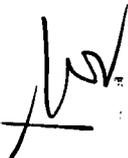


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SENATE

SENATE BILL No. 1197

RECEIVED BY: 

Introduced by **SENATOR LEILA M. DE LIMA**

**AN ACT
DEFINING EXTRAJUDICIAL KILLING, PROVIDING FOR ITS PENALTY AND
OTHER PURPOSES**

EXPLANATORY NOTE

Article II Section 11 of the Constitution provides that “[t]he State values the dignity of every human person and guarantees full respect for human rights.”

The above State policy is underscored by the ratification of human rights treaties, such as the UN Covenant on Civil and Political Rights, and enactment of laws that integrate promotion and protection of the right to life, and access to effective remedy as articulated in the Universal Declaration of Human Rights.

However, there has been a spate of killings of suspected drug pushers and users which qualify as extrajudicial killing (EJK), a form of arbitrary taking of life which in turn amounts to a gross violation of human rights. This is supported by statistics both from media and from government monitoring bodies. In the 3 October 2016 hearing of the Senate Committee on Justice and Human Rights, Police Director General Ronald Dela Rosa of the Philippine National Police (PNP) reported that one thousand three hundred seventy-five (1,375) have been killed in police operations. As of 10 October 2016, a media report on the latest PNP statistics showed 3,844 died in the “war of drugs” since 1 July 2016. Of this figure 1,550 died in police operations as of 06 October 2016,¹ while 2,294 in extrajudicial or vigilante-style killings.²

In addition to the Senate inquiry in aid of legislation to examine this pattern of killings, the Commission on Human Rights (CHR) has also been investigating individual cases of

1 See <<http://www.rappler.com/newsbreak/iq/145814-numbers-statistics-philippines-war-drugs>>, 10 October 2016.

2 Ibid.

extrajudicial killings through its regional offices.³ CHR, besides its own initiative, fully supports the Senate inquiry.⁴

This incidence of kills and deaths is reminiscent of the country situation that prompted the mission to the Philippines in 2007 of Mr. Philip Alston, the then United Nations Special Rapporteur on Extrajudicial Killings. In his report,⁵ he noted 100 to 800 mortality consisting of leftist activists between 2001 and 2007.⁶ At much earlier year or in 1989, the Human Rights Committee (HRC) also took note of the issue on extrajudicial killings in the Philippines, in its consideration of the latter's first State Report on the implementation of the commitments under the International Covenant on Civil and Political Rights.⁷ In the Concluding Observation, the Committee recommended a prompt and impartial investigation of perpetrators.⁸ The same concern on extrajudicial killings, including "vigilante" killings, were raised in the Fourth Periodic Report of the Philippines to the HRC. In the 2012 Universal Periodic Review of the United Nations Human Rights Council, whereby the Philippine government submitted its State Report on the human rights situation of country, various states including the Holy See made specific recommendations for the Philippines to address the issue of extrajudicial killings.

The breadth of the undertaking on the so-called "war on drugs" has also invited the attention of the world and government leaders. The United Nations (UN) Secretary General Ban Ki-Moon himself spoke against the endorsement of extrajudicial killings, describing them as illegal and a breach of fundamental rights and freedoms.⁹ The denunciation from the UN's highest official was supported by the UN Drugs and Organized Crime through its Executive Director Mr. Yuri Fedotov who issued an official statement to express concern over the reports of extrajudicial killing of suspected drug dealers and users in the Philippines. Referencing to the direction taken by the Philippine government, Fedotov stated that "[s]uch responses contravene the provisions of the international drug control conventions, do not serve the cause of justice, and will not help to ensure that "all people can live in health, dignity and peace, with security and prosperity", as agreed by governments in the outcome document approved at the UN General Assembly special session on the world drug problem."¹⁰

Besides the United Nations, governments have also spoken on the unacceptability of extrajudicial killings. The European Parliament in a Resolution¹¹ dated 09 September 2016, called the attention of the Philippine government to put an end to the killings. In the United

3 See <<http://www.gmanetwork.com/news/story/576056/news/nation/twitter-to-set-up-barangay-hall-discussion-for-duterte-by-end-of-august>>, 08 August 2016.

4 See <<http://cnnphilippines.com/news/2016/10/04/Senate-extrajudicial-killings.html>> 10 October 2016.

5 See A/HRC/8/3/Add.2 (16 April 2008).

6 Ibid., page 2.

7 Ratified by the Philippines on 23 October 1986.

8 See, CCPR A/44/40 (1989), <http://www.bayefsky.com/html/philippines_t4_ccpr.php>, 08 August 2016.

9 See <<http://www.un.org/press/en/2016/sgsm17831.doc.htm>>, 27 September 2016.

10 See <<https://www.unodc.org/unodc/en/press/releases/2016/August/statement-by-the-unodc-executive-director-on-the-situation-in-the-philippines.html>>, 27 September 2016.

11 See, <<http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2016-0999&format=XML&language=EN>>, 27 September 2016.

States, the Department of State, through its Deputy Spokesperson, stated that their government stands firm on human rights issues in the Philippines.¹²

In light of the thousand deaths, the Filipino as a nation cannot negate that EJK is a clear and present phenomenon of the times boldly challenging our constitutionally protected human right against taking of life, transgression of due process, and presumption of innocence of criminal suspects. While positive actions have been undertaken by the past governments, for instance, the creation of the inter-agency committee against extra-legal killings, enforced disappearance, and torture through Administrative Order No. 35¹³ in the Aquino administration, EJK has become a grave concern in our homes, within Philippine shores and around the world that demands only the most certain effort through legislation, for which the passage of this bill is earnestly sought.


LEILA M. DE LIMA

12 See, <<http://www.philstar.com/headlines/2016/09/07/1621350/us-stands-firm-human-rights-issues-philippines>>, 27 September 2016.

13 Administrative Order No. 35, Series of 2012, available at <<http://www.gov.ph/2012/11/22/administrative-order-no-35-s-2012/>>, 08 August 2016.

SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

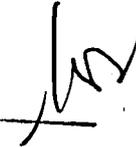


Senate
Office of the Secretary

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SENATE

SENATE BILL No. 1197

RECEIVED BY: 

Introduced by **SENATOR LEILA M. DE LIMA**

**AN ACT
DEFINING EXTRAJUDICIAL KILLING, PROVIDING FOR ITS PENALTY
AND OTHER PURPOSES**

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

1 Section 1. *Short Title.*- This Act shall be known as “*Anti-Extrajudicial Killing*
2 *Act of 2016*”.

3 Sec.2. *Declaration of Policy.*- It is hereby declared policy, and legally binding
4 obligation of the State to uphold and protect the non-derogable human right to life of
5 all, set forth in various provisions of the Constitution, in Article 3 of the Universal
6 Declaration of Human Rights, and Article 6 of the United Nations Covenant on Civil
7 and Political Rights and other covenants ratified by the Philippines.

8 Sec. 3.- *Objectives:*

9 a) Define and provide penalty for acts that qualify as extrajudicial killings, to
10 ensure accountability of state actors and non-state actors.

11 b) Address institutional barriers to efficient, independent, and impartial
12 investigation of extrajudicial killings through specific measures that will
13 strengthen agencies of government with investigative functions such as the

1 Commission on Human Rights, the National Bureau of Investigation, and
2 Philippine National Police.

- 3 c) Institutionalize operational intervention guidelines such as but not limited to
4 arrest, raid, search and seizure, of law enforcement agencies to align with
5 international human rights standards.
- 6 d) Promote human rights of all, and ensure public awareness on the sanctity of life,
7 respect for rule of law and established processes, as well as corresponding
8 obligation of the public in the maintenance of public order.

9 *Sec. 4.- Definition of Terms:*

- 10 a) "Absolute necessity test" refers to the determination of whether or not in the
11 apprehension of suspected criminals, the use of force is necessary and if in the
12 affirmative, whether or not the use of lethal force shall be employed. Lethal
13 force involves use of firearms, other objects and means that can inflict death on
14 a person.
- 15 b) "Extrajudicial killing" refers to the unlawful, and deliberate killing of targeted
16 individuals or groups thereof, carried out by agents of the State and under its
17 order or acquiescence in lieu of arrest, investigation and prosecution.
18 Extrajudicial killing includes summary killing perpetrated by private
19 individuals for purposes of carrying out on their own or in the context of
20 vigilantism, a campaign or policy of the State.
- 21 c) "Human rights due diligence" refers to the measures and initiatives undertaken
22 by the State, and its instrumentalities to prevent arbitrary taking of life through
23 extrajudicial killing as well as actions to investigate, punish and prosecute
24 individuals who have committed the criminal act.
- 25 d) "Innocent bystander" refers to a person/s who either dies or is injured as a
26 result of the police intervention.

- 1 e) "Inquiry" refers to the process of examination by the Commission on Human
2 Rights, in the exercise of its function to monitor human rights due diligence of
3 government, including the private sector.
- 4 f) "Non-state actors" which includes paramilitary groups, private armed groups
5 and death squads refer to those who are not formally part of any agency of
6 government but commit extrajudicial killings at the behest or acquiescence of
7 state actors.
- 8 g) "Police intervention" refers to arrest with or without warrant, raid, search and
9 seizure.
- 10 h) "State actor" refers to members of the national police or armed forces,
11 including government officials and employees in law enforcement agency or the
12 military.

13 Sec. 5.- *Special Mandates.*

- 14 a) Commission on Human Rights (CHR). - It shall have authority to investigate
15 cases of extrajudicial killings, *motu proprio* or on complaint, by an interested
16 party as defined in its Rules of Procedure. It is likewise empowered to conduct
17 inquiries on matters that relate to extrajudicial killings. For this purpose and
18 consistent with its constitutional authority, it is empowered to require services
19 and support of government agencies in the form of security, shelter, medico-
20 legal, and legal service. The CHR on its own, subject to availability of resources,
21 provide protection of witnesses, medical and/or forensic examination, legal
22 counseling, and temporary shelter.
- 23 b) National Bureau of Investigation (NBI).- It shall make its relevant services
24 available to CHR and/or the PNP in their inquires or investigation of EJK cases.
25 Further, in carrying out its own investigations, it shall observe human rights
26 due diligence by adopting or integrating, in addition to Constitutional

1 restrictions or safeguards, modalities and standards that aid in securing
2 independent evidence.

3 c) Philippine National Police (PNP)- In all Police Intervention Operations (POI)
4 such as arrest, raid, search, and seizure, they shall observe the following
5 minimum standards:

6 1. In conducting arrest, warning shall be issued by announcing the
7 same through a megaphone. Firing of warning shots is absolutely
8 prohibited.

9 2. Necessity of force test shall be the principal rule in POIs. Use of
10 force when employed shall be proportionate, and shall be allowed
11 only when there is clear and convincing attempt to evade arrest.

12 3. Alternative non-lethal incapacitating weapons shall be the
13 primary tool to effect arrest when there is resistance.

14 4. It shall be mandatory for the team leader of every POI, to submit
15 an after-operation report, The Internal Affairs Service of the PNP
16 shall maintain a separate reportorial system for cases whereby an
17 individual dies as a result of the police operation. Copies of the
18 report and/or its latest inventory of cases shall be submitted to the
19 Commission on Human Rights on a quarterly basis and shall be
20 available whenever CHR requests or demands it.

21 **Sec. 6. *Inter-Agency Council Against Extrajudicial Killings.***- There is hereby
22 created an “*Inter-agency Council Against Extrajudicial Killings*”, or “*Anti-EJK*
23 *Council*”, with the following composition:

24 **Chairperson:** Secretary, Department of Justice

25 **Members:** Secretary, Department of National Defense

26 Secretary, Department of the Interior and Local Government

- 1 Executive Director, Presidential Human Rights Committee
- 2 Director General, Philippine Drug Enforcement Agency
- 3 Director General, Philippine National Police
- 4 Director, National Bureau of Investigation
- 5 Chairperson, Philippine Commission on Women
- 6 Chairperson, National Youth Commission

7 One representative each from two (2) non-governmental organizations shall
8 be appointed by the President of the Philippines upon the recommendation of the
9 Council. These representatives shall serve for two (2) years, unless sooner revoked
10 also upon recommendation of the Council. Appointment of an NGO shall not be more
11 than once.

12 The Council shall constitute itself within one (1) month or sooner when this law
13 takes effect, at the call of the Chairperson.

14 The CHR with an observer status shall participate in all meetings of the Council
15 for policy development and reform.

16 *Sec. 7. Powers and Functions of the Anti-EJK Council.-*

- 17 a. Develop plans and programs to achieve the objectives set forth in
18 this law and coordinate with member-agencies including the CHR
19 for purposes of public information and advocacy, policy
20 implementation, monitoring, and reportorial;
- 21 b. Engage with human rights mechanisms here and abroad,
22 including Mandate Holders, and Special Procedures of human
23 rights organizations for purposes of developing or strengthening
24 cooperation in the areas of human rights education, law
25 enforcement, investigation, and access to justice;

1 c. Recommend ratification of international instruments or
2 cooperation agreements relating to the legal regime that protects
3 against extrajudicial killings; and

4 d. Function as a clearing house for investigation modules, arrest,
5 search and seizure protocols of the NBI and the PNP, to ensure that
6 these embody the minimum standards for the prevention of
7 extrajudicial killing or its investigation.

8 **Sec. 8. *Secretariat to the Council.*** - There shall be a Secretariat to the Council
9 which shall be headed by an Executive Director to be appointed by the Secretary of
10 Justice from the list of nominees of the Council.

11 **Sec. 9. *Prohibited Acts.*** - It shall be unlawful for state actors to resort to
12 extrajudicial killing as herein defined in furtherance of campaign for public order or
13 in the enforcement of laws. Killings perpetrated by non-state actors and paramilitary
14 groups in furtherance of or in support of government campaign for public order is also
15 unlawful and prohibited.

16 **Sec. 10. *Penalty.*** - The penalty of life imprisonment without the benefit of parole
17 shall be imposed upon any public officer, person in authority, agent of a person in
18 authority, or private individual found guilty of extrajudicial killing as defined herein.

19 Public officials who fail to prevent, investigate, or file necessary actions in court
20 against those suspected of having committed an extrajudicial killing shall be
21 administratively liable according to applicable laws.

22 **Sec. 11. *Presumption of Administrative Negligence.*** - Except in communities
23 affected by armed conflict, the local chief executive and chief of police shall be
24 presumed administratively negligent where there is increase in cases of extrajudicial
25 killings or executions as determined by CHR.

1 **Sec. 12. Preventive Suspension.** - In all police interventions, where death of
2 suspected criminal or innocent bystander occurs by reason of use of lethal force, the
3 responsible police officer shall automatically be subjected to investigation, and
4 preventive suspension to be carried out by the Internal Affairs Service of the Philippine
5 National Police. Pending this process, issued firearms shall be returned by the police
6 officer concerned.

7 **Sec.13. Imprescriptibility.** - The prosecution for extrajudicial killings shall not
8 prescribe.

9 **Sec. 14. Compensation for Victims.** - The family of the victim of EJK shall have
10 the right to claim for compensation as provided for under Republic Act No. 7309 or
11 “An Act Creating A Board of Claims Under The Department Of Justice For Victims Of
12 Unjust Imprisonment Or Detention And Victims Of Violent Crimes And For Other
13 Purposes.” Provided, that in no case shall compensation be any lower than ten
14 thousand pesos (P10,000.00).

15 **Sec. 15. Implementing Rules and Regulations.**- Within ninety (90) days from
16 the effectivity of this Act, the Council shall finalize and promulgate the rules and
17 regulations for the effective implementation of this Act.

18 **Sec. 16. Separability Clause.** - If for any reason, a provision is declared invalid,
19 other provisions not affected thereby shall remain in full force and effect.

20 **Sec. 17. Repealing Clause.** - All laws, decrees, executive orders, rules and
21 regulations contrary to or inconsistent with the provisions of this Act are hereby
22 repealed or modified accordingly.

23 **Sec. 18. Effectivity.** - This Act shall take effect fifteen (15) days after its complete
24 publication in at least two (2) national newspapers of general circulation.

Approved,