

LOURDES D. RUBRICO, JEAN RUBRICO APRUEBO, AND MARY JOY RUBRICO CARBONEL, PETITIONERS, VS. GLORIA MACAPAGAL-ARROYO, GEN. HERMOGENES ESPERON, P/DIR. GEN. AVELINO RAZON, MAJ. DARWI...

G.R. No. 183871. February 18, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

In this 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[2] (Amparo Rule), Lourdes D. Rubrico, Jean Rubrico Apruebo, and Mary Joy Rubrico Carbonel assail and seek to set aside the Decision[3] of the Court of Appeals (CA) dated July 31, 2008 in CA-G.R. SP No. 00003, a petition commenced under the Amparo Rule.

The petition for the writ of amparo dated October 25, 2007 was originally filed before this Court. After issuing the desired writ and directing the respondents to file a verified written return, the Court referred the petition to the CA for summary hearing and appropriate action. The petition and its attachments contained, in substance, the following allegations:

1. On April 3, 2007, armed men belonging to the 301[st] Air Intelligence and Security Squadron (AISS, for short) based in Fernando Air Base in Lipa City abducted Lourdes D. Rubrico (Lourdes), then attending a Lenten pabasa in Bagong Bayan, Dasmariñas, Cavite, and brought to, and detained at, the air base without charges. Following a week of relentless interrogation - conducted alternately by hooded individuals - and what amounts to verbal abuse and mental harassment, Lourdes, chair of the Ugnayan ng Maralita para sa Gawa Adhikan, was released at Dasmariñas, Cavite, her hometown, but only after being made to sign a statement that she would be a military asset.

After Lourdes' release, the harassment, coming in the form of being tailed on at least two occasions at different places, i.e., Dasmariñas, Cavite and Baclaran in Pasay City, by motorcycle-riding men in bonnets, continued;

2. During the time Lourdes was missing, P/Sr. Insp. Arsenio Gomez (P/Insp. Gomez), then sub-station commander of Bagong Bayan, Dasmariñas, Cavite, kept sending text messages to Lourdes' daughter, Mary Joy R. Carbonel (Mary Joy), bringing her to beaches and asking her questions about Karapatan, an alliance of human rights organizations. He, however, failed to make an investigation even after Lourdes' disappearance had been made known to him;

3. A week after Lourdes' release, another daughter, Jean R. Apruebo (Jean), was constrained to leave their house because of the presence of men watching them;

4. Lourdes has filed with the Office of the Ombudsman a criminal complaint for kidnapping and arbitrary detention and administrative complaint for gross abuse of authority and grave misconduct against Capt. Angelo Cuaresma (Cuaresma), Ruben Alfaro (Alfaro), Jimmy Santana (Santana) and a certain Jonathan, c/o Headquarters 301[st] AISS, Fernando Air Base and Maj. Sy/Reyes with address at No. 09 Amsterdam Ext.,

Merville Subd., Parañaque City, but nothing has happened; and the threats and harassment incidents have been reported to the Dasmariñas municipal and Cavite provincial police stations, but nothing eventful resulted from their respective investigations.

Two of the four witnesses to Lourdes' abduction went into hiding after being visited by government agents in civilian clothes; and

5. Karapatan conducted an investigation on the incidents. The investigation would indicate that men belonging to the Armed Forces of the Philippines (AFP), namely Capt. Cuaresma of the Philippine Air Force (PAF), Alfaro, Santana, Jonathan and Maj. Darwin Sy/Reyes, led the abduction of Lourdes; that unknown to the abductors, Lourdes was able to pilfer a "mission order" which was addressed to CA Ruben Alfaro and signed by Capt. Cuaresma of the PAF.

The petition prayed that a writ of amparo issue, ordering the individual respondents to desist from performing any threatening act against the security of the petitioners and for the Office of the Ombudsman (OMB) to immediately file an information for kidnapping qualified with the aggravating circumstance of gender of the offended party. It also prayed for damages and for respondents to produce documents submitted to any of them on the case of Lourdes.

Before the CA, respondents President Gloria Macapagal-Arroyo, Gen. Hermogenes Esperon, then Armed Forces of the Philippines (AFP) Chief of Staff, Police Director-General (P/Dir. Gen.) Avelino Razon, then Philippine National Police (PNP) Chief, Police Superintendent (P/Supt.) Roquero of the Cavite Police Provincial Office, Police Inspector (P/Insp.) Gomez, now retired, and the OMB (answering respondents, collectively) filed, through the Office of the Solicitor General (OSG), a joint return on the writ specifically denying the material inculpatory averments against them. The OSG also denied the allegations against the following impleaded persons, namely: Cuaresma, Alfaro, Santana, Jonathan, and Sy/Reyes, for lack of knowledge or information sufficient to form a belief as to the allegations' truth. And by way of general affirmative defenses, answering respondents interposed the following defenses: (1) the President may not be sued during her incumbency; and (2) the petition is incomplete, as it fails to indicate the matters required by Sec. 5(d) and (e) of the Amparo Rule.[4]

Attached to the return were the affidavits of the following, among other public officials, containing their respective affirmative defenses and/or statements of what they had undertaken or committed to undertake regarding the claimed disappearance of Lourdes and the harassments made to bear on her and her daughters:

1. Gen. Esperon - attested that, pursuant to a directive of then Secretary of National Defense (SND) Gilberto C. Teodoro, Jr., he ordered the Commanding General of the PAF, with information to all concerned units, to conduct an investigation to establish the circumstances behind the disappearance and the reappearance of Lourdes insofar as the involvement of alleged personnel/unit is concerned. The Provost Marshall General and the Office of the Judge Advocate General (JAGO), AFP, also undertook a parallel action.

Gen. Esperon manifested his resolve to provide the CA with material results of the investigation; to continue with the probe on the alleged abduction of Lourdes and to bring those responsible, including military personnel, to the bar of justice when warranted by the findings and the competent evidence that may be gathered in the investigation process by those mandated to look into the matter;[5]

2. P/Dir. Gen. Razon - stated that an investigation he immediately ordered upon receiving a copy of the petition is on-going vis-à-vis Lourdes' abduction, and that a background verification with the PNP Personnel Accounting and Information System disclosed that the names Santana, Alfaro, Cuaresma and one Jonathan do not appear in the police personnel records, although the PNP files carry the name of Darwin Reyes Y. Muga.

Per the initial investigation report of the Dasmariñas municipal police station, P/Dir. Gen. Razon disclosed, Lourdes was abducted by six armed men in the afternoon of April 3, 2007 and dragged aboard a Toyota Revo

with plate number XRR 428, which plate was issued for a Mitsubishi van to AK Cottage Industry with address at 9 Amsterdam St., Merville Subd., Parañaque City. The person residing in the apartment on that given address is one Darius/Erwin See @ Darius Reyes allegedly working, per the latter's house helper, in Camp Aguinaldo.

P/Dir. Gen. Razon, however, bemoaned the fact that Mrs. Rubrico never contacted nor coordinated with the local police or other investigating units of the PNP after her release, although she is in the best position to establish the identity of her abductors and/or provide positive description through composite sketching. Nonetheless, he manifested that the PNP is ready to assist and protect the petitioners and the key witnesses from threats, harassments and intimidation from whatever source and, at the same time, to assist the Court in the implementation of its orders.[6]

3. P/Supt. Roquero - stated conducting, upon receipt of Lourdes' complaint, an investigation and submitting the corresponding report to the PNP Calabarzon, observing that neither Lourdes nor her relatives provided the police with relevant information;

4. P/Insp. Gomez - alleged that Lourdes, her kin and witnesses refused to cooperate with the investigating Cavite PNP; and

5. Overall Deputy Ombudsman Orlando Casimiro - alleged that cases for violation of Articles 267 and 124, or kidnapping and arbitrary detention, respectively, have been filed with, and are under preliminary investigation by the OMB against those believed to be involved in Lourdes' kidnapping; that upon receipt of the petition for a writ of amparo, proper coordination was made with the Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices (MOLEO) where the subject criminal and administrative complaints were filed.

Commenting on the return, petitioners pointed out that the return was no more than a general denial of averments in the petition. They, thus, pleaded to be allowed to present evidence ex parte against the President, Santana, Alfaro, Capt. Cuaresma, Darwin Sy, and Jonathan. And with leave of court, they also asked to serve notice of the petition through publication, owing to their failure to secure the current address of the latter five and thus submit, as the CA required, proof of service of the petition on them.

The hearing started on November 13, 2007.[7] In that setting, petitioners' counsel prayed for the issuance of a temporary protection order (TPO) against the answering respondents on the basis of the allegations in the petition. At the hearing of November 20, 2007, the CA granted petitioners' motion that the petition and writ be served by the court's process server on Darwin Sy/Reyes, Santana, Alfaro, Capt. Cuaresma, and Jonathan.

The legal skirmishes that followed over the propriety of excluding President Arroyo from the petition, petitioners' motions for service by publication, and the issuance of a TPO are not of decisive pertinence in this recital. The bottom line is that, by separate resolutions, the CA dropped the President as respondent in the case; denied the motion for a TPO for the court's want of authority to issue it in the tenor sought by petitioners; and effectively denied the motion for notice by publication owing to petitioners' failure to submit the affidavit required under Sec. 17, Rule 14 of the Rules of Court.[8]

After due proceedings, the CA rendered, on July 31, 2008, its partial judgment, subject of this review, disposing of the petition but only insofar as the answering respondents were concerned. The fallo of the CA decision reads as follows:

WHEREFORE, premises considered, partial judgment is hereby rendered DISMISSING the instant petition with respect to respondent Gen. Hermogenes Esperon, P/Dir. Gen. Avelino Razon, Supt. Edgar B. Roquero, P/Sr. Insp. Arsenio C. Gomez (ret.) and the Office of the Ombudsman.

Nevertheless, in order that petitioners' complaint will not end up as another unsolved case, the heads of the Armed Forces of the Philippines and the Philippine National Police are directed to ensure that the investigations already commenced are diligently pursued to bring the perpetrators to justice. The Chief of Staff of the Armed Forces of the Philippines and P/Dir. Gen. Avelino Razon are directed to regularly update petitioners and this Court on the status of their investigation.

SO ORDERED.

In this recourse, petitioners formulate the issue for resolution in the following wise:

WHETHER OR NOT the [CA] committed reversible error in dismissing [their] Petition and dropping President Gloria Macapagal Arroyo as party respondent.

Petitioners first take issue on the President's purported lack of immunity from suit during her term of office. The 1987 Constitution, so they claim, has removed such immunity heretofore enjoyed by the chief executive under the 1935 and 1973 Constitutions.

Petitioners are mistaken. The presidential immunity from suit remains preserved under our system of government, albeit not expressly reserved in the present constitution. Addressing a concern of his co-members in the 1986 Constitutional Commission on the absence of an express provision on the matter, Fr. Joaquin Bernas, S.J. observed that it was already understood in jurisprudence that the President may not be sued during his or her tenure.[9] The Court subsequently made it abundantly clear in *David v. Macapagal-Arroyo*, a case likewise resolved under the umbrella of the 1987 Constitution, that indeed the President enjoys immunity during her incumbency, and why this must be so:

Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government.[10] x x x

And lest it be overlooked, the petition is simply bereft of any allegation as to what specific presidential act or omission violated or threatened to violate petitioners' protected rights.

This brings us to the correctness of the assailed dismissal of the petition with respect to Gen. Esperon, P/Dir. Gen. Razon, P/Supt. Roquero, P/Insp. Gomez, and the OMB.

None of the four individual respondents immediately referred to above has been implicated as being connected to, let alone as being behind, the alleged abduction and harassment of petitioner Lourdes. Their names were not even mentioned in Lourdes' *Sinumpaang Salaysay*[11] of April 2007. The same goes for the respective *Sinumpaang Salaysay* and/or *Karagdagang Sinumpaang Salaysay* of Jean[12] and Mary Joy.[13]

As explained by the CA, Gen. Esperon and P/Dir. Gen. Razon were included in the case on the theory that they, as commanders, were responsible for the unlawful acts allegedly committed by their subordinates against petitioners. To the appellate court, "the privilege of the writ of amparo must be denied as against Gen. Esperon and P/Dir. Gen. Razon for the simple reason that petitioners have not presented evidence showing that those who allegedly abducted and illegally detained Lourdes and later threatened her and her family were, in fact, members of the military or the police force." The two generals, the CA's holding broadly hinted, would have been accountable for the abduction and threats if the actual malefactors were members of the AFP or PNP.

As regards the three other answering respondents, they were impleaded because they allegedly had not exerted the required extraordinary diligence in investigating and satisfactorily resolving Lourdes' disappearance or bringing to justice the actual perpetrators of what amounted to a criminal act, albeit there were allegations against P/Insp. Gomez of acts constituting threats against Mary Joy.

While in a qualified sense tenable, the dismissal by the CA of the case as against Gen. Esperon and P/Dir. Gen. Razon is incorrect if viewed against the backdrop of the stated rationale underpinning the assailed decision vis-à-vis the two generals, i.e., command responsibility. The Court assumes the latter stance owing to the fact that command responsibility, as a concept defined, developed, and applied under international law, has little, if at all, bearing in amparo proceedings.

The evolution of the command responsibility doctrine finds its context in the development of laws of war and armed combats. According to Fr. Bernas, "command responsibility," in its simplest terms, means the "responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict." [14] In this sense, command responsibility is properly a form of criminal complicity. The Hague Conventions of 1907 adopted the doctrine of command responsibility, [15] foreshadowing the present-day precept of holding a superior accountable for the atrocities committed by his subordinates should he be remiss in his duty of control over them. As then formulated, command responsibility is "an omission mode of individual criminal liability," whereby the superior is made responsible for crimes committed by his subordinates for failing to prevent or punish the perpetrators [16] (as opposed to crimes he ordered).

The doctrine has recently been codified in the Rome Statute [17] of the International Criminal Court (ICC) to which the Philippines is signatory. Sec. 28 of the Statute imposes individual responsibility on military commanders for crimes committed by forces under their control. The country is, however, not yet formally bound by the terms and provisions embodied in this treaty-statute, since the Senate has yet to extend concurrence in its ratification. [18]

While there are several pending bills on command responsibility, [19] there is still no Philippine law that provides for criminal liability under that doctrine. [20]

It may plausibly be contended that command responsibility, as legal basis to hold military/police commanders liable for extra-legal killings, enforced disappearances, or threats, may be made applicable to this jurisdiction on the theory that the command responsibility doctrine now constitutes a principle of international law or customary international law in accordance with the incorporation clause of the Constitution. [21] Still, it would be inappropriate to apply to these proceedings the doctrine of command responsibility, as the CA seemed to have done, as a form of criminal complicity through omission, for individual respondents' criminal liability, if there be any, is beyond the reach of amparo. In other words, the Court does not rule in such proceedings on any issue of criminal culpability, even if incidentally a crime or an infraction of an administrative rule may have been committed. As the Court stressed in *Secretary of National Defense v. Manalo (Manalo)*, [22] the writ of amparo was conceived to provide expeditious and effective procedural relief against violations or threats of violation of the basic rights to life, liberty, and security of persons; the corresponding amparo suit, however, "is not an action to determine criminal guilt requiring proof beyond reasonable doubt x x x or administrative liability requiring substantial evidence that will require full and exhaustive proceedings." [23] Of the same tenor, and by way of expounding on the nature and role of amparo, is what the Court said in *Razon v. Tagitis*:

It does not determine guilt nor pinpoint criminal culpability for the disappearance [threats thereof or extra-judicial killings]; it determines responsibility, or at least accountability, for the enforced disappearance [threats thereof or extra-judicial killings] for purposes of imposing the appropriate remedies to address the

disappearance [or extra-judicial killings].

x x x x

As the law now stands, extra-judicial killings and enforced disappearances in this jurisdiction are not crimes penalized separately from the component criminal acts undertaken to carry out these killings and enforced disappearances and are now penalized under the Revised Penal Code and special laws. The simple reason is that the Legislature has not spoken on the matter; the determination of what acts are criminal x x x are matters of substantive law that only the Legislature has the power to enact.[24] x x x

If command responsibility were to be invoked and applied to these proceedings, it should, at most, be only to determine the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be appropriate under the premises to protect rights covered by the writ of amparo. As intimated earlier, however, the determination should not be pursued to fix criminal liability on respondents preparatory to criminal prosecution, or as a prelude to administrative disciplinary proceedings under existing administrative issuances, if there be any.

Petitioners, as the CA has declared, have not adduced substantial evidence pointing to government involvement in the disappearance of Lourdes. To a concrete point, petitioners have not shown that the actual perpetrators of the abduction and the harassments that followed formally or informally formed part of either the military or the police chain of command. A preliminary police investigation report, however, would tend to show a link, however hazy, between the license plate (XRR 428) of the vehicle allegedly used in the abduction of Lourdes and the address of Darwin Reyes/Sy, who was alleged to be working in Camp Aguinaldo.[25] Then, too, there were affidavits and testimonies on events that transpired which, if taken together, logically point to military involvement in the alleged disappearance of Lourdes, such as, but not limited to, her abduction in broad daylight, her being forcibly dragged to a vehicle blindfolded and then being brought to a place where the sounds of planes taking off and landing could be heard. Mention may also be made of the fact that Lourdes was asked about her membership in the Communist Party and of being released when she agreed to become an "asset."

Still and all, the identities and links to the AFP or the PNP of the alleged abductors, namely Cuaresma, Alfaro, Santana, Jonathan, and Sy/Reyes, have yet to be established.

Based on the separate sworn statements of Maj. Paul Ciano[26] and Technical Sergeant John N. Romano,[27] officer-in-charge and a staff of the 301[st] AISS, respectively, none of the alleged abductors of Lourdes belonged to the 301[st] AISS based in San Fernando Air Base. Neither were they members of any unit of the Philippine Air Force, per the certification[28] of Col. Raul Dimatactac, Air Force Adjutant. And as stated in the challenged CA decision, a verification with the Personnel Accounting and Information System of the PNP yielded the information that, except for a certain Darwin Reyes y Muga, the other alleged abductors, i.e., Cuaresma, Alfaro, Santana and Jonathan, were not members of the PNP. Petitioners, when given the opportunity to identify Police Officer 1 Darwin Reyes y Muga, made no effort to confirm if he was the same Maj. Darwin Reyes a.k.a. Darwin Sy they were implicating in Lourdes' abduction.

Petitioners, to be sure, have not successfully controverted answering respondents' documentary evidence, adduced to debunk the former's allegations directly linking Lourdes' abductors and tormentors to the military or the police establishment. We note, in fact, that Lourdes, when queried on cross-examination, expressed the belief that Sy/Reyes was an NBI agent.[29] The Court is, of course, aware of what was referred to in Razon[30] as the "evidentiary difficulties" presented by the nature of, and encountered by petitioners in, enforced disappearance cases. But it is precisely for this reason that the Court should take care too that no wrong message is sent, lest one conclude that any kind or degree of evidence, even the outlandish, would suffice to secure amparo remedies and

protection.

Sec. 17, as complemented by Sec. 18 of the Amparo Rule, expressly prescribes the minimum evidentiary substantiation requirement and norm to support a cause of action under the Rule, thus:

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

x x x x

Sec. 18. Judgment.--x x x 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. (Emphasis added.)

Substantial evidence is more than a mere imputation of wrongdoing or violation that would warrant a finding of liability against the person charged;[31] it is more than a scintilla of evidence. It means such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might opine otherwise.[32] Per the CA's evaluation of their evidence, consisting of the testimonies and affidavits of the three Rubrico women and five other individuals, petitioners have not satisfactorily hurdled the evidentiary bar required of and assigned to them under the Amparo Rule. In a very real sense, the burden of evidence never even shifted to answering respondents. The Court finds no compelling reason to disturb the appellate court's determination of the answering respondents' role in the alleged enforced disappearance of petitioner Lourdes and the threats to her family's security.

Notwithstanding the foregoing findings, the Court notes that both Gen. Esperon and P/Dir. Gen. Razon, per their separate affidavits, lost no time, upon their receipt of the order to make a return on the writ, in issuing directives to the concerned units in their respective commands for a thorough probe of the case and in providing the investigators the necessary support. As of this date, however, the investigations have yet to be concluded with some definite findings and recommendation.

As regards P/Supt. Romero and P/Insp. Gomez, the Court is more than satisfied that they have no direct or indirect hand in the alleged enforced disappearance of Lourdes and the threats against her daughters. As police officers, though, theirs was the duty to thoroughly investigate the abduction of Lourdes, a duty that would include looking into the cause, manner, and like details of the disappearance; identifying witnesses and obtaining statements from them; and following evidentiary leads, such as the Toyota Revo vehicle with plate number XRR 428, and securing and preserving evidence related to the abduction and the threats that may aid in the prosecution of the person/s responsible. As we said in *Manalo*,[33] the right to security, as a guarantee of protection by the government, is breached by the superficial and one-sided--hence, ineffective--investigation by the military or the police of reported cases under their jurisdiction. As found by the CA, the local police stations concerned, including P/Supt. Roquero and P/Insp. Gomez, did conduct a preliminary fact-finding on petitioners' complaint. They could not, however, make any headway, owing to what was perceived to be the refusal of Lourdes, her family, and her witnesses to cooperate. Petitioners' counsel, Atty. Rex J.M.A. Fernandez, provided a plausible explanation for his clients and their witnesses' attitude, "[They] do not trust the government agencies to protect them." [34] The difficulty arising from a situation where the party whose complicity in extra-judicial killing or enforced disappearance, as the case may be, is alleged to be the same party who investigates it is understandable, though.

The seeming reluctance on the part of the Rubricos or their witnesses to cooperate ought not to pose a hindrance to the police in pursuing, on its own initiative, the investigation in question to its natural end. To repeat what the Court said in *Manalo*, the right to security of persons is a guarantee of the protection of one's right by the

government. And this protection includes conducting effective investigations of extra-legal killings, enforced disappearances, or threats of the same kind. The nature and importance of an investigation are captured in the Velasquez Rodriguez case,[35] in which the Inter-American Court of Human Rights pronounced:

[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 a step taken by private interests that depends upon the initiative of the victim or his family or upon offer of proof, without an effective search for the truth by the government. (Emphasis added.)

This brings us to Mary Joy's charge of having been harassed by respondent P/Insp. Gomez. With the view we take of this incident, there is nothing concrete to support the charge, save for Mary Joy's bare allegations of harassment. We cite with approval the following self-explanatory excerpt from the appealed CA decision:

In fact, during her cross-examination, when asked what specific act or threat P/Sr. Gomez (ret) committed against her or her mother and sister, Mary Joy replied "None ..."[36]

Similarly, there appears to be no basis for petitioners' allegations about the OMB failing to act on their complaint against those who allegedly abducted and illegally detained Lourdes. Contrary to petitioners' contention, the OMB has taken the necessary appropriate action on said complaint. As culled from the affidavit[37] of the Deputy Overall Ombudsman and the joint affidavits[38] of the designated investigators, all dated November 7, 2007, the OMB had, on the basis of said complaint, commenced criminal[39] and administrative[40] proceedings, docketed as OMB-P-C-07-0602-E and OMB-P-A 07-567-E, respectively, against Cuaresma, Alfaro, Santana, Jonathan, and Sy/Reyes. The requisite orders for the submission of counter-affidavits and verified position papers had been sent out.

The privilege of the writ of amparo, to reiterate, is a remedy available to victims of extra-judicial killings and enforced disappearances or threats of similar nature, regardless of whether the perpetrator of the unlawful act or omission is a public official or employee or a private individual.

At this juncture, it bears to state that petitioners have not provided the CA with the correct addresses of respondents Cuaresma, Alfaro, Santana, Jonathan, and Sy/Reyes. The mailed envelopes containing the petition for a writ of amparo individually addressed to each of them have all been returned unopened. And petitioners' motion interposed before the appellate court for notice or service via publication has not been accompanied by supporting affidavits as required by the Rules of Court. Accordingly, the appealed CA partial judgment--disposing of the underlying petition for a writ of amparo without (1) pronouncement as to the accountability, or lack of it, of the four non-answering respondents or (2) outright dismissal of the same petition as to them--hews to the prescription of Sec. 20 of the Amparo Rule on archiving and reviving cases.[41] Parenthetically, petitioners have also not furnished this Court with sufficient data as to where the afore-named respondents may be served a copy of their petition for review.

Apart from the foregoing considerations, the petition did not allege ultimate facts as would link the OMB in any manner to the violation or threat of violation of the petitioners' rights to life, liberty, or personal security.

The privilege of the writ of amparo is envisioned basically to protect and guarantee the rights to life, liberty, and security of persons, free from fears and threats that vitiate the quality of this life.[42] It is an extraordinary writ conceptualized and adopted in light of and in response to the prevalence of extra-legal killings and enforced disappearances.[43] Accordingly, the remedy ought to be resorted to and granted judiciously, lest the ideal sought by the Amparo Rule be diluted and undermined by the indiscriminate filing of amparo petitions for purposes less than the desire to secure amparo reliefs and protection and/or on the basis of unsubstantiated allegations.

In their petition for a writ of amparo, petitioners asked, as their main prayer, that the Court order the impleaded respondents "to immediately desist from doing any acts that would threaten or seem to threaten the security of the Petitioners and to desist from approaching Petitioners, x x x their residences and offices where they are working under pain of contempt of [this] Court." Petitioners, however, failed to adduce the threshold substantive evidence to establish the predicate facts to support their cause of action, i.e., the adverted harassments and threats to their life, liberty, or security, against responding respondents, as responsible for the disappearance and harassments complained of. This is not to say, however, that petitioners' allegation on the fact of the abduction incident or harassment is necessarily contrived. The reality on the ground, however, is that the military or police connection has not been adequately proved either by identifying the malefactors as components of the AFP or PNP; or in case identification is not possible, by showing that they acted with the direct or indirect acquiescence of the government. For this reason, the Court is unable to ascribe the authorship of and responsibility for the alleged enforced disappearance of Lourdes and the harassment and threats on her daughters to individual respondents. To this extent, the dismissal of the case against them is correct and must, accordingly, be sustained.

Prescinding from the above considerations, the Court distinctly notes that the appealed decision veritably extended the privilege of the writ of amparo to petitioners when it granted what to us are amparo reliefs. Consider: the appellate court decreed, and rightly so, that the police and the military take specific measures for the protection of petitioners' right or threatened right to liberty or security. The protection came in the form of directives specifically to Gen. Esperon and P/Dir. Gen. Razon, requiring each of them (1) to ensure that the investigations already commenced by the AFP and PNP units, respectively, under them on the complaints of Lourdes and her daughters are being pursued with urgency to bring to justice the perpetrators of the acts complained of; and (2) to submit to the CA, copy furnished the petitioners, a regular report on the progress and status of the investigations. The directives obviously go to Gen. Esperon in his capacity as head of the AFP and, in a sense, chief guarantor of order and security in the country. On the other hand, P/Dir. Gen. Razon is called upon to perform a duty pertaining to the PNP, a crime-preventing, investigatory, and arresting institution.

As the CA, however, formulated its directives, no definitive time frame was set in its decision for the completion of the investigation and the reportorial requirements. It also failed to consider Gen. Esperon and P/Dir. Gen. Razon's imminent compulsory retirement from the military and police services, respectively. Accordingly, the CA directives, as hereinafter redefined and amplified to fully enforce the amparo remedies, are hereby given to, and shall be directly enforceable against, whoever sits as the commanding general of the AFP and the PNP.

At this stage, two postulates and their implications need highlighting for a proper disposition of this case.

First, a criminal complaint for kidnapping and, alternatively, for arbitrary detention rooted in the same acts and incidents leading to the filing of the subject amparo petition has been instituted with the OMB, docketed as OMB-P-C-07-0602-E. The usual initial steps to determine the existence of a prima facie case against the five (5) impleaded individuals suspected to be actually involved in the detention of Lourdes have been set in motion. It must be pointed out, though, that the filing^[44] of the OMB complaint came before the effectivity of the Amparo Rule on October 24, 2007.

Second, Sec. 22^[45] of the Amparo Rule proscribes the filing of an amparo petition should a criminal action have, in the meanwhile, been commenced. The succeeding Sec. 23^[46] on the other hand, provides that when the criminal suit is filed subsequent to a petition for amparo, the petition shall be consolidated with the criminal action where the Amparo Rule shall nonetheless govern the disposition of the relief under the Rule. Under the terms of said Sec. 22, the present petition ought to have been dismissed at the outset. But as things stand, the outright dismissal of the petition by force of that section is no longer technically feasible in light of the interplay of the following factual mix: (1) the Court has, pursuant to Sec. 6^[47] of the Rule, already issued ex parte the writ

of amparo; (2) the CA, after a summary hearing, has dismissed the petition, but not on the basis of Sec. 22; and (3) the complaint in OMB-P-C-O7-0602-E named as respondents only those believed to be the actual abductors of Lourdes, while the instant petition impleaded, in addition, those tasked to investigate the kidnapping and detention incidents and their superiors at the top. Yet, the acts and/or omissions subject of the criminal complaint and the amparo petition are so linked as to call for the consolidation of both proceedings to obviate the mischief inherent in a multiplicity-of-suits situation.

Given the above perspective and to fully apply the beneficial nature of the writ of amparo as an inexpensive and effective tool to protect certain rights violated or threatened to be violated, the Court hereby adjusts to a degree the literal application of Secs. 22 and 23 of the Amparo Rule to fittingly address the situation obtaining under the premises. [48] Towards this end, two things are at once indicated: (1) the consolidation of the probe and fact-finding aspects of the instant petition with the investigation of the criminal complaint before the OMB; and (2) the incorporation in the same criminal complaint of the allegations in this petition bearing on the threats to the right to security. Withal, the OMB should be furnished copies of the investigation reports to aid that body in its own investigation and eventual resolution of OMB-P-C-O7-0602-E. Then, too, the OMB shall be given easy access to all pertinent documents and evidence, if any, adduced before the CA. Necessarily, Lourdes, as complainant in OMB-P-C-O7-0602-E, should be allowed, if so minded, to amend her basic criminal complaint if the consolidation of cases is to be fully effective.

WHEREFORE, the Court PARTIALLY GRANTS this petition for review and makes a decision:

- (1) Affirming the dropping of President Gloria Macapagal-Arroyo from the petition for a writ of amparo;
- (2) Affirming the dismissal of the amparo case as against Gen. Hermogenes Esperon, and P/Dir. Gen. Avelino Razon, insofar as it tended, under the command responsibility principle, to attach accountability and responsibility to them, as then AFP Chief of Staff and then PNP Chief, for the alleged enforced disappearance of Lourdes and the ensuing harassments allegedly committed against petitioners. The dismissal of the petition with respect to the OMB is also affirmed for failure of the petition to allege ultimate facts as to make out a case against that body for the enforced disappearance of Lourdes and the threats and harassment that followed; and
- (3) Directing the incumbent Chief of Staff, AFP, or his successor, and the incumbent Director-General of the PNP, or his successor, to ensure that the investigations already commenced by their respective units on the alleged abduction of Lourdes Rubrico and the alleged harassments and threats she and her daughters were made to endure are pursued with extraordinary diligence as required by Sec. 17[49] of the Amparo Rule. They shall order their subordinate officials, in particular, to do the following:
 - (a) Determine based on records, past and present, the identities and locations of respondents Maj. Darwin Sy, a.k.a. Darwin Reyes, Jimmy Santana, Ruben Alfaro, Capt. Angelo Cuaresma, and one Jonathan; and submit certifications of this determination to the OMB with copy furnished to petitioners, the CA, and this Court;
 - (b) Pursue with extraordinary diligence the evidentiary leads relating to Maj. Darwin Sy and the Toyota Revo vehicle with Plate No. XRR 428; and
 - (c) Prepare, with the assistance of petitioners and/or witnesses, cartographic sketches of respondents Maj. Sy/Reyes, Jimmy Santana, Ruben Alfaro, Capt. Angelo Cuaresma, and a certain Jonathan to aid in positively identifying and locating them.

The investigations shall be completed not later than six (6) months from receipt of this Decision; and within thirty (30) days after completion of the investigations, the Chief of Staff of the AFP and the Director-General of the PNP shall submit a full report of the results of the investigations to the Court, the CA, the OMB, and petitioners.

This case is accordingly referred back to the CA for the purpose of monitoring the investigations and the actions of the AFP and the PNP.

Subject to the foregoing modifications, the Court AFFIRMS the partial judgment dated July 31, 2008 of the CA.

SO ORDERED.

Puno, C.J., Corona, Nachura, Leonardo-De Castro, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and Mendoza, JJ., concur.

Carpio, J., join the separate opinion of J. Morales.

Carpio Morales, J., please see separate opinion.

Brion, J., pls. see separate opinion.

Peralta, J., no part.

[1] 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. x x x

[2] A.M. No. 07-9-12-SC.

[3] Penned by Associate Justice Edgardo P. Cruz (now retired) and concurred in by Associate Justices Fernanda Lampas-Peralta and Normandie Pizarro.

[4] Sec. 5. Contents of the Petition.--The petition x x x shall allege the following: x x x d) The investigation conducted, if any, specifying the names and personal circumstances and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report; e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission.

[5] Rollo, pp. 196-198.

[6] Id. at 228-233.

[7] Id. at 48.

[8] Sec. 17. Leave of Court. - Any application to the court under this Rule for leave to effect service in any manner which leave of court is necessary shall be made by motion in writing, supported by an affidavit of the plaintiff or some person on his behalf, setting forth the grounds for the application.

[9] Bernas, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 738 (1996); citing Soliven v. Makasiar, Nos. L-82585, L-82827 & L-83979, November 14, 1988, 167 SCRA 393.

[10] G.R. No. 171396, May 3, 2006, 489 SCRA 160, 224-225.

[11] Rollo, pp. 524-527.

[12] Id. at 528-530, 531-532.

[13] Id. at 311-313.

[14] J.G. Bernas, S.J., Command Responsibility, February 5, 2007 .

[15] Eugenia Levine, Command Responsibility, The Mens Rea Requirement, Global Policy Forum, February 2005 . As stated in Kuroda v. Jalandoni, 83 Phil. 171 (1949), the Philippines is not a signatory to the Hague

Conventions.

[16] Iavor Rangelov and Jovan Nicic, "Command Responsibility: The Contemporary Law," (visited September 9, 2009).

[17] Adopted by 120 members of the UN on July 17, 1998 and entered into force on July 1, 2002 (visited November 26, 2009).

[18] *Pimentel v. Office of the Executive Secretary*, G.R. No. 158088, July 6, 2005, 462 SCRA 622.

[19] S. Bill 1900: DEFINING THE LIABILITY OF HEADS OF DEPARTMENTS CONCERNED FOR GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED BY MEMBERS OF THE [PNP] OR OTHER LAW ENFORCEMENT AGENCIES.

S. Bill 1427: PUNISHING GOVERNMENT OFFICIALS OR SUPERIORS FOR CRIMES OR OFFENSES COMMITTED BY THEIR SUBORDINATES UNDER THE PRINCIPLE OF COMMAND RESPONSIBILITY.

S. Bill 2159: AN ACT ADOPTING THE DOCTRINE OF "SUPERIOR RESPONSIBILITY" TO ALL ACTIONS INVOLVING MILITARY PERSONNEL, MEMBERS OF THE [PNP] AND OTHER CIVILIANS INVOLVED IN LAW ENFORCEMENT.

[20] The attempt of the 1986 Constitutional Commission to incorporate said doctrine in the Bill of Rights that would have obliged the State to compensate victims of abuses committed against the right to life by government forces was shot down, on the ground that the proposal would violate a fundamental principle of criminal liability under the Penal Code upholding the tenet *nullum crimen, nulla poena sine lege* (there is no crime when there is no law punishing it). I Record of the 1986 Constitutional Commission, pp. 753-54.

[21] The incorporation clause (Art. II, Sec. 2) of the Constitution states that the Philippines adopts the generally accepted principles of international law as part of the law of the land.

[22] G.R. No. 180906, October 7, 2008, 568 SCRA 1.

[23] *Id.*; citing the deliberations of the Committee on the Revision of the Rules of Court, dated August 10, 24, and 31, 2007 and September 20, 2008.

[24] G.R. No. 182498, December 3, 2009.

[25] *Supra* note 6.

[26] *Rollo*, pp. 206-207.

[27] *Id.* at 209-210.

[28] *Id.* at 208.

[29] TSN, February 11, 2008, p. 30.

[30] *Supra* note 24.

[31] *Republic v. Meralco*, G.R. No. 141314, November 15, 2002, 391 SCRA 700.

[32] *Bautista v. Sula*, A.M. No. P-04-1920, August 17, 2007, 530 SCRA 406; *Portuguez v. GSIS Family Bank (Comsavings Bank)*, G.R. No. 169570, March 2, 2007, 517 SCRA 309.

[33] *Supra* note 22.

[34] Rollo, p. 54.

[35] I/A Court, H.R. Velasquez Rodriguez Case, Judgment of July 29, 1988, Series C No. 4; cited in Secretary of National Defense v. Manalo, supra.

[36] TSN, March 3, 2008, p. 17.

[37] Rollo, pp. 223-225.

[38] Id. at 226-227.

[39] For arbitrary detention and kidnapping.

[40] For grave abuse of authority and grave misconduct.

[41] SEC. 20. Archiving and Revival of Cases. - The [amparo] court shall not dismiss the petition, but shall archive it, if upon its determination it cannot proceed for a valid cause such as the failure of the petitioner or witnesses to appear due to threats on their lives.

A periodic review of the archived cases shall be made by the amparo court that shall, motu proprio or upon motion by any party, order their revival when ready for further proceedings. The petition shall be dismissed with prejudice, upon failure to prosecute the case after the lapse of two (2) years from notice to the petitioner of the order archiving the case.

[42] Secretary of National Defense v. Manalo, supra.

[43] Annotation to the Writ of Amparo, p. 2 .

[44] Sometime in April 2007.

[45] Sec. 22. Effect of Filing of a Criminal Action. - When a criminal action has been commenced, no separate petition [for a writ of amparo] shall be filed. The reliefs under the writ shall be available by motion in the criminal case.

The procedure under this Rule shall govern the disposition of the reliefs available under the writ of amparo.

[46] SEC. 23. Consolidation. - When a criminal action is filed subsequent to the filing for the writ, the latter shall be consolidated with the criminal action. x x x

After consolidation, the procedure under this Rule shall continue to apply to the disposition of the reliefs in the petition.

[47] SEC. 6. Issuance of the Writ. - Upon the filing of the petition, the court, justice or judge shall immediately order the issuance of the writ if on its face it ought to issue.

[48] As held in Razon v. Tagitis, supra note 24, "the unique situations that call for the issuance of the writ [of amparo] as well as the considerations and measures necessary to address the situations, may not at all be the same as the standard measures and procedures in ordinary court actions and proceedings."

[49] Sec. 17. Burden of Proof and Standard of Diligence Required.-- x x x The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty. x x x

SEPARATE OPINION

CARPIO MORALES, J.:

I concur with the ponencia in all respects, except its treatment of the doctrine of command responsibility.

The ponencia's ambivalence on the applicability of the doctrine of command responsibility overlooks its general acceptance in public international law, which warrants its incorporation into Philippine law via the incorporation clause of the Constitution.

Under Article II, Section 2 of the Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land. Based on the clarification provided by then Commissioner Adolfo Azcuna, now a retired member of this Court, during the deliberations of the Constitutional Commission, the import of this provision is that the incorporated law would have the force of a statute.[1]

The most authoritative enumeration of the sources of international law, Article 38 of the Statute of the International Court of Justice (ICJ Statute),[2] does not specifically include "generally accepted principles of international law." To be sure, it is not quite the same as the "general principles of law" recognized under Article 38(1)(c) of the ICJ Statute. Renowned publicist Ian Brownlie suggested, however, that "general principles of international law" may refer to rules of customary law, to general principles of law as in Article 38(1)(c), or to logical propositions resulting from judicial reasoning on the basis of existing international law and municipal analogies.[3]

Indeed, judicial reasoning has been the bedrock of Philippine jurisprudence on the determination of generally accepted principles of international law and consequent application of the incorporation clause.

In *Kuroda v. Jalandoni*,[4] the Court held that while the Philippines was not a signatory to the Hague Convention and became a signatory to the Geneva Convention only in 1947, a Philippine Military Commission had jurisdiction over war crimes committed in violation of the two conventions before 1947. The Court reasoned that the rules and regulations of the Hague and Geneva Conventions formed part of generally accepted principles of international law. Kuroda thus recognized that principles of customary international law do not cease to be so, and are in fact reinforced, when codified in multilateral treaties.

In *International School Alliance of Educators v. Quisumbing*,[5] the Court invalidated as discriminatory the practice of International School, Inc. of according foreign hires higher salaries than local hires. The Court found that, among other things, there was a general principle against discrimination evidenced by a number of international conventions proscribing it, which had been incorporated as part of national laws through the Constitution.

The Court thus subsumes within the rubric of "generally accepted principles of international law" both "international custom" and "general principles of law," two distinct sources of international law recognized by the ICJ Statute.

Respecting the doctrine of command responsibility, a careful scrutiny of its origin and development shows that it is a widely accepted general principle of law if not, also, an international custom.

The doctrine of command responsibility traces its roots to the laws of war and armed combat espoused by ancient civilizations. In a 1439 declaration of Charles VII of Orleans, for instance, he proclaimed in his Ordinances for the Armies:

[T]he King orders each captain or lieutenant be held responsible for the abuses, ills, and offences committed by

members of his company, and that as soon as he receives any complaint concerning any such misdeed or abuse, he bring the offender to justice so that the said offender be punished in a manner commensurate with his offence, according to these Ordinances. If he fails to do so or covers up the misdeed or delays taking action, or if, because of his negligence or otherwise, the offender escapes and thus evades punishment, the captain shall be deemed responsible for the offence, as if he has committed it x x x .[6] (underscoring supplied.)

The first treaty codification of the doctrine of command responsibility was in the Hague Convention IV of 1907.[7] A provision therein held belligerent nations responsible for the acts of their armed forces,[8] prefiguring the modern precept of holding superiors accountable for the crimes of subordinates if they fail in their duties of control, which is anchored firmly in customary international law.[9]

The development of the command responsibility doctrine is largely attributable to the cases related to World War II and subsequent events.

One prominent case is the German High Command Case[10] tried by the Nuremberg Tribunal, wherein German officers were indicted for atrocities allegedly committed in the European war. Among the accused was General Wilhelm Von Leeb, who was charged with implementing Hitler's Commissar and Barbarossa Orders, which respectively directed the murder of Russian political officers and maltreatment of Russian civilians. Rejecting the thesis that a superior is automatically responsible for atrocities perpetrated by his subordinates, the tribunal acquitted Von Leeb. It acknowledged, however, that a superior's negligence may provide a proper basis for his accountability even absent direct participation in the commission of the crimes. Thus:

[C]riminality does not attach to every individual in this chain of command from that fact alone. There must be a personal dereliction. That can occur only where the act is directly traceable to him or where his failure to properly supervise his subordinates constitutes criminal negligence on his part. (underscoring supplied.)

In *In re Yamashita*,[11] the issue was framed in this wise:

The question then is whether the law of war imposes on an army commander a duty to take such appropriate measures as are within his power to control the troops under his command for the prevention of the specified acts which are violations of the law of war and which are likely to attend the occupation of hostile territory by an uncontrolled soldiery, and whether he may be charged with personal responsibility for his failure to take such measures when violations result. (emphasis, underscoring and italics supplied.)

Resolving the issue in the affirmative, the Court found General Tomoyuki Yamashita guilty of failing to control the members of his command who committed war crimes, even without any direct evidence of instruction or knowledge on his part.

The post-World War II formulation of the doctrine of command responsibility then came in Protocol I of 1977, Additional Protocol to the Geneva Conventions[12] of 1949, Article 86 of which provides:

- The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.
- The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information that should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.[13] (emphasis, underscoring and italics supplied.)

The doctrine of command responsibility has since been invariably applied by ad hoc tribunals created by the United Nations for the prosecution of international crimes, and it remains codified in the statutes of all major

international tribunals.[14]

From the foregoing, it is abundantly clear that there is a long-standing adherence by the international community to the doctrine of command responsibility, which makes it a general principle of law recognized by civilized nations. As such, it should be incorporated into Philippine law as a generally accepted principle of international law.

While the exact formulation of the doctrine of command responsibility varies in different international legal instruments, the variance is more apparent than real. The Court should take judicial notice of the core element that permeates these formulations - a commander's negligence in preventing or repressing his subordinates' commission of the crime, or in bringing them to justice thereafter. Such judicial notice is but a necessary consequence of the application of the incorporation clause vis-à-vis the rule on mandatory judicial notice of international law.[15]

That proceedings under the Rule on the Writ of Amparo do not determine criminal, civil or administrative liability should not abate the applicability of the doctrine of command responsibility. Taking *Secretary of National Defense v. Manalo*[16] and *Razon v. Tagitis*[17] in proper context, they do not preclude the application of the doctrine of command responsibility to Amparo cases.

Manalo was actually emphatic on the importance of the right to security of person and its contemporary signification as a guarantee of protection of one's rights by the government. It further stated that 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.[18]

Tagitis, on the other hand, cannot be more categorical on the application, at least in principle, of the doctrine of command responsibility:

Given their mandates, the PNP and PNP-CIDG officials and members were the ones who were remiss in their duties when the government completely failed to exercise the extraordinary diligence that the Amparo Rule requires. We hold these organizations accountable through their incumbent Chiefs who, under this Decision, shall carry the personal responsibility of seeing to it that extraordinary diligence, in the manner the Amparo Rule requires, is applied in addressing the enforced disappearance of Tagitis. (emphasis and underscoring supplied.)

Neither does Republic Act No. 9851[19] emasculate the applicability of the command responsibility doctrine to Amparo cases. The short title of the law is the "Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity." Obviously, it should, as it did, only treat of superior responsibility as a ground for criminal responsibility for the crimes covered.[20] Such limited treatment, however, is merely in keeping with the statute's purpose and not intended to rule out the application of the doctrine of command responsibility to other appropriate cases.

Indeed, one can imagine the innumerable dangers of insulating high-ranking military and police officers from the coverage of reliefs available under the Rule on the Writ of Amparo. The explicit adoption of the doctrine of command responsibility in the present case will only bring Manalo and Tagitis to their logical conclusion.

In fine, I submit that the Court should take this opportunity to state what the law ought to be if it truly wants to make the Writ of Amparo an effective remedy for victims of extralegal killings and enforced disappearances or threats thereof. While there is a genuine dearth of

evidence to hold respondents Gen. Hermogenes Esperon and P/Dir. Gen. Avelino Razon accountable under the

command responsibility doctrine, the ponencia's hesitant application of the doctrine itself is replete with implications abhorrent to the rationale behind the Rule on the Writ of Amparo.

[1] 4 Record of the Constitutional Commission 772 (1986). The Commission unanimously voted in favor of the provision, with no abstentions.

[2] The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) international custom, as evidence of a general practice accepted as law;

(c) general principles of law recognized by civilized nations;

(d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Statute of the International Court of Justice, Art. 38(1).

[3] Ian Brownlie, *Principles of Public International Law* Sixth Edition 18 (2003).

[4] 83 Phil. 171, 178 (1949).

[5] G.R. No. 128845, June 1, 2000, 333 SCRA 13.

[6] Text culled from Theodor Meron, *Henry's Wars and Shakespeare's Laws* 149 N.40, Article 19 (Eng. Tr. 1993); Louis Guillaume De Vilevault & Louis Brequigny, *Ordonnances Des Rois De France De La Troisieme Race XIII*, 306 (1782).

[7] *Respecting the Laws and Customs of War on Land*, October 18, 1907, U.S.T.S. 539, 36 Stat. 2277.

[8] *Id.*, Article 3.

[9] *Vide Prosecutor v. Mucic*, International Criminal Tribunal for the Former Yugoslavia (Appeals Chamber), judgment of February 20, 2001, para. 195. For command responsibility in international armed conflict, *vide Prosecutor v. Hadzihasanovic*, International Criminal Tribunal for the Former Yugoslavia (Appeals Chamber), decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility of July 16, 2003, paras. 11 et seq.

[10] United Nations War Crimes Commission, *XII Law Reports of Trials of War Criminals* 1, 76 (1948).

[11] 327 US 1 (1946).

[12] The Geneva Conventions consist of four treaties concluded in Geneva, Switzerland that deal primarily with the treatment of non-combatants and prisoners of war. The four Conventions are:

First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (first adopted in 1864, last revised in 1949)

Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (first adopted in 1949, successor to the 1907 Hague Convention X)

Third Geneva Convention relative to the Treatment of Prisoners of War (first adopted in 1929, last revised in 1949)

Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (first adopted in 1949, based on parts of the 1907 Hague Convention IV).

[13] Protocol I Additional to the Geneva Conventions of August 12, 1949 and relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3.

[14] Statute of the International Criminal Tribunal for the former Yugoslavia, UN Doc. S/RES/827 (1993), Annex, Article 7(3); Statute of the International Criminal Tribunal for Rwanda, UN Doc. S/RES/955 (1994), Annex, Article 6(3); Statute of the Special Court for Sierra Leone, Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, January 16, 2002, Annex, Article 6(3); Statute of the Khmer Rouge Tribunal, Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, Article 29; Rome Statute of the International Criminal Court, circulated as document A/CONF. 183/9 of July 17, 1998 and corrected by process-verbaux of November 10, 1998, July 12, 1999, November 30, 1999, May 8, 2000, January 17, 2001 and January 16, 2002, Article 28; Statute of the Special Tribunal for Lebanon, UN Doc. S/RES/1757 (2007), Article 3(2).

[15] Section 1, Rule 129 of the Rules of Court provides in relevant part:

Section 1. Judicial notice, when mandatory. - A court shall take judicial notice, without the introduction of evidence, of . . . the law of nations . . .

[16] G.R. No. 180906, October 7, 2008, 568 SCRA 1.

[17] G.R. No. 182498, December 3, 2009.

[18] Supra note 16 at 57.

[19] AN ACT DEFINING AND PENALIZING CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND OTHER CRIMES AGAINST HUMANITY, ORGANIZING JURISDICTION, DESIGNATING SPECIAL COURTS, AND FOR RELATED PURPOSES; SIGNED INTO LAW ON DECEMBER 11, 2009.

[20] Section 10. Responsibility of Superiors. - In addition to other grounds of criminal responsibility for crimes defined and penalized under this Act, a superior shall be criminally responsible as a principal for such crimes committed by subordinates under his/her effective command and control, or effective authority and control as the case may be, as a result of his/her failure to properly exercise control over such subordinates, where:

(a) That superior either knew or, owing to the circumstances at the time, should have known that the subordinates were committing or about to commit such crimes;

(b) That superior failed to take all necessary and reasonable measures within his/her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

SEPARATE OPINION

BRION, J.:

I CONCUR with the ponencia and its results but am compelled to write this Separate Opinion to elaborate on some of the ponencia's points and to express my own approach to the case, specifically, an "alternative approach" in resolving the case that the ponencia only partially reflects. On this point, I still believe that my "alternative approach" would be more effective in achieving the objectives of a Writ of Amparo.

For the record, I wish at the outset to draw attention to the recent enactment on December 11, 2009 of Republic Act No. 9851 (RA 9851), otherwise known as "An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, and for Related Purposes." Two aspects relevant to the present case have been touched upon by this law, namely, the definition of enforced or involuntary disappearance, and liability under the doctrine of command responsibility. Under Section 3(g) of the law, "enforced or involuntary disappearance" is now defined as follows:

(g) "Enforced or involuntary disappearance of persons" means the arrest, detention, or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons with the intention of removing from the protection of the law for a prolonged period of time.[1]

With this law, the Rule on the Writ of Amparo is now a procedural law anchored, not only on the constitutional rights to the rights to life, liberty and security, but on a concrete statutory definition as well of what an "enforced or involuntary disappearance" is. This new law renders academic and brings to a close the search for a definition that we undertook in *Razon v. Tagitis*[2] to look for a firm anchor in applying the Rule on the Writ of Amparo procedures.

I shall discuss RA 9851's effect on doctrine of command responsibility under the appropriate topic below.

Background

By way of background, the petition for the Writ of Amparo dated October 25, 2007 alleged that petitioner Lourdes Rubrico (Lourdes) was kidnapped and detained without any basis in law on April 3, 2007, but was subsequently released by her captors. Soon after her release on April 10, 2007, Lourdes and her children Jean Rubrico Apruebo and Joy Rubrico Carbonel (collectively, the petitioners) filed with the Ombudsman their complaint (dated April 19, 2007) against respondents Capt. Angelo Cuaresma, Ruben Alfaro, Jimmy Santana, a certain Jonathan and Darwin Sy or Darwin Reyes. The Ombudsman complaint was for violation of Articles 124 and 267 of the Revised Penal Code, and of Section 4, Rep. Act No. 7438, paragraphs (a) and (b).

During Lourdes' detention and after her release, her children (who initially looked for her and subsequently followed up the investigation of the reported detention with the police), and even Lourdes herself, alleged that they were harassed by unknown persons they presumed to be military or police personnel.

On October 25, 2007, the petitioners filed the present petition regarding: (1) the failure of the respondents to properly investigate the alleged kidnapping; and (2) the acts of harassment the petitioners suffered during the search for Lourdes and after her release. The petition also alleged that the Ombudsman violated Lourdes' right to the speedy disposition of her case, and placed her and her witnesses in danger because of its inaction.

Re: Respondent President Macapagal-Arroyo

The ponencia correctly ruled that the dismissal of the petition as against the President is proper because of her immunity from suit during her term.[3] The more basic but unstated reason is that the petitioners did not even specifically state the act or omission by which the President violated their right as required by Section 2, Rule 2 of

the Rules of Court, and therefore, failed to prove it. Thus, I fully concur with the dismissal the ponencia directed.

Re: The Ombudsman

I likewise agree with the ponencia's conclusion that the petition against the Ombudsman should be dismissed for the reason discussed below.

The petitioner simply alleged that the Ombudsman violated her right to speedy disposition of the criminal complaint, with the passing claim that the delay has placed her life and that of her witnesses in danger. She failed to aver the fact of delay; the dilatory acts of the Ombudsman, if any; and manner and kind of danger the delay caused her.

Thus, the petition did not allege anything that would place it within the ambit of the Rule on the Writ of Amparo (the Amparo Rule) with respect to the Ombudsman; it did not involve any violation by the Ombudsman relating to any disappearance, extrajudicial killing or any violation or threat of violation of the petitioners' constitutional rights to life, liberty or security.

For this reason, the petition stated no cause of action against the Ombudsman under the Amparo Rule, contrary to Section 2, Rule 2 of the Rules of Court, in relation with Section 5 of the Amparo Rule. I thus join the ponencia in dismissing the case against the Ombudsman.

Re: The Command Responsibility Ruling

On the command responsibility issue, the CA held in its decision that:

The doctrine of command responsibility holds military commanders and other persons occupying positions of superior authority criminally responsible for the unlawful conduct of their subordinates. For the doctrine to apply, the following elements must be shown to exist: (i) the existence of a superior-subordinate relationship; (ii) the superior knew or had reason to know that the criminal act was about to be or had been committed; and (iii) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator (Joaquin Bernas, S.J. Command Responsibility, February 7, 2007).

Since petitioners failed to establish by substantial evidence the first element of command responsibility, i.e., that the perpetrators of the acts complained of are subordinates of Gen. Esperon and P/Dir. Gen Razon, we cannot hold the two officials liable under a writ of amparo.

Under these terms, the CA effectively ruled that the doctrine of command responsibility applies in an Amparo case, but could not be applied in this case for lack of proof that the alleged perpetrators were military or police personnel.

The ponencia rejects the CA's approach and conclusion and holds that command responsibility is not an appropriate consideration in an Amparo proceeding, except for purposes specific and directly relevant to these proceedings. I fully concur with this conclusion.

The doctrine of command responsibility is a substantive rule that establishes criminal or administrative liability that is different from the purpose and approach of the Amparo Rule. As we have painstakingly explained in *Secretary of Defense v. Manalo*[4] and *Razon v. Tagitis*,[5] the Amparo Rule merely provides for a procedural protective remedy against violations or threats of violations of the constitutional rights to life, liberty and security. It does not address criminal, civil or administrative liability as these are matters determined from the application of substantive law.

As heretofore mentioned, a new law - RA 9851 - has recently been passed relating to enforced disappearance and command responsibility. Section 10 of this law explicitly makes superiors criminally liable under the doctrine of

command responsibility, as follows:[6]

Section 10. Responsibility of Superiors. - In addition to other grounds of criminal responsibility for crimes defined and penalized under this Act, a superior shall be criminally responsible as a principal for such crimes committed by subordinates under his/her effective command and control, or effective authority and control as the case may be, as a result of his/her failure to properly exercise control over such subordinates, where:

(a) That superior either knew or, owing to the circumstances at the time, should have known that the subordinates were committing or about to commit such crimes;

(b) That superior, failed to take all necessary and reasonable measures within his/her power to prevent or repress their commissio0n or to submit the matter to the competent authorities for investigation and prosecution.

Thus, liability under the doctrine of command responsibility is no longer simply administrative (based on neglect of duty),[7] but is now criminal. This new development all the more stresses that the doctrine of command responsibility has limited application to the Rule on the Writ of Amparo whose concern is the protection of constitutional rights through procedural remedies.

The factual issue an Amparo case directly confronts is whether there has been a disappearance or an extrajudicial killing or threats to the constitutional rights to life, liberty and security. If at all possible, a preliminary determination can be made on who could have perpetrated the acts complained of, but only for the purpose of pointing the way to the remedies that should be undertaken. On the basis of a positive finding, the case proceeds to its main objective of defining and directing the appropriate procedural remedies to address the threat, disappearance or killing.[8] In meeting these issues, the Amparo Rule specifies the standard of diligence that responsible public officials carry in the performance of their duties. Expressly,[9] one duty the Amparo Rule commands is the investigation of a reported crime that, by law,[10] the police is generally duty bound to address.

To the extent of (1) answering the question of whether an enforced disappearance, an extrajudicial killing or threats thereof have taken place and who could have been the perpetrators of these deeds; (2) determining who has the immediate duty to address the threat, disappearance, extrajudicial killing or violation of constitutional right; and in (2) determining the remedial measures that need to be undertaken - the doctrine of command responsibility may find some relevance to the present petition.

This linkage, however, does not go all the way to a definitive determination of criminal or administrative liability, or non-liability, for the act of a subordinate or for neglect of duty. This question is far from what the CA or this Court can definitively answer in an Amparo petition and is certainly an improper one to answer in an Amparo proceeding. It has never been the intention of the Amparo Rule to determine liability, whether criminal or administrative; the Court, under the Amparo Rule, can only direct that procedural remedies be undertaken for the protection of constitutional rights to life, liberty and security.

In Tagitis, we pointedly stated that while the Court can preliminarily determine responsibility in terms of authorship (not liability), this is only "as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts." In doing this, we gave "responsibility" a peculiar meaning in an Amparo proceeding. (We did the same with the term "accountability.") [11] It is only in this same sense that the CA can hold respondents Gen. Esperon and P/Dir. Gen. Razon not liable under the doctrine of command responsibility.

Re: Respondents P/Dir. Gen. Razon and Gen. Esperon

Subject to the above observations and for the reasons discussed below, I concur in dismissing the petition against

the respondents P/Dir. Gen. Razon and Gen. Esperon who were impleaded in their capacities as Philippine National Police (PNP) Chief and Armed Forces of the Philippines (AFP) Chief of Staff, respectively. As a matter of judicial notice, they are no longer the incumbents of the abovementioned positions and cannot therefore act to address the concerns of a Writ of Amparo. In their places should be the incumbent PNP Chief and AFP Chief of Staff to whom the concerns of and the responsibilities under the petition and the Amparo Rule should be addressed. Unless otherwise directed by the Court, these incumbent officials shall assume direct responsibility for what their respective offices and their subordinate officials should undertake in Amparo petitions. This is in line with what we did in *Tagitis* where, as appropriate remedy, we applied the broadest brush by holding the highest PNP officials tasked by law to investigate, to be accountable for the conduct of further investigation based on our finding that no extraordinary diligence had been applied to the investigation of the case.

Consistent with this position, the petition should likewise be dismissed as against respondents Edgar B. Roquero (Roquero) and Arsenio C. Gomez (Gomez), except to the extent that Gomez may be charged with harassment and oppression before the Ombudsman^[12] as these are substantive liability matters that are not laid to rest under an Amparo petition.

Re: Consideration of the Evidence and the Remedy

I acknowledge that the police at the municipal and provincial levels conducted investigations that unfortunately did not produce concrete results because of, among others, the lack of cooperation from the petitioners at some point during the investigation. No amount of extraordinary diligence indeed can produce results if the very persons seeking the investigation would not cooperate.

I do not read this intervening development, however, to be indicative of lack of interest in the case, given the efforts on record exerted by the petitioners to follow up the case at every level of police investigation. Moreover, the petitioners still pursued their petition and relied on this Court, in the hope that we can remedy what they perceive to be inadequate police investigative response.

In my view, the perceived lack of cooperation resulted more from frustration with police processes rather than from the outright refusal to cooperate. As we discussed in *Tagitis*, this is precisely the type of situation that a Writ of Amparo addresses - a situation where the petitioners swim against the current in a river strewn with investigative and evidentiary difficulties.

From the records, I note that very significant gaps exist in the handling of the investigation - among them, the failure to identify and locate the respondents Major Darwin Reyes/Sy, Jimmy Santana, Ruben Alfaro, Captain Angelo Cuaresma and a certain Jonathan - to the point that the petition was not even served on these respondents. This gap occurred despite evidence that the respondents are military or police personnel and that the address of Darwin Reyes/Sy had apparently been located and he had been identified to be connected with the military. A major problem, as the petition pointed out, is that the AFP itself certified that these respondents are not in the roster of Philippine Air Force personnel; no search and certification was ever made on whether they are AFP personnel or in other branches of the service. No significant follow through was also made in locating and properly placing Darwin Reyes/Sy within the jurisdiction of the court despite the evidentiary leads provided. These constitute major gaps in the investigation that became the stumbling blocks to its progress, both with the CA and the Ombudsman. Both bodies failed to make any headway because only the investigating respondents who are not alleged participants in the kidnapping showed up while the alleged perpetrators did not. This Court will never know unless further investigation is conducted whether this happened by design or by accident.

Based on this view, I agree with the ponencia that further investigation and monitoring should be undertaken. While past investigations may have been conducted, no extraordinary diligence had been applied to critical

aspects of the case that are outside the petitioners' capability to act upon and which therefore have not been affected by the petitioners' lack of cooperation, even assuming this to be true. Because of this investigative shortcoming, we do not have sufficient factual findings that would give us the chance to fashion commensurate remedies. Otherwise stated, we cannot rule on the case until a more meaningful investigation using extraordinary diligence is undertaken.

The ponencia holds that the needed additional actions should be undertaken by the CA. I concur with this ruling as it is legally correct; the CA started the fact-finding on the case and has adequate powers and capability to pursue it. I wish to reiterate in this Separate Opinion, however, that an alternative way exists that is more direct and more efficient in achieving the goals of the Rule on the Writ of Amparo - i.e. the full and complete investigation with the observance of extraordinary diligence, and the recommendation for the prosecution of the parties who appear to be responsible for the violation of the constitutional rights to life, liberty and security. This alternative is based on the relevant provisions of the Amparo Rule, particularly Sections 20 to 23 which provide:

SECTION 20. Archiving and Revival of Cases. -- The court shall not dismiss the petition, but shall archive it, if upon its determination it cannot proceed for a valid cause such as the failure of petitioner or witnesses to appear due to threats on their lives.

A periodic review of the archived cases shall be made by the Amparo court that shall, *motu proprio* or upon motion by any party, order their revival when ready for further proceedings. The petition shall be dismissed with prejudice upon failure to prosecute the case after the lapse of two (2) years from notice to the petitioner of the order archiving the case.

The clerks of court shall submit to the Office of the Court Administrator a consolidated list of archived cases under this Rule not later than the first week of January of every year.

SECTION 21. Institution of Separate Actions. -- This Rule shall not preclude the filing of separate criminal, civil or administrative actions.

SECTION 22. Effect of Filing of a Criminal Action - When a criminal action has been commenced, no separate petition shall be filed. The reliefs under the writ shall be available by motion in the criminal case.

The procedure under this Rule shall govern the disposition of the reliefs available under the writ of amparo.

SECTION 23. Consolidation. -- When a criminal action is filed subsequent to the filing of a petition for the writ, the latter shall be consolidated with the criminal action.

When a criminal action and a separate civil action are filed subsequent to a petition for a writ of Amparo, the latter shall be consolidated with the criminal action.

After consolidation, the procedure under this Rule shall continue to apply to the disposition of the reliefs in the petition.

SECTION 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.

Section 22 of the Amparo Rule would be the closest provision to apply to the present case since a criminal action has been commenced before the Ombudsman (on April 19, 2007) before the present petition was filed on October 25, 2007. Under Section 22, no petition for the Writ of Amparo can technically be filed because of the previous commencement of criminal action before the Ombudsman. In the regular course, the present petition should have been dismissed outright at the first instance.

Yet, as the case developed, the Court issued the Writ of Amparo and the CA denied the petition on other grounds.

As things now stand, it appears late in the day to dismiss the petition on the basis of Section 22. We should consider, too, that the present petition came under a unique non-repeatable circumstance - the Ombudsman complaint was filed before the Amparo Rule took effect; thus, the petitioners did not really have a choice of remedies when they filed the criminal complaint before the Ombudsman. There is likewise the consideration that the Ombudsman complaint was only against the perceived perpetrators of the kidnapping, whereas the present petition impleaded even those who had the duty to investigate or could effectively direct investigation of the case. The kidnapping and the threats that resulted, too, are inextricably linked and should not separately and independently be considered under prevailing procedural rules.[13]

Under the circumstances, I believe that the best approach is to simply avail of the possibilities that the combined application of the above-quoted provisions offer, appropriately modified to fit the current situation. Thus, this Court can simply consolidate the investigative and fact-finding aspects of the present petition with the investigation of the criminal complaint before the Ombudsman, directing in the process that the threats to the right to security aired in the present petition be incorporated in the Ombudsman complaint. Necessarily, all the records and evidence so far adduced before the CA should likewise be turned over and be made available to the Ombudsman in its investigation, in accordance with the dispositions made in this Decision. For purposes of its delegated investigative and fact-finding authority, the Ombudsman should be granted the complete investigative power available under the Amparo Rule.

The petitioners should be allowed, as they see fit, to amend their Ombudsman complaint to give full effect to this consolidation.

In the above manner, the Court continues to exercise jurisdiction over the Amparo petition and any interim relief issue that may arise, taking into account the Ombudsman's investigative and fact-finding recommendations.

The Ombudsman, for its part, shall rule on the complaint before it in accordance with its authority under Republic Act 6770 and its implementing rules and regulations, and report to the Court its investigative and fact-finding recommendations on the Amparo petition within one year from the promulgation of this Decision.

The incumbent Chiefs of the AFP and the PNP and their successors shall remain parties to the Ombudsman case and to the present petition in light of and under the terms of the consolidation, and can be directed to act, as the ponencia does direct them to act.

Now that the case has been remanded for further investigation and monitoring to the Court of Appeals, the investigation using the standards of extraordinary diligence now rests with that court to enforce, using all the powers and authority that this Court can grant under the Rule on the Writ of Amparo. The Ombudsman, for its part, has been duly enlightened by the ponencia and by this Separate Opinion on the directions it should take to effectively discharge its tasks in handling the complaint before it. The petitioners, too, have their share of the burden in pushing their case to a meaningful conclusion and cannot just wait for the other dramatis personae to act. With the Court's Decision, action has again shifted to the lower levels and the Court now simply waits to see if the appellate court, the Ombudsman and the parties, acting on their own and collectively, can be equal to the tasks before them.

[1] Under Section 6 of RA 9851, enforced or involuntary disappearance is penalized under the concept of "other crimes against humanity" when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

[2] G.R. No. 182498, Dec. 3, 2009.

[3] Under Section 9 of RA 9851, the Philippine constitutional standard of presidential immunity from suit is also made an exception to the higher international criminal law standard of non-immunity of heads of state for the most serious crimes of concern to the international community as a whole - namely, war crimes, genocide, and crimes against humanity. Thus, Section 9 states:

Section 9. Irrelevance of Official Capacity. - This Act shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a head of state or government, a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Act, nor shall it, in and of itself, constitute a ground for reduction of sentence. However:

(a) Immunities or special procedural rules that may be attached to the official capacity of a person under Philippine law other than the established constitutional immunity from suit of the Philippine President during his/her tenure, shall not bar the court from exercising jurisdiction over such a person; and

(b) Immunities that may be attached to the official capacity of a person under international law may limit the application of this Act, but only within the bounds established under international law. [emphasis supplied]

[4] G.R. No. 180906, Oct. 7, 2008, 568 SCRA 1, 57-58.

[5] Supra note 1.

[6] Similarly, Section 13 of Republic Act No. 9745, otherwise known as the "Anti-Torture Act of 2009" makes "[t]he immediate commanding officer of the unit concerned of the AFP or the immediate senior public official of the PNP and other law enforcement agencies criminally liable as a principal to the crime of torture or other cruel or inhuman and degrading treatment or punishment "[i]f he/she has knowledge of or, owing to the circumstances at the time, should have known that acts of torture or other cruel, inhuman and degrading treatment or punishment shall be committed, is being committed, or has been committed by his/her subordinates or by others within his/her area of responsibility and, despite such knowledge, did not take preventive or corrective action either before, during or immediately after its commission, when he/she has the authority to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment but failed to prevent or investigate allegations of such act, whether deliberately or due to negligence shall also be liable as principals."

[7] As provided under Executive Order No. 226 for the Philippine National Police and Circular No. 28, Series of 1956 of the Armed Forces of the Philippines.

[8] Id.

[9] Rule on the Writ of Amparo, Sections 5, 9 and 17.

[10] Republic Act No. 6975, Section 24.

[11] In Tagitis, we defined the concept of responsibility and accountability for Writ of Amparo cases as follows: "Responsibility refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. Accountability refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance."

[12] See *Prudencio M. Reyes, Jr. v. Simplicio C. Belisario*, G.R. No. 154652, August 15, 2009.

[13] See *Philippine National Bank v. Gotesco Tyan Ming Development, Inc.*, G.R. No. 183211, June 5, 2009, where the Court held that "[t]he rule allowing consolidation is designed to avoid multiplicity of suits, to guard against oppression or abuse, to prevent delays, to clear congested dockets, and to simplify the work of the [courts]; in short, the attainment of justice with the least expense and vexation to the parties-litigants." See also *Teston v. Development Bank of the Philippines*, G.R. No. 144374, November 11, 2005, 474 SCRA 597, 605.

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