



Republic of the Philippines  
Department of the Interior and Local Government  
National Police Commission

**NATIONAL HEADQUARTERS, PHILIPPINE NATIONAL POLICE**  
**DIRECTORATE FOR INVESTIGATION AND DETECTIVE MANAGEMENT**  
Camp Crame, Quezon City



**MEMORANDUM**

**TO :** See Distribution

**FROM :** TADIDM/TF USIG Commander

**SUBJECT :** Salient Provisions of RA 10353 and its IRR, and Duties of PNP Personnel in Relation Thereto

**DATE :** MAY 16 2013

1. References:

- a. Republic Act No. 10353;
- b. Implementing Rules and Regulations of RA 10353; and
- c. Memorandum dated July 14, 2008 re inclusion of labor related killings and enforced disappearances as TF USIG special concerns;

2. This pertains to RA 10353 or the "Anti-Enforced or Involuntary Disappearance Act of 2012", a new law criminalizing the act of Enforced Disappearance (ED) that was finally passed on December 21, 2012. Said law is considered as a major milestone in the government's advocacy to protect human rights and is the first national law in Asia to penalize ED.

3. The salient provisions of RA 10353 include the criminalization of ED, duty to certify in writing the results of inquiry regarding the whereabouts of the victim, holding the immediate senior official of the PNP as principal for the crime of ED, preventive suspension or summary dismissal of PNP personnel in the commission of ED, among others. **(Annex "A")**

4. Based on the foregoing and to guide all PNP personnel, attached are the duties and responsibilities of the PNP in relation to RA 10353. **(Annex "B")**

5. For your guidance and widest dissemination.

**FRANCISCO DON C. MONTENEGRO, Ph.D.**  
Police Chief Superintendent

Distribution:

All RDs, PRO 1-13, ARMM and COR  
D. NSUs

# **Salient Provisions of RA 10353 or the Anti-Enforced or Involuntary Disappearance Act of 2012 and its IRR**

## **1. Construction (Sec 3 of IRR)**

In case of doubt or uncertainty in the interpretation of the provisions of the IRR of RA 10353, it shall be resolved in favor of the victims of the enforced disappearance (ED).

## **2. Definition of “Enforced or Involuntary Disappearance” (Sec. 3b of RA 10353; Sec 4b of IRR)**

ED can only be committed by agents of the State or by persons or group of persons acting with the support or authorization of the State. Hence, members of the Abu Sayyaf Group of the New People’s Army can never be held liable under RA 10353 because they are not state agents or they are not acting with the support or authorization of the State.

## **3. Definition of “Victim” (Sec. 3d of RA 10353; Sec. 4d of IRR)**

A victim of ED includes the disappeared person and any other person who suffers harm as a direct result of ED.

## **4. Non-Derogability of the Right Against ED (Sec. 4 of RA 10353; Sec. 5 of IRR)**

Even in times of political instability, threat of war, state of war or other public emergencies, the right against ED and other fundamental safeguards for its prevention shall not be suspended. Hence, the commission of ED is prohibited at all times.

## **5. Order of Battle or Any Order of Similar Nature is Not a Legal Ground for ED (Sec. 5 of RA 10353; Sec 6 of IRR)**

An “Order of Battle” or any order from a superior officer causing the commission of ED is unlawful. Hence, it cannot be invoked as a justifying or exempting circumstance. Also, any person receiving said order shall have the right to disobey it.

## **6. Right of Access to Communication (Sec. 6 of RA 10353; Sec. 7 of IRR)**

Any person deprived of liberty must be given immediate access to any available form or means of communication in order to inform his/her family, lawyer, CHR, etc of his/her whereabouts and condition. If the person was arrested by virtue of warrantless arrest, said person will immediately acquire the right of access to information upon actual deprivation of liberty.

## **7. Duty to Certify in Writing on the Results of Inquiry re Reported Disappeared Person's Whereabouts (Sec. 8 of RA 10353; Sec. 9 of IRR)**

Any member or official of the PNP or any of its agencies (members or officials of police detention center are included) are required to immediately issue a certification in writing about the presence or absence of information re the whereabouts of disappeared person if any of the following person/institution made an inquiry:

- Family member;
- Relative;
- Lawyer;
- CHR representative;
- Representative of Human Rights Organization; and
- Members of the media.

In this regard, a PNP officer must always be available to issue said certification at any time of the day or night. The certification must state, among others, in clear and unequivocal manner the following:

- Name of the person, organization or institution who made the inquiry;
- Date and time the inquiry was made;
- Details of the inquiry;
- Purpose of the inquiry;
- Response to the inquiry;
- Previous record of detention and/or record or transfer or release of disappeared person;
- That in the event that such named person will later be brought into such facility or the immediate premises thereof after an inquiry and response have been made, the inquiring party shall be immediately notified through the most expedient means of communication available.

If the inquiry is made with the head of the detention facility (includes lock-up cells in precincts, stations and other offices, and detention center/facilities in camps), the certification shall be issued immediately but not beyond four (4) hours from the time of inquiry.

If the inquiry is made with the Police Provincial Office, the certification must be issued within five (5) calendar days. On the other hand, the certification must be issued within seven (7) calendar days if the inquiry is made with the Police Regional Office or the National Headquarters.

Non-compliance with the certification requirement is punishable by penalty of arresto mayor (and accessory penalties)

## **8. Official Up-to-Date Register of All Persons Detained/Confined (Sec. 10 of RA 10353; Sec. 11 of IRR)**

PNP units/personnel concerned must ensure that all persons detained or confined shall only be placed in officially recognized and controlled places of detention/confinement where an official up-to-date register of such persons shall be maintained.

All information contained in said register must be regularly reported to the CHR Regional Offices within the first five (5) working days of the month on a bi-monthly basis.

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

#### **9. Submission of List of Government Detention Facilities (Sec. 11 of RA 10353; Sec. 12 of IRR)**

All government agencies concerned shall submit an updated inventory of all officially recognized and controlled places of detention/confinement, and list of detainees or persons deprived of liberty under their respective jurisdictions to the CHR.

The places of detention/confinement shall include jails, correctional, lock-up cells, holding areas, safehouses, hospitals, clinics or similar facilities, among others.

#### **10. Visitation/Inspection of Places of Detention/Confinement (Sec. 13 of RA 10353; Sec. 14 of IRR)**

The CHR or its duly authorized representatives can conduct regular, independent, unannounced and unrestricted visits to or visitations of all places of detention/confinement.

However, it must be noted that all visits conducted by the CHR through its authorized officers and personnel shall be covered by a Mission Order and Identification Card. Hence, the PNP unit concerned may validly refuse to entertain said visits in the absence of a mission order and identification card.

#### **11. Liability of Commanding Officer or Superior / Command Responsibility (Sec. 14 of RA 10353; Sec. 15 of IRR)**

The immediate senior official of the PNP shall be held liable as principal for the crime of ED if the acts committed by him/her have led, assisted, abetted or allowed, whether directly or indirectly, the commission of ED by his/her subordinates.

Said senior official shall also be held liable as principal if all the following are present:

- ED is being committed or has been committed within the official's area of responsibility;
- The official has knowledge of said ED, or the official should have known said ED owing to the circumstances at the time;
- The official did not take preventive or coercive action either before, during or immediately after the commission of ED;
- The official has the authority to prevent or investigate allegations of ED; and

## **12. Preventive Suspension/Summary Dismissal (Sec. 16 of RA 10353; Sec 17 of IRR)**

If the result of the preliminary investigation at the prosecutor's office is that the PNP personnel are found to be perpetrators or participants in any manner in the commission of ED, said personnel shall be preventively suspended or summarily dismissed from the service.

The suspension or dismissal from the service will depend on the strength of evidence gathered during the preliminary investigation or as may be recommended by the investigating authority.

The Ombudsman and the PNP shall be furnished with a copy of the resolution of the ED. Thereafter, said resolution may be used by the Ombudsman or the PNP for the conduct of administrative proceedings.

The victim or his/her family may also initiate a separate and independent administrative charge before the Ombudsman or the PNP.

## **13. Civil Liability and Independent Liability (Secs. 17 and 18 of RA 10353; Secs. 18 and 19 of IRR)**

If PNP personnel committed or participated in any manner in the commission of ED, he/she shall also be civilly liable. Further, he/she may also be independently prosecuted and/or convicted for violation of RA 7438 (Rights of Person Under Custodial Investigation), RA 9745 (Anti-Torture Law), and applicable provisions of the Revised Penal Code.

## **14. Exemption from Prosecution (Sec. 20 of RA 10353; Sec 21 of IRR)**

Any offender who volunteers to give information that leads to the discovery of the victim of ED or the prosecution of the offenders without the victim being found shall be exempt from criminal and/or civil liability: Provided, that said offender does not appear to be the most guilty.

If no case or complaint yet has been filed with the prosecutor's office or the courts, the sworn statement executed by the offender shall be submitted to any law enforcement agency (PNP is included) for purposes of filing a complaint before the prosecutor's office or the Ombudsman.

## **15. ED as a Continuing Offense (Sec. 21 of RA 10353; Sec. 22 of IRR)**

Since ED is a continuing offense, those ED committed before the passage of RA 10353 may still be prosecuted and punished as ED (under RA 10353) if the offender continue to conceal the fate and whereabouts of the victim.

Also, perpetrators or participants in the commission of ED may be validly arrested anytime without a warrant of arrest.

"Reappearance" shall be construed to include the following:

- The victim was discovered or found in jail or other detention place, or hospital by his/her family, the CHR, or human rights organizations; or
- The victim reunites with his/her family and said victim reports his/her discovery or reappearance to the CHR or human rights organizations.

**17. Special Amnesty Law Exclusion (Sec 23 of RA 10353; Sec 24 of IRR)**

Persons who are charged with and/or found guilty of committing acts of ED shall not benefit from any special amnesty law or other similar measures that exempt an individual from any penal proceedings or sanctions.

**18. State Protection (Sec 24 of RA 10353; Sec 25 of IRR)**

The AFP, PNP, NBI and other law enforcement agencies shall ensure the safety of the investigators, prosecutors, members of the media, and other persons involved in the search, exhumation, investigation and prosecution of ED cases.

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



## Duties and Responsibilities of the PNP in Relation to RA 10353

1. PNP personnel must bear in mind that the commission of any act of Enforce Disappearance (ED) is strictly prohibited at all times. The right against ED shall not be suspended under any circumstance including political instability, threat of war, state of war or other public emergencies. **(Sec. 4)**
2. PNP personnel should allow persons deprived of liberty to have access to any form of communication available in order for said person to inform his or her family, relative, friend, lawyer or any human rights organization on his or her whereabouts and condition. **(Sec. 6)**
3. PNP personnel are required to immediately issue a certification in writing about the presence or absence of information regarding the whereabouts of the disappeared person if any of the following person/institution made an inquiry:
  - Family member;
  - Relative;
  - Lawyer;
  - CHR representative;
  - Representative of Human Rights Organization; and
  - Members of the media.

The certification must state, among others, in clear and unequivocal manner the following:

- Name of the person, organization or institution who made the inquiry;
- Date and time the inquiry was made;
- Details of the inquiry;
- Purpose of the inquiry;
- Response to the inquiry;
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If the inquiry is made with the head of the detention facility (includes lock-up cells in precincts, stations and other offices, and detention center/facilities in camps), the certification shall be issued immediately but not beyond four (4) hours from the time of inquiry.

If the inquiry is made with the Police Provincial Office, the certification must be issued within five (5) calendar days. On the other hand, the certification must be issued within seven (7) calendar days if the inquiry is made with the Police Regional Office or the National Headquarters. **(Sec. 8)**

4. PNP personnel shall only detain or confine an arrested person solely in officially recognized and controlled places of detention.

5. The PNP should allow and assist the CHR or its duly authorized representatives to conduct visits or inspection to all of PNP's places of detention and confinement. The visit of said representatives must be covered by a mission order and identification card. **(Sec. 13)**
6. Officials of the PNP should take preventive or coercive action to prevent or investigate allegations of ED. Otherwise, said official may be held liable as principal to the crime of ED. **(Sec. 14)**
7. The PNP shall ensure the safety of the victims, investigators, prosecutors, members of the media, and other persons involved in the investigation and prosecution of ED cases. **(Sec. 24)**



SUBJECT:

DATE: MAY 16 2013

PROs

PRO 1

PRO 2

PRO 3

PRO 4A

PRO 4B

PRO 5

PRO 6

PRO 7

PRO 8

PRO 9

PRO 10

PRO 11

PRO 12

PRO 13

PROARMM

PROCOR

NCRPO

Benjie B. Barbra may 17, 2013

hugon 5/16/13

5/23/13

NUP SONIA DE ARAND 5/17/13

5/16/13 1530P

PO3 PERNA, A IT 05/16/13

PO2 DIZON 05/16/13

NUP SOPA I-MOISOS 5/16/13

PO2 WARTON 5/17/13

PO1 IMPERATOR n. 5-16-13

5/16/13

NUP TO LAND IT 5/16/13

PO1 PASTRY & GUARANO 5-16-13

PO3 DARWIN PARA 5/16/13

PO1 HANUKA 5/16/13

SP3 ESCORTA 5/20/13

PO1 DINO COCHIN 5/17/13

SUBJECT

DATE

MAY 16 2013

Julius Perdomo y Rio 10333 at Re 1KR, and  
 date of 1st arrival in field is 16/05/13

## Command Group

OCPNP

DCA

DCO

TCDS

SPR Gamba  
 NUP RUMAPALAD 5/17/13 0404  
 11/17/13 17 MAY 2013  
 All 05/17/13

## P-STAFF

HRAO

CSMP

DILG/SEA

SP01 TURNER, C 5-17-13 0804  
 C. TURNER 5-17-13 8:30 AM  
 SP01 TURNER 5-17-13 8:40 AM

## D-STAFF

DPRM

DI

DO

DL

DPL

DC

DPCR

DHRDD

DRD

DIPO WM

DIPO EM

DIPO V

DIPO NL

DIPO SL

DITCM

MAY 17 2013  
 SP01  
 MAY 17 2013 0730H  
 NUP DAVEN MAY 17 2013 0830H  
 CAP-PIO 5-17-13  
 MAY 17 2013 0830H  
 MAY 17 2013  
 NUP CEANI MAY 17 2013  
 MAY 17 2013 SP03 AB PAUTON  
 MALON 5/17/13  
 POI TABISORA 5/17/13 9:50 am  
 POI CELADENA, MG 5/17/13 9:00 AM  
 CIV. CIRAL 5/17/13 9:14  
 SP02 MACCABEON MAY 17 2013 9:55 AM  
 NUP PIMUTER 5/17/13 1455H

PIO - POI EUPALON MAY 17 2013

10/17

SUBJECT \_\_\_\_\_

DATE \_\_\_\_\_

**NSUs**

CL NOP Telit 17 MAY 2013  
0900H

PCRG 131 Amor 5/17/13

IG PO2 PUPAL 5/17/13

CIDG NUP IRADOL 5/17/13 10:20 AM

CSG NUP DUMLA 5/17/13 H00H

PSPG SPO1 DAMIANO R-X 17 MAY 2013

HPG PO3 ABANES MAY 17, 2013

MG PO1 NUENO 17/5/13

LSS Jannette Alcorn 5/17/13

HS NUP Paulo 5/17/13

HSS PO2 BALATERRA 17 MAY 2013

FS RECEIVED BY  
JAMES ALI S MIRANDA 17 MAY 2013  
PNP FS MESSAGE CENTER

ITMS E. Acosta 5/17/13 NU

CES NUP CANAN 170810H May 13

LS Elie Luz 5-17-13

ES [Signature] 5/17/13 1058H

CHS PO3 REX M DANIL PTT-05-13 1042H

PNP TS NUP VILMONT 5/17-13

IAS NUP Quana 1/17

PRBS SPO1 RUIZ 5/17-13

AKG PO2 SINTU ELO BULANZO F. 5/17/13

AIDSOTF SPO1 MANABRA 5/17/13

PCTC PO3 JUMER GARCIA 5-17-13

ASG \_\_\_\_\_ SAF \_\_\_\_\_