

# ESSENTIALS OF ADMINISTRATIVE ORDER 35 INVESTIGATIONS

*A Practical Handbook for  
Prosecutors and Investigators*



UNITED NATIONS  
Joint Programme  
For Human Rights  
IN THE PHILIPPINES



UNITED NATIONS  
HUMAN RIGHTS  
OFFICE OF THE HIGH COMMISSIONER



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# Executive Summary

This Handbook is designed specifically for AO 35 prosecutors and investigators, providing them with essential tools for conducting thorough and effective investigations of serious human rights violations. It seeks to complement, not supplant the PNP Criminal Investigation Manual, the primary resource for PNP investigators, and offers useful guidance on the operational procedures, investigative skills, and legal frameworks that are particularly relevant to AO 35 cases. Moreover, the Handbook integrates global standards from the Minnesota and Istanbul Protocol and other relevant legal frameworks to ensure adherence to international norms. The Handbook has ten chapters, each of which is described below:

**Chapter 1: Introduction**

This chapter outlines the purpose, scope, and usage of the handbook, positioning it as a vital resource for AO 35 prosecutors and investigators. It introduces the handbook as both a training manual and a reference guide, designed to enhance the investigative capabilities for handling cases of extrajudicial killings, enforced disappearances, and torture.

**Chapter 2: AO 35 and Its Revised Operational Guidelines**

This section delves into the background and rationale for the issuance of AO 35, providing guidelines on identifying cases that fall under its mandate and detailing the procedural steps to follow when an AO 35 case is reported or occurs, including handling both unsolved and new cases as well as inquest procedures.

**Chapter 3: Human Rights and Gender Intersectionality**

This chapter emphasizes the importance of human rights and gender intersectionality in investigations. It covers the relevance of international standards and treaties related to AO 35 crimes and discusses how recognizing the diversity of victim experiences and adopting a gender-sensitive approach can enhance investigative processes.

**Chapter 4: Crimes Covered by AO 35**

Detailed descriptions of the crimes under AO 35 jurisdiction are provided here, including extrajudicial killings, enforced disappearances, torture, and other grave human rights violations. Each section defines the crimes, discusses the elements and factors to consider in determining if a case falls under AO 35.

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The Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Joint Programme for Human Rights gratefully acknowledge the financial support from the Governments of Norway, Australia, Switzerland, United Kingdom, Netherlands, Philippines, United States of America, and Ireland toward the development and production of this publication.

**Chapter 5: Criminal Investigation Principles, Protocols, and Guidelines**  
This chapter outlines the fundamental principles of investigation according to the PNP Criminal Investigation Manual and integrates insights from the Minnesota Protocol and the Istanbul Protocol. It discusses common investigation oversights and additional principles that enhance the investigation of serious human rights violations.

**Chapter 6: Crime Scene Analysis**  
Focuses on the processing of crime scenes, providing general investigative procedures and practical advice specific to AO 35 cases. This section covers everything from the initial approach to the crime scene to the submission of an investigation report.

**Chapter 7: Evidence Collection**  
Describes the importance and methods of evidence collection as outlined in the PNP Manual of Investigation. It details various types of evidence relevant to AO 35 cases, including physical, testimonial, documentary, and digital evidence.

**Chapter 8: Witness Interviewing and Preparation**  
Discusses the crucial role of witnesses in investigations and provides guidelines on ethical interviewing, witness protection programs, and challenges in witness cooperation. It also details the procedures and benefits of the DOJ and CHR Witness Protection Programs.

**Chapter 9: Forensic Evidence and Digital Forensics**  
Examines the pivotal role of forensic evidence in AO 35 cases, discussing the basics of forensic evidence and its specific application in cases of torture, enforced disappearances, extralegal killings, and other serious human rights violations. It also includes guidance on digital forensics.

**Chapter 10: Chain of Custody of Evidence**  
Explains the importance of maintaining a secure chain of custody for physical evidence. It includes guidelines from the PNP Manual on the chain of custody and discusses relevant jurisprudence and procedures for ensuring continuity of possession.

**Chapter 11: Case Build-up of AO 35 Cases Under DC 20**  
Focuses on the active role of prosecutors during the case build-up phase, detailing the procedures for evaluation, case build-up, and preliminary investigation.

**Chapter 12: Inter-Agency Coordination**  
Highlights the significance of inter-agency coordination in the handling of AO 35 cases. This chapter discusses the roles of prosecutors in coordination efforts and the functions of the Inter-Agency Committee and other bodies involved in these cases.

**Chapter 13: Annexes**  
Provides supplementary materials and legal documents relevant to AO 35, including the Anti-Enforced or Involuntary Disappearance Act of 2012, the Anti-Torture Act of 2009, International Humanitarian Law, Administrative Order 35, its revised operational guidelines, and Department Circular 20.

Table of Contents

**EXECUTIVE SUMMARY** ..... i

**1. INTRODUCTION** .....1

1.1. PURPOSE OF THE HANDBOOK ..... 1

1.2. SCOPE ..... 2

1.3. HOW TO USE THIS HANDBOOK ..... 2

**2. AO 35 AND ITS REVISED OPERATIONAL GUIDELINES** ..... 3

2.1. OVERVIEW .....3

2.2. RATIONALE FOR ISSUANCE OF AO 35 .....3

2.3. GUIDE TO DETERMINE IF CASE FALLS UNDER AO 35 MANDATE ..... 4

2.4. WHAT DOES NOT QUALIFY? ..... 5

2.5. PROCEDURE WHEN AN AO 35 CASE OCCURS OR IS REPORTED .....5

2.5.1. Unsolved Cases .....5

2.5.2. New Cases ..... 6

2.5.3. Inquest ..... 8

**3. HUMAN RIGHTS AND GENDER INTERSECTIONALITY** .....10

3.1. OVERVIEW .....10

3.2. HUMAN RIGHTS AND THE RELEVANCE OF INTERNATIONAL STANDARDS. .12

3.3. BASIC SOURCES .....12

3.3.1. Treaties: Covenants and Conventions on Human Rights and Other International Legal Instruments that Are Relevant to AO 35 Crimes ..... 12

3.3.2. International humanitarian laws ..... 15

3.4. GENDER INTERSECTIONALITY ..... 17

3.4.1. Overview .....17

3.4.2. Recognizing the Diversity of Victim Experiences .....18

3.4.3. Significance of a Gender-Sensitive Approach ..... 18

**4. CRIMES COVERED BY AO 35** .....19

4.1. OVERVIEW .....19

4.2. EXTRA-LEGAL KILLINGS (ELKS) .....20

4.2.1. ELK Definition Under AO 35 .....20

4.2.2. Factors to Consider Whether Case Falls Under AO 35 ..... 20

4.2.3. Other Types of Killings that Do Not Fall Under AO 35 .....21

4.3. ENFORCED OR INVOLUNTARY DISAPPEARANCE (EID) ..... 21

4.3.1. EID Definition Under AO 35 ..... 21

4.3.2. Factors to Consider Whether Case Falls Under AO 35 ..... 22

4.4. TORTURE ..... 23

4.4.1. Definition Under AO 35 ..... 23

4.4.2. Elements .....23

4.4.3. Factors to Consider Whether Case Falls Under AO 35 .....24

4.5. OTHER GRAVE HUMAN RIGHTS VIOLATIONS .....24

4.5.1. Definition Under AO 35 .....24

4.5.2. Factors to Consider Whether Case Falls Under AO 35 .....25



5. CRIMINAL INVESTIGATION PRINCIPLES, PROTOCOLS & GUIDELINES ..... 26

5.1. OVERVIEW .....26

5.2. THE MINNESOTA PROTOCOL .....26

5.3. THE ISTANBUL PROTOCOL ..... 27

5.4. GENERAL PRINCIPLES OF INVESTIGATION: PNP CRIMINAL INVESTIGATION MANUAL (EXCERPTS) ..... 27

5.4.1. Definition of Investigation ..... 29

5.4.2. Investigation Protocols .....29

5.5. COMMON INVESTIGATION OVERSIGHTS ..... 33

5.6. ADDITIONAL NOTES ON THE MINNESOTA PROTOCOL .....33

5.6.1. Elements and Principles of Investigations .....34

6. CRIME SCENE ANALYSIS .....36

6.1. OVERVIEW .....36

6.2. CRIME SCENE PROCESSING .....36

6.3. GENERAL INVESTIGATIVE PROCEDURES ..... 37

6.3.1. Purpose .....37

6.3.2. Procedures ..... 38

6.3.3. Investigation Procedure at the Crime Scene ..... 38

6.3.4. Methods of Crime Scene Search .....39

6.3.5. SOCO Assistance .....40

6.3.6. Release of Crime Scene .....41

6.4. SOME PRACTICAL ADVICE IN CRIME SCENE ANALYSIS OF AO 35 CASES .....41

6.5. INVESTIGATION REPORT .....43

6.5.1. Parts of a Criminal Investigation Report ..... 43

6.5.2. Sample Crime Scene Investigation Report ..... 45

6.5.3. Practical Advice When Writing an Investigation Report ..... 47

7. EVIDENCE COLLECTION .....48

7.1. OVERVIEW .....48

7.2. PNP MANUAL OF INVESTIGATION ON EVIDENCE COLLECTION .....48

7.2.1. Searching for Evidence ..... 48

7.3. IMPORTANCE OF EVIDENCE COLLECTION .....52

7.4. TYPES OF EVIDENCE AND THEIR RELEVANCE IN AO 35 CASES ..... 52

7.4.1. Physical Evidence .....52

7.4.2. Testimonial Evidence ..... 52

7.4.3. Documentary Evidence .....53

7.4.4. Digital Evidence ..... 53

8. WITNESS INTERVIEWING AND PREPARATION .....54

8.1. OVERVIEW .....54

8.2. IMPORTANT ROLE OF WITNESSES DURING INVESTIGATION .....54

8.2.1. Conducting Ethical Interview .....55

8.2.2. Some Practical Interviewing Tips and Sample Questions .....57

8.2.3. Challenges in Witness Cooperation & Locating Witnesses ..... 58

8.2.4. Government’s Witness Protection Programs .....59

8.3. THE DOJ WITNESS PROTECTION PROGRAM .....59

8.3.1. Witnesses that can be admitted into the DOJ-WPP ..... 59

8.3.2. Who are disqualified for admission into the DOJ-WPP .....60

8.3.3. How is a person admitted to the DOJ-WPP .....60

8.3.4. Benefits .....60

8.3.5. Discharged from the DOJ-WPP ..... 61

8.4. CHR WITNESS PROTECTION PROGRAM (CHR-WPP) ..... 61

8.4.1. Scope and Application ..... 61

8.4.2. Admission Procedure ..... 61

8.4.3. Protection and Benefits .....62

9. FORENSIC EVIDENCE AND DIGITAL FORENSICS .....63

9.1. OVERVIEW ..... 63

9.2. IMPORTANCE OF FORENSIC EVIDENCE .....63

9.3. BASICS OF FORENSIC EVIDENCE .....64

9.4. CRUCIAL ROLE OF FORENSIC EVIDENCE IN AO 35 CASES ..... 64

9.4.1. Forensic Evidence in Torture Cases .....65

9.4.2. Forensic Evidence in Enforced Disappearance Cases ..... 66

9.4.3. Forensic Evidence in Extralegal Killings .....67

9.4.4. Forensic Evidence Involving Other Grave Human Rights Violations ..... 68

9.5. DIGITAL FORENSIC EVIDENCE ..... 70

9.5.1. Use of Digital Evidence in AO 35 Investigations .....70

9.5.2. DIDM’s Directive on the Referral and Conduct of Digital Forensic Examination .....71

9.5.3. Practical Advice on the Use of Digital Forensics .....72

10. CHAIN OF CUSTODY OF EVIDENCE ..... 74

10.1. OVERVIEW ..... 74

10.2. THE PNP MANUAL ON CHAIN OF CUSTODY .....74

10.2.1. Preservation of Physical Evidence .....75

10.2.2. Relevant Jurisprudence .....76

10.3. CONTINUITY OF POSSESSION .....77

11. AO 35 CASE BUILD-UP AS REQUIRED BY DC 20 .....79

11.1. OVERVIEW ..... 79

11.2. ACTIVE ROLE OF PROSECUTORS DURING CASE BUILD-UP .....79

11.3. EVALUATION, CASE BUILD-UP AND PRELIMINARY INVESTIGATION ..... 79



12. INTERAGENCY COORDINATION ..... 81

12.1. OVERVIEW ..... 81

12.2. IMPORTANCE OF INTERAGENCY COORDINATION ..... 81

12.3. ROLE OF PROSECUTORS IN COORDINATION ..... 82

12.4. THE IAC AND OTHER BODIES AND ITS MANDATE ..... 84

12.4.1. Functions ..... 84

12.4.2. Interagency Coordination While Maintaining Autonomy ..... 85

13. ANNEXES ..... 87

13.1. ANTI-ENFORCED OR INVOLUNTARY DISAPPEARANCE ACT OF 2012 ..... 87

13.2. ANTI-TORTURE ACT OF 2009 ..... 93

13.3. INTERNATIONAL HUMANITARIAN LAW, GENOCIDE  
AND CRIMES AGAINST HUMANITY .....100

13.4. ADMINISTRATIVE ORDER 35 ..... 104

13.5. AO 35 REVISED OPERATIONAL GUIDELINES .....107

13.6. DEPARTMENT CIRCULAR 20 .....120

# 1. INTRODUCTION

1.1 PURPOSE OF THE HANDBOOK

This Handbook serves two purposes. First, it functions as a training manual, complementing the regional training conducted by the UN Joint Programme on Human Rights (UNJP) and the Department of Justice-AO 35 Secretariat to strengthen the investigative capabilities of designated AO 35 prosecutors and investigators.

More importantly, this is a comprehensive resource that the AO 35 prosecutors and investigators can use as a reference material before, during, or after the training. It contains the compiled summary of the most important parts of AO 35 and its Operation Guidelines, the PNP Criminal Investigation Manual (also referred to here as PNP Manual) and the relevant provisions of the laws on extra-legal killing, torture, enforced disappearance and other grave human rights violations (also referred to here as AO 35 crimes).

Designed to enhance the skills of AO 35 investigators and prosecutors, the Handbook provides useful guidelines, advice and techniques to further improve their skills on crime scene analysis, evidence collection, interview, and other

basic competencies. Basic templates and examples of Criminal Investigation Reports are provided for easy reference.

The Handbook promotes a human rights-centric and collaborative approach in case handling, emphasizing ethical considerations and respect for the dignity of all individuals involved. It also aims to deepen their appreciation of the importance of inter-agency coordination.

This Handbook is not intended to supplant the PNP Criminal Investigation Manual, which should remain the only official document to guide any criminal investigation conducted by any member of the PNP. What this Handbook offers is a set of tools, practical advice and information that are specific to investigating AO 35 crimes, many of whom are based on the PNP Manual and supplemented by universally recognized best practices and standards.

In other words, this Handbook is a synthesis of theoretical knowledge and practical skills, structured to be as accessible and user-friendly as possible. Therefore, beyond being a training guide, it stands as a reference material for AO 35.



1.2 SCOPE

The Handbook covers several major areas to equip AO 35 investigators and prosecutors with essential knowledge, skills, and ethical grounding for effective case handling:

- 1. **An Overview of AO 35 and its Historical Context:** Providing a comprehensive understanding of AO 35, its origins, and its role in addressing extrajudicial killings and enforced disappearances.
- 2. **Detailed Operational Guidelines:** Offering a step-by-step guide for handling AO 35 cases.
- 3. **Legal Foundations Including Relevant Laws and Regulations:** Delving into the legal framework underpinning AO 35.
- 4. **Skills and Competencies Required for Effective Investigation and Prosecution:** Focusing on the specific skills and competencies necessary for handling AO 35 cases.
- 5. **Ethical Considerations and Human Rights-Centric Approaches:** Instilling ethical principles and a focus on human rights.
- 6. **Inter-Agency Coordination and Best Practices:** Providing best practices for collaboration among various agencies involved in AO 35 cases.

1.3 HOW TO USE THIS HANDBOOK

This Handbook is crafted for ease of use and is rich in informative content. Each section functions independently, enabling focused study on topics pertinent to the individual’s needs . While selective reading is facilitated, a comprehensive grasp of AO 35’s aspects is best achieved by reading the Handbook in its entirety.

Beyond being a source of information, this Handbook stands as an interactive toolkit. Embedded within are practical exercises that mirror real-world situations, essential for the learning process. These exercises are crucial for hands-on experience and active engagement, thus enhancing the effectiveness of the learning experience.

Case studies, integral to the Handbook, offer valuable insights into complex issues. They foster critical thinking and informed decision-making, particularly in contexts demanding a human rights-centric approach and ethical consideration.

To assist in easy referencing, checklists are provided at strategic points. These checklists aid in ensuring thoroughness in various aspects, from evidence gathering to adherence to legal standards.

<sup>1</sup>These were identified in a Training Needs Assessment conducted in 2023 in close collaboration with the AO35 leadership, as part of the UNJP.

# 2. AO 35 AND ITS REVISED OPERATIONAL GUIDELINES

2.1 OVERVIEW

This chapter aims to provide AO 35 Investigators and Prosecutors with focused insight into the critical role of human rights principles within the framework of Administrative Order 35 (AO 35). It elucidates that AO 35 transcends procedural guidance, representing a binding commitment by the state to ensure accountability for severe human rights violations such as extra-legal killings, enforced disappearances, torture, and breaches of International Humanitarian Law (IHL).

The chapter also introduces gender intersectionality as a pivotal analytical tool in human rights investigations. This concept enables a deeper understanding of how intersecting forms of discrimination, such as gender, race, and socio-economic status, can amplify vulnerabilities for specific individuals or groups. Incorporating this framework enhances the thoroughness and inclusiveness of investigations.

Responding to feedback from the Training Needs Assessment (TNA), this chapter provides a targeted review of specific laws under AO 35. It focuses on the considerations for handling cases and the elements of each crime defined by AO 35, as well as the evidence necessary to establish

these elements. This approach is aimed at fostering a comprehensive understanding of the legal mechanisms available.

Upon completing this chapter, proficiency in both the ethical imperatives and legal specifics of AO 35 should be achieved. This knowledge will enhance the capacity to perform roles effectively, thus advancing the overarching goal of maintaining human dignity and the rule of law.

2.2 RATIONALE FOR ISSUANCE OF AO 35

The issuance of AO 35 is rooted in the fundamental constitutional principles that uphold “the State values the dignity of every human person and guarantees full respect for human rights” (Art. II, Section 11 of the 1987 Constitution). The roles of AO 35 prosecutors and investigators extend beyond administrative functions, embodying the responsibility to uphold these constitutional values. This directive is a key response to “reported and validated violations of the above-declared rights of the individual,” which have contributed to “an impression of a culture of impunity” (Whereas Clauses). The tasks involve more than routine legal procedures; they are critical in addressing grave human rights violations and upholding constitutional guarantees.



AO 35 specifically targets “unsolved cases of grave violations of the right to life, liberty, and security of persons” (Whereas Clauses). These represent crucial opportunities to reinforce public trust in the justice system. This Handbook equips for this task, emphasizing the resolution of unsolved cases of political violence, including extra-legal killings, enforced disappearances, torture and other grave rights violations (Whereas Clauses). This was reiterated and emphasized in the AO 35 Operational Guidelines.

The directive also highlights the need for an “efficient, coherent, and comprehensive

government machinery” (Whereas Clauses), calling for effective inter-agency coordination for handling complex issues. This Handbook provides operational guidelines for such collaborations, aligning efforts with constitutional mandates.

2.3 GUIDE TO DETERMINE IF CASE FALLS UNDER AO 35 MANDATE

Ordinary crimes, even those involving killing, disappearance or torture, do not qualify unless they meet AO 35’s specific criteria. The following is a guide to determine if a case falls within AO 35’s purview.

QUICK REFERENCE GUIDE<sup>2</sup>  
FOR IDENTIFYING WHETHER A CASE FALLS UNDER THE PURVIEW OF AO 35

Criteria/ Type of Crime	Should be one of these crimes: <ul style="list-style-type: none"><li>1. Extra-Legal Killing</li><li>2. Enforced or Involuntary Disappearance</li><li>3. Torture</li><li>4. Other Grave Human Rights Violations</li></ul>
Victim Profile	<ul style="list-style-type: none"><li>• Members of civil society, cause-oriented groups, political movements, people’s and non-government organizations</li><li>• Ordinary citizens expressing legitimate dissent and opposition</li></ul>
Perpetrator	<ul style="list-style-type: none"><li>• Security establishments of the State</li><li>• Non-state forces</li></ul>
Intent	Silencing legitimate dissent and opposition through violence or intimidation
Method	Violation of constitutional rights, including: <ul style="list-style-type: none"><li>• Deprivation of life, liberty, or property without due process of law</li><li>• Unreasonable searches and seizures</li><li>• Denial of the right to remain silent and have competent and independent counsel</li><li>• Use of torture, force, violence, threat, intimidation, or other means that vitiate free will</li><li>• Secret detention places, solitary, incommunicado, or other similar forms of detention</li><li>• Detention solely by reason of political beliefs and aspirations</li></ul>

<sup>2</sup>Based on the Whereas clauses of AO 35

2.4 WHAT DOES NOT QUALIFY?

- **General Crimes:** Ordinary crimes not included above
- **Personal Motives:** Crimes committed for personal reasons, such as personal vendettas or domestic issues, do not qualify.

Understanding these nuances is crucial for AO 35 prosecutors and investigators. If a case does not meet these criteria, it should not be treated as an AO 35 case. In order to achieve maximum efficiency of the AO 35 mechanism it is the responsibility of AO prosecutors to apply this framework rigorously to ensure that the cases that fall under this mandate are given the specialized attention they require, while other cases are handled through regular investigation mechanisms.

2.5 PROCEDURE WHEN AN AO 35 CASE OCCURS OR IS REPORTED

The procedures and system of cooperation for investigating unsolved cases under AO 35, as outlined in the Revised Operational Guidelines, are structured with detailed coordination among different agencies and specialized teams depending on the status of the case.

2.5.1 Unsolved Cases.

One type of AO 35 cases that can reach the investigators and prosecutors are unsolved cases. These refer to incidents that were previously investigated by the Philippine National Police (PNP), National Bureau of Investigation (NBI) or Commission on Human Rights (CHR) prior to November 22, 2012.<sup>3</sup> Below is a summary of the steps that must be taken by the different bodies under AO 35.

PROCEDURES FOR DEALING WITH  
UNSOLVED CASES<sup>4</sup>

1. Reinvestigation by Special Investigation Teams (SITs)

- **Formation and Activation:** SITs are specifically tasked to re-evaluate and reinvestigate unsolved cases. These teams are created by the Inter-Agency Committee (IAC) or its Chairperson (Section 3).
- **Initial Actions:** Led by an AO 35 prosecutor, the SIT reviews case records, interviews relatives of the victim, conducts site inspections, and speaks with potential witnesses to gather new insights (Section 4).
- **Timeframe for Reinvestigation:** The SIT is expected to complete the reinvestigation and case build-up within 30 days from their first meeting, with an option for a 30-day extension on meritorious grounds (Section 5).

<sup>3</sup>Sec. 1(n), Art. 1, Revised Operational Guidelines of Administrative Order No. 35, s.2012 (adopted on 12 May 2022).

<sup>4</sup> The procedures outlined below are just a guide and may not be complete in all respects. It is best to refer to the original Operational Guidelines for clarifications.



2. Submission and Review of Investigation Report

- **Content of Report:** The SIT compiles a Final Investigation Report detailing the incident, investigative efforts, evidence evaluation, their findings and recommendations (Section 6).
- **Filing of Complaint:** If the reinvestigation uncovers sufficient evidence, a formal complaint is prepared and promptly filed with the appropriate prosecution office (Section 7).

3. Deliberations and Actions by Special Oversight Team (SOT)

- **Review Process:** The SIT's report is reviewed by the SOT, which can direct additional investigative actions or further case build-up (Section 8).
- **Independent Action:** If sufficient evidence is found, the SOT can instruct the SIT to prepare and file a complaint directly, bypassing IAC approval (Section 8).
- **Closure or Delisting:** The SOT manages recommendations for delisting or closing cases, forwarding these to the IAC for final approval (Section 8).

4. Higher Level Review and Coordination (IAC Action)

- **Final Decisions:** The IAC has final say over decisions made by the SOT, including the option to modify, overturn, or commission further investigations (Section 9).
- **Engagement with External Agencies:** The IAC can involve additional agencies not initially part of the committee to aid in the resolution process (Section 9).

5. Reporting and Continual Monitoring

- **Regular Updates:** The SIT is required to provide periodic updates on the case status to the IAC Secretariat (Section 10).
- **Change in Team Composition:** If necessary, especially if an AO35 agency is implicated, the AO 35 prosecutor can reorganize the SIT to ensure effective investigation (Section 10).

6. Coordination with Other Entities

- **Inquest Proceedings:** In situations involving warrantless arrests related to AO 35 cases, investigating officers must notify the AO 35 prosecutor, who will then assess the need to convene the SIT (Section 19 & 20).
- **Utilization of Technology:** The guidelines emphasize the use of communication technology to speed up coordination among involved teams (General Provisions).

2.5.2 NEW CASES

Another type of case that could be brought to the attention of AO 35 secretariat or bodies are the so-called new cases. The Revised Operational Guidelines lay out a systematic process involving

initial assessments, special investigation team (SIT) convening, evidence gathering, and coordination among various legal and enforcement bodies. An explanation of the steps and system of cooperation, referencing the relevant sections can be found in the next page.

PROCEDURES FOR DEALING WITH NEW CASES<sup>5</sup>

1. Initial Assessment and Report

- **Responsibilities of Law Enforcement:** Upon the occurrence or report of an incident potentially covered by AO 35, the local police or National Bureau of Investigation (NBI) unit must conduct an initial assessment to determine any links to advocacy groups, signs of enforced disappearance, torture, or other serious violations (Section 11).
- **Report Submission:** This assessment must be completed within 72 hours, and the findings are submitted to the Chief of Police or District Chief Agent of the NBI. Upon approval, this report is then endorsed to the City or Provincial Prosecutor, who forwards it to a designated AO35 Prosecutor (Section 11).

2. Designation of AO 35 Prosecutors

- **Availability and Roles:** AO 35 prosecutors are designated to serve on-call to lead investigation and case build-up teams. They are tasked with assessing the initial reports and deciding on the convening of an SIT (Section 12).

3. Convening of the Special Investigation Team (SIT)

- **Immediate Action:** Within 24 hours of receiving endorsement from law enforcement, the AO35 Prosecutor determines the nature of the incident and decides whether to convene an SIT. This decision is crucial for coordinating the subsequent investigative steps (Section 13).

4. Investigation and Case Build-Up

- **Duties of the SIT:** Once convened, the SIT is responsible for a comprehensive investigation. This includes evidence collection, witness identification, and statement preparation. The SIT must submit regular updates on the case status to the IAC Secretariat and manage all documentation necessary for a potential trial (Section 14).
- **Change of Team Composition:** If during the investigation, the composition of the SIT is found ineffective or compromised, the AO 35 Prosecutor has the authority to reorganize the team to maintain the investigation's integrity (Section 15).

<sup>5</sup> Sec. 1(n), Art. 1, Revised Operational Guidelines of Administrative Order No. 35, s.2012 (adopted on 12 May 2022).

5. Investigation Report Submission

- **Detailed Report Requirements:** The SIT must submit an investigation report within 30 days of convening, detailing the incident summary, investigative efforts, evidence evaluation, and any recommendations for further action. If sufficient evidence is found, a complaint is prepared and filed alongside the report (Section 16).

6. Review and Action by Special Oversight Team (SOT)

- **Further Investigation or Action:** The SOT reviews the SIT’s report and can direct further investigation or other necessary actions to strengthen the case build-up. They can also direct the immediate filing of a complaint if the evidence warrants (Section 17).
- **Deliberations on Case Closure or Delisting:** Recommendations from the SOT regarding the closing or delisting of cases are submitted to the IAC for final decisions (Section 18).

7. IAC Review and Final Decisions

- **Higher Authority Review:** The IAC reviews recommendations from the SOT, with the power to modify, adopt, or overturn these decisions. They may also involve other agencies or form new teams for additional investigations as needed (Section 19).

2.5.3 INQUEST

Listed below are the procedures and system of coordination for inquest proceedings under AO 35 as detailed in the Revised Operational Guideline. They are designed to ensure that cases involving

warrantless arrests are handled promptly and in accordance with the law. The summary of the steps and coordination system related to inquest proceedings, referencing relevant sections, are listed below:

HOW TO DEAL WITH CASES THAT REQUIRE INQUEST

1. Initial Assessment by Investigating Officers

- **Immediate Assessment and Notification:** Upon a warrantless arrest, investigating officers must assess if the incident involves potential AO 35 violations, such as extrajudicial killings, enforced disappearances, or torture. They must inform the designated AO 35 Prosecutor of the arrest and the circumstances that might qualify it under AO 35. This prompt notification is essential for the quick initiation of inquest proceedings (Section 19 & 20).

2. Role of the AO 35 Prosecutor

- **Convening the SIT:** If not previously convened, the AO 35 Prosecutor will immediately organize the Special Investigation Team (SIT) to handle the inquest and further investigation of the case. This includes coordinating with law enforcement to gather all necessary evidence (Section 19).
- **Oversight of the Inquest:** The AO 35 Prosecutor ensures that the inquest proceedings are conducted according to AO 35 guidelines, reviewing the initial assessments and evidence presented by the law enforcement officers (Section 19 & 20).

3. Certification and Documentation by Investigating Officers

- **Certification Requirement:** During the inquest, investigating officers are required to certify their initial assessment to the inquest prosecutor, stating their reasons for considering the case under AO 35. This includes providing all relevant documents and evidence needed for the inquest (Section 19 & 20).

4. Additional Duties During Inquest Proceedings

- **Duties of Inquest Prosecutor:** According to Section 21, if the inquest prosecutor learns that the respondent (the arrested individual) is a victim or probable victim of enforced or involuntary disappearance, they must immediately disclose the respondent’s whereabouts to their family, their lawyer, the Commission on Human Rights (CHR), or any relevant human rights organization. The prosecutor must also verify whether these parties have been informed about the arrest and detention details (Section 21).
- **Recording Communications:** The inquest prosecutor is tasked with recording all communications made to the family or representatives of the respondent and ensuring that these details are included in the minutes of the proceedings. This is crucial for maintaining transparency and accountability in the handling of AO 35 cases (Section 21).

5. Integration with SIT Actions

- **Continued SIT Involvement:** If an SIT was convened prior to or during the inquest, it remains actively involved in all legal proceedings. This includes providing ongoing support and coordination with the inquest prosecutor to ensure comprehensive investigation and adherence to AO 35 protocols (Section 20).

6. Use of Technology

- **Efficient Communication:** The guidelines advocate for the use of advanced communication technology to facilitate quick and effective coordination among the investigating officers, the AO 35 Prosecutor, and the inquest prosecutor. This technology use is intended to streamline communication and expedite the inquest process (General Provisions).



# 3. HUMAN RIGHTS AND GENDER INTERSECTIONALITY

## 3.1 OVERVIEW

### A. WHAT ARE HUMAN RIGHTS?

Human rights are universal legal guarantees that protect individuals and groups against actions by States that interfere with fundamental freedoms and human dignity. Human rights law establishes both positive and negative obligations of States in this respect. “Negative obligation” refers to the duty of a State to abstain from human rights violations, while “positive obligation” refers to the duty of a State to actively engage in securing the enjoyment of human rights. The following characteristics are frequently associated with human rights:

- Internationally guaranteed
- Legally protected
- Focus on the dignity of the human being
- Protect individuals and groups
- Oblige States and state actors
- Cannot be taken away
- Equal and interdependent
- Universal

Human rights are set out in the Universal Declaration of Human Rights and in various treaties (also called “covenants” and “conventions”), declarations, guidelines and bodies of principles

elaborated by the United Nations and by regional organizations. These instruments include a broad range of guarantees. The rights guaranteed to all human beings include:

- The right to life
- Freedom from torture and cruel, inhuman or degrading treatment or punishment
- Freedom from discrimination
- The right to equal protection of the law
- Freedom of association, opinion, expression, assembly and movement
- The right to liberty and security of person
- Freedom from arbitrary arrest or detention
- The right to a fair trial
- Freedom from arbitrary interference with privacy, family, home or correspondence
- The right to seek asylum
- The right to a nationality
- Freedom of thought, conscience and religion
- The right to vote and take part in government
- The right to work and to just and favourable working conditions
- The right to adequate food, shelter, clothing and social security
- The right to the highest attainable standard of physical and mental health
- The right to education
- The right to participate in cultural life

## B. SCOPE OF STATE RESPONSIBILITY

### 1. State responsibility to respect, protect and fulfil human rights

The international human rights instruments provide States with a comprehensive legal framework for ensuring respect, protection and fulfilment of human rights in the context of criminal justice. These three main duties of States have important implications for the AO35 prosecutors and investigators.

- The **duty to respect** is a negative obligation. It requires state institutions to refrain from unduly interfering with or curtailing the enjoyment of human rights.<sup>6</sup> For example, this includes the obligation to treat all persons with respect for their inherent dignity in all situations.
- The **duty to protect** is an obligation to take reasonable and effective measures to protect individuals and groups against human rights abuses by third parties.<sup>7</sup> It requires state institutions and actors to ensure that third parties do not deprive people of their guaranteed rights.<sup>8</sup> For instance, “freedom of peaceful assembly and of association” and “freedom of expression” are fundamental freedoms enshrined in the core international human rights treaties. Another example is the duty of state agents to protect victims in cases of domestic violence.
- The **duty to fulfill** is a positive obligation to take action to facilitate the enjoyment of basic human rights.<sup>9</sup> It is the responsibility

of the State to establish political, economic and social systems that provide access to the guaranteed rights for all members of society. Treaty provisions are often general in character but must be implemented by specific, detailed provisions in national law. States must facilitate the enjoyment of basic human rights through adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures.<sup>10</sup> For example, the rights to life, liberty and security of person cannot be fulfilled merely by declaring their existence in legal provisions. Rather, detailed criminal, civil and administrative laws and procedures must be in place to provide procedural guarantees, as well as a system of remedies for victims and sanctions for perpetrators.

International standards, whether treaties or declarations, possess moral and legal authority. They reflect universally accepted values, guiding the conduct and actions of law enforcement officials.

Adhering to treaty obligations in AO 35 processes aligns with both national and international legal responsibilities. Beyond treaties, non-treaty instruments like declarations and principles also hold significant importance. Their universal recognition often places them as “general principles of international law.” Thus, these instruments create a thorough legal framework that enhances treaty obligations, particularly in complex AO 35 cases involving multiple forms of discrimination, including gender intersectionality.

International standards are vital in providing detailed guidance for national implementation.

<sup>6</sup> OHCHR, What are human rights?, [www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx](http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx).

<sup>7</sup> Ibid.

<sup>8</sup> Center for Economic and Social Rights, Legal duties, see <http://www.cesr.org/economic-social-and-cultural-rights-guide-legal-framework-0>.

<sup>9</sup> OHCHR, What are human rights?

<sup>10</sup> UNODC and OHCHR, Resource Book on the Use of Force and Firearms in Law Enforcement (New York, United Nations, 2017), p. 17.



They offer specific direction within the broader framework of binding treaties, ensuring that law enforcement has the detailed guidance necessary for effectively fulfilling AO 35 roles.

A thorough understanding of these international standards equips AO 35 Investigators and Prosecutors with a comprehensive perspective on human rights, enhancing their capacity to uphold these rights through their legal mandates.

**3.2 HUMAN RIGHTS AND THE RELEVANCE OF INTERNATIONAL STANDARDS**

Understanding the global framework of human rights standards is an essential aspect of law enforcement, especially for those implementing AO 35. Key United Nations mechanisms, such as the Human Rights Council, treaty bodies and Special Procedures have significantly shaped this domain. They provide critical interpretations and developments of these standards, resulting in a layered international legal structure aimed at fostering respect for human rights, freedom, and dignity within the criminal justice system.

In executing AO 35 duties, these international instruments are crucial resources. They present a broad yet detailed array of principles and standards aiding in addressing intricate human rights issues and providing solid legal support for actions taken under AO 35. This knowledge enhances legal and ethical proficiency in roles, promoting a more cohesive, rights-based approach to criminal justice that is attuned to complexities of human rights and intersecting forms of discrimination such like gender.

**3.3 BASIC SOURCES**

The following are the basic sources of international law that are most relevant to AO 35 cases. They are not exhaustive but having a basic understanding of these legal instruments and principles are critical to

the work of AO 35 prosecutors and investigators.

**3.3.1 Treaties: Covenants and Conventions on Human Rights and Other International Legal Instruments that are Relevant to AO 35 Crimes**

**1. International Covenant on Civil and Political Rights (ICCPR)<sup>11</sup>, (adopted in 1966 and entered into force in 1976**

The ICCPR is a key international legal instrument that codifies essential civil and political rights for individuals. This Covenant elaborates on rights including the right to life, prohibition of torture, and prohibition of arbitrary arrest, among others. As a legally binding instrument ratified by over 100 States, it demands adherence from governments and their institutions, including law enforcement. The Philippines signed and ratified the ICCPR on 19 December 1966 and 23 October 1986, respectively. Among its most relevant procedures are:

**2. International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>12</sup>, Year?**

The ICESCR is vital for understanding the comprehensive scope of human rights. It highlights the interconnection and indivisibility of all rights, including socio-economic rights. For AO 35 personnel, acknowledging the socio-economic context is key in understanding the broader landscape of rights violations, allowing for a more holistic approach to their investigations and prosecutions. The Philippines signed and ratified this treaty on December 19, 1966 and October 23, 1986, respectively. The Philippines signed and ratified this Convention on 19 December 1966 and 7 June 1974, respectively.

<sup>11</sup> Adopted on 16 December 1966; Entry into Force on 23 March 1976.  
<sup>12</sup> Adopted on 16 December 1966; Entry into Force on 3 January 1976.

**First Optional Protocol to the International Covenant on Civil and Political Rights.<sup>13</sup>**

This Protocol bolsters state accountability by enabling individuals to file complaints to the Human Rights Committee about violations of rights contained in the ICCPR, if the State has failed to address these. It highlights the importance of effective domestic mechanisms for addressing grievances. For AO 35, this underscores the role they play in fulfilling the Philippines’ international obligations, and the importance of providing effective domestic avenues for victims and their families to seek redress. The Philippines signed and ratified this instrument on 19 December 1966 and 7 June 1974, respectively.

**3. Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty<sup>14</sup>**

Focusing on the abolition of the death penalty, this Protocol reinforces the sanctity of the right to life. This fundamental right is

central to many AO 35 investigations. The Protocol emphasizes the inviolability of life, guiding AO 35 prosecutors and investigators to prioritize the protection of this right and address its violations with due seriousness. The Philippines signed and ratified this treaty on 20 September 2006 and 20 November 2007, respectively.

**4. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>15</sup>**

AO35 mandate directly aligns with the Convention against Torture. Article 2’s emphasis on preventive measures against torture and Articles 12-14’s mandate for investigations, fair treatment, and victim rehabilitation are directly pertinent. Given that torture and inhumane treatment are among the grave violations under the AO 35, the CAT Convention provides specific, actionable guidance. It ensures that investigators approach cases with diligence, thoroughness, and a commitment to justice. The Philippines’ date of Accession to the Convention was 18 June 1986.

**TORTURE**

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

<sup>13</sup> Adopted on 17 December 1966; Entry into Force on 23 March 1976.  
<sup>14</sup> Adopted on 15 December 1989; Entry into Force on 11 July 1991  
<sup>15</sup> Adopted on 10 December 1984; Entry into Force on 26 June 1987



5. International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)<sup>16</sup> and the Declaration on the Protection of All Persons from Enforced Disappearance<sup>17</sup>

These two international instruments seek to address and prevent the serious human rights violation of enforced disappearance. The ICPPED was adopted in response to widespread enforced disappearances in various regions of the world, recognizing the severe pain and suffering caused to the victims and their families. The Convention aims to prevent enforced disappearances, establish the truth about such acts, and ensure justice and reparation for victims. As a convention,

the ICPPED is legally binding on states that have ratified or acceded to it. Note, however, that the Philippines is not a signatory to this Convention. Nonetheless, it enacted the Anti-Enforced or Involuntary Disappearance Act in 2012, which is discussed below.

The Declaration, on the other hand, was one of the earlier instruments addressing enforced disappearances. Unlike the ICPPED, the Declaration is not legally binding. It serves as a strong moral and ethical guideline for states and lays down a framework for the protection against enforced disappearances. It aims to influence state behavior and policy formation but does not carry the legal force of a convention.

ENFORCED OR INVOLUNTARY DISAPPEARANCE

Arrest, detention, abduction or other deprivation of liberty, by the Government or its agents, or with its complicity, tolerance or acquiescence, where the fate or whereabouts of the victim are not disclosed, or custody is not confirmed.

6. UN Principles on Extralegal, Arbitrary and Summary Executions<sup>18</sup>

The Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions were recommended to States by the Economic and Social Council. The principles provide guidance to law enforcement and other national authorities on preventing and investigating such crimes, and on legal proceedings to bring perpetrators to justice. They emphasize the importance

of ensuring strict control, including a clear chain of command, over law enforcement agencies, as well as careful record-keeping, inspections, and notifications to families and legal representatives with regard to detention. They also require the protection of witnesses and family members of victims, and the careful collection and consideration of relevant evidence. The principles give crucial detail to the provisions of human rights treaties guaranteeing the right to life.

<sup>16</sup> Adopted on 20 December 2006; Entry into Force on 23 December 2010

<sup>17</sup> Adopted on 18 December 1992

<sup>18</sup> Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989

EXTRALEGAL, ARBITRARY OR SUMMARY EXECUTIONS

Deprivation of life without full judicial process, and with the involvement, complicity, tolerance or acquiescence of the Government or its agents. This includes death through the use of excessive force by police or security forces.

- Enforced Disappearance and Extrajudicial Execution: Investigation and Sanction: A Practitioners Guide, International Commission of Jurists, 2015

3.3.2 International humanitarian laws

International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. It is also known as the law of war or the law of armed conflict.<sup>19</sup>

It is important to remember, however, that its principles, although primarily applicable in armed conflicts, are relevant to AO 35 investigations and prosecutors. For example, international humanitarian laws prohibit the following acts in all situations:

- Extrajudicial Killings
- Torture and Inhumane Treatment
- Enforced Disappearances
- Sexual Violence
- Attacks on Civilian Populations and Objects
- Denial of Basic Needs and Services
- Forced Displacement
- Use of Prohibited Weapons

IHL also helps define what constitutes lawful and unlawful conduct during armed conflicts. Knowing these distinctions is vital to accurately classify incidents as either permissible acts of war or potential human rights violations or war crimes and ensuring that only human rights abuses are investigated and pursued within the framework of AO 35.

Furthermore, knowledge of IHL can assist AO 35 investigators navigate the problem of accessing and investigating areas in conflict, a common challenge raised by investigators and prosecutors assigned to investigate cases of potential human rights violations in armed conflict areas. IHL provides mechanisms such as rights of access to information and areas, crucial for effective field investigations. Its provisions can help investigators design and implement effective investigative strategies that respect legal norms and ensure the safety of all parties involved.

A major part of IHL is found Convention on the Prevention and Punishment of the Crime of Genocide<sup>20</sup>. The Genocide Convention defines severe crimes against humanity, underscoring the global consensus against impunity.

<sup>19</sup> ICRC, Advisory Service on International Humanitarian Law (07/2004)

<sup>20</sup> Adopted on 9 December 1948; Entry into Force on 12 January 1951

The Conventions have been developed and supplemented by two further agreements: the Additional Protocols of 1977 relating to the protection of victims of armed conflicts.<sup>21</sup> The

Philippines signed the Geneva Convention on 11 December 1948 and ratified it on 7 July 1950.

GENOCIDE

Acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, including:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

3.3.3 Accountability requirements of international instruments

International human rights instruments require member states to implement three key functions that promote accountability in the area of AO35 mandate:

a) Prevention of human rights violations

An important function of international human rights law is to support States to set up national protection systems that prevent human rights violations. One way of supporting States in this endeavor is to set universal human rights standards. The prevention function in those instruments is further strengthened through requirements to monitor state compliance (e.g. through periodic reporting) and provisions for remedies and redress. The International Covenant on Civil and Political Rights and the International Covenant on Economic,

Social and Cultural Rights are examples of binding international human rights instruments that set the standard for universal and inviolable human rights, as well as the obligation to provide remedies and redress. Through their committees and reporting obligations, these instruments give States further support in interpreting the standards and also contribute to holding States accountable for preventing human rights violations. Another example of a human rights instrument with a prevention function can be found in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires States to systematically review interrogations rules, methods and practices.

<sup>21</sup> ICRC, Advisory Service on International Humanitarian Law (07/2004)

b) Establishment of effective, prompt and impartial investigations of alleged human rights violations

International human rights instruments establish an obligation on States to effectively, promptly and impartially investigate human rights violations. This includes an obligation on States to set up systems for investigation of human rights violations by state agents. Such systems must include full access for victims and their families to independent investigation mechanisms, including judicial review.<sup>22</sup>

Governments and state institutions must ensure the establishment of:

- Effective systems for victims and their families to file complaints of human rights violations<sup>23</sup>
- Effective, independent and competent mechanisms for prompt investigation of complaints
- Internal command and reporting systems that detect, document and refer incidents for follow-up and review. One example can be found in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which requires governments and law enforcement agencies, in situations where the use of force or firearms causes injury or death, to set up effective review procedures for referring information on such cases to the authorities responsible for administrative review and judicial control.<sup>24</sup>

c) Establishment of remedies and sanctions for human rights violations

International human rights instruments also establish obligations on States to provide remedies and sanctions for human rights violations. The International Covenant on Civil and Political Rights ensures the right for victims to a remedy for human rights violations. States must ensure that there is a mechanism whereby those whose rights have been violated can seek and obtain redress. The Optional Protocol to the Convention against Torture includes binding obligations on States to ensure judicial review, sanctions and remedies for violations on the prohibition of torture and other forms of inhuman treatment for all state actors, including law enforcement agencies and officials. States are also obliged to ensure that victims are protected from repetition of the human rights violation.

An important aspect of victims' right to a remedy is to know the truth about what happened to themselves or their relatives, including the facts surrounding human rights violations and identification of the perpetrators.<sup>25</sup>

3.4 GENDER INTERSECTIONALITY

3.4.1 Overview

Gender intersectionality is a framework that recognizes the complex, overlapping nature of

<sup>22</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 12, requires States to promptly and impartially investigate any case where there is reason to believe that torture may have been committed. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 23, states that victims and their families must have access to judicial review.

<sup>23</sup> Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, principle 36(d).

<sup>24</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 6, 11 and 22.

<sup>25</sup> A/HRC/RES/9/11; General Assembly resolution 68/165; A/68/456/Add.2; E/CN.4/1999/62).



social categorizations such as gender, race, class, and others. These intersections can lead to multiple layers of discrimination or disadvantage, especially relevant in human rights contexts. For AO 35 prosecutors and investigators, understanding this concept is imperative as victims of human rights abuses often face these compounded vulnerabilities. Recognizing intersectional identities is essential to ensuring that investigations and prosecutions are comprehensive, acknowledging the unique experiences and challenges faced by different victims.

In the context of AO 35, it's crucial to understand that human rights violations are not experienced uniformly. Victims' intersecting identities, such as gender combined with ethnic background or socio-economic status, can lead to unique types of violations or exacerbate their severity. This understanding enables AO 35 personnel to tailor their approaches, ensuring they fully grasp and address the complexities and nuances of the human rights abuses they investigate.

#### 3.4.2 Recognizing the Diversity of Victim Experiences

AO 35 focuses on addressing severe human rights violations, such as extrajudicial killings, enforced disappearances, and torture. Integrating the lens of gender intersectionality into this mandate is crucial. It enriches the understanding of the complex dynamics surrounding these violations and fosters a more nuanced and effective approach in both investigation and prosecution processes. This integration is not just about adding a layer of complexity; it's about enriching the process with a broader perspective that captures the multifaceted nature of human rights abuses.

The experiences of victims in human rights cases are shaped by a various factor, including gender, race, religion, and socio-economic status. These experiences differ significantly from one individual to another. For instance, women may face certain gender-specific challenges and threats,

while individuals from religious minorities may encounter distinct prejudices. By acknowledging and understanding these diverse experiences, AO 35 prosecutors and investigators can ensure that their investigative and prosecutorial procedures are meticulously tailored to address the individual needs and realities of each victim. This approach leads to more effective, equitable, and just outcomes.

#### 3.4.3 Significance of a Gender-Sensitive Approach

Adopting a gender-sensitive approach in addressing human rights violations like extrajudicial killings, enforced disappearances, and torture is vital. This approach requires an understanding of the specific ways different genders experience, respond to, and are affected by human rights violations. Acknowledging that women, men, and non-binary individuals may face distinct vulnerabilities or be targeted for different reasons is crucial. For AO 35 prosecutors and investigators, this means ensuring that gendered dimensions of crimes are not overlooked, leading to more comprehensive investigations and effective prosecutions.

Understanding how societal and cultural gender roles and stereotypes can amplify vulnerabilities is vital. For instance, women might be perceived as more vulnerable due to societal views on their physical strength, while men might be less likely to report torture and sexual violence due to societal expectations of toughness. An understanding of these dynamics is crucial to ensure that potential biases or blind spots in their work are recognized and that victims are approached with the necessary sensitivity and understanding.

It is also crucial to tailor victim support mechanisms to address gender-specific needs. For example, a female victim of sexual violence might require specialized trauma counseling, while a male victim may need support in overcoming societal stigma. Recognizing the unique challenges faced by different gender identities, especially in conservative or patriarchal settings, is needed.

## 4. CRIMES COVERED BY AO 35

For AO 35 investigators and prosecutors, it is crucial to have a fundamental understanding of the crimes defined under AO 35, as this knowledge forms the basis of their jurisdiction and operational focus. AO 35 was enacted in response to worsening human rights conditions in the country, with the specific intent of addressing and rectifying serious human rights violations such as extrajudicial killings, enforced disappearances, and torture.

AO 35 underscores the urgency of holding perpetrators of such violations accountable and ensuring justice for the victims. Therefore, a clear and comprehensive understanding of what constitutes AO 35 crimes is indispensable for investigators and prosecutors. This understanding not only empowers them to accurately identify and pursue cases within their mandate but also aligns their efforts with the broader goal of addressing human rights concerns and reinforcing the rule of law in the face of these violations. Their proficiency in this area is pivotal to the effective implementation of AO 35, reflecting the commitment to uphold human rights and deliver justice to those affected.

### 4.1 OVERVIEW

This chapter provides a detailed overview of the crimes that are within the ambit of AO 35, specifically:

- a. Extra-legal killings,
- b. Enforced or Involuntary Disappearance (EID),
- c. Torture, and
- d. Other Grave Human Rights Violations.

A comprehensive understanding of these crimes is crucial for investigators and prosecutors to effectively and efficiently perform their tasks. Thus, this Chapter provides a discussion of the specific laws criminalizing these acts, the elements constituting each crime, and the potential evidence required for their establishment in legal proceedings. Likewise, given the potential scarcity of direct evidence in these cases, the Chapter puts emphasis on the importance of various forms of evidence, including physical, testimonial, documentary, and digital, and how to effectively gather and utilize this evidence.



4.2 EXTRA-LEGAL KILLINGS (ELKS)

Extra-legal killing refers to the act of deliberately taking a person’s life without legal justification or due process. This term generally encompasses killings that occur outside the boundaries of the law, often involving individuals or groups who are not acting under the authority of a legal or judicial process. These killings are not sanctioned by any legal system and are typically considered a serious violation of human rights and international law. Extra-legal killings can include, but are not limited to, acts like targeted assassinations, some cases of death in custody, killings resulting from excessive use of force by members of security forces, vigilante justice, honor killings, and death squads. However, ELKs that are covered under AO 35 are those specifically listed in the Definition of Terms under its Revised Operational Guidelines.

4.2.1 ELK Definition Under AO 35<sup>26</sup>

- 1. The victim was:
  - a.a member of or affiliated with an organization, to include political, agrarian, environmental, labor, or similar causes; or
  - b. An advocate of any of the above-named causes; or
  - c. person(s) apparently mistaken or identified to be so.
- 2. The victim was targeted and killed because of actual or perceived membership, advocacy, or profession
- 3. The person/s responsible for the killing is a state agent or non- state agent
- 4. The method and circumstances of attack reveal a deliberate intent to kill

<sup>26</sup> Sec. 1(a), Art. 1, Revised Operational Guidelines of Administrative Order No. 35, s.2012 (adopted on 12 May 2022).

<sup>27</sup> The definition of extra-legal killings under the Operational Guidelines of Administrative Order No. 35 issued on April 18, 2013 included killings where the victim was a media practitioner. However, Administrative Order No. 1, s.2016 amended AO 35 by creating a Presidential Task Force on Violence against Media Workers, which shall have the mandate of ensuring a safe environment for Media Workers. (See footnote no. 1 of the Revised Operational Guidelines of Administrative Order No. 35, s.2012.

4.2.2 Factors to Consider Whether Case Falls Under AO 35

In determining whether a killing falls within the jurisdiction of AO 35 for purposes of investigation, the following factors must be considered:

- 1. Nature of the Victim: <sup>27</sup>
  - The victim was a member of, or affiliated with an organization related to political, environmental, agrarian, labor, or similar causes.
  - Alternatively, the victim was an advocate of any of the aforementioned causes.
  - Or, the victim was apparently mistaken or identified to be associated with such causes.
- 2. Reason for Targeting:
  - The victim was targeted and killed due to their actual or perceived membership, advocacy, or profession related to the causes mentioned in the first element.
- 3. Identity of the Perpetrator:
  - The person or persons responsible for the killing is either a state agent or a non-state agent.
- 4. Intent and Method:
  - The method and circumstances of the attack reveal a clear and deliberate intent to kill.

QUICK GUIDE AND FACTORS TO DETERMINE IF THE KILLING IS AN AO 35 CASE	
Criteria/ Type of Crime	Extra-Legal Killings (ELK)
Victim Profile	<ul style="list-style-type: none"><li>• Member or affiliate of specific organizations (political, environmental, agrarian, labor, etc.;</li><li>• Advocate of above causes;</li><li>• Mistakenly identified as such</li></ul>
Perpetrator	<ul style="list-style-type: none"><li>• State agent or non-state agent</li></ul>
Intent	<ul style="list-style-type: none"><li>• Deliberate intent to kill</li></ul>
Method	<ul style="list-style-type: none"><li>• Method and circumstances reveal a deliberate intent to kill</li></ul>
Stages	<ul style="list-style-type: none"><li>• Includes consummated, frustrated, or attempted killings</li></ul>
Exclusions	<ul style="list-style-type: none"><li>• Other killings are addressed by other appropriate mechanisms within the justice system</li></ul>

4.2.3 Other Types of Killings that Do Not Fall Under AO 35

AO 35 emphasizes that other types of killings, which do not fit the aforementioned criteria for Extra-Legal Killings, shall be addressed by other appropriate mechanisms within the justice system.<sup>28</sup>

4.3 ENFORCED OR INVOLUNTARY DISAPPEARANCE (EID)

Enforced disappearance is a grave human rights violation that occurs when a person is secretly abducted or imprisoned by a state or political organization, or by a third party with the authorization, support, or acquiescence of a state or political organization, followed by a refusal to

acknowledge the person’s fate and whereabouts. This leaves the victim outside the protection of the law.

Victims of enforced disappearance are often at high risk of torture and even extrajudicial execution. Moreover, families and loved ones of the disappeared are frequently subjected to anguish and uncertainty regarding the fate of the disappeared person. Enforced disappearance is considered a continuous crime until the fate of the individual is established.

4.3.1 EID Definition Under AO 35

This crime refers to the arrest, detention, abduction or any other form of deprivation of liberty committed by the agents of the State or

<sup>28</sup> Revised AO 35 Operational Guidelines.



by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by the refusal to acknowledge the deprivation of liberty or by concealment

of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law.<sup>29</sup>

QUICK GUIDE AND FACTORS TO DETERMINE IF THE DISAPPEARANCE IS AN AO 35 CASE	
Criteria/ Type of Crime	Enforced or Involuntary Disappearance (EID)
Victim Profile	<ul style="list-style-type: none"><li>Any person deprived of liberty by agents of the State or those acting with State support</li></ul>
Perpetrator	<ul style="list-style-type: none"><li>Agents of the State or those acting with State support</li></ul>
Intent	<ul style="list-style-type: none"><li>Concealment of the victim’s fate or whereabouts</li></ul>
Method	<ul style="list-style-type: none"><li>Deprivation of liberty followed by refusal to acknowledge or concealment</li></ul>
Stages	<ul style="list-style-type: none"><li>N/A</li></ul>
Exclusions	<ul style="list-style-type: none"><li>N/A</li></ul>

For easy reference, you can find the most relevant parts of the R.A. No. 10353 or the Act Defining and Penalizing Enforced or Involuntary Disappearance at the end of this Handbook as part of the Annexes.

4.3.2 Factors to Consider Whether Case Falls Under AO 35

The following factors are important in ascertaining whether a case involving the abduction or disappearance of a victim is cognizable under AO 35:

1. Act of Deprivation of Liberty:
- The arrest, detention, abduction, or any other form of deprivation of liberty.

2. Perpetrator’s Affiliation:
- Committed by agents of the State.
  - Alternatively, by persons or groups of persons who act with the authorization, support, or acquiescence of the State.
3. Refusal or Concealment:
- A refusal by the responsible parties to acknowledge the deprivation of liberty.
  - Alternatively, a concealment of the fate or whereabouts of the disappeared person.
4. Consequence of the Act:
- The act places the disappeared person outside the protection of the law.

These factors collectively define the crime of

<sup>29</sup> R.A. No. 10353 (Anti-Enforced or Involuntary Disappearance Act of 2012), Sec. 3

enforced disappearance, indicating a situation where a person is made to disappear, by state authorities or with their acquiescence, and the state then refuses to acknowledge the act or provide information on the victim’s whereabouts or fate.

4.4 TORTURE

Torture is a dehumanizing and illegal act that inflicts severe physical and psychological pain, violating fundamental human rights. It destroys lives, erodes trust in society, and leaves lasting trauma on victims, families, and communities. Under our domestic and international law, torture is never justified, regardless of circumstances, and those who perpetrate it must be held accountable.

4.4.1 Definition Under AO 35

4.4.1.1 Torture

- Refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.<sup>30</sup>

4.4.1.2 Other cruel, inhuman and degrading treatment or punishment

- Refers to a deliberate and aggravated treatment or punishment not enumerated

under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter.

4.4.2 Elements

1. Act of Infliction:
- Severe pain or suffering, which can be either physical or mental, is intentionally inflicted upon a person.
2. Purpose:
- Obtaining information or a confession from the victim or a third person.
  - Punishing the victim for an act they or a third person has committed or is suspected of having committed.
  - Intimidating or coercing the victim or a third person.
  - Any act based on discrimination of any kind.
3. Perpetrator’s Affiliation:
- The pain or suffering is inflicted by, at the instigation of, or with the consent or acquiescence of a person in authority or an agent of a person in authority.
4. Exclusion:
- The act does not encompass pain or suffering that arises solely from, is inherent in, or is incidental to lawful sanctions.

<sup>30</sup> R.A. No. 9745 (Anti-Torture Act of 2009), Sec. 3(a). The main international standard creating legal obligations on the Philippines in this regard is the Convention Against Torture (see Section 3.3.2).

4.4.3 FACTORS TO CONSIDER  
WHETHER CASE FALLS UNDER AO 35

The following guide can be used in determining a case falls within the ambit of AO 35 mechanism:

a. **Victim Profile:** The victim is defined as any person who has been subjected to severe pain or suffering.

b. **Perpetrator:** The perpetrator is identified as a person in authority or an agent of a person in authority.

c. **Intent:** The intent behind the act is the intentional infliction of severe pain or suffering for specific purposes, such as obtaining information, punishment, or intimidation.

d. **Method:** The method involves the infliction of severe physical or mental pain or suffering.

QUICK GUIDE AND FACTORS TO DETERMINE IF THE CASE FALLS UNDER AO 35	
Criteria/ Type of Crime	Torture
Victim Profile	• Any person subjected to severe pain or suffering
Perpetrator	• Person in authority or agent of a person in authority
Intent	• Intentional infliction of severe pain or suffering for specific purposes (e.g., obtaining information, punishment, intimidation)
Method	• Infliction of severe physical or mental pain or suffering
Exclusions	• Excludes pain or suffering arising from lawful sanctions

4.5 OTHER GRAVE HUMAN  
RIGHTS VIOLATIONS

Grave human rights violations severely undermine a rule of law society by breaching fundamental justice and equality principles. They damage public trust in the legal system, hinder justice, and create fear and mistrust within communities. Internationally, these violations harm a country’s reputation and relationships. Their long-term effects extend across generations, affecting societal harmony and progress. In essence, such violations

not only break immediate legal and moral norms but also cause lasting harm to society’s fabric.

4.5.1 Definition Under AO 35

These refer to acts that grossly violate an individual’s right to life, liberty and security of persons and/or their physical or mental integrity and dignity including, but not limited to, Enforced Disappearance, Torture and other violations enumerated under Sections 4 (War Crimes), 5 (Genocide) and 6 (Other Crimes against Humanity) of R.A. No. 9851.<sup>31</sup>

<sup>31</sup> Revised AO 35 Operational Guidelines.

QUICK GUIDE AND FACTORS TO DETERMINE IF THE CASE FALLS UNDER AO 35	
Criteria/ Type of Crime	Other Grave Human Rights Violations
Victim Profile	• Individual whose right to life, liberty, and security is grossly violated
Perpetrator	• Varies (could include State agents or non-state agents)
Intent	• Gross violation of rights, could include acts under War Crimes, Genocide, and Other Crimes against Humanity
Method	• Varies (could include acts like enforced disappearance, torture, etc.)
Stages	• N/A
Exclusions	• N/A

4.5.2 Factors to Consider Whether  
Case Falls Under AO 35

The following must be considered to determine whether a case can be considered as an AO 35 cases:

1. Gross Violation of Fundamental Rights: The act grossly violates an individual’s right to life, liberty, and security of persons. Such act grossly infringes upon an individual’s physical or mental integrity and dignity.

2. Inclusion of Specific Violations:

- Enforced Disappearance.
- Torture.

3. Violations Enumerated under RA No. 9851:

- Section 4: War Crimes.
- Section 5: Genocide.
- Section 6: Other Crimes against Humanity.

4. Non-exhaustiveness:

- The definition includes the aforementioned violations but is not limited to them. There might be other acts that can be classified under “Other Grave Human Rights Violations.”



# 5. CRIMINAL INVESTIGATION PRINCIPLES, PROTOCOLS AND GUIDELINES

## 5.1 OVERVIEW

It is essential for all PNP investigators and AO 35 prosecutors to be familiar with the PNP Criminal Investigation Manual. It should be considered the ‘bible’ for investigators, guiding them through the correct procedures and best practices. Investigators must follow it closely to make sure their work is legal and thorough and in accordance with what the PNP prescribes. Prosecutors also need to know this Manual well. It helps them check the quality of investigations and build strong cases before they are filed in court. It is crucial that everyone involved in the investigation of AO 35 cases follow the procedures and protocols laid out in this Manual to processes standard and united. This part of the Handbook covers the general aspects of the PNP Criminal Investigation Manual.

Alongside the Manual, the Minnesota Protocol offers extra guidance, especially for cases involving unjust harm or killings, while the Istanbul Protocol offers guidance on the effective investigation of cases of torture and other cruel, inhuman or degrading treatment or punishment. AO 35 personnel should understand that these Protocols add to, but does not replace, the PNP Manual. The Protocols bring in additional tips and good practices from around the world. Using both

the PNP Manual and the Minnesota and Istanbul Protocols together, ensures that AO 35 methods meet both local laws and international standards.

In short, knowing both the PNP Criminal Investigation Manual and the Minnesota and Istanbul Protocols is vital for AO 35 prosecutors and investigators. This knowledge ensures a well-rounded, globally-aware approach to justice, showing our strong commitment to the rule of law in the Philippines.

## 5.2 THE MINNESOTA PROTOCOL

The Minnesota Protocol, formally known as the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, is widely regarded as the gold standard for conducting investigations into extra-legal killings, torture, and enforced disappearances. Developed under the auspices of the United Nations in 1991 and updated in 2016, this comprehensive framework provides detailed guidelines and procedures aimed at ensuring thorough, impartial, and effective investigations into these grave human rights violations. While the Minnesota Protocol itself is not a legally binding instrument, it sets forth a set of principles and practical approaches based on international human

rights standards that help ensure accountability and justice.

The protocol emphasizes the importance of preserving evidence, securing the crime scene, and maintaining detailed documentation throughout the investigative process. It outlines the roles and responsibilities of those involved in the investigation, ensuring that all actions are conducted with the utmost professionalism and ethical standards. The protocol also stresses the need for investigators to possess the necessary independence to carry out their duties without interference, and the importance of protecting those involved in the investigation, including witnesses, family members of the victim, and the investigators themselves.

Adopting the Minnesota Protocol’s methodologies can significantly benefit the conduct of investigations under Administrative Order No. 35 (AO 35) in the Philippines, which deals with extra-legal killings, enforced disappearances, and torture. By aligning with the protocol’s best practices, AO 35 investigators and prosecutors can enhance the credibility and effectiveness of their investigations. This alignment helps in building solid cases that can withstand legal scrutiny and lead to the successful prosecution of perpetrators. Furthermore, utilizing the Minnesota Protocol can foster greater trust in the justice system among the communities affected by such violations, as it demonstrates a commitment to adhering to international human rights norms and ensuring thorough and impartial justice processes.

## 5.3 THE ISTANBUL PROTOCOL

The Istanbul Protocol, formally known as the “Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” is a comprehensive set of international guidelines designed to enhance the ability of healthcare professionals, legal practitioners, and human rights defenders to document and investigate instances of torture effectively. Developed in 1999 through the collaboration of more than 75 experts in law, health, and human rights, it represents the

first internationally recognized set of standards for systematic assessment of persons who allege torture and ill-treatment.

The primary goal of the Istanbul Protocol is to provide a detailed framework for the medical evaluation of torture allegations and to suggest methods for effective legal and ethical documentation of torture. This framework includes the medical and psychological examination of torture victims, outlining both the immediate and long-term effects of torture on the individual. It emphasizes the importance of a meticulous and unbiased approach, ensuring that all findings are accurately recorded to support any potential legal proceedings against alleged perpetrators. The protocol also offers guidance on the interpretation of findings to differentiate between injuries consistent with torture and those that may have other origins.

Moreover, the Istanbul Protocol serves a critical role in the training of medical professionals and legal experts, providing them with the tools necessary to identify signs of torture and ensuring that reports generated are of a high forensic standard that can hold up in court. Its implementation helps to strengthen the accountability mechanisms for human rights abuses, supporting broader efforts to combat torture and inhumane treatment worldwide. By adopting the principles of the Istanbul Protocol, countries affirm their commitment to justice and human rights, bolstering legal systems against the impunity of those who commit acts of torture. Below are the major headings of the topics under the Manual on Istanbul Protocol.

## 5.4 GENERAL PRINCIPLES OF INVESTIGATION: PNP CRIMINAL INVESTIGATION MANUAL (EXCERPTS)

The following are excerpts from the PNP Manual. They are provided below to make it easier for AO 35 investigators and prosecutors to access the most relevant provisions of the PNP Manual. This also seeks to reiterate that the PNP Manual is the primary source of procedure and protocols when conducting criminal investigation, including those that are covered by AO 35.



THE MINNESOTA PROTOCOL ON THE INVESTIGATION  
OF POTENTIALLY UNLAWFUL DEATH (2016)

Revised UN Manual on the Effective Prevention and Investigation of Extra-Legal,  
Arbitrary and Summary Executions (1989)

CONTENTS

- I. Aims and Scope of the 2016 Minnesota Protocol
- II. International Legal Framework
- III. Professional Ethics
- IV. Conduct of an Investigation
  - A. General Principles of Investigations
  - B. The Investigation Process
  - C. Interviews and Witness Protection
  - D. Recovery of Human Remains
  - E. Identification of Dead Bodies
  - F. Types of Evidence and Sampling
  - G. Autopsy
  - H. Analysis of Skeletal Remains
- V. Detailed Guidelines
  - A. Detailed Guidelines on Crime-Scene Investigation
  - B. Detailed Guidelines on Interviews
  - C. Detailed Guidelines on the Excavation of Graves
  - D. Detailed Guidelines on Autopsy
  - E. Detailed Guidelines on the Analysis of Skeletal Remains
- VI. Glossary
- VII. Annexes
  - Annex 1. Anatomical Sketches
  - Annex 2. Case Details Form
  - Annex 3. Firearm Wound Chart
  - Annex 4. Stab Wound/Laceration Chart
  - Annex 5. Adult Dental Chart
- List of Tables
  - Table 1: Ante-Mortem and Post-Mortem Data for the Purpose of Identification
  - Table 2: Torture Techniques and Related Findings

ISTANBUL PROTOCOL MANUAL ON THE EFFECTIVE INVESTIGATION  
AND DOCUMENTATION OF TORTURE AND OTHER

CONTENTS

- I. Relevant International Legal Norms and Standards
- II. Relevant Ethical Codes
- III. Legal Investigation of Torture and Ill-Treatment
- IV. General Considerations for Interview
- V. Physical Evidence of Torture and Ill-Treatment
- VI. Psychological Evidence of Torture and Ill-Treatment
- VII. Role of Health Professionals in Documenting Torture and Ill-Treatment in  
Different Countries
- VIII. Implementation of the Istanbul Protocol
- Glossary
- Annexes

5.4.1 Definition of Investigation

Investigation is defined in the Manual as the collection of facts to accomplish a three-fold aim:

- a. to identify the suspect;
- b. to locate the suspect; and
- c. to provide evidence of his guilt.

Likewise, the Manual emphasizes that in the performance of their duties, the investigator must seek to establish the six (6) cardinal points of investigation, namely:

- 1. What specific offense has been committed;
- 2. How the offense was committed;
- 3. Who committed it;
- 4. Where the offense was committed;
- 5. When it was committed; and
- 6. Why it was committed.

5.4.2 Investigation Protocols

The PNP Manual of Investigation has established a set of critical investigation protocols that serve as the bedrock for conducting criminal investigations in the Philippines. These protocols outline systematic procedures, ensuring that every investigation is carried out in a structured, legal, and effective manner. This methodical approach not only enhances the quality and integrity of the investigation but also bolsters the likelihood of achieving justice in court proceedings.

The protocols are directly applicable to AO 35 cases. They ensure consistency and adherence to legal standards, which is particularly crucial in these cases given their often sensitive and complex nature. By following these established protocols, AO 35 investigators and prosecutors can maintain the highest standards of investigation and justice, reflecting a steadfast commitment to the rule of law and human rights.



**Protocol 1: Jurisdictional Investigation by the Territorial Unit Concerned**

The Police Station, which has territorial jurisdiction of the area where the crime incident was committed, shall immediately undertake the necessary investigation and processing of the crime scene, unless otherwise directed by higher authorities for a certain case to be investigated by another units/agency.

**Protocol 2: Official Police Blotter**

a. A Police Blotter is an 18 12 logbook with hard-bound cover that contains the daily register of all crime incident reports, official summary of arrests, and other significant events reported in a police station.

b. As a general rule, all crime incidents must be recorded in the official police blotter.

c. A separate Police Blotter, however, shall be maintained for offenses requiring confidentiality like violence against women and children and those cases involving a child in conflict with the law to protect their privacy pursuant to R.A. 9262 (Anti-Violence Against Women and Children Act of 2004) and RA 9344 (Juvenile Justice and Welfare Act of 2006).

d. The duty police officer shall record the nature of the incident in the police blotter containing the “five Ws” (who, what, where, when and why) and “one H” (how) of the information and inform his superior officer or the duty officer regarding the occurrence of such incident.

e. In answering the above “five Ws and one H” and the Case Disposition, all such material details about the incident, including the nature of the action or offense; the Date, Time, and Place of Occurrence; the names of the suspect/s, the victim/s, the witness/es, if any; facts of the case; significant circumstances that aggravate or mitigate the event or the crime should be entered along with the identity of the officer

to whom the case is assigned (Officer-on-case); and, the status of the case.

**Protocol 3: Investigation Team: Organization and Equipment**

a. All investigators in any police unit must be a graduate of prescribed investigation course with a rank of at least PO2 (pre-requisite to assignment).

b. Composition:

1. Team Leader;
2. Investigator/recorder;
3. Photographer;
4. Evidence custodian; and
5. Composite Illustrator/Artist

c. Equipment of the investigator:

1. Police line;
2. Video camera;
3. Voice recorder;
4. Camera;
5. Measuring device;
6. Gloves;
7. Flashlight;
8. Fingerprint kit;
9. Evidence bag;
10. Evidence tag;
11. Evidence bottles/vials; and
12. Investigators tickler (contains the following)
  - a) Investigators checklist
  - b) Anatomical diagram form
  - c) Evidence checklist
  - d) Turn-over receipt

**Protocol 4: Duties of the First Responder**

a. Proceed to the crime scene to validate the information received;

b. Record the exact time of arrival and all pertinent data regarding the incident in his issued pocket notebook and notify the Tactical Operations Center (TOC);

c. Cordon off the area and secure the crime scene with a police line or whatever available

material like ropes, straws or human as barricade to preserve its integrity;

d. Check whether the situation still poses imminent danger and call for back up if necessary;

e. Identify possible witnesses and conduct preliminary interview and ensure their availability for the incoming investigator-on-case;

f. Arrest the suspect/s if around or in instances wherein the suspect/s is fleeing, make appropriate notification for dragnet operations;

g. Prepare to take the Dying Declaration of several injured persons with the following requisites:

1. That death is imminent and the declarant is conscious of that fact;
2. That the declaration refers to the cause and surrounding circumstances of such death;
3. That the declaration relates to facts which the victim is competent to testify to; and
4. That the declaration is offered in a case wherein the declarants death is the subject of the inquiry. (Section 37, Rule 130 of the Rules of Court).

h. Evacuate the wounded to the nearest hospital using emergency services;

i. Account for the killed, wounded and arrested persons for proper disposition;

j. Conduct initial investigation;

k. Brief the investigator-on-case upon arrival and turn over the crime scene.

l. Conduct inventory on the evidence taken at the crime scene; Inventory receipt should be properly signed by the first responder, Scene of Crime Operation (SOCO) and the investigator.

**Protocol 5: Duties and Responsibilities of the Investigating Team**

a. Take full control of the crime scene to include the conduct of crime scene search; taking of photographs; making sketches; lifting of fingerprints; markings of physical evidence; (Chain of custody) the transmittal of evidence to crime laboratory; interview of witnesses; gathering and evaluation of evidence; follow-up of the case and the documentation and filing of appropriate charges in court.

b. Establish a command post in the immediate vicinity of the crime scene;

c. Designate a holding area in the immediate vicinity of the crime scene (for the media, VIPs and other personalities present);

d. Conduct case conference with the first responder, SOCO, other law enforcers and rescue personnel;

e. Note any secondary crime scene (if situation requires); and

f. Release the crime scene after investigation.

**Protocol 6: Investigation of Suspects**

- a. Procedures when arrest is made
- i. Secure the person arrested (handcuff at the back);
  - ii. Inform the arrested person on the cause of his arrest and his rights as provided for in the Constitution;
  - iii. Conduct thorough search for weapons and other illegal materials against the suspect/s;
  - iv. Use reasonable force in making arrest;
  - v. Confiscated evidence shall be properly documented and marked;
  - vi. Bring the arrested person to the Police Station for investigation;

b. Booking procedures of the Arrested Person/Suspect

- i. The arrested suspect shall be fingerprinted, photographed and subjected to medical examination to include liquor and drug tests;
- ii. Conduct record check;

Rights of the detainee shall be respected at all times, including the right to medical treatment, access to legal advice etc.

Respect the rights and special status of female detainee, Juvenile and, persons with disabilities.

**Protocol 7: Taking of Sworn Statements of Suspects**

The execution of a suspect’s WAIVER as stipulated in Art 125 of the RPC<sup>32</sup> shall always be done in the presence of his chosen counsel or any independent counsel.

**Protocol 8: Taking of Sworn Statement/s of the Witnesses**

- a. Sworn Statement or Affidavit of complainant/s and witness/es must be taken immediately by the investigator-on-case
- b. Affidavit of Arrest of arresting officers must be taken immediately and not later than 24 hours after arrest.
- c. In Inquest cases, the investigator-on-case and the arresting officer/s shall observe Art. 125 of the RPC.

**Protocol 9: Preparation of Reports and Filing of Charges**

The Investigator-On-Case shall submit the following:

- a. Spot Report within 24 hours to HHQ;
- b. Progress Report;
- c. After Operation Report;
- d. Final Report after the case is filed before the prosecutor’s office/court; and
- e. Accomplishment Report.

**Protocol 10: Procedure in the Release of a Crime Scene**

- a. Release is accomplished only after completion of the final survey and proper documentation of evidence, witness/es, victim/s and suspect/s
- b. If the crime scene is within a private property, the same must be released to the lawful owner witnessed by any barangay official. In case of government facility, it should be released to the administrator

**Protocol 11: Follow-up of Case**

The investigator shall conduct police operation to identify and apprehend suspect/s based on the results of the initial investigation conducted and in compliance with standards for making arrest/apprehending suspects.

**Protocol 12: Preparation of the Case Investigation Plan (CIPLAN)**

The conduct of police operation involving sensational cases, high profile and heinous crimes must be covered by Case Investigation Plan.

**Protocol 13: Attendance to Court Dates**

The investigator-on-case and arresting officers shall endeavor to ensure their attendance during court hearings while COPs/Heads of Units shall supervise and ensure the attendance of witness/es.

**Protocol 14: Uniform of the Investigator**

Prescribed uniform should be worn by investigators when conducting investigation so as to identify them as PNP personnel.

**5.5 COMMON INVESTIGATION OVERSIGHTS**

The PNP Manual acknowledges that lapses in investigations can occur and has proactively identified these common issues. It offers comprehensive recommendations to both prevent and address these lapses. By highlighting potential pitfalls and providing strategic solutions, the Manual ensures that investigators are well-equipped to maintain the integrity and effectiveness of their investigations. This proactive approach is crucial for minimizing errors and enhancing the overall quality of criminal investigations, ultimately contributing to more reliable and just outcomes in the judicial process.

**a. Incomplete Case Folder** - lack of material documentation of the case under investigation.

**Recommended Remedies** - include the police reports in chronological order such as police blotter, spot, progress and final investigation report. Also, append the scene of crime operation reports, forensic reports and photographs. Further, if possible, attach the profile of victim/s and suspect/s, as well as the status of the party involved and the case.

**b. No template for the conduct of investigation** - police personnel are not knowledgeable about crime scene preservation and basic investigation.

**Recommended Remedies** - every police personnel should mandatorily undergo investigation training giving priority to those in the field units.

**c. Inadequacy of coordination** - the SOCO, investigators, prosecutors and other concerned agencies work separately and independently in the conduct of their investigation.

**Recommended Remedies** - case conferences should be encouraged at the start of the investigation. The conferences should be attended by the SOCO, investigators, prosecutors, IBP lawyers and other concerned agencies in order to ensure the coordinated actions in the preparation of an air-tight case folder.

**d. Failure to prosecute** - pertains to absence of police investigator during trial to act as prosecutors witness due to retirement and transfer of concerned investigator.

**Recommended Remedies** - proper turn-over of case folders handled by investigators who shall retire or be transferred, as requisite before the issuance of office clearance.

**e. Chain of Custody** - non-observance of proper documentation in the turn-over of evidence from one officer to another or one office to another.

**Recommended Remedies** - documentation on the turnover of evidence with actual receipt should be observed and non-observance should be the basis for administrative sanctions.

**f. Less appreciation of electronic evidence** - police investigators take for granted the electronic devices such as cellphones, computers and other electronic devices can be processed to give investigative leads.

**Recommended Remedies** - proper training on the preservation and processing of electronic devices should be prioritized for all investigators in the field.

**5.6 ADDITIONAL NOTES ON THE MINNESOTA PROTOCOL**

Understanding the Minnesota Protocol, in addition to the PNP Manual of Investigation, is crucial for AO 35 prosecutors and investigators. As mentioned earlier, the Minnesota Protocol brings an internationally recognized framework,

<sup>32</sup> Revised Penal Code



particularly in cases involving serious human rights violations. Its global acceptance and adherence to international human rights standards can significantly enhance the credibility of investigations conducted by AO 35 personnel. By aligning with the Minnesota Protocol's principles and standards, investigators and prosecutors not only ensure compliance with local guidelines but also demonstrate a commitment to global best practices. This alignment bolsters the integrity and legitimacy of their investigations and will make police work and identification of perpetrators more effective. Consequently, the integration of the Minnesota Protocol into their work amplifies the thoroughness, fairness, and reliability of investigations, fostering greater trust and confidence in the justice system both domestically and internationally.

5.6.1 Elements and Principles of Investigations

International law requires that investigations be: (i) prompt; (ii) effective and thorough; (iii) independent and impartial; and (iv) transparent.

5.6.1.1 Prompt

The right to an effective remedy is violated when investigations into potentially unlawful death are not conducted promptly. Authorities must conduct an investigation as soon as possible and proceed without unreasonable delays. In cases of unlawful death, investigators must report these to their superiors or proper authorities without delay. The duty of promptness does not justify a rushed or unduly hurried investigation. The failure of the State promptly to investigate does not relieve it of its duty to investigate at a later time: the duty does not cease even with the passing of significant time.

5.6.1.2 Effective and thorough

Investigations of any potentially unlawful death or enforced disappearance must be effective and thorough. Investigators should, to the extent possible, collect and

confirm (for example by triangulation) all testimonial, documentary and physical evidence. Investigations must be capable of: ensuring accountability for unlawful death; leading to the identification and, if justified by the evidence and seriousness of the case, the prosecution and punishment of all those responsible; and preventing future unlawful death. It must, at a minimum, take all reasonable steps to:

- Identify the victim(s);
- Recover and preserve all material probative of the cause of death, the identity of the perpetrator(s) and the circumstances surrounding the death;
- Identify possible witnesses and obtain their evidence in relation to the death and the circumstances surrounding the death;
- Determine the cause, manner, place and time of death, and all of the surrounding circumstances. In determining the manner of death, the investigation should distinguish between natural death, accidental death, suicide and homicide; and
- Determine who was involved in the death and their individual responsibility for the death.

5.6.1.3 Independent and impartial

Investigators and investigative mechanisms must be, and must be seen to be, independent of undue influence. They must be independent institutionally and formally, as well as in practice and perception, at all stages. Investigations must be independent of any suspected perpetrators and the units, institutions or agencies to which they belong. Investigations of law enforcement killings, for example, must be capable of being carried out free from undue influence that may arise from institutional hierarchies and chains of command. Inquiries into serious human rights violations, such as extra-legal killings and torture, must be conducted under the jurisdiction of ordinary civilian courts. Investigations must also be free from undue external influence, such as

the interests of political parties or powerful social groups.

Investigators must be impartial and must act at all times without bias. They must analyze all evidence objectively. They must consider and appropriately pursue exculpatory as well as inculpatory evidence.

5.6.1.4 Transparent

Investigative processes and outcomes must be transparent, including through openness to the scrutiny of the general public and of victims' families. Transparency promotes the rule of law and public accountability, and enables the efficacy of investigations to be monitored externally. It also enables the victims, defined broadly, to take part in the investigation. States should adopt explicit policies regarding the transparency of

investigations. States should, at a minimum, be transparent about the existence of an investigation, the procedures to be followed in an investigation, and an investigation's findings, including their factual and legal basis.

Any limitations on transparency must be strictly necessary for a legitimate purpose, such as protecting the privacy and safety of affected individuals (including suspects, witnesses and relatives of victims), ensuring the integrity of ongoing investigations, or securing sensitive information about intelligence sources or military or police operations. In no circumstances may a state restrict transparency in a way that would conceal the fate or whereabouts of any victim of an enforced disappearance or unlawful killing, or would result in impunity for those responsible.



# 6. CRIME SCENE ANALYSIS

## 6.1 OVERVIEW

Crime scene analysis plays a pivotal role in the investigation of potential AO 35 cases, as it forms the foundation upon which the entire investigation is built. The meticulous examination of a crime scene allows investigators to gather crucial physical evidence, understand the sequence of events, and identify possible suspects. This is especially important in AO 35 cases, which often involve serious violations like extrajudicial killings or enforced disappearances, where the integrity and accuracy of the investigation are paramount. Proper crime scene analysis ensures that evidence is collected, preserved, and analyzed correctly, thereby preventing contamination or loss of vital information. It provides the factual basis needed to build a strong, coherent case, essential for achieving justice and holding perpetrators accountable under the law.

## 6.2 CRIME SCENE PROCESSING

The PNP Manual puts emphasis on the importance on processing and securing a crime scene. Below is the instruction of the PNP Manual on crime scene processing in simplified and summarized form:

1. Processing and Securing the Crime Scene:
  - **Recognize and Identify:** Carefully examine the scene to recognize and identify potential evidence.
  - **Preserve:** Take steps to preserve the scene as it is found.
  - **Collect Evidence:** Collect all items and facts of evidentiary value.
  - **Consider Crime Type and Location:** Tailor your approach based on the specific crime and its location.
2. Protecting the Crime Scene and Evidence:
  - **Skillful Collection:** Skillfully collect facts and items that are valuable as evidence.
  - **Documentation:** Make detailed notes and sketches of the scene.
  - **Witness Statements:** Obtain written and verbal statements from witnesses and suspects.
  - **Mark and Preserve Evidence:** Carefully mark and preserve all physical objects collected as evidence.

## 3. Laboratory Examination:

- **Examine Collected Items:** Send all collected objects and substances to the laboratory for examination.
- **Track Suspect Movements:** Be aware that suspects may carry objects or substances away from the scene, either intentionally or unintentionally. Keep track of such movements for thorough investigation.

## 4. Use of Investigators Notebook

- **Use a Notebook:** Employ a notebook to record relevant case details.
- **Prevent Forgetting Details:** Keep in mind the possibility of forgetting some details due to the large number of cases and details handled.
- **Record Non-Essential Details:** Note down details that may not be essential for the report but could be of interest in court.
- **Consult Notes During Trial:** Investigators can consult their notes in court to refresh their memory.

## 5. Recording Notes:

- **Complete and Accurate Data:** Ensure that all investigation data is recorded completely and accurately.
- **Legible Writing:** Maintain legibility in your notes for clarity.
- **Facilitate Handover:** Record in a manner that allows another investigator to easily assume responsibility and understand the case.

According to the Minnesota Protocol, the aim of crime scene examination is to identify scientifically, document, collect and preserve court-admissible evidence that may link suspects, victims and physical evidence with the scene. Such examinations should be conducted by forensic experts who have been trained in the legal and scientific identification, documentation.... [missing].

## 6.3 GENERAL INVESTIGATIVE PROCEDURES

Outlined below are the General Investigative Procedures as derived from the PNP Manual. These steps have been replicated in this Handbook for ease of reference, ensuring that investigators have ready access to the fundamental and structured approach prescribed by the PNP. This includes crucial stages of an investigation, starting from the initial assessment of the crime scene to the collection and analysis of evidence, and finally, the documentation and preparation for legal proceedings. These procedures form the backbone of effective criminal investigation, providing a clear and methodical framework that guides investigators through the complexities of their work, ensuring thoroughness, legality, and adherence to best practices.

### 6.3.1 Purpose

This investigative procedure is designed to adapt to the current trends in modern investigation, in line with the PNP Integrated Transformation Program which seeks to improve and integrate the different manuals used by the PNP to serve as guide in all aspects of police investigation.

It also aims to come up with a definite investigative procedure on specific cases from the time the incident happened, until the case is filed, which will be adopted by the PNP investigators in pursuing their mandated tasks.



6.3.2 Procedures

6.3.2.1 Upon receipt of call/walk-in complainants

- a. Duty Desk Officer shall:
  - i. Record the time it was reported;
  - ii. Get the identity of the caller/complainant;
  - iii. Get the place of the incident;
  - iv. Get the nature of the incident;
  - v. Get the number of victim/s;
- b. Record a brief synopsis of the incident;
- c. Direct the nearest mobile car/beat patrollers or the nearest police precinct to act as first responder equipped with police line to secure the place of incident a camera;
- d. Inform the duty investigator (preferably one team of investigators).

6.3.2.2 At the crime scene

The First Responder shall perform his/her duty as stated in Chapter I Protocol 4 of the Police Manual. In addition, check the condition of the victim(s) while the other members of the first responders shall simultaneously secure the area by putting a police line or any material (like rope, straw, etc.).

- a. If the victim is in serious condition
  - 1. Bring the victim immediately to the nearest hospital using emergency services;
  - 2. Photograph and make a sketch of the victim (if the victim is dead);
  - 3. Get the dying declaration; if necessary (ask 3 questions)
    - a) Ano ang pangalan at address mo? (What is your name and address)
    - b) Kilala mo ba ang gumawa nito sa iyo? (Do you know who did this to you?)
    - c) Sa pakiramdam mo ba ay ikamamatay mo ang tinamo mong sugat?

However, if there is still a chance to ask

more questions, then follow-up should be done. The statement, once reduced into writing, shall be duly signed by or with thumb mark of the victim.

- b. If not in serious condition
  - 1. Bring the victim immediately to the nearest hospital using emergency services;
  - 2. Get the identity and other data of the victim;
  - 3. Get initial interview from the victim

**Note:** The other member/s of the first responders shall remain at the crime scene to secure the premises.

- c. If the suspect is arrested at the scene
  - 1. Get the names of the persons who turned over or arrested the suspect;
  - 2. Isolate the arrested suspect/s and separate them from any probable witness of the incident;
  - 3. Record what time the suspect was arrested;
  - 4. Wait for the investigator to interview the suspect;
  - 5. If the suspect volunteers any statement, take note of the time, location and circumstances of the statements.

6.3.3 Investigation Procedure at the Crime Scene

- a. Upon arrival at the crime scene
  - 1. Receive the crime scene from the first responder.
  - 2. Record time/date of arrival at the crime scene, location of the scene, condition of the weather, condition and type of lighting, direction of wind and visibility.
  - 3. Photograph and/or video the entire crime scene.
  - 4. Before entering the crime scene, all investigators must put on surgical gloves.

5. Before touching or moving any object at the crime scene in a homicide or murder case, determine first the status of the victim, whether he is still alive or already dead. If the victim is alive, the investigator should exert effort to gather information from the victim himself regarding the circumstances of the crime, while a member of the team or someone must immediately call an ambulance from the nearest hospital. Before removing the victim, mark, sketch and photograph his/her relative position. Only a coroner or a medical examiner shall remove the dead body unless unusual circumstances justify its immediate removal.

6. Designate a member of the team or ask other policemen or responsible persons to stand watch and secure the scene, and permit only authorized persons to enter the same.

7. Identify and retain for questioning the person who first notified the police, and other possible witnesses.

8. Determine the assailant through inquiry or observe him if his identity is immediately apparent. Arrest him if he is still in the vicinity, in accordance with procedures for arrest.

9. Separate witnesses in order to get independent statements.

- b. Recording

The investigator begins the process of recording pertinent facts and details of the investigation the moment he arrives at the crime scene. (He should record the time when he was initially notified prior to his arrival). He also writes down the identification of persons involved and what he initially saw. He also draws a basic sketch of the crime scene and takes the initial photograph (if a photographer is available, avail his services). This is to ensure that an image of the crime scene is recorded before any occurrence that disturbs the scene. As a rule, do not

touch, alter or remove anything at the crime scene until the evidence has been processed through notes, sketches and photograph, with proper measurements.

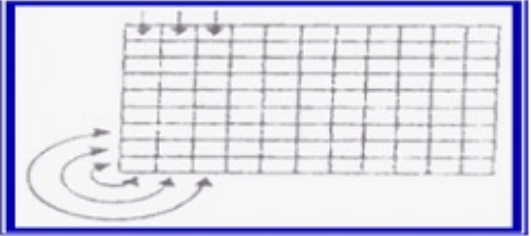
6.3.4 Methods of Crime Scene Search

a. Strip Search Method



In this method, the area is blocked out in the form of a rectangle. The three (3) searchers A, B, and C, proceed slowly at the same pace along paths parallel to one side of the rectangle. When a piece of evidence is found, the finder announces his discovery and the search must stop until the evidence has been cared for. A photographer is called, if necessary. The evidence is collected and tagged and the search proceeds at a given signal. At the end of the rectangle, the searchers turn and proceed along new lanes as shown in the above illustration.

b. Double Strip Search Method



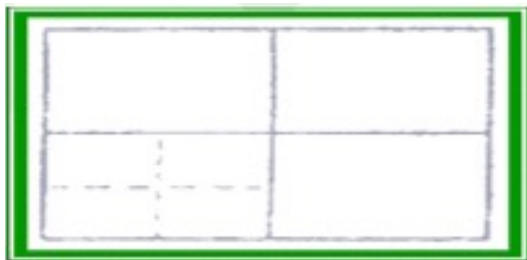
The double strip or grid method of search is a modification of the Strip Search Method. Here, the rectangle is traversed first parallel to the base then parallel to a side.

c. Spiral Search Method



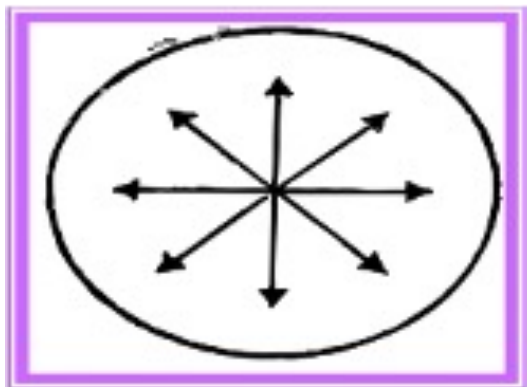
In this method, the three searchers follow each other along the path of a spiral, beginning on the outside and spiraling in toward the center.

d. Zone Search Method



In this method, one searcher is assigned to each subdivision of a quadrant, and then each quadrant is cut into another set of quadrants.

e. Wheel Search Method



In this method, the area is considered to be approximately circular. The searchers gather at the center and proceed outward along radii or spokes. The procedure should be repeated several times depending on the size of the circle and the number of searchers. One shortcoming

of this method is the great increase in the area to be observed as the searcher departs from the center.

6.3.5 SOCO Assistance

a. In cases where the crime scene needs special processing due to its significance or because of its sensational nature, the Scene of the Crime Operation (SOCO) specialists of the Crime Laboratory shall be requested.

b. If the situation involves a clandestine drug laboratory, biological weapons, radiological or chemical threats, the appropriate agency should be contacted prior to entering the scene.

1. Significant Cases:

- a. Bombing Incident
- b. Initiated terrorist activities
- c. Raids, ambushade, liquidation
- d. KFR<sup>33</sup> case
- e. Armed Robbery of Banks and other
- f. Financial institution
- g. Calamity/Disaster
- h. Massacre
- i. Heinous crimes (as defined by law)
- j. Murder, Homicide, Arson, Rape with Homicide

2. Sensational Cases:

- a. Elected Public Officials (Brgy Captain up to President of the Republic of the Philippines)
- b) Appointed public officials with the rank of commissioner, secretary and undersecretary
- c) Foreign diplomat
- d) Any foreigner
- e) PNP/AFP personnel
- f) Former high-ranking government officials
- g) Other prominent figures such as movie stars, sports stars, tri-media practitioners, prominent businessmen, professionals,

and prominent leaders of religious organizations.

6.3.6 Release of Crime Scene

Ensure that appropriate inventory has been provided.

a. Release the scene with the notion that there is only one chance to perform job correctly and completely.

b. Release is accomplished only after completion of the final survey and proper documentation.

6.4 SOME PRACTICAL ADVICE IN CRIME SCENE ANALYSIS OF AO 35 CASES

For AO 35 investigators, every crime scene is a complex puzzle that holds the key to grave human rights violations. The need for meticulousness and precision is paramount. The process, when approached with diligence, ensures that justice is not only sought but effectively achieved:

1. Securing the Crime Scene:

The initial moments upon arriving at a crime scene are pivotal. It is imperative to restrict access, be it from onlookers, media, or even other officials not directly involved in the investigation. By immediately securing the scene, investigators prevent contamination, tampering, or loss of evidence. This preservation is crucial for maintaining the scene's integrity and ensuring the evidence's admissibility in court.

2. Comprehensive Documentation:

Every element within a crime scene, regardless of perceived importance at first glance, should be thoroughly documented. This involves capturing photographs from multiple angles, drawing detailed sketches, and making exhaustive notes.

A well-documented crime scene acts as a permanent record, allowing investigators and legal professionals to revisit and analyze the scene long after it has been cleared. This is crucial for reconstructing events, identifying overlooked details, and establishing timelines.

3. Systematic Evidence Collection:

Adopting a methodical approach to evidence collection ensures comprehensive coverage. This could involve following established patterns, like spiral, grid, or zone methods, depending on the scene's nature and size. In addition –

- a. Wear appropriate protective gear: This prevents contamination of evidence and protects the investigator from biological hazards.
- b. Use clean, non-contaminating materials: Collect evidence in sterile containers and avoid touching it directly. This ensures its admissibility in court.
- c. Label and document all evidence: Each piece of evidence should be clearly labeled with a unique identifier, date, time, and location of collection. This helps track the chain of custody and prevent confusion.

A systematic approach minimizes the risk of oversight, ensuring that every potential piece of evidence, from the most evident to the easily overlooked, is accounted for.

4. Interviewing Witnesses

In AO 35 cases, witness interviews require a delicate and sensitive approach. Treat all witnesses with empathy and respect, especially given the potential trauma they may have endured. Ask open-ended questions to encourage them to provide detailed accounts of what they saw, heard, or experienced. Be mindful of cultural sensitivities and adapt your approach to respect their background. Remember, their information is vital for uncovering the truth

<sup>33</sup> Kidnapping for Ransom



and bringing justice to victims. In addition, take note of the following:

- a. Recognize the emotional impact of AO 35 cases: Be prepared to deal with the emotional distress of victims, families, and witnesses.
- b. Maintain objectivity and avoid personal biases: Focus on collecting and analyzing evidence objectively, without preconceived notions or personal opinions.
- c. In cases where the suspected perpetrator is a state actor, explain to victims and witnesses that the AO 35 mechanism was established to ensure that perpetrators are held accountable while ensuring that they are protected from potential retaliation. The government programs of the government on witness protection (i.e. DOJ and CHR's) can be mentioned if there is a reason to believe that the victim or witness is qualified for admission. Always take extra care to document and address security concerns and confidentiality of victims and witnesses.

5. Preservation and Transport of Evidence:

Once evidence is collected, it is essential to store it properly. Using labeled containers, sealing them adequately, and monitoring environmental conditions become vital. All movements of evidence should be logged to maintain a clear chain of custody.

Proper preservation ensures that the evidence remains uncontaminated and unchanged from the time of collection to its presentation in court. The chain of custody guarantees that the evidence's integrity is unquestionable, eliminating doubts about tampering or mismanagement. Since

problems often arise with chain of custody, ensure that the following are followed:

- a. Maintain detailed notes and reports: Document all observations, actions, and decisions made during the investigation. This provides a clear record of the investigation process.
- b. Follow chain of custody protocols: Ensure all evidence is properly documented, packaged, and transported to secure storage. This prevents tampering and establishes the legal validity of the evidence.

6. Collaboration with Specialists:

Crime scenes, especially those concerning severe violations like torture or extrajudicial killings, may present complexities requiring specialized expertise. Engaging with forensic experts, pathologists, or even digital forensic professionals can offer deeper insights.

Specialist knowledge can unearth nuances that might be missed by general investigators. This expertise ensures a more in-depth understanding of the crime, aiding in creating a robust case that can withstand rigorous scrutiny.

In the challenging terrain of AO 35 cases, where every detail can be the difference between justice served or denied, adherence to these best practices is non-negotiable. Through diligent crime scene analysis, investigators lay the groundwork for a robust legal pursuit, ensuring that violators are held accountable and victims find the justice they rightfully deserve.

A. DETAILED GUIDELINES ON CRIME SCENE INVESTIGATION

172. Once its dimensions have been identified, the scene needs to be secured. A crime scene entry log should be opened and maintained until the crime scene has been fully processed. Securing the scene entails:

- (a) **Limiting access:** Access to the geographic area of the scene is documented and limited to relevant experts and investigators. Access that may have contributed to the contamination and degradation of evidence, as well as any evidence of a manipulation of the scene that may have occurred or could possibly occur, need to be identified and documented.
- (b) **Personnel safety:** The scene is rendered safe for access for the identification, documentation and collection of evidence. In circumstances such as ongoing armed conflict, or areas where items such as unexploded ordnance, toxic agents, and/or booby-traps are suspected, specialists with expertise in rendering such items safe need to be consulted. They include explosive ordnance disposal personnel and chemical, biological and/or radiological experts. Precautions against coming under armed attack might also be necessary in some circumstances.
- (c) **Evidence security:** Limiting access to a death scene entail establishing a chain of custody that originates when an individual crime-scene investigator identifies evidence.

- From the Minnesota Protocol, p. 31

6.5 INVESTIGATION REPORT

The significance of an investigation report within the criminal justice framework cannot be understated. As an indispensable record, it chronicles every facet of the investigation, from the meticulous steps taken by investigators to each piece of evidence they gather and every observation they note down. This document's comprehensiveness ensures that the details of the incident remain preserved, providing a clear and unambiguous account of events that took place, the actions of those involved, and the investigative measures employed.

Furthermore, its relevance extends beyond mere documentation. The report becomes an instrumental tool during court proceedings,

offering legal teams a structured and detailed narrative that bolsters their case presentation. But its importance isn't confined to the courtroom. The transparency and accountability embedded within this report stand as a testament to the integrity of the investigative process, ensuring that any potential oversights or biases are laid bare for scrutiny. For authorities and legal professionals, the report becomes a beacon, illuminating the path forward, whether those entails pressing charges, crafting defense strategies, or proposing corrective actions in light of the findings.

6.5.1 Parts of a Criminal Investigation Report

In a criminal investigation report, especially in the context of an AO 35 case, certain key elements are essential. At a minimum, the

report should include a comprehensive and factual narrative of the incident, detailed descriptions of the crime scene and evidence collected, statements from witnesses and any suspects, and results of forensic analyses.

It should also document the investigative procedures followed, ensuring they align with both national guidelines and international human rights standards. The report must provide a clear timeline of events, any relevant background information on the victims and alleged perpetrators, and an analysis of the motives and patterns that may indicate a broader context of human rights abuses.

A comprehensive Criminal Investigation Report would contain the following information:

- 1. Introduction
  - Brief overview of the case
  - Date and time of report preparation
  - Identification of the reporting officer
- 2. Case Identification
  - Case number
  - Types of offenses alleged (e.g., extrajudicial killing, torture, enforced disappearance)
  - Names of victims and suspects, if known
- 3. Incident Summary
  - Date, time, and location of the incident
  - Brief description of the incident
  - Initial findings or observations
- 4. Crime Scene Analysis
  - Description of the crime scene layout
  - Details of evidence found at the scene
  - Initial crime scene processing steps taken
- 5. Evidence Collected
  - List and description of physical evidence collected
  - Information on chain of custody for evidence
  - Results of any immediate forensic tests

- 6. Witness Statements
  - Names and contact details of witnesses
  - Summaries of witness accounts
  - Details of any interviews conducted
- 7. Suspect Information (if applicable)
  - Identification of suspects
  - Details of suspect apprehension
  - Record of suspect interrogation (if conducted)
- 8. Investigative Actions Taken
  - Chronological account of the investigation steps
  - Details of coordination with other agencies
  - Summary of any search and seizure actions
- 9. Analysis and Findings
  - Interpretation of evidence in relation to the alleged crimes
  - Connections drawn between evidence, witness statements, and suspect information
  - Preliminary conclusions based on current investigation
- 10. Legal Considerations and Compliance
  - Discussion of compliance with relevant laws and protocols
  - Human rights considerations in the investigation
- 11. Conclusion and Recommendations
  - Summary of the current status of the investigation
  - Recommendations for further investigative actions
  - Any immediate legal actions or proceedings recommended
- 12. Annexes/Appendices
  - Copies of key documents, photographs, and forensic reports
  - Detailed witness statements
  - Other relevant supplementary information

6.5.2 Sample Crime Scene Investigation Report

**Case Number:** 2023-07-22-001  
**Investigation Team:** Investigators A, B, C, Prosecutors X, Y, Z  
**Date and Time of Arrival at the Scene:** July 22, 2023, 07:30 AM  
**Location of the Crime Scene:** Near local cemetery, Barangay San Isidro, Davao City, Philippines  
**Weather Conditions:** Clear skies, temperature approximately 28 degrees Celsius  
**Lighting Conditions:** Natural morning light

**Initial Observations:**  
Upon arrival, the team found the body of a male, later identified as Juan dela Cruz, a local labor leader. The body was lying face up, approximately 15 feet from the cemetery’s west gate. The victim was dressed in a blue shirt and black jeans. There were visible signs of struggle, including abrasions on his wrists and ankles, suggesting possible restraint. There were two bullet wounds on his chest and one on his head. His wallet, mobile phone, and a protest banner were found near his body, approximately 3 feet to the right.

**Crime Scene Security:**  
The crime scene was secured with police tape to prevent unauthorized entry. The secured area was approximately 30 feet in radius from the body. A log was maintained to record all individuals who entered the crime scene, their affiliation, the reason for their entry, and the time of their entry and exit. The log was initiated at 07:45 AM.

**Documentation of the Crime Scene:**  
The crime scene was thoroughly documented through photographs, videos, sketches, and detailed notes. A total of 50 photographs and a 20-minute video were taken, capturing the overall scene and close-ups of the body and other evidence. A sketch was drawn to show the layout of the crime scene, including the location of the body, the victim’s belongings, and other physical evidence such as tire tracks and footprints. Detailed notes were taken to record observations and actions taken at the crime scene.

**Collection and Preservation of Evidence:**  
All physical evidence was carefully collected and preserved. This included the victim’s belongings (wallet, mobile phone, protest banner), bullet casings found near the body, samples of soil and vegetation from the surrounding area, and swabs of blood stains. The victim’s clothes were also collected for further examination. All evidence was packaged in appropriate materials (paper bags for biological evidence, rigid containers for sharp objects) and a chain of custody was maintained.

**Autopsy:**  
An autopsy was conducted by a forensic pathologist. The autopsy revealed that the victim had been tortured before being killed, with evidence of blunt force trauma to the torso and signs of asphyxiation. The bullet wounds were determined to be the cause of death, with the bullet to the head likely being the fatal shot. Detailed notes and photographs were taken to document



the findings, and samples (including bullet fragments, tissue samples from areas of injury, and blood samples) were collected for further analysis.

**Interviews:**

Several individuals were interviewed, including the person who discovered the body (a local resident walking his dog), attendees of the labor union meeting (five individuals who provided information about the victim’s activities and interactions on the day of his death), and employees of the mining corporation (three individuals who provided information about the victim’s disputes with the corporation). The wife of the victim also mentioned that a policeman briefly arrested and threatened him about his work. All interviews were conducted in a respectful and non-threatening manner, and were accurately documented.

**Investigation of Digital Evidence:**

The victim’s mobile phone was examined by a digital forensics’ expert. The phone contained call records, text messages, and social media activity that provided valuable information for the investigation. Notably, a text message was found sent to the victim on the day of his death, threatening him to stop his activities against the mining corporation.

**Linking the Suspects:**

Based on the evidence collected and the interviews conducted, several potential suspects were identified. These include an officer of the armed forces assigned in the province, two officials from the mining corporation who had public disputes with the victim, and an unknown individual linked to the threatening text message found on the victim’s phone. Further investigation is needed to establish a connection between these individuals and the crime.

**Legal Proceedings:**

The prosecutors in the team are preparing for the legal proceedings. This includes drafting the complaint, preparing the evidence, and planning the presentation of witnesses. The complaint is being drafted based on the evidence gathered during the investigation, and is sufficient to establish probable cause that the accused committed the offense.

**Protection of Witnesses:**

Measures are being taken to ensure the safety of the witnesses. This includes physical protection measures (such as police escorts and safe houses) and psychological support (including access to counseling services). Special attention is being given to the safety of the witnesses who will be testifying against the mining corporation officials.

**Recommendations for Further Action:**

The team recommends further investigation to establish a connection between the identified suspects and the crime. The team also recommends continued support for the witnesses to ensure their safety and well-being. The digital evidence should be further analyzed to trace the origin of the threatening text message.

**6.5.3 Practical Advice When Writing an Investigation Report**

**1. Be Objective:** It is vital to remain impartial and objective, presenting facts without inserting personal opinions or biases.

**2. Be Accurate:** Ensure all details are accurate, from dates and times to descriptions and names. Any inaccuracy can jeopardize the integrity of the report.

**3. Ensure Clarity and Conciseness:** While thoroughness is essential, it is equally important to be clear and direct, avoiding jargon or overly complex language.

**4. Maintain Confidentiality:** Given the sensitive nature of investigations, it is crucial to handle the report with confidentiality, ensuring it is shared only with authorized personnel.

**5. Be Consistent:** Use a consistent format and style throughout the report, ensuring it is easy to follow and reference.

**6. Review:** Before finalizing, review the report multiple times, and, if possible, have it reviewed by a peer or supervisor to ensure its completeness and accuracy.



# 7. EVIDENCE COLLECTION

Collecting evidence and analyzing a crime scene are critical steps in the investigative process. For AO 35 investigators, showing up at a crime scene is the start of a careful search, where every little detail can help uncover the truth. It is crucial to collect and handle evidence the right way. Any mistake can change the outcome of the whole investigation.

For AO 35 prosecutors, knowing how evidence was collected and analyzed is just as important. When investigators do their job properly, it makes it easier for prosecutors to present a strong case in court. Understanding the details of how the evidence was gathered helps prosecutors explain it to the court, answer questions, and show that the investigation was thorough and correct. This chapter goes into the details, offering insights to help both investigators and prosecutors work better together.

## 7.1 OVERVIEW

This chapter is designed to reinforce investigators' previous training evidence collection, thereby helping them understand the best ways to collect and handle evidence. It delves into the various types of evidence, such as physical, documentary, and testimonial, and outlines the methods and

best practices for their collection, preservation, and analysis. It also emphasizes the importance of maintaining the integrity of evidence from the crime scene to the courtroom, ensuring that it remains uncontaminated and properly documented throughout the investigative process. Detailed instructions are provided on handling different evidence forms, along with the legal considerations and procedural protocols that must be adhered to. As in the other chapters, most of the discussions are culled from the PNP Manual of Investigation. They are supplemented by advice, tips and best practices on identification, collection and preservation of evidence.

## 7.2 PNP MANUAL OF INVESTIGATION ON EVIDENCE COLLECTION

The following are excerpts from the PNP Manual of Investigation, which can be found on pp. 2-4 to 2-6.

### 7.2.1 Searching for evidence

- Each crime is different, according to the physical nature of the scene and the crime or offense involved. Consequently, the scene is processed in accordance with the prevailing physical characteristics of the scene and with

the need to develop essential evidentiary facts peculiar to the offense. A general survey of the scene is always made, however, to note the locations of obvious traces of action, the probable entry and exit points used by the offender(s) and the size and shape of the area involved.

- In rooms, buildings, and small outdoor areas, a systematic search of evidence is initiated (In the interest of uniformity, it is recommended that the clockwise movement be used). The investigator examines each item encountered on the floor, walls, and ceiling to locate anything that may be of evidentiary value.

- You should give particular attention to fragile evidence that may be destroyed or contaminated if it is not collected when discovered.

- If any doubt exists as to the value of an item, treat it as evidence until proven otherwise.

- Ensure that the item or area where latent fingerprints may be present is closely examined and that action is taken to develop the prints.

- Carefully protect any impression of evidentiary value in surfaces conducive to making casts or molds. If possible, photograph the impression and make a cast or mold.

- Note stains, spots and pools of liquid within the scene and treat them as evidence.

- Treat as evidence all other items, such as hairs, fibers, and earth particles foreign to the area in which they are found; for example, matter found under the victim's fingerprints.

- Proceed systematically and uninterruptedly to the conclusion of the processing of the scene. The search for evidence is initially completed when, after a thorough examination of the scene, the rough sketch, necessary photograph and investigative notes have been completed and the investigator has returned to the point from which the search began.

- Further search may be necessary after the evidence and the statements obtained have been evaluated.

- In large outdoor areas, it is advisable to divide the area into strips about four (4) feet wide. The policeman may first search the strip on his left as he faces the scene and then the adjoining strips.

- It may be advisable to make a search beyond the area considered to be the immediate scene of the incident or crime. For example, evidence may indicate that a weapon or tool used in the crime was discarded or hidden by the offender somewhere within a square-mile area near the scene.

- After completing the search of the scene, the investigator examines the object or person actually attacked by the offender. For example, a ripped safe, a desk drawer that has been pried open or a room from which items has been stolen, would be processed after the remainder of the scene has been examined for traces of the offender.

- In a homicide case, the position of the victim should be outlined with chalk or any other suitable material before the body is removed from the scene. If the victim has been pronounced dead by a doctor or is obviously dead, it is usually advisable to examine the body, the clothing and the area under the body after the remainder of the scene has been searched. This is to enable the police personnel/ investigator to evaluate all objects of special interest in the light of all other evidence found at the scene.

### 7.2.1.1 Collection of Evidence

This is accomplished after the search is completed, the rough sketch finished and photographs taken. Fragile evidence should be collected as they are found. All firearms (FAs) found to have tampered serial numbers (SNs) shall be automatically subjected to macro etching at the Philippine National



Police Crime Laboratory (PNP-CL). A corresponding request to the Firearms and Explosive Office (FEO) must be made for verification purposes.

The investigator places his or her initials, the date and time of discovery on each item of evidence for proper identification. Items that cannot be marked should be placed in a suitable container and sealed.

#### 7.2.1.1.1 Procedures on taking photographs

- Overall photos of the scene are taken to show the approach to the area, street signs, and street light locations in relation to the actual scene, street addresses and identifying objects at the scene. Pictures should also be taken of every room in the house, even if their relationship to the crime scene is not readily apparent.

- Photograph the scene in a clockwise pattern before altering the body's position or any other evidence within the scene. Photograph the scene from at least 2 opposite corners, but from all four corners is even better. This way, nothing is missed or hidden from view by intervening objects.

- Photograph the body and the immediate vicinity around the body. If you have a camera boom, take pictures from ceiling height down of the victim and any other evidence. This perspective often shows things missed when viewed from ground or eye level.

- Keep a photo log.

#### 7.2.1.1.2 Procedures on making a sketch

- To establish admissibility, the investigator must have personal observation of the data in question. In other words, the sketch must be sponsored or verified.

- **REMINDER:** Sketches are not a substitute for notes or photos; they are but a supplement to them.

- Types of sketches:
  - o Floor plan or birds-eye view;
  - o Elevation drawing;
  - o Exploded view; and
  - o Respective drawings.

- Write down all measurements.

- Fill in all the details on your rough sketch at the scene. The final sketch may be prepared at the office.

- Keep the rough sketch even when you have completed the final sketch.

- Indicate the North direction with an arrow.

- Draw the final sketch to scale.

- Indicate the PLACE in the sketch as well as the person who drew it. Use KEY-capital letters of the alphabet for listing down more or less normal parts or accessories of the place, and numbers for items of evidence.

- Indicate the position, location and relationship of objects.

- Methods or systems of locating points (objects) on sketch:
  - o Rectangular coordinates. (Measurements at right angles from each of two walls).
  - o Coordinates constructed on transecting base line. Choose relatively fixed points for your base line.
  - o Triangulation. (Measurements made from each of two fixed objects to the point you want to plot or locate so as to form an imaginary triangle. Sketch will show as many imaginary triangles as there are objects plotted).

- Critical measurements, such as skid marks, should be checked by two (2) investigators.

- Measurements should be harmony or in centimeters, inches, yards, meters, mixed in one sketch.

- Use standard symbols in the sketch.

- Show which way the doors swing.

- Show with an arrow the direction of stairways.

- Recheck the sketch for clarity, accuracy, scale, and title, key.

#### 7.2.1.1.3 Procedures on lifting fingerprints

- Dusting for Latent Fingerprints
  - o Pour a small amount of powder into a piece of paper or a shallow bowl.
  - o Touch the tip of the brush to the powder being careful not to pick up too much.
  - o Apply the powder to the surface gently, using short strokes.
  - o When a print begins to appear, begin making the brush strokes to conform to the pattern of the ridges.

- Lifting of Latent Fingerprints
  - o Pull off approximately 3 inches of tape from the roll.
  - o Begin pressing the tape from the leading edge with a back-and-forth motion of a finger.
  - o Continue pressing the tape an inch or more past the latent.
  - o To make the lift, use a steady, even pull.
  - o Once the tape is pulled beyond the latent print and the print is lifted, stop so that the leading edge is still in contact with the surface.
  - o The print should be mounted on some form of backing material.

- Taking Plain Impressions
  - o DO NOT ROLL the fingers when inking or taking the impression.
  - o Use the same position as when rolling the fingers.
  - o Ink the right thumb by pressing it straight down onto the ink surface (do not roll).
  - o Ink the remaining four fingers simultaneously by pressing them onto the ink surface.
  - o Repeat the same procedure with the left hand.

#### 7.2.1.2 Markings of Evidence

Any physical evidence obtained must be marked or tagged before its submission to the evidence custodian. These are information to ensure that the items can be identified by the collector at any time in the future. This precaution will help immeasurably to establish the credibility of the collectors' report or testimony and will effectively avoid any suggestions that the item has been misidentified.

Markings on the specimen must at least contain the following:

1. Exhibit Case Number
2. Initials and or signature of the collecting officer.
3. Time and date of collection.

**NOTE:** It is also important to note the place or location where the evidence was collected.

#### 7.2.1.3 Evaluation of Evidence

Each item of evidence must be evaluated in relation to all the evidence, individually and collectively. If necessary, these pieces of evidence must be subjected to crime laboratory examination. Example: firearms for ballistic examination, hair strands etc.

7.2.1.4 Preservation of Evidence

It is the investigators responsibility to ensure that every precaution is exercised to preserve physical evidence in the state in which it was recovered/ obtained until it is released to the evidence custodian.

7.2.1.5 Releasing of Evidence

All collected evidence can only be released upon order of the court or prosecutor, as the case may be.

7.3 IMPORTANCE OF EVIDENCE COLLECTION

When dealing with serious human rights violations covered by AO 35, like extrajudicial killings, enforced disappearances, and torture, collecting evidence is crucial and goes beyond just following steps. It’s important for many reasons, which include the following:

7.3.1

**Building Strong Cases:** Each piece of evidence is key to building a strong case. It helps to clearly show what happened, supports victims’ stories, and helps identify those responsible. Without good evidence, cases can have weaknesses that offenders might use to escape justice.

**Holding Offenders Accountable:** Solid evidence turns accusations into convictions. It shows that those who violate human rights will face consequences, which can stop others from committing similar acts.

**Helping Victims Heal:** Evidence is not just about legal processes; it also helps victims and their families find healing and closure. Knowing there is solid proof of their suffering and that the guilty are punished can bring comfort.

**Revealing Bigger Problems:** AO 35 cases often point to larger, ongoing issues. Good evidence

can show patterns and suggest if these acts are part of bigger plans. This can lead to important changes and improvements in society.

**Supporting the Rule of Law:** Proper evidence gathering shows that everyone must follow the law. It builds trust in the justice system, showing that every violation will be dealt with seriously, no matter who is involved.

**Meeting International Standards:** AO 35 cases often get international attention. Collecting evidence thoroughly shows the world that the country is serious about tackling human rights issues and capable of holding perpetrators accountable.

7.4 TYPES OF EVIDENCE AND THEIR RELEVANCE IN AO 35 CASES

In the complex landscape of AO 35 cases, which address grave human rights violations, evidence stands as the bedrock for seeking justice. Different kinds of evidence bring unique value to the investigative and prosecutorial processes:

7.4.1 Physical Evidence:

Physical evidence encompasses tangible items found at the crime scene or related locations. This could range from weapons used in the commission of the crime, personal belongings of victims, forensic samples, to items that indicate the presence of a person at the scene.

The undeniable materiality of physical evidence offers direct, concrete links between the crime and its perpetrators. Such evidence can corroborate witness testimonies, validate narratives, and even provide leads in tracing the series of events. For instance, a weapon, when traced back, might reveal its owner or the person who last handled it, providing direct leads.

7.4.2 Testimonial Evidence:

This type of evidence relies on the verbal accounts of individuals who either witnessed

the crime, have knowledge about it, or have something of value to share related to the incident.

In human rights violations, firsthand testimonies are invaluable. They bring forth the human aspect of the crime, capturing emotions, sequences, and often overlooked details. However, it is imperative to ensure the credibility of these accounts and provide adequate protection to witnesses, given the sensitive and dangerous nature of AO 35 cases.

7.4.3 Documentary Evidence:

Encompassing written records, official reports, logs, or any form of documentation that can support or refute claims in a case. This might include medical records, CCTV footages, police reports, or even unofficial journals and diaries.

Documentary evidence provides an official and often chronological account of events. In cases of extrajudicial killings, for example, autopsy reports can reveal the cause of death, the nature of injuries, and even the possible time of death—all crucial details that can shape the direction of the investigation.

7.4.4 Digital Evidence:

This pertains to electronically stored information which can provide insights or evidence about the crime. It could be digital communications like emails, text messages, social media posts, digital photos, videos, or even metadata.

As the world becomes increasingly digitalized, electronic trails become more pertinent. Digital evidence can often provide real-time accounts, timestamps, and unaltered data. It can place individuals at specific locations, show intent or premeditation through communications, or even provide visual accounts of the crime or events leading up to it.

Each type of evidence serves its unique role. In AO 35 cases, where stakes are high and complexities are many, a holistic approach to evidence collection becomes paramount. Leveraging a combination of these evidence types ensures a comprehensive understanding of events and fortifies the case against potential challenges, ensuring that justice is not just sought, but effectively delivered.



# 8. WITNESS INTERVIEWING AND PREPARATION

In AO 35 cases, witnesses provide important information that can help uncover the truth about what happened. Their statements can be key in finding out who is responsible and ensuring they face justice. However, being a witness in such cases can be very risky. These cases often deal with powerful people or groups who might try to silence or harm witnesses. Therefore, it is extremely important to protect witnesses, making sure they feel safe enough to tell their story, and that they do not face repercussions for doing so. Without their brave input, many of these serious crimes might go unsolved and unpunished.

It is important to remember that witnesses should not be seen as mere investigation tools. Conducting interviews in an ethical manner is not only a matter of legal obligation but also a cornerstone of maintaining the integrity of the judicial process. Ethical interviewing upholds the rights of the witnesses, ensures the reliability of the information gathered, and protects the credibility of the investigation.

## 8.1 OVERVIEW

This chapter discusses the crucial role of witnesses in AO 35 investigation and prosecution. It aims to provide AO 35 investigators and prosecutors

with the knowledge, skills and correct attitude necessary to conduct effective and ethical witness interviews, prepare witnesses for trial, and ensure their protection throughout the judicial process.

The chapter also discusses the witness protection programs of the government, which may be needed by some witnesses.

## 8.2 IMPORTANT ROLE OF WITNESSES DURING INVESTIGATION

Witness interviews play a critical role in AO 35 investigations. They are often the cornerstone of building a robust and compelling case. Effective witness interviews can yield crucial evidence, establish key facts, and provide a deeper understanding of the circumstances surrounding a case. Witnesses, through their testimonies, bring forth the narrative that may not be evident from the physical evidence alone. Hence, the ability to conduct comprehensive and effective interviews is indispensable for investigators and prosecutors involved in AO 35 cases.

Below are some of the reasons why witnesses are important in any AO 35 investigation.

- **Providing firsthand accounts:** Witnesses offer direct narratives of the events, which are crucial for understanding what happened.
- **Establishing timelines:** Their testimonies help in piecing together when specific events occurred.
- **Identifying perpetrators:** Witnesses can sometimes identify or describe the individuals involved in the crime.
- **Corroborating evidence:** Their accounts can support or confirm other evidence collected in the investigation.
- **Revealing new information:** Witnesses might provide new leads or information previously unknown to investigators.
- **Giving context:** They can explain the circumstances and environment in which the crime took place.
- **Highlighting patterns:** In some cases, witness statements can reveal patterns of behavior or systemic issues.

- **Supporting prosecution:** Their testimonies are often key elements in building a strong case for prosecution.
- **Humanizing the case:** Witnesses bring a personal perspective to the case, often highlighting the human impact of the crimes.
- **Ensuring comprehensive understanding:** Their accounts contribute to a fuller understanding of the case, beyond just the physical evidence.

### 8.2.1 Conducting Ethical Interview

In investigating AO 35 cases, which involve serious human rights issues, it is very important to do interviews ethically and with a focus on human rights. This means treating everyone involved with respect and fairness. Ethical interviews help us get true and useful information, while a human rights approach makes sure we respect and protect the people we talk to. This is key in dealing with sensitive cases and in making sure justice is done properly.

The following pointers provided are simple guidelines to help investigators do their interviews in the right way, taking care of both the facts of the case and the people involved.

WHAT TO DO	HOW?
Respect Dignity	Always treat interviewees with respect and dignity.
Obtain Consent	Ask for it. Ensure interviewees give informed consent to participate.
Avoid Harm	Don't ask questions that can re-traumatize or harm the interviewee.
Ensure Confidentiality	Keep the interviewee's information private if required.
Be Impartial	Conduct interviews without bias or preconceived notions.
Listen Actively	Pay close attention & show empathy to the interviewee's responses.



Use appropriate language	Communicate in a language and manner understandable to the interviewee.
Avoid leading questions	Ask open-ended questions that allow for unbiased responses.
Be culturally sensitive	Respect the interviewee’s cultural background and norms.
Provide support	Offer or refer to psychological support if needed.
Ensure safety	Ensure the interview setting is safe and secure for the interviewee.
Follow legal protocols	Adhere to legal standards and protocols for interviewing.
Recognize signs of trauma	Be aware of verbal and non-verbal cues that indicate the interviewee might be feeling distressed or traumatized.
Create a safe environment	Ensure the interview setting is comfortable and non-threatening, allowing the witness to feel secure.
Allow witness control	Let the witness have some control over the interview process, such as deciding breaks or the pace of the conversation.
Avoid graphic details	Steer clear of insisting on overly graphic details of the traumatic event unless absolutely necessary.
Use trauma-informed questioning	Frame questions in a way that is sensitive to the witness’s traumatic experience.
Be patient and understanding	Give the witness time to answer and understand that they might struggle to articulate their experiences.
Offer breaks	Regularly offer breaks during the interview to allow the witness to rest and gather their thoughts.
Maintain a supportive demeanor	Use a tone of voice and body language that conveys empathy and support.
Provide information about support services	Inform the witness about available psychological support services and how to access them.
Be flexible	Be willing to adapt the interview process if the witness appears distressed or overwhelmed.
End the interview sensitively	Conclude the interview in a manner that ensures the witness does not feel abruptness or lack of concern for their well-being.

8.2.2 Some Practical Interviewing Tips and Sample Questions

Below are some tips in conducting interviews, with sample questions – one is in English and the other in Filipino.

**1. Build Rapport:** Make the interviewee feel comfortable and at ease. Creating a friendly environment encourages open communication.

- Sample Question:**
- “How are you feeling today? We appreciate your willingness to speak with us.”
  - “Kumusta ka ngayon? Salamat sa pagpayag mong makipag-usap sa amin.”

**2. Use Open-ended Questions:** Ask questions that encourage detailed responses. This allows the interviewee to provide more information and perspectives.

- Sample Question:**
- “Can you describe what you witnessed on the day of the incident?”
  - “Pwede mo bang ilarawan ang nakita mo noong araw ng pangyayari?”

**3. Active Listening:** Show that you are paying attention and understand their responses. This helps the interviewee feel heard and valued.

- Sample Question:**
- “I understand that this might be difficult for you. But I need to know what happened. Can you tell me more about that?”
  - “Naiintindihan ko na mahirap ito para sa iyo. Gayunpaman, kailangan kong malaman ang buong pangyayari. Pwede mo bang ikwento pa nang konti?”

**4. Avoid Leading Questions:** Do not ask questions that suggest a specific answer. This ensures that the interviewee’s responses are unbiased and genuine.

- Sample Question:**
- “What did you see next?”
  - “Ano ang sumunod mong nakita?”

**5. Be Patient and Empathetic:** Give the interviewee time to think and respond. Respect their pace, especially in sensitive situations.

- Sample Question:**
- “Take your time, we understand this can be hard. When you are ready, you can tell us what happened after that.”
  - “Okay lang, pwede tayong huminto. Alam namin na mahirap ito para sa iyo. Kapag handa ka na, saka mo sabihin kung ano ang nangyari pagkatapos.”

**6. Clarify and Confirm:** Make sure you’ve understood their statements correctly. This avoids misunderstandings and ensures accurate information.

- Sample Question:**
- “Just to make sure I’ve understood correctly, you said...”
  - “Tama ba ang pagkaunawa ko na sinabi mong . . .?”

**7. Respect Cultural Differences:** Be aware of and sensitive to cultural nuances. This helps in establishing trust and respect.

- Sample Question:**
- “Is there anything important from your cultural perspective that we should know?”
  - “May mahalagang bagay ba mula sa kultura mo na dapat namin malaman?”

**8. Ensure Confidentiality:** Reassure them that their information is safe. Build trust, especially in cases involving fear of reprisal.

- Sample Question:**
- “We assure you that your information will be kept confidential. Are you comfortable proceeding?”
  - “Sinisiguro ko sa iyo na ligtas ang mga impormasyon na binabahagi mo sa akin. Ok lang ba na ituloy natin?”

**9. Use Simple Language:** Avoid legal jargon or complex terms. Ensures the interviewee understands and can effectively communicate.



Sample Question:

- “Could you tell us in your own words what happened?”
- “Pwede mo bang sabihin sa sarili mong salita kung ano ang nangyari?”

**10. Summarize Key Points:** Repeat important information back to the interviewee for confirmation. This ensures accuracy and that nothing is misunderstood.

Sample Question:

- “So, what I heard is [summarize key points]. Is that correct?”
- “Eto ang pagkaunawa ko sa mga sinabi mo [buod ng mga mahalagang punto]. Tama ba?”

Challenges in Witness Cooperation and Locating Witnesses

Fear of reprisal or intimidation

Mistrust in the justice system

Lack of awareness about the importance of their testimony

Psychological trauma

Relocation or concealment of witnesses

Social and cultural barriers

Limited resources for witness protection

Communication barriers

Recommended Strategies for Overcoming Challenges

Provide assurance of safety and confidentiality, implement security measures.

Build trust through consistent and transparent communication, highlight successful case examples.

Educate witnesses on the impact of their testimony and the importance of justice.

Offer psychological support and trauma-informed interviewing techniques.

Utilize investigative techniques to track relocation, offer incentives for coming forward.

Understand and respect cultural contexts, use community liaisons or local networks.

Seek government or non-governmental support for resources, emphasize witness protection programs.

Use interpreters or translators, and ensure clear and understandable communication.

8.2.3 Challenges in Witness Cooperation and Locating Witnesses

Investigators and prosecutors often face challenges in securing witness cooperation and locating witnesses in AO 35 cases. These challenges may arise due to fear of reprisal, mistrust in the justice system, or the clandestine nature of the crimes involved. The chapter will address strategies to overcome these challenges, including building trust with potential witnesses, understanding the dynamics of fear and intimidation, and employing investigative techniques to locate witnesses who may be in hiding or are reluctant to come forward.

Below are some of the challenges that may be encountered and suggested strategies.

Witness fatigue or reluctance

Be patient and empathetic, allow breaks during interviews, and show understanding of their situation.

Perceived lack of benefit or incentive to cooperate

Explain the role their testimony plays in achieving justice, offer protection and support as needed.

Lack of coordination among law enforcement agencies

Improve inter-agency collaboration, share information and resources effectively.

Physical and logistical challenges in reaching witnesses

Use technology for remote interviews, arrange safe and convenient locations for interviews.

Legal complexities and procedural delays

Simplify legal procedures where possible, and keep witnesses informed about the progress of their case.

Threats to witness families or loved ones

Extend protection measures to include family members or close associates as needed.

8.2.4 Government’s Witness Protection Programs

Having a witness protection program is very important in AO 35 cases, where serious crimes like human rights violations are investigated. Witnesses in these cases often have valuable information but may be scared to speak out because of the danger they might face. A witness protection program keeps them safe, so they can share what they know without fear. It is very important for AO 35 investigators and prosecutors to understand how this program works. This way, if a witness needs protection, they can quickly and effectively get them into the program. Knowing the details of witness protection helps make sure that witnesses are safe and that the truth about these serious crimes can come out.

8.3 THE DOJ WITNESS PROTECTION PROGRAM

The DOJ Witness Protection Program, established under Republic Act No. 6981, also known as “The Witness Protection, Security and Benefit Act,” is designed to help people who have seen

a crime or know about it to come forward and speak out. The main goal of this program is to make sure these witnesses feel safe from any kind of revenge or harm that could happen because they told the truth. It also helps them if they face money problems because of their decision to testify. By giving them this protection and support, the program encourages witnesses to share their knowledge with the courts or other authorities, which is important for solving crimes and bringing justice.

8.3.1 Witnesses that can be admitted into the DOJ-WPP

The following persons who are potential witnesses to an AO 35 case can be admitted into the program:

1. Any person who has knowledge of or information on the commission of a crime and has testified or is testifying or is willing to testify.
2. A witness in a congressional investigation, upon the recommendation of the legislative committee where his testimony is needed and with the approval of the Senate President or

the Speaker of the House of Representatives, as the case may be.

3. A witness who participated in the commission of a crime and who desires to be a state witness.

4. An accused who is discharged from an information or criminal complaint by the court in order that he may be a state witness.

**8.3.2 Who are disqualified for admission into the DOJ-WPP**

An applicant will not be admitted into the program if:

- 1. the offense in which his testimony will be used is not a grave felony;
- 2. his testimony cannot be substantially corroborated in its material points;
- 3. he or any member of his family within the second degree of consanguinity or affinity has not been threatened with death or bodily injury or there is no likelihood that he will be killed, forced, intimidated, harassed or corrupted to prevent him from testifying or to testify falsely or evasively because or on account of his testimony; and
- 4. if the applicant is a law enforcement officer even if he will testify against other law enforcement officers. The immediate members of the applicant may, however, be admitted into the program.

**8.3.3 How is a person admitted to the DOJ-WPP**

The person in danger or his or her family may get an application form from the Secretariat, Witness Protection Security and Benefit Program. This is at the Department of Justice building in Padre Faura, Manila. The applicant may also get the form from the nearest Regional State Prosecutor. The proceedings involving the application for admission, the action taken

thereon and the information or documents submitted in support of the application are confidential. They cannot be released without the written order of the Department of Justice or the proper court.

The witness is required to enter into a Memorandum of Agreement with the Government.

**8.3.4 Benefits**

The benefits include the following:

- Security protection and escort services.
- Immunity from criminal prosecution and not to be subjected to any penalty or forfeiture for any transaction, matter or thing concerning his compelled testimony or books, documents or writings produced.
- Secure housing facility.
- Assistance in obtaining a means of livelihood.
- Reasonable traveling expenses and subsistence allowance while acting as a witness.
- Free medical treatment, hospitalization and medicine for any injury or illness incurred or suffered while acting as a witness.
- Burial benefits of not less than Ten Thousand pesos (P10,000.00) if the witness is killed because of his participation in the Program.
- Free education from primary to college level for the minor or dependent children of a witness who dies or is permanently incapacitated.
- Non-removal or demotion in work because of absences due to his being a witness and payment of full salary or wage while acting as witness.

After being honorably discharged as a witness, he and any member of his family within the second civil degree of consanguinity or affinity may be relocated in an area where he will be safe and/or given a new personal identity. He may also be given one-time financial assistance for his support and that of his family.

**8.3.5 Discharged from the DOJ-WPP.**

A witness is discharged -

- 1. when he has already testified or has completed his witness duty;
- 2. if he fails or refuses to testify, in which case, he may be arrested or detained and prosecuted for perjury or contempt.
- 3. if he is no longer regarded as a necessary witness; or
- 4. if the danger falls away.

**8.4 CHR WITNESS PROTECTION PROGRAM (CHR-WPP)**

The CHR WPP is a special program that helps protect people who are witnesses in serious human rights violation cases, including under AO 35. This program is distinct from the DOJ’s witness protection program as it is specifically tailored to address the unique challenges faced by those who come forward to testify in human rights violation cases. For witnesses in AO 35 cases, this program is another option they can choose to make sure they are safe.

**8.4.1 Scope and Application**

The CHR-WPP is designed to apply in situations where there is an actual, imminent, or apparent danger or threat to the life and security of a vital witness in human rights violation cases. Importantly, this protection can extend to the witness’s family, guardian, or ward if they too are under threat. The following are the criteria to determine qualification:

- Survivors of human rights violations and their relatives or guardians, if threatened, are eligible.
- Those who have witnessed human rights violations and are willing to provide

information or evidence.

- Persons granted immunity by the Commission and whose security is compromised.
- The program offers specific provisions for the protection of women and children, recognizing their unique vulnerabilities and needs.

**8.4.2 Admission Procedure**

Admission can be initiated by the Commission, upon the recommendation by the Regional Office handling the case, or through direct application or endorsement by various parties. CHR Regional Offices can provisionally admit witnesses, with a required report to the Commission en banc within 48 hours for final assessment and approval. The Commission en banc has the final say on the admission of witnesses into the program.

Witnesses under the CHR-WPP must execute a sworn statement stating personal knowledge of the complete facts regarding a human rights violation, including their participation in the same if any. They must also freely testify and provide information, comply with the orders of the Commission and/or competent authorities, and refrain from performing any act or engaging in any activity that will compromise the integrity of the Commission.

In cases of denial of admission, the Commission must notify the applicant, who is given the opportunity to appeal the decision.

The gravity or severity of the human rights violation committed, the imminence of danger or threats to the life of the witness, and the materiality and relevance of the testimony are all considered in determining eligibility for the WPP. Additionally, the witness must not appear to be the guiltiest in the commission of the abuse.



8.4.3 Protection and Benefits

Witnesses under the WPP are provided with a secure housing facility, food, clothing, and other necessities for daily sustenance, medical care, education for a child witness, and security escort to and from the place of hearing before any judicial, quasi-judicial, or investigating body.

Protection under the CHR-WPP can extend to the spouse and children of the witness and shall continue even after the witness has given

their testimony until such time that the threat to the life and/or security of the witness has finally ceased, or until such time as deemed terminated by the Commission.

Women and children under the CHR-WPP also receive special protection by being placed in a safe house or shelter separate from male witnesses except when the male witness is her husband or son. Pregnant women and nursing mothers shall also be afforded special consideration by reason of their biological needs and gender.

# 9. FORENSIC EVIDENCE AND DIGITAL FORENSICS

9.1 OVERVIEW

This chapter provides a comprehensive overview tailored for AO 35 cases, including torture, enforced disappearance, and extralegal killings. It starts by explaining the different types of forensic evidence relevant to these serious human rights cases. The chapter then guides readers on how to identify, collect, and interpret this evidence, equipping them with practical skills. A significant emphasis is placed on the ethical and human rights aspects of conducting forensic investigations.

The chapter also delves into the growing field of digital forensics, highlighting its importance in AO 35 cases. It teaches basic digital forensics techniques and discusses the legal and ethical considerations involved in this area. Lastly, the chapter covers how to properly preserve and present digital evidence in court, ensuring its integrity and admissibility. This comprehensive approach ensures that readers not only acquire technical knowledge but also understand the broader ethical and legal context of forensic work in AO 35 cases.

9.2 IMPORTANCE OF FORENSIC EVIDENCE

In AO 35 cases, it is not enough to rely only on testimony of witnesses because they can sometimes be unreliable or influenced by fear or external pressures. Forensic evidence brings in scientific methods to uncover facts, providing objective and concrete proof that can confirm or challenge testimonies.

Forensic evidence helps to reconstruct events accurately, identify perpetrators, and establish links between suspects and the crime. This type of evidence is especially important in cases where physical harm or death is involved, as it can provide insights that are not visible to the naked eye or not captured in witness accounts.

By offering clear, tangible proof, forensic evidence becomes a powerful tool in seeking justice and ensuring that those responsible for grave human rights violations are held accountable.



9.3 BASICS OF FORENSIC EVIDENCE

Forensic evidence refers to information or material obtained through scientific methods that can be used in a court of law to support or challenge hypotheses about how a crime occurred or who committed it. This evidence is gathered using principles and techniques of various scientific disciplines, such as biology, chemistry, physics, and digital technology.

Forensic evidence can include a wide range of materials, such as:

- **Biological samples:** Blood, saliva, hair, skin cells, and other bodily fluids which can be analyzed for DNA profiling.
- **Fingerprints:** Unique patterns left by the ridges on fingers that can be used to identify individuals who touched certain surfaces.
- **Digital data:** Information retrieved from computers, smartphones, and other electronic devices that can provide insights into communications and movements of suspects.
- **Ballistics:** Details about bullets and firearms that can link a weapon to a crime scene or individual.
- **Trace evidence:** Small pieces of materials like fibers from clothing, paint, glass fragments, or soil that can connect a person or object to a particular location.
- **Chemical substances:** Drugs, poisons, and other compounds that can be chemically analyzed.

The reliability and admissibility of forensic evidence are pivotal, as they can strongly influence the outcome of criminal proceedings. Proper collection, preservation, and analysis of forensic evidence are essential to maintain its integrity and ensure it is legally accepted in investigations and trials.

9.4 CRUCIAL ROLE OF FORENSIC EVIDENCE IN AO 35 CASES

Forensic evidence holds a particularly crucial role in AO 35 cases, which involve grave human rights violations such as extrajudicial killings, enforced disappearances, and torture. These are complex cases that typically require meticulous examination and a high standard of proof. Understanding the different types of forensic evidence is critical for AO 35 teams for several reasons:

1. **Objective Evidence:** Forensic evidence provides objective facts that can substantiate claims of human rights violations. In cases where testimonial evidence may be biased or unreliable, forensic evidence can offer impartial insights.
2. **Identification of Victims and Perpetrators:** Through DNA analysis and fingerprinting, forensic evidence can help in accurately identifying victims and linking perpetrators to the crime, which is essential in cases where identity is disputed or unknown.
3. **Reconstruction of Events:** Various types of forensic evidence, like ballistics and trace evidence, can help reconstruct the sequence of events leading to a crime. This reconstruction is vital in understanding the nature and extent of the violation and in establishing intent.
4. **Support Legal Proceedings:** Strong forensic evidence can support legal arguments in court and can be critical in the pursuit of justice. It bolsters the case by providing tangible proof that can withstand legal scrutiny.
5. **Credibility of Investigations:** When AO 35 teams use rigorous forensic methods, it adds credibility to their investigations. It shows commitment to thorough, scientific inquiry and helps build trust in legal processes.
6. **Counter Defense Strategies:** Forensic evidence can be pivotal in countering defense strategies that may claim lack of evidence or suggest alternative narratives. It can fill in gaps

where other types of evidence are lacking.

**7. Compliance with International Standards:** Many AO 35 cases may attract international attention. Utilizing forensic evidence ensures that investigations meet international standards for human rights inquiries.

**8. Deterrence:** The effective use of forensic evidence can have a deterrent effect on potential violators. When state agents and others see that forensic science can link them directly to their crimes, it may deter future violations.

For these reasons, it is important for AO 35 teams to have a clear understanding of the different types of forensic evidence, how to properly collect and preserve it, and how to interpret it within the context of their investigations. This knowledge is not only foundational for building strong cases but also for ensuring that justice is served and the rights of all individuals are upheld.

9.4.1 Forensic Evidence in Torture Cases

In torture cases, forensic evidence is crucial for documenting the abuse and linking it to the alleged perpetrators. Different types of forensic evidence can help prove various elements of the crime, such as the occurrence of the torture, the identification of the victim and the perpetrator, and the intent behind the act. Here are some potential types of forensic evidence in torture cases:

1. **Medical Forensic Evidence:**
  - **Physical injuries:** Documentation of lacerations, bruises, broken bones, and burn marks can prove the occurrence of physical abuse. For example, patterned bruises or whip marks can indicate the use of specific instruments, helping to corroborate victims' accounts of torture.
  - **Toxicology reports:** Presence of drugs or other chemicals in the victim's system could indicate forced intoxication or the administration of substances to induce pain or compliance.

- **Psychological evaluations:** Can reveal signs of mental and emotional trauma consistent with torture, supporting claims of psychological abuse.

2. **Photographic Evidence:**
  - **Injury photographs:** Time-stamped images that show the progression of injuries can help establish timelines and the severity of the abuse.
  - **Scene photographs:** Images of the location where the torture allegedly occurred can provide context and may reveal evidence of restraint or confinement.

3. **Digital Forensics:**
  - **Audio/video recordings:** Can directly capture acts of torture, the environment, and the individuals involved. Recordings of the victim's distress or the perpetrator's instructions could be key evidence.
  - **Electronic communication:** Text messages, emails, or social media posts that contain threats or describe the torture can link suspects to the crime and reveal premeditation.

4. **Trace Evidence:**
  - **Fibers and hair:** Can connect a victim to a specific location where torture is alleged to have occurred or to the personal effects of the perpetrator.
  - **Residues:** Chemical residues, for example from pepper spray or other substances used in torture, can be traced back to their source or identified on clothing or at the scene.

5. **Biological Evidence:**
  - **DNA:** Blood, hair, skin cells, or other biological materials found on instruments of torture or at the scene can help identify the victim and the perpetrator. DNA evidence can also establish physical contact or presence at the torture site.

6. **Documentary Evidence:**
  - **Medical records:** Can establish a timeline of injury and recovery, correlating with



the reported time of torture.

- **Official documents:** Records that detail the custody or detainment of individuals can support claims of illegal detention and potential torture during confinement.

Each piece of forensic evidence serves to construct a comprehensive picture of the alleged torture, corroborate witness testimony, and refute false narratives. For instance, the presence of a victim’s DNA on restraints or a whip can corroborate their account of being bound and whipped. Medical evidence of injuries in various healing stages can support allegations of prolonged or repeated abuse. Additionally, psychological assessments can demonstrate the lasting impact of torture, which goes beyond immediate physical injuries.

9.4.2 Forensic Evidence in Enforced Disappearance Cases

In cases of enforced disappearance, where individuals are taken against their will and their whereabouts are concealed, forensic evidence plays a critical role in unraveling the truth and providing justice. Here are various types of potential forensic evidence in such cases:

1. Surveillance Footage:

- **Video recordings** from CCTV cameras can capture the act of abduction or the movements of the individuals involved, helping to establish the victim’s last known location and potential suspects.

2. Digital Forensics:

- **Phone records and GPS data** can pinpoint the victim’s location at the time of disappearance and trace the route taken by the abductors.
- **Emails and messages** could reveal communication that might hint at planning or execution of the abduction.

3. Vehicle Forensics:

- **Fibers or paint chips** found on the victim’s clothing could match those from

a vehicle used in the abduction, suggesting a link to the crime scene or suspects.

- **Tire tread patterns** in the vicinity of the abduction site can be matched to vehicles of interest.

4. Biological Evidence:

- **DNA samples** from the victim found in a suspect’s vehicle or at a potential holding location can suggest that the victim was transported or detained there.
- **Human remains**, in the worst-case scenario, can be identified through DNA profiling, dental records, or skeletal analysis, confirming the identity of a disappeared person.

5. Personal Effects:

- **Items belonging to the victim** found in specific locations or in the possession of suspects can indicate the movement or transfer of the victim post-abduction.

6. Financial Records:

- **Bank and credit card usage** after the time of disappearance might signal forced or unauthorized transactions, potentially leading to locations associated with the suspects.

7. Environmental Evidence:

- **Soil, water, and plant material** on personal effects or vehicles can be analyzed to suggest the geographical areas where the victim might have been taken.

8. Documentary Evidence:

- **Detention records or official logs** that show irregularities or gaps could point to illicit activity and periods when an individual was potentially held incommunicado.

9. Chemical Analysis:

- **Drug tests** on biological samples that might indicate the victim was sedated during the abduction.

Each of these types of evidence can help prove different elements of enforced disappearance:

- **Occurrence of Abduction:** Surveillance footage and digital evidence can confirm that an individual was indeed abducted, which is the initial act in an enforced disappearance.

- **Identification of the Victim and Perpetrators:** Biological evidence and personal effects can confirm the identity of the victim and, potentially, those involved in the disappearance.

- **Concealment and Location:** Environmental evidence, vehicle forensics, and digital data can provide clues about where the victim was taken and any efforts to hide their whereabouts.

- **State Involvement:** Documentary evidence can indicate whether state agents or entities were involved, as can discrepancies in official records.

- **Intent and Cover-up:** Financial records and communication data can show premeditation and attempts to cover up the disappearance.

Collecting and analyzing these pieces of forensic evidence can be challenging, especially as time passes, but they are essential to building a factual representation of the events and holding those responsible to account. For AO 35 teams, understanding the critical nature and interplay of these various types of forensic evidence is indispensable for the effective investigation of enforced disappearance cases.

9.4.3 Forensic Evidence in Extralegal Killings

In cases of extra-legal killings, forensic evidence is vital to establish the facts surrounding the death, identify the perpetrators, and understand the context in which the killing occurred. Here are several types of

PNP Criminal Investigation Manual | 2011

a. Sample request Format of Medico-Legal Examination (Autopsy)

Republic of the Philippines  
Department of the Interior and Local Government  
NATIONAL POLICE COMMISSION  
PHILIPPINE NATIONAL POLICE

MEMORANDUM

FOR : Director, PNP Crime Laboratory

FROM :

SUBJECT : Request for Autopsy Examination

DATE :

1. Request conducts medico-legal (autopsy) examination on the accompanying specimen to determine the cause of death.

a) NATURE OF CASE :

b) VICTIM :

c) SUSPECT :

d) T D P O :

e) SPECIMEN SUBMITTED :

2. Further request that this Office be furnished a copy of medico-legal examination result for our reference.

3. For consideration.

(CHIEF OF OFFICE)

potential forensic evidence that could be relevant in such cases:

1. Autopsy Reports:

- Provide details on the cause of death, the nature of any wounds, and can suggest the type of weapon used.
- Can indicate the time of death, which is crucial for verifying alibis and timelines.

2. Ballistic Evidence:

- Bullet casings and projectiles can be traced back to specific firearms, which can then be linked to owners or users.
- Gunpowder residue on the victim or suspect can suggest proximity to the discharge of a weapon.

3. Bloodstain Pattern Analysis:

- Patterns of blood at the scene can help reconstruct the events, indicating positions of the victim and assailant during the attack.

4. DNA Evidence:

- Blood, hair, or tissue samples can match the victim to the crime scene or the

perpetrator to the victim or crime scene.

- Can also be used to identify unknown victims through familial DNA matches.

5. Digital Forensics:

- Data from the victim’s and suspects’ digital devices may provide location history, communications, and other information that can establish motives or connections between individuals.
- Social media activity could reveal threats, potential motives, or associations with groups involved in extra-legal activities.

6. Fingerprint Analysis:

- Can identify individuals who were at the crime scene and potentially link suspects to the act.

7. Trace Evidence:

- Fibers, soil, or other materials can connect a suspect or victim to a particular location.
- Can also show transfer between the victim and perpetrator or their environment.

8. Witness Testimonies Corroborated by Forensic Evidence:

- Eyewitness accounts can be substantiated by forensic findings, adding credibility to their testimonies.

9. Crime Scene Reconstruction:

- The overall analysis of the evidence can help recreate the scene, providing a visual narrative of the crime that can be critical in court.

10. Pathology of Wounds:

- The examination of wound patterns on the victim’s body can suggest the nature of the attack, whether it was premeditated, and possibly the intent.

Each type of forensic evidence serves to shed light on different elements of an extra-legal killing:

• Verification of an Unlawful Death:

Autopsy reports can confirm that the death was a result of unlawful actions rather than natural causes or self-defense.

- Linking Suspects to the Crime: DNA, fingerprints, and ballistic evidence can directly connect a suspect to the killing.

• Understanding the Crime’s Context:

Digital data and trace evidence can provide context, such as the location of the crime or the victim’s movements leading up to the event.

• Determining the Manner of Death:

Bloodstain patterns and pathology can inform investigators whether the killing was instantaneous or prolonged, which can be indicative of torture or other cruel methods.

For AO 35 teams, comprehending the various types and implications of forensic evidence is fundamental for the thorough investigation of extra-legal killings. Such evidence not only aids in piecing together the circumstances of the death but also reinforces the pursuit of accountability and justice for the victims.

9.4.4 Forensic Evidence Involving Other Grave Human Rights Violations

Violations of international humanitarian law (IHL) in the Philippines, particularly concerning war crimes, genocide, and other crimes against humanity, are grave offenses that demand rigorous investigation and substantiation through various forms of forensic evidence. Below are the types of potential forensic evidence and their relevance to proving the elements of these serious crimes:

1. Mass Grave Excavations:

- The discovery of mass graves and subsequent forensic analysis can provide

evidence of systematic or widespread attacks against civilian populations, which are characteristic of war crimes and crimes against humanity.

- Examination of remains can reveal the cause of death, such as gunshot wounds or blunt force trauma, and whether victims were non-combatants, which is crucial for establishing unlawful targeting in war crimes.

2. Biological Evidence:

- DNA from remains can help identify victims and establish a pattern that may be indicative of genocide, particularly when specific ethnic or religious groups are targeted.
- Biological samples from survivors can support allegations of sexual violence, which can constitute war crimes or crimes against humanity.

3. Weaponry and Ballistics:

- Analysis of weapons and ammunition used can indicate the perpetration of prohibited attacks, such as the use of indiscriminate weapons in civilian areas.
- Residues from chemical weapons can prove the use of banned substances, supporting allegations of war crimes.

4. Documentary and Digital Evidence:

- Orders, directives, and communications intercepted from military or paramilitary groups can establish command responsibility and intent, key elements in prosecuting war crimes and crimes against humanity.
- Digital evidence such as videos or photographs can document the commission of violent acts and the scale of destruction, corroborating witness accounts.

5. Personal Belongings and Property Damage:

- Items found at massacre sites can be traced back to victims, reinforcing accounts of targeted violence.

- The extent of property damage assessed through forensic architecture can help demonstrate intent to destroy a particular group’s heritage or livelihood, supporting elements of genocide or crimes against humanity.

6. Eyewitness Testimony Corroborated by Forensic Findings:

- Survivor accounts and witness testimonies, when aligned with forensic evidence, strengthen the credibility of reports concerning the execution of war crimes and crimes against humanity.

7. Trace Evidence:

- Fibers, soil, and other trace materials can connect suspects to crime scenes, supporting charges of participation in war crimes.
- Trace evidence can also indicate the presence of victims in places where they were allegedly detained or executed.

8. Environmental Forensics:

- Analysis of environmental damage, such as poisoned water sources or scorched earth, can indicate tactics that violate IHL, relevant to both war crimes and crimes against humanity.

Each type of evidence can contribute to proving critical elements of IHL violations:

- Occurrence of Atrocities: Mass grave excavations and biological evidence can confirm the perpetration of atrocities.
- Specific Targeting of Groups: Biological evidence and personal belongings can prove the deliberate targeting of specific ethnic or social groups, relevant to genocide.
- Method of Commission: Weaponry and ballistics evidence can show the methods used to commit war crimes, such as targeting civilians or using prohibited weapons.



- **Scale and Intent:** Documentary and digital evidence can demonstrate the scale of the crimes and the intent behind them, which is essential for proving crimes against humanity and genocide.
- **Identification of Perpetrators:** Trace evidence and environmental forensics can link suspects to the commission of crimes, aiding in establishing individual criminal responsibility.

For investigators and prosecutors in the Philippines dealing with such severe allegations, a thorough understanding of how to collect, preserve, and interpret forensic evidence is essential. This evidence forms the foundation upon which cases are built in national or international courts to hold perpetrators accountable and seek justice for victims of war crimes, genocide, and crimes against humanity.

9.5 DIGITAL FORENSIC EVIDENCE

Digital forensics is increasingly crucial in AO 35 investigations due to the rising use of digital devices and communication channels. Digital forensics is a complex and ever-evolving field but it is an essential tool for the investigation of AO 35 violations. By using digital forensics, investigators can gather crucial digital evidence they need to hold perpetrators accountable and prevent future violations.

The Minnesota Protocol defines digital evidence as information and data that are stored on, received from or transmitted by an electronic device. It can be recovered from a number of sources: open systems such as the internet and social media; and closed systems such as computers, laptops, mobile phones and cameras. Internet and mobile-phone service providers frequently keep their data (e.g. call records) for only a limited time. In planning an investigation, investigators should be aware of how long data is retained by these providers so

they can ensure that the appropriate information is requested within the available time frame.<sup>34</sup>

9.5.1 Use of Digital Evidence in AO 35 Investigations

Digital evidence plays a significant role in AO 35 cases. The rise of technology and digital communications has expanded the scope and capability of evidence gathering in these cases. Here’s how digital evidence can be utilized:

1. **Communication Data Analysis:** Text messages, emails & social media interactions are crucial forms of digital evidence. They can provide insights into the victim’s interactions and activities prior to the violation, any threats or harassment they might have received, and potentially even the motives of the perpetrators. This type of evidence can help to establish timelines, relationships and contexts surrounding the crime.
2. **Geolocation & Movement Tracking:** Many digital devices store GPS data, which can be instrumental in tracking the movements of victims and suspects. For instance, in cases of enforced disappearances, data from a victim’s smartphone could provide vital clues about their last known locations, movement patterns, or potential abduction sites.
3. **Digital Forensic Analysis:** Forensic examination of digital devices such as computers, smartphones, and tablets can reveal a wealth of information. This includes retrieving deleted files, examining call logs, analyzing internet browsing histories, and more. This type of evidence can provide insights into the planning, execution, or cover-up of a human rights violation.
4. **Social Media Scrutiny:** Social media platforms can be a rich source of information. Posts, messages, location check-ins, and network connections can all

<sup>34</sup> Minnesota Protocol, p. 37.

offer valuable leads in an investigation. In some cases, perpetrators or witnesses may share information related to the crime on these platforms, either directly or indirectly.

**5. Audio and Video Evidence:** Digital recordings from devices, CCTV footage, and even user-generated content from bystanders or witnesses can be critical. Such evidence can corroborate or refute testimonies, provide visual or audio records of incidents, and help in identifying perpetrators or reconstructing events.

**6. Challenges with Digital Evidence:** While valuable, digital evidence also presents unique challenges. Investigators must have the technical expertise to extract and preserve digital data correctly. Legal considerations, such as privacy rights and the admissibility of digital evidence in court, are also paramount. Furthermore, the fast-paced evolution of technology means that investigators must continually update their skills and knowledge.

**7. Ethical Considerations:** When utilizing digital evidence in AO 35 investigations, ethical considerations are crucial. This includes respecting privacy rights, avoiding unnecessary intrusion into personal data, and ensuring digital evidence is used fairly and responsibly.

9.5.2 DIDM’s Directive on the Referral and Conduct of Digital Forensic Examination

The Philippine National Police’s Directorate for Investigation and Detective Management (DIDM), through its Anti-Cybercrime Group, has been entrusted with several critical tasks related to digital evidence in criminal investigations. These responsibilities include conducting data recovery and forensic analysis on all computers, computer peripherals, storage devices, and other forms of digital evidence that have been seized by PNP units or any other law enforcement agencies within the country. Additionally, the DIDM provides operational

support to various investigative units within the PNP. This support encompasses the search, seizure, preservation, and examination of all digital evidence from crime scenes.

In light of these responsibilities, it is imperative for AO 35 investigators and prosecutors to establish proper coordination with the DIDM when handling digital evidence. This coordination is crucial during crime scene investigations or whenever digital evidence comes into the possession of AO 35 personnel during their investigative processes. Effective collaboration with the DIDM ensures that digital evidence is handled in accordance with the best forensic practices, maintaining the integrity of the evidence and ensuring its admissibility in legal proceedings. This partnership is essential for the thorough and efficient processing of digital evidence, thereby bolstering the efficacy of investigations under the AO 35 mandate.

9.5.2.1 Some Important Guidelines

Reproduced below are some relevant Guidelines from the DIDM’s Directive on the Referral and Conduct of Digital Forensic Examination. They are abridged and restated:

- a. When responding to a cybercrime incident or crime scene where computers or electronic devices, digital media and other similar devices are present, it is imperative for the First Responder (FR) to be able to protect, seize and search the same and recognize potential evidence, using the following questions as guidelines to determine its role in the commission of the crime:
  - i. Is it a contraband or fruit of a crime?
  - ii. Is it a tool used for the commission of the crime?
  - iii. Is it only incidental to the crime, i.e. being used to store evidence of the crime?
  - iv. Is it both instrumental to the crime and a storage device for evidence?

- b. After identifying the theories as to the role of the computer in the commission of the crime, the following questions essential to any further police intervention should be considered by the first responder:
  - i. Is there probable cause to seize the hardware?
  - ii. Is there probable cause to seize the software?
  - iii. Is there probable cause to seize the data?
  - iv. Where will the search and seizure be conducted?
- c. Search of computers (or electronic device, digital media, and other similar devices) and seizure of data therefrom require a warrant issued by the court. (emphasis supplied)
- d. Appropriate collection techniques shall be used to preserve the data sought to be seized.
- e. The evidence seized shall be subjected to forensic examination by trained personnel. The result of the forensic examination, as well as the testimony of the forensic expert, shall be made available during the trial.
- f. The FR should understand that other electronic devices may contain viable evidence associated with the crime. The FR must ensure that, unless an emergency exists, the device should not be accessed.
- g. Should it be necessary to access the device, the FR should ensure that all actions associated with the manipulation of the device should be noted in order to document the chain of custody and ensure its admission as evidence in court.
- h. The digital forensic examination of computers or devices confiscated by PNP unit pursuant to the implementation of a search warrant for traditional crimes shall only be made when there is a court order directing the ACG to conduct the same,

- even if computers or devices were listed as items to be seized in the search warrant.
- i. When a crime is under investigation of a PNP unit, and the complainant or his witness desires that the police examine a legally owned computer or device in order to obtain evidence therefrom, the investigator-on-case shall cause the owner to sign a Consent to Search form, and attach the same to the unit's request to the ACG. In cases where the legal owner is deceased, the consent form shall be accomplished by the spouse or any direct family member.
  - j. In case of minors, consent shall be confirmed by parents or guardians, or, in their absence, the DSWD or LSWDO as the case may be.
  - k. For requests coming from partners and other stakeholders, digital forensic examination may be extended to them provided it can be shown that the digital device is voluntarily submitted and there is legal purpose for the examination, recovery or preservation of data.

9.5.3 Practical Advice on the Use of Digital Forensics

Here are some tips and techniques for AO 35 investigators on the use of digital forensics, considering human rights, compliance with laws and procedures, ensuring the admissibility of collected evidence, and being comprehensive to support the crime being investigated:

Prior to Conducting Digital Forensics

- 1. **Obtain Proper Authorization:** Before conducting any digital forensics examination, ensure you have proper authorization from relevant authorities. This may involve obtaining a warrant, subpoena or following specific protocols for accessing digital evidence.
- 2. **Establish a Clear Scope:** Clearly define

- the scope of the investigation, identifying the specific devices, data sources, and time periods to be examined. This will help ensure that the investigation remains focused and relevant to the case.
- 3. **Secure the Scene:** If examining a physical device, such as a computer or smartphone, secure the scene to prevent any unauthorized access or tampering with the evidence. This may involve isolating the device, disconnecting it from networks, and placing it in a secure location.

During Digital Forensics Examination

- 1. **Preserve Digital Evidence:** Take steps to preserve digital evidence in its original state to avoid tampering or contamination. Use forensic tools to create copies of hard drives, USB drives, and other storage devices.
- 2. **Document All Procedures:** Carefully document all steps taken during the investigation, including the use of forensic tools, software, and techniques. This documentation will be crucial for ensuring the admissibility of collected evidence.
- 3. **Protect Privacy and Confidentiality:** Respect the privacy of individuals involved in the investigation. Only access and collect data relevant to the case and handle sensitive information with utmost care.

Ensuring Admissibility of Collected Evidence

- 1. **Maintain Chain of Custody:** Maintain a clear chain of custody for all digital evidence to ensure its authenticity and traceability throughout the investigation and legal process. This involves documenting the handling, storage, and transfer of evidence at every stage.
- 2. **Use Validated Forensic Tools:** Utilize only validated and reputable forensic tools to ensure that the integrity of digital evidence is preserved

- throughout the examination process.
- 3. **Avoid Alterations:** Avoid making any alterations to the original digital evidence. Instead, create copies for analysis and leave the originals untouched.
  - 4. **Document Findings:** Thoroughly document all findings and conclusions derived from the digital forensics' examination. This documentation should be clear, concise, and supported by relevant data.

Protecting Human Rights and Complying with Laws and Procedures

- 1. **Respect for Privacy:** Investigators must respect the privacy rights of individuals involved in the investigation. Data collection and analysis should be limited to what is relevant to the case and handled with utmost care.
- 2. **Data Minimization:** Minimize the collection of personal data to only what is necessary for the investigation. Avoid collecting or storing irrelevant or unnecessary information.
- 3. **Transparency:** Be transparent with individuals on the purpose of data collection and the intended use of the information.
- 4. **Data Protection:** Implement appropriate security measures to protect collected data from unauthorized access, modification or loss.
- 5. **Adhere to Laws and Regulations:** Ensure that all investigative activities comply with laws and regulations governing digital forensics, data privacy, and cybercrime investigations.
- 6. **Proper Documentation:** Maintain proper documentation of all investigative procedures, including the use of forensic tools, software, and techniques. This documentation will be crucial for ensuring the admissibility of collected evidence.



# 10. CHAIN OF CUSTODY OF EVIDENCE

## 10.1 OVERVIEW

A well-documented chain of custody establishes a transparent and traceable record of every individual who has handled, accessed, or transferred evidence, safeguarding against any tampering, alteration, or substitution that could compromise the validity of the evidence.

It is thus worth reiterating that when evidence has a clear chain of custody, it is more likely to be accepted in court. This is vital in AO 35 cases, where the evidence must be strong and trustworthy to prove what happened. A good chain of custody also helps keep the trust of the public. It shows that the investigators are doing their job correctly and fairly, making sure that the rights of everyone involved, including the accused, are respected.

This chapter highlights the importance of maintaining an impeccable chain of custody from the onset of evidence collection to its presentation in court. The adherence to stringent chain of custody protocols not only ensures the integrity and admissibility of evidence but also upholds the credibility of the entire investigative process.

## 10.2 THE PNP MANUAL ON CHAIN OF CUSTODY

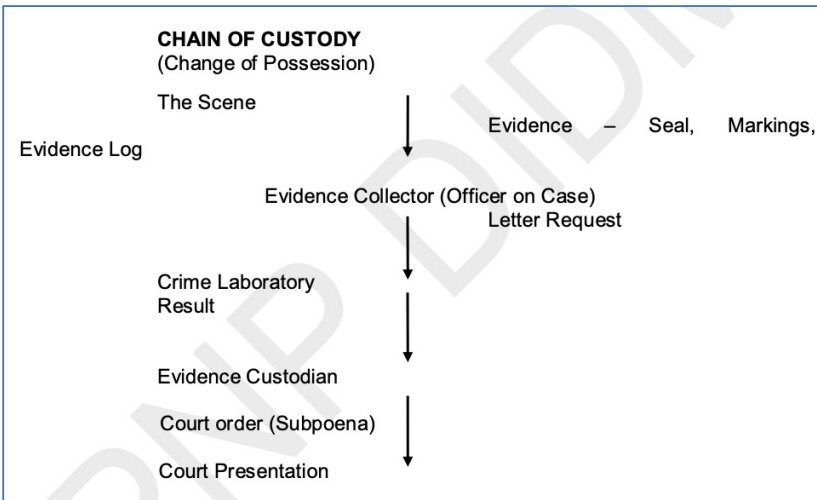
The list of all persons who came into possession of an item of evidence, continuity of possession, or the chain of custody, must be established whenever evidence is presented in court as an exhibit. Adherence to standard procedures in recording the location of evidence, marking it for identification, and properly completing evidence submission forms for laboratory analysis is critical to chain of custody. Every person who handled or examined the evidence and where it is at all times must be accounted for.

As a rule, all seized evidence must be in the custody of the evidence custodian and deposited in the evidence room or designated place for safekeeping. Proper handling of physical evidence is necessary to obtain the maximum possible information upon which scientific examination shall be based, and to prevent exclusion as evidence in court. Specimens which truly represent the material found at the scene, unaltered, unspoiled or otherwise unchanged in handling will provide more and better information upon examination.

Legal requirements make it necessary to account for all physical pieces of evidence from the time it is collected until it is presented in court. Proper handling of physical evidence is necessary to obtain the maximum possible information upon which scientific examination shall be based, and to prevent exclusion as evidence in court. Specimens which truly represent the material found at the scene, unaltered, unspoiled or otherwise unchanged in handling will provide more and better information upon examination. Legal requirements make it necessary to account for all physical pieces of evidence from the time it is collected until it is presented in court. With these in mind, the following principles should be observed in handling all types of evidence:

With these in mind, the following principles should be observed in handling all types of evidence:

1. The evidence should reach the laboratory in same condition as when it was found, as much as possible.
2. The quantity of specimen should be adequate. Even with the best equipment available, good results cannot be obtained from insufficient specimens.
3. Submit a known or standard specimen for comparison purposes.
4. Keep each specimen separate from others so there will be no intermingling or mixing of known and unknown material. Wrap and seal in individual packages when necessary.
5. Mark or label each of evidence for positive identification as the evidence taken from a particular location in connection with the crime under investigation.



6. The chain of custody of evidence must be maintained. Account for evidence from the time it is collected until it is produced in court. Any break in this chain of custody may make the material inadmissible as evidence in court.

### 10.2.1 Preservation of Physical Evidence

The PNP Criminal Investigation Manual (Revised 2011), Chapter II, 2.2.3 provides the outline of the investigation procedures and the preservation of physical evidence from markings, handling of evidence, to laboratory examination until its presentation in court. The manual provides:

#### g. Preservation of Evidence

It is the investigator's responsibility to ensure that every precaution is exercised to preserve physical evidence in the state in which it was recovered/ obtained until it is released to the evidence custodian.

x x x x

#### i. Chain of Custody

A list of all persons who came into possession of an item of evidence, continuity of



possession, or the chain of custody, must be established whenever evidence is presented in court as an exhibit. Adherence to standard procedures in recording the location of evidence, marking it for identification, and properly completing evidence submission forms for laboratory analysis is critical to chain of custody. Every person who handled or examined the evidence and where it is at all times must be accounted for.

10.2.2 Relevant Jurisprudence

The Supreme Court in several cases has emphasized the importance of chain of custody in the possession of evidence. In the case of *People vs. Togon, Jr.*, it held that as a rule, all seized evidence must be in the custody of the evidence custodian and deposited in the evidence room or designated place for safekeeping.<sup>35</sup>

x x x

Proper handling of physical evidence is necessary to obtain the maximum possible information upon which scientific examination shall be based, and to prevent exclusion as evidence in court. Specimens which truly represent the material found

PNP Criminal Investigation Manual 2011

q. Sample Format of Inventory/Receipt of Property

Republic of the Philippines  
Department of the Interior and Local Government  
PHILIPPINE NATIONAL POLICE

Date: \_\_\_\_\_

INVENTORY SHEET/RECEIPT FOR PROPERTY / GOODS RECOVERED

Inventory Sheet of article/items seized from the premise/establishment of  
located at \_\_\_\_\_ by virtue of \_\_\_\_\_

ITEMS/ARTICLES	QUANTITY/UNITS
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(Seizing Officer)

Witness by: \_\_\_\_\_

at the scene, unaltered, unspoiled or otherwise unchanged in handling will provide more and better information upon examination. Legal requirements make it necessary to account for all physical pieces of evidence from the time it is collected until it is presented in court.

<sup>35</sup> *People vs. Togon*, G.R. No. 247501. October 11, 2021

With these in mind, the following principles should be observed in handling all types of evidence:

1. The evidence should reach the laboratory in same condition as when it was found, as much as possible.
2. The quantity of specimen should be adequate. Even with the best equipment available, good results cannot be obtained from insufficient specimens.
3. Submit a known or standard specimen for comparison purposes.
4. Keep each specimen separate from others so there will be no intermingling or mixing of known and unknown material. Wrap and seal in individual packages when necessary.
5. Mark or label each of evidence for positive identification as the evidence taken from a particular location in connection with the crime under investigation.
6. The chain of custody of evidence must be maintained. Account for evidence from the time it is collected until it is produced in court. Any break in this chain of custody may make the material inadmissible as evidence in court. (underscoring supplied)

Compliance with Chain of Custody Rule is a must.

In the said case, the Court noted that there was no documentary evidence proving that the police officers complied with the chain of custody rule under the PNP Criminal Investigation Manual.

There must be proper turnover of evidence.

Likewise, the prosecution failed to establish that the subject hand grenade was properly turned over to the investigating officer for investigation and later to the evidence custodian for safekeeping.

Accomplishment of chain of custody form is required.

A perusal of the records reveals that there was no chain of custody form that was accomplished and presented by the police officers in court. Granting there was a proper turnover of the subject evidence to the investigating officer and the evidence custodian, there is a complete absence of proof as to how the subject hand grenade was handled from one hand to another until it was turned over to the PNP Firearms and Explosives Unit and for identification in court. Hence, there was a break in the chain of custody; thus, the evidentiary value of the subject grenade was not preserved.

Violation of chain of custody rule is fatal.

With the blunders committed by the police officers in the handling of the subject hand grenade, there is no assurance that the hand grenade identified in court was the same hand grenade allegedly confiscated from accused-appellant. The prosecution failed to prove that the police officers exercised every precaution to preserve the subject hand grenade in the state in which it was obtained until it was identified in court; and that the police officers kept the subject hand grenade separate from other hand grenades while it was in their possession to avoid intermingling or substitution.

10.3 CONTINUITY OF POSSESSION

Another legal term for “chain of custody” of evidence is continuity of possession. This term is used to describe the process of documenting the possession and movement of evidence from the time it is collected until it is presented in court. This process is essential to ensure that the evidence has not been tampered with or altered in any way, and that it is the same evidence that was collected at the crime scene or from the suspect.



The continuity of possession of evidence must be documented through a chain of custody form. Typically, this form must include the following information:

- Date and time the evidence was collected
- Name of the person who collected the evidence
- Description of the evidence
- Location where the evidence was collected
- Signature of the person who collected the evidence
- Name of each person who subsequently handled the evidence
- Signature of each person who handled the evidence
- Date and time the evidence was transferred to each person
- Location where the evidence was transferred

The chain of custody form must be maintained and kept in a secure location until the evidence is presented in court. If any breaks in the chain of custody occur, they must be documented and explained.

The term “continuity of possession” is more precise than “chain of custody” because it emphasizes the importance of maintaining physical control over the evidence at all times. This is essential to ensure that the evidence is not tampered with or altered in any way.

# 11. AO 35 CASE BUILD-UP AS REQUIRED BY DC 20

## 11.1 OVERVIEW

DOJ Department Circular 20 has supplementary application to AO 35 cases. This Circular mandates that all prosecutors of the National Prosecution Service must strictly observe and implement its policies and guidelines to ensure their pro-active involvement in the investigation of crimes.

This Chapter examines DC 20 and its implications for AO 35 cases. Its emphasis on “reasonable certainty of conviction” under DC 20 in AO 35 cases necessitates a detailed and collaborative approach to case build-up. This approach not only aligns with the legal and ethical imperatives of such serious cases but also enhances the likelihood of successful prosecution, thereby contributing to the broader goals of justice and human rights protection. DC 20 underscores the importance of meticulous case build-up in AO 35 investigations, highlighting several key aspects.

## 11.2 ACTIVE ROLE OF PROSECUTORS DURING CASE BUILD-UP

The Circular provides that all prosecutors shall take an active role in the investigation of crimes

covered by these guidelines, particularly during the case build-up stage where they may require, assist or otherwise cooperate with the complainants and/or law enforcement agencies.

In carrying out such role, prosecutors must ensure the existence of a prima facie case and a reasonable certainty of conviction based on available documents, witness/es, real evidence and the like. Prima facie evidence is such status of evidence which on its own and if left uncontroverted, is sufficient to establish all the elements of a crime.

## 11.3 EVALUATION, CASE BUILD-UP AND PRELIMINARY INVESTIGATION

Criminal complaints received by prosecution offices from private individuals, as well as formal referrals for investigation from law enforcement agencies (LEAs) involving crimes covered by this issuance but not subject to inquest, shall, within ten (10) working days from receipt, be evaluated to determine if they contain all the necessary evidence to prove the essential elements of the crime and should be docketed for preliminary investigation.



Should the evaluation disclose that the complaint or referral contains all the necessary evidence to prove all the essential elements of the crime, the assisting prosecutor who conducted the evaluation shall certify that there is a sufficient ground to conduct preliminary investigation. The complaint or referral shall then be docketed for the conduct of preliminary investigation in accordance with Rule 112 of the Revised Rules of Criminal Procedure.

In all cases for preliminary investigation, the investigating prosecutor shall issue a Certification as to the existence of prima facie case and of a reasonable certainty of conviction based on available documents, witness/es, real evidence and the like, or the lack thereof.

However, should the evaluation result in a finding that the complaint is not supported by sufficient evidence, or that there are lacking pieces of evidence, the complaint shall be referred back

to the private complainant or the referring LEA along with the following: (1) a report on the result of the evaluation; (2) an advice about the lacking evidence; and (3) a directive to secure and submit the said lacking evidence/s. For this purpose, the complainant or referring LEA, or other concerned LEA/s may be subpoenaed to appear for a conference or to produce necessary documents if the assisting prosecutor deems it necessary or advantageous under the circumstances.

If the complaint cannot still be supported by sufficient evidence, or that the lacking pieces of evidence cannot be located or secured within a reasonable period of time from its referral back to the private complainant or the referring LEA as contemplated under the preceding paragraph, it shall be closed and terminated without prejudice to refiling, with due notice to the complainant or the referring LEA.

# 12. INTER-AGENCY COORDINATION

## 12.1 OVERVIEW

This chapter reiterates the critical importance of inter-agency coordination in handling AO 35 cases, which often involve complex and sensitive human rights issues. A key finding from the TNA is the need for improved coordination between different agencies, particularly in AO 35 cases. Directive Circular (DC) 20 also stresses the importance of prosecutors' involvement from the early stages of planning with police, through to the investigation and case build-up. This underscores the necessity for agencies to work closely and cooperatively to ensure effective investigation and prosecution of AO 35 cases.

AO 35 cases require a blend of diverse skills, including legal knowledge, investigative expertise, ethical understanding, and procedural adherence. The leadership role of prosecutors in fostering this collaborative approach is crucial, as mandated by DC 20. The active participation of the different justice agencies ensures that cases are well-prepared, legally sound, and have a higher likelihood of successful prosecution.

## 12.2 IMPORTANCE OF INTER-AGENCY COORDINATION

Inter-agency coordination is crucial for the effective, efficient, and credible handling of grave human rights violation cases. It fosters a holistic approach that is necessary given the complexity of these cases and the imperative of upholding human rights and justice. Below are some only of the reasons why an effective and efficient investigation of AO 35 cases requires close working relationship among different agencies:

- 1. Pooling of Resources and Expertise:** AO 35 cases often require a diverse set of skills and resources, ranging from investigative expertise to legal and human rights knowledge. Inter-agency coordination allows for the pooling of these varied resources, ensuring a more comprehensive approach to each case.
- 2. Ensuring Comprehensive Investigations:** These cases are complex and may involve various aspects such as forensic analysis, witness protection, and legal proceedings. Coordination among agencies like the Philippine National Police, National Bureau of



Investigation, Commission on Human Rights, and others ensures that all aspects of the case are thoroughly investigated.

**3. Consistency in Legal Approach:** Inter-agency coordination helps in maintaining consistency in the legal approach towards AO 35 cases. It ensures that investigations and prosecutions are conducted within the ambit of the law and international human rights standards, contributing to the credibility and legitimacy of the process.

**4. Effective Witness Protection:** The safety of witnesses and victims is crucial in AO 35 cases. Coordination between law enforcement and witness protection programs is essential to ensure the security of those who come forward to provide testimony.

**5. Speed and Efficiency:** Through collaboration, agencies can work more efficiently, avoiding duplication of efforts and ensuring that investigations proceed swiftly. This is crucial in AO 35 cases where delays can compromise the safety of involved parties and the integrity of evidence.

**6. Information Sharing:** Inter-agency collaboration facilitates the sharing of information, which can lead to quicker identification of patterns of violations, suspects, and underlying systemic issues that contribute to human rights abuses.

**7. Building Public Trust:** Effective inter-agency coordination demonstrates a unified government front in addressing human rights violations. This unified approach can increase public trust in government efforts to address such serious issues.

**8. International Compliance:** Coordination ensures that investigations and resolutions of human rights violation cases comply with international human rights obligations and standards, which is crucial for the Philippines' international reputation and relations.

**9. Comprehensive Legal Support:** For successful prosecutions, it is essential that investigators, prosecutors, and other legal personnel work in tandem. This ensures that cases are not just thoroughly investigated, but also effectively prosecuted in the judicial system.

**10. Post-Trial Coordination:** After a case concludes, coordination is still needed for monitoring the enforcement of court decisions, including reparations or other forms of redress to victims.

### **12.3 ROLE OF PROSECUTORS IN COORDINATION**

AO 35 prosecutors are positioned to take a leadership role in inter-agency coordination, especially in cases involving grave human rights violations. This leadership is pivotal in steering the direction and effectiveness of the investigations and subsequent prosecutions. Here is how prosecutors can actively participate and lead from the planning stage to prosecution:

#### **1. Strategic Planning and Case Building:**

- **Initiating Collaborative Efforts:** Prosecutors can initiate and lead regular meetings with law enforcement, investigative agencies, human rights groups, and other relevant bodies to strategize on case approach.
- **Developing Case Strategy:** By understanding the legal complexities, prosecutors can help formulate a comprehensive case strategy that guides the investigation.

#### **2. Guiding Investigations:**

- **Legal Guidance:** Prosecutors can provide legal advice to investigators during the evidence-gathering process to ensure that the evidence collected is admissible in court.
- **Directing Investigations:** They can direct the focus of the investigation, ensuring that it remains within the scope of the alleged human rights violations.

#### **3. Facilitating Communication and Information Sharing:**

- **Central Point of Contact:** As leaders, prosecutors should establish themselves as the central point of contact for information sharing among agencies.
- **Ensuring Transparency:** Maintain open lines of communication to ensure all agencies are updated on the progress and developments of the cases.

#### **4. Witness and Victim Interaction:**

- **Ensuring Witness Protection:** Prosecutors should coordinate with witness protection programs to ensure the safety of witnesses and victims, crucial in human rights cases.
- **Building Trust:** They should work to establish trust with witnesses and victims, ensuring that their rights are protected throughout the legal process.

#### **5. Legal Compliance and Human Rights Adherence:**

- **Upholding Standards:** Prosecutors must ensure that all actions by participating agencies comply with national laws, international human rights standards, and the principles of DC 20.
- **Training and Sensitization:** Lead or facilitate training sessions for all participating agencies on human rights and legal procedures relevant to AO 35 cases.

#### **6. Advocacy and Public Communication:**

- **Representing the Case Publicly:** Prosecutors may need to communicate with the media and the public, representing the case's progress while maintaining confidentiality and integrity.
- **Advocating for Resources:** Advocate for necessary resources, support, and attention for AO 35 cases within the justice system.

#### **7. Trial Preparation and Prosecution:**

- **Case Presentation:** Prosecutors should meticulously prepare for trial, ensuring all evidence is properly organized and presented.
- **Legal Strategy in Court:** They must skillfully argue the case in court, applying their knowledge of human rights law and legal precedent.

#### **8. People and communities facing barriers:**

- **Non-discrimination:** Prosecutors should ensure that the investigation and trial preparation takes steps to overcome particular barriers or needs of those involved in the case, including gender, socio-economic status, Indigenous status, educational level, disability, age, displacement, etc.
- **Inclusive language:** Prosecutors should use inclusive, non-judgmental language, including using gender sensitive and "people-first" language (persons with disabilities, persons living in poverty).

12.4 THE IAC AND OTHER BODIES  
AND ITS MANDATE

a. Inter-Agency Committee

AO 35 created the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture, and Other Grave Violations of the Right to Life, Liberty, and Security of Persons (IAC).

Chairperson:	Secretary, Department of Justice (DOJ)
Members:	Chairperson, Presidential Human Rights Committee (PHRC)
	Secretary, Department of the Interior and Local Government (DILG)
	Secretary, Department of National Defense (DND)
	Presidential Adviser on the Peace Process (PAPP)
	Presidential Adviser for Political Affairs (PAPA)
	Chief of Staff, Armed Forces of the Philippines (AFP)
	Director General, Philippine National Police (PNP)
	Director, National Bureau of investigation (NBI)

The Committee also invites the Chairperson of the Commission on Human Rights (CHR) and the Ombudsman as observers and resource persons, thereby ensuring a multi-disciplinary approach to human rights issues.

12.4.1 Functions

The following are the functions of the IAC:

- **Inventory of Cases:**
  - The Committee conducts an initial inventory of all cases related to extra-legal killings, enforced disappearances, and other grave human rights violations.

B. Composition

Chaired by the Secretary of the Department of Justice (DOJ), the Committee’s membership is extensive, including key officials from various government agencies. Below is the composition of the IAC:

- This inventory categorizes cases into various stages: unsolved, under investigation, under preliminary investigation, and under trial.
- Data is also sourced from non-governmental human rights organizations.

- **Investigation of Unsolved Cases:**
  - Special investigation teams are assigned to investigate unsolved cases, focusing on identifying the perpetrators.
  - AO 35 investigators and prosecutors often form part of these special teams, responsible for evidence gathering and case building.

- **Monitoring and Reporting:**
  - The Committee designates special oversight teams to monitor ongoing cases at various stages.
  - These teams actively track developments and submit recommendations to the Committee.
  - AO 35 investigators and prosecutors may be part of these oversight teams, ensuring legal procedures are followed and evidence is compelling.

- **Investigation and Prosecution of New Cases:**
  - A special team of investigators and prosecutors is designated exclusively for new cases.
  - This team also monitors cases referred to or filed with the Commission on Human Rights (CHR) or the Ombudsman.
  - The team ensures that legal timelines, such as the 60-day period for an investigation of a complaint for torture as per RA No. 9745, are followed.

- **Action Upon Cases:**
  - After each team’s report, immediate action is taken by the Chair or in consensus with concerned Committee members.
  - AO 35 prosecutors and investigators contribute to these reports and actions, especially in high-profile or problematic cases.

- **Submission of Report to the President:**
  - The Committee is required to submit bi-annual reports to the President, detailing the inventory of cases and describing progress or challenges.
  - Contributions from AO 35 prosecutors and investigators are often highlighted in these reports, emphasizing their role in upholding human rights and the rule of law.

12.4.2 Inter-Agency Coordination  
While Maintaining Autonomy

AO 35 explicitly states that the regular and ordinary functions of agencies under the Committee’s jurisdiction should not be hampered. For prosecutors and investigators, this means that your standard operating procedures and protocols remain intact. You are not required to deviate from your established practices unless explicitly directed by the Committee.

While each agency retains its autonomy, the Administrative Order also emphasizes the need for inter-agency coordination. This is crucial for the Committee to achieve its overarching mandates. Prosecutors and investigators should be prepared to collaborate with other agencies when directed by the Committee. This could involve sharing case files, intelligence, or even manpower for specific investigations.



LIST OF ACRONYMS AND ABBREVIATION

AFP	-	Armed Forces of the Philippines
AHRC	-	Ateneo Human Rights Center
AO	-	Administrative Order
CHR	-	Commission on Human Rights
CSOs	-	Civil Society Organizations
DC	-	Department Circular
DIDM	-	Directorate for Investigation and Detective Management
DILG	-	Department of Interior and Local Government
DND	-	Department of National Defense
DOJ	-	Department of Justice
EDs	-	Enforced Disappearances
EJK/ELK	-	Extra-Judicial/Extra-Legal Killing
FGDs	-	Focused-Group Discussions
HRAO	-	Human Rights Affairs Office
IAC	-	Inter-Agency Committee
IHL	-	International Humanitarian Law
ILO	-	International Labor Organization
LEA	-	Law Enforcement Agencies
NBI	-	National Bureau of Investigation
NGO	-	Non-Government Organizations
NMM	-	National Monitoring Mechanism
OBL	-	Outcomes-Based Learning
OMB	-	Office of the Ombudsman
PNP	-	Philippine National Police
SITN	-	Special Investigation Team for New Cases
SOT	-	Special Oversight Team
SITU	-	Special Investigation Team for Unsolved Cases
TNA	-	Training Needs Analysis
TOT	-	Training of Trainers
UNJP	-	United Nations Joint Programme
WPP	-	Witness Protection Programme

# 12. ANNEXES

13.1 ANTI-ENFORCED OR INVOLUNTARY  
DISAPPEARANCE ACT OF 2012

REPUBLIC ACT NO. 10353

AN ACT DEFINING AND  
PENALIZING ENFORCED OR  
INVOLUNTARY DISAPPEARANCE

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

Section 1. Short Title. –This Act shall be known as  
the “Anti-Enforced or Involuntary Disappearance  
Act of 2012”.

Section 2. Declaration of Policy. –The State values the  
dignity of every human person and guarantees full  
respect for human rights for which highest priority  
shall be given to the enactment of measures for the  
enhancement of the right of all people to human  
dignity, the prohibition against secret detention  
places, solitary confinement, incommunicado, or  
other similar forms of detention, the provision for  
penal and civil sanctions for such violations, and  
compensation and rehabilitation for the victims

and their families, particularly with respect to the  
use of torture, force, violence, threat, intimidation  
or any other means which vitiate the free will of  
persons abducted, arrested, detained, disappeared  
or otherwise removed from the effective protection  
of the law.

Furthermore, the State adheres to the principles  
and standards on the absolute condemnation of  
human rights violations set by the 1987 Philippine  
Constitution and various international instruments  
such as, but not limited to, the International  
Covenant on Civil and Political Rights (ICCPR),  
and the Convention Against Torture and Other  
Cruel, Inhuman or Degrading Treatment or  
Punishment (CAT), to which the Philippines is a  
state party.

Section 3. Definitions. –For purposes of this Act,  
the following terms shall be defined as follows:

(a) Agents of the State refer to persons who, by  
direct provision of the law, popular election or  
appointment by competent authority, shall take  
part in the performance of public functions  
in the government, or shall perform in the  
government or in any of its branch’s public  
duties as an employee, agent or subordinate



official, of any rank or class.

(b) **Enforced or involuntary disappearance** refers to the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law.

(c) **Order of Battle** refers to a document made by the military, police or any law enforcement agency of the government, listing the names of persons and organizations that it perceives to be enemies of the State and which it considers as legitimate targets as combatants that it could deal with, through the use of means allowed by domestic and international law.

(d) **Victim** refers to the disappeared person and any individual who has suffered harm as a direct result of an enforced or involuntary disappearance as defined in letter (b) of this Section.

**Section 4. Non-derogability of the Right Against Enforced or Involuntary Disappearance.** – The right against enforced or involuntary disappearance and the fundamental safeguards for its prevention shall not be suspended under any circumstance including political instability, threat of war, state of war or other public emergencies.

**Section 5. “Order of Battle” or Any Order of Similar Nature, Not Legal Ground, for Enforced or Involuntary Disappearance.** – An “Order of Battle” or any order of similar nature, official or otherwise, from a superior officer or a public authority causing the commission of enforced or involuntary disappearance is unlawful and cannot be invoked as a justifying or exempting circumstance. Any person receiving such an order shall have the right to disobey it.

**Section 6. Right of Access to Communication.** – It shall be the absolute right of any person deprived of liberty to have immediate access to any form of communication available in order for him or her to inform his or her family, relative, friend, lawyer or any human rights organization on his or her whereabouts and condition.

**Section 7. Duty to Report Victims of Enforced or Involuntary Disappearance.** – Any person, not being a principal, accomplice or accessory, who has an information of a case of enforced or involuntary disappearance or who shall learn of such information or that a person is a victim of enforced or involuntary disappearance, shall immediately report in writing the circumstances and whereabouts of the victim to any office, detachment or division of the Department of the Interior and Local Government (DILG), the Department of National Defense (DND), the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), the National Bureau of Investigation (NBI), the City or Provincial Prosecutor, the Commission on Human Rights (CHR) or any human rights organization and, if known, the victim’s family, relative, or lawyer.

**Section 8. Duty to Certify in Writing on the Results of Inquiry into a Reported Disappeared Person’s Whereabouts.** – In case a family member, relative, lawyer, representative of a human rights organization or a member of the media inquiries with a member or official of any police or military detention center, the PNP or any of its agencies, the AFP or any of its agencies, the NBI or any other agency or instrumentality of the government, as well as any hospital or morgue, public or private, on the presence or whereabouts of a reported victim of enforced or involuntary disappearance, such member or official shall immediately issue a certification in writing to the inquiring person or entity on the presence or absence and/or information on the whereabouts of such disappeared person, stating, among others, in clear and unequivocal manner the date and time of inquiry, details of the inquiry and the response to the inquiry.

**Section 9. Duty of Inquest/Investigating Public Prosecutor or any Judicial or Quasi-Judicial Official or Employee.** – Any inquest or investigating public prosecutor, or any judicial or quasi-judicial official or employee who learns that the person delivered for inquest or preliminary investigation or for any other judicial process is a victim of enforced or involuntary disappearance shall have the duty to immediately disclose the victim’s whereabouts to his or her immediate family, relatives, lawyer/s or to a human rights organization by the most expedient means.

**Section 10. Official Up-to-Date Register of All Persons Detained or Confined.** – All persons detained or confined shall be placed solely in officially recognized and controlled places of detention or confinement where an official up-to-date register of such persons shall be maintained. Relatives, lawyers, judges, official bodies and all persons who have legitimate interest in the whereabouts and condition of the persons deprived of liberty shall have free access to the register.

The following details, among others, shall be recorded, in the register:

- (a) The identity or name, description and address of the person deprived of liberty;
- (b) The date, time and location where the person was deprived of liberty and the identity of the person who made such deprivation of liberty;
- (c) The authority who decided the deprivation of liberty and the reasons for the deprivation of liberty or the crime or offense committed;
- (d) The authority controlling the deprivation of liberty;
- (e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
- (f) Records of physical, mental and psychological condition of the detained or confined person before and after the

deprivation of liberty and the name and address of the physician who examined him or her physically, mentally and medically;

(g) The date and time of release or transfer of the detained or confined person to another place of detention, the destination and the authority responsible for the transfer;

(h) The date and time of each removal of the detained or confined person from his or her cell, the reason or purpose for such removal and the date and time of his or her return to his or her cell;

(i) A summary of the physical, mental and medical findings of the detained or confined person after each interrogation;

(j) The names and addresses of the persons who visit the detained or confined person and the date and time of such visits and the date and time of each departure;

(k) In the event of death during the deprivation of liberty, the identity, the circumstances and cause of death of the victim as well as the destination of the human remains; and

(l) All other important events bearing on and all relevant details regarding the treatment of the detained or confined person.

Provided, That the details required under letters (a) to (f) shall be entered immediately in the register upon arrest and/or detention.

All information contained in the register shall be regularly or upon request reported to the CHR or any other agency of government tasked to monitor and protect human rights and shall be made available to the public.

**Section 11. Submission of List of Government Detention Facilities.** – Within six (6) months from the effectivity of this Act and as may be requested by the CHR thereafter, all government agencies concerned shall submit an updated inventory or list of all officially recognized and controlled



detention or confinement facilities, and the list of detainees or persons deprived of liberty under their respective jurisdictions to the CHR.

**Section 12. Immediate Issuance and Compliance of the Writs of Habeas Corpus, Amparo and Habeas Data.** – All proceedings pertaining to the issuance of the writs of habeas corpus, amparo and habeas data shall be dispensed with expeditiously. As such, all courts and other concerned agencies of government shall give priority to such proceedings. Moreover, any order issued or promulgated pursuant to such writs or their respective proceedings shall be executed and complied with immediately.

**Section 13. Visitation /Inspection of Places of Detention and, Confinement.** – The CHR or its duly authorized representatives are hereby mandated and authorized to conduct regular, independent, unannounced and unrestricted visits to or inspection of all places of detention and confinement.

**Section 14. Liability of Commanding Officer or Superior.** – The immediate commanding officer of the unit concerned of the AFP or the immediate senior official of the PNP and other law enforcement agencies shall be held liable as a principal to the crime of enforced or involuntary disappearance for acts committed by him or her that shall have led, assisted, abetted or allowed, whether directly or indirectly, the commission thereof by his or her subordinates. If such commanding officer has knowledge of or, owing to the circumstances at the time, should have known that an enforced or involuntary disappearance is being committed, or has been committed by subordinates or by others within the officer's area of responsibility and, despite such knowledge, did not take preventive or coercive action either before, during or immediately after its commission, when he or she has the authority to prevent or investigate allegations of enforced or involuntary disappearance but failed to prevent or investigate such allegations, whether deliberately or due to negligence, shall also be held liable as principal.

**Section 15. Penal Provisions.** –

a) The penalty of reclusion perpetua and its accessory penalties shall be imposed upon the following persons:

- (1) Those who directly committed the act of enforced or involuntary disappearance;
- (2) Those who directly forced, instigated, encouraged or induced others to commit the act of enforced or involuntary disappearance;
- (3) Those who cooperated in the act of enforced or involuntary disappearance by committing another act without which the act of enforced or involuntary disappearance would not have been consummated;
- (4) Those officials who allowed the act or abetted in the consummation of enforced or involuntary disappearance when it is within their power to stop or uncover the commission thereof; and
- (5) Those who cooperated in the execution of the act of enforced or involuntary disappearance by previous or simultaneous acts.

b) The penalty of reclusion temporal and its accessory penalties shall be imposed upon those who shall commit the act of enforced or involuntary disappearance in the attempted stage as provided for and defined under Article 6 of the Revised Penal Code.

c) The penalty of reclusion temporal and its accessory penalties shall also be imposed upon persons who, having knowledge of the act of enforced or involuntary disappearance and without having participated therein, either as principals or accomplices, took part subsequent to its commission in any of the following manner:

- (1) By themselves profiting from or assisting the offender to profit from the effects of the act of enforced or involuntary disappearance;
- (2) By concealing the act of enforced or involuntary disappearance and/or destroying the effects or instruments thereof in order to prevent its discovery; or
- (3) By harboring, concealing or assisting in the escape of the principal/s in the act of enforced or involuntary disappearance,

provided such accessory acts are done with the abuse of official functions.

d) The penalty of prison correctional and its accessory penalties shall be imposed against persons who defy, ignore or unduly delay compliance with any order duly issued or promulgated pursuant to the writs of habeas corpus, amparo and habeas data or their respective proceedings.

e) The penalty of arresto mayor and its accessory penalties shall be imposed against any person who shall violate the provisions of Sections 6, 7, 8, 9 and 10 of this Act.

**Section 16. Preventive Suspension/Summary Dismissal.** – Government officials and personnel who are found to be perpetrators of or participants in any manner in the commission of enforced or involuntary disappearance as a result of a preliminary investigation conducted for that purpose shall be preventively suspended or summarily dismissed from the service, depending on the strength of the evidence so presented and gathered in the said preliminary investigation or as may be recommended by the investigating authority.

**Section 17. Civil Liability.** – The act of enforced or involuntary disappearance shall render its perpetrators and the State agencies which organized, acquiesced in or tolerated such disappearance liable under civil law.

**Section 18. Independent Liability.** – The criminal liability of the offender under this Act shall be independent of or without prejudice to the prosecution and conviction of the said offender for any violation of 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”; Republic Act No. 9745, otherwise known as “An Act Penalizing Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and Prescribing Penalties Therefor”; and applicable

provisions of the Revised Penal Code.

**Section 19. Non-exclusivity or Double Jeopardy Under International Law.** – Any investigation, trial and decision in any Philippines court, or body for any violation of this Act shall; be without prejudice to any investigation, trial, decision or any other legal or administrative process before any appropriate international court or agency under applicable international human rights and humanitarian law.

**Section 20. Exemption from Prosecution.** – Any offender who volunteers information that leads to the discovery of the victim of enforced or involuntary disappearance or the prosecution of the offenders without the victim being found shall be exempt from any criminal and/or civil liability under this Act: Provided, that said offender does not appear to be the most guilty.

**Section 21. Continuing Offense.** – An act constituting enforced or involuntary disappearance shall be considered a continuing offense as long as the perpetrators continue to conceal the fate and whereabouts of the disappeared person and such circumstances have not been determined with certainty.

**Section 22. Statue of Limitations Exemption.** – The prosecution of persons responsible for enforced or involuntary disappearance shall not prescribe unless the victim surfaces alive. In which case, the prescriptive period shall be twenty-five (25) years from the date of such reappearance.

**Section 23. Special Amnesty Law Exclusion.** – Persons who are charged with and/or guilty of the act of enforced or involuntary disappearance shall not benefit from any special amnesty law or other similar executive measures that shall exempt them from any penal proceedings or sanctions.

**Section 24. State Protection** – The State, through its appropriate agencies, shall ensure the safety of all persons involved in the search, investigation and prosecution of enforced or involuntary disappearance including, but not limited to, the victims, their families, complainants, witnesses,

legal counsel and representatives of human rights organizations and media. They shall likewise be protected from any intimidation or reprisal.

**Section 25. Applicability of Refouler.** – No person shall be expelled, returned or extradited to another State where there are substantial grounds to believe that such person shall be in danger of being subjected to enforced or involuntary disappearance. For purposes of determining whether such grounds exist, the Secretary of the Department, of Foreign Affairs (DFA) and the Secretary of the Department of Justice (DOJ) in coordination with the Chairperson of the CHR, shall take into account all relevant considerations including where applicable and not limited to, the existence in the requesting State of a consistent pattern of gross, flagrant or mass violations of human rights.

**Section 26. Restitution and Compensation to Victims of Enforced or Involuntary Disappearance and/or Their Immediate Relatives.** – The victims of enforced or involuntary disappearance who surface alive shall be entitled to monetary compensation, rehabilitation and restitution of honor and reputation. Such restitution of honor and reputation shall include immediate expunging or rectification of any derogatory record, information or public declaration/statement on his or her person, personal circumstances, status, and/or organizational affiliation by the appropriate government or private agency or agencies concerned.

The immediate relatives of a victim of enforced or involuntary disappearance, within the fourth civil degree of consanguinity or affinity, may also claim for compensation as provided for under Republic Act No. 7309, entitled “An Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and For Other Purposes”, and other relief programs of the government.

The package of indemnification for both the victims and the immediate relatives within the fourth civil degree of consanguinity or affinity shall be without prejudice to other legal remedies that may be available to them.

**Section 27. Rehabilitation of Victims and/or Their Immediate Relatives, and Offenders.** – In order that the victims of enforced or involuntary disappearance who surfaced alive and/or their immediate relatives within the fourth civil degree of consanguinity or affinity, may be effectively reintegrated into the mainstream of society and in the process of development, the State, through the CHR, in coordination with the Department of Health, the Department of Social Welfare and Development (DSWD) and the concerned nongovernment organization/s, shall provide them with appropriate medical care and rehabilitation free of charge.

Toward the attainment of restorative justice, a parallel rehabilitation program for persons who have committed enforced or involuntary disappearance shall likewise be implemented without cost to such offenders.

**Section 28. Implementing Rules and Regulations.** – Within thirty (30) days from the effectivity of this Act, the DOJ, the DSWD, the CHR, the Families of Victims of Involuntary Disappearance (FIND) and the Families of Desaparecidos for Justice (Desaparecidos), in consultation with other human rights organizations, shall jointly promulgate the rules and regulations for the effective implementation of this Act and shall ensure the full dissemination of the same to the public.

**Section 29. Suppletory Applications.** – The applicable provisions of the Revised Penal Code shall have suppletory application insofar as they are consistent with the provisions of this Act.

**Section 30. Appropriations.** – The amount of Ten million pesos (P10,000,000.00) is hereby appropriated for the initial implementation of this Act by the CHR. Subsequent funds for the continuing implementation of this Act shall be included in the respective budgets of the CHR and the DOJ in the annual General Appropriations Act.

**Section 31. Separability Clause.** – If for any reason, any section or provision of this Act is declared unconstitutional or invalid, such other sections or

provisions not affected thereby shall remain in full force and effect.

**Section 32. Repealing Clause.** – All laws, decrees, executive orders, rules and regulations and other issuances or parts thereof inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

## 13.2 ANTI-TORTURE ACT OF 2009

### REPUBLIC ACT NO. 9745

AN ACT PENALIZING TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT AND PRESCRIBING PENALTIES THEREFOR

**Section 1. Short Title.** – This Act shall be known as the “Anti-Torture Act of 2009”.

**Section 2. Statement of Policy.** It is hereby declared the policy of the State:

- a) To value the dignity of every human person and guarantee full respect for human rights;
- b) To ensure that the human rights of all persons, including suspects, detainees and prisoners are respected at all times; and that no person placed under investigation or held in custody of any person in authority or, agent of a person authority shall be subjected to physical, psychological or mental harm, force, violence, threat or intimidation or any act that impairs his/her free will or in any manner demeans or degrades human dignity;
- c) To ensure that secret detention places, solitary, incommunicado or other similar forms of detention, where torture may be carried out with impunity, are prohibited; and
- d) To fully adhere to the principles and standards on the absolute condemnation and prohibition of torture as provided for in the 1987 Philippine Constitution; various

**Section 33. Effectivity Clause.** – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation or the Official Gazette, which shall not be later than seven (7) days after the approval thereof.

international instruments to which the Philippines is a State party such as, but not limited to, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and all other relevant international human rights instruments to which the Philippines is a signatory.

**Section 3. Definitions.** – For purposes of this Act, the following terms shall mean:

- a) “Torture” refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or Buffering arising only from, inherent in or incidental to lawful sanctions.
- b) “Other cruel, inhuman and degrading treatment or punishment” refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of



a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter.

c) “Victim” refers to the person subjected to torture or other cruel, inhuman and degrading treatment or punishment as defined above and any individual who has suffered harm as a result of any act(s) of torture, or other cruel, inhuman and degrading treatment or punishment.

d) “Order of Battle” refers to any document or determination made by the military, police or any law enforcement agency of the government, listing the names of persons and organizations that it perceives to be enemies of the State and that it considers as legitimate targets as combatants that it could deal with, through the use of means allowed by domestic and international law.

**Section 4. Acts of Torture.** – For purposes of this Act, torture shall include, but not be limited to, the following:

(1) Physical torture is a form of treatment or punishment inflicted by a person in authority or agent of a person in authority upon another in his/her custody that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:

- 1) Systematic beating, headbanging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;
- 2) Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;
- 3) Electric shock;
- 4) Cigarette burning; burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s);
- 5) The submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation;
- 6) Being tied or forced to assume fixed and

stressful bodily position;

- 7) Rape and sexual abuse, including the insertion of foreign objects into the sex organ or rectum, or electrical torture of the genitals;
- 8) Mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue, etc.;
- 9) Dental torture or the forced extraction of the teeth;
- 10) Pulling out of fingernails;
- 11) Harmful exposure to the elements such as sunlight and extreme cold;
- 12) The use of plastic bag and other materials placed over the head to the point of asphyxiation;
- 13) The use of psychoactive drugs to change the perception, memory, alertness or will of a person, such as:
  - i. The administration or drugs to induce confession and/or reduce mental competency; or
  - ii. The use of drugs to induce extreme pain or certain symptoms of a disease; and
- 14) Other analogous acts of physical torture; and

(2) “Mental/Psychological Torture” refers to acts committed by a person in authority or agent of a person in authority which are calculated to affect or confuse the mind and/or undermine a person’s dignity and morale, such as:

- a) Blindfolding;
- b) Threatening a person(s) or his/her relative(s) with bodily harm, execution or other wrongful acts;
- c) Confinement in solitary cells or secret detention places;
- d) Prolonged interrogation;
- e) Preparing a prisoner for a “show trial”, public display or public humiliation of a detainee or prisoner;
- f) Causing unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he/she shall be summarily executed;
- g) Maltreating a member/s of a person’s family;

h) Causing the torture sessions to be witnessed by the person’s family, relatives or any third party;

i) Denial of sleep/rest;

j) Shame infliction such as stripping the person naked, parading him/her in public places, shaving the victim’s head or putting marks on his/her body against his/her will;

k) Deliberately prohibiting the victim to communicate with any member of his/her family; and

l) Other analogous acts of mental/psychological torture.

**Section 5. Other Cruel, Inhuman and Degrading Treatment or Punishment.** – Other cruel, inhuman or degrading treatment or punishment refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against another person in custody, which attains a level of severity sufficient to cause suffering, gross humiliation or debasement to the latter. The assessment of the level of severity shall depend on all the circumstances of the case, including the duration of the treatment or punishment, its physical and mental effects and, in some cases, the sex, religion, age and state of health of the victim.

**Section 6. Freedom from Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, An Absolute Right.** – Torture and other cruel, inhuman and degrading treatment or punishment as criminal acts shall apply to all circumstances. A state of war or a threat of war, internal political instability, or any other public emergency, or a document or any determination comprising an “order of battle” shall not and can never be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment.

**Section 7. Prohibited Detention.** – Secret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out with impunity are hereby prohibited.

In which case, the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP) and other law enforcement agencies concerned shall make an updated list of all detention centers and facilities under their respective jurisdictions with the corresponding data on the prisoners or detainees incarcerated or detained therein such as, among others, names, date of arrest and incarceration, and the crime or offense committed. This list shall be made available to the public at all times, with a copy of the complete list available at the respective national headquarters of the PNP and AFP. A copy of the complete list shall likewise be submitted by the PNP, AFP and all other law enforcement agencies to the Commission on Human Rights (CHR), such list to be periodically updated, by the same agencies, within the first five (5) days of every month at the minimum. Every regional office of the PNP, AFP and other law enforcement agencies shall also maintain a similar list for all detainees and detention facilities within their respective areas, and shall make the same available to the public at all times at their respective regional headquarters, and submit a copy, updated in the same manner provided above, to the respective regional offices of the CHR.

**Section 8. Applicability of the Exclusionary Rule; Exception.** – Any confession, admission or statement obtained as a result of torture shall be inadmissible in evidence in any proceedings, except if the same is used as evidence against a person or persons accused of committing torture.

**Section 9. Institutional Protection of Torture Victims and Other Persons Involved.** – A victim of torture shall have the following rights in the institution of a criminal complaint for torture:

- a) To have a prompt and an impartial investigation by the CHR and by agencies of government concerned such as the Department of Justice (DOJ), the Public Attorney’s Office (PAO), the PNP, the National Bureau of Investigation (NBI) and the AFP. A prompt investigation shall mean a maximum period of sixty (60) working days from the time a complaint for torture is filed within which an investigation report and/or resolution shall be completed and made available. An appeal

whenever available shall be resolved within the same period prescribed herein,

b) To have sufficient government protection against all forms of harassment; threat and/or intimidation as a consequence of the filing of said complaint or the presentation of evidence therefor. In which case, the State through its appropriate agencies shall afford security in order to ensure his/her safety and all other persons involved in the investigation and prosecution such as, but not limited to, his/her lawyer, witnesses and relatives; and

c) To be accorded sufficient protection in the manner by which he/she testifies and presents evidence in any fora in order to avoid further trauma.

**Section 10. Disposition of Writs of Habeas Corpus, Amparo and Habeas Data Proceedings and Compliance with a Judicial Order.** – A writ of habeas corpus or writ of amparo or writ of habeas data proceeding, if any, filed on behalf of the victim of torture or other cruel, degrading and inhuman treatment or punishment shall be disposed of expeditiously and any order of release by virtue thereof, or other appropriate order of a court relative thereto, shall be executed or complied with immediately.

**Section 11. Assistance in Filing a Complaint.** – The CHR and the PAO shall render legal assistance in the investigation and monitoring and/or filing of the complaint for a person who suffers torture and other cruel, inhuman and degrading treatment or punishment, or for any interested party thereto. The victim or interested party may also seek legal assistance from the Barangay Human Rights Action Center (BRRAC) nearest him/her as well as from human rights nongovernment organizations (NGOs).

**Section 12. Right to Physical, Medical and Psychological Examination.** – Before and after interrogation, every person arrested, detained or under custodial investigation shall have the right to be informed of his/her right to demand physical examination by an independent and

competent doctor of his/her own choice. If such person cannot afford the services of his/her own doctor, he/she shall be provided by the State with a competent and independent doctor to conduct physical examination. The State shall endeavor to provide the victim with psychological evaluation if available under the circumstances. If the person arrested is a female, she shall be attended to preferably by a female doctor. Furthermore, any person arrested, detained or under custodial investigation, including his/her immediate family, shall have the right to immediate access to proper and adequate medical treatment. The physical examination and/or psychological evaluation of the victim shall be contained in a medical report, duly signed by the attending physician, which shall include in detail his/her medical history and findings, and which shall be attached to the custodial investigation report. Such report shall be considered a public document.

Following applicable protocol agreed upon by agencies tasked to conduct physical, psychological and mental examinations, the medical reports shall, among others, include:

- a) The name, age and address of the patient or victim;
- b) The name and address of the nearest kin of the patient or victim;
- c) The name and address of the person who brought the patient or victim for physical, psychological and mental examination, and/or medical treatment;
- d) The nature and probable cause of the patient or victim's injury, pain and disease and/or trauma;
- e) The approximate time and date when the injury, pain, disease and/or trauma was/were sustained;
- f) The place where the injury, pain, disease and/or trauma was/were sustained;
- g) The time, date and nature of treatment necessary; and

h) The diagnosis, the prognosis and/or disposition of the patient.

Any person who does not wish to avail of the rights under this provision may knowingly and voluntarily waive such rights in writing, executed in the presence and assistance of his/her counsel.

**Section 13. Who are Criminally Liable.** – Any person who actually participated or induced another in the commission of torture or other cruel, inhuman and degrading treatment or punishment or who cooperated in the execution of the act of torture or other cruel, inhuman and degrading treatment or punishment by previous or simultaneous acts shall be liable as principal

Any superior military, police or law enforcement officer or senior government official who issued an order to any lower ranking personnel to commit torture for whatever purpose shall be held equally liable as principals.

The immediate commanding officer of the unit concerned of the AFP or the immediate senior public official of the PNP and other law enforcement agencies shall be held liable as a principal to the crime of torture or other cruel or inhuman and degrading treatment or punishment for any act or omission, or negligence committed by him/her that shall have led, assisted, abetted or allowed, whether directly or indirectly, the commission thereof by his/her subordinates. If he/she has knowledge of or, owing to the circumstances at the time, should have known that acts of torture or other cruel, inhuman and degrading treatment or punishment shall be committed, is being committed, or has been committed by his/her subordinates or by others within his/her area of responsibility and, despite such knowledge, did not take preventive or corrective action either before, during or immediately after its commission, when he/she has the authority to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment but failed to prevent or investigate allegations of such act, whether deliberately or due to negligence shall also be liable as principals.

Any public officer or employee shall be liable as an accessory if he/she has knowledge that torture or other cruel, inhuman and degrading treatment or punishment is being committed and without having participated therein, either as principal or accomplice, takes part subsequent to its commission in any of the following manner:

- a) By themselves profiting from or assisting the offender to profit from the effects of the act of torture or other cruel, inhuman and degrading treatment or punishment;
- b) By concealing the act of torture or other cruel, inhuman and degrading treatment or punishment and/or destroying the effects or instruments thereof in order to prevent its discovery; or(c) By harboring, concealing or assisting in the escape of the principal/s in the act of torture or other cruel, inhuman and degrading treatment or punishment: Provided, That the accessory acts are done with the abuse of the official's public functions.

**Section 14. Penalties.** –

- a) The penalty of reclusion perpetua shall be imposed upon the perpetrators of the following acts:
  - 1) Torture resulting in the death of any person;
  - 2) Torture resulting in mutilation;
  - 3) Torture with rape;
  - 4) Torture with other forms of sexual abuse and, in consequence of torture, the victim shall have become insane, imbecile, impotent, blind or maimed for life; and
  - 5) Torture committed against children.
- b) The penalty of reclusion temporal shall be imposed on those who commit any act of mental/psychological torture resulting in insanity, complete or partial amnesia, fear of becoming insane or suicidal tendencies of the victim due to guilt, worthlessness or shame.
- c) The penalty of prison correctional shall be imposed on those who commit any act of torture resulting in psychological, mental and emotional harm other than those described in paragraph (b) of this section.



d) The penalty of prison mayor in its medium and maximum periods shall be imposed if, in consequence of torture, the victim shall have lost the power of speech or the power to hear or to smell; or shall have lost an eye, a hand, a foot, an arm or a leg; or shall have lost the use of any such member; Or shall have become permanently incapacitated for labor.

e) The penalty of prison mayor in its minimum and medium periods shall be imposed if, in consequence of torture, the victim shall have become deformed or shall have lost any part of his/her body other than those forecited, or shall have lost the use thereof, or shall have been ill or incapacitated for labor for a period of more than ninety (90) days.

f) The penalty of prison correctional in its maximum period to prison mayor in its minimum period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for labor for more than thirty (30) days but not more than ninety (90) days.

g) The penalty of prison correctional in its minimum and medium period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for labor for thirty (30) days or less.

h) The penalty of arresto mayor shall be imposed for acts constituting cruel, inhuman or degrading treatment or punishment as defined in Section 5 of this Act.

i) The penalty of prison correctional shall be imposed upon those who establish, operate and maintain secret detention places and/or effect or cause to effect solitary confinement, incommunicado or other similar forms of prohibited detention as provided in Section 7 of this Act where torture may be carried out with impunity.

j) The penalty of arrest mayor shall be imposed upon the responsible officers or personnel of the AFP, the PNP and other law enforcement agencies for failure to perform his/her duty

to maintain, submit or make available to the public an updated list of detention centers and facilities with the corresponding data on the prisoners or detainees incarcerated or detained therein, pursuant to Section 7 of this Act.

**Section 15. Torture as a Separate and Independent Crime.** – Torture as a crime shall not absorb or shall not be absorbed by any other crime or felony committed as a consequence, or as a means in the conduct or commission thereof. In which case, torture shall be treated as a separate and independent criminal act whose penalties shall be imposable without prejudice to any other criminal liability provided for by domestic and international laws.

**Section 16. Exclusion from the Coverage of Special Amnesty Law.** – In order not to depreciate the crime of torture, persons who have committed any act of torture shall not benefit from any special amnesty law or similar measures that will have the effect of exempting them from any criminal proceedings and sanctions.

**Section 17. Applicability of Refouler.** – No person shall be expelled, returned or extradited to another State where there are substantial grounds to believe that such person shall be in danger of being subjected to torture. For the purposes of determining whether such grounds exist, the Secretary of the Department of Foreign Affairs (DFA) and the Secretary of the DOJ, in coordination with the Chairperson of the CHR, shall take into account all relevant considerations including, where applicable and not limited to, the existence in the requesting State of a consistent pattern of gross, flagrant or mass violations of human rights.

**Section 18. Compensation to Victims of Torture.** – Any person who has suffered torture shall have the right to claim for compensation as provided for under Republic Act No. 7309: Provided, that in no case shall compensation be any lower than ten thousand pesos (P10,000.00). Victims of torture shall also have the right to claim for compensation from such other financial relief programs that may be made available to him/her under existing law and rules and regulations.

**Section 19. Formulation of a Rehabilitation Program.** – Within one (1) year from the effectivity of this Act, the Department of Social Welfare and Development (DSWD), the DOJ and the Department of Health (DOH) and such other concerned government agencies, and human rights organizations shall formulate a comprehensive rehabilitation program for victims of torture and their families. The DSWD, the DOJ and the DOH shall also call on human rights nongovernment organizations duly recognized by the government to actively participate in the formulation of such program that shall provide for the physical, mental, social, psychological healing and development of victims of torture and their families. Toward the attainment of restorative justice, a parallel rehabilitation program for persons who have committed torture and other cruel, inhuman and degrading punishment shall likewise be formulated by the same agencies.

**Section 20. Monitoring of Compliance with this Act.** – An Oversight Committee is hereby created to periodically oversee the implementation of this Act. The Committee shall be headed by a Commissioner of the CRR, with the following as members: the Chairperson of the Senate Committee on Justice and Human Rights, the respective Chairpersons of the House of Representatives' Committees on Justice and Human Rights, and the Minority Leaders of both houses or their respective representatives in the minority.

**Section 21. Education and Information Campaign.** – The CHR, the DOJ, the Department of National Defense (DND), the Department of the Interior and Local Government (DILG) and such other concerned parties in both the public and private sectors shall ensure that education and information regarding prohibition against torture and other cruel, inhuman and degrading treatment or punishment shall be fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. The Department of Education (DepED) and the Commission on

Higher Education (CHED) shall also ensure the integration of human rights education courses in all primary, secondary and tertiary level academic institutions nationwide.

**Section 22. Applicability of the Revised Penal Code.** – The provisions of the Revised Penal Code insofar as they are applicable shall be suppletory to this Act. Moreover, if the commission of any crime punishable under Title Eight (Crimes Against Persons) and Title Nine (Crimes Against Personal Liberty and Security) of the Revised Penal Code is attended by any of the acts constituting torture and other cruel, inhuman and degrading treatment or punishment as defined herein, the penalty to be imposed shall be in its maximum period.

**Section 23. Appropriations.** – The amount of Five million pesos (Php5,000,000.00) is hereby appropriated to the CHR for the initial implementation of tills Act. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the annual General Appropriations Act.

**Section 24. Implementing Rules and Regulations.** – The DOJ and the CHR, with the active participation of human rights nongovernmental organizations, shall promulgate the rules and regulations for the effective implementation of tills Act. They shall also ensure the full dissemination of such rules and regulations to all officers and members of various law enforcement agencies.

**Section 25. Separability Clause.** – If any provision of this Act is declared invalid or unconstitutional, the other provisions not affected thereby shall continue to be in full force and effect.

**Section 26. Repealing Clause.** – All laws, decrees, executive orders or rules and regulations contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

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

### 13.3 INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND CRIMES AGAINST HUMANITY

AN ACT DEFINING AND PENALIZING  
CRIMES AGAINST INTERNATIONAL  
HUMANITARIAN LAW, GENOCIDE AND  
OTHER CRIMES AGAINST HUMANITY,  
ORGANIZING JURISDICTION,  
DESIGNATING SPECIAL COURTS, AND FOR  
RELATED PURPOSES

**Section 1. Short Title.** – This Act shall be known as the “Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity”.

## Section 2. Declaration of Principles and State Policies. –

a) The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to a policy of peace, equality, justice, freedom, cooperation and amity with all nations.

b) The state values the dignity of every human person and guarantees full respect for human rights, including the rights of indigenous cultural communities and other vulnerable groups, such as women and children;

c) It shall be the responsibility of the State and all other sectors concerned to resolved armed conflict in order to promote the goal of “Children as Zones of Peace”;

d) The state adopts the generally accepted principles of international law, including the Hague Conventions of 1907, the Geneva Conventions on the protection of victims of war and international humanitarian law, as part of the law of our nation;

e) The most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes;

f) The State shall guarantee persons suspected or accused of having committed grave crimes under international law all rights necessary to ensure that their trial will be fair and prompt in strict accordance with national and international law and standards for fair trial, It shall also protect victims, witnesses and their families, and provide appropriate redress to victims and their families, It shall ensure that the legal systems in place provide accessible and gender-sensitive avenues of redress for victims of armed conflict, and

g) The State recognizes that the application of the provisions of this Act shall not affect the legal status of the parties to a conflict, nor give an implied recognition of the status of belligerency.

Xxx                      xxx                      xxx

## CHAPTER III

### CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND OTHER CRIMES AGAINST HUMANITY

**Section 4. War Crimes.** – For the purpose of this Act, “war crimes” or “crimes against International Human Humanitarian Law” means:

a) In case of an international armed conflict, grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under provisions of the relevant Geneva Convention:

- (1) Willful killing;
- (2) Torture or inhuman treatment, including biological experiments;

- (3) Willfully causing great suffering, or serious injury to body or health;
- (4) Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
- (5) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (6) Arbitrary deportation or forcible transfer of population or unlawful confinement;
- (7) Taking of hostages;
- (8) Compelling a prisoner a prisoner of war or other protected person to serve in the forces of a hostile power; and
- (9) Unjustifiable delay in the repatriation of prisoners of war or other protected persons.

b) In case of a non-international armed conflict, serious violations of common Article 3 to the four (4) Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including member of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause;

- (1) Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;
- (2) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (3) Taking of hostages; and
- (4) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

c) Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law, namely:

(1) Internationally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(2) Intentionally directing attacks against

civilian objects, that is, object which are not military objectives;

(3) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions or Additional Protocol III in conformity with intentional law;

(4) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(5) Launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be excessive in relation to the concrete and direct military advantage anticipated;

(6) Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, and causing death or serious injury to body or health.

(7) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives, or making non-defended localities or demilitarized zones the object of attack;

(8) Killing or wounding a person in the knowledge that he/she is hors de combat, including a combatant who, having laid down his/her arms or no longer having means of defense, has surrendered at discretion;

(9) Making improper use of a flag of truce, of the flag or the military insignia and uniform



- of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions or other protective signs under International Humanitarian Law, resulting in death, serious personal injury or capture;
- (10) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives. In case of doubt whether such building or place has been used to make an effective contribution to military action, it shall be presumed not to be so used;
- (11) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind, or to removal of tissue or organs for transplantation, which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his/her interest, and which cause death to or seriously endanger the health of such person or persons;
- (12) Killing, wounding or capturing an adversary by resort to perfidy;
- (13) Declaring that no quarter will be given;
- (14) Destroying or seizing the enemy's property unless such destruction or seizure is imperatively demanded by the necessities of war;
- (15) Pillaging a town or place, even when taken by assault;
- (16) Ordering the displacements of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (17) Transferring, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of

- all or parts of the population of the occupied territory within or outside this territory;
- (18) Committing outrages upon personal dignity, in particular, humiliating and degrading treatments;
- (19) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions or a serious violation of common Article 3 to the Geneva Conventions;
- (20) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (21) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols;
- (22) In an international armed conflict, compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (23) In an international armed conflict, declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (24) Committing any of the following acts:
- i. Conscripting, enlisting or recruiting children under the age of fifteen (15) years into the national armed forces;
  - ii. Conscripting, enlisting or recruiting children under the age of eighteen (18) years into an armed force or group other than the national armed forces; and
  - iii. Using children under the age of eighteen (18) years to participate

actively in hostilities; and

- (25) Employing means of warfare which are prohibited under international law, such as:
- i. Poison or poisoned weapons;
  - ii. Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
  - iii. Bullets which expand or flatten easily in the human body, such as bullets with hard envelopes which do not entirely cover the core or are pierced with incisions; and
  - iv. Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict.

Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act.

Section 5. Genocide –

- a) For the purpose of this Act, “genocide” means any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, religious, social or any other similar stable and permanent group as such:
- 1) Killing members of the group;
  - 2) Causing serious bodily or mental harm to members of the group;
  - 3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
  - 4) Imposing measures intended to prevent births within the group; and
  - 5) Forcibly transferring children of the group to another group.
- b) It shall be unlawful for any person to directly and publicly incite others to commit genocide.

Any person found guilty of committing any of the acts specified in paragraphs (a) and (b) of this section shall suffer the penalty provided under Section 7 of this Act.

**Section 6. Other Crimes Against Humanity.** – For the purpose of this act, “other crimes against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- a) Willful killing;
- b) Extermination;
- c) Enslavement;
- d) Arbitrary deportation or forcible transfer of population;
- e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- f) Torture;
- g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime defined in this Act;
- i) Enforced or involuntary disappearance of persons;
- j) Apartheid; and
- k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act.

13.4 ADMINISTRATIVE ORDER 35

ADMINISTRATIVE ORDER NO. 35

CREATING THE INTER-AGENCY COMMITTEE ON EXTRA-LEGAL KILLINGS, ENFORCED DISAPPEARANCES, TORTURE AND OTHER GRAVE VIOLATIONS OF THE RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSONS

WHEREAS, Art. II, Section 11 of the 1987 Constitution declares that the State values the dignity of every human person and guarantees full respect for human rights;

WHEREAS, Art. III, Section 1 of the 1987 Constitution provides that no person shall be deprived of life, liberty or property without due process of law;

WHEREAS, Art. III, Section 2 of the 1987 Constitution provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable;

WHEREAS, Art III, Section 12 (1) of the 1987 Constitution provides that 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;

WHEREAS, Art. III, Section 12 (2) of the 1987 Constitution provides that no torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him, and that secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited;

WHEREAS, Art. III, Section 14 (1) of the 1987 Constitution provides that no person shall be held to answer for a criminal offense without due process of law;

WHEREAS, Art. III, Section Sec. 18 (1) of the

1987 Constitution provides that no person shall be detained solely by reason of his political beliefs and aspirations;

WHEREAS, there have been reported and validated violations of the above-declared rights of the individual throughout the years, which have served to create an impression of a culture of impunity, wherein security establishments of the State and non-state forces have been accused of silencing, through violence and intimidation, legitimate dissent and opposition raised by members of the civil society, cause-oriented groups, political movements, people’s and nor-government organizations, and by ordinary citizens;

WHEREAS, most of these violations remain uninvestigated and unsolved, with the perpetrators unidentified or unprosecuted, giving rise to more impunity;

WHEREAS, there is a need to revisit these unsolved cases of grave violations of the right to life, liberty, and security of persons, whether committed as part of an apparent government policy in the past or as recurring cases of unsanctioned individual abuse of power and authority by State and non-state forces under the present; and

WHEREAS, the present Administration declares as a matter of paramount policy that there is no room for all these forms of political violence and abuses of power by agents or elements of the State or non-state forces, and towards this end commits to establish an institutional legacy of an efficient, coherent, and comprehensive government machinery dedicated to the resolution of unsolved cases of political violence in the form of extra-legal killings, enforced disappearances, torture, and other grave violations of the right to life, liberty, and security of persons;

NOW, THEREFORE, I, BENIGNO S. AQUINO III, President of the Philippines, by virtue of the powers vested in me by the Constitution and by law do hereby order:

SECTION 1. Creation of the Inter-Agency Committee. There is hereby created an Inter-

Agency Committee on Extra Legal Killings, Enforced Disappearances, Torture, and Other Grave Violations of the Right to Life, Liberty, and Security of Persons, to be composed of the following:

Chairperson:	Secretary, Department of Justice (DOJ)
Members:	Chairperson, Presidential Human Rights Committee (PHRC)
	Secretary, Department of the Interior and Local Government (DILG)
	Secretary, Department of National Defense (DND)
	Presidential Adviser on the Peace Process (PAPP)
	Presidential Adviser for Political Affairs (PAPA)
	Chief of Staff, Armed Forces of the Philippines (AFP)
	Director General, Philippine National Police (PNP)
	Director, National Bureau of investigation (NBI)

The Committee shall invite the Chairperson of the Commission of Human Rights (CHR) and the Ombudsman as observers and resource persons of the Committee.

The above officials may designate their representatives to the Committee, who shall have a rank not lower than Assistant Secretary, or General and Chief Superintendent in the case of the AFP and the PNP.

The Committee shall organize a technical working group coming from the offices of the various members and a secretariat that may be designated by the Chairperson.

SECTION 2. Functions. The Committee shall undertake the following:

- a) Inventory of cases. For the first 30 days, the Committee shall conduct an inventory of all cases of extra-legal killings, enforced disappearances, torture, and other grave

violations of the right to life, liberty, and security of persons, perpetrated by State and non-state forces alike, from all government sources, i.e. the investigative and prosecutorial government offices, including the National Prosecution Service (NPS), the Ombudsman, CHR, PNP, NBI, AFP Inspector General, People’s Law Enforcement Board (PLEB), National Police Commission (NAPOLCOM), PNP Internal Affairs Service, the Judiciary and all others, for purposes of categorizing said cases, as follows:

- i. Unsolved Cases;
- ii. Cases under investigation;
- iii. Cases under preliminary investigation; and
- iv. Cases under trial.

Simultaneously, the Committee shall also source data of cases from non-government sources, specifically independent and non-partisan international and national human rights organizations and groups.



In determining which cases are to be included in the inventory, the Committee shall draw up guidelines for the consideration of doubtful cases with primacy given to the political complexion of the offense committed, and the participation of State or non-state forces in the commission of the human rights violation.

b) Investigation of unsolved cases. After conducting the inventory, the Committee shall prioritize the unsolved cases for action, and assign special investigation learns to conduct further investigation on these cases for the possible identification of the perpetrators. Greater priority shall be given to high profile cases perpetrated during the past administration.

c) Monitoring and reporting to the Committee of cases under investigation, preliminary investigation, and trial. For cases under investigation, preliminary investigation, and trial, the Committee shall designate a special oversight team composed of investigators and prosecutors who shall actively monitor developments on these cases and regularly report and submit recommendations to the Committee.

d) Investigation and prosecution of new cases. The Committee shall also designate a special team of investigators and prosecutors exclusively for new cases, for immediate investigation and prosecution of the perpetrators. Cases referred to or filed with the CHR or the Ombudsman shall be monitored by this special team for action on CHR and Ombudsman resolutions on said cases, if applicable, unless the investigation has already been started beforehand by, or complaints have already been filed with, the agencies under the Committee's jurisdiction, in which case the special team shall oversee, supervise and monitor the investigation or preliminary investigation conducted by the Committee's agencies, notwithstanding the conduct of an on-going investigation by the CHR or the Ombudsman. However, the special team shall actively coordinate with the

CHR and the Ombudsman in the conduct of these concurrent investigations.

In the case of torture, the special team shall ensure that Section 9 (a) of RA No. 9745 or the Anti-Torture Act of 2009 on the 60-day period for an investigation of a complaint for torture is followed by the DOJ, Public Attorney's Office (PAO), PNP, NBI, and the AFP.

e) Action upon the cases. After the report of every team, which shall be made as regularly and as expeditiously as possible, whether in the form of short memoranda, email, notes, field spot reports, SMS messages, and the like, the Chair shall take immediate action if such is within the jurisdiction of the agencies of the Department of Justice, without need of consultation or agreement of the other members, or in consensus with the concerned member of the Committee. In any case, the Chair shall have the discretion to table any matter for discussion and decision of the Committee, especially in the instance of high-profile or problematic cases.

f) Submission of report to the President. After the first six months from its creation, and every six months thereafter, the Committee shall submit a report to the President, detailing the inventory of cases according to category, and describing the accomplishments and progress made for each case, or the problems and obstacles encountered, highlighting problematic high profile cases from the past administration as well as violations committed during the present administration, with further recommendations for any additional action that may be taken by the President requiring coordination on a common course of action with the CHR, the Ombudsman, Congress, and the Judiciary.

**SECTION 3. Coordination and autonomy of members.** Nothing in this Administrative Order shall be interpreted to add to bureaucratic processes or regulations in order to achieve the mandate of the Committee or hamper the regular and ordinary course of functions of the

agencies under the jurisdiction of the Committee members. The individual agencies shall not be prevented from accomplishing what otherwise is ordinarily accomplished in the regular conduct of their operations and functions, unless otherwise specifically agreed upon by the Committee for purposes of coordinating and implementing concerted action for the achievement of the Committee's mandates.

**SECTION 4. Support and cooperation from other government agencies.** The various departments, bureaus, offices, agencies, and local government units are hereby enjoined to give full support, assistance and cooperation to the Committee in carrying out its mandate and functions.

**SECTION 5. Funding.** The initial funding requirements for the Inter-Agency Committee shall be charged against the current appropriations of the agencies composing the Committee. Thereafter, funding for the succeeding years shall be incorporated in their respective regular appropriations.

**SECTION 6. Repealing Clause.** This Administrative Order supersedes and repeals Administrative Order No. 211 (s.2007) on the creation of the Task Force Against Political Violence. The Task Force is hereby directed to submit and turnover all its documents, data, reports, supplies, resources, and remaining budget to the Committee, subject to regular procedures.

**SECTION 7. Effectivity.** This Administrative Order shall take effect immediately.

**DONE,** in the City of Manila, this 22nd day of November, in the year of our Lord, Two Thousand and Twelve.

(Sgd.) BENIGNO S. AQUINO III  
President of the Philippines

### 13.5 AO 35 REVISED OPERATIONAL GUIDELINES

REVISED OPERATIONAL GUIDELINES OF ADMINISTRATIVE ORDER NO. 35, s.2012

**WHEREAS,** Article II, Section 11 of the 1987 Constitution declares that the State values the dignity of every human person and guarantees full respect for human rights;

**WHEREAS,** Article III, Section 1 of the 1987 Constitution provides that no person shall be deprived of life, liberty or property without due process of law;

**WHEREAS,** Article III, Section 2 of the 1987 Constitution provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable;

**WHEREAS,** Article III, Section 12(1) of the 1987 Constitution provides that any person under investigation for the commission of an offense shall have the right to be informed of the right to remain silent and to have competent and independent counsel preferably of his own choice;

**WHEREAS,** Article III, Section 12(2) of the 1987 Constitution provides that no torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against any person, and that secret detention places, solitary incommunicado, or other similar forms of detention are prohibited;

**WHEREAS,** Article III, Section 14(1) of the 1987 Constitution provides that no person shall be held to answer for a criminal offense without due process of law;

**WHEREAS,** Article III, Section 18(1) of the 1987 Constitution provides that no person shall be detained solely by reason of political beliefs and aspirations;

**WHEREAS**, the Philippines is a state party to key international human rights instruments, among which are: (a) the International Convention on Civil and Political Rights and (b) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

**WHEREAS**, in becoming a State Party to these international human rights conventions, the Philippines undertook to harmonize and reflect in its laws, policies and practices the provisions of such conventions;

**WHEREAS**, being such a State Party, the Philippine Government passed Republic Act No. 9745, also known as “Anti-Torture Act of 2009” penalizing torture and other cruel, inhuman and degrading treatment or punishment;

**WHEREAS**, to further institutionalize the commitment of the Philippines to improve its human rights record, the Philippine Government enacted Republic Act No. 9851, also known as “Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity”;

**WHEREAS**, to fully adhere to the principles and standards of absolute condemnation and prohibition of enforced or involuntary disappearance, the President signed into law Republic Act No. 10353, also known as “Anti-Enforced or Involuntary Disappearance Act of 2012,” a first of its kind in Asia and another major legislative milestone on the protection and promotion of human rights;

**WHEREAS**, commitment to resolve cases of political violence and other various forms of human rights violations caused President Benigno Aquino III to issue Administrative Order No. 35, s.2012, entitled “Creating the Inter-Agency Committee on Extra-Legal killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons,” a comprehensive government mechanism mandated to monitor, investigate and prosecute cases of extra-legal killings, enforced disappearances, torture and other human rights violations;

**WHEREAS**, in order to ensure that violations are effectively investigated and successfully prosecuted, the Secretary of Justice and the Secretary of the Department of Interior and Local Government jointly formulated and issued through a Joint Department Order No. 003-2012, which outlines the Operational Guidelines for Prosecutors and Law Enforcement Investigators in Evidence-Gathering, Investigation and Case Build-Up; Inquest and Preliminary Investigation; and Trial of Cases of Political-Activist and Media Killings;

**WHEREAS**, there have been reported and validated violations of human rights of individuals, which have served to create an impression of a culture of impunity, wherein State and non-state forces have been accused of silencing, through violence and intimidation, legitimate dissent and opposition raised by members of the civil society, cause-oriented groups, political movements, people’s and non-government organizations, and by ordinary citizens;

**WHEREAS**, it is important to maintain a database of allegations of human rights violations in the form of extra-legal killings, enforced disappearances, torture, and other grave violations of the right to life, liberty, and security of persons in order to ensure well-coordinated and immediate response of the Philippine Government;

**WHEREAS**, the Government declares as a matter of paramount policy that there is no room for all these forms of violence and abuses of power by agents or elements of the State or non-state forces, and towards this end commits to establish an effective, government mechanism dedicated to the resolution of cases of violence in the form of extra-legal killings, enforced disappearances, torture, and other grave violations of the right to life, liberty, and security of persons;

**WHEREAS**, in order to carry out the implementation of Administrative Order No.35, s.2012, the Inter-Agency Committee signed and adopted on April 18, 2013 the Operational Guidelines of Administrative Order No. 35;

**WHEREAS**, in order to further enhance and make it more responsive to the needs of stakeholders, there is a need to revise the Operational Guidelines;

**NOW, THEREFORE**, in order to carry out the implementation of Administrative Order No. 35, s.2012, the following Revised Operational Guidelines are hereby prescribed and promulgated:

**ARTICLE I**  
**DEFINITION OF TERMS**

**SECTION 1. Definitions.** – In the implementation of Administrative Order No. 35, s.2012 (AO 35) and these Revised Operational Guidelines, the following terms shall mean:

- (a) **Extra-Legal Killings (ELK)** shall refer to killings wherein:
  - (1) The victim was:
    - (A) a member of, or affiliated with an organization, to include political, environmental, agrarian, labor, or similar causes; or
    - (B) an advocate of any of the above-named causes; or
    - (C) person(s) apparently mistaken or identified to be so.
  - (2) The victim was targeted and killed because of actual or perceived membership, advocacy, or profession;
  - (3) The person/s responsible for the killing is a state agent or non-state agent;
  - (4) The method and circumstances of attack reveal a deliberate intent to kill;

For purposes of the focused mandate of AO 35, other killings shall be addressed by other appropriate mechanisms within the justice system.

- (b) **State Agent** shall refer to a person who, by direct provision of law, popular election or appointment by competent authority, takes part in the performance of public functions in the government, or who performs in the government or in any of its branches, public

duties as an employee, agent or subordinate official, of any rank or class.

Any other person who does not fall under the above-definition shall be deemed as a Non-State Agent, including those listed, classified or designated by international/ supranational jurisdictions.

(c) **Enforced or Involuntary Disappearance (EID)** shall refer to the arrest, detention, abduction or any other form of deprivation of liberty committed by the agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by the refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law.

(d) **Torture** shall refer to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.

(e) **Other Grave Human Rights Violations** shall refer to acts that grossly violate an individual’s right to life, liberty and security of persons and/or their physical or mental integrity and dignity including, but not limited to, Enforced Disappearance, Torture and other violations enumerated under Sections 4 (War Crimes), 5 (Genocide) and 6 (Other Crimes against Humanity) of R.A. No. 9851.

(f) AO 35 Cases shall refer to cases of extra-



legal killings (including those committed in the attempted and frustrated stages), enforced or involuntary disappearances, torture, and other grave human rights violation cases involving right to life, liberty and security of persons and other cases identified by the IAC.

(g) **Special Investigation Team (SIT)** shall refer to composite teams of prosecutors and investigators designated to investigate, prosecute and monitor AO 35 cases or incidents.

(h) **Special Oversight Team (SOT)** shall refer to a composite team of investigators and prosecutors tasked to evaluate and oversee the investigation by the SITs, supervise the management of AO 35 cases, and to regularly report and submit recommendations to the TWG and IAC thru the AO 35 Secretariat.

(i) **Inter-Agency Committee (IAC)** shall refer to a body created under AO 35 tasked to monitor and ensure the speedy disposition of extra-legal killings, enforced or involuntary disappearances, torture, and other grave violations of the right to life, liberty and security of persons.

(j) **Technical Working Group (TWG)** shall refer to a body composed of the representatives of the member-agencies and observers/resource persons of the IAC which shall serve as the central support system to the Committee in the monitoring and handling of AO 35 cases.

(k) **Observers/Resource Persons** shall refer to the Chairman of the Commission on Human Rights (CHR) and the Ombudsman or any of their authorized representatives. The IAC may further designate others as additional observers/resource persons.

(l) **Other Supporting Agencies** shall refer to other government agencies in the executive department that are not members of the IAC enjoined to give full support, assistance and cooperation to the Committee in carrying out its mandate and functions.

(m) **Special Interest Cases** shall refer to cases identified by the IAC as such because of the presence of any of the following circumstances:

- (1) High media attention;
- (2) Highlighted or monitored by international agencies, organizations, or institutions;
- (3) Given special attention by other stakeholders;
- (4) The victim or suspect is a public personality; and
- (5) Other cases as may be determined by the IAC.

(n) **Unsolved Cases** shall refer to incidents that were previously investigated by the Philippine National Police (PNP), the National Bureau of Investigation (NBI) or the Commission on Human Rights (CHR) prior to November 22, 2012.

(o) **Cold Cases** shall refer to AO 35 cases under investigation where:

- (1) The incident was previously investigated and would have been treated as an AO 35 case but where no complaint was filed due to lack of sufficient evidence, or unwillingness of eyewitnesses to cooperate in the investigation, or to give information, or for total lack of witnesses.
- (2) The case was dismissed by the National Prosecution Service (NPS) or the Office of the Ombudsman due to lack of probable cause.

However, the person/s implicated in a case that was resolved to be classified as a cold case, shall forthwith be delisted from the list of possible perpetrators after due assessment is conducted by the SOT on the said person/s' purported participation. The SOT shall thereafter recommend to the IAC the approval to delist the aforesaid person/s. The delisting of such name/s shall be without prejudice to their re-inclusion if the case is revived due to newly obtained evidence sufficiently showing the person/s participation as the perpetrator/s thereof.

(p) **Closed Cases** shall refer to AO 35 cases which may have been disposed with finality by the court, where all the accused are already deceased or the crime has already prescribed.

(q) **Cases Under Investigation** shall refer to incidents that are presently undergoing investigation by law enforcement offices/ Special Investigation Teams for the possible conduct of preliminary investigation with the National Prosecution Service or the Ombudsman.

(r) **Delisted Cases** shall refer to the following cases that were removed from the inventory of AO 35 cases as determined by the IAC:

- (1) Closed Cases
- (2) Cases which were classified as AO 35 cases but after due diligence were discovered to be not covered by the following definitions as stated under Section 1 of Article I:
  - (A) Extra-Legal Killings
  - (B) Torture
  - (C) Enforced or Involuntary Disappearance
  - (D) Other grave human rights violations

(s) **Cases Under Re-Investigation** shall refer to cases identified by the SOT for further investigation.

(t) **Cases Under Preliminary Investigation** shall refer to cases that are undergoing preliminary investigation either by the NPS or the Ombudsman.

(u) **Cases on Appeal** shall refer to cases where the resolution of the prosecutor is appealed by way of petition for review before the Office of the Secretary of Justice or to the Ombudsman.

(v) **AO 35 Prosecutors** shall refer to prosecutors designated to lead special investigation teams (SITs) in the investigation and build-up of AO 35 Cases.

(w) **Investigating Prosecutor** shall refer to the prosecutor who is tasked to conduct a preliminary investigation in an AO 35 Case.

(x) **Trial Prosecutor** shall refer to the prosecutor who is in charge of the active prosecution of an AO 35 case in court.

(y) **Law Enforcement Agency** shall refer to the Philippine National Police (PNP) or the National Bureau of Investigation (NBI), or to any of its offices or sub-offices or other law enforcement agencies of the government ordered by competent authorities to investigate AO 35 cases and/or arrest those responsible therefor.

(z) **Law Enforcement Investigator/AO 35 Investigator** shall refer to the investigator from a law enforcement agency as defined in the preceding paragraph designated as part of the composite team led by the AO 35 prosecutor in the investigation and build-up of AO 35 cases.

(aa) **Case Build-Up** shall refer to the entire process of investigation and case preparation including, but not limited to, the collection and preservation of evidence, documentation, and identification of suspects to ensure the successful prosecution of the case.

## ARTICLE II SOURCES OF INFORMATION

**SEC. 2. Sources of Information.** – The following shall be the sources of information:

(a) PNP, NBI and other law enforcement agencies;

(b) Fact-Finding Committees and other ad hoc bodies created by laws, ordinances, department orders, administrative issuances, or judicial orders for purposes of information-gathering, the conduct of investigation, and submission of findings and recommendations relative to AO 35 cases;

(c) CHR and Ombudsman;

(d) AO 35 member-agencies which may separately provide information on AO 35 cases which are submitted to the IAC

for appropriate action;

- (e) Other government offices or units;
- (f) Media, advocates and other private entities, including civilians/human rights/civil society organizations and other groups;
- (g) Reports from international entities including United Nations bodies, international NGOs and foreign governments, on possible human rights violations identified under AO 35.

### ARTICLE III SYSTEM OF COOPERATION

#### A. Unsolved Cases

**SEC. 3. Reinvestigation by Special Investigation Teams (SIT).** – Unsolved cases identified by the IAC, especially those that transpired between 2001 up to November 22, 2012 shall be re-evaluated and re-investigated by Special Investigation Teams (SITs) that shall be created by the IAC or by the Chairperson of the IAC.

**SEC. 4. Duties and Responsibilities of SITs.** – As soon as practicable after their creation, an SIT led by an AO 35 prosecutor shall convene in order to thoroughly study the records of the case, interview the relatives of the victim, conduct an ocular inspection of the crime scene, interview possible witnesses to the incident, and exert all other efforts which may lead to the identification of the person/s responsible for the crime.

**SEC. 5. Period of Reinvestigation; Extensions.** – The SIT shall expeditiously work on the unsolved cases and finish their reinvestigation and case build-up within a period of thirty (30) days from their initial meeting, unless otherwise extended by the SOT for another thirty (30) days upon their prior written request and only on meritorious grounds such as difficulty in obtaining testimonies or cooperation of witnesses.

**SEC. 6. Investigation Report.** – Upon completion of the reinvestigation, the SIT shall submit a Final Investigation Report to the IAC Secretariat

containing the following:

- (a) Summary of the Incident (which shall include name and affiliation of the victim/s and the suspect/s);
- (b) Brief narrative on the previous investigative efforts and their results;
- (c) Detailed narrative on the SIT's reinvestigation efforts and their results;
- (d) Enumeration and evaluation of evidence;
- (e) Findings;
- (f) Conclusion;
- (g) Recommendation; and,
- (h) Annexes of pertinent documents

**SEC. 7. Filing of Complaint.** – Should the SIT find sufficient evidence for the filing of a complaint, the complaint shall be prepared together with the report. The complaint shall be immediately filed with the appropriate prosecution office.

The complaint shall contain an Indorsement signed by the AO 35 Investigator who is a member of the SIT, indicating that the investigation was conducted pursuant to AO 35 and these Revised Operational Guidelines. The SIT shall furnish the Secretariat a copy of the complaint after it is duly filed.

**SEC. 8. Deliberations and Action of SOT.** – Unless the SIT recommends the filing of a complaint, the Secretariat shall, upon receipt of the Investigation Report from the SIT, calendar the same for discussion by the SOT. The SOT, after conduct of deliberations and thorough review of the records, may direct the SIT to do any of the following actions:

- (a) That the case be further reinvestigated by the SIT; or
- (b) That other actions be performed in relation to case build-up.

Should the SOT find sufficient evidence, the SOT, without need of approval of the IAC, shall direct the SIT concerned to prepare a complaint and immediately file the same with the appropriate prosecution office. The Secretariat shall be furnished a copy of the complaint after it is duly filed.

Should the SOT recommend that the case be delisted or deemed closed, the same shall be reported to the IAC for its consideration and approval.

**SEC. 9. IAC Action.** – Acting on the recommendations of the SOT to close or delist the case, the IAC may adopt, modify, or otherwise overturn the same, or altogether create another team to reinvestigate the case anew. The IAC may seek involvement of other agencies which may not be a member of the Committee or take any other appropriate action.

**SEC. 10. Change of SIT Composition.** – If it appears at any time during the investigation and case build-up that an AO 35 agency may be somehow involved in the incident subject of the investigation, the AO 35 prosecutor may reorganize the SIT.

#### B. New Cases

**SEC. 11. Initial Assessment and Report.** – When a killing (which shall be deemed to include an attempted or frustrated killing) or a deprivation of liberty or a suspected case of torture or other suspected AO 35 violations occurs or are reported, the local police or NBI office or unit concerned shall make an initial assessment and report based on the following guidelines:

- (a) Whenever there is an incident of killing, whether there is information that the victim is a member/affiliated or has links with any advocacy group or organization such as, but not limited to, political, environmental, agrarian, labor, or similar causes.
- (b) Whenever there is an enforced or involuntary disappearance, whether the deprivation of liberty is suspected to have been committed by agents of the State or by persons or groups of persons suspected to have acted with the authorization, support or acquiescence of agents of the State;
- (c) Whether there are apparent signs, allegations, or information of severe pain or suffering suspected to have been inflicted by persons in authority or their agents

on the victim; and

- (d) Whether there are armed conflict violations or acts committed as part of a widespread or systematic attack directed against any civilian population, when: (1) the victim is a civilian, hors de combat, (wounded, sick, captured or surrendered fighter), medical/religious personnel; and (2) perpetrator is from the government security forces or non-state armed group.

The initial assessment must be made within seventy-two (72) hours after deployment by the local police or NBI office or unit, and the corresponding report shall be submitted to the Chief of Police, or District Chief Agent of the NBI as the case may be.

Within 24 hours upon approval of the report by the Chief of Police or the District Chief Agent of the NBI as the case may be, the same shall be endorsed to the City or Provincial Prosecutor concerned, who shall transmit the report to a designated AO 35 Prosecutor. The endorsement of the Chief of Police or District Chief Agent of the NBI as the case may be, shall also include names of the recommended list of investigators that may form part of the SIT.

If in case the investigation has been started by a Special Investigation Task Group or Task Forces of the PNP or similar teams of the NBI, within 24 hours upon convening thereof, the same shall prepare an initial report containing the assessment as provided in the above-mentioned guidelines. The same shall be endorsed to the City or Provincial Prosecutor concerned, who shall transmit the report to a designated AO 35 Prosecutor.

**SEC. 12. Designation of AO 35 Prosecutors.** – There shall be a roster of AO 35 prosecutors who shall be available on an on-call basis in order to serve as team leaders in the investigation and case build-up of AO 35 Cases.

**SEC. 13. Convening of the SIT.** – Within 24 hours, upon receipt of the endorsement of the Chief of Police, NBI head of office, Head/Commander of the Special Investigation Task Group (SITG)



of the report, the City or Provincial Prosecutor shall transmit the same to the designated AO 35 Prosecutor.

Within 24 hours, the AO 35 Prosecutor shall determine whether the incident is an AO 35 case and decide whether or not to convene an SIT. Should the AO 35 prosecutor deem it necessary, he or she may enlist the support and cooperation of other government agencies in the case build-up and other related matters.

**SEC. 14. Duties and Responsibilities of the SIT.** – The SIT shall have the following duties and responsibilities:

(a) Duties of the prosecutor:

- (1) To coordinate and supervise the case build-up;
- (2) To make an initial determination as to whether the incident reported is an AO 35 case on the basis of the documents submitted by the Chief of Police or the Chief District Agent of the NBI as the case may be, and when necessary, the AO 35 Prosecutor shall direct the law enforcement agencies concerned to gather additional evidence to aid in his/her initial determination. Should the AO 35 Prosecutor determine that the incident reported is an AO 35 case, he/she shall convene the SIT, if he/she finds it necessary;
- (3) To evaluate the periodic report submitted by the law enforcement office concerned and make proper recommendations with the view of case build-up;
- (4) To recommend the immediate or provisional coverage of qualified witnesses and/or their immediate families under the Witness Protection, Security and Benefit Program (WPSBP) of the Department of Justice (DOJ). Likewise, recommend sufficient government protection for other witnesses and relatives, and qualified persons under R.A. No. 9745, R.A. No.

10353, and other relevant laws;

(5) Upon convening the SIT, to submit reports every thirty (30) days on the progress of the investigation to the Secretariat of the IAC;

(6) To prepare monthly reports to the IAC Secretariat on the status, progress and challenges of the case during preliminary investigation or during trial;

(7) If at any time the AO 35 Prosecutor determines that the incident reported is not an AO 35 case, to make proper report or recommendation to the IAC and TWG through the Secretariat.

(b) Duties of investigators:

- (1) To identify witness/es and assist in the preparation of their Statement/s;
- (2) To gather/collect pieces of evidence and determine the possible referral of the same to other concerned investigating units;
- (3) To identify and locate the perpetrators/s;
- (4) To submit reports/documents and pieces of evidence to the AO 35 prosecutors for the latter's evaluation prior to the referral of the case to the concerned prosecutor's office;
- (5) To comply with guidance or advice given by the AO 35 prosecutors; and
- (6) To initiate coordination and support with other concerned entities including the AFP.

(c) Joint responsibilities of SIT members:

- (1) To immediately investigate a possible AO 35 case for purposes of filing the appropriate charges with the prosecution office;
- (2) To ensure the proper handling and preservation of all the evidence collected;
- (3) To prepare and file the complaint and supporting evidence, where applicable;
- (4) To continuously monitor the progress of the case and coordinate with the trial prosecutor during the course of the trial;
- (5) To perform such other tasks as the IAC, SOT or the TWG may direct, thru the

Secretariat, for them to perform. The SIT shall periodically submit a written update to the IAC Secretariat on the status of the case. (6) To regularly convene for the purpose of evaluating and gathering additional evidence when necessary to strengthen the case:

- (A) To identify witnesses, consult with victims or their families, and assist in the preparation of their sworn statements;
- (B) To invite the participation of other government agencies as may be deemed necessary or beneficial to the investigation;
- (C) To submit monthly reports about the progress of the investigation to the Secretariat of the IAC;
- (D) To ensure the proper handling and preservation of all the evidence collected; and
- (E) To perform such other tasks as the IAC, SOT or the TWG may direct them to perform thru the Secretariat.

**SEC. 15. Change of SIT Composition.** – If it appears at any time during the investigation and case build-up that the SIT can no longer effectively perform its function based on its current composition, the AO 35 Prosecutor shall initiate the coordination for a change in the assigned investigators. Within five (5) days after the re-organization, notice shall be sent to the IAC thru the Secretariat stating the reasons for the change in the composition.

**SEC. 16. Investigation Report.** – Within thirty (30) days from the time it convenes, the SIT shall submit an Investigation Report to the IAC thru Secretariat.

The Investigation Report shall contain the following:

- a. Summary of the Incident (which shall include the name and affiliation of the victim and the suspect);
- b. Detailed narrative on the SIT investigation efforts and their results;
- c. Enumeration and evaluation of evidence;
- d. Findings;
- e. Conclusion;
- f. Recommendation; and
- g. Annexes of pertinent documents.

Should the SIT find sufficient evidence for the filing of a complaint, the complaint shall be prepared together with the report. The complaint shall be immediately filed with the appropriate prosecution office.

The complaint shall contain an Indorsement signed by the AO 35 Investigator who is a member of the SIT, indicating that the investigation was conducted pursuant to AO 35 and these Revised Operational Guidelines. The SIT shall furnish the Secretariat a copy of the complaint after it is duly filed.

**SEC. 17. Deliberations and Action of SOT.** – Unless the SIT recommends the filing of a complaint, the Secretariat shall, upon receipt of the Investigation Report from the SIT, calendar the same for discussion by the SOT.

The SOT, after conduct of deliberations and thorough review of the records, may direct the SIT to do any of the following actions:

- (a) That the case be further reinvestigated by the SIT; or
- (b) That other actions be performed in relation to case build-up. Should the SOT find sufficient evidence, the SOT, without need of approval by the IAC, shall direct the SIT concerned to prepare a complaint and to immediately file the same with the appropriate prosecution office. The SIT shall furnish the Secretariat a copy of the complaint after it is duly filed.

Should the SOT recommend that the case be delisted or deemed closed, the same shall be reported to the IAC for its consideration and approval.

**SEC. 18. IAC Action.** – Acting on the recommendations of the SOT to close or delist the case, the IAC may adopt, modify, or otherwise overturn the same, or altogether create another team to reinvestigate the case anew. The IAC may seek involvement of other agencies which may not be a member of the Committee, and/or take any other appropriate action.

**SEC. 19. Inquest of AO 35 Cases, when SIT has yet to be convened.** – In instances of warrantless

arrests, the investigating officers shall immediately conduct an initial assessment in order to determine whether the offense for which the person was arrested falls under any of the circumstances enumerated under Section 11 of these Guidelines. If any of such circumstances is present, the investigating officers shall inform the AO 35 prosecutor, through any expedient means, about the arrest and pending inquest proceedings. The said investigating officer/s shall also certify before the inquest prosecutor his or her initial assessment that the person/s arrested subject of inquest may have possibly committed a case covered by AO 35. The AO 35 prosecutor, upon receipt of the notice from the investigating officer/s, shall thereafter convene the SIT.

**SEC. 20. Inquest of AO 35 Cases, when SIT has been convened.** – In instances where the SIT has been convened and the person suspected of committing a crime covered by AO 35 is taken into custody by other law enforcers without a warrant under circumstances allowed by the law/rules, the investigating officer shall immediately inform, by any expedient means, the AO 35 prosecutor of the said SIT of such warrantless arrest.

The investigating officer/s shall then furnish the inquest prosecutor with all documents necessary for the conduct of inquest proceedings and shall indicate if the complaint is a possible AO 35 case.

The SIT shall continue to act on the case in accordance with Section 14 of these Guidelines. For purposes of this Section, both the AO 35 investigators and the AO 35 prosecutor are enjoined to take advantage of the innovations or advancements in communications technology in order to facilitate and expedite their coordination efforts.

#### ARTICLE IV INQUEST

**SEC. 21. Additional duty of inquest prosecutor, when the person delivered is a victim of enforced disappearance.** – Any inquest or investigating prosecutor who learns that the person delivered for inquest (respondent) is a victim or a probable

victim of enforced or involuntary disappearance shall have the duty to immediately disclose the probable victim's whereabouts to his or her immediate family, relatives, lawyer/s, the CHR, or any human rights organization such as, but not limited to, FIND (Families of Victims of Involuntary Disappearance) and Desaparecidos (Families of Desaparecidos for Justice), by the most expedient means through any of the following modalities, including but not limited to:

- (a) Telephone
- (b) SMS; or
- (c) Electronic mail.

The inquest prosecutor shall inquire from the respondent whether or not the respondent's immediate family or relatives, lawyer, the CHR or any human rights organization, have been informed of the respondent's arrest and/or detention, including his or her whereabouts; and if so, the details or particulars of such communication as regards to name/s of person/s communicated, their contact details, and the time of communication.

If the respondent is accompanied by his or her family or relatives, lawyer, or other persons other than the arresting officers, the prosecutor shall likewise verify from the said companion/s the time or particulars of the communication with the respondent. The prosecutor shall include in the minutes of proceedings the facts and details of communication to the respondent's family, relatives, the CHR and/or other human rights organizations, and require the said respondent, as well as his or her companion and the arresting officers, to sign thereon. The DOJ shall ensure that a list of updated contact details of concerned CHR Offices and other human rights organizations shall be available at all times to prosecutors.

#### ARTICLE V PRELIMINARY INVESTIGATION

**SEC. 22. Transmittal of Information to Court.** – Once the resolution finding probable cause is approved by the Prosecutor General, City or Provincial Prosecutor, the transmittal to the appropriate Office of the Clerk of Court shall state that the case involves an extra-legal killing,

enforced or involuntary disappearance, torture, or other grave human rights violation as the case may be. If the case involves an extra-legal killing, the transmittal should invoke Administrative Order No. 25-2007 of the Supreme Court in order for the case to be raffled to any of the designated special courts.

**SEC. 23. Report to IAC Secretariat.** – The AO 35 prosecutor shall prepare monthly reports to the IAC Secretariat on the efforts of the SIT and the status, progress and challenges of the case during preliminary investigation.

#### ARTICLE VI TRIAL

**SEC. 24. Reports.** – Periodic reports shall be submitted by the AO 35 prosecutor to the IAC Secretariat on the status and progress of the case. No plea bargaining shall be allowed without the prior written consent or authority from the Regional Prosecutor or Secretary of Justice.

#### ARTICLE VII AO 35 STRUCTURES

##### A. Inter-Agency Committee (IAC)

**SEC. 25. Composition.** – The IAC shall refer to the high-level policy-making and oversight body tasked to monitor and ensure the speedy resolution of AO 35 cases which shall be headed by the Secretary of the Department of Justice (DOJ) as the Chairperson. The members of the IAC shall be the following:

- (a) Secretary of the Department of Interior and Local Government (DILG);
- (b) Secretary of the Department of National Defense (DND);
- (c) Chairperson of the Presidential Human Rights Committee (PHRC);
- (d) Presidential Adviser on the Peace, Reconciliation, and Unity (PAPRU);
- (e) Presidential Adviser for Political Affairs (PAPA);
- (f) Chief of Staff of the Armed Forces of the Philippines (AFP);
- (g) Chief of the Philippine National

Police (PNP); and  
(h) Director of the National Bureau of Investigation (NBI).

The observers and resource persons of the Committee are the Chairperson of the CHR and the Ombudsman. The Committee may involve the participation of other executive offices also, as observers and resource persons. The above members of the IAC may designate their representatives to the Committee, who shall have the rank not lower than Assistant Secretary, or Brigadier General in the case of the AFP and Police Brigadier General in the case of the PNP.

**SEC. 26. Functions.** – The IAC shall direct the policy formulation and implementation with regard to the investigation and prosecution of cases involving an AO 35 case. As such it shall have the following functions:

- (a) To develop a mechanism for the unification and inventory of all cases of extra-legal killings, enforced disappearances, torture, and other grave violations of human rights, committed by both State and Non-State Agents from all government as well as non-government sources, to include independent and non-partisan international and national human rights organizations;
- (b) To create special oversight teams that will supervise the investigations of AO 35 cases;
- (c) To create or revise the composition of special investigation teams that will supervise, monitor and/or coordinate actual investigations of AO 35 cases until its final resolution;
- (d) To create, upon the recommendation of any AO 35 structure or IAC member, Special Tracker Teams, or to direct existing tracker teams from law enforcement agencies, or a combination thereof, to share information, coordinate and operate under the ambit of AO 35, specifically to locate and effect the arrest of the accused in AO 35 cases in order to undergo trial;



(e) To monitor the development of cases under investigation, preliminary investigation and trial through the duly designated special oversight teams and adopt, modify, or otherwise overturn the recommendations of the same;

(f) To engage and liaise with the Supreme Court (SC), through the Office of the Court Administrator (OCA), to raise the Judiciary's awareness on AO 35 cases and the efforts of AO 35 structures to ensure the successful prosecution and speedy disposition thereof.

(g) To develop and support programs that will enhance and strengthen relations of the IAC and its member-agencies with domestic and international stakeholders such as, but not limited to, International Organizations, Non-Governmental Organizations, Civil Society Organizations;

(h) To report to the President, once a year, on the inventory of cases, describing the accomplishment and progress made for each case, or the problems and obstacles encountered, highlighting problematic high-profile cases; and

(i) To present recommendations for any additional action that may be taken by the President requiring coordination on a common course of action with the CHR, the Ombudsman, Congress and the Judiciary.

**SEC. 27. Meetings.** – The IAC shall meet biannually or as may be requested by the Chairperson on matters of policy coordination or cases which may require high-level discussion of principals.

For purposes of adopting resolutions, the IAC members, may sign the same without convening a meeting upon the initiation by the Chairperson.

**SEC. 28. Quorum.** – A majority of the member agencies of the IAC shall constitute a quorum. No resolution shall be adopted without a quorum.

## B. Special Oversight Team

**SEC. 29. Composition.** – There shall be one (1) Special Oversight Team (SOT) each for Luzon, Visayas and Mindanao. Each SOT shall be composed of five (5) members: two (2) Prosecutors, two (2) PNP investigators and one (1) NBI agent, all of which must possess sufficient experience. The most senior prosecutor shall be the head of each SOT.

**SEC. 30. Functions.** – the SOT shall have the following powers and functions:

- (a) To review reports submitted by the SIT and to take appropriate action thereon in accordance with these Operational Guidelines;
- (b) To make such other recommendations to the IAC for the purpose of facilitating the resolution of cases.
- (c) To perform such other functions as may be directed by the IAC.

**SEC. 31. Meetings.** – Each SOT shall have regular meetings at least once a month. The IAC or the Chairperson of the Committee may, however, convene any of the SOT at any time.

## C. Special Tracker Teams (STT)

**SEC. 32. Composition.** – Special Tracker Team(s) shall be composed of personnel from the PNP, the NBI, or from other law enforcement agencies of the government, or a combination of any of the foregoing, created to effect the arrest of the accused in AO 35 cases. Personnel from the AFP or other security forces of the government may be directed to complement the Special Tracker Teams created, especially if the accused to be arrested is from the agency concerned.

**SEC. 33. Functions.** – Special Tracker Team(s) shall have the following functions:

- (a) Submit an Operational Plan to the secretariat;
- (b) Conduct manhunt operations to locate the accused;
- (c) Effect the arrest of the accused.

**SEC. 34. Reporting Functions.** – Tracker Teams shall submit, by any expeditious means, its report on the progress of its efforts to the SOT at least twice a month.

**SEC. 35. Dissolution.** – Tracker Teams may be dissolved upon completion of their functions or upon orders of the IAC.

## D. Technical Working Group (TWG)

**SEC. 36. Composition.** – There is hereby created a Technical Working Group (TWG) which shall be composed of representatives from IAC member-agencies.

**SEC. 37. Functions.** – The TWG shall have the following powers and functions:

- (a) To process cases for the consideration of the IAC;
- (b) To ensure the effective and efficient implementation of AO 35 and the continuous and periodic evaluation thereof;
- (c) To formulate and/or monitor plans, projects and activities of AO 35 structures;
- (d) To oversee information, publication and public relation programs for nationwide dissemination of information regarding the programs/projects of the IAC;
- (e) To prepare regular reports to the IAC and to the President; and
- (f) To recommend policy direction to the IAC.

**SEC. 38. Meetings.** – The TWG shall hold regular meetings where named members or nominees of IAC member-agencies are enjoined to actively participate.

## E. Secretariat

**SEC. 39. Functions.** – The IAC Secretariat shall have the following powers and functions:

- (a) To coordinate the business of the IAC, including the preparation of agenda for each meeting, the circulation of papers and the communication and consultation among member-agencies;
- (b) To help coordinate the efforts of all other AO 35 structures;

- (c) To manage the database of AO 35 cases;
- (d) To manage the reportorial requirements of all AO 35 structures; and
- (e) To provide personnel, budgetary and other administrative services to support the functions and of all AO 35 structures.

**SEC. 40. Administration of the AO 35 Secretariat.** – The Head of the AO 35 Secretariat shall be appointed by the Chairperson of the IAC. The Head of the Secretariat shall administer and supervise the internal operations of the Secretariat as well as the implementation of the various programs of all the AO 35 structures.

## ARTICLE VIII COOPERATION WITH VICTIMS/ VICTIMS FAMILIES, INTERNATIONAL ORGANIZATIONS (IOs), NON- GOVERNMENTAL ORGANIZATIONS (NGOs), CIVIL SOCIETY ORGANIZATIONS (CSOs) AND OTHER STAKEHOLDERS

**SEC. 41. Sharing of Information.** – The IAC, in pursuance of its adopted communication plan, may share information it deems relevant with victims and their families, IOs, NGOs, CSOs and other stakeholders, provided that the rights of the accused will not be violated or that the disclosure would not interfere with the administration of justice.

**SEC. 42. Engagement with IOs, NGOs, CSOs and other stakeholders.** – In pursuit of its mandate, the IAC may seek and accept the assistance of IOs, NGOs, CSOs and other stakeholders, among others, in obtaining relevant information, promoting grassroots advocacy and strengthening the capacity of the AO 35 structures. The IAC may make suitable arrangements for consultation with the said parties.

## ARTICLE IX FINAL PROVISIONS

**SEC. 43. Separability.** – If any section of these Revised Guidelines or part thereof is held invalid or unconstitutional, the remainder not otherwise affected shall remain valid and subsisting.

**SEC. 44. Effectivity.** – These Revised Guidelines shall take effect immediately. The internal rules of procedure of the Philippine National Police, National Bureau of Investigation and the National Prosecution Service shall be supplemental to this Revised Operational Guidelines.

Adopted by the Inter-Agency Committee this 12th day of May 2022.  
Pasay City, Philippines.

13.6 DEPARTMENT CIRCULAR 20

In the interest of the service, pursuant to the provisions of existing laws, and in order to promote efficient and effective administration of justice, all prosecutors of the National Prosecution Service are hereby directed to strictly observe and implement the following policies and guidelines relative to their pro-active involvement in the investigation of crimes:

**Section 1. Policy.** – The conduct of preliminary investigation is an executive function wherein the prosecutor exercises investigative or inquisitorial powers, the sole purpose of which is to determine whether a crime has been committed and whether there is a prima facie case against respondent and a reasonable certainty of conviction based on the available documents, witness/es, real evidence and the like. It includes the powers to administer oaths, summon witnesses, require the production of documents by a subpoena duces tecum, to inspect records and premises, investigate the activities of persons or entities coming under the prosecutor’s jurisdiction, to secure or require the disclosure of information by means of accounts, records, reports, statements, the testimony of witnesses, and production of documents, take oral evidence of witnesses, subpoena witnesses to appear and testify under oath before them.

Accordingly, as a matter of policy, and consistent with law, relevant Department of Justice issuances, and these guidelines, all prosecutors shall take an active role in the investigation of crimes covered by these guidelines, particularly during the case

build-up stage where they may require, assist or otherwise cooperate with the complainants and/or law enforcement agencies<sup>4</sup> (LEA).

**Section 2. Quantum of Proof.** – In carrying out such role, prosecutors must ensure the existence of a prima facie case and a reasonable certainty of conviction based on available documents, witness/es, real evidence and the like. Prima facie evidence is such status of evidence which on its own and if left uncontroverted, is sufficient to establish all the elements of a crime.

**Section 3. Scope.** – These guidelines shall apply to the following:

- (a) Heinous crimes, such as but not limited to the following:
  - (1) Treason under Article 114 of the Revised Penal Code (RPC);
  - (2) Piracy and Qualified Piracy under Articles 122 and 123 of the RPC, respectively;
  - (3) Qualified Bribery under Article 211-A of the RPC;
  - (4) Parricide under Article 245 of the RPC;
  - (5) Murder under Article 248 of the RPC;
  - (6) Infanticide under Article 255 of the RPC;
  - (7) Kidnapping and Serious Illegal Detention under Article 267 of the RPC;
  - (8) Robbery with violence against and intimidation of persons under Article 294 of the RPC;
  - (9) Destructive Arson under Article 320 of the RPC;
  - (10) Rape under Article 335 of the RPC
  - (11) Plunder under Republic Act No. 7080; and
  - (12) Carnapping under Section 14 of Republic Act No. 6539;

(b) All violations of Republic Act No. 9165, otherwise known as “The Dangerous Drugs Act, as amended” as amended by Republic Act No. 10640;

(c) All violations of Republic Act No. 9160 otherwise known as the “Anti-Money Laundering Act of 2001” as amended by Republic Act No. 10365;

(d) All violations of Republic Act No. 11479 otherwise known as the “Anti-Terrorism Act of 2020”;

(e) All violations of Republic Act No. 10168 otherwise known as the “Terrorism Financing Prevention and Suppression Act of 2012”; and

(f) All other capital offenses that are punishable by reclusion perpetua or life imprisonment;

**Section 4. Close Coordination and Cooperation.** – All heads of prosecution offices shall ensure that all prosecutors within their respective offices shall, as far as practicable, be available to assist, coordinate and cooperate with, and provide sufficient legal guidance to, law enforcement agencies (LEA) in all planned operations such as but not limited to buy bust, controlled delivery operation, entrapment, application for search warrant, and the like, starting from their inception until successful termination of the case. Prosecutors shall be available at any hour of the day or night, even remotely via available telecommunications technology, for purposes of consultation, cooperation and coordination on matters involving proper collection and preservation of evidence, such as but not limited to interviewing of witnesses, preparation of Judicial Affidavits, and vetting of evidence.

In case of lack of available prosecutors in a city or provincial prosecution office for this purpose, Regional Prosecutors shall designate such number of prosecutors from the Regional Prosecution Office or from nearby prosecution offices within their region, in order to complement or augment such city or provincial prosecution office where there is a lack of available prosecutors.

**Section 5. Evaluation, Case Build-Up and Preliminary Investigation.** – Criminal complaints received by prosecution offices from private individuals, as well as formal referrals for investigation from LEAs involving crimes covered by this issuance but not subject to inquest, shall, within ten (10) working days from receipt, be evaluated to determine if they contain all the necessary evidence to prove the essential elements of the crime and should be docketed for preliminary investigation.

Should the evaluation disclose that the complaint or referral contains all the necessary evidence to prove all the essential elements of the crime, the assisting prosecutor who conducted the evaluation shall certify that there is a sufficient ground to conduct preliminary investigation. The complaint or referral shall then be docketed for the conduct of preliminary investigation in accordance with Rule 112 of the Revised Rules of Criminal Procedure.

In all cases for preliminary investigation, the investigating prosecutor shall issue a Certification as to the existence of prima facie case and of a reasonable certainty of conviction based on available documents, witness/es, real evidence and the like, or the lack thereof.

However, should the evaluation result in a finding that the complaint is not supported by sufficient evidence, or that there are lacking pieces of evidence, the complaint shall be referred back to the private complainant or the referring LEA along with the following: (1) a report on the result of the evaluation; (2) an advice about the lacking evidence; and (3) a directive to secure and submit the said lacking evidence/s. For this purpose, the complainant or referring LEA, or other concerned LEA/s may be subpoenaed to appear for a conference or to produce necessary documents if the assisting prosecutor deems it necessary or advantageous under the circumstances.

If the complaint cannot still be supported by sufficient evidence, or that the lacking pieces of evidence cannot be located or secured within a reasonable period of time from its referral back to the private complainant or the referring LEA as contemplated under the preceding paragraph, it shall be closed and terminated without prejudice to refile, with due notice to the complainant or the referring LEA.

The foregoing procedure shall be without prejudice to existing review and approval processes as well as to standard rules on confidentiality that are currently being observed by the city and provincial prosecutors in connection with preliminary investigation.



**Section 6. Inquest Cases.** – Consistent with the policy on proactive involvement of prosecutors in case build-up, and considering the nature of inquest cases where an offense covered by these guidelines is about to be committed, is being committed or has just been committed, the docket/records section of the office shall immediately refer the complaint and other required documents such as the investigation form, referral letter, complaint-affidavits or arrest and the like to the assisting prosecutors duly designated by the Prosecutor General, city and provincial prosecutors as the case may be. These assisting prosecutors shall render immediate assistance and evaluate the required documents. If the documents contain all the necessary evidence to prove the essential elements of the crime, they shall certify that there is sufficient ground to conduct inquest proceedings. Thereupon, the complaint and other required documents together with the certification of the assisting prosecutors shall be submitted to the head of office or his/her designated personnel for approval for inquest. If approved, an inquest prosecutor shall be designated and the docket/record section shall assign a docket number to the complaint and send the complaint and other required documents to the inquest prosecutor for the immediate conduct of inquest proceedings.

If the complaint and other required documents at that point do not contain all necessary evidence to prove the essential elements of the crime, or the suspect/s are not taken into custody within the period allowed by law, the assisting prosecutor shall so certify such fact and make a recommendation to the head of office or his/her designated personnel for the conduct of regular case build up and, if warranted, a preliminary investigation. The prosecution office concerned must continue to assist, coordinate and cooperate with, and extend sufficient legal guidance with the relevant LEA to build-up the case and ensure the successful prosecution of the same.

The head of office shall closely monitor all inquest proceedings to ensure the lawful arrest of the suspect/s and the proper collection and preservation of all evidence to prove the commission of the crime and ensure a reasonable certainty of conviction.

In all inquest proceedings covered by these Circular, prosecution offices must ensure that all important pieces of evidence are submitted by the LEA to make sure that no suspect who is lawfully arrested without warrant shall be released for further investigation.

**Section 7. Designation of Witnesses in Drugs Cases.** – This Department, in case of inadequate personnel from provincial or city prosecution offices, may designate employees from the local government units (LGU) concerned who shall act as representatives of the National Prosecution Service for purposes of Section 21 of Republic Act No. 9165 as amended by Republic Act No. 10640. The Department shall likewise provide, in coordination with the Department of Interior and Local Government (DILG), the necessary training for said LGU personnel or NPS representative.

**Section 8. Supplementary Application.** – These guidelines shall be of supplementary application to the following:

- a. Administrative Order No. 35 s.2012 creating the Inter-Agency Committee on Extra Legal Killings, Enforced Disappearances, Torture, and Other Grave Violations of the Right to Life, Liberty, and Security of Persons;
- b. Administrative Order No. 1 s.2016 creating the Presidential Task Force on Violence against Media Workers; and
- c. Executive Order No. 70 creating the National Task Force to End Local Communist Armed Conflict.

**Section 9. Effectivity.** – This Order shall take effect immediately and shall remain in full force until further orders.





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ESSENTIALS OF ADMINISTRATIVE ORDER 35 INVESTIGATIONS  
A Practical Handbook for Prosecutors and Investigators