



FLAG PRIMER ON THE WRIT OF AMPARO

1. Origin of the remedy:

The writ of *amparo* (which means “protection”) is of Mexican origin. Its present form is found in Articles 103 and 107 of the Mexican Constitution.

Recurso de Amparo is a remedy against acts that violate any of the individual guarantees recognized in the Mexican constitution. It is available in most legal controversies and may be invoked in criminal, civil and administrative trials.

In its country of origin, the *recurso de amparo*, is of much broader application than what the Philippine Supreme Court has decided to adopt under the present Rule. It is also much broader in scope and application than the writ of *habeas corpus*, because the latter is limited to cases of illegal confinement or detention.

The decision of the Philippine Supreme Court to limit it to extrajudicial killings, enforced disappearance and threats to life, liberty and security may be because present Philippine laws and remedies already cover much of what the Mexican *amparo* includes within its protection. At its core is the power of judicial review, which is also expressly found in our Philippine constitution.

2. What is the writ of *amparo*?

It is a remedy available to ANY PERSON:

- a. whose right to LIFE, LIBERTY and SECURITY
- b. is VIOLATED or THREATENED with violation
- c. by an unlawful act or omission
- d. of a public official or employee, or of a private individual or entity (Sec. 1, Rule on the Writ of Amparo)

Notes:

- a. it is not an available remedy for violations or threatened violations of the right to PROPERTY *per se*;

The right to property may in some cases however be so closely connected with the right to liberty that it could be included in a petition where that liberty is violated or threatened;

- b. it can be directed not only against a public official or employee but even against PRIVATE INDIVIDUALS or entities;

In Mexico, its country of origin, it is even available in cases of domestic violence, which is probably a situation not envisioned in the present rule.

3. What are the rights usually included in the rights to life, liberty and security?

In their primal and basic form these rights can be found in the Bill of Rights of the Philippine Constitution. (Art. III, Philippine Constitution)

4. Who may avail of the remedy?

A petition for the writ of *amparo* may be filed:

1. By the AGGRIEVED PARTY, or
2. By any QUALIFIED person or entity IN THE FOLLOWING ORDER AND WHICH ORDER MUST BE OBSERVED:
 - a. Any member of the immediate family of the aggrieved party, namely:
 1. the spouse,
 2. children and
 3. parents

There seem to be no order of preference among the immediate family of the aggrieved party and the petition can therefore be filed by any of them and in any order;

- b. Any ascendant, descendant or collateral relative of the aggrieved party within the 4th civil degree of consanguinity or affinity, in default of the members of the immediate family of the aggrieved party as mentioned above;

- c. If there is no known member of the immediate family or relative of the aggrieved party, then ANY of the following:
 1. concerned citizen
 2. concerned organization or association
 3. concerned institution

(Sec. 2, *Amparo* Rule)

Notes:

- a. If the AGGRIEVED PARTY files the petition, the said filing suspends the right of all other authorized parties to file a similar petition;
- b. The filing of a petition by an authorized party on behalf of the aggrieved party suspends the right of all others; (Sec. 2, *Amparo* Rule)

5. Where and when can the petition to filed?

- a. A petition for the issuance of a writ of *amparo*, can be filed:
 1. On ANY DAY and at ANY TIME;
 2. With:
 - a. The REGIONAL TRIAL COURT (RTC) of the place where the threat, act or omission committed or any of its elements occurred;
 - b. The SANDIGANBAYAN;
 - c. The COURT OF APPEALS;
 - d. The SUPREME COURT;
 - e. or with ANY OF THE JUSTICES of the Sandiganbayan, Court of Appeal or Supreme Court;(Sec. 3, *Amparo* Rule)

6. How much is the court fee for filing a petition?

None. A petition for a writ of *amparo* is EXEMPT from the payment of the docket and other lawful fees. (Sec. 4, *Amparo* Rule)

7. What are the contents of a petition for the writ of amparo?

The petition must be:

- a. signed, and
- b. verified by the petitioner

Verification – *A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records. (Rule 7, Sec. 4, Rules of Court)*

It shall allege the following:

- (a) The personal circumstances of the petitioner;
- (b) The name and personal circumstances of the person or entity (called the respondent) responsible for the threat, act or omission;

If the name of the respondent is unknown or uncertain, the respondent may be described by an assumed appellation;

Ex. John Doe, Jane Doe, etc.

- (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 remedies. (Sec. 5, *Amparo* Rule)

8. Must a petition for the writ of amparo contain a certification against forum shopping?

The rule does not expressly require a Certification against Forum Shopping. A petition for *amparo* cannot be dismissed for lack of such a certification. In fact, a Motion To Dismiss (on any ground) is a prohibited pleading under this rule.

To avoid technicalities, it should do no harm however to include a Certification against Forum Shopping as found in Rule 7, Sec. 5 of the Rules of Court:

The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith:

(a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein;

(b) if there is such other pending action or claim, a complete statement of the present status thereof; and

(c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

9. How soon should the *amparo* court, justice or judge act upon a petition?

Upon filing a petition, the *amparo* court, justice or judge shall docket the petition and ACT UPON IT **IMMEDIATELY**; (Sec. 4, *Amparo* Rule)

10. What should the court, justice or judge do immediately upon the filing of the petition?

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.

1. The clerk of court shall issue the writ under the seal of the court, or
2. 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. (Sec. 6, *Amparo* Rule)

11. Where can the writ issued by any *amparo* court, justice or judge be enforceable?

The writ shall be enforceable ANYWHERE in the Philippines. (Sec. 3, *Amparo* Rule)

12. Suppose the clerk of court refuses to issue the writ or a person deputized to serve it refuses to serve the same?

A clerk of court or the person deputized shall be punished by the *amparo* court, justice or judge:

- a. For contempt, and
- b. without prejudice to other disciplinary actions. (Sec. 7, *Amparo* Rule)

13. How soon shall a hearing on the petition be held?

The writ issued shall set the date and time for summary hearing of the petition which **shall NOT BE LATER THAN SEVEN (7) DAYS from the date of issuance.** (Sec. 6, *Amparo* Rule)

14. How will the writ be served upon the respondent/s?

The writ shall be served PERSONALLY upon the respondent/s by a judicial officer or the person deputized. The serving officer 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. 8, *Amparo* Rule)

15. What is substituted service?

If, for justifiable causes, the respondent cannot be personally served within a reasonable time, service may be effected:

- (a) by leaving copies at the respondent/s residence with some person of suitable age and discretion then residing therein, or
- (b) by leaving copies at respondent/s office or regular place of business with some competent person in charge thereof. (Rule 14, Sec. 7, Rules of Court)

16. What happens after a writ is served on the respondent/s?

Within SEVENTY TWO (72) hours after the service of the writ, the respondent/s shall submit a VERIFIED WRITTEN RETURN; (Sec. 9, *Amparo* Rule)

17. What shall the verified written return contain?

The verified written return of the respondent/s shall:

- 1. have the supporting affidavits of the respondent/s and their witnesses, and
- 2. shall also 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 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. (Sec. 9, *Amparo* Rule)

18. In the return of the respondent/s can it allege a general denial of the allegations of the petition?

A general denial IS NOT ALLOWED. (Sec. 9, *Amparo* Rule)

19. Can the respondent/s subsequently amend the return to add other defenses?

No. All defenses shall be raised in the return, otherwise, they shall be deemed WAIVED. (Sec. 10, *Amparo* Rule)

20. Can the respondent/s file a Motion for Extension of Time to File Return, or a Motion to Dismiss the petition, etc., instead of filing a return?

NO. The following pleading and motions are prohibited and cannot be filed:

- (a) Motion to dismiss
- (b) Motion for extension of time to file return, opposition, affidavit, position paper and other pleadings;
- (c) Dilatory motion to postponement;

- (d) Motion for bill of particulars;
- (e) Counterclaim or cross-claim;
- (f) Third party complaint;
- (g) Reply;
- (h) Motion to declare the respondent in default;
- (i) Intervention;
- (j) Memorandum;
- (k) Motion for reconsideration of interlocutory orders or interim reliefs; and
- (l) Petition for certiorari, mandamus or prohibition against any interlocutory order. (Sec. 11, *Amparo* Rule)

21. Where shall the return of the writ be submitted?

- a. When issued by the RTC or any judge thereof, the writ shall be returnable before such court or judge;
- b. When issued by the Sandiganbayan or the Court of Appeals or any of their justices, the writ shall be returnable:
 - 1. before such court;
 - 2. or any justice thereof, or
 - 3. to any RTC of the place where the threat, act or omission was committed or any of its elements occurred;
- c. When issued by the Supreme Court or any of its justices, the writ shall be returnable:
 - 1. before the Supreme Court,
 - 2. Any justice of the Supreme Court, or
 - 3. With the Sandiganbayan, or
 - 4. The Court of Appeals, or
 - 5. to any RTC of the place where the threat, act or omission was committed or any of its elements occurred; (Sec. 3, *Amparo* Rule)

22. What happens if the respondent/s fail to submit a return?

- a. The *amparo* court, justice or judge shall proceed to hear the petition **ex parte**. (Sec. 12, *Amparo* Rule)

Ex parte – with only one side represented.
- b. The respondent/s who refuses to make a return, or who makes a false return, shall be punished for contempt. The person held in contempt may be imprisoned or imposed a fine. (Sec. 16, *Amparo* Rule)

23. What kind of a hearing shall be held on the petition?

The hearing shall be SUMMARY. (Sec. 13, Amparo Rule)

Under the 1991 Revised Rule on Summary Procedure, which is what is most probably envisioned by the rule on *amparo*, or at least something similar or analogous thereto, the following is what usually transpires:

- a. A preliminary conference is held.

*(Under the rule on **amparo**, the court, justice or judge may also call a PRELIMINARY CONFERENCE in order to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.)*

- b. Thereafter the parties are ordered to submit the affidavits of witnesses and other evidence on the factual issues defined therein, together with a brief statement of their positions setting forth the law and the facts relied upon by them.

*(The **amparo** rule already requires that supporting affidavits be attached to the petition. This may be without prejudice to the filing of additional affidavits at the discretion of the amparo court.)*

- c. Should the court find, upon a consideration of the pleadings, the affidavits and other evidence, and position statements submitted by the parties, that a judgment may be rendered thereon without need of a formal hearing, it may proceed to render judgment not later than fifteen (15) days from the submission of the position statements of the parties.

*(Under the **amparo** rule however, the amparo court is mandated to decide the case within **TEN (10)** days from the time the case is submitted for decision.)*

In cases where the judge deems it necessary to hold a hearing to clarify specific factual matters before rendering judgment, he shall set the case for hearing for the purpose. At such hearing, witnesses whose affidavits were previously submitted may be asked clarificatory questions by the proponent and by the court and may be cross-examined by the adverse party.

*(Note that under the **amparo** rule the hearing must initially be held not less than SEVEN (7) days from the date of the issuance of the writ.) (Sec. 6, Amparo Rule)*

The order setting the case for hearing shall specify the witnesses who will be called to testify, and the matters on which their examination will deal.

24. How often shall hearings be held on the petition?

DAILY. The hearing shall be from day to day until completed.

It is given the same priority as petitions for *habeas corpus*.

25. What are the *interim* or preliminary reliefs that may be granted to the petitioner upon the filing of the petition and prior to final judgment?

The following reliefs may be granted upon the filing of the petition or at anytime before final judgment:

- (a) **Temporary Protection Order (TPO)**
- (b) **Inspection Order (IO)**
- (c) **Production Order (PO)**
- (d) **Witness Protection Order (WPO)**

(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 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.

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.

(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. 14, *Amparo* Rule)

26. What happens if the issuance of INSPECTION OR PRODUCTION ORDERS are opposed by the respondent/s on grounds of NATIONAL SECURITY or the PRIVILEGED nature of the information sought?

- a. If the motion for the issuance of an **INSPECTION ORDER** 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.

- b. The motion for the issuance of a **PROTECTION ORDER** 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 *amparo* court, justice or judge shall prescribe other conditions to protect the constitutional rights of all the parties. (Sec. 14, *Amparo* Rule)

27. Can the respondent/s also ask for interim reliefs?

Yes. The respondent/s upon verified motion and after due hearing can be granted:

- a. An INSPECTION ORDER (IO), and
- b. A PRODUCTION ORDER (PO)

A motion for INSPECTION ORDER requested by the respondent/s shall be supported by AFFIDAVITS OR TESTIMONIES OF WITNESSES having PERSONAL KNOWLEDGE of the defenses of the respondent/s. (Sec. 15, *Amparo* Rule)

For obvious reasons, respondent/s are NOT ENTITLED to the issuance of Temporary Protection and Witness Protection Orders in their favor;

28. Aside from the respondent who refuses to submit a return or files a false return, what punishment can be imposed on OTHER persons who disobey or resist lawful processes or order/s issued by the *amparo* court?

They shall also be punished for contempt and may be imprisoned or imposed a fine. (Sec. 16, *Amparo* Rule)

29. What quantum of evidence is required for the parties to prove their claims?

The parties shall establish their claims by SUBSTANTIAL EVIDENCE. (Sec. 17, *Amparo* Rule)

Substantial Evidence – *that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.* (Rule 133, Sec. 5, Rules of Court)

30. As valid defenses what standards of diligence are required to be established by the respondent/s?

a. If the respondent is a PRIVATE INDIVIDUAL he/she must prove that ORDINARY DILIGENCE as required by applicable laws, rules and regulations was observed in the performance of duty; (Sec. 17, *Amparo* Rule)

b. If the respondent is a PUBLIC OFFICIAL OR EMPLOYEE he/she must prove that EXTRAORDINARY DILIGENCE as required by applicable laws, rules and regulations was observed in the performance of duty. (Sec. 17, *Amparo* Rule)

Example of a statutory definition of **Extra-ordinary Diligence** – “... as *human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.*” (Art. 1755, *Civil Code of the Philippines*)

31. Can a respondent public official/employee invoke as a defense the presumption that official duty was regularly performed?

NO, that is not allowed by the rule. (Sec. 17, *Amparo* Rule)

32. How soon shall the court render judgment on a petition for writ of *amparo*?

Judgment must be rendered WITHIN TEN (10) DAYS from the time the petition is submitted for decision. (Sec. 18, *Amparo* Rule)

33. When can the privilege of the writ be granted by the court, and when is it denied?

- a. 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,
- b. otherwise, the privilege shall be DENIED. (Sec. 18, *Amparo* Rule)

34. If a petition is denied for failure to present substantial evidence, is the petition also dismissed?

No. 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. (Sec. 20, *Amparo* Rule)

35. How can an archived petition be revived?

A periodic review of archived cases shall be made by the *amparo* court and shall:

- a. *motu proprio*, or
- b. Upon motion by any party

order its revival when ready for further proceedings.

The clerks of court shall submit to the Office of the Court Administrator of the Supreme Court a consolidated list of archived cases under this Rule not later than the first week of January every year. (Sec. 20, *Amparo* Rule)

36. When can a petition be dismissed after it has been archived?

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. (Sec. 20, *Amparo* Rule)

37. Are the parties allowed to appeal from the judgment of the court? What kind of questions may be raised?

Any party may appeal from the final judgment or order TO THE SUPREME COURT under Rule 45.

Rule 45 of the Rules of Court provides for a PETITION FOR REVIEW ON CERTIORARI – *A party desiring to appeal by certiorari from a judgment of final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari.*

Unlike a petition under Rule 45 wherein only **questions of law** can be raised, a Petition for Review on Certiorari under the rule on *amparo* may raise:

- a. QUESTIONS OF FACT
- b. QUESTIONS OF LAW
- c. OR BOTH QUESTIONS OF FACT AND LAW (Sec. 19, *Amparo* Rule)

38. Can an order to archive a petition be the subject of an appeal by the petitioner?

Apparently not. The order to archive is an interlocutory order not subject of an appeal. The petitioner can however file a motion to revive the petition if he/she disagrees with the archival or feels ready to proceed with the petition. (Sec. 20, *Amparo* Rule)

39. How soon after judgment is rendered by the *amparo* court can an appeal be taken?

The period of appeal shall be FIVE (5) WORKING DAYS from the date of notice of the adverse judgment. (Sec. 19, *Amparo* Rule)

40. What kind of priority is given to the appeal?

The appeal shall be given the same priority as in *habeas corpus* cases. (Sec. 19, *Amparo* Rule)

41. Can other criminal, civil and administrative cases be filed separately from with a petition for a writ of amparo?

As a general rule - Yes. The rule does not preclude the filing of separate criminal, civil and administrative actions. (Sec. 21, *Amparo* Rule)

42. What is the effect of filing a separate criminal case?

a. If a criminal action is filed BEFORE the filing of a petition for writ of *amparo*, NO SEPARATE PETITION for the writ of amparo shall be filed. The reliefs under the writ shall be available BY MOTION in the criminal case. (Sec. 22, *Amparo* Rule)

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

b. If the criminal action is filed AFTER a petition for the writ of *amparo* has already been filed, the petition for writ of *amparo* shall be CONSOLIDATED with the criminal action. (Sec. 23, *Amparo* Rule)

c. If a criminal action and a separate civil action are filed after a petition for writ of *amparo* has already been filed, the petition shall be CONSOLIDATED WITH THE CRIMINAL ACTION;

After consolidation, the procedure under the *Amparo* Rule shall continue to apply in the disposition of the reliefs of the petition; (Sec. 23, *Amparo* Rule)

43. What if only separate civil or administrative actions are filed prior or subsequent to the filing of a petition for writ of *amparo*, and no criminal action is instituted?

The rule is silent on this. The civil or administrative actions, on the one hand, and the petition for writ of *amparo*, on the other, would most probably be heard and tried separately.

Note that even if both a criminal and a civil action are filed after a petition for writ of *amparo* is instituted, the petition is consolidated only with the criminal case. This implies that the civil case shall proceed independently.

44. Does the rule on the writ of *amparo* affect rights protected by the Constitution?

No. The rule does not diminish, increase or modify substantive rights recognized and protected by the Constitution. (Sec. 24, *Amparo* Rule)

45. Are the Rules of Court applicable in a petition for writ of *amparo*?

Yes they apply in a suppletory manner and only insofar as they are not inconsistent with the rule of *amparo*. (Sec. 25, *Amparo* Rule)

46. Is the rule on *amparo* applicable to cases already pending in courts at the time the rule was adopted?

Yes. The Rule shall govern cases involving extralegal killings and enforced disappearances or threats thereof pending in the trial and appellate courts. (Sec. 26, *Amparo* Rule)

47. When does the *amparo* rule take effect?

It takes effect on October 24, 2007, following its publication in three (3) newspapers of general circulation. (Sec. 27, *Amparo* Rule)

October 2, 2007
Baguio City