



The Writ of Amparo

Title

THE RULE ON THE WRIT OF AMPARO

Background

The *National Consultative Summit on Extrajudicial Killings and Enforced Disappearances* held in July 2007 recommended the review of existing rules and promulgation of new ones to address the issues of extrajudicial killings and forced abductions. As a response, the Supreme Court unanimously approved the Rule on the Writ of *Amparo* on 25 September 2007. The Writ took effect on 24 October 2007.

Etymology

Amparo comes from the Spanish verb *amparar*, which means "to defend, protect or shelter from harm." The rule is Latin American in origin.

What is the Writ of Amparo?

- It 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.
- It covers extralegal killings and other enforced disappearances or threats.

Authority

- Supreme Court Resolution dated 25 September 2007 (A.M. No. 07-9-12-SC)

Constitutional Basis

- Article VIII, Section 5 (5): The Supreme Court shall promulgate rules concerning the protection and enforcement of constitutional rights...and procedures in all courts.
- Article VIII, Section 5 (8): ...authority to review, revise, reverse, modify or approve final judgments and orders of lower courts
- Article III (Bill of Rights) – Section 1: Due process and equal protection clause; Section 7: Right to information; Section 8 (1): Right against detention; Section 8 (2): Right against involuntary servitude

Who May File

- Aggrieved party
- Member of immediate family (spouse, children or parents)

- Ascendant, descendant or collateral relative (within the 4th civil degree of consanguinity or affinity)
- Concerned citizen, organization, association or institution if there is no known member of the immediate family or relative of the aggrieved party

Where to file?

1. In the place where the threat, act or omission was committed or any of its elements occurred
 2. Supreme Court
 3. Sandiganbayan
 4. Court of Appeals
 5. Regional Trial Court
 6. Any justice or member of the courts mentioned above
- Enforceable anywhere in the Philippines
 - Returnable before the issuing court
 - Petitioner shall be exempted from the payment of docket and other lawful fees.

Issuance of the Writ

- Upon filing of the petition, the Writ shall be issued immediately.
- There shall be a summary hearing not later than seven days from date of issuance
- Respondent shall file a verified written return with supporting affidavits within 72 hours after service of writ.

Contents of Return

- Lawful defenses
- Steps taken
- All relevant information
- If respondent is a public official, the actions that have been or will still be taken to:
 1. verify identity of aggrieved party;
 2. recover and preserve evidence;
 3. identify witnesses and obtain statements;
 4. determine the cause, manner, location and time of death or disappearance;
 5. identify and apprehend the person or persons involved in the death or disappearance; and,
 6. bring suspected offenders before the competent court.

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This particular update was prepared by the **Human Rights and Peace Process Desk** of the Institute for National Security Studies (INSS) based on the presentation of BGen Manuel B Ibanez, Jr AFP (Ret), NDCP Legal Consultant, on 23 October 2007 before the NDCP Strategic Studies Group, of which he is a member.

Pleadings

- General denial is not allowed.
- Defenses not raised with the Return are deemed waived.
- In case of failure of respondent to file a Return, petition will be heard *ex parte*.

Prohibited Pleadings

- Motion to dismiss
 - Motion for extension of time to file return
 - Dilatory motion for postponement
 - Counterclaim or cross-claim
 - Third-party complaint
 - Reply
 - Motion to declare respondent in default
 - Intervention
 - Memorandum
 - Motion for reconsideration of interlocutory orders
 - Petition for *certiorari*, *mandamus* or prohibition against any interlocutory order
- *Hearings shall be summary and day to day until completed.

Interim Reliefs

Upon filing of the petition or before final judgment, the court may grant any of the following reliefs:

Temporary Protection Order – an order to protect the aggrieved party, or the petitioner and any member of the family addressed to any government agency or an accredited person or private institution.

Inspection Order – an order to a 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. It may be opposed on the ground of national security or privileged information (Hearing will be in chambers).

Production Order – addressed to a person in possession, custody or control of any documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitalized or electronic forms, to produce or permit their inspection, copying or photographing by or on behalf of the movant. It may be opposed as in the case of a Protection Order.

Witness Protection Order – an order referring witnesses to the Department of Justice for admission in the Witness Protection Security and Benefit Program under R.A. 6891, to other government agencies or accredited persons or private institutions capable of keeping and securing their safety.

Other Matters

- Power to cite for contempt by the court
- Parties shall establish their claims by substantial evidence
- If respondent is:
 1. A private individual or entity – show exercise of ordinary diligence in the performance of duties
 2. A public official or employee – show extraordinary diligence in the performance of duties
 3. A public official or employee cannot invoke the presumption that official duty has been regularly performed to evade responsibility.

Judgment

Judgment shall be rendered ten days from the time the petition is submitted for decision. A case may also be archived.

Appeal

Period of appeal is five (5) working days from date of notice of adverse judgment.

Institution of Separate Actions

It shall apply to extralegal killings and enforced disappearances or threats pending in the trial and appellate courts.

Effect of Filing Criminal Action

- If commenced, no separate petition for the Writ shall be filed.
- If filed subsequent to the petition for the Writ, the latter shall be consolidated with the criminal action.
- If filed together with a separate civil action subsequent to the petition for the Writ, the latter shall be consolidated with the criminal action.

Observations and Questions

- The Writ imposes a burden on security forces due to the requirement of submission of documentary evidence in support of the return of the Writ. Also, petitions of this nature usually include as many respondents as feasible (e.g., nominal respondents).
- Inspection Orders place camp security at risk. This same observation is applicable to Production Orders for classified documents.
- Although the respondent may cite the ground of national security and the hearing is conducted in chambers, the harm will have been done already, as the respondent will have to show classified evidence to support his position.
- Under the Rule, the AFP and PNP can ask for a production or inspection order against the enemies of the state.
- The insurgents can indirectly use free government legal services, e.g., PAO, in availing of the privilege of the Writ.
- Can the Writ of *Amparo* be suspended similar to the writ of *Habeas Corpus*? If so, who can suspend it? Also, how and when can it be suspended?
- In case of accreditation, can a cause-oriented group apply for accreditation in the absence of a petition or “live” case? Relatedly, if the spouse of the aggrieved party refuses out of fear to file the petition, can the government file the petition instead?
- Can security forces who are victims apply for the privilege of the Writ? Also, can the person deputized to serve the Writ come from the same organization as the respondent, e.g., AFP or PNP, in case of service of the Writ?

Institute for National Security Studies

We welcome your comments.

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