

SENATE

'19 JUL 11 P2:36

S. No. 371

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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 entry of the Philippines to 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.

Since President Duterte assumed office in July of 2016 up to the end of 2018, the Philippine Drug War has already killed more than 5,000 persons according to the Philippine Drug Enforcement Agency (PDEA)<sup>1</sup>. According to the Commission on Human Rights (CHR), the number could be as high as 27,000 owing to the lack of information being released as well as the reluctance of the victims’ families to come out and speak up due to fear of being exterminated<sup>2</sup>. While the deaths related to anti-drug operations have tapered significantly for Metro Manila, where the killings were initially most rampant, the epicenter of the Drug War has seemingly moved north towards neighboring Central Luzon. From the start of December 2017 to February 2019, within the so-called Double Barrel "Resumption" phase, data shows that Central Luzon cops shot down a total of 668 drug personalities compared to Metro

<sup>1</sup> Tomacruz, S. (2018). *Duterte gov't tally: 'Drug war' deaths breach 5,000-mark before 2019*. Retrieved from <https://www.rappler.com/nation/220013-duterte-government-tally-killed-war-on-drugs-november-2018>

<sup>2</sup> Maru, D. (2018). *CHR chief: Drug war deaths could be as high as 27,000*. Retrieved from <https://news.abs-cbn.com/focus/12/05/18/chr-chief-drug-war-deaths-could-be-as-high-as-27000>

Manila police's 318 kills<sup>3</sup>. Even other regions have not been spared from the carnage as CHR Chairperson Jose "Chito" Gascon claimed that Central Visayas ranked fourth in the most number of drug-related killings among the regions in the country early in February 2019<sup>4</sup>. In fact, from January to March 2019, at least 59 persons were reportedly killed in 46 separate incidents that include police anti-drug operations in Cebu<sup>5</sup>. Most of the victims were slain by motorcycle-riding gunmen, while others were killed in a drug bust.

Tragically, a significant portion of the victims of these killings are those of innocent men, women, and even children who were either caught in the crossfire or misidentified as drug personalities. Furthermore, despite the current administration's relentless efforts and brutal methods to curb its proliferation in the country, none other than President Duterte himself conceded that the Philippines' illegal drug trade has worsened after almost three years since the beginning of the Drug War<sup>6</sup>, which may be indicative of the methodology's overall ineffectiveness.

However, the killings do not stop at suspected drug-personalities. It has also extended to the murder of peasant farmers and human rights activists as militarization and counterinsurgency operations now share disturbing characteristics with the drug war, namely, killing without due process, planting of evidence, and a growing climate of apparent impunity<sup>7</sup>.

These incidences of extrajudicial killings (EJKs) are eerily reminiscent of the country's situation years ago which prompted the mission to the Philippines of the former United Nations Special Rapporteur on Extrajudicial killings, Mr. Philip Alston in 2007. In his report<sup>8</sup>, he noted the systematic and targeted killings of various "civil society leaders, including human rights defenders, trade unionists, and land reform advocates, as well as many others on the left of the political spectrum." The goal then was to quell political dissent by using the killings as a tool of coercion

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<sup>3</sup> Talabong, R. (2019). *Central Luzon: New killing fields in Duterte's drug war*. Retrieved from <https://www.rappler.com/newsbreak/in-depth/224159-central-luzon-new-killing-fields-duterte-drug-war>

<sup>4</sup> Miasco, M. (2019). *CHR: Drug-related killings in Central Visayas 4th highest in Philippines*. Retrieved from <https://www.philstar.com/the-freeman/cebu-news/2019/02/08/1891952/chr-drug-related-killings-central-visayas-4th-highest-philippines>

<sup>5</sup> Mondonado-Ynot, L. (2019). *Interactive map: Cebu killings since January 2019*. Retrieved from <https://www.sunstar.com.ph/article/1796734>

<sup>6</sup> Regalao, E. (2019). *Duterte: Philippines drug situation has worsened*. Retrieved from <https://www.philstar.com/headlines/2019/03/27/1904945/duterte-philippines-drug-situation-has-worsened>

<sup>7</sup> Aspinwall, N. (2019). *Duterte turns death squads on political activists*. Retrieved from <https://foreignpolicy.com/2019/06/10/duterte-turns-death-squads-on-political-activists/>

<sup>8</sup> Retrieved from <https://undocs.org/A/HRC/8/3/Add.2>

in order to maintain peace and order. This now appears to be the same goal in the current killings of non-drug personalities. As to the rampant killings of drug offenders, the message being conveyed is that drug personalities have no place in society and thus have to be exterminated while altogether glossing over the circumstances which led them to become drug personalities in the first place – namely, rampant poverty and inequality of opportunity which pervades every layer of Philippine society.

In light of the thousands of 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. EJK remains a grave threat 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.

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

*Be it enacted by the Senate and 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 2019”.

3 Sec. 2. *Declaration of Policy.* – It is hereby declared policy, and legally  
4 binding obligation of the State to uphold and protect the non-derogable human right  
5 to life of all, set forth in various provisions of the Constitution, in Article 3 of the  
6 Universal Declaration of Human Rights, and Article 6 of the United Nations  
7 Covenant on Civil 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 and non-state actors.
- 11 b) Address institutional barriers to efficient, independent, and impartial  
12 investigation of extrajudicial killings (EJKs) through specific measures that  
13 will strengthen agencies of government with investigative functions such as  
14 the Commission on Human Rights (CHR), the National Bureau of  
15 Investigation (NBI), and Philippine National Police (PNP).
- 16 c) Institutionalize operational intervention guidelines such as but not limited  
17 to arrest, raid, search and seizure, of law enforcement agencies to align  
18 with international human rights standards.

1 d) Promote human rights of all, and ensure public awareness on the sanctity  
2 of life, respect for the rule of law and established processes, as well as the  
3 corresponding obligation of the public in the maintenance of public order.

4 Sec. 4. *Definition of Terms.* –

5 a) *Absolute necessity test* – refers to the determination of whether or not, in  
6 the apprehension of suspected criminals, the use of force is necessary and  
7 if in the affirmative, whether or not the use of lethal force shall be  
8 employed. Lethal force involves use of firearms, other objects and means  
9 that can inflict death on a person.

10 b) *Extrajudicial killing (EJK)* – refers to the unlawful, and deliberate killing  
11 of targeted individuals or groups thereof, carried out by agents of the State  
12 and under its order or acquiescence in lieu of arrest, investigation and  
13 prosecution. EJK includes summary killing perpetrated by private  
14 individuals for purposes of carrying out on their own or in the context of  
15 vigilantism, a campaign or policy of the State.

16 c) *Human rights due diligence* – refers to the measures and initiatives  
17 undertaken by the State, and its instrumentalities to prevent arbitrary  
18 taking of life through EJK as well as actions to investigate, punish and  
19 prosecute individuals who have committed the criminal acts.

20 d) *Innocent bystanders* – refer to persons who are present during a law  
21 enforcement operation but are not participants to or are involved in any  
22 ongoing criminal acts or in the said operation.

23 e) *Inquiry* – refers to the process of examination by the CHR, in the exercise  
24 of its function to monitor human rights due diligence of government,  
25 including the private sector.

26 f) *Non-state actors* – refer to those who are not formally part of any agency  
27 of government but commit EJK at the behest or acquiescence of state  
28 actors. These include paramilitary groups, private armed groups and death  
29 squads.

30 g) *Police intervention* – refers to arrest with or without warrant, raid, search  
31 and seizure.

1 h) *State actors* – refer to members of the national police or armed forces,  
2 including government officials and employees in law enforcement agencies  
3 or the military.

4 Sec. 5. *Special Mandates.* –

5 a) *CHR* – It shall have authority to investigate cases of EJK *motu proprio* or  
6 on complaint by an interested party as set forth in its Rules of Procedure. It  
7 is likewise empowered to conduct inquiries on matters that relate to EJKs.  
8 For this purpose and consistent with its constitutional authority, it is  
9 empowered to require services and support of government agencies in the  
10 form of security, shelter, medico-legal, and legal service. The CHR shall, on  
11 its own, subject to availability of resources, provide protection of witnesses,  
12 medical and/or forensic examination, legal counseling, and temporary  
13 shelter.

14 b) *NBI* – It shall make its relevant services available to CHR and/or the PNP  
15 in their inquiries or investigation of EJK cases. In carrying out its own  
16 investigations, it shall observe human rights due diligence by adopting or  
17 integrating, in addition to Constitutional restrictions or safeguards,  
18 modalities and standards that aid in securing independent evidence.

19 c) *PNP* – In all Police Intervention Operations (PIOs) such as arrest, raid,  
20 search, and seizure, they shall observe the following minimum standards:

21 1) In conducting arrest, the arresting officer shall announce his  
22 presence and intent to arrest. Firing of warning shots is absolutely  
23 prohibited. The arresting officer shall take the necessary  
24 precautions to ensure the safety of the arresting team as well as the  
25 innocent bystanders.

26 2) Necessity of force test shall be the principal rule in PIOs. Use of  
27 force when employed shall be proportionate, and shall be allowed  
28 only when there is clear and convincing attempt to evade arrest.

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

31 4) It shall be mandatory for the team leader of every PIO, to submit an  
32 after-operation report. The Internal Affairs Service of the PNP shall  
33 maintain a separate reportorial system for cases whereby an

1 individual dies as a result of the police operation. Copies of the  
2 report and/or its latest inventory of cases shall be submitted to the  
3 CHR on a quarterly basis and shall be available whenever the CHR  
4 requests or demands it.

- 5 5) Except in cases of warrantless arrest, the arresting officers shall  
6 document the arrest with the use of body cameras and similar  
7 devices, which shall be immediately turned over to representatives  
8 of the Anti-EJK Council, as provided in Section 6 of this Act.

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

12 Chairperson: Secretary, Department of Justice

13 Members: Secretary, Department of National Defense

14 Secretary, Department of the Interior and Local Government

15 Executive Director, Presidential Human Rights Committee

16 Director General, Philippine Drug Enforcement Agency

17 Director General, Philippine National Police

18 Director, National Bureau of Investigation

19 Chairperson, Philippine Commission on Women

20 Chairperson, National Youth Commission

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

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

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

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

- 1 a) Develop plans and programs to achieve the objectives set forth in this law  
2 and coordinate with member-agencies including the CHR for purposes of  
3 public information and advocacy, policy implementation, monitoring, and  
4 reportorial;
- 5 b) Engage with human rights mechanisms here and abroad, including  
6 Mandate Holders, and Special Procedures of human rights organizations  
7 for purposes of developing or strengthening cooperation in the areas of  
8 human rights education, law enforcement, investigation, and access to  
9 justice;
- 10 c) Recommend ratification of international instruments or cooperation  
11 agreements relating to the legal regime that protects against extra-judicial  
12 killings; and
- 13 d) Function as a clearing house for investigation modules, arrest, search and  
14 seizure protocols of the NBI and the PNP, to ensure that these embody the  
15 minimum standards for the prevention of extra-judicial killing or its  
16 investigation.

17 Sec. 8. *Secretariat to the Council.* – There shall be a Secretariat to the Council  
18 which shall be headed by an Executive Director to be appointed by the Secretary of  
19 Justice from the list of nominees of the Council.

20 Sec. 9. *Prohibited Acts.* – It shall be unlawful for state actors to resort to EJK  
21 as herein defined in furtherance of campaign for public order or in the enforcement  
22 of laws. Killings perpetrated by non-state actors and paramilitary groups in  
23 furtherance or in support of government campaign for public order is also unlawful  
24 and prohibited.

25 The Anti-EJK Council shall establish programs and promulgate measures to  
26 ensure that non-state actors who committed EJK are brought to justice.

27 Sec. 10. *Presumption of Administrative Negligence.* – Except in communities  
28 affected by armed conflict, the local chief executive and chief of police shall be  
29 presumed administratively negligent where there is increase in cases of EJK as  
30 determined by CHR.

31 Sec. 11. *Preventive Suspension.* – In all police interventions, where death of  
32 suspected criminals or innocent bystanders occur by reason of use of lethal force, the



1 responsible police officer shall automatically be subjected to investigation and  
2 preventive suspension to be carried out by the Internal Affairs Service of the  
3 Philippine National Police. Pending this process, issued firearms shall be returned by  
4 the police officer concerned.

5       Sec. 12. *Penalty.* – The penalty of life imprisonment without the benefit of  
6 parole shall be imposed upon any public officer, person in authority, agent of a  
7 person in authority, or private individual found guilty of EJK as defined herein.

8       Public officials who fail to prevent, investigate, or file necessary actions in  
9 court against those suspected of having committed EJK shall be administratively  
10 liable according to applicable laws.

11       Sec. 13. *Imprescriptibility.* – The prosecution for EJK shall not prescribe.

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

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

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

23       Sec. 17. *Repealing Clause.* – All laws, decrees, executive orders, rules and  
24 regulations contrary to or inconsistent with the provisions of this Act are hereby  
25 repealed or modified accordingly.

26       Sec. 18. *Effectivity.* – This Act shall take effect fifteen (15) days after its  
27 publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved,