

**PHILIPPINE NATIONAL POLICE HANDBOOK**  
**PNPHRAO-PS-4-14**



**COMPENDIUM OF HUMAN RIGHTS LAWS**

**Volume 2 - National Instruments**

**2014 EDITION**



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*"Serbisyon  
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PHILIPPINE NATIONAL POLICE  
**STRATEGIC FOCUS**

**CODE-P**

Competence Organizational Discipline Excellence Professionalism  
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**2013 AND BEYOND  
TOWARDS THE REALIZATION OF THE  
PNP P.A.T.R.O.L  
Plan 2030**

Peace and order Agenda for Transformation  
and upholding of the **Rule-Of-Law**



**ALAN LA MADRID PURISIMA**  
Police Director General  
Chief, Philippine National Police



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**COMPENDIUM OF  
INTERNATIONAL AND  
NATIONAL LAWS ON  
HUMAN RIGHTS**

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[www.senate.gov.ph](http://www.senate.gov.ph)

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Camp Crame, Quezon City

## FOREWORD



The improvement of community safety through human rights-based policing is one of the process excellence objectives under the *PNP PATROL Plan 2030- Performance Governance System*. The foundation necessary to attain this objective is the continuing education of police personnel about human rights and the laws and international instruments that seek to promote and protect these rights.

Since effective law enforcement is fundamentally anchored on a veritable knowledge of the law, this 2014 edition of the PNP Compendium on International and National Laws on Human Rights (CD Compilation) is published to enhance the practical understanding of police personnel on the spirit and letter of these laws. By using this Compendium as a constant guide and reference, our law enforcers will be properly informed on the extent of their powers, the specific actions they may undertake, and the responsibilities that come with their exercise of authority. This is also a valuable tool for educating our personnel on state obligations to the international community as embodied in the international covenants or treaties that have been acceded to by the Philippine Government.

As law enforcers, we are always expected to strictly follow established procedures and to fully comply with the law in the performance of our duties. Failure to do so would cast doubt on the rule of justice and imperil both the PNP mission and the rights and liberties of our people. For this reason, every police officer must know and understand human rights laws and the international instruments applicable in the Philippines and other member-states of the United Nations.

Through this Compendium, we hope to further raise the understanding, appreciation and commitment of PNP personnel to the principles of Human Rights and the International Humanitarian Law.

  
**ALAN LA MADRID PURISIMA**  
Police Director General  
Chief, PNP

## Preface



The updated *PNP Compendium of International and National Laws on Human Rights (CD Compilation)* is a more comprehensive resource on newly passed legislation and other lesser known international instruments related to the protection of human rights. Understandably, reading this extensive Compendium can prove to be an enormous undertaking for even the most enthusiastic reader or passionate practitioner of law. For this reason, we developed a Compact Disc (CD) version that features portable digital formats of human rights laws and instruments that can be read directly from the disc, copied onto another computer or device, or printed on paper. As a more user-friendly version, this updated compendium is not only portable but has contents that can be shared online with PNP personnel and other stakeholders. This compilation also features the complete texts of international conventions not included in the previous version such as the Rome Statute of the International Criminal Court and other equally monumental instruments covering the laws on armed conflict, treatment of refugees, labor rights, and vital protocols that must be known and understood by all PNP personnel.

The original printed compendium was published way back in 2008 but since then, new human rights laws were enacted which made it necessary to revise and publish a new compilation. It may be recalled that in 2009, the Anti-Torture Law or R.A. 9745 was passed and welcomed with jubilation by human rights defenders here and abroad. That same year, Congress enacted R.A. 9851 which enabled the Philippines to have a counterpart statute to the International Humanitarian Law (IHL) which likewise criminalized genocide and other crimes against humanity. In 2012, another milestone was reached when R.A. 10353 (Anti-Enforced Disappearance Act) was signed into law.

Through this CD reference, we are confident that we can make Human Rights and IHL Education more accessible to police personnel. But surely, it is more than just a reference. This CD Compendium, in essence, is a testament to the struggles and achievements of human rights defenders in government, civil society, and other sectors of society that labored day and night to translate their advocacies into law. It encapsulates the untiring efforts of the International Community to establish peace and goodwill among nations through the promotion of equality and protection of human rights.

It is our highest hope that this humble work will help educate and empower police personnel to fulfill their duty as servants and protectors of the people and, ultimately, make the task of upholding Human Rights a way of life in the Philippine National Police.

A handwritten signature in black ink, appearing to read 'Antonio Bello Viernes', written over a white background.

**ANTONIO BELLO VIERNES**  
Police Chief Superintendent  
Chief, PNP Human Rights Affairs Office



## Message

The Hanns Seidel Foundation/Germany (HSF) is honored to be a partner of the Philippine National Police (PNP) in the production of this “PNP Compendium on International and National Laws on Human Rights”. The efforts that went into the production and eventual dissemination of this Compact Disk (CD) to the various units of the organization is indicative of the PNP's commitment to the principles of human rights.

This compilation of human rights laws builds upon the previous efforts of the PNP Human Rights Affairs Office (HRAO) and HSF, and this latest compilation of international and national human rights laws is for the benefit of police officers and human rights practitioners who, by accessing the information provided herein can be guided in the performance of their duties and as human rights advocates.

The information in this CD is also expected to enhance its users' knowledge and understanding of human rights laws as it provides the background and legal basis for police response.

We have been working with the PNP since 2008 primarily with the PNP HRAO and look forward to a continued partnership towards the promotion and protection of community and human rights-based policing, and on a broader scale in helping strengthen the technical competence and professionalism of police officers as they face the challenges of the twenty-first century.

We look forward to a sustained and fruitful cooperation with the PNP and wish the HRAO the best in the future.

Paul G. Schäfer  
Resident Representative  
Hanns Seidel Foundation/Germany



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# **VOLUME II**

# **NATIONAL INSTRUMENTS**

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# THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES (Pertinent Provisions)

## ARTICLE II

### DECLARATION OF PRINCIPLES AND STATE POLICIES PRINCIPLES

**Section 1.** The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

**Section 2.** The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

**Section 3.** Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory.

**Section 4.** The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State and, in the fulfillment thereof, all Citizens may be required, under conditions provided by law, to render personal, military or civil service.

**Section 11.** The State values the dignity of every human person and guarantees full respect for human rights.

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## ARTICLE III

### BILL OF RIGHTS

**Section 1.** No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

**Section 2.** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

#### **Section 3.**

- (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.
- (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

**Section 4.** No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

**Section 5.** No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.



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**Section 6.** The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

**Section 7.** The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

**Section 8.** The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

**Section 9.** Private property shall not be taken for public use without just compensation.

**Section 10.** No law impairing the obligation of contracts shall be passed.

**Section 11.** Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

**Section 12.**

- (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

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- (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.
  - (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.
  - (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to the rehabilitation of victims of torture or similar practices, and their families.

**Section 13.** All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

**Section 14.**

- (1) No person shall be held to answer for a criminal offense without due process of law.
- (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable.

**Section 15.** The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion, when the public safety requires it.

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**Section 16.** All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

**Section 17.** No person shall be compelled to be a witness against himself.

**Section 18.**

- (1) No person shall be detained solely by reason of his political beliefs and aspirations.
- (2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

**Section 19.**

- (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.
- (2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

**Section 20.** No person shall be imprisoned for debt or non-payment of a poll tax.

**Section 21.** No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

**Section 22.** No ex post facto law or bill of attainder shall be enacted.

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## ARTICLE XIII

### SOCIAL JUSTICE AND HUMAN RIGHTS

**Section 1.** The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

#### **Section 17.**

- (1) There is hereby created an independent office called the Commission on Human Rights.
- (2) The Commission shall be composed of a Chairman and four Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the Bar. The term of office and other qualifications and disabilities of the Members of the Commission shall be provided by law.
- (3) Until this Commission is constituted, the existing Presidential Committee on Human Rights shall continue to exercise its present functions and powers.
- (4) The approved annual appropriations of the Commission shall be automatically and regularly released.

**Section 18.** The Commission on Human Rights shall have the following powers and functions:

- (1) Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
- (2) Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;

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- (3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the under-privileged whose human rights have been violated or need protection;
  - (4) Exercise visitorial powers over jails, prisons, or detention facilities;
  - (5) Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;
  - (6) Recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;
  - (7) Monitor the Philippine Government's compliance with international treaty obligations on human rights;
  - (8) Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;
  - (9) Request the assistance of any department, bureau, office, or agency in the performance of its functions;
  - (10) Appoint its officers and employees in accordance with law; and
  - (11) Perform such other duties and functions as may be provided by law.



## **RULES ON CRIMINAL PROCEDURES**

### **(Pertinent Procedures)**

#### **RULE 113 - ARREST**

**Section 1. Definition of arrest.** – Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense.

**Sec. 2. Arrest; how made.** – An arrest is made by an actual restraint of a person to be arrested, or by his submission to the custody of the person making the arrest.

No violence or unnecessary force shall be used in making an arrest. The person arrested shall not be subject to a greater restraint than is necessary for his detention.

**Sec. 3. Duty of arresting officer.** – It shall be the duty of the officer executing the warrant to arrest the accused and deliver him to the nearest police station or jail without unnecessary delay.

**Sec. 4. Execution of warrant.** – The head of the office to whom the warrant of arrest was delivered for execution shall cause the warrant to be executed within ten (10) days from its receipt. Within ten (10) days after the expiration of the period, the officer to whom it was assigned for execution shall make a report to the judge who issued the warrant. In case of his failure to execute the warrant, he shall state the reason therefor.

**Sec. 5. Arrest without warrant; when lawful.** – A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

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- (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
  - (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.

**Sec. 6. Time of making arrest.** – An arrest may be made on any day and at any time of the day or night.

**Sec. 7. Method of arrest by officer by virtue of warrant.** – When making an arrest by virtue of a warrant, the officer shall inform the person to be arrested of the cause of the arrest and the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the officer has opportunity to so inform him, or when the giving of such information will imperil the arrest. The officer need not have the warrant in his possession at the time of the arrest but after the arrest, if the person arrested so requires, the warrant shall be shown to him as soon as practicable.

**Sec. 8. Method of arrest by officer without warrant.** – When making an arrest without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest, unless the latter is either engaged in the commission of an offense, is pursued immediately after its commission, has escaped, flees, or forcibly resists before the officer has opportunity to so inform him, or when the giving of such information will imperil the arrest.

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**Sec. 9. Method of arrest by private person.** – When making an arrest, a private person shall inform the person to be arrested of the intention to arrest him and the case of the arrest, unless the latter is either engaged in the commission of an offense, is pursued immediately after its commission, or has escaped, flees, or forcibly resists before the person making the arrest has opportunity to so inform him, or when the giving of such information will imperil the arrest.

**Sec. 10. Officer may summon assistance.** – An officer making a lawful arrest may orally summon as many persons as he deems necessary to assist him in effecting the arrest. Every person so summoned by an officer shall assist him in effecting the arrest when he can render such assistance without detriment to himself.

**Sec. 11. Right of officer to break into building or enclosure.** – An officer, in order to make an arrest either by virtue of a warrant, or without a warrant as provided in section 5, may break into any building or enclosure where the person to be arrested is or is reasonably believed to be, if he is refused admittance thereto, after announcing his authority and purpose.

**Sec. 12. Right to break out from building or enclosure.** – Whenever an officer has entered the building or enclosure in accordance with the preceding section, he may break out therefrom when necessary to liberate himself.

**Sec. 13. Arrest after escape or rescue.** – If a person lawfully arrested escapes or is rescued, any person may immediately pursue or retake him without a warrant at any time and in any place within the Philippines.

**Sec. 14. Right of attorney or relative to visit person arrested.** – Any member of the Philippine Bar shall, at the request of the person arrested or of another acting in his behalf, have the right to visit and confer privately with such person in the jail or any other place of custody at any hour of the day or night. Subject to reasonable regulations, a relative of the person arrested can also exercise the same right.

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## **RULE 115 - RIGHTS OF ACCUSED**

**Section 1. Rights of accused at trial.** – In all criminal prosecutions, the accused shall be entitled to the following rights:

- (a) To be presumed innocent until the contrary is proved beyond reasonable doubt.
- (b) To be informed of the nature and cause of the accusation against him.
- (c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, waive his presence at the trial pursuant to the stipulations set forth in his bail, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat. When an accused under custody escapes, he shall be deemed to have waived his right to be present on all subsequent trial dates until custody over him is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his rights without the assistance of counsel.
- (d) To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him.
- (e) To be exempt from being compelled to be a witness against himself.
- (f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or can not with due diligence be found in the Philippines, unavailable, or otherwise unable to testify, given in another case or

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proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.

- (g) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf.
- (h) To have speedy, impartial and public trial.
- (i) To appeal in all cases allowed and in the manner prescribed by law.

## **RULE 126 - SEARCH AND SEIZURE**

**Section 1. Search warrant defined.** – A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court.

**Sec. 2. Court where application for search warrant shall be filed.**  
– An application for search warrant shall be filed with the following:

- (a) Any court within whose territorial jurisdiction a crime was committed.
- (b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.

However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending.

**Sec. 3. Personal property to be seized.** – A search warrant may be issued for the search and seizure of personal property:

- (a) Subject of the offense;



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- (b) Stolen or embezzled and other proceeds, or fruits of the offense; or
  - (c) Used or intended to be used as the means of committing an offense.

**Sec. 4. Requisites for issuing search warrant.** – A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

**Sec. 5. Examination of complainant; record.** – The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

**Sec. 6. Issuance and form of search warrant.** – If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by these Rules.

**Sec. 7. Right to break door or window to effect search.** – The officer, if refused admittance to the place of directed search after giving notice of his purpose and authority, may break open any outer or inner door or window of a house or any part of a house or anything therein to execute the warrant to liberate himself or any person lawfully aiding him when unlawfully detained therein.

**Sec. 8. Search of house, room, or premises to be made in presence of two witnesses.** – No search of a house, room, or any other premises shall be made except in the presence of the lawful

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occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

**Sec. 9. Time of making search.** – The warrant must direct that it be served in the day time, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night.

**Sec. 10. Validity of search warrant.** – A search warrant shall be valid for ten (10) days from its date. Thereafter, it shall be void.

**Sec. 11. Receipt for the property seized.** – The officer seizing the property under the warrant must give a detailed receipt for the same to the lawful occupant of the premises in whose presence the search and seizure were made, or in the absence of such occupant, must, in the presence of at least two witnesses of sufficient age and discretion residing in the same locality, leave a receipt in the place in which he found the seized property.

**Sec. 12. Delivery of property and inventory thereof to court; return and proceedings thereon.** –

- (a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.
- (b) Ten (10) days after issuance of the search warrant, the issuing judge shall ascertain if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made. If the return has been made, the judge shall ascertain whether section 11 of this Rule has been complied with and shall require that the property seized be delivered to him. The judge shall see to it that subsection (a) hereof has been complied with.

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- (c) The return on the search warrant shall be filed and kept by the custodian of the log book on search warrants who shall enter therein the date of the return, the result, and other actions of the judge.

A violation of this section shall constitute contempt of court.

**Sec. 13. Search incident to lawful arrest.** – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

# CRIMES AGAINST THE FUNDAMENTAL LAWS OF THE STATE

## Chapter One

### ARBITRARY DETENTION OR EXPULSION, VIOLATION OF DWELLING, PROHIBITION, INTERRUPTION, AND DISSOLUTION OF PEACEFUL MEETINGS AND CRIMES AGAINST RELIGIOUS WORSHIP

#### Section One. — Arbitrary detention and expulsion

**Art. 124. Arbitrary detention.** — Any public officer or employee who, without legal grounds, detains a person, shall suffer;

1. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if the detention has not exceeded three days;
2. The penalty of *prision correccional* in its medium and maximum periods, if the detention has continued more than three but not more than fifteen days;
3. The penalty of *prision mayor*, if the detention has continued for more than fifteen days but not more than six months; and
4. That of *reclusion temporal*, if the detention shall have exceeded six months.

The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for the detention of any person.

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**Art. 125. Delay in the delivery of detained persons to the proper judicial authorities.** — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by E.O. Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

**Art. 126. Delaying release.** — The penalties provided for in Article 124 shall be imposed upon any public officer or employee who delays for the period of time specified therein the performance of any judicial or executive order for the release of a prisoner or detention prisoner, or unduly delays the service of the notice of such order to said prisoner or the proceedings upon any petition for the liberation of such person.

**Art. 127. Expulsion.** — The penalty of prision correccional shall be imposed upon any public officer or employee who, not being thereunto authorized by law, shall expel any person from the Philippine Islands or shall compel such person to change his residence.

## **Section Two. — Violation of domicile**

**Art. 128. Violation of domicile.** — The penalty of prision correccional in its minimum period shall be imposed upon any public officer or employee who, not being authorized by judicial order, shall enter any dwelling against the will of the owner thereof, search papers or other effects found therein without the previous consent of such owner, or having surreptitiously entered said dwelling, and being required to leave the premises, shall refuse to do so.



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If the offense be committed in the night-time, or if any papers or effects not constituting evidence of a crime be not returned immediately after the search made by the offender, the penalty shall be prision correccional in its medium and maximum periods.

**Art. 129. Search warrants maliciously obtained and abuse in the service of those legally obtained.** — In addition to the liability attaching to the offender for the commission of any other offense, the penalty of arresto mayor in its maximum period to prision correccional in its minimum period and a fine not exceeding P1,000 pesos shall be imposed upon any public officer or employee who shall procure a search warrant without just cause, or, having legally procured the same, shall exceed his authority or use unnecessary severity in executing the same.

**Art. 130. Searching domicile without witnesses.** — The penalty of arresto mayor in its medium and maximum periods shall be imposed upon a public officer or employee who, in cases where a search is proper, shall search the domicile, papers or other belongings of any person, in the absence of the latter, any member of his family, or in their default, without the presence of two witnesses residing in the same locality.

**Section Three.** — Prohibition, interruption and dissolution of peaceful meetings

**Art. 131. Prohibition, interruption and dissolution of peaceful meetings.** — The penalty of prision correccional in its minimum period shall be imposed upon any public officer or employee who, without legal ground, shall prohibit or interrupt the holding of a peaceful meeting, or shall dissolve the same.

The same penalty shall be imposed upon a public officer or employee who shall hinder any person from joining any lawful association or from attending any of its meetings.

The same penalty shall be imposed upon any public officer or employee who shall prohibit or hinder any person from addressing,

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either alone or together with others, any petition to the authorities for the correction of abuses or redress of grievances.

#### **Section Four. — Crimes against religious worship**

**Art. 132. Interruption of religious worship.** — The penalty of prison correccional in its minimum period shall be imposed upon any public officer or employee who shall prevent or disturb the ceremonies or manifestations of any religion.

If the crime shall have been committed with violence or threats, the penalty shall be prison correccional in its medium and maximum periods.

**Art. 133. Offending the religious feelings.** — The penalty of arresto mayor in its maximum period to prison correccional in its minimum period shall be imposed upon anyone who, in a place devoted to religious worship or during the celebration of any religious ceremony shall perform acts notoriously offensive to the feelings of the faithful.

# PRESIDENTIAL DECREE NO. 603

## PRESIDENTIAL DECREE No. 603

### THE CHILD AND YOUTH WELFARE CODE

I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the following:

#### TITLE I

#### GENERAL PRINCIPLES

**Article 1. Declaration of Policy.** - The Child is one of the most important assets of the nation. Every effort should be exerted to promote his welfare and enhance his opportunities for a useful and happy life.

The child is not a mere creature of the State. Hence, his individual traits and aptitudes should be cultivated to the utmost insofar as they do not conflict with the general welfare.

The molding of the character of the child starts at the home. Consequently, every member of the family should strive to make the home a wholesome and harmonious place as its atmosphere and conditions will greatly influence the child's development.

Attachment to the home and strong family ties should be encouraged but not to the extent of making the home isolated and exclusive and unconcerned with the interests of the community and the country.

The natural right and duty of parents in the rearing of the child for civic efficiency should receive the aid and support of the government.

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Other institutions, like the school, the church, the guild, and the community in general, should assist the home and the State in the endeavor to prepare the child for the responsibilities of adulthood.

**Article 2. Title and Scope of Code.** - The Code shall be known as the Child and Youth Welfare Code. It shall apply to persons below twenty-one years of age except those emancipated in accordance with law. "Child" or "minor" or "youth" as used in this Code, shall refer to such persons.

**Article 3. Rights of the Child.** - All children shall be entitled to the rights herein set forth without distinction as to legitimacy or illegitimacy, sex, social status, religion, political antecedents, and other factors.

- (1) Every child is endowed with the dignity and worth of a human being from the moment of his conception, as generally accepted in medical parlance, and has, therefore, the right to be born well.
- (2) Every child has the right to a wholesome family life that will provide him with love, care and understanding, guidance and counseling, and moral and material security.

The dependent or abandoned child shall be provided with the nearest substitute for a home.

- (3) Every child has the right to a well-rounded development of his personality to the end that he may become a happy, useful and active member of society.

The gifted child shall be given opportunity and encouragement to develop his special talents.

The emotionally disturbed or socially maladjusted child shall be treated with sympathy and understanding, and shall be entitled to treatment and competent care.

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The physically or mentally handicapped child shall be given the treatment, education and care required by his particular condition.

- (4) Every child has the right to a balanced diet, adequate clothing, sufficient shelter, proper medical attention, and all the basic physical requirements of a healthy and vigorous life.
- (5) Every child has the right to be brought up in an atmosphere of morality and rectitude for the enrichment and the strengthening of his character.
- (6) Every child has the right to an education commensurate with his abilities and to the development of his skills for the improvement of his capacity for service to himself and to his fellowmen.
- (7) Every child has the right to full opportunities for safe and wholesome recreation and activities, individual as well as social, for the wholesome use of his leisure hours.
- (8) Every child has the right to protection against exploitation, improper influences, hazards, and other conditions or circumstances prejudicial to his physical, mental, emotional, social and moral development.
- (9) Every child has the right to live in a community and a society that can offer him an environment free from pernicious influences and conducive to the promotion of his health and the cultivation of his desirable traits and attributes.
- (10) Every child has the right to the care, assistance, and protection of the State, particularly when his parents or guardians fail or are unable to provide him with his fundamental needs for growth, development, and improvement.
- (11) Every child has the right to an efficient and honest government that will deepen his faith in democracy and inspire him with the morality of the constituted authorities both in their public and private lives.

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- (12) Every child has the right to grow up as a free individual, in an atmosphere of peace, understanding, tolerance, and universal brotherhood, and with the determination to contribute his share in the building of a better world.

**Article 4. Responsibilities of the Child.** - Every child, regardless of the circumstances of his birth, sex, religion, social status, political antecedents and other factors shall:

- (1) Strive to lead an upright and virtuous life in accordance with the tenets of his religion, the teachings of his elders and mentors, and the biddings of a clean conscience;
- (2) Love, respect and obey his parents, and cooperate with them in the strengthening of the family;
- (3) Extend to his brothers and sisters his love, thoughtfulness, and helpfulness, and endeavor with them to keep the family harmonious and united;
- (4) Exert his utmost to develop his potentialities for service, particularly by undergoing a formal education suited to his abilities, in order that he may become an asset to himself and to society;
- (5) Respect not only his elders but also the customs and traditions of our people, the memory of our heroes, the duly constituted authorities, the laws of our country, and the principles and institutions of democracy;
- (6) Participate actively in civic affairs and in the promotion of the general welfare, always bearing in mind that it is the youth who will eventually be called upon to discharge the responsibility of leadership in shaping the nation's future; and
- (7) Help in the observance of individual human rights, the strengthening of freedom everywhere, the fostering of cooperation among nations in the pursuit of their common

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aspirations for programs and prosperity, and the furtherance of world peace.

**Article 5. Commencement of Civil Personality.** - The civil personality of the child shall commence from the time of his conception, for all purposes favorable to him, subject to the requirements of Article 41 of the Civil Code.

**Article 6. Abortion.** - The abortion of a conceived child, whether such act be intentional or not, shall be governed by the pertinent provisions of the Revised Penal Code.

**Article 7. Non-disclosure of Birth Records.** - The records of a person's birth shall be kept strictly confidential and no information relating thereto shall be issued except on the request of any of the following:

- (1) The person himself, or any person authorized by him;
- (2) His spouse, his parent or parents, his direct descendants, or the guardian or institution legally in-charge of him if he is a minor;
- (3) The court or proper public official whenever absolutely necessary in administrative, judicial or other official proceedings to determine the identity of the child's parents or other circumstances surrounding his birth; and
- (4) In case of the person's death, the nearest of kin.

Any person violating the prohibition shall suffer the penalty of imprisonment of at least two months or a fine in an amount not exceeding five hundred pesos, or both, in the discretion of the court.

**Article 8. Child's Welfare Paramount.** - In all questions regarding the care, custody, education and property of the child, his welfare shall be the paramount consideration.



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**Article 9. Levels of Growth.** - The child shall be given adequate care, assistance and guidance through his various levels of growth, from infancy to early and later childhood, to puberty and adolescence, and when necessary even after he shall have attained age 21.

**Article 10. Phases of Development.** - The child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to ensure and enable his fullest development physically, mentally, emotionally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity appropriate to the corresponding developmental stage.

**Article 11. Promotion of Health.** - The promotion of the Child's health shall begin with adequate pre-natal and post-natal care both for him and his mother. All appropriate measures shall be taken to insure his normal total development.

It shall be the responsibility of the health, welfare, and educational entities to assist the parents in looking after the health of the child.

**Article 12. Education.** - The schools and other entities engaged in non-formal education shall assist the parents in providing the best education for the child.

**Article 13. Social and Emotional Growth.** - Steps shall be taken to insure the child's healthy social and emotional growth. These shall be undertaken by the home in collaboration with the schools and other agencies engaged in the promotion of child welfare.

**Article 14. Morality.** - High moral principles should be instilled in the child, particularly in the home, the school, and the church to which he belongs.

**Article 15. Spiritual Values.** - The promotion of the child's spiritual well-being according to the precepts of his religion should, as much as possible, be encouraged by the State.

**Article 16. Civic Conscience.** - The civic conscience of the child shall not be overlooked. He shall be brought up in an atmosphere of

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universal understanding, tolerance, friendship, and helpfulness and in full consciousness of his responsibilities as a member of society.

## **TITLE II**

### **CHILD AND YOUTH WELFARE AND THE HOME**

#### **CHAPTER I**

##### **Parental Authority**

###### **SECTION A. In General**

**Article 17. Joint Parental Authority.** - The father and mother shall exercise jointly just and reasonable parental authority and responsibility over their legitimate or adopted children. In case of disagreement, the father's decision shall prevail unless there is a judicial order to the contrary.

In case of the absence or death of either parent, the present or surviving parent shall continue to exercise parental authority over such children, unless in case of the surviving parent's remarriage, the court, for justifiable reasons, appoints another person as guardian.

In case of separation of his parents, no child under five years of age shall be separated from his mother unless the court finds compelling reasons to do so.

**Article 18. Grandparents.** - Grandparents shall be consulted on important family questions but they shall not interfere in the exercise of parental authority by the parents.

**Article 19. Absence or Death of Parents.** - Grandparents and in their default, the oldest brother or sister who is at least eighteen years of age, or the relative who has actual custody of the child, shall exercise parental authority in case of absence or death of both parents, unless a guardian has been appointed in accordance with the succeeding provision.

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**Article 20. Guardian.** - The court may, upon the death of the parents and in the cases mentioned in Arts. 328 to 332 of the Civil Code, appoint a guardian for the person and property of the child, on petition of any relative or friend of the family or the Department of Social Welfare.

**Article 21. Dependent, Abandoned or Neglected Child.** - The dependent, abandoned or neglected child shall be under the parental authority of a suitable or accredited person or institution that is caring for him as provided for under the four preceding articles, after the child has been declared abandoned by either the court or the Department of Social Welfare.

**Article 22. Transfer to the Department of Social Welfare.** - The dependent, abandoned or neglected child may be transferred to the care of the Department of Social Welfare or a duly licensed child-caring institution or individual in accordance with Articles 142 and 154 of this Code, or upon the request of the person or institution exercising parental authority over him.

From the time of such transfer, the Department of Social Welfare or the duly licensed child-caring institution or individual shall be considered the guardian of the child for all intents and purposes.

**Article 23. Case Study.** - It shall be the duty of the Department of Social Welfare to make a case study of every child who is the subject of guardianship or custody proceedings and to submit its report and recommendations on the matter to the court for its guidance.

**Article 24. Intervention of Department of Social Welfare.** - The Department of Social Welfare shall intervene on behalf of the child if it finds, after its case study, that the petition for guardianship or custody should be denied.

**Article 25. Hearings Confidential.** - The hearing on guardianship and custody proceedings may, at the discretion of the court, be closed to the public and the records thereof shall not be released without its approval.

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**Article 26. Repealing Clause.** - All provisions of the Civil Code on parental authority which are not inconsistent with the provisions of this Chapter shall remain in force: Provided, That Articles 334 up to 348 inclusive on Adoption, are hereby expressly repealed and replaced by Section B of this Chapter.

## **SECTION B. Adoption**

**Article 27. Who May Adopt.** - Any person of age and in full possession of his civil rights may adopt: Provided, That he is in a position to support and care for his legitimate, legitimated, acknowledged natural children, or natural children by legal fiction, or other illegitimate children, in keeping with the means, both material and otherwise, of the family. In all cases of adoption the adopter must be at least fifteen years older than the person to be adopted.

**Article 28. Who May Not Adopt.** - The following persons may not adopt:

1. A married person without the written consent of the spouse;
2. The guardian with respect to the ward prior to final approval of his accounts;
3. Any person who has been convicted of a crime involving moral turpitude; and
4. An alien who is disqualified to adopt according to the laws of his own country or one with whose government the Republic of the Philippines has broken diplomatic relations.

**Article 29. Adoption by Husband and Wife.** - Husband and Wife may jointly adopt. In such case, parental authority shall be exercised as if the child were their own by nature.

**Article 30. Who May Not Be Adopted.** - The following may not be adopted:

1. A married person, without the written consent of the spouse;

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2. An alien with whose government the Republic of the Philippines has broken diplomatic relations; and
  3. A person who has already been adopted unless the adoption has been previously revoked or rescinded in accordance with this Chapter.

**Article 31. Whose Consent is Necessary.** - The written consent of the following to the adoption shall be necessary:

1. The person to be adopted, if fourteen years of age or over;
2. The natural parents of the child or his legal guardian of the Department of Social Welfare or any duly licensed child placement agency under whose care the child may be; and
3. The natural children, fourteen years and above, of the adopting parents.

**Article 32. Hurried Decisions.** - In all proceedings for adoption, steps should be taken by the court to prevent the natural parents from making hurried decisions caused by strain or anxiety to give up the child, and to ascertain, that all measures to strengthen the family have been exhausted and that any prolonged stay of the child in his own home will be inimical to his welfare and interest.

**Article 33. Case Study.** - No petition for adoption shall be granted unless the Department of Social Welfare, or the Social Work and Counseling Division, in case of Juvenile and Domestic Relations Courts, has made a case study of the child to be adopted, his natural parents as well as the prospective adopting parents, and has submitted its report and recommendations on the matter to the court hearing such petition. The Department of Social Welfare shall intervene on behalf of the child if it finds, after such case study, that the petition should be denied.

**Article 34. Procedure.** - The proceedings for adoption shall be governed by the Rules of Court in so far as they are not in conflict with this Chapter.

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**Article 35. Trial Custody.** - No petition for adoption shall be finally granted unless and until the adopting parents are given by the court a supervised trial custody period of at least six months to assess their adjustment and emotional readiness for the legal union. During the period of trial custody parental authority shall be vested in the adopting parents.

The court may, upon its own motion or on motion of the petitioner, reduce or dispense with the trial period if it finds that it is to the best interest of the child. In such case, the court shall state its reasons for reducing said period.

**Article 36. Decree of Adoption.** - If, after considering the report of the Department of Social Welfare or duly licensed child placement agency and the evidence submitted before it, the court is satisfied that the petitioner is qualified to maintain, care for, and educate the child, that the trial custody period has been completed, and that the best interests of the child will be promoted by the adoption, a decree of adoption shall be entered, which shall be effective as of the date the original petition was filed. The decree shall state the name by which the child is thenceforth to be known.

**Article 37. Civil Registry Record.** - The adoption shall be recorded in the local civil register and shall be annotated on the record of birth, and the same shall entitle the adopted person to the issuance of an amended certificate of birth.

**Article 38. Confidential Nature of Proceedings and Records.** - All hearings in adoption cases shall be confidential and shall not be open to the public. All records, books and papers relating to the adoption cases in the files of the court, of the Department of Social Welfare, and of any other agency or institution participating in the adoption proceedings, shall be kept strictly confidential.

Subject to the provisions of Article 7, in any case in which information from such records, books and papers is needed, the person or agency requesting the release of the information may file a petition to the court which entered the decree of adoption for its release. If the court finds that the disclosure of the information is necessary for

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purposes connected with or arising out of the adoption and will be for the best interests of the child, the court may permit the necessary information to be released, restricting the purposes for which it may be used.

**Article 39. Effects of Adoption. - The adoption shall:**

1. Give to the adopted person the same rights and duties as if he were a legitimate child of the adopter: Provided, That an adopted child cannot acquire Philippine citizenship by virtue of such adoption;
2. Dissolve the authority vested in the natural parent or parents, except where the adopter is the spouse of the surviving natural parent;
3. Entitle the adopted person to use the adopter's surname; and
4. Make the adopted person a legal heir of the adopter: Provided, That if the adopter is survived by legitimate parents or ascendants and by an adopted person, the latter shall not have more successional rights than an acknowledged natural child: Provided, further, That any property received gratuitously by the adopted from the adopter shall revert to the adopter should the former predecease the latter without legitimate issue unless the adopted has, during his lifetime, alienated such property: Provided, finally, That in the last case, should the adopted leave no property other than that received from the adopter, and he is survived by illegitimate issue or a spouse, such illegitimate issue collectively or the spouse shall receive one-fourth of such property; if the adopted is survived by illegitimate issue and a spouse, then the former collectively shall receive one-fourth and the latter also one-fourth, the rest in any case reverting to the adopter, observing in the case of the illegitimate issue the proportion provided for in Article 895 of the Civil Code.



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The adopter shall not be a legal heir of the adopted person, whose parents by nature shall inherit from him, except that if the latter are both dead, the adopting parent or parents take the place of the natural parents in the line of succession, whether testate or interstate.

**Article 40. Rescission by Adopted.** - The adopted person or the Department of Social Welfare or any duly licensed child placement agency if the adopted is still a minor or otherwise incapacitated, may ask for the rescission of the adoption on the same grounds that cause the loss of parental authority under the Civil Code.

**Article 41. Revocation by Adopter.** - The adopter may petition the court for the revocation of the adoption in any of these cases:

1. If the adopted person has attempted against the life of the adopter and/or his spouse;
2. When the adopted minor has abandoned the home of the adopter for more than three years and efforts have been exhausted to locate the minor within the stated period; and
3. When by other acts the adopted person has definitely repudiated the adoption.

**Article 42. Effects of Rescission or Revocation.** - Where the adopted minor has not reached the age of majority at the time of the revocation or rescission referred to in the next preceding articles, the court in the same proceeding shall determine whether he should be returned to the parental authority of his natural parents or remitted to the Department of Social Welfare or any duly licensed child placement agency or whether a guardian over his person and property should be appointed.

Where the adopted child has reached the age of majority, the revocation or rescission, if and when granted by the court, shall release him from all obligations to his adopting parents and shall extinguish all his rights against them: Provided, That if the said adopted person is physically or mentally handicapped as to need a

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guardian over his person or property, or both, the court may appoint a guardian in accordance with the provisions of existing law.

In all cases of revocation or rescission, the adopted shall lose the right to continue using the adopter's surname and the court shall order the amendment of the records in the Civil Register in accordance with its decision.

## **CHAPTER II**

### **Rights of Parents**

**Article 43. Primary Right of Parents.** - The parents shall have the right to the company of their children and, in relation to all other persons or institutions dealing with the child's development, the primary right and obligation to provide for their upbringing.

**Article 44. Rights Under the Civil Code.** - Parents shall continue to exercise the rights mentioned in Articles 316 to 326 of the Civil Code over the person and property of the child.

**Article 45. Right to Discipline Child.** - Parents have the right to discipline the child as may be necessary for the formation of his good character, and may therefore require from him obedience to just and reasonable rules, suggestions and admonitions.

## **CHAPTER III**

### **Duties of Parents**

**Article 46. General Duties.** - Parents shall have the following general duties toward their children:

1. To give him affection, companionship and understanding;
2. To extend to him the benefits of moral guidance, self-discipline and religious instruction;

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3. To supervise his activities, including his recreation;
  4. To inculcate in him the value of industry, thrift and self-reliance;
  5. To stimulate his interest in civic affairs, teach him the duties of citizenship, and develop his commitment to his country;
  6. To advise him properly on any matter affecting his development and well-being;
  7. To always set a good example;
  8. To provide him with adequate support, as defined in Article 290 of the Civil Code; and
  9. To administer his property, if any, according to his best interests, subject to the provisions of Article 320 of the Civil Code.

**Article 47. Family Affairs.** - Whenever proper, parents shall allow the child to participate in the discussion of family affairs, especially in matters that particularly concern him. In cases involving his discipline, the child shall be given a chance to present his side.

**Article 48. Winning Child's Confidence.** - Parents shall endeavor to win the child's confidence and to encourage him to conduct with them on his activities and problems.

**Article 49. Child Living Away from Home.** - If by reason of his studies or for other causes, a child does not live with his parents, the latter shall communicate with him regularly and visit him as often as possible. The parents shall see to it that the child lives in a safe and wholesome place and under responsible adult care and supervision.

**Article 50. Special Talents.** - Parents shall endeavor to discover the child's talents or aptitudes, if any, and to encourage and develop them. If the child is especially gifted, his parents shall report this fact to the National Center for Gifted Children or to other agencies concerned so that official assistance or recognition may be extended to him.

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**Article 51. Reading Habit.** - The reading habit should be cultivated in the home. Parents shall, whenever possible, provide the child with good and wholesome reading material, taking into consideration his age and emotional development. They shall guard against the introduction in the home of pornographic and other unwholesome publications.

**Article 52. Association with Other Children.** - Parents shall encourage the child to associate with other children of his own age with whom he can develop common interests of useful and salutary nature. It shall be their duty to know the child's friends and their activities and to prevent him from falling into bad company. The child should not be allowed to stay out late at night to the detriment of his health, studies or morals.

**Article 53. Community Activities.** - Parents shall give the child every opportunity to form or join social, cultural, educational, recreational, civic or religious organizations or movements and other useful community activities.

**Article 54. Social Gatherings.** - When a party or gathering is held, the parents or a responsible person should be present to supervise the same.

**Article 55. Vices.** - Parents shall take special care to prevent the child from becoming addicted to intoxicating drinks, narcotic drugs, smoking, gambling, and other vices or harmful practices.

**Article 56. Choice of career.** - The child shall have the right to choose his own career. Parents may advise him on this matter but should not impose on him their own choice.

**Article 57. Marriage.** - Subject to the provisions of the Civil Code, the child shall have the prerogative of choosing his future spouse. Parents should not force or unduly influence him to marry a person he has not freely chosen.

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## CHAPTER IV

### Liabilities of Parents

**Article 58. Torts.** - Parents and guardians are responsible for the damage caused by the child under their parental authority in accordance with the Civil Code.

**Article 59. Crimes.** - Criminal liability shall attach to any parent who:

1. Conceals or abandons the child with intent to make such child lose his civil status.
2. Abandons the child under such circumstances as to deprive him of the love, care and protection he needs.
3. Sells or abandons the child to another person for valuable consideration.
4. Neglects the child by not giving him the education which the family's station in life and financial conditions permit.
5. Fails or refuses, without justifiable grounds, to enroll the child as required by Article 72.
6. Causes, abates, or permits the truancy of the child from the school where he is enrolled. "Truancy" as here used means absence without cause for more than twenty schooldays, not necessarily consecutive.
7. It shall be the duty of the teacher in charge to report to the parents the absences of the child the moment these exceed five schooldays.
8. Improperly exploits the child by using him, directly or indirectly, such as for purposes of begging and other acts which are inimical to his interest and welfare.

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9. Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignation and other excessive chastisement that embarrass or humiliate him.
  10. Causes or encourages the child to lead an immoral or dissolute life.
  11. Permits the child to possess, handle or carry a deadly weapon, regardless of its ownership.
  12. Allows or requires the child to drive without a license or with a license which the parent knows to have been illegally procured. If the motor vehicle driven by the child belongs to the parent, it shall be presumed that he permitted or ordered the child to drive.

“Parents” as here used shall include the guardian and the head of the institution or foster home which has custody of the child.

**Article 60. Penalty.** - The act mentioned in the preceding article shall be punishable with imprisonment from two or six months or a fine not exceeding five hundred pesos, or both, at the discretion of the Court, unless a higher penalty is provided for in the Revised Penal Code or special laws, without prejudice to actions for the involuntary commitment of the child under Title VIII of this Code.

## **CHAPTER V**

### **Assistance to Parents**

**Article 61. Admonition to Parents.** - Whenever a parent or guardian is found to have been unreasonably neglectful in the performance of his duties toward the child, he shall be admonished by the Department of Social Welfare or by the local Council for the Protection of Children referred to in Article 87.

Whenever a child is found delinquent by any court, the father, mother or guardian may be judicially admonished.

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**Article 62. Medical and Dental Services.** - If the child has special health problems, his parents shall be entitled to such assistance from the government as may be necessary for his care and treatment in addition to other benefits provided for under existing law.

**Article 63. Financial Aid and Social Services to Needy Families.** - Special financial or material aid and social services shall be given to any needy family, to help maintain the child or children in the home and prevent their placement elsewhere.

The amount of such aid shall be determined by the Department of Social Welfare, taking into consideration, among other things, the self-employment of any of the family members and shall be paid from any funds available for the purpose.

**Article 64. Assistance to Widowed or Abandoned Parent and Her Minor Dependents.** - The State shall give assistance to widowed or abandoned parent or where either spouse is on prolonged absence due to illness, imprisonment, etc. and who is unable to support his/her children. Financial and other essential social services shall be given by the National Government or other duly licensed agencies with similar functions to help such parent acquire the necessary knowledge or skill needed for the proper care and maintenance of the family.

**Article 65. Criterion for Aid.** - The criteria to determine eligibility for the aid mentioned in the next two preceding articles shall be (1) the age of the child or children (2) the financial condition of the family, (3) the degree of deprivation of parental care and support, and (4) the inability to exercise parental authority.

**Article 66. Assistance to Unmarried Mothers and Their Children.** - Any unmarried mother may, before and after the birth of the child, seek the assistance and advice of the Department of Social Welfare or any duly licensed child placement agency. The said agencies shall offer specialized professional services which include confidential help and protection to such mother and her child, including placement of protection to such mother and child, including placement of such mother's rights, if any, against the father of such child.

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## CHAPTER VI

### Foster-Care

**Article 67. Foster Homes.** - Foster Homes shall be chosen and supervised by the Department of Social Welfare or any duly licensed child placement agency when and as the need therefore arises. They shall be run by married couples, to be licensed only after thorough investigation of their character, background, motivation and competence to act as foster parents.

**Article 68. Institutional Care.** - Assignment of the child to a foster home shall be preferred to institutional care. Unless absolutely necessary, no child below nine years of age shall be placed in an institution. An older child may be taken into an institution for child care if a thorough social case study indicates that he will derive more benefit therefrom.

**Article 69. Day-care service and other substitute parental arrangement.** - Day-care and other substitute parental arrangement shall be provided a child whose parents and relatives are not able to care for him during the day. Such arrangements shall be the subject of accreditation and licensing by the Department of Social Welfare.

**Article 70. Treatment of Child Under Foster Care.** - A child under foster care shall be given, as much as possible, the affection and understanding that his own parents, if alive or present, would or should have extended to him. Foster care shall take into consideration the temporary nature of the placement and shall not alienate the child from his parents.

### TITLE III.

## CHILD AND YOUTH WELFARE AND EDUCATION

### CHAPTER I

#### Access to Educational Opportunities



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**Article 71. Admission to Schools.** - The state shall see to it that no child is refused admission in public schools. All parents are required to enroll their children in schools to complete, at least, an elementary education.

**Article 72. Assistance.** - To implement effectively the compulsory education policy, all necessary assistance possible shall be given to parents, specially indigent ones or those who need the services of children at home, to enable the children to acquire at least an elementary education. Such assistance may be in the form of special school programs which may not require continuous attendance in school, or aid in the form of necessary school supplies, school lunch, or whatever constitutes a bar to a child's attendance in school or access to elementary education.

**Article 73. Nursery School.** - To further help promote the welfare of children of working mothers and indigent parents, and in keeping with the Constitutional provision on the maintenance of an adequate system of public education, public nursery and kindergarten schools shall be maintained, whenever possible. The operation and maintenance of such schools shall be the responsibility of local governments. Aid from local school board funds, when available, may be provided.

**Article 74. Special Classes.** - Where needs warrant, there shall be at least special classes in every province, and, if possible, special schools for the physically handicapped, the mentally retarded, the emotionally disturbed, and the specially gifted. The private sector shall be given all the necessary inducement and encouragement to establish such classes or schools.

**Article 75. School Plants and Facilities.** - Local school officials and local government officials shall see to it that school children and students are provided with adequate schoolrooms and facilities including playground, space, and facilities for sports and physical development activities. Such officials should see to it that the school environment is free from hazards to the health and safety of the students and that there are adequate safety measures for any

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emergencies such as accessible exits, firefighting equipment, and the like. All children shall have the free access to adequate dental and medical services.

## **CHAPTER II**

### **The Home and the School**

**Article 76. Role of the Home.** - The home shall fully support the school in the implementation of the total school program - curricular and co-curricular - toward the proper physical, social, intellectual and moral development of the child.

**Article 77. Parent-Teacher Associations.** - Every elementary and secondary school shall organize a parent-teacher association for the purpose of providing a forum for the discussion of problems and their solutions, relating to the total school program, and for insuring the full cooperation of parents in the efficient implementation of such program. All parents who have children enrolled in a school are encouraged to be active members of its PTA, and to comply with whatever obligations and responsibilities such membership entails.

Parent-Teacher Association all over the country shall aid the municipal and other local authorities and school officials in the enforcement of juvenile delinquency control measures, and in the implementation of programs and activities to promote child welfare.

## **CHAPTER III**

### **Miscellaneous**

**Article 78. Contributions.** - No school shall receive or collect from students, directly or indirectly, contributions of any kind or form, or for any purpose except those expressly provided by law, and on occasions of national or local disasters in which case the school may accept voluntary contribution or aid from students for distribution to victims of such disasters or calamities.

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## TITLE IV.

### CHILD AND YOUTH WELFARE AND THE CHURCH

**Article 79. Rights of the Church.** - The State shall respect the rights of the Church in matters affecting the religious and moral upbringing of the child.

**Article 80. Establishment of Schools.** - All churches and religious orders, congregations or groups may, conformably to law, establish schools for the purpose of educating children in accordance with the tenets of their religion.

**Article 81. Religious Instruction.** - The religious education of children in all public and private schools is a legitimate concern of the Church to which the students belong. All churches may offer religious instruction in public and private elementary and secondary schools, subject to the requirements of the Constitution and existing laws.

**Article 82. Assistance to Churches.** - Insofar as may be allowed by the Constitution, the government shall extend to all churches, without discrimination or preference, every opportunity to exercise their influence and disseminate their teachings.

**Article 83. Parents.** - Parents shall admonish their children to heed the teachings of their Church and to perform their religious duties. Whenever possible, parents shall accompany their children to the regular devotion of their Church and other religious ceremonies.

## TITLE V.

### CHILD AND YOUTH WELFARE AND THE COMMUNITY

#### CHAPTER I

##### Duties in General of the State

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**Article 84. Community Defined.** - As used in this Title, a community shall mean, the local government, together with the society of individuals or institutions, both public and private, in which a child lives.

**Article 85. Duties of the Community.** - To insure the full enjoyment of the right of every child to live in a society that offers or guarantee him safety, health, good moral environment and facilities for his wholesome growth and development, it shall be the duty of the community to:

1. Bring about a healthy environment necessary to the normal growth of children and the enhancement of their physical, mental and spiritual well-being;
2. Help institutions of learning, whether public or private, achieve the fundamental objectives of education;
3. Organize or encourage movements and activities, for the furtherance of the interests of children and youth;
4. Promote the establishment and maintenance of adequately equipped playgrounds, parks, and other recreational facilities;
5. Support parent education programs by encouraging its members to attend and actively participate therein;
6. Assist the State in combating and curtailing juvenile delinquency and in rehabilitating wayward children;
7. Aid in carrying out special projects for the betterment of children in the remote areas or belonging to cultural minorities or those who are out of school; and
8. Cooperate with private and public child welfare agencies in providing care, training and protection to destitute, abandoned, neglected, abused, handicapped and disturbed children.

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## CHAPTER II

### Community Bodies Dealing with Child Welfare

#### SECTION A. Barangay Councils

**Article 86. Ordinances and Resolutions.** - Barangay Councils shall have the authority to enact ordinances and resolutions not inconsistent with law or municipal ordinances, as may be necessary to provide for the proper development and welfare of the children in the community, in consultation with representatives of national agencies concerned with child and youth welfare.

**Article 87. Council for the Protection of Children.** - Every barangay council shall encourage the organization of a local Council for the Protection of Children and shall coordinate with the Council for the Welfare of Children and Youth in drawing and implementing plans for the promotion of child and youth welfare. Membership shall be taken from responsible members of the community including a representative of the youth, as well as representatives of government and private agencies concerned with the welfare of children and youth whose area of assignment includes the particular barangay and shall be on a purely voluntary basis.

#### **Said Council shall:**

1. Foster the education of every child in the barangay;
2. Encourage the proper performance of the duties of parents, and provide learning opportunities on the adequate rearing of children and on positive parent-child relationship;
3. Protect and assist abandoned or maltreated children and dependents;
4. Take steps to prevent juvenile delinquency and assist parents of children with behavioral problems so that they can get expert advise;

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5. Adopt measures for the health of children;
  6. Promote the opening and maintenance of playgrounds and day-care centers and other services that are necessary for child and youth welfare;
  7. Coordinate the activities of organizations devoted to the welfare of children and secure their cooperation;
  8. Promote wholesome entertainment in the community, especially in movie houses; and
  9. Assist parents, whenever necessary in securing expert guidance counseling from the proper governmental or private welfare agency.

In addition, it shall hold classes and seminars on the proper rearing of the children. It shall distribute to parents available literature and other information on child guidance. The Council shall assist parents, with behavioral problems whenever necessary, in securing expert guidance counseling from the proper governmental or private welfare agency.

**Article 88. Barangay Scholarships.** - Barangay funds may be appropriated to provide annual scholarship for indigent children who, in judgment of the Council for the Protection of Children, deserve public assistance in the development of their potentialities.

**Article 89. Youth Associations in Barangays.** - Barangay councils shall encourage membership in civil youth associations and help these organizations attain their objectives.

**Article 90. Aid to Youth Associations.** - In proper cases, barangay funds may be used for the payment of the cost of the uniforms and equipment required by these organizations.

## **SECTION B. Civic Associations of Adults**

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**Article 91. Civic Associations of Adults.** - As used in this Title, a civic association shall refer to any club, organization or association of individuals twenty-one years of age or over, which is directly or indirectly involved in carrying out child welfare programs and activities.

**Article 92. Accounting of Proceeds or Funds.** - It shall be the duty of any civic association of adults holding benefits or soliciting contributions pursuant to the provisions of the next preceding article, to render an accounting of the proceeds thereof to the Department of Social Welfare or to the city or municipal treasurer, as the case may be.

**Article 93. Functions.** - Civic associations and youth associations shall make arrangements with the appropriate governmental or civic organization for the instruction of youth in useful trades or crafts to enable them to earn a living.

**Article 94. Youth Demonstrations.** - Any demonstrations sponsored by any civic associations and youth associations shall be conducted in a peaceful and lawful manner.

**Article 95. Unwholesome Entertainment and advertisements.** - It shall be the duty of all civic associations and youth associations to bring to the attention of the proper authorities the exhibition of indecent shows and the publication, sale or circulation of pornographic materials.

The Board of Censors or the Radio Control Board may, upon representation of any civic association, prohibit any movie, television or radio program offensive to the proprieties of language and behavior.

Commercial advertisements and trailers which are improper for children under eighteen years of age due to their advocating or unduly suggesting violence, vices, crimes and immorality, shall not be shown in any movie theater where the main feature is for general patronage nor shall they be used or shown during or immediately before and after any television or radio program for children.

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**Article 96. Complaint Against Child Welfare Agency.** - Any civic association and any youth association may complain to the officials of any public or private child-caring agency about any act or omission therein prejudicial to the wards of such agency.

If the complaint is not acted upon, it may be brought to the Council for the Protection of Children or the Department of Social Welfare, which shall promptly investigate the matter and take such steps as may be necessary.

**Article 97. Studies and Researches.** - The government shall make available such data and technical assistance as may be needed by civic associations conducting studies and researches on matters relating to child welfare, including the prevention of juvenile delinquency.

**Article 98. Exchange Programs.** - Student exchange programs sponsored by civic associations or youth associations shall receive the support and encouragement of the State.

## **SECTION C. Youth Associations**

**Article 99. Youth Associations.** - As used in this Title, a youth association shall refer to any club, organization or association of individuals below twenty-one years of age which is directly or indirectly involved in carrying out child or youth welfare programs and activities.

**Article 100. Rights and Responsibilities.** - All youth associations shall enjoy the same rights and discharge the same responsibilities as civic associations as may be permitted under existing laws.

**Article 101. Student Organizations.** - All student organization in public or private schools shall include in their objectives the cultivation of harmonious relations among their members and with the various segments of the community.



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## CHAPTER III

### Collaboration Between the Home and the Community

**Article 102. Proper Atmosphere for Children.** - The home shall aid the community in maintaining an atmosphere conducive to the proper upbringing of children, particularly with respect to their preparation for adult life and the conscientious discharge of their civic duties as a whole.

**Article 103. Unwholesome Influence.** - The home and the community shall cooperate with each other in counteracting and eliminating such influences as may be exerted upon children by useless and harmful amusements and activities, obscene exhibitions and programs, and establishments inimical to health and morals.

## TITLE VI.

### CHILD AND YOUTH WELFARE AND THE SAMAHAN

#### CHAPTER I

##### Duties in General of the Samahan

**Article 104. “Samahan” Defined.** - As used in this Code, the term “samahan” shall refer to the aggregate of persons working in commercial, industrial, and agricultural establishments or enterprises, whether belonging to labor or management.

**Article 105. Organization.** - The barangay, municipal and city councils, whenever necessary, shall provide by ordinance for the formation and organization of a samahan in their respective communities. Membership in the samahan shall be on voluntary basis from among responsible persons from the various sectors of the community mentioned in the preceding article.

**Article 106. Duties of the Samahan.** - The Samahan shall:

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1. Prevent the employment of children in any kind of occupation or calling which is harmful to their normal growth and development;
  2. Forestall their exploitation by insuring that their rates of pay, hours of work and other conditions of employment are in accordance not only with law but also with equity;
  3. Give adequate protection from all hazards to their safety, health, and morals, and secure to them their basic right to an education;
  4. Help out-of-school youth to learn and earn at the same time by helping them look for opportunities to engage in economic self-sufficient projects;
  5. To coordinate with vocational and handicraft classes in all schools and agencies in the barangay, municipality or city to arrange for possible marketing of the products or articles made by the students; and
  6. Provide work experience, training and employment in those areas where the restoration and conservation of our natural resources is deemed necessary.

## **CHAPTER II**

### **Working Children**

#### **Article 107. Employment of Children Below Sixteen Years. -**

Children below sixteen years of age may be employed to perform light work which is not harmful to their safety, health or normal development and which is not prejudicial to their studies.

The provisions of the Labor Code relating to employable age and conditions of employment of children are hereby adopted as part of this Code insofar as not inconsistent herewith.

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**Article 108. Duty of Employer to Submit Report.** - The employer shall submit to the Department of Labor a report of all children employed by him. A separate report shall be made of all such children who are found to be handicapped after medical examination. The Secretary of Labor shall refer such handicapped children to the proper government or private agencies for vocational guidance, physical and vocational rehabilitation, and placement in employment.

**Article 109. Register of Children.** - Every employer in any commercial, industrial or agricultural establishment or enterprise shall keep:

1. A register of all children employed by him, indicating the dates of their birth;
2. A separate file for the written consent to their employment given by their parents or guardians;
3. A separate file for their educational and medical certificates; and
4. A separate file for special work permits issued by the Secretary of Labor in accordance with existing laws.

**Article 110. Education of Children Employed as Domestics.** - If a domestic is under sixteen years of age, the head of the family shall give him an opportunity to complete at least elementary education as required under Article 71. The cost of such education shall be a part of the domestic's compensation unless there is a stipulation to the contrary.

## **CHAPTER III**

### **Labor-Management Projects**

**Article 111. Right to Self-Organization.** - Working children shall have the same freedoms as adults to join the collective bargaining union of their own choosing in accordance with existing law.

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Neither management nor any collective bargaining union shall threaten or coerce working children to join, continue or withdraw as members of such union.

**Article 112. Conditions of Employment.** - There shall be close collaboration between labor and management in the observance of the conditions of employment required by law for working children.

**Article 113. Educational Assistance Programs.** - The management may allow time off without loss or reduction of wages for working children with special talents to enable them to pursue formal studies in technical schools on scholarships financed by management or by the collective bargaining union or unions.

**Article 114. Welfare Programs.** - Labor and management shall, in cooperation with the Women and Minors Bureau of the Department of Labor, undertake projects and in-service training programs for working children which shall improve their conditions of employment, improve their capabilities and physical fitness, increase their efficiency, secure opportunities for their promotion, prepare them for more responsible positions, and provide for their social, educational and cultural advancement.

**Article 115. Research Projects.** - Labor and management shall cooperate with any government or private research project on matters affecting the welfare of working children.

## **CHAPTER IV**

### **Collaboration Between the Home and the Samahan**

**Article 116. Collaboration Between the Home and the Samahan.** - The home shall assist the Samahan in the promotion of the welfare of working children and for this purpose shall:

1. Instill in the hearts and minds of working children the value of dignity of labor;

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2. Stress the importance of the virtues of honesty; diligence and perseverance in the discharge of their duties;
  3. Counsel them on the provident use of the fruits of their labor for the enrichment of their lives and the improvement of their economic security; and
  4. Protect their general well-being against exploitation by management or unions as well as against conditions of their work prejudicial to their health, education, or morals.

## **TITLE VII.**

### **CHILD AND YOUTH WELFARE AND THE STATE**

#### **CHAPTER I**

##### **Regulation of Child and Youth Welfare Services**

###### **Article 117. Classifications of Child and Youth Welfare Agencies.**

- Public and private child welfare agencies providing encouragement, care, and protection to any category of children and youth whether mentally gifted, dependent, abandoned, neglected, abused, handicapped, disturbed, or youthful offenders, classified and defined as follows, shall be coordinated by the Department of Social Welfare:

1. A child-caring institution is one that provides twenty-four resident group care service for the physical, mental, social and spiritual well-being of nine or more mentally gifted, dependent, abandoned, neglected, handicapped or disturbed children, or youthful offenders.
2. An institution, whose primary purpose is education, is deemed to be a child-caring institution when nine or more of its pupils or wards in the ordinary course of events do not return annually to the homes of their parents or guardians for at least two months of summer vacation.

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3. A detention home is a twenty-four hour child-caring institution providing short term resident care for youthful offenders who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.
  4. A shelter-care institution is one that provides temporary protection and care to children requiring emergency reception as a result of fortuitous events, abandonment by parents, dangerous conditions of neglect or cruelty in the home, being without adult care because of crisis in the family, or a court order holding them as material witnesses.
  5. Receiving homes are family-type homes which provides temporary shelter from ten to twenty days for children who shall during this period be under observation and study for eventual placement by the Department of Social Welfare. The number of children in a receiving home shall not at any time exceed nine: Provided, That no more than two of them shall be under three years of age.
  6. A nursery is a child-caring institution that provides care for six or more children below six years of age for all or part of a twenty-four hour day, except those duly licensed to offer primarily medical and educational services.
  7. A maternity home is an institution or place of residence whose primary function is to give shelter and care to pregnant women and their infants before, during and after delivery.
  8. A rehabilitation center is an institution that receives and rehabilitates youthful offenders or other disturbed children.
  9. A reception and study center is an institution that receives for study, diagnosis, and temporary treatment, children who have behavioral problems for the purpose of determining the appropriate care for them or recommending their permanent treatment or rehabilitation in other child welfare agencies.

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10. A child-placing agency is an institution or person assuming the care, custody, protection and maintenance of children for placement in any child-caring institution or home or under the care and custody of any person or persons for purposes of adoption, guardianship or foster care. The relatives of such child or children within the sixth degree of consanguinity or affinity are excluded from this definition.

**Article 118. License Required.** - No private person, natural or juridical, shall establish, temporarily or permanently, any child welfare agency without first securing a license from the Department of Social Welfare.

Such license shall not be transferable and shall be used only by the person or institution to which it was issued at the place stated therein.

No license shall be granted unless the purpose or function of the agency is clearly defined and stated in writing. Such definition shall include the geographical area to be served, the children to be accepted for care, and the services to be provided.

If the applicant is a juridical person, it must be registered in accordance with Philippine laws.

**Article 119. Guiding Principles.** - The protection and best interests of the child or children therein shall be the first and basic consideration in the granting, suspension or revocation of the license mentioned in the preceding article.

**Article 120. Revocation or Suspension of License.** - The Department of Social Welfare may, after notice and hearing, suspend or revoke the license of a child welfare agency on any of the following grounds:

1. That the agency is being used for immoral purposes;
2. That said agency is insolvent or is not in a financial position to support and maintain the children therein or to perform the functions for which it was granted license;

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3. That the children therein are being neglected or are undernourished;
  4. That the place is so unsanitary so as to make it unfit for children;
  5. That said agency is located in a place or community where children should not be, or is physically dangerous to children or would unduly expose children to crime, vice, immorality, corruption or severe cruelty; or
  6. That said agency has by any act or omission shown its incompetence or unworthiness to continue acting as a child welfare agency. During the period of suspension, the agency concerned shall not accept or admit any additional children. In any case, the Department of Social Welfare shall make such order as to the custody of the children under the care of such agency as the circumstances may warrant. The suspension may last for as long as the agency has not complied with any order of the Department of Social Welfare to remove or remedy the conditions which have risen to the suspension. The aggrieved agency may appeal the suspension and/or revocation in a proper court action. In such case, the court shall within fifteen days from the filing of the Department of Social Welfare's answer, conduct a hearing and decide the case, either by lifting the suspension, or continuing it for such period of time as it may order, or by revoking the license of the agency where the Department of Social Welfare has proven the revocation to be justified.

**Article 121. Responsible Government Body.** - The governing body of a child welfare agency or institution shall be composed of civic leaders or persons of good standing in the community. The administrator must be a competent person qualified by education or experience or both to serve as such.

**Article 122. Child-Caring Institution Serving as Child-Placement Agency.** - An association or corporation may be both a child-caring



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institution and a child-placement agency and it may be licensed to carry out both types of service.

When a license also serves as a child-placement agency, it shall maintain a staff equipped by training to make thorough studies of every prospective family home. Staff arrangements must also be made for continuing supervision of the children staying in family homes so long as the children remain in the legal custody of the agency.

**Article 123. Responsible Staff of Employees.** - The licensee shall choose its employees who shall be persons of good health and character, and whenever possible, the higher rank of employees shall in addition have training, preferably in child psychology.

**Article 124. Intake Study and Periodic Investigations.** - The licensee shall undertake investigations to determine if the acceptance or continued stay of a child in its institution is necessary. Each licensee shall make provisions for continuing services, including social casework for every child under its care.

**Article 125. Records.** - The licensee shall keep confidential records of every child in its study. These records shall be made available only to such persons as may be authorized by the Department of Social Welfare or by the proper court.

**Article 126. Home Atmosphere.** - Child welfare agencies shall endeavor to provide the children with a pleasant atmosphere that shall approximate as nearly as possible the conditions of an ideal home. Vocational rehabilitation shall also be provided in accordance with existing law and the particular needs of the children.

**Article 127. Adequate Diet.** - The licensee shall provide a varied and balanced diet to satisfy the child's total nutritional requirements.

**Article 128. Clothing.** - The licensee shall furnish clean, comfortable, and appropriate clothing for every child under its care.

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**Article 129. Physical Surroundings and Outings.** - The licensee shall maintain a building adequate both in ventilation and sanitation, and with a safe, clean and spacious playground.

Regular inexpensive periodic outing shall be an important part of its activities in order to make the children aware of their vital role in their community and country.

**Article 130. Medical and Nursing Care.** - The licensee shall provide adequate medical and nursing care for sick children who may be confined due to illness.

**Article 131. Religious Training.** - The licensee shall provide opportunities for religious training to children under its custody, taking into consideration the religious affiliation or express wishes of the child or his parents. For such purpose, it shall have a defined policy regarding its religious activities for the information of those wishing to place children in its care.

**Article 132. Annual Report.** - Every child welfare agency or institution shall submit to the Department of Social Welfare an annual report setting forth a brief summary of its operations during the preceding year, including the funds received during said period, the sources thereof, the purposes for which they were spent and the cash position of the agency or institution as of the date of the report, number of children admitted, and such other information as may be required by the Department of Social Welfare.

## **CHAPTER II**

### **Collaboration Between the Home and the State**

**Article 133. Healthy Growth of Children.** - Pursuant to its obligation to assist the parents in the proper upbringing of the child, the State shall, whenever possible, in collaboration and cooperation with local government establish:

1. Puericulture and similar centers;

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2. Juvenile courts;
  3. Child welfare agencies;
  4. Orphanages and other similar institutions; and
  5. Children's recreation centers.

**Article 134. Puericulture or Health Centers.** - Puericulture or health centers shall be established in every barangay to perform, among other things, the following functions:

1. Disseminate information concerning the health of children and expectant or nursing mothers;
2. Provide consultation service and treatment, whenever necessary, for the children and the expectant or nursing mothers;
3. Provide guidance and special treatment to children with physical handicaps; and
4. Advise child welfare institutions on matters relating to nutrition and hygiene.

**Article 135. Juvenile and Domestic Relations Courts.** - Juvenile and Domestic Relations Courts shall, as far as practicable, be established in every province or city to hear and decide cases involving juvenile and domestic problems.

**Article 136. Regional Child Welfare Agencies.** - The State shall, whenever practicable, establish regional child welfare agencies, orphanages and other similar institutions to provide care for the children mentioned in Title VIII of this Code.

**Article 137. Children's Reading and Recreation Centers.** - The State shall establish in every barangay reading centers and recreation centers where children may meet and play together for their healthy growth and their social and cultural development.

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**Article 138. Parent Education Program.** - The Department of Social Welfare shall from time to time hold a Parent Education Congress, which shall aim to enable parents to understand child growth and development, parent-child relationship, family life, and family-community relationship, and to improve their ability to discharge their duties.

**Article 139. Curfew Hours for Children.** - City or municipal councils may prescribe such curfew hours for children as may be warranted by local conditions. The duty to enforce curfew ordinances shall devolve upon the parents or guardians and the local authorities.

Any parent or guardian found grossly negligent in the performance of the duty imposed by this article shall be admonished by the Department of Social Welfare or the Council for the Protection of Children.

**Article 140. State Aid in Case of Public Calamity.** - In case of earthquake, flood, storm, conflagration, epidemic, or other calamity, the State shall give special assistance to children whenever necessary. The Department of Social Welfare shall take immediate custody of dependent children and give temporary shelter to orphaned or displaced children (who are separated from their parents or guardian).

## **TITLE VIII.**

### **SPECIAL CATEGORIES OF CHILDREN**

#### **CHAPTER I**

##### **Dependent, Abandoned and Neglected Children**

**Article 141. Definition of Terms.** - As used in this Chapter:

1. A dependent child is one who is without a parent, guardian or custodian; or one whose parents, guardian or other custodian for good cause desires to be relieved of his care and custody; and is dependent upon the public for support.

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2. An abandoned child is one who has no proper parental care or guardianship, or whose parents or guardians have deserted him for a period of at least six continuous months.
  3. A neglected child is one whose basic needs have been deliberately unattended or inadequately attended. Neglect may occur in two ways:
    - (a) There is a physical neglect when the child is malnourished, ill clad and without proper shelter.
    - (b) A child is unattended when left by himself without provisions for his needs and/or without proper supervision.
    - (c) Emotional neglect exists: when children are maltreated, raped or seduced; when children are exploited, overworked or made to work under conditions not conducive to good health; or are made to beg in the streets or public places, or when children are in moral danger, or exposed to gambling, prostitution and other vices.
  4. Commitment or surrender of a child is the legal act of entrusting a child to the care of the Department of Social Welfare or any duly licensed child placement agency or individual.

Commitment may be done in the following manner:

- (a) Involuntary commitment, in case of a dependent child, or through the termination of parental or guardianship rights by reason of abandonment, substantial and continuous or repeated neglect and/or parental incompetence to discharge parental responsibilities, and in the manner, form and procedure hereinafter prescribed.
- (b) Voluntary commitment, through the relinquishment of parental or guardianship rights in the manner and form hereinafter prescribed.

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**Article 142. Petition for Involuntary Commitment of a Child: Venue.** - The Department of Social Welfare Secretary or his authorized representative or any duly licensed child placement agency having knowledge of a child who appears to be dependent, abandoned or neglected, may file a verified petition for involuntary commitment of said child to the care of any duly licensed child placement agency or individual.

The petition shall be filed with the Juvenile and Domestic Relations Court, if any, or with the Court of First Instance of the province or City Court in which the parents or guardian resides or the child is found.

**Article 143. Contents of Petition: Verification.** - The petition for commitment must state so far as known to the petitioner:

1. The facts showing that the child is dependent, abandoned, or neglected;
2. The names of the parent or parents, if known, and their residence. If the child has no parent or parents living, then the name and residence of the guardian, if any; and
3. The name of the duly licensed child placement agency or individual to whose care the commitment of the child is sought.

The petition shall be verified and shall be sufficient if based upon the information and belief of the petitioner.

**Article 144. Court to Set Time for Hearing: Summons.** - When a petition or commitment is filed, the court shall fix a date for the hearing thereof. If it appears from the petition that one or both parents of the child, or the guardian, resides in province or city, the clerk of court shall immediately issue summons, together with a copy of the petition, which shall be served on such parent or guardian not less than two days before the time fixed for the hearing. Such summons shall require them to appear before the court on the date mentioned.

**Article 145. When Summons Shall Not be Issued.** - The summons provided for in the next preceding article shall not be issued and

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the court shall thereupon proceed with the hearing of the case if it appears from the petition that both parents of the child are dead or that neither parent can be found in the province or city and that the child has no guardian residing therein.

**Article 146. Representation of Child.** - If it appears that neither of the parents nor the guardian of the child can be found in the province or city, it shall be the duty of the court to appoint some suitable person to represent him.

**Article 147. Duty of Fiscal.** - The provincial or city fiscal shall appear for the State, seeing to it that there has been due notice to all parties concerned and that there is justification for the declaration of dependency, abandonment or neglect.

The legal services section of the Department of Social Welfare, any recognized legal association, or any appointed de officio counsel shall prepare the petition for the Secretary of the Department of Social Welfare, his representative or the head of the duly licensed child placement agency, or the duly licensed individual and represent him in court in all proceedings arising under the provisions of this Chapter.

**Article 148. Hearing.** - During the hearing of the petition, the child shall be brought before the court, which shall investigate the facts and ascertain whether he is dependent, abandoned, or neglected, and, if so, the cause and circumstances of such condition. In such hearing, the court shall not be bound by the technical rules of evidence.

Failure to provide for the child's support for a period of six months shall be presumptive evidence of the intent to abandon.

**Article 149. Commitment of Child.** - If, after the hearing, the child is found to be dependent, abandoned, or neglected, an order shall be entered committing him to the care and custody of the Department of Social Welfare or any duly licensed child placement agency or individual.

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**Article 150. When Child May Stay In His Own Home.** - If in the court's opinion the cases of the abandonment or neglect of any child may be remedied, it may permit the child to stay in his own home and under the care and control of his own parents or guardian, subject to the supervision and direction of the Department of Social Welfare.

When it appears to the court that it is no longer for the best interests of such child to remain with his parents or guardian, it may commit the child in accordance with the next preceding article.

**Article 151. Termination of Rights of Parents.** - When a child shall have been committed to the Department of Social Welfare or any duly licensed child placement agency or individual pursuant to an order of the court, his parents or guardian shall thereafter exercise no authority over him except upon such conditions as the court may impose.

**Article 152. Authority of Person, Agency or Institution.** - The Department of Social Welfare or any duly licensed child placement agency or individual receiving a child pursuant to an order of the court shall be the legal guardian and entitled to his legal custody and control, be responsible for his support as defined by law, and when proper, shall have authority to give consent to his placement, guardianship and/or adoption.

**Article 153. Change of Custody.** - The Department of Social Welfare shall have the authority to change the custody of a child committed to and duly licensed child placement agency or individual if it appears that such change is for the best interests of the child. However, when conflicting interests arise among child placement agencies the court shall order the change of commitment of the child.

**Article 154. Voluntary Commitment of a Child to an Institution.** - The parent or guardian of a dependent, abandoned or neglected child may voluntarily commit him to the Department of Social Welfare or any duly licensed child placement agency or individual subject to the provisions of the next succeeding articles.



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**Article 155. Commitment Must Be in Writing.** - No child shall be committed pursuant to the preceding article unless he is surrendered in writing by his parents or guardian to the care and custody of the Department of Social Welfare or duly licensed child placement agency. In case of the death or legal incapacity of either parent or abandonment of the child for a period of at least one year, the other parent alone shall have the authority to make the commitment. The Department of Social Welfare, or any proper and duly licensed child placement agency or individual shall have the authority to receive, train, educate, care for or arrange appropriate placement of such child.

**Article 156. Legal Custody.** - When any child shall have been committed in accordance with the preceding article and such child shall have been accepted by the Department of Social Welfare or any duly licensed child placement agency or individual, the rights of his natural parents, guardian, or other custodian to exercise parental authority over him shall cease.

Such agency or individual shall be entitled to the custody and control of such child during his minority, and shall have authority to care for, educate, train and place him out temporarily or for custody and care in a duly licensed child placement agency. Such agency or individual may intervene in adoption proceedings in such manner as shall best inure to the child's welfare.

**Article 157. Visitation or Inspection.** - Any duly licensed child placement agency or individual receiving a judicial order or by voluntary commitment by his parents or guardian shall be subject to visitation or inspection by a representative of the court or of the Department of Social Welfare or both, as the case may be.

**Article 158. Report of Person or Institution.** - Any duly licensed child placement agency or individual receiving a child for commitment may at any time be required by the Department of Social Welfare to submit a report, copy furnished the court, containing all necessary information for determining whether the welfare of the child is being served.

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**Article 159. Temporary Custody of Child.** - Subject to regulation by the Department of Social Welfare and with the permission of the court in case of judicial commitment, the competent authorities of any duly licensed child placement agency or individual to which a child has been committed may place him in the care of any suitable person, at the latter's request, for a period not exceeding one month at a time.

The temporary custody of the child shall be discontinued if it appears that he is not being given proper care, or at his own request, or at the instance of the agency or person receiving him.

**Article 160. Prohibited Acts.** - It shall be unlawful for any child to leave the person or institution to which he has been judicially or voluntarily committed or the person under whose custody he has been placed in accordance with the next preceding article, or for any person to induce him to leave such person or institution, except in case of grave physical or moral danger, actual or imminent, to the child.

Any violation of this article shall be punishable by an imprisonment of not more than one year or by a fine of not more than two thousand pesos, or both such fine and imprisonment at the discretion of the court: Provided, That if the violation is committed by a foreigner, he shall also be subject to deportation.

If the violation is committed by a parent or legal guardian of the child, such fact shall aggravate or mitigate the offense as circumstances shall warrant.

**Article 161. Duty to Report Abandonment.** - When the parents or persons entitled to act as guardian of a child are dead or, if living, have abandoned him, for no valid reason, for at least six months in a duly licensed child placement agency or hospital, or left him with any other person for the same period without providing for his care and support, such fact shall be reported immediately to the Department of Social Welfare. In case of a child left in a hospital, immediate transfer

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of the child to the Department of Social Welfare or any duly licensed child placement agency must be arranged. The Department of Social Welfare shall make provisions for the adequate care and support of the child and shall take such action as it may deem proper for his best interests.

**Article 162. Adoption of Dependent or Abandoned or Neglected Child.** - Upon the filing of an application by any person to adopt a dependent, abandoned or neglected child in the custody of any institution or individual mentioned in Article 156, it shall be the duty of the provincial or city fiscal, any recognized legal association, or any appointed de officio counsel upon being informed of such fact, to represent the Department of Social Welfare in the proceedings. The costs of such proceedings shall be de officio.

**Article 163. Restoration of Child After Involuntary Commitment.** - The parents or guardian of a child committed to the care of a person, agency or institution by judicial order may petition the proper court for the restoration of his rights over the child: Provided, That the child in the meantime, has not been priorly given away in adoption nor has left the country with the adopting parents or the guardian. The petition shall be verified and shall state that the petitioner is now able to take proper care and custody of said child.

Upon receiving the petition, the court shall fix the time for hearing the questions raised thereby and cause reasonable notice thereof to be sent to the petitioner and to the person, agency or institution to which the child has been committed. At the trial, any person may be allowed, at the discretion of the court, to contest the right to the relief demanded, and witnesses may be called and examined by the parties or by the court motu proprio. If it is found that the cause for the commitment of the child no longer exists and that the petitioner is already able to take proper care and custody of the child, the court, after taking into consideration the best interests and the welfare of the child, shall render judgment restoring parental authority to the petitioner.

**Article 164. Restoration After Voluntary Commitment.** - Upon petition filed with the Department of Social Welfare the parent or

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parents or guardian who voluntarily committed a child may recover legal custody and parental authority over him from the agency, individual or institution to which such child was voluntarily committed when it is shown to the satisfaction of the Department of Social Welfare that the parent, parents or guardian is in a position to adequately provide for the needs of the child: Provided, That, the petition for restoration is filed within six months after the surrender.

In all cases, the person, agency or institution having legal custody of the child shall be furnished with a copy of the petition and shall be given the opportunity to be heard.

**Article 165. Removal of Custody.** - A petition to transfer custody of a child may be filed against a person or child welfare agency to whose custody a child has been committed by the court based on neglect of such child as defined in Article 141(3). If the court, after notice and hearing, is satisfied that the allegations of the petition are true and that it is for the best interest and welfare of the child the court shall issue an order taking him from the custody of the person or agency, as the case may be, and committing him to the custody of another duly licensed child placement agency or individual.

The license of the agency or individual found guilty of such neglect may be suspended or revoked, as the court may deem proper, in the same proceeding.

**Article 166. Report of Maltreated or Abused Child.** - All hospitals, clinics and other institutions as well as private physicians providing treatment shall, within forty-eight hours from knowledge of the case, report in writing to the city or provincial fiscal or to the Local Council for the Protection of Children or to the nearest unit of the Department of Social Welfare, any case of a maltreated or abused child, or exploitation of an employed child contrary to the provisions of labor laws. It shall be the duty of the Council for the Protection of Children or the unit of the Department of Social Welfare to whom such a report is made to forward the same to the provincial or city fiscal.

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Violation of this provision shall subject the hospital, clinic, institution, or physician who fails to make such report to a fine of not more than two thousand pesos.

In cases of sexual abuse, the records pertaining to the case shall be kept strictly confidential and no information relating thereto shall be disclosed except in connection with any court or official proceeding based on such report. Any person disclosing confidential information in violation of this provision shall be punished by a fine of not less than one hundred pesos nor more than five thousand pesos, or by imprisonment for not less than thirty days nor more than one year, or both such fine and imprisonment, at the discretion of the court.

**Article 167. Freedom from Liability of Reporting Person or Institution.** - Persons, organizations, physicians, nurses, hospitals, clinics and other entities which shall in good faith report cases of child abuse, neglect, maltreatment or abandonment or exposure to moral danger be free from any civil or criminal liability arising therefrom.

## **CHAPTER II**

Mentally Retarded, Physically Handicapped, Emotionally Disturbed and Mentally Ill Children

**Article 168. Mentally Retarded Children.** - Mentally retarded children are (1) socially incompetent, that is, socially inadequate and occupationally incompetent and unable to manage their own affairs; (2) mentally subnormal; (3) retarded intellectually from birth or early age; (4) retarded at maturity; (5) mentally deficient as a result of constitutional origin, through hereditary or disease, and (6) essentially incurable.

**Article 169. Classification of Mental Retardation.** - Mental Retardation is divided into four classifications:

1. Custodial Group. The members of this classification are severely or profoundly retarded, hence, the least capable group. This includes those with I.Q.s to 25.

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2.     Trainable Group. The members of this group consist of those with I.Q.s from about 25 to about 50; one who belongs to this group shows a mental level and rate of development which is  $\frac{1}{4}$  to  $\frac{1}{2}$  that of the average child, is unable to acquire higher academic skills, but can usually acquire the basic skills for living to a reasonable degree. He can likewise attain a primary grade level of education if he receives effective instruction.
  3.     Educable Group. This group's I.Q. ranges from about 50 to about 75, and the intellectual development is approximately  $\frac{1}{2}$  to  $\frac{3}{4}$  of that expected of a normal child of the same chronological age. The degree of success or accomplishment that they will reach in life depends very much on the quality and type of education they receive, as well as on the treatment at home and in the community. Many of the educable retardates may reach 5th or 6th grade educational level and can develop occupational skills which may result in partial or complete economic independence in adulthood.
  4.     Borderline or Low Normal Group. This is the highest group of mentally retarded, with I.Q.s from about 75 to about 89. The members of this classification are only slightly retarded and they can usually get by in regular classes if they receive some extra help, guidance and consideration. They have to spend much more time with their studies than do most children in order to pass. Those who cannot make it are usually handicapped by one or more other conditions aside from that of intelligence.

**Article 170. Physically Handicapped Children.** - Physically handicapped children are those who are crippled, deaf-mute, blind, or otherwise defective which restricts their means of action on communication with others.

**Article 171. Emotionally Disturbed Children.** - Emotionally disturbed children are those who, although not afflicted with insanity or mental defect, are unable to maintain normal social relations with others and the community in general due to emotional problems or complexes.

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**Article 172. Mentally Ill Children.** - Mentally ill children are those with any behavioral disorder, whether functional or organic, which is of such a degree of severity as to require professional help or hospitalization.

**Article 173. Admission of Disabled Children.** - The Department of Social Welfare, upon the application of the parents or guardians and the recommendation of any reputable diagnostic center or clinic, shall refer and/or admit disabled children to any public or private institution providing the proper care, training and rehabilitation.

“Disabled children” as used in this Chapter shall include mentally retarded, physically handicapped, emotionally disturbed, and severe mentally ill children.

**Article 174. Training and Opportunities for Disabled Children.** - Specialized educational services shall be expanded and improved to provide appropriate opportunities for disabled children. Vocational rehabilitation and manpower conservation agencies shall train disabled children for specialized types of jobs, services and business which could be learned only by them and shall help provide opportunities for their future occupational placement: That the agencies and organizations engaged in programs and services for the disabled need not be limited to minors. Persons of legal age may be admitted whenever facilities are available for them.

**Article 175. Planning of Programs and Services.** - Selected pilot demonstration projects needed by the disabled children shall be developed and shall be the basis for planning expanded programs and services throughout the nation. There shall be established area centers designed to bring together an aggregate of services to serve all ages of the disabled within a specified geographical area.

**Article 176. Donations.** - Donations to agencies and organizations engaged in programs and services for disabled children shall be deductible in accordance with the provision of Presidential Decree No. 507.

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**Article 177. Petition for Commitment.** - Where a child appears to be mentally retarded, physically handicapped, emotionally disturbed, or mentally ill, and needs institutional care but his parents or guardians are opposed thereto, the Department of Social Welfare, or any duly licensed child placement agency or individual shall have the authority to file a petition for commitment of the said child to any reputable institution providing care, training and rehabilitation for disabled children.

The parents or guardian of the child may file a similar petition in case no immediate placement can be arranged for the disabled child when the welfare and interest of the child is at stake.

**Article 178. Venue.** - The petition for commitment of a disabled child shall be filed with the Juvenile and Domestic Relations Court, if any, or with the Court of First Instance of the province or City Court where the parent or guardian resides or where the child is found.

**Article 179. Contents of Petition.** - The petition for commitment must state so far as known to the petitioner:

1. The facts showing that the child appears to be mentally retarded, physically handicapped, emotionally disturbed or mentally ill and needs institutional care;
2. The Fact that the parents or guardians or any duly licensed disabled child placement agency, as the case may be, has opposed the commitment of such child;
3. The name of the parents and their residence, if known or if the child has no parents or parent living, the names and residence of the guardian, if any; and
4. The name of the institution where the child is to be committed.

The petition shall be verified and shall be sufficient if based upon the information and belief of the petitioner.



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**Article 180. Order of Hearing.** - If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix the date for the hearing thereof, and a copy of such order shall be served on the child alleged to be mentally retarded, or physically handicapped, or emotionally disturbed, or mentally ill, and on the person having charge of him or any of his relatives residing in the province or city as the judge may deem proper. The court shall furthermore order the sheriff to produce, if possible, the alleged disabled child on the date of the hearing.

**Article 181. Hearing and Judgment.** - Upon satisfactory proof that the institutional care of the child is for him or the public welfare and that his parents, or guardian or relatives are unable for any reason to take proper care of him, the Court shall order his commitment to the proper institution for disabled children.

**Article 182. Disposition of Property or Money.** - The Court, in its order of commitment, shall make proper provisions for the custody of property or money belonging to the committed child.

**Article 183. Findings and Other Data.** - The Court shall furnish the institution to which the child has been committed with a copy of its judgment, together with all the social and other data pertinent to the case.

**Article 184. Expenses.** - The expense of maintaining a disabled child in the institution to which he has been committed shall be borne primarily by the parents or guardian and secondarily, by such disabled child, if he has property of his own.

In all cases where the expenses for the maintenance of the disabled child cannot be paid in accordance with the next preceding paragraph, the same, or such part thereof as may remain unpaid, shall be borne by the Department of Social Welfare.

**Article 185. Children With Cerebral Palsy.** - Children afflicted with cerebral palsy shall be committed to the institution which under the circumstances of the particular child concerned is best equipped to treat and care for him.

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**Article 186. Discharge of Child Judicially Committed.** - The Court shall order the discharge of any child judicially committed to an institution for disabled children if it is certified by the Department of Social Welfare that:

1. He has been certified by the duly licensed disabled child placement agency to be no longer a hazard to himself or to the community;
2. He has been sufficiently rehabilitated from his physical handicap or, if of work age, is already fit to engage in a gainful occupation; or
3. He has been relieved of his emotional problems and complexes and is ready to assume normal social relations.

**Article 187. Discharge of Child Voluntarily Committed.** - Any child voluntarily committed to an institution for disabled children may be discharged by the Department of Social Welfare *motu proprio* or upon the request of his parents or guardian on any of the grounds specified in the preceding article. In the latter case, the Department of Social Welfare may refuse to discharge the child if, in its opinion, his release would be prejudicial to him or to the community.

**Article 188. Assistance of Fiscal.** - The provincial or city fiscal shall represent the Department of Social Welfare or any recognized legal association in all judicial matters arising under the provisions of this Chapter.

## **CHAPTER III**

### **Youthful Offenders**

**Article 189. Youthful Offender Defined.** - A youthful offender is one who is over nine years but under twenty-one years of age at the time of the commission of the offense.

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A child nine years of age or under at the time of the offense shall be exempt from criminal liability and shall be committed to the care of his or her father or mother, or nearest relative or family friend in the discretion of the court and subject to its supervision. The same shall be done for a child over nine years and under fifteen years of age at the time of the commission of the offense, unless he acted with discernment, in which case he shall be proceeded against in accordance with Article 192.

The provisions of Article 80 of the Revised Penal Code shall be deemed modified by the provisions of this Chapter.

**Article 190. Physical and Mental Examination.** - It shall be the duty of the law-enforcement agency concerned to take the youthful offender, immediately after his apprehension, to the proper medical or health officer for a thorough physical and mental examination. Whenever treatment for any physical or mental defect is indicated, steps shall be immediately undertaken to provide the same.

The examination and treatment papers shall form part of the record of the case of the youthful offender.

**Article 191. Care of Youthful Offender Held for Examination or Trial.** - A youthful offender held for physical and mental examination or trial or pending appeal, if unable to furnish bail, shall from the time of his arrest be committed to the care of the Department of Social Welfare or the local rehabilitation center or a detention home in the province or city which shall be responsible for his appearance in court whenever required: Provided, That in the absence of any such center or agency within a reasonable distance from the venue of the trial, the provincial, city and municipal jail shall provide quarters for youthful offenders separate from other detainees. The court may, in its discretion, upon recommendation of the Department of Social Welfare or other agency or agencies authorized by the Court, release a youthful offender on recognizance, to the custody of his parents or other suitable person who shall be responsible for his appearance whenever required.

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**Article 192. Suspension of Sentence and Commitment of Youthful Offender.** - If after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such minor to the custody or care of the Department of Social Welfare, or to any training institution operated by the government, or duly licensed agencies or any other responsible person, until he shall have reached twenty-one years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare or the agency or responsible individual under whose care he has been committed.

The youthful offender shall be subject to visitation and supervision by a representative of the Department of Social Welfare or any duly licensed agency or such other officer as the Court may designate subject to such conditions as it may prescribe.

**Article 193. Appeal.** - The youthful offender whose sentence is suspended can appeal from the order of the court in the same manner as appeals in criminal cases.

**Article 194. Care and Maintenance of Youthful Offender.** - The expenses for the care and maintenance of the youthful offender whose sentence has been suspended shall be borne by his parents or those persons liable to support him: Provided, That in case his parents or those persons liable to support him can not pay all or part of said expenses, the municipality in which the offense was committed shall pay one-third of said expenses or part thereof; the province to which the municipality belongs shall pay one-third; and the remaining one-third shall be borne by the National Government. Chartered cities shall pay two-thirds of said expenses; and in case a chartered city cannot pay said expenses, part of the internal revenue allotments applicable to the unpaid portion shall be withheld and applied to the settlement of said indebtedness.

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All city and provincial governments must exert efforts for the immediate establishment of local detention homes for youthful offenders.

**Article 195. Report on Conduct of Child.** - The Department of Social Welfare or its representative or duly licensed agency or individual under whose care the youthful offender has been committed shall submit to the court every four months or oftener as may be required in special cases, a written report on the conduct of said youthful offender as well as the intellectual, physical, moral, social and emotional progress made by him.

**Article 196. Dismissal of the Case.** - If it is shown to the satisfaction of the court that the youthful offender whose sentence has been suspended, has behaved properly and has shown his capability to be a useful member of the community, even before reaching the age of majority, upon recommendation of the Department of Social Welfare, it shall dismiss the case and order his final discharge.

**Article 197. Return of the Youth Offender to Court.** - Whenever the youthful offender has been found incorrigible or has wilfully failed to comply with the conditions of his rehabilitation programs, or should his continued stay in the training institution be inadvisable, he shall be returned to the committing court for the pronouncement of judgment.

When the youthful offender has reached the age of twenty-one while in commitment, the court shall determine whether to dismiss the case in accordance with the next preceding article or to pronounce the judgment of conviction.

In any case covered by this article, the youthful offender shall be credited in the service of his sentence with the full time spent in actual commitment and detention effected under the provisions of this Chapter.

**Article 198. Effect of Release of Child Based on Good Conduct.** - The final release of a child pursuant to the provisions of this Chapter shall not obliterate his civil liability for damages. Such release shall

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be without prejudice to the right for a writ of execution for the recovery of civil damages.

**Article 199. Living Quarters for Youthful Offenders Sentence.**

- When a judgment of conviction is pronounced in accordance with the provisions of Article 197, and at the time of said pronouncement the youthful offender is still under twenty-one, he shall be committed to the proper penal institution to serve the remaining period of his sentence: Provided, That penal institutions shall provide youthful offenders with separate quarters and, as far as practicable, group them according to appropriate age levels or other criteria as will insure their speedy rehabilitation: Provided, further, That the Bureau of Prisons shall maintain agricultural and forestry camps where youthful offenders may serve their sentence in lieu of confinement in regular penitentiaries.

**Article 200. Records of Proceedings.** - Where a youthful offender has been charged before any city or provincial fiscal or before any municipal judge and the charges have been ordered dropped, all the records of the case shall be destroyed immediately thereafter.

Where a youthful offender has been charged and the court acquits him, or dismisses the case or commits him to an institution and subsequently releases him pursuant to this Chapter, all the records of his case shall be destroyed immediately after such acquittal, dismissal or release, unless civil liability has also been imposed in the criminal action, in which case such records shall be destroyed after satisfaction of such civil liability. The youthful offender concerned shall not be held under any provision of law, to be guilty of perjury or of concealment or misrepresentation by reason of his failure to acknowledge the case or recite any fact related thereto in response to any inquiry made of him for any purpose.

“Records” within the meaning of this article shall include those which may be in the files of the National Bureau of Investigation and with any police department, or any other government agency which may have been involved in the case.

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**Article 201. Civil Liability of Youthful Offenders.** - The civil liability for acts committed by a youthful offender shall devolve upon the offender's father and, in case of his death or incapacity, upon the mother, or in case of her death or incapacity, upon the guardian. Civil liability may also be voluntarily assumed by a relative or family friend of the youthful offender.

**Article 202. Rehabilitation Centers.** - The Department of Social Welfare shall establish regional rehabilitation centers for youthful offenders. The local government and other non-governmental entities shall collaborate and contribute their support for the establishment and maintenance of these facilities.

**Article 203. Detention Homes.** - The Department of Local Government and Community Development shall establish detention homes in cities and provinces distinct and separate from jails pending the disposition of cases of juvenile offenders.

**Article 204. Liability of Parents or Guardian or Any Person in the Commission of Delinquent Acts by Their Children or Wards.**

- A person whether the parent or guardian of the child or not, who knowingly or wilfully,

1. Aids, causes, abets or connives with the commission by a child of a delinquency, or
2. Does any act producing, promoting, or contributing to a child's being or becoming a juvenile delinquent, shall be punished by a fine not exceeding five hundred pesos or to imprisonment for a period not exceeding two years, or both such fine and imprisonment, at the discretion of the court.

## **TITLE IX.**

### **COUNCIL FOR THE WELFARE OF CHILDREN AND YOUTH**

#### **CHAPTER I**

##### **Creation and Composition**

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**Article 205. Creation of the Council for the Welfare of Children.**

- A Council for the Welfare of Children is hereby established under the Office of the President. The Council shall be composed of the Secretary of Social Welfare as Chairman, and seven members, namely: The Secretary of Justice, the Secretary of Labor, the Secretary of Education and Culture, the Secretary of Health, the Presiding Judge of the Juvenile and Domestic Relations Court, City of Manila, and two representatives of voluntary welfare associations to be appointed by the President of the Philippines, each of whom shall hold office for a term two years.

There shall be a permanent Secretariat for the Council headed by an Executive Director, to be appointed by the Chairman and approved by a majority of the members of the Council.

For actual attendance at regular meetings, the Chairman and each member of the Council shall receive a per diem of one hundred pesos for every meeting actually attended, but the total amount of per diem that the Chairman and a member may receive in a month shall in no case exceed five hundred pesos.

**Article 206. Appropriation.** - The sum of five million pesos is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, for the operation and maintenance of the Council for the Welfare of Children and Youth during the fiscal year. Thereafter, such sums as may be necessary for its operation and maintenance shall be included in the General Appropriations Decree.

## **CHAPTER II**

### **Powers and Responsibilities**

**Article 207. Powers and Functions.** - The Council for the Welfare of Children and Youth shall have the following powers and functions:

1. To coordinate the implementation and enforcement of all laws relative to the promotion of child and youth welfare;



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2. To prepare, submit to the President and circulate copies of long-range programs and goals for the physical, intellectual , emotional, moral, spiritual, and social development of children and youth, and to submit to him an annual report of the progress thereof;
  3. To formulate policies and devise, introduce, develop and evaluate programs and services for the general welfare of children and youth;
  4. To call upon and utilize any department, bureau, office, agency, or instrumentality, public, private or voluntary, for such assistance as it may require in the performance of its functions; and
  5. Perform such other functions as provided by law.

**Article 208. Offices to Coordinate with the Council for Welfare of Children.** - The following offices and agencies shall coordinate with the Council for the Welfare of Children and Youth in the implementation of laws and programs on child and youth welfare:

1. Department of Justice
2. Department of Social Welfare
3. Department of Education and Culture
4. Department of Labor
5. Department of Health
6. Department of Agriculture
7. Department of Local Government and Community Development;

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8. Local Councils for the Protection of Children; and such other government and private agencies which have programs on child and youth welfare.

Existing as well as proposed programs of the above-named agencies as well as other government and private child and youth welfare agencies as may be hereafter created shall be implemented by such agencies: Provided, That, with the exception of those proposed by the Local Councils for the Protection of Children, all long-range child and youth welfare programs shall, before implementation, be indorsed by the agencies concerned to their respective departments, which shall in turn indorse the same to the Council for the Welfare on Children and Youth, for evaluation, cooperation and coordination.

## **CHAPTER III**

### **Implementation of Code and Rule-Making Authority**

**Article 209. Implementation of this Code and Rule-Making Authority.** - The enforcement and implementation of this Code shall be the primary responsibility of the Council for the Welfare of Children. Said Council shall have authority to promulgate the necessary rules and regulations for the purpose of carrying into effect the provisions of this Code.

## **FINAL PROVISIONS**

**Article 210. General Penalty.** - Violations of any provisions of this Code for which no penalty is specifically provided shall be punished by imprisonment not exceeding one month or a fine not exceeding two hundred pesos, or both such fine and imprisonment at the discretion of the court, unless a higher penalty is provided for in the Revised Penal Code or special laws.

**Article 211. Repealing Clause.** - All laws or parts of any laws inconsistent with the provisions of this Code are hereby repealed or modified accordingly: Provided, That the provisions of the Dangerous Drugs Act of 1972 and amendments thereto shall continue to be in

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force and shall not be deemed modified or repealed by any provision of this Code.

**Article 212. Separability Clause.** - If any provision of this Code is held invalid, the other provisions not affected thereby shall continue in operation.

**Article 213. Effectivity Clause.** - This Code shall take effect six months after its approval.

Done in the City of Manila, this 10th day of December, in the year of Our Lord, nineteen hundred and seventy-four.

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**REPUBLIC ACT NO. 7192**  
**An Act Promoting the Integration of Women**  
**as Full and Equal Partners of Men**  
**in Development and**  
**Nation Building and for Other Purposes**

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

**SECTION 1.**

**Title.**

– This Act shall be cited as the “Women in Development and Nation Building Act”.

**SECTION 2.**

**Declaration of Policy.** – The State recognizes the role of women in nation building and shall ensure the fundamental equality before the law of women and men. The State shall provide women rights and opportunities equal to that of men.

To attain the foregoing policy:

A substantial portion of official development assistance funds received from foreign government and multilateral agencies and organizations shall be set aside and utilized by the agencies concerned to support programs and activities for women;

All government departments shall ensure that women benefit equally and participate directly in the development programs and projects of said department, specifically those funded under official foreign development assistance, to ensure the full participation and involvement of women in the development process; and

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All government departments and agencies shall review and revise all their regulations, circulars, issuances and procedures to remove gender bias therein.

### **SECTION 3.**

**Responsible Agency.** – The National Economic and Development Authority (NEDA) shall primarily be responsible for ensuring the participation of women as recipients in foreign aid, grants and loans. It shall determine and recommend the amount to be allocated for the development activity involving women.

### **SECTION 4.**

**Mandate.** – The NEDA, with the assistance of the National Commission on the Role of Filipino Women, shall ensure that the different government departments, including its agencies and instrumentalities which, directly or indirectly, affect the participation of women in national development and their integration therein:

Formulate and prioritize rural or countryside development programs or projects, provide income and employment opportunities to women in the rural areas and thus, prevent their heavy migration from rural to urban or foreign countries;

Include an assessment of the extent to which their programs and/or projects integrate women in the development process and of the impact of said programs or projects on women, including their implications in enhancing the self-reliance of women in improving their income;

Ensure the active participation of women and women's organizations in the development programs and/or projects including their involvement in the planning, design, implementation, management, monitoring and evaluation thereof;

Collect sex-disaggregated data and include such data in its program/project paper, proposal or strategy;

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Ensure that programs and/or projects are designed so that the percentage of women who receive assistance is approximately proportionate to either their traditional participation in the targeted activities or their proportion of the population, whichever is higher.

Otherwise, the following should be stated in the program/project paper, proposal or strategy:

The obstacles in achieving the goal;

The steps being taken to overcome those obstacles; and

To the extent that steps are not being taken to overcome those obstacles, why they are not being taken.

Assist women in activities that are of critical significance to their self-reliance and development.

## **SECTION 5.**

**Equality in Capacity to Act.** – Women of legal age, regardless of civil status, shall have the capacity to act and enter into contracts which shall in every respect be equal to that of men under similar circumstances. In all contractual situations where married men have the capacity to act, married women shall have equal rights.

To this end:

Women shall have the capacity to borrow and obtain loans and execute security and credit arrangements under the same conditions as men;

Women shall have equal access to all government and private sector programs granting agricultural credit, loans and nonmaterial resources and shall enjoy equal treatment in agrarian reform and land resettlement programs;

Women shall have equal rights to act as incorporators and enter into insurance contracts; and

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Married women shall have rights equal to those of married men in applying for passports, secure visas and other travel documents, without need to secure the consent of their spouses.

In all other similar contractual relations, women shall enjoy equal rights and shall have the capacity to act which shall in every respect be equal to those of men under similar circumstances.

## **SECTION 6.**

**Equal Membership in Clubs.** – Women shall enjoy equal access to membership in all social, civic and recreational clubs, committees, associations and similar other organizations devoted to public purpose. They shall be entitled to the same rights and privileges accorded to their spouses if they belong to the same organization.

## **SECTION 7.**

**Admission to Military Schools.** – Any provision of the law to the contrary notwithstanding, consistent with the needs of the services, women shall be accorded equal opportunities for appointment, admission, training, graduation and commissioning.

## **SECTION 8.**

**Voluntary Pag-IBIG, GSIS and SSS Coverage.** – Married persons who devote full time to managing the household and family affairs shall, upon the working spouse's consent, be entitled to voluntary Pag-IBIG (Pagtutulungan – Ikaw, Bangko, Industriya at Gobyerno), Government Service Insurance System (GSIS) or Social Security System (SSS) coverage to the extent of one-half (1/2) of the salary and compensation of the working spouse.

The contributions due thereon shall be deducted from the salary of the working spouse.

The GSIS or the SSS, as the case may be, shall issue rules and regulations necessary to effectively implement the provisions of this section.

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## SECTION 9.

**Implementing Rules.** – The NEDA in consultation with the different government agencies concerned shall issue rules and regulations as may be necessary for the effective implementation of Section 2, 3 and 4 of this Act within six (6) months from its effectivity.

## SECTION 10.

**Compliance Report.** – Within six (6) months from the effectivity of this Act and every six (6) months thereafter, all government departments, including its agencies and instrumentalities, shall submit a report to Congress on their compliance with this Act.

## SECTION 11.

**Separability Clause.** – If for any reason any section or provision of this Act is declared unconstitutional or invalid, the other sections or provisions hereof which are not affected thereby shall continue to be in full force and effect.

## SECTION 12.

**Repealing Clause.** – The provisions of Republic Act No. 386, otherwise known as the Civil Code of the Philippines, as amended, and of Executive Order No. 209, otherwise known as the Family Code of the Philippines, and all laws, decrees, executive orders, proclamations, rules and regulations, or parts thereof, inconsistent herewith are hereby repealed.

## SECTION 13.

**Effectivity Clause.** – The rights of women and all the provisions of this Act shall take effect immediately upon its publication in the Official Gazette or in two (2) newspapers of general circulation.



## REPUBLIC ACT 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**

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

**SECTION 1. Statement of policy.** - It is the policy of the State to value the dignity of every human being and guarantee full respect for human rights.

#### **SEC. 2. Rights of Persons Arrested, Detained, or under Custodial Investigation; Duties of Public Officers. -**

- a) Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.
- b) Any public officer or employee, or anyone acting under his order or in his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.
- c) The custodial investigation report shall be reduced to writing by the investigating officer, provided that before such report is signed, or thumbmarked if

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the person arrested or detained does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever.

- d) Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding.
- e) Any waiver by a person arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing and signed by such person in the presence of his counsel; otherwise such waiver shall be null and void and of no effect.
- f) Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-government organization duly accredited by the Commission on Human Rights or by any international non-governmental organization duly accredited by the Office of the President. The person's "immediate family" shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.

As used in this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection

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with an offense he is suspected to have committed, without prejudice to the liability of the “inviting” officer for any violation of law.

**SEC. 3. Assisting Counsel.** - Assisting counsel is any lawyer, except those directly affected by the case, those charged with conducting preliminary investigation or those charged with the prosecution of crimes.

The assisting counsel other than the government lawyers shall be entitled to the following fees:

- a) The amount of One hundred fifty pesos (P150.00) if the suspected person is chargeable with light felonies;
- b) The amount of Two hundred fifty pesos (P250.00) if the suspected person is chargeable with less grave or grave felonies; and
- c) The amount of Three hundred fifty pesos (P350.00) if the suspect is chargeable with a capital offense.

The fee for the assisting counsel shall be paid by the city or municipality where the custodial investigation is conducted, provided that if the municipality or city cannot pay such fee, the province comprising such municipality or city shall pay the fee:

Provided, That the Municipal or City Treasurer must certify that no funds are available to pay the fees of assisting counsel before the province pays said fees.

In the absence of any lawyer, no custodial investigation shall be conducted and the suspected person can only be detained by the investigating officer in accordance with the provision of

**Article 125 of the Revised Penal Code.**

**SEC. 4. Penalty Clause.** -

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- a) Any arresting public officer or employee, or any investigating officer, who fails to inform any person arrested, detained or under custodial investigation of his right to remain silent and to have competent and independent counsel preferably of his own choice, shall suffer a fine of Six thousand pesos (P6,000.00) or a penalty of imprisonment of not less than eight (8) years but not more than ten (10) years, or both. The penalty of perpetual absolute disqualification shall also be imposed upon the investigating officer who has been previously convicted of a similar offense.

The same penalties shall be imposed upon a public officer or employee, or anyone acting upon orders of such investigating officer or in his place, who fails to provide a competent and independent counsel to a person arrested, detained or under custodial investigation for the commission of an offense if the latter cannot afford the services of his own counsel.

- b) Any person who obstructs, prevents or prohibits any lawyer, any member of the immediate family of a person arrested, detained or under custodial investigation, or any medical doctor or priest or religious minister chosen by him or any member of his immediate family or by his counsel, from visiting and conferring privately with him, or from examining and treating him, or from ministering to his spiritual needs, at any hour of the day or, in urgent cases, of the night shall suffer the penalty of imprisonment of not less than four (4) years, and a fine of Four thousand pesos (P4,000.00).

The provisions of the above Section notwithstanding, any security officer with custodial responsibility over any detainee or prisoner may undertake such reasonable measures as may be necessary to secure his safety and prevent his escape.

**SEC. 5. Repealing Clause.** - Republic Act No. 857, as amended, is hereby repealed. Other laws, presidential decrees, executive orders or rules and regulations, or parts thereof inconsistent with the provisions of this Act are repealed or modified accordingly.

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**SEC. 6. Effectivity.** - This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in any daily newspaper of general circulation in the Philippines.

**Republic Act 7610**  
**Special Protection of Children Against Abuse,**  
**Exploitation and Discrimination Act**

**AN ACT PROVIDING FOR STRONGER DETERRENCE  
AND SPECIAL PROTECTION AGAINST CHILD ABUSE,  
EXPLOITATION AND DISCRIMINATION, PROVIDING  
PENALTIES FOR ITS VIOLATION AND FOR OTHER  
PURPOSES.**

**ARTICLE I Title, Policy, Principles and Definitions of  
Terms**

**Section 1. Title.** - This Act shall be known as the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act.”

**Sec. 2. Declaration of State Policy and Principles.** - It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty exploitation and discrimination and other conditions, prejudicial their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

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The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

### **Sec. 3. Definition of Terms. -**

- (a) “Children” refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;
- (b) “Child abuse” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:
  - (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
  - (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
  - (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
  - (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.
- (c) “Circumstances which gravely threaten or endanger the survival and normal development of children” include, but are not limited to, the following:
  - (1) Being in a community where there is armed conflict or being affected by armed conflict-related activities;

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- (2) Working under conditions hazardous to life, safety and normal which unduly interfere with their normal development;
  - (3) Living in or fending for themselves in the streets of urban or rural areas without the care of parents or a guardian or basic services needed for a good quality of life;
  - (4) Being a member of a indigenous cultural community and/or living under conditions of extreme poverty or in an area which is underdeveloped and/or lacks or has inadequate access to basic services needed for a good quality of life;
  - (5) Being a victim of a man-made or natural disaster or calamity; or
  - (6) Circumstances analogous to those above-stated which endanger the life, safety or normal development of children.
- (d) "Comprehensive program against child abuse, exploitation and discrimination" refers to the coordinated program of services and facilities to protected children against:
- (1) Child Prostitution and other sexual abuse;
  - (2) Child trafficking;
  - (3) Obscene publications and indecent shows;
  - (4) Other acts of abuses; and
  - (5) Circumstances which threaten or endanger the survival and normal development of children.

## **ARTICLE II Program on Child Abuse, Exploitation and Discrimination**



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**Sec. 4. Formulation of the Program.** - There shall be a comprehensive program to be formulated, by the Department of Justice and the Department of Social Welfare and Development in coordination with other government agencies and private sector concerned, within one (1) year from the effectivity of this Act, to protect children against child prostitution and other sexual abuse; child trafficking, obscene publications and indecent shows; other acts of abuse; and circumstances which endanger child survival and normal development.

### **ARTICLE III Child Prostitution and Other Sexual Abuse**

**Sec. 5. Child Prostitution and Other Sexual Abuse.** - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

- (a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
  - (1) Acting as a procurer of a child prostitute;
  - (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
  - (3) Taking advantage of influence or relationship to procure a child as prostitute;
  - (4) Threatening or using violence towards a child to engage him as a prostitute; or
  - (5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

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- (b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and
- (c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

**Sec. 6. Attempt To Commit Child Prostitution.** - There is an attempt to commit child prostitution under Section 5, paragraph (a) hereof when any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.

There is also an attempt to commit child prostitution, under paragraph (b) of Section 5 hereof when any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments. A penalty lower by two (2) degrees than that prescribed for the consummated felony under Section 5 hereof shall be imposed upon the principals of the attempt to commit the crime of child prostitution under this Act, or, in the proper case, under the Revised Penal Code.

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## **ARTICLE IV Child Trafficking**

**Sec. 7. Child Trafficking.** - Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter, shall suffer the penalty of reclusion temporal to reclusion perpetua. The penalty shall be imposed in its maximum period when the victim is under twelve (12) years of age.

**Sec. 8. Attempt to Commit Child Trafficking.** - There is an attempt to commit child trafficking under Section 7 of this Act:

(a) When a child travels alone to a foreign country without valid reason therefor and without clearance issued by the Department of Social Welfare and Development or written permit or justification from the child's parents or legal guardian;

(c) When a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking; or

(d) When a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person simulates birth for the purpose of child trafficking; or

(e) When a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centers, or other child-during institutions who can be offered for the purpose of child trafficking.

A penalty lower two (2) degrees than that prescribed for the consummated felony under Section 7 hereof shall be imposed upon the principals of the attempt to commit child trafficking under this Act.

## **ARTICLE V Obscene Publications and Indecent Shows**

**Sec. 9. Obscene Publications and Indecent Shows.** - Any person who shall hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials

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or to sell or distribute the said materials shall suffer the penalty of prision mayor in its medium period.

If the child used as a performer, subject or seller/distributor is below twelve (12) years of age, the penalty shall be imposed in its maximum period.

Any ascendant, guardian, or person entrusted in any capacity with the care of a child who shall cause and/or allow such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by this section shall suffer the penalty of prision mayor in its medium period.

## **ARTICLE VI Other Acts of Abuse**

### **Sec. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. -**

- (a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.
- (b) Any person who shall keep or have in his company a minor, twelve (12) years or under or who in ten (10) years or more his junior in any public or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlor, beach and/or other tourist resort or similar places shall suffer the penalty of prision mayor in its maximum period and a fine of not less than Fifty thousand pesos (P50,000.00): Provided, That this provision shall not apply to any person who is related within the fourth degree of consanguinity or affinity or any bond recognized by law, local custom and tradition or acts in the performance of a social, moral or legal duty.

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- (c) Any person who shall induce, deliver or offer a minor to any one prohibited by this Act to keep or have in his company a minor as provided in the preceding paragraph shall suffer the penalty of prision mayor in its medium period and a fine of not less than Forty thousand pesos (P40,000.00); Provided, however, That should the perpetrator be an ascendant, stepparent or guardian of the minor, the penalty to be imposed shall be prision mayor in its maximum period, a fine of not less than Fifty thousand pesos (P50,000.00), and the loss of parental authority over the minor.
- (d) Any person, owner, manager or one entrusted with the operation of any public or private place of accommodation, whether for occupancy, food, drink or otherwise, including residential places, who allows any person to take along with him to such place or places any minor herein described shall be imposed a penalty of prision mayor in its medium period and a fine of not less than Fifty thousand pesos (P50,000.00), and the loss of the license to operate such a place or establishment.
- (e) Any person who shall use, coerce, force or intimidate a street child or any other child to:
- (1) Beg or use begging as a means of living;
  - (2) Act as conduit or middlemen in drug trafficking or pushing; or
  - (3) Conduct any illegal activities, shall suffer the penalty of prision correccional in its medium period to reclusion perpetua.

For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be reclusion perpetua when the victim is under twelve (12) years of age. The penalty for the commission of acts punishable under Articles 337, 339, 340 and 341 of Act No. 3815, as amended, the Revised Penal Code, for the

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crimes of qualified seduction, acts of lasciviousness with the consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one (1) degree higher than that imposed by law when the victim is under twelve (12) years age.

The victim of the acts committed under this section shall be entrusted to the care of the Department of Social Welfare and Development.

## **ARTICLE VII Sanctions for Establishments or Enterprises**

**Sec. 11. Sanctions of Establishments or Enterprises which Promote, Facilitate, or Conduct Activities Constituting Child Prostitution and Other Sexual Abuse, Child Trafficking, Obscene Publications and Indecent Shows, and Other Acts of Abuse.** - All establishments and enterprises which promote or facilitate child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse shall be immediately closed and their authority or license to operate cancelled, without prejudice to the owner or manager thereof being prosecuted under this Act and/or the Revised Penal Code, as amended, or special laws. A sign with the words “off limits” shall be conspicuously displayed outside the establishments or enterprises by the Department of Social Welfare and Development for such period which shall not be less than one (1) year, as the Department may determine. The unauthorized removal of such sign shall be punishable by prision correccional.

An establishment shall be deemed to promote or facilitate child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse if the acts constituting the same occur in the premises of said establishment under this Act or in violation of the Revised Penal Code, as amended. An enterprise such as a sauna, travel agency, or recruitment agency which; promotes the aforementioned acts as part of a tour for foreign tourists; exhibits children in a lewd or indecent show; provides child masseurs for adults of the same or opposite sex and said services include any lascivious conduct with the customers; or solicits children or activities constituting the aforementioned acts shall be deemed to have committed the acts penalized herein.

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## Article VIII Working Children

### **Sec. 12. Employment of Children. - Children below fifteen (15) years of age may be employed except:**

- (1) When a child works directly under the sole responsibility of his parents or legal guardian and where only members of the employer's family are employed: Provided, however, That his employment neither endangers his life, safety and health and morals, nor impairs his normal development: Provided, further, That the parent or legal guardian shall provide the said minor child with the prescribed primary and/or secondary education; or
- (2) When a child's employment or participation in public & entertainment or information through cinema, theater, radio or television is essential: Provided, The employment contract concluded by the child's parent or guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labor and Employment: Provided, That the following requirements in all instances are strictly complied with:
  - (a) The employer shall ensure the protection, health, safety and morals of the child;
  - (b) the employer shall institute measures to prevent the child's exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and
  - (c) The employer shall formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skill acquisition of the child.

In the above exceptional cases where any such child may be employed, the employer shall first secure, before engaging such

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child, a work permit from the Department of Labor and Employment which shall ensure observance of the above requirement.

The Department of Labor and Employment shall promulgate rules and regulations necessary for the effective implementation of this Section.

**Sec. 13. Non-formal Education for Working Children.** - The Department of Education, Culture and Sports shall promulgate a course design under its non-formal education program aimed at promoting the intellectual, moral and vocational efficiency of working children who have not undergone or finished elementary or secondary education. Such course design shall integrate the learning process deemed most effective under given circumstances.

**Sec. 14. Prohibition on the Employment of Children in Certain Advertisements.** - No person shall employ child models in all commercials or advertisements promoting alcoholic beverages, intoxicating drinks, tobacco and its byproducts and violence.

**Sec. 15. Duty of Employer.** - Every employer shall comply with the duties provided for in Articles 108 and 109 of Presidential Decree No. 603.

**Sec. 16. Penalties.** - Any person who shall violate any provision of this Article shall suffer the penalty of a fine of not less than One thousand pesos (P1,000) but not more than Ten thousand pesos (P10,000) or imprisonment of not less than three (3) months but not more than three (3) years, or both at the discretion of the court: Provided, That, in case of repeated violations of the provisions of this Article, the offender's license to operate shall be revoked.

## **ARTICLE IX Children of Indigenous Cultural Communities**

**Sec. 17. Survival, Protection and Development.** - In addition to the rights guaranteed to children under this Act and other existing laws, children of indigenous cultural communities shall be entitled to protection, survival and development consistent with the customs and traditions of their respective communities.



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**Sec. 18. System of and Access to Education.** - The Department of Education, Culture and Sports shall develop and institute an alternative system of education for children of indigenous cultural communities which culture-specific and relevant to the needs of and the existing situation in their communities. The Department of Education, Culture and Sports shall also accredit and support non-formal but functional indigenous educational programs conducted by non-government organizations in said communities.

**Sec. 19. Health and Nutrition.** - The delivery of basic social services in health and nutrition to children of indigenous cultural communities shall be given priority by all government agencies concerned. Hospitals and other health institution shall ensure that children of indigenous cultural communities are given equal attention. In the provision of health and nutrition services to children of indigenous cultural communities, indigenous health practices shall be respected and recognized.

**Sec.20.Discrimination.** -Children of indigenous cultural communities shall not be subjected to any and all forms of discrimination.

Any person who discriminate against children of indigenous cultural communities shall suffer a penalty of arresto mayor in its maximum period and a fine of not less than Five thousand pesos (P5,000.00) more than Ten thousand pesos (P10,000.00).

**Sec. 21. Participation.** - Indigenous cultural communities, through their duly-designated or appointed representatives shall be involved in planning, decision-making implementation, and evaluation of all government programs affecting children of indigenous cultural communities. Indigenous institution shall also be recognized and respected.

## **ARTICLE X Children in Situations of Armed Conflict**

**Sec. 22. Children as Zones of Peace.** - Children are hereby declared as Zones of Peace. It shall be the responsibility of the State and all other sectors concerned to resolve armed conflicts in order

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to promote the goal of children as zones of peace. To attain this objective, the following policies shall be observed.

- (a) Children shall not be the object of attack and shall be entitled to special respect. They shall be protected from any form of threat, assault, torture or other cruel, inhumane or degrading treatment;
- (b) Children shall not be recruited to become members of the Armed Forces of the Philippines of its civilian units or other armed groups, nor be allowed to take part in the fighting, or used as guides, couriers, or spies;
- (c) Delivery of basic social services such as education, primary health and emergency relief services shall be kept unhampered;
- (d) The safety and protection of those who provide services including those involved in fact-finding missions from both government and non-government institutions shall be ensured. They shall not be subjected to undue harassment in the performance of their work;
- (e) Public infrastructure such as schools, hospitals and rural health units shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots; and
- (f) All appropriate steps shall be taken to facilitate the reunion of families temporarily separated due to armed conflict.

**Sec. 23. Evacuation of Children During Armed Conflict.** - Children shall be given priority during evacuation as a result of armed conflict. Existing community organizations shall be tapped to look after the safety and well-being of children during evacuation operations. Measures shall be taken to ensure that children evacuated are accompanied by persons responsible for their safety and well-being.

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**Sec. 24. Family Life and Temporary Shelter.** - Whenever possible, members of the same family shall be housed in the same premises and given separate accommodation from other evacuees and provided with facilities to lead a normal family life. In places of temporary shelter, expectant and nursing mothers and children shall be given additional food in proportion to their physiological needs. Whenever feasible, children shall be given opportunities for physical exercise, sports and outdoor games.

**Sec. 25. Rights of Children Arrested for Reasons Related to Armed Conflict.** - Any child who has been arrested for reasons related to armed conflict, either as combatant, courier, guide or spy is entitled to the following rights;

- (a) Separate detention from adults except where families are accommodated as family units;
- (b) Immediate free legal assistance;
- (c) Immediate notice of such arrest to the parents or guardians of the child; and
- (d) Release of the child on recognizance within twenty-four (24) hours to the custody of the Department of Social Welfare and Development or any responsible member of the community as determined by the court.

If after hearing the evidence in the proper proceedings the court should find that the aforesaid child committed the acts charged against him, the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such child to the custody or care of the Department of Social Welfare and Development or to any training institution operated by the Government, or duly-licensed agencies or any other responsible person, until he has had reached eighteen (18) years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of

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the Department of Social Welfare and Development or the agency or responsible individual under whose care he has been committed.

The aforesaid child shall subject to visitation and supervision by a representative of the Department of Social Welfare and Development or any duly-licensed agency or such other officer as the court may designate subject to such conditions as it may prescribe.

The aforesaid child whose sentence is suspended can appeal from the order of the court in the same manner as appeals in criminal cases.

**Sec. 26. Monitoring and Reporting of Children in Situations of Armed Conflict.** - The chairman of the barangay affected by the armed conflict shall submit the names of children residing in said barangay to the municipal social welfare and development officer within twenty-four (24) hours from the occurrence of the armed conflict.

## **ARTICLE XI Remedial Procedures**

**Sec. 27. Who May File a Complaint.** - Complaints on cases of unlawful acts committed against the children as enumerated herein may be filed by the following:

- (a) Offended party;
- (b) Parents or guardians;
- (c) Ascendant or collateral relative within the third degree of consanguinity;
- (d) Officer, social worker or representative of a licensed child-caring institution;
- (e) Officer or social worker of the Department of Social Welfare and Development;
- (f) Barangay chairman; or

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- (g) At least three (3) concerned responsible citizens where the violation occurred.

**Sec. 28. Protective Custody of the Child.** - The offended party shall be immediately placed under the protective custody of the Department of Social Welfare and Development pursuant to Executive Order No. 56, series of 1986. In the regular performance of this function, the officer of the Department of Social Welfare and Development shall be free from any administrative, civil or criminal liability. Custody proceedings shall be in accordance with the provisions of Presidential Decree No. 603.

**Sec. 29. Confidentiality.** - At the instance of the offended party, his name may be withheld from the public until the court acquires jurisdiction over the case.

It shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio broadcasting, producer and director of the film in case of the movie industry, to cause undue and sensationalized publicity of any case of violation of this Act which results in the moral degradation and suffering of the offended party.

**Sec. 30. Special Court Proceedings.** - Cases involving violations of this Act shall be heard in the chambers of the judge of the Regional Trial Court duly designated as Juvenile and Domestic Court.

Any provision of existing law to the contrary notwithstanding and with the exception of habeas corpus, election cases, and cases involving detention prisoners and persons covered by Republic Act No. 4908, all courts shall give preference to the hearing or disposition of cases involving violations of this Act.

## **ARTICLE XII Common Penal Provisions**

**Sec. 31. Common Penal Provisions.** -

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- (a) The penalty provided under this Act shall be imposed in its maximum period if the offender has been previously convicted under this Act;
  - (b) When the offender is a corporation, partnership or association, the officer or employee thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period;
  - (c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked;
  - (d) When the offender is a foreigner, he shall be deported immediately after service of sentence and forever barred from entry to the country;
  - (e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: Provided, however, That if the penalty imposed is reclusion perpetua or reclusion temporal, then the penalty of perpetual or temporary absolute disqualification shall also be imposed: Provided, finally, That if the penalty imposed is prision correccional or arresto mayor, the penalty of suspension shall also be imposed; and
  - (f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

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## **ARTICLE XIII Final Provisions**

**Sec. 32. Rules and Regulations.** - Unless otherwise provided in this Act, the Department of Justice, in coordination with the Department of Social Welfare and Development, shall promulgate rules and regulations of the effective implementation of this Act.

Such rules and regulations shall take effect upon their publication in two (2) national newspapers of general circulation.

**Sec. 33. Appropriations.** - The amount necessary to carry out the provisions of this Act is hereby authorized to be appropriated in the General Appropriations Act of the year following its enactment into law and thereafter.

**Sec. 34. Separability Clause.** - If any provision of this Act is declared invalid or unconstitutional, the remaining provisions not affected thereby shall continue in full force and effect.

**Sec. 35. Repealing Clause.** - All laws, decrees, or rules inconsistent with the provisions of this Acts are hereby repealed or modified accordingly.

**Sec. 36. Effectivity Clause.** - This Act shall take effect upon completion of its publication in at least two (2) national newspapers of general circulation.

## REPUBLIC ACT NO. 7877

### AN ACT DECLARING SEXUAL HARASSMENT UNLAWFUL IN THE EMPLOYMENT, EDUCATION OR TRAINING ENVIRONMENT, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

#### **SECTION 1. This Act shall be known as the “Anti-Sexual Harassment Act of 1995.”**

**SEC. 2. Declaration of Policy.** — The State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and uphold the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education. Towards this end, all forms of sexual harassment in the employment, education or training environment are hereby declared unlawful.

**SEC. 3. Work, Education or Training-related Sexual Harassment Defined.** — Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

- (a) In a work-related or employment environment, sexual harassment is committed when:
  - (1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued



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employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

- (2) The above acts would impair the employee's rights or privileges under existing labor laws; or
- (3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

(b) In an education or training environment, sexual harassment is committed:

- (1) Against one who is under the care, custody or supervision of the offender;
- (2) Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;
- (3) When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges, or considerations; or
- (4) When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.

Any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under this Act.

**SEC. 4. Duty of the Employer or Head of Office in a Work-related, Education or Training Environment.** — It shall be the duty of the employer or the head of the work-related, educational or training

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environment or institution, to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. Towards this end, the employer or head of office shall:

- (a) Promulgate appropriate rules and regulations in consultation with and jointly approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions therefor.

Administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of sexual harassment.

The said rules and regulations issued pursuant to this subsection

- (a) shall include, among others, guidelines on proper decorum in the workplace and educational or training institutions.
- (b) Create a committee on decorum and investigation of cases on sexual harassment. The committee shall conduct meetings, as the case may be, with officers and employees, teachers, instructors, professors, coaches, trainers and students or trainees to increase understanding and prevent incidents of sexual harassment. It shall also conduct the investigation of alleged cases constituting sexual harassment.

In the case of a work-related environment, the committee shall be composed of at least one (1) representative each from the management, the union, if any, the employees from the supervisory rank, and from the rank and file employees.

In the case of the educational or training institution, the committee shall be composed of at least one (1) representative from the administration, the trainers, teachers, instructors, professors or coaches and students or trainees, as the case may be.

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The employer or head of office, educational or training institution shall disseminate or post a copy of this Act for the information of all concerned.

**SEC. 5. Liability of the Employer, Head of Office, Educational or Training Institution.** — The employer or head of office, educational or training institution shall be solidarily liable for damages arising from the acts of sexual harassment committed in the employment, education or training environment if the employer or head of office, educational or training institution is informed of such acts by the offended party and no immediate action is taken thereon.

**SEC. 6. Independent Action for Damages.** — Nothing in this Act shall preclude the victim of work, education or training-related sexual harassment from instituting a separate and independent action for damages and other affirmative relief.

**SEC. 7. Penalties** — Any person who violates the provisions of this Act shall, upon conviction, be penalized by imprisonment of not less than one (1) month nor more than six (6) months, or a fine of not less than Ten thousand pesos (P 10,000) nor more than Twenty thousand pesos (P20,000), or both such fine and imprisonment at the discretion of the court.

Any action arising from the violation of the provisions of this Act shall prescribe in three (3) years.

**SEC. 8. Separability Clause** — If any portion or provision of this Act is declared void or unconstitutional, the remaining portions or provisions hereof shall not be affected by such declaration.

**SEC. 9. Repealing Clause** — All laws, decrees, orders, rules and regulations, other issuances, or parts thereof inconsistent with provisions of this Act are hereby repealed or modified accordingly.

**SEC. 10. Effectivity Clause.** — This Act shall take effect fifteen (15) days after its complete publication in at least two (2) national newspapers of general circulation.

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Approved,

(Sgd.) EDGARDO J. ANGARA (Sgd.)

JOSE DE VENECIA, JR.

President of the Senate Speaker of the House of  
Representatives

This Act which is a consolidation of House Bill No. 9425 and Senate  
Bill No. 1632 was finally passed by the House of Representatives  
and the Senate on February 8, 1995.

(Sgd.) EDGARDO E. TUMANGAN (Sgd.)

CAMILO L. SABIO

Secretary of the Senate Secretary General  
House of Representatives

Approved: February 14, 1995

(Sgd.) FIDEL V. RAMOS

President of the Philippines

## REPUBLIC ACT NO. 8049

### **AN ACT REGULATING HAZING AND OTHER FORMS OF INITIATION RITES IN FRATERNITIES, SORORITIES, AND OTHER ORGANIZATIONS AND PROVIDING PENALTIES THEREFOR**

Be enacted by Senate and House Representatives of the Philippines in Congress assembled:

**Section 1.** Hazing, as used in this Act, is an initiation rite or practice as a prerequisite for admission into membership in a fraternity, sorority or organization by placing the recruit, neophyte or applicant in some embarrassing or humiliating situations such as forcing him to do menial, silly, foolish and other similar tasks or activities or otherwise subjecting him to physical or psychological suffering or injury.

The term “organization” shall include any club or the Armed Forces of the Philippines, Philippine National Police, Philippine Military Academy, or officer and cadet corp of the Citizen’s Military Training and Citizen’s Army Training. The physical, mental and psychological testing and training procedure and practices to determine and enhance the physical, mental and psychological fitness of prospective regular members of the Armed Forces of the Philippines and the Philippine National Police as approved by the Secretary of National Defense and the National Police Commission duly recommended by the Chief of Staff, Armed Forces of the Philippines and the Director General of the Philippine National Police shall not be considered as hazing for the purposes of this Act.

**Sec. 2.** No hazing or initiation rites in any form or manner by a fraternity, sorority or organization shall be allowed without prior written notice to the school authorities or head of organization seven (7) days before the conduct of such initiation. The written notice shall indicate the period of the initiation activities which shall not exceed three (3) days,

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shall include the names of those to be subjected to such activities, and shall further contain an undertaking that no physical violence be employed by anybody during such initiation rites.

**Sec. 3.** The head of the school or organization or their representatives must assign at least two (2) representatives of the school or organization, as the case may be, to be present during the initiation. It is the duty of such representative to see to it that no physical harm of any kind shall be inflicted upon a recruit, neophyte or applicant.

**Sec. 4.** If the person subjected to hazing or other forms of initiation rites suffers any physical injury or dies as a result thereof, the officers and members of the fraternity, sorority or organization who actually participated in the infliction of physical harm shall be liable as principals. The person or persons who participated in the hazing shall suffer:

1. The penalty of reclusion perpetua (life imprisonment) if death, rape, sodomy or mutilation results there from.
2. The penalty of reclusion temporal in its maximum period (17 years, 4 months and 1 day to 20 years) if in consequence of the hazing the victim shall become insane, imbecile, impotent or blind.
3. The penalty of reclusion temporal in its medium period (14 years, 8 months and one day to 17 years and 4 months) if in consequence of the hazing the victim shall have lost the use of speech or the power to hear or to smell, or shall have lost an eye, a hand, a foot, an arm or a leg or shall have lost the use of any such member shall have become incapacitated for the activity or work in which he was habitually engaged.
4. The penalty of reclusion temporal in its minimum period (12 years and one day to 14 years and 8 months) if in consequence of the hazing the victim shall become deformed or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance on

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the activity or work in which he was habitually engaged for a period of more than ninety (90) days.

5. The penalty of prison mayor in its maximum period (10 years and one day to 12 years) if in consequence of the hazing the victim shall have been ill or incapacitated for the performance on the activity or work in which he was habitually engaged for a period of more than thirty (30) days.
6. The penalty of prison mayor in its medium period (8 years and one day to 10 years) if in consequence of the hazing the victim shall have been ill or incapacitated for the performance on the activity or work in which he was habitually engaged for a period of ten (10) days or more, or that the injury sustained shall require medical assistance for the same period.
7. The penalty of prison mayor in its minimum period (6 years and one day to 8 years) if in consequence of the hazing the victim shall have been ill or incapacitated for the performance on the activity or work in which he was habitually engaged from one (1) to nine (9) days, or that the injury sustained shall require medical assistance for the same period.
8. The penalty of prison correccional in its maximum period (4 years, 2 months and one day to 6 years) if in consequence of the hazing the victim sustained physical injuries which do not prevent him from engaging in his habitual activity or work nor require medical attendance.

The responsible officials of the school or of the police, military or citizen's army training organization, may impose the appropriate administrative sanctions on the person or the persons charged under this provision even before their conviction. The maximum penalty herein provided shall be imposed in any of the following instances:

- (a) when the recruitment is accompanied by force, violence, threat, intimidation or deceit on the person of the recruit who refuses to join;

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- (b) when the recruit, neophyte or applicant initially consents to join but upon learning that hazing will be committed on his person, is prevented from quitting;
  - (c) when the recruit, neophyte or applicant having undergone hazing is prevented from reporting the unlawful act to his parents or guardians, to the proper school authorities, or to the police authorities, through force, violence, threat or intimidation;
  - (d) when the hazing is committed outside of the school or institution; or
  - (e) when the victim is below twelve (12) years of age at the time of the hazing.

The owner of the place where hazing is conducted shall be liable as an accomplice, when he has actual knowledge of the hazing conducted therein but failed to take any action to prevent the same from occurring. If the hazing is held in the home of one of the officers or members of the fraternity, group, or organization, the parents shall be held liable as principals when they have actual knowledge of the hazing conducted therein but failed to take any action to prevent the same from occurring.

The school authorities including faculty members who consent to the hazing or who have actual knowledge thereof, but failed to take any action to prevent the same from occurring shall be punished as accomplices for the acts of hazing committed by the perpetrators.

The officers, former officers, or alumni of the organization, group, fraternity or sorority who actually planned the hazing although not present when the acts constituting the hazing were committed shall be liable as principals. A fraternity or sorority's adviser who is present when the acts constituting the hazing were committed and failed to take action to prevent the same from occurring shall be liable as principal.



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The presence of any person during the hazing is prima facie evidence of participation therein as principal unless he prevented the commission of the acts punishable herein.

Any person charged under this provision shall not be entitled to the mitigating circumstance that there was no intention to commit so grave a wrong.

This section shall apply to the president, manager, director or other responsible officer of a corporation engaged in hazing as a requirement for employment in the manner provided herein.

**Sec. 5.** If any provision or part of this Act is declared invalid or unconstitutional, the other parts or provisions thereof shall remain valid and effective.

**Sec. 6.** All laws, orders, rules or regulations which are inconsistent with or contrary to the provisions of this Act are hereby amended or repealed accordingly.

**Sec. 7.** This Act shall take effect fifteen (15) calendar days after its publication in at least two (2) national newspapers of general circulation.

## REPUBLIC ACT NO. 8371

# AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/ INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON INDIGENOUS PEOPLES, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

## CHAPTER I

### General Provisions

**SECTION 1. Short Title.** — This Act shall be known as “The Indigenous Peoples’ Rights Act of 1997”.

**SECTION 2. Declaration of State Policies.** — The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples hereunder enumerated within the framework of the Constitution:

- a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;
- b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;
- c) The State shall recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;

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- d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinction or discrimination;
  - e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and
  - f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains.

## **CHAPTER II**

### **Definition of Terms**

**SECTION 3. Definition of Terms.** — For purposes of this Act, the following terms shall mean:

- a) **Ancestral Domains** — Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by

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war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

- b) Ancestral Lands — Subject to Section 56 hereof, refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots;
- c) Certificate of Ancestral Domain Title — refers to a title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with this law;
- d) Certificate of Ancestral Lands Title — refers to a title formally recognizing the rights of ICCs/IPs over their ancestral lands;
- e) Communal Claims — refer to claims on land, resources and rights thereon, belonging to the whole community within a defined territory;

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- f) Customary Laws — refer to a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs;
  - g) Free and Prior Informed Consent — as used in this Act shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community;
  - h) Indigenous Cultural Communities/Indigenous Peoples — refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains;
  - i) Indigenous Political Structures — refer to organizational and cultural leadership systems, institutions, relationships, patterns and processes for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of

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Elders, Council of Timuays, Bodong Holders, or any other tribunal or body of similar nature;

- j) Individual Claims — refer to claims on land and rights thereon which have been devolved to individuals, families and clans including, but not limited to, residential lots, rice terraces or paddies and tree lots;
- k) National Commission on Indigenous Peoples (NCIP) — refers to the office created under this Act, which shall be under the Office of the President, and which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs;
- l) Native Title — refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest;
- m) Nongovernment Organization — refers to a private, nonprofit voluntary organization that has been organized primarily for the delivery of various services to the ICCs/IPs and has an established track record for effectiveness and acceptability in the community where it serves;
- n) People's Organization — refers to a private, nonprofit voluntary organization of members of an ICC/IP which is accepted as representative of such ICCs/IPs;
- o) Sustainable Traditional Resource Rights — refer to the rights of ICCs/IPs to sustainably use, manage, protect and conserve a) land, air, water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds; d) sacred sites; and e) other areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge, beliefs, systems and practices; and

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- p) Time Immemorial — refers to a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed in the concept of owner, and utilized a defined territory devolved to them, by operation of customary law or inherited from their ancestors, in accordance with their customs and traditions.

## **CHAPTER III**

### **Rights to Ancestral Domains**

**SECTION 4. Concept of Ancestral Lands/Domains.** — Ancestral lands/domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.

**SECTION 5. Indigenous Concept of Ownership.** — Indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.

**SECTION 6. Composition of Ancestral Lands/Domains.** — Ancestral lands and domains shall consist of all areas generally belonging to ICCs/IPs as referred under Sec. 3, items (a) and (b) of this Act.

**SECTION 7. Rights to Ancestral Domains.** — The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

- a) Right of Ownership. — The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing

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grounds, and all improvements made by them at any time within the domains;

- b) Right to Develop Lands and Natural Resources. — Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;
- c) Right to Stay in the Territories. — The right to stay in the territory and not to be removed therefrom. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons



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thus relocated shall likewise be fully compensated for any resulting loss or injury;

- d) **Right in Case of Displacement.** — In case displacement occurs as a result of natural catastrophes, the State shall endeavor to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support systems: Provided, That the displaced ICCs/IPs shall have the right to return to their abandoned lands until such time that the normalcy and safety of such lands shall be determined: Provided, further, That should their ancestral domain cease to exist and normalcy and safety of the previous settlements are not possible, displaced ICCs/IPs shall enjoy security of tenure over lands to which they have been resettled: Provided, furthermore, That basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed;
- e) **Right to Regulate Entry of Migrants.** — Right to regulate the entry of migrant settlers and organizations into the domains;
- f) **Right to Safe and Clean Air and Water.** — For this purpose, the ICCs/IPs shall have access to integrated systems for the management of their inland waters and air space;
- g) **Right to Claim Parts of Reservations.** — The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common public welfare and service; and
- h) **Right to Resolve Conflict.** — Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.

**SECTION 8. Rights to Ancestral Lands.** — The right of ownership and possession of the ICCs/IPs to their ancestral lands shall be recognized and protected.

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- a) Right to transfer land/property. — Such right shall include the right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned.
  - b) Right to Redemption. — In cases where it is shown that the transfer of land/property rights by virtue of any agreement or devise, to a non-member of the concerned ICCs/IPs is tainted by the vitiated consent of the ICCs/IPs, or is transferred for an unconscionable consideration or price, the transferor ICC/IP shall have the right to redeem the same within a period not exceeding fifteen (15) years from the date of transfer.

**SECTION 9. Responsibilities of ICCs/IPs to their Ancestral Domains.** — ICCs/IPs occupying a duly certified ancestral domain shall have the following responsibilities:

- a) Maintain Ecological Balance. — To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;
- b) Restore Denuded Areas. — To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration; and
- c) Observe Laws. — To observe and comply with the provisions of this Act and the rules and regulations for its effective implementation.

**SECTION 10. Unauthorized and Unlawful Intrusion.** — Unauthorized and unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights hereinbefore enumerated, shall be punishable under this law. Furthermore, the Government shall take measures to prevent non-ICCs/IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/IPs.

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**SECTION 11. Recognition of Ancestral Domain Rights.** — The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.

**SECTION 12. Option to Secure Certificate of Title Under Commonwealth Act 141, as amended, or the Land Registration Act 496.** — Individual members of cultural communities, with respect to their individually-owned ancestral lands who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since time immemorial or for a period of not less than thirty (30) years immediately preceding the approval of this Act and uncontested by the members of the same ICCs/IPs shall have the option to secure title to their ancestral lands under the provisions of Commonwealth Act 141, as amended, or the Land Registration Act 496.

For this purpose, said individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.

The option granted under this section shall be exercised within twenty (20) years from the approval of this Act.

## **CHAPTER IV**

### **Right to Self-Governance and Empowerment**

**SECTION 13. Self-Governance.** — The State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.

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**SECTION 14. Support for Autonomous Regions.** — The State shall continue to strengthen and support the autonomous regions created under the Constitution as they may require or need. The State shall likewise encourage other ICCs/IPs not included or outside Muslim Mindanao and the Cordilleras to use the form and content of their ways of life as may be compatible with the fundamental rights defined in the Constitution of the Republic of the Philippines and other internationally recognized human rights.

**SECTION 15. Justice System, Conflict Resolution Institutions, and Peace Building Processes.** — The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.

**SECTION 16. Right to Participate in Decision-Making.** — ICCs/IPs have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory representation in policy-making bodies and other local legislative councils.

**SECTION 17. Right to Determine and Decide Priorities for Development.** — The ICCs/IPs shall have the right to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use. They shall participate in the formulation, implementation and evaluation of policies, plans and programs for national, regional and local development which may directly affect them.

**SECTION 18. Tribal Barangays.** — The ICCs/IPs living in contiguous areas or communities where they form the predominant population but which are located in municipalities, provinces or cities where they do not constitute the majority of the population, may form or constitute

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a separate barangay in accordance with the Local Government Code on the creation of tribal barangays.

**SECTION 19. Role of Peoples Organizations.** — The State shall recognize and respect the role of independent ICCs/IPs organizations to enable the ICCs/IPs to pursue and protect their legitimate and collective interests and aspirations through peaceful and lawful means.

**SECTION 20. Means for Development/Empowerment of ICCs/IPs.** — The Government shall establish the means for the full development/empowerment of the ICCs/IPs own institutions and initiatives and, where necessary, provide the resources needed therefor.

## **CHAPTER V**

### **Social Justice and Human Rights**

**SECTION 21. Equal Protection and Non-discrimination of ICCs/IPs.** — Consistent with the equal protection clause of the Constitution of the Republic of the Philippines, the Charter of the United Nations, the Universal Declaration of Human Rights including the Convention on the Elimination of Discrimination Against Women and International Human Rights Law, the State shall, with due recognition of their distinct characteristics and identity, accord to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry. It shall extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society. Accordingly, the State shall likewise ensure that the employment of any form of force or coercion against ICCs/IPs shall be dealt with by law.

The State shall ensure that the fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to indigenous women. Towards this end, no provision in this Act shall be interpreted so as to result in the diminution of rights and privileges already recognized and accorded to women under existing laws of general application.

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**SECTION 22. Rights During Armed Conflict.** — ICCs/IPs have the right to special protection and security in periods of armed conflict. The State shall observe international standards, in particular, the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not recruit members of the ICCs/IPs against their will into the armed forces, and in particular, for use against other ICCs/IPs; nor recruit children of ICCs/IPs into the armed forces under any circumstance; nor force indigenous individuals to abandon their lands, territories and means of subsistence, or relocate them in special centers for military purposes under any discriminatory condition.

**SECTION 23. Freedom from Discrimination and Right to Equal Opportunity and Treatment.** — It shall be the right of the ICCs/IPs to be free from any form of discrimination, with respect to recruitment and conditions of employment, such that they may enjoy equal opportunities for admission to employment, medical and social assistance, safety as well as other occupationally-related benefits, informed of their rights under existing labor legislation and of means available to them for redress, not subject to any coercive recruitment systems, including bonded labor and other forms of debt servitude; and equal treatment in employment for men and women, including the protection from sexual harassment.

Towards this end, the State shall, within the framework of national laws and regulations, and in cooperation with the ICCs/IPs concerned, adopt special measures to ensure the effective protection with regard to the recruitment and conditions of employment of persons belonging to these communities, to the extent that they are not effectively protected by laws applicable to workers in general.

ICCs/IPs shall have the right to association and freedom for all trade union activities and the right to conclude collective bargaining agreements with employers' organizations. They shall likewise have the right not to be subject to working conditions hazardous to their health, particularly through exposure to pesticides and other toxic substances.

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**SECTION 24. Unlawful Acts Pertaining to Employment.** — It shall be unlawful for any person:

- a) To discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. Equal remuneration shall be paid to ICC/IP and non-ICC/IP for work of equal value; and
- b) To deny any ICC/IP employee any right or benefit herein provided for or to discharge them for the purpose of preventing them from enjoying any of the rights or benefits provided under this Act.

**SECTION 25. Basic Services.** — The ICCs/IPs have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security. Particular attention shall be paid to the rights and special needs of indigenous women, elderly, youth, children and differently-abled persons. Accordingly, the State shall guarantee the right of ICCs/IPs to government's basic services which shall include, but not limited to, water and electrical facilities, education, health, and infrastructure.

**SECTION 26. Women.** — ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life. The participation of indigenous women in the decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition.

The State shall provide full access to education, maternal and child care, health and nutrition, and housing services to indigenous women. Vocational, technical, professional and other forms of training shall be provided to enable these women to fully participate in all aspects of social life. As far as possible, the State shall ensure that indigenous women have access to all services in their own languages.

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**SECTION 27. Children and Youth.** — The State shall recognize the vital role of the children and youth of ICCs/IPs in nation-building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being. Towards this end, the State shall support all government programs intended for the development and rearing of the children and youth of ICCs/IPs for civic efficiency and establish such mechanisms as may be necessary for the protection of the rights of the indigenous children and youth.

**SECTION 28. Integrated System of Education.** — The State shall, through the NCIP, provide a complete, adequate and integrated system of education, relevant to the needs of the children and young people of ICCs/IPs.

## **CHAPTER VI**

### **Cultural Integrity**

**SECTION 29. Protection of Indigenous Culture, Traditions and Institutions.** — The State shall respect, recognize and protect the right of ICCs/IPs to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation and application of national plans and policies.

**SECTION 30. Educational Systems.** — The State shall provide equal access to various cultural opportunities to the ICCs/IPs through the educational system, public or private cultural entities, scholarships, grants and other incentives without prejudice to their right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children/youth shall have the right to all levels and forms of education of the State.

**SECTION 31. Recognition of Cultural Diversity.** — The State shall endeavor to have the dignity and diversity of the cultures, traditions, histories and aspirations of the ICCs/IPs appropriately reflected in all forms of education, public information and cultural-educational exchange. Consequently, the State shall take effective measures,



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in consultation with ICCs/IPs concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among ICCs/IPs and all segments of society. Furthermore, the Government shall take effective measures to ensure that the State-owned media duly reflect indigenous cultural diversity. The State shall likewise ensure the participation of appropriate indigenous leaders in schools, communities and international cooperative undertakings like festivals, conferences, seminars and workshops to promote and enhance their distinctive heritage and values.

**SECTION 32. Community Intellectual Rights.** — ICCs/IPs have the right to practice and revitalize their own cultural traditions and customs. The State shall preserve, protect and develop the past, present and future manifestations of their cultures as well as the right to the restitution of cultural, intellectual, religious, and spiritual property taken without their free and prior informed consent or in violation of their laws, traditions and customs.

**SECTION 33. Rights to Religious, Cultural Sites and Ceremonies.** — ICCs/IPs shall have the right to manifest, practice, develop, and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access to their religious and cultural sites; the right to use and control of ceremonial objects; and, the right to the repatriation of human remains. Accordingly, the State shall take effective measures, in cooperation with the ICCs/IPs concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected. To achieve this purpose, it shall be unlawful to:

- a) Explore, excavate or make diggings on archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural values without the free and prior informed consent of the community concerned; and
- b) Deface, remove or otherwise destroy artifacts which are of great importance to the ICCs/IPs for the preservation of their cultural heritage.

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**SECTION 34. Right to Indigenous Knowledge Systems and Practices and to Develop own Sciences and Technologies.** —

ICCs/IPs are entitled to the recognition of the full ownership and control and protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of the properties of fauna and flora, oral traditions, literature, designs, and visual and performing arts.

**SECTION 35. Access to Biological and Genetic Resources.** —

Access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources, shall be allowed within ancestral lands and domains of the ICCs/IPs only with a free and prior informed consent of such communities, obtained in accordance with customary laws of the concerned community.

**SECTION 36. Sustainable Agro-Technical Development.** —

The State shall recognize the right of ICCs/IPs to a sustainable agro-technological development and shall formulate and implement programs of action for its effective implementation. The State shall likewise promote the bio-genetic and resource management systems among the ICCs/IPs and shall encourage cooperation among government agencies to ensure the successful sustainable development of ICCs/IPs.

**SECTION 37. Funds for Archeological and Historical Sites.** —

The ICCs/IPs shall have the right to receive from the national government all funds especially earmarked or allocated for the management and preservation of their archeological and historical sites and artifacts with the financial and technical support of the national government agencies.

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## CHAPTER VII

### National Commission on Indigenous Peoples (NCIP)

**SECTION 38. National Commission on Indigenous Cultural Communities/Indigenous Peoples (NCIP).** — To carry out the policies herein set forth, there shall be created the National Commission on ICCs/IPs (NCIP), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as the rights thereto.

**SECTION 39. Mandate.** — The NCIP shall protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.

**SECTION 40. Composition.** — The NCIP shall be an independent agency under the Office of the President and shall be composed of seven (7) Commissioners belonging to ICCs/IPs, one (1) of whom shall be the Chairperson. The Commissioners shall be appointed by the President of the Philippines from a list of recommendees submitted by authentic ICCs/IPs: Provided, That the seven (7) Commissioners shall be appointed specifically from each of the following ethnographic areas: Region I and the Cordilleras; Region II; the rest of Luzon; Island Groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; Northern and Western Mindanao; Southern and Eastern Mindanao; and Central Mindanao: Provided, That at least two (2) of the seven (7) Commissioners shall be women.

**SECTION 41. Qualifications, Tenure, Compensation.** — The Chairperson and the six (6) Commissioners must be natural born Filipino citizens, bona fide members of the ICCs/IPs as certified by his/her tribe, experienced in ethnic affairs and who have worked for at least ten (10) years with an ICC/IP community and/or any government agency involved in ICC/IP, at least 35 years of age at the time of appointment, and must be of proven honesty and integrity: Provided, That at least two (2) of the seven (7) Commissioners

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shall be members of the Philippine Bar: Provided, further, That the members of the NCIP shall hold office for a period of three (3) years, and may be subject to re-appointment for another term: Provided, furthermore, That no person shall serve for more than two (2) terms. Appointment to any vacancy shall only be for the unexpired term of the predecessor and in no case shall a member be appointed or designated in a temporary or acting capacity: Provided, finally, That the Chairperson and the Commissioners shall be entitled to compensation in accordance with the Salary Standardization Law.

**SECTION 42. Removal from Office.** — Any member of the NCIP may be removed from office by the President, on his own initiative or upon recommendation by any indigenous community, before the expiration of his term for cause and after complying with due process requirement of law.

**SECTION 43. Appointment of Commissioners.** — The President shall appoint the seven (7) Commissioners of the NCIP within ninety (90) days from the effectivity of this Act.

**SECTION 44. Powers and Functions.** — To accomplish its mandate, the NCIP shall have the following powers, jurisdiction and function:

- a) To serve as the primary government agency through which ICCs/IPs can seek government assistance and as the medium, through which such assistance may be extended;
- b) To review and assess the conditions of ICCs/IPs including existing laws and policies pertinent thereto and to propose relevant laws and policies to address their role in national development;
- c) To formulate and implement policies, plans, programs and projects for the economic, social and cultural development of the ICCs/IPs and to monitor the implementation thereof;
- d) To request and engage the services and support of experts from other agencies of government or employ private

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experts and consultants as may be required in the pursuit of its objectives;

- e) To issue certificate of ancestral land/domain title;
- f) Subject to existing laws, to enter into contracts, agreements, or arrangement, with government or private agencies or entities as may be necessary to attain the objectives of this Act, and subject to the approval of the President, to obtain loans from government lending institutions and other lending institutions to finance its programs;
- g) To negotiate for funds and to accept grants, donations, gifts and/or properties in whatever form and from whatever source, local and international, subject to the approval of the President of the Philippines, for the benefit of ICCs/IPs and administer the same in accordance with the terms thereof; or in the absence of any condition, in such manner consistent with the interest of ICCs/IPs as well as existing laws;
- h) To coordinate development programs and projects for the advancement of the ICCs/IPs and to oversee the proper implementation thereof;
- i) To convene periodic conventions or assemblies of IPs to review, assess as well as propose policies or plans;
- j) To advise the President of the Philippines on all matters relating to the ICCs/IPs and to submit within sixty (60) days after the close of each calendar year, a report of its operations and achievements;
- k) To submit to Congress appropriate legislative proposals intended to carry out the policies under this Act;
- l) To prepare and submit the appropriate budget to the Office of the President;

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- m) To issue appropriate certification as a pre-condition to the grant of permit, lease, grant, or any other similar authority for the disposition, utilization, management and appropriation by any private individual, corporate entity or any government agency, corporation or subdivision thereof on any part or portion of the ancestral domain taking into consideration the consensus approval of the ICCs/IPs concerned;
  - n) To decide all appeals from the decisions and acts of all the various offices within the Commission;
  - o) To promulgate the necessary rules and regulations for the implementation of this Act;
  - p) To exercise such other powers and functions as may be directed by the President of the Republic of the Philippines; and
  - q) To represent the Philippine ICCs/IPs in all international conferences and conventions dealing with indigenous peoples and other related concerns.

**SECTION 45. Accessibility and Transparency.** — Subject to such limitations as may be provided by law or by rules and regulations promulgated pursuant thereto, all official records, documents and papers pertaining to official acts, transactions or decisions, as well as research data used as basis for policy development of the Commission shall be made accessible to the public.

**SECTION 46. Offices within the NCIP.** — The NCIP shall have the following offices which shall be responsible for the implementation of the policies hereinafter provided:

- a) **Ancestral Domains Office** — The Ancestral Domain Office shall be responsible for the identification, delineation and recognition of ancestral lands/domains. It shall also be responsible for the management of ancestral lands/ domains in accordance with a master plan as well as the

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implementation of the ancestral domain rights of the ICCs/IPs as provided in Chapter III of this Act. It shall also issue, upon the free and prior informed consent of the ICCs/IPs concerned, certification prior to the grant of any license, lease or permit for the exploitation of natural resources affecting the interests of ICCs/IPs or their ancestral domains and to assist the ICCs/IPs in protecting the territorial integrity of all ancestral domains. It shall likewise perform such other functions as the Commission may deem appropriate and necessary;

- b) Office on Policy, Planning and Research — The Office on Policy, Planning and Research shall be responsible for the formulation of appropriate policies and programs for ICCs/IPs such as, but not limited to, the development of a Five-Year Master Plan for the ICCs/IPs. Such plan shall undergo a process such that every five years, the Commission shall endeavor to assess the plan and make ramifications in accordance with the changing situations. The Office shall also undertake the documentation of customary law and shall establish and maintain a Research Center that would serve as a depository of ethnographic information for monitoring, evaluation and policy formulation. It shall assist the legislative branch of the national government in the formulation of appropriate legislation benefiting ICCs/IPs;
- c) Office of Education, Culture and Health — The Office on Culture, Education and Health shall be responsible for the effective implementation of the education, cultural and related rights as provided in this Act. It shall assist, promote and support community schools, both formal and non-formal, for the benefit of the local indigenous community, especially in areas where existing educational facilities are not accessible to members of the indigenous group. It shall administer all scholarship programs and other educational rights intended for ICC/IP beneficiaries in coordination with the Department of Education, Culture and Sports and the Commission on Higher Education. It shall undertake, within the limits of available appropriation, a special program which

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includes language and vocational training, public health and family assistance program and related subjects.

It shall also identify ICCs/IPs with potential training in the health profession and encourage and assist them to enroll in schools of medicine, nursing, physical therapy and other allied courses pertaining to the health profession.

Towards this end, the NCIP shall deploy a representative in each of the said offices who shall personally perform the foregoing task and who shall receive complaints from the ICCs/IPs and compel action from appropriate agency. It shall also monitor the activities of the National Museum and other similar government agencies generally intended to manage and preserve historical and archeological artifacts of the ICCs/IPs and shall be responsible for the implementation of such other functions as the NCIP may deem appropriate and necessary;

- d) Office on Socio-Economic Services and Special Concerns — The Office on Socio-Economic Services and Special Concerns shall serve as the Office through which the NCIP shall coordinate with pertinent government agencies specially charged with the implementation of various basic socio-economic services, policies, plans and programs affecting the ICCs/IPs to ensure that the same are properly and directly enjoyed by them. It shall also be responsible for such other functions as the NCIP may deem appropriate and necessary;
- e) Office of Empowerment and Human Rights — The Office of Empowerment and Human Rights shall ensure that indigenous socio-political, cultural and economic rights are respected and recognized. It shall ensure that capacity building mechanisms are instituted and ICCs/IPs are afforded every opportunity, if they so choose, to participate in all levels of decision-making. It shall likewise ensure that the basic human rights, and such other rights as the NCIP may determine, subject to existing laws, rules and regulations, are protected and promoted;



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- f) **Administrative Office** — The Administrative Office shall provide the NCIP with economical, efficient and effective services pertaining to personnel, finance, records, equipment, security, supplies and related services. It shall also administer the Ancestral Domains Fund; and
  - g) **Legal Affairs Office** — There shall be a Legal Affairs Office which shall advise the NCIP on all legal matters concerning ICCs/IPs and which shall be responsible for providing ICCs/IPs with legal assistance in litigation involving community interest. It shall conduct preliminary investigation on the basis of complaints filed by the ICCs/IPs against a natural or juridical person believed to have violated ICCs/IPs rights. On the basis of its findings, it shall initiate the filing of appropriate legal or administrative action to the NCIP.

**SECTION 47. Other Offices.** — The NCIP shall have the power to create additional offices as it may deem necessary subject to existing rules and regulations.

**SECTION 48. Regional and Field Offices.** — Existing regional and field offices shall remain to function under the strengthened organizational structure of the NCIP. Other field offices shall be created wherever appropriate and the staffing pattern thereof shall be determined by the NCIP: Provided, That in provinces where there are ICCs/IPs but without field offices, the NCIP shall establish field offices in said provinces.

**SECTION 49. Office of the Executive Director.** — The NCIP shall create the Office of the Executive Director which shall serve as its secretariat. The Office shall be headed by an Executive Director who shall be appointed by the President of the Republic of the Philippines upon recommendation of the NCIP on a permanent basis. The staffing pattern of the office shall be determined by the NCIP subject to the existing rules and regulations.

**SECTION 50. Consultative Body.** — A body consisting of the traditional leaders, elders and representatives from the women and youth sectors of the different ICCs/IPs shall be constituted by

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the NCIP from time to time to advise it on matters relating to the problems, aspirations and interests of the ICCs/IPs.

## **CHAPTER VIII**

### **Delineation and Recognition of Ancestral Domains**

#### **SECTION 51. Delineation and Recognition of Ancestral Domains.**

— Self-delineation shall be the guiding principle in the identification and delineation of ancestral domains. As such, the ICCs/IPs concerned shall have a decisive role in all the activities pertinent thereto. The Sworn Statement of the Elders as to the scope of the territories and agreements/pacts made with neighboring ICCs/IPs, if any, will be essential to the determination of these traditional territories. The Government shall take the necessary steps to identify lands which the ICCs/IPs concerned traditionally occupy and guarantee effective protection of their rights of ownership and possession thereto. Measures shall be taken in appropriate cases to safeguard the right of the ICCs/IPs concerned to land which may no longer be exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities, particularly of ICCs/IPs who are still nomadic and/or shifting cultivators.

**SECTION 52. Delineation Process.** — The identification and delineation of ancestral domains shall be done in accordance with the following procedures:

- a) **Ancestral Domains Delineated Prior to this Act.** — The provisions hereunder shall not apply to ancestral domains/lands already delineated according to DENR Administrative Order No. 2, series of 1993, nor to ancestral lands and domains delineated under any other community/ancestral domain program prior to the enactment of this law. ICCs/IPs whose ancestral lands/domains were officially delineated prior to the enactment of this law shall have the right to apply for the issuance of a Certificate of Ancestral Domain Title (CADT) over the area without going through the process outlined hereunder;

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- b) Petition for Delineation. — The process of delineating a specific perimeter may be initiated by the NCIP with the consent of the ICC/IP concerned, or through a Petition for Delineation filed with the NCIP, by a majority of the members of the ICCs/IPs;
  - c) Delineation Proper. — The official delineation of ancestral domain boundaries including census of all community members therein, shall be immediately undertaken by the Ancestral Domains Office upon filing of the application by the ICCs/IPs concerned. Delineation will be done in coordination with the community concerned and shall at all times include genuine involvement and participation by the members of the communities concerned; and
  - d) Proof Required. — Proof of Ancestral Domain Claims shall include the testimony of elders or community under oath, and other documents directly or indirectly attesting to the possession or occupation of the area since time immemorial by such ICCs/IPs in the concept of owners which shall be any one (1) of the following authentic documents:
    - 1) Written accounts of the ICCs/IPs customs and traditions;
    - 2) Written accounts of the ICCs/IPs political structure and institution;
    - 3) Pictures showing long term occupation such as those of old improvements, burial grounds, sacred places and old villages;
    - 4) Historical accounts, including pacts and agreements concerning boundaries entered into by the ICCs/IPs concerned with other ICCs/IPs;
    - 5) Survey plans and sketch maps;
    - 6) Anthropological data;
    - 7) Genealogical surveys;

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- 8) Pictures and descriptive histories of traditional communal forests and hunting grounds;
  - 9) Pictures and descriptive histories of traditional landmarks such as mountains, rivers, creeks, ridges, hills, terraces and the like; and
  - 10) Write-ups of names and places derived from the native dialect of the community.
- e) Preparation of Maps. — On the basis of such investigation and the findings of fact based thereon, the Ancestral Domains Office of the NCIP shall prepare a perimeter map, complete with technical descriptions, and a description of the natural features and landmarks embraced therein;
  - f) Report of Investigation and Other Documents. — A complete copy of the preliminary census and a report of investigation, shall be prepared by the Ancestral Domains Office of the NCIP;
  - g) Notice and Publication. — A copy of each document, including a translation in the native language of the ICCs/ IPs concerned shall be posted in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial and regional offices of the NCIP, and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspaper and radio station are not available;
  - h) Endorsement to NCIP. — Within fifteen (15) days from publication, and of the inspection process, the Ancestral Domains Office shall prepare a report to the NCIP endorsing a favorable action upon a claim that is deemed to have

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sufficient proof. However, if the proof is deemed insufficient, the Ancestral Domains Office shall require the submission of additional evidence: Provided, That the Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification: Provided, further, That in case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP: Provided, furthermore, That in cases where there are conflicting claims among ICCs/IPs on the boundaries of ancestral domain claims, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to the section below;

- i) Turnover of Areas Within Ancestral Domains Managed by Other Government Agencies. — The Chairperson of the NCIP shall certify that the area covered is an ancestral domain. The secretaries of the Department of Agrarian Reform, Department of Environment and Natural Resources, Department of the Interior and Local Government, and Department of Justice, the Commissioner of the National Development Corporation, and any other government agency claiming jurisdiction over the area shall be notified thereof. Such notification shall terminate any legal basis for the jurisdiction previously claimed;
- j) Issuance of CADT . — ICCs/IPs whose ancestral domains have been officially delineated and determined by the NCIP shall be issued a CADT in the name of the community concerned, containing a list of all those identified in the census; and
- k) Registration of CADTs. — The NCIP shall register issued certificates of ancestral domain titles and certificates of ancestral lands titles before the Register of Deeds in the place where the property is situated.

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## **SECTION 53. Identification, Delineation and Certification of Ancestral Lands. —**

- a) The allocation of lands within any ancestral domain to individual or indigenous corporate (family or clan) claimants shall be left to the ICCs/IPs concerned to decide in accordance with customs and traditions;
- b) Individual and indigenous corporate claimants of ancestral lands which are not within ancestral domains, may have their claims officially established by filing applications for the identification and delineation of their claims with the Ancestral Domains Office. An individual or recognized head of a family or clan may file such application in his behalf or in behalf of his family or clan, respectively;
- c) Proofs of such claims shall accompany the application form which shall include the testimony under oath of elders of the community and other documents directly or indirectly attesting to the possession or occupation of the areas since time immemorial by the individual or corporate claimants in the concept of owners which shall be any of the authentic documents enumerated under Sec. 52 (d) of this Act, including tax declarations and proofs of payment of taxes;
- d) The Ancestral Domains Office may require from each ancestral claimant the submission of such other documents, Sworn Statements and the like, which in its opinion, may shed light on the veracity of the contents of the application/claim;
- e) Upon receipt of the applications for delineation and recognition of ancestral land claims, the Ancestral Domains Office shall cause the publication of the application and a copy of each document submitted including a translation in the native language of the ICCs/IPs concerned in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial,

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and regional offices of the NCIP and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspapers and radio station are not available;

- f) Fifteen (15) days after such publication, the Ancestral Domains Office shall investigate and inspect each application, and if found to be meritorious, shall cause a parcellary survey of the area being claimed. The Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification. In case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP. In case of conflicting claims among individuals or indigenous corporate claimants, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to Sec. 62 of this Act. In all proceedings for the identification or delineation of the ancestral domains as herein provided, the Director of Lands shall represent the interest of the Republic of the Philippines; and
- g) The Ancestral Domains Office shall prepare and submit a report on each and every application surveyed and delineated to the NCIP, which shall, in turn, evaluate the report submitted. If the NCIP finds such claim meritorious, it shall issue a certificate of ancestral land, declaring and certifying the claim of each individual or corporate (family or clan) claimant over ancestral lands.

**SECTION 54. Fraudulent Claims.** — The Ancestral Domains Office may, upon written request from the ICCs/IPs, review existing claims

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which have been fraudulently acquired by any person or community. Any claim found to be fraudulently acquired by, and issued to, any person or community may be cancelled by the NCIP after due notice and hearing of all parties concerned.

**SECTION 55. Communal Rights.** — Subject to Section 56 hereof, areas within the ancestral domains, whether delineated or not, shall be presumed to be communally held: Provided, That communal rights under this Act shall not be construed as co-ownership as provided in Republic Act No. 386, otherwise known as the New Civil Code.

**SECTION 56. Existing Property Rights Regimes.** — Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

**SECTION 57. Natural Resources within Ancestral Domains.** — The ICCs/IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the NCIP may exercise visitorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.

**SECTION 58. Environmental Considerations.** — Ancestral domains or portions thereof, which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by appropriate agencies with the full participation of the ICCs/IPs concerned shall be maintained, managed and developed for such purposes. The ICCs/IPs concerned shall be given the responsibility to maintain, develop, protect and conserve such areas with the full and effective assistance of government agencies. Should the ICCs/IPs decide to transfer the responsibility over the areas, said decision must be



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made in writing. The consent of the ICCs/IPs should be arrived at in accordance with its customary laws without prejudice to the basic requirements of existing laws on free and prior informed consent: Provided, That the transfer shall be temporary and will ultimately revert to the ICCs/IPs in accordance with a program for technology transfer: Provided, further, That no ICCs/IPs shall be displaced or relocated for the purpose enumerated under this section without the written consent of the specific persons authorized to give consent.

**SECTION 59. Certification Precondition.** — All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

**SECTION 60. Exemption from Taxes.** — All lands certified to be ancestral domains shall be exempt from real property taxes, special levies, and other forms of exaction except such portion of the ancestral domains as are actually used for large-scale agriculture, commercial forest plantation and residential purposes or upon titling by private persons: Provided, That all exactions shall be used to facilitate the development and improvement of the ancestral domains.

**SECTION 61. Temporary Requisition Powers.** — Prior to the establishment of an institutional surveying capacity whereby it can effectively fulfill its mandate, but in no case beyond three (3) years after its creation, the NCIP is hereby authorized to request

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the Department of Environment and Natural Resources (DENR) survey teams as well as other equally capable private survey teams, through a Memorandum of Agreement (MOA), to delineate ancestral domain perimeters. The DENR Secretary shall accommodate any such request within one (1) month of its issuance: Provided, That the Memorandum of Agreement shall stipulate, among others, a provision for technology transfer to the NCIP.

**SECTION 62. Resolution of Conflicts.** — In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which can not be resolved, the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains: Provided, That if the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: Provided, further, That any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen (15) days from receipt of a copy thereof.

**SECTION 63. Applicable Laws.** — Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes. Any doubt or ambiguity in the application and interpretation of laws shall be resolved in favor of the ICCs/IPs.

**SECTION 64. Remedial Measures.** — Expropriation may be resorted to in the resolution of conflicts of interest following the principle of the “common good”. The NCIP shall take appropriate legal action for the cancellation of officially documented titles which were acquired illegally: Provided, That such procedure shall ensure that the rights of possessors in good faith shall be respected: Provided, further, That the action for cancellation shall be initiated within two (2) years

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from the effectivity of this Act: Provided, finally, That the action for reconveyance shall be within a period of ten (10) years in accordance with existing laws.

## **CHAPTER IX**

### **Jurisdiction and Procedures for Enforcement of Rights**

**SECTION 65. Primacy of Customary Laws and Practices.** — When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

**SECTION 66. Jurisdiction of the NCIP.** — The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

**SECTION 67. Appeals to the Court of Appeals.** — Decisions of the NCIP shall be appealable to the Court of Appeals by way of a petition for review.

**SECTION 68. Execution of Decisions, Awards, Orders.** — Upon expiration of the period herein provided and no appeal is perfected by any of the contending parties, the Hearing Officer of the NCIP, on its own initiative or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders or awards of the Regional Hearing Officer of the NCIP.

**SECTION 69. Quasi-Judicial Powers of the NCIP.** — The NCIP shall have the power and authority:

- a) To promulgate rules and regulations governing the hearing and disposition of cases filed before it as well as those

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pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Act;

- b) To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, agreements and other document of similar nature as may be material to a just determination of the matter under investigation or hearing conducted in pursuance of this Act;
- c) To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and
- d) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic activity.

**SECTION 70. No Restraining Order or Preliminary Injunction. —**

No inferior court of the Philippines shall have jurisdiction to issue any restraining order or writ of preliminary injunction against the NCIP or any of its duly authorized or designated offices in any case, dispute or controversy arising from, necessary to, or interpretation of this Act and other pertinent laws relating to ICCs/IPs and ancestral domains.

**CHAPTER X**

**Ancestral Domains Fund**

**SECTION 71. Ancestral Domains Fund. —** There is hereby created a special fund, to be known as the Ancestral Domains Fund, an initial amount of One hundred thirty million pesos (P130,000,000) to cover compensation for expropriated lands, delineation and development of ancestral domains. An amount of Fifty million pesos (P50,000,000) shall be sourced from the gross income of the Philippine Charity Sweepstakes Office (PCSO) from its lotto operation, Ten million

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pesos (P10,000,000) from the gross receipts of the travel tax of the preceding year, the fund of the Social Reform Council intended for survey and delineation of ancestral lands/domains, and such other source as the government may deem appropriate. Thereafter, such amount shall be included in the annual General Appropriations Act. Foreign as well as local funds which are made available for the ICCs/IPs through the government of the Philippines shall be coursed through the NCIP. The NCIP may also solicit and receive donations, endowments and grants in the form of contributions, and such endowments shall be exempted from income or gift taxes and all other taxes, charges or fees imposed by the government or any political subdivision or instrumentality thereof.

## **CHAPTER XI**

### **Penalties**

**SECTION 72. Punishable Acts and Applicable Penalties.** — Any person who commits violation of any of the provisions of this Act, such as, but not limited to, unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned: Provided, That no such penalty shall be cruel, degrading or inhuman punishment: Provided, further, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine of not less than One hundred thousand pesos (P100,000) nor more than Five hundred thousand pesos (P500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act.

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**SECTION 73. Persons Subject to Punishment.** — If the offender is a juridical person, all officers such as, but not limited to, its president, manager, or head of office responsible for their unlawful act shall be criminally liable therefor, in addition to the cancellation of certificates of their registration and/or license: Provided, That if the offender is a public official, the penalty shall include perpetual disqualification to hold public office.

## **CHAPTER XII**

Merger of the Office for Northern Cultural Communities (ONCC) and the Office for Southern Cultural Communities (OSCC)

**SECTION 74. Merger of ONCC/OSCC.** — The Office for Northern Cultural Communities (ONCC) and the Office of Southern Cultural Communities (OSCC), created under Executive Order Nos. 122-B and 122-C respectively, are hereby merged as organic offices of the NCIP and shall continue to function under a revitalized and strengthened structures to achieve the objectives of the NCIP: Provided, That the positions of Staff Directors, Bureau Directors, Deputy Executive Directors and Executive Directors, except positions of Regional Directors and below, are hereby phased-out upon the effectivity of this Act: Provided, further, That officials and employees of the phased-out offices who may be qualified may apply for reappointment with the NCIP and may be given prior rights in the filling up of the newly created positions of NCIP, subject to the qualifications set by the Placement Committee: Provided, furthermore, That in the case where an indigenous person and a non-indigenous person with similar qualifications apply for the same position, priority shall be given to the former. Officers and employees who are to be phased-out as a result of the merger of their offices shall be entitled to gratuity a rate equivalent to one and a half (1 ½) months salary for every year of continuous and satisfactory service rendered or the equivalent nearest fraction thereof favorable to them on the basis of the highest salary received. If they are already entitled to retirement or gratuity, they shall have the option to select either such retirement benefits or the gratuity herein provided. Officers and employees who may be reinstated shall refund such retirement benefits or gratuity received: Provided, finally, That absorbed personnel must still meet

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the qualifications and standards set by the Civil Service and the Placement Committee herein created.

**SECTION 75. Transition Period.** — The ONCC/OSCC shall have a period of six (6) months from the effectivity of this Act within which to wind up its affairs and to conduct audit of its finances.

**SECTION 76. Transfer of Assets/Properties.** — All real and personal properties which are vested in, or belonging to, the merged offices as aforestated shall be transferred to the NCIP without further need of conveyance, transfer or assignment and shall be held for the same purpose as they were held by the former offices: Provided, That all contracts, records and documents relating to the operations of the merged offices shall be transferred to the NCIP. All agreements and contracts entered into by the merged offices shall remain in full force and effect unless otherwise terminated, modified or amended by the NCIP.

**SECTION 77. Placement Committee.** — Subject to rules on government reorganization, a Placement Committee shall be created by the NCIP, in coordination with the Civil Service Commission, which shall assist in the judicious selection and placement of personnel in order that the best qualified and most deserving persons shall be appointed in the reorganized agency. The Placement Committee shall be composed of seven (7) commissioners and an ICCs'/IPs' representative from each of the first and second level employees association in the Offices for Northern and Southern Cultural Communities (ONCC/OSCC), nongovernment organizations (NGOs) who have served the community for at least five (5) years and peoples organizations (POs) with at least five (5) years of existence. They shall be guided by the criteria of retention and appointment to be prepared by the consultative body and by the pertinent provisions of the civil service law.

## **CHAPTER XIII**

### **Final Provisions**

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**SECTION 78. Special Provision.** — The City of Baguio shall remain to be governed by its Charter and all lands proclaimed as part of its townsite reservation shall remain as such until otherwise reclassified by appropriate legislation: Provided, That prior land rights and titles recognized and/or acquired through any judicial, administrative or other processes before the effectivity of this Act shall remain valid: Provided, further, That this provision shall not apply to any territory which becomes part of the City of Baguio after the effectivity of this Act.

**SECTION 79. Appropriations.** — The amount necessary to finance the initial implementation of this Act shall be charged against the current year's appropriation of the ONCC and the OSCC. Thereafter, such sums as may be necessary for its continued implementation shall be included in the annual General Appropriations Act.

**SECTION 80. Implementing Rules and Regulations.** — Within sixty (60) days immediately after appointment, the NCIP shall issue the necessary rules and regulations, in consultation with the Committees on National Cultural Communities of the House of Representatives and the Senate, for the effective implementation of this Act.

**SECTION 81. Saving Clause.** — This Act will not in any manner adversely affect the rights and benefits of the ICCs/IPs under other conventions, recommendations, international treaties, national laws, awards, customs and agreements.

**SECTION 82. Separability Clause.** — In case any provision of this Act or any portion thereof is declared unconstitutional by a competent court, other provisions shall not be affected thereby.

**SECTION 83. Repealing Clause.** — Presidential Decree No. 410, Executive Order Nos. 122-B and 122-C, and all other laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.



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**SECTION 84. Effectivity.** — This Act shall take effect fifteen (15) days upon its publication in the Official Gazette or in any two (2) newspapers of general circulation.

Approved: October 29, 1997

**Republic Act No. 9208**  
**May 26, 2003**

**AN ACT TO INSTITUTE POLICIES TO ELIMINATE  
TRAFFICKING IN PERSONS ESPECIALLY WOMEN  
AND CHILDREN, ESTABLISHING THE NECESSARY  
INSTITUTIONAL MECHANISMS FOR THE PROTECTION  
AND SUPPORT OF TRAFFICKED PERSONS,  
PROVIDING PENALTIES FOR ITS VIOLATIONS, AND  
FOR OTHER**

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

**Section 1.** Title. This Act shall be known as the “Anti-Trafficking in Persons Act of 2003”.

**Section 2. Declaration of Policy.** – It is hereby declared that the State values the dignity of every human person and guarantees the respect of individual rights. In pursuit of this policy, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.

It shall be a State policy to recognize the equal rights and inherent human dignity of women and men as enshrined in the United Nations Universal Declaration on Human Rights, United Nations Convention on the Rights of the Child, United Nations Convention on the Protection of Migrant Workers and their Families. United Nations Convention Against Transnational Organized Crime Including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and all other relevant and

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universally accepted human rights instruments and other international conventions to which the Philippines is a signatory.

**Section 3. Definition of Terms.** - As used in this Act:

- (a) **Trafficking in Persons** - refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph.

- (b) **Child** - refers to a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.
- (c) **Prostitution** - refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.
- (d) **Forced Labor and Slavery** - refer to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception.

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- (e) Sex Tourism - refers to a program organized by travel and tourism-related establishments and individuals which consists of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military.
  - (f) Sexual Exploitation - refers to participation by a person in prostitution or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force, abuse of authority, debt bondage, fraud or through abuse of a victim's vulnerability.
  - (g) Debt Bondage - refers to the pledging by the debtor of his/her personal services or labor or those of a person under his/her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied toward the liquidation of the debt.
  - (h) Pornography - refers to any representation, through publication, exhibition, cinematography, indecent shows, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes.
  - (i) Council - shall mean the Inter-Agency Council Against Trafficking created under Section 20 of this Act.

**Section 4. Acts of Trafficking in Persons.** - It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

- (a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

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- (b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
  - (c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;
  - (d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;
  - (e) To maintain or hire a person to engage in prostitution or pornography;
  - (f) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
  - (g) To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person; and
  - (h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.

**Section 5. Acts that Promote Trafficking in Persons.** - The following acts which promote or facilitate trafficking in persons, shall be unlawful:

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- (a) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting trafficking in persons;
  - (b) To produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers and certificates of any government agency which issues these certificates and stickers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;
  - (c) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, of any brochure, flyer, or any propaganda material that promotes trafficking in persons;
  - (d) To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;
  - (e) To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent travel documents for the purpose of promoting trafficking in persons;
  - (f) To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies; and
  - (g) To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery.

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**Section 6. Qualified Trafficking in Persons.** - The following are considered as qualified trafficking:

- (a) When the trafficked person is a child;
- (b) When the adoption is effected through Republic Act No. 8043, otherwise known as the "Inter-Country Adoption Act of 1995" and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
- (c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;
- (d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;
- (e) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;
- (f) When the offender is a member of the military or law enforcement agencies; and
- (g) When by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS).

**Section 6. Confidentiality.** - At any stage of the investigation, prosecution and trial of an offense under this Act, law enforcement officers, prosecutors, judges, court personnel and medical practitioners, as well as parties to the case, shall recognize the right

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to privacy of the trafficked person and the accused. Towards this end, law enforcement officers, prosecutors and judges to whom the complaint has been referred may, whenever necessary to ensure a fair and impartial proceeding, and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial. The name and personal circumstances of the trafficked person or of the accused, or any other information tending to establish their identities and such circumstances or information shall not be disclosed to the public.

In cases when prosecution or trial is conducted behind closed-doors, it shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilizing tri-media facilities or information technology to cause publicity of any case of trafficking in persons.

**Section 8. Prosecution of Cases.** - Any person who has personal knowledge of the commission of any offense under this Act, the trafficked person, the parents, spouse, siblings, children or legal guardian may file a complaint for trafficking.

**Section 9. Venue.** - A criminal action arising from violation of this Act shall be filed where the offense was committed, or where any of its elements occurred, or where the trafficked person actually resides at the time of the commission of the offense: Provided, That the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts.

**Section 10. Penalties and Sanctions.** - The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

- (a) Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) but not more than Two million pesos (P2,000,000.00);



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- (b) Any person found guilty of committing any of the acts enumerated in Section 5 shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);
  - (c) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) but not more than Five million pesos (P5,000,000.00);
  - (d) Any person who violates Section 7 hereof shall suffer the penalty of imprisonment of six (6) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);
  - (e) If the offender is a corporation, partnership, association, club, establishment or any juridical person, the penalty shall be imposed upon the owner, president, partner, manager, and/or any responsible officer who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission;
  - (f) The registration with the Securities and Exchange Commission (SEC) and license to operate of the erring agency, corporation, association, religious group, tour or travel agent, club or establishment, or any place of entertainment shall be cancelled and revoked permanently. The owner, president, partner or manager thereof shall not be allowed to operate similar establishments in a different name;
  - (g) If the offender is a foreigner, he shall be immediately deported after serving his sentence and be barred permanently from entering the country;
  - (h) Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counseling certificates,

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marriage license, and other similar documents to persons, whether juridical or natural, recruitment agencies, establishments or other individuals or groups, who fail to observe the prescribed procedures and the requirement as provided for by laws, rules and regulations, shall be held administratively liable, without prejudice to criminal liability under this Act. The concerned government official or employee shall, upon conviction, be dismissed from the service and be barred permanently to hold public office. His/her retirement and other benefits shall likewise be forfeited; and

- (i) Conviction by final judgment of the adopter for any offense under this Act shall result in the immediate rescission of the decree of adoption.

**Section 11. Use of Trafficked Persons.** - Any person who buys or engages the services of trafficked persons for prostitution shall be penalized as follows:

- (a) First offense - six (6) months of community service as may be determined by the court and a fine of Fifty thousand pesos (P50,000.00); and
- (b) Second and subsequent offenses - imprisonment of one (1) year and a fine of One hundred thousand pesos (P100,000.00).

**Section 12. Prescriptive Period.** - Trafficking cases under this Act shall prescribe in ten (10) years: Provided, however, That trafficking cases committed by a syndicate or in a large scale as defined under Section 6 shall prescribe in twenty (20) years.

The prescriptive period shall commence to run from the day on which the trafficked person is delivered or released from the conditions of bondage and shall be interrupted by the filing of the complaint or information and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to the accused.

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**Section 13. Exemption from Filing Fees.** - When the trafficked person institutes a separate civil action for the recovery of civil damages, he/she shall be exempt from the payment of filing fees.

**Section 14. Confiscation and Forfeiture of the Proceeds and Instruments Derived from Trafficking in Persons.** - In addition to the penalty imposed for the violation of this Act, the court shall order the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the commission of the crime, unless they are the property of a third person not liable for the unlawful act; Provided, however, That all awards for damages shall be taken from the personal and separate properties of the offender; Provided, further, That if such properties are insufficient, the balance shall be taken from the confiscated and forfeited properties.

When the proceeds, properties and instruments of the offense have been destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, of the offender, or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds, property or instruments of the offense.

**Section 15. Trust Fund.** - All fines imposed under this Act and the proceeds and properties forfeited and confiscated pursuant to Section 14 hereof shall accrue to a Trust Fund to be administered and managed by the Council to be used exclusively for programs that will prevent acts of trafficking and protect, rehabilitate, reintegrate trafficked persons into the mainstream of society. Such programs shall include, but not limited to, the following:

- (a) Provision for mandatory services set forth in Section 23 of this Act;
- (b) Sponsorship of a national research program on trafficking and establishment of a data collection system for monitoring and evaluation purposes;

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- (c) Provision of necessary technical and material support services to appropriate government agencies and non-government organizations (NGOs);
  - (d) Sponsorship of conferences and seminars to provide venue for consensus building amongst the public, the academe, government, NGOs and international organizations; and
  - (e) Promotion of information and education campaign on trafficking.

**Section 16. Programs that Address Trafficking in Persons.** - The government shall establish and implement preventive, protective and rehabilitative programs for trafficked persons. For this purpose, the following agencies are hereby mandated to implement the following programs;

- (a) Department of Foreign Affairs (DFA) - shall make available its resources and facilities overseas for trafficked persons regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs.

The DFA shall take necessary measures for the efficient implementation of the Machine Readable Passports to protect the integrity of Philippine passports, visas and other travel documents to reduce the incidence of trafficking through the use of fraudulent identification documents.

It shall establish and implement a pre-marriage, on-site and pre-departure counseling program on intermarriages.

- (b) Department of Social Welfare and Development (DSWD) - shall implement rehabilitative and protective programs for trafficked persons. It shall provide counseling and temporary shelter to trafficked persons and develop a system for

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accreditation among NGOs for purposes of establishing centers and programs for intervention in various levels of the community.

- (c) Department of Labor and Employment (DOLE) - shall ensure the strict implementation and compliance with the rules and guidelines relative to the employment of persons locally and overseas. It shall likewise monitor, document and report cases of trafficking in persons involving employers and labor recruiters.
- (d) Department of Justice (DOJ) - shall ensure the prosecution of persons accused of trafficking and designate and train special prosecutors who shall handle and prosecute cases of trafficking. It shall also establish a mechanism for free legal assistance for trafficked persons, in coordination with the DSWD, Integrated Bar of the Philippines (IBP) and other NGOs and volunteer groups.
- (e) National Commission on the Role of Filipino Women (NCRFW) - shall actively participate and coordinate in the formulation and monitoring of policies addressing the issue of trafficking in persons in coordination with relevant government agencies. It shall likewise advocate for the inclusion of the issue of trafficking in persons in both its local and international advocacy for women's issues.
- (f) Bureau of Immigration (BI) - shall strictly administer and enforce immigration and alien administration laws. It shall adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure and shall ensure compliance by the Filipino fiancés/fiancées and spouses of foreign nationals with the guidance and counseling requirement as provided for in this Act.
- (g) Philippine National Police (PNP) - shall be the primary law enforcement agency to undertake surveillance, investigation and arrest of individuals or persons suspected to be engaged in trafficking. It shall closely coordinate with various law

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enforcement agencies to secure concerted efforts for effective investigation and apprehension of suspected traffickers. It shall also establish a system to receive complaints and calls to assist trafficked persons and conduct rescue operations.

- (h) Philippine Overseas Employment Administration (POEA)
  - shall implement an effective pre-employment orientation seminars and pre-departure counseling programs to applicants for overseas employment. It shall likewise formulate a system of providing free legal assistance to trafficked persons.
- (i) Department of the Interior and Local Government (DILG)
  - shall institute a systematic information and prevention campaign and likewise maintain a databank for the effective monitoring, documentation and prosecution of cases on trafficking in persons.
- (j) Local government units (LGUs) - shall monitor and document cases of trafficking in persons in their areas of jurisdiction, effect the cancellation of licenses of establishments which violate the provisions of this Act and ensure effective prosecution of such cases. They shall also undertake an information campaign against trafficking in persons through the establishment of the Migrants Advisory and Information Network (MAIN) desks in municipalities or provinces in coordination with DILG, Philippine Information Agency (PIA), Commission on Filipinos Overseas (CFO), NGOs and other concerned agencies. They shall encourage and support community based initiatives which address the trafficking in persons.

In implementing this Act, the agencies concerned may seek and enlist the assistance of NGOs, people's organizations (Pos), civic organizations and other volunteer groups.

**Section 17. Legal Protection to Trafficked Persons.** - Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such shall not be penalized for crimes directly related to the

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acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.

**Section 18. Preferential Entitlement Under the Witness Protection Program.** - Any provision of Republic Act No. 6981 to the contrary notwithstanding, any trafficked person shall be entitled to the witness protection program provided therein.

**Section 19. Trafficked Persons Who are Foreign Nationals.** - Subject to the guidelines issued by the Council, trafficked persons in the Philippines who are nationals of a foreign country shall also be entitled to appropriate protection, assistance and services available to trafficked persons under this Act: Provided, That they shall be permitted continued presence in the Philippines for a length of time prescribed by the Council as necessary to effect the prosecution of offenders.

**Section 20. Inter-Agency Council Against Trafficking.** - There is hereby established an Inter-Agency Council Against Trafficking, to be composed of the Secretary of the Department of Justice as Chairperson and the Secretary of the Department of Social Welfare and Development as Co-Chairperson and shall have the following as members:

- (a) Secretary, Department of Foreign Affairs;
- (b) Secretary, Department of Labor and Employment;
- (c) Administrator, Philippine Overseas Employment Administration;
- (d) Commissioner, Bureau of Immigration;
- (e) Director-General, Philippine National Police;
- (f) Chairperson, National Commission on the Role of Filipino Women; and

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- (g) Three (3) representatives from NGOs, who shall be composed of one (1) representative each from among the sectors representing women, overseas Filipino workers (OFWs) and children, with a proven record of involvement in the prevention and suppression of trafficking in persons. These representatives shall be nominated by the government agency representatives of the Council, for appointment by the President for a term of three (3) years.

The members of the Council may designate their permanent representatives who shall have a rank not lower than an assistant secretary or its equivalent to meetings, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting, rules and regulations.

**Section 21. Functions of the Council.** - The Council shall have the following powers and functions:

- (a) Formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons;
- (b) Promulgate rules and regulations as may be necessary for the effective implementation of this Act;
- (c) Monitor and oversee the strict implementation of this Act;
- (d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;
- (e) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the LGUs, concerned agencies, and NGOs;
- (f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;



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- (g) Assist in filing of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act;
  - (h) Formulate a program for the reintegration of trafficked persons in cooperation with DOLE, DSWD, Technical Education and Skills Development Authority (TESDA), Commission on Higher Education (CHED), LGUs and NGOs;
  - (i) Secure from any department, bureau, office, agency, or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement this Act;
  - (j) Complement the shared government information system for migration established under Republic Act No. 8042, otherwise known as the “Migrant Workers and Overseas Filipinos Act of 1995” with data on cases of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and program direction;
  - (k) Develop the mechanism to ensure the timely, coordinated, and effective response to cases of trafficking in persons;
  - (l) Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress international trafficking in persons;
  - (m) Coordinate with the Department of Transportation and Communications (DOTC), Department of Trade and Industry (DTI), and other NGOs in monitoring the promotion of advertisement of trafficking in the internet;
  - (n) Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;

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- (o) Initiate training programs in identifying and providing the necessary intervention or assistance to trafficked persons; and
  - (p) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of this Act.

**Section 22. Secretariat to the Council.** - The Department of Justice shall establish the necessary Secretariat for the Council.

**Section 23. Mandatory Services to Trafficked Persons.** - To ensure recovery, rehabilitation and reintegration into the mainstream of society, concerned government agencies shall make available the following services to trafficked persons:

- (a) Emergency shelter or appropriate housing;
- (b) Counseling;
- (c) Free legal services which shall include information about the victims' rights and the procedure for filing complaints, claiming compensation and such other legal remedies available to them, in a language understood by the trafficked person;
- (d) Medical or psychological services;
- (e) Livelihood and skills training; and
- (f) Educational assistance to a trafficked child.

Sustained supervision and follow through mechanism that will track the progress of recovery, rehabilitation and reintegration of the trafficked persons shall be adopted and carried out.

**Section 24. Other Services for Trafficked Persons.** -

- (a) Legal Assistance. - Trafficked persons shall be considered under the category "Overseas Filipino in Distress" and may

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avail of the legal assistance created by Republic Act No. 8042, subject to the guidelines as provided by law.

- (b) Overseas Filipino Resource Centers. - The services available to overseas Filipinos as provided for by Republic Act No. 8042 shall also be extended to trafficked persons regardless of their immigration status in the host country.
- (c) The Country Team Approach. - The country team approach under Executive Order No. 74 of 1993, shall be the operational scheme under which Philippine embassies abroad shall provide protection to trafficked persons insofar as the promotion of their welfare, dignity and fundamental rights are concerned.

**Section 25. Repatriation of Trafficked Persons.** - The DFA, in coordination with DOLE and other appropriate agencies, shall have the primary responsibility for the repatriation of trafficked persons, regardless of whether they are documented or undocumented.

If, however, the repatriation of the trafficked persons shall expose the victims to greater risks, the DFA shall make representation with the host government for the extension of appropriate residency permits and protection, as may be legally permissible in the host country.

**Section 26. Extradition.** - The DOJ, in consultation with DFA, shall endeavor to include offenses of trafficking in persons among extraditable offenses.

**Section 27. Reporting Requirements.** - The Council shall submit to the President of the Philippines and to Congress an annual report of the policies, programs and activities relative to the implementation of this Act.

**Section 28. Funding.** - The heads of the departments and agencies concerned shall immediately include in their programs and issue such rules and regulations to implement the provisions of this Act, the funding of which shall be included in the annual General Appropriations Act.

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**Section 29. Implementing Rules and Regulations.** - The Council shall promulgate the necessary implementing rules and regulations within sixty (60) days from the effectivity of this Act.

**Section 30. Non-restriction of Freedom of Speech and of Association, Religion and the Right to Travel.** - Nothing in this Act shall be interpreted as a restriction of the freedom of speech and of association, religion and the right to travel for purposes not contrary to law as guaranteed by the Constitution.

**Section 31. Separability Clause.** - If, for any reason, any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby.

**Section 32. Repealing clause.** - All laws, presidential decrees, executive orders and rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly: Provided, That this Act shall not in any way amend or repeal the provision of Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act".

**Section 33. Effectivity.** - This Act shall take effect fifteen (15) days from the date of its complete publication in at least two (2) newspapers of general circulation.

Approved,

FRANKLIN DRILON  
President of the Senate

JOSE DE VENECIA JR.  
Speaker of the House of Representatives

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This Act, which is a consolidation of Senate Bill No. 2444 and House Bill No. 4432 was finally passed by the Senate and the House of Representatives on May 12, 2003 respectively.

OSCAR G. YABES  
Secretary of Senate

ROBERTO P. NAZARENO  
Secretary General  
House of Representatives

Approved: May 26, 2003.

GLORIA MACAPAGAL-ARROYO  
President of the Philippines

**Republic Act No. 9262**  
**March 08, 2004**

**AN ACT DEFINING VIOLENCE AGAINST WOMEN AND  
THEIR CHILDREN, PROVIDING FOR PROTECTIVE  
MEASURES FOR VICTIMS, PRESCRIBING PENALTIES  
THEREFORE, AND FOR OTHER PURPOSES**

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

**SECTION 1. Short Title.-** This Act shall be known as the “Anti-Violence Against Women and Their Children Act of 2004”.

**SECTION 2. Declaration of Policy.-** It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.

Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights, the convention on the Elimination of all forms of discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.

**SECTION 3. Definition of Terms.- As used in this Act,**

- (a) “Violence against women and their children” refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child

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whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

- A. “Physical Violence” refers to acts that include bodily or physical harm;
- B. “Sexual violence” refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:
  - a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim’s body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;
  - b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;
  - c) Prostituting the woman or child.
- C. “Psychological violence” refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

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- D. “Economic abuse” refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:
1. withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;
  2. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
  3. destroying household property;
  4. controlling the victims’ own money or properties or solely controlling the conjugal money or properties.
- (b) “Battery” refers to an act of inflicting physical harm upon the woman or her child resulting to the physical and psychological or emotional distress.
- (c) “Battered Woman Syndrome” refers to a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse.
- (d) “Stalking” refers to an intentional act committed by a person who, knowingly and without lawful justification follows the woman or her child or places the woman or her child under surveillance directly or indirectly or a combination thereof.
- (e) “Dating relationship” refers to a situation wherein the parties live as husband and wife without the benefit of marriage or are romantically involved over time and on a continuing basis during the course of the relationship. A casual acquaintance or ordinary socialization between two individuals in a business or social context is not a dating relationship.



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- (f) “Sexual relations” refers to a single sexual act which may or may not result in the bearing of a common child.
  - (g) “Safe place or shelter” refers to any home or institution maintained or managed by the Department of Social Welfare and Development (DSWD) or by any other agency or voluntary organization accredited by the DSWD for the purposes of this Act or any other suitable place the resident of which is willing temporarily to receive the victim.
  - (h) “Children” refers to those below eighteen (18) years of age or older but are incapable of taking care of themselves as defined under Republic Act No. 7610. As used in this Act, it includes the biological children of the victim and other children under her care.

**SECTION 4. Construction.-** This Act shall be liberally construed to promote the protection and safety of victims of violence against women and their children.

**SECTION 5. Acts of Violence Against Women and Their Children.-** The crime of violence against women and their children is committed through any of the following acts:

- (a) Causing physical harm to the woman or her child;
- (b) Threatening to cause the woman or her child physical harm;
- (c) Attempting to cause the woman or her child physical harm;
- (d) Placing the woman or her child in fear of imminent physical harm;
- (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman’s or her child’s freedom of movement or conduct by force or threat of force, physical or

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other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

- (1) Threatening to deprive or actually depriving the woman or her child of custody to her/his family;
- (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
- (3) Depriving or threatening to deprive the woman or her child of a legal right;
- (4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;
- (f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;
- (g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;
- (h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:
  - (1) Stalking or following the woman or her child in public or private places;

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- (2) Peering in the window or lingering outside the residence of the woman or her child;
  - (3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
  - (4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and
  - (5) Engaging in any form of harassment or violence;
    - (i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children.

**SECTION 6. Penalties.-** The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

- (a) Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code;

If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of prison mayor; those constituting less serious physical injuries shall be punished by prison correccional; and those constituting slight physical injuries shall be punished by arresto mayor.

Acts falling under Section 5(b) shall be punished by imprisonment of two degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than arresto mayor.

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- (b) Acts falling under Section 5(c) and 5(d) shall be punished by arresto mayor;
  - (c) Acts falling under Section 5(e) shall be punished by prision correccional;
  - (d) Acts falling under Section 5(f) shall be punished by arresto mayor;
  - (e) Acts falling under Section 5(g) shall be punished by prision mayor; and
  - (f) Acts falling under Section 5(h) and Section 5(i) shall be punished by prision mayor.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in the section.

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (P100,000.00) but not more than three hundred thousand pesos (300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

**SECTION 7. Venue.-** The Regional Trial Court designated as a Family Court shall have original and exclusive jurisdiction over cases of violence against women and their children under this law. In the absence of such court in the place where the offense was committed, the case shall be filed in the Regional Trial Court where the crime or any of its elements was committed at the option of the compliant.

**SECTION 8. Protection Orders.-** A protection order is an order issued under this act for the purpose of preventing further acts of violence against a woman or her child specified in Section 5 of this Act and granting other necessary relief. The relief granted under a protection order serve the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently

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regain control over her life. The provisions of the protection order shall be enforced by law enforcement agencies. The protection orders that may be issued under this Act are the barangay protection order (BPO), temporary protection order (TPO) and permanent protection order (PPO). The protection orders that may be issued under this Act shall include any, some or all of the following reliefs:

- (a) Prohibition of the respondent from threatening to commit or committing, personally or through another, any of the acts mentioned in Section 5 of this Act;
- (b) Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or indirectly;
- (c) Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence, either temporarily for the purpose of protecting the petitioner, or permanently where no property rights are violated, and if respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent has gathered his things and escort respondent from the residence;
- (d) Directing the respondent to stay away from petitioner and designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member;
- (e) Directing lawful possession and use by petitioner of an automobile and other essential personal effects, regardless of ownership, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to the possession of the automobile and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

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- (f) Granting a temporary or permanent custody of a child/children to the petitioner;
  - (g) Directing the respondent to provide support to the woman and/or her child if entitled to legal support. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer for the same to be automatically remitted directly to the woman. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;
  - (h) Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same to the court for appropriate disposition by the court, including revocation of license and disqualification to apply for any license to use or possess a firearm. If the offender is a law enforcement agent, the court shall order the offender to surrender his firearm and shall direct the appropriate authority to investigate on the offender and take appropriate action on matter;
  - (i) Restitution for actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, childcare expenses and loss of income;
  - (j) Directing the DSWD or any appropriate agency to provide petitioner may need; and
  - (k) Provision of such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member, provided petitioner and any designated family or household member consents to such relief.

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Any of the reliefs provided under this section shall be granted even in the absence of a decree of legal separation or annulment or declaration of absolute nullity of marriage.

The issuance of a BPO or the pendency of an application for BPO shall not preclude a petitioner from applying for, or the court from granting a TPO or PPO.

**SECTION 9. Who may file Petition for Protection Orders.** – A petition for protection order may be filed by any of the following:

- (a) the offended party;
- (b) parents or guardians of the offended party;
- (c) ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity;
- (d) officers or social workers of the DSWD or social workers of local government units (LGUs);
- (e) police officers, preferably those in charge of women and children's desks;
- (f) Punong Barangay or Barangay Kagawad;
- (g) lawyer, counselor, therapist or healthcare provider of the petitioner; and
- (h) At least two (2) concerned responsible citizens of the city or municipality where the violence against women and their children occurred and who has personal knowledge of the offense committed.

**SECTION 10. Where to Apply for a Protection Order.** – Applications for BPOs shall follow the rules on venue under Section 409 of the Local Government Code of 1991 and its implementing rules and regulations. An application for a TPO or PPO may be filed in the regional trial court, metropolitan trial court, municipal trial court,

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municipal circuit trial court with territorial jurisdiction over the place of residence of the petitioner: Provided, however, That if a family court exists in the place of residence of the petitioner, the application shall be filed with that court.

**SECTION 11. How to Apply for a Protection Order.** – The application for a protection order must be in writing, signed and verified under oath by the applicant. It may be filed as an independent action or as incidental relief in any civil or criminal case the subject matter or issues thereof partakes of a violence as described in this Act. A standard protection order application form, written in English with translation to the major local languages, shall be made available to facilitate applications for protections order, and shall contain, among other, the following information:

- (a) names and addresses of petitioner and respondent;
- (b) description of relationships between petitioner and respondent;
- (c) a statement of the circumstances of the abuse;
- (d) description of the reliefs requested by petitioner as specified in Section 8 herein;
- (e) request for counsel and reasons for such;
- (f) request for waiver of application fees until hearing; and
- (g) an attestation that there is no pending application for a protection order in another court.

If the applicants is not the victim, the application must be accompanied by an affidavit of the applicant attesting to (a) the circumstances of the abuse suffered by the victim and (b) the circumstances of consent given by the victim for the filling of the application. When disclosure of the address of the victim will pose danger to her life, it shall be so stated in the application. In such a case, the applicant shall attest that the victim is residing in the municipality or city over which court



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has territorial jurisdiction, and shall provide a mailing address for purpose of service processing.

An application for protection order filed with a court shall be considered an application for both a TPO and PPO.

Barangay officials and court personnel shall assist applicants in the preparation of the application. Law enforcement agents shall also extend assistance in the application for protection orders in cases brought to their attention.

**SECTION 12. Enforceability of Protection Orders.** – All TPOs and PPOs issued under this Act shall be enforceable anywhere in the Philippines and a violation thereof shall be punishable with a fine ranging from Five Thousand Pesos (P5,000.00) to Fifty Thousand Pesos (P50,000.00) and/or imprisonment of six (6) months.

**SECTION 13. Legal Representation of Petitioners for Protection Order.** – If the woman or her child requests in the applications for a protection order for the appointment of counsel because of lack of economic means to hire a counsel de parte, the court shall immediately direct the Public Attorney's Office (PAO) to represent the petitioner in the hearing on the application. If the PAO determines that the applicant can afford to hire the services of a counsel de parte, it shall facilitate the legal representation of the petitioner by a counsel de parte. The lack of access to family or conjugal resources by the applicant, such as when the same are controlled by the perpetrator, shall qualify the petitioner to legal representation by the PAO.

However, a private counsel offering free legal service is not barred from representing the petitioner.

**SECTION 14. Barangay Protection Orders (BPOs); Who May Issue and How.** - Barangay Protection Orders (BPOs) refer to the protection order issued by the Punong Barangay ordering the perpetrator to desist from committing acts under Section 5 (a) and (b) of this Act. A Punong Barangay who receives applications for a BPO shall issue the protection order to the applicant on the date of filing after ex parte determination of the basis of the application. If

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the Punong Barangay is unavailable to act on the application for a BPO, the application shall be acted upon by any available Barangay Kagawad. If the BPO is issued by a Barangay Kagawad the order must be accompanied by an attestation by the Barangay Kagawad that the Punong Barangay was unavailable at the time for the issuance of the BPO. BPOs shall be effective for fifteen (15) days. Immediately after the issuance of an ex parte BPO, the Punong Barangay or Barangay Kagawad shall personally serve a copy of the same on the respondent, or direct any barangay official to effect is personal service.

The parties may be accompanied by a non-lawyer advocate in any proceeding before the Punong Barangay.

**SECTION 15. Temporary Protection Orders.**—Temporary Protection Orders (TPOs) refers to the protection order issued by the court on the date of filing of the application after ex parte determination that such order should be issued. A court may grant in a TPO any, some or all of the reliefs mentioned in this Act and shall be effective for thirty (30) days. The court shall schedule a hearing on the issuance of a PPO prior to or on the date of the expiration of the TPO. The court shall order the immediate personal service of the TPO on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service. The TPO shall include notice of the date of the hearing on the merits of the issuance of a PPO.

**SECTION 16. Permanent Protection Orders.** – Permanent Protection Order (PPO) refers to protection order issued by the court after notice and hearing.

Respondents non-appearance despite proper notice, or his lack of a lawyer, or the non-availability of his lawyer shall not be a ground for rescheduling or postponing the hearing on the merits of the issuance of a PPO. If the respondents appears without counsel on the date of the hearing on the PPO, the court shall appoint a lawyer for the respondent and immediately proceed with the hearing. In case the respondent fails to appear despite proper notice, the court shall allow ex parte presentation of the evidence by the applicant and render judgment on the basis of the evidence presented. The court

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shall allow the introduction of any history of abusive conduct of a respondent even if the same was not directed against the applicant or the person for whom the applicant is made.

The court shall, to the extent possible, conduct the hearing on the merits of the issuance of a PPO in one (1) day. Where the court is unable to conduct the hearing within one (1) day and the TPO issued is due to expire, the court shall continuously extend or renew the TPO for a period of thirty (30) days at each particular time until final judgment is issued. The extended or renewed TPO may be modified by the court as may be necessary or applicable to address the needs of the applicant.

The court may grant any, some or all of the reliefs specified in Section 8 hereof in a PPO. A PPO shall be effective until revoked by a court upon application of the person in whose favor the order was issued. The court shall ensure immediate personal service of the PPO on respondent.

The court shall not deny the issuance of protection order on the basis of the lapse of time between the act of violence and the filing of the application.

Regardless of the conviction or acquittal of the respondent, the Court must determine whether or not the PPO shall become final. Even in a dismissal, a PPO shall be granted as long as there is no clear showing that the act from which the order might arise did not exist.

**SECTION 17. Notice of Sanction in Protection Orders.** – The following statement must be printed in bold-faced type or in capital letters on the protection order issued by the Punong Barangay or court:

**“VIOLATION OF THIS ORDER IS PUNISHABLE BY LAW.”**

**SECTION 18. Mandatory Period For Acting on Applications For Protection Orders** – Failure to act on an application for a protection order within the reglementary period specified in the previous

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section without justifiable cause shall render the official or judge administratively liable.

**SECTION 19. Legal Separation Cases.** – In cases of legal separation, where violence as specified in this Act is alleged, Article 58 of the Family Code shall not apply. The court shall proceed on the main case and other incidents of the case as soon as possible. The hearing on any application for a protection order filed by the petitioner must be conducted within the mandatory period specified in this Act.

**SECTION 20. Priority of Application for a Protection Order.** – Ex parte and adversarial hearings to determine the basis of applications for a protection order under this Act shall have priority over all other proceedings. Barangay officials and the courts shall schedule and conduct hearings on applications for a protection order under this Act above all other business and, if necessary, suspend other proceedings in order to hear applications for a protection order.

**SECTION 21. Violation of Protection Orders.** – A complaint for a violation of a BPO issued under this Act must be filed directly with any municipal trial court, metropolitan trial court, or municipal circuit trial court that has territorial jurisdiction over the barangay that issued the BPO. Violation of a BPO shall be punishable by imprisonment of thirty (30) days without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.

A judgement of violation of a BPO may be appealed according to the Rules of Court. During trial and upon judgment, the trial court may *motu proprio* issue a protection order as it deems necessary without need of an application.

Violation of any provision of a TPO or PPO issued under this Act shall constitute contempt of court punishable under Rule 71 of the Rules of Court, without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.

**SECTION 22. Applicability of Protection Orders to Criminal Cases.** – The foregoing provisions on protection orders shall be

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applicable in impliedly instituted with the criminal actions involving violence against women and their children.

**SECTION 23. Bond to Keep the Peace.** – The Court may order any person against whom a protection order is issued to give a bond to keep the peace, to present two sufficient sureties who shall undertake that such person will not commit the violence sought to be prevented.

Should the respondent fail to give the bond as required, he shall be detained for a period which shall in no case exceed six (6) months, if he shall have been prosecuted for acts punishable under Section 5(a) to 5(f) and not exceeding thirty (30) days, if for acts punishable under Section 5(g) to 5(l).

The protection orders referred to in this section are the TPOs and the PPOs issued only by the courts.

**SECTION 24. Prescriptive Period.** – Acts falling under Sections 5(a) to 5(f) shall prescribe in twenty (20) years. Acts falling under Sections 5(g) to 5(l) shall prescribe in ten (10) years.

**SECTION 25. Public Crime.** – Violence against women and their children shall be considered a public offense which may be prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.

**SECTION 26. Battered Woman Syndrome as a Defense.** – Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code.

In the determination of the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrists/ psychologists.

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**SECTION 27. Prohibited Defense.** – Being under the influence of alcohol, any illicit drug, or any other mind-altering substance shall not be a defense under this Act.

**SECTION 28. Custody of children.** – The woman victim of violence shall be entitled to the custody and support of her child/children. Children below seven (7) years old older but with mental or physical disabilities shall automatically be given to the mother, with right to support, unless the court finds compelling reasons to order otherwise.

A victim who is suffering from battered woman syndrome shall not be disqualified from having custody of her children. In no case shall custody of minor children be given to the perpetrator of a woman who is suffering from Battered woman syndrome.

**SECTION 29. Duties of Prosecutors/Court Personnel.** – Prosecutors and court personnel should observe the following duties when dealing with victims under this Act:

- a) communicate with the victim in a language understood by the woman or her child; and
- b) inform the victim of her/his rights including legal remedies available and procedure, and privileges for indigent litigants.

**SECTION 30. Duties of Barangay Officials and Law Enforcers.** – Barangay officials and law enforcers shall have the following duties:

- (a) respond immediately to a call for help or request for assistance or protection of the victim by entering the necessary whether or not a protection order has been issued and ensure the safety of the victim/s;
- (b) confiscate any deadly weapon in the possession of the perpetrator or within plain view;
- (c) transport or escort the victim/s to a safe place of their choice or to a clinic or hospital;

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- (d) assist the victim in removing personal belongs from the house;
  - (e) assist the barangay officials and other government officers and employees who respond to a call for help;
  - (f) ensure the enforcement of the Protection Orders issued by the Punong Barangy or the courts;
  - (g) arrest the suspected perpetrator wiithout a warrant when any of the acts of violence defined by this Act is occurring, or when he/she has personal knowledge that any act of abuse has just been committed, and there is imminent danger to the life or limb of the victim as defined in this Act; and
  - (h) immediately report the call for assessment or assistance of the DSWD, social Welfare Department of LGUs or accredited non-government organizations (NGOs).

Any barangay official or law enforcer who fails to report the incident shall be liable for a fine not exceeding Ten Thousand Pesos (P10,000.00) or whenever applicable criminal, civil or administrative liability.

**SECTION 31. Healthcare Provider Response to Abuse** – Any healthcare provider, including, but not limited to, an attending physician, nurse, clinician, barangay health worker, therapist or counselor who suspects abuse or has been informed by the victim of violence shall:

- (a) properly document any of the victim's physical, emotional or psychological injuries;
- (b) properly record any of victim's suspicions, observations and circumstances of the examination or visit;
- (c) automatically provide the victim free of charge a medical certificate concerning the examination or visit;

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- (d) safeguard the records and make them available to the victim upon request at actual cost; and
  - (e) provide the victim immediate and adequate notice of rights and remedies provided under this Act, and services available to them.

**SECTION 32. Duties of Other Government Agencies and LGUs**

– Other government agencies and LGUs shall establish programs such as, but not limited to, education and information campaign and seminars or symposia on the nature, causes, incidence and consequences of such violence particularly towards educating the public on its social impacts.

It shall be the duty of the concerned government agencies and LGU's to ensure the sustained education and training of their officers and personnel on the prevention of violence against women and their children under the Act.

**SECTION 33. Prohibited Acts.** – A Punong Barangay, Barangay Kagawad or the court hearing an application for a protection order shall not order, direct, force or in any way unduly influence he applicant for a protection order to compromise or abandon any of the reliefs sought in the application for protection under this Act. Section 7 of the Family Courts Act of 1997 and Sections 410, 411, 412 and 413 of the Local Government Code of 1991 shall not apply in proceedings where relief is sought under this Act.

Failure to comply with this Section shall render the official or judge administratively liable.

**SECTION 34. Persons Intervening Exempt from Liability.** – In every case of violence against women and their children as herein defined, any person, private individual or police authority or barangay official who, acting in accordance with law, responds or intervenes without using violence or restraint greater than necessary to ensure the safety of the victim, shall not be liable for any criminal, civil or administrative liability resulting therefrom.



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**SECTION 35. Rights of Victims.** – In addition to their rights under existing laws, victims of violence against women and their children shall have the following rights:

- (a) to be treated with respect and dignity;
- (b) to avail of legal assistance form the PAO of the Department of Justice (DOJ) or any public legal assistance office;
- (c) To be entitled to support services form the DSWD and LGUs’
- (d) To be entitled to all legal remedies and support as provided for under the Family Code; and
- (e) To be informed of their rights and the services available to them including their right to apply for a protection order.

**SECTION 36. Damages.** – Any victim of violence under this Act shall be entitled to actual, compensatory, moral and exemplary damages.

**SECTION 37. Hold Departure Order.** – The court shall expedite the process of issuance of a hold departure order in cases prosecuted under this Act.

**SECTION 38. Exemption from Payment of Docket Fee and Other Expenses.** – If the victim is an indigent or there is an immediate necessity due to imminent danger or threat of danger to act on an application for a protection order, the court shall accept the application without payment of the filing fee and other fees and of transcript of stenographic notes.

**SECTION 39.** Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC). In pursuance of the abovementioned policy, there is hereby established an Inter-Agency Council on Violence Against Women and their children, hereinafter known as the Council, which shall be composed of the following agencies:

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- (a) Department of Social Welfare and Development (DSWD);
  - (b) National Commission on the Role of Filipino Women (NCRFW);
  - (c) Civil Service Commission (CSC);
  - (d) Commission on Human rights (CHR)
  - (e) Council for the Welfare of Children (CWC);
  - (f) Department of Justice (DOJ);
  - (g) Department of the Interior and Local Government (DILG);
  - (h) Philippine National Police (PNP);
  - (i) Department of Health (DOH);
  - (j) Department of Education (DepEd);
  - (k) Department of Labor and Employment (DOLE); and
  - (l) National Bureau of Investigation (NBI).

These agencies are tasked to formulate programs and projects to eliminate VAW based on their mandates as well as develop capability programs for their employees to become more sensitive to the needs of their clients. The Council will also serve as the monitoring body as regards to VAW initiatives.

The Council members may designate their duly authorized representative who shall have a rank not lower than an assistant secretary or its equivalent. These representatives shall attend Council meetings in their behalf, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.

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**SECTION 40. Mandatory Programs and Services for Victims. –**

The DSWD, and LGU's shall provide the victims temporary shelters, provide counseling, psycho-social services and / or, recovery, rehabilitation programs and livelihood assistance.

**The DOH shall provide medical assistance to victims.**

**SECTION 41. Counseling and Treatment of Offenders. –**

The DSWD shall provide rehabilitative counseling and treatment to perpetrators towards learning constructive ways of coping with anger and emotional outbursts and reforming their ways. When necessary, the offender shall be ordered by the Court to submit to psychiatric treatment or confinement.

**SECTION 42. Training of Persons Involved in Responding to Violence Against Women and their Children Cases. –**

All agencies involved in responding to violence against women and their children cases shall be required to undergo education and training to acquaint them with:

- a. the nature, extend and causes of violence against women and their children;
- b. the legal rights of, and remedies available to, victims of violence against women and their children;
- c. the services and facilities available to victims or survivors;
- d. the legal duties imposed on police officers to make arrest and to offer protection and assistance; and
- e. techniques for handling incidents of violence against women and their children that minimize the likelihood of injury to the officer and promote the safety of the victim or survivor.

The PNP, in coordination with LGU's shall establish an education and training program for police officers and barangay officials to enable them to properly handle cases of violence against women and their children.

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**SECTION 43. Entitled to Leave.** – Victims under this Act shall be entitled to take a paid leave of absence up to ten (10) days in addition to other paid leaves under the Labor Code and Civil Service Rules and Regulations, extendible when the necessity arises as specified in the protection order.

Any employer who shall prejudice the right of the person under this section shall be penalized in accordance with the provisions of the Labor Code and Civil Service Rules and Regulations. Likewise, an employer who shall prejudice any person for assisting a co-employee who is a victim under this Act shall likewise be liable for discrimination.

**SECTION 44. Confidentiality.** – All records pertaining to cases of violence against women and their children including those in the barangay shall be confidential and all public officers and employees and public or private clinics to hospitals shall respect the right to privacy of the victim. Whoever publishes or causes to be published, in any format, the name, address, telephone number, school, business address, employer, or other identifying information of a victim or an immediate family member, without the latter's consent, shall be liable to the contempt power of the court.

Any person who violates this provision shall suffer the penalty of one (1) year imprisonment and a fine of not more than Five Hundred Thousand pesos (P500,000.00).

**SECTION 45. Funding** – The amount necessary to implement the provisions of this Act shall be included in the annual General Appropriations Act (GAA).

The Gender and Development (GAD) Budget of the mandated agencies and LGU's shall be used to implement services for victim of violence against women and their children.

**SECTION 46. Implementing Rules and Regulations.** – Within six (6) months from the approval of this Act, the DOJ, the NCRFW, the DSWD, the DILG, the DOH, and the PNP, and three (3) representatives from NGOs to be identified by the NCRFW, shall promulgate the Implementing Rules and Regulations (IRR) of this Act.

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**SECTION 47. Suppletory Application** – For purposes of this Act, the Revised Penal Code and other applicable laws, shall have suppletory application.

**SECTION 48. Separability Clause.** – If any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions shall not be affected.

**SECTION 49. Repealing Clause** – All laws, Presidential decrees, executive orders and rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

**SECTION 50. Effectivity** – This Act shall take effect fifteen (15) days from the date of its complete publication in at least two (2) newspapers of general circulation.

Approved,

JOSE DE VENECIA JR.

Speaker of the House of Representatives

FRANKLIN DRILON

President of the Senate

This Act, which is a consolidation of Senate Bill No. 2723 and House Bill Nos. 5516 and 6054, was finally passed by the Senate and the House of Representatives on January 29, 2004 and February 2, 2004, respectively.

ROBERTO P. NAZARENO

Secretary General

House of Representatives

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OSCAR G. YABES  
Secretary of Senate

Approved: March 08, 2004

GLORIA MACAPAGAL-ARROYO  
President of the Philippines

## **Republic Act No. 9344**

# **AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM, CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES**

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

## **TITLE I**

### **GOVERNING PRINCIPLES**

#### **CHAPTER 1**

### **TITLE, POLICY AND DEFINITION OF TERMS**

**Section 1. Short Title and Scope.** - This Act shall be known as the “Juvenile Justice and Welfare Act of 2006.” It shall cover the different stages involving children at risk and children in conflict with the law from prevention to rehabilitation and reintegration.

**SEC. 2. Declaration of State Policy.** - The following State policies shall be observed at all times:

- (a) The State recognizes the vital role of children and youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.
- (b) The State shall protect the best interests of the child through measures that will ensure the observance of international standards of child protection, especially

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those to which the Philippines is a party. Proceedings before any authority shall be conducted in the best interest of the child and in a manner which allows the child to participate and to express himself/herself freely. The participation of children in the program and policy formulation and implementation related to juvenile justice and welfare shall be ensured by the concerned government agency.

- (c) The State likewise recognizes the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty and exploitation, and other conditions prejudicial to their development.
- (d) Pursuant to Article 40 of the United Nations Convention on the Rights of the Child, the State recognizes the right of every child alleged as, accused of, adjudged, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age and desirability of promoting his/her reintegration. Whenever appropriate and desirable, the State shall adopt measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. It shall ensure that children are dealt with in a manner appropriate to their well-being by providing for, among others, a variety of disposition measures such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care.
- (e) The administration of the juvenile justice and welfare system shall take into consideration the cultural and religious perspectives of the Filipino people, particularly the indigenous peoples and the Muslims, consistent with the protection of the rights of children belonging to these communities.
- (f) The State shall apply the principles of restorative justice in all its laws, policies and programs applicable to children in conflict with the law.



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**SEC. 3. Liberal Construction of this Act.** - In case of doubt, the interpretation of any of the provisions of this Act, including its implementing rules and regulations (IRRs), shall be construed liberally in favor of the child in conflict with the law.

**SEC. 4. Definition of Terms.** - The following terms as used in this Act shall be defined as follows:

- (a) “Bail” refers to the security given for the release of the person in custody of the law, furnished by him/her or a bondsman, to guarantee his/her appearance before any court. Bail may be given in the form of corporate security, property bond, cash deposit, or recognizance.
- (b) “Best Interest of the Child” refers to the totality of the circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child’s physical, psychological and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child.
- (e) “Child” refers to a person under the age of eighteen (18) years.
- (d) “Child at Risk” refers to a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances, such as, but not limited to, the following:
  - (1) being abused by any person through sexual, physical, psychological, mental, economic or any other means and the parents or guardian refuse, are unwilling, or unable to provide protection for the child;
  - (2) being exploited including sexually or economically;
  - (3) being abandoned or neglected, and after diligent search and inquiry, the parent or guardian cannot be found;

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- (4) coming from a dysfunctional or broken family or without a parent or guardian;
  - (5) being out of school;
  - (6) being a streetchild;
  - (7) being a member of a gang;
  - (8) living in a community with a high level of criminality or drug abuse; and
  - (9) living in situations of armed conflict.
- (e) “Child in Conflict with the Law” refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.
  - (f) “Community-based Programs” refers to the programs provided in a community setting developed for purposes of intervention and diversion, as well as rehabilitation of the child in conflict with the law, for reintegration into his/her family and/or community.
  - (g) “Court” refers to a family court or, in places where there are no family courts, any regional trial court.
  - (h) “Deprivation of Liberty” refers to any form of detention or imprisonment, or to the placement of a child in conflict with the law in a public or private custodial setting, from which the child in conflict with the law is not permitted to leave at will by order of any judicial or administrative authority.
  - (i) “Diversion” refers to an alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his/her social, cultural, economic, psychological or educational background without resorting to formal court proceedings.

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- (j) “Diversion Program” refers to the program that the child in conflict with the law is required to undergo after he/she is found responsible for an offense without resorting to formal court proceedings.
  - (k) “Initial Contact With-the Child” refers to the apprehension or taking into custody of a child in conflict with the law by law enforcement officers or private citizens. It includes the time when the child alleged to be in conflict with the law receives a subpoena under Section 3(b) of Rule 112 of the Revised Rules of Criminal Procedure or summons under Section 6(a) or Section 9(b) of the same Rule in cases that do not require preliminary investigation or where there is no necessity to place the child alleged to be in conflict with the law under immediate custody.
  - (l) “Intervention” refers to a series of activities which are designed to address issues that caused the child to commit an offense. It may take the form of an individualized treatment program which may include counseling, skills training, education, and other activities that will enhance his/her psychological, emotional and psycho-social well-being.
  - (m) “Juvenile Justice and Welfare System” refers to a system dealing with children at risk and children in conflict with the law, which provides child-appropriate proceedings, including programs and services for prevention, diversion, rehabilitation, re-integration and aftercare to ensure their normal growth and development.
  - (n) “Law Enforcement Officer” refers to the person in authority or his/her agent as defined in Article 152 of the Revised Penal Code, including a barangay tanod.
  - (o) “Offense” refers to any act or omission whether punishable under special laws or the Revised Penal Code, as amended.
  - (p) “Recognizance” refers to an undertaking in lieu of a bond assumed by a parent or custodian who shall be responsible

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for the appearance in court of the child in conflict with the law, when required.

- (q) “Restorative Justice” refers to a principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offender and the community. It seeks to obtain reparation for the victim; reconciliation of the offender, the offended and the community; and reassurance to the offender that he/she can be reintegrated into society. It also enhances public safety by activating the offender, the victim and the community in prevention strategies.
- (r) “Status Offenses” refers to offenses which discriminate only against a child, while an adult does not suffer any penalty for committing similar acts. These shall include curfew violations; truancy, parental disobedience and the like.
- (s) “Youth Detention Home” refers to a 24-hour child-caring institution managed by accredited local government units (LGUs) and licensed and/or accredited nongovernment organizations (NGOs) providing short-term residential care for children in conflict with the law who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.
- (t) “Youth Rehabilitation Center” refers to a 24-hour residential care facility managed by the Department of Social Welfare and Development (DSWD), LGUs, licensed and/or accredited NGOs monitored by the DSWD, which provides care, treatment and rehabilitation services for children in conflict with the law. Rehabilitation services are provided under the guidance of a trained staff where residents are cared for under a structured therapeutic environment with the end view of reintegrating them into their families and communities as socially functioning individuals. Physical mobility of residents of said centers may be restricted pending court disposition of the charges against them.

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- (u) “Victimless Crimes” refers to offenses where there is no private offended party.

## **CHAPTER 2**

### **PRINCIPLES IN THE ADMINISTRATION OF JUVENILE JUSTICE AND WELFARE**

**SEC. 5. Rights of the Child in Conflict with the Law.** - Every child in conflict with the law shall have the following rights, including but not limited to:

- (a) the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment;
- (b) the right not to be imposed a sentence of capital punishment or life imprisonment, without the possibility of release;
- (c) the right not to be deprived, unlawfully or arbitrarily, of his/her liberty; detention or imprisonment being a disposition of last resort, and which shall be for the shortest appropriate period of time;
- (d) the right to be treated with humanity and respect, for the inherent dignity of the person, and in a manner which takes into account the needs of a person of his/her age. In particular, a child deprived of liberty shall be separated from adult offenders at all times. No child shall be detained together with adult offenders. He/She shall be conveyed separately to or from court. He/She shall await hearing of his/her own case in a separate holding area. A child in conflict with the law shall have the right to maintain contact with his/her family through correspondence and visits, save in exceptional circumstances;
- (e) the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other

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competent, independent and impartial authority, and to a prompt decision on such action;

- (f) the right to bail and recognizance, in appropriate cases;
- (g) the right to testify as a witness in his/her own behalf under the rule on examination of a child witness;
- (h) the right to have his/her privacy respected fully at all stages of the proceedings;
- (i) the right to diversion if he/she is qualified and voluntarily avails of the same;
- (j) the right to be imposed a judgment in proportion to the gravity of the offense where his/her best interest, the rights of the victim and the needs of society are all taken into consideration by the court, under the principle of restorative justice;
- (k) the right to have restrictions on his/her personal liberty limited to the minimum, and where discretion is given by law to the judge to determine whether to impose fine or imprisonment, the imposition of fine being preferred as the more appropriate penalty;
- (l) in general, the right to automatic suspension of sentence;
- (m) the right to probation as an alternative to imprisonment, if qualified under the Probation Law;
- (n) the right to be free from liability for perjury, concealment or misrepresentation; and
- (o) other rights as provided for under existing laws, rules and regulations.

The State further adopts the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice

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or “Beijing Rules”, United Nations Guidelines for the Prevention of Juvenile Delinquency or the “Riyadh Guidelines”, and the United Nations Rules for the Protection of Juveniles Deprived of Liberty.

**SEC. 6. Minimum Age of Criminal Responsibility.** - A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

**SEC. 7. Determination of Age.** - The child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. The age of a child may be determined from the child’s birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

Any person contesting the age of the child in conflict with the law prior to the filing of the information in any appropriate court may file a case in a summary proceeding for the determination of age before the Family Court which shall decide the case within twenty-four (24) hours from receipt of the appropriate pleadings of all interested parties.

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If a case has been filed against the child in conflict with the law and is pending in the appropriate court, the person shall file a motion to determine the age of the child in the same court where the case is pending. Pending hearing on the said motion, proceedings on the main case shall be suspended.

In all proceedings, law enforcement officers, prosecutors, judges and other government officials concerned shall exert all efforts at determining the age of the child in conflict with the law.

## **TITLE II**

### **STRUCTURES IN THE ADMINISTRATION OF JUVENILE JUSTICE AND WELFARE**

**SEC. 8. Juvenile Justice and Welfare Council (JJWC).** - A Juvenile Justice and Welfare Council (JJWC) is hereby created and attached to the Department of Justice and placed under its administrative supervision. The JJWC shall be chaired by an undersecretary of the Department of Social Welfare and Development. It shall ensure the effective implementation of this Act and coordination among the following agencies:

- (a) Council for the Welfare of Children (CWC);
- (b) Department of Education (DepEd);
- (c) Department of the Interior and Local Government (DILG);
- (d) Public Attorney's Office (PAO);
- (e) Bureau of Corrections (BUCOR);
- (f) Parole and Probation Administration (PPA);
- (g) National Bureau of Investigation (NBI);
- (h) Philippine National Police (PNP);



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- (i) Bureau of Jail Management and Penology (BJMP);
  - (i) Commission on Human Rights (CHR);
  - (k) Technical Education and Skills Development Authority (TESDA);
  - (l) National Youth Commission (NYC); and
  - (m) Other institutions focused on juvenile justice and intervention programs.

The JJWC shall be composed of representatives, whose ranks shall not be lower than director, to be designated by the concerned heads of the following departments or agencies:

- (a) Department of Justice (DOJ);
- (b) Department of Social Welfare and Development (DSWD);
- (c) Council for the Welfare of Children (CWC);
- (d) Department of Education (DepEd);
- (e) Department of the Interior and Local Government (DILG);
- (f) Commission on Human Rights (CHR);
- (g) National Youth Commission (NYC); and
- (h) Two (2) representatives from NGOs, one to be designated by the Secretary of Justice and the other to be designated by the Secretary of Social Welfare and Development.

The JJWC shall convene within fifteen (15) days from the effectivity of this Act. The Secretary of Justice and the Secretary of Social Welfare and Development shall determine the organizational structure and staffing pattern of the JJWC.

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The JJWC shall coordinate with the Office of the Court Administrator and the Philippine Judicial Academy to ensure the realization of its mandate and the proper discharge of its duties and functions, as herein provided.

**SEC. 9. Duties and Functions of the JJWC.** - The JJWC shall have the following duties and functions:

- (a) To oversee the implementation of this Act;
- (b) To advise the President on all matters and policies relating to juvenile justice and welfare;
- (c) To assist the concerned agencies in the review and redrafting of existing policies/regulations or in the formulation of new ones in line with the provisions of this Act;
- (d) To periodically develop a comprehensive 3 to 5-year national juvenile intervention program, with the participation of government agencies concerned, NGOs and youth organizations;
- (e) To coordinate the implementation of the juvenile intervention programs and activities by national government agencies and other activities which may have an important bearing on the success of the entire national juvenile intervention program. All programs relating to juvenile justice and welfare shall be adopted in consultation with the JJWC;
- (f) To formulate and recommend policies and strategies in consultation with children for the prevention of juvenile delinquency and the administration of justice, as well as for the treatment and rehabilitation of the children in conflict with the law;
- (g) To collect relevant information and conduct continuing research and support evaluations and studies on all matters relating to juvenile justice and welfare, such as but not limited to:

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- (1) the performance and results achieved by juvenile intervention programs and by activities of the local government units and other government agencies;
  - (2) the periodic trends, problems and causes of juvenile delinquency and crimes; and
  - (3) the particular needs of children in conflict with the law in custody.

The data gathered shall be used by the JJWC in the improvement of the administration of juvenile justice and welfare system.

The JJWC shall set up a mechanism to ensure that children are involved in research and policy development.

- (h) Through duly designated persons and with the assistance of the agencies provided in the preceding section, to conduct regular inspections in detention and rehabilitation facilities and to undertake spot inspections on their own initiative in order to check compliance with the standards provided herein and to make the necessary recommendations to appropriate agencies;
- (i) To initiate and coordinate the conduct of trainings for the personnel of the agencies involved in the administration of the juvenile justice and welfare system and the juvenile intervention program;
- (j) To submit an annual report to the President on the implementation of this Act; and
- (k) To perform such other functions as may be necessary to implement the provisions of this Act.

**SEC. 10. Policies and Procedures on Juvenile Justice and Welfare.** - All government agencies enumerated in Section 8 shall, with the assistance of the JJWC and within one (1) year from the

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effectivity of this Act, draft policies and procedures consistent with the standards set in the law. These policies and procedures shall be modified accordingly in consultation with the JJWC upon the completion of the national juvenile intervention program as provided under Section 9 (d).

**SEC. 11. Child Rights Center (CRC).** - The existing Child Rights Center of the Commission on Human Rights shall ensure that the status, rights and interests of children are upheld in accordance with the Constitution and international instruments on human rights. The CHR shall strengthen the monitoring of government compliance of all treaty obligations, including the timely and regular submission of reports before the treaty bodies, as well as the implementation and dissemination of recommendations and conclusions by government agencies as well as NGOs and civil society.

### **TITLE III**

## **PREVENTION OF JUVENILE DELINQUENCY**

### **CHAPTER 1**

## **THE ROLE OF THE DIFFERENT SECTORS**

**SEC. 12. The Family.** - The family shall be responsible for the primary nurturing and rearing of children which is critical in delinquency prevention. As far as practicable and in accordance with the procedures of this Act, a child in conflict with the law shall be maintained in his/her family.

**SEC. 13. The Educational System.** - Educational institutions shall work together with families, community organizations and agencies in the prevention of juvenile delinquency and in the rehabilitation and reintegration of child in conflict with the law. Schools shall provide adequate, necessary and individualized educational schemes for children manifesting difficult behavior and children in conflict with the law. In cases where children in conflict with the law are taken into custody or detained in rehabilitation centers, they should be provided the opportunity to continue learning under an alternative

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learning system with basic literacy program or non- formal education accreditation equivalency system.

**SEC. 14. The Role of the Mass Media.** - The mass media shall play an active role in the promotion of child rights, and delinquency prevention by relaying consistent messages through a balanced approach. Media practitioners shall, therefore, have the duty to maintain the highest critical and professional standards in reporting and covering cases of children in conflict with the law. In all publicity concerning children, the best interest of the child should be the primordial and paramount concern. Any undue, inappropriate and sensationalized publicity of any case involving a child in conflict with the law is hereby declared a violation of the child's rights.

**SEC. 15. Establishment and Strengthening of Local Councils for the Protection of Children.** - Local Councils for the Protection of Children (LCPC) shall be established in all levels of local government, and where they have already been established, they shall be strengthened within one (1) year from the effectivity of this Act. Membership in the LCPC shall be chosen from among the responsible members of the community, including a representative from the youth sector, as well as representatives from government and private agencies concerned with the welfare of children.

The local council shall serve as the primary agency to coordinate with and assist the LGU concerned for the adoption of a comprehensive plan on delinquency prevention, and to oversee its proper implementation.

One percent (1%) of the internal revenue allotment of barangays, municipalities and cities shall be allocated for the strengthening and implementation of the programs of the LCPC: Provided, That the disbursement of the fund shall be made by the LGU concerned.

**SEC. 16. Appointment of Local Social Welfare and Development Officer.** - All LGUs shall appoint a duly licensed social worker as its local social welfare and development officer tasked to assist children in conflict with the law.

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**SEC. 17. The Sangguniang Kabataan.** - The Sangguniang Kabataan (SK) shall coordinate with the LCPC in the formulation and implementation of juvenile intervention and diversion programs in the community.

## **CHAPTER 2**

### **COMPREHENSIVE JUVENILE INTERVENTION PROGRAM**

**SEC. 18. Development of a Comprehensive Juvenile Intervention Program.** - A Comprehensive juvenile intervention program covering at least a 3-year period shall be instituted in LGUs from the barangay to the provincial level.

The LGUs shall set aside an amount necessary to implement their respective juvenile intervention programs in their annual budget.

The LGUs, in coordination with the LCPC, shall call on all sectors concerned, particularly the child-focused institutions, NGOs, people's organizations, educational institutions and government agencies involved in delinquency prevention to participate in the planning process and implementation of juvenile intervention programs. Such programs shall be implemented consistent with the national program formulated and designed by the JJWC. The implementation of the comprehensive juvenile intervention program shall be reviewed and assessed annually by the LGUs in coordination with the LCPC. Results of the assessment shall be submitted by the provincial and city governments to the JJWC not later than March 30 of every year.

**SEC. 19. Community-based Programs on Juvenile Justice and Welfare.** - Community-based programs on juvenile justice and welfare shall be instituted by the LGUs through the LCPC, school, youth organizations and other concerned agencies. The LGUs shall provide community-based services which respond to the special needs, problems, interests and concerns of children and which offer appropriate counseling and guidance to them and their families. These programs shall consist of three levels:

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- (a) Primary intervention includes general measures to promote social justice and equal opportunity, which tackle perceived root causes of offending;
  - (b) Secondary intervention includes measures to assist children at risk; and
  - (c) Tertiary intervention includes measures to avoid unnecessary contact with the formal justice system and other measures to prevent re-offending.

## **TITLE IV**

### **TREATMENT OF CHILDREN BELOW THE AGE OF CRIMINAL RESPONSIBILITY**

**SEC. 20. Children Below the Age of Criminal Responsibility.** - If it has been determined that the child taken into custody is fifteen (15) years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. Said authority shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered nongovernmental or religious organization; a barangay official or a member of the Barangay Council for the Protection of Children (BCPC); a local social welfare and development officer; or when and where appropriate, the DSWD. If the child referred to herein has been found by the Local Social Welfare and Development Office to be abandoned, neglected or abused by his parents, or in the event that the parents will not comply with the prevention program, the proper petition for involuntary commitment shall be filed by the DSWD or the Local Social Welfare and Development Office pursuant to Presidential Decree No. 603, otherwise known as "The Child and Youth Welfare Code".

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## TITLE V

### JUVENILE JUSTICE AND WELFARE SYSTEM

#### CHAPTER I

#### INITIAL CONTACT WITH THE CHILD

**SEC. 21. Procedure for Taking the Child into Custody.** - From the moment a child is taken into custody, the law enforcement officer shall:

- (a) Explain to the child in simple language and in a dialect that he/she can understand why he/she is being placed under custody and the offense that he/she allegedly committed;
- (b) Inform the child of the reason for such custody and advise the child of his/her constitutional rights in a language or dialect understood by him/her;
- (e) Properly identify himself/herself and present proper identification to the child;
- (d) Refrain from using vulgar or profane words and from sexually harassing or abusing, or making sexual advances on the child in conflict with the law;
- (e) Avoid displaying or using any firearm, weapon, handcuffs or other instruments of force or restraint, unless absolutely necessary and only after all other methods of control have been exhausted and have failed;
- (f) Refrain from subjecting the child in conflict with the law to greater restraint than is necessary for his/her apprehension;
- (g) Avoid violence or unnecessary force;
- (h) Determine the age of the child pursuant to Section 7 of this Act;



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- (i) Immediately but not later than eight (8) hours after apprehension, turn over custody of the child to the Social Welfare and Development Office or other accredited NGOs, and notify the child's apprehension. The social welfare and development officer shall explain to the child and the child's parents/guardians the consequences of the child's act with a view towards counseling and rehabilitation, diversion from the criminal justice system, and reparation, if appropriate;
  - (j) Take the child immediately to the proper medical and health officer for a thorough physical and mental examination. The examination results shall be kept confidential unless otherwise ordered by the Family Court. Whenever the medical treatment is required, steps shall be immediately undertaken to provide the same;
  - (k) Ensure that should detention of the child in conflict with the law be necessary, the child shall be secured in quarters separate from that of the opposite sex and adult offenders;
  - (l) Record the following in the initial investigation:
    - 1. Whether handcuffs or other instruments of restraint were used, and if so, the reason for such;
    - 2. That the parents or guardian of a child, the DSWD, and the PAO have been informed of the apprehension and the details thereof; and
    - 3. The exhaustion of measures to determine the age of a child and the precise details of the physical and medical examination or the failure to submit a child to such examination; and
  - (m) Ensure that all statements signed by the child during investigation shall be witnessed by the child's parents or guardian, social worker, or legal counsel in attendance who shall affix his/her signature to the said statement.

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A child in conflict with the law shall only be searched by a law enforcement officer of the same gender and shall not be locked up in a detention cell.

**SEC. 22. Duties During Initial Investigation.** - The law enforcement officer shall, in his/her investigation, determine where the case involving the child in conflict with the law should be referred.

The taking of the statement of the child shall be conducted in the presence of the following: (1) child's counsel of choice or in the absence thereof, a lawyer from the Public Attorney's Office; (2) the child's parents, guardian, or nearest relative, as the case may be; and (3) the local social welfare and development officer. In the absence of the child's parents, guardian, or nearest relative, and the local social welfare and development officer, the investigation shall be conducted in the presence of a representative of an NGO, religious group, or member of the BCPC.

After the initial investigation, the local social worker conducting the same may do either of the following:

- (a) Proceed in accordance with Section 20 if the child is fifteen (15) years or below or above fifteen (15) but below eighteen (18) years old, who acted without discernment; and
- (b) If the child is above fifteen (15) years old but below eighteen (18) and who acted with discernment, proceed to diversion under the following chapter.

## **CHAPTER 2**

### **DIVERSION**

**SEC. 23. System of Diversion.** - Children in conflict with the law shall undergo diversion programs without undergoing court proceedings subject to the conditions herein provided:

- (a) Where the imposable penalty for the crime committee is not more than six (6) years imprisonment, the law enforcement

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officer or Punong Barangay with the assistance of the local social welfare and development officer or other members of the LCPC shall conduct mediation, family conferencing and conciliation and, where appropriate, adopt indigenous modes of conflict resolution in accordance with the best interest of the child with a view to accomplishing the objectives of restorative justice and the formulation of a diversion program. The child and his/her family shall be present in these activities.

- (b) In victimless crimes where the imposable penalty is not more than six (6) years imprisonment, the local social welfare and development officer shall meet with the child and his/her parents or guardians for the development of the appropriate diversion and rehabilitation program, in coordination with the BCPC;
- (c) Where the imposable penalty for the crime committed exceeds six (6) years imprisonment, diversion measures may be resorted to only by the court.

**SEC. 24. Stages Where Diversion May be Conducted.** - Diversion may be conducted at the Katarungang Pambarangay, the police investigation or the inquest or preliminary investigation stage and at all 1levels and phases of the proceedings including judicial level.

**SEC. 25. Conferencing, Mediation and Conciliation.** - A child in conflict with law may undergo conferencing, mediation or conciliation outside the criminal justice system or prior to his entry into said system. A contract of diversion may be entered into during such conferencing, mediation or conciliation proceedings.

**SEC. 26. Contract of Diversion.** - If during the conferencing, mediation or conciliation, the child voluntarily admits the commission of the act, a diversion program shall be developed when appropriate and desirable as determined under Section 30. Such admission shall not be used against the child in any subsequent judicial, quasi-judicial or administrative proceedings. The diversion program shall be effective and binding if accepted by the parties concerned. The

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acceptance shall be in writing and signed by the parties concerned and the appropriate authorities. The local social welfare and development officer shall supervise the implementation of the diversion program. The diversion proceedings shall be completed within forty-five (45) days. The period of prescription of the offense shall be suspended until the completion of the diversion proceedings but not to exceed forty-five (45) days.

The child shall present himself/herself to the competent authorities that imposed the diversion program at least once a month for reporting and evaluation of the effectiveness of the program.

Failure to comply with the terms and conditions of the contract of diversion, as certified by the local social welfare and development officer, shall give the offended party the option to institute the appropriate legal action.

The period of prescription of the offense shall be suspended during the effectivity of the diversion program, but not exceeding a period of two (2) years.

**SEC. 27. Duty of the Punong Barangay When There is No Diversion.** - If the offense does not fall under Section 23(a) and (b), or if the child, his/her parents or guardian does not consent to a diversion, the Punong Barangay handling the case shall, within three (3) days from determination of the absence of jurisdiction over the case or termination of the diversion proceedings, as the case may be, forward the records of the case of the child to the law enforcement officer, prosecutor or the appropriate court, as the case may be. Upon the issuance of the corresponding document, certifying to the fact that no agreement has been reached by the parties, the case shall be filed according to the regular process.

**SEC. 28. Duty of the Law Enforcement Officer When There is No Diversion.** - If the offense does not fall under Section 23(a) and (b), or if the child, his/her parents or guardian does not consent to a diversion, the Women and Children Protection Desk of the PNP, or other law enforcement officer handling the case of the child under

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custody, to the prosecutor or judge concerned for the conduct of inquest and/or preliminary investigation to determine whether or not the child should remain under custody and correspondingly charged in court. The document transmitting said records shall display the word "CHILD" in bold letters.

**SEC. 29. Factors in Determining Diversion Program.** - In determining whether diversion is appropriate and desirable, the following factors shall be taken into consideration:

- (a) The nature and circumstances of the offense charged;
- (b) The frequency and the severity of the act;
- (c) The circumstances of the child (e.g. age, maturity, intelligence, etc.);
- (d) The influence of the family and environment on the growth of the child;
- (e) The reparation of injury to the victim;
- (f) The weight of the evidence against the child;
- (g) The safety of the community; and
- (h) The best interest of the child.

**SEC. 30. Formulation of the Diversion Program.** - In formulating a diversion program, the individual characteristics and the peculiar circumstances of the child in conflict with the law shall be used to formulate an individualized treatment.

The following factors shall be considered in formulating a diversion program for the child:

- (a) The child's feelings of remorse for the offense he/she committed;

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- (b) The parents' or legal guardians' ability to guide and supervise the child;
  - (c) The victim's view about the propriety of the measures to be imposed; and
  - (d) The availability of community-based programs for rehabilitation and reintegration of the child.

**SEC. 31. Kinds of Diversion Programs.** - The diversion program shall include adequate socio-cultural and psychological responses and services for the child. At the different stages where diversion may be resorted to, the following diversion programs may be agreed upon, such as, but not limited to:

(a) At the level of the Punong Barangay:

- (1) Restitution of property;
- (2) Reparation of the damage caused;
- (3) Indemnification for consequential damages;
- (4) Written or oral apology;
- (5) Care, guidance and supervision orders;
- (6) Counseling for the child in conflict with the law and the child's family;
- (7) Attendance in trainings, seminars and lectures on:
  - (i) anger management skills;
  - (ii) problem solving and/or conflict resolution skills;
  - (iii) values formation; and

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- (iv) other skills which will aid the child in dealing with situations which can lead to repetition of the offense;
  - (8) Participation in available community-based programs, including community service; or
  - (9) Participation in education, vocation and life skills programs.
- (b) At the level of the law enforcement officer and the prosecutor:
- (1) Diversion programs specified under paragraphs (a)(1) to (a) (9) herein; and
  - (2) Confiscation and forfeiture of the proceeds or instruments of the crime;
- (c) At the level of the appropriate court:
- (1) Diversion programs specified under paragraphs(a)and (b) above;
  - (2) Written or oral reprimand or citation;
  - (3) Fine:
  - (4) Payment of the cost of the proceedings; or
  - (5) Institutional care and custody.

## **CHAPTER 3**

### **PROSECUTION**

**SEC. 32. Duty of the Prosecutor's Office.** - There shall be a specially trained prosecutor to conduct inquest, preliminary investigation and prosecution of cases involving a child in conflict with the law. If there is an allegation of torture or ill-treatment of a child in conflict with the law during arrest or detention, it shall be the duty of the prosecutor to investigate the same.

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**SEC. 33. Preliminary Investigation and Filing of Information.** - The prosecutor shall conduct a preliminary investigation in the following instances: (a) when the child in conflict with the law does not qualify for diversion; (b) when the child, his/her parents or guardian does not agree to diversion as specified in Sections 27 and 28; and (c) when considering the assessment and recommendation of the social worker, the prosecutor determines that diversion is not appropriate for the child in conflict with the law.

Upon serving the subpoena and the affidavit of complaint, the prosecutor shall notify the Public Attorney's Office of such service, as well as the personal information, and place of detention of the child in conflict with the law.

Upon determination of probable cause by the prosecutor, the information against the child shall be filed before the Family Court within forty-five (45) days from the start of the preliminary investigation.

## **CHAPTER 4**

### **COURT PROCEEDINGS**

**SEC. 34. Bail.** - For purposes of recommending the amount of bail, the privileged mitigating circumstance of minority shall be considered.

**SEC. 35. Release on Recognizance.** - Where a child is detained, the court shall order:

- (a) the release of the minor on recognizance to his/her parents and other suitable person;
- (b) the release of the child in conflict with the law on bail; or
- (c) the transfer of the minor to a youth detention home/youth rehabilitation center.

The court shall not order the detention of a child in a jail pending trial or hearing of his/her case.



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**SEC. 36. Detention of the Child Pending Trial.** - Children detained pending trial may be released on bail or recognizance as provided for under Sections 34 and 35 under this Act. In all other cases and whenever possible, detention pending trial may be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home. Institutionalization or detention of the child pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

Whenever detention is necessary, a child will always be detained in youth detention homes established by local governments, pursuant to Section 8 of the Family Courts Act, in the city or municipality where the child resides.

In the absence of a youth detention home, the child in conflict with the law may be committed to the care of the DSWD or a local rehabilitation center recognized by the government in the province, city or municipality within the jurisdiction of the court. The center or agency concerned shall be responsible for the child's appearance in court whenever required.

**SEC. 37. Diversion Measures.** - Where the maximum penalty imposed by law for the offense with which the child in conflict with the law is charged is imprisonment of not more than twelve (12) years, regardless of the fine or fine alone regardless of the amount, and before arraignment of the child in conflict with the law, the court shall determine whether or not diversion is appropriate.

**SEC. 38. Automatic Suspension of Sentence.** - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

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Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

**SEC. 39. Discharge of the Child in Conflict with the Law.** - Upon the recommendation of the social worker who has custody of the child, the court shall dismiss the case against the child whose sentence has been suspended and against whom disposition measures have been issued, and shall order the final discharge of the child if it finds that the objective of the disposition measures have been fulfilled.

The discharge of the child in conflict with the law shall not affect the civil liability resulting from the commission of the offense, which shall be enforced in accordance with law.

**SEC. 40. Return of the Child in Conflict with the Law to Court.** - If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

**SEC. 41. Credit in Service of Sentence.** - The child in conflict with the law shall be credited in the services of his/her sentence with the full time spent in actual commitment and detention under this Act.

**SEC. 42. Probation as an Alternative to Imprisonment.** - The court may, after it shall have convicted and sentenced a child in conflict with the law, and upon application at any time, place the child on probation in lieu of service of his/her sentence taking into account the

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best interest of the child. For this purpose, Section 4 of Presidential Decree No. 968, otherwise known as the “Probation Law of 1976”, is hereby amended accordingly.

## **CHAPTER 5**

### **CONFIDENTIALITY OF RECORDS AND PROCEEDINGS**

**SEC. 43. Confidentiality of Records and Proceedings.** -All records and proceedings involving children in conflict with the law from initial contact until final disposition of the case shall be considered privileged and confidential. The public shall be excluded during the proceedings and the records shall not be disclosed directly or indirectly to anyone by any of the parties or the participants in the proceedings for any purpose whatsoever, except to determine if the child in conflict with the law may have his/hes sentence suspended or if he/she may be granted probation under the Probation Law, or to enforce the civil liability imposed in the criminal action.

The component authorities shall undertake all measures to protect this confidentiality of proceedings, including non-disclosure of records to the media, maintaining a separate police blotter for cases involving children in conflict with the law and adopting a system of coding to conceal material information which will lead to the child’s identity. Records of a child in conflict with the law shall not be used in subsequent proceedings for cases involving the same offender as an adult, except when beneficial for the offender and upon his/her written consent.

A person who has been in conflict with the law as a child shall not be held under any provision of law, to be guilty of perjury or of concealment or misrepresentation by reason of his/her failure to acknowledge the case or recite any fact related thereto in response to any inquiry made to him/her for any purpose.

## **TITLE VI**

### **REHABILITATION AND REINTEGRATION**

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**SEC. 44. Objective of Rehabilitation and Reintegration.** - The objective of rehabilitation and reintegration of children in conflict with the law is to provide them with interventions, approaches and strategies that will enable them to improve their social functioning with the end goal of reintegration to their families and as productive members of their communities.

**SEC. 45. Court Order Required.** - No child shall be received in any rehabilitation or training facility without a valid order issued by the court after a hearing for the purpose. The details of this order shall be immediately entered in a register exclusively for children in conflict with the law. No child shall be admitted in any facility where there is no such register.

**SEC. 46, Separate Facilities from Adults.** - In all rehabilitation or training facilities, it shall be mandatory that children shall be separated from adults unless they are members of the same family. Under no other circumstance shall a child in conflict with the law be placed in the same confinement as adults.

The rehabilitation, training or confinement area of children in conflict with the law shall provide a home environment where children in conflict with the law can be provided with quality counseling and treatment.

**SEC. 47. Female Children.** - Female children in conflict with the law placed in an institution shall be given special attention as to their personal needs and problems. They shall be handled by female doctors, correction officers and social workers, and shall be accommodated separately from male children in conflict with the law.

**SEC. 48. Gender-Sensitivity Training.** - No personnel of rehabilitation and training facilities shall handle children in conflict with the law without having undergone gender sensitivity training.

**SEC. 49. Establishment of Youth Detention Homes.** - The LGUs shall set aside an amount to build youth detention homes as mandated by the Family Courts Act. Youth detention homes may

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also be established by private and NGOs licensed and accredited by the DSWD, in consultation with the JJWC.

**SEC. 50. Care and Maintenance of the Child in Conflict with the Law.** - The expenses for the care and maintenance of a child in conflict with the law under institutional care shall be borne by his/her parents or those persons liable to support him/her: Provided, That in case his/her parents or those persons liable to support him/her cannot pay all or part of said expenses, the municipality where the offense was committed shall pay one-third (1/3) of said expenses or part thereof; the province to which the municipality belongs shall pay one-third (1/3) and the remaining one-third (1/3) shall be borne by the national government. Chartered cities shall pay two-thirds (2/3) of said expenses; and in case a chartered city cannot pay said expenses, part of the internal revenue allotments applicable to the unpaid portion shall be withheld and applied to the settlement of said obligations: Provided, further, That in the event that the child in conflict with the law is not a resident of the municipality/city where the offense was committed, the court, upon its determination, may require the city/municipality where the child in conflict with the law resides to shoulder the cost.

All city and provincial governments must exert effort for the immediate establishment of local detention homes for children in conflict with the law.

**SEC. 51. Confinement of Convicted Children in Agricultural Camps and other Training Facilities.** - A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

**SEC. 52. Rehabilitation of Children in Conflict with the Law.** - Children in conflict with the law, whose sentences are suspended may, upon order of the court, undergo any or a combination of

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disposition measures best suited to the rehabilitation and welfare of the child as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

If the community-based rehabilitation is availed of by a child in conflict with the law, he/she shall be released to parents, guardians, relatives or any other responsible person in the community. Under the supervision and guidance of the local social welfare and development officer, and in coordination with his/her parents/guardian, the child in conflict with the law shall participate in community-based programs, which shall include, but not limited to:

- (1) Competency and life skills development;
- (2) Socio-cultural and recreational activities;
- (3) Community volunteer projects;
- (4) Leadership training;
- (5) Social services;
- (6) Homelife services;
- (7) Health services;
- (8) Spiritual enrichment; and
- (9) Community and family welfare services.

In accordance therewith, the family of the child in conflict with the law shall endeavor to actively participate in the community-based rehabilitation.

Based on the progress of the youth in the community, a final report will be forwarded by the local social welfare and development officer to the court for final disposition of the case.

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If the community-based programs are provided as diversion measures under Chapter II, Title V, the programs enumerated above shall be made available to the child in conflict with the law.

**SEC. 53. Youth Rehabilitation Center.** - The youth rehabilitation center shall provide 24-hour group care, treatment and rehabilitation services under the guidance of a trained staff where residents are cared for under a structured therapeutic environment with the end view of reintegrating them in their families and communities as socially functioning individuals. A quarterly report shall be submitted by the center to the proper court on the progress of the children in conflict with the law. Based on the progress of the youth in the center, a final report will be forwarded to the court for final disposition of the case. The DSWD shall establish youth rehabilitation centers in each region of the country.

**SEC. 54. Objectives of Community Based Programs.** - The objectives of community-based programs are as follows:

- (a) Prevent disruption in the education or means of livelihood of the child in conflict with the law in case he/she is studying, working or attending vocational learning institutions;
- (b) Prevent separation of the child in conflict with the law from his/her parents/guardians to maintain the support system fostered by their relationship and to create greater awareness of their mutual and reciprocal responsibilities;
- (c) Facilitate the rehabilitation and mainstreaming of the child in conflict with the law and encourage community support and involvement; and
- (d) Minimize the stigma that attaches to the child in conflict with the law by preventing jail detention.

**SEC. 55. Criteria of Community-Based Programs.** - Every LGU shall establish community-based programs that will focus on the rehabilitation and reintegration of the child. All programs shall meet the criteria to be established by the JJWC which shall take into

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account the purpose of the program, the need for the consent of the child and his/her parents or legal guardians, and the participation of the child-centered agencies whether public or private.

**SEC. 56. After-Care Support Services for Children in Conflict with the Law.** - Children in conflict with the law whose cases have been dismissed by the proper court because of good behavior as per recommendation of the DSWD social worker and/or any accredited NGO youth rehabilitation center shall be provided after-care services by the local social welfare and development officer for a period of at least six (6) months. The service includes counseling and other community-based services designed to facilitate social reintegration, prevent re-offending and make the children productive members of the community.

## **TITLE VII**

### **GENERAL PROVISIONS**

#### **CHAPTER 1**

### **EXEMPTING PROVISIONS**

**SEC. 57. Status Offenses.** - Any conduct not considered an offense or not penalized if committed by an adult shall not be considered an offense and shall not be punished if committed by a child.

**SEC. 58. Offenses Not Applicable to Children.** - Persons below eighteen (18) years of age shall be exempt from prosecution for the crime of vagrancy and prostitution under Section 202 of the Revised Penal Code, of mendicancy under Presidential Decree No. 1563, and sniffing of rugby under Presidential Decree No. 1619, such prosecution being inconsistent with the United Nations Convention on the Rights of the Child: Provided, That said persons shall undergo appropriate counseling and treatment program.



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**SEC. 59. Exemption from the Application of Death Penalty.** - The provisions of the Revised Penal Code, as amended, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and other special laws notwithstanding, no death penalty shall be imposed upon children in conflict with the law.

## **CHAPTER 2**

### **PROHIBITED ACTS**

**SEC. 60. Prohibition Against Labeling and Shaming.** - In the conduct of the proceedings beginning from the initial contact with the child, the competent authorities must refrain from branding or labeling children as young criminals, juvenile delinquents, prostitutes or attaching to them in any manner any other derogatory names. Likewise, no discriminatory remarks and practices shall be allowed particularly with respect to the child's class or ethnic origin.

**SEC. 61. Other Prohibited Acts.** - The following and any other similar acts shall be considered prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child in conflict with the law and therefore, prohibited:

- (a) Employment of threats of whatever kind and nature;
- (b) Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement;
- (c) Employment of degrading, inhuman and cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity; and
- (d) Compelling the child to perform involuntary servitude in any and all forms under any and all instances.

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## CHAPTER 3

### PENAL PROVISION

**SEC. 62. Violation of the Provisions of this Act or Rules or Regulations in General.** - Any person who violates any provision of this Act or any rule or regulation promulgated in accordance thereof shall, upon conviction for each act or omission, be punished by a fine of not less than Twenty thousand pesos (P20,000.00) but not more than Fifty thousand pesos (P50,000.00) or suffer imprisonment of not less than eight (8) years but not more than ten (10) years, or both such fine and imprisonment at the discretion of the court, unless a higher penalty is provided for in the Revised Penal Code or special laws. If the offender is a public officer or employee, he/she shall, in addition to such fine and/or imprisonment, be held administratively liable and shall suffer the penalty of perpetual absolute disqualification.

## CHAPTER 4

### APPROPRIATION PROVISION

**SEC. 63. Appropriations.** - The amount necessary to carry out the initial implementation of this Act shall be charged to the Office of the President. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the succeeding General Appropriations Act.

An initial amount of Fifty million pesos (P50,000,000.00) for the purpose of setting up the JJWC shall be taken from the proceeds of the Philippine Charity Sweepstakes Office.

## TITLE VIII

### TRANSITORY PROVISIONS

**SEC. 64. Children in Conflict with the Law Fifteen (15) Years Old and Below.** - Upon effectivity of this Act, cases of children fifteen (15) years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to

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the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child, shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

**SEC. 65. Children Detained Pending Dial.** - If the child is detained pending trial, the Family Court shall also determine whether or not continued detention is necessary and, if not, determine appropriate alternatives for detention.

If detention is necessary and he/she is detained with adults, the court shall immediately order the transfer of the child to a youth detention home.

**SEC. 66. Inventory of “Locked-up” and Detained Children in Conflict with the Law.** - The PNP, the BJMP and the BUCOR are hereby directed to submit to the JJWC, within ninety (90) days from the effectivity of this Act, an inventory of all children in conflict with the law under their custody.

**SEC. 67. Children Who Reach the Age of Eighteen (18) Years Pending Diversion and Court Proceedings.** - If a child reaches the age of eighteen (18) years pending diversion and court proceedings, the appropriate diversion authority in consultation with the local social welfare and development officer or the Family Court in consultation with the Social Services and Counseling Division (SSCD) of the Supreme Court, as the case may be, shall determine the appropriate disposition. In case the appropriate court executes the judgment of conviction, and unless the child in conflict the law has already availed of probation under Presidential Decree No. 603 or other similar laws, the child may apply for probation if qualified under the provisions of the Probation Law.

**SEC. 68. Children Who Have Been Convicted and are Serving Sentence.** - Persons who have been convicted and are serving

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sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable law.

## **TITLE IX**

### **FINAL PROVISIONS**

**SEC. 69. Rule Making Power.** - The JJWC shall issue the IRRs for the implementation of the provisions of this act within ninety (90) days from the effectivity thereof.

**SEC. 70. Separability Clause.** - If, for any reason, any section or provision of this Act is declared unconstitutional or invalid by the Supreme Court, the other sections or provisions hereof not affected by such declaration shall remain in force and effect.

**SEC. 71. Repealing Clause.** - All existing laws, orders, decrees, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

**SEC. 72. Effectivity.** - This Act shall take effect after fifteen (15) days from its publication in at least two (2) national newspapers of general circulation.

Approved,

FRANKLIN DRILON  
President of the Senate

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JOSE DE VENECIA JR.

Speaker of the House of Representatives

This Act which is a consolidation of Senate Bill No. 1402 and House Bill No. 5065 was finally passed by the Senate and the House of Representatives on March 22, 2006.

OSCAR G. YABES

Secretary of Senate

ROBERTO P. NAZARENO

Secretary General

House of Representatives

Approved: April 28, 2006

GLORIA MACAPAGAL-ARROYO

President of the Philippines

## REPUBLIC ACT NO. 9745

### AN ACT PENALIZING TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT AND PRESCRIBING PENALTIES THEREFOR

**Section 1. Short Title.** - This Act shall be known as the “Anti-Torture Act of 2009”.

**Section 2. Statement of Policy.** - It is hereby declared the policy of the State:

- (a) To value the dignity of every human person and guarantee full respect for human rights;
- (b) To ensure that the human rights of all persons, including suspects, detainees and prisoners are respected at all times; and that no person placed under investigation or held in custody of any person in authority or, agent of a person authority shall be subjected to physical, psychological or mental harm, force, violence, threat or intimidation or any act that impairs his/her free will or in any manner demeans or degrades human dignity;
- (c) To ensure that secret detention places, solitary, incommunicado or other similar forms of detention, where torture may be carried out with impunity, are prohibited; and
- (d) To fully adhere to the principles and standards on the absolute condemnation and prohibition of torture as provided for in the 1987 Philippine Constitution; various international instruments to which the Philippines is a State party such as, but not limited to, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of

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All Forms of Discrimination Against Women (CEDAW) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and all other relevant international human rights instruments to which the Philippines is a signatory.

**Section 3. Definitions.** - For purposes of this Act, the following terms shall mean:

- (a) "Torture" refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or Buffering arising only from, inherent in or incidental to lawful sanctions.
- (b) "Other cruel, inhuman and degrading treatment or punishment" refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter.
- (c) "Victim" refers to the person subjected to torture or other cruel, inhuman and degrading treatment or punishment as defined above and any individual who has suffered harm as a result of any act(s) of torture, or other cruel, inhuman and degrading treatment or punishment.
- (d) "Order of Battle" refers to any document or determination made by the military, police or any law enforcement agency of the government, listing the names of persons and

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organizations that it perceives to be enemies of the State and that it considers as legitimate targets as combatants that it could deal with, through the use of means allowed by domestic and international law.

**Section 4. Acts of Torture.** - For purposes of this Act, torture shall include, but not be limited to, the following:

- (a) Physical torture is a form of treatment or punishment inflicted by a person in authority or agent of a person in authority upon another in his/her custody that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:
  - (1) Systematic beating, headbanging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;
  - (2) Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;
  - (3) Electric shock;
  - (4) Cigarette burning; burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s);
  - (5) The submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation;
  - (6) Being tied or forced to assume fixed and stressful bodily position;
  - (7) Rape and sexual abuse, including the insertion of foreign objects into the sex organ or rectum, or electrical torture of the genitals;



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- (8) Mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue, etc.;
  - (9) Dental torture or the forced extraction of the teeth;
  - (10) Pulling out of fingernails;
  - (11) Harmful exposure to the elements such as sunlight and extreme cold;
  - (12) The use of plastic bag and other materials placed over the head to the point of asphyxiation;
  - (13) The use of psychoactive drugs to change the perception, memory, alertness or will of a person, such as:
    - (i) The administration of drugs to induce confession and/or reduce mental competency; or
    - (ii) The use of drugs to induce extreme pain or certain symptoms of a disease; and
  - (14) Other analogous acts of physical torture; and
    - (b) “Mental/Psychological Torture” refers to acts committed by a person in authority or agent of a person in authority which are calculated to affect or confuse the mind and/or undermine a person’s dignity and morale, such as:
      - (1) Blindfolding;
      - (2) Threatening a person(s) or his/her relative(s) with bodily harm, execution or other wrongful acts;
      - (3) Confinement in solitary cells or secret detention places;
      - (4) Prolonged interrogation;

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- (5) Preparing a prisoner for a “show trial”, public display or public humiliation of a detainee or prisoner;
  - (6) Causing unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he/she shall be summarily executed;
  - (7) Maltreating a member/s of a person’s family;
  - (8) Causing the torture sessions to be witnessed by the person’s family, relatives or any third party;
  - (9) Denial of sleep/rest;
  - (10) Shame infliction such as stripping the person naked, parading him/her in public places, shaving the victim’s head or putting marks on his/her body against his/her will;
  - (11) Deliberately prohibiting the victim to communicate with any member of his/her family; and
  - (12) Other analogous acts of mental/psychological torture.

**Section 5. Other Cruel, Inhuman and Degrading Treatment or Punishment.** - Other cruel, inhuman or degrading treatment or punishment refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against another person in custody, which attains a level of severity sufficient to cause suffering, gross humiliation or debasement to the latter. The assessment of the level of severity shall depend on all the circumstances of the case, including the duration of the treatment or punishment, its physical and mental effects and, in some cases, the sex, religion, age and state of health of the victim.

**Section 6. Freedom from Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, An Absolute Right.** - Torture and other cruel, inhuman and degrading treatment or punishment as criminal acts shall apply to all circumstances. A state

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of war or a threat of war, internal political instability, or any other public emergency, or a document or any determination comprising an “order of battle” shall not and can never be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment.

**Section 7. Prohibited Detention.** - Secret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out with impunity. Are hereby prohibited. In which case, the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP) and other law enforcement agencies concerned shall make an updated list of all detention centers and facilities under their respective jurisdictions with the corresponding data on the prisoners or detainees incarcerated or detained therein such as, among others, names, date of arrest and incarceration, and the crime or offense committed. This list shall be made available to the public at all times, with a copy of the complete list available at the respective national headquarters of the PNP and AFP. A copy of the complete list shall likewise be submitted by the PNP, AFP and all other law enforcement agencies to the Commission on Human Rights (CHR), such list to be periodically updated, by the same agencies, within the first five (5) days of every month at the minimum. Every regional office of the PNP, AFP and other law enforcement agencies shall also maintain a similar list for all detainees and detention facilities within their respective areas, and shall make the same available to the public at all times at their respective regional headquarters, and submit a copy updated in the same manner provided above, to the respective regional offices of the CHR.

**Section 8. Applicability of the Exclusionary Rule; Exception.** - Any confession, admission or statement obtained as a result of torture shall be inadmissible in evidence in any proceedings, except if the same is used as evidence against a person or persons accused of committing torture.

**Section 9. Institutional Protection of Torture Victims and Other Persons Involved.** - A victim of torture shall have the following rights in the institution of a criminal complaint for torture:

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- (a) To have a prompt and an impartial investigation by the CHR and by agencies of government concerned such as the Department of Justice (DOJ), the Public Attorney's Office (PAO), the PNP, the National Bureau of Investigation (NBI) and the AFP. A prompt investigation shall mean a maximum period of sixty (60) working days from the time a complaint for torture is filed within which an investigation report and/or resolution shall be completed and made available. An appeal whenever available shall be resolved within the same period prescribed herein,
  - (b) To have sufficient government protection against all forms of harassment; threat and/or intimidation as a consequence of the filing of said complaint or the presentation of evidence therefor. In which case, the State through its appropriate agencies shall afford security in order to ensure his/her safety and all other persons involved in the investigation and prosecution such as, but not limited to, his/her lawyer, witnesses and relatives; and
  - (c) To be accorded sufficient protection in the manner by which he/she testifies and presents evidence in any fora in order to avoid further trauma.

**Section 10. Disposition of Writs of Habeas Corpus, Amparo and Habeas Data Proceedings and Compliance with a Judicial Order.**

- A writ of habeas corpus or writ of amparo or writ of habeas data proceeding, if any, filed on behalf of the victim of torture or other cruel, degrading and inhuman treatment or punishment shall be disposed of expeditiously and any order of release by virtue thereof, or other appropriate order of a court relative thereto, shall be executed or complied with immediately.

**Section 11. Assistance in Filing a Complaint.** - The CHR and the PAO shall render legal assistance in the investigation and monitoring and/or filing of the complaint for a person who suffers torture and other cruel, inhuman and degrading treatment or punishment, or for any interested party thereto.

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The victim or interested party may also seek legal assistance from the Barangay Human Rights Action Center (BRRAC) nearest him/her as well as from human rights nongovernment organizations (NGOs).

**Section 12. Right to Physical, Medical and Psychological Examination.** - Before and after interrogation, every person arrested, detained or under custodial investigation shall have the right to be informed of his/her right to demand physical examination by an independent and competent doctor of his/her own choice. If such person cannot afford the services of his/her own doctor, he/she shall be provided by the State with a competent and independent doctor to conduct physical examination. The State shall endeavor to provide the victim with psychological evaluation if available under the circumstances. If the person arrested is a female, she shall be attended to preferably by a female doctor. Furthermore, any person arrested, detained or under custodial investigation, including his/her immediate family, shall have the right to immediate access to proper and adequate medical treatment. The physical examination and/or psychological evaluation of the victim shall be contained in a medical report, duly signed by the attending physician, which shall include in detail his/her medical history and findings, and which shall be attached to the custodial investigation report. Such report shall be considered a public document.

Following applicable protocol agreed upon by agencies tasked to conduct physical, psychological and mental examinations, the medical reports shall, among others, include:

- (a) The name, age and address of the patient or victim;
- (b) The name and address of the nearest kin of the patient or victim;
- (c) The name and address of the person who brought the patient or victim for physical, psychological and mental examination, and/or medical treatment;
- (d) The nature and probable cause of the patient or victim's injury, pain and disease and/or trauma;

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- (e) The approximate time and date when the injury, pain, disease and/or trauma was/were sustained;
  - (f) The place where the injury, pain, disease and/or trauma was/were sustained;
  - (g) The time, date and nature of treatment necessary; and
  - (h) The diagnosis, the prognosis and/or disposition of the patient.

Any person who does not wish to avail of the rights under this provision may knowingly and voluntarily waive such rights in writing, executed in the presence and assistance of his/her counsel.

**Section 13. Who are Criminally Liable.** - Any person who actually participated Or induced another in the commission of torture or other cruel, inhuman and degrading treatment or punishment or who cooperated in the execution of the act of torture or other cruel, inhuman and degrading treatment or punishment by previous or simultaneous acts shall be liable as principal

Any superior military, police or law enforcement officer or senior government official who issued an order to any lower ranking personnel to commit torture for whatever purpose shall be held equally liable as principals.

The immediate commanding officer of the unit concerned of the AFP or the immediate senior public official of the PNP and other law enforcement agencies shall be held liable as a principal to the crime of torture or other cruel or inhuman and degrading treatment or punishment for any act or omission, or negligence committed by him/her that shall have led, assisted, abetted or allowed, whether directly or indirectly, the commission thereof by his/her subordinates. If he/she has knowledge of or, owing to the circumstances at the time, should have known that acts of torture or other cruel, inhuman and degrading treatment or punishment shall be committed, is being committed, or has been committed by his/her subordinates or by others within his/her area of responsibility and, despite such

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knowledge, did not take preventive or corrective action either before, during or immediately after its commission, when he/she has the authority to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment but failed to prevent or investigate allegations of such act, whether deliberately or due to negligence shall also be liable as principals.

Any public officer or employee shall be liable as an accessory if he/she has knowledge that torture or other cruel, inhuman and degrading treatment or punishment is being committed and without having participated therein, either as principal or accomplice, takes part subsequent to its commission in any of the following manner:

- (a) By themselves profiting from or assisting the offender to profit from the effects of the act of torture or other cruel, inhuman and degrading treatment or punishment;
- (b) By concealing the act of torture or other cruel, inhuman and degrading treatment or punishment and/or destroying the effects or instruments thereof in order to prevent its discovery; or
- (c) By harboring, concealing or assisting in the escape of the principal/s in the act of torture or other cruel, inhuman and degrading treatment or punishment: Provided, That the accessory acts are done with the abuse of the official's public functions.

**Section 14. Penalties.** - (a) The penalty of reclusion perpetua shall be imposed upon the perpetrators of the following acts:

- (1) Torture resulting in the death of any person;
- (2) Torture resulting in mutilation;
- (3) Torture with rape;

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- (4) Torture with other forms of sexual abuse and, in consequence of torture, the victim shall have become insane, imbecile, impotent, blind or maimed for life; and
- (5) Torture committed against children.
- (b) The penalty of reclusion temporal shall be imposed on those who commit any act of mental/psychological torture resulting in insanity, complete or partial amnesia, fear of becoming insane or suicidal tendencies of the victim due to guilt, worthlessness or shame.
- (c) The penalty of prision correccional shall be imposed on those who commit any act of torture resulting in psychological, mental and emotional harm other than those described 1n paragraph (b) of this section. ‘
- (d) The penalty of prision mayor in its medium and maximum periods shall be imposed if, in consequence of torture, the victim shall have lost the power of speech or the power to hear or to smell; or shall have lost an eye, a hand, a foot, an arm or a leg; or shall have lost the use of any such member; Or shall have become permanently incapacitated for labor.
- (e) The penalty of prision mayor in its minimum and medium periods shall be imposed if, in consequence of torture, the victim shall have become deformed or shall have lost any part of his/her body other than those aforecited, or shall have lost the use thereof, or shall have been ill or incapacitated for labor for a period of more than ninety (90) days.
- (f) The penalty of prision correccional in its maximum period to prision mayor in its minimum period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for labor for mare than thirty (30) days but not more than ninety (90) days.
- (g) The penalty of prision correccional in its minimum and medium period shall be imposed if, in consequence of



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torture, the victim shall have been ill or incapacitated for labor for thirty (30) days or less.

- (h) The penalty of *arresto mayor* shall be imposed for acts constituting cruel, inhuman or degrading treatment or punishment as defined in Section 5 of this Act.
- (i) The penalty of *prision correccional* shall be imposed upon those who establish, operate and maintain secret detention places and/or effect or cause to effect solitary confinement, *incommunicado* or other similar forms of prohibited detention as provided in Section 7 of this Act where torture may be carried out with impunity.
- (j) The penalty of *arresto mayor* shall be imposed upon the responsible officers or personnel of the AFP, the PNP and other law enforcement agencies for failure to perform his/her duty to maintain, submit or make available to the public an updated list of detention centers and facilities with the corresponding data on the prisoners or detainees incarcerated or detained therein, pursuant to Section 7 of this Act.

**Section 15. Torture as a Separate and Independent Crime.** - Torture as a crime shall not absorb or shall not be absorbed by any other crime or felony committed as a consequence, or as a means in the conduct or commission thereof. In which case, torture shall be treated as a separate and independent criminal act whose penalties shall be imposable without prejudice to any other criminal liability provided for by domestic and international laws.

**Section 16. Exclusion from the Coverage of Special Amnesty Law.** - In order not to depreciate the crime of torture, persons who have committed any act of torture shall not benefit from any special amnesty law or similar measures that will have the effect of exempting them from any criminal proceedings and sanctions.

**Section 17. Applicability of Refouler.** - No person shall be expelled, returned or extradited to another State where there are

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substantial grounds to believe that such person shall be in danger of being subjected to torture. For the purposes of determining whether such grounds exist, the Secretary of the Department of Foreign Affairs (DFA) and the Secretary of the DOJ, 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 18. Compensation to Victims of Torture.** - Any person who has suffered torture shall have the right to claim for compensation as provided for under Republic Act No. 7309: Provided, That in no case shall compensation be any lower than Ten thousand pesos (P10,000.00). Victims of torture shall also have the right to claim for compensation from such other financial relief programs that may be made available to him/her under existing law and rules and regulations.

**Section 19. Formulation of a Rehabilitation Program.** - Within one (1) year from the effectivity of this Act, the Department of Social Welfare and Development (DSWD), the DOJ and the Department of Health (DOH) and such other concerned government agencies, and human rights organizations shall formulate a comprehensive rehabilitation program for victims of torture and their families. The DSWD, the DOJ and the DOH shall also call on human rights nongovernment organizations duly recognized by the government to actively participate in the formulation of such program that shall provide for the physical, mental, social, psychological healing and development of victims of torture and their families. Toward the attainment of restorative justice, a parallel rehabilitation program for persons who have committed torture and other cruel, inhuman and degrading punishment shall likewise be formulated by the same agencies.

**Section 20. Monitoring of Compliance with this Act.** - An Oversight Committee is hereby created to periodically oversee the implementation of this Act. The Committee shall be headed by a Commissioner of the CRR, with the following as members: the Chairperson of the Senate Committee on Justice and Human Rights,

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the respective Chairpersons of the House of Representatives, Committees on Justice and Human Rights, and the Minority Leaders of both houses or their respective representatives in the minority.

**Section 21. Education and Information Campaign.** - The CHR, the DOJ, the Department of National Defense (DND), the Department of the Interior and Local Government (DILG) and such other concerned parties in both the public and private sectors shall ensure that education and information regarding prohibition against torture and other cruel, inhuman and degrading treatment or punishment shall be fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. The Department of Education (DepED) and the Commission on Higher Education (CHED) shall also ensure the integration of human rights education courses in all primary, secondary and tertiary level academic institutions nationwide.

**Section 22. Applicability of the Revised Penal Code.** - The provisions of the Revised Penal Code insofar as they are applicable shall be supplementary to this Act. Moreover, if the commission of any crime punishable under Title Eight (Crimes Against Persons) and Title Nine (Crimes Against Personal Liberty and Security) of the Revised Penal Code is attended by any of the acts constituting torture and other cruel, inhuman and degrading treatment or punishment as defined herein, the penalty to be imposed shall be in its maximum period.

**Section 23. Appropriations.** - The amount of Five million pesos (Php5,000,000.00) is hereby appropriated to the CHR for the initial implementation of this Act. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the annual General Appropriations Act.

**Section 24. Implementing Rules and Regulations.** - The DOJ and the CHR, with the active participation of human rights nongovernmental organizations, shall promulgate the rules and regulations for the effective implementation of this Act. They shall

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also ensure the full dissemination of such rules and regulations to all officers and members of various law enforcement agencies.

**Section 25. Separability Clause.** - If any provision of this Act is declared invalid or unconstitutional, the other provisions not affected thereby shall continue to be in full force and effect.

**Section 26. Repealing Clause.** - All laws, decrees, executive orders or rules and regulations contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

**Section 27. Effectivity.** - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved: November 10, 2009

## REPUBLIC ACT NO. 9851

# AN ACT DEFINING AND PENALIZING CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND OTHER CRIMES AGAINST HUMANITY, ORGANIZING JURISDICTION, DESIGNATING SPECIAL COURTS, AND FOR RELATED PURPOSES

## CHAPTER I

### INTRODUCTORY PROVISIONS

**Section 1. Short Title.** - This Act shall be known as the “Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity”.

**Section 2. Declaration of Principles and State Policies.**

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- (a) The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to a policy of peace, equality, justice, freedom, cooperation and amity with all nations.
- (b) The state values the dignity of every human person and guarantees full respect for human rights, including the rights of indigenous cultural communities and other vulnerable groups, such as women and children;
- (c) It shall be the responsibility of the State and all other sectors concerned to resolved armed conflict in order to promote the goal of “Children as Zones of Peace”;

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- (d) The state adopts the generally accepted principles of international law, including the Hague Conventions of 1907, the Geneva Conventions on the protection of victims of war and international humanitarian law, as part of the law of our nation;
  - (e) The most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes;
  - (f) The State shall guarantee persons suspected or accused of having committed grave crimes under international law all rights necessary to ensure that their trial will be fair and prompt in strict accordance with national and international law and standards for fair trial, It shall also protect victims, witnesses and their families, and provide appropriate redress to victims and their families, It shall ensure that the legal systems in place provide accessible and gender-sensitive avenues of redress for victims of armed conflict; and
  - (g) The State recognizes that the application of the provisions of this Act shall not affect the legal status of the parties to a conflict, nor give an implied recognition of the status of belligerency.

## **CHAPTER II**

### **DEFINITION OF TERMS**

#### **Section 3. For purposes of this Act, the term;**

- (a) “Apartheid” means inhumane acts committed in the context of an institutionalized regime of systematic oppression and

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domination by one racial group or groups and committed with the intention of maintaining that regime.

- (b) “Arbitrary deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under domestic or international law.
- (c) “Armed conflict” means any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized armed groups or between such groups within that State: Provided, That such force or armed violence gives rise, or may give rise, to a situation to which the Geneva Conventions of 12 August 1949, including their common Article 3, apply. Armed conflict may be international, that is, between two (2) or more States, including belligerent occupation; or non-international, that is, between governmental authorities and organized armed groups or between such groups within a state. It does not cover internal disturbances or tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (d) “Armed forces” means all organized armed forces, groups and units that belong to a party to an armed conflict which are under a command responsible to that party for the conduct of its subordinates. Such armed forces shall be subject to an internal disciplinary system which enforces compliance with International Humanitarian Law.
- (e) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in Section 6 of this Act against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.
- (f) “Effective command and control” or “ effective authority and control” means having the material ability to prevent and punish the commission of offenses by subordinates.

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- (g) “Enforced or involuntary disappearance of persons” means the arrest, detention, or abduction of persons by, or with the authorization support or acquiescence of, a State or a political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing from the protection of the law for a prolonged period of time.
- (h) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.
- (i) “Extermination” means the international infliction of conditions of life, inter alia, the deprivation of access to food and medicine, calculated to bring about the destruction of a part of a population.
- (j) “Forced pregnancy” means the unlawful confinement of a women to be forcibly made pregnant, with the intent of affecting the ethnic composition of any population carrying out other grave violations of international law.
- (k) “Hors de Combat” means a person who:
- (1) is in the power of an adverse party;
  - (2) has clearly expressed an intention to surrender; or
  - (3) has been rendered unconscious or otherwise incapacitated by wounds or sickness and therefore is incapable of defending himself: Provided, that in any of these cases, the person form any hostile act and does not attempt to escape.
- (l) “Military necessity” means the necessity of employing measures which are indispensable to achieve a legitimate aim of the conflict and are not otherwise prohibited by International Humanitarian Law.



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(m) “Non-defended locality” means a locality that fulfills the following conditions:

- (1) all combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;
- (2) no hostile use of fixed military installations or establishments must have been made;
- (3) no acts of hostility must have been committed by the authorities or by the population; and
- (4) no activities in support of military operations, must have been undertaken.

(n) “No quarter will be given” means refusing to spare the life of anybody, even of persons manifestly unable to defend themselves or who clearly express their intention to surrender.

(o) “Perfidy” means acts which invite the confidence of an adversary to lead him/her to believe he/she is entitled to, or is obliged to accord, protection under the rules of International Humanitarian Law, with the intent to betray that confidence, including but not limited to:

- (1) feigning an intent to negotiate under a flag of truce;
- (2) feigning surrender;
- (3) feigning incapacitation by wounds or sickness;
- (4) feigning civilian or noncombatant status; and
- (5) feigning protective status by use of signs, emblems or uniforms of the United Nations or of a neutral or other State not party to the conflict.

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(p) “Persecution” means the international and severe deprivation of fundamental rights contrary to international law by reason of identity of the group or collectivity.

(q) “Protect person” in an armed conflict means:

- (1) a person wounded, sick or shipwrecked, whether civilian or military;
- (2) a prisoner of war or any person deprived of liberty for reasons related to an armed conflict;
- (3) a civilian or any person not taking a direct part or having ceased to take part in the hostilities in the power of the adverse party;
- (4) a person who, before the beginning of hostilities, was considered a stateless person or refugee under the relevant international instruments accepted by the parties to the conflict concerned or under the national legislation of the state of refuge or state of residence;
- (5) a member of the medical personnel assigned exclusively to medical purposes or to the administration of medical units or to the operation of or administration of medical transports; or
- (6) a member of the religious personnel who is exclusively engaged in the work of their ministry and attached to the armed forces of a party to the conflict, its medical units or medical transports, or non-denominational, noncombatant military personnel carrying out functions similar to religious personnel.

(r) “Superior” means:

- (1) a military commander or a person effectively acting as a military commander; or
- (2) any other superior, in as much as the crimes arose from activities within the effective authority and control of that superior.

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- (s) “Torture” means the intentional infliction of severe pain or suffering, whether physical, mental, or psychological, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.
  - (t) “Works and installations containing dangerous forces” means works and installations the attack of which may cause the release of dangerous forces and consequent severe losses among the civilian population, namely: dams, dikes, and nuclear, electrical generation stations.

### **CHAPTER III**

#### **CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND OTHER CRIMES AGAINST HUMANITY**

**Section 4. War Crimes.** - For the purpose of this Act, “war crimes” or “crimes against international Humanitarian Law” means:

- (a) In case of an international armed conflict , grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under provisions of the relevant Geneva Convention:
  - (1) Willful killing;
  - (2) Torture or inhuman treatment, including biological experiments;
  - (3) Willfully causing great suffering, or serious injury to body or health;
  - (4) Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
  - (5) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

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- (6) Arbitrary deportation or forcible transfer of population or unlawful confinement;
  - (7) Taking of hostages;
  - (8) Compelling a prisoner a prisoner of war or other protected person to serve in the forces of a hostile power; and
  - (9) Unjustifiable delay in the repatriation of prisoners of war or other protected persons.
- (b) In case of a non-international armed conflict, serious violations of common Article 3 to the four (4) Geneva Conventions of 12 August 1949, namely , any of the following acts committed against persons taking no active part in the hostilities, including member of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause;
- (1) Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;
  - (2) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;
  - (3) Taking of hostages; and
  - (4) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (c) Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law, namely:
- (1) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

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- (2) Intentionally directing attacks against civilian objects, that is, object which are not military objectives;
  - (3) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions or Additional Protocol III in conformity with international law;
  - (4) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (5) Launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be excessive in relation to the concrete and direct military advantage anticipated;
  - (6) Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, and causing death or serious injury to body or health;
  - (7) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives, or making non-defended localities or demilitarized zones the object of attack;
  - (8) Killing or wounding a person in the knowledge that he/she is hors de combat, including a combatant who, having laid down his/her arms or no longer having means of defense, has surrendered at discretion;
  - (9) Making improper use of a flag of truce, of the flag or the military insignia and uniform of the enemy or of the United Nations, as

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well as of the distinctive emblems of the Geneva Conventions or other protective signs under International Humanitarian Law, resulting in death, serious personal injury or capture;

- (10) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives. In case of doubt whether such building or place has been used to make an effective contribution to military action, it shall be presumed not to be so used;
- (11) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind, or to removal of tissue or organs for transplantation, which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his/her interest, and which cause death to or seriously endanger the health of such person or persons;
- (12) Killing, wounding or capturing an adversary by resort to perfidy;
- (13) Declaring that no quarter will be given;
- (14) Destroying or seizing the enemy's property unless such destruction or seizure is imperatively demanded by the necessities of war;
- (15) Pillaging a town or place, even when taken by assault;
- (16) Ordering the displacements of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (17) Transferring, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

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- (18) Committing outrages upon personal dignity, in particular, humiliating and degrading treatments;
  - (19) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions or a serious violation of common Article 3 to the Geneva Conventions;
  - (20) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
  - (21) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols;
  - (22) In an international armed conflict, compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
  - (23) In an international armed conflict, declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
  - (24) Committing any of the following acts:
    - (i) Conscripting, enlisting or recruiting children under the age of fifteen (15) years into the national armed forces;
    - (ii) Conscripting, enlisting or recruiting children under the age of eighteen (18) years into an armed force or group other than the national armed forces; and
    - (iii) Using children under the age of eighteen (18) years to participate actively in hostilities; and

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(25) Employing means of warfare which are prohibited under international law, such as:

- (i) Poison or poisoned weapons;
- (ii) Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (iii) Bullets which expand or flatten easily in the human body, such as bullets with hard envelopes which do not entirely cover the core or are pierced with incisions; and
- (iv) Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict.

Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act.

**Section 5. Genocide** - (a) For the purpose of this Act, “genocide” means any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, religious, social or any other similar stable and permanent group as such:

- (1) Killing members of the group;
- (2) Causing serious bodily or mental harm to members of the group;
- (3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (4) Imposing measures intended to prevent births within the group; and
- (5) Forcibly transferring children of the group to another group.



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- (b) It shall be unlawful for any person to directly and publicly incite others to commit genocide.

Any person found guilty of committing any of the acts specified in paragraphs (a) and (b) of this section shall suffer the penalty provided under Section 7 of this Act.

**Section 6. Other Crimes Against Humanity.** - For the purpose of this act, “other crimes against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Willful killing;
- (b) Extermination;
- (c) Enslavement;
- (d) Arbitrary deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime defined in this Act;
- (i) Enforced or involuntary disappearance of persons;
- (j) Apartheid; and

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- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act.

## **CHAPTER IV**

### **PENAL PROVISIONS**

**Section 7. Penalties.** - Any person found guilty of committing any of the acts provided under Sections 4, 5 and 6 of this Act shall suffer the penalty of reclusion temporal in its medium to maximum period and a fine ranging from One hundred thousand pesos (Php 100,000.00) to Five hundred thousand pesos (Php 500,000.00).

When justified by the extreme gravity of the crime, especially where the commission of any of the crimes specified herein results in death or serious physical injury, or constitutes rape, and considering the individual circumstances of the accused, the penalty of reclusion perpetua and a fine ranging from Five hundred thousand pesos (Php 500,000.00) to One million pesos (Php 1,000,000.00) shall be imposed.

Any person found guilty of inciting others to commit genocide referred to in Section 5(b) of this Act shall suffer the penalty of prision mayor in its minimum period and a fine ranging from Ten thousand pesos (Php 10,000.00) to Twenty thousand pesos (Php 20,000.00).

In addition, the court shall order the forfeiture of proceeds, property and assets derived, directly or indirectly, from that crime, without prejudice to the rights of bona fide third (3rd) parties. The court shall also impose the corresponding accessory penalties under the Revised Penal Code, especially where the offender is a public officer.

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## CHAPTER V

### SOME PRINCIPLES OF CRIMINAL LIABILITY

**Section 8. Individual Criminal Responsibilities.** - (a) In addition to existing provisions in Philippine law on principles of criminal responsibility, a person shall be criminally liable as principal for a crime defined and penalized in this Act if he/she:

- (1) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
  - (2) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
  - (3) In any other way contributes to the commission or attempted commission of such a crime by a group of person acting with a common purpose. Such contribution shall be intentional and shall either:
    - (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime defined in this Act; or
    - (ii) be made in the knowledge of the intention of the group to commit the crime.
- (b) A person shall be criminally liable as accomplice for facilitating the commission of a crime defined and penalized in this Act if he/she aids, abets or otherwise assists in its commission or attempted commission, including providing the means for its commission.
- (c) A person shall be criminally liable for a crime defined and penalized in this Act if he/she attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur

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because of circumstances independent of the person's intention. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Act for the attempt to commit the same if he/she completely and voluntarily gave up the criminal purpose.

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

- (a) Immunities or special procedural rules that may be attached to the official capacity of a person under Philippine law other than the established constitutional immunity from suit of the Philippine President during his/her tenure, shall not bar the court from exercising jurisdiction over such a person; and
- (b) Immunities that may be attached to the official capacity of a person under international law may limit the application of this Act, but only within the bounds established under international law.

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

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

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

**Section 11. Non-prescription.** - The crimes defined and penalized under this Act, their prosecution, and the execution of sentences imposed on their account, shall not be subject to any prescription.

**Section 12. Orders from a Superior.** - The fact that a crime defined and penalized under this Act has been committed by a person pursuant to an order of a government or a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless all of the following elements occur:

- (a) The person was under a legal obligation to obey orders of the government or the superior in question;
- (b) The person did not know that the order was unlawful; and
- (c) The order was not manifestly unlawful.

For the purposes of this section, orders to commit genocide or other crimes against humanity are manifestly unlawful.

## **CHAPTER VI**

### **Protection of Victims and Witnesses**

**Section 13. Protection of Victims and Witnesses.** - In addition to existing provisions in Philippine law for the protection of victims and witnesses, the following measures shall be undertaken:

- (a) The Philippine court shall take appropriate measures to protect the safety, physical and physiological well-being, dignity and privacy of victims and witnesses. In so doing, the court shall have regard of all relevant factors, including age, gender and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender

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violence or violence against children. The prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and to a fair and impartial trial;

- (b) As an exception to the general principle of public hearings, the court may, to protect the victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of the victim of sexual violence or a child who is a victim or is a witness, unless otherwise ordered by the court, having regard to all the circumstances, particularly the views of the victim or witness;
- (c) Where the personal interests of the victims are affected, the court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the court in manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the court considers it appropriate in accordance with the established rules of procedure and evidence; and
- (d) Where the disclosure of evidence or information pursuant to this Act may lead to the grave endangerment of the security of a witness for his/her family, the prosecution may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and to a fair and impartial trial.

**Section 14. Reparations to Victims.** - In addition to existing provisions in Philippine law and procedural rules for reparations to victims, the following measures shall be undertaken:

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- (a) The court shall follow the principles relating to the reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision, the court may, wither upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and state the principles on which it is acting;
  - (b) The court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation; and
  - (c) Before making an order under this section, the court may invite and shall take account of representations from or on behalf of the convicted person, victims or other interested persons.

Nothing in this section shall be interpreted as prejudicing the rights of victims under national or international law.

## **CHAPTER VII**

### **Applicability of International Law and Other Laws**

**Section 15. Applicability of International Law.-** In the application and interpretation of this Act, Philippine courts shall be guided by the following sources:

- (a) The 1948 Genocide Convention;
- (b) The 1949 Geneva Conventions I-IV, their 1977 Additional Protocols I and II and their 2005 Additional Protocol III;
- (c) The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, its First Protocol and its 1999 Second Protocol;

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- (d) The 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the Involvement of Children in Armed Conflict;
  - (e) The rules and principles of customary international law;
  - (f) The judicial decisions of international courts and tribunals;
  - (g) Relevant and applicable international human rights instruments;
  - (h) Other relevant international treaties and conventions ratified or acceded to by the Republic of the Philippines; and
  - (i) Teachings of the most highly qualified publicists and authoritative commentaries on the foregoing sources as subsidiary means for the determination of rules of international law.

**Section 16. Suppletory Application of the Revised Penal Code and Other General or Special Laws.** - The provisions of the Revised Penal Code and other general or special laws shall have a suppletory application to the provisions of this Act.

## **CHAPTER VII**

### **JURISDICTION**

**Section 17. Jurisdiction.**- The State shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of a crime defined and penalized in this Act, regardless of where the crime is committed, provided, any one of the following conditions is met:

- (a) The accused is a Filipino citizen;
- (b) The accused, regardless of citizenship or residence, is present in the Philippines; or



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- (c) The accused has committed the said crime against a Filipino citizen.

In the interest of justice, the relevant Philippine authorities may dispense with the investigation or prosecution of a crime punishable under this Act if another court or international tribunal is already conducting the investigation or undertaking the prosecution of such crime. Instead, the authorities may surrender or extradite suspected or accused persons in the Philippines to the appropriate international court, if any, or to another State pursuant to the applicable extradition laws and treaties.

No criminal proceedings shall be initiated against foreign nationals suspected or accused of having committed the crimes defined and penalized in this Act if they have been tried by a competent court outside the Philippines in respect of the same offense and acquitted, or having been convicted, already served their sentence.

**Section 18. Philippine Court, Prosecutors and Investigators. -** The Regional Trial Court of the Philippines shall have original and exclusive jurisdiction over the crimes punishable under this Act. Their judgments may be appealed or elevated to the Court of Appeals and to the Supreme Court as provided by law.

The Supreme Court shall designate special courts to try cases involving crimes punishable under this Act. For these cases, the Commission on Human Rights, the Department of Justice, the Philippine National Police or other concerned law enforcement agencies shall designate prosecutors or investigators as the case may be.

The State shall ensure that judges, prosecutors and investigators, especially those designated for purposes of this Act, receive effective training in human rights, International Humanitarian Law and International Criminal Law.

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## CHAPTER IX

### FINAL PROVISIONS

**Section 19. Separability Clause.** - If, for any reason or reasons, any part or provision of this Statute shall be held to be unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

**Section 20. Repealing Clause.** - All laws, presidential decrees and issuances, executive orders, rules and regulations or parts thereof inconsistent with the provisions of this Statute are hereby repealed or modified accordingly.

**Section 21. Effectivity.** - This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in two (2) newspapers general circulation.

Approved: December 11, 2009

## **REPUBLIC ACT NO. 10353 AN ACT DEFINING AND PENALIZING ENFORCED OR INVOLUNTARY DISAPPEARANCE**

**SECTION 1. Short Title.** –This Act shall be known as the “Anti-Enforced or Involuntary Disappearance Act of 2012”.

**SEC. 2. Declaration of Policy.** –The State values the dignity of every human person and guarantees full respect for human rights for which highest priority shall be given to the enactment of measures for the enhancement of the right of all people to human dignity, the prohibition against secret detention places, solitary confinement, incommunicado, or other similar forms of detention, the provision for penal and civil sanctions for such violations, and compensation and rehabilitation for the victims and their families, particularly with respect to the use 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.

Furthermore, the State adheres to the principles and standards on the absolute condemnation of human rights violations set by the 1987 Philippine Constitution and various international instruments such as, but not limited to, the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which the Philippines is a State party.

**SEC. 3. Definitions.** – For purposes of this Act, the following terms shall be defined as follows:

- (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

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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 the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, 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 a 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 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 as defined in letter (b) of this Section.

**SEC. 4. 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.

**SEC. 5. “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

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of enforced or involuntary disappearance is unlawful and cannot be invoked as a justifying or exempting circumstance. Any person receiving such an order shall have the right to disobey it.

**SEC. 6. Right of Access to Communication.** – It shall be the absolute right of any person deprived of liberty to have immediate access to any form of communication available in order for him or her to inform his or her family, relative, friend, lawyer or any human rights organization on his or her whereabouts and condition.

**SEC. 7. Duty to Report Victims of Enforced or Involuntary Disappearance.** – Any person, not being a principal, accomplice or accessory, who has an information of a case of enforced or involuntary disappearance or who shall learn of such information 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 office, detachment or division of the Department of the Interior and Local Government (DILG), the Department of National Defense (DND), the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), the National Bureau of Investigation (NBI), the City or Provincial Prosecutor, the Commission on Human Rights (CHR) or any human rights organization and, if known, the victim's family, relative, or lawyer.

**SEC. 8. 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 a human rights organization or a member of the media inquires with a member or official of any police or military detention center, the PNP or any of its agencies, the AFP or any of its agencies, 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 reported 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.

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**SEC. 9. 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 process is a victim of enforced or involuntary disappearance shall have the duty to immediately disclose the victim's whereabouts to his or her immediate family, relatives, lawyer/s or to a human rights organization by the most expedient means.

**SEC. 10. 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. Relatives, lawyers, judges, official bodies 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;

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- (f) Records of physical, mental and psychological condition of the detained or confined person before and after the deprivation of liberty and the name and address of the physician who examined him or her physically, mentally and medically;
  - (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 and 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, the circumstances and cause of death of the victim as well as the destination of the human remains; and
- (1) 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 or upon request reported to the CHR or any other agency of government tasked to monitor and protect human rights and shall be made available to the public.

#### **SEC. 11. Submission of List of Government Detention Facilities.**

–Within six (6) months from the effectivity of this Act and as may

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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.

**SEC. 12. 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 dispensed with expeditiously. 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.

**SEC. 13. 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 inspection of all places of detention and confinement.

**SEC. 14. 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.



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## **SEC. 15. 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:

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- (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 prison 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 6, 7, 8, 9 and 10 of this Act.

**SEC. 16. 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.

**SEC. 17. 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.

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**SEC. 18. Independent Liability.** –The criminal liability of the offender under this Act shall be independent of or without prejudice to the prosecution and conviction of the said offender for any violation of Republic Act No. 7438, otherwise known as “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”; Republic Act No. 9745, otherwise known as “An Act Penalizing Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and Prescribing Penalties Therefor”; and applicable provisions of the Revised Penal Code.

**SEC. 19. Nonexclusivity or Double Jeopardy Under International Law.** – Any investigation, trial and decision in any Philippines court, or body for any violation of this 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.

**SEC. 20. 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 this Act: Provided, That said offender does not appear to be the most guilty.

**SEC. 21. 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.

**SEC. 22. Statue 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.

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**SEC. 23. Special Amnesty Law Exclusion.** – Persons who are changed 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.

**SEC. 24. 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 and media. They shall likewise be protected from any intimidation or reprisal.

**SEC. 25. 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 the Department, of Foreign Affairs (DFA) and the Secretary of the Department of Justice (DOJ) 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.

**SEC. 26. 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. Such 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.

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The immediate relatives of a victim of enforced or involuntary disappearance, within the fourth civil degree of consanguinity or affinity, may also claim for compensation as provided for under Republic Act No. 7309, entitled “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.

The package of indemnification for both the victims and the immediate relatives within the fourth civil degree of consanguinity or affinity shall be without prejudice to other legal remedies that may be available to them.

**SEC. 27. 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 Department of Health, the Department of Social Welfare and Development (DSWD) and the concerned non-government organization/s, shall provide them with appropriate medical care and rehabilitation free of charge.

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.

**SEC. 28. Implementing Rules and Regulations.** – Within thirty (30) days from the effectivity of this Act, the DOJ, the DSWD, the CHR, the Families of Victims of Involuntary Disappearance (FIND) and the Families of Desaparecidos for Justice (Desaparecidos), in consultation with other human rights organizations, shall jointly promulgate the rules and regulations for the effective implementation of this Act and shall ensure the full dissemination of the same to the public.

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**SEC. 29. Suppletory Applications.** – The applicable provisions of the Revised Penal Code shall have suppletory application insofar as they are consistent with the provisions of this Act.

**SEC. 30. Appropriations.** –The amount of Ten million pesos (P10,000,000.00) is hereby appropriated for the initial implementation of this Act by the CHR. Subsequent funds for the continuing implementation of this Act shall be included in the respective budgets of the CHR and the DOJ in the annual General Appropriations Act.

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

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

**SEC. 33. Effectivity Clause.** – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation or the Official Gazette, which shall not be later than seven (7) days after the approval thereof.

Approved: December 21, 2012

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## **OTHER RELATED ISSUANCES**

## THE RULE ON THE WRIT OF HABEAS DATA

**Section 1. Habeas Data.** - The writ of habeas data is a remedy available to any person whose right to privacy in 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 data or information regarding the person, family, home and correspondence of the aggrieved party.

**Sec. 2. Who May File.** - Any aggrieved party may file a petition for the writ of habeas data. However, in cases of extralegal killings and enforced disappearances, the petition may be filed by:

- (a) Any member of the immediate family of the aggrieved party, namely: the spouse, children and parents; and
- (b) Any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph;

**Sec. 3. Where to File.** - The petition may be filed with the Regional Trial Court where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored, at the option of the petitioner.

The petition may also be filed with the Supreme Court or the Court of Appeals or the Sandiganbayan when the action concerns public data files of government offices.

**Sec. 4. Where Returnable; Enforceable.** - When the writ is issued by a Regional Trial Court or any judge thereof, it shall be returnable before such court or judge.



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When issued by the Court of Appeals or the Sandiganbayan or any of its justices, it may be returnable before such court or any justice thereof, or to any Regional Trial Court of the place where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored.

When issued by the Supreme Court or any of its justices, it may be returnable before such Court or any justice thereof, or before the Court of Appeals or the Sandiganbayan or any of its justices, or to any Regional Trial Court of the place where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored.

The writ of habeas data shall be enforceable anywhere in the Philippines.

**Sec. 5. Docket Fees.** - No docket and other lawful fees shall be required from an indigent petitioner. The petition of the indigent shall be docketed and acted upon immediately, without prejudice to subsequent submission of proof of indigency not later than fifteen (15) days from the filing of the petition.

**Sec. 6. Petition.** - A verified written petition for a writ of habeas data should contain:

- (a) The personal circumstances of the petitioner and the respondent;
- (b) The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party;
- (c) The actions and recourses taken by the petitioner to secure the data or information;
- (d) The location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information, if known;

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- (e) The reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information or files kept by the respondent.

In case of threats, the relief may include a prayer for an order enjoining the act complained of; and

- (f) Such other relevant reliefs as are just and equitable.

**Sec. 7. Issuance of the Writ.** - Upon the filing of the petition, the court, justice or judge shall immediately order the issuance of the writ if on its face it ought to issue. The clerk of court shall issue the writ under the seal of the court and cause it to be served within three (3) days from the issuance; or, in case of urgent necessity, the justice or judge may issue the writ under his or her own hand, and may deputize any officer or person serve it.

The writ shall also set the date and time for summary hearing of the petition which shall not be later than ten (10) work days from the date of its issuance.

**Sec. 8. Penalty for Refusing to Issue or Serve the Writ.** - A clerk of court who refuses to issue the writ after its allowance, or a deputized person who refuses to serve the same, shall be punished by the court, justice or judge for contempt without prejudice to other disciplinary actions.

**Sec. 9. How the Writ is Served.** - The writ shall be served upon the respondent by a judicial officer or by a person deputized by the court, justice or judge who shall retain a copy on which to make a return of service. In case the writ cannot be served personally on the respondent, the rules on substituted service shall apply.

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

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- (a) The lawful defenses such as national security, state secrets, privileged communications, confidentiality of the source of information of media and others;
  - (b) In case of respondent in charge, in possession or in control of the data or information subject of the petition;
    - (i) a disclosure of the data or information about the petitioner, the nature of such data or information, and the purpose for its collection;
    - (ii) the steps or actions taken by the respondent to ensure the security and confidentiality of the data or information;
    - (iii) the currency and accuracy of the data or information held.
  - (c) Other allegations relevant to the resolution of the proceeding.

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

**Sec. 11. Contempt.** - The court, justice or judge may punish with imprisonment or fine a respondent who commits contempt by making a false return, or refusing to make a return; or any person who otherwise disobeys or resist a lawful process or order of the court.

**Sec. 12. When Defenses May be Heard in Chambers.** - A hearing in chambers may be conducted where the respondent invokes the defense that the release of the data or information in question shall compromise national security or state secrets, or when the data or information cannot be divulged to the public due to its nature or privileged character.

**Sec. 13. Prohibited Pleadings and Motions.** - The following pleadings and motions are prohibited:

- (a) Motion to dismiss;

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- (b) Motion for extension of time to file return, opposition, affidavit, position paper and other pleadings;
  - (c) Dilatory motion for postponement;
  - (d) Motion for a bill of particulars;
  - (e) Counterclaim or cross-claim;
  - (f) Third-party complaint;
  - (g) Reply;
  - (h) Motion to declare respondent in default;
  - (i) Intervention;
  - (j) Memorandum;
  - (k) Motion for reconsideration of interlocutory orders or interim relief orders; and
  - (l) Petition for certiorari, mandamus or prohibition against any interlocutory order.

**Sec. 14. Return; Filing.** - In case the respondent fails to file a return, the court, justice or judge shall proceed to hear the petition ex parte, granting the petitioner such relief as the petition may warrant unless the court in its discretion requires the petitioner to submit evidence.

**Sec. 15. Summary Hearing.** - The hearing on the petition shall be summary. However, the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.

**Sec. 16. Judgment.** - The court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence,

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the court shall enjoin the act complained of, or order the deletion, destruction, or rectification of the erroneous data or information and grant other relevant reliefs as may be just and equitable; otherwise, the privilege of the writ shall be denied.

Upon its finality, the judgment shall be enforced by the sheriff or any lawful officers as may be designated by the court, justice or judge within five (5) working days.

**Sec. 17. Return of Service.** - The officer who executed the final judgment shall, within three (3) days from its enforcement, make a verified return to the court. The return shall contain a full statement of the proceedings under the writ and a complete inventory of the database or information, or documents and articles inspected, updated, rectified, or deleted, with copies served on the petitioner and the respondent.

The officer shall state in the return how the judgment was enforced and complied with by the respondent, as well as all objections of the parties regarding the manner and regularity of the service of the writ.

**Sec. 18. Hearing on Officer-s Return.** - The court shall set the return for hearing with due notice to the parties and act accordingly.

**Sec. 19. Appeal.** - Any party may appeal from the final judgment or order to the Supreme Court under Rule 45. The appeal may raise questions of fact or law or both.

The period of appeal shall be five (5) working days from the date of notice of the judgment or final order.

The appeal shall be given the same priority as in habeas corpus and amparo cases.

**Sec. 20. Institution of Separate Actions.** - The filing of a petition for the writ of habeas data shall not preclude the filing of separate criminal, civil or administrative actions.

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**Sec. 21. Consolidation.** - When a criminal action is filed subsequent to the filing of a petition for the writ, the latter shall be consolidated with the criminal action.

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

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

**Sec. 22. Effect of Filing of a Criminal Action.** - When a criminal action has been commenced, no separate petition for the writ shall be filed. The relief under the writ shall be available to an aggrieved party by motion in the criminal case.

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

**Sec. 23. Substantive Rights.** - This Rule shall not diminish, increase or modify substantive rights.

**Sec. 24. Suppletory Application of the Rules of Court.** - The Rules of Court shall apply suppletorily insofar as it is not inconsistent with this Rule.

**Sec. 25. Effectivity.** - This Rule shall take effect on February 2, 2008, following its publication in three (3) newspapers of general circulation.

## THE RULE ON THE WRIT OF AMPARO

**Section 1. Petition.** - The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

The writ shall cover extralegal killings and enforced disappearances or threats thereof.

**Sec. 2. Who May File.** - The petition may be filed by the aggrieved party or by any qualified person or entity in the following order:

1. Any member of the immediate family, namely: the spouse, children and parents of the aggrieved party;
2. Any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph; or
3. Any concerned citizen, organization, association or institution, if there is no known member of the immediate family or relative of the aggrieved party.

The filing of a petition by the aggrieved party suspends the right of all other authorized parties to file similar petitions. Likewise, the filing of the petition by an authorized party on behalf of the aggrieved party suspends the right of all others, observing the order established herein.

**Sec. 3. Where to File.** - The petition may be filed on any day and at any time with the Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred, or with the Sandiganbayan, the Court of

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Appeals, the Supreme Court, or any justice of such courts. The writ shall be enforceable anywhere in the Philippines.

When issued by a Regional Trial Court or any judge thereof, the writ shall be returnable before such court or judge.

When issued by the Sandiganbayan or the Court of Appeals or any of their justices, it may be returnable before such court or any justice thereof, or to any Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred.

When issued by the Supreme Court or any of its justices, it may be returnable before such Court or any justice thereof, or before the Sandiganbayan or the Court of Appeals or any of their justices, or to any Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred.

**Sec. 4. No Docket Fees.** - The petitioner shall be exempted from the payment of the docket and other lawful fees when filing the petition. The court, justice or judge shall docket the petition and act upon it immediately.

**Sec. 5. Contents of Petition.** - The petition shall be signed and verified and shall allege the following:

1. The personal circumstances of the petitioner;
2. The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation;
3. The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;



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4. The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;
  5. The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and
  6. The relief prayed for.

The petition may include a general prayer for other just and equitable reliefs.

**Sec. 6. Issuance of the Writ.** - Upon the filing of the petition, the court, justice or judge shall immediately order the issuance of the writ if on its face it ought to issue. The clerk of court shall issue the writ under the seal of the court; or in case of urgent necessity, the justice or the judge may issue the writ under his or her own hand, and may deputize any officer or person to serve it.

The writ shall also set the date and time for summary hearing of the petition which shall not be later than seven (7) days from the date of its issuance.

**Sec. 7. Penalty for Refusing to Issue or Serve the Writ.** - A clerk of court who refuses to issue the writ after its allowance, or a deputized person who refuses to serve the same, shall be punished by the court, justice or judge for contempt without prejudice to other disciplinary actions.

**Sec. 8. How the Writ is Served.** - The writ shall be served upon the respondent by a judicial officer or by a person deputized by the court, justice or judge who shall retain a copy on which to make a return of service. In case the writ cannot be served personally on the respondent, the rules on substituted service shall apply.

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

1. The lawful defenses to show that the respondent did not violate or threaten with violation the right to life, liberty and security of the aggrieved party, through any act or omission;
2. The steps or actions taken by the respondent to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission;
3. All relevant information in the possession of the respondent pertaining to the threat, act or omission against the aggrieved party; and
4. If the respondent is a public official or employee, the return shall further state the actions that have been or will still be taken:
  1. to verify the identity of the aggrieved party;
  2. to recover and preserve evidence related to the death or disappearance of the person identified in the petition which may aid in the prosecution of the person or persons responsible;
  3. to identify witnesses and obtain statements from them concerning the death or disappearance;
  4. to determine the cause, manner, location and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance;
  5. to identify and apprehend the person or persons involved in the death or disappearance; and
  6. to bring the suspected offenders before a competent court.

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

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

**Sec. 10. Defenses not Pleaded Deemed Waived.** - All defenses shall be raised in the return, otherwise, they shall be deemed waived.

**Sec. 11. Prohibited Pleadings and Motions.** - The following pleadings and motions are prohibited:

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.

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**Sec. 12. Effect of Failure to File Return.** - In case the respondent fails to file a return, the court, justice or judge shall proceed to hear the petition ex parte.

**Sec. 13. Summary Hearing.** - The hearing on the petition shall be summary. However, the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.

The hearing shall be from day to day until completed and given the same priority as petitions for habeas corpus.

**Sec. 14. Interim Reliefs.** - Upon filing of the petition or at anytime before final judgment, the court, justice or judge may grant any of the following reliefs:

- (a) Temporary Protection Order. - The court, justice or judge, upon motion or motu proprio, may order that the petitioner or the aggrieved party and any member of the immediate family be protected in a government agency or by an accredited person or private institution capable of keeping and securing their safety. If the petitioner is an organization, association or institution referred to in Section 3(c) of this Rule, the protection may be extended to the officers involved.

The Supreme Court shall accredit the persons and private institutions that shall extend temporary protection to the petitioner or the aggrieved party and any member of the immediate family, in accordance with guidelines which it shall issue.

The accredited persons and private institutions shall comply with the rules and conditions that may be imposed by the court, justice or judge.

- (b) Inspection Order. - The court, justice or judge, upon verified motion and after due hearing, may order any person in possession or control of a designated land or other property,

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to permit entry for the purpose of inspecting, measuring, surveying, or photographing the property or any relevant object or operation thereon.

The motion shall state in detail the place or places to be inspected. It shall be supported by affidavits or testimonies of witnesses having personal knowledge of the enforced disappearance or whereabouts of the aggrieved party.

If the motion is opposed on the ground of national security or of the privileged nature of the information, the court, justice or judge may conduct a hearing in chambers to determine the merit of the opposition.

The movant must show that the inspection order is necessary to establish the right of the aggrieved party alleged to be threatened or violated.

The inspection order shall specify the person or persons authorized to make the inspection and the date, time, place and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties. The order shall expire five (5) days after the date of its issuance, unless extended for justifiable reasons.

- (c) Production Order. - The court, justice or judge, upon verified motion and after due hearing, may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.

The motion may be opposed on the ground of national security or of the privileged nature of the information, in which case the court, justice or judge may conduct a hearing in chambers to determine the merit of the opposition.

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The court, justice or judge shall prescribe other conditions to protect the constitutional rights of all the parties.

- (d) **Witness Protection Order.** - The court, justice or judge, upon motion or motu proprio, may refer the witnesses to the Department of Justice for admission to the Witness Protection, Security and Benefit Program, pursuant to Republic Act No. 6981.

The court, justice or judge may also refer the witnesses to other government agencies, or to accredited persons or private institutions capable of keeping and securing their safety.

**Sec. 15. Availability of Interim Reliefs to Respondent.** - Upon verified motion of the respondent and after due hearing, the court, justice or judge may issue an inspection order or production order under paragraphs (b) and (c) of the preceding section.

A motion for inspection order under this section shall be supported by affidavits or testimonies of witnesses having personal knowledge of the defenses of the respondent.

**Sec. 16. Contempt.** - The court, justice or judge may order the respondent who refuses to make a return, or who makes a false return, or any person who otherwise disobeys or resists a lawful process or order of the court to be punished for contempt. The contemnor may be imprisoned or imposed a fine.

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

The respondent who is a private individual or entity must prove that ordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

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The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed to evade responsibility or liability.

**Sec. 18. Judgment.** - The court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate; otherwise, the privilege shall be denied.

**Sec. 19. Appeal.** - Any party may appeal from the final judgment or order to the Supreme Court under Rule 45. The appeal may raise questions of fact or law or both.

The period of appeal shall be five (5) working days from the date of notice of the adverse judgment.

The appeal shall be given the same priority as in habeas corpus cases.

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

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

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

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

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

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

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

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

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

**Sec. 24. Substantive Rights.** - This Rule shall not diminish, increase or modify substantive rights recognized and protected by the Constitution.

**Sec. 25. Suppletory Application of the Rules of Court.** - The Rules of Court shall apply suppletorily insofar as it is not inconsistent with this Rule.

**Sec. 26. Applicability to Pending Cases.** - This Rule shall govern cases involving extralegal killings and enforced disappearances or threats thereof pending in the trial and appellate courts.

**Sec. 27. Effectivity.** - This Rule shall take effect on October 24, 2007, following its publication in three (3) newspapers of general circulation.



**BY THE PRESIDENT OF THE PHILIPPINES  
ADMINISTRATIVE ORDER NO. 35**

**CREATING THE INTER-AGENCY COMMITTEE  
ON EXTRA-LEGAL KILLINGS, ENFORCED  
DISAPPEARANCES, TORTURE AND OTHER GRAVE  
VIOLATIONS OF THE RIGHT TO LIFE, LIBERTY AND  
SECURITY OF PERSONS.**

**WHEREAS**, Art. II, Section 11 of the 1987 Constitution declares that the State values the dignity of every human person and guarantees full respect for human rights;

**WHEREAS**, Art. III, Section 1 of the 1987 Constitution provides that no person shall be deprived of life, liberty or property without due process of law;

**WHEREAS**, Art. III, Section 2 of the 1987 Constitution provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolate;

**WHEREAS**, Art. III, Section 12 (1) of the 1987 Constitution provides that any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice;

**WHEREAS**, Art. III, Section 12 (2) of the 1987 Constitution provides that no torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him, and that secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited;

**WHEREAS**, Art. III, Section 14 (1) of the 1987 Constitution provides that no person shall be held to answer for a criminal offense without due process of law;

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**WHEREAS**, Art. III, Section 18 (1) of the 1987 Constitution provides that no person shall be detained solely by reason of his political beliefs and aspirations;

**WHEREAS**, there have been reported and validated violations of the above declared rights of the individual throughout the years, which have served to create an impression of a culture of impunity, wherein security establishments of the State and non-state forces have been accused of silencing, through violence and intimidation, legitimate dissent and opposition raised by members of the civil society, cause-oriented groups, political movements, people's and non-government organizations, and by ordinary citizens;

**WHEREAS**, most of these violations remain uninvestigated and unsolved, with the perpetrators unidentified or unprosecuted, giving rise to more impunity;

**WHEREAS**, there is a need to revisit these unsolved cases of grave violations of the right to life, liberty, and security of persons, whether committed as part of an apparent government policy in the past or as recurring cases of unsanctioned individual abuse of power and authority by State and non-state forces under the present; and

**WHEREAS**, the present Administration declares as a matter of paramount policy that there is no room for all these forms of political violence and abuses of power by agents or elements of the State or non-state forces, and towards this end commits to establish an institutional legacy of an efficient, coherent, and comprehensive government machinery dedicated to the resolution of unsolved cases of political violence in the form of extra-legal killings, enforced disappearances, torture, and other grave violations of the right to life, liberty, and security of persons;

**NOW, THEREFORE**, I, BENIGNO S. AQUINO III, President of the Philippines, by virtue of the powers vested in me by the Constitution and by law do hereby order;

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**SECTION 1,** Creation of the Inter-Agency Committee. There is hereby created an Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture, and Other Grave Violations of the Right to Life, Liberty, and Security of Persons, to be composed of the following:

Chairperson: Secretary, Department of Justice (DOJ)

Member: Chairperson,  
Presidential Human Rights Committee (PHRC)  
Secretary, Department of the Interior and  
Local Government (DILG)  
Secretary, Department of National Defense (DND)  
Presidential Adviser on the Peace Process (PAPP)  
Presidential Adviser for Political Affairs (PAPA)  
Chief of Staff, Armed Forces of the Philippines (AFP)  
Director General, Philippine National Police (PNP)  
Director, National Bureau of Investigation (NBI)

The Committee shall invite the Chairperson of the Commission on Human Rights (CHR) and the Ombudsman as observers and resource persons of the Committee.

The above official may designate their representatives to the Committee, who shall have a rank not lower than Assistant Secretary, or General and Chief Superintendent in the case of the AFP and the PNP.

The Committee shall organize a technical working group coming from the offices of the various members and a secretariat that may be designated by the Chairperson.

**SECTION 2.** Functions. The Committee shall undertake the following:

- a) Inventory of cases. For the first 30 days, the Committee shall conduct an inventory of all cases of extra-legal killings, enforced disappearances, torture, and other grave violations

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of the right to life, liberty, and security of persons, perpetrated by State and non-state forces alike, from all government sources, i.e. the investigative and prosecutorial government offices, including the National Prosecution Service (NPS), the Ombudsman, CHR, PNP, NBI, AFP, Inspector General, People's Law Enforcement Board (PLEB), National Police Commission (NAPOLCOM), PNP Internal Affairs Service, the Judiciary and all others, for purposes of categorizing said cases, as follows:

- i. Unsolved Cases;
- ii Cases under investigation;
- iii Cases under preliminary investigation; and
- iv. Cases under trial.

Simultaneously, the Committee shall also source date of cases from non-government sources, specifically independent and non-partisan international and national human rights organizations and groups.

In determining which cases to be included in the inventory, the Committee shall draw up guidelines for the consideration of doubtful cases with primacy given to the political complexion of the offense committed, and the participation of State or non-state forces in the commission of the human rights violation.

- b) Investigation of unsolved cases. After conducting the inventory, the Committee shall prioritize the unsolved cases for action, and assign special investigation teams to conduct further investigation on these cases for the possible identification of the perpetrators. Greater priority shall be given to high profile cases perpetrated during the past administration.
- c) Monitoring and reporting to the Committee of cases under investigation, preliminary investigation, and trial. For cases under investigation, preliminary investigation, and trial, the Committee shall designate a special oversight team composed of investigators and prosecutors who shall

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actively monitor developments on these cases and regularly report and submit recommendations to the Committee.

- d) Investigation and prosecution of new cases. The Committee shall also designate a special team of investigators and prosecutors exclusively for new cases, for immediate investigation and prosecution of the perpetrators. Cases referred to or filed with the CHR or the Ombudsman shall be monitored by this special team for action on CHR and Ombudsman resolution on said cases, if applicable, unless the investigation has already been started beforehand by, or complaints have already been filed with, the agencies under the Committee's jurisdiction, in which case the special team shall oversee, supervise and monitor the investigation or preliminary investigation conducted by the Committee's agencies, notwithstanding the conduct of an on-going investigation by the CHR or the Ombudsman. However, the special team shall actively coordinate with the CHR and the Ombudsman in the conduct of these concurrent investigations.

In the case of torture, the special team shall ensure that Section 9 (a) of RA No. 9745 or the Anti-Torture Act of 2009 on the 60day period for an investigation of a complaint for torture is followed by the DOJ, Public Attorney's Office (PAO), PNP, NBI, and the AFP.

- e) Action upon the cases. After the report of every team, which shall be made as regularly and as expeditiously as possible, whether in the form of short memoranda, email, notes, field spot reports, sms messages, and the like, the Chair shall take immediate action if such is within the jurisdiction of the agencies of the Department of Justice, without need of consultation or agreement of the other members, or in consensus with the concerned member of the Committee. In any case, the Chair shall have the discretion to table any matter for discussion and decision of the Committee, especially in the instance of high-profile or problematic cases.

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- f) Submission of report to the President. After the first six months from its creation, and every six months thereafter, the Committee shall submit a report to the President, detailing the inventory of case according to category, and describing the accomplishments and progress made for each case, or the problems and obstacles encountered, highlighting problematic high profile cases from the past administration as well as violations committed during the present administration, with further recommendations for any additional action that may be taken by the President requiring coordination on a common course of action with the CHR, the Ombudsman, Congress, and the Judiciary.

**SECTION 3.** Coordination and autonomy of members. Nothing in this Administrative Order shall be interpreted to add to bureaucratic processes or regulations in order to achieve the mandate of the Committee or hamper the regular and ordinary course of functions of the agencies under the jurisdiction of the Committee members. The individual agencies shall not be prevented from accomplishing what otherwise is ordinarily accomplished in the regular conduct of their operations and functions, unless otherwise specifically agreed upon by the Committee for purposes of coordinating and implementing concerted action for the achievement of the Committee's mandates.

**SECTION 4.** Support and cooperation from other government agencies. The various departments, bureaus, offices, agencies and local government units are hereby enjoined to give full support, assistance and cooperation to the Committee in carrying out its mandate and functions.

**SECTION 5.** Funding. The initial funding requirements for the Inter-Agency Committee shall be charged against the current appropriations of the agencies composing the Committee. Thereafter, funding for the succeeding years shall be incorporated in their respective regular appropriations.

**SECTION 6.** Repealing Clause. This Administrative Order supersedes and repeals Administrative Order No. 211 (s. 2007) on the creation of the Task Force Against Political Violence. The Task

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Force is hereby directed to submit and turnover all its documents, data, reports, supplies, resources, and remaining budget to the Committee, subject to regular procedures.

**SECTION 7.** Effectivity. This Administrative Order shall take effect immediately.

DONE, in the City of Manila, this 22nd day of November, in the year of our Lord, Two Thousand and Twelve.

**REPUBLIC OF THE PHILIPPINES**  
**Department of the Interior and Local Government**  
**NATIONAL POLICE COMMISSION**  
**NATIONAL HEADQUARTERS PHILIPPINE**  
**NATIONAL POLICE**  
**OFFICE OF THE CHIEF, PNP**  
**Camp Crame, Quezon City**

**SUBJECT** : Letter of Instructions 55/07 (“PAMANA”)  
**TO** : All PNP Offices and Personnel

**I. REFERENCES:**

- A. Universal Declaration of Human Rights (UDHR) of 1948;
- B. International Covenant on Civil and Political Rights (ICCPR);
- C. UN Convention Against Torture or Other Cruel, Inhuman and Degrading Treatment (CAT);
- D. UN Code of Conduct for Law Enforcement Officials;
- E. UN Convention on the Rights of the Child (CRC);
- F. UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- G. Art II and Art III, 1987 Philippine Constitution;
- H. RA 7438, RA 9262, RA 7610, RA 8371 and other special laws with human rights standards;



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- I. Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL);
  - J. PNP Code of Professional Conduct and Ethical Standards (COPCES);
  - K. PNP Operational Procedures;
  - L. PNP Implementing Guidelines on Human Rights dated 14 Feb 1995; and
  - M. Other administrative issuances on human rights.

## **II. SITUATION:**

The Philippine National Police, the premier law enforcement agency of the land, serves as one of the government instruments charged with enforcing the full protection of human rights. Existing international standards on human rights to which the Philippines is a state party are supposed to guide the police in practicing human rights principles as the highest embodiment of policing. The PNP also published the Implementing Guidelines on Human Rights on February 14, 1995 identifying specific human rights violations and the responsibilities of various tasked offices.

Yet, despite the countless awareness-raising efforts on human rights for its personnel, the PNP is still perceived as a human rights violator given the number of incidents of alleged human rights violations which have been highlighted in media reports and those filed with the Commission on Human Rights. From January 1991 to October 2007, the CHR received a total of 7,678 cases against PNP personnel for alleged human rights violations. The data on the disposition of these cases are still being processed by the CHR.

Incidentally, the passage of the Human Security Act (RA 9372), the influx of human rights issues, both in the local and international communities, and the increasing complexities in the maintenance of peace and order, have given the police more reasons to engage in an evolving effort to address human rights on a higher plane. Likewise,

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the challenge of Her Excellency President Gloria Macapagal-Arroyo for the PNP to make human rights at the centerpiece of all its actions serves as a catalyst for advancing the human rights agenda for police personnel.

The creation of the Human Rights Affairs Office (HRAO) is one of the measures that the PNP leadership has brought into fore in order to improve existing mechanisms on human rights protection. However, far greater involvement of all PNP members is necessary for the citizenry to feel that the agency means business in serving the people and protecting their human rights. Thus, several institutional approaches on human rights are laid down in order to improve human capacities, enhance relationships and partnerships with other stakeholders, and adopt human rights-based policing programs, all geared towards making the PNP a protective bulwark of human rights.

### **III. PURPOSE:**

This LOI sets forth renewed policy directions and guidelines in the PNP to respect, promote and protect human rights.

### **IV. VISION:**

The Philippine National Police envisions the organization to be a UN-certified fortress of human rights protection.

### **V. MISSION:**

Consistent with its mandate, the Philippine National Police shall serve the citizenry and ensure the full protection of their human rights.

### **VI. GENERAL POLICIES AND GUIDELINES:**

In faithful compliance to the Philippine commitment to the universal principles of human rights and in furtherance of existing human rights standards and practices, the PNP leadership hereby issues the following policies and guidelines:

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- A. Human Rights is supreme, inalienable, and indivisible.
  - B. The entire members of the Philippine National Police shall embrace the highest principles of the Universal Declaration of Human Rights which proclaims the personal, civil, political, economic, social, and cultural rights of individuals, which are limited only by the recognition of the rights and freedoms of others and the requirements of morality, public order, and general welfare.
  - C. All police officers must internalize and put into practice Sec 11, Art II, in relation to Sec 2, Art III of the 1987 Philippine Constitution that “the State values the dignity of every human person and guarantees full respect for human rights”.
  - D. Respect for human rights and human dignity shall apply to everyone, including members of the police service, regardless of education, gender, religion, and political beliefs.
  - E. All police officers shall adopt the paradigm of human rights-based policing by being “champions” and “catalysts”, individually and collectively, to strengthen the faith and trust of the citizenry in their police officers as protectors of human rights.
  - F. Efforts by the police to protect human rights shall come to terms with the peace-building program of the government;
  - G. Programs of Instruction for police personnel shall be regularly reviewed, as may be fitting and proper, to include issues of police ethics and human rights, especially in the investigative process, as well as alternatives to the use of force and firearms. Such alternatives may include but are not limited to the peaceful settlement of conflicts, the understanding of crowd behavior, and the methods of persuasion, negotiation and mediation, and other appropriate means, with the end in view of limiting the use of force and firearms.

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- H. All police officers shall undergo appropriate knowledge, skills and attitude enhancement and other human resource development programs that will cut across the recruitment, assignment, and promotion process.
  - I. Under no circumstance shall any police officer inflict, instigate, or tolerate extra-judicial killing, enforced disappearance, “salvaging”, arbitrary arrest, torture or other cruel, inhuman or degrading treatment or punishment, against any person.
  - J. Failure on the part of any police officer, in any capacity, to take appropriate action to prevent and/or report the commission of any human rights violation by a fellow PNP personnel with his knowledge or in his presence shall make him liable.
  - K. Violation of human rights shall be dealt with drastically through the existing administrative disciplinary machinery of the PNP.
  - L. In case of conflicting scenarios, the supremacy of respect for human rights remains inviolable over the performance of police duties and functions unless it is proven that the exercise of such rights runs counter to the requirements of morality, public order, and general welfare.
  - M. Any human rights violation committed by police officers shall be subject to appropriate sanctions under the existing internal administrative disciplinary system.

## **VII. EXECUTION**

### **A. CONCEPT OF OPERATIONS:**

The Philippine National Police shall implement a comprehensive human rights development program (Annex “A”) that will address four (4) major components: institutional policy development; capability building on human rights protection; prevention and control measures against violation of human rights; and strengthening of partnership and cooperation with multi-sectoral organizations for human rights compliance.

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Duty holders within the PNP shall be responsible for putting into place the necessary mechanisms with the implementation of the comprehensive human rights development program for police personnel, in particular, and for the public, in general.

The Human Rights Affairs Office (HRAO), in furtherance of its mandated functions, shall serve as the focal point on the formulation, implementation and monitoring of the PNP human rights development program in line with the policies herein set forth.

To enhance the capacities of police officers as human rights protectors, the PNP Human Rights Desks created pursuant to PNP Implementing Rules on Human Rights dated February 14, 1995, shall be strengthened to serve as conduits to the HRAO on various efforts involving human rights. Said PNP HR Desks shall be placed as an adjunct unit in the offices of the regional directors, provincial/city police office directors, district directors, and city/municipal chiefs of police as well as directors of concerned national support units.

## **B. PHASES OF IMPLEMENTATION**

**Phase 1: (October 2007 – January 2008)** – Formulation of internal policy framework, revision of training programs, training of trainers, and strengthening of structural mechanisms.

**Phase 2: (November 2007 – September 2008)** – Cross-cutting implementation of the four major components.

**Phase 3: (September 2008)** – Initial Monitoring and Assessment.

**Phase 4: (October 2008 onwards)** – Institutionalization of program initiatives.

## **C. TASKS**

To ensure the proper implementation of these guidelines, various offices and units of the PNP are directed to carry out the following tasks:

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## 1. HRAO

- a. Initiate advocacy measures to raise the consciousness and internationalization of the PNP personnel on human rights-based policing;
- b. Lead the organization in participating or initiating human rights-driven events and activities such as Human Rights Week, International Human Rights Day, International Humanitarian Law Day, and other related human rights events, including those on women, youth and children, and others;
- c. Establish ties with and generate support and assistance from various government and non-government organizations concerned with human rights, both local and international, to advance the cause of human rights within and outside the Philippine National Police;
- d. Establish a Human Rights Eligibility List for police officers directly engaged in human rights advocacy and promotion through the issuance of appropriate certificates of qualifications making them belong to a directory of human rights practitioners in the country;
- e. Coordinate regularly with various duty holders in the PNP for discussions and resolutions of human rights issues that include but are not limited to human rights violations by police officers and/or other government forces as well as non-state actors, development of knowledge, skills and attitude of PNP personnel as human rights protectors, and enhancement of partnerships with other sectors concerning human rights;
- f. Conduct regular and/or random inspections, dialogues, and field inquiries on human rights issues affecting members of the police service, including violation of their own rights as human beings, using existing mechanisms and venues such

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as the Annual General Inspections, directorial staff family conferences, conduct of mandatory courses in the PPSC and its regional training schools;

- g. Conduct researches and case studies on human rights that delve on the causes, role patterns, capacity gaps, and institutional mechanisms leading to the improvement of the PNP as a human rights protector;
- h. Initiate, *motu proprio*, inquiries on cases of human rights violations received through walk-in complaints, electronic communications, and other means in order to facilitate appropriate actions thereof, including some mechanisms to explore alternative dispute resolutions especially when cases arise from personal acts on the part of police officers subject of the complaints. Otherwise, cases may be referred to the IAS for appropriate administrative action.
- i. Monitor, assess, and document human rights issues and concerns for use as reference of the Chief, PNP;
- j. Provide inputs to the PIO on various initiatives of the PNP on human rights for information of the public; and
- k. Perform other tasks as may be directed.

## **2. TDPRM**

- a. Develop a human rights-based psychological evaluation tool, through the PNP Health Service, aimed at determining the capacity of every police officer to promote and protect human rights while in the performance of his or her duties;
- b. Issue orders for all PNP Human Rights Officers throughout the country to ensure sustainability and dedication of individuals charged with advancing human rights agenda in the PNP; and
- c. Perform other tasks as may be directed.

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### **3. TDI**

- a. Strengthen counter-intelligence efforts to identify PNP personnel who commit human rights violations; and
- b. Perform other tasks as may be directed.

### **4. TDO**

- a. Review, evaluate and reconstruct, as may be appropriate, some provisions of existing operational policies, procedures, guidelines, attuned to the human rights principles specifically in the areas of arrest, search and seizure, civil disturbance management, lockup, and other concomitant police operations regularly performed by police officers in the field; and
- b. Perform other tasks as may be directed.

### **5. TDPL**

- a. Issue activation orders for the establishment of PNP Human Rights Desks in all PROs, PPOs, CPOs, CPS/MPS and NSUs, in coordination with NAPOLCOM; and
- b. Perform other tasks as may be directed.

### **6. TDHRDD**

- a. Formulate a human resource development plan on human rights, in coordination with HRAO, the PPSC and other concerned offices, aimed at improving the existing training and education of police officers to enhance their knowledge, skills and attitude towards human rights;
- b. Develop a training needs analysis on the necessary contents and tools for the training and education of police officers concerning human rights;



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- c. Undertake a joint effort with HRAO on the conduct of general knowledge examinations for all police officers starting with candidates for promotion, positions of higher responsibility, and deployment in international peacekeeping missions;
  - d. Ensure that the behavioral development of police officers, regardless of the nature of work, be it in intelligence, traffic, investigation, patrol, and/or community relations, shall bear the mark of human rights protector; and
  - e. Perform other tasks as may be directed.

## **7. TDPCR**

- a. Coordinate with HRAO on the production of complementary information, education and communication (IEC) materials aimed at raising the human rights awareness of both the police and the community;
- b. Conduct appropriate seminars on human rights, to include those of women and children, indigenous peoples, and other marginalized sectors, as part of the PNP information campaign on human rights;
- c. Include human rights subjects and invite the participation of trained police officers to expound on the subject in the ongoing PICE, television/radio programs, newsletter/journals, and website of the PNP; and
- d. Perform other tasks as may be directed.

## **8. TDIDM**

- a. Fast track investigative capability development program for PNP offices and personnel;
- b. Initiate the installation of video recording systems in investigation rooms of PNP offices;

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- c. Provide the HRAO a regular update on the list of cases of extrajudicial killings, enforced and involuntary disappearances, and other forms of human rights violations against militants in the political, media, labor, and student sectors, for reference and discussion with human rights organizations and other parties of interest;
  - d. Conduct and expedite the investigation of alleged violations of human rights by police officers not only for the purpose of inflicting punishment to erring personnel but to relieve innocent police officers from undue and malicious harassment charges; and
  - e. Perform other tasks as may be directed.

## **9. TDC**

- a. Provide funding support and earmark an annual budget for the PNP human rights development program in coordination with HRAO to ensure sustainability of its implementation; and
- b. Perform other tasks as may be directed.

## **10. RDs, PROs**

- a. Organize and establish the PNP Human Rights Desks in the PROs, PPOs/CPOs, CPS/MPS and designate qualified HR officers that will be responsible for addressing issues of human rights in their respective areas and for providing the HRAO necessary data and information on human rights;
- b. Conduct initiatives on human rights advocacy and protection in line with the attached PNP human rights development program;
- c. Enhance partnership with local community organizations, NGOs, and private civic oriented groups, geared towards advancing the cause of human rights; and

- 
- d. Perform other tasks as may be directed.

## **11. Directors, NSUs**

- a. Organize and establish the PNP Human Rights Desks and designate qualified HR officers that will be responsible for addressing issues of human rights in their respective areas and for providing the HRAO necessary data and information on human rights;
- b. Conduct initiatives on human rights advocacy and protection in line with the attached PNP human rights development program;
- c. Enhance partnership with local community organizations, NGOs, and private civic oriented groups, geared towards advancing the cause of human rights; and
- d. Perform other tasks as may be directed.

## **12. IG, IAS**

- a. Conduct pre-charge administrative evaluation of cases involving any human rights violation, subject to existing rules and regulations governing PNP personnel disciplinary machinery;
- b. Establish a database of cases involving violations of human rights committed by police personnel; and
- c. Perform other tasks as may be directed.

## **13. C, PIO**

- a. Issue press releases on various initiatives of the PNP on human rights protection in coordination with the HRAO;
- b. Conduct appropriate human rights seminars for PIO in the PROs/NSUs, press reporters and other media practitioners

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to enhance their knowledge on human rights in coordination with HRAO;

- c. Perform other tasks as may be directed.

### **VIII. COORDINATING INSTRUCTIONS:**

- A. All concerned chiefs/heads of offices shall disseminate the foregoing policies and guidelines to their respective personnel immediately following the issuance of this LOI.
- B. Violations or non-compliance with this LOI shall be dealt with accordingly.
- C. D-Staff and NSUs given the tasks as indicated shall render an initial report of compliance in writing NLT 30 days upon receipt of a copy of this LOI. Succeeding reports shall be submitted quarterly or as may be appropriate.
- D. All regular reports must be submitted to the Chief, PNP (Attn: C, HRAO).

IX. EFFECTIVITY: LOI "PAMANA" shall take effect upon approval.

AVELINO I RAZON, JR  
Police Director General  
Chief, Philippine National Police

Distribution:

IG, IAS

Directors, D-Staff

RDs, PROs

Dirs, NSUs

C, HRAO

CS, PMO

C, PIO

Copy Furnished:

SILG/Chairman, NAPOLCOM

Commission on Human Rights of the Philippines

Presidential Human Rights Committee

**REPUBLIC OF THE PHILIPPINES**  
**Department of the Interior and Local Government**  
**NATIONAL POLICE COMMISSION**  
**Makati City**

**RESOLUTION NO. 2007-247**

**APPROVING THE ACTIVATION OF THE PNP HUMAN  
RIGHTS AFFAIRS OFFICE (PNP-HRAO) UNDER NHQ-  
PNP GENERAL ORDERS NUMBER DPL 07-04**

WHEREAS, in line with the directive of Her Excellency President GLORIA MACAPAGAL-ARROYO during the Cabinet Group Meeting pertaining to the government's human rights campaign strategy, the PNP submitted for the approval of the Commission the NHQ-PNP General Orders Number DPL 07-04 providing for the activation of the PNP Human Rights Affairs Office (PNP-HRAO).

WHEREAS, PNP Human Rights Affairs Office shall be headed by a Police Commissioned Officer with a rank of at least Police Senior Superintendent and shall be composed of three (3) sections, namely: (1) Complaints and Investigation Section (2) Education and Advocacy Section (3) Plans and Programs Section and shall perform the following functions:

- a) Integrate the PNP efforts and come up with holistic approach and systematic implementation of human rights programs and activities;
- b) Review, formulate and recommend policies and programs, as well as administrative and legislative measures to effectively implement human rights laws;
- c) Monitor the conduct of investigation, legal and judicial processes of addressing human rights violations of PNP personnel;

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- d) Undertake information campaigns for media (local and foreign) and interested sectors (e.g. advocates for press freedom and human rights) to project government findings and perspectives and measures being implemented relative to human rights violation of human personnel;
  - e) Establish and maintain linkages with concerned agencies handling human rights violation cases against PNP personnel; and
  - f) Perform other duties as directed by the Chief, PNP.

WHEREAS, the existing Committee on Human Rights created by virtue of NHQ-PNP Letter Orders Number 1278 shall cease to exist and its mandate shall be absorbed by the PNP Human Rights Affairs Office.

WHEREAS, after review of the proposal, the Commission finds the same to be in order.

NOW THEREFORE, THE COMMISSION IN THE EXERCISE OF ITS STATUTORY POWERS AND FUNCTIONS TO ADMINISTER AND CONTROL THE PNP, HAS RESOLVED TO APPROVED, AS IT HEREBY APPROVES, the activation of PNP Human Rights Affairs Office (PNP-HRAO) as provided for under NHQ-PNP General Orders Number DPL 07-04, herein attached as "Annex A".

APPROVED, this 29th day of JUNE, 2007 at Makati City, Metro Manila, Philippines.

(Sgd) RONALDO V PUNO  
Chairperson, Napolcom

(Sgd) LINDA L MALENAB-HORNILLA  
Commissioner  
Officer-in-Charge, OVCEO

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(Sgd) CELIA V SANIDAD-LEONES  
Commissioner  
(Sgd) MIGUEL G CORONEL  
Commissioner

(Sgd) OSCAR C CALDERON  
Commissioner

Attested by:

(Sgd) ADELMALYN A MANIEZA  
Chief Secretariat

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