

THIRTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

6 JUN 20 P6:06

SENATE

RECEIVED BY: 

S.B. No. 2405

Introduced by Senator Jinggoy Ejercito Estrada

EXPLANATORY NOTE

On April 27, 1992, Republic Act No. 7438, otherwise known as "AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF", was enacted into law.

RA 7438 was supposed to be the implementing law for the Rights of the Accused under the Bill of Rights, Article III, Section 12, of the 1987 Constitution, which reads:

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

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against them. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families."

The said law, although laudable, failed to emphasize and enforce the State policy against torture and involuntary disappearances, which continues to be rampant, especially under the Arroyo Administration.

In this regard, Article II, Section 11, of the Constitution provides that:

"The State values the dignity of every human person and guarantees full protection of human rights."

Moreover, Article III, Section 19, paragraph 2, of the Constitution provides that:

"The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or

inadequate penal facilities under subhuman conditions shall be dealt with by law.”

On May 22, 2006, several operatives from the Intelligence Service of the Armed Forces of the Philippines (ISAFP) and the Criminal Investigation and Detection Group (CIDG) of the Philippine National Police arrested, detained and investigated five (5) officials and members of the Union of the Masses for Democracy and Justice (UMDJ) on purported rebellion charges.

The facts and circumstances regarding the arrest, detention, and custodial investigation of the UMDJ 5 show that their constitutional rights and statutory rights under RA 7438 have been violated by the ISAFP and CIDG.

The UMDJ 5 were not informed of their right to remain silent and to have competent and independent counsel. They were not informed of the reasons for their arrest and detention. And for three (3) days, they were blindfolded, held incommunicado, and subjected to torture while being interrogated. In fact, Ruben Dionisio, one of the UMDJ 5, was hospitalized for broken ribs and possible damage to his internal organs. He claims that he was also subjected to severe ant bites, and that his private parts were electrocuted. The others claim that they were subjected to psychological torment.

Unfortunately, RA 7438 has no provision on torture and incommunicado detention. This situation cannot be tolerated because the Philippines is a signatory to major international human rights treaties, such as the International Covenant on Civil and Political Rights and the Convention against Torture.

Worse, the Commission on Human Rights (CHR), the constitutional body that is supposed to be the vanguard of human rights, appears to be helpless and toothless in the face of such blatant human right abuses by law enforcement agencies. The best that the CHR can do under the present circumstances is to conduct fact-finding investigations and submit its recommendation to the Department of Justice or the Ombudsman.

The CHR should at least be able to conduct preliminary investigation regarding the violation of the custodial rights of persons arrested, detained, or under investigation by law enforcement agencies.


In view of the foregoing considerations, the urgent passage of this bill is earnestly requested.


JINGGOY EJERCITO ESTRADA
Senator

THIRTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

6 JUN 20 P 6:06

SENATE

RECEIVED BY: 

S.B. No. 2405

Introduced by Senator Jinggoy Ejercito Estrada

**AN ACT
PENALIZING THE COMMISSION OF ACTS OF TORTURE
AND INVOLUNTARY DISAPPEARANCE OF PERSONS ARRESTED,
DETAINED OR UNDER CUSTODIAL INVESTIGATION, AND
GRANTING JURISDICTION TO THE COMMISSION ON HUMAN RIGHTS
TO CONDUCT PRELIMINARY INVESTIGATION FOR VIOLATION OF
THE CUSTODIAL RIGHTS OF THE ACCUSED, AMENDING FOR THIS
PURPOSE SECTIONS 2, 3 AND 4 OF R.A. 7438,
AND FOR OTHER PURPOSES**

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

Section 1. Section 2 of R.A. 7438 is hereby amended to read as follows:

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

(a) Any person arrested, detained or under custodial investigation shall at all times be ALLOWED TO COMMUNICATE FREELY WITH, AND BE assisted by counsel.

(b) Any public officer or employee, or anyone acting under his order or in his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times, be allowed to confer in private with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer. SUCH PERSON SHALL

BE INFORMED OF THE CAUSE OR CAUSES OF HIS ARREST AND DETENTION IN THE PRESENCE OF HIS COUNSEL.

(C) ANY PUBLIC OFFICER OR EMPLOYEE, OR ANYONE ACTING UNDER HIS ORDER OR IN HIS PLACE, WHO ARRESTS OR DETAINS ANY PERSON FOR THE COMMISSION OF AN OFFENSE SHALL IMMEDIATELY INFORM THE COMMISSION ON HUMAN RIGHTS OF THE FACTS AND CIRCUMSTANCES OF SUCH ARREST AND DETENTION.

(D) NO THREAT, INTIMIDATION, OR COERCION, AND NO ACT WHICH WILL INFLICT PHYSICAL PAIN OR TORTURE, OR MENTAL OR MORAL PRESSURE, OR OTHER ACTS OF TORTURE ON THE ARRESTED OR DETAINED PERSON, WHICH SHALL VITIATE HIS FREE-WILL, SHALL BE EMPLOYED DURING THE INVESTIGATION AND INTERROGATION; OTHERWISE, THE EVIDENCE OBTAINED FROM SUCH ARRESTED OR DETAINED PERSON SHALL BE, IN ITS ENTIRETY, ABSOLUTELY INADMISSIBLE AND USABLE AS EVIDENCE IN ANY JUDICIAL, QUASI-JUDICIAL, LEGISLATIVE, OR ADMINISTRATIVE INVESTIGATION, INQUIRY, PROCEEDING, OR HEARING.

[(c)] (E) The custodial investigation report shall be reduced to writing by the investigating officer, provided that before such report is signed, or thumbmarked if the person arrested or detained does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever.

[(d)] (F) Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be, IN ITS

ENTIRETY, ABSOLUTELY inadmissible AND USABLE as evidence in any JUDICIAL, QUASI-JUDICIAL, LEGISLATIVE, OR ADMINISTRATIVE INVESTIGATION, INQUIRY, proceeding, OR HEARING.

[(e)] (G) Any waiver by a person arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing and signed by such person in the presence of his counsel; otherwise the waiver shall be null and void and of no effect.

[(f)] (H) Any person arrested or detained or under custodial investigation shall be allowed TO COMMUNICATE FREELY WITH, AND TO BE VISITED [visits] by or HAVE conferences with any member of his immediate family, or any INDEPENDENT AND COMPETENT medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-governmental organization duly accredited by the Commission on Human Rights or by any international non-governmental organization duly accredited by the Office of the President. The person's "immediate family" shall include his or her spouse, fiance or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.

As used this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law."

Section 2. Section 3 of R.A. 7438 is hereby amended to read as follows:

"Section 3. *Assisting Counsel.* - Assisting counsel is any lawyer, except those directly affected by the case, those charged with conducting preliminary investigation or those charged with the prosecution of crimes. The assisting counsel other than the government lawyers shall be entitled to the following fees PER REQUIRED APPEARANCE UNDER THIS ACT:

(a) The amount of FIVE HUNDRED PESOS (P500.00) [One hundred fifty pesos (P150.00)] if the suspected person is chargeable with light felonies;

(b) The amount of SEVEN HUNDRED FIFTY PESOS (P750.00) [Two hundred fifty pesos (P250.00)] if the suspected person is chargeable with less grave of grave felonies;

(c) The amount of ONE THOUSAND PESOS (P1,000.00) [Three hundred fifty pesos (P350.00)] if the suspected person is chargeable with a capital offense.

The fee for the assisting counsel shall be paid by the city or municipality where the custodial investigation is conducted, provided that if the municipality of city cannot pay such fee, the province comprising such municipality or city shall pay the fee: Provided, That the Municipal of City Treasurer must certify that no funds are available to pay the fees of assisting counsel before the province pays said fees.

In the absence of any lawyer, no custodial investigation shall be conducted and the suspected person can only be detained by the investigating officer in accordance with the provisions of Article 125 of the Revised Penal Code.”

Section 3. Section 4 of R.A. 7438 is hereby amended to read as follows:

“Section 4. *Penalty Clause.* - (a) Any arresting public officer or employee, or any investigating officer, OR ANYONE ACTING UNDER HIS ORDER OR IN HIS PLACE who VIOLATES ANY OF THE AFOREMENTIONED RIGHTS [fails to inform any] OF A person arrested, detained or under custodial investigation [of his right to remain silent and to have competent and independent counsel preferably of his own choice,], OR FAILS TO COMPLY WITH ANY OF THE AFORMENTIONED DUTIES, OR COMMITS ANY OF THE AFORMENTIONED PROHIBITED ACTS, shall BE GUILTY OF AN OFFENSE AND SHALL suffer [a fine of Six thousand pesos (P6,000.00) or a] THE

penalty of RECLUSION TEMPORAL [imprisonment of not less than eight (8) years but not more than ten (10) years, or both. The penalty of perpetual absolute disqualification shall also be imposed upon the investigating officer who has been previously convicted of a *similar offense.*], WITHOUT PREJUDICE TO PROSECUTION AND CONVICTION FOR OTHER CRIMES AND OFFENSES PUNISHABLE BY THE REVISED PENAL CODE AND OTHER LAWS.

(B) The same PENALTY [penalties] UNDER THE ABOVE PARAGRAPH shall be imposed upon THE IMMEDIATE COMMANDING [a] officer or EQUIVALENT SENIOR OFFICIAL [employee or anyone acting upon orders of such investigating officer or in his place,] who fails to IMMEDIATELY INVESTIGATE AND CAUSE THE PROSECUTION, OR COOPERATE IN THE PROSECUTION, OF THE PUBLIC OFFICERS AND EMPLOYEES WHO VIOLATED ANY PROVISION OF THIS ACT [provide a competent and independent counsel to a person arrested, detained or under custodial investigation for the commission of an offense if the latter cannot afford the services of his own counsel].

[(b) Any person who obstruct, prevents or prohibits any lawyer, *any member of the immediate family* of a person arrested, detained or under custodial investigation, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, from visiting and conferring privately with him, or from examining and treating him, or from ministering to his spiritual needs, at any hour of the day or, in urgent cases, of the night shall suffer the penalty of imprisonment of not less than four (4) years nor more than six (6) years, and a fine of four thousand pesos (P4,000.00).]

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

(D) THE COMMISSION ON HUMAN RIGHTS SHALL HAVE PRIMARY JURISDICTION TO CONDUCT PRELIMINARY

INVESTIGATION, AT ITS OWN INITIATIVE OR UPON COMPLAINT, AND TO FILE THE NECESSARY INFORMATION WITH THE PROPER COURT FOR ANY VIOLATION OF THIS ACT.”

Section 4. *Repealing Clause.* - Republic Act No. 7438 and all other acts, laws, presidential decrees, executive orders, rules and regulations, or any part thereof which are inconsistent herewith are hereby deemed repealed or modified accordingly.

Section 5. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) national newspapers of general circulation in the Philippines, whichever comes earlier.