

**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

¹ Please see attached Annex “A” or the AFP Certification, which may be used as a template for other implementing agencies.

- 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, including his or her whereabouts; and if so, the details or particulars of such communication as regards to name/s of person/s communicated to, their contact details, and the time of communication.

If the respondent is accompanied by his or her family or relatives, lawyer, or other persons other than the arresting officers, the prosecutor or any judicial or quasi-judicial official or employee shall likewise verify from the said companion/s the time or particulars of the communication with the respondent.

If the inquest or investigating prosecutor or any judicial or quasi-judicial official or employee finds that the respondent is a probable victim of enforced or involuntary disappearance, the prosecutor or any judicial or quasi-judicial official or employee shall immediately disclose the probable victim's whereabouts to the latter's immediate family, relatives, lawyer, CHR or to any human rights organization, such as but not limited to FIND and *Desaparecidos*, through the most expedient means, such as but not limited to:

- a) Telephone call;

- b) Short Messaging System (SMS); or
- c) Electronic Mail (e-mail).

The prosecutor or any judicial or quasi-judicial official or employee shall include in the minutes of proceedings the facts and details of communication to the respondent's family, relatives, the CHR and/or other human rights organizations, and require the said respondent, as well as his or her companion and the arresting officers, to sign thereon.

The Judiciary, the Ombudsman, the DOJ and other government agencies exercising quasi-judicial functions shall ensure that a list of updated contact details of concerned CHR Offices, FIND, Desaparecidos, and other human rights organizations shall be available at all times to prosecutors and all judicial and quasi-judicial officials or employees within their jurisdiction .

SECTION 11. *Official Up-to-Date Register of All Persons Detained or Confined.*

All persons detained or confined shall be placed solely in officially recognized and controlled places of detention or confinement where an official up-to-date register of such persons shall be maintained.

Family members, relatives, lawyers, judges, official bodies, the CHR, human rights organizations, and all persons who have legitimate interest in the whereabouts and condition of the persons deprived of liberty shall have free access to the register. The following details, among others, shall be recorded in the register:

- a) The identity or name, description, and address of the person deprived of liberty;
- b) The date, time, and location where the person was deprived of liberty, and the identity of the person who made such deprivation of liberty;
- c) The authority who decided the deprivation of liberty and the reasons for the deprivation of liberty or the crime or offense committed;
- d) The authority controlling the deprivation of liberty;
- e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty, and the authority responsible for the place of deprivation of liberty;
- f) Records of physical, mental, and psychological condition of the detained or confined person before, during, and after the deprivation of liberty, and the name and address of the physician who examined him or her physically, mentally, and medically without prejudice to the application of R.A. No. 7438;
- g) The date and time of release or transfer of the detained or confined person to another place of detention, the destination, and the authority responsible for the transfer;
- h) The date and time of each removal of the detained or confined person from his or her cell, the reason or purpose for such removal, and the date and time of his or her return to his or her cell;
- i) A summary of the physical, mental, and medical findings of the detained or confined person after each interrogation;
- j) The names and addresses of the persons who visit the detained or confined person, the date and time of such visits, and the date and time of each departure;
- k) In the event of death during the deprivation of liberty, the identity, circumstances and cause of death of the person deprived of liberty, as well as the destination of the human remains; and
- l) All other important events bearing on and all relevant details regarding the treatment

of the detained or confined person.

Provided, that the details required under letters (a) to (f) shall be entered immediately in the register upon arrest and/or detention.

All information contained in the register shall be regularly reported to the CHR Regional Offices (CHR-RO) within the first five (5) working days of the month on a bi-monthly basis. These will then be consolidated by the CHR Main Office through its Assistance and Visitorial Office (AVO), and by any other agency of government tasked to monitor and protect human rights. The registry shall be made available to the public. The public shall refer to those persons with legitimate interest as contemplated by this Section.

It is incumbent upon the custodian of the registry to determine the status of the person inquiring, whether he/she is a person with legitimate interest.

The absence and non-maintenance of the registry shall make the person who has immediate authority and jurisdiction over the detention facility liable under this Section. The immediate custodian of the registry or one who accomplishes the entries may, however, be held administratively liable.

SECTION 12. *Submission of List of Government Detention Facilities.* Within six (6) months from the effectivity of the Act, and within the first five (5) days of every month at the minimum or as may be requested by the CHR thereafter, all government agencies concerned shall submit an updated inventory or list of all officially recognized and controlled detention or confinement facilities and the list of detainees or persons deprived of liberty under their respective jurisdictions to the CHR.

The places of detention and confinement shall include, but not be limited to jails, correctional, lock-up cells, holding areas, safehouses, hospitals or clinics or similar facilities, including those maintained by the military or law enforcement agencies.

Centers under the supervision of Department of Social Welfare and Development (DSWD) can be inquired into subject to the rules of confidentiality. Safehouses under the auspices of DOJ's Witness Protection Program (WPP) shall be exempted from the application of Section 11 of this Act.

SECTION 13. *Immediate Issuance and Compliance of the Writs of Habeas Corpus, Amparo and Habeas Data.* All proceedings pertaining to the issuance of the writs of *habeas corpus*, *amparo* and *habeas data* shall be expeditiously dispensed with in accordance with the provisions of the Rules of Court on Habeas Corpus and the Supreme Court's Rules on the Writ of Amparo and Habeas Data. As such, all courts and other concerned agencies of government shall give priority to such proceedings.

Moreover, any order issued or promulgated pursuant to such writs or their respective proceedings shall be executed and complied with immediately.

SECTION 14. *Visitation/Inspection of Places of Detention and, Confinement.* The CHR or its duly authorized representatives are hereby mandated and authorized to conduct regular, independent, unannounced, and unrestricted visits to or inspections of all places of detention or confinement.

Places of detention or confinement shall refer to any physical space, area or structure, whether moving or stationary, permanent or temporary where deprivation of liberty is carried out, and which establishment, operation, and maintenance of the same is punishable under Section 14 (i) of R.A. No. 9745 (Anti-Torture Act of 2009).

All visits conducted by the CHR through its authorized officers and personnel shall be covered by a Mission Order and Identification Card.

In cases of Quick Reaction Teams (QRT), Rapid Assessment Teams (RAST) or other similar CHR fact-finding missions where there is an absence of Mission Order, CHR officials need only to present their official ID cards.

SECTION 15. *Liability of Commanding Officer or Superior.* The immediate commanding officer of the unit concerned of the AFP or the immediate senior official of the PNP and other law enforcement agencies shall be held liable as a principal to the crime of enforced or involuntary disappearance for acts committed by him or her that shall have led, assisted, abetted or allowed, whether directly or indirectly, the commission thereof by his or her subordinates. If such commanding officer has knowledge of or, owing to the circumstances at the time, should have known that an enforced or involuntary disappearance is being committed, or has been committed by subordinates or by others within the officer's area of responsibility and, despite such knowledge, did not take preventive or coercive action either before, during or immediately after its commission, when he or she has the authority to prevent or investigate allegations of enforced or involuntary disappearance but failed to prevent or investigate such allegations, whether deliberately or due to negligence, shall also be held liable as principal.

SECTION 16. *Penal Provisions.*

a) The penalty of *reclusion perpetua* and its accessory penalties shall be imposed upon the following persons:

- 1) Those who directly committed the act of enforced or involuntary disappearance;
- 2) Those who directly forced, instigated, encouraged or induced others to commit the act of enforced or involuntary disappearance;
- 3) Those who cooperated in the act of enforced or involuntary disappearance by committing another act without which the act of enforced or involuntary disappearance would not have been consummated;
- 4) Those officials who allowed the act or abetted in the consummation of enforced or involuntary disappearance when it is within their power to stop or uncover the commission thereof; and
- 5) Those who cooperated in the execution of the act of enforced or involuntary disappearance by previous or simultaneous acts.

b) The penalty of *reclusion temporal* and its accessory penalties shall be imposed upon those who shall commit the act of enforced or involuntary disappearance in the attempted stage as provided for and defined under Article 6 of the Revised Penal Code.

c) The penalty of *reclusion temporal* and its accessory penalties shall also be imposed upon persons who, having knowledge of the act of enforced or involuntary disappearance and without having participated therein, either as principals or accomplices, took part subsequent to its commission in any of the following manner:

- 1) By themselves profiting from or assisting the offender to profit from the effects of the act of enforced or involuntary disappearance;
- 2) By concealing the act of enforced or involuntary disappearance and/or destroying the effects or instruments thereof in order to prevent its discovery; or
- 3) By harboring, concealing or assisting in the escape of the principal/s in the act of enforced or involuntary disappearance, provided such accessory acts are done with the abuse of official functions.

d) The penalty of *prision correctional* and its accessory penalties shall be imposed against persons who defy, ignore or unduly delay compliance with any order duly issued or promulgated

pursuant to the writs of *habeas corpus*, *amparo* and *habeas data* or their respective proceedings.

e) The penalty of *arresto mayor* and its accessory penalties shall be imposed against any person who shall violate the provisions of Sections 7, 8, 9, 10 and 11 of this **IRR**.

SECTION 17. Preventive Suspension/Summary Dismissal. Government officials and personnel who are found to be perpetrators of or participants in any manner in the commission of enforced or involuntary disappearance as a result of a preliminary investigation conducted for that purpose shall be preventively suspended or summarily dismissed from the service, depending on the strength of the evidence so presented and gathered in the said preliminary investigation or as may be recommended by the investigating authority.

The investigating prosecutor shall furnish the agency or office to which the respondent belongs or is connected with, and the Office of the Ombudsman with copies of the resolution on the enforced or involuntary disappearance case not later than five (5) calendar days from the release of the same.

Upon receipt of the resolution, the Office of the Ombudsman or the agency concerned may use the said resolution to proceed with the conduct of administrative proceedings.

This **IRR** shall not preclude the victim or his or her family from initiating, or the Ombudsman or the concerned agency from conducting, a separate and independent administrative disciplinary proceeding.

SECTION 18. Civil Liability. The act of enforced or involuntary disappearance shall render its perpetrators and the State agencies which organized, acquiesced in or tolerated such disappearance liable under civil law.

SECTION 19. Independent Liability. The criminal liability of the offender under the Act shall be independent of or without prejudice to the prosecution and conviction of the said offender for any violation of R.A. No. 7438, R.A. No. 9745, and applicable provisions of the Revised Penal Code.

SECTION 20. Nonexclusivity or Double Jeopardy Under International Law. Any investigation, trial and decision in any Philippines court, or body for any violation of the Act shall be without prejudice to any investigation, trial, decision or any other legal or administrative process before any appropriate international court or agency under applicable international human rights and humanitarian law.

SECTION 21. Exemption from Prosecution. Any offender who volunteers information that leads to the discovery of the victim of enforced or involuntary disappearance or the prosecution of the offenders without the victim being found shall be exempt from any criminal and/or civil liability under the Act: *Provided*, that said offender does not appear to be the most guilty.

To qualify for this exemption, the offender shall execute a sworn statement narrating in detail the following:

- a) his or her knowledge about and participation in the incident leading to or surrounding the enforced or involuntary disappearance of the victim;
- b) the person/s responsible for the enforced or involuntary disappearance of the victim and their respective participation, names and offices connected with;
- c) the whereabouts of the victim;
- d) the circumstances how he gained knowledge about the victim's whereabouts; and

e) an undertaking that he will cooperate in the investigation and prosecution of the case of enforced or involuntary disappearance.

If no case or complaint has yet been filed with the prosecutor's office or the courts, the offender's sworn statement shall be submitted to any law enforcement agency, the CHR or any human rights organization, for purposes of filing a complaint with the prosecution office or with the Office of the Ombudsman.

The investigating prosecutor, upon determination that the offender is not the most guilty, shall exempt him/her from the charges.

The offender contemplated under this section may avail of the benefits or coverage under the DOJ's WPP.

If a case is already pending in court, the prosecution shall move for the discharge of the offender from the Information so that he or she can testify for the State, or for the withdrawal of the Information against the offender, or cause the amendment of the Information if the accused/offender has not yet been arraigned, as the case may be.

SECTION 22. *Continuing Offense.* An act constituting enforced or involuntary disappearance shall be considered a continuing offense as long as the perpetrators continue to conceal the fate and whereabouts of the disappeared person and such circumstances have not been determined with certainty.

SECTION 23. *Statute of Limitations Exemption.* The prosecution of persons responsible for enforced or involuntary disappearance shall not prescribe unless the victim surfaces alive. In which case, the prescriptive period shall be twenty-five (25) years from the date of such reappearance.

For purposes of this provision, "reappearance" shall be construed to include the following:

a) the victim was discovered or found in jail or other detention place, or hospital by his or her family, the CHR, or human rights organizations; or

b) the day the victim reunites with his or her family or relatives, victim reports his or her discovery or reappearance to the CHR or other human rights organizations, there being an effective cessation of deprivation of liberty.

SECTION 24. *Special Amnesty Law Exclusion.* In order not to depreciate the crime of enforced or involuntary disappearance, persons who are charged with and/or guilty of the act of enforced or involuntary disappearance shall not benefit from any special amnesty law or other similar executive measures that shall exempt them from any penal proceedings or sanctions.

SECTION 25. *State Protection.* The State, through its appropriate agencies, shall ensure the safety of all persons involved in the search, investigation and prosecution of enforced or involuntary disappearance including, but not limited to the victims, their families, complainants, witnesses, legal counsel and representatives of human rights organizations, CHR, NPS and media. They shall likewise be protected from any intimidation or reprisal.

The AFP, NBI, PNP and other law enforcement agencies, as may be appropriate, shall also ensure the safety of the investigators, prosecutors, members of the media, and other persons involved in the search, exhumation, investigation, and prosecution of enforced or involuntary disappearance cases.

For this purpose, "investigation" shall include criminal investigation of law enforcement agencies of the government, ocular inspection, preliminary investigation, and CHR investigation.

Upon filing of a complaint, during trial and until the case reaches final disposition, the victim, as well as the other persons involved in the investigation and prosecution of the case, shall be provided with sufficient government protection.

The factors to be considered in granting protection may include, among others, the following:

- a) Power and position of the alleged perpetrators;
- b) Capacity and access to resources of the accused;
- c) History of retaliatory action of the alleged perpetrators;
- d) Economic and social status, age, and gender of the victim and other involved persons;
- e) Degree of severity of the act complained of; and
- f) Geographical distance between the victim/other involved persons and the alleged perpetrators.

The victims of enforced disappearance, their families and witnesses may avail of the benefits under R.A. No. 6981 (Witness Protection, Security and Benefit Act), and other applicable laws.

SECTION 26. *Applicability of Refouler.* No person shall be expelled, returned or extradited to another State where there are substantial grounds to believe that such person shall be in danger of being subjected to enforced or involuntary disappearance. For purposes of determining whether such grounds exist, the Secretary of Foreign Affairs and the Secretary of Justice, in coordination with the Chairperson of the CHR, shall take into account all relevant considerations including where applicable and not limited to, the existence in the requesting State of a consistent pattern of gross, flagrant or mass violations of human rights.

SECTION 27. *Restitution and Compensation to Victims of Enforced or Involuntary Disappearance and/or Their Immediate Relatives.* The victims of enforced or involuntary disappearance who surface alive shall be entitled to monetary compensation, rehabilitation and restitution of honor and reputation.

The restitution of honor and reputation shall include immediate expunging or rectification of any derogatory record, information or public declaration/ statement on his or her person, personal circumstances, status, and/or organizational affiliation by the appropriate government or private agency or agencies concerned. To give further spirit to the intent of the declaration of policy of this law, and for purposes of this section, victims herein shall be interpreted to mean not only those who surface alive but also those who continue to be disappeared or are found dead subsequent to the passage of the Act.

The immediate relatives of the disappeared person within the fourth civil degree of consanguinity or affinity may also claim the remedies available under the law, including compensation as provided for under R.A. No. 7309 (An Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and For Other Purposes), and other relief programs of the government.

A victim of enforced or involuntary disappearance and his or her immediate family within the fourth civil degree of consanguinity or affinity shall be entitled to compensation.

While the victim of enforced or involuntary disappearance continues to be disappeared or when he or she has been found dead, after the effectivity of the Act, his or her family may file a claim in the order provided under Section 6 of R.A. No. 7309 as supplemented by the order of succession under the New Civil Code.

The prior claim of the family shall not bar the victim of enforced disappearance from filing his or her own claim once he/she reappears. When a victim of enforced or involuntary disappearance reappears or surfaces alive, after the effectivity of the Act, and his or her family has not yet filed a claim, both the victim of enforced disappearance and his or her family in the order provided may file a claim for compensation under R.A. No. 7309.

Any grant of compensation to any victim shall not be less than Ten Thousand Pesos (Php 10,000.00).

For purpose of claiming compensation under R.A. No. 7309, any of the following record/s shall be considered proof of enforced disappearance:

- a) NPS Resolution
- b) CHR Resolution
- c) Records of the National Historical Institute (NHI) or the *Bantayog ng mga Bayani* Memorial Center
- d) Writ of *Amparo*, *Habeas Corpus* and *Habeas Data*, or Court Order
- e) Roll of victims of enforced or involuntary disappearance officially issued subsequently by the government.

Recognizing the continuing nature of the offense of enforced or involuntary disappearance, the six-month period within which to file a claim under R.A. No. 7309 shall not apply. However, for victims who surfaced alive, the period of six months within which to file the claim with the Board of Claims (BOC) shall apply.

Victims of enforced or involuntary disappearance and their immediate families shall have the right to claim for compensation from such other financial relief programs and mechanisms that are or may be made available to them under the law, including the right to apply for the grant of financial assistance from the CHR and other government agencies.

SECTION 28. *Rehabilitation of Victims and/or Their Immediate Relatives, and Offenders.* In order that the victims of enforced or involuntary disappearance who surfaced alive and/or their immediate relatives within the fourth civil degree of consanguinity or affinity, may be effectively reintegrated into the mainstream of society and in the process of development, the State, through the CHR, in coordination with the DOH, DSWD in partnership with concerned non-government organization/s, shall provide them with appropriate medical care and rehabilitation free of charge.

Pursuant to the preceding paragraph, the CHR shall convene the DSWD, the DOH and non-government organizations in order to formulate a comprehensive rehabilitation program to include but not limited to psychosocial, medical care, and livelihood services.

The comprehensive rehabilitation program shall be developed within six (6) months from the effectivity of the **IRR**.

The concerned agencies, in partnership with non-government organizations, shall ensure that in the development of the comprehensive rehabilitation plan, gender-responsive, rights-based and culturally-sensitive provisions of services and interventions for victims of enforced disappearances and their immediate families shall be provided.

Toward the attainment of restorative justice, a parallel rehabilitation program for persons who have committed enforced or involuntary disappearance shall likewise be implemented without cost to such offenders.

SECTION 29. *Implementing Rules and Regulations.* Upon the effectivity of this **IRR**, the DOJ, DSWD, CHR, FIND and the Desaparecidos shall ensure the full dissemination of the Act and this **IRR** to the concerned agencies and the public.

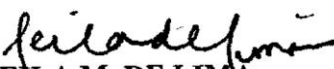
SECTION 30. *Suppletory Applications.* The applicable provisions of the Revised Penal Code shall have suppletory application insofar as they are consistent with the provisions of the Act.


SECTION 31. *Separability Clause.* If for any reason, any section or provision of the Act is declared unconstitutional or invalid, such other sections or provisions not affected thereby shall remain in full force and effect.

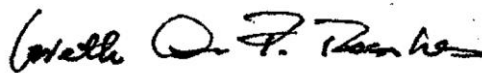
SECTION 32. *Repealing Clause.* All laws, decrees, executive orders, rules and regulations and other issuances or parts thereof inconsistent with the provisions of the Act are hereby repealed, amended or modified accordingly.


SECTION 33. *Effectivity Clause.* This **IRR** shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.


Done in the City of Manila, this 12th day of February 2013.


LELA M. DE LIMA
Secretary
Department of Justice


CORAZON JULIANO-SOLIMAN
Secretary
Department of Social Welfare and
Development *file*


LORETTA ANN P. ROSALES
Chairperson
Commission on Human Rights


NILDA L. SEVILLA
Co-Chairperson
Families of Victims of Involuntary
Disappearance (FIND)


LORENA P. SANTOS
Secretary General
Families of *Desaparecidos* for Justice
(*Desaparecidos*)