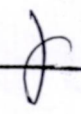




'16 SEP 19 P2:42

SENATE
S. B. No. 1151

RECEIVED BY: 

Introduced by Senator Maria Lourdes Nancy S. Binay

AN ACT TO INSTITUTE POLICIES TO ELIMINATE SMUGGLING OF MIGRANTS,
ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THIS
PURPOSE, PROVIDING PENALTIES FOR ITS VIOLATIONS AND FOR OTHER
PURPOSES

EXPLANATORY NOTE

The Protocol against the Smuggling of Migrants by Land, Sea and Air (Protocol), supplementing the United Nations Convention against Transnational Organized Crime, was adopted by the United Nations General Assembly on November 15, 2000 and entered into force on January 28, 2004. The Philippines signed the Protocol on December 14, 2000 and ratified the same on May 28, 2002.

Migrant Smuggling is a crime involving the procurement for financial or other material benefit of illegal entry of a person into a State of which that person is not a national or resident. The United Nations Office on Drugs and Crime (UNODC), describes Migrant Smuggling as a deadly business that affects almost every country in the world and costs thousands of lives each year. Although current data is sparse to show an accurate picture of the number of persons smuggled each year and the routes and methods used by those who smuggle them, available evidence reveals:

- Criminals are increasingly providing smuggling services to irregular migrants to evade national border controls, migration regulations and visa requirements;
- Migrant smuggling is a highly profitable business in which criminals enjoy low risk of detection and punishment;
- The modus operandi of migrant smugglers are diverse. Highly sophisticated and expensive services rely on document fraud or visa-smuggling;
- Migrant smugglers constantly change routes and modus operandi in response to changed circumstances often at the expense of the safety of the smuggled migrants; and
- Thousands of people have lost their lives as a result of the indifferent or even deliberate actions of migrant smugglers¹.

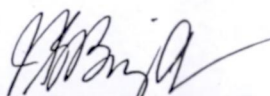
¹ United Nations Office on Drugs and Crime (UNODC), Migrant Smuggling,
<https://www.unodc.org/unodc/en/human-trafficking/smuggling-of-migrants.html>

According to the 2014 CFO Compendium of Statistics on International Migration published by the Commission on Filipinos Overseas, the UN Global migration statistics revealed that in 2013 there are 232 million international migrants living abroad worldwide, with an estimated 10.23 million overseas Filipinos in more than 200 countries and territories. Of the 10.23 million overseas Filipinos, 4.8 million are permanent migrants, 4.20 million are temporary migrants and 1.16 million irregular migrants².

It is alarming that there are 1.16 million irregular Filipino migrants scattered around the globe who are exposed to unfathomable abuse and exploitation. Similarly, illegal migrants also enter the Philippines. Data on illegal migrants entering the country is too scant and scattered but according to news reports, in 2014, there are 1.5 million foreign residents in the country of which only 200,000 have registered with the Bureau of Immigration and the rest are illegal aliens³.

Under the Protocol, each State Party shall adopt domestic legislation and other measures to combat migrant smuggling⁴. A model law against the smuggling of migrants was developed by the UNODC to facilitate the review and amendment of existing legislation and the adoption of new legislation by States. It is designed to be adapted to the needs of each State, whatever its legal tradition and social, economic, cultural and geographic conditions.⁵

In response to our obligation under the Protocol and in furtherance of the State's duty to prevent and combat the smuggling of migrants as well as protect the rights of smuggled migrants, this representation seeks the timely passage of this proposed bill.



MARIA LOURDES NANCY S. BINAY

² Commission on Filipino Overseas, 2014 CFO Compendium of Statistics on International Migration, 4th edition, retrieved from: <http://www.cfo.gov.ph/images/pdf/pdf-migration/2014-CFO-Statistical-Compendium.pdf>.

³ ABS-CBN News, DZMM interview of Bureau of Immigration Commissioner Siegfred Mison, <http://news.abs-cbn.com/focus/09/26/14/over-1-m-foreigners-are-tnts-philippines>.

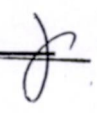
⁴ UNODC, Protocol against the Smuggling of Migrants by Land, Sea and Air (Protocol), supplementing the United Nations Convention against Transnational Organized Crime, retrieved from: https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/convention_smug_eng.pdf.

⁵ UNODC, Model law against the Smuggling of Migrants, retrieved from: https://www.unodc.org/documents/human-trafficking/Model_Law_Smuggling_of_Migrants_10-52715_Ebook.pdf.



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1 AN ACT TO INSTITUTE POLICIES TO ELIMINATE SMUGGLING OF MIGRANTS,
2 ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THIS
3 PURPOSE, PROVIDING PENALTIES FOR ITS VIOLATIONS AND FOR OTHER
4 PURPOSES
5

6 *Be it enacted by the Senate and House of Representatives of the Philippines in Congress*
7 *assembled:*
8

9 Chapter I. GENERAL PROVISIONS
10

11 Article 1. *Title.* This Act shall be known as the "Anti-Smuggling of Migrants Act of 2016."
12

13 Article 2. *Declaration of Policy.* It is hereby declared that the State adopts the generally
14 accepted principles of international law as part of the law of the land and adheres to the
15 policy of peace, equality, justice, freedom, cooperation, and amity with all nations. In the
16 pursuit of this policy, the State gives full effect to the Protocol against the Smuggling of
17 Migrants by Land, Sea and Air supplementing the United Nations Convention against
18 Transnational Organized Crime.
19

20 It shall be a State policy to give highest priority to the enactment of measures and
21 development of programs that will prevent and combat the smuggling of migrants, protect the
22 rights of smuggled migrants and promote and facilitate national and international cooperation
23 in order to meet these objectives.⁶
24

25 Article 3. *Definition of Terms. - As used in this Act:*
26

- 27 a) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or
28 indirectly, a financial or other material benefit, of the illegal entry of a person into the
29 Philippines or another jurisdiction of which the person is not a national or a
30 permanent resident;
31

⁶ Mandatory, Smuggling of Migrants Protocol, articles 1 and 2; read together with article 1 of the Organized Crime Convention.

- 1 b) "Child" shall mean a person under the age of 18 years or one who is over eighteen
2 (18) but is unable to fully take care of or protect himself/herself from abuse, neglect,
3 cruelty, exploitation, or discrimination because of a physical or mental disability or
4 condition;
- 5 c) "Commercial carrier" shall mean a natural or juridical person who engages in the
6 transportation of goods or people for commercial gain;
- 7
- 8 d) "Financial or other material benefit" shall include any type of monetary or non-
9 monetary inducement, payment, bribe, reward, advantage, privilege or service,
10 including sexual or other services;
- 11
- 12 e) "Fraudulent travel or identity document" shall mean any travel or identity document:
- 13
- 14 i) That has been falsely made or altered in some material way by anyone
15 other than a person or agency lawfully authorized to make or issue the
16 travel or identity document on behalf of a State;
- 17 ii) That has been improperly issued or obtained through
18 misrepresentation, corruption or duress, or in any other unlawful
19 manner; or
- 20 iii) That is being used by a person other than the rightful holder;⁷
- 21
- 22 f) "Illegal entry" shall mean crossing borders without complying with the necessary
23 requirements or processes for legal entry into the receiving State;⁸
- 24
- 25 g) "Non-refoulement" shall refer to the principle of international law which prohibits the
26 return by a State, in any manner whatsoever, of an individual to the frontiers of
27 territories where his or her life or freedom would be threatened on account of race,
28 religion, nationality, membership of a particular social group or political opinion, or
29 would run the risk of torture, inhumane and degrading treatment or other forms of
30 irreparable harm. Refoulement includes any action having the effect of returning the
31 individual to a State, including expulsion, deportation, extradition, rejection at the
32 border, extraterritorial interception and physical return;
- 33
- 34 h) "Grave offense" as used under Article 5, paragraph 2 (c) of this Act shall mean an
35 offense punishable by deprivation of liberty or imprisonment of more than six years
36 or a more serious penalty;
- 37
- 38 i) "Migrant" shall mean, for the purpose of this Act, persons entering a jurisdiction, who
39 may be required by the law of that jurisdiction, to possess the necessary travel or
40 entry documents;
- 41
- 42 j) "Smuggled migrant" shall mean any person who has been the object of conduct
43 criminalized under Chapter II of this Act, regardless of whether the perpetrator is
44 apprehended, prosecuted or convicted;

⁷ Mandatory, Smuggling of Migrants Protocol, Article 3 (c)

⁸ Mandatory, Smuggling of Migrants Protocol, Article 3 (b)

1
2 k) "Vessel" shall mean any type of watercraft, including non-displacement craft and
3 seaplanes, used or capable of being used as a means of transportation on water, except
4 a warship, naval auxiliary or other vessel owned or operated by a Government and
5 used, for time being, only on government non-commercial service¹¹;

6
7
8 l) "Aircraft" – shall mean any conveyance capable of transporting passengers by air
9 except foreign military and/or law enforcement aircrafts;

10
11 Article 4. *Principles of Interpretation and Application.* This Act shall be interpreted and
12 applied in a way:

13
14 a) That is not discriminatory on any ground, such as age, race, color, gender, language,
15 religion, political or other opinion, nationality or social origin, property, birth,
16 disability or other status;

17
18 b) That is consistent with the principle of non-refoulement;

19
20 c) That is consistent with the policy enunciated by Philippine laws concerning migrants,
21 including, but not limited to, Republic Act No. 8042 as amended and Republic Act
22 9208 as amended, as may be applicable;

23
24 d) That is consistent with the Philippines' obligations under international law, especially
25 human rights, humanitarian and refugee law, including, but not limited to the
26 International Covenant on Civil and Political Rights, the International Covenant on
27 Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the
28 Convention on the Elimination of All Forms of Discrimination against Women, The
29 Convention on the Elimination of All Forms of Racial Discrimination, The
30 Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or
31 Punishment, The International Convention on the Protection of the Rights of All
32 Migrant Workers and Members of Their Families, the Convention relating to the
33 Status of Refugees and the 1967 Protocol relating to the Status of Refugees and
34 customary international law; and

35
36 e) That takes into account the special needs of smuggled migrants including women,
37 children, or those who have special needs.¹³

38
39 Article 5. *Jurisdiction.*

40
41 1. This Act shall apply when committed, wholly or partially:

42
43 a) within the territory of the Philippines or maritime areas over which the
44 Philippines exercises territorial sovereignty; or

¹¹ Mandatory, Smuggling of Migrants Protocol, Article 3 (d)

¹³ Mandatory, Smuggling of Migrants Protocol, article 16, paragraphs 1 and 4, and article 19

- 1
2 b) on board a vessel that is flying the flag of the Philippines or an aircraft that is
3 registered under the laws of the Philippines at the time the offense was
4 committed;
5
- 6 2. This Act shall likewise apply to offenses committed outside the Philippines when:
7
8 a) the smuggled migrant is a citizen of the Philippines; or
9
10 b) the offender is a Philippine national or a permanent resident of the
11 Philippines; or
12
13 c) it is committed with a view to the commission of any grave offense or
14 transnational crime within the territory of the Philippines.
15
- 16 3. This Act shall likewise apply to conduct engaged outside of the Philippine
17 territory on a vessel reasonably suspected of being engaged, directly or indirectly,
18 in the smuggling of migrants by sea:
19
20 a) If the vessel is without nationality or may be assimilated to a vessel without
21 nationality;
22
23 b) If the vessel, although flying a foreign flag or refusing to show a flag, is in
24 reality of the nationality of the State concerned; or
25
26 c) If the vessel is flying the flag or displaying the marks of registry of a Protocol
27 State other than the Philippines¹⁵.
28
- 29 4. This Act shall also apply to conduct committed by persons who are present in the
30 Philippines whose extradition is refused on any ground.
31
32

33 Chapter II. CRIMINAL OFFENSES¹⁶

34 Article 6. *Basic Offenses.*

35
36
37 Section 1. *Acts of Smuggling of Migrants.* Any person, natural or juridical, who, in
38 order to obtain directly or indirectly a financial or other material benefit, procures the
39 illegal entry of a person into the Philippines or another jurisdiction of which the
40 person is not a national or a permanent resident, commits an offense punishable by
41 imprisonment of six (6) years and one (1) day to twelve (12) years and a fine of not
42 less than P400,000.00 but not more than P1,000,000.00.
43

¹⁵ Mandatory-Smuggling of Migrants Protocol, article 8, paragraphs 1, 2 and 7

¹⁶ Mandatory requirement under Article 6 of the Smuggling of Migrants Protocol

1 An attempt to commit this offense shall be punished by five (5) years and one (1) day
2 to six (6) years and fine of not less than P200,000.00 but not more than P 400,000.00.
3

4 An accomplice to this crime shall be punished by three (3) years and one (1) day to
5 five (5) years and fine of not less than P100,000.00 but not more than P 300,000.00.
6

7 An accessory to commit this offense shall be punished by three (3) years and one (1)
8 day to five (5) years and fine of not less than P100,000.00 but not more than
9 P300,000.00.
10

11 In all these cases, foreign nationals liable under this Act shall be deported after
12 service of sentence, unless they are undergoing investigation or trial or serving
13 sentence for another crime. Thereafter, they shall be barred entry to the country,
14 except upon approval on meritorious grounds by the President of the Philippines or by
15 another officer to whom the President has delegated this specific function.
16

17 Section 2. *Offenses in relation to travel or identity documents and immigration stamp.*
18 Any person who, in order to obtain directly or indirectly a financial or other material
19 benefit, produces, procures, provides or possesses a fraudulent travel or identity
20 document or arrival or departure immigration stamp for the purpose of enabling the
21 smuggling of migrants, commits an offense punishable by imprisonment of four (4)
22 years and one (1) day to six (6) years and a fine of not less than P300,000.00 but not
23 more than P500,000.00.
24

25 An attempt to commit this offense shall be punished by three (3) years and one (1)
26 day to four (4) years and a fine of not less than P100,000.00 but not more than
27 P300,000.00.
28

29 An accomplice to this crime shall be punished by three (3) years and one (1) day to
30 four (4) years and a fine of not less than P100,000.00 but not more than P 300,000.00.
31

32 An accessory to commit this offense shall be punished by two (2) years and one (1)
33 day to three (3) years and a fine of not less than P100,000.00 but not more than P
34 300,000.00.
35

36 Section 3. *Enabling illegal residence, harboring or concealment.* Any person who, by
37 unlawful acts such as, but not limited to, the use of fraudulent or falsified documents,
38 or the procurement of documents by misrepresentation, in order to obtain directly or
39 indirectly a financial or material benefit, enables another who is not a national or a
40 permanent resident, to remain in the jurisdiction without complying with the
41 necessary requirements for legally remaining in the jurisdiction or any person who
42 harbors or conceals any smuggled migrant shall be punished by imprisonment of six
43 (6) years and one (1) day to twelve (12) years and fine of not less than P400,000.00
44 but not more than P 1,000,000.00.
45

46 An attempt to commit this offense shall be punished by five (5) years and one (1) day
47 to six (6) years and fine of not less than P200,000.00 but not more than P 400,000.00.

1
2 Section 4. *Principals by Organizing or Directing.* Any person who organizes or
3 directs another person or persons to commit an offense under this chapter shall be
4 punished by imprisonment of six (6) years and one (1) day to twelve (12) years and a
5 fine of not less than P400,000.00 but not more than P1,000,000.00.
6

7 Section 5. *Attempts.* Where there are acts to initiate the commission of an offense
8 punished under this chapter but the offender failed to or did not execute all the
9 elements of the crime, by accident or by reason of some cause other than voluntary
10 desistance, such overt acts, if not otherwise punished under this Act, shall be deemed
11 as an attempt to commit any of the offenses enumerated under Article 7 of this Act.
12

13 Section 6. *Participating as an accomplice.* Whoever knowingly aids, abets,
14 cooperates in the execution of the offense by previous or simultaneous acts defined in
15 Article 7 of this Act shall be liable as an accomplice.
16

17 Section 7. *Accessories.* Whoever has the knowledge of the commission of the offense,
18 and without having participated therein, either as principal or as accomplice, take part
19 in its commission in any of the following manner:
20

- 21 a) By profiting themselves or assisting the offender to profit by the effects of the
22 offense;
23
24 b) By concealing or destroying the body of the offense or effects or instruments
25 thereof, in order to prevent its discovery; or
26
27 c) By harboring, concealing or assisting in the escape of the principal of the
28 offense, provided the accessory acts with abuse of his or her public functions
29 or is known to be habitually guilty of some other crime.
30

31 Article 8. *Aggravating Circumstances.* If any of the following circumstances are present, the
32 offenses under this Chapter shall be punishable by twelve (12) years and 1 day:
33

- 34 a) The offense involved circumstances that endangered or were likely to endanger the
35 life or safety of the smuggled migrant;¹⁷
36
37 b) The offense involved circumstances that entail inhumane or degrading treatment of
38 the smuggled migrants;¹⁸
39
40 c) The offense involved serious injury or death of the smuggled migrant or another
41 person;
42
43 d) The offender took advantage of the particular vulnerability or dependency of the
44 smuggled migrant for financial or other material gain;

¹⁷ Mandatory, Smuggling of Migrants Protocol, article 6, paragraph 3 (a)

¹⁸ Mandatory, Smuggling of Migrants Protocol, article 6, paragraph 3 (b)

- 1
2 e) The offender, at the time of commission of the offense, was previously convicted
3 by final judgment of a "similar offense";
4
5 f) When the offense is committed by a syndicate, or in large scale. An offense is
6 deemed committed by a syndicate if carried out by a group of three (3) or more
7 persons conspiring or confederating with one another. It is deemed committed in
8 large scale if committed against three (3) or more persons, individually or as a
9 group.
10
11 g) The offender is a public officer who took advantage of his or her position or
12 authority in the commission of the offense;
13
14 h) The smuggled migrant is a child;
15
16 i) The smuggled migrant is pregnant;
17
18 j) The smuggled migrant is a person with disability;
19
20 k) The smuggled migrant is a member of a vulnerable or marginalized group,
21 including indigenous people, as defined by law;
22
23 l) The offender used a child as an accomplice or participant in the criminal conduct;
24
25 m) The offender used or threatened to use any form of violence against the smuggled
26 migrant or their family;
27
28 n) The offender is a parent, legal guardian or anyone who has the authority or control
29 over the smuggled migrant;
30
31 o) The offender confiscated, destroyed or attempted to destroy the travel or identity
32 documents of the smuggled migrant.
33

34 Article 9. *Criminal liability of smuggled migrants.* A smuggled person shall not be liable to
35 criminal prosecution under this law for being the object of conduct punished under this law,
36 without prejudice to his or her administrative, criminal and civil liabilities under other
37 relevant laws, including but not limited to Commonwealth Act No. 613 (Philippine
38 Immigration Act of 1940 as amended), Republic Act No. 8239 (Philippine Passport Act of
39 1996) and Act No. 3815 (Revised Penal Code).
40

41 Article 10. *Liabilities of commercial carrier.*
42

- 43 1. Any commercial carrier that fails to verify that every smuggled migrant possesses
44 the identity and/or travel documents required to enter the destination State and
45 any transit State, shall be liable to a fine of not less than P100,000.00 but not
46 more than P300,000.00.
47

- 1 2. Any commercial carrier that fails to notify the competent authorities that a person
2 has attempted to or has travelled on that carrier without the identity and travel
3 documents required to enter the destination State or any transit State with
4 knowledge or in reckless disregard of the fact that the person was a smuggled
5 migrant, in addition to any other penalty provided by existing laws, shall be liable
6 to a fine of not less than P50,000.00 but not more than P100,000.00.
7
- 8 3. A commercial carrier does not commit an offense under this article if:
9
- 10 a) There were reasonable grounds to believe that the transported person has the
11 travel documents required for lawful entry in the receiving State;
12
- 13 b) The transported person possessed the lawful travel documents when boarded,
14 or last boarded the means of transport to travel to the Philippines;
15
- 16 c) The entry into the receiving State occurred only because of circumstances
17 beyond the control of the commercial carrier;
18
- 19 d) The entry into the receiving State resulted from a rescue;
20
- 21 e) The persons it transported were provided against refoulement and/or access to
22 the asylum system by the United Nations High Commissioner for Refugees or
23 other competent authorities in accordance with existing laws and international
24 instruments.
25

26 Article 11. *Facilitating entry or stay for justice processes.* The Bureau of Immigration may
27 grant a visa to a smuggled migrant in order to facilitate the investigation and/or prosecution
28 of an offense under this Act.
29

30 For this purpose, the smuggled migrant may avail the privileges granted under the Witness
31 Protection Program of the Department of Justice, if the offense charged is committed in large
32 scale or by a syndicate.
33

34 Article 12. *Liability of a juridical entity.*
35

- 36 1. This law applies to a juridical entity in the same way as it applies to an individual.
37 A juridical entity may be found guilty of any of the offenses set out in this Act, in
38 addition to the liability of any person for the same offense.
39
- 40 2. For purposes of the offenses under this Act, the conduct or state of mind of an
41 employee, agent, partner, director or any other officer of the juridical entity will
42 be deemed to be an act of the juridical entity if that person is acting within the
43 scope of his or her employment or actual or apparent authority or with the
44 consent, whether express or implied, of the agent, partner, director or any other
45 officer of the juridical entity.
46

- 1 3. A reference in this selection of the state of mind of a person includes the person's
2 knowledge, intention, opinion, belief or purpose and the person's reasons for that
3 intention, opinion, belief or purpose.
4

5 Chapter III. PROTECTION AND ASSISTANCE MEASURES
6

7 Article 13. *Access to urgent medical care.* Access to emergency medical care, including
8 urgent maternal care, shall not be refused by medical service providers to smuggled migrants
9 by reason of any irregularity with regard to their entry or stay in the Philippines.
10

11 Article 14. *Protection of smuggled migrants against violence.* The Council shall develop
12 guidelines on appropriate measures to afford migrants appropriate protection against all
13 forms of violence that may be inflicted upon them, whether by individuals or groups, by
14 reason of being the object of conduct described in Chapter 2 of this Act. These measures shall
15 take into account the special needs of women and children, as well as the needs of other
16 vulnerable sectors.²⁰
17

18 Article 15. *Assistance to smuggled migrants whose lives or safety are in danger.* The Council
19 shall develop guidelines on appropriate assistance to migrants whose lives or safety are
20 endangered by reason of being the object of conduct described in Chapter 2 of this Act. These
21 measures shall take into account the special needs of women and children, as well as the
22 needs of other vulnerable sectors.²¹
23

24 Article 16. *Civil proceedings*
25

- 26 1. A smuggled migrant who has been subjected to violence, torture or other cruel,
27 inhumane or degrading treatment or punishment, or threats to his or her life or
28 safety as a result of being the object of conduct criminalized by this Act shall
29 have the right to institute civil proceedings to claim material and non-material
30 damage suffered as a result of the acts specified.
31
- 32 2. The right to pursue a civil proceeding for material or non-material damages shall
33 not be affected by the existence of criminal proceedings in connection with the
34 same acts from which the civil claim derives.
35
- 36 3. The immigration status or return of the smuggled migrant to his or her home
37 country or other absence of the smuggled migrant from the jurisdiction shall not
38 prevent the court from ordering payment of compensation under this article.
39

40 Article 17. *Smuggled migrants who are children.*
41

- 42 1. In addition to any other protections provided in this Act:
43

²⁰ Mandatory, Smuggling of Migrants Protocol, article 16, paragraphs 2 and 4

²¹ Mandatory, Smuggling of Migrants Protocol, article 16, paragraphs 3 and 4

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- a) In all actions by government officials, agencies and the courts concerning smuggled migrants who are children, the primary consideration shall be the best interests of the child;
 - b) When the age of a smuggled migrant is uncertain and there are reasons to believe that the smuggled migrant is a child, he or she shall be presumed to be a child, for the purpose of being afforded protection, pending verification of his or her age;
 - c) Any interview or examination of a smuggled migrant who is a child shall be conducted by a specially trained professional, in a suitable environment, in a language that the child uses and understands and in the presence of the child's parent, legal guardian or a support person;
 - d) A smuggled migrant who is a child shall have the right of access to education, which shall not be refused or limited by reason of their irregular entry or situation, or that of their parents;
 - e) A smuggled migrant who is a child shall be under protective custody in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.
2. If a smuggled migrant is an unaccompanied child, the Council shall:
- a) Take protective custody of the child and act as temporary guardian to represent the interests of the child;
 - b) Take all necessary steps to establish his or her identity and nationality. When the nationality has been established, the smuggled migrant who is a child shall be turned over to the consular officer of his or her nationality, if available;
 - c) Make every effort to locate his or her family including for the purpose of facilitating family reunification when this is in the best interests of the child.
3. For the purposes of this article, "unaccompanied child" means a child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.

Article 18. *Access to consular officials for smuggled migrants.*

- 1. The appropriate authority shall inform the consular officers of the smuggled migrant regarding the fact of him or her being an object of acts punished by this law and all reasonable steps are to be taken to facilitate such communication.

- 1 2. Smuggled migrants who are being held in protective custody shall have the rights to
2 receive assistance from consular officers to converse and correspond with consular
3 officers; and to receive communications sent by consular authorities without delay.
4
- 5 3. The arresting authority shall take all reasonable steps to facilitate such visits and
6 communication and shall forward all correspondence from the smuggled migrant that
7 is addressed to the relevant consular office without delay.²²
8

9 Chapter IV. PREVENTION
10

11 Article 19. *Strict Departure and Entry Policy.* In line with the State policy to prevent
12 smuggling of migrants, the Council shall implement a strict departure and entry policy in
13 Philippine airports, seaports, border crossing stations or any international ports of entry or
14 exit whenever the elements as provided for under Chapter 2 of this Act are present, taking
15 into consideration the right to travel.
16

17 Article 20. *Authority to Defer Departure and Exclude Possible Objects.* As a means to
18 prevent smuggling of migrants, the immigration officers at the airport, seaports, border
19 crossing stations or any international ports of exit and entry shall prevent the departure and/or
20 entry of passengers who are possible objects of migrant smuggling or those in possession of
21 fraudulent travel documents.
22

23 Article 21. *Respect for Rights.* In the exercise of the power to defer departure and exclude
24 possible objects of migrant smuggling including the determination on the possibility of a
25 migrant smuggling activity, the immigration officer at the international airports, seaports,
26 border crossing stations or any international ports of entry and exit shall always do so with
27 due regard to the rights of the migrants. In the exercise of such power, the immigration
28 officer shall practice courtesy, accountability, efficiency and service.
29
30

31 Chapter V. COORDINATION AND COOPERATION
32

33 Article 22. *Establishment of a National Coordinating Council.*
34

- 35 1. There shall be established an Inter-Agency Council Against Migrant Smuggling
36 (IACAMS) to be comprised of officials from the following:
37
- 38 a) Bureau of Immigration - shall strictly administer and enforce immigration and
39 alien registration laws. It shall adopt measures for the apprehension of
40 suspected migrant smugglers both at the place of arrival and departure and
41 shall ensure compliance with existing formalities and mechanisms to prevent
42 smuggling of migrants;
43

²² Mandatory, Smuggling of Migrants Protocol, article 16, paragraph 5; Vienna Convention on Consular Relations, article 36

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- b) Department of Justice - shall ensure the prosecution of persons accused of smuggling of migrants and designate and train special prosecutors who shall handle and prosecute cases of smuggling of migrants. It shall also establish mechanism for free legal assistance for smuggled persons, in coordination with the DSWD, Integrated Bar of the Philippines and other non-governmental organizations (NGOs) and volunteer groups;
- 8
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14
- c) Office of the Special Envoy on Transnational Crime, Office of the President - shall actively participate and coordinate in the formulation and monitoring of policies addressing the issue of smuggling of migrants in coordination with relevant government agencies. It shall likewise advocate for the inclusion of the issue of smuggling of migrants in both its local and international campaign against transnational crimes;
- 15
16
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21
- d) Department of Foreign Affairs – shall make available its resources and facilities overseas for smuggled migrants regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in eliminating migrant smuggling activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs;
- 22
23
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28
- e) Department of Interior and Local Government- shall institute a systematic information and prevention campaign against smuggling, as well as enabling illegal residence, harboring or concealment of migrants, and ensure that local government units (LGUs) closely monitor and document cases of smuggling of migrants in their areas of jurisdiction and effect the cancellation of licenses of establishments which violate the provisions of this Act;
- 29
30
31
32
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34
- f) Department of Social Welfare and Development- shall develop policies, standards and rehabilitative and protective programs for smuggled migrants. It shall provide counseling and temporary shelter to smuggled persons and develop a system for accreditation among NGOs for purposes of establishing centers and programs for intervention in various levels of the community;
- 35
36
37
38
39
- g) Department of Tourism- shall inform and raise awareness in the tourism industry about smuggling of migrants and encourage all tourism stakeholders to be partners in the prevention and elimination of migrant smuggling activities;
- 40
41
42
43
- h) Philippine Center on Transnational Crime – shall ensure a centralized database and maintain a databank for the effective monitoring, documentation and prosecution of cases of smuggling of migrants;
- 44
45
- i) Philippine Coast Guard – shall implement maritime law enforcement against smuggling of migrants and participate in inter-agency intelligence exchange,

1 cooperation and collaboration to efficiently address maritime migrant
2 smuggling activities;

3
4 j) Philippine National Police and National Bureau of Investigation- shall be the
5 primary law enforcement agencies to undertake surveillance, investigation and
6 arrest of individuals or persons suspected to be engaged in smuggling of
7 migrants. It shall closely coordinate with various law enforcement agencies to
8 secure concerted efforts for effective investigation and apprehension of
9 suspected migrant smugglers. It shall also establish a system to receive
10 complaints and calls to assist smuggled migrants and conduct rescue
11 operations; and

12
13 k) Commission on Filipinos Overseas- shall formulate and implement policies
14 and programs relevant to the rights, welfare and status of smuggled migrants,
15 and conduct prevention campaign to raise the awareness on smuggling of
16 migrants among prospective migrants and Filipino communities; and

17
18 l) such other agencies and/or sectors as may be determined by the Council.
19

20 2. The Council shall:

21
22 a) Oversee and coordinate the implementation of this Act through the development
23 of policy, regulations, guidelines, procedures and other measures;

24
25 b) Develop a national plan of action to ensure comprehensive and effective
26 implementation of this Act, which shall include a process of periodic review of
27 achievement of aims and objectives;

28
29 c) Oversee the implementation of obligations under the Smuggling of Migrants
30 Protocol;

31
32 d) Facilitate inter-agency and multi-disciplinary cooperation between the various
33 government agencies, international organizations and non-governmental
34 organizations; and

35
36 e) Facilitate cooperation with relevant countries of origin, transit and destination, in
37 particular border control agencies.

38
39 f) Maintain a database of foreign nationals staying in the Philippines for at least six
40 (6) months in coordination with the respective Local Government Unit (LGU)
41 where said foreign nationals are sojourning.

42
43 3. The Council shall organize a Secretariat through the Implementing Rules and
44 Regulations of this Act in accordance with the applicable budget and other laws.
45 The Department of Justice shall work for the inclusion of specific appropriations
46 for the Secretariat.
47

1 Article 23. *Capacity-building, Advocacy and Partnership.* The Council shall:
2

- 3 1. Develop and provide training programs to concerned government agencies,
4 including immigration and law enforcement officers, prosecutors and judges, for
5 the prevention and suppression of smuggling of migrants, prosecution of
6 offenders, while protecting and preserving the rights of smuggled migrants²³;
7
8 2. Develop and implement public information programs to increase public
9 awareness of the fact that smuggling of migrants is a criminal activity frequently
10 perpetrated by organized criminal groups for profit and that it possesses a serious
11 risk to smuggled migrants²⁴;
12
13 3. Provide assistance to and foster cooperation with the relevant agencies on
14 development programs that take into account the socio-economic realities of
15 migration and paying special attention to economically and socially depressed
16 areas, in order to combat the root socio-economic causes of the smuggling of
17 migrants, such as poverty and underdevelopment²⁵.
18

19 Chapter VI. COOPERATION REGARDING THE SMUGGLING OF MIGRANTS AT SEA
20

21 Article 24. *Inspection of Vessels.* In conformity with existing laws and regulations, including
22 applicable international norms and instruments, the relevant law enforcement agencies may
23 board, inspect, or otherwise investigate any vessel not flying a flag or otherwise navigating
24 under suspicious circumstances that enters or traverses maritime areas under Philippine
25 territorial sovereignty for the purpose of determining whether it is being used to commit the
26 acts punished under Chapter II of this Act.
27

28 Article 25. *Designation of competent national authority.*
29

- 30 1. In coordination with the Council, the Philippine Coast Guard through the
31 Department of Foreign Affairs, or such other agencies as may be designated by
32 the Council in accordance with their respective mandates, shall:
33
34 a) Receive and respond to requests for assistance from Protocol States;
35
36 b) Transmit requests for assistance to Protocol States;
37
38 c) Receive and respond to requests for confirmation of registry or of the right of
39 a vessel to fly the flag of the Philippines;
40
41 d) Receive and respond to requests for authorization from Protocol States to take
42 appropriate measures as set out in this Chapter; and
43

²³ Mandatory provision-Smuggling of Migrants Protocol, Article 14, paragraphs 1 and 2

²⁴ Mandatory provision-Smuggling of Migrants Protocol, Article 15

²⁵ Mandatory provision-Smuggling of Migrants Protocol, Article 15, paragraph 3

1 e) Transmit requests for authorization to Protocol States to take appropriate
2 measures as set out in this Chapter.
3

- 4 2. The designation provided in the preceding paragraph shall be notified to the
5 Secretary-General of the United Nations within one (1) month from the
6 effectivity thereof²⁶.
7

8 *Article 26. Conditions and limitations on the exercise of the powers in the preceding articles.*
9

- 10 1. In the exercise of powers conferred in Article 5 paragraph 1 (b), the authorized
11 officers shall take into consideration the rights of the migrants and practice
12 courtesy, accountability, efficiency and service.
13
- 14 2. Those powers shall not be exercised in relation to a vessel beyond the limits of
15 the maritime areas under Philippine territorial sovereignty and flying the flag or
16 displaying the marks of registry of another Protocol State except:
17
- 18 a) If the Philippines is exercising its rights in its contiguous zone;
 - 19
 - 20 b) in the exercise of the right of hot pursuit; or
 - 21
 - 22 c) If the Council has given authority.
- 23
- 24 3. The Council shall not give the authority contained in paragraph 2 (c) above unless
25 satisfied that:
26
- 27 a) The Protocol State has requested assistance of the Philippines for the purposes
28 of detecting or preventing the smuggling of migrants and taking appropriate
29 action; or
 - 30
 - 31 b) The Protocol State has authorized the Philippines to act for that purpose.
- 32
- 33 4. The Council shall impose such conditions or limitations on the exercise of the
34 powers as may be necessary to give effect to any conditions or limitations
35 imposed by the Protocol State.
36
- 37 5. The Council may, either on its own initiative or in response to a request from a
38 Protocol State, authorize a Protocol State to exercise, in relation to a Philippine
39 vessel, powers corresponding to those conferred on officers authorized under this
40 Chapter but subject to such conditions or limitations, if any, as it may impose.
41
- 42 6. Paragraph 5 above is without prejudice to any agreement made, or which may be
43 made, on behalf of the Philippines undertaking not to object to the exercise by
44 any other State in relation to a Philippine vessel of powers corresponding to those
45 conferred on officers authorized under this Chapter.

²⁶ Mandatory-Smuggling of Migrants Protocol, article 8, paragraph 6

- 1
2 7. The powers conferred on officers authorized under this Chapter shall not be
3 exercised in the territorial sea of any other State without the authority of the
4 Council²⁷.
5

6 Article 27. *Operational framework for measures at sea.*
7

- 8 1. Any measure taken at sea pursuant to this Chapter shall be carried out only by
9 warships or military aircraft, or by law enforcement ships or aircraft clearly
10 marked and identified as being on government service and authorized to that
11 effect²⁸.
12
13 2. When taking measures against a vessel in accordance with this Chapter, an
14 authorized officer is required to take all necessary steps:
15
16 a) To afford migrants protection against all forms of violence that may be
17 inflicted upon them, whether by individuals or groups, by reason of being the
18 object of conduct criminalized by this Act;
19
20 b) To assist migrants whose lives or safety are endangered by reason of being the
21 object of the acts punished by this Act;
22
23 c) To take into account the special needs of women, children and vulnerable or
24 marginalized groups, as defined by law;
25
26 d) To ensure safety and humane treatment of the persons on board;
27
28 e) To ensure that any measures taken are compliant with human rights and
29 international humanitarian obligations;
30
31 f) To take due account of the need to safeguard the vessel or its cargo;
32
33 g) To take due account of the commercial or legal interests of the flag State or
34 any other interested State; and
35
36 h) To ensure, within available means that any measure taken with regard to the
37 vessel is environmentally sound²⁹.
38

39 Article 28. *Safeguards in relation to danger to lives at sea.* Nothing in this Act affects the
40 obligation of any person or agency required to render assistance to those in distress at sea³⁰.
41

²⁷ Mandatory, Smuggling of Migrants Protocol, article 8, paragraphs 2 and 5

²⁸ Mandatory, Smuggling of Migrants Protocol, article 9, paragraph 4

²⁹ Mandatory, Smuggling of Migrants Protocol, article 9, paragraph 1 article 16, paragraphs 1-4; and article 19, paragraph 1.

³⁰ Mandatory, Smuggling of Migrants Protocol, article 8, paragraph 5, United Nations Convention on the Law of the Sea, article 98.

1 Article 29. *Compensation for loss or damage.* The holder of legal rights in the vessel is
2 entitled to reasonable compensation for loss or damage sustained as a result of actions taken
3 by an officer authorized under this chapter when the grounds for measures taken prove to be
4 unfounded, except if the vessel or any person on the vessel has committed any act that would
5 justify the measures taken³¹.

6
7 Chapter VII. PROCESS RELATED TO THE RETURN OF SMUGGLED MIGRANTS

8
9 Article 30. *Designation of agency or agencies.*

- 10
11 1. The Council shall perform the functions described in this Chapter.
12
13 2. In performing its functions, the Council, may, through the Department of Foreign
14 Affairs, cooperate with relevant international organizations, including the Office
15 of United Nations High Commissioner for Refugees and the International
16 Organization for Migration.
17

18
19 Article 31. *Referral of migrants with specific protection needs.*

- 20
21 1. In performing its functions under this Chapter, the Council shall ensure that
22 smuggled migrants who are seeking international protection under national
23 asylum laws, the Convention relating to the Status of Refugees or international
24 law, or who have particular protection needs are promptly referred to the
25 competent authorities to decide on their case.
26
27 2. The Council, through the Department of Foreign Affairs, shall ensure that the
28 Office of the United Nations High Commissioner for Refugees is given access to
29 smuggled migrants who are asylum-seekers and other persons of concern to the
30 Office, pursuant to Article 18, Chapter III of this Act.
31

32 Article 32. *Ensuring safety in exchange of information.*

- 33
34 1. The Council shall develop policies and procedures to ensure that any exchange of
35 information about a smuggled migrant will not put the returnee, or his or her
36 relatives, in danger upon return to the State of origin.
37
38 2. Information about the existence or content of any application made by the
39 smuggled migrant from international protection shall be confidential and not be
40 disclosed to the State where he shall return, unless in meritorious cases.
41

42 Article 33. *Legitimacy and validity of documents.* The Council, through the Department of
43 Foreign Affairs, shall, at the request of the appropriate authority or representative of another
44 Protocol State, verify within a reasonable time the legitimacy and validity of travel

³¹ Mandatory, Smuggling of Migrants Protocol, article 9, paragraph 2

1 documents issued or purported to have been issued in the Philippines and suspected of being
2 used for the purposes of smuggling of migrants.

3
4 The Council shall verify the authenticity of identity documents issued by such agency³².

5
6 Article 34. *Facilitating return of smuggled migrants.* The Council shall:

- 7
8 1. At the request of the appropriate authority of the smuggled migrant or of the
9 Council's own initiative, facilitate without undue or unreasonable delay, the
10 return of a smuggled migrant to his country of nationality or where he or she
11 acquired permanent residence, provided that there is no pending civil or criminal
12 action filed against the smuggled migrant³³;
- 13
14 2. At the request of the appropriate authority of the smuggled migrant or of its own
15 initiative, facilitate the return to the Philippines of a smuggled migrant who had
16 the right of permanent residence in the Philippines or country of origin, at his or
17 her option, at the time of entry into the receiving State;
- 18
19 3. At the request of the appropriate authority of the smuggled migrant, verify
20 without undue or unreasonable delay whether a smuggled migrant is a national or
21 has the right of permanent residence in the Philippines³⁴.
- 22
23 4. At the request of the appropriate authority or representative of another Protocol
24 State, facilitate the issue of documents or other authorization as necessary to
25 enable a smuggled migrant who is either a national of the Philippines or who has
26 a right of permanent residence in the Philippines, to travel and re-enter
27 Philippines³⁵.

28
29 Article 35. *Protection of smuggled migrants in the return process.*

- 30
31 1. The Council shall ensure that any planned or actual return of a smuggled migrant
32 is consistent with international law, in particular human rights, refugee and
33 humanitarian laws, including the principle of non-refoulement, the principle of
34 non-discrimination, the right to life, the prohibition on torture and other forms of
35 cruelty, inhumane and degrading treatment or punishment, and, where children
36 are involved, the best interests of the child.
- 37
38 2. In facilitating the return of smuggled migrants, the Council shall take appropriate
39 measures to ensure that the return of smuggled migrants occurs in an orderly
40 manner and with due regard for the safety and dignity of the persons involved³⁶.
- 41

³² Mandatory, Smuggling of Migrants Protocol Article 13

³³ Mandatory, Smuggling of Migrants Protocol Article 18, paragraph 1

³⁴ Mandatory, Smuggling of Migrants Protocol Article 18, paragraph 3

³⁵ Mandatory, Smuggling of Migrants Protocol, article 18, paragraph 4

³⁶ Mandatory, Smuggling of Migrants Protocol, article 18, paragraph 4

- 1 3. Every effort should be made to limit the use of force in the return and/ or removal
2 process. The only forms of restraint which are acceptable are those constituting
3 responses that are strictly proportional to the actual or reasonably anticipated
4 resistance of the particular returnee with a view to controlling him or her.
5

6 Article 36. *Protection of existing arrangement.* Nothing in this Chapter prejudices:
7

- 8 1. Any rights or remedies afforded or available to persons who have been the object
9 of any offense related to smuggling of migrants under any other law;
10
11 2. Any obligations entered into under any applicable treaty, bilateral or multilateral,
12 or any other applicable operational agreement that governs, in whole or in part,
13 the return of persons who have been the object of smuggling of migrants.
14

15 Article 37. *Immunity from Suit.* No action or suit, whether civil, criminal or administrative,
16 shall be brought in any court or tribunal, or before any authority against any immigration
17 officer, law enforcement officer, prosecutor, social worker, private persons doing citizen's
18 arrest or any other person acting in compliance with the lawful order from any of the above,
19 for lawful acts done or statements made in the conduct of operations done in furtherance of
20 this Act or in the investigation or prosecution of crimes under this Act or in the prevention of
21 acts of migrant smuggling.
22

23 Article 38. *Implementing Rules and Regulations.* - The Council shall promulgate the
24 necessary implementing rules and regulations within sixty (60) days from the effectivity of
25 this Act.
26

27 Article 39. *Separability Clause.* If, for any reason, any section or provision of this Act is held
28 unconstitutional or invalid, the other sections or provisions hereof shall not be affected
29 thereby.
30

31 Article 40. *Repealing clause.* All laws, presidential decrees, executive orders and rules and
32 regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed
33 or modified accordingly.
34

35 Article 41. *Effectivity.* This law shall take effect fifteen (15) days after its complete
36 publication in at least two (2) newspapers of general circulation.
37
38

39 Adopted,