizations suspected to be front groups of the Communist Party of the Philippines (CPP), and the failure of the criminal justice system to arrest, convict and imprison those responsible for extrajudicial executions. Alston claims that there is a distortion of priorities—law enforcers focus on the prosecution of civil society leaders instead of their killers.[18]

Alston likewise highlighted the killings related to the armed conflict in Mindanao, distinguishing the area thus:

> First, the violence was relatively indiscriminate. The conflict between the Government and the NPA involves precisely targeted violence. Civilians are killed, but seldom by accident. In contrast, on Jolo, persons are abducted or arrested, and sometimes extrajudicially executed, for little or no apparent reason. In addition, military operations involve inherently indiscriminate tactics, such as aerial bombardment, artillery shelling, and helicopter strafing. Second, witnesses live in even more fear than in other parts of the country, and I received information regarding cases that had never been reported to the PNP. Third, responsibility for abuses is often difficult to assign. It is not uncommon for the Government to blame the ASG or MNLF and for victims to blame the AFP.[19]

Finally, the Alston Report discussed the killings in Davao City where it is "commonplace" to witness the operations of the Davao Death Squad. It described the Davao Death Squad as not strictly a vigilante group. Since the killers boldly show up undisguised, Alston concluded that these extralegal executions may have been officially sanctioned. The little to zero conviction in cases involving leftist activists also led him to conclude that there is in fact impunity in extrajudicial executions.[20]

3. Data from Karapatan

In 2001 to 2006, the same years covered by the Melo Commission, Karapatan, an activist, non-governmental, human rights organization, reported at least 868 killings[21] compared to the conservative 111 reported by TFU. In

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[18] Alston, *supra* note 16, at 8.

[19] *Id.* at 15.

[20] *Id.* at 16.

[21] Karapatan, *The 2010 Year-End Report of the Human Rights Situation in the Philippines*, at 16-7 (2010).

2007, the group reported 100 victims of extralegal executions and 30 victims of enforced disappearances.[22] In the same year, the courts denied six out of nine *habeas corpus* petitions for victims of enforced disappearances.[23] In 2008, there were 90 victims of extralegal executions, while enforced disappearances amounted to nine new incidents. In 2009, an estimated 130 cases of extralegal killings were recorded and four new incidents of enforced disappearances.[24] Notably, this was the year of the Ampatuan massacre, which resulted in 57 deaths. In the first half of 2010, President Macapagal-Arroyo's last six months in office, 18 incidents of extralegal executions and one incident of enforced disappearance were recorded.[25]

Karapatan also observed a rise in human rights violations involving community leaders of the indigenous peoples, particularly the Lumad in Mindanao, during the early years of the Benigno C. Aquino III administration.[26] The targeting of indigenous people who stand up for the right to their ancestral land and to self-determination has been sustained.[27]

From July 2010, when President Aquino began his administration, to 2015, Karapatan recorded 307 incidents of extrajudicial killings and 30 incidents of enforced disappearances.[28] The sector of peasant farmers and of indigenous people had the most victims.[29]

Impunity figures significantly in the problem. Agents of the state have all the resources within their reach to withhold or destroy evidence which may be used for prosecution. Without compulsion, the *corpus delicti* of the crime would never see the light of day. The inherent advantage of State agents causes the lack of accountability. The reluctance of victims and their families to file complaints or cooperate with the police worsens the impunity. It also reflects a perceived threat to their own security.

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[22] *Id.*

[23] Karapatan, *The 2007 Year-End Report of the Human Rights Situation in the Philippines*, at 46 (2007).

[24] Karapatan, *supra* note 21, at 16-7 (2010).

[25] *Id.*

[26] Karapatan, *The 2012 Year-End Report of the Human Rights Situation in the Philippines*, at 39-43 (2012).

[27] Karapatan, *The 2015 Year-End Report of the Human Rights Situation in the Philippines*, at 9 (2015).

[28] *Id.* at vi.

[29] *Id.* at 11.

B. Present Safeguards Against Human Rights Violations

Fundamental protection of human rights can be found in our Constitution. The Bill of Rights protects our right to life and liberty[30] and our right against unreasonable searches and seizures.[31] On the other hand, the privilege of the writ of *habeas corpus* provides a remedy against illegal detention of individuals by the state.[32]

To further these constitutional guarantees and to recognize our international obligations, Congress enacted the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity or Republic Act (RA) 9851 in 2009. Significantly, the Act criminalizes and legally defines enforced or involuntary disappearance of persons[33] and provides for criminal responsibility on the ground of command responsibility.[34] In relation to this, the *Desaparacidos* Act (RA 10353) was enacted in 2012, focusing specifically on penalizing enforced or involuntary disappearances.[35] Notably, neither of these laws were in force at the time of the promulgation of the Rule on the Writ of *Amparo*.

We are also not without judicial recourse. Traumatized by the impotence of the judiciary during the Marcos era, the framers of our 1987 Constitution strengthened the powers of the Supreme Court by including the Grave Abuse of Discretion clause,[36] and by expanding its rule-making prerogative.[37] For a valid exercise of the latter, two conditions must be observed. First, it must pertain to the protection and enforcement of constitutional rights and second, it must not diminish, increase, or modify substantive rights.

By exercising its rule-making prerogative, the Court has figured more prominently in the effort to curb impunity through the promulgation of the Rule on the Writ of *Amparo*, a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.[38] The Court has also promulgated the Rules on the Writ of *Habeas Data*,

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[30] CONST. art. III, § 1.
[31] Art. III, § 2.
[32] Art. III, § 15.
[33] Rep. Act No. 9851 (2012), § 6(i).
[34] § 10.
[35] Rep. Act No. 10353 (2012), § 15.
[36] CONST. art. VIII, § 1.
[37] Art. VIII, § 5.
[38] A.M. No. 07-9-12-SC (2007), § 1. The Rule on the Writ of *Amparo*.

a remedy to protect a person's right to control information regarding herself, particularly in instances where such information is being collected through unlawful means in order to achieve unlawful ends.[39]

One view says that a writ promulgated by the Supreme Court pursuant to its rule-making prerogative does not provide an independent action. Former Justice Vicente V. Mendoza argues that "[i]t is not an extraordinary writ or a prerogative writ like *habeas corpus*, *certiorari*, prohibition, mandamus or *quo warranto* but an auxiliary remedy designed to aid a court in the exercise of jurisdiction already granted to it to try cases involving violations of personal freedoms and security."[40] However, the Court, in various instances, has characterized the writ of *amparo* and the writ of *habeas data* as independent and prerogative writs.[41]

Human rights law in the Philippines cannot be fully comprehended unless taken in the context of public international law because international law forms part of Philippine domestic law. The 1987 Constitution provides two ways by which international law forms part of domestic law: by incorporation and by transformation.

First, the incorporation clause in Article II, Section 2 provides that the Philippines adopts the generally accepted principles of international law as part of the law of the land.[42] Second, under Article VII, Section 21, international conventions and treaties to which the Philippines is a signatory or party are binding (1) as part of domestic law in the same class as a statute and (2) as a source of international obligations if they are concurred in by Senate and which are in force by their own terms.[43]

The Court has held in a number of cases that human rights as defined in the Universal Declaration of Human Rights (UDHR) form part of the generally accepted principles of international law.[44] Similarly treated are those under the Hague Conventions of 1907 and the Geneva Conventions on the

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[39] Rodriguez v. Macapagal-Arroyo [hereinafter "Rodriguez"], G.R. No. 191805, 660 SCRA 84, 102, Nov. 15, 2011.

[40] Vicente V. Mendoza, *A Note on the Writ of Amparo*, 82 PHIL. L.J. 1, 2 (2008).

[41] *Rodriguez*, 660 SCRA 84, 101-102.

[42] CONST. art. II, § 2.

[43] Art. VII, § 21; Alberto Muyot, *The Unfulfilled Promise: Gaps in the Human Rights Provisions of the 1987 Constitution*, 1999 PHIL. PEACE AND HUM. RTS. REV. 1, 17 (1999).

[44] *Id.* at 16-7.

protection of victims of war and international humanitarian law.[45] On the other hand, the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which the Philippines is a State party, enjoy the status of statutes. Thus, violations of obligations under these conventions are actionable in our courts. These international laws establish norms that protect an individual's civil and political rights, which if breached can make states accountable in the international arena.

Clearly, there is no dearth in legal remedies which a *desaparecido* or the family of victims of extralegal killings may resort to. Whether this is more apparent than real remains to be seen. It would seem that the premium placed on the protection of human rights is so apparent and universal. With all the legal protections in place, the government need only "the resolve not to engage in illegal practices."[46] However, the illegal practices continue and with much impunity at that.

C. The Writ of *Amparo*

1. In General

The Rule on the Writ of *Amparo* was a response to the glaring inadequacy of existing remedies against human rights violations committed particularly by agents of the State.[47] Its limited application was an intentional move on the part of the drafters, considering that the other protections usually provided by the *amparo* in other jurisdictions are already available under our present Constitution.

The *amparo libertad* (to protect personal freedom) is akin to the writ of *habeas corpus*, while the *amparo contra leyes* (for judicial review of the constitutionality of statutes), *amparo casacion* (for judicial review of the constitutionality and legality of a judicial decision) and *amparo administrativo* (for judicial review of administrative actions) are protections guaranteed by the Grave Abuse clause. [48] The Philippine *amparo* is inspired by its Latin

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[45] Kuroda v. Jalandoni, 83 Phil. 171, 178 (1949), *cited in* Rubrico v. Gloria Macapagal-Arroyo [hereinafter, "Rubrico"], G.R. No. 183871, 613 SCRA 233, Feb. 10, 2010 (Carpio-Morales, *J.*, *separate*).

[46] Nery Duremdes, *One View on the Case of the Desaparecidos*, 18 J. INTEG. BAR PHIL. 26, 27 (1990).

[47] Hanns Seidel Foundation, *supra* note 2.

[48] Santiago v. Tulfo, G.R. No. 205039, 773 SCRA 558, 566, Oct. 21, 2015.

contemporaries but grounded in our own experience of a particular brand of human rights violation—enforced disappearances and extralegal killings.[49]

The first sentence of Section 1 of the Rule provides the basic function of the Writ, which is to serve as a remedy against violations of a person's right to life, liberty, and security of persons. However, Section 1 narrows down the scope to two specific kinds of human rights violations: actual cases or threats of extralegal killings or enforced disappearances.[50] Worthy of note is the inclusion of *threats* of extralegal killings or enforced disappearances. This recognizes that the right to security is distinct from the right to liberty.[51]

Extralegal killings and enforced disappearances were, as of the promulgation of the Rule, undefined in the Constitution, statutes, or the Rules of Court. The drafters decided against making their own definition and deferred to future legislation on the matter.[52] Be that as it may, international definitions were heavily relied upon, thus:

> "[E]xtralegal killings" are killings committed without due process of law, i.e. without legal safeguards or judicial proceedings. As such, these will include the illegal taking of life regardless of the motive, summary and arbitrary executions, "salvagings" even of suspected criminals, and threats to take the life of persons who are openly critical of erring government officials and the like. On the other hand, "enforced disappearances" are attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law.[53]

2. Breaking Down the Rule

Justice Leonen in *Secretary of Justice v. Gatdula*[54] concisely discusses the proceedings in a petition for the Writ of *Amparo*, to wit:

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[49] Secretary of National Defense v. Manalo [hereinafter "Manalo"], G.R. No. 180906, 568 SCRA 1, 39-41, Oct. 7, 2008.

[50] Rule on the Writ of *Amparo*, § 1.

[51] *Manalo*, 568 SCRA 1, 58-61.

[52] Felipe Enrique Gozon, Jr. & Theoben Jerdan Orosa, *Watching the Watchers: A Look into the Drafting of the Writ of Amparo*, 82 PHIL. L.J. 8, 24-5 (2008).

[53] *Id.* at 23.

[54] De Lima v. Gatdula [hereinafter "De Lima"], G.R. No. 204528, 691 SCRA 226, Feb. 19, 2013.

It is initiated through a petition to be filed in a Regional Trial Court, Sandiganbayan, the Court of Appeals, or the Supreme Court. The judge or justice then makes an "immediate" evaluation of the facts as alleged in the petition and the affidavits submitted "with the attendant circumstances detailed". After evaluation, the judge has the option to issue the Writ of Amparo or immediately dismiss the case. Dismissal is proper if the petition and the supporting affidavits do not show that the petitioner's right to life, liberty or security is under threat or the acts complained of are not unlawful. On the other hand, the issuance of the writ itself sets in motion presumptive judicial protection for the petitioner. The court compels the respondents to appear before a court of law to show whether the grounds for more permanent protection and interim reliefs are necessary. The respondents are required to file a Return after the issuance of the writ through the clerk of court. The Return serves as the responsive pleading to the petition. Unlike an Answer, the Return has other purposes aside from identifying the issues in the case. Respondents are also required to detail the actions they had taken to determine the fate or whereabouts of the aggrieved party. If the respondents are public officials or employees, they are also required to state the actions they had taken to: (i) verify the identity of the aggrieved party; (ii) recover and preserve evidence related to the death or disappearance of the person identified in the petition; (iii) identify witnesses and obtain statements concerning the death or disappearance; (iv) determine the cause, manner, location, and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance; and (vi) bring the suspected offenders before a competent court. Clearly these matters are important to the judge so that s/he can calibrate the means and methods that will be required to further the protections, if any, that will be due to the petitioner. There will be a summary hearing only after the Return is filed to determine the merits of the petition and whether interim reliefs are warranted. If the Return is not filed, the hearing will be done *ex parte*. After the hearing, the court will render the judgment within 10 days from the time the petition is submitted for decision. If the allegations are proven with substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate. The judgment should contain measures which the judge views as essential for the continued protection of the petitioner in the *Amparo* case. These measures must be detailed enough so that the judge may be able to verify and monitor the actions taken by the respondents. It is this judgment that could be subject to appeal to the Supreme Court via Rule 45. After the measures have served their purpose, the judgment will be satisfied. In *Amparo* cases, this is when the threats to the petitioner's life, liberty and security cease to exist as evaluated by the court that

> renders the judgment. Parenthetically, the case may also be terminated through consolidation should a subsequent case be filed – either criminal or civil. Until the full satisfaction of the judgment, the extraordinary remedy of *Amparo* allows vigilant judicial monitoring to ensure the protection of constitutional rights.[55]

i. The Parties

Under Section 2 of the Rule, the petition may be filed by the aggrieved party or a party enumerated therein. This includes:

> (a) any member of the immediate family, namely: the spouse, children and parents of the aggrieved party;
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> (b) any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph; or
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> (c) any concerned citizen, organization, association or institution, if there is no known member of the immediate family or relative of the aggrieved party.[56]

The order of precedence must be observed and the filing by any one of the parties authorized bars any subsequent petition under the Rule.[57]

As to who may be impleaded, Section 1 specifically mentions a "public official or employee, or a private individual or entity."[58] In short, both state and non-state actors, either an individual or an entity, are recognized under the Rule as possible perpetrators of extralegal killings or enforced disappearances.

In *Razon v. Tagitis*,[59] the Court said that an *amparo* petitioner need only comply with the substance of the petition, meaning the content requirement prescribed in Section 5, and the formal requirements of signature and verification. Only substantial evidence is needed to buttress the allegations in the complaint, particularly showing that an enforced disappearance or extralegal killing has taken place, the circumstances showing a violation of the victim's rights to life, liberty, or security, and the concomitant failure on the

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[55] *Id.* at 234-5.

[56] The Rule on the Writ of *Amparo*, § 2.

[57] § 2.

[58] § 1.

[59] Razon v. Tagitis [hereinafter "Razon"], G.R. No. 182498, 606 SCRA 598, Dec. 3, 2009.

part of the investigating authorities to take the appropriate action.[60] In practice, this would involve the petitioner simply having to supply any information he or she has obtained to comply with each material allegation prescribed in Section 5 as best he or she could. As will be seen later, the Court has time and again considered circumstantial evidence a valid basis for the issuance of the writ, albeit at its very sound discretion.

Notably, the judge must issue the writ if the petition shows, *on its face*, that the writ should issue. Thus, the burden of proof is liberally construed in favor of the petitioner, requiring only that he or she prove a *prima facie* case of extralegal killing or enforced disappearance.[61]

At this point, the writ and the privilege of the writ should be distinguished. The *writ* is issued upon the filing of a compliant petition and upon the finding by the judge that on its face the writ should issue.[62] The *privilege of the writ*, on the other hand, is that granted in the judgment referred to in Section 18 after undergoing the entire procedure in the Rule.[63] Thus, once the petitioner discharges the burden of proving his allegations by substantial evidence, the court shall grant the privilege of the writ as well as other appropriate reliefs; otherwise, the court will deny it. The judgment should detail the required acts from the respondents that will mitigate, if not totally eradicate, the violation of or the threat to the petitioner's life, liberty or security.[64]

ii. Nature of the Petition

The writ of *amparo* is meant to be a speedy remedy. To this end, the rules on filing, docket fees, and hearing were designed to aid the victims and their families to avail of recourse promptly.

First, Section 3 prescribes that a petition can be filed on any day with the regional trial court where any of the acts or threats complained of may have occurred. It may also be filed in the Sandiganbayan, the Court of Appeals or directly with the Supreme Court, subject to the rules on return. More

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[60] *Id.* at 652-660.

[61] The Rule on the Writ of *Amparo*, § 6.

[62] § 6.

[63] § 18.

[64] *De Lima*, 691 SCRA 226, 234.

importantly, the writ is enforceable anywhere.[65] The petitioners are also exempt from paying the usual docket fees,[66] a factor which hinders the filing of cases.

The hearings on *amparo* petitions are summary and shall be conducted from day to day. It shall have the same priority as *habeas corpus* proceedings.[67] Consistent with its summary nature, certain pleadings and motions which can hinder the progress of the case are prohibited.[68] Further, the failure of the respondents to file their return will not delay the proceedings, and allows the judge to hear the case *ex parte*.[69]

The Rule on the Writ of *Amparo* was intentionally designed to have certain safeguards in keeping with its purpose to assist victims of human rights violations where the most usual suspects are members of the armed forces or agents of the state. Section 17 provides that the burden of proof in *amparo* proceedings is substantial evidence.[70] In *Rubrico v. Arroyo*, the Court defined substantial evidence as "such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might opine otherwise."[71] This is a much lower quantum of evidence than in criminal cases which require proof beyond reasonable doubt.

Section 17 also dictates that a respondent public official or employee cannot use the presumption of regularity in the performance of his duties as a defense against allegations of human rights violations. Instead, they must prove that they exerted extraordinary diligence in the performance of their duties or in complying with the orders contained in the writ.[72]

Recognizing that cases of enforced disappearance usually span months if not years, the Rule requires that *amparo* petitions be archived instead of dismissed. Within two years from the order or archiving, any party upon motion or the court may *motu proprio* order the revival of the case for further proceedings.[73]

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[65] § 3.
[66] § 4.
[67] § 13.
[68] § 11.
[69] § 12.
[70] § 17.
[71] *Rubrico*, 613 SCRA 233, 256-7.
[72] § 17.
[73] § 20.

iii. The Return

Of importance is the return to be filed by the respondents. This takes the place of their answer; thus, all defenses not raised in the return are deemed waived. While the general denial that the respondent had custody of an individual could warrant a dismissal in *habeas corpus* cases, the Rule on the Writ of *Amparo* expressly provides that a general denial shall not be allowed.

Instead, the return must establish that the respondent took steps to determine the whereabouts of the victim as well as to find the perpetrator.[74] The filing of a false return, for instance, where the respondents allege that they do not know of the whereabouts of the victims, but he or she is in fact in their custody, is punishable by contempt.[75] Again, the failure of respondents to file a return allows the judge to hear the *amparo* petition *ex parte*.[76] According to one author, "it is important to implead the Commander-in-Chief in an *amparo* petition, particularly in the NCR, because she has complete control of all large units which may have custody of the victim."[77] Command responsibility will be discussed further in a latter section.

iv. Interim Reliefs

Whether or not the privilege of the writ is granted in the end, the Rule on the Writ of *Amparo* provides interim reliefs to the aggrieved party. These are intended to assist the court before it arrives at a judicious determination of the *amparo* petition.[78] Being interim reliefs, they can only be granted upon the filing of the petition or any time before a final adjudication of the case is made.[79] Thus, the Court has emphasized that the granting of the privilege of the writ, i.e. in the judgment, necessarily subsumes the protections sought to be provided by the interim reliefs.[80] The temporary protection order, the inspection order, the production order, and the witness protection order are the four interim reliefs provided by the Rule.

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[74] § 9.

[75] § 16.

[76] § 12.

[77] Neri Colmenares, *The Writ of Amparo as a Mechanism to Curb Impunity: The Case of the Philippines* 7, paper presented at the International Association of Democratic Lawyers (IADL) Congress in Hanoi, Vietnam (June 2009).

[78] Yano v. Sanchez [hereinafter "Yano"], G.R. No. 186640, 612 SCRA 347, 362, Feb. 11, 2010.

[79] § 14.

[80] *Rodriguez*, 660 SCRA 84, 104-105.

Unlike the inspection order and the production order which are issued upon verified motion and hearing only,[81] the temporary protection order (TPO) and the witness protection order (WPO) may be availed of upon motion by the party or be granted *motu proprio* by the court.[82] This is because of the likelihood that the petitioners would be exposed to increasing danger once they file the petition for the writ.[83]

The drafters of the Rule broadened the scope of the temporary protection order and the witness protection order. Both government and private institutions can provide protection to families of the aggrieved parties and witnesses.[84] This recognizes the usual reluctance of the aggrieved parties and their families to seek protection from the government. The Rule adds as a condition that private persons or institutions must first be accredited by the Supreme Court.[85] The protection orders apply not only to individuals but to entities as well, seeing that non-governmental organizations and groups can be the subject of threats and harassment by the respondents.[86]

Of the four interim reliefs, the inspection order is of a sensitive nature, being an order that gives law enforcers and the aggrieved parties access to the place sought to be inspected.[87] Through this relief, the court can order property owners to permit entry for the purpose of inspecting, measuring, surveying, or photographing the property or any relevant object or operation thereon.

Being, in a sense, also an invasion of property rights, the Rule safeguards against the misuse of the inspection order. The Rule requires that the place to be inspected be reasonably determinable from the allegations of the party seeking the order. The motion should also be verified and supported by affidavits so as to make a *prima facie* case.[88] In *Roxas v. Macapagal-Arroyo*,[89] the Court found that petitioner Roxas failed to support her allegations. It declared

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[81] § 14(b)-(c).

[82] § 14(a), (d).

[83] Adolfo S. Azcuna, former Justice of the Supreme Court, Lecture on The Writ of Amparo: The Philippine Experience So Far (Nov. 12, 2012), *published by* Supreme Court of the Philippines, Philippine Judicial Academy: Research, Publications and Linkages Offices, at 105.

[84] The Rule on the Writ of Amparo, § 14(a).

[85] § 14(a).

[86] Colmenares, *supra* note 77, at 8.

[87] Azcuna, *supra* note 83, at 106.

[88] § 14(b).

[89] Roxas v. Macapagal-Arroyo [hereinafter "Roxas"], G.R. No. 189155, 630 SCRA 211, Sept. 7, 2010.

that an inspection order could not be issued in aid of fishing expeditions.[90] A valid inspection order is one that specifies the persons authorized to make the inspection as well as the date, time, place and manner of making the same.[91]

The production order under the *amparo* can be likened to the production of documents under discovery proceedings in the Rules of Civil Procedure. Under the Rule, the production order can be used to compel production of "documents, papers, letters, photographs, objects or tangible things and those in digitized or electronic forms."[92] Some useful pieces of evidence include prison logbooks, records of arrest, which can be used to pinpoint the official who ordered the arrest and his participating subordinates.[93] In *Secretary of Defense v. Manalo*, the production order was used to compel the Secretary of Defense and the AFP to furnish the aggrieved parties with all official and unofficial reports of the investigation undertaken in connection with their case; to confirm in writing the present places of official assignment of two military personnel found involved in the matter investigated, and to produce to the Court all medical reports, records, charts and reports of any treatment given or recommended and medicines prescribed to said respondents and the list of the attending medical personnel.[94]

The inspection and production orders are necessary tools to enable the victims to pierce through the protection given by high-ranking officials to violators and question the blanket denials of the respondents. The production order is usually the most important relief that an *amparo* petition can provide in terms of successfully prosecuting cases. Through the production order, victims can gather evidence on the perpetrators of the enforced disappearance or the extralegal killing.[95]

Note, however, that a valid objection on the ground of privileged information or national security can lead to the denial of the inspection or production order.[96] This is a possible area of deadlock between the judiciary, which orders the disclosure of information, and the executive, which believes it is justified in withholding the information. In the end, it is the court, upon hearing, which still decides whether the defenses are meritorious.[97]

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[90] *Id.* at 237-8.
[91] The Rule on the Writ of Amparo, § 14(b).
[92] § 14(c).
[93] Colmenares, *supra* note 77, at 9.
[94] *Manalo*, 568 SCRA 1, 64.
[95] Colmenares, *supra* note 77, at 5.
[96] § 14(c).
[97] Colmenares, *supra* note 77, at 9.

3. Doctrinal Pronouncements

Mindful of the intent of the Puno court that the Writ evolve on its own,[98] we now evaluate the manner and extent of the practical development of the Writ eight years after it first took effect.

i. Scope and Nature

In the leading case of *Secretary v. Manalo*, penned by Chief Justice Puno in 2008, a petition initially for prohibition, injunction and temporary restraining order filed against members of the military and the Secretary of Defense was converted into a petition for the writ of *amparo*. The Court granted the privilege of the writ, ruling that the right of the Manalo brothers to security had been violated notwithstanding the fact that they were no longer in the custody of the military.[99] In this case, the Court made the important ruling that "the right to security of person can exist independently of the right to liberty. In other words, there need not be a deprivation of liberty for the right to security of person to be invoked."[100]

In discussing the concept of the right to security, the Court established that it may be understood in three ways. First, the right to security of person is freedom from fear, or in the context of the *amparo,* freedom from threat to the rights to life, liberty or security. Thus, as in the case of the Manalo brothers, the continued threat posed by their abductors after the brothers had escaped was considered a violation of their right to security. Second, the right to security of person is a guarantee of bodily and psychological integrity or security. The actionable wrong in such case would be the practice of inflicting physical injuries or torturing the detainees during interrogations. Third, the right to security of person is a guarantee of protection of one's rights by the government which must make effective the Constitutional guarantees of order and security. Such protection includes conducting effective investigations, organizing of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats thereof) and/or their families, and bringing offenders to the bar of justice.[101]

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[98] Diane A. Desierto, *Justiciability of Socio-Economic Rights: Comparative Powers, Roles and Practices in the Philippines and South Africa*, 11 ASIAN PAC. L. & POL'Y J. 114, 132 (2009), *citing* Committee on the Revision of the Rules of Court, *Annotation to the Writ of Amparo* (2007).

[99] *Manalo*, 568 SCRA 1.

[100] *Id.* at 58. (Emphasis omitted.)

[101] *Id.* at 52-61.

In that same year, the Court in *Canlas v. NAPICO*[102] refused to grant the writ in favor of the petitioner, whose dwelling was subject to demolition. The Court ruled that the order of demolition did not constitute a violation of the right to life, liberty, or security as contemplated in Section 1 of the Rule.[103] Similarly, in the case of *Reyes v. Court of Appeals*,[104] the Court refused to grant the writ to counter the hold departure order issued against petitioner and other individuals implicated in the Manila Peninsula mutiny. The Court did not give merit to petitioner's contention that the right to travel as part of the right to liberty was within the ambit of the *amparo* protection.[105] Citing *Marcos v. Sandiganbayan*,[106] it held that "a person's right to travel is subject to the usual constraints imposed by the very necessity of safeguarding the system of justice. In such cases, whether the accused should be permitted to leave the jurisdiction for humanitarian reasons is a matter of the court's sound discretion."[107]

In the first instance that the Court had the opportunity to apply the Rule, its position was clear:

> This new remedy of writ of *amparo* which is made available by this Court is intended for the protection of the highest possible rights of any person, which is his or her right to life, liberty and security. The Court will not spare any time or effort on its part in order to give priority to petitions of this nature. However, the Court will also not waste its precious time and effort on matters not covered by the writ.[108]

The 2009 case of *Razon v. Tagitis* became the next significant case on the writ of *amparo*. Tagitis disappeared in Zamboanga and was suspected to be in the hands of the Crime Investigation and Detection Group of the PNP (CIDG-PNP) for custodial investigation. It was believed that he was assisting the Jemiah Islamiah (JI). His wife filed a petition for the writ of *amparo*. Here, the Court established the elements which would constitute an enforced disappearance based on the definition found in Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance: (a) arrest, detention, abduction or any form of deprivation of liberty; (b) carried

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[102] Canlas v. Napico Homeowners Ass'n., I-XIII, Inc. [hereinafter "Canlas"], G.R. No. 182795, 554 SCRA 208, June 5, 2008.

[103] *Id.* at 210-11.

[104] Reyes v. Ct. of Appeals, G.R. No. 182161, 606 SCRA 580, Dec. 3, 2009.

[105] *Id.* at 594.

[106] Marcos v. Sandiganbayan, G.R. No. 115132, 247 SCRA 127, Aug. 9, 1995.

[107] Reyes v. Ct. of Appeals, G.R. No. 182161, 606 SCRA 580, 594, Dec. 3, 2009.

[108] *Canlas*, 554 SCRA 208, 211-2.

out by agents of the State or persons or groups of persons acting with the authorization, support or acquiescence of the State; (c) followed by a refusal to acknowledge the detention, or a concealment of the fate of the disappeared person; and (d) placement of the disappeared person outside the protection of the law.[109]

In the 2010 case of *Rubrico v. Arroyo*, the concept of command responsibility in relation to *amparo* proceedings was given consideration by the Court for the first time.[110] It held that "command responsibility, as a concept defined, developed, and applied under international law, has little, if at all, bearing in *amparo* proceedings."[111] Being understood in international law as a form of criminal complicity through omission, its function of imputing criminal liability on certain individual respondents was beyond the reach of *amparo* even if incidentally a crime or an infraction of an administrative rule may have been committed.[112]

The inapplicability of the doctrine of command responsibility in *amparo* petitions was affirmed in the 2010 case of *Roxas*, where the Court appeared to say that commanders of the military and the police may be impleaded not on the basis of command responsibility but on the basis of responsibility or accountability, because of their direct or indirect acquiescence in the commission of the acts complained of.[113]

However, in the 2011 case of *Rodriguez v. Arroyo*, the Court, through then Associate Justice Maria Lourdes Sereno, finally decided that "nothing precludes this Court from applying the doctrine of command responsibility in *amparo* proceedings to ascertain responsibility and accountability in extrajudicial killings and enforced disappearances."[114] But the Court qualified it by saying that the doctrine should be applied only to determine "the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be appropriate under the premises to protect rights covered by the writ of *amparo*."[115] The Court maintained its position that such determination would not fix liability—whether criminal or administrative—and would only aid in devising remedial measures to protect the complainant's

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[109] *Razon*, 606 SCRA 598, 694.
[110] *Rubrico*, 613 SCRA 233.
[111] *Id.* at 251.
[112] *Id.* at 253.
[113] *Roxas*, 630 SCRA 211, 229-32.
[114] *Rodriguez*, 660 SCRA 84, 112.
[115] *Id.* at 111, 113, *citing Rubrico*, 613 SCRA 233.

rights.[116] Furthermore, *Rodriguez* declared that a former president may be held accountable or responsible under the writ since his or her immunity from suit only applies during his or her tenure as president.[117]

The 2012 case of *Navia v. Pardico*[118] ruled that an indispensable element of a case of enforced disappearance is the second element: that it be carried out by agents of the State or persons or groups of persons acting with the authorization, support or acquiescence of the State.[119] State participation is the indispensable element which differentiates a case of enforced disappearance from an ordinary case of missing persons.[120]

From the foregoing, it can be gleaned that first, the Court has not been willing to extend the privilege of the writ to cases outside the contemplation of enforced disappearances and/or extrajudicial killings. Second, the elements of an enforced disappearance have now been legally defined in jurisprudence, with state participation being the most indispensable. Third, the concept of command responsibility has been introduced into the framework of the *amparo*, such that it is possible to hold liable high ranking officials who did not directly participate in the acts complained of. Finally, a former president may be impleaded and made accountable or responsible under the Writ since he or she is no longer protected by immunity from suit after his or her tenure.

ii. Evidence

a. The Substantial Evidence Rule

The Court recognizes the unique difficulties presented by the nature of enforced disappearances particularly in matters of evidence. The intention of the Court to respond to such realities is apparent from the Rule as well as in jurisprudence.[121] The Court said in *Manalo*:

> With the secret nature of an enforced disappearance and the torture perpetrated on the victim during detention, it logically holds that much of the information and evidence of the ordeal will come from the victims themselves, and the veracity of their account will depend on their credibility and candidness in their written and/or oral statements. Their statements can be corroborated by other evidence

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[116] *Id.* at 102.
[117] *Id.* at 107.
[118] Navia v. Pardico, G.R. No. 184467, 673 SCRA 618, June 19, 2012.
[119] *Id.* at 635.
[120] *Id.*
[121] *See e.g. Razon*, 606 SCRA 598, 684-6.

> such as physical evidence left by the torture they suffered or landmarks they can identify in the places where they were detained. Where powerful military officers are implicated, the hesitation of witnesses to surface and testify against them comes as no surprise.[122]

To respond, the Rule requires that the parties prove their allegations only by substantial evidence.[123] In *Rubrico*, substantial evidence was referred to as:

> [M]ore than a mere imputation of wrongdoing or violation that would warrant a finding of liability against the person charged; it is more than a scintilla of evidence. It means such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might opine otherwise.[124]

Thus, a complainant's burden of proving his allegations by substantial evidence is not related to the burden of the respondents to prove compliance with extraordinary diligence.[125] The respondent's failure to establish that the public official concerned observed extraordinary diligence in the performance of duty does not result in the automatic grant of the privilege of the writ. It does not relieve the petitioner of the duty of establishing his or her claim by substantial evidence.[126]

b. Appreciation of the Evidence

In *Secretary v. Manalo*, the Court gave credence to Manalo's testimony which contained "countless candid details of respondents harrowing experience and tenacious will to escape, captured through his different senses and etched in his memory."[127] Furthermore, it was corroborated by the affidavit of his brother as well as medical reports and photographs.[128]

Razon discussed the doctrine of totality of evidence:

> The fair and proper rule, to our mind, is to consider all the pieces of evidence adduced in their totality, and to consider any evidence

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[122] *Manalo*, 568 SCRA 1, 48-9.

[123] The Rule on the Writ of *Amparo*, § 17.

[124] *Rubrico*, 613 SCRA 233, 256-7.

[125] Lozada v. Macapagal-Arroyo [hereinafter "Lozada"], G.R. No. 184379, 670 SCRA 545, 568, Apr. 24, 2012.

[126] *Yano*, 612 SCRA 347, 360.

[127] *Manalo*, 568 SCRA 1, 45.

[128] *Id.* at 47-8.

> otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced. In other words, we reduce our rules to the most basic test of reason i.e., to the relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence. Thus, even hearsay evidence can be admitted if it satisfies this basic minimum test.[129]

In this case, the Court decided to forego certain principles in the rules on evidence in order to examine the testimony of the witness Kasim. While the testimony would have been based on hearsay evidence and therefore inadmissible, the Court said that "we should at least determine whether the Kasim evidence before us is relevant and meaningful to the disappearance of Tagitis and reasonably consistent with other evidence in the case."[130]

However, the Court was not so liberal in *In Re Melissa Roxas* where the petitioner buttressed her claims only with parallel evidence. The Court here stated that:

> The similarity between the circumstances attending a particular case of abduction with those surrounding previous instances of enforced disappearances does not, necessarily, carry sufficient weight to prove that the government orchestrated such abduction. We opine that insofar as the present case is concerned, the perceived similarity cannot stand as substantial evidence of the involvement of the government.
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> In *amparo* proceedings, the weight that may be accorded to parallel circumstances as evidence of military involvement depends largely on the availability or non-availability of other pieces of evidence that has the potential of directly proving the identity and affiliation of the perpetrators. Direct evidence of identity, when obtainable, must be preferred over mere circumstantial evidence based on patterns and similarity, because the former indubitably offers greater certainty as to the true identity and affiliation of the perpetrators. An amparo court cannot simply leave to remote and hazy inference what it could otherwise clearly and directly ascertain.[131]

Roxas's cartographic sketches of her abductors' faces were available to potentially identify her abductors. The Court ruled against Roxas because she

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[129] *Razon*, 606 SCRA 598, 692.
[130] *Id.* at 703.
[131] *Roxas*, 630 SCRA 211, 234.

failed to prove that the faces in her sketches were those of military or police personnel.[132]

c. What Need not be Proved

The Court is not precluded from taking judicial notice of past decisions to rule favorably in a case. In *Manalo*, Raymond Manalo testified to having encountered Sherlyn Cadapan, the victim in *Boac v. Cadapan*,[133] during the course of his detention. The Court in *Boac* took judicial notice of the *Manalo* decision and its appreciation of Raymond's testimony in that case, characterizing it as a candid and forthright narrative of the abduction and as graphic descriptions of the detention area which were further corroborated by his brother's testimony and the medical and forensic reports. The Court considered that to not take notice would be to "disturb its appreciation of Manalo's testimony."[134]

3. Limitations

i. Intrinsic Limitations

Being a product of the rule-making power of the Supreme Court, the Writ of *Amparo* cannot diminish, increase or modify substantive rights. In this regard, it can only aid a court as an auxiliary process in the exercise of jurisdiction already granted to it to try cases involving violations of personal freedoms and security. An independent action is created through law or the Constitution, as when these confer upon the courts a new jurisdiction. If the *amparo* were to be considered an independent action, it would violate the limits of the rule-making power of the Supreme Court.[135]

Nevertheless, it is the position of one author, based on the evolution of the *amparo* in other jurisdictions, that the Writ of *Amparo* is both procedural and substantive. Paolo Cardinal thus posits that:

> [B]oth the *Amparo* in general and the Philippine *Amparo* in particular have a structural dual nature. That is to say, a set of procedural rules aimed at the defense of fundamental rights while being a fundamental right in itself, much in the same way that access to justice is a fundamental right in itself, as are the constitutional rights

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[132] *Id.* at 234-5.

[133] Boac v. Cadapan [hereinafter "Boac"], G.R. No. 184461, 649 SCRA 618, 640-43 May 31, 2011.

[134] *Id.* at 643.

[135] Mendoza, *supra* note 40, at 2-3.

> of the accused. People do now have consecrated their right to *Amparo* strictly saying.
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> * * *
>
> Hence, since it is not possible in this case to impose a clear-cut division, one must balance contesting values and opt to consider effective judicial protection principles and the *pro homine* principle as relatively prevalent in the adjudicated case, as well as to appeal to a certain idea of constitutional necessity—in light of other powers inaction— that will be proportionally addressed and realized.[136]

Another possible inherent limitation is the President's power to suspend the privilege of the writ of *amparo*. One author is of the opinion that the President's power to suspend the privilege of the writ of *habeas corpus* implies his power to suspend the privilege of the writ of *amparo*. He argues that the writ of *amparo* is merely "auxiliary" to the writ of *habeas corpus* and "cannot remain standing without the main remedy."[137]

On the other hand, another author opines that in the absence of such similar express provision, it should not be concluded that the *amparo* can be suspended at all. Such view, he argues, is supported if we consider:

> [T]he important fundamental rights [the writ of *amparo*] is sworn to protect and its legal construction as an autonomous procedure, the only exception being in the case of a pending criminal action. The procedural autonomy of the *amparo* may be seen in its lack of dependence on other actions, such as that of *habeas corpus*.[138]

The author qualifies however that, should the *amparo* be capable of being suspended, the same conditions applied to the suspension of the privilege of the writ of *habeas corpus* should likewise be applied. Specifically, it can only be suspended in cases of invasion or rebellion, or when the public safety requires it, and only by an act of the President, and subject to reportorial obligations to and review by the Congress.[139]

Finally, the writ of *amparo* can only be used to enforce self-executing rights in the Constitution. This is clear from the deliberations of its drafters where Justice Azcuna said:

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[136] Cardinal, *supra* note 1, at 267-8.
[137] Mendoza, *supra* note 40, at 2.
[138] Cardinal, *supra* note 1, at 283.
[139] *Id.* at 284.

> So we have to distinguish between problematic rights and self-executing constitutional rights. In the recent decision of the Court in *Tondo Medical Center*, it was pointed out that certain rights found under the Constitution are not self-executory. They need legislation to be enforceable... and those rights cannot be enforced through *amparo*. On the other hand, there are decisions of the Court with respect to certain rights, *i.e.* the right to a healthy environment – there is no need for legislation and therefore it is covered by the writ – so assuming that a right under the Constitution...is enforceable then the Court can enforce it through rules adopted for the enforcement of such right. The rights given under the Constitution cannot be left without remedy and if Congress or any other body that is supposed to provide for a remedy fails to do so, it can be enforced by the courts. The other thing is, since [the amparo] is a flexible writ that varies from country to country, [it] is for us to shape our own Filipino amparo to meet our needs [and] special situation.[140]

This, unfortunately, affirms the dichotomous treatment of human rights in the Philippines which can be traced back to the intention of the framers of the Constitution. Civil and political rights enshrined in the Bill of Rights needed no further implementing legislation to be enforceable. Meanwhile, economic, social, and cultural rights placed in the article on Social Justice[141] were more properly claims or demands on the state, such that without implementing action by the state, they generally cannot be enforced against anybody by judicial action.[142]

In the context of the *amparo*, notwithstanding the present limited application to enforced disappearances and extralegal killings, should the scope of the writ be expanded, second generation rights under Article XIII of the Constitution would still be beyond the ambit of the writ in the absence of implementing legislation.

ii. Extrinsic Limitations

Certain external factors may affect the efficacy of the writ, particularly in the application of the Rule and in the enforcement of the interim reliefs and of the judgment. First, courts would dismiss petitions on the basis of insufficiency of evidence. For instance, the petition filed by the mother of

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[140] 1 Records of the Supreme Court Committee on Rules 1 (2007).

[141] CONST. art. XIII.

[142] Muyot, *supra* note 43, at 10-12.

Jonas Burgos was dismissed despite the fact that the vehicle used for the alleged abduction was traced to be in the possession of military men. The court, however, ordered law enforcers to continue their investigation.[143] Lourdes Rubrico's petition was likewise dismissed even when she and her children appeared in court to testify while the respondents did not present any witnesses.[144] This was subsequent to the decision of the Court in *Manalo*, where it was held that testimonial evidence alone, if corroborated, may be enough to constitute substantial evidence to prove that the enforced disappearance took place.[145]

Second, enforcement agencies lack willingness to observe the orders of the court in *amparo* proceedings. Military officers would decline to appear in court or refuse entry into military bases despite a lawful inspection order.[146] Moreover, an unspoken line prevents the police from actively pursuing leads within the military. As mentioned in the Melo Report, the police officers behind TFU did not think to engage military officers in their interviews because they believed that they lacked jurisdiction to investigate military officers and operations.[147]

Furthermore, the courts, at times, give credence to the claims of the military that the victims are allegedly in their custody by their own volition[148] or that the victims are NPA turned military assets who seek their protection.[149] This is counterintuitive to human experience and the court should know better than to take such claims at face value. Worse, it is claimed that the AFP itself files petitions for the writ of *amparo* against leaders of legal democratic organizations in an attempt to turn the table against the intended beneficiaries of the new writ.[150]

Third, the interplay between the criminal justice system and the nature of the cases covered by the *amparo* presents enforcement problems. As Philip Alston observed:

> The criminal justice system's failure to obtain convictions and deter future killings should be understood in light of the system's overall

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[143] Karapatan, *The 2008 Year-End Report of the Human Rights Situation in the Philippines*, at 20-21 (2008).

[144] *Id.* at 21.

[145] *Manalo*, 568 SCRA 1, 43-9.

[146] Karapatan, *supra* note 143, at 22.

[147] Melo Commission Report, *supra* note 5, at 8-9.

[148] Colmenares, *supra* note 77, at 3-4, 11.

[149] *Rodriguez*, 660 SCRA 84, 122-3.

[150] Karapatan, *supra* note 143, at 22.

> structure. Crimes are investigated by two bodies: the PNP, which is organized on a national level but is generally subject to the "operational supervision and control" of local mayors; and the National Bureau of Investigation (NBI), which is centrally controlled. Prosecutors, who are organized in the National Prosecution Service (NPS) of the DOJ, determine whether there is probable cause and then prosecute the cases in the courts. This is the normal process; however, in cases implicating public officials, the Ombudsman should take over the investigation and conduct the prosecution. Cases are tried before the courts, with the Supreme Court both administering the judiciary and providing the highest level of appellate review. Cases against senior Government officials should be prosecuted by the Ombudsman before the Sandiganbayan rather than the ordinary courts, but the Supreme Court still provides the highest level of appellate review. The Inter-Agency Legal Action Group (IALAG) is the latest addition to the system, affecting the operations of the NBI, NPS, and PNP.[151]

The bureaucratic structure of the criminal justice system creates confusion in terms of authority and jurisdiction. A streamlined process is necessary to ensure the speedy prosecution of cases. The very fact that military and police officers are the most usual respondents in *amparo* petitions already serves as a limitation in the effective execution of judgments. The conflict of interest is pretty much ingrained. The necessity of making use of an independent body to oversee the execution of the privilege of the writ has never been clearer.

III. ANALYSIS

A. Situating the *Amparo*

1. In Relation to Other Procedural Remedies

One issue which always crops up is that of overlap between the constitutionally enshrined writ of *habeas corpus* and the more recent rules on the Writ of *Amparo* and Writ of *Habeas Data* which can be considered as operating within the same regime of human rights. The writ of *habeas corpus* extends to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.[152] On the other hand, the writ of *amparo* covers

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[151] Alston, *supra* note 16, at 17-8. (Citations omitted.)

[152] RULES OF COURT, Rule 102, § 1.

extralegal killings and enforced disappearances or threats thereof.[153] Meanwhile, the writ of *habeas data* involves the right to privacy in life, liberty or security violated or threatened by an unlawful act or omission of any person or entity engaged in the gathering of information regarding the person, family, home and correspondence of the aggrieved party.[154]

Habeas corpus proceedings would apply to all manners of involuntary restraint or illegal confinement, which would logically include cases of enforced disappearances. However, actual restraint must be established, since the rule presupposes actual custody by the respondents.[155] The writ of *amparo* on the other hand, in its present form, is limited to cases of enforced disappearances and extralegal killings, but extends such protection to threats thereof.[156] Precisely, when actual custody is not established, *amparo* would be more appropriate. The writ of *habeas data*, on the other hand, is not confined to cases of enforced disappearances or extralegal killings, and may also be used not only for actual violations of the right to privacy but also to threats of violation.[157]

For the longest time, the detention of political prisoners was questioned through *habeas corpus* proceedings. The Supreme Court, however, has not been as liberal in its granting of the privilege. Since only the legality of detention is questioned in a *habeas corpus* proceeding, the protection of the writ cannot be extended where the custody of missing persons is denied—after all, there was no detention to begin with. With that, the writ of *habeas corpus* could not be availed of to inquire into the claims of the general denials of the military in cases of missing persons. Victims and families of victims of enforced disappearances or extrajudicial killings were left at a dead end for the longest time.[158]

The Supreme Court, in denying the reliefs prayed for, would reason that it is not a trier of facts where there is either a denial of custody of the missing persons and there is no proof to rebut such denial, or when there is a claim that the missing person has been released however questionable such claim is. This is clearly a problem since release is properly an affirmative defense and thus must be proven in the respondent's pleadings.[159] The writ of *amparo* is designed to fill this gap by ensuring that the problem of impunity,

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[153] The Rule on the Writ of *Amparo*, § 1.

[154] A.M. No. 08-1-16-SC (2008), § 1. The Rule on the Writ of *Habeas Data*.

[155] *Boac*, 649 SCRA 618, 628.

[156] The Rule on the Writ of *Amparo*, § 1.

[157] The Rule on the Writ of *Habeas Data*, § 1.

[158] Mendoza, *supra* note 40, at 4.

[159] Duremdes, *supra* note 46, at 28-9.

which was left unsolved in *habeas corpus* proceedings, could be pursued through the interim reliefs discussed earlier.

Noteworthy, however, is the opinion of Justice Vicente V. Mendoza that the perceived inefficacy of the writ of *habeas corpus* could only be a result of a lack of appreciation of its potential and the broad discretion of the Court in its application. He said:

> Mere denial by the military that they have custody of a person whose whereabouts and cause of detention are sought cannot foreclose further inquiry by the court. There are discovery procedures available under the Rules of Court which can be utilized by a party in *habeas corpus* proceedings. By express provision these rules, along with other rules for ordinary actions, apply to special proceedings such as those for *habeas corpus*. In addition, Rule 135, § 6, give courts the power to issue all auxiliary writs, processes and other means necessary to carry into effect their jurisdiction. Courts are thus given broad discretionary powers to fashion procedures for the full development of the facts.[160]

Even then, the Court of Appeals in *Boac v. Cadapan* held that a *habeas corpus* petition was not the appropriate remedy where the location of the person was unknown since its primary function was to inquire into the legality of detention.[161] In such cases, a petition for a writ of *amparo* is more appropriate because it provides for interim reliefs that can be used to ascertain the whereabouts of the disappeared person. However, because of the policy behind the writs and the nature of the circumstances surrounding the filing of these cases, the Supreme Court has time and again, rectified procedural lapses by the parties. For instance, in *Boac*, it resolved to consolidate the petition for the writ of *habeas corpus* and the petition for the writ of *amparo*.[162]

In *Rodriguez*, the court had the opportunity to discuss the nature of the writ of *habeas data* as a judicial remedy to protect a person's right to control information regarding himself, particularly in instances where such information is being collected through unlawful means in order to achieve unlawful ends. The Court declared that it was an independent and summary remedy to protect the right to informational privacy.[163] In contrast, an indispensable requirement before the privilege of the writ of *amparo* may be extended is the showing, at

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[160] Mendoza, *supra* note 40, at 4.
[161] *Boac*, 649 SCRA 618, 628.
[162] *Id.* at 630-31.
[163] *Rodriguez*, 660 SCRA 84, 102.

least by substantial evidence, of an actual or threatened violation of the right to privacy in life, liberty or security of the victim.[164]

Similar to that of those in *habeas corpus* and *amparo* petitions, proceedings in *habeas data* petitions do not entail any finding of criminal, civil or administrative culpability. Its only function is to grant the reliefs prayed for as provided in the Rule where the petition is sufficient. A favorable judgment may (a) grant access to the database or information; (b) enjoin the act complained of; or (c) in case the database or information contains erroneous data or information, order its deletion, destruction or rectification.[165]

In sum, courts are more predisposed to entertain the interplay of these judicial processes, as opposed to making findings of liability based on substantive law, since the reliefs that may be granted do not run counter to each other.

2. In Relation to Substantive Laws

It is well settled in jurisprudence that *amparo* proceedings determine responsibility or accountability and not criminal liability. *Razon v. Tagitis* explains the nature of a judicial determination in *amparo* proceedings:

> It does not determine guilt nor pinpoint criminal culpability for the disappearance; rather, it determines responsibility, or at least accountability, for the enforced disappearance for purposes of imposing the appropriate remedies to address the disappearance. Responsibility refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. Accountability, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance.[166]

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[164] *Roxas* 630 SCRA 211, 239-40.
[165] *Rodriguez*, 660 SCRA 84, 102.
[166] *Razon*, 606 SCRA 598, 620-21.

This passage reveals a few important features of the Writ. We will now examine them.

i. The Summary Nature of *Amparo* Proceedings

There would be no compliance with the due process requirements to sustain a finding of criminal liability by resorting to *amparo* proceedings. Being of a summary nature,[167] it would not provide parties a full-blown trial. More importantly, only substantial evidence is required to make a determination that the privilege of the writ should be granted,[168] in contrast to the requirement that conviction must be based on proof beyond reasonable doubt.[169]

ii. Limitations as to Liability

Only responsibility or accountability can be determined in *amparo* proceedings. A respondent is responsible where he is found, by substantial evidence, to have participated in any way in the alleged violations. He is accountable if found to have been involved in the enforced disappearance either by having knowledge of the same and the duty to disclose such knowledge, or in any way to have failed to discharge the burden of extraordinary diligence in investigating the enforced disappearance.

The privilege of the writ issued by the Court can order the respondents and proper agents of the state to take various actions relating to the enforced disappearance. However, individual criminal or administrative liability and the corollary or independent civil liability must be pursued by separate action.

At present, those responsible and accountable for enforced disappearances may be penalized under the *Desaparecidos* Act (RA 10353) or the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity (RA 9851). RA 10353 penalizes enforced or involuntary disappearances,[170] while RA 9851 penalizes both enforced disappearances and torture.[171] The Human Security Act (RA 9372) penalizes violators of the provisions on coercion and killing of suspected terrorists. Notably, no special law governs extralegal killings but the same may be prosecuted under the Revised Penal Code.

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[167] The Rule on the Writ of *Amparo*, §§ 6 & 13.
[168] § 17.
[169] RULES OF COURT, Rule 133, § 2.
[170] Rep. Act No. 10353 (2012), § 15.
[171] Rep. Act No. 9851 (2012), § 6.

Criminal prosecution for arbitrary detention [172] or expulsion, [173] serious [174] and less serious physical injuries, [175] threats [176] or coercion, [177] or murder [178] is also available. On the other hand, a civil action can be pursued through an action for damages under Article 32 of the Civil Code.[179]

Sections 22 and 23 of the Rule discuss the cases where an *amparo* proceeding and a criminal action are filed. These provisions adhere to the principle against the multiplicity of suits.

As a general rule, where a criminal action has already been filed against the alleged violators by the family of the victim or the victim himself, a separate petition for the writ of *amparo* is barred. However, the reliefs under the writ may be availed of in the criminal action. Where the criminal action is filed after the institution of *amparo* proceedings, the criminal action is not barred. The *amparo* proceedings will be consolidated with the criminal action. The Rule shall still govern the disposition of the reliefs prayed for in the petition, albeit, during the course of the criminal proceedings.[180]

iii. The Legislative Definitions Governing the Scope of Application

When the Rule was promulgated, there was at the time no law specifically penalizing extrajudicial killings and enforced disappearances. During the deliberation of the drafters, they intentionally refrained from making their own definitions (though they could not resist doing so in jurisprudence) in deference to the power of Congress to do so.[181] Now that special laws directly pertaining to these human rights violations have been enacted, legal definitions therein legislated could now bind *amparo* proceedings. We will now look at some of these definitions.

"Agents of the State" under RA 10353 refer to persons who, by direct provision of the law, popular election or appointment by competent authority, take part in the performance of public functions in the government, or

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[172] REV. PEN. CODE, arts. 124-126.
[173] Art. 127.
[174] Art. 263.
[175] Art. 265.
[176] Arts. 282-283, 285.
[177] Arts. 286-288.
[178] Art. 248.
[179] *See* Mendoza, *supra* note 40, at 3.
[180] The Rule on the Writ of *Amparo*, §§ 22-23.
[181] Gozon & Orosa, *supra* note 52, at 24-5.

perform in the government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class.[182]

In RA 9851, an "enforced or involuntary disappearance of persons" means the arrest, detention, or abduction of persons by, or with the authorization support or acquiescence of, a State or a political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing from the protection of the law for a prolonged period of time.[183] On the other hand, in RA 10353, "enforced or involuntary disappearance" refers to the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law.[184]

RA 9851 defines "armed forces" as all organized armed forces, groups and units that belong to a party to an armed conflict which are under a command responsible to that party for the conduct of its subordinates.[185] Notably, under this definition, armed forces need not be the official state military.

As it stands, our special laws have set the parameters for effecting liability once the privilege of the writ of *amparo* is granted. It becomes easier to prosecute, there being a law already penalizing enforced disappearance in particular. This is, however, not the case in extralegal killings. Strangely, no special law has been enacted penalizing it as a crime separate from the felonies in the Revised Penal Code.

On the other hand, statutes have now demarcated the bounds within which criminal liability may be exacted. Thus, it is possible, that the resolution in *amparo* cases may actually be broader in scope and cast a wider net of protections, but in the end, the prosecution of the offenders will be with a different set of standards altogether. For instance, both state and non-state actors may be respondents in an *amparo* petition. However, the definition of an enforced disappearance under RA 10353 establishes that it must be committed through an agent of the State or must at least show acquiescence by the

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[182] Rep. Act No. 10353, § 3(a).
[183] Rep. Act No. 9851, § 3(g).
[184] Rep. Act No. 10353, § 3(b).
[185] Rep. Act No. 9851, § 3(d).

State.[186] This was also the doctrinal pronouncement in *Navia*.[187] In effect, to prosecute private offenders who may have been held responsible or accountable in the *amparo* judgment, a complainant will have to use another statute deemed more appropriate, such as RA 9851 or the Revised Penal Code.

B. The Doctrine of Command Responsibility

The declared purpose of the Writ of *Amparo* is to be both curative and preventive in addressing extralegal killings and enforced disappearances. It is curative because the *amparo* proceeding enables aggrieved parties to seek protection, access information and gain evidence for future prosecution of cases. It is preventive in that it aims to break the expectation of impunity.[188]

To this day, the second function remains an esoteric declaration. Impunity cannot truly be curbed if only subordinates in the military chain-of-command are held responsible or accountable. This cannot be helped precisely because information to implicate a military man becomes more scarce the higher one climbs up the ranks. It could be likened to a hydra whose heads when cut off will always be replaced while the body is protected by an impenetrable defense. The doctrine of command responsibility was developed in international law precisely to respond to this problem. A major development in *amparo* proceedings is the application of the doctrine of command responsibility.

The doctrine of command responsibility refers to "the responsibility of commanders for war crimes committed by subordinate members of their armed forces or other person subject to their control."[189] Today, command responsibility liability extends not only to positive acts of the superior, i.e. having a direct hand or in directly ordering or authorizing the violations, but also for culpable omissions, i.e. having actual or constructive knowledge of the crime and failing to prevent it. Practically speaking, it is the latter aspect addressed by the command responsibility doctrine.[190] "[S]ince the basis is the

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[186] Rep. Act No. 10353, § 3(b).

[187] Navia v. Pardico, G.R. No. 184467, 673 SCRA 618, June 19, 2012.

[188] *Manalo*, 568 SCRA 1, 43.

[189] Fides Angeli Sabio, *Where the Buck Stops: Command Responsibility in Extrajudicial Killings—Deducing Reasonable Standards for Imposing Command Responsibility Liability on Responsible Military Officers*, 54 ATENEO L.J. 164, 182 (2009), *quoting* Weston Burnett, *Command Responsibility and a Case Study of the Criminal Responsibility of Israeli Military Commanders for the Pogrom at Shatila and Sabra*, 107 MIL. L. REV. 71, 76 (1985).

[190] *Id.* at 226-9.

failure to prevent, command responsibility may be characterized as an omission mode of offense."[191]

1. Origins

The concept originated in Greek times when the king would order each captain or lieutenant liable for the abuses of the members of his company. While the subordinate is primarily liable, should he escape or cover up his misdeed, the superior becomes liable as though he himself had committed the violation.[192] In the Nuremburg Trials, the Tribunal declared that command responsibility arises only where there was personal dereliction on the part of the general—the act was traceable directly to him or it is found that there was negligence on his part for failing to properly supervise his subordinates.[193] In the case of General Yamashita, the Court concluded that Yamashita possessed "an affirmative duty to take such measures as were within his power and appropriate in the circumstances to protect prisoners of war and the civilian population. This duty of a commanding officer has heretofore been recognized, and its breach penalized by our own military tribunals."[194]

In public international law, the doctrine of command responsibility has evolved into a customary norm and a generally accepted principle of international law.[195] It has in fact been codified in the Geneva Convention and the Additional Protocol II to which the Philippines is a state party.[196] On the basis of the incorporation clause, as well as by virtue of transformation, it can be argued that the observation of command responsibility liability is an international obligation that the Philippines has to observe.

2. Command Responsibility in Philippine Law

To the question of whether command responsibility is observed in the Philippines, the answer would be in the affirmative. As early as 1996, President Ramos issued Executive Order 226 entitled "Institutionalization of the Doctrine of Command Responsibility in All Government Offices, Particularly at all levels of Command in the Philippine National Police and other Law Enforcement Agencies." This issuance made neglect of duty a ground for

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[191] *Id.* at 226.
[192] *Id.* at 183.
[193] *Id.* at 185.
[194] In re Yamashita, 327 U.S. 1, 16 (1946). *See* Sabio, *supra* note 189, at 185-7.
[195] Sabio, *supra* note 186, at 182-213.
[196] *See id.* at 188-99.

administrative liability.[197] EO 226 attributes administrative liability under the doctrine of command responsibility where:

> Any government official or supervisor, or officer of the Philippine National Police or that of any other law enforcement agency has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge, he did not take preventive or corrective action either before, during, or immediately after its commission.[198]

Notably, however, EO 226 does not seem to cover the Armed Forces of the Philippines. However, in 2006, the Melo Commission recognized the application of command responsibility to the armed forces when it found that "General Palparan and perhaps some of his superior officers, may be held responsible for failing to prevent, punish, or condemn the killings under the principle of command responsibility."[199] The Melo Commission declared that the failure to investigate and to punish is also an inculpatory act under the doctrine.[200]

Further, although a relatively recent development, the case of *Rodriguez* has likewise affirmed the applicability of the doctrine of command responsibility in *amparo* proceedings, even if only to determine if a high-ranking official was responsible or accountable in the enforced disappearance or extralegal killing.[201]

3. The Elements

Razon enumerates the elements of command responsibility based on the definition under the International Convention for the Protection of All Persons from Enforced Disappearance:

> (a) arrest, detention, abduction or any form of deprivation of liberty;
> (b) carried out by agents of the State or persons or groups of persons acting with the authorization, support or acquiescence of the State;

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[197] Exec. Order No. 226 (1996). Institutionalization of the Doctrine of 'Command Responsibility' in All Government Offices, Particularly at All Levels of Command in the Philippine National Police and Other Law Enforcement Agencies.

[198] § 1.

[199] Melo Commission Report, *supra* note 5, at 58.

[200] *Id.*

[201] *Rodriguez*, 660 SCRA 84, 110-14.

> (c) followed by a refusal to acknowledge the detention, or a concealment of the fate of the disappeared person; and
> (d) placement of the disappeared person outside the protection of the law.[202]

Finally, command responsibility has become a basis for penal sanctions under RA 9851 and RA 10353. RA 9851 defines command responsibility thus:

> [A] superior shall be criminally responsible as a principal for such crimes committed by subordinates under his/her effective command and control, or effective authority and control as the case may be, as a result of his/her failure to properly exercise control over such subordinates, where: (a) That superior either knew or, owing to the circumstances at the time, should have known that the subordinates were committing or about to commit such crimes; (b) That superior failed to take all necessary and reasonable measures within his/her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.[203]

RA 9851 is a statutory enactment in compliance with our international obligations to recognize and penalize internationally recognized crimes against humanity. Thus, the aforementioned definition and elements are but an adoption of the international definition of command responsibility.

RA 10353 defines command responsibility thus:

> The immediate commanding officer of the unit concerned of the AFP or the immediate senior official of the PNP and other law enforcement agencies shall be held liable as a principal to the crime of enforced or involuntary disappearance for acts committed by him or her that shall have led, assisted, abetted or allowed, whether directly or indirectly, the commission thereof by his or her subordinates. If such commanding officer has knowledge of or, owing to the circumstances at the time, should have known that an enforced or involuntary disappearance is being committed, or has been committed by subordinates or by others within the officer's area of responsibility and, despite such knowledge, did not take preventive or coercive action either before, during or immediately after its commission, when he or she has the authority to prevent or investigate allegations of enforced or involuntary disappearance but

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[202] *Razon*, 606 SCRA 598, 694.
[203] Rep. Act No. 9851, § 10.

> failed to prevent or investigate such allegations, whether deliberately or due to negligence, shall also be held liable as principal.[204]

In sum, we can summarize the essence of the doctrine in three elements common to all these definitions:

> a) the existence of a superior-subordinate relationship between the officer and the perpetrator of the substantive crime; (b) a *mens rea* element that requires knowledge on the part of the commander, often constructive, suggesting a negligence standard of the subordinate's *jus cogens* violations; and (c) an *actus reus* element, which requires that the superior either failed to prevent the abuses, or *post-hoc*, failed to punish the subordinate perpetrators for their actions.[205]

I believe that this permutation comprises the customary notion of command responsibility contained in most, if not all, definitions of the doctrine. In evaluating each of these elements, the goal is to create standards by which an aggrieved party can properly use the ground of command responsibility as a basis for keeping high-ranking officials impleaded in an *amparo* proceeding.

i. The Existence of a Superior-subordinate Relationship

Command responsibility is not implicated simply because a superior has a higher rank than another. It is the position of some authors that the superior must have effective control over the subordinate. Effective control refers to the superior's "material ability to prevent and punish the [subordinate's] commission of these offenses."[206] In other words, it must be within the authority of the superior to have prevented or punished the violations.

ii. Knowledge Requirement

This pertains to both actual and constructive knowledge on the part of the superior that the crime was about to be or had been committed. Constructive knowledge consists of "possession of information sufficient to put the superior on notice of the risk of such offenses having occurred or occurring."[207] To satisfy the requirement of constructive knowledge, the information need only to have been available and does not require that the

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[204] Rep. Act No. 10353, § 14.
[205] *See* Sabio, *supra* note 189, at 182-3.
[206] *Id.* at 208.
[207] *Id.*

superior acquainted himself with the same.[208] On the part of the prosecution, such knowledge of the superior can be established by direct or circumstantial evidence.[209]

Constructive knowledge can be acquired through reports either oral or written, the character of his subordinates, or even media reports. The notoriety of the alleged crimes, taken alone, does not give rise to a presumption that the superior knew about them.[210] However, several factors can be considered in imputing constructive knowledge: if the reports can show the number, type, scope, and time of occurrence of illegal acts, the number and type of troops and logistics involved, the geographical location and widespread occurrence of the acts, the tactical tempo of operations, the *modus operandi* of similar illegal acts, the officers and staff involved, and the location of the commander at the time.[211]

iii. Superior Fails to Prevent the Acts or
Punish the Perpetrator

Reasonableness is the gauge for the extent of liability a superior can be held for. Only those measures that could have been within his power to take can be the subject of scrutiny. On one hand, international case law has held that the lack of formal legal competence to take the necessary measure to prevent a crime does not preclude liability under the command responsibility doctrine. On the other, it is hard to set guidelines for the measure which would discharge the obligation under this third element.[212] Needless to say, liability extends not only to positive orders but also to the dereliction of duty to prevent or punish.

4. Command Responsibility as Applied in the Philippine Context

How much difference has the application of the doctrine of command responsibility in *amparo* proceedings made in cases of enforced disappearances and extralegal killings? Not much, really.

After the majority opinion in *Rubrico* declared that command responsibility liability found little relevance in *amparo* proceedings because the

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[208] *Id.* at 209.
[209] *Id.* at 208.
[210] *Id.*
[211] *Id.* at 231.
[212] *Id.* at 209, *citing* Prosecutor v. Delalic, ICTY-IT-96-21-T, Trial Chambers, No. 16, 1998.

doctrine was designed to impute criminal culpability, Associate Justice Conchita-Carpio Morales called out the Court in her separate opinion. She said:

> I submit that the Court should take this opportunity to state what the law ought to be if it truly wants to make the Writ of Amparo an effective remedy for victims of extralegal killings and enforced disappearances or threats thereof. While there is a genuine dearth of evidence to hold respondents Gen. Hermogenes Esperon and P/Dir. Gen. Avelino Razon accountable under the command responsibility doctrine, the ponencia's hesitant application of the doctrine itself is replete with implications abhorrent to the rationale behind the Rule on the Writ of Amparo.[213]

Affirming Justice Carpio-Morales' sentiments on the matter, the *Rodriguez* case stated that the doctrine of command responsibility could apply in *amparo* proceedings even if only insofar as determining responsibility and accountability in extrajudicial killings and enforced disappearances.[214] The Court emphasized, however, that the doctrine should be applied only to determine "the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be appropriate under the premises to protect rights covered by the writ of *amparo*."[215]

While former President Arroyo was dropped as a respondent in that case, the Court found that petitioner Rodriguez failed to support his allegations that she was responsible or accountable for his abduction. Neither was there even a clear attempt to show that she should have known about the violation of his right to life, liberty or security, or that she had failed to investigate, punish or prevent it.[216] This is a telling sign that perhaps if the proper allegations were made and substantial evidence was adduced to buttress such claims, the doctrine of command responsibility can be a potent tool to curb impunity in the high ranks of government.

The Court subsequently lost no time in reminding us that the determinations in *amparo* cases cannot hold respondents criminally liable, not even on the ground of command responsibility.[217] However, statutes penalizing superiors for neglect of duty on the ground of command responsibility now exist. It cannot be argued that these statutes can preclude the use of the

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[213] *Rubrico*, 613 SCRA 233, 275 (Carpio-Morales, *J.*, *separate*).
[214] *Rodriguez*, 660 SCRA 84, 110-14.
[215] *Id.* at 114, *citing Rubrico*, 613 SCRA 233; *Boac*, 649 SCRA 618. (Emphasis omitted.)
[216] *Id.* at 117.
[217] *Id.* at 112-5.

doctrine in *amparo* proceedings.

It is submitted that so long as its application is properly contextualized and the elements exist, the doctrine of command responsibility should be applied if only to ensure that high-ranking officials are no longer allowed to hide behind their positions and the chain-of-command. If any, the proper use of the doctrine of command responsibility in *amparo* proceedings can help courts in creating a clearer picture of the operations which underscore extralegal killings and enforced disappearances and make it more difficult to ignore the culpability of impleaded superiors.

I do not believe that the matter of applying the doctrine in *amparo* proceedings is a given. Jurisprudence is likely to turn either way and it is possible that the next few *amparo* cases will still lean towards a conservative application of the doctrine. The problem lies in the lack of uniform standards in determining a superior-subordinate relationship. It is apparent that the further away a superior is from the actual perpetrator in the chain of command, the harder it will be to find the reasonable connection to establish effective control.[218] The *Rodriguez* case itself clarifies that command responsibility liability is applied for purposes of determining who, *in the first instance*, is accountable for, and has the duty to address the violations.[219] This may be the reason why high-ranking officials like General Esperon or General Razon are dropped.

Such pronouncements, however, limit the application of the doctrine considerably. I submit that effective control as a test for the superior-subordinate relationship is a more beneficial standard because as long as the reasonable connection between the subordinate and the superior is established, command responsibility liability can be invoked. At the same time, the reasonableness standard protects against empty allegations as to who is responsible.

Furthermore, where command responsibility is not invoked by the petitioner, the court does not take judicial notice of its application. This is despite the fact that the doctrine has formed part of the general principles of international law, is codified in international conventions, and thus, for all intents and purposes, forms part of our domestic laws.[220]

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[218] Sabio, *supra* note 189, at 229.

[219] *Rodriguez*, 660 SCRA 84, 111, 113, *citing Rubrico*, 613 SCRA 233; *Boac*, 649 SCRA 618.

[220] *Rubrico*, 613 SCRA 233, 273 (Carpio-Morales, *J.*, *separate*). "The Court should take judicial notice of the core element that permeates these formulations--a commander's

It remains to be seen whether the Courts will be willing to expand the scope of the writ in this regard.

C. Expansion of the Rule

The Puno Court spoke true when, in its capacity as drafters of the Rule on the Writ of *Amparo*, they deemed it more proper that the Writ be allowed to evolve by way of jurisprudence and substantive laws.[221] As already established in the previous sections, cases and statutes have in fact legally defined enforced disappearance, and the concept of command responsibility was slowly introduced to establish another ground for accountability.

The application of the Rule, however, is conservative at best. Courts are still reluctant to look favorably on petitions which do not fall within the factual milieu of an enforced disappearance. This was clearly illustrated in the case of *Lozada* when the Court of Appeals denied the issuance of the writ in favor of petitioner Lozada who claimed that his right to security had been threatened when he was disembarked from a plane and accosted by police officials. The Court of Appeals ruled that the case did not involve an extralegal killing or an enforced disappearance and dismissed it.[222] The dismissal can be viewed as having ignored the plain fact that there had been a threat, albeit aborted, at an enforced disappearance.[223] In affirming the Court of Appeals, the Supreme Court further said that the issue had been rendered moot since whatever threat had been alleged to exist had already ceased.[224]

Based on this observation, as well as the intrinsic limitations of the Writ, I believe an expansion to accommodate other factual milieus that do not strictly conform to the current understanding of, for instance, an enforced disappearance, will not materially change the Rule in its current form.

In Mexico, the *amparo*, which first appeared in 1847, was intended to be a "hybrid" writ, a process by which the judge could grant relief in cases of constitutional violations without declaring the law unconstitutional. When the writ of *habeas corpus* was developed, it particularly covered cases questioning the

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negligence in preventing or repressing his subordinates commission of the crime, or in bringing them to justice thereafter. Such judicial notice is but a necessary consequence of the application of the incorporation clause vis-à-vis the rule on mandatory judicial notice of international law."

[221] Adolfo S. Azcuna, *supra* note 83, at 50.

[222] *Lozada*, 670 SCRA 545, 564-5.

[223] Cardinal, *supra* note 1, at 285-6, *citing* Raul Pangalangan, *Passion for a Reason: Judicial Activism and Its Limits*, PHIL. DAILY INQUIRER, Feb. 1, 2008, *available at* https://opinion.inquirer.net/inquireropinion/columns/view/20080201-116069/Judicial-activism-and-its-limits.

[224] *Lozada*, 670 SCRA 545, 566.

custody by government officials of persons. The *amparo* was still held as the proper remedy in all other cases of constitutional violations. The Argentinian *amparo* is of a similar nature but broader—it could issue in cases of imminent acts or omissions in violation of constitutional liberties and not merely consummated acts. The Honduran *amparo* protects against violations of the constitution as well as liberties protected under international law. The Guatamelan *amparo* could be availed of as a protection of the constitutional rights of an individual. At times, it can address the constitutionality of a law.[225]

From these models, we can conclude certain things. First, in other jurisdictions, the *amparo* is the most immediate recourse of persons claiming that their fundamental rights have been violated. The Writ is broad and all-encompassing in this sense. Second, the respective scopes of the writ of *habeas corpus* and the writ of *amparo* are expressly delineated. Thus the writ of *amparo* is generally applicable, except in cases of custody, where the writ of *habeas corpus* is the more appropriate remedy. Third, the *amparo* has gained recognition as a human right inasmuch as it is considered the "right of every person to recourse that is simple, efficacious, and expeditious, against transgressions of constitutionally guaranteed rights."[226] Fourth, the Latin *amparo* may be used to pass upon the constitutionality of laws when such laws are used as a defense.

While the Philippine *amparo* indeed adheres more closely to the Latin American *amparo* tradition, the differences between the two are stark and indicative of how much it can evolve. *First*, the Philippine *amparo* was born out of a specific context and promulgated for a specific purpose—to serve as a remedy against the deprivation of right to life, liberty or security in general, and against enforced disappearances and extralegal killings in particular. In any case, it should be remembered that the writ may only be used for self-executing rights. The social, economic, and cultural rights under Article XIII of the Constitution are also constitutional human rights, but they lack the implementing statutes that would, in theory, allow the invocation of the writ. I believe that should there be any development in this regard, the area of probable expansion would only play within the limits of the rights to life, liberty, and security or threats thereof which would not necessarily constitute enforced disappearance or extralegal killing.

Second, the Rule on the Writ of *Amparo* does not exclude from its coverage rights other than personal liberty. However, it neither expressly nor implicitly provides for the prayer for the production of the person deprived of

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[225] Ranhilio Aquino, *The Solace of Amparo: A Brief Study on the Writ of Amparo*, 21 THE LAW'S REV. 21, 21-2 (2007).

[226] *Id.* at 21.

liberty and the showing that such detention was legal.[227] In any case, jurisprudence seems to be going in the direction that where custody is established but questioned, the proper remedy would still be the writ of *habeas corpus*.

Third, whether the writ of *amparo* can be considered a substantive right is a budding debate in the Philippines. This is the minority view, however, since authorities still refer to it as "an auxiliary remedy designed to aid a court in the exercise of jurisdiction already granted to it to try cases involving violations of personal freedoms and security."[228] In any case, the fact that the writ was promulgated through the Supreme Court's rule-making power subjects it to the condition that the rule shall not diminish, increase, or modify substantive rights.

Finally, courts cannot use the Philippine *amparo* to pass upon the constitutionality of a law. Provisions in the Rule were incorporated to effect a speedy disposition of *amparo* cases. Section 11 enumerates the prohibited pleadings.[229] Section 15 provides that hearings shall be summary.[230] Section 17 requires only substantial evidence in establishing the allegations of the petition.[231] These features of the *amparo* prevent a full-blown proceeding to consider the constitutionality of a law, even if raised as a defense.[232] More importantly, the constitutionality of a law cannot be attacked collaterally, which would be the case in *amparo* proceedings where the main issue is whether or not there has been an enforced disappearance or extralegal killing.

VI. CONCLUSION

Since the promulgation of the Rule on the Writ of *Amparo* in 2007, the evolution of the writ has been slow. With less cases filed and successfully decided than hoped, there does not appear to be any real difference in the state of human rights in the Philippines.

The Court is reluctant to entertain circumstances which do not fall within the context of extralegal killings or enforced disappearance despite those same situations being deprivations or imminent deprivations of life, liberty, or

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[227] *Id.* at 23.
[228] Mendoza, *supra* note 40, at 2.
[229] The Rule on the Writ of *Amparo*, § 11.
[230] § 15.
[231] § 17.
[232] Aquino, *supra* note 222, at 23.

security. It is likewise not keen on categorically holding high-ranking officials accountable, but quick to order the continued investigations of the acts complained of, to be conducted by the very same respondents impleaded. If any, it is the character of the violations which is rapidly evolving. The latest in transgressions of civil and political rights have included the detention and extralegal execution of leaders of indigenous communities and peasant farmers.

Be that as it may, it is still useful to reevaluate the framework of human rights in the Philippines in view of key developments already discussed.

A. The Foundation

The bedrock of this framework remains to be the 1987 Constitution. It is a declared state policy that the State values the dignity of every human person and guarantees full respect for human rights.[233] In this regard, the Bill of Rights protects our most fundamental civil and political rights, and Article XIII our social, economic, and cultural rights.

The guarantee of full respect of human rights is also an international obligation because we have adopted generally accepted principles of international law according to the Constitution. As a state party to various human rights instruments, we are bound by their text when it comes to various human rights issues. Our participation in the international community gives rise to an obligation on our part to observe respect for human rights.

In the context of civil and political rights, this would include enacting legislation to penalize internationally recognized crimes against humanity and ensuring that the standards used by our courts are compliant with *jus cogens* norms. Failure on our part to keep human rights violations in check may lead to sanctions. Thus, the human rights framework in the Philippines must still be evaluated against an international backdrop.

This is not to say that the Philippines is non-compliant. In fact, as discussed, the statutory safeguards against human rights violations are in place. These laws particularly penalize enforced disappearances. They also provide a legal definition which can be used by courts in determining whether or not an enforced disappearance or a threat thereof has taken place, filling the gap in legal definitions in the Rule on the Writ of *Amparo*.

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[233] CONST. art. II, § 11.

B. Minding the Gap

It is taken for granted that for a violation of the law, there must be a liability imposed, whether criminal, civil, or administrative. This would be true in cases of felonies under the Revised Penal Code. However, in practice, it is not as true in cases of enforced disappearances and extralegal killings.

The nature of the violation, being politically motivated and having been perpetrated by agents of the State, allows impunity to enter the picture. There is immediately an imbalance between the parties—an individual with no means or authority to prove that his or her abductors are agents of the State as against officers of the State who have access to resources to ensure that no trace of their involvement will be discovered. Due to lack of evidence, cases impleading public officers or military and policemen as respondents cannot stand against the evidentiary standards of the courts. The result is a gap between the violation and the liability.

The writ of *habeas corpus* was, for the longest time, the immediate recourse of victims of illegal detention. The view, however, has been to the effect that the remedy of *habeas corpus* was inadequate where precisely the identity of the custodian cannot be ascertained. The Rule on the Writ of *Amparo*—and later, the Writ of *Habeas Data*—was supposed to address this gaping hole. These judicial processes, created by authority of the rule-making power of the Supreme Court, are meant to break the expectation of impunity. The Rule on the Writ of *Amparo* was a direct response to the rise of enforced disappearances and extralegal killings.

1. Immediacy and Prevention

The Writ of *Amparo* was intended by the drafters to be a curative and preventive measure.[234] Its curative function is found most prominently in the protections granted both in the writ and in the privilege of the writ. *First*, the issuance of the writ gives rise to the obligation on the part of the respondents to file a return, which should reveal the information they possess and actions they have taken as regards the enforced disappearance or extralegal killing complained of.[235] Thus, the aggrieved party can immediately look to the courts to compel the alleged perpetrators to shed light on the incident.

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[234] *Manalo*, 568 SCRA 1, 43.

[235] The Rule on the Writ of *Amparo*, § 9.

Second, the interim reliefs of temporary protection[236] and witness protection[237] can safeguard the survival of an *amparo* petition. Due to the lack of other kinds of evidence, the testimonies of witnesses form the bulk of a petitioner's case. Thus, the progress of *amparo* petitions is seriously hampered when witnesses desist or disappear. A TPO or WPO will ensure that the petitioners and their witnesses are shielded from threats and harassment aimed at delaying or preventing the pursuit of the case. The Court's strong policy against the further clogging of dockets has impelled it to grant *amparo* petitions a great privilege by allowing the archival of cases for a period of two years. Witness protection programs must be strengthened to ensure that this period does not go to waste.

Third, the privilege of the writ, when granted, can provide various kinds of protections in the sound discretion of the court. The most common would include a pronouncement on the respondent's compliance with the standard of diligence required in responding to the enforced disappearance or extralegal killing, a determination of the respective accountabilities or responsibilities imputed to the respondents, and an order for the further investigation of the case and for the regular submission of reports for the court's monitoring. Also, the protections provided by the interim reliefs are necessarily subsumed in the privilege.[238]

As a preventive measure, the Writ was meant to break the expectation of impunity.[239] I believe that the drafters meant for the reliefs to be used in smoking out perpetrators of enforced disappearances and extralegal killings from the State's mantle of protection. Since the Rule prohibits respondents from issuing general denials in their Return and from invoking the presumption of regularity of performance of duty, they are compelled to show in concrete terms each step taken to address the acts complained of.[240] Moreover, the degree of diligence required is that of extraordinary diligence,[241] which, based on jurisprudence, respondents have difficulty complying with. What is needed is a strong court to categorically declare where the respondents have failed to discharge this burden.

Applying the doctrine of command responsibility can strengthen the preventive nature of the writ. As of now, jurisprudence merely affirms the

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[236] § 14(a).
[237] § 14(d).
[238] *Rodriguez*, 660 SCRA 84, 104-105.
[239] *Manalo*, 568 SCRA 1, 43.
[240] The Rule on the Writ of *Amparo*, § 9.
[241] § 17.

doctrine as applicable insofar as determining if such superior could be held responsible or accountable.[242] And pursuant to *Rodriguez*, there has to be a proper invocation of the doctrine, meaning establishing that its elements exist and the production of substantial evidence to prove each element, for there to be a successful finding of command responsibility liability.

While the application of the doctrine of command responsibility in an *amparo* proceeding will not constitute any form of prior judgment on the matter when raised in a criminal proceeding, it is still a potent tool to curb impunity. First, the invocation and proper allegation of the elements will prevent the dropping of such superiors as parties in the case. Second, such finding goes into the record of these high-ranking military officers or even the president.

As a discovery measure, the Writ is vital in facilitating future prosecution. Aggrieved parties will do well to remember that a judgment in an *amparo* proceeding is only for purposes of aiding in the eventual restoration of the victim's liberty or security. Thus, the interim reliefs of production and inspection must be utilized properly so as to gather as much information and evidence so that when a case, criminal or otherwise, is filed in court, it can stand on its own merits.

2. Enforcement

It goes without saying that a crucial step in the effectiveness of the Writ is the enforcement of the judgment, which is satisfied only when the threats to the petitioner's life, liberty, and security cease to exist as determined by the *amparo* court. Thus, until the judgment is fully satisfied, the extraordinary remedy of *amparo* allows vigilant judicial monitoring to ensure the protection of constitutional rights.[243]

When the court does issue the order granting the writ, there must be a body ready to ensure that the protections contained therein are complied with. The Commission on Human Rights (CHR) could be this body. However, it has figured very weakly in aiding *amparo* proceedings. In fact, CHR officials were censured by the Court in *Rodriguez* for failing to recognize signs of torture:

> [T]he CHR, being constitutionally mandated to protect human rights and investigate violations thereof should ensure that its officers are well-equipped to respond effectively to and address human rights violations. The actuations of respondents unmistakably showed their

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[242] *Rodriguez*, 660 SCRA 84, 110-14.

[243] *De Lima*, 691 SCRA 226, 234.

> insufficient competence in facilitating and ensuring the safe release of Rodriguez after his ordeal.[244]

The 1987 Constitution confers upon the CHR investigative powers, contempt powers, visitorial powers, recommendatory powers, monitoring powers, the power to grant immunities, deputize and appoint officers, and the duty to provide legal aid and conduct research.[245] Its primary purpose really is to investigate human rights violations. Nonetheless, because it is dependent on the Department of Justice for the prosecution of human rights violations, the CHR has been criticized time and again for being a paper tiger. [246] Understandably, it has lobbied for an expansion of its functions and powers, but there appears to be no political will in Congress to make that happen.

It is my belief that the CHR has the potential to aid in the effective execution of the privilege of the Writ of *Amparo* and it does not need prosecutorial powers to do so. Contrary to the current practice of the CHR, its investigatory powers are not merely for the purpose of resolving individual cases. Such powers can be channeled towards policy-making[247] or consolidating official reports which could expose the common patterns and practices surrounding enforced disappearances and extralegal killings. The widespread publication of these reports will ensure that high-ranking officials or superiors impleaded in *amparo* petitions will not be able to excuse themselves from liability by claiming that they have no constructive knowledge of the occurrence or the risk of occurrence of the offense for purposes of establishing the elements of command responsibility.

The Constitution also grants the CHR visitorial powers over jails, prisons, or detention facilities.[248] Moreover, under RA 10353, the CHR is mandated and authorized to conduct regular, independent, unannounced and unrestricted visits to or inspection of all places of detention and confinement.[249] The Court should keep this in mind when issuing its inspection orders such that the same or similar authority may be given to the CHR. Over all, the Court should involve the CHR more in the execution of its judgments in *amparo* petitions.

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[244] *Rodriguez*, 660 SCRA 84, 124.
[245] CONST. art. XIII, § 18.
[246] Muyot, *supra* note 43, at 25.
[247] *See id.* at 32.
[248] CONST. art. XIII, § 18(4).
[249] Rep. Act No. 10353 (2012), § 13.

3. Looking to the Future

Liability for human rights violations should be the end goal if we really want to give justice to the victims of enforced disappearances and extralegal killings. The Writ of *Amparo*, in this regard, serves as the preparatory step leading to the more important hurdle of filing the appropriate case. The successful prosecution of cases beyond the *amparo* petition will remind our public officers that they are not immune to inquiry nor will their transgressions on human rights, if any, remain unseen.

Although criminal prosecution cannot be compelled, there are different avenues to hold respondents liable. The Ombudsman is, in fact, mandated to investigate, whether upon complaint or on its own, public officers for their illegal acts and thereafter prosecute.[250] The CHR also has such investigatory power and recommendatory power to call attention to agents of the state when they fail to comply with the policy to respect human rights.[251] Clearly, we have enough recourse. The only thing necessary is sufficient zeal to use them.

The future of victims of enforced disappearances and of extralegal executions and their families seems bleak considering that the *Desaparecidos* Act has not yet produced convictions. Further, the law and jurisprudence in extralegal executions are clearly less developed than that of enforced disappearances. This is telling of the political will in this area of human rights. In light of the recent deaths of community leaders of the Lumad and the farmers of Kidapawan, it is crucial that our laws, our courts, and the criminal justice system are prepared to respond.

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[250] CONST. art. XI, § 13(1); Rep. Act No. 6770 (1989), § 15(1).
[251] Art. XIII, § 18.