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FROM EDITORS' DESK

It gives us great pleasure in presenting to readers the first issue of the *City University of Hong Kong Law Review (CityU LR)*. The *CityU LR* represents the desire of both faculty members and students of the Law School of City University to create a platform where academics, lawyers, judges, legal practitioners, and students could exchange scholarly views on cutting edge legal issues of local and global relevance.

Considering the overwhelming number of law journals, it is a legitimate question to ask: what is it that the *CityU LR* seeks to achieve? There are at least three objectives it seeks to accomplish. First of all, the *CityU LR* aims to bring to Hong Kong a model in which students are trained at law schools to write, edit, and publish scholarly papers. Second, the *CityU LR* is created as a 'legal mosaic' in that it will publish papers in any area of law by a range of people—from students to scholars, legal professionals, judges, and prosecutors—from all over the world. Third, the *CityU LR* aspires to become a window to the outside world to keep readers abreast of the legal developments taking place in mainland China, Hong Kong, and Macau.

With these objectives in mind, we present here a collection of articles and notes covering a variety of legal issues in municipal, comparative, regional, and international settings. Readers will also find in this issue a survey of recent legal developments in Hong Kong and mainland China, and a review of some recently published books.

We believe that the first issue has been able to take steps, albeit small, in achieving the above-stated ambitious goals. We hope that readers will enjoy reading, and find beneficial, the papers contained in this issue.

Prabhjyot KAUR
Ham Dick Dickie MOK
Zaineb Amirali NASIR

Editors
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The Latin American Amparo Proceeding and the Writ of Amparo in the Philippines±

*Allan R Brewer-Carías**

This article analyses the principal trends of the amparo proceeding in Latin America, which is an extraordinary judicial remedy specifically conceived for the protection of constitutional rights. It can be filed by any injured person against harms or threats inflicted to such rights by authorities and individuals. The remedy was first established in Mexico in the 19th century and since then, it spread in all Latin American Countries, being one of the most important institutions of Latin American Constitutional Law, reflecting the continued process of seeking for the progressive protection of constitutional rights. As the Latin American institution has in some way inspired the recently established 'writ of amparo' in the Philippines, the article gives a comparative overview of both institutions.

I. Introduction

The *amparo* proceeding is a Latin American extraordinary judicial remedy specifically conceived for the protection of constitutional rights. It can be filed by the injured person against harms or threats inflicted to such rights, not only by authorities but also by individuals.

Although being indistinctly called as an 'action,' a 'recourse' or a 'suit' of *amparo*, it has always been configured as a whole judicial proceeding that normally concludes with a judicial

± This Paper was originally written for the *Second Distinguish Lecture*, Series of 2007, which I was invited to give in Manila in March 2008, in an event organised by the Supreme Court of the Philippines, the Judicial Academy and the Philippine Association of Law Schools. Unfortunately, at that time I was unable to travel to Manila, due to the political persecution initiated against me by the government of my country, Venezuela, manifested in threats received from the Venezuelan Embassy in the Philippines.

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order or writ of 'protection'.[1] That is why, in Latin America, *amparo* is not merely a writ or a judicial protective order but a whole judicial proceeding.

This remedy has a long tradition in Latin America. It was introduced in the 19th century in Mexico and from there it spread to other countries. Although similar remedies were established during the 20th century in European countries[2] such as Austria,[3] Germany,[4] Spain[5] and Switzerland,[6] the institution remains more of a Latin American one, adopted in addition to the other two classical protective remedies of constitutional rights, the *habeas corpus* and *habeas data* actions.

The consequence of this development is that *amparo* influenced the introduction of a similar, although more restrictive remedy, in the Philippines, that is, the 'writ of *amparo*' created in 2007 by the Supreme Court of Philippines by means of the Rule on the Writ of *Amparo*, in order to reinforce the protection of the rights to life, liberty and security.[7]

This article begins, in Part II, by highlighting the principal trends of the *amparo* proceeding in Latin America within the process of progressive protection of constitutional rights since the 19th century. Part III then offers an overview of the birth of the institution in Mexico and its evolution in Latin America. Considering that the recently established

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[1] In Spanish, *amparo*, *protección* or *tutela* are all used to express the same meaning, See Héctor Fix-Zamudio and Eduardo Ferrer Mac-Gregor (Coord), *El Derecho de Amparo en el Mundo* (Editorial Porrúa, México 2006); Allan R Brewer-Carías, *El Amparo a los Derechos y Libertades Constitucionales: Una Aproximación Comparativa*, (Universidad Católica del Táchira, San Cristóbal 1993) 138; Allan R Brewer-Carías, *Mecanismos Nacionales de Protección de los Derechos Humanos (Garantías Judiciales de los Derechos Humanos en el Derecho Constitucional Comparado Latinoamericano)* (Instituto Interamericano de Derechos Humanos, San José 2005); and Allan R Brewer-Carías, *Constitutional Protection of Human Rights in Latin America: A Comparative Study on of the Amparo Proceeding* (Cambridge University Press, New York 2009).

[2] See Allan R Brewer-Carías, *Judicial Review in Comparative Law* (Cambridge University Press, Cambridge 1989); Fix-Zamudio and Mac-Gregor (2006) (n 1) 761 ff, 789 ff and 835 ff.

[3] Article 144, Law of the Constitutional Tribunal. See F Ermacora, 'Procédures et Techniques de Protection des Droits Fundamentaux: Cour Constitutionnelle Autrichienne' in L Favoreu (ed), *Cours Constitutionnelles Européennes et Droit Fundamentaux* (Economica;Presses Universitaires d'Aix-Marseille, Paris 1982) 189.

[4] Article 93(1)/(4)(a), Federal Constitutional Tribunal Law. See F Sainz Moreno, 'Tribunal Constitucional Federal Alemán' in Cortes Generales, *Boletín de Jurisprudencia Constitucional*, No 8 (Boletín Oficial del Estado, Madrid 1981) 603; G Müller, 'El Tribunal Constitucional Federal de la República Federal de Alemania' (1965) 4 *Revista de la Comisión Internacional de Juristas* 222.

[5] See Article 161(1)(b), Constitution; Article 41(2), Constitutional Tribunal Organic Law 2/1979. See Encarna Carmona Cuenca, 'El Recurso de Amparo Constitucional y el Recurso de Amparo Judicial' in *Revista Iberoamericana de Derecho Procesal Constitucional*, No. 5 (Instituto Iberoamericano de Derecho Procesal Constitucional, Editorial Porrúa, México 2006) 3–14.

[6] Articles 84–88, Law of Judiciary Organisation. See A Grisel, 'Réflexions sur la juridiction constitutionnelle et administrative en Suisse' in *Etudes et Documents*, No. 28 (Conseil d'Etat, Paris 1976) 255; E Zellweger, 'El Tribunal Federal Suizo en Calidad de Tribunal Constitucional' (1966) 7 *Revista de la Comisión Internacional de Juristas* 122; W J Wagner, *The Federal States and their Judiciary* (Mouton Co,The Hague 1959) 109.

[7] 'The Rule on the Writ of Amparo' in Resolution AM No 07-9-12-SC of the Supreme Court of the Philippines of 25 September 2007. The Resolution was amended on 16 October 2007 and took effect on 24 October 2007.

writ of *amparo* in the Philippines is inspired by the *amparo* proceedings in Latin America, Part IV compares and contrasts the two institutions. Part V highlights various distinctive features of the *amparo* proceeding in Latin America.

II. Progressive Protection of Constitutional Rights

The Latin American system of constitutional protection of constitutional rights can be identified through a few basic yet important trends. The first being the long-standing tradition the countries have had of inserting in their constitutions a very extensive declaration of human rights, comprising not only civil and political rights, but also social, cultural, economic and environmental rights. This trend, for instance, can be contrasted with the relatively limited content of the United States (US) Bill of Rights, and also with the content of the 1987 Philippines Constitution, that merely enumerates civil rights.

This Latin American declarative trend began almost 200 years ago with the adoption in 1811 of the 'Declaration of Rights of the People' by the Supreme Congress of Venezuela, four days before the declaration of the Venezuelan independence from Spain.[8] That is why, although having been a Spanish colony for three centuries, no Spanish constitutional influence can be found at the beginning of the 19th century Latin American modern state, which was conceived following the American and the French 18th century constitutional revolutionary principles.

However, in parallel to this declarative tradition, the second feature of the Latin American constitutional system regarding human rights has been the unfortunate process of their violations, which continues to occur in some countries where authoritarian governments have been installed, defrauding democracy and the constitution.[9]

The third trend of the Latin American system of constitutional protection of human rights has been the progressive and continuous incorporation in the constitutions of 'open clauses' of rights, in the same sense as the IX Amendment to the US Constitution referring to the existence of other rights 'retained by the people' that are not enumerated in the constitutional text.[10] A similar clause can be found in all Latin American constitutions (except in Cuba, Chile, Mexico, and Panama), in an even wider sense referring to others rights 'inherent to the human being' or to 'human dignity,' or derived from the 'nature of the human person.'

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[8] See Allan R Brewer-Carías, *Las Constituciones de Venezuela*, Vol. I (Academia de Ciencias Políticas y Sociales, Caracas 2008), 549 ff.

[9] See, e.g., Allan R Brewer-Carías, 'Constitution Making in Defraudation of the Constitution and Authoritarian Government in Defraudation of Democracy: The Recent Venezuelan Experience' in *Lateinamerika Analysen* 19, 1/2008, (German Institute of Global and Area Studies, Institute of Latin American Studies, Hamburg 2008), 119–142.

[10] For instance, in *Griswold v Connecticut* 381 US 479; 85 S Ct 1678, the Supreme Court declared that, even if it was not explicitly mentioned in the constitution, the right to marital privacy was to be considered as a constitutional right, embraced by the concept of liberty, and constitutionally protected. See also *Snyder v Massachusetts*, 291 US 97, 105; and *Poe v Ullman*, 367 US 497, 517.

The fourth feature, also related to the progressive expansion of the content of the constitutional declarations of rights, is the express incorporation in the constitutions, in addition to the rights listed therein, of the rights enumerated in international treaties and conventions. For such purpose, the constitutions not only have given international treaties and covenants the traditional statutory rank, similar to the US and many countries in the world, but in many cases, the constitutions have given such international treaties supra-legal rank, constitutional rank and even supra-constitutional rank. In the latter case, some constitutions even grant pre-emptive status to international human rights treaties vis-à-vis the constitution itself, whenever they provide for more favourable rules for their exercise. This is the case, for example, of the Venezuelan Constitution.[11]

Regarding the hierarchy of international human rights treaties in some Latin American countries, even in the absence of express constitutional provisions, such treaties have also acquired constitutional value and status through constitutional interpretation. For example, when the constitutions themselves establish that constitutional rights must always be interpreted according to what it is set forth in those international human rights treaties. This is the case, for instance, with the Colombian Constitution[12] and of the Peruvian Constitutional Procedural Code.[13]

Within this process of internationalisation of human rights, a particular international treaty on the matter has had an exceptional impact in the Continent: it is the 1969 American Convention on Human Rights.[14] The importance of the Convention derives not only from the content of the declaration of rights, but also from the judicial guarantees established for the protection of human rights, even at the international level by the creation of the Inter American Court of Human Rights (IACHR) , whose jurisdiction has been recognised by the Member States.[15]

This Convention was signed on 22 November 1969 and was ratified by all Latin American countries, except Cuba. The only American country that did not sign the Convention was Canada, and even though the US signed the Convention in 1977, it has not yet ratified it. This has also been the case of many Caribbean states, in particular, of Antigua and Barbuda, Bahamas, Belize, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines. Trinidad and Tobago ratified the Convention on 3 April 1977, but denounced it on 28 May 1991.[16]

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[11] Venezuelan Constitution, art 23.

[12] Columbian Constitution, art 93.

[13] Peruvian Constitutional Procedural Code, art V.

[14] See the text in Pedro Nikken, *Código de Derechos Humanos* (Editorial Jurídica Venezolana, Caracas 2006) 111 ff.

[15] See Sergio García Ramírez (Coord), *La Jurisprudencia de la Corte Interamericana de Derechos Humanos* (Universidad Nacional Autónoma de México, Corte Interamericana de Derechos Humanos, México 2001) 1.200.

[16] See <http://www.oas.org/juridico/english/Sigs/b-32.html> accessed 11 September 2009.

The importance of ratification of this Convention by all Latin American countries is that it has contributed to the development of a very rich minimal standard on civil and political rights, common to all countries.

In addition to the above mentioned features that characterise the Latin American constitutional system of protection of human rights, the other main feature of the system is the express provision in the constitutions of the judicial guarantee of human rights. This is achieved by creating a specific judicial remedy for their protection, called the *amparo* proceeding, with different procedural rules to those provided in the general civil procedural code, in cases of protection of personal or property rights.

The judicial protection of human rights can be guaranteed in two ways. First, by means of ordinary or extraordinary suits, actions, recourses or writs prescribed in the general procedural codes. Second, through specific and separate judicial suits, actions or recourses particularly established for the protection of the constitutional rights and freedoms. Both options have been adopted in Latin American countries to protect human rights.

The provision of *amparo* remedy contrasts, for example, with the US constitutional system, where the protection of human rights is assured through the general judicial actions and equitable remedies that are also used to protect any other kind of personal or property rights or interests. In Latin America, on the contrary, and in part due to the traditional deficiencies of the general judicial means for granting effective protection to constitutional rights, the *amparo* proceeding has been developed to assure such protection.

III. Birth and Evolution of the Amparo Proceeding

The *amparo* proceeding was first introduced in Mexico in 1857, being inspired, according to the unanimous opinion of all the Mexican scholars, by the American system of judicial review of constitutionality of statutes which was established just a few decades earlier in *Marbury v Madison*.[17]

Notwithstanding this influence, it can be said that the US model was only partially followed. The *amparo* suit in Mexico has evolved into a unique and very complex institution exclusively found in that country. In Mexico, the *amparo* suit, in addition to being the main instrument for the protection of human rights (*amparo libertad*), consists of a wide range of other protective judicial actions that can be filed against the state, which in all the other countries are always separate actions or recourses. The Mexican *amparo* suit, for instance, comprises actions for judicial review of the constitutionality and legality of statutes (*amparo contra leyes*), actions for judicial review of administrative

[17] (1 Cranch) 137; 2L Ed 60 (1803).

actions (*amparo administrativo*), actions for judicial review of judicial decisions (*amparo casación*), and actions for protection of peasant's rights (*amparo agrario*). That is why the Mexican *amparo*, without doubt, has a comprehensive and unique character not to be found in any other Latin American country. Nonetheless, the Mexican *amparo* remains the most commonly referred to proceeding outside Latin America.[18]

After its introduction in Mexico, the *amparo* proceeding subsequently spread across all Latin America in the 19th century giving rise to the evolution of a very different specific judicial remedy established only for the purpose of protecting human rights and freedoms and becoming in many cases more protective than the original Mexican institution.[19]

In addition to the *habeas corpus* recourse, and of course influenced by the initial Mexican institution, *amparo* was introduced in the second half of the 19th century in the constitutions of Guatemala (1879), El Salvador (1886), and Honduras (1894); and during the 20th century, in the constitutions of Nicaragua (1911), Brazil (*mandado de segurança*, 1934), Panama (1941), Costa Rica (1946), Venezuela (1961), Bolivia, Paraguay, Ecuador (1967), Peru (1976), Chile (*recurso de protección*, 1976), and Colombia (*acción de tutela*, 1991).[20]

Since 1957, the *amparo* action was admitted through court decisions in Argentina.[21] The action was regulated by a special statute in 1966 and subsequently included in the 1994 Constitutional reform.[22] In the Dominican Republic, the Supreme Court has also admitted the *amparo* action since 2000,[23] which in 2006 was regulated by a special statute.[24]

The consequence of this constitutional process is that in all the Latin American countries but Cuba, the *habeas corpus*, the *habeas data* and the *amparo* actions are regulated as specific judicial means exclusively designed for the protection of constitutional rights.

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[18] See Héctor Fix-Zamudio, *Ensayos Sobre el Derecho de Amparo* (Editorial Porrúa, Mexico 2003).

[19] See Joaquín Brague Camazano, *La Jurisdicción Constitucional de la Libertad. Teoría General, Argentina, México, Corte Interamericana de Derechos Humanos* (Editorial Porrúa, México 2005) 156 ff.

[20] See Brewer-Carías (2009) (n 1); Fix-Zamudio and Mac-Gregor (2006) (n 1).

[21] See the references to the *Samuel Kot Ltd case* (decision of 5 October 1958) in S V Linares Quintana, *Acción de Amparo* (Ed. Bibliográfica Argentina, Buenos Aires 1960) 25; José Luis Lazzarini, *El juicio de amparo* (La Ley, Buenos Aires 1987) 243 ff.

[22] Constitution of Argentina, art 43. See Oswaldo Alfredo Gozaíni, *Derecho Procesal Constitucional: Amparo* (Rubinzal-Culzoni Editores, Buenos Aires 2004) 245 ff.

[23] See the reference to the *Productos Avon SA* case (decision of 24 February 1999) in *Iudicum et Vita, Jurisprudencia Nacional de América Latina en Derechos Humanos*, No 7, Tomo I (Instituto Interamericano de Derechos Humanos, San José, Costa Rica 2000) 329 ff; Allan R Brewer-Carías, 'La Admisión Jurisprudencial de la Acción de Amparo en Ausencia de Regulación Constitucional o Legal en la República Dominicana' in Ibid, 334; and Juan de la Rosa, *El Recurso de Amparo, Estudio Comparativo* (Editora Serrallés, Santo Domingo 2001) 69.

[24] Law No 437-06 (2006).

Except the Dominican Republic, the provisions for the action are expressly set forth in the constitutions;[25] and in all the countries, except Chile, the proceeding has been the object of statutory regulation as well.[26] Generally, these statutes are special ones enacted specifically to provide for the *amparo* proceedings. Nonetheless, in some countries, the special legislation also contains regulations regarding other judicial means for the protection of the constitution like the judicial review proceedings, and the petitions for *habeas corpus* and *habeas data*, as is the case in Bolivia, Guatemala, Peru, Costa Rica, Ecuador, El Salvador and Honduras.[27] Only in Panama and in Paraguay is the *amparo* proceeding regulated as a specific chapter of the General Procedural Judicial Code.[28]

In some constitutions, like the Guatemalan, Mexican and Venezuelan ones, the *amparo* action is conceived to protect all constitutional rights and freedoms including the protection of personal liberty. In such case, the *habeas corpus* is considered as a type of *amparo*,

[25] ARGENTINA: Constitución Nacional de la República Argentina, 1994; BOLIVIA: Constitución Política de la República de Bolivia, 2008); BRAZIL: Constituçao da República Federativa do Brasil, 1988 (Last reform, 2005); COLOMBIA: Constitución Política de la República de Colombia, 1991 (Last reform 2005); COSTA RICA: Constitución Política de la República de Costa Rica, 1949 (Last reform 2003); CUBA: Constitución Política de la República de Cuba, 1976 (Last reform, 2002); CHILE: Constitución Políitica de la República de Chile, 1980 (Last reform, 2005); ECUADOR: Constitución Política de la República de Ecuador, 2008; EL SALVADOR: Constituticón de la República de El Salvador, 1983 (Last reform, 2003); GUATEMALA: Constitución Polítitica de la República de Guatemala, 1989 (Last reform 1993); HONDURAS: Constitución Política de la República de Honduras, 1982 (Last reform, 2005); MÉXICO: Constitución Política de los Estados Unidos Mexicanos, 1917 (Last reform, 2004); NICARAGUA: Constitución Política de la República de Nicaragua, 1987 (Last reform 2005); PANAMA: Constitución Política de la República de Panamá, 1972 (Last Reform, 1994); PARAGUAY: Constitución Política de la República de Paraguay, 1992; PERÚ: Constitución Política del Perú, 1993 (Last reform, 2005); REPÚBLICA DOMINICANA: Constitución Política de la República Dominicana, 2002; URUGUAY: Constitución Política de la República Oriental del Uruguay, 1967 (Last reform, 2004); VENEZUELA: Constitución de la República Bolivariana de Venezuela, 1999 (Amended 2009).

[26] ARGENTINA: Ley No 16.986, Acción de Amparo, 1966; BOLIVIA: Ley No 1836, Ley del Tribunal Constitucional, 1998; BRAZIL: Lei No 1.533, Mandado de Segurança, 1951; COLOMBIA: Decretos Ley No 2591, 306 y 1382, Acción de Tutela, 2000; COSTA RICA: Ley No 7135, Ley de la Jurisdicción Constitucional, 1989; CHILE: Auto Acordado de la Cortre Suprema de Justicia Sobre Tramitación del Recurso de Protección, 1992; ECUADOR: Ley No 000, RO/99, Ley de Control Constitucional, 1997; EL SALVADOR: Ley de Procedimientos Constitucionales, 1960; GUATEMALA: Decreto No 1-86, Ley de Amparo, Exhibición Personal y Constitucionalidad, 1986; HONDURAS: Ley Sobre Justicia Constitucional, 2004; MÉXICO: Ley de Amparo, Reglamentaria de Los Artículos 103 y 107 de la Constitución Política, 1936; NICARAGUA: Ley No 49, Amparo, 1988; PANAMA: Código Judicial, Libro Cuarto: Instituciones de Garantía, 1999; PARAGUAY: Ley No 1.337/88, Código Procesal Civil, Titulo II, El Juicio de Amparo, 1988; PERÚ: Ley No 28.237, Código Procesal Constitucional, 2005; REPÚBLICA DOMINICANA: Ley No 437-06 que Establece el Recurso de Amparo, 2006; URUGUAY: Ley No 16.011, Acción de Amparo, 1988; VENEZUELA: Ley Orgánica de Amparo Sobre Derechos y Garantías Constitucionales, 1988. See the text of all these laws in Allan R Brewer-Carías, *Leyes de Amparo de America Latina* (Instituto de Administración Pública de Jalisco, Guadalajara, Mexico 2009).

[27] In Peru, for instance, the Code on Constitutional proceedings repealed the previous statutes regulating the *amparo* and the *habeas corpus* recourses (Law 23.506 of 1982, and Law 25.398 of 1991). See Samuel B Abad Yupanqui et al, *Código Procesal Constitucional* (Editorial Palestra, Lima 2004).

[28] See Allan R Brewer-Carías, 'Ensayo de Síntesis Comparativa sobre el Régimen del Amparo en la Legislación Latinoamericana' in *Revista Iberoamericana de Derecho Procesal Constitucional*, No 9 (Instituto Iberoamericano de Derecho Procesal Constitucional, Editorial Porrúa, México 2008) 311–321.

named for instance, recourse for personal exhibition (Guatemala)[29] or *amparo* for the protection of personal freedom (Venezuela).[30] But in general, in all other Latin American countries,[31] in addition to the *amparo* action, a different recourse of *habeas corpus* has always been expressly established in the constitutions for the specific protection of personal freedom and integrity.

In recent times, in some countries such as Argentina, Ecuador, Paraguay, Peru and Venezuela, in addition to the *amparo* and *habeas corpus* recourses, the constitutions have also provided for a separate recourse called *habeas data*, by which any person can file a suit in order to obtain personal information regarding the content of the data referred to himself contained in public or private registries or data banks, and in case of false, inaccurate or discriminatory information, *habeas data* empowers the person to seek for suppression, rectification, confidentiality, and updating of the information.[32]

As a result of this human rights protective process, the constitutional regulations regarding the protection of constitutional rights in Latin America are established in three different ways. First, by providing for three different remedies: the *amparo*, the *habeas corpus* and the *habeas data*, as is the case of Argentina, Brazil, Ecuador, Paraguay and Peru. Second, by establishing two remedies: the *amparo* and the *habeas corpus*, as is the case of Bolivia, Colombia, Costa Rica, Chile, the Dominican Republic, El Salvador, Honduras, Nicaragua, Panama and Uruguay, or the *amparo* and the *habeas data* as is the case of Venezuela. Third, by just establishing one general *amparo* action comprising the protection of personal freedom as is the case of Guatemala and Mexico.

In general terms, the rights to be protected by means of the *amparo* proceedings are all those declared in the constitution or those considered as having constitutional status. Only in an exceptional way have some constitutions reduced the protective scope of the *amparo* protection to only some constitutional guarantees or fundamental rights as is the case of Colombia, Chile and Mexico. This is the trend that has also been followed in Germany and Spain with the individual recourse for the protection or the *amparo* recourse, and more recently in the Philippines, with the writ of *amparo* conceived to protect only the right to life, liberty, and security.

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[29] The Decree No 1-86 contained the Law on Amparo, Personal Exibition and Constitutionality, 1986. See Jorge Mario García La Guardia, 'La Constitución y su Defensa en Guatemala' in *La Constitución y su Defensa* (Universidad Nacional Autónoma de México, México 1984) 717–719.

[30] The Organic Law on Amparo of the Constitutional Rights and Guaranties, 1988 contains the provisions regarding *habeas corpus*. See Allan R Brewer-Carías et al, *Ley Orgánica de Amparo Sobre Derechos y Garantías Constitucionales* (Editorial Jurídica Venezolana, Caracas 2007).

[31] As is the case of Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, the Dominican Republic, Ecuador, El Salvador, Honduras, Nicaragua, Panama, Paraguay, Peru and Uruguay.

[32] See, e.g., José Afonso da Silva, *Curso de Direito Constitucional Positivo* (Malheiros, Sao Paulo 2004); Oswaldo Alfredo Gozaíni, *Derecho Procesal Constitucional: Habeas Data* (Rubinzal-Culzoni Editores, Buenos Aires 2002); Miguel Ángel Ekmerkdjian and Calogero Pizzolo, *Hábeas Data*, (Depalma, Buenos Aires 1998).

As mentioned before, the American Convention on Human Rights, which nowadays in Latin America is not only an international law text but also a text with internal law value, has played an important role regarding the consolidation of the *amparo* proceeding. In this sense, *amparo* is conceived in the Convention as a 'right to judicial protection', that is, the right of everyone to have 'a simple and prompt recourse, or any other effective recourse, before a competent court or tribunal for protection (*que la ampare*) against acts that violate his fundamental rights recognised by the Constitution or laws of the state or by this Convention.'[33]

In order to guarantee this right, the Convention imposes on the Member States the duty 'to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state', to develop 'the possibilities of judicial remedy', and 'to ensure that the competent authorities shall enforce such remedies when granted.'

In the words of the IACHR, this provision of the Convention is a 'general provision that gives expression to the procedural institution known as "*amparo*", which is a simple and prompt remedy designated for the protection of all of the rights recognised in the Constitution and laws of the Member States and by the Convention.'[34] The Convention also provides for the recourse of *habeas corpus* for the protection of the right to personal freedom and security in cases of lawful arrests or detentions.[35]

Examining the *habeas corpus* and the *amparo* recourses, the IACHR has declared that the '*amparo* comprises a whole series of remedies and that *habeas corpus* is but one of its components,' so that in some instances '*habeas corpus* is viewed either as the *amparo* of freedom or as an integral part of *amparo*.'[36] In any case, the *amparo* in the Convention has been considered by the IACHR, as 'one of the basic pillars not only of the American Convention, but of the rule of law in a democratic society.'[37]

Consequently, the IACHR has ruled that the Convention imposes 'the duty on the Member States to organise the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.'[38]

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[33] American Convention on Human Rights, OAS Treaty Series No. 36, 1144 UNTS 123 (entered into force 18 July 1978) art 25(1).

[34] See Advisory Opinion OC-8/87 (30 January 1987) (*habeas corpus* in emergency situations) [32] in Ramírez (2001) (n 15) 1.008 ff.

[35] American Convention on Human Rights (n 33) art 7.

[36] See Advisory Opinion OC-8/87 (n 34) [34] in Ramírez (2001) (n 15) 1.008 ff.

[37] See *Castillo Páez* case (Peru) (1997) [83]; *Suárez Roseo* case (Ecuador) (1997) [65] and *Blake* case (Guatemala) (1998) [102] in Ramírez (2001) (n 15) 273 ff., 406 ff. and 372 ff. See also the Advisory Opinion OC-8/87 (n 34) [42] and the Advisory Opinion OC-9/87 (6 October 1987) (Judicial Guarantees in Status of Emergency) [33] in Ramírez (2001) (n 15) 1.008 ff and 1.019 ff.

[38] *Velásquez Rodríguez* case (decision of 29 July 1988) [166] in Ramírez (2001) (n 15) 58 ff.

IV. Comparative Analysis of the Amapro Proceeding in Latin America and the Philippines Writ of Amparo

In order to compare the Latin American *amparo* proceeding with the Philippines writ of *amparo*, it is important to compare the general principles of the American Convention on Human Rights and the Latin American national statutes.[39] It is also important to determine how the Member States have conducted themselves 'so as to effectively ensure the free and full exercise of human rights.'[40] Referring to *amparo* as a judicial guaranty of human rights, the IACHR has ruled that 'for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by statute or that it be formally recognised, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.'[41] In this regard, of course, the existence of an autonomous and independent judiciary is essential.

From what is provided in Article 25 of the Convention regarding the *amparo* action, the following elements characterise such action in Latin America.

First, under the Convention, the *amparo* action is conceived for the protection of all constitutional rights, not only those listed in the Convention, the constitutions of the Member States and in statutes, but also all those rights that can be considered inherent to the human person and human dignity.

However, it should be noted that if it is true that this is the rule, not all the Latin American countries follow this general trend of the Convention, in the sense that in some countries not all constitutional rights can be protected by the *amparo* actions. This is the situation, as already mentioned, in the case of Germany and Spain regarding the individual protection action or the *amparo* recourse, which are only established to protect 'fundamental rights', that is, basically, civil rights and individual liberties. In Latin America it is also the case in respect of the Constitutions of Chile and Columbia which have reduced the list of rights that can be protected by means of the actions for *tutela* or *protección* to those considered as 'fundamental rights'. This is also the position in the case of Mexico where the *amparo* suit is conceived only for the protection of 'individual guarantees.'

Nonetheless, this restrictive configuration of the *amparo* is nowadays exceptional in Latin America in that the *amparo* proceeding is being used to protect all constitutional rights, including social and economic rights. And even in those countries where the restrictive approach exists (e.g., Colombia), the restriction has been overcome through

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[39] See Allan R Brewer-Carías, 'El amparo en América Latina: La Universalización del Régimen de la Convención Americana sobre los Derechos Humanos y la Necesidad de Superar las Restricciones Nacionales,'in *Etica y Jurisprudencia*, 1/2003 (Universidad Valle del Momboy, Facultad de Ciencias Jurídicas y Políticas, Centro de Estudios Jurídicos "Cristóbal Mendoza", Valera, Estado Trujillo 2004) 9–34.

[40] *Velásquez Rodríguez* case (n 38) [167].

[41] Advisory Opinión OC-9/87 (n 34) [24]; *Comunidad Mayagna (Sumo) Awas Tingni* case [113]; *Ivcher Bronstein* case [136]; *Cantoral Benavides* case [164]; *Durand y Ugarte* case [102] in Ramírez (2001) (n 15) 1019 ff, 710 ff, 768 ff, 452 ff, 484 ff.

constitutional interpretation, allowing the courts to develop the doctrine of interrelation, universality, indivisibility, connection and interdependence of human rights, with the result that almost all constitutional rights can be protected by the action of *tutela*.[42] That is how, for instance, the rights to health has been protected because of its connection to the right to life.[43]

In the case of the Philippines, in a certain way established in order to supplement the inefficiency of the traditional writ of *habeas corpus*,[44] the Rule on the Writ of *Amparo* was sanctioned by the Supreme Court in 2007. In the words of Chief Justice Reynato Puno announcing the Rule on 25 September 2007, the writ of *amparo* has the purpose of protecting the constitutional right to life, liberty and security, mainly by providing 'the victims of extralegal killings and enforced disappearances the protection they need and the promise of vindication for their rights', so that 'the sovereign Filipino people should be assured that if their right to life and liberty is threatened or violated, they will find vindication in our courts of justice.'[45]

The writ of *amparo* was created by the Supreme Court as a remedy available to any person only for the protection of the rights to life, liberty and security when violated or threatened with violation by an unlawful act or omission of a public official or employee, and a private individual or entity.[46] In addition, the Supreme Court also created the writ of *habeas data*,[47] as a remedy available to any person, whose right to privacy also limited to life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of information regarding the person, family, home and correspondence of the aggrieved party.[48]

Even though, according to the Philippines Constitution, the Supreme Court is empowered to 'promulgate rules concerning the protection and enforcement of constitutional rights',[49] the writ of *amparo* was not established for the protection of all constitutional rights, that is, all the human or fundamental rights declared in the Constitution, but only the rights to life, liberty and security.

Second, the Latin American *amparo* proceeding is conceived as not only a judicial means for the protection of constitutional rights, but is also conceived as a human right

[42] See Juan Carlos Esguerra Portocarrero, *La Protección Constitucional del Ciudadano* (Legis, Bogotá 2004); Julio César Ortiz Gutierrez, 'La Acción de Tutela en la Carta Política de 1991: El Derecho de Amparo y su Influencia en el Ordenamiento Constitucional de Colombia' in Fix-Zamudio and Mac-Gregor (n 1) 13–256.

[43] See decision T-406 of 5 June in Manuel José Cepeda, *Derecho Constitucional Jurisprudencial. Las Grandes Decisiones de la Corte Constitucional* (Legis, Bogotá 2001) 55–63.

[44] Rule 102, Revised Rules of Court.

[45] See the text available at News, Inquirer.net <http://www.inquirer.net/> accessed 31 December 2007.

[46] Rule on the Writ of *Amparo*, sec 1.

[47] The Rule on the Writ of *Habeas Data* (entered into force 2 February 2008).

[48] Ibid, art 1.

[49] Philippines Constitution, art VIII, sec 5(5).

in itself in some countries. Therefore, the judicial guarantee can also be obtained through various other judicial means, for instance, under the Mexican and Venezuelan legal systems.

This right to *amparo* or to protection is considered in the Convention as a 'fundamental' one, to the point that it cannot be suspended or restricted in cases of state of emergency.[50] Applying it, the IACHR has considered the suspension of both *habeas corpus* and *amparo* in emergency situations as completely 'incompatible with the international obligations imposed on the States by the Convention'.[51] The IACHR has emphasised that 'the declaration of a state of emergency... cannot entail the suppression or ineffectiveness of the judicial guaranties that the Convention requires the Member States to establish for the protection of the rights not subject to derogation or suspension by the state of emergency' and 'therefore, any provision adopted by virtue of a state of emergency which results in the suspension of those guaranties is a violation of the Convention.'[52]

This doctrine of the IACHR has been very important regarding the protection of human rights in Latin America, particularly when considering the unfortunate past experiences that some countries have had situations of emergency or a state of siege, especially under former military dictatorship or internal civil war cases. In such cases, no effective judicial protection was available to safeguard people's life and physical integrity, to prevent their disappearance or their whereabouts to be kept secret, to protect persons against torture or other cruel, inhumane, or degrading punishment or treatment.

On the other hand, considering *amparo* as a specific judicial remedy for the protection of human rights, the internal legislation in the countries have always conceived the *amparo* action as an extraordinary remedy, which is only available when there are no other effective judicial means available for the immediate protection of human rights. Moreover, the internal regulations provide that if a previous action has been filed seeking the protection of a constitutional right, then the extraordinary mean cannot be filed.

No similar provision is found in the Rule on the Writ of *Amparo* of the Philippines. These rules, though, contain an indirect provision as a condition of inadmissibility of the writ of *amparo* in cases 'when a criminal action has been commenced.' In these situations, the Rules then provide that 'no separate petition for the writ shall be filed', and expressly establish that 'the reliefs under the writ shall be available by motion in the criminal case.'[53]

Being a judicial mean for the protection of rights, the Convention refers to *amparo* as an action that can be brought before the 'competent courts', in the sense of considering the protection of human rights as an essential function of the judiciary. That is why, in almost all Latin American countries, the jurisdiction for *amparo* cases corresponds in

[50] American Convention on Human Rights (n 33) art 27.

[51] Advisory Opinion OC-8/87 (n 34) [37], [42] and [43].

[52] Advisory Opinion OC-9/87 (n 37).

[53] Rule on the Writ of *Amparo* of the Philippines, sec 22.

general terms to all the first instance courts, the only exception being the cases in which the competence on *amparo* is assigned to one single court. For instance, in Costa Rica, El Salvador and Nicaragua, the Constitutional Chamber of the Supreme Courts of these countries is the only court with exclusive power to decide the *amparo* cases.[54] Similarly, the individual action for protection and the *amparo* recourse in Germany and Spain can only be filed before the respective Constitutional Court or Tribunal.

In the Philippines, following the general Latin American trend, the petition for the writ of *amparo* can be filed before a variety of courts, namely the Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred, or with the Courts of Appeal, the Supreme Court, or any justice of such courts.[55]

As mentioned before, in order to guarantee the effective protection of human rights in any case, what is essential and necessary is that the courts empowered to decide *amparo* must really be independent and autonomous ones. *Amparo* will be no more than an illusion if the general conditions prevailing in the country, particularly regarding the judiciary, cannot assure its effectiveness. This is the case, as was ruled by the IACHR, 'when the judicial power lacks the necessary independence to render impartial decisions or the means to carry out its judgments; or in any other situation that constitutes a denial of justice, as there is an unjustified delay in the decision; or when, for any reason, the alleged victim is denied access to a judicial remedy.'[56]

The third element provided by the Convention regarding the action for *amparo* is that it must be a 'simple, prompt and effective' instrument.[57] The simplicity implies that the procedure must lack the dilatory procedural formalities of ordinary judicial means, imposing the need to grant immediate constitutional protection. Regarding the prompt character of the recourse, the IACHR, for instance, has argued about the need for a reasonable delay for the decision, not considering 'prompt' recourses for those resolved after 'a long time'.[58] The effective character of the recourse refers to the capability to produce the results for which it has been created.[59] In the words of the IACHR, 'it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.'[60]

For these purposes, many Latin American *Amparo* Laws expressly provide for some general procedural principles to avoid unnecessary delays. For instance, in Colombia, the Tutela Law refers to 'the principles of publicity, prevalence of substantial law,

[54] See Brewer-Carías (n 1).

[55] Rule on the Writ of *Amparo*, sec 3.

[56] Advisory Opinion OC-9/87 (n 37) [24].

[57] *Suárez Romero* case [66] in Ramírez (2001) (n 15) 406 ff.

[58] *Ivcher Bronstein* case [140 in Ramírez (2001) (n 15) 768 ff.

[59] *Velásquez Rodríguez* case [66] in Ramírez (2001) (n 15) 58 ff.

[60] Advisory Opinion OC-9/87 (n 37) [24].

economy, promptness and efficacy';[61] in Ecuador, the Law refers to 'the principles of procedural promptness and immediate [response]' (*inmediatez*);[62] in Honduras, mention is made to the 'principles of independence, morality of the debate, informality, publicity, prevalence of substantial law, freedom, promptness, procedural economy, effectiveness, and due process;'[63] and in Peru, the Code refers to 'the principles of judicial direction of the process: freedom regarding the plaintiff's acts, procedural economy, immediacy and socialization' (Article III). It is in this sense that Article 27 of the Venezuelan Constitution also expressly provides that the procedure of the constitutional *amparo* action must be oral, public, brief, free and not subject to formality.

For these reasons, in the *amparo* proceeding, as a general rule, the procedural terms cannot be extended, nor suspended or interrupted, except in cases expressly set forth in the statute; any delay in the procedure being the responsibility of the courts. Similarly, in the *amparo* proceeding, no procedural incidents are generally allowed,[64] and in some cases no recuse or motion to recuse the judges are admitted or they are restricted. In fact, some *amparo* laws provide for specific and prompt procedural rules regarding the cases in which the competent judge is impeded from resolving the case. Section 11 of the Philippines Rule on the Writ of *Amparo* embodies this spirit in that it is very precise in enumerating the different pleadings and motions that are prohibited on matters of the *amparo* procedure.[65]

The fourth element of the *amparo* remedy, as mentioned before, is that it is conceived to protect everybody's rights (in the very broadest sense of the term), without distinction or discrimination of any kind, whether individuals, nationals or foreigners. The protective tendency for the implementation of *amparo* has also gradually allowed interested parties to act in representation of diffuse or collective rights, like the right to safe environment or to health, the violation of which affects the community as a whole, as has been expressly established in the constitutions of Argentina, Brazil, Colombia, Costa Rica, and Venezuela.[66]

Though the American Convention on Human Rights declares human rights in the strict sense of the term as rights belonging to human persons, the internal regulations

[61] Colombia Tutela Law, art 3.

[62] Ecuador Law, art 59.

[63] Honduras Law, art 45.

[64] See Honduras Law: art 70; Uruguay Law: art 12; Panama Law: art 2610; Paraguay Code: art 586; Uruguay Law: art 12.

[65] Rule on the Writ of *Amparo*, sec 11: '1. Motion to dismiss; 2. Motion for extension of time to file return, opposition, affidavit, position paper and other pleadings; 3. Dilatory motion for postponement; 4. Motion for a bill of particulars; 5. Counterclaim or cross-claim; 6. Third-party complaint; 7. Reply; 8. Motion to declare respondent in default; 9. Intervention; 10. Memorandum; 11. Motion for reconsideration of interlocutory orders or interim relief orders; and 12. Petition for certiorari, mandamus or prohibition against any interlocutory order.'

[66] Argentina Constitution: art 43; Brazil Constitution: art 5, LXIII; Costa Rica Constitution: art 50; Colombia Constitution: art 88; Venezuela Constitution: art 24.

of the countries have also conferred on private corporations or entities the right to file *amparo* actions for the protection of their constitutional rights, such as the right to non-discrimination, right to due process or right to own defence.[67]

The fifth feature of the constitutional *amparo* protection guaranteed in the Convention is its universal scope in the sense that it can be filed against any act, omission, fact or action that violates or threatens to violate them, without specifying the origin or the author of the harm or threat. This implies that the *amparo* action can be brought before the courts against any person, that is, not only against the state or public authorities, but also against private individuals and corporations.

Consequently, and in contrast with, for instance, the Spanish *amparo* action conceived to protect against only public authorities, the *amparo* against individuals has been broadly admitted in the majority of Latin American countries, following a trend that began 50 years ago in Argentina, where the Supreme Court admitted such possibility.[68] Nowadays, the *amparo* action against individuals is expressly recognised in the constitutions of Argentina, Bolivia, Paraguay and Peru.[69] In other countries, such as Costa Rica, Nicaragua, the Dominican Republic, Uruguay and Venezuela, *amparo* against individuals is provided in the Laws on *Amparo*,[70] or it has been accepted by courts' decisions (Chile).[71] In other constitutions, it is admitted only regarding certain individuals, such as those who act as agents exercising public functions, or who exercise some kind of public prerogatives, or who are in a position of control, for example, when rendering public services by means of a concession.[72]

Only in Brazil, El Salvador, Guatemala, Mexico and Panama, the possibility to file an *amparo* action against private individuals has been excluded;[73] a situation that is distant from the orientation of the American Convention on Human Rights.

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[67] See Brewer-Carías (n 1) 188.

[68] See *Samuel Kot* case (n 21). See the references in Quintana (n 21) 25; Lazzarini (n 21) 16 ff; Alí Joaquín Salgado, *Juicio de Amparo y Acción de Inconstitucionalidad* (Editorial Astrea, Buenos Aires 1987) 6; Susana Albanese, *Garantías Judiciales: Algunos Requisitos del Debido Proceso Legal en el Derecho Internacional de los Derechos Humanos* (S A Editora, Buenos Aires, 2000); Augusto M Morillo et al, *El Amparo Régimen Procesal* (3rd edn Librería Editora Platense SRL, La Plata 1998) 430; Néstor Pedro Sagües, *Derecho Procesal Constitucional*, Vol. 3, *Acción de Amparo* (2nd edn Editorial Astrea, Buenos Aires 1988) 12 ff.

[69] Argentina Constitution: art 43; Bolivia Constitution: art 19; Paraguay Constitution: art 134; Peru Constitution: art 200.

[70] Costa Rica Law: art 57; Nicaragua Law: art 23; Dominican Republic Law: art 1; Peru Code: art 2; Uruguay Law: art 1; Venezuela Law: art 2.

[71] See Humberto Nogueira Alcalá, 'El Derecho de Amparo o Protección de los Derechos Humanos, Fundamentales o Esenciales en Chile: Evolución y Perspectivas' in Humberto Nogueira Alcalá (ed), *Acciones Constitucionales de Amparo y Protección: Realidad y Perspectivas en Chile y América Latina* (Editorial Universidad de Talca, Talca 2000) 41.

[72] Colombia Law: arts 5 and 42; Ecuador Constitution: art 95; and Honduras Law: art 42.

[73] Brazil Constitution: art 5, LXIX; El Salvador Law: art 12; Guatemala Constitution: art 265; Mexico Constitution: art 103; Panama Constitution: art 50.

On this point, the Philippines petition for the writ of *amparo* follows the general trends of the Latin American *amparo* in that it is a remedy available to any person for the protection of the right to life, liberty and security when violated or threatened with violation by an unlawful act or omission, not only of a public official or employee, but also of a private individual or entity.[74]

V. Distinctness of the Amparo Writ in Latin America

If *amparo* is a judicial means for the protection of human rights, it is a petition or action that can be filed against any public act that violates them, and therefore, no act must be excluded from the possibility to be challenged through the *amparo* action.

Nevertheless, a tendency towards excluding certain public acts from the purview of *amparo* remedy can also be identified in Latin America in different areas. In some countries, the exclusion refers to actions of certain public authorities, such as the electoral bodies, whose acts are expressly excluded from the recourse of *amparo*.[75] In other cases, like in Peru, an exclusion from the scope of constitutional protection of the *amparo* proceeding is provided only with respect to the acts of the National Council of the Judiciary.

In other cases, the exclusion refers to certain State acts, e.g., against judicial decisions, as is the case of Argentina, Uruguay, Costa Rica, the Dominican Republic, Panama, El Salvador, Honduras, Nicaragua and Paraguay. On the contrary, in many other countries the *amparo* proceeding is admitted against judicial decisions, as is the case of Colombia, Honduras, Guatemala, Mexico, Panama, and Venezuela.[76]

The case of Colombia must be highlighted, because in spite of the *tutela* action being admitted against judicial decisions, the Constitutional Court in 1992 considered that possibility as contrary to the principle of *res judicata*, and consequently annulled the article of the statute which provided for it.[77] However, in spite of this annulment, all the main courts of the country (the Supreme Court, the Constitutional Court and the Council of State) progressively began to admit the action of *tutela* against judicial decisions in cases of arbitrary decisions.[78] Similarly, in Peru, the *amparo* action against judicial decisions is admitted when they are issued outside a regular procedure.

Another general feature of the Latin American *amparo* recourse, as well as the *habeas corpus*, is that as judicial means for the protection of constitutional rights, they have a personal or subjective character which implies that in principle they must be filed by the

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[74] Rule on the Writ of *Amparo*, sec 1.

[75] As is the case of Costa Rica, Mexico, Nicaragua, Panama, Peru and Uruguay.

[76] See Brewer-Carías (n 1) 320 ff.

[77] See Decision C-543/92 (24 September 1992). See Manuel José Cepeda Espinosa, *Derecho Constitucional Jurisprudencial: Las Grandes Decisiones de la Corte Constitucional* (Legis, Bogotá 2001) 1009 ff.

[78] Decision T-231 (13 May 1994) in Espinosa (n 77) 1022 ff.

injured party. This implies that no one else can file an action for *amparo* alleging in his/her own name a right belonging to another.

Nonetheless, some Latin American *amparo* statutes authorise persons other than the injured parties or their representatives to file the *amparo* suit on their behalf, particularly, regarding minors. In this case, the Mexican Law exceptionally allows minors to act personally in cases when their representatives are absent or impaired.[79] In Colombia, when the representative of a minor is in a situation of inability to assume her defence, anyone can act on behalf of the injured party.[80]

Except in these cases where the representatives of incapacitated natural persons are called to act on their behalf, the general rule of standing is that the injured persons must act in their own defence and no other person can judicially act on their behalf, except when acting through legally appointed representatives.

A general exception to this principle refers to the action of *habeas corpus*, in which case, since generally the injured person is physically prevented from acting personally because of detention or restrained freedom, the *amparo* laws authorise anybody to file the action on his/her behalf (e.g., Argentina, Bolivia, Guatemala, Honduras, México, Nicaragua, Peru, and Venezuela).

In the same sense, some *amparo* laws, in order to guarantee constitutional protection, also establish the possibility for other persons to act on behalf of the injured party and file the action in his/her name. It can be any lawyer or relative as established in Guatemala,[81] or it can be anybody, as set forth in Paraguay,[82] Ecuador, Honduras, Uruguay and Colombia, where anyone can act on behalf of the injured party when the latter is in a situation of inability to assume her own defence.[83] The same principle is established in the Peruvian Code on Constitutional Procedures.[84] In Mexico, the Law imposes on the injured party the obligation to expressly ratify the filing of the *amparo* suit, to the extent that if the complaint is not ratified it will be considered as not filed.[85] In the Philippines, although the Rule on the Writ of *Amparo* provides that the petition must be filed by the aggrieved person, section 2 lays down that another 'qualified person or entity' is entitled to file the petition, that is, any member of the immediate family (spouse, children and parents of the aggrieved party) or any ascendant, descendant or collateral relative of the aggrieved party. Also any concerned citizen, organisation, association or institution can also file the petition if there is no known member of the immediate family or relative of the aggrieved.

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[79] Mexico Constitution, art 6.

[80] Colombia Constitution, art 10.

[81] Guatemala Law, art 23.

[82] Paraguay Code, art 567.

[83] Colombia Law, art 10.

[84] Peru Code, art 41.

[85] Mexico Law, art 17.

VI. Conclusion

As readers may note from the above discussion, the *amparo* proceeding in Latin America, that derives not only from the provisions of the constitutions but also from the statutes on *amparo*, contain a unique and impressive set of norms for the protection of constitutional rights.

The formal regulations of *amparo* are important but not enough to ensure the effectiveness of the said remedy, which really depends on the existence of an effective independent and autonomous judiciary which may only be possible in democratic societies.

This is the basic condition for the enjoyment of constitutional rights and for their protection, to the point that the judicial protection of human rights can be achieved in democratic regimes even without the existence of formal constitutional declarations of rights or of the provisions for extraordinary means or remedies. Conversely, even with extensive declarations of rights and the provision of the *amparo* proceeding in the constitutions to ensure their protection, effectiveness of it depends on the existence of a democratic political system based on the rule of law, the principle of the separation of powers, the existence of checks and balances between different branches of the government, and on the possibility for the State powers to be effectively controlled, among other, by means of the judiciary. Only in such situations, it is possible for a person to effectively have his or her rights protected.

In the case of the Philippines, the sole fact that the Supreme Court has adopted two extraordinary judicial means (i.e., writs of *amapro* and *habeas data*) for the purpose of protecting the constitutional rights to life, liberty and security, is an important sign of its independence and autonomy. At the same time, it must also be highlighted that the very important protective judicial means are only devoted to protect just a few, although fundamental, constitutional guarantees, that is, the rights to life, liberty, security and privacy. Thus, some constitutional rights provided for in the Constitution of the Philippines are out of the scope of the protection offered by *amparo* and *habeas data*.

Even though the Rules adopted by the Supreme Court of the Philippines have been and are of great importance and constitute a great beginning regarding the protection of constitutional rights, it remains in the hands of the same Supreme Court to enlarge the protection, because it is empowered by the Constitution to 'promulgate rules concerning the protection and enforcement of constitutional rights'.[86] The Latin American experience on these matters, without doubt, can be very useful for such purposes, as I have tried to explain

[86] Phillipines Constitution, art VIII, sec 5,5.