

New Frontiers in the Application of the Writ of *Amparo* — Is the Philippines Ready?

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I. TAMING THE WILD SOUTHEAST

In 1993, Justice Adolfo S. Azcuna wrote on a writ utilized in Mexico for the protection of fundamental human rights.¹ Fourteen years later, he would sit in the Supreme Court that would create the Rule on the Writ of *Amparo*² (Writ) and bring to life what was once only a concept from a faraway land.

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1. Adolfo S. Azcuna, *The Writ of Amparo: A Remedy to Enforce Fundamental Rights*, 37 ATENEO L.J. 13, 14 (1993).
2. RULE ON THE WRIT OF AMPARO, A.M. No. 07-9-12-SC, Sep. 25, 2007.

But what is conceptually one of the greatest legal tools for the protection of a person's rights has been limited in its use in the Philippines.

Violent abductions, extrajudicial killings, and mysterious disappearances have been on a rise in recent history.³ In the first four months of President Benigno C. Aquino III's term, there have been 20 reports of Extrajudicial Killings, two reports of Enforced Disappearances, 16 reports of Torture, and four reports of Frustrated Extrajudicial Killings.⁴ In total, from 2001 to 2010, the number of extra-judicial killings reached 1,190 and the number of enforced disappearances, 205.⁵ A record of 104 journalist killings has occurred since 1986, 140 of which happened during the time of President Gloria Macapagal-Arroyo.⁶ And of the 55 documented killings of journalists in the Philippines, only 327 were brought to court and only two were successfully investigated from 2005 to 2006.⁷ Court records have linked the police, military, or the local government to several of these cases.⁸

The traumatic experiences of many citizens meant that the Writ has typically been applied to deter the atrocious actions of the State against its own people. The Writ seemed to be an answer to many of the prayers of those who knew of the undergrowth in the jungles of the Philippine bureaucracy. It was hoped that within the provisions of the Rule on the Writ of *Amparo* was key to taming the unruly landscape threatening to take hold of the entire country.

However, other countries have advanced in their application of the Writ. Understanding that judicial remedies are not only limited when it comes to answering violations to human rights, the clogged dockets of the courts have also meant that even civil and commercial offenses cannot always be sufficiently addressed by the typical Provisional Remedies⁹ or Special Proceedings.¹⁰ It is from this point that this Essay takes off.

Many other works have delved into the history behind the Writ, therefore this Essay will not touch on the matter.¹¹ Rather, the Author

3. Karapatan (Alliance for the Advancement of Peoples' Rights), *2010 Year-End Report on the Human Rights Situation in the Philippines*, 1 (Dec. 1, 2010).

4. *Id.*

5. *Id.* at 1-22.

6. National Union of Journalists of the Philippines, Home, *available at* <http://www.nujp.org/> (last accessed Feb. 25, 2011).

7. LUIS V. TEODORO, PHILIPPINE PRESS FREEDOM REPORT 2007 1-15 (2007).

8. *Id.*

9. *See generally* 1997 RULES OF CIVIL PROCEDURE, rules 57-61.

10. *See generally* SPECIAL PROCEEDINGS, rules 72-109.

11. *See generally* Felix T. Sy, Jr., *The Writ of Amparo: An Extraordinary Remedy for the Protection and Enforcement of Fundamental Rights* (1994) (J.D. thesis,

examines cases with the idea of culling from their pages the dominant perception of the uses of the Writ of *Amparo*. The cases from the Court of Appeals (C.A.) are sampled since many of the petitions are filed there. The growing popularity of the Writ, however, has meant that an increasing number of petitions has also been filed at and heard by the Supreme Court.

II. EVOLUTION OF UNDERSTANDING IN THE PHILIPPINES

A. Court of Appeals: Feeling Out the Boundaries

Although the Supreme Court released the Annotation¹² soon after issuing the Rule, the CA seems to have been somewhat confused with exactly how and when to implement the new tool of protection.

1. The Manalo Brothers Set the Trend

The Privilege of the Writ of *Amparo* was granted by Justice Lucas P. Bersamin, and the Secretary of National Defense was required to submit to Raymond and Reynaldo Manalo all official and unofficial reports regarding them as subjects of the military's investigation.¹³ This was the first docketed Writ of *Amparo* Petition in the C.A. It began as a proceeding for *habeas corpus*.¹⁴ It was alleged that military personnel and Citizens Armed Forces Geographical Unit (CAFGU) auxiliaries took the Manalo brothers from their homes on Valentine's Day of 2006.¹⁵ As expected, the respondents to the Writ of *Habeas Corpus* denied any knowledge of the whereabouts of the Manalos.¹⁶ Months later, the brothers escaped from captivity and the petitions for *habeas corpus* were withdrawn.¹⁷ Subsequently, the Rule on the Writ of *Amparo* took effect and presented the Manalos with a legal remedy for their woes. There was no doubt in the mind of the C.A. justices that the

Ateneo de Manila University) (on file with the Ateneo Professional Schools Library, Ateneo de Manila University); Joseph Roman D. de la Cuesta, *Protecting the Writ to Protect: Making Effective the Rule on the Writ of Amparo* (2011) (J.D. thesis, Ateneo de Manila University) (on file with the Ateneo Professional Schools Library, Ateneo de Manila University); & Azcuna, *supra* note 1.

12. RULE ON THE WRIT OF AMPARO, ratio.

13. *Manalo v. The Secretary of National Defense*, CA-G.R. Amparo No. 00001, Dec. 26, 2007, 29-30 (on file with author).

14. *Id.* at 1.

15. *Id.* at 2.

16. *Id.*

17. *Id.*

Manalos were indeed abducted.¹⁸ The only remaining question was whether the response of the State was sufficient — and it was found wanting.¹⁹

The decision basically discusses the reaction to the petition for *habeas corpus*, its insufficiency, and the resistance to the petition for the Writ of *Amparo*.²⁰ It provides an insight as to the reception and initial application of the Rule. As expected, the C.A. was careful that it did not grant all the reliefs prayed for. The inspection order was denied because of the lack of any pressing need since the Manalo brothers were no longer held in captivity. Therefore, there was no need to search the premises.²¹ A roster of military personnel assigned to certain units was always requested but denied since they believed that it was not necessary in order to resolve the issues.²² The production order, however, was granted, as earlier mentioned, since it required reports on investigations undertaken after the fact.²³ Other similar orders were granted so long as they pertained to an ongoing search or investigation and denied when it immediately laid blame on the State.²⁴

2. The Rubricos Reach for the Top

Soon after, another petition was filed availing of the Writ. In *Rubrico v. Arroyo*,²⁵ a mother and her two daughters (the Rubricos) filed a petition for the Writ of *Amparo* impleading President Gloria Macapagal-Arroyo and certain members of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP).²⁶ One of the Rubricos was harassed by a member of the PNP while another was abducted, prompting the filing of the petition with a prayer for the relief of a Temporary Retraining Order.²⁷ The prayer, however, was denied.²⁸ In including the President of the Philippines as a respondent to the petition, the petitioners put to the test the possibility of using the *Amparo* to hold accountable the highest officer of the Executive

18. *Id.* at 21.

19. *Manalo*, CA-G.R. Amparo No. 00001, at 21.

20. *Id.*

21. *Id.* at 25.

22. *Id.* at 26.

23. *Id.* at 25-26.

24. *Id.* at 27-29.

25. In the Matter of the Petition for Writ of *Amparo* in favor of Lourdes D. Rubrico, Jean Rubrico Apruebo, and Mary Joy Rubrico Carbonel, *Rubrico v. Arroyo*, CA-G.R. SP No. 00003, July 3, 2008 (on file with author).

26. *Id.* at 2.

27. *Id.* at 6. Originally, a Temporary Protection was sought but later withdrawn when the court declared the absence of any authority to grant one as requested. *Id.*

28. *Id.* at 8.

Branch. The concept of Command Responsibility, in relation to superiors pegged as respondents for such a Writ, was explained in order to justify the inclusion of certain prominent parties such as the President of the Philippines.²⁹ The C.A. believed it to be applicable to the Rule on the Writ of *Amparo*.³⁰ Since the petitioners were unable to establish through substantial evidence certain elements of Command Responsibility, certain respondents were released from the burden of responding to the Writ and the petition was dismissed as it pertained to them.³¹

3. Tagitis Explores Reliefs

In *Tagitis v. Doromal*,³² the petition for the Writ was granted. Engineer Morced N. Tagitis, a consultant for the World Bank and Islamic Development Bank Scholarship Program, disappeared on 30 October 2007.³³ In searching for him, his wife, Mary Jean B. Tagitis, was informed by a military colonel that her husband was in the custody of the PNP and the Criminal Investigation and Detection Group (CIDG) for alleged involvement with different terrorist groups.³⁴ Acting on this tip, she filed a Petition for Writ of *Amparo* before the CA.³⁵ The Writ was issued on 28 December 2007, but when the Return was filed on 7 January 2008, General Joel Goltiao claimed no knowledge of events involving Engineer Tagitis.³⁶

The C.A. subsequently ordered General Goltiao to form a task force charged with uncovering the truth behind Engineer Tagitis' disappearance.³⁷ In doing so, the State would have to exert extraordinary efforts — a feat that even had to be specifically outlined and defined by the C.A.³⁸ Though there were efforts to attribute his disappearance to infidelity or that it was somehow linked to the transfer of money from an account in the Kingdom of Saudi Arabia to his personal account, his wife stood her ground and insisted that the facts did not line up for such a conclusion to hold true.³⁹

29. *Id.* at 9-10.

30. *Rubrico*, CA-G.R. SP No. 00003, at 9-10.

31. *Id.* at 10 & 12.

32. In the Matter of the Petition for the Writ of *Amparo* of Engr. Morced N. Tagitis, *Tagitis v. Doromal*, CA-G.R. Amparo No. 00009, Mar. 7, 2008 (on file with the author).

33. *Id.* at 2.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Tagitis*, CA-G.R. Amparo No. 00009, at 5-6.

39. *Id.* at 6.

On 4 February 2008, the C.A. issued an Alarm Warning when they discovered that extraordinary efforts were not being exerted.⁴⁰ And though the State (through the respondents) complained of what was demanded from them, the CA set its foot down and made it clear that nothing less could be demanded given their sworn duty and the requirements of the Rule on the Writ of *Amparo*.⁴¹ They even made it clear that without evidence and extraordinary efforts, any answer from the State would be pure speculation.⁴²

More importantly, the C.A. revealed that it saw the Writ as a tool to be used in order to put a stop to the “killings of journalists and insurgent personalities who were feared to have been ‘rubbed-out’ by the police or the military or political foes. [Since memories] of ‘[K]uratong [B]aleleng’ and vigilante stories were never forgotten [and the] ordinary ‘*habeas corpus*’ remedy proved wanting during [those] times.”⁴³

4. Dismissing Petitions

Certain trends, however, have suggested possible disaster in applying the Rule. Responding to increasing pressure of positive actions from the State to answer inquiries as to the location and well-being of certain individuals alleged to be held against their will or abducted, the latter have made statements before the Court with the responsible officials claiming consented custody. *Ortiz v. Tello*,⁴⁴ was witness to one such instance when a statement by the petitioner that he was never subjected to torture, harassment, threat, coercion, or intimidation and that he consented to his own detention was sufficient assurance of the absence of foul play — paving the way for the dismissal of the petition.⁴⁵

In *Malapute v. Tello*,⁴⁶ the C.A. closed and terminated a case after a family detained claimed that it was their desire to remain so.⁴⁷ Although the officials responsible for the detention admitted that the family was originally arrested, they explained to the C.A. that the family remained in protective custody since the family feared a reprisal of their former comrades.⁴⁸ When

40. *Id.* at 9.

41. *Id.* at 12.

42. *Id.* at 18.

43. *Id.* at 13.

44. *Ortiz v. Tello*, CA-GR SP No. 00005, Nov. 27, 2007 (on file with author).

45. *Id.* at 3.

46. In the Matter of the Petition for the Writ of Amparo in Favor of Edwin Malapute, Edwinalyn Malapute Reduta, Primo Reduta and their two (2)-month old son, *Malapute v. Tello*, CA-G.R. WRA No. 00006, Nov. 29, 2007 (on file with author).

47. *Id.* at 2.

48. *Id.*

the C.A. questioned certain members of the family, these officials were permitted to be present in the room; yet, the C.A. did not even explore the possibility that their presence could have served as a significant factor in the making of the statements.⁴⁹ Also, questions as to the detention of the two-month old son of the family were not even raised. The Case was simply terminated as the family expressed their willingness to remain in detention.⁵⁰

Despite all caution in issuing a Writ, there are still some instances when seemingly undeserving petitioners are granted its benefits. The C.A. once granted a Writ for the immediate protection of a woman when her father could not find her.⁵¹ The father, however, later withdrew the petition when he found her at home sleeping.⁵² The question that arises therefore is whether the limitations and interpretations on the Rule by the C.A. are beneficial to the people.

B. The Supreme Court's Focused Application

The Supreme Court has taken a hard line with the application of the Rule. Although it has admitted to the confusion in the lower courts, it has remained steadfast in the standards in which it believes when the Writ should be granted.

1. The Manalos Set Another Example

In *Secretary of National Defense, The Chief of Staff, Armed Forces of the Philippines v. Manalo*,⁵³ the Supreme Court firmly believed that it was necessary to remain bound by the original intentions of the drafters of the Rule.⁵⁴ The Rule was adopted after it was proposed a number of times during the two-day summit of the Court (the National Consultative Summit on Extrajudicial Killings and Enforced Disappearances held on 16–17 July 2007).⁵⁵ Since the Summit was intended to find a fact-based approach to solve the rising problems of extra-judicial killings and enforced

49. *Id.*

50. *Id.* at 3.

51. In the Matter of the Petition for Issuance of the Writ of Amparo for Jesselyn D. Castro, Castro v. Totanes, CA-G.R. SP. No. 00028, Nov. 21, 2008 (on file with author).

52. *Id.* at 2.

53. *Secretary of National Defense, The Chief of Staff, Armed Forces of the Philippines v. Manalo*, 568 SCRA 1 (2008).

54. *Id.* at 37–38.

55. *Id.* at 37.

disappearances, the tools generated by it would necessarily have to remain focused on facts.⁵⁶

As the maiden exercise of the Court's expanded power to promulgate rules to protect constitutional rights, the Court resolved that the Rule must limit itself to instances of extra-judicial killings and enforced disappearances or to threats thereof.⁵⁷ As if this was not enough of a stranglehold, the Court fine-tuned the limitations of the application of the Rule by defining extralegal killings and enforced disappearances.⁵⁸

The Court went on to admit to the inadequacies of the Rules of Court, particularly the Rules on Injunction,⁵⁹ Prohibition,⁶⁰ and *Habeas Corpus*,⁶¹ to address these problems.⁶² The strict time limitations imposed by the Rule and the offer of interim and permanent reliefs made the Rule highly desirable in cases where the life of a human being is at stake.⁶³ But the "rapid judicial relief"⁶⁴ provided by the Rule is not to prove a person's criminal guilt, liability for damages, or administrative liability.⁶⁵ In a sense, the Court seems to be saying that the Writ was meant to serve as a triage in the war for peace. And in sorting out the urgency for reliefs, the Writ would be able to play both preventive and curative roles.⁶⁶ It would prevent crimes of a similar nature from perpetuating since there would no longer be certain impunity.⁶⁷ If the injustice had already been done, then the investigation and

56. *Id.* at 37-38.

57. *Id.* at 38.

58. *Id.* On the one hand,

'[e]xtralegal killings' are 'killings committed without due process of law, i.e., without legal safeguards or judicial proceedings.' On the other hand, 'enforced disappearances' are 'attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law.'

Secretary of National Defense, 568 SCRA at 38.

59. *See* 1997 Rules of Civil Procedure, rule 58.

60. *See* 1997 Rules of Civil Procedure, rule 65.

61. *See* SPECIAL PROCEEDINGS, rule 102.

62. *Secretary of National Defense*, 568 SCRA at 38.

63. *Id.* at 42.

64. *Id.*

65. *Id.*

66. *Id.* at 43.

67. *Id.*

action required by the Writ would ensure that someone would have to answer for it.⁶⁸ The Court could not emphasize enough that the Rule was borne with the intention of eradicating the rates of extrajudicial killings and enforced disappearances.

So even if the Manalo brothers originally filed an action for Prohibition, Injunction, and Temporary Restraining Order seeking ancillary remedies including Protective Custody Orders, Appointment of Commissioner, Inspection and Access Orders, and other legal and equitable remedies under Article VIII, Section 5 (5) of the 1987 Constitution⁶⁹ and Rule 135, Section 6 of the Rules of Court,⁷⁰ the moment the Rule was put into effect, their petition was treated as one filed for the Writ of *Amparo*.⁷¹ The Court, then, granted their motion.⁷²

The Court also made a distinction between the reliefs granted by the Rule and those provided for elsewhere in the law:

The production order under the [*Amparo*] Rule should not be confused with a search warrant for law enforcement under Article III, Section 2 of the 1987 Constitution. This Constitutional provision is a protection of the people from the unreasonable intrusion of the government, not a protection of the government from the demand of the people such as respondents.

...

Instead, the [*Amparo*] production order may be likened to the production of documents or things under Section 1, Rule 27 of the Rules of Civil Procedure.⁷³

2. Rubrico Makes the Rule Work

In *Rubrico v. Macapagal-Arroyo*,⁷⁴ the manner by which the C.A. formulated its directives was revealed to contain no definitive timeframe within which the investigation and the reportorial requirements would have to be completed.⁷⁵ The Court also commented on the failure of the C.A. to take into account imminent compulsory retirement from the military *and police services of two of the respondents*.⁷⁶ *And though the Writ of Amparo* has been

68. *Secretary of National Defense*, 568 SCRA at 43.

69. PHIL. CONST. art VIII, § 5 (5).

70. LEGAL ETHICS, rule 135, § 6.

71. *Secretary of National Defense*, 568 SCRA at 43.

72. *Id.*

73. *Id.* at 65 (citing 1997 RULES OF CIVIL PROCEDURE, rule 27, § 1).

74. *Rubrico v. Macapagal-Arroyo*, 613 SCRA 233 (2010).

75. *Id.* at 262.

76. *Id.*

characterized by its applicability being limited to those named in the petition,⁷⁷ the Court “redefined and amplified to fully enforce the [A]mparo remedies ... [by allowing the Writ to be] directly enforceable against[] whoever sits as the commanding general of the AFP and the PNP.”⁷⁸

The suspension and consolidation of *Amparo* Petitions were also tackled. The Court explained that though the filing of an *Amparo* Petition is proscribed after a criminal action has commenced,⁷⁹ the criminal actions in this particular Case were filed prior to the effectivity of the Rule.⁸⁰ Anyway, the Rule considered the possibility of a similar situation when it provided that the petition and criminal action should be consolidated when the criminal action is subsequently filed.⁸¹ But in this instance, it would still be the Rule of the Writ of *Amparo* that would govern the proceedings relating to the relief.⁸²

Rubrico showcased the Court’s willingness to remain flexible with certain technicalities involving the Rule. Although it acknowledged that the strict application of the Rule would demand that the petition be dismissed, this was not technically feasible here.⁸³ Since the factual milieu meant that the criminal complaint and *Amparo* Petition were inextricably linked, “the consolidation of both proceedings [was called for] to obviate the mischief inherent in a multiplicity-of-suits situation.”⁸⁴ The Court explained:

Given the above perspective and to fully apply the beneficial nature of the [W]rit of [*Amparo*] as an inexpensive and effective tool to protect certain rights violated or threatened to be violated, the Court ... adjusts to a degree the literal application of Secs. 22 and 23 of the [*Amparo*] Rule to fittingly address the situation obtaining under the premises.⁸⁵

3. Causing Confusion, Not Exhibiting Ignorance

*Salcedo v. Bollozos*⁸⁶ emphasized the existing confusion over the application of the Writ. The problem began with a simple land dispute.⁸⁷ Accompanied by heavily armed men, Jose Tanmalack, Jr., forced his way into the premises

77. This is further discussed in the latter Part of this Essay.

78. *Rubrico*, 613 SCRA at 262.

79. RULE ON THE WRIT OF AMPARO, § 22.

80. *Rubrico*, 613 SCRA at 263.

81. RULE ON THE WRIT OF AMPARO, § 23.

82. *Rubrico*, 613 SCRA at 264-65.

83. *Id.* at 263.

84. *Id.* at 264.

85. *Id.* (citing RULE ON THE WRIT OF AMPARO, §§ 22-23).

86. *Salcedo v. Bollozos*, 623 SCRA 27 (2010).

87. *Id.* at 31-32.

and threatened the persons overseeing the construction on a parcel of land.⁸⁸ Tanmalack's actions were complained of and the police then detained him.⁸⁹ Tanmalack's sister filed a handwritten petition on his behalf against the Police Officers of Police Precinct No. 3, Agora, Lapasan, Cagayan de Oro City, and Inspector Wylen Rojo claiming that Tanmalack was simply making use of the self-help doctrine and protecting his titled property from squatters.⁹⁰ The Writ was immediately granted and Ruben N. Salcedo complained that the Writ was issued with undue haste.⁹¹ He claimed that, as Masonic brothers, Judge Gil G. Bollozos was partial towards Tanmalack's counsel.⁹² The Clerk of Court, Atty. Herlie Luis-Requerme, explained the confusion.⁹³ Judge Bollozo's explanations to the Office of the Court

88. *Id.* at 31.

89. *Id.* at 32.

90. *Id.* at 33.

91. *Id.* at 35.

92. *Salcedo*, 623 SCRA at 35.

93. *Id.* at 33-34. He explained that:

- (1) In the late afternoon of January 23, 2008, a query was received by the Office regarding the procedure in filing a petition for a Writ of Amparo. We gave the information that the established procedure is to assign cases to the different branches by raffling or in urgent cases, by a special raffle upon proper motions. But since the office has not received any case of that nature yet, and as the schedule of raffling will still be in the afternoon of the next day, it will be referred to the Executive Judge for instruction and or appropriate action;
- (2) That since the Executive Judge was on leave, I went to consult the 1st Vice Executive Judge Evelyn Gamotin Nery. Since Judge Nery was busy at that time, I went to see 2nd Vice Executive Judge Ma. Anita Esguerra-Lucagbo;
- (3) That I clarified from Judge Lucagbo the procedure to be adopted under the Rule on the Writ of Amparo (A.M. No. 07-9-12-SC);
- (4) That the issue if any judge can immediately act on the petition was not clearly stated in the Rule but if the case will be referred to her as the 2nd Vice Executive Judge, she will be willing to look at the petition;
- (5) That when I went back at the Office at a little past 5:00 P.M. already, direct from the chamber of Judge Lucagbo, I found out that a Petition for Writ of Amparo was filed at around 4:45 P.M. as stamped in the petition;

...

- (10) That there is nobody from this Office who brought the handwritten petition to Judge Lucagbo nor was there any

Administrator (OCA) are telling of the conflicting understanding of the Rule and its use.⁹⁴ He claimed that in his careful application of the Rule, the

instruction from her to any of the personnel to have the petition conform to a form acceptable to the court, such fact was confirmed by Judge Lucagbo[.]

Id.

94. *Id.* at 35. The explanations were as follows:

- (a) [W]hen he received the petition from the Office of the Clerk of Court, he had no option but to exercise his judicial duty without any bias or partiality, nor did he consider that the petitioner's counsel is a fraternal brother (Mason);
- (b) [A]lthough the petition is for the issuance of both [W]rit of [A]mparo and [W]rit of [H]abeas [C]orpus, he deemed it more in consonance with the [Rule on the Writ of Amparo];
- (c) [I]t was not improper even if the ... petition was not raffled, and was immediately assigned to his sala by the Office of the Clerk of Court, since Par. 2, Sec. 3 of A.M. No. 07-9-12-SC states that any judge of a Regional Trial Court (RTC) can issue a writ and the said Sec. 3 further states that it can be filed on any day and at any time;
- (d) [T]he person who filed the petition is the sister of Mr. Tanmalack who was detained at the Agora Police Station, Cagayan de Oro City; that the issuance of the writ was a matter of great urgency because the alleged illegal deprivation of liberty was made in the late afternoon of January 23, 2008, which was a Friday, and that if the Court would not act on the petition, the detainee would certainly spend the night in jail;
- (e) [T]he petition, although in handwritten form, is not improper because Section 5 of the SC Circular (on the Writ of Amparo) only requires that the same be signed and verified; that he found the petition sufficient in form and in substance;
- (f) [A]lthough the Amparo rules mandate that a judge shall immediately order the issuance of the writ if on its face it ought to issue, he propounded clarificatory questions on the petitioner's representative and their counsel, thus, the following information were elicited:

...
- (h) [I]n the Writ of Amparo the respondents were directed to file a verified return pursuant to the rules; during the summary hearing of the petition on 25 January 2008, it was only Rojo who appeared, the alleged complainants (Salcedo, Lumbay and Roa) who caused the detention of the petitioner were absent; P/Insp. Rojo, when asked by the Court, gave the following answers:

...

situation merited the grant of the Writ.⁹⁵ The OCA agreed with him believing that the Philippine rule was broad and all-encompassing in the sense that perceived threats such as one arising from a dispute over land can be prevented from escalating using the Writ.⁹⁶

The Court, however, disagreed with Bollozos and the OCA stating that the Writ only applies to extralegal killing and enforced disappearances.⁹⁷ They made it clear that purely property and commercial concerns are not covered by the Writ by reiterating the pronouncements made in an earlier case.⁹⁸ The Court, however, did exhibit even more leniency considering that this Case was promulgated three months after the effectivity of the Rule. The Court said:

We take judicial notice of the fact that at the time he issued the Writ of [*Amparo*] on January 23, 2008, the Rule on the Writ of [*Amparo*] has been effective for barely three months (The Rule on the Writ of [*Amparo*] became effective on October 24, 2007). At that time, the respondent judge cannot be said to have been fully educated and informed on the novel aspects of the Writ of [*Amparo*]. Simply stated, the Rule on the Writ of [*Amparo*] at that time cannot be said to be a simple, elementary, and well-known rule that its patent disregard would constitute gross ignorance of the law.⁹⁹

-
- (j) That in the summary hearing on January 25, 2008, the petitioner as well as the respondent Rojo have arrived into an agreement that the writ be considered permanent[.]

Id. at 36-38.

95. *Id.*

96. *Salcedo*, 623 SCRA at 38. Comparing the Philippine Rule on the Writ of Amparo with other jurisdictions, the Court explained that

[w]hereas in other jurisdictions the writ covers only actual violations, the Philippine version is more protective of the right to life, liberty[,] and security because it covers both actual and threatened violations of such rights.

Nowhere in the records of the instant complaint that the issuance of the [W]rit of [A]mparo was attended by irregularities.

...

Respondent Judge, in whose sala the said petition was assigned is deemed to have complied with his oath and judicial duty when he ordered the issuance of the [W]rit of [A]mparo upon determination that the right to liberty of Mr. Tanmalack was being violated or threatened to be violated.

Id. at 38-39.

97. *Id.* at 39 (citing RULE ON THE WRIT OF AMPARO, § 1).

98. *Id.* at 40 (citing *Tapuz v. Del Rosario*, 554 SCRA 768, 784-85 (2008)).

99. *Id.* at 45.

4. Self-Defeating Requirements?

While on an exposure trip in the Philippines, Filipino-American Melissa C. Roxas was taken from a house.¹⁰⁰ She was informed that she was detained for being a member of the Communist Party of the Philippines-New People's Army (CPP-NPA).¹⁰¹ She was tortured during her five-day detention and informed that her name was in the Order of Battle.¹⁰² When she was released, she was warned not to reveal what transpired or something unsavory would happen to her family.¹⁰³

The Supreme Court granted Roxas the Writ upon her petition and directed the case to the C.A.,¹⁰⁴ but the C.A. extended the privilege of the Writ.¹⁰⁵ The Court explained that, generally, the Writ is a protective remedy, however, this protection cannot extend so far as to apply the Doctrine of Command Responsibility.¹⁰⁶ While the C.A. had earlier decreed that the Doctrine is applicable, and one petitioner simply failed to prove one of the elements to establish the Doctrine, the Court made it clear that this is not so.¹⁰⁷ This does not mean that those up in the chain of command cannot be made respondents to the petition; it simply requires that commanders must be impleaded based on their responsibility or accountability on the matter. So though it was originally thought that the evidence required by the Rule is much more relaxed, the Court in its explanation has said:

In [*Amparo*] proceedings, the weight that may be accorded to parallel circumstances as evidence of military involvement depends largely on the availability or non-availability of other pieces of evidence that has the potential of directly proving the identity and affiliation of the perpetrators. Direct evidence of identity, when obtainable, must be preferred over mere circumstantial evidence based on patterns and similarity, because the former indubitably offers greater certainty as to the true identity and affiliation of the perpetrators. An [*Amparo*] court cannot simply leave to remote and hazy inference what it could otherwise clearly and directly ascertain.¹⁰⁸

100. In the Matter of the Petition for the Writ of Amparo and the Writ of Habeas Data in favor of Melissa C. Roxas, *Roxas v. Macapagal-Arroyo*, G.R. No. 189155, Sep. 7, 2010, available at <http://sc.judiciary.gov.ph/jurisprudence/2010/sepember2010/189155.htm> (last accessed Feb. 25, 2011).

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Roxas*, G.R. No. 189155.

107. *Id.*

108. *Id.*

Therefore, when Roxas could not establish the identity of those responsible for her detention even with cartographic sketches, and because the chain of command was not established, the Court ruled that the relief of an Inspection Order was unwarranted.¹⁰⁹ To the Court's mind, this was a simple "fishing expedition," which was not permitted or tolerated by the Rule.¹¹⁰

The Court maintained its focus and emphasized that Inspection Orders were intended to assist courts in the merits of a petitioner's claim.¹¹¹ Therefore, the place covered by the inspection Order would need to be sufficiently identified.¹¹² The Court recognized the irony of such a requirement when in most cases involving abduction and detention, a person does not have the liberty to familiarize him or herself with his or her surroundings.¹¹³ How then can the Court require this familiarization to be afforded such a relief? The Court does so by requiring extraordinary diligence from the respondents.¹¹⁴

5. Protection of All Constitutional Rights?

109. *Id.*

110. *Id.*

111. *Id.*

112. *Roxas*, G.R. No. 189155.

113. *Id.*

Ironic as it seems, but part and parcel of the reason why the petitioner was not able to adduce substantial evidence proving her allegations of government complicity in her abduction and torture, may be attributed to the incomplete and one-sided investigations conducted by the government itself. This 'awkward' situation, wherein the very persons alleged to be involved in an enforced disappearance or extralegal killing are, at the same time, the very ones tasked by law to investigate the matter, is a unique characteristic of these proceedings and is the main source of the 'evidentiary difficulties' faced by any petitioner in any [*Amparo*] case.

Cognizant of this situation, however, the [*Amparo*] Rule placed a potent safeguard—requiring the 'respondent who is a public official or employee' to prove that no less than 'extraordinary diligence as required by applicable laws, rules[,] and regulations was observed in the performance of duty.' Thus, unless and until any of the public respondents is able to show to the satisfaction of the [*Amparo*] court that extraordinary diligence has been observed in their investigations, they cannot shed the allegations of responsibility despite the prevailing scarcity of evidence to that effect.

Id.

114. *Id.*

In *Reyes v. Court of Appeals*,¹¹⁵ Fr. Robert P. Reyes attempted to make use of the Writ to secure the lifting of the hold departure order in force, which was preventing him from leaving the country.¹¹⁶ He claimed that since it violated his constitutional right to travel, the Case necessarily falls under the purview of the Writ.¹¹⁷ But this attempt at broadening the application of Writ was quickly shot down.

The Court, however, did not base its decision on the lack of a connection to an extrajudicial killing or enforced disappearance. It in fact went on to discuss the rights protected by the Writ and made no mention of an extrajudicial killing and enforced disappearance as a requisite circumstance.¹¹⁸ This leaves the Author to believe that at one point, the Court was open to the possibility of using the Writ for other problems. Hence, this Essay explores other possible applications of the Writ.

III. TRANSFORMATION ABROAD

A. Protection of Commercial Transactions or Harm to its Propagation?

The Writ of *Amparo* in Mexico and other countries were also originally limited, but wider than the Philippines' in scope.¹¹⁹ Later, the *Amparo* was expanded to tackle matters in Criminal Law, Tax Law, Administrative Law, Labor Law, and other Commercial Law matters.¹²⁰ Its protective mantle was sought to be utilized in matters involving commercial arbitration awards.¹²¹

These countries have recognized that activity in the international scene of commerce has led to an increase in arbitration.¹²² At times when arbitration involved a party from Mexico, the Writ of *Amparo* came into play.¹²³ The Right to avail of the Writ is unwaivable in Mexican law.¹²⁴ Like the Philippine Constitution, the Mexican Constitution incorporates treaties, to which it is a signatory, as binding law.¹²⁵ Mexico is a signatory to several treaties, such as the New York Convention, the Inter-American

115. *Reyes v. Court of Appeals*, 606 SCRA 580 (2009).

116. *Id.* at 586.

117. *Id.*

118. *Id.* at 591-94.

119. Carlos Loperena Ruiz, *The Process of Amparo in Commercial Matters*, 6 U.S.-MEX. L.J. 43 (1998).

120. *Id.* at 43.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. Ruiz, *supra* note 119, at 43.

Convention on Commercial Arbitration of 1975 (Panama Convention), and the Inter-American Convention Concerning the Extraterritorial Effect of Judgments and Arbitral Awards (Montevideo Convention).¹²⁶

But still, the laws governing arbitral awards are somewhat limited.¹²⁷ When, however, a commercial arbitration award is considered violative of a person's rights, despite of whatever is written into an arbitration clause, there may be judicial review regardless of the wishes of the parties.¹²⁸ The grounds to set aside a commercial arbitral award are few and the use of the Writ is one of them.¹²⁹

Commercial Arbitral Awards are given a special loophole. Even when the award is set aside by judgment of a court and the judgment would have normally been final and unappealable, the *Amparo* may be availed of to question this decision.¹³⁰ At first impression this may seem to create an instability in commerce and courts, however, the *Amparo* only addressed the setting aside of an award and the grounds upon which the court may have based its decision. Substantial matters such as the merits of the award, its fairness, or the annulment or rescission of the contract are not tackled.¹³¹ Still, the dangers posed by the misuse of the *Amparo* in arbitration cases pose a possible threat to treaties to which the country may be a signatory. *Amparo* is then deemed a possible cause for derailment of the push for Alternative Dispute Resolution.

B. Demand for Medical Treatment

Petitions for the Writ of *Amparo* in Valenzuela, Colombia, Costa Rica, and Mexico have been filed by Human Immunodeficiency Virus (HIV)-positive patients to demand antiretroviral treatments, which were cost-prohibitive but effective.¹³² Treating the access to these drugs as a basic human right in poverty-stricken nations made these HIV drugs available to most residents who otherwise would have never had the hopes of seeing them.¹³³ *Accion Ciudadana Contra el SIDA* (ACCSI) organized efforts to systematically transform the use of the Writ to benefit the increasingly large population

126. *Id.* at 47.

127. *Id.* at 48.

128. *Id.* at 43.

129. *Id.* at 46.

130. *Id.* at 48.

131. Ruiz, *supra* note 119, at 47-48.

132. Enrique González Mac Dowell, *Juridical Action for the Protection of Collective Rights and its Legal Impact: A Case Study*, 30 J.L. MED. & ETHICS 644, 645-46 (2002).

133. *Id.* at 644.

infected with HIV/AIDS.¹³⁴ They were the driving force behind many Petitions for the Writ in Valenzuela.¹³⁵ The primary argument used in one case was that lack of access to these treatments posed imminent threats to the lives of 37 patients and that these patients had the right to benefit from advancements in science and technology despite the costs.¹³⁶

When draft soldiers in Valenzuela were dismissed from duty because they were found to be HIV positive, their health conditions were made public and subsequently the *Amparo* was used.¹³⁷ The Writ was also used to provide them with the health care and drugs that army officials were given.¹³⁸ When the Petition was granted, the Court ordered the Ministry of defense to

(1) issue resolutions to preserve confidentiality regarding health and HIV status within the army; (2) issue sensitization guidelines regarding the disease and the ethical behavior of army members; (3) provide adequate treatment to all HIV-positive army members, according to the right to benefit from the advancements of science and technology; and (4) ask the Congress for financial resources to implement adequate preventive measures, as well as to provide antiretroviral treatment.¹³⁹

Although many of the decisions are commendable, a serious flaw is found in that, though similarly situated, others could not avail of the benefits of the Writ previously obtained since “the effects of an [A]mparo decision were still considered as limited to the petitioners.”¹⁴⁰ The Venezuelan Court has flip-flopped on the reach of successful petitions.¹⁴¹ While sometimes recognizing that the diffused or collective interests in the subject matter of the suit logically demands the reliefs provided for by the Writ, there are other moments when a narrow perspective takes hold to block similarly situated strangers (to the litigation) from its effects.¹⁴²

The *Amparo* has been broadened in scope through the establishment of a legal framework, which takes into account the synergy of national and international human rights laws.¹⁴³ No longer are rights limited to the sphere

134. *Id.* at 648.

135. *Id.*

136. *Id.*

137. *Id.*

138. Mac Dowell, *supra* note 132, at 648.

139. *Id.*

140. *Id.* at 649.

141. *Id.*

142. *Id.*

143. *Id.* at 651.

of the traditionally political.¹⁴⁴ In doing so, a better understanding of what should and can be demanded from the State is uncovered.¹⁴⁵ The *Amparo* was used to develop existing rights. One such right is the right to health. The question as to the extent of its effects comes to surface. As the extended effects of every decision to grant a petition is examined, it begins to seem more logical that, when a group, such as those HIV-positive, have the same concerns, even when they are not one of those who formally signed the petition, they must be afforded the same benefits or reliefs. In the Philippines, especially with the clogged court dockets, allowing similarly situated parties to avail of the benefits of another's writ would then be more efficient in the administration of justice.¹⁴⁶

C. Collective Amparo

One of the defining characteristics of the Writ of *Amparo* is that only the petitioner (or the real-party-in-interest) shall receive the benefit of any petition granted.¹⁴⁷ Countries have consistently applied what is known as the Otero Formula, which makes the pronouncement that unless you were a party to the specific case in which the relief of *Amparo* was granted, you cannot benefit from it.¹⁴⁸ When the Otero Formula is applied, every person who wishes to avail of its benefits would need to file his or her own petition with the court. This would not only lead to clogged dockets but also to a greater possibility in contradicting applications of the law.

There have been moves in several countries to allow a multitude of people to benefit from a single petition.¹⁴⁹ This move would liken the *Amparo* to reliefs in other countries. In Sweden, the *jammst lleombudsmanen* (ombudsman) is given the power to protect all women and afford them equal treatment in their jobs.¹⁵⁰ Portugal and Italy even permit Non-governmental Organizations to protect their artistic and cultural heritage through court proceedings.¹⁵¹ This necessarily means that a single grant of the Writ would benefit all parties needing protection.

144. Mac Dowell, *supra* note 132, at 651.

145. *Id.*

146. *Id.* at 651.

147. Ruiz, *supra* note 119, at 44.

148. Hector Fix Zamudio, *A Brief Introduction to the Mexican Writ of Amparo*, 9 CAL. W. INT'L L.J. 306, 309-10 (1979)

149. Ruiz, *supra* note 119, at 44.

150. Dr. Lucio Cabrera Acevedo, *Past and Possible Future of the Collective Amparo Process (Amparo Colectivo)*, 6 U.S.-MEX. L. J. 35, 36-37 (Spring 1998).

151. *Id.*

IV. BOUNDLESS OPPORTUNITIES?

In other jurisdictions from where the Rule has been patterned, the *Amparo* makes use of several procedures but they are all unified in fulfilling a protective function. In other jurisdictions, the *Amparo* serves several functions, not simply to eliminate extrajudicial killings and enforced disappearances, but also to “[protect] individual guarantees, [determine] the constitutionality of laws, [contest] judicial decisions, [petition] against official administrative acts and resolutions, and [protect] social rights of farmers.”¹⁵² In discussing the various cases involving the Writ, the Author notes the confusion in application during the Rule’s infancy. However, as the Supreme Court continues to define the use and application of the Writ, there arises a fear that with each case promulgated, the scope and use of this protective tool will be limited to the point of absurdity.

If the limitations begin to proceed in a consistent manner, given the trend of jurisprudence, the potential of the Writ will be squandered. Other countries have already witnessed the failings and benefits of the Writ, and the Author believes that these must be explored rather than simply dismissed as beyond the scope and intention of the Rule. There are boundless opportunities before the Court to explore the new frontiers of the Writ, and nearly four years after its effectivity, the Philippines may be ready for it.

152. Ruiz, *supra* note 119, at 44.