

[DOJ, February 12, 2013]

IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10353, OTHERWISE KNOWN AS THE "ANTI-ENFORCED OR INVOLUNTARY DISAPPEARANCE ACT OF 2012"

SECTION 1. *Short Title.* This shall be known as the **Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 10353**, otherwise known as the **"Anti-Enforced or Involuntary Disappearance Act of 2012"**.

SECTION 2. *Declaration of Policy.* It is hereby declared the policy of the State:

- a. To value the dignity of every human person;
- b. To guarantee full respect for human rights giving highest priority to the enactment of measures that uphold and enhance the right to life, liberty and security of all persons, and prevent the commission of enforced or involuntary disappearances;
- c. To prohibit the use and the establishment of secret detention places, solitary confinement, *incommunicado*, or other similar forms of detention;
- d. To provide for penal and civil sanctions for the violations of rights and obligations under the Act;
- e. To provide restitution, compensation and rehabilitation for the victims and their families, particularly in relation to incidence or commission of torture, force, violence, threat, intimidation or any other means which vitiate the free will of persons abducted, arrested, detained, disappeared, or otherwise removed from the effective protection of the law;
- f. To fully adhere to the principles and standards on the absolute condemnation of human rights violations set by the 1987 Philippine Constitution and various international human rights instruments such as, but not limited to the:

- 1) Universal Declaration of Human Rights (UDHR);
- 2) International Covenant on Civil and Political Rights (ICCPR);
- 3) International Covenant on Economic, Social and Cultural Rights (ICESCR);
- 4) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- 5) Convention on the Rights of the Child (CRC);
- 6) Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW);
- 7) UN Declaration on the Protection of all Persons from Enforced Disappearance; and
- 8) All other relevant international human rights instruments to which the Philippines is a State Party.

SECTION 3. *Construction.* This IRR shall be construed to achieve the objectives of the Act. In case of doubt in the interpretation of these rules and regulations, it shall be resolved in favor of the victims of enforced or involuntary disappearance.

SECTION 4. Definitions. For purposes of this IRR, the following terms shall be defined as:

a) **Agents of the State** refer to persons who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the government, or shall perform in the government or in any of its branches, public duties as an employee, agent or subordinate official, of any rank or class.

b) **Enforced or involuntary disappearance** refers to an offense with the presence of all the following elements:

1) the arrest, detention, abduction or any other form of deprivation of liberty;

2) committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State; and

3) followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law.

c) **Order of Battle** refers to any document made by the military, police or any law enforcement agency of the government, listing the names of persons and organizations that it perceives to be enemies of the State and which it considers as legitimate targets as combatants that it could deal with, through the use of means allowed by domestic laws, such as but not limited to, the Bill of Rights under the 1987 Philippine Constitution, R.A. No. 7438 (An Act Defining Certain Rights Of Person Arrested, Detained Or Under Custodial Investigation As Well As The Duties Of The Arresting, Detaining And Investigating Officers, And Providing Penalties For Violations Thereof) and R.A. No. 9851 (Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity), and international law.

d) **Victim** refers to the disappeared person and any individual who has suffered harm as a direct result of an enforced or involuntary disappearance.

For purposes of restitution under Section 26 of the Act, the 'victim' shall refer to the disappeared person who surfaced alive, found dead or still missing.

For purposes of compensation and rehabilitation under Sections 26 and 27 of the Act, the 'victim' may also include the disappeared person's immediate relatives within the fourth civil degree of consanguinity and affinity.

e) **Officially recognized and controlled places of detention or confinement** refers to facilities created by law, ordinances, department orders, administrative issuances, or judicial orders where persons deprived of liberty are held, confined or detained.

SECTION 5. Nonderogability of the Right Against Enforced or Involuntary Disappearance. The right against enforced or involuntary disappearance and the fundamental safeguards for its prevention shall not be suspended under any circumstance including political instability, threat of war, state of war or other public emergencies.

SECTION 6. "Order of Battle" or Any Order of Similar Nature, Not Legal Ground for Enforced or Involuntary Disappearance. An "Order of Battle" or any order of similar nature, official or otherwise, from a superior officer or a public authority causing the commission of enforced or involuntary disappearance is unlawful. It cannot be invoked as a justifying or exempting circumstance. Any person receiving such an order shall have the right to disobey it.

SECTION 7. Right of Access to Communication. It shall be the absolute right of any person deprived of liberty to have immediate access to any form or means of effective communication available in order for him or her to inform his or her family, relative, friend, lawyer, Commission on Human Rights (CHR) or any human rights organization of his or her whereabouts and condition. In instances of warrantless arrest, the right of access to communication will immediately attach upon actual deprivation of liberty, from the taking, in transit and detention.

The enforcement of this right is without prejudice to the enforcement of rights of person under custodial investigation, as provided for by R.A. No. 7438.

SECTION 8. Duty to Report Victims of Enforced or Involuntary Disappearance. Any person, not being a principal, accomplice or accessory, who has or shall learn of any information about any incident or case of enforced or involuntary disappearance or that a person is a victim of enforced or involuntary disappearance, shall immediately report in writing the circumstances and whereabouts of the victim to any of the following:

- a) If known, the victim's family, relative or lawyer;
- b) Any human rights organization;
- c) The CHR main office or Regional or sub-office or desk office concerned;
- d) The Department of Justice (DOJ), the National Prosecution Service (NPS), or the nearest Prosecution Office;
- e) The National Bureau of Investigation (NBI) or any of its offices at the local level nearest the place of incident or the reported location of the victim;
- f) Any office, bureau, division or unit of the Department of the Interior and Local Government (DILG);
- g) Any office, bureau, division or unit of the Department of National Defense (DND);
- h) Any office, detachment or division of the Philippine National Police (PNP); or
- i) Any unit of the Armed Forces of the Philippines (AFP).

The information about the circumstances and whereabouts of the victim shall be based on the personal knowledge of the person making the report.

The written report shall include, but not be limited to, any of the following:

- a) Sworn Statement;
- b) Letter duly signed;
- c) Memorandum, Incident Report, Blotter duly signed;
- d) Short Messaging System (SMS);
- e) Electronic Mail (e-mail); or
- f) Social Media.

All reports made through SMS, e-mail or social media shall be followed by a written statement duly signed by the person making the report and filed within a reasonable period of time.

SECTION 9. *Duty to Certify in Writing on the Results of Inquiry into a Reported Disappeared Person's Whereabouts.* In case a family member, relative, lawyer, representative of the CHR or any human rights organization, or a member of the media inquires with a member or official of any police or military detention center or similar facilities, the PNP or any of its agencies, the AFP or any of its units, the NBI or any other agency or instrumentality of the government, as well as any hospital or morgue, public or private, on the presence or whereabouts of a person reported to have disappeared or to be a victim of enforced or involuntary disappearance, such member or official shall immediately issue a certification in writing to the inquiring person or entity on the presence or absence and/or information on the whereabouts of such disappeared person, stating, among others, in clear and unequivocal manner the date and time of inquiry, details of the inquiry and the response to the inquiry.

Pursuant to the preceding paragraph, the DILG, DOJ, DND, Department of Health (DOH), Philippine Drug Enforcement Agency (PDEA), and the National Police Commission (NAPOLCOM) shall adopt, within 30 days from the effectivity of this IRR, mechanisms to ensure availability of an officer to issue the certification contemplated herein, at any time of the day or night.^[1]

The certification shall state the following:

- a) Name of the person, organization or institution who made the inquiry;
- b) The date and time the inquiry was made;
- c) Details of the inquiry such as, but not limited to, the name of the disappeared person and a description of the physical features of the victim that can establish the identity of the disappeared individual;
- d) Purpose of the inquiry;
- e) Response to the inquiry, specifically stating whether or not the person disappeared is within any of the above-named facility or the immediate premises thereof;
- f) Previous record of detention and/or record of transfer or release of the disappeared person, if available; and
- g) That in the event that such named person will later be brought into such facility or the immediate premises thereof after an inquiry and response have been made, the inquiring party shall be immediately notified through the most expedient means of communication available.

As a general rule, certifications shall be issued in accordance with the schedules as provided herein:

- a) For the PNP, if the inquiry is directly made before the head of the detention facility such as lock-up cells in precincts, stations and other offices, and detention centers or facilities in camps, the certification shall be issued immediately but not beyond four (4) hours from the time of inquiry.
- b) For jails under the Bureau of Jail Management and Penology (BJMP) and local government units, if the inquiry is directly made before the head of the detention facility, the certification shall be issued immediately but not beyond four (4) hours from the time of inquiry.

c) If the inquiry is made with the provincial office of the PNP or the BJMP, the certification shall issue within five (5) calendar days; and with the Regional and National Headquarters, within seven (7) calendar days. d) For the AFP, the certification shall be issued immediately within twenty-four (24) hours by the Commanding Officer of the AFP unit being inquired with as far as the headquarters/camp/command post to where that said AFP unit is located/based/stationed. For the headquarters/camps/command posts of subordinate units/offices (those that are under operational or tactical control/command) of the aforesaid AFP unit, the certification shall also be issued by the Commanding Officer of that AFP unit depending on the type of unit being inquired with, as follows:

- 1) For Philippine Army (PA) Battalions or its equivalent units in the Philippine Air Force (PAF) and Philippine Navy (PN) – Within two (2) calendar days
- 2) For PA Brigades or its equivalent units in the PAF and PN – Within three (3) calendar days
- 3) For PA Divisions or its equivalent units in the PAF and PN – Within four (4) calendar days
- 4) For Unified Commands – Within five (5) calendar days
- 5) For the General Headquarters, AFP and the Major Services (PA, PAF and PN) – Within seven (7) calendar days
- 6) For any other AFP commands/units/offices not defined above – Within three (3) calendar days

e) If the inquiry is made with hospitals, medical clinics and morgues, the certification shall be issued immediately but not beyond four (4) hours from the time of inquiry.

f) For other detention facilities not otherwise enumerated in this Section, the certification shall be issued immediately. However, if the inquiry is made at the provincial, regional or national levels, the same number of days stated in paragraph (c) of this Section shall apply.

SECTION 10. *Duty of Inquest/Investigating Public Prosecutor or any Judicial or Quasi-Judicial Official or Employee.* Any inquest or investigating public prosecutor, or any judicial or quasi-judicial official or employee who learns that the person delivered for inquest or preliminary investigation or for any other judicial or quasi-judicial process is a victim of enforced or involuntary disappearance shall have the duty to immediately disclose the probable victim's whereabouts to his or her immediate family, relatives, lawyer/s or to the CHR or any human rights organization such as but not limited to FIND (Families of Victims of Involuntary Disappearance) and *Desaparecidos* (Families of *Desaparecidos* for Justice), by the most expedient means through any of the following modalities, including but not limited to:

- a) Telephone;
- b) SMS; or
- c) Electronic mail.

The inquest or investigating prosecutor or any judicial or quasi-judicial official or employee shall inquire from the person presented for inquest or preliminary investigation or for any other judicial or quasi-judicial process whether or not the respondent's immediate family or relatives, lawyer, the CHR or any human rights organization, have been informed of the respondent's arrest and/or detention,