“The Writ of Amparo and Human Rights Violations: Impunity in the Philippines

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Victims of Extrajudicial, Summary or Arbitrary Execution under the Arroyo Government

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Victims of Enforced or Involuntary Disappearance under Arroyo Government


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Evidentiary Patterns

1. Most of the victims are activists
2. Public Vilification
3. Impunity in the execution of the act
4. Failure to investigate and prosecute
5. Failure to condemn
Implementation


2. Counter Insurgency Program (Coin)

(a) Oplan Bantay Laya (Operation Plan Guard Freedom and

(b) Target Research (“research among front target members of front organizations and neutralize them”)
Statements by Gen. Palparan

The death of civilians and local officials were ‘small sacrifices’ brought about by the military’s anti-insurgency campaign (Daily Inquirer 12 Sept. 2006)

“The killings are being attributed to me but I did not kill them, I just inspire the triggermen.”

“I cannot order my soldiers to kill, it’s their judgment call, they can do it on their own.”

“Potential vigilante actions by anti communist elements outside the military organization cannot be stopped completely and the killing of activists are necessary incident to (the) conflict.”
Oplan Bantay Laya

1. Neuralization of Sectoral Front Organizations

2. Gen. Palparan’s declaration
   “I want communism totally erased…. to wage the ongoing counterinsurgency . . . by "neutralizing" not just armed rebels but also a web of alleged front organizations that include leftist political parties, human-rights and women's organizations, even lawyers and members of the clergy. (“Wagging the Buffalo”-September 25, 2006, Newsweek) .
Four Criminal convictions

903 extrajudicial killings,
193 enforced disappearances
Presidential Immunity

- I. Habeas Corpus
- II. Impeachment
- III. Executive Privilege
Professor Alston concluded that: the government, particularly the AFP, was in a state of denial about the human rights violations.
"In parts of Central Luzon, the leaders of leftist organizations are systematically hunted down. Those who may know their whereabouts may be interrogated and tortured. A campaign of vilification designed to instill fear into community follows, and the individual is often killed as a result. Such attacks and the attendant of fear can lead to the disintegration of organized civil society."
This practice reflects more than the mere 'excesses' of a particular commander. Rather, it is a deliberate strategy in keeping with the overall trajectory of counterinsurgency thinking at the national level...It is, instead, essential to identify and decisively reject at an institutional level those innovations in counterinsurgency strategy that have resulted in such level of political killings.
• The NPA purge theory being discredited, the only other theory left is that certain elements within or connected to some military officers are responsible for the killings. The victims, according to General Palparan and others, were enemies of the State; hence, their neutralization.
This may well be so, but it should be carefully noted that the victims, were all non-combatants. They were not killed in armed clashes or engagements with the military. They were killed, it is said, by motorcycle riding hooded killers in assassination manner.

Government agencies hardly need reminding that in a democratic and civilized state such as ours, one must uphold and observe the rule of law, the principles of justice, and the system and rules of how it is dispensed – from investigation to arrest, to inquest, and to trial. The system may be far from perfect, giving rise to the temptation to take short-cuts. But precisely, short-cuts are in defiance of the system of impartial justice. The rules must be observed at all times.

(Melo Commission Report, page 2)
Judicial Intervention

• The Supreme Court called the legislative, executive and the human rights groups to a “Summit on Extra Judicial Killings”

• Problems:
  • 1. Lack of Investigation
  • 2. Lack of Witnesses
  • 3. Failure of Habeas Corpus as a judicial remedy
The Writ of Amparo

- Amparo literally means ‘to shelter’ or “protection” from the Spanish word Amparar when constitutional rights are violated by:

1. Laws

2. Judicial decision in civil and criminal cases

3. Acts of any nature by the authorities
Nicaraguan Definition

- It may be provided through statute under Decree No. 232 [The Law of Amparo for Personal Freedom and Security] and the Constitution by the Fundamental statute of July 20, 1979.

Amparo operates:

1) on behalf of a person who has been detained or threatened with detention upon orders of the State;

2) against a sentence of imprisonment imposed upon a person who has not been detained and who wishes to be released from its effects.
Argentina

It provides for the filing of a writ of *amparo* against any act or omission of a public authority which “currently or imminently may damage, limit, modify or threaten rights and guarantees explicitly or implicitly recognized by the Constitution, except for individual liberty, which is protected by *habeas corpus*.”
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.
Key Elements of Philippine Amparo

• i. May be filed by the victim, her family or “any concerned citizen or group”

• ii. Filed with “any justice” of the supreme court and other collegial tribunal at “any day, at any time”

• III. No docket fees required

• IV. Witness Protection under government agencies of private institution or person
Access to Information

• 1. Requires the military-police to provide the court “all relevant information” on the victim

• 2. Privatization of Investigation
  • A. Inspection Order
  • B. Production Order
Balao Decision

1. President Arroyo is not immune from an amparo suit and must answer the petition.

2. The Court ordered the respondents including Pres. Arroyo and the Secretary of Defense, to:
   
   (i) DISCLOSE where the victim is kept

   (ii) RELEASE him from his unlawful detention and

   (iii) DESIST from inflicting harm on him

• ...the abduction was perpetrated by armed men who were sufficiently identified by the petitioners (herein respondents) to be military personnel and CAFGU auxiliaries.

• We are convinced, too, that the reason for the abduction was the suspicion that the petitioners were either members or sympathizers of the NPA.
(1) Gen. Palparan’s participation in the abduction was also established. At the very least, he was aware of the petitioners’ captivity at the hands of men in uniform assigned to his command.

(2) His knowledge of the dire situation of the petitioners during their long captivity at the hands of military personnel under his command bespoke of his indubitable command policy that unavoidably encouraged and not merely tolerated the abduction of civilians without due process of law.
Initial Analysis

1. Constitutional Norms insufficient in the face of a linear justice system

2. Judiciary is an arena for judicial intervention for human rights protection

3. Amparo led to the surfacing of six disappeared victims and release of ten more but did not spur serious investigation and prosecution although the information gathering mechanisms generated evidence.

4. Qualified presidential immunity through Amparo
Impact of Amparo

1. Led to the release of illegally abducted detainees and the surfacing of six victims of disappearances (Munasque case etc.)

2. Spurred investigation in very few instances and generated information on certain cases

3. Pierced presidential immunity

4. Acceptance of Judicial intervention in human rights protection