

THE SECRETARY OF NATIONAL DEFENSE, THE CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, PETITIONERS, VS. RAYMOND MANALO AND REYNALDO MANALO, RESPONDENTS.

G.R. No. 180906. October 07, 2008

Ponente: PUNO, CJ.

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PUNO, CJ.:

While victims of enforced disappearances are separated from the rest of the world behind secret walls, they are not separated from the constitutional protection of their basic rights. The constitution is an overarching sky that covers all in its protection. The case at bar involves the rights to life, liberty and security in the first petition for a writ of amparo filed before this Court.

This is an appeal via Petition for Review under Rule 45 of the Rules of Court in relation to Section 19[1] of the Rule on the Writ of Amparo, seeking to reverse and set aside on both questions of fact and law, the Decision promulgated by the Court of Appeals in C.A. G.R. AMPARO No. 00001, entitled "Raymond Manalo and Reynaldo Manalo, petitioners, versus The Secretary of National Defense, the Chief of Staff, Armed Forces of the Philippines, respondents."

This case was originally a Petition for Prohibition, Injunction, and Temporary Restraining Order (TRO)[2] filed before this Court by herein respondents (therein petitioners) on August 23, 2007 to stop herein petitioners (therein respondents) and/or their officers and agents from depriving them of their right to liberty and other basic rights. Therein petitioners also sought ancillary remedies, Protective Custody Orders, Appointment of Commissioner, Inspection and Access Orders, and all other legal and equitable reliefs under Article VIII, Section 5(5)[3] of the 1987 Constitution and Rule 135, Section 6 of the Rules of Court. In our Resolution dated August 24, 2007, we (1) ordered the Secretary of the Department of National Defense and the Chief of Staff of the AFP, their agents, representatives, or persons acting in their stead, including but not limited to the Citizens Armed Forces Geographical Unit (CAFGU) to submit their Comment; and (2) enjoined them from causing the arrest of therein petitioners, or otherwise restricting, curtailing, abridging, or depriving them of their right to life, liberty, and other basic rights as guaranteed under Article III, Section 1[4] of the 1987 Constitution.[5]

While the August 23, 2007 Petition was pending, the Rule on the Writ of Amparo took effect on October 24, 2007. Forthwith, therein petitioners filed a Manifestation and Omnibus Motion to Treat Existing Petition as Amparo Petition, to Admit Supporting Affidavits, and to Grant Interim and Final Amparo Reliefs. They prayed that: (1) the petition be considered a Petition for the Writ of Amparo under Sec. 26[6] of the Amparo Rule; (2) the Court issue the writ commanding therein respondents to make a verified return within the period provided by law and containing the specific matter required by law; (3) they be granted the interim reliefs allowed by the Amparo Rule and all other reliefs prayed for in the petition but not covered by the Amparo Rule; (4) the Court, after hearing, render judgment as required in Sec. 18[7] of the Amparo Rule; and (5) all other just and equitable reliefs.[8]

On October 25, 2007, the Court resolved to treat the August 23, 2007 Petition as a petition under the Amparo Rule and further resolved, viz:

WHEREFORE, let a WRIT OF AMPARO be issued to respondents requiring them to file with the CA (Court of Appeals) a verified written return within five (5) working days from service of the writ. We REMAND the petition to the CA and designate the Division of Associate Justice Lucas P. Bersamin to conduct the summary hearing on the petition on November 8, 2007 at 2:00 p.m. and decide the petition in accordance with the Rule on the Writ of Amparo.[9]

On December 26, 2007, the Court of Appeals rendered a decision in favor of therein petitioners (herein respondents), the dispositive portion of which reads, viz:

ACCORDINGLY, the PRIVILEGE OF THE WRIT OF AMPARO is GRANTED.

The respondents SECRETARY OF NATIONAL DEFENSE and AFP CHIEF OF STAFF are hereby REQUIRED:

- To furnish to the petitioners and to this Court within five days from notice of this decision all official and unofficial reports of the investigation undertaken in connection with their case, except those already on file herein;
- To confirm in writing the present places of official assignment of M/Sgt Hilario aka Rollie Castillo and Donald Caigas within five days from notice of this decision.
- To cause to be produced to this Court all medical reports, records and charts, reports of any treatment given or recommended and medicines prescribed, if any, to the petitioners, to include a list of medical and (sic) personnel (military and civilian) who attended to them from February 14, 2006 until August 12, 2007 within five days from notice of this decision.

The compliance with this decision shall be made under the signature and oath of respondent AFP Chief of Staff or his duly authorized deputy, the latter's authority to be express and made apparent on the face of the sworn compliance with this directive.

SO ORDERED.[10]

Hence, this appeal. In resolving this appeal, we first unfurl the facts as alleged by herein respondents:

Respondent Raymond Manalo recounted that about one or two weeks before February 14, 2006, several uniformed and armed soldiers and members of the CAFGU summoned to a meeting all the residents of their barangay in San Idelfonso, Bulacan. Respondents were not able to attend as they were not informed of the gathering, but Raymond saw some of the soldiers when he passed by the barangay hall.[11]

On February 14, 2006, Raymond was sleeping in their house in Buhol na Mangga, San Idelfonso, Bulacan. At past noon, several armed soldiers wearing white shirts, fatigue pants and army boots, entered their house and roused him. They asked him if he was Bestre, but his mother, Ester Manalo, replied that he was Raymond, not Bestre. The armed soldier slapped him on both cheeks and nudged him in the stomach. He was then handcuffed, brought to the rear of his house, and forced to the ground face down. He was kicked on the hip, ordered to stand and face up to the light, then forcibly brought near the road. He told his mother to follow him, but three soldiers stopped her and told her to stay.[12]

Among the men who came to take him, Raymond recognized brothers Michael de la Cruz, Madning de la Cruz, "Puti" de la Cruz, and "Pula" de la Cruz, who all acted as lookout. They were all members of the CAFGU and residing in Manuzon, San Idelfonso, Bulacan. He also recognized brothers Randy Mendoza and Rudy Mendoza,

also members of the CAFGU. While he was being forcibly taken, he also saw outside of his house two barangay councilors, Pablo Cunanan and Bernardo Lingasa, with some soldiers and armed men.[13]

The men forced Raymond into a white L300 van. Once inside, he was blindfolded. Before being blindfolded, he saw the faces of the soldiers who took him. Later, in his 18 months of captivity, he learned their names. The one who drove the van was Rizal Hilario alias Rollie Castillo, whom he estimated was about 40 years of age or older. The leader of the team who entered his house and abducted him was "Ganata." He was tall, thin, curly-haired and a bit old. Another one of his abductors was "George" who was tall, thin, white-skinned and about 30 years old.[14]

The van drove off, then came to a stop. A person was brought inside the van and made to sit beside Raymond. Both of them were beaten up. On the road, he recognized the voice of the person beside him as his brother Reynaldo's. The van stopped several times until they finally arrived at a house. Raymond and Reynaldo were each brought to a different room. With the doors of their rooms left open, Raymond saw several soldiers continuously hitting his brother Reynaldo on the head and other parts of his body with the butt of their guns for about 15 minutes. After which, Reynaldo was brought to his (Raymond's) room and it was his (Raymond's) turn to be beaten up in the other room. The soldiers asked him if he was a member of the New People's Army. Each time he said he was not, he was hit with the butt of their guns. He was questioned where his comrades were, how many soldiers he had killed, and how many NPA members he had helped. Each time he answered none, they hit him.[15]

In the next days, Raymond's interrogators appeared to be high officials as the soldiers who beat him up would salute them, call them "sir," and treat them with respect. He was in blindfolds when interrogated by the high officials, but he saw their faces when they arrived and before the blindfold was put on. He noticed that the uniform of the high officials was different from those of the other soldiers. One of those officials was tall and thin, wore white pants, tie, and leather shoes, instead of combat boots. He spoke in Tagalog and knew much about his parents and family, and a habeas corpus case filed in connection with the respondents' abduction.[16] While these officials interrogated him, Raymond was not manhandled. But once they had left, the soldier guards beat him up. When the guards got drunk, they also manhandled respondents. During this time, Raymond was fed only at night, usually with left-over and rotten food.[17]

On the third week of respondents' detention, two men arrived while Raymond was sleeping and beat him up. They doused him with urine and hot water, hit his stomach with a piece of wood, slapped his forehead twice with a .45 pistol, punched him on the mouth, and burnt some parts of his body with a burning wood. When he could no longer endure the torture and could hardly breathe, they stopped. They then subjected Reynaldo to the same ordeal in another room. Before their torturers left, they warned Raymond that they would come back the next day and kill him.[18]

The following night, Raymond attempted to escape. He waited for the guards to get drunk, then made noise with the chains put on him to see if they were still awake. When none of them came to check on him, he managed to free his hand from the chains and jumped through the window. He passed through a helipad and firing range and stopped near a fishpond where he used stones to break his chains. After walking through a forested area, he came near a river and an Iglesia ni Kristo church. He talked to some women who were doing the laundry, asked where he was and the road to Gapan. He was told that he was in Fort Magsaysay.[19] He reached the highway, but some soldiers spotted him, forcing him to run away. The soldiers chased him and caught up with him. They brought him to another place near the entrance of what he saw was Fort Magsaysay. He was boxed repeatedly, kicked, and hit with chains until his back bled. They poured gasoline on him. Then a so-called "Mam" or "Madam" suddenly called, saying that she wanted to see Raymond before he was killed. The soldiers ceased the torture and he was

returned inside Fort Magsaysay where Reynaldo was detained.[20]

For some weeks, the respondents had a respite from all the torture. Their wounds were treated. When the wounds were almost healed, the torture resumed, particularly when respondents' guards got drunk.[21]

Raymond recalled that sometime in April until May 2006, he was detained in a room enclosed by steel bars. He stayed all the time in that small room measuring 1 x 2 meters, and did everything there, including urinating, removing his bowels, bathing, eating and sleeping. He counted that eighteen people[22] had been detained in that bartolina, including his brother Reynaldo and himself.[23]

For about three and a half months, the respondents were detained in Fort Magsaysay. They were kept in a small house with two rooms and a kitchen. One room was made into the bartolina. The house was near the firing range, helipad and mango trees. At dawn, soldiers marched by their house. They were also sometimes detained in what he only knew as the "DTU." [24]

At the DTU, a male doctor came to examine respondents. He checked their body and eyes, took their urine samples and marked them. When asked how they were feeling, they replied that they had a hard time urinating, their stomachs were aching, and they felt other pains in their body. The next day, two ladies in white arrived. They also examined respondents and gave them medicines, including orasol, amoxicillin and mefenamic acid. They brought with them the results of respondents' urine test and advised them to drink plenty of water and take their medicine. The two ladies returned a few more times. Thereafter, medicines were sent through the "master" of the DTU, "Master" Del Rosario alias Carinyoso at Puti. Respondents were kept in the DTU for about two weeks. While there, he met a soldier named Efren who said that Gen. Palparan ordered him to monitor and take care of them.[25]

One day, Rizal Hilario fetched respondents in a Revo vehicle. They, along with Efren and several other armed men wearing fatigue suits, went to a detachment in Pinaud, San Ildefonso, Bulacan. Respondents were detained for one or two weeks in a big two-storey house. Hilario and Efren stayed with them. While there, Raymond was beaten up by Hilario's men.[26]

From Pinaud, Hilario and Efren brought respondents to Sapang, San Miguel, Bulacan on board the Revo. They were detained in a big unfinished house inside the compound of "Kapitan" for about three months. When they arrived in Sapang, Gen. Palparan talked to them. They were brought out of the house to a basketball court in the center of the compound and made to sit. Gen. Palparan was already waiting, seated. He was about two arms' length away from respondents. He began by asking if respondents felt well already, to which Raymond replied in the affirmative. He asked Raymond if he knew him. Raymond lied that he did not. He then asked Raymond if he would be scared if he were made to face Gen. Palparan. Raymond responded that he would not be because he did not believe that Gen. Palparan was an evil man.[27]

Raymond narrated his conversation with Gen. Palparan in his affidavit, viz:

Tinanong ako ni Gen. Palparan, "Ngayon na kaharap mo na ako, di ka ba natatakot sa akin?"

Sumagot akong, "Siyempre po, natatakot din..."

Sabi ni Gen. Palparan: "Sige, bibigyan ko kayo ng isang pagkakataon na mabuhay, basta't sundin n'yo ang lahat ng sasabihin ko... sabihin mo sa magulang mo - huwag pumunta sa mga rali, sa hearing, sa Karapatan at sa Human Right dahil niloloko lang kayo. Sabihin sa magulang at lahat sa bahay na huwag paloko doon. Tulungan kami na kausapin si Bestre na sumuko na sa gobyerno." [28]

Respondents agreed to do as Gen. Palparan told them as they felt they could not do otherwise. At about 3:00 in

the morning, Hilario, Efren and the former's men - the same group that abducted them - brought them to their parents' house. Raymond was shown to his parents while Reynaldo stayed in the Revo because he still could not walk. In the presence of Hilario and other soldiers, Raymond relayed to his parents what Gen. Palparan told him. As they were afraid, Raymond's parents acceded. Hilario threatened Raymond's parents that if they continued to join human rights rallies, they would never see their children again. The respondents were then brought back to Sapang.[29]

When respondents arrived back in Sapang, Gen. Palparan was about to leave. He was talking with the four "masters" who were there: Arman, Ganata, Hilario and Cabalse.[30] When Gen. Palparan saw Raymond, he called for him. He was in a big white vehicle. Raymond stood outside the vehicle as Gen. Palparan told him to gain back his strength and be healthy and to take the medicine he left for him and Reynaldo. He said the medicine was expensive at Php35.00 each, and would make them strong. He also said that they should prove that they are on the side of the military and warned that they would not be given another chance.[31] During his testimony, Raymond identified Gen. Palparan by his picture.[32]

One of the soldiers named Arman made Raymond take the medicine left by Gen. Palparan. The medicine, named "Alive," was green and yellow. Raymond and Reynaldo were each given a box of this medicine and instructed to take one capsule a day. Arman checked if they were getting their dose of the medicine. The "Alive" made them sleep each time they took it, and they felt heavy upon waking up.[33]

After a few days, Hilario arrived again. He took Reynaldo and left Raymond at Sapang. Arman instructed Raymond that while in Sapang, he should introduce himself as "Oscar," a military trainee from Sariaya, Quezon, assigned in Bulacan. While there, he saw again Ganata, one of the men who abducted him from his house, and got acquainted with other military men and civilians.[34]

After about three months in Sapang, Raymond was brought to Camp Tecson under the 24th Infantry Battalion. He was fetched by three unidentified men in a big white vehicle. Efren went with them. Raymond was then blindfolded. After a 30-minute ride, his blindfold was removed. Chains were put on him and he was kept in the barracks.[35]

The next day, Raymond's chains were removed and he was ordered to clean outside the barracks. It was then he learned that he was in a detachment of the Rangers. There were many soldiers, hundreds of them were training. He was also ordered to clean inside the barracks. In one of the rooms therein, he met Sherlyn Cadapan from Laguna. She told him that she was a student of the University of the Philippines and was abducted in Hagonoy, Bulacan. She confided that she had been subjected to severe torture and raped. She was crying and longing to go home and be with her parents. During the day, her chains were removed and she was made to do the laundry.[36]

After a week, Reynaldo was also brought to Camp Tecson. Two days from his arrival, two other captives, Karen Empeño and Manuel Merino, arrived. Karen and Manuel were put in the room with "Allan" whose name they later came to know as Donald Caigas, called "master" or "commander" by his men in the 24th Infantry Battalion. Raymond and Reynaldo were put in the adjoining room. At times, Raymond and Reynaldo were threatened, and Reynaldo was beaten up. In the daytime, their chains were removed, but were put back on at night. They were threatened that if they escaped, their families would all be killed.[37]

On or about October 6, 2006, Hilario arrived in Camp Tecson. He told the detainees that they should be thankful they were still alive and should continue along their "renewed life." Before the hearing of November 6 or 8, 2006, respondents were brought to their parents to instruct them not to attend the hearing. However, their parents had already left for Manila. Respondents were brought back to Camp Tecson. They stayed in that camp from September 2006 to November 2006, and Raymond was instructed to continue using the name "Oscar" and holding

himself out as a military trainee. He got acquainted with soldiers of the 24th Infantry Battalion whose names and descriptions he stated in his affidavit.[38]

On November 22, 2006, respondents, along with Sherlyn, Karen, and Manuel, were transferred to a camp of the 24th Infantry Battalion in Limay, Bataan. There were many huts in the camp. They stayed in that camp until May 8, 2007. Some soldiers of the battalion stayed with them. While there, battalion soldiers whom Raymond knew as "Mar" and "Billy" beat him up and hit him in the stomach with their guns. Sherlyn and Karen also suffered enormous torture in the camp. They were all made to clean, cook, and help in raising livestock.[39]

Raymond recalled that when "Operation Lubog" was launched, Caigas and some other soldiers brought him and Manuel with them to take and kill all sympathizers of the NPA. They were brought to Barangay Bayan-bayanan, Bataan where he witnessed the killing of an old man doing kaingin. The soldiers said he was killed because he had a son who was a member of the NPA and he coddled NPA members in his house.[40] Another time, in another "Operation Lubog," Raymond was brought to Barangay Orion in a house where NPA men stayed. When they arrived, only the old man of the house who was sick was there. They spared him and killed only his son right before Raymond's eyes.[41]

From Limay, Raymond, Reynaldo, Sherlyn, Karen, and Manuel were transferred to Zambales, in a safehouse near the sea. Caigas and some of his men stayed with them. A retired army soldier was in charge of the house. Like in Limay, the five detainees were made to do errands and chores. They stayed in Zambales from May 8 or 9, 2007 until June 2007.[42]

In June 2007, Caigas brought the five back to the camp in Limay. Raymond, Reynaldo, and Manuel were tasked to bring food to detainees brought to the camp. Raymond narrated what he witnessed and experienced in the camp, viz:

Isang gabi, sinabihan kami ni Donald (Caigas) na matulog na kami. Nakita ko si Donald na inaayos ang kanyang baril, at nilagyan ng silenser. Sabi ni Donald na kung mayroon man kaming makita o marinig, walang nangyari. Kinaumagahan, nakita naming ang bangkay ng isa sa mga bihag na dinala sa kampo. Mayroong binuhos sa kanyang katawan at ito'y sinunog. Masansang ang amoy.

Makaraan ang isang lingo, dalawang bangkay and ibinaba ng mga unipormadong sundalo mula sa 6 x 6 na trak at dinala sa loob ng kampo. May naiwang mga bakas ng dugo habang hinihila nila ang mga bangkay. Naamoy ko iyon nang nililinis ang bakas.

Makalipas ang isa o dalawang lingo, may dinukot sila na dalawang Ita. Itinali sila sa labas ng kubo, pinirangan, ikinadena at labis na binugbog. Nakita kong nakatakas ang isa sa kanila at binaril siya ng sundalo ngunit hindi siya tinamaan. Iyong gabi nakita kong pinatay nila iyong isang Ita malapit sa Post 3; sinilaban ang bangkay at ibinaon ito.

Pagkalipas ng halos 1 buwan, 2 pang bangkay ang dinala sa kampo. Ibinaba ang mga bangkay mula sa pick up trak, dinala ang mga bangkay sa labas ng bakod. Kinaumagahan nakita kong mayroong sinilaban, at napakamasangsang ang amoy.

May nakilala rin akong 1 retiradong koronel at 1 kasama niya. Pinakain ko sila. Sabi nila sa akin na dinukot sila sa Bataan. Iyong gabi, inilabas sila at hindi ko na sila nakita.

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Ikinadena kami ng 3 araw. Sa ikatlong araw, nilabas ni Lat si Manuel dahil kakausapin daw siya ni Gen. Palparan. Nakapiring si Manuel, wala siyang suot pang-itaas, pinosasan. Nilakasan ng mga sundalo ang tunog na galing sa istiryo ng sasakyan. Di nagtagal, narinig ko ang hiyaw o ungol ni Manuel. Sumilip ako sa isang

haligi ng kamalig at nakita kong sinisilaban si Manuel.

Kinaumagahan, naka-kadena pa kami. Tinanggal ang mga kadena mga 3 o 4 na araw pagkalipas. Sinabi sa amin na kaya kami nakakadena ay dahil pinagdedesisyunan pa ng mga sundalo kung papatayin kami o hindi.

Tinanggal ang aming kadena. Kinausap kami ni Donald. Tinanong kami kung ano ang sabi ni Manuel sa amin. Sabi ni Donald huwag na raw naming hanapin ang dalawang babae at si Manuel, dahil magkakasama na yung tatlo. Sabi pa ni Donald na kami ni Reynaldo ay magbagong buhay at ituloy namin ni Reynaldo ang trabaho. Sa gabi, hindi na kami kinakadena.[43]

On or about June 13, 2007, Raymond and Reynaldo were brought to Pangasinan, ostensibly to raise poultry for Donald (Caigas). Caigas told respondents to also farm his land, in exchange for which, he would take care of the food of their family. They were also told that they could farm a small plot adjoining his land and sell their produce. They were no longer put in chains and were instructed to use the names Rommel (for Raymond) and Rod (for Reynaldo) and represent themselves as cousins from Rizal, Laguna.[44]

Respondents started to plan their escape. They could see the highway from where they stayed. They helped farm adjoining lands for which they were paid Php200.00 or Php400.00 and they saved their earnings. When they had saved Php1,000.00 each, Raymond asked a neighbor how he could get a cellular phone as he wanted to exchange text messages with a girl who lived nearby. A phone was pawned to him, but he kept it first and did not use it. They earned some more until they had saved Php1,400.00 between them.

There were four houses in the compound. Raymond and Reynaldo were housed in one of them while their guards lived in the other three. Caigas entrusted respondents to Nonong, the head of the guards. Respondents' house did not have electricity. They used a lamp. There was no television, but they had a radio. In the evening of August 13, 2007, Nonong and his cohorts had a drinking session. At about 1:00 a.m., Raymond turned up the volume of the radio. When none of the guards awoke and took notice, Raymond and Reynaldo proceeded towards the highway, leaving behind their sleeping guards and barking dogs. They boarded a bus bound for Manila and were thus freed from captivity.[45]

Reynaldo also executed an affidavit affirming the contents of Raymond's affidavit insofar as they related to matters they witnessed together. Reynaldo added that when they were taken from their house on February 14, 2006, he saw the faces of his abductors before he was blindfolded with his shirt. He also named the soldiers he got acquainted with in the 18 months he was detained. When Raymond attempted to escape from Fort Magsaysay, Reynaldo was severely beaten up and told that they were indeed members of the NPA because Raymond escaped. With a .45 caliber pistol, Reynaldo was hit on the back and punched in the face until he could no longer bear the pain.

At one point during their detention, when Raymond and Reynaldo were in Sapang, Reynaldo was separated from Raymond and brought to Pinaud by Rizal Hilario. He was kept in the house of Kapitan, a friend of Hilario, in a mountainous area. He was instructed to use the name "Rodel" and to represent himself as a military trainee from Meycauayan, Bulacan. Sometimes, Hilario brought along Reynaldo in his trips. One time, he was brought to a market in San Jose, del Monte, Bulacan and made to wait in the vehicle while Hilario was buying. He was also brought to Tondo, Manila where Hilario delivered boxes of "Alive" in different houses. In these trips, Hilario drove a black and red vehicle. Reynaldo was blindfolded while still in Bulacan, but allowed to remove the blindfold once outside the province. In one of their trips, they passed by Fort Magsaysay and Camp Tecson where Reynaldo saw the sign board, "Welcome to Camp Tecson." [46]

Dr. Benito Molino, M.D., corroborated the accounts of respondents Raymond and Reynaldo Manalo. Dr. Molino specialized in forensic medicine and was connected with the Medical Action Group, an organization handling

cases of human rights violations, particularly cases where torture was involved. He was requested by an NGO to conduct medical examinations on the respondents after their escape. He first asked them about their ordeal, then proceeded with the physical examination. His findings showed that the scars borne by respondents were consistent with their account of physical injuries inflicted upon them. The examination was conducted on August 15, 2007, two days after respondents' escape, and the results thereof were reduced into writing. Dr. Molino took photographs of the scars. He testified that he followed the Istanbul Protocol in conducting the examination.[47]

Petitioners dispute respondents' account of their alleged abduction and torture. In compliance with the October 25, 2007 Resolution of the Court, they filed a Return of the Writ of Amparo admitting the abduction but denying any involvement therein, viz:

13. Petitioners Raymond and Reynaldo Manalo were not at any time arrested, forcibly abducted, detained, held incommunicado, disappeared or under the custody by the military. This is a settled issue laid to rest in the habeas corpus case filed in their behalf by petitioners' parents before the Court of Appeals in C.A.-G.R. SP No. 94431 against M/Sgt. Rizal Hilario aka Rollie Castillo, as head of the 24[th] Infantry Battalion; Maj. Gen. Jovito Palparan, as Commander of the 7[th] Infantry Division in Luzon; Lt. Gen. Hermogenes Esperon, in his capacity as the Commanding General of the Philippine Army, and members of the Citizens Armed Forces Geographical Unit (CAFGU), namely: Michael dela Cruz, Puti dela Cruz, Madning dela Cruz, Pula dela Cruz, Randy Mendoza and Rudy Mendoza. The respondents therein submitted a return of the writ... On July 4, 2006, the Court of Appeals dropped as party respondents Lt. Gen. Hermogenes C. Esperon, Jr., then Commanding General of the Philippine Army, and on September 19, 2006, Maj. (sic) Jovito S. Palparan, then Commanding General, 7[th] Infantry Division, Philippine Army, stationed at Fort Magsaysay, Palayan City, Nueva Ecija, upon a finding that no evidence was introduced to establish their personal involvement in the taking of the Manalo brothers. In a Decision dated June 27, 2007..., it exonerated M/Sgt. Rizal Hilario aka Rollie Castillo for lack of evidence establishing his involvement in any capacity in the disappearance of the Manalo brothers, although it held that the remaining respondents were illegally detaining the Manalo brothers and ordered them to release the latter.[48]

Attached to the Return of the Writ was the affidavit of therein respondent (herein petitioner) Secretary of National Defense, which attested that he assumed office only on August 8, 2007 and was thus unaware of the Manalo brothers' alleged abduction. He also claimed that:

- The Secretary of National Defense does not engage in actual military directional operations, neither does he undertake command directions of the AFP units in the field, nor in any way micromanage the AFP operations. The principal responsibility of the Secretary of National Defense is focused in providing strategic policy direction to the Department (bureaus and agencies) including the Armed Forces of the Philippines;

- In connection with the Writ of Amparo issued by the Honorable Supreme Court in this case, I have directed the Chief of Staff, AFP to institute immediate action in compliance with Section 9(d) of the Amparo Rule and to submit report of such compliance... Likewise, in a Memorandum Directive also dated October 31, 2007, I have issued a policy directive addressed to the Chief of Staff, AFP that the AFP should adopt the following rules of action in the event the Writ of Amparo is issued by a competent court against any members of the AFP:

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

(2) 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;

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

(4) 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;

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

(6) to bring the suspected offenders before a competent court.[49]

Therein respondent AFP Chief of Staff also submitted his own affidavit, attached to the Return of the Writ, attesting that he received the above directive of therein respondent Secretary of National Defense and that acting on this directive, he did the following:

3.1. As currently designated Chief of Staff, Armed Forces of the Philippines (AFP), I have caused to be issued directive to the units of the AFP for the purpose of establishing the circumstances of the alleged disappearance and the recent reappearance of the petitioners.

3.2. I have caused the immediate investigation and submission of the result thereof to Higher headquarters and/or direct the immediate conduct of the investigation on the matter by the concerned unit/s, dispatching Radio Message on November 05, 2007, addressed to the Commanding General, Philippine Army (Info: COMNOLCOM, CG, 71D PA and CO 24 IB PA). A Copy of the Radio Message is attached as ANNEX "3" of this Affidavit.

3.3. We undertake to provide result of the investigations conducted or to be conducted by the concerned unit relative to the circumstances of the alleged disappearance of the persons in whose favor the Writ of Amparo has been sought for as soon as the same has been furnished Higher headquarters.

3.4. A parallel investigation has been directed to the same units relative to another Petition for the Writ of Amparo (G.R. No. 179994) filed at the instance of relatives of a certain Cadapan and Empeño pending before the Supreme Court.

3.5. On the part of the Armed Forces, this respondent will exert earnest efforts to establish the surrounding circumstances of the disappearances of the petitioners and to bring those responsible, including any military personnel if shown to have participated or had complicity in the commission of the complained acts, to the bar of justice, when warranted by the findings and the competent evidence that may be gathered in the process.[50]

Also attached to the Return of the Writ was the affidavit of Lt. Col. Felipe Anontado, INF (GSC) PA, earlier filed in G.R. No. 179994, another amparo case in this Court, involving Cadapan, Empeño and Merino, which averred among others, viz:

10) Upon reading the allegations in the Petition implicating the 24[th] Infantry Battalion detachment as detention area, I immediately went to the 24[th] IB detachment in Limay, Bataan and found no untoward incidents in the area nor any detainees by the name of Sherlyn Cadapan, Karen Empeño and Manuel Merino being held captive;

11) There was neither any reports of any death of Manuel Merino in the 24[th] IB in Limay, Bataan;

12) After going to the 24[th] IB in Limay, Bataan, we made further inquiries with the Philippine National Police, Limay, Bataan regarding the alleged detentions or deaths and were informed that none was reported to their good office;

13) I also directed Company Commander 1[st] Lt. Romeo Publico to inquire into the alleged beachhouse in Iba, Zambales also alleged to be a detention place where Sherlyn Cadapan, Karen Empeño and Manuel Merino were detained. As per the inquiry, however, no such beachhouse was used as a detention place found to have been used by armed men to detain Cadapan, Empeño and Merino.[51]

It was explained in the Return of the Writ that for lack of sufficient time, the affidavits of Maj. Gen Jovito S. Palparan (Ret.), M/Sgt. Rizal Hilario aka Rollie Castillo, and other persons implicated by therein petitioners could

not be secured in time for the submission of the Return and would be subsequently submitted.[52]

Herein petitioners presented a lone witness in the summary hearings, Lt. Col. Ruben U. Jimenez, Provost Marshall, 7[th] Infantry Division, Philippine Army, based in Fort Magsaysay, Palayan City, Nueva Ecija. The territorial jurisdiction of this Division covers Nueva Ecija, Aurora, Bataan, Bulacan, Pampanga, Tarlac and a portion of Pangasinan.[53] The 24[th] Infantry Battalion is part of the 7[th] Infantry Division.[54]

On May 26, 2006, Lt. Col. Jimenez was directed by the Commanding General of the 7[th] Infantry Division, Maj. Gen. Jovito Palaran,[55] through his Assistant Chief of Staff,[56] to investigate the alleged abduction of the respondents by CAFGU auxiliaries under his unit, namely: CAA Michael de la Cruz; CAA Roman de la Cruz, aka Puti; CAA Maximo de la Cruz, aka Pula; CAA Randy Mendoza; ex-CAA Marcelo de la Cruz aka Madning; and a civilian named Rudy Mendoza. He was directed to determine: (1) the veracity of the abduction of Raymond and Reynaldo Manalo by the alleged elements of the CAFGU auxiliaries; and (2) the administrative liability of said auxiliaries, if any.[57] Jimenez testified that this particular investigation was initiated not by a complaint as was the usual procedure, but because the Commanding General saw news about the abduction of the Manalo brothers on the television, and he was concerned about what was happening within his territorial jurisdiction.[58]

Jimenez summoned all six implicated persons for the purpose of having them execute sworn statements and conducting an investigation on May 29, 2006.[59] The investigation started at 8:00 in the morning and finished at 10:00 in the evening.[60] The investigating officer, Technical Sgt. Eduardo Lingad, took the individual sworn statements of all six persons on that day. There were no other sworn statements taken, not even of the Manalo family, nor were there other witnesses summoned and investigated[61] as according to Jimenez, the directive to him was only to investigate the six persons.[62]

Jimenez was beside Lingad when the latter took the statements.[63] The six persons were not known to Jimenez as it was in fact his first time to meet them.[64] During the entire time that he was beside Lingad, a subordinate of his in the Office of the Provost Marshall, Jimenez did not propound a single question to the six persons.[65]

Jimenez testified that all six statements were taken on May 29, 2006, but Marcelo Mendoza and Rudy Mendoza had to come back the next day to sign their statements as the printing of their statements was interrupted by a power failure. Jimenez testified that the two signed on May 30, 2006, but the jurats of their statements indicated that they were signed on May 29, 2006.[66] When the Sworn Statements were turned over to Jimenez, he personally wrote his investigation report. He began writing it in the afternoon of May 30, 2006 and finished it on June 1, 2006.[67] He then gave his report to the Office of the Chief of Personnel.[68]

As petitioners largely rely on Jimenez's Investigation Report dated June 1, 2006 for their evidence, the report is herein substantially quoted:

III. BACKGROUND OF THE CASE

- This pertains to the abduction of RAYMOND MANALO and REYNALDO MANALO who were forcibly taken from their respective homes in Brgy. Buhol na Mangga, San Ildefonso, Bulacan on 14 February 2006 by unidentified armed men and thereafter were forcibly disappeared. After the said incident, relatives of the victims filed a case for Abduction in the civil court against the herein suspects: Michael dela Cruz, Madning dela Cruz, Puti Dela Cruz, Pula Dela Cruz, Randy Mendoza and Rudy Mendoza as alleged members of the Citizen Armed Forces Geographical Unit (CAFGU).

a) Sworn statement of CAA Maximo F. dela Cruz, aka Pula dated 29 May 2006 in (Exhibit "B") states that he was at Sitio Mozon, Brgy. Bohol na Mangga, San Ildefonso, Bulacan doing the concrete building of a church located nearby his residence, together with some neighbor thereat. He claims that on 15 February 2006, he was being informed by Brgy. Kagawad Pablo Umayan about the abduction of the brothers Raymond and Reynaldo

Manalo. As to the allegation that he was one of the suspects, he claims that they only implicated him because he was a CAFGU and that they claimed that those who abducted the Manalo brothers are members of the Military and CAFGU. Subject vehemently denied any participation or involvement on the abduction of said victims.

b) Sworn statement of CAA Roman dela Cruz y Faustino Aka Puti dtd 29 May 2006 in (Exhibit "C") states that he is a resident of Sitio Muzon, Brgy. Buhol na Mangga, San Ildefonso, Bulacan and a CAA member based at Biak na Bato Detachment, San Miguel, Bulacan. He claims that Raymond and Reynaldo Manalo being his neighbors are active members/sympathizers of the CPP/NPA and he also knows their elder Rolando Manalo @ KA BESTRE of being an NPA Leader operating in their province. That at the time of the alleged abduction of the two (2) brothers and for accusing him to be one of the suspects, he claims that on February 14, 2006, he was one of those working at the concrete chapel being constructed nearby his residence. He claims further that he just came only to know about the incident on other day (15 Feb 06) when he was being informed by Kagawad Pablo Kunanan. That subject CAA vehemently denied any participation about the incident and claimed that they only implicated him because he is a member of the CAFGU.

c) Sworn Statement of CAA Randy Mendoza y Lingas dated 29 May 2006 in (Exhibit "O") states that he is a resident of Brgy. Buhol na Mangga, San Ildefonso, Bulacan and a member of CAFGU based at Biak na Bato Detachment. That being a neighbor, he was very much aware about the background of the two (2) brothers Raymond and Reynaldo as active supporters of the CPP NPA in their Brgy. and he also knew their elder brother "KUMANDER BESTRE" TN: Rolando Manalo. Being one of the accused, he claims that on 14 February 2006, he was at Brgy. Magmarate, San Miguel, Bulacan in the house of his aunt and he learned only about the incident when he arrived home in their place. He claims further that the only reason why they implicated him was due to the fact that his mother has filed a criminal charge against their brother Rolando Manalo @ KA BESTRE who is an NPA Commander who killed his father and for that reason they implicated him in support of their brother. Subject CAA vehemently denied any involvement on the abduction of said Manalo brothers.

d) Sworn Statement of Rudy Mendoza y Lingasa dated May 29, 2006 in (Exhibit "E") states that he is a resident of Brgy. Marungko, Angat, Bulacan. He claims that Raymond and Reynaldo Manalo are familiar to him being his barriomate when he was still unmarried and he knew them since childhood. Being one of the accused, he claims that on 14 February 2006, he was at his residence in Brgy. Marungko, Angat, Bulacan. He claims that he was being informed only about the incident lately and he was not aware of any reason why the two (2) brothers were being abducted by alleged members of the military and CAFGU. The only reason he knows why they implicated him was because there are those people who are angry with their family particularly victims of summary execution (killing) done by their brother @ KA Bestre Rolando Manalo who is an NPA leader. He claims further that it was their brother @ KA BESTRE who killed his father and he was living witness to that incident. Subject civilian vehemently denied any involvement on the abduction of the Manalo brothers.

e) Sworn statement of Ex-CAA Marcelo dala Cruz dated 29 May 2006 in (Exhibit "F") states that he is a resident of Sitio Muzon, Brgy. Buhol na Mangga, San Ildefonso, Bulacan, a farmer and a former CAA based at Biak na Bato, San Miguel, Bulacan. He claims that Raymond and Reynaldo Manalo are familiar to him being their barrio mate. He claims further that they are active supporters of CPP/NPA and that their brother Rolando Manalo @ KA BESTRE is an NPA leader. Being one of the accused, he claims that on 14 February 2006, he was in his residence at Sitio Muzon, Brgy. Buhol na Mangga, San Ildefonso, Bulacan. That he vehemently denied any participation of the alleged abduction of the two (2) brothers and learned only about the incident when rumors reached him by his barrio mates. He claims that his implication is merely fabricated because of his relationship to Roman and Maximo who are his brothers.

f) Sworn statement of Michael dela Cruz y Faustino dated 29 May 2006 in (Exhibit "G") states that he is a resident of Sitio Muzon, Brgy. Buhol na Mangga, San Ildefonso, Bulacan, the Chief of Brgy. Tanod and a

CAFGU member based at Biak na Bato Detachment, San Miguel, Bulacan. He claims that he knew very well the brothers Raymond and Reynaldo Manalo in their barangay for having been the Tanod Chief for twenty (20) years. He alleged further that they are active supporters or sympathizers of the CPP/NPA and whose elder brother Rolando Manalo @ KA BESTRE is an NPA leader operating within the area. Being one of the accused, he claims that on 14 Feb 2006 he was helping in the construction of their concrete chapel in their place and he learned only about the incident which is the abduction of Raymond and Reynaldo Manalo when one of the Brgy. Kagawad in the person of Pablo Cunanan informed him about the matter. He claims further that he is truly innocent of the allegation against him as being one of the abductors and he considers everything fabricated in order to destroy his name that remains loyal to his service to the government as a CAA member.

IV. DISCUSSION

- Based on the foregoing statements of respondents in this particular case, the proof of linking them to the alleged abduction and disappearance of Raymond and Reynaldo Manalo that transpired on 14 February 2006 at Sitio Muzon, Brgy. Buhol na Mangga, San Ildefonso, Bulacan, is unsubstantiated. Their alleged involvement theretofore to that incident is considered doubtful, hence, no basis to indict them as charged in this investigation.

Though there are previous grudges between each families (sic) in the past to quote: the killing of the father of Randy and Rudy Mendoza by @ KA BESTRE TN: Rolando Manalo, this will not suffice to establish a fact that they were the ones who did the abduction as a form of revenge. As it was also stated in the testimony of other accused claiming that the Manalos are active sympathizers/supporters of the CPP/NPA, this would not also mean, however, that in the first place, they were in connivance with the abductors. Being their neighbors and as members of CAFGU's, they ought to be vigilant in protecting their village from any intervention by the leftist group, hence inside their village, they were fully aware of the activities of Raymond and Reynaldo Manalo in so far as their connection with the CPP/NPA is concerned.

V. CONCLUSION

- Premises considered surrounding this case shows that the alleged charges of abduction committed by the above named respondents has not been established in this investigation. Hence, it lacks merit to indict them for any administrative punishment and/or criminal liability. It is therefore concluded that they are innocent of the charge.

VI. RECOMMENDATIONS

- That CAAs Michael F. dela Cruz, Maximo F. Dela Cruz, Roman dela Cruz, Randy Mendoza, and two (2) civilians Maximo F. Dela Cruz and Rudy L. Mendoza be exonerated from the case.

- Upon approval, this case can be dropped and closed.[69]

In this appeal under Rule 45, petitioners question the appellate court's assessment of the foregoing evidence and assail the December 26, 2007 Decision on the following grounds, viz:

I.

THE COURT OF APPEALS SERIOUSLY AND GRIEVOUSLY ERRED IN BELIEVING AND GIVING FULL FAITH AND CREDIT TO THE INCREDIBLE, UNCORROBORATED, CONTRADICTED, AND OBVIOUSLY SCRIPTED, REHEARSED AND SELF-SERVING AFFIDAVIT/TESTIMONY OF HEREIN RESPONDENT RAYMOND MANALO.

II.

THE COURT OF APPEALS SERIOUSLY AND GRIEVOUSLY ERRED IN REQUIRING RESPONDENTS (HEREIN PETITIONERS) TO: (A) FURNISH TO THE MANALO BROTHER(S) AND TO THE COURT

OF APPEALS ALL OFFICIAL AND UNOFFICIAL REPORTS OF THE INVESTIGATION UNDERTAKEN IN CONNECTION WITH THEIR CASE, EXCEPT THOSE ALREADY IN FILE WITH THE COURT; (B) CONFIRM IN WRITING THE PRESENT PLACES OF OFFICIAL ASSIGNMENT OF M/SGT. HILARIO aka ROLLIE CASTILLO AND DONALD CAIGAS; AND (C) CAUSE TO BE PRODUCED TO THE COURT OF APPEALS ALL MEDICAL REPORTS, RECORDS AND CHARTS, AND REPORTS OF ANY TREATMENT GIVEN OR RECOMMENDED AND MEDICINES PRESCRIBED, IF ANY, TO THE MANALO BROTHERS, TO INCLUDE A LIST OF MEDICAL PERSONNEL (MILITARY AND CIVILIAN) WHO ATTENDED TO THEM FROM FEBRUARY 14, 2006 UNTIL AUGUST 12, 2007.[70]

The case at bar is the first decision on the application of the Rule on the Writ of Amparo (Amparo Rule). Let us hearken to its beginning.

The adoption of the Amparo Rule surfaced as a recurring proposition in the recommendations that resulted from a two-day National Consultative Summit on Extrajudicial Killings and Enforced Disappearances sponsored by the Court on July 16-17, 2007. The Summit was "envisioned to provide a broad and fact-based perspective on the issue of extrajudicial killings and enforced disappearances,"[71] hence "representatives from all sides of the political and social spectrum, as well as all the stakeholders in the justice system"[72] participated in mapping out ways to resolve the crisis.

On October 24, 2007, the Court promulgated the Amparo Rule "in light of the prevalence of extralegal killing and enforced disappearances." [73] It was an exercise for the first time of the Court's expanded power to promulgate rules to protect our people's constitutional rights, which made its maiden appearance in the 1987 Constitution in response to the Filipino experience of the martial law regime.[74] As the Amparo Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are "killings committed without due process of law, i.e., without legal safeguards or judicial proceedings." [75] 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." [76]

The writ of amparo originated in Mexico. "Amparo" literally means "protection" in Spanish.[77] In 1837, de Tocqueville's *Democracy in America* became available in Mexico and stirred great interest. Its description of the practice of judicial review in the U.S. appealed to many Mexican jurists.[78] One of them, Manuel Crescencio Rejón, drafted a constitutional provision for his native state, Yucatan,[79] which granted judges the power to protect all persons in the enjoyment of their constitutional and legal rights. This idea was incorporated into the national constitution in 1847, viz:

The federal courts shall protect any inhabitant of the Republic in the exercise and preservation of those rights granted to him by this Constitution and by laws enacted pursuant hereto, against attacks by the Legislative and Executive powers of the federal or state governments, limiting themselves to granting protection in the specific case in litigation, making no general declaration concerning the statute or regulation that motivated the violation.[80]

Since then, the protection has been an important part of Mexican constitutionalism.[81] If, after hearing, the judge determines that a constitutional right of the petitioner is being violated, he orders the official, or the official's superiors, to cease the violation and to take the necessary measures to restore the petitioner to the full enjoyment of the right in question. Amparo thus combines the principles of judicial review derived from the U.S. with the limitations on judicial power characteristic of the civil law tradition which prevails in Mexico. It enables courts to

enforce the constitution by protecting individual rights in particular cases, but prevents them from using this power to make law for the entire nation.[82]

The writ of amparo then spread throughout the Western Hemisphere, gradually evolving into various forms, in response to the particular needs of each country.[83] It became, in the words of a justice of the Mexican Federal Supreme Court, one piece of Mexico's self-attributed "task of conveying to the world's legal heritage that institution which, as a shield of human dignity, her own painful history conceived." [84] What began as a protection against acts or omissions of public authorities in violation of constitutional rights later evolved for several purposes: (1) amparo libertad for the protection of personal freedom, equivalent to the habeas corpus writ; (2) amparo contra leyes for the judicial review of the constitutionality of statutes; (3) amparo casacion for the judicial review of the constitutionality and legality of a judicial decision; (4) amparo administrativo for the judicial review of administrative actions; and (5) amparo agrario for the protection of peasants' rights derived from the agrarian reform process.[85]

In Latin American countries, except Cuba, the writ of amparo has been constitutionally adopted to protect against human rights abuses especially committed in countries under military juntas. In general, these countries adopted an all-encompassing writ to protect the whole gamut of constitutional rights, including socio-economic rights.[86] Other countries like Colombia, Chile, Germany and Spain, however, have chosen to limit the protection of the writ of amparo only to some constitutional guarantees or fundamental rights.[87]

In the Philippines, while the 1987 Constitution does not explicitly provide for the writ of amparo, several of the above amparo protections are guaranteed by our charter. The second paragraph of Article VIII, Section 1 of the 1987 Constitution, the Grave Abuse Clause, provides for the judicial power "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 Clause accords a similar general protection to human rights extended by the amparo contra leyes, amparo casacion, and amparo administrativo. Amparo libertad is comparable to the remedy of habeas corpus found in several provisions of the 1987 Constitution.[88] The Clause is an offspring of the U.S. common law tradition of judicial review, which finds its roots in the 1803 case of *Marbury v. Madison*. [89]

While constitutional rights can be protected under the Grave Abuse Clause through remedies of injunction or prohibition under Rule 65 of the Rules of Court and a petition for habeas corpus under Rule 102,[90] these remedies may not be adequate to address the pestering problem of extralegal killings and enforced disappearances. However, with the swiftness required to resolve a petition for a writ of amparo through summary proceedings and the availability of appropriate interim and permanent reliefs under the Amparo Rule, this hybrid writ of the common law and civil law traditions - borne out of the Latin American and Philippine experience of human rights abuses - offers a better remedy to extralegal killings and enforced disappearances and threats thereof. The remedy provides rapid judicial relief as it partakes of a summary proceeding that requires only substantial evidence to make the appropriate reliefs available to the petitioner; it is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or administrative responsibility requiring substantial evidence that will require full and exhaustive proceedings.[91]

The writ of amparo serves both preventive and curative roles in addressing the problem of extralegal killings and enforced disappearances. It is preventive in that it breaks the expectation of impunity in the commission of these offenses; it is curative in that it facilitates the subsequent punishment of perpetrators as it will inevitably yield leads to subsequent investigation and action. In the long run, the goal of both the preventive and curative roles is to deter the further commission of extralegal killings and enforced disappearances.

In the case at bar, respondents initially filed an action for "Prohibition, Injunction, and Temporary Restraining Order"[92] to stop petitioners and/or their officers and agents from depriving the respondents of their right to liberty and other basic rights on August 23, 2007,[93] prior to the promulgation of the Amparo Rule. They also sought 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 Constitution and Rule 135, Section 6 of the Rules of Court. When the Amparo Rule came into effect on October 24, 2007, they moved to have their petition treated as an amparo petition as it would be more effective and suitable to the circumstances of the Manalo brothers' enforced disappearance. The Court granted their motion.

With this backdrop, we now come to the arguments of the petitioner. Petitioners' first argument in disputing the Decision of the Court of Appeals states, viz:

The Court of Appeals seriously and grievously erred in believing and giving full faith and credit to the incredible uncorroborated, contradicted, and obviously scripted, rehearsed and self-serving affidavit/testimony of herein respondent Raymond Manalo.[94]

In delving into the veracity of the evidence, we need to mine and refine the ore of petitioners' cause of action, to determine whether the evidence presented is metal-strong to satisfy the degree of proof required.

Section 1 of the Rule on the Writ of Amparo provides for the following causes of action, viz:

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. (emphasis supplied)

Sections 17 and 18, on the other hand, provide for the degree of proof required, viz:

Sec. 17. Burden of Proof and Standard of Diligence Required. - The parties shall establish their claims by substantial evidence.

xxx xxx xxx

Sec. 18. Judgment. - ... 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. (emphases supplied)

Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[95]

After careful perusal of the evidence presented, we affirm the findings of the Court of Appeals that respondents were abducted from their houses in Sito Muzon, Brgy. Buhol na Mangga, San Ildefonso, Bulacan on February 14, 2006 and were continuously detained until they escaped on August 13, 2007. The abduction, detention, torture, and escape of the respondents were narrated by respondent Raymond Manalo in a clear and convincing manner. His account is dotted with countless candid details of respondents' harrowing experience and tenacious will to escape, captured through his different senses and etched in his memory. A few examples are the following: "Sumilip ako sa isang haligi ng kamalig at nakita kong sinisilaban si Manuel." [96] "(N)ilakasan ng mga sundalo ang tunog na galing sa istiryo ng sasakyan. Di nagtagal, narinig ko ang hiyaw o ungol ni Manuel." [97] "May naiwang mga bakas ng dugo habang hinihila nila ang mga bangkay. Naamoy ko iyon nang nililinis ang bakas." [98] "Tumigil ako sa may palaisdaan kung saan ginamit ko ang bato para tanggalin ang mga kadena." [99] "Tinanong ko sa isang kapit-bahay kung paano ako makakakuha ng cell phone; sabi ko gusto kong i-text ang

isang babae na nakatira sa malapit na lugar."[100]

We affirm the factual findings of the appellate court, largely based on respondent Raymond Manalo's affidavit and testimony, viz:

...the abduction was perpetrated by armed men who were sufficiently identified by the petitioners (herein respondents) to be military personnel and CAGU auxiliaries. Raymond recalled that the six armed men who barged into his house through the rear door were military men based on their attire of fatigue pants and army boots, and the CAGU auxiliaries, namely: Michael de la Cruz, Madning de la Cruz, Puti de la Cruz and Pula de la Cruz, all members of the CAGU and residents of Muzon, San Ildefonso, Bulacan, and the brothers Randy Mendoza and Rudy Mendoza, also CAGU members, served as lookouts during the abduction. Raymond was sure that three of the six military men were Ganata, who headed the abducting team, Hilario, who drove the van, and George. Subsequent incidents of their long captivity, as narrated by the petitioners, validated their assertion of the participation of the elements of the 7[th] Infantry Division, Philippine Army, and their CAGU 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, considering that the abductors were looking for Ka Bestre, who turned out to be Rolando, the brother of petitioners.

The efforts exerted by the Military Command to look into the abduction were, at best, merely superficial. The investigation of the Provost Marshall of the 7[th] Infantry Division focused on the one-sided version of the CAGU auxiliaries involved. This one-sidedness might be due to the fact that the Provost Marshall could delve only into the participation of military personnel, but even then the Provost Marshall should have refrained from outrightly exculpating the CAGU auxiliaries he perfunctorily investigated...

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. In fact, he or any other officer tendered no controversion to the firm claim of Raymond that he (Gen. Palparan) met them in person in a safehouse in Bulacan and told them what he wanted them and their parents to do or not to be doing. Gen. Palparan's direct and personal role in the abduction might not have been shown but 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 and without probable cause.

In the habeas proceedings, the Court, through the Former Special Sixth Division (Justices Buzon, chairman; Santiago-Lagman, Sr., member; and Romilla-Lontok, Jr., member/ponente.) found no clear and convincing evidence to establish that M/Sgt. Rizal Hilario had anything to do with the abduction or the detention. Hilario's involvement could not, indeed, be then established after Evangeline Francisco, who allegedly saw Hilario drive the van in which the petitioners were boarded and ferried following the abduction, did not testify. (See the decision of the habeas proceedings at rollo, p. 52)

However, in this case, Raymond attested that Hilario drove the white L-300 van in which the petitioners were brought away from their houses on February 14, 2006. Raymond also attested that Hilario participated in subsequent incidents during the captivity of the petitioners, one of which was when Hilario fetched them from Fort Magsaysay on board a Revo and conveyed them to a detachment in Pinaud, San Ildefonso, Bulacan where they were detained for at least a week in a house of strong materials (Exhibit D, rollo, p. 205) and then Hilario (along with Efren) brought them to Sapang, San Miguel, Bulacan on board the Revo, to an unfinished house inside the compound of Kapitan where they were kept for more or less three months. (Exhibit D, rollo, p. 205) It was there where the petitioners came face to face with Gen. Palparan. Hilario and Efren also brought the petitioners one early morning to the house of the petitioners' parents, where only Raymond was presented to the parents to relay the message from Gen. Palparan not to join anymore rallies. On that occasion, Hilario

warned the parents that they would not again see their sons should they join any rallies to denounce human rights violations. (Exhibit D, rollo, pp. 205-206) Hilario was also among four Master Sergeants (the others being Arman, Ganata and Cabalse) with whom Gen. Palparan conversed on the occasion when Gen. Palparan required Raymond to take the medicines for his health. (Exhibit D, rollo, p. 206) There were other occasions when the petitioners saw that Hilario had a direct hand in their torture.

It is clear, therefore, that the participation of Hilario in the abduction and forced disappearance of the petitioners was established. The participation of other military personnel like Arman, Ganata, Cabalse and Caigas, among others, was similarly established.

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As to the CAFGU auxiliaries, the habeas Court found them personally involved in the abduction. We also do, for, indeed, the evidence of their participation is overwhelming.[101]

We reject the claim of petitioners that respondent Raymond Manalo's statements were not corroborated by other independent and credible pieces of evidence.[102] Raymond's affidavit and testimony were corroborated by the affidavit of respondent Reynaldo Manalo. The testimony and medical reports prepared by forensic specialist Dr. Molino, and the pictures of the scars left by the physical injuries inflicted on respondents,[103] also corroborate respondents' accounts of the torture they endured while in detention. Respondent Raymond Manalo's familiarity with the facilities in Fort Magsaysay such as the "DTU," as shown in his testimony and confirmed by Lt. Col. Jimenez to be the "Division Training Unit,"[104] firms up respondents' story that they were detained for some time in said military facility.

In *Ortiz v. Guatemala*,[105] a case decided by the Inter-American Commission on Human Rights, the Commission considered similar evidence, among others, in finding that complainant Sister Diana Ortiz was abducted and tortured by agents of the Guatemalan government. In this case, Sister Ortiz was kidnapped and tortured in early November 1989. The Commission's findings of fact were mostly based on the consistent and credible statements, written and oral, made by Sister Ortiz regarding her ordeal.[106] These statements were supported by her recognition of portions of the route they took when she was being driven out of the military installation where she was detained.[107] She was also examined by a medical doctor whose findings showed that the 111 circular second degree burns on her back and abrasions on her cheek coincided with her account of cigarette burning and torture she suffered while in detention.[108]

With the secret nature of an enforced disappearance and the torture perpetrated on the victim during detention, it logically holds that much of the information and evidence of the ordeal will come from the victims themselves, and the veracity of their account will depend on their credibility and candidness in their written and/or oral statements. Their statements can be corroborated by other evidence such as physical evidence left by the torture they suffered or landmarks they can identify in the places where they were detained. Where powerful military officers are implicated, the hesitation of witnesses to surface and testify against them comes as no surprise.

We now come to the right of the respondents to the privilege of the writ of amparo. There is no quarrel that the enforced disappearance of both respondents Raymond and Reynaldo Manalo has now passed as they have escaped from captivity and surfaced. But while respondents admit that they are no longer in detention and are physically free, they assert that they are not "free in every sense of the word"[109] as their "movements continue to be restricted for fear that people they have named in their Judicial Affidavits and testified against (in the case of Raymond) are still at large and have not been held accountable in any way. These people are directly connected to the Armed Forces of the Philippines and are, thus, in a position to threaten respondents' rights to life, liberty and security." [110] (emphasis supplied) Respondents claim that they are under threat of being once again abducted, kept captive or even killed, which constitute a direct violation of their right to security of person.[111]

Elaborating on the "right to security, in general," respondents point out that this right is "often associated with liberty;" it is also seen as an "expansion of rights based on the prohibition against torture and cruel and unusual punishment." Conceding that there is no right to security expressly mentioned in Article III of the 1987 Constitution, they submit that their rights "to be kept free from torture and from incommunicado detention and solitary detention places[112] fall under the general coverage of the right to security of person under the writ of Amparo." They submit that the Court ought to give an expansive recognition of the right to security of person in view of the State Policy under Article II of the 1987 Constitution which enunciates that, "The State values the dignity of every human person and guarantees full respect for human rights." Finally, to justify a liberal interpretation of the right to security of person, respondents cite the teaching in *Moncupa v. Enrile*[113] that "the right to liberty may be made more meaningful only if there is no undue restraint by the State on the exercise of that liberty"[114] such as a requirement to "report under unreasonable restrictions that amounted to a deprivation of liberty"[115] or being put under "monitoring and surveillance." [116]

In sum, respondents assert that their cause of action consists in the threat to their right to life and liberty, and a violation of their right to security.

Let us put this right to security under the lens to determine if it has indeed been violated as respondents assert. The right to security or the right to security of person finds a textual hook in Article III, Section 2 of the 1987 Constitution which provides, viz:

Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge...

At the core of this guarantee is the immunity of one's person, including the extensions of his/her person - houses, papers, and effects - against government intrusion. Section 2 not only limits the state's power over a person's home and possessions, but more importantly, protects the privacy and sanctity of the person himself.[117] The purpose of this provision was enunciated by the Court in *People v. CFI of Rizal, Branch IX, Quezon City*, viz: [118]

The purpose of the constitutional guarantee against unreasonable searches and seizures is to prevent violations of private security in person and property and unlawful invasion of the security of the home by officers of the law acting under legislative or judicial sanction and to give remedy against such usurpation when attempted. (*Adams v. New York*, 192 U.S. 858; *Alvero v. Dizon*, 76 Phil. 637 [1946]). The right to privacy is an essential condition to the dignity and happiness and to the peace and security of every individual, whether it be of home or of persons and correspondence. (*Tañada and Carreon*, *Political Law of the Philippines*, Vol. 2, 139 [1962]). The constitutional inviolability of this great fundamental right against unreasonable searches and seizures must be deemed absolute as nothing is closer to a man's soul than the serenity of his privacy and the assurance of his personal security. Any interference allowable can only be for the best causes and reasons.[119] (emphases supplied)

While the right to life under Article III, Section 1[120] guarantees essentially the right to be alive[121] - upon which the enjoyment of all other rights is preconditioned - the right to security of person is a guarantee of the secure quality of this life, viz: "The life to which each person has a right is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler. Rather, it is a life lived with the assurance that the government he established and consented to, will protect the security of his person and property. The ideal of security in life and property... pervades the whole history of man. It touches every aspect of man's existence." [122] In a broad sense, the right to security of person "emanates in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. It includes the right to exist, and the right

to enjoyment of life while existing, and it is invaded not only by a deprivation of life but also of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual." [123]

A closer look at the right to security of person would yield various permutations of the exercise of this right.

First, the right to security of person is "freedom from fear." In its "whereas" clauses, the Universal Declaration of Human Rights (UDHR) enunciates that "a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people." (emphasis supplied) Some scholars postulate that "freedom from fear" is not only an aspirational principle, but essentially an individual international human right. [124] It is the "right to security of person" as the word "security" itself means "freedom from fear." [125] Article 3 of the UDHR provides, viz:

Everyone has the right to life, liberty and security of person. [126] (emphasis supplied)

In furtherance of this right declared in the UDHR, Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) also provides for the right to security of person, viz:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. (emphasis supplied)

The Philippines is a signatory to both the UDHR and the ICCPR.

In the context of Section 1 of the Amparo Rule, "freedom from fear" is the right and any threat to the rights to life, liberty or security is the actionable wrong. Fear is a state of mind, a reaction; threat is a stimulus, a cause of action. Fear caused by the same stimulus can range from being baseless to well-founded as people react differently. The degree of fear can vary from one person to another with the variation of the prolificacy of their imagination, strength of character or past experience with the stimulus. Thus, in the amparo context, it is more correct to say that the "right to security" is actually the "freedom from threat." Viewed in this light, the "threatened with violation" Clause in the latter part of Section 1 of the Amparo Rule is a form of violation of the right to security mentioned in the earlier part of the provision. [127]

Second, the right to security of person is a guarantee of bodily and psychological integrity or security. Article III, Section II of the 1987 Constitution guarantees that, as a general rule, one's body cannot be searched or invaded without a search warrant. [128] Physical injuries inflicted in the context of extralegal killings and enforced disappearances constitute more than a search or invasion of the body. It may constitute dismemberment, physical disabilities, and painful physical intrusion. As the degree of physical injury increases, the danger to life itself escalates. Notably, in criminal law, physical injuries constitute a crime against persons because they are an affront to the bodily integrity or security of a person. [129]

Physical torture, force, and violence are a severe invasion of bodily integrity. When employed to vitiate the free will such as to force the victim to admit, reveal or fabricate incriminating information, it constitutes an invasion of both bodily and psychological integrity as the dignity of the human person includes the exercise of free will. Article III, Section 12 of the 1987 Constitution more specifically proscribes bodily and psychological invasion, viz:

(2) No torture, force, violence, threat or intimidation, or any other means which vitiate the free will shall be used against him (any person under investigation for the commission of an offense). Secret detention places, solitary, incommunicado or other similar forms of detention are prohibited.

Parenthetically, under this provision, threat and intimidation that vitiate the free will - although not involving invasion of bodily integrity - nevertheless constitute a violation of the right to security in the sense of "freedom from threat" as afore-discussed.

Article III, Section 12 guarantees freedom from dehumanizing abuses of persons under investigation for the commission of an offense. Victims of enforced disappearances who are not even under such investigation should all the more be protected from these degradations.

An overture to an interpretation of the right to security of person as a right against torture was made by the European Court of Human Rights (ECHR) in the recent case of *Popov v. Russia*.^[130] In this case, the claimant, who was lawfully detained, alleged that the state authorities had physically abused him in prison, thereby violating his right to security of person. Article 5(1) of the European Convention on Human Rights provides, viz: "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law ..." (emphases supplied) Article 3, on the other hand, provides that "(n)o one shall be subjected to torture or to inhuman or degrading treatment or punishment." Although the application failed on the facts as the alleged ill-treatment was found baseless, the ECHR relied heavily on the concept of security in holding, viz:

...the applicant did not bring his allegations to the attention of domestic authorities at the time when they could reasonably have been expected to take measures in order to ensure his security and to investigate the circumstances in question.

xxx xxx xxx

... the authorities failed to ensure his security in custody or to comply with the procedural obligation under Art.3 to conduct an effective investigation into his allegations.^[131] (emphasis supplied)

The U.N. Committee on the Elimination of Discrimination against Women has also made a statement that the protection of the bodily integrity of women may also be related to the right to security and liberty, viz:

...gender-based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under specific human rights conventions is discrimination within the meaning of article 1 of the Convention (on the Elimination of All Forms of Discrimination Against Women). These rights and freedoms include . . . the right to liberty and security of person.^[132]

Third, the right to security of person is a guarantee of protection of one's rights by the government. In the context of the writ of amparo, this right is built into the guarantees of the right to life and liberty under Article III, Section 1 of the 1987 Constitution and the right to security of person (as freedom from threat and guarantee of bodily and psychological integrity) under Article III, Section 2. The right to security of person in this third sense is a corollary of the policy that the State "guarantees full respect for human rights" under Article II, Section 11 of the 1987 Constitution.^[133] As the government is the chief guarantor of order and security, the Constitutional guarantee of the rights to life, liberty and security of person is rendered ineffective if government does not afford protection to these rights especially when they are under threat. Protection includes conducting effective investigations, organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats thereof) and/or their families, and bringing offenders to the bar of justice. The Inter-American Court of Human Rights stressed the importance of investigation in the *Velasquez Rodriguez Case*,^[134] viz:

(The duty to investigate) must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of

proof, without an effective search for the truth by the government.[135]

This third sense of the right to security of person as a guarantee of government protection has been interpreted by the United Nations' Human Rights Committee[136] in not a few cases involving Article 9[137] of the ICCPR. While the right to security of person appears in conjunction with the right to liberty under Article 9, the Committee has ruled that the right to security of person can exist independently of the right to liberty. In other words, there need not necessarily be a deprivation of liberty for the right to security of person to be invoked. In *Delgado Paez v. Colombia*,[138] a case involving death threats to a religion teacher at a secondary school in Leticia, Colombia, whose social views differed from those of the Apostolic Prefect of Leticia, the Committee held, viz:

The first sentence of article 9 does not stand as a separate paragraph. Its location as a part of paragraph one could lead to the view that the right to security arises only in the context of arrest and detention. The travaux préparatoires indicate that the discussions of the first sentence did indeed focus on matters dealt with in the other provisions of article 9. The Universal Declaration of Human Rights, in article 3, refers to the right to life, the right to liberty and the right to security of the person. These elements have been dealt with in separate clauses in the Covenant. Although in the Covenant the only reference to the right of security of person is to be found in article 9, there is no evidence that it was intended to narrow the concept of the right to security only to situations of formal deprivation of liberty. At the same time, States parties have undertaken to guarantee the rights enshrined in the Covenant. It cannot be the case that, as a matter of law, States can ignore known threats to the life of persons under their jurisdiction, just because that he or she is not arrested or otherwise detained. States parties are under an obligation to take reasonable and appropriate measures to protect them. An interpretation of article 9 which would allow a State party to ignore threats to the personal security of non-detained persons within its jurisdiction would render totally ineffective the guarantees of the Covenant.[139] (emphasis supplied)

The Paez ruling was reiterated in *Bwalya v. Zambia*,[140] which involved a political activist and prisoner of conscience who continued to be intimidated, harassed, and restricted in his movements following his release from detention. In a catena of cases, the ruling of the Committee was of a similar import: *Bahamonde v. Equatorial Guinea*,[141] involving discrimination, intimidation and persecution of opponents of the ruling party in that state; *Tshishimbi v. Zaire*,[142] involving the abduction of the complainant's husband who was a supporter of democratic reform in Zaire; *Dias v. Angola*, [143] involving the murder of the complainant's partner and the harassment he (complainant) suffered because of his investigation of the murder; and *Chongwe v. Zambia*,[144] involving an assassination attempt on the chairman of an opposition alliance.

Similarly, the European Court of Human Rights (ECHR) has interpreted the "right to security" not only as prohibiting the State from arbitrarily depriving liberty, but imposing a positive duty on the State to afford protection of the right to liberty.[145] The ECHR interpreted the "right to security of person" under Article 5(1) of the European Convention of Human Rights in the leading case on disappearance of persons, *Kurt v. Turkey*. [146] In this case, the claimant's son had been arrested by state authorities and had not been seen since. The family's requests for information and investigation regarding his whereabouts proved futile. The claimant suggested that this was a violation of her son's right to security of person. The ECHR ruled, viz:

... any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness... Having assumed control over that individual it is incumbent on the authorities to account for his or her whereabouts. For this reason, Article 5 must be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt effective investigation into an arguable claim that a person has been taken into custody and has not been seen since.[147] (emphasis supplied)

Applying the foregoing concept of the right to security of person to the case at bar, we now determine whether there is a continuing violation of respondents' right to security.

First, the violation of the right to security as freedom from threat to respondents' life, liberty and security.

While respondents were detained, they were threatened that if they escaped, their families, including them, would be killed. In Raymond's narration, he was tortured and poured with gasoline after he was caught the first time he attempted to escape from Fort Magsaysay. A call from a certain "Mam," who wanted to see him before he was killed, spared him.

This time, respondents have finally escaped. The condition of the threat to be killed has come to pass. It should be stressed that they are now free from captivity not because they were released by virtue of a lawful order or voluntarily freed by their abductors. It ought to be recalled that towards the end of their ordeal, sometime in June 2007 when respondents were detained in a camp in Limay, Bataan, respondents' captors even told them that they were still deciding whether they should be executed. Respondent Raymond Manalo attested in his affidavit, viz:

Kinaumagahan, naka-kadena pa kami. Tinanggal ang mga kadena mga 3 o 4 na araw pagkalipas. Sinabi sa amin na kaya kami nakakadena ay dahil pinagdedesisyunan pa ng mga sundalo kung papatayin kami o hindi.[148]

The possibility of respondents being executed stared them in the eye while they were in detention. With their escape, this continuing threat to their life is apparent, moreso now that they have surfaced and implicated specific officers in the military not only in their own abduction and torture, but also in those of other persons known to have disappeared such as Sherlyn Cadapan, Karen Empeño, and Manuel Merino, among others.

Understandably, since their escape, respondents have been under concealment and protection by private citizens because of the threat to their life, liberty and security. The threat vitiates their free will as they are forced to limit their movements or activities.[149] Precisely because respondents are being shielded from the perpetrators of their abduction, they cannot be expected to show evidence of overt acts of threat such as face-to-face intimidation or written threats to their life, liberty and security. Nonetheless, the circumstances of respondents' abduction, detention, torture and escape reasonably support a conclusion that there is an apparent threat that they will again be abducted, tortured, and this time, even executed. These constitute threats to their liberty, security, and life, actionable through a petition for a writ of amparo.

Next, the violation of the right to security as protection by the government. Apart from the failure of military elements to provide protection to respondents by themselves perpetrating the abduction, detention, and torture, they also miserably failed in conducting an effective investigation of respondents' abduction as revealed by the testimony and investigation report of petitioners' own witness, Lt. Col. Ruben Jimenez, Provost Marshall of the 7[th] Infantry Division.

The one-day investigation conducted by Jimenez was very limited, superficial, and one-sided. He merely relied on the Sworn Statements of the six implicated members of the CAFGU and civilians whom he met in the investigation for the first time. He was present at the investigation when his subordinate Lingad was taking the sworn statements, but he did not propound a single question to ascertain the veracity of their statements or their credibility. He did not call for other witnesses to test the alibis given by the six implicated persons nor for the family or neighbors of the respondents.

In his affidavit, petitioner Secretary of National Defense attested that in a Memorandum Directive dated October 31, 2007, he issued a policy directive addressed to the AFP Chief of Staff, that the AFP should adopt rules of action in the event the writ of amparo is issued by a competent court against any members of the AFP, which

should essentially include verification of the identity of the aggrieved party; recovery and preservation of relevant evidence; identification of witnesses and securing statements from them; determination of the cause, manner, location and time of death or disappearance; identification and apprehension of the person or persons involved in the death or disappearance; and bringing of the suspected offenders before a competent court.[150] Petitioner AFP Chief of Staff also submitted his own affidavit attesting that he received the above directive of respondent Secretary of National Defense and that acting on this directive, he immediately caused to be issued a directive to the units of the AFP for the purpose of establishing the circumstances of the alleged disappearance and the recent reappearance of the respondents, and undertook to provide results of the investigations to respondents.[151] To this day, however, almost a year after the policy directive was issued by petitioner Secretary of National Defense on October 31, 2007, respondents have not been furnished the results of the investigation which they now seek through the instant petition for a writ of amparo.

Under these circumstances, there is substantial evidence to warrant the conclusion that there is a violation of respondents' right to security as a guarantee of protection by the government.

In sum, we conclude that respondents' right to security as "freedom from threat" is violated by the apparent threat to their life, liberty and security of person. Their right to security as a guarantee of protection by the government is likewise violated by the ineffective investigation and protection on the part of the military.

Finally, we come to the reliefs granted by the Court of Appeals, which petitioners question.

First, that petitioners furnish respondents all official and unofficial reports of the investigation undertaken in connection with their case, except those already in file with the court.

Second, that petitioners confirm in writing the present places of official assignment of M/Sgt. Hilario aka Rollie Castillo and Donald Caigas.

Third, that petitioners cause to be produced to the Court of Appeals all medical reports, records and charts, and reports of any treatment given or recommended and medicines prescribed, if any, to the Manalo brothers, to include a list of medical personnel (military and civilian) who attended to them from February 14, 2006 until August 12, 2007.

With respect to the first and second reliefs, petitioners argue that the production order sought by respondents partakes of the characteristics of a search warrant. Thus, they claim that the requisites for the issuance of a search warrant must be complied with prior to the grant of the production order, namely: (1) the application must be under oath or affirmation; (2) the search warrant must particularly describe the place to be searched and the things to be seized; (3) there exists probable cause with one specific offense; and (4) the probable cause must be personally determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce.[152] In the case at bar, however, petitioners point out that other than the bare, self-serving and vague allegations made by respondent Raymond Manalo in his unverified declaration and affidavit, the documents respondents seek to be produced are only mentioned generally by name, with no other supporting details. They also argue that the relevancy of the documents to be produced must be apparent, but this is not true in the present case as the involvement of petitioners in the abduction has not been shown.

Petitioners' arguments do not hold water. 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 which provides in relevant part, viz:

Section 1. Motion for production or inspection order.

Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books of accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control...

In *Material Distributors (Phil.) Inc. v. Judge Natividad*,^[153] the respondent judge, under authority of Rule 27, issued a subpoena duces tecum for the production and inspection of among others, the books and papers of Material Distributors (Phil.) Inc. The company questioned the issuance of the subpoena on the ground that it violated the search and seizure clause. The Court struck down the argument and held that the subpoena pertained to a civil procedure that "cannot be identified or confused with unreasonable searches prohibited by the Constitution..."

Moreover, in his affidavit, petitioner AFP Chief of Staff himself undertook "to provide results of the investigations conducted or to be conducted by the concerned unit relative to the circumstances of the alleged disappearance of the persons in whose favor the Writ of Amparo has been sought for as soon as the same has been furnished Higher headquarters."

With respect to the second and third reliefs, petitioners assert that the disclosure of the present places of assignment of M/Sgt. Hilario aka Rollie Castillo and Donald Caigas, as well as the submission of a list of medical personnel, is irrelevant, improper, immaterial, and unnecessary in the resolution of the petition for a writ of amparo. They add that it will unnecessarily compromise and jeopardize the exercise of official functions and duties of military officers and even unwittingly and unnecessarily expose them to threat of personal injury or even death.

On the contrary, the disclosure of the present places of assignment of M/Sgt. Hilario aka Rollie Castillo and Donald Caigas, whom respondents both directly implicated as perpetrators behind their abduction and detention, is relevant in ensuring the safety of respondents by avoiding their areas of territorial jurisdiction. Such disclosure would also help ensure that these military officers can be served with notices and court processes in relation to any investigation and action for violation of the respondents' rights. The list of medical personnel is also relevant in securing information to create the medical history of respondents and make appropriate medical interventions, when applicable and necessary.

In blatant violation of our hard-won guarantees to life, liberty and security, these rights are snuffed out from victims of extralegal killings and enforced disappearances. The writ of amparo is a tool that gives voice to preys of silent guns and prisoners behind secret walls.

WHEREFORE, premises considered, the petition is DISMISSED. The Decision of the Court of Appeals dated December 26, 2007 is affirmed.

SO ORDERED.

Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.

[1] Sec. 19 of the Rule on the Writ of Amparo provides for appeal, viz:

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.

[2] G.R. No. 179095 filed on August 23, 2007.

[3] 1987 PHIL. CONST. Art. VIII, § 5(5) provides for the rule-making power of the Supreme Court, viz:

Sec. 5. The Supreme Court shall have the following powers:

(5) Promulgate rules concerning the protection and enforcement of constitutional rights...

[4] 1987 PHIL. CONST. Art. III, § 1 provides in relevant part, viz:

Sec. 1. No person shall be deprived of life, liberty...without due process of law...

[5] CA rollo, pp. 26-27.

[6] Section 26 of the Rule on the Writ of Amparo provides, viz:

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.

[7] Section 18 of the Rule on the Writ of Amparo provides, viz:

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.

[8] CA rollo, pp. 86-87.

[9] Id. at 1-6.

[10] Id. at 82-83.

[11] Exhibit D (Sinumpaang Salaysay para sa Hukuman ni Raymond Manalo), CA rollo, pp. 200-201; TSN, November 13, 2007, p. 47.

[12] Exhibit D, CA rollo, pp. 200-201.

[13] Id. at 201-202.

[14] Id.

[15] Id. at 202.

[16] A Petition for Habeas Corpus was filed on May 12, 2006 in the Court of Appeals by the relatives of herein respondents. (CA-G.R. SP. No. 94431). The petition alleged that military personnel and CAGU auxiliaries forcibly took petitioners from their homes in Bulacan on February 14, 2006.

Impleaded as respondents were Lt. Gen. Hermogenes C. Esperon, then the Commanding General of the Philippine Army; Maj. Gen. Jovito Palparan, then the Commanding Officer, 7th Infantry Division, stationed in Luzon; M/Sgt. Rizal Hilario alias Rollie Castillo; and civilians Michael dela Cruz, Madning dela Cruz, Puti dela Cruz, Pula dela Cruz, Randy Mendoza and Rudy Mendoza, all CAGU members.

Respondents denied any involvement in the petitioners' abduction and disappearance.

After hearing, the Court of Appeals rendered a decision on June 27, 2007, viz:

WHEREFORE, in view of the foregoing, this Court holds that respondents Madning de la Cruz, Puti de la Cruz, Pula de la Cruz, Rudy Mendoza and CAFGU members Michael de la Cruz and Randy Mendoza are illegally detaining Raymond and Reynaldo Manalo, and are hereby ordered to RELEASE said victims Raymond Manalo and Reynaldo Manalo within ten (10) days from receipt hereof; otherwise, they will be held in contempt of court. This is without prejudice to any penalty that may be imposed should they be found later by any other court of justice to be criminally, administratively, or civilly liable for any other act/s against the persons of aforementioned victims. (CA rollo, pp. 60-61)

On July 18, 2007, the relatives of the petitioners appealed the decision to the Supreme Court. (G.R. No. 178614). Respondents filed a motion for reconsideration in the Court of Appeals.

On August 13, 2007, the petitioners escaped from captivity. Consequently, they filed motions to withdraw the petition for habeas corpus in the CA and this Court as it had become moot and academic. (CA rollo, p. 101; rollo, pp. 54-55)

[17] Exhibit D, CA rollo, pp. 200-201.

[18] Id. at 203.

[19] TSN, November 13, 2007, p. 29.

[20] Exhibit D, CA rollo, p. 203.

[21] Id.

[22]"Daniel Mendiola; Oscar Leuterio; mag-asawang Teresa at Vergel; isang nagngangalang Mang Ipo at Ferdinand mula sa Nueva Ecija; isang taga-Bicol na ikinulong doon ng isa o dalawang araw lamang (siya'y inilabas at hindi ko na nakitang muli); isang taga-Visayas (na ikinulong doon ng isa o dalawang araw; siya'y inilabas at hindi ko na siya nakita); mga nagngangalang Abel, Jojo at isa pa mula sa Nueva Ecija (na tumagal doon ng isang araw at isang gabi, pagkatapos ay inilabas din); isang nagngangalang Bernard mula sa Hagonoy, Bulacan; ang apelyido ni Bernard ay tila Majas ngunit hindi ako sigurado sa apelyido niya. Nang dinala doon si Bernard, inilabas sina Mang Ipo at Ferdinand; dalawang lalaking may edad na, taga-Pinaud at dinukot sa poultry (tumagal lang sila ng mga isang araw at tapos inilabas at hindi ko na nakita uli)." (CA rollo, pp. 203-204)

[23] Exhibit D, CA rollo, pp. 203-204.

[24] Id. at 204.

[25] Id. at 204-205.

[26] Id. at 205.

[27] Id.; TSN, November 13, 2007, pp. 36-38.

[28] Exhibit D, CA rollo, p. 205.

[29] Id.

[30] Id.

[31] Id. at 206.

[32] TSN, November 13, 2007, p. 44; Exhibit F shows eight pictures of highest ranking officers of the AFP and PNP in their uniforms; Exhibit F-1 is the picture of Gen. Palparan identified by respondent Raymond Manalo, CA

rollo, p. 214.

[33] Exhibit D, CA rollo, p. 206.

[34] Id. at 207.

[35] Id.

[36] Id. at 207-208.

[37] Id. at 208.

[38] Id.

[39] Id. at 209.

[40] Id.

[41] Id.

[42] Id.

[43] Id. at 210-211.

[44] Id. at 211.

[45] Id.

[46] Exhibit C (Sinumpaang Salaysay ni Reynaldo Manalo para sa Hukuman), CA rollo, pp. 196-197.

[47] TSN, November 13, 2007, pp. 85-90; Exhibit G is the background of the case of Raymond and Reynaldo Manalo, CA rollo, p. 216; Exhibits G-1 to G-2 are the report proper for Reynaldo Manalo containing a narration of his ordeal and complaints, and Dr. Molino's physical findings, analysis and recommendations, CA rollo, pp. 217-218; Exhibit G-3 are the pictures taken of Reynaldo Manalo's scars, CA rollo, p. 219; Exhibits G-4 to G-5 are the report proper for Raymond Manalo with similar contents as Reynaldo's report, CA rollo, pp. 220-221; Exhibits G-6 to G-7 are the pictures of Raymond Manalo's scars, CA rollo, pp. 222-223.

[48] CA rollo, pp. 112-113; rollo, pp. 94-95.

[49] CA rollo, pp. 122 and 171; rollo, pp. 28-29.

[50] CA rollo, pp. 124-125; 177-178; rollo, pp. 29-31.

[51] CA rollo, pp. 191-192; rollo, 106-107.

[52] Id. at 107.

[53] TSN, November 14, 2007, p. 25.

[54] Id. at 84.

[55] Id. at 36.

[56] Id. at 40.

[57] Id. at 41.

[58] Id. at 92.

[59] Id. at 46.

[60] Id. at 44.

[61] Id. at 46.

[62] Id. at 80.

[63] Id. at 28.

[64] Id. at 50.

[65] Id. at 55-56.

[66] Id. at 57-61.

[67] Id. at 61-63.

[68] Id. at 63.

[69] Exhibit 3-C, CA rollo, pp. 238-240.

[70] Rollo, pp. 35-36.

[71] Rule on the Writ of Amparo: The Rationale for the Writ of Amparo, p. 43.

[72] Id.

[73] Rule on the Writ of Amparo: Annotation, p. 47.

[74] Id. Article VIII, § 5(5) of the 1987 Constitution provides for this rule-making power, viz:

Sec. 5. The Supreme Court shall have the following powers:

(5) Promulgate rules concerning the protection and enforcement of constitutional rights...

[75] Rule on the Writ of Amparo: Annotation, p. 48. This is the manner the term is used in United Nations instruments.

[76] Rule on the Writ of Amparo: Annotation, p. 48. This is the definition used in the Declaration on the Protection of All Persons from Enforced Disappearances.

[77] Barker, R., "Constitutionalism in the Americas: A Bicentennial Perspective," 49 University of Pittsburgh Law Review (Spring, 1988) 891, 906.

[78] Id., citing Zamudio, F., "A Brief Introduction to the Mexican Writ of Amparo," 9 California Western International Law Journal (1979) 306, 309.

[79] "At the time it adopted Rejón's amparo, Yucatan had separated itself from Mexico. After a few months, the secession ended and the state resumed its place in the union." (Barker, R., *supra* at 906.)

[80] Acta de Reformas, art. 25 (1847) (amending Constitution of 1824).

[81] Acta de Reformas, art. 25 (1847) (amending Constitution of 1824); Const. of 1857, arts. 101, 102 (Mex.); Const. art. 107 (Mex.).

[82] Barker, R., *supra* at 906-907. See also Provost, R. "Emergency Judicial Relief for Human Rights Violations in Canada and Argentina," University of Miami Inter-American Law Review (Spring/Summer, 1992) 693,

701-702.

[83] Rule on the Writ of Amparo: Annotation, p. 45. 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.

[84] Provost, R., *supra* at 698, citing Ramirez, F., "The International Expansion of the Mexican Amparo," 1 *Inter-American Law Review* (1959) 163, 166.

[85] Rule on the Writ of Amparo: Annotation, p. 45; see also Zagaris, B., "The Amparo Process in Mexico," 6 *Mexico Law Journal* (Spring 1998) 61, 66 and Provost, R., *supra* at 708-709.

[86] Rule on the Writ of Amparo: Annotation, p. 45.

[87] Brewer-Carias, A., "The Latin American Amparo Proceeding and the Writ of Amparo in the Philippines," Second Distinguished Lecture, Series of 2007, Supreme Court, Philippine Judicial Academy in coordination with the Philippine Association of Law Schools, March 7, 2008.

[88] See 1987 Phil. Const. Art. III, §§ 13 & 15; Art. VII, § 18; Art. VIII, § 5(1).

[89] 5 U.S. 137 (1803). See Gormley, K. "Judicial Review in the Americas: Comments on the United States and Mexico," 45 *Duquesne Law Review* (Spring, 2007) 393.

[90] Rule on the Writ of Amparo: Annotation, p. 47.

[91] Deliberations of the Committee on the Revision of the Rules of Court, August 10, 2007; August 24, 2007; August 31, 2007; and September 20, 2008.

[92] G.R. No. 179095.

[93] CA rollo, p. 3.

[94] Rollo, p. 35.

[95] *Ferancullo v. Ferancullo, Jr.*, A.C. No. 7214, November 30, 2006, 509 SCRA 1.

[96] CA rollo, p. 210.

[97] *Id.*

[98] *Id.*

[99] *Id.* at 203.

[100] *Id.* at 211.

[101] Rollo, pp. 74-76.

[102] *Id.* at 40.

[103] CA rollo, pp. 219, 222-224.

[104] TSN, November 14, 2007, p. 66.

[105] Case 10.526, Report No. 31/96, Inter-Am.C.H.R.,OEA/Ser.L/V/II.95 Doc. 7 rev. at 332 (1997).

[106] *Id.* at par. 49.

[107] Id.

[108] Id. at par. 50.

[109] Rollo, p. 182.

[110] Id.

[111] Id. at 183.

[112] Respondents cite 1987 Phil. Const. Art. III, § 12(2) which provides, viz:

(2) No torture, force, violence threat, intimidation, or any other means which vitiate the free will shall be used against him (any person under investigation for the commission of an offense). Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

[113] 225 Phil. 191 (1986).

[114] Rollo, pp. 182-183.

[115] Id. at 183.

[116] Id.

[117] Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary (2003) 162.

[118] No. L-41686, November 17, 1980, 101 SCRA 86.

[119] Id. at 100-101.

[120] 1987 Phil. Const. Art. III, § 1 provides, viz:

Sec. 1. No person shall be deprived of life, liberty, or property without due process of law...

[121] But see Bernas, *supra* at 110. "The constitutional protection of the right to life is not just a protection of the right to be alive or to the security of one's limb against physical harm."

[122] Separate Opinion of Chief Justice Reynato S. Puno in *Republic v. Sandiganbayan*, 454 Phil. 504 (2003).

[123] Sandifer, D. and L. Scheman, *The Foundation of Freedom* (1966), pp. 44-45.

[124] Schmidt, C., "An International Human Right to Keep and Bear Arms," 15 *William and Mary Bill of Rights Journal* (February, 2007) 983, 1004.

[125] Id., citing Webster's Seventh New Collegiate Dictionary 780 (1971).

[126] The U.N. Declaration on the Protection of All Persons from Enforced Disappearance also provides for the right to security under Article 2, viz:

2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life. (emphasis supplied)

Various international human rights conventions and declarations affirm the "right to security of person", including the American Convention on Human Rights; European Convention on Human Rights; African Charter;

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women; American Declaration of the Rights and Duties of Man, African Women's Protocol, and the U.N. Declaration on the Elimination of Violence against Women.

[127] Section 1 of the Rule on the Writ of Amparo provides, viz:

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. (emphasis supplied)

[128] *People v. Aruta*, 351 Phil. 868 (1998).

[129] Book Two, Title Eight, Crimes against Persons, of the Revised Penal Code consists of two chapters: Chapter One - Destruction of Life, and Chapter Two - Physical Injuries.

[130] (App. No.26853/04), ECtHR Judgment of July 13, 2006.

[131] *Id.* at pars.196-197.

[132] General Recommendation No. 19 on Violence against Women of the Committee on the Elimination of Discrimination Against Women. Adoption of the Report, U.N. Committee on the Elimination of Discrimination against Women, 11th Sess., Agenda Item 7, at para. 8, U.N. Doc. CEDAW/C/1992/L.1/Add.15 (1992); see also Lai, S. and Ralph, R., "Female Sexual Autonomy and Human Rights," 8 *Harvard Human Rights Journal* (Spring, 1995) 201, 207-208.

[133] 1987 Phil. Const. Art. II, § 11, provides, viz:

Sec. 11. The State values the dignity of every human person and guarantees full respect for human rights.

[134] *I/A Court H.R. Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4.

[135] *Id.* at par. 177.

[136] Created under Article 28 of the ICCPR as the treaty-based body charged with the authoritative interpretation of the ICCPR. See Russell-Brown, S., "Out of the Crooked Timber of Humanity: The Conflict Between South Africa's Truth and Reconciliation Commission and International Human Rights Norms Regarding 'Effective Remedies'," 26 *Hastings International and Comparative Law Review* (Winter 2003) 227.

[137] The ICCPR provides in Article 9(1), viz:

"1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." (emphasis supplied)

[138] Communication No. 195/1985, U. N. Doc. CCPR/C/39/D/195/1985 (1990).

[139] *Id.* at , par. 5.5.

[140] Communication No. 314/1988, U.N. Doc. CCPR/C/48/D/314/1988 (1993).

[141] Communication No. 468/1991, U.N. Doc. CCPR/C/49/D/468/1991 (1993).

[142] Communication No. 542/1993, U.N. Doc. CCPR/C/53/D/542/1993 (1996).

[143] Communication No. 711/1996, U.N. Doc. CCPR/C/68/D/711/1996 (2000).

[144] Communication No. 821/1998, U.N. Doc. CCPR/C/70/D/821/1998 (2000).

[145] Powell, R., "The Right to Security of Person in European Court of Human Rights Jurisprudence," 6 European Human Rights Law Review (2007) 649, 652-653.

[146] Kurt v. Turkey (1999) 27 E.H.R.R. 373.

[147] Id. at pars. 122 and 123.

[148] CA rollo, p. 210.

[149] Rollo, p. 182

[150] Rollo, pp. 28-29.

[151] Rollo, pp. 29-31. The directives issued by the petitioners are in line with Article 13 of the 1992 U.N. Declaration on Enforced Disappearances which states that, "any person having knowledge or legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent state authority and to have that complaint promptly, thoroughly and impartially investigated by the authority."

[152] Rollo, pp. 44-45.

[153] 84 Phil. 127 (1949).

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