Republic of the Philippines
Supreme Court
Manila

A.M. No. 07-9-12-SC

THE RULE ON THE WRIT OF AMPARO

(as amended by the Resolution of the Court *En Banc*
dated October 16, 2007)

EFFECTIVE OCTOBER 24, 2007

MANILA, PHILIPPINES

Republic of the Philippines
Supreme Court
Manila

EN BANC

A.M. No. 07-9-12-SC

THE RULE ON THE WRIT OF AMPARO

RESOLUTION

Acting on the recommendation of the Chairperson of the Committee on Revision of the Rules of Court submitting for this Court's consideration and approval the proposed Rule on the Writ of Amparo, the Court Resolved to APPROVE the same.

This Rule shall take effect on October 24, 2007 following its publication in three (3) newspapers of general circulation.

September 25, 2007.

REYNATO S. PUNO
Chief Justice

LEONARDO A. QUISUMBING
Associate Justice

CONSUELO YNARES-SANTIAGO
Associate Justice

ANGELINA SANDOVAL-GUTIERREZ
Associate Justice

ANTONIO T. CARPIO
Associate Justice

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

RENATO C. CORONA
Associate Justice

CONCHITA CARPIO MORALES
Associate Justice

ADOLFO S. AZCUNA
Associate Justice

DANTE O. TINGA
Associate Justice

MINITA V. CHICO-NAZARIO
Associate Justice

CANCIO C. GARCIA
Associate Justice

(on leave)
PRESBITERO J. VELASCO, JR.
Associate Justice

ANTONIO EDUARDO B. NACHURA
Associate Justice

RUBEN T. REYES
Associate Justice

THE RULE ON
THE WRIT OF AMPARO

SECTION 1. *Petition.*—The petition for a writ of *amparo* is 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.

The writ shall cover extralegal killings and enforced disappearances or threats thereof.

SEC. 2. *Who May File.*—The petition may be filed by the aggrieved party or by any qualified person or entity in the following order:

(a) Any member of the immediate family, namely: the spouse, children and parents of the aggrieved party;

(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

(c) Any concerned citizen, organization, association or institution, if there is no known member of the immediate family or relative of the aggrieved party.

The filing of a petition by the aggrieved party suspends the right of all other authorized parties to file similar petitions. Likewise, the filing of the petition by an authorized party on behalf of the aggrieved party suspends the right of all others, observing the order established herein.

SEC. 3. *Where to File.*—The petition may be filed on any day and at any time with the Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred, or with the Sandiganbayan, the Court of Appeals, the Supreme Court, or any justice of such courts. The writ shall be enforceable anywhere in the Philippines.

When issued by a Regional Trial Court or any judge thereof, the writ shall be returnable before such court or judge.

When issued by the Sandiganbayan or the Court of Appeals or any of their justices, it may be returnable before such court or any justice thereof, or to any Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred.

When issued by the Supreme Court or any of its justices, it may be returnable before such Court or any justice thereof, or before the Sandiganbayan or the Court of Appeals or any of their justices, or to any Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred.

SEC. 4. *No Docket Fees.*—The petitioner shall be exempted from the payment of the docket and other lawful fees when filing the petition. The court, justice or judge shall docket the petition and act upon it immediately.

SEC. 5. *Contents of Petition.*—The petition shall be signed and verified and shall allege the following:

(a) The personal circumstances of the petitioner;

(b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation;

(c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;

(d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;

(e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and

(f) The relief prayed for.

The petition may include a general prayer for other just and equitable reliefs.

SEC. 6. *Issuance of the Writ.*—Upon the filing of the petition, the court, justice or judge shall immediately order the issuance of the writ if on its face it ought to issue. The clerk of court shall issue the writ under the seal of the court; or in case of urgent necessity, the justice or the judge may issue the writ under his or her own hand, and may deputize any officer or person to serve it.

The writ shall also set the date and time for summary hearing of the petition which shall not be later than seven (7) days from the date of its issuance.

SEC. 7. *Penalty for Refusing to Issue or Serve the Writ.*—A clerk of court who refuses to issue the writ after its allowance, or a deputized person who refuses to serve the same, shall be punished by the court, justice or judge for contempt without prejudice to other disciplinary actions.

SEC. 8. *How the Writ is Served.*—The writ shall be served upon the respondent by a judicial officer or by a person deputized by the court, justice or judge who shall retain a copy on which to make a return of service. In case the writ cannot be served personally on the respondent, the rules on substituted service shall apply.

SEC. 9. *Return; Contents.*—Within seventy-two (72) hours after service of the writ, the respondent shall file a verified written return together with supporting affidavits which shall, among other things, contain the following:

(a) The lawful defenses to show that the respondent did not violate or threaten with violation the right to life, liberty and security of the aggrieved party, through any act or omission;

(b) The steps or actions taken by the respondent to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission;

(c) All relevant information in the possession of the respondent pertaining to the threat, act or omission against the aggrieved party; and

(d) If the respondent is a public official or employee, the return shall further state the actions that have been or will still be taken:

(i) to verify the identity of the aggrieved party;

(ii) to recover and preserve evidence related to the death or disappearance of the person identified in the

petition which may aid in the prosecution of the person or persons responsible;

(iii) to identify witnesses and obtain statements from them concerning the death or disappearance;

(iv) to 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;

(v) to identify and apprehend the person or persons involved in the death or disappearance; and

(vi) to bring the suspected offenders before a competent court.

The return shall also state other matters relevant to the investigation, its resolution and the prosecution of the case.

A general denial of the allegations in the petition shall not be allowed.

SEC. 10. *Defenses not Pleaded Deemed Waived.*—All defenses shall be raised in the return, otherwise, they shall be deemed waived.

SEC. 11. *Prohibited Pleadings and Motions.*—The following pleadings and motions are prohibited:

(a) Motion to dismiss;

(b) Motion for extension of time to file return, opposition, affidavit, position paper and other pleadings;

(c) Dilatory motion for postponement;

(d) Motion for a bill of particulars;

(e) Counterclaim or cross-claim;

(f) Third-party complaint;

(g) Reply;

(h) Motion to declare respondent in default;

(i) Intervention;

(j) Memorandum;

(k) Motion for reconsideration of interlocutory orders or interim relief orders; and

(l) Petition for *certiorari*, *mandamus* or prohibition against any interlocutory order.

SEC. 12. *Effect of Failure to File Return.*—In case the respondent fails to file a return, the court, justice or judge shall proceed to hear the petition *ex parte*.

SEC. 13. *Summary Hearing.*—The hearing on the petition shall be summary. However, the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.

The hearing shall be from day to day until completed and given the same priority as petitions for *habeas corpus*.

SEC. 14. *Interim Reliefs.*—Upon filing of the petition or at anytime before final judgment, the court, justice or judge may grant any of the following reliefs:

(a) *Temporary Protection Order.*—The court, justice or judge, upon motion or *motu proprio*, may order that the petitioner or the aggrieved party and any member of the immediate family be protected in a government agency or by an accredited person or private institution capable of keeping and securing their safety. If the petitioner is an organization, association or institution referred to in Section 2(c) of this Rule, the protection may be extended to the officers involved.

The Supreme Court shall accredit the persons and private institutions that shall extend temporary protection to the petitioner or the aggrieved party and any member of the immediate family, in accordance with guidelines which it shall issue.

The accredited persons and private institutions shall comply with the rules and conditions that may be imposed by the court, justice or judge.

(b) *Inspection Order.*—The court, justice or judge, upon verified motion and after due hearing, may order any person in possession or control of a designated land or other property, to permit entry for the purpose of inspecting, measuring, surveying, or photographing the property or any relevant object or operation thereon.

The motion shall state in detail the place or places to be inspected. It shall be supported by affidavits or testimonies of witnesses having personal knowledge of the enforced disappearance or whereabouts of the aggrieved party.

If the motion is opposed on the ground of national security or of the privileged nature of the information, the court, justice or judge

may conduct a hearing in chambers to determine the merit of the opposition.

The movant must show that the inspection order is necessary to establish the right of the aggrieved party alleged to be threatened or violated.

The inspection order shall specify the person or persons authorized to make the inspection and the date, time, place and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties. The order shall expire five (5) days after the date of its issuance, unless extended for justifiable reasons.

(c) *Production Order.*—The court, justice or judge, upon verified motion and after due hearing, may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.

The motion may be opposed on the ground of national security or of the privileged nature of the information, in which case the court, justice or judge may conduct a hearing in chambers to determine the merit of the opposition.

The court, justice or judge shall prescribe other conditions to protect the constitutional rights of all the parties.

(d) *Witness Protection Order.*—The court, justice or judge, upon motion or *motu proprio*, may refer the witnesses to the Department of Justice for admission to the Witness Protection, Security and Benefit Program, pursuant to Republic Act No. 6981.

The court, justice or judge may also refer the witnesses to other government agencies, or to accredited persons or private institutions capable of keeping and securing their safety.

SEC. 15. *Availability of Interim Reliefs to Respondent.*—Upon verified motion of the respondent and after due hearing, the court, justice or judge may issue an inspection order or production order under paragraphs (b) and (c) of the preceding section.

A motion for inspection order under this section shall be supported by affidavits or testimonies of witnesses having personal knowledge of the defenses of the respondent.

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

SEC. 17. *Burden of Proof and Standard of Diligence Required.*—The parties shall establish their claims by substantial evidence.

The respondent who is a private individual or entity must prove that ordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed to evade responsibility or liability.

SEC. 18. *Judgment.*—The court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate; otherwise, the privilege shall be denied.

SEC. 19. *Appeal.*—Any party may appeal from the final judgment or order to the Supreme Court under Rule 45**.** The appeal may raise questions of fact or law or both.

The period of appeal shall be five (5) working days from the date of notice of the adverse judgment.

The appeal shall be given the same priority as in *habeas corpus* cases.

SEC. 20. *Archiving and Revival of Cases.*—The court shall not dismiss the petition, but shall archive it, if upon its determination it cannot proceed for a valid cause such as the failure of petitioner or witnesses to appear due to threats on their lives.

A periodic review of the archived cases shall be made by the *amparo* court that shall, *motu proprio* or upon motion by any party, order their revival when ready for further proceedings. The petition shall be dismissed with prejudice upon failure to prosecute the case after the lapse of two (2) years from notice to the petitioner of the order archiving the case.

The clerks of court shall submit to the Office of the Court Administrator a consolidated list of archived cases under this Rule not later than the first week of January of every year.

SEC. 21. *Institution of Separate Actions.*—This Rule shall not preclude the filing of separate criminal, civil or administrative actions.

SEC. 22. *Effect of Filing of a Criminal Action.*—When a criminal action has been commenced, no separate petition for the writ shall be filed. The reliefs under the writ shall be available by motion in the criminal case.

The procedure under this Rule shall govern the disposition of the reliefs available under the writ of *amparo*.

SEC. 23. *Consolidation.*—When a criminal action is filed subsequent to the filing of a petition for the writ, the latter shall be consolidated with the criminal action.

When a criminal action and a separate civil action are filed subsequent to a petition for a writ of *amparo*, the latter shall be consolidated with the criminal action.

After consolidation, the procedure under this Rule shall continue to apply to the disposition of the reliefs in the petition.

SEC. 24. *Substantive Rights.*—This Rule shall not diminish, increase or modify substantive rights recognized and protected by the Constitution.

SEC. 25. *Suppletory Application of the Rules of Court.*—The Rules of Court shall apply suppletorily insofar as it is not inconsistent with this Rule.

SEC. 26. *Applicability to Pending Cases.*—This Rule shall govern cases involving extralegal killings and enforced disappearances or threats thereof pending in the trial and appellate courts.

SEC. 27. *Effectivity.*—This Rule shall take effect on October 24, 2007, following its publication in three (3) newspapers of general circulation.

THE RATIONALE FOR THE WRIT OF AMPARO

INTRODUCTION

The care of human life and happiness, and not their destruction, is the first and only object of good government."

– Thomas Jefferson

Human rights, collectively, is a concept that has long been constantly evolving throughout history. It is intricately tied to laws, customs and religions throughout the ages, and in Constitutions and international instruments in modern times. Experience is the life of the law and history is the cauldron of human rights. As early as 4000 B.C.E. the Sumerian king Hammurabi codified laws to arrest arbitrariness and impose a sense of universal fairness to all his subjects.

In ancient Greece, human rights began to take a greater meaning than mere prevention of arbitrary persecution. Human rights became synonymous with natural rights or those rights that spring from natural laws. Human rights deriving from the philosophical ideal of natural rights meant that the innate rights of individuals are present even if there is no legal system in place to protect them. According to the Greek tradition of Socrates and Plato, natural law is that which reflects the natural order of the universe, essentially the will of the gods who control nature. A classical example of this was when Creon approached Antigone for defying the gods. The idea of natural rights continued in ancient Rome, where the Roman jurist Ulpian believed that natural rights belonged to every person—whether they be Roman citizens or not. Another Roman jurist, Justinian, published his *Codex* of various laws in the early 6th century, setting the precedent for further codifications.

The recognition by Thomas Hobbes (1588-1679) of the idea of positive law saw natural law as being overshadowed for having been too vague and subject to so many different interpretations. Legal positivism, with Jeremy Bentham in the forefront, dealt natural law

a fatal blow, when he argued that under positive law, "right is a child of law, from real laws come real rights, but from imaginary law, from 'laws of nature,' come imaginary rights…natural rights is simple nonsense."

Abstract ideas regarding human rights and their relation to the will of nature were transformed into concrete laws, as exemplified best by various legal documents such as the **British Magna Carta** (1215),[1] the **French Declaration of the Rights of Man** (1789);[2] the **American Bill of Rights** (1789) and the **Geneva Convention** (1894).

Historically, human rights legislation dramatically increased after the Magna Carta and many countries, the Philippines being one of them, followed the liberal individualist ideas of the American Bill of Rights, which restated and affirmed many human rights in the English tradition. These liberal-individualist thoughts flowed from the West to the East and now form a larger part of the prevailing human rights doctrines, legislation, norms and theories. But it is in the individual experience of every state where human rights find context and application.

This paper will trace the legal history and explore the rationale bases for the application of the writ of *amparo*, a writ to protect constitutional rights, in the Philippines. Part I will cover the early legal history of the writs that protect human rights. Part II will discuss the prevailing trend of internationalization of human rights. Part III will discuss the problem of extralegal killings and enforced disappearances and the measures implemented in Latin America. Part IV will discuss the Philippine experience.

I. Early Legal History

The belief that everyone, by virtue of one's humanity, is entitled to certain human rights is fairly new. Its roots, however, lie in earlier tradition and documents of many cultures. It took the catalyst of World War II to propel human rights onto the global stage and into the global conscience.

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[1] *Magna Carta of 1215,* Fordham University Medieval Sourcebook, available at http://www.fordham.edu/hall/source/mcarta.html (last accessed September 11, 2007).

[2] *Declaration of the Rights of Man,* The Avalon Project at Yale Law School, available at http://www.yale.edu/lawwed/avalon/rightsof.htm (last accessed September 11, 2007).

A. ***The Magna Carta***

In England, during the medieval times, the monarch was the sovereign. This absolutist sovereignty advanced in the 12th century and the English king by the end of the 12th century became one of the most powerful monarchs in Europe. But when King John of England was crowned in the early 13th century, a series of failures at home and abroad, combined with perceived abuses of the king's power, led the English barons to revolt and attempt to restrain what the king could legally do. This was the beginning of constitutionalism in the modern world—the dogma of absolutism was at an end.

By 1215, some of the most important barons in England had had enough, and they entered London in force on June 10, 1215, with the city showing its sympathies with their cause by opening its gates to them. They forced King John to agree to the "Articles of the Barons," to which his Great Seal was attached at Runnymede on June 15, 1215. In return, the barons renewed their oaths of fealty to King John on June 19, 1215. A formal document to record the agreement was created by the royal chancery on July 15: this document is what will soon be known as the **Magna Carta or the Great Charter.**

When King John died during the war, on October 18, 1216, his nine-year-old son, Henry III, was next in line to the throne and was swiftly crowned in late October 1216. Henry's regents reissued the Magna Carta in his name on November 12, 1216. When he turned 18 in 1225, Henry III himself reissued the Magna Carta, this time in a shorter version with only 37 articles. Henry III ruled for 56 years (the longest reign of an English monarch in the medieval period), so that by the time of his death in 1272, the Magna Carta had become a settled part of English legal precedent. The Parliament of Henry III's son and heir, Edward I, reissued the Magna Carta for the final time on October 12, 1297 as part of a statute called *Confirmatio Cartarum* (25 Edw. I), reconfirming Henry III's shorter version of the Magna Carta from 1225.

The Magna Carta is the progenitor of the modern Constitution. Basic rights such as the right to due process can be found therein.

Clause 29 is foretelling:

> 29. No Freeman shall be taken or imprisoned, or be disseized of his Freehold, or Liberties, or free Customs, or

> be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right.[3]

For modern times, the most enduring legacy of the Magna Carta is the right of *habeas corpus*. As previously provided in the 1297 version:

> 36. Henceforth nothing shall be given or taken for a writ of inquest in a matter concerning life or limb; but it shall be conceded gratis, and shall not be denied.
>
> x x x
>
> 38. No bailiff, on his own simple assertion, shall henceforth put any one to his law, without producing faithful witnesses in evidence.
>
> 39. No freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or in any way harmed—nor will we go upon or send upon him—save by the lawful judgment of his peers or by the law of the land.
>
> 40. To none will we sell, to none deny or delay, right or justice.[4]

Clauses 36, 38, 39 and 40 collectively defined the right of *habeas corpus*. Clause 36 required courts to make inquiries as to the whereabouts of a prisoner, and to do so without charging any fee. Clause 38 required more than the mere word of an official, before any person could be put on trial. Clause 39 gave the courts exclusive rights to punish anyone. Clause 40 disallowed the selling or the delay of justice. Clauses 36 and 38 were removed from the 1225 version, but were reinstated in later versions. The right of *habeas corpus*, as such, was first invoked in court in the year 1305.

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[3] *Magna Carta of 1297*, UK Law Database *available at* http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=1517519 (last accessed September 9, 2007).

[4] *Magna Carta*, UK Law Database *available at* http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=1517519 (last accessed September 9, 2007).

B. The *Habeas Corpus*

In common law, ***habeas corpus***[5] has historically been an important instrument for the safeguarding of individual freedom against arbitrary State action.

Blackstone noted:

> If any person be restrained of his liberty by order or decree of any illegal court, or by command of the king's majesty in person, or by warrant of the council board, or of any of the privy council; he shall upon demand of his counsel, have a writ of *habeas corpus*, to bring his body before the court of king's bench or common pleas; who shall determine whether the cause of his commitment be just, and thereupon do as to justice shall appertain. And by *the habeas corpus act* [of 1679], the methods of obtaining this writ are plainly pointed out and enforced, that, so long as this statute remains unimpeached, no subject of England can be long detained imprison, except in those cases in which the law requires and justifies such detainer…[6]

In early common law, much of the business of the courts began with the issuance of one of several writs, many of which have survived to this day. The writs were a series of written order forms, issued by the court in the name of the king, commanding the individual to whom they were addressed to return the writ to the court for the purpose stated in the writ. The purpose was generally reflected in the name of the writ itself. Thus, for example, a *subpoena ad testificandum*

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[5] The writ of *habeas corpus* is often referred to in full in legal texts as *habeas corpus ad subjiciendum* or more rarely *ad subjiciendum et recipiendum*. The name derives from the operative words of the writ in Medieval Latin: "*Praecipimus tibi quod corpus A.B. in prisona nostra sub custodia tua detentum, ut dicitur, una cum die et causa captionis et detentionis suae, quocumque nomine praedictus A.B. censeatur in eadem, habeas coram nobis ... ad subjiciendum et recipiendum ea quae curia nostra de eo adtunc et ibidem ordinare contigerit in hac parte. Et hoc nullatenus omittatis periculo incumbente. Et habeas ibi hoc breve." (Translation:* We command you, that the body of A.B. in Our prison under your custody detained, as it is said, together with the day and cause of his taking and detention, by whatsoever name the said A.B. may be known therein, you have at our Court ... to undergo and to receive that which our Court shall then and there consider and order in that behalf. Hereof in no way fail, at your peril. And have there this writ.)

[6] 1 BLACKSTONE, COMMENTARIES 131(italics in the original) (transliteration provided)(1st ed. 1765-1769).

was a command to return the writ to the court at a specified time and place, *sub poena*, that is, "under penalty" for failure to comply; and "ad testificandum" that is, "for the purpose of testifying."

Also known as "The Great Writ," a writ of *habeas corpus ad subjiciendum* is a court order addressed to a prison official (or other custodian), ordering that a prisoner be brought before the court so that the court can determine whether that person is serving a lawful sentence or should be released from custody. The prisoner, or some other person on his behalf (for example, when the prisoner is being held *incommunicado*), may petition the court or an individual judge for a writ of *habeas corpus*.

The right of *habeas corpus*—or rather, the right to petition for the writ—has long been celebrated as the most efficient safeguard of the liberty of the subject. Dicey wrote that the *Habeas Corpus Acts* "declare no principle and define no rights, but they are for practical purposes worth a hundred constitutional articles guaranteeing individual liberty."

There are several types of the *habeas corpus*:[7]

(1) *Habeas corpus ad deliberandum et recipiendum*, a writ for bringing an accused from a different county into a court in the place where an offense had been committed for purposes of trial, or more literally to return holding the body for purposes of "deliberation and receipt" of a decision.

(2) *Habeas corpus ad faciendum et recipiendum*, a writ of a court of superior jurisdiction to a custodian to return with the body being held in confinement pursuant to the order of a lower court for purposes of "receiving" the court's decision and of "doing" with the prisoner what the court instructed.

(3) *Habeas corpus ad faciendum, subjiciendum et recipiendum*, or more simply, *habeas corpus ad subjiciendum*, a writ ordering a custodian to return with a prisoner for the purposes of "submitting"

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[7] BLACK'S LAW DICTIONARY, 715 (7th ed. 1999); 1 BOUVIER'S LAW DICTIONARY, 1400-408 (11th ed. 1914); *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 95-8 (1807); for English history of habeas corpus see DUKER, A CONSTITUTIONAL HISTORY OF HABEAS CORPUS, 12-94 (1980); IX HOLDSWORTH, A HISTORY OF ENGLISH LAW, 104-25 (2d ed. 1938).

the question of confinement to the court, of "receiving" its decision, and of "doing" what the court instructed with the prisoner.

(4) *Habeas corpus ad prosequendum*, a writ ordering return with a prisoner for the purpose "prosecuting" him before the court.

(5) *Habeas corpus ad respondendum*, a writ ordering return to a court of superior jurisdiction of a body under the jurisdiction of a lower court for purposes of allowing the individual to "respond" with respect to matters under consideration in the high tribunal.

(6) *Habeas corpus ad satisfaciendum*, a writ ordering return with the body of a prisoner for "satisfaction" or execution of a judgment of the issuing court.

(7) *Habeas corpus ad testificandum*, a writ ordering return with the body of a prisoner for the purposes of "testifying"; and

(8) *Habeas corpus cum causa*, a writ ordering return with the body of a prisoner and "with the cause" of his confinement so that the issuing court might pass upon the validity of continued confinement and issue appropriate additional orders.

Blackstone cites the first recorded usage of *habeas corpus ad subjiciendum* in 1305, during the reign of King Edward I. However, other writs were issued with the same effect as early as the reign of Henry II in the 12th century. Blackstone explained the basis of the writ, saying "the King is at all times entitled to have an account, why the liberty of any of his subjects is restrained, wherever that restraint may be inflicted."[8] The procedure for issuing writs of *habeas corpus* was first codified by the *Habeas Corpus Act of 1679*, following judicial rulings which had restricted the effectiveness of the writ. A previous act had been passed in 1640 to overturn a ruling that the command of the King was a sufficient answer to a petition of *habeas corpus*.

Then, the writ of *habeas corpus* was issued by a superior court in the name of the Sovereign and commanded the addressee (a lower court, sheriff, or private subject) to produce the prisoner before the royal courts of law. A *habeas corpus* petition could be made by the prisoner himself or by a third party on his behalf and, as a result of the *Habeas Corpus Acts*, could be made regardless of whether the court was in session, by presenting the petition to a judge.

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[8] 1 BLACKSTONE, COMMENTARIES 133.

Since the 18th century, the writ has also been used in cases of unlawful detention by private individuals, most famously in **Somersett's Case** (1771), in which the black slave Somersett was ordered to be freed, in the famous words being quoted: "The air of England has long been too pure for a slave, and every man is free who breathes it."

At about the same time, in France, the clamor for freedom was also being heard, but a more serious one — that of political freedom and the fall of the monarchy—culminated in the revolution of 1789. In another continent, the people of the New World were also clamoring for their independence from their colonizers—a shout that would be heard the world over.

C. The United States Constitution and the Bill of Rights

In 1776, the United States of America declared independence. The **United States Declaration of Independence**[9] (Declaration) was an act of the Second Continental Congress, adopted on July 4, 1776, which declared that the Thirteen Colonies were independent of Great Britain. The document, formally entitled "The Unanimous Declaration of the Thirteen United States of America" and written chiefly by Thomas Jefferson, explained the justifications for separation from the British crown, and was an expansion of Richard Henry Lee's Resolution (passed by Congress in July 2), which first proclaimed independence.

The Declaration is considered to be a founding document that preceded the later formed United States of America, where July 4 is celebrated as Independence Day. At the time the Declaration was issued, the American colonies were "united" in declaring their independence from Great Britain, but were not yet declaring themselves to be a single nation. That union would evolve and take shape during the next few years after the Declaration was issued. John Hancock was the first to sign the Declaration of Independence.

The Declaration proclaimed that: "We hold these truths to be self-evident, that ***all men are created equal, that they are endowed***

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[9] U.S. Declaration of Independence, U.S. National Archives and Records Administration in Washington, D.C.

by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."[10]

U.S. President Abraham Lincoln succinctly explained the central importance of the Declaration to American history in his Gettysburg Address of 1863:

> Fourscore and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty, and dedicated to the proposition that ***all men are created equal***…[11]

These first principles were further enshrined in what would be considered a codification of rights—the **United States Bill of Rights**.

The United States Bill of Rights consists of the first 10 amendments to the United States Constitution. These amendments limit the powers of the federal government in protecting the rights of all citizens, residents and visitors on United States territory. Among the enumerated rights these amendments guarantee are: **the freedoms of speech, the press, and religion; the people's right to keep and bear arms; the freedom of assembly; the freedom to petition; and the rights to be free of unreasonable search and seizure; cruel and unusual punishment; and compelled self-incrimination.** The United States Bill of Rights also restricts Congress' power by prohibiting it from making any law respecting the establishment of religion and by prohibiting the federal government from depriving any person of life, liberty, or property without due process of law. In criminal cases, it requires indictment by grand jury for any capital or "infamous crime," guarantees a speedy public trial with an impartial and local jury, and prohibits double jeopardy. In addition, the United States Bill of Rights states that "the enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people," and reserves all powers not granted to the Federal government, to the citizenry, or the states.

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[10] N.B.: The original hand-written text ended on the phrase "the pursuit of property" rather than |the pursuit of Happiness" but the phrase was changed in subsequent copies, in part because it was broader. The latter phrase is used today.

[11] Abraham Lincoln, Gettysburg Address of 1863 (emphasis supplied); *see also* CARL F. WIECK, LINCOLN'S QUEST FOR EQUALITY: THE ROAD TO GETTYSBURG (2002).

These amendments came into effect on December 15, 1791, when ratified by three-fourths of the states. Most were applied to the states by a series of decisions applying the due process clause of the Fourteenth Amendment, which was adopted after the American Civil War.

Initially drafted by James Madison in 1789, the United States Bill of Rights was written at a time when ideological conflict between Federalists and anti-Federalists, dating from the Philadelphia Convention in 1787, threatened the ratification of the Constitution.

The United States Bill of Rights was influenced by George Mason's 1776 Virginia Declaration of Rights, the 1689 English Bill of Rights, works of the Age of Enlightenment pertaining to natural rights, and earlier English political documents such as the Magna Carta (1215). The Bill was largely a response to the Constitution's influential opponents, including prominent founding fathers, who argued that it failed to protect the basic principles of human liberty.

The **English Bill of Rights** (1689), one of the fundamental documents of English law whose roots can be traced to the Magna Carta of 1225, differed substantially in form and intent from the United States Bill of Rights, because it was intended to address the rights of citizens as represented by Parliament against the Crown. However, some of the basic tenets of the English Bill of Rights are adopted and extended to the general public by the United States Bill of Rights, including the right of petition; an independent judiciary (the sovereign was forbidden to establish his own courts or to act as a judge himself); freedom from taxation by royal (executive) prerogative, without agreement by Parliament (legislators); freedom from a peace-time standing army; freedom [for Protestants] to bear arms for self-defence; freedom to elect members of Parliament without interference from the Sovereign; freedom of speech in Parliament; freedom from cruel and unusual punishment and excessive bail, and freedom from fines and forfeitures without trial.

Also borrowing from the traditions of the English legal system and the libertarian philosophies of the French Revolution, the United States Constitution specifically included the English common law procedure in the Suspension Clause, located in Article One, Section 9. It states: "The privilege of the writ of *habeas corpus* shall not be

suspended, unless when in cases of rebellion or invasion, the public safety may require it."[12]

Furthermore, the amendments that would soon become the Bill of Rights strengthened the individual liberties and highlighted the interplay between the government and the individuals, with the Constitution being the contract of governance.[13]

D. The French Declaration of the Rights of Man

A month after the storming of the Bastille in 1789, the French National Assembly was convened and the ***La Déclaration des Droits de l'Homme et du Citoyen*** (The Declaration of the Rights of Man and of the Citizen) was promulgated. *La Déclaration* is one of the fundamental documents of the French Revolution, defining a set of individual rights and collective rights of all of the estates as one. Influenced by the doctrine of natural rights, these rights are universal: they are supposed to be valid at all times and places, pertaining to human nature itself. The last article of the Declaration was adopted August 26, 1789, by the *Assemblée Nationale Constituante* (National Constituent Assembly), as the first step toward writing a Constitution. While it set forth fundamental rights, not only for French citizens but for everyone without exception, the "First Article [states]– ***Men are born and remain free and equal in rights.*** Social distinctions can be founded only on the common utility."

The principles set forth in the declaration are of constitutional value in present-day French law and may be used to oppose legislation or other government activities.

E. World Wars I and II

The end of the 19th century saw the rise of prominent countries adopting human rights principles as part of their Constitutions. Efforts in the 19th century to prohibit slavery and to limit the devastations of war, especially in terms of loss of lives both of combatants and non combatants are prime examples. These concerns on human rights provided impetus to the formation of the *League of Nations,* to protect minority groups; and to the *International Labor Organization* (ILO) to protect the rights of workers.

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[12] U.S. Const. Art. I, §9.

[13] Irving Grant, The Bill of Rights: Its Origin and Meaning (1965).

This trend of protecting human rights was cut short when World War I erupted. The *League of Nations* floundered because it failed to prevent Japan's invasion of China and Manchuria (1931) and Italy's attack on Ethiopia (1935). The refusal of the United States to join aggravated the weakness of the League of Nations.

In 1939, the World War II finally gave the death blow to the triumph of peace through international cooperation. The war, however, demonstrated the need for greater protection of human rights of people, especially against attacks by their own governments. It took this bloody World War to jumpstart the internationalization of human rights.

F. The Birth of the United Nations

The Hitler government's extermination of over six million Jews, Sinti and Romani, homosexuals, and persons with disabilities horrified the world. So did the cruel excesses of the Japanese in the conduct of war. Trials were held in Nuremberg and Tokyo after the Second World War, and officials from defeated countries were charged with and punished for committing war crimes, "crimes against peace," and "crimes against humanity." It was the first time the concept of crimes against humanity was used to bring to justice officials who could have escaped liability if they had been prosecuted on the basis of their domestic laws.

The result boosted the campaign for human rights. From across the globe came the calls for human rights standards to protect citizens from abuses by their own governments, standards against which nations and ruling governments could be held accountable. Worldwide, people demanded that never again would anyone be unjustly denied life, liberty and their basic social and economic necessities.

Responding to these demands for internationalization of human rights, U.S. President Franklin D. Roosevelt, in his 1941 State of the Union Address, called for a new world order founded on four essential freedoms: **freedom of speech, freedom of religion, freedom from want, and freedom from fear**. The voice of arguably the most powerful country in the world precipitated the cascade of calls for nations to come together under one more effective organization.

In 1945, in San Francisco, California a historic meeting was held that would give life to a document creating the *United Nations*.

Member-States of the United Nations pledged to promote respect for the human rights of all. To advance the goal, the United Nations established a *Commission on Human Rights* and charged it with the task of drafting a document spelling out the meaning of fundamental rights and freedoms proclaimed in the charter. The commission was guided by the able leadership of Eleanor Roosevelt.

In **The History of Human Rights: From Ancient Times to the Globalization Era** (2003), written by Micheline Ishay, Director of the Human Rights Program of the Graduate School of International Studies of the University of Denver, there is an anecdote regarding the role of the Philippines in the drafting of the Universal Declaration of Human Rights.

Professor Ishay traced the beginnings of human rights and revealed very significant yet little known battles on the final wording of the Declaration. They were little known, because they were fought on the sidelines—and not on center stage, which was dominated by such figures as Roosevelt, Churchill, Stalin and the big powers they represented. Professor Ishay narrated how the UN was almost formed with a weak commitment to the enhancement of human rights. The tragedy was averted, thanks to the off-center stage efforts of less powerful countries, which included the Philippines.

> ***The proposal for a United Nations organization was not accepted without vociferous protests from small and medium states***. Two months before the meeting in San Francisco, Latin American states held a conference assembling twenty nations at Chapultepec, Mexico, to exert pressure against the prominence of great power influence in the new international organization, and they submitted recommendations to be discussed at the San Francisco conference. ***At the San Francisco meeting, Australia, New Zealand, India and the Philippines joined the chorus of disenchanted countries.*** With Chile, Cuba and the Panama initially in the forefront, *the protesting countries called for a stronger human rights commitment.* Joining Gandhi's effort, ***Carlos Romulo of the Philippines (1899-1985),*** Ho Chi Minh, Kwame Nkrumag and the American black leader W.E.B. Du Bois (1868-1963) all condemned the proposal for ignoring human rights in general, and specifically for

> overlooking the rights of minority and indigenous people living under colonial control.
>
> x x x
>
> …Days later, ***the United States, along with Britain, France and the USSR, conceded and backed the NGOs' human rights proposals.*** The charter would now include the statement that "[w]e the people of the United Nations [are] determined… to reaffirm faith in fundamental human rights," followed by several passages with clear human rights references, and ending with a recommendation for the formation of a Trusteeship Council system as a main organ (Articles 75-91) designed to oversee the rights of the people of the colonies and work toward their self-determination. ***The revised charter thus marked an important success for human rights activists.***[14]

On December 10, 1948, the **Universal Declaration of Human Rights** (UDHR) was adopted by the 56 members of the United Nations. While not legally binding, it urged member nations to promote a number of human, civil, economic and social rights, declaring these rights are part of the "foundation of freedom, justice and peace in the world." The Declaration was the first international legal effort to limit the behavior of states and press upon them duties to their citizens following the model of the rights-duty duality. In the words of Eleanor Roosevelt, the UDHR was the "international Magna Carta,"[15] and how a government treats its own citizens is now a matter of legitimate international concern, and not simply a domestic issue. The "international Magna Carta" claims that all rights are "interdependent" and "indivisible."

The impact of the United Nations and the UDHR was far-reaching. Its principles have been incorporated into the Constitutions of the more than 185 nations who are now members of the United

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[14] Micheline Ishay, The History of Human Rights: From Ancient Times to the Globalization Era 16-18, 218-223 (2003).

[15] Eleanor Roosevelt, *Address to the United Nations General Assembly,* December 9, 1949, in Paris, France *available online at* http://www.americanrhetoric.com/speeches/eleanorrooseveltdeclarationhumanrights.htm (last accessed September 11, 2007).

Nations. The Universal Declaration gained the status of *customary international law*, as people regarded it as "a common standard of achievement for all people and all nations."[16]

II. Internationalization of Human Rights

Many states were spurred to go beyond a declaration of rights and create legal covenants to put greater pressure on governments to follow human rights norms. Some states, however, disagreed on whether this international covenant should contain economic and social rights (which usually require greater resources and effort to fulfill on the part of individual states), so two treaties were prepared.

In 1950, the first multilateral treaty on human rights – the **European Convention on Human Rights –** was adopted and ratified by a majority of the nations of the European region.

In 1966, two international treaties were erected based on the UDHR. Because the UDHR contained both first-generation civil and political rights and second-generation economic, social, and cultural rights, it could not garner the international consensus necessary to become a binding treaty. Particularly, a divide developed between capitalist nations such as the U.S.A., which favored civil and political rights; and communist nations, which favored economic, social and cultural rights. To solve this problem, two binding Covenants were created instead of one: the **International Covenant on Civil and Political Rights** (ICCPR) and the **International Covenant on Economic, Social and Cultural Rights** (ICESCR).

The ICCPR is a United Nations treaty based on the UDHR, created in 1966 and entered into force on 23 March 1976.[17] The ICCPR currently has 160 States-Parties and a five further signatories (pending ratification).

The ICESCR is also a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966, and in force from

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[16] Johannes Morsink, The Universal Declaration of Human Rights: Origins, Drafting and Intent (1999).

[17] International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966). A country-by-country list of declarations and reservations made upon ratification, accession or succession can be seen at http://www.unhchr.ch/html/menu3/b/treaty5_asp.htm (last accessed Sept. 7, 2007).

January 3, 1976. It commits States-Parties to work toward the granting of economic, social, and cultural rights (ESCR) to individuals. It was introduced as a second-generation human rights treaty developing some of the issues contained in the UDHR, at the same time as ICCPR. As of July 2007, there were 157 States-Parties to the ICESCR. Four other states have also signed the treaty, but have not ratified it.

A most significant part of the ICCPR is its imposition upon the signatory states, which include the Philippines, of the duty to adopt the necessary laws to give effect to the rights enumerated in the covenant. Articles 2 and 3 mandated the signatory states (a) to ensure that persons whose rights or freedoms are violated shall have an **effective remedy**, even if the violation has been committed by those acting in an official capacity; (b) to ensure that persons claiming such a remedy shall have their rights thereto determined by **competent judicial**, administrative or legislative authorities, or by any other competent authority provided by the legal system of the State, and to develop the possibilities of a judicial remedy; and (c) to ensure that, when granted, the competent authorities **shall enforce such remedies**.

Complementing the movement towards the internationalization of human rights was the broadening of the scope of those responsible for their violation. Originally, human rights were protected only from violations by the State; hence, in international covenants, the bearer of the duty was always the State. In other words, the right of an individual citizen is not protected from an unlawful act or omission by another individual, but only from State intrusion. There was a right to sue, but only against the State.

Expressed otherwise, the internationalization of rights resulted in a change of concepts as to the holders of the right and the bearers of the duties or the personalities of those who could sue and be sued. For instance, the third-generation human rights, which include the right to a healthy environment, does not belong only to an individual; it belongs to the entire populace and can be claimed even by the international community. Correspondingly, the duty to preserve a healthy environment is demandable by the people as a collectivity against a State, an individual, a group, or a community. Pollution, for example, prejudices individuals, communities, and the State; its ill effects could even cross over to other countries. For these reasons, the irreversible trend now is to hold both the State and individuals accountable for violation of international human rights.

In addition, the United Nations has adopted more than 20 principal treaties enhancing human rights. These include conventions to prevent specific abuses like torture[18] and genocide;[19] and to protect vulnerable populations such as refugees,[20] women,[21] and children.[22]

III. The Latin American Experience

Over a period of fifty years, the nations of the Western Hemisphere developed a relatively sophisticated and progressive system of human rights protection for their citizens.[23] Though the region is often thought of as Latin America, the system also comprises the independent nations of the Carribean, including Spanish-speaking Cuba and the Dominican Republic, French-speaking Haiti, and about a dozen English-speaking island nations, plus English-speaking United States and Canada.[24]

A. Supranational and National Protection of Human Rights

The development of mechanisms of supranational protection has been made possible because, since 1948, a regional, political and diplomatic body — the **Organization of American States** (OAS) — has afforded an appropriate forum to condemn violations and seek their redress. The Charter of the OAS and the first human rights

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[18] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted by resolution 39/46 2 of 10 December 1984 at the thirty-ninth session of the General Assembly of the United Nations.

[19] *Convention on the Prevention and Punishment of the Crime of Genocide*, approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948, entry into force 12 January 1951, in accordance with article XIII.

[20] *Convention Relating to the Status of Refugees*, adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950, entry into force 22 April 1954, in accordance with article 43.

[21] *Convention on the Elimination of All Forms of Discrimination Against Women*, adopted by UN General Assembly on 18 December 1979 (resolution 34/180) and entered into force on 3 September 1981.

[22] *Convention on the Rights of the Child*, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49.

[23] Juan E. Mendez, *The Inter-American System of Protection: Its Contributions to the International Law of Human Rights,* p. 111.

[24] *Id*.

instrument for the Americas — the American Declaration on the Rights and Duties of Man — were signed in the same conference in Bogota in 1948.[25] Subsequently, in 1959, a resolution of the General Assembly of the OAS created the **Inter-American Commission on Human Rights** (Commission), where complaints can be brought alleging violations by the authorities of rights enumerated in the American Declaration. A multilateral human rights treaty, **the American Convention on Human Rights** (ACHR), also known as the Pact of San Jose, Costa Rica, which reinforced the treaty underpinnings of the Commission, was signed in 1969, and it entered into force a decade later.

In the 1970s and early 1980s, the Commission was besieged with urgent complaints about arrests conducted in secret, in which the authorities denied any responsibility or knowledge of the fate and whereabouts of the victims.[26] Inquiries before domestic agencies and resort to *habeas corpus* writs proved ineffective. There was also little hope that an abducted person could be found via the long and cumbersome procedures for case complaints outlined in the ACHR.[27] **This tragic phenomenon came to be known as forced disappearance of persons.** The Commission had to find a way to deal effectively with the problem, as more and more military dictatorships violated their people's right to life, liberty and security.

The Commission realized that there had to be a quick response, because it was in those early hours following a "deniable" detention that the authorities decided the fate of the detainee. The person could be released, sent into "legalized" detention, killed and the body disposed of secretly, or held in clandestine detention centers where the detainee could be tortured or interrogated.[28]

The **first** adversarial cases to reach the Inter-American Court were about involuntary disappearances.[29] The Commission decided to bring these cases against Honduras, as a way of highlighting the seriousness of the violation and obtaining support from the Court in

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[25] *Id*. at 112.

[26] *Id*. at 120.

[27] *Id*.

[28] *Id*.

[29] *Id*. at 121.

the struggle to solve the problem of "**desaparecidos**." In **Velasquez** and **Godinez,** the Court held that such disappearances **constituted crimes against humanity** under international law; and that, as a result, governments had an **affirmative duty** to investigate them and to prosecute and punish whoever may be responsible.[30] The Court also found that, because the purpose of a disappearance was to eliminate traces of the government's role in a serious crime, the standard of proof and burden of persuasion must, after an initial presentation by the Commission, shift to the government to demonstrate that it had done all in its power to redress the wrong.[31] The Court based this reasoning on its dictum that states have an obligation to organize their whole apparatus so that human rights may be adequately protected.[32]

This ruling **resulted in the trend** towards the incorporation of the international law of human rights into the text of domestic constitutions. In some cases, the full text of all treaties ratified by the country is reproduced as constitutional text, and special majorities of Congress are required to denounce a human rights treaty.[33] In other cases, international instruments that have been ratified are incorporated by reference into the new constitutional text. Whatever the case may be, **various court procedures were developed to accord protection to human rights.**

Among the different procedures that have been established, the **primary ones** that provide direct and immediate protection are ***habeas corpus* and *amparo***.[34] The difference between these two writs is that *habeas corpus* is designed to enforce the right of freedom of a person, whereas *amparo* is designed to protect those other fundamental human rights enshrined in the Constitution but not covered by the writ of *habeas corpus.*[35]

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[30] Inter-American Court of Human Rights, *Velasquez Rodriguez* case, and *Godinez Cruz* case, judgment of January 20, 1989.

[31] *Mendez*, at 121.

[32] *Id*.

[33] *See* Article 74, Sec. 11, Constitution of the Argentine Republic, as amended, 1994.

[34] Adolfo S. Azcuna, *The Writ of Amparo: A Remedy to Enforce Fundamental Rights,* 37 A.L.J. 14.

[35] Zamudio, *Latin American Procedures for the Protection of the Individual,* J. Int'l Com. Jurists 86 (1968).

The writ of *amparo* **originated** in Mexico, where it was provided for in the Constitution of the State of Yucatan in 1841 and later in the Federal Constitution of 1857.[36] Initially, the Mexican *amparo* was a narrowly constructed procedural device designed to protect citizens' rights in certain circumstances—*amparo* comes from "*amparar*" which means "to protect." In the beginning, the term was used by judges to take action when a citizen was being illegally conscripted into the military or improperly detained or condemned to death by a firing squad because of an alleged political crime.

Gradually, and through experience and jurisprudence, the Mexican *amparo* procedure developed to protect citizens in many more ways and eventually blossomed to cover the whole range of constitutional rights. A plaintiff could bring a proceeding in the Supreme Court, and eventually the intermediate appellate courts, to protect constitutional rights; to test unconstitutional laws; and to challenge certain judicial decisions (*amparo casacion).*

The success met by the writ of *amparo* in championing human rights in Mexico led other Latin American countries to follow suit and adopt this extraordinary writ in their Constitutions. As practiced, the *amparo* has been found to be so flexible to the particular situations of each country that, while retaining its essence, it has developed various procedural forms.[37] These forms differ according to the scope of protection given. Briefly, these are as follows:

a) In some countries, *amparo* is regarded solely as an equivalent to *habeas corpus*, being available only to protect the individual from unlawful acts or from irregularities in criminal proceedings. This is the meaning it has in Chile, and the same holds in the transitional provision of the 1951 Venezuelan Constitution which uses the term *amparo de la libertad personal* as a synonym of *habeas corpus.*[38]

b) In Argentina, Venezuela, Guatemala, El Salvador, Costa Rica, Panama, and very recently, in Bolivia, Ecuador, and Paraguay, as well as in Mexico, *amparo*, has come to mean an instrument for the protection of constitutional rights with the exception of freedom of the person, which is protected by the traditional *habeas corpus.*[39]

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[36] *Azcuna*, at 13.

[37] *Id*. at 15.

[38] *Id*.

[39] *Id*.

c) A third group of countries also uses *amparo* as a petition for judicial review to challenge unconstitutional laws, as in Mexico, Honduras and Nicaragua.[40]

Amparo, therefore, has been said to have done for the social and economic rights what *habeas corpus* has done for the civil and political rights.[41]

The following is an examination of the *amparo* procedure as embodied in the various Constitutions of the countries in Latin America:

As the birthplace of *amparo,* Mexico provides in Article 107 of its Constitution an exhaustive substantive and procedural method for the enforcement of the different types of *amparo*, *viz:*

> All controversies mentioned in Article 103 shall be subject to the legal forms and procedure prescribed by law, on the following bases:
>
> I. A trial in *amparo* shall always be held at the instance of the injured party.
>
> II. The judgment shall always be such that it affects only private individuals, being limited to affording them redress and protection in the special case to which the complaint refers, without making any general declaration as to the law or act on which the complaint is based.
>
> A defect in the complaint may be corrected, whenever the act complained of is based on laws declared unconstitutional by previous decisions of the Supreme Court of Justice.
>
> A defect in the complaint may also be corrected in criminal matters and in behalf of workers in labor disputes, when it is found that there has been a manifest violation of the law against the injured party who is left without defense, and in criminal matters, likewise, when the trial has been based on a law not precisely applicable to the case.

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[40] *Id*. at 16.

[41] *Id*. at 14.

In trials in *amparo* which contest acts that resulted or could result in depriving *ejidos* or population groups, or members of an *ejido* or communal holders having a *de facto* or *de jure* communal status, from ownership or possession and enjoyment of their lands, waters, pastures, and woodlands, defects in the complaint must be corrected as provided in regulations; and there shall be no abandonment, discontinuance due to inactivity, or lapse of the legal action, if the rights of *ejidos* or communal population groups are affected.

III. In judicial civil, criminal, or labor matters a writ of *amparo* shall be granted only:

a. Against final judgments or awards against which no ordinary recourse is available by virtue of which these judgments can be modified or amended, whether the violation of the law is committed in the judgments or awards, or whether, if committed during the course of the trial, the violation prejudices the petitioner's defense to the extent of affecting the judgment; provided that in civil or criminal judicial matters opportune objection and protest were made against it because of refusal to rectify the wrong and that if (the violation) was committed in first instance, it was urged in second instance as a grievance.

b. Against acts at the trial, the execution of which would be irreparable out of court, or at the conclusion of the trial once all available recourses have been exhausted.

c. Against acts that affect persons who are strangers to the trial.

IV. In administrative matters, *amparo* may be invoked against decisions which cause an injury that cannot be remedied through any legal recourse, trial, or defense. It shall not be necessary to exhaust these remedies when the law that established them, in authorizing the suspension of the contested act, demand greater requirements than the regulatory law for trials in *amparo* requires as a condition for ordering such suspension.

V. Except as provided in the following section, a writ of *amparo* against final decisions or awards, for violations committed therein shall be applied for directly to the Supreme Court of Justice, which shall render its decision without other evidence than the original complaint, a certified copy of the claims of the aggrieved party, which shall be added to those made by the third party affected, the latter's complaint submitted either by the Attorney General of the Republic or his designated agent, and that of the responsible authority.

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Art. 28 (15) of the Ecuadorian Constitution provides:

Without prejudice to other inherent rights of the individual, the State shall guarantee… the right to demand judicial *amparo* against any violation of constitutional guarantees, without prejudice to the duty of the public power to ensure the observance of the Constitution and the laws.

Article 77 of the Constitution of Paraguay provides:

Any person who considers that a right or guarantee to which he is entitled under this Constitution or under law has been or is in imminent danger of being seriously injured by an individual and who, because of the urgency of the case, cannot have recourse to the ordinary remedies may file a petition for *amparo* with any judge of first instance. The proceedings shall be short, summary, free and held in public, and the judge shall be empowered to safeguard the right or guarantee or to restore immediately the legal position infringed. Regulations governing the procedure shall be laid down by law.

Article 43 of the Constitution of Argentina provides:

Any person shall file a prompt and summary proceeding regarding constitutional guarantees, provided there is no other legal remedy, against any act or omission of the public authorities or individuals which currently or imminently may damage, limit, modify or threaten rights and guarantees recognized by this Constitution, treaties or

> laws, with open arbitrariness or illegality. In such case, the judge may declare that the act or omission is based on an unconstitutional rule.
>
> Article 49 of the Venezuelan Constitution provides:
>
> The courts shall protect all inhabitants of the Republic in the exercise of the rights and guarantees established by the Constitution, in accordance with law. The procedure shall be brief and summary and the judge shall have the power to immediately restore the legal situation alleged to be infringed.
>
> Article 48(3) of the Costa Rican Constitution provides:
>
> To maintain or restore the enjoyment of the rights laid down in this Constitution (other than freedom of the person which is protected under paragraph 1 of the Article by *habeas corpus)* everyone shall also have the right of *amparo* in such courts as the law may determine.
>
> Article 19 of the Bolivian Constitution provides:
>
> In addition to the right of *habeas corpus*, to which the preceding article refers, *amparo* lies against illegal acts or omissions of officials or private individuals that restrict or deny the individual rights and guarantees recognized by the Constitution and the law.

This examination shows, it is submitted, that no other institution has the prestige, roots and traditions as that of *amparo* to provide a coherent procedure with uniform bases for the protection of fundamental rights set forth in various Constitutions.[42]

B. Judicial Development of The Writ of Amparo Against Human Rights Abuses

Unlike the Mexican writ of *amparo* and which was mainly developed through legislative fiat, the emergence and metamorphosis of the Argentine writ of *amparo* was much more dramatic as the remedy was mainly fashioned through judicial activism.

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[42] *Zamudio*, at 89.

Before 1957, there existed no summary devise for the protection of constitutional rights in Argentine law or jurisprudence.[43] Although at this time, the *habeas corpus* or as it is known in Argentina the *recurso de amparo de la libertad*, was already operative in Argentine legal arenas, its protection is limited to the traditional unlawful restraints on personal liberty or mobility.[44] The absence of such a remedy was made more emphatic against the background of rapid progress in the development of the same remedy in neighboring Brazil and Mexico. Attempts to include within the protective coverage of the *habeas corpus* other constitutional rights were rebuffed by the courts in the absence of specific statutory authority.[45]

By 1957, the seeds of *amparo* protection had already been transplanted in the various state constitutions of Argentina.[46] It took the Supreme Court of Justice of Argentina, despite the absence of clear and express statutory authority, in the two leading cases of **Siri and Samuel Kot** to adopt and define a national *amparo*, finding support in its charge of protecting rights embodied in the Constitution.

In the **Siri** case,[47] Angel Siri, publisher of the newspaper "Mercedes," invoked the writ of *habeas corpus* and sought judicial redress for the protection of his constitutional guarantees of freedom of the press and of work, when his newspaper company was shut down by police authorities for no apparent reason. The court of first instance and the court of appeals rejected the petition on the ground that it protects physical liberty only. **The Supreme Court, however, reversed and ruled that "it may not be alleged to the contrary that there is no law regulating the guarantee. Individual guarantees exist and protect individuals by virtue of the single fact that they are contained in the Constitution, independently of regulatory laws**…"[48]

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[43] Robert E. Biles, *The Position of the Judiciary in the Political Systems of Argentina and Mexico*, 8 LAW AM 287 at 307 (1976).

[44] *Id*.

[45] KARST & ROSENN, LAW & DEVELOPMENT IN LATIN AMERICA: A CASE *Book* 138-139 (1975).

[46] The Argentine *amparo* first appeared in Article 17 of the Constitution of the Province of Santa Fe, in Article 22 of the Constitution of the Province of Santiago de Estero and in Article 33 of the Constitution of the Province of Mendoza.

[47] 239 Fallos 459, 1958-II J.A. 478, 89 La Ley 532 (1957).

[48] *Id*. at 463.

The **Samuel Kot** case,[49] innocently enough, began as a labor dispute. The textile firm of Samuel Kot was involved in a row with its laborers when the latter staged a strike which was initially declared illegal by the provincial department of labor which ordered the laborers to return to work. The company, however, refused to reinstate two union officials, invoking the *amparo* protection enunciated in the **Siri** case.

The Supreme Court granted protection and redress for the violation of the constitutional right of work and property, ruling:

> Whenever it is clear and obvious that any restriction of basic human rights is illegal and also that submitting the question to the ordinary administrative or judicial procedures would cause serious and irreparable harm, it is proper for the judges immediately to restore the restricted right through the swift method of the recourse of *amparo*.[50]

The Supreme Court fearlessly proceeded to give form to it, proclaiming that **the *amparo* protection covers not only illegal actions of government but also of private persons or social groups**:

> There is nothing in either the letter or the spirit of the Constitution that might permit the assertion that the protection of "human rights" – so called because they are the basic rights of man—is confined to attacks by official authorities. Neither is there anything to authorize the assertion that an illegal, serious, and open attack against any of the rights that make up liberty in the broad sense, would lack adequate constitutional protection because of the single fact that the attack comes from other private persons or organized group of individuals…[51]

The Supreme Court concluded with an impassioned affirmation of the need for a summary remedy such as the *amparo* procedure, *viz:*

> In these conditions, it is not appropriate to require the affected party to claim the return of his property through ordinary procedures. If, every time that a group of persons

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[49] 241 Fallos 291, 1958-IV J.A. 227, 92 La Ley 626 (1958).

[50] *Id*. at 257.

[51] *Id*. at 450.

> physically occupied a factory, a private teaching institution, or any other establishment, in connection with a conflict, the owners had no other recourse for defense of their constitutional rights than to bring a possessory action or one of ejectment, with multiple citations for each and every one of the occupants to appear in the action, with the power of each of the occupants to name his own attorney, to contest notices and documents, to offer and produce evidence, etc., anyone can see how the protection of rights given by the laws would be diminished and how the juridical order of the country would be subverted. In such situations,… judicial protection of constitutional rights does not tolerate or consent to such a delay.[52]

Judicial fashioning of the Argentine *amparo* proceeded without let-up. The **Moris** case[53] established the *amparo* as the remedy if resort to ordinary legal channels would render any protective grant illusory and cause irreparable damage to the complainant. Consistent with the **Siri** case which relied on the implicit guarantees for the grant of the protection even on those rights not explicitly enumerated, mere legitimate interest, not necessarily clear and incontestable right, suffices to fix legal personality on the petitioner for the *amparo* protection.

IV. The Philippine Experience

A. The Philippines Under Spain

The Spanish crown governed the Philippines through the regional government of Mexico. This continued until the Mexican independence from Spain in 1821, when Philippine governance shifted to Council of the Indies in Spain. In 1837 the abolition of the Council of the Indies shifted Philippine governance into the Council of Ministers and again in 1863 shifted to the Ministry of Colonies.

The *Royal Audiencia* established in 1583 acted as the Supreme Court of the Philippines. Under the *Royal Audiencia* were two Territorial Audiencia established in 1893 in Cebu and Vigan. Regular Courts begun to be established in the provinces in 1886. Justice of the Peace Courts begun to be established in 1885 throughout the country.

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[52] *Id.*

[53] 1962-I J.A. 442 (1961).

Religious matters where usually handled by a special ecclesiastical court, whereas military matters where often handled in a specialized military court.

Under Spanish laws, representation in the courts was denied Filipino natives among many other rights. In the late 1800's, Filipino students who were able to imbibe Western ideals formed propaganda movements, notably, the *La Solidaridad,* under Marcelo H. Del Pilar, the aims of which were to include active Filipino participation in the affairs of the government; freedom of speech, of the press, and of assembly; wider social and political freedoms; equality before the law; assimilation; and representation in the Spanish Cortes, or Parliament.

Spanish rule on the Philippines was briefly interrupted in 1762, when British troops occupied Manila as a result of Spain's entry into the Seven Years' War. The Treaty of Paris of 1763 restored Spanish rule and in 1764 the British left the country fearing another costly war with Spain.

Spain and the United States sent commissioners to Paris to draw up the terms of the Treaty of Paris which ended the Spanish-American War. The Filipino representative, Felipe Agoncillo, was excluded from sessions as the revolutionary government was not recognized by the family of nations.[54] Although there was substantial domestic opposition, the United States decided neither to return the Philippines to Spain, nor to allow Germany to annex the Philippines. In addition to Guam and Puerto Rico, Spain was forced in the negotiations to hand over the Philippines to the United States in exchange for US$20,000,000.00, which the latter later claimed to be a "gift" from Spain.[55] The first Philippine Republic rebelled against the U.S. occupation, resulting in the Philippine-American War (1899–1913).

B. The United States Occupation

Most of the rights recognized by the United States were transplanted in the Philippines. The controversial **Insular Cases**[56] were in essence the U.S. Supreme Court's resolution to a major issue

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[54] *Leodivico Cruz Lacsamana, Philippine History and Government 126-7 (1990); see also Teodoro Agoncillo, History of the Filipino People, (1990 ed).*

[55] Walter Millis, The Martial Spirit (1931) *available at* http://www.spanamwar.com/McKinleyphilreasons.htm (last accessed September 7, 2007.

[56] DeLima v. Bidwell, 182 U.S. 1 (1901); Goetze v. United States, 182 U.S.

of the United States presidential election, 1900 and the American Anti-Imperialist League, summarized by the phrase *"Does the Constitution follow the flag?"* Essentially, the U.S. Supreme Court held that not all constitutional rights extended to areas under American control. In 1898, the United States annexed Hawaii. In the same year, the Treaty of Paris ended the Spanish- American War and the United States gained the islands of the Philippines, Puerto Rico, and Guam. At the time, there was a debate on how to govern these new territories in view of the silence of the United States Constitution on the matter. In the Insular Cases, the U.S. Supreme Court established the framework for applying some of the Constitution to these islands.

In **Fourteen Diamond Rings v. United States**,[57] the U.S. Supreme Court ruled that the Philippines, after its cession to the United States by Spain, was not a foreign country for purposes of the tariff laws of the United States, following **De Lima v. Bidwell**.[58] It held that:

> By the 3d (sic) article of the treaty Spain ceded to the United States "the archipelago known as the Philippine islands," and the United States agreed to pay Spain the sum of $20,000,000 within three months. The treaty was ratified; Congress appropriated the money; the ratification was proclaimed. The treaty making power, the executive power, the legislative power, concurred in the completion of the transaction.

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221 (1901); Armstrong v. United States, 182 U.S. 243 (1901); Downes v. Bidwell, 182 U.S. 244 (1901); Huus v. New York & Porto Rico S.S. Co., 182 U.S. 392 (1901); Dooley v. United States, 183 U.S. 151 (1901); Fourteen Diamond Rings v. United States, 183 U.S. 176 (1901); Hawaii v. Mankichi, 190 U.S. 197 (1903); Kepner v. United States, 195 U.S. 100 (1904); Dorr v. United States, 195 U.S. 138 (1904); Rasmussen v. United States, 197 U.S. 516 (1905); Dowdell v. United States, 221 U.S. 325 (1911); Ocampo v. United States, 234 U.S. 91 (1914); Balzac v. Porto Rico, 258 U.S. 298 (1922). They are collectively referred to as the *insular cases,* meaning, those which are "island-related."

[57] Fourteen Diamond Rings v. United States, 183 U.S. 176, 46 L.Ed. 138, 22 S.Ct. 59 (1901).

[58] De Lima v. Bidwell,182 U.S. 1, 45 L.Ed. 1041, 21 S.Ct. 743 (1901) which held that Puerto Rico after its cession to the United States was not a foreign country for purposes of the tariff laws of the United States, which required payment of duties on goods moving into the United States from a foreign country. In the absence of congressional legislation, the United States Government could not collect customs duties on sugar from Puerto Rico shipped to other parts of the United States by classifying Puerto Rico as a foreign country.

> The Philippines thereby ceased, in the language of the treaty, "to be Spanish." Ceasing to be Spanish, they ceased to be foreign country. They came under the complete and absolute sovereignty and dominion of the United States, and so became territory of the United States over which civil government could be established. The result was the same although there was no stipulation that the native inhabitants should be incorporated into the body politic, and none securing to them the right to choose their nationality. Their allegiance became due to the United States, and they became entitled to its protection.[59]

This was the legal background when the **1935 Philippine Constitution** was adopted. The 1935 Philippine Constitution was approved and adopted by the Commonwealth of the Philippines (1935-1946) and later used by the Third Republic of the Philippines (1946-1972).

Echoing the first principles of the French egalitarianism, the right based Constitution of the United States and the limitation-centered Magna Carta, the 1935 Philippine Constitution in its preamble reads:

> The Filipino people, imploring the aid of Divine Providence, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty, and democracy, do ordain and promulgate this constitution.[60]

The 1935 Philippine Constitution adopted most of the Bill of Rights as embodied in the amendments of the United States Constitution. Article II, Section 1(14) of the 1935 Philippine Constitution explicitly recognized the writ of *habeas corpus*, bringing to the Philippines the English law concept of the remedial enforcement of the right to liberty of a person.

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[59] *Fourteen Diamond Rings*, 183 U.S. at 180.

[60] 1935 PHIL. CONST. preamble.

The United States, as provided in the **Jones-McDuffie Law** of 1934, granted independence to the Philippines on July 4, 1946.

C. Martial law years and the drafting of the 1987 Constitution

The Philippine legal history of human rights operates under the experience of a presidential form of government which is the only form so far known in Philippine history.[61] In particular, the powers granted to the Executive branch of government by the organic law of the land have influenced and shaped the present remedies and safeguards against the violations of human rights. The experience of how powerful the presidency can be was specially marked during the martial law era when President Marcos tested the limits of the power of the presidency.[62]

Amidst the rising wave of lawlessness and the threat of a Communist insurgency, Marcos declared martial law on September 21, 1972 by virtue of Proclamation No. 1081. Marcos, ruling by decree, curtailed press freedom and other civil liberties, closed down Congress and media establishments, and ordered the arrest of opposition leaders and militant activists, including his staunchest critics senators Benigno Aquino, Jr., Jovito Salonga and Jose Diokno. The declaration of martial law was initially well received, given the social turmoil the Philippines was experiencing. Crime rates plunged dramatically after a curfew was implemented. Many political opponents were forced to go into exile.

A constitutional convention, which had been called for in 1970 to replace the colonial 1935 Constitution, continued the work of framing a new constitution after the declaration of martial law. The new constitution went into effect in early 1973, changing the form of government from presidential to parliamentary and allowing Marcos to stay in power beyond 1973.

From the experience of the martial law years, the members of the 1986 Constitutional Commission tasked with drafting the new

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[61] *See* JOAQUIN G. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (2003 ed.); *see also* Joaquin G. Bernas, *From One-Man Rule to "People Power,"* 46 ATENEO L.J. 44 (2001).

[62] *Id.* at 45.

Constitution were keenly aware of the need to protect the people through the organic law against another powerful dictator. Hence, the pronounced effort of the Commission to provide within the constitutional structure of government a remedy against the emergence of another dictator by not only providing checks and balances within the three co-equal branches of government but also by providing for other legal means for the protection of human rights.

Under the **1987 Constitution**, the rule-making powers of the Supreme Court have been expanded. In Article VIII, Section 5 (5) it is stated that **the Supreme Court shall have the power to promulgate rules concerning the protection and enforcement of constitutional rights**, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.[63]

The power to "promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts," refers to a traditional power granted to the Supreme Court.[64] Chief Justice Puno, in his *ponencia* of the case of **Echegaray v. Secretary of Justice**[65] characterized the nature of this rule-making power, designed under the present Constitution to provide a stronger and more independent judiciary by taking away from Congress the power to repeal, alter or supplement the rules of court promulgated by the Supreme Court. In the words of Chief Justice Puno,

> **The rule making power of this Court was expanded**. This Court for the **first time** was given the power to promulgate rules concerning the protection and

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[63] 1987 PHIL. CONST. art. VIII, §5, ¶ 5 (emphasis supplied).

[64] JOAQUIN BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 969 (2003 ed.).

[65] G.R. No. 132601, January 19, 1999, which idea is reiterated in *People v. Lacson*, G.R. No. 149453 : April 1, 2003. The case of *Republic v. Judge Gingoyon* G.R. No. 166429, however, provided that Congress may repeal a rule of the Court involving substantial rights. Justice Puno registered his dissent in this case.

> enforcement of constitutional rights. The Court was also granted for the **first time** the power to disapprove rules of procedure of special courts and quasi-judicial bodies. **But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure**. In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive.[66]

On July 16-17, 2007, Justices, activists, militant leaders, police officials, politicians and prelates attended the **two-day National Consultative Summit on Extrajudicial Killings and Enforced Disappearances** sponsored by the Supreme Court of the Philippines, held at the Manila Hotel in Manila City to map out ways to put an end to the string of extrajudicial killings in the Philippines.

In the said event, Chief Justice Reynato S. Puno explained that **"If there are compelling reasons for this Summit, one of them is to prevent losing eye contact with these killings and disappearances, revive our righteous indignation, and spur our united search for the elusive solution to this pestering problem."** The questions surrounding the extrajudicial killings and enforced disappearances and their seeming resurgence refuse to go quietly and simply be rationalized. While a large number in society are concerned with this issue, the frequency of its occurrence and the media focus only seem to anesthetize their sense of shock. While there are no easy solutions, this Summit is an embodiment of the untiring and ceaseless effort to overcome what may often seem to be insurmountable challenges to resolve this issue.

The Summit was envisioned to provide a broad and fact-based perspective on the issue of extrajudicial killings and enforced disappearances. Representatives from all sides of the political and social spectrum, as well as all the stakeholders in the justice system, have been invited in the hope that this summit will point to the right direction in resolving this crisis. In so doing, the commitment to uphold respect for life and human rights is enforced and revitalized.

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[66] *Id.*

The 1987 Constitution gave the judiciary two (2) very prominent powers: (1) the expanded judicial power to settle actual controversies involving rights which are legally demandable and enforceable, and to likewise determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government; and (2) the expanded rule-making power in the protection and enforcement of constitutional rights to more effectively check the abuses in human rights. Citing his opinion in the case of **Tolentino v. Secretary of Finance**,[67] the Chief Justice submitted that **"in imposing to this Court the duty to annul acts of government committed with grave abuse of discretion, the new Constitution transformed the Court from passivity to activism."**

The expanded rule-making power, on the other hand, can provide for a simplified and inexpensive procedure for the speedy disposition of cases. This enhanced rule-making power proved providential two decades later as the country was once again plagued by the scourge of extrajudicial killings and enforced disappearances. This issue had inadvertently exposed "the frailties of our freedom, the inadequacy of our laws if not the inutility of our system of justice." In view thereof, the Judiciary has decided to "unsheathe its unused power to enact rules to protect the constitutional rights," primordial of which is the right to life.

In the Summit, a recurring proposition to the effect that the writ of amparo be operationalized in the Philippines was heard. The first proposal in the Summary of Recommendations,[68] the output of the Summit, was to the effect that the Judiciary "[to] undertake a serious study of the Writ of Amparo to see how it can be availed of, as protective and remedial tool, for the greater protection of the constitutional rights of the victims; to undertake a study on how to attain a more creative and resourceful application of the writ of *habeas corpus*."[69]

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[67] G.R. No. 115455, 30 October 1995, 249 SCRA 628.

[68] National Consultative Summit on Extrajudicial Killings and Enforced Disappearances, Summary of Recommendations (2007); available online at Supreme Court Website http://www.supremecourt.gov.ph/publications/summit/SummaryRecommendations.pdf (last accessed September 7, 2007).

[69] Summary of Recommendations, p. 2.

ANNOTATION TO THE

WRIT OF *AMPARO*

The Writ of Amparo. The nature and time-tested role of *amparo* has shown that it is an effective and inexpensive instrument for the protection of constitutional rights.[1] *Amparo,* literally "to protect," originated in Mexico and spread throughout the Western Hemisphere where it has gradually evolved into various forms, depending on the particular needs of each country.[2] It started as a protection against acts or omissions of public authorities in violation of constitutional rights. Later, however, the writ evolved for several purposes:[3]

> (1) For the protection of personal freedom, equivalent to the *habeas corpus* writ (called *amparo libertad*);
>
> (2) For the judicial review of the constitutionality of statutes (called *amparo contra leyes*);
>
> (3) For the judicial review of the constitutionality and legality of a judicial decision (called *amparo casacion*);
>
> (4) For the judicial review of administrative actions (called *amparo administrativo*); and
>
> (5) For the protection of peasants' rights derived from the agrarian reform process (called *amparo agrario*).

The *writ of amparo* has been constitutionally adopted by Latin American countries, except Cuba, to protect against human rights abuses especially during the time they were governed by military juntas. Generally, these countries adopted the writ to provide for a remedy to protect the whole range of constitutional rights, including socio-economic rights.

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[1] Adolfo S. Azcuna, *The Writ of Amparo: A Remedy to Enforce Fundamental Rights,* 37 ATENEO L.J. 15 (1993).

[2] *See* Article 107 of the Constitution of Mexico; Article 28 (15) of the Constitution of Ecuador**;** Article 77 of the Constitution of Paraguay; Article 43 of the Constitution of Argentina; Article 49 of the Constitution of Venezuela**;** Article 48(3) of the Constitution of Costa Rica; and Article 19 of the Constitution of Bolivia**.**

[3] Supra note 1.

In the Philippines, the Constitution does not explicitly provide for the writ of *amparo*. However, several of the *amparo* protections are available under our Constitution. Thus, pursuant to Article VIII, Section 1 of the 1987 Philippine Constitution, the definition of judicial power was expanded to include "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, *and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government*." The second clause, otherwise known as the *Grave Abuse Clause,* accords the same general protection to human rights given by the *amparo contra leyes, amparo casacion* and *amparo administrativo*.

Amparo contra leyes, amparo casacion and *amparo administrativo* are also recognized in form by the 1987 Philippine Constitution. Specifically, under Article VIII, Section 5, the Supreme Court has explicit review powers over judicial decisions akin to *amparo casacion.* To wit, Section 5 (2) provides that the Supreme Court shall have power to "[r]eview, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts."[4] And in paragraph (a) of Section 5(2) it is also explicitly provided that the Supreme Court shall have, like *amparo contra leyes,* the power to review "…[a]ll cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question."[5]

Amparo libertad is comparable to the remedy of *habeas corpus*. Our Rules of Court has adopted the old English rule on the writ of *habeas corpus* to protect the right to liberty of individuals. There are also constitutional provisions recognizing *habeas corpus*, *i.e.* Article III, Sections 13 and 15;[6] Article VII, Section 18;[7] and Article VIII, Section 5, Paragraph 1.[8]

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[4] 1987 PHIL. CONST. Art.VIII, § 5(2).

[5] 1987 PHIL. CONST. Art.VIII, § 5(2)(a).

[6] 1987 PHIL. CONST. Art. III §§ 13 & 15.

[7] 1987 PHIL. CONST. Art. VII, § 18.

[8] 1987 PHIL. CONST. Art. VIII, § 5 (1).

The Rules of Court provide the procedure to protect constitutional rights. Rule 65 embodies the *Grave Abuse Clause*, while Rule 102 governs petition for *habeas corpus*. Notably, the various socio-economic rights granted by the Constitution are enforced by specific provisions of the Rules of Court, such as the rules on injunction, prohibition, etc.

The 1987 Constitution enhanced the protection of human rights by giving the Supreme Court the power to "[p]romulgate rules concerning the protection and enforcement of constitutional rights…"[9] This rule-making power unique to the present Constitution, is the result of our experience under the dark years of the martial law regime. Heretofore, the protection of constitutional rights was principally lodged with Congress through the enactment of laws and their implementing rules and regulation. The 1987 Constitution, however, gave the the Supreme Court the additional power to promulgate rules to protect and enforce rights guaranteed by the fundamental law of the land.

In light of the prevalence of extralegal killing and enforced disappearances, the Supreme Court resolved to exercise for the first time its power to promulgate rules to protect our people's constitutional rights. Its Committee on Revision of the Rules of Court agreed that the writ of *amparo* should not be as comprehensive and all-encompassing as the ones found in some American countries, especially Mexico. These nations are understandably more advanced in their laws as well as in their procedures with respect to the scope of this extraordinary writ. The Committee decided that in our jurisdiction, this writ of *amparo* should be allowed to evolve through time and jurisprudence and through substantive laws as they may be promulgated by Congress.

The highlights of the proposed Rule, section by section, are as follows:

> **SECTION 1. *Petition.* – The petition for a writ of *amparo* is 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.**
>
> **The writ shall cover extralegal killings and enforced disappearances or threats thereof.**

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[9] 1987 PHIL. CONST. Art. VIII, § 5(5).

Philippine Version. Since the writ of *amparo* is still undefined under our Constitution and Rules of Court, Section 1 enumerates the constitutional rights protected by the writ, *i.e.*, **only** the right to life, liberty and security of persons. In other jurisdictions, the writ protects **all** constitutional rights. The reason for limiting the coverage of its protection only to the right to life, liberty and security is that other constitutional rights of our people are already enforced through different remedies.

Be that as it may, the Philippine *amparo* encapsulates a broader coverage. Whereas in other jurisdictions the writ covers only actual violations, the Philippine version is more protective of the right to life, liberty and security in the sense that it covers both actual and **threatened** violations of such rights. Further, unlike other writs of *amparo* that provide protection only against unlawful acts or omissions of public officials or employees, our writ covers violations committed by **private individuals or entities**. "Entities" refer to artificial persons, as they are also capable of perpetrating the act or omission.

The writ covers extralegal killings and enforced disappearances or threats thereof. "Extralegal killings"[10] 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.[11] On the other hand, "enforced disappearances"[12] 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.

SEC. 2. *Who May File.* – The petition may be filed by the aggrieved party or by any qualified person or entity in the following order:

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[10] As the term is used in United Nations Instruments.

[11] Such as media persons for example.

[12] As defined in the Declaration on the Protection of All Persons from Enforced Disappearances.

(a) Any member of the immediate family, namely: the spouse, children and parents of the aggrieved party;

(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

(c) Any concerned citizen, organization, association or institution, if there is no known member of the immediate family or relative of the aggrieved party.

The filing of a petition by the aggrieved party suspends the right of all other authorized parties to file similar petitions. Likewise, the filing of the petition by an authorized party on behalf of the aggrieved party suspends the right of all others, observing the order established herein.

Who May File. This section provides the order which must be followed by those who can sue for the writ. It is necessary for the orderly administration of justice. First, the right to sue belongs to the person whose right to life, liberty and security is being threatened by an unlawful act or omission of a public official or employee or of a private individual or entity *(the aggrieved party).* However, in cases where the whereabouts of the aggrieved party is unknown, the petition may be filed by qualified persons or entities enumerated in the Rule *(the authorized party).* A similar order of priority of those who can sue is provided in our rules implementing the law on violence against women and children in conflict with the law.

The reason for establishing an order is to prevent the indiscriminate and groundless filing of petitions for *amparo* which may even prejudice the right to life, liberty or security of the aggrieved party. For instance, the immediate family may be nearing the point of successfully negotiating with the respondent for the release of the aggrieved party. An untimely resort to the writ by a nonmember of the family may endanger the life of the aggrieved party.

The Committee is aware that there may also be instances wherein the qualified members of the immediate family or relatives of the aggrieved party might be threatened from filing the petition. As the

right to life, liberty and security of a person is at stake, this section shall not preclude the filing by those mentioned in paragraph (c) when authorized by those mentioned in paragraphs (a) or (b) when circumstances require.

> **SEC. 3. *Where to File.* – The petition may be filed on any day and at any time with the Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred, or with the Sandiganbayan, the Court of Appeals, the Supreme Court, or any justice of such courts. The writ shall be enforceable anywhere in the Philippines.**
>
> **When issued by a Regional Trial Court or any judge thereof, the writ shall be returnable before such court or judge.**
>
> **When issued by the Sandiganbayan or the Court of Appeals or any of their justices, it may be returnable before such court or any justice thereof, or to any Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred.**
>
> **When issued by the Supreme Court or any of its justices, it may be returnable before such Court or any justice thereof, or before the Sandiganbayan or the Court of Appeals or any of their justices, or to any Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred.**

Day and Time of Filing. Due to the extraordinary nature of the writ which protects the mother of all rights — the right to life — the petition may be filed on *any day*, including Saturdays, Sundays and holidays; and at *any time*, from morning until evening.

Courts Where Petition May Be Filed. This section is basically similar to the Rule on petitions for the writ of *habeas corpus*. It is, however, different because it includes the *Sandiganbayan* for the reason that public officials and employees will be respondents in *amparo* petitions. It will be noted that the *amparo* petition has to be filed with the Regional Trial Court where the act or omission was committed or where any of its elements occurred. The intent is to prevent the filing of

the petition in some far-flung area to harass the respondent. Moreover, allowing the *amparo* petition to be filed in any Regional Trial Court may prejudice the effective dispensation of justice, as in most cases, the witnesses and the evidence are located within the jurisdiction of the Regional Trial Court where the act or omission was committed.

Designation. Originally, the draft Rule required the petition to be filed in the RTC that had "jurisdiction" over the offense. However, the Committee felt that the use of the word "jurisdiction" might be construed as vesting new jurisdiction in our courts, an act that can only be done by Congress. The use of the word "jurisdiction" was discontinued, for the Rule merely establishes a procedure to enforce the right to life, liberty or security of a person and, undoubtedly the Court has the power to promulgate procedural rules to govern proceedings in our courts without disturbing their jurisdiction.

> **SEC. 4.** ***No Docket Fees.*** **– The petitioner shall be exempted from the payment of the docket and other lawful fees when filing the petition. The court, justice or judge shall docket the petition and act upon it immediately.**

Liberalized Docket Fees. The Committee exempted petitioners from payment of docket and other lawful fees in filing an *amparo* petition, for this extraordinary writ involves the protection of the right to life, liberty and security of a person. The enforcement of these sacrosanct rights should not be frustrated by lack of finances.

> **SEC. 5.** ***Contents of Petition.*** **– The petition shall be signed and verified and shall allege the following:**
>
> **(a) The personal circumstances of the petitioner;**
>
> **(b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation;**
>
> **(c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;**

(d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;

(e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and

(f) The relief prayed for.

The petition may include a general prayer for other just and equitable reliefs.

Contents of the Petition. The petition should be verified to enhance the truthfulness of its allegations and to prevent groundless suits.

Paragraphs (a) and (b) are necessary to identify the petitioner and the respondent. The respondent may be given an assumed appellation such as "John Doe," as long as he or she is particularly described *(descriptio personae)*. Paragraph (c) requires the petitioner to allege the cause of action in as complete a manner a possible. The requirement of affidavit was added, and it can be used as the direct testimony of the affiant. Affidavits can facilitate the resolution of the petition, consistent with the summary nature of the proceedings. Paragraph (d) is necessary to determine whether the act or omission of the respondent satisfies the standard of conduct set by this Rule. Paragraph (e) is intended to prevent the premature use, if not misuse, of the writ for a fishing expedition.

SEC. 6. *Issuance of the Writ.* – Upon the filing of the petition, the court, justice or judge shall immediately order the issuance of the writ if on its face it ought to issue. The clerk of court shall issue the writ under the seal of the court; or in case of urgent necessity, the justice or the judge may issue the writ in his or her own hand, and may deputize any officer or person to serve it.

The writ shall also set the date and time for summary hearing of the petition which shall not be later than seven (7) days from the date of its issuance.

Issuance. The writ is **issued** as a matter of course when on the face of the petition it ought to issue. The writ will require respondent to file his return, which is the comment or answer to the petition. If the petitioner is able to prove his cause of action after the hearing, the **privilege** of the writ of *amparo* shall be granted, i.e., the court will grant the petitioner his appropriate reliefs.

The provision requires that the writ should set the date of hearing of the petition to expedite its resolution. The *amparo* proceedings enjoy priority and cannot be unreasonably delayed.

> **SEC. 7.** ***Penalty for Refusing to Issue or Serve the Writ.*** **– A clerk of court who refuses to issue the writ after its allowance, or a deputized person who refuses to serve the same, shall be punished by the court, justice or judge for contempt without prejudice to other disciplinary actions.**

Penalties. The provision is a modified version of a similar provision in Rule 102, governing petitions for a writ of *habeas corpus*.

> **SEC. 8.** ***How the Writ is Served.*** **– The writ shall be served upon the respondent by a judicial officer or by a person deputized by the court, justice or judge who shall retain a copy on which to make a return of service. In case the writ cannot be served personally on the respondent, the rules on substituted service shall apply.**

Manner of Service. The writ should be served against the respondent, preferably in person. If personal service cannot be made, the rules on substituted service shall apply. This will avoid the situation where the respondent would be conveniently assigned on a "secret mission" to frustrate personal service.

> **SEC. 9.** ***Return; Contents.*** **– Within seventy-two (72) hours after service of the writ, the respondent shall file a verified written return together with supporting affidavits which shall, among other things, contain the following:**
>
> **(a) The lawful defenses to show that the respondent did not violate or threaten with violation the right to life, liberty and security of the aggrieved party, through any act or omission;**

(b) The steps or actions taken by the respondent to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission;

(c) All relevant information in the possession of the respondent pertaining to the threat, act or omission against the aggrieved party; and

(d) If the respondent is a public official or employee, the return shall further state the actions that have been or will still be taken:

(i) to verify the identity of the aggrieved party;

(ii) to recover and preserve evidence related to the death or disappearance of the person identified in the petition which may aid in the prosecution of the person or persons responsible;

(iii) to identify witnesses and obtain statements from them concerning the death or disappearance;

(iv) to 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;

(v) to identify and apprehend the person or persons involved in the death or disappearance; and

(vi) to bring the suspected offenders before a competent court.

The return shall also state other matters relevant to the investigation, its resolution and the prosecution of the case.

A general denial of the allegations in the petition shall not be allowed.

Contents of the Return. The section requires a detailed return. The detailed return is important, for it will help determine whether the respondent fulfilled the standard of conduct required by the Rule. It will also avoid the ineffectiveness of the writ of *habeas corpus*, where often the respondent makes a simple denial in the return that he or she has custody over the missing person, and the petition is dismissed. The requirements under paragraph (d) are based on United Nations standards.[13]

No General Denial. No general denial is allowed. The policy is to require revelation of all evidence relevant to the resolution of the petition. A litigation is not a game of guile but a search for truth, which alone is the basis of justice.

SEC. 10. ***Defenses Not Pleaded Deemed Waived.*** **– All defenses shall be raised in the return, otherwise, they shall be deemed waived.**

Waiver. This section is in consonance with the summary nature of the proceedings and to prevent its delay.

SEC. 11. ***Prohibited Pleadings and Motions.*** **– The following pleadings and motions are prohibited:**

(a) Motion to dismiss;

(b) Motion for extension of time to file return, opposition, affidavit, position paper and other pleadings;

(c) Dilatory motion for postponement;

(d) Motion for a bill of particulars;

(e) Counterclaim or cross-claim;

(f) Third-party complaint;

(g) Reply;

(h) Motion to declare respondent in default;

(i) Intervention;

(j) Memorandum;

(k) Motion for reconsideration of interlocutory orders or interim relief orders; and

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[13] *See* Art. III, United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

(l) Petition for *certiorari*, *mandamus* or prohibition against any interlocutory order.

Prohibited Pleadings. The enumerated pleadings and motions are prohibited, so that the proceedings in the hearing shall be expedited. The Committee noted that since the right to life, liberty and security of a person is at stake, the proceedings should not be delayed.

This section is similar to that found in the Rule on Violence Against Women and Children in Conflict with the Law (VAWC).[14] However, unlike in VAWC, this Rule allows the filing of motions for new trial and petitions for relief from judgment. The Committee decided that the denial of these remedies may jeopardize the rights of the aggrieved party in certain instances and should not be countenanced.

No Motion to Dismiss. The filing of a motion to dismiss even on the ground of lack of jurisdiction over the subject matter and the parties is proscribed. The reason is to avoid undue delay. The grounds of a motion to dismiss should be included in the return and resolved by the court, using its reasonable discretion as to the time and merit of the motion.

SEC. 12. *Effect of Failure to File Return.*– In case the respondent fails to file a return, the court, justice or judge shall proceed to hear the petition *ex parte*.

***Ex Parte* Hearing.** The Committee decided that the hearing should not be delayed by the failure of the respondent to file a return, otherwise the right to life, liberty and security of a person would be easily frustrated.

SEC. 13. *Summary Hearing.*– The hearing on the petition shall be summary. However, the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.

The hearing shall be from day to day until completed and given the same priority as petitions for *habeas corpus*.

Summary Nature. The *amparo* hearing is summary in nature and held from day to day until completed, for time cannot stand still when life, liberty or security is at stake. Be that as it may, the court, justice or

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[14] *See* A.M. No. 04-10-11-SC, Section 22.

judge, using reasonable discretion, may conduct a preliminary conference, if such conference will aid in the speedy disposition of the petition.

> **SEC. 14. *Interim Reliefs*. – Upon filing of the petition or at any time before final judgment, the court, justice or judge may grant any of the following reliefs:**

Interim Reliefs. The interim reliefs available to the parties are distinct features of the writ of *amparo*. Some of these reliefs can be given immediately after the filing of the petition *motu proprio* or at any time before final judgment.

> **(a) *Temporary Protection Order*. – The court, justice or judge, upon motion or *motu proprio*, may order that the petitioner or the aggrieved party and any member of the immediate family be protected in a government agency or by an accredited person or private institution capable of keeping and securing their safety. If the petitioner is an organization, association or institution referred to in Section 3(c) of this Rule, the protection may be extended to the officers concerned.**
>
> **The Supreme Court shall accredit the persons and private institutions that shall extend temporary protection to the petitioner or the aggrieved party and any member of the immediate family, in accordance with guidelines which it shall issue.**
>
> **The accredited persons and private institutions shall comply with the rules and conditions that may be imposed by the court, justice or judge.**

Temporary Protection Order. The grant of a temporary protection order to the petitioner or the aggrieved party and any member of the immediate family is essential because their lives and safety may be at higher risk once they file the *amparo* petition.

The temporary protection order and witness protection order are distinguishable from the inspection order and production order in that there is no need for verification of these motions. Moreover, unlike the latter, the temporary protection order and witness protection order may be issued *motu proprio* or *ex parte,* without need of a hearing in view of their urgent necessity.

To make the temporary protection order as broad and as effective as possible, the Committee decided to include not only government agencies, but also accredited persons and private institutions. For reasons of their own, some aggrieved persons refuse to be protected by government agencies; hence, the need to add persons and private institutions. To ensure their capability, the Supreme Court shall accredit these persons and private institutions.

> **(b)** ***Inspection Order.*** **– The court, justice or judge, upon verified motion and after due hearing, may order any person in possession or control of a designated land or other property, to permit entry for the purpose of inspecting, measuring, surveying, or photographing the property or any relevant object or operation thereon.**
>
> **The motion shall state in detail the place or places to be inspected. It shall be supported by affidavits or testimonies of witnesses having personal knowledge of the enforced disappearance or whereabouts of the aggrieved party.**
>
> **If the motion is opposed on the ground of national security or of the privileged nature of the information, the court, justice or judge may conduct a hearing in chambers to determine the merit of the opposition.**
>
> **The movant must show that the inspection order is necessary to establish the right of the aggrieved party alleged to be threatened or violated.**
>
> **The inspection order shall specify the person or persons authorized to make the inspection and the date, time, place and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties. The order shall expire five (5) days after the date of its issuance, unless extended for justifiable reasons.**

Inspection Order. The sensitive nature of an inspection order requires that it shall be the subject of a motion and shall be duly heard. It may be availed of by both the petitioner and the respondent. To prevent its misuse, the Rule requires that the motion also state in sufficient detail the place or places to be inspected. It should also be under oath and should have supporting affidavits. The inspection order shall specify

the persons authorized to make the inspection as well as the date, time, place and manner of making the inspection. Other conditions may be imposed to protect the rights of the parties. The order has a limited lifetime of five days, but can be extended under justifiable circumstances.

If the court, justice or judge gravely abuses his or her discretion in issuing the inspection order, as when it will compromise national security, the aggrieved party is not precluded from filing a petition for *certiorari* with the Supreme Court, which, under the Constitution, may not be deprived of its *certiorari* jurisdiction.

> **(c) *Production Order.* – The court, justice or judge, upon verified motion and after due hearing, may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.**
>
> **The motion may be opposed on the ground of national security or of the privileged nature of the information, in which case the court, justice or judge may conduct a hearing in chambers to determine the merit of the opposition.**
>
> **The court, justice or judge shall prescribe other conditions to protect the constitutional rights of all the parties.**

Production Order. Like the inspection order, the production order is available to both the petitioner and respondent and, considering its sensitive nature, is only granted upon motion and after hearing. The phrase "objects in digitized or electronic form" was added to cover electronic evidence, since the documents involved may be stored in digital files.

> **(d) *Witness Protection Order.* – The court, justice or judge, upon motion or *motu proprio*, may refer the witnesses to the Department of Justice for admission to the Witness Protection, Security and Benefit Program, pursuant to Republic Act No. 6981.**

The court, justice or judge may also refer the witnesses to other government agencies, or to accredited persons or private institutions capable of keeping and securing their safety.

Witness Protection Order. The witness protection order may be issued upon motion or *motu proprio*. The witness may be referred to the DOJ pursuant to Republic Act No. 6981. If the witness cannot be accommodated by the DOJ or the witness refuses the protection of the DOJ, the court, justice or judge may refer the witness to another government agency or to an accredited person or private institution.

SEC. 15. ***Availability of Interim Reliefs to Respondent.*****– Upon verified motion of the respondent and after due hearing, the court, justice or judge may issue an inspection order or production order under paragraphs (b) and (c) of the preceding section.**

A motion for inspection order under this section shall be supported by affidavits or testimonies of witnesses having personal knowledge of the defenses of the respondent.

Interim Reliefs of Respondent. This section enumerates the interim reliefs that may be availed of by the respondent, which are the inspection and production orders.

The interim reliefs will ensure fairness in the proceedings, since there may be instances in which the respondents would need to avail themselves of these reliefs to protect their rights or to prove their defenses, *i.e.*, when they allege that the aggrieved party is located elsewhere, or when vital documents proving their defenses are in the possession of other persons.

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

Contempt. The power to cite for contempt is an inherent power of a court to compel obedience to its orders and to preserve the integrity of

the judiciary. A finding of contempt of court may result from a refusal to make a return; or, if one is filed, it is false and tantamount to not making a return; disobedience to a lawful order; and resistance to a lawful process. A fine or an imprisonment may be imposed on a person found guilty of contempt of court in accordance with the Rules of Court.

> **SEC. 17.** ***Burden of Proof and Standard of Diligence Required.*** **– The parties shall establish their claims by substantial evidence.**
>
> **The respondent who is a private individual or entity must prove that ordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.**
>
> **The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.**
>
> **The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed to evade responsibility or liability.**

Diligence Standard. The distinction is made between a private and a public respondent to highlight the difference in the diligence requirement for a public official or employee. Public officials or employees are charged with a higher standard of conduct because it is their legal duty to obey the Constitution, especially its provisions protecting the right to life, liberty and security. The denial of the presumption that official duty has been regularly performed is in accord with current jurisprudence on custodial interrogation and search warrant cases.

> **SEC. 18.** ***Judgment.*** **– The court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate; otherwise, the privilege shall be denied.**

Speedy Judgment. The court, justice or judge is obliged to render judgment within ten (10) days after submission of the petition for decision. The short period is demanded by the extraordinary nature of the writ.

SEC. 19. *Appeal.* – Any party may appeal from the final judgment or order to the Supreme Court under Rule 45. The appeal may raise questions of fact or law or both.

The period of appeal shall be five (5) working days from the date of notice of the adverse judgment.

The appeal shall be given the same priority as *habeas corpus* cases.

Appeal. The provision allows an appeal from final judgments or orders through Rule 45. The Committee considered Rule 41 as a mode of appeal, but a consensus was reached that Rule 45 would best serve the nature of the writ of *amparo*. The Rule 45 appeal here, however, is different, because it allows questions not only *of law* but also *of fact* to be raised. The Committee felt that an *amparo* proceeding essentially involves a determination of facts considering that its subject is extralegal killings or enforced disappearances, hence, a review of errors of fact should be allowed. The disposition of appeals dealing with *amparo* cases shall be prioritized like *habeas corpus* cases.

SEC. 20. *Archiving and Revival of Cases.* – The court shall not dismiss the petition, but shall archive it, if upon its determination it cannot proceed for a valid cause such as the failure of petitioner or witnesses to appear due to threats on their lives.

A periodic review of the archived cases shall be made by the *amparo* court that shall, *motu proprio* or upon motion by any party, order their revival when ready for further proceedings. The petition shall be dismissed with prejudice, upon failure to prosecute the case after the lapse of two (2) years from notice to the petitioner of the order archiving the case.

The clerks of court shall submit to the Office of the Court Administrator a consolidated list of archived cases under this Rule, not later than the first week of January of every year.

Liberalized Rule on Dismissal. The rule on dismissal due to failure to prosecute is liberalized. If petitioners cannot proceed to prove their allegations for a justifiable reason like the existence of a threat to their lives or the lives of their witnesses, the court will not dismiss the petition

but will archive it. The parties will be notified before a case is archived, as the order has to be justified by a good reason, to be determined after hearing. Archiving can be ordered only during the pendency of the case. The case may be revived within two years from its archiving. After two years, it may be dismissed for failure to prosecute. Since it is the petitioner who would be prejudiced by its final dismissal, the two-year prescriptive period is reckoned from the date of notice to the petitioners of the order of archiving. Two years is deemed a reasonable time for the aggrieved parties to prosecute their petition.

> **SEC. 21.** ***Institution of Separate Actions.*** **– This Rule shall not preclude the filing of separate criminal, civil or administrative actions.**

Prerogative Writ. The writ of *amparo* partakes of the nature of a prerogative writ. It is not a criminal, civil, or administrative suit. Hence, it does not suspend the filing of criminal, civil or administrative actions.

Originally, the Committee included a provision allowing a claim for damages. It dropped the provision for fear that such a claim would unduly delay the proceeding, considering the possibility of counterclaims and cross-claims being set up. Delay would defeat the summary nature of the *amparo* proceeding. It was decided that the aggrieved party should instead file in a claim in a proper civil action.

Similarly, the *amparo* proceeding is not criminal in nature and will not determine the criminal guilt of the respondent. However, if the evidence so warrants, the *amparo* court may refer the case to the Department of Justice for criminal prosecution.

> **SEC. 22.** ***Effect of Filing of a Criminal Action*****. – When a criminal action has been commenced, no separate petition for the writ shall be filed. The reliefs under the writ shall be available by motion in the criminal case.**
>
> **The procedure under this Rule shall govern the disposition of the reliefs available under the writ of *amparo*.**

Effect of Criminal Proceeding. This section contemplates the situation where a criminal action has already been filed, in which case the commencement of the *amparo* action is barred. This is to avoid the difficulties that may be encountered when the *amparo* action is allowed

to proceed separately from the criminal action. Two courts trying essentially the same subject may issue conflicting orders.

The *amparo* reliefs, however, are made available to the aggrieved party through motion in the court where the criminal case is pending. The disposition of such reliefs shall continue to be governed by this Rule.

> **SEC. 23. *Consolidation.* – When a criminal action is filed subsequent to the filing of a petition for the writ, the latter shall be consolidated with the criminal action.**
>
> **When a criminal action and a separate civil action are filed subsequent to a petition for a writ of *amparo*, the latter shall be consolidated with the criminal action.**
>
> **After consolidation, the procedure under this Rule shall continue to apply to the disposition of the reliefs in the petition.**

Consolidation. In case a petition for the writ of *amparo* is filed prior to the institution of a criminal action, or prior to a criminal action and a separate civil action, the petition shall be consolidated with the criminal action. This Rule shall continue to govern the disposition of the reliefs for *amparo* after consolidation.

> **SEC. 24. *Substantive Rights.* – This Rule shall not diminish, increase or modify substantive rights recognized and protected by the Constitution.**

No Diminution, Increase or Modification of Substantive Rights. The rule-making power of the Supreme Court has been expanded in Article VIII, Section 5 (5) of the 1987 Constitution. It provides that the Supreme Court shall have the power to "[p]romulgate rules *concerning the protection and enforcement of constitutional rights* [which] shall not diminish, increase, or modify substantive rights..."[15]

The Supreme Court clarified what constitutes procedural rules in *Fabian v. Desierto, viz*:

> [T]he test whether the rule really regulates procedure, that is, the *judicial process for enforcing rights and duties*

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[15] 1987 PHIL. CONST. Art. VIII, §5, ¶ 5 (emphasis supplied).

> *recognized by substantive* law and for justly administering remedy and redress for a disregard or infraction of them. If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as substantive matter; but *if it operates as a means of implementing an existing right, then the rule deals merely with procedure.* [16]

> **SEC. 25.** ***Suppletory Application of the Rules of Court.*** **– The Rules of Court shall apply suppletorily insofar as it is not inconsistent with this Rule.**

Suppletory Application of the Rules of Court. The Rules of Court shall supplement the Rule on *amparo* as far as it is applicable. This new Rule will prevail and will not be affected by prior inconsistent rules, resolutions, regulations or circulars of the Supreme Court.

> **SEC. 26.** ***Applicability to Pending Cases.*** **– This Rule shall govern cases involving extralegal killings and enforced disappearances or threats thereof pending in the trial and appellate courts.**

Remedial Nature of the Writ. Since the writ is remedial in nature, it is applicable to pending cases of extralegal killings and enforced disappearances or threats thereof, both in the trial and the appellate courts.

> **SEC. 27.** ***Effectivity*****. – This Rule shall take effect on October 24, 2007, following its publication in three (3) newspapers of general circulation.**

Date of Effectivity. The last section marks the date of effectivity of the Rule and its publication requirement. The Committee deemed it proper that the birth of the Rule in the Philippines should coincide with our celebration of United Nations Day, to manifest a strong affirmation of our commitment towards the internationalization of human rights.

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[16] G.R. No. 129742, September 16, 1998, at 22-23 citing 32 AM. JUR. 2d, Federal Practice and Procedure, §505, at 936; People v. Smith, 205 P. 2d 444.

A.M. No. 07-9-12-SC

THE RULE ON THE WRIT OF AMPARO

RESOLUTION

Pursuant to the action of the Court *en banc* in its session held on October 16, 2007, Sections 9 and 11 of the Rule on the Writ of Amparo are hereby AMENDED to read as follow:

SEC. 9. *Return; Contents*.—Within FIVE (5) WORKING DAYS after service of the writ, the respondent shall file a verified written return together with supporting affidavits which shall, among other things, contain the following:

(a) The lawful defenses to show that the respondent did not violate or threaten with violation the right to life, liberty and security of the aggrieved party, through any act or omission;

(b) The steps or actions taken by the respondent to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission;

(c) All relevant information in the possession of the respondent pertaining to the threat, act or omission against the aggrieved party; and

(d) If the respondent is a public official or employee, the return shall further state the actions that have been or will still be taken:

  (i) to verify the identity of the aggrieved party;

(ii) to recover and preserve evidence related to the death or disappearance of the person identified in the petition which may aid in the prosecution of the person or persons responsible;

(iii) to identify witnesses and obtain statements from them concerning the death or disappearance;

(iv) to 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;

(v) to identify and apprehend the person or persons involved in the death or disappearance; and

(vi) to bring the suspected offenders before a competent court.

THE PERIOD TO FILE A RETURN CANNOT BE EXTENDED EXCEPT ON HIGHLY MERITORIOUS GROUND.

The return shall also state other matters relevant to the investigation, its resolution and the prosecution of the case.

A general denial of the allegations in the petition shall not be allowed.

SEC. 11. *Prohibited Pleadings and Motions*.—The following pleadings and motions are prohibited:

(a) Motion to dismiss;

(b) Motion for extension of time to file opposition, affidavit, position paper and other pleadings;

(c) Dilatory motion for postponement;

(d) Motion for a bill of particulars;

(e) Counterclaim or cross-claim;

(f) Third-party complaint;

(g) Reply;

(h) Motion to declare respondent in default;

(i) Intervention;

(j) Memorandum;

(k) Motion for reconsideration of interlocutory orders or interim relief orders; and

(l) Petition for *certiorari, mandamus* or prohibition against any interlocutory order.

The amendments to the Rule shall take effect on October 24, 2007 following its publication in three (3) newspapers of general circulation.

October 16, 2007.

REYNATO S. PUNO
Chief Justice

LEONARDO A. QUISUMBING
Associate Justice

CONSUELO YNARES-SANTIAGO
Associate Justice

ANGELINA SANDOVAL-GUTIERREZ
Associate Justice

ANTONIO T. CARPIO
Associate Justice

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

RENATO C. CORONA
Associate Justice

CONCHITA CARPIO MORALES
Associate Justice

ADOLFO S. AZCUNA
Associate Justice

DANTE O. TINGA
Associate Justice

MINITA V. CHICO-NAZARIO
Associate Justice

CANCIO C. GARCIA
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

ANTONIO EDUARDO B. NACHURA
Associate Justice

RUBEN T. REYES
Associate Justice