

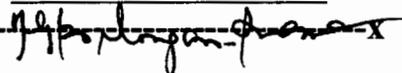
EN BANC

G.R. No. 220028 – BAYAN MUNA PARTY-LIST REP. CARLOS ISAGANI T. ZARATE, GABRIELA WOMEN’S PARTY REP. EMERENCIANA DE JESUS, FORMER ANAKPAWIS PARTY-LIST REP. RAFAEL V. MARIANO, FORMER BAYAN MUNA PARTY-LIST REP. TEODORO CASIÑO, CRISTINA PALABAY, SR. MARY FRANCIS AÑOVER, REV. IRMA M. BALABA, JACQUILINE RUIZ, HEIRS OF FORMER ANAKPAWIS PARTY-LIST REP. CRISPIN BELTRAN, Represented by OFELIA BELTRAN BALLETA, Petitioners, v. H.E. BENIGNO SIMEON C. AQUINO III, IN HIS CAPACITY AS THE COMMANDER-IN-CHIEF OF THE ARMED FORCES OF THE PHILIPPINES, ET AL., Respondents

Promulgated:

November 10, 2015

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DISSENTING OPINION

This case involves the phenomenon of “red baiting.” It is our version of McCarthyism.¹

To make it easy for military and paramilitary units to silence or cause untold human rights abuses on vocal dissenters, government agents usually resort to stereotyping or caricaturing individuals. This is accomplished by providing witnesses who, under coercive and intimidating conditions, identify the leaders of organizations critical of the administration as masterminds of ordinary criminal acts. Not only does this make these leaders’ lives and liberties vulnerable, a chilling effect on dissent is also generated among similar-minded individuals.

Belief in communism has historically been used as a bogey to create non-existent exigencies for purposes of national security. History records the many human rights violations that may have been caused by this unsophisticated view of some in the echelons of military power. History, too, teaches that toleration and the creation of wider deliberative spaces are the more lasting and peaceful ways to debunk worn-out ideologies.

The use of the red bogey of communism may be what is at work again today in the mountains of Northeastern Mindanao.

¹ Petition, p. 3. See also, Dr. Nymia P. Simbulan, *Red Baiting: A Tool of Repression, Then and Now*, Observer: A Journal on Threatened Human Rights Defenders in the Philippines Vol. 3, No. 2, pp. 12-15 (2011), <http://www.ipon-philippines.info/fileadmin/user_upload/Observers/Observer_Vol.3_Nr.2/Observer_Vol.3_Nr.2_Red-Baiting.pdf> (visited November 16, 2015).



I dissent in the majority's Resolution to deny the Petition for the issuance of a writ of Amparo. The writ of Amparo should be issued in this case or, in the alternative, respondents should be required to comment on the Petition.

I

Amparo affords protection for individuals against extrajudicial killings and enforced disappearances.² It protects life and liberty, ensuring the security of an individual. Security means freedom from fear, guarantee of bodily and psychological integrity, and the guarantee of protection of one's rights.³

The Rule on the Writ of Habeas Data was devised to ensure autonomous control over personal information. It deters the illegal acquisition of information protected by the right to privacy which may be used to the detriment of citizens.⁴

Petitioners in this case are active members of various progressive party-list groups, non-government, civil service, and religious organizations.⁵ They seek relief because their life, liberty, and security are threatened by the labels given to their groups by the military as "communist front organizations."⁶ The fear for their life, liberty, and security is based on their personal experiences. These are consistent with the effect of labeling and stereotyping in the reports of Philip Alston (Alston) and Chaloka Beyani, two United Nations Special Rapporteurs on Extrajudicial, Summary or Arbitrary Executions.⁷

The antecedents of this case involve the plight of the Manobos who are lumads or indigenous people in Mindanao.⁸ Manobos from Talaingod, Davao del Norte are currently being displaced from their communities due to military activities allegedly attributed to clashes between the government and the New People's Army.⁹

These conflicts, which caused various human rights abuses, forced the Manobos to flee their communities and stay at the Haran Center of the United Church of Christ in the Philippines¹⁰ in Davao City.¹¹ The

² *Secretary of National Defense, et al. v. Manalo, et al.*, 589 Phil. 1, 41 (2008) [Per C.J. Puno, En Banc].

³ *Id.* at 50-58.

⁴ *In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Rodriguez*, 676 Phil. 84, 103 (2011) [Per J. Sereno (now Chief Justice), En Banc].

⁵ Petition, pp. 4-5.

⁶ *Id.* at 8.

⁷ *Id.* at 18, 23-24.

⁸ *Id.* at 16.

⁹ *Id.* at 16-17.

¹⁰ *Id.* at 14. Petitioner Reverend Irma M. Balaba is an ordained minister of this church.

Irma M. Balaba

alternative narrative being posed by the Criminal Investigation and Detection Group was that these Manobos were being held at the Haran Center against their will and forced to attend lectures and rallies.¹²

Sometime in April 2015, some of the Manobos returned to their communities.¹³ According to petitioners, the returning Manobos were compelled by the members of the military to file a criminal complaint against those who “forcibly detained” them in Davao City.¹⁴ Petitioners’ photographs were shown to them. These photographs constitute what petitioners refer to as a “rogue gallery,” which caused some of the Manobos to identify these individuals as the ones responsible for their alleged detention.¹⁵ The conditions within which the Manobos were asked to identify, i.e., whether it was coercive or intimidating, were unknown.

Petitioners are known to be critical of government. They engaged in various humanitarian activities in support of their advocacies.¹⁶ They were surprised when they were tagged as individuals criminally responsible for the atrocities against the Manobos, especially since they were not even based in Davao City nor in Mindanao.¹⁷ Criminal complaints¹⁸ were filed against petitioners Representative Isagani T. Zarate (Zarate),¹⁹ Representative Emerenciana De Jesus,²⁰ Rafael V. Mariano (Mariano),²¹ Teodoro Casiño (Casiño),²² Cristina Palabay,²³ Sister Mary Francis Añover,²⁴ Reverend Irma M. Balaba (Balaba),²⁵ and Jacqueline Ruiz.²⁶

The phenomenon of implicating progressive civil group leaders to heinous crimes is called “*red baiting*.” As stated by Alston, it is the “‘vilification’, ‘labelling’, or guilt by association”²⁷ of various democratic

¹¹ Petition, p. 17.

¹² Id. at 20–22.

¹³ Id. at 20.

¹⁴ Id.

¹⁵ Id. at 20–22.

¹⁶ Id. at 8–16.

¹⁷ Id. at 22.

¹⁸ Id. at 20.

¹⁹ Id. at 8–9. Petitioner Bayan Muna Party-list incumbent representative Carlos Isagani T. Zarate stated in the Petition that he has worked with the lumads sometime in May 2014.

²⁰ Id. at 9. Petitioner Rep. Emerenciana De Jesus is the incumbent representative of Gabriela Women’s Party.

²¹ Id. at 10. Petitioner Rafael V. Mariano is the former representative of Anakpawis Party-list.

²² Id. at 11. Petitioner Teodoro Casiño is the former representative of Bayan Muna Party-list.

²³ Id. at 12. Petitioner Cristina Palabay is the Secretary General of KARAPATAN.

²⁴ Id. at 13. Petitioner Sr. Mary Francis Añover is the national coordinator of Rural Missionaries of the Philippines.

²⁵ Id. at 14–15. Petitioner Rev. Irma M. Balaba is an ordained minister of the United Church of Christ in the Philippines. She stated in the Petition that she has done some humanitarian work with the lumads in August 2014.

²⁶ Id. at 15. Petitioner Jacqueline Ruiz is the Executive Director of the Children’s Rehabilitation Center.

²⁷ Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council,” *Preliminary note on the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, to the Philippines (12-21 February 2007)*, par. 8 <<http://www.ihumanrights.ph/hr-mechanism/human-rights-bodies/charter-based-bodies/special-procedures/reportsrecommendations/preliminary-note-on-the-visit-of-the-special-rapporteur-on->

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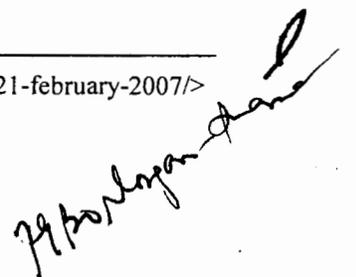
organizations. These groups are stereotyped or caricatured by the military as communist groups, making them easy targets of government military or paramilitary units. Alston described this in detail in the Report of the Special Rapporteur on Extrajudicial Summary or Arbitrary Executions, Philip Alston, on His Mission to Philippines (12–21 February 2007):

1. Since 2001 the number of politically motivated killings in the Philippines has been high and the death toll has mounted steadily. These killings have eliminated civil society leaders, including human rights defenders, trade unionists, and land reform advocates, as well as many others on the left of the political spectrum. Of particular concern is the fact that those killed appear to have been carefully selected and intentionally targeted. The aim has been to intimidate a much larger number of civil society actors, many of whom have, as a result, been placed on notice that the same fate awaits them if they continue their activism. One of the consequences is that the democratic rights that the people of the Philippines fought so hard to assert are under serious threat.

....

13. Senior Government officials in and out of the military believe that many civil society organizations are fronts for the [Communist Party of the Philippines (CPP)] and that the CPP controls these groups to instrumentalize popular grievances in the service of revolutionary struggle, forge anti-Government alliances, and recruit new party members. While greatly overstated, these views are not entirely baseless. It is the self-professed policy of the CPP to engage in united front politics for the purpose of promoting its views among those who are dissatisfied with the status quo but would be disinclined to join the CPP. Similarly, the CPP has publicly stated that its members engaged in such organizing and mobilization are subject to the principle of democratic centralism and, thus, ultimately to the direction of the Central Committee of the CPP. There is no reason to doubt that the CPP expects those of its members who occupy leadership positions within civil society organizations to promote its strategic priorities. This does not, however, warrant the approach of many officials who characterized alleged front groups as if they were simply branches of the CPP. More objective interlocutors recognized that the term “front” encompasses many gradations of control, some very tenuous, and that in virtually any front organization most members will not belong to the CPP and will likely be unaware of the organization’s relationship to the CPP. Relatively little is known about the extent of the CPP’s influence within civil society organizations, and it would be naïve to assume that the CPP is as powerful as it would like to present itself as being.

....



16. Newspapers routinely carry reports of senior military officials urging that alleged CPP front groups and parties be neutralized. Often, prominent political parties and established civil society groups are named specifically. The public is told that supporting their work or candidates is tantamount to supporting “the enemy”. This practice was openly and adamantly defended by nearly every member of the military with whom I spoke. When I suggested to senior military officials that denunciation of civil society groups should only be done according to law and by the Government, the response was that civilian authorities are in no position to make such statements because they might be assassinated as a result. On another occasion, I asked a senior civilian official whether the Government might issue a directive prohibiting such statements by military officers. He expressed vague sympathy for the idea, but his subordinate — a retired military commander — promptly interjected that such a directive would be “impossible” because “this is a political war”. When political “warfare” is conducted by soldiers rather than civilians, democracy has been superseded by the military.

17. The public vilification of “enemies” is accompanied by operational measures. The most dramatic illustration is the “*order of battle*” approach adopted systematically by the AFP and, in practice, often by the PNP. In military terms an order of battle is an organizational tool used by military intelligence to list and analyze enemy military units. The AFP adopts an order of battle in relation to the various regions and sub-regions in which it operates. A copy of a leaked document of this type, from 2006, was provided to me, and I am aware of no reason to doubt its authenticity. The document, co-signed by senior military and police officials, calls upon “all members of the intelligence community in the [relevant] region . . . to adopt and be guided by this update to enhance a more comprehensive and concerted effort against the CPP/NPA/NDF”. Some 110 pages in length, the document lists hundreds of prominent civil society groups and individuals who have been classified, on the basis of intelligence, as members of organizations which the military deems “illegitimate”. While some officials formalistically deny that being on the order of battle constitutes being classified as an enemy of the state, the widespread understanding even among the political elite is that it constitutes precisely that.

.....

46. Senior Government officials are attempting to use prosecutions to dismantle the numerous civil society organizations and party list groups that they believe to be fronts for the CPP. While this project is sometimes discussed as if it were a dark conspiracy, it was explained to me openly and directly by numerous officials as the very function of [Inter-Agency Legal Action Group (IALAG)], which was established in 2006. IALAG is an executive rather than advisory body and, while it includes representatives of various criminal justice, intelligence, and military organs, institutional power and legal authority over its operations is concentrated in the Office of the National Security Adviser. At the national level, IALAG meets at least once every

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other week, discusses the evidence in particular cases and debates whether it is sufficient to file a criminal complaint. There are also regional and provincial IALAG bodies with a similar structure and role. It has been due to the efforts of IALAG that charges have been brought against a number of leftist lawmakers and persons who had been given immunity guarantees to facilitate peace negotiations with the NDF.

47. The reason that such an ad hoc mechanism was established for bringing charges against members of these civil society organizations and party list groups is that they have seldom committed any obvious criminal offence. Congress has never reversed its decision to legalize membership in the CPP or to facilitate the entry of leftist groups into the democratic political system. But the executive branch, through IALAG, has worked resolutely to circumvent the spirit of these legislative decisions and use prosecutions to impede the work of these groups and put in question their right to operate freely.

48. What justification is given for waging this legal offensive? One explanation that I received was that when membership in the CPP was legalized, the expectation was that its members would lay down their arms and participate in the parliamentary struggle. On this interpretation, the CPP has instead sought to pursue simultaneously the armed and parliamentary struggles. Many senior government officials stated unequivocally that they consider the party list groups in Congress as part of the insurgency. It is evidently the case that there are persons in Congress as well as in the hills who adhere to a "national democratic" ideology, but when I would ask interlocutors in what respect party list members of Congress belonging to the most criticized parties — Bayan Muna, Anakpawis, and Gabriela — had gone beyond expressing sympathy for the armed struggle to actually supporting it, I was repeatedly provided the same unsubstantiated allegation, that these congresspersons provide their "pork barrel" to the NPA. Cases filed against several congresspersons on these grounds have failed. This has not discouraged senior government officials. One insisted that although the publicly available evidence might be inadequate, the charges were amply supported by intelligence information that could not be disclosed. Another informed me simply that warrants had been issued based on probable cause and that he would not stop treating the congresspersons as criminals simply because no conviction had yet been achieved.

49. The central purpose of IALAG is to prosecute and punish members of the CPP and its purported front groups whenever there is any legal basis for doing so. I received no evidence that it was designed or generally functions to plan extrajudicial executions. *However, IALAG's proactive legal strategy requires drawing up lists of individuals who are considered enemies of the state but many of whom will not be reachable by legal process.* The temptation to execute such individuals is clear, representatives of the AFP and PNP with the capacity to do so participate in IALAG bodies at all levels, and there is circumstantial evidence that this has sometimes occurred. The most deleterious role played by IALAG bodies may, however, be to encourage prosecutors to act

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as team players with the AFP and PNP in counterinsurgency operations and to de-prioritize cases involving the deaths of leftist activists.²⁸ (Emphasis supplied, citations omitted)

Alston's report shows that the military has routinely prosecuted leaders of progressive groups for a specific purpose. Once the government prosecutes baselessly, these progressive leaders will have to bargain for immunity and, in exchange, the government will use them to facilitate negotiations with the Communist Party of the Philippines. Alston's observations match the experience of petitioners currently being prosecuted for allegedly detaining the Manobos.

The display of petitioners' photographs in the "rouge gallery" to the Manobos does not appear to be an isolated incident of red baiting against petitioners. Petitioner Representative Zarate found evidence that his name had been included in an Order of Battle, as described by Alston, of the 10th Infantry Division of the Philippine Army.²⁹ Petitioners Mariano and Casiño were also wrongfully accused in a kidnapping and murder case in Nueva Ecija, similar to the criminal complaint filed by the Manobos against them. However, it turned out that in the earlier case, the victim had died in a road accident.³⁰

Petitioner Reverend Balaba also narrated in detail four (4) different occasions in August 2015 when unidentified men looked for her in their church and in her residence.³¹ She also noticed that for several hours, a government-issued vehicle (red plate with plate number SLB 383) was parked six (6) meters away from their church.³² Petitioners believe this type of systematized surveillance resulted in information in the possession of the Criminal Investigation and Detection Group that was eventually used in the criminal complaint alleging that petitioners illegally detained the Manobos.³³

The previous encounter of petitioner Representative Zarate with the military, the harassment in the criminal cases previously filed against petitioners Mariano and Casiño, the apparent surveillance being conducted against petitioner Reverend Balaba, and petitioners' inclusion in the military's "rogue gallery" may possibly escalate into a situation where the life, liberty, or security of these petitioners will be violated. This possibility of harm is what the writ of Amparo seeks to avert. One of the functions of

²⁸ *Report of the Special Rapporteur on Extrajudicial Summary or Arbitrary Executions, Philip Alston, on His Mission to Philippines (12-21 February 2007)* 6-19 <http://www2.ohchr.org/english/bodies/hrcouncil/docs/8session/A.HRC.8.3.Add.2_sp.doc> (visited November 16, 2015).

²⁹ Petition, p. 26. However, the inclusion of Zarate's name in an Order of Battle was already subject to a separate Petition for Amparo in this court, which this court denied. *See Ladaga v. Mapagu*, G.R. No. 189689, November 13, 2012, 685 SCRA 322 [Per J. Perlas-Bernabe, En Banc].

³⁰ *Id.* at 27.

³¹ *Id.* at 27-28.

³² *Id.* at 28.

³³ *Id.* at 31-32.

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the writ is to “[break] the expectation of impunity in the commission of [extralegal killings and enforced disappearances].”³⁴ The writ of Amparo must be allowed in order that its preventive function be realized.

II

In the alternative, given the nature of the allegations made in the Petition, respondents should be ordered to comment on the Petition for the writ of Amparo and writ of Habeas Data in order to show cause why these protective writs should not be issued.

Under the rules on the writs of Amparo and Habeas Data, “the court, justice or judge shall immediately order the issuance of the writ *if on its face it ought to issue*.”³⁵ The immediate issuance of the writ is conditioned on a prima facie showing that the petitioner’s life, liberty, or security is violated or threatened to be violated. The rules, however, do not suggest that the petition should immediately be dismissed absent a prima facie showing of a violation or threat of violation of petitioner’s life, liberty, or security. The rules provide enough procedural leeway³⁶ to allow the courts to ask for additional pleadings in order to evaluate the merits of the petition.

A comment to the petition for the issuance of a writ of Amparo or habeas data is different from a verified return. While both may be responsive to the petition, a comment merely discusses the issues raised in the petition to guide the court as to whether to grant due course to the petition. A verified return, on the other hand, has to comply with the requisites enumerated under the rules, thus:

SEC. 9. Return; Contents. – Within seventy-two (72) hours after service of the writ, the respondent shall file a verified written return together with supporting affidavits which shall, among other things, contain the following:

- (a) The lawful defenses to show that the respondent did not violate or threaten with violation the right to life, liberty and security of the aggrieved party, through any act or omission;
- (b) The steps or actions taken by the respondent to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission;

³⁴ *Secretary of National Defense, et al. v. Manalo, et al.*, 589 Phil. 1, 41 (2008) [Per C.J. Puno, En Banc].

³⁵ A.M. No. 07-9-12-SC (2007), sec. 6; A.M. No. 08-1-16-SC (2008), sec. 7.

³⁶ A Comment or Answer is not among the prohibited pleadings enumerated under Section 11 of A.M. No. 07-9-12-SC (2007) and Section 13 of A.M. No. 08-1-16-SC (2008).

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(c) All relevant information in the possession of the respondent pertaining to the threat, act or omission against the aggrieved party; and

(d) If the respondent is a public official or employee, the return shall further state the actions that have been or will still be taken:

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

(ii) to recover and preserve evidence related to the death or disappearance of the person identified in the petition which may aid in the prosecution of the person or persons responsible;

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

(iv) to determine the cause, manner, location and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance;

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

(vi) to bring the suspected offenders before a competent court.

The return shall also state other matters relevant to the investigation, its resolution and the prosecution of the case.

A general denial of the allegations in the petition shall not be allowed.³⁷

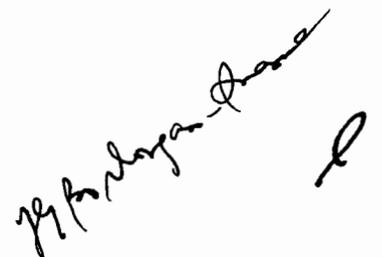
SEC. 10. Return; Contents. – The respondent shall file a verified written return together with supporting affidavits within five (5) work days from service of the writ, which period may be reasonably extended by the Court for justifiable reasons. The return shall, among other things, contain the following:

a) The lawful defenses such as national security, state secrets, privileged communication, confidentiality of the source of information of media and others;

b) In case of respondent in charge, in possession or in control of the data or information subject of the petition:

(i) a disclosure of the data or information about the petitioner, the nature of such data or information, and the purpose for its collection;

³⁷ A.M. No. 07-9-12-SC (2007), sec. 9.

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(ii) the steps or actions taken by the respondent to ensure the security and confidentiality of the data or information; and

(iii) the currency and accuracy of the data or information held; and

c) Other allegations relevant to the resolution of the proceeding. A general denial of the allegations in the petition shall not be allowed.³⁸

The difference in the function of a return and a comment was apparent in *In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Rodriguez*.³⁹ This court issued the writs of Amparo and habeas data and ordered respondents to file a verified Return and a Comment to the Petition.⁴⁰ Upon filing the Return of the writ, respondents' counsels merely manifested that the return be treated as their Comment to the Petition.⁴¹ In *Saez v. Macapagal-Arroyo*,⁴² this court issued a writ of Amparo without necessarily giving due course to the Petition.⁴³ This is akin to asking for a Comment.

A comment to a petition for the writs of Amparo or habeas data is similar to a preliminary citation issued by courts in petitions for the issuance of the writ of habeas corpus. The writ of habeas corpus requires respondent to produce the body of a person who appears to be illegally confined or deprived of his or her liberty, or when the rightful custody of any person is withheld from the person entitled thereto.⁴⁴ Like the writs of Amparo and habeas data, the writ of habeas corpus is an extraordinary writ; hence, the rules require that judicial relief be given with immediacy.

A writ of habeas corpus may be issued if it appears on the face of the petition that the writ ought to be issued.⁴⁵ If it is not apparent that the writ should be issued, a preliminary citation is issued by the courts asking respondents to show cause why the writ itself should not be issued.⁴⁶ The procedural device of a preliminary citation, though textually absent in our rules, is borne from practice. It was recognized in the 1921 case of *Lee Yick Hon v. Collector of Customs*.⁴⁷

While these extraordinary writs should be processed with urgency, this court should also be mindful in granting these remedies and should only

³⁸ A.M. No. 08-1-16-SC (2008), sec. 10.

³⁹ 676 Phil. 84 (2011) [Per J. Sereno (now Chief Justice), En Banc].

⁴⁰ Id. at 97.

⁴¹ Id. at 98.

⁴² G.R. No. 183533, September 25, 2012, 681 SCRA 678 [Per J. Reyes, En Banc].

⁴³ Id. at 681.

⁴⁴ *Zagala v. Ilustre*, 48 Phil. 282, 283 (1925) [Per J. Villa-Real, En Banc].

⁴⁵ RULES OF COURT, Rule 102, sec. 5.

⁴⁶ *Lee Yick Hon v. Collector of Customs*, 41 Phil. 548, 551 (1921) [Per J. Street, En Banc].

⁴⁷ 41 Phil. 548 (1921) [Per J. Street, En Banc].

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do so with great circumspection and scrutiny of the merits. In *Tapuz, et al. v. Hon. Judge Del Rosario, et al.*,⁴⁸ this court stated that the writ of Amparo should not be issued on “amorphous and uncertain grounds.”⁴⁹ An opportunity for respondent to comment would allow this court to exercise better scrutiny of the allegations in the Petition.

Petitioners in this case allege facts that *threaten* their lives and liberty, and, therefore, their security. The Resolution of the majority correctly points out that there is still no tangible offense committed by respondents against petitioners. However, Amparo does not come into existence as a relevant preventive device only when there is the certainty of an offense committed. In those cases, preliminary investigation or the judicial determination of probable cause affords a venue for the accused to contest the impending threats on his or her liberties.

Rather, Amparo is a remedy designed for events that reside in legal penumbra. Those conditions, which, though ambiguously legal, incrementally create the vulnerabilities that will, with the certainty of experience, lead to the person’s harassment, disappearance, or death. Certainly, “red baiting” is quintessentially paradigmatic of these cases.

ACCORDINGLY, the writ of Amparo should be issued. In the alternative and without necessarily giving due course to the Petition, respondents should be required to file their Comment.



MARVIC M.V.F. LEONEN
Associate Justice

⁴⁸ 577 Phil. 636 (2008) [Per J. Brion, En Banc].

⁴⁹ Id. at 652.