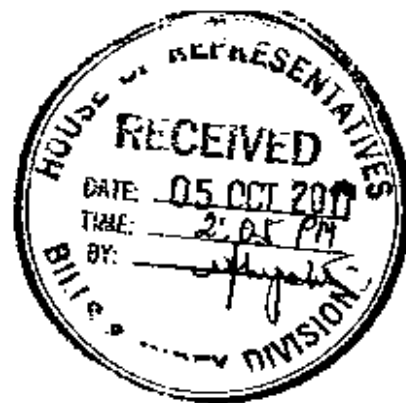


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



FIFTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5379

Introduced by Representatives NERI JAVIER COLMENARES,
TEDDY A. CASIÑO, RAFAEL V. MARIANO, RAYMOND V. PALATINO,
LUZVIMINDA C. ILAGAN, EMMI A. DE JESUS
and ANTONIO L. TINIO

**AN ACT DEFINING CERTAIN RIGHTS OF HUMAN RIGHTS DEFENDERS AND
PROVIDING PENALTIES FOR VIOLATIONS THEREOF IN IMPLEMENTATION OF
THE 1998 U.N. DECLARATION ON THE RIGHTS AND RESPONSIBILITY OF
INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT
UNIVERSALLY RECOGNIZED HUMAN RIGHTS OR OTHERWISE KNOWN AS THE
UN DECLARATION ON HUMAN RIGHTS DEFENDERS**

EXPLANATORY NOTE

The Philippine government was one of the 48 original signatories to the Universal Declaration of Human Rights in 1948. The government later signed and ratified the multilateral treaties on human rights namely The International Covenant on Civil and Political Rights and The International Covenant on Economic, Social and Cultural Rights. These official acts of the Republic of the Philippines is a commitment that the government shall not only respect human rights but must also protect and promote these rights.

However, despite these commitments human rights violations continue to plague the Philippines. The international community, including the United Nations have expressed serious concern over the systematic and continuing violations of human rights, including the phenomena of extra judicial killings and enforced disappearances. It is within this context that the need for and the importance of human rights defenders coming from human rights groups and advocates came to the fore.

These courageous band of human rights workers and advocates, from various sectors including the farmers, religious, women, trade unions, indigenous peoples and many other groups concerned with human rights, managed to document human rights atrocities and persevere in working for the protection of human rights during the darkest periods of Philippine history when fundamental freedoms were trampled by the very government that committed to protect these rights.

However, this international recognition of the importance of human rights defenders has grimly been negated in the killings, disappearances, tortures, vilifications, persecutions, harassments, and other abuses of human rights defenders.

Human rights defenders in the Philippines face human rights violations themselves in the course of their work and these violations include killings, death threats, abductions and kidnappings, arbitrary arrest and detention, and other actions of harassment and intimidation, such as defamation campaigns and the filing of trumped up charges aimed at harassing human rights workers. All these violations also target the immediate family members of human rights defenders, (including their children), and their other relatives, so as to prevent them from continuing their activities. Human rights campaigns are affected in many regions in the country by restrictions on the activities and the persecution of human rights defenders leaving the people more vulnerable to human rights abuse.

Worse, human rights defenders in the country have been tagged as "*enemies of the state*" by government and harshly dealt with as such. Not a few of them like Eden Marcellana, Eddie Gumanoy, Leima Fortu, and Benjaline Hernandez were brutally slain. From the time former Pres. Gloria Arroyo became president up to the end of her term in June 2010, for example, there were a total of 1,206 victims of extrajudicial, summary or arbitrary execution (or EJKs) in the Philippines. Of the total number, 476 were human rights defenders (HRDs). There were 206 victims of enforced or involuntary disappearance 68 of whom were human rights defenders. Scores from their ranks have been physically assaulted, tortured, treated inhumanely, cruelly and degradingly, and threatened, harassed, and intimidated. These violations are continuously being committed with impunity by government security forces.

Women human rights defenders are particularly at risk, and other groups and categories of defenders who are particularly exposed to attacks and human rights violations as a result of the work they carry out include defenders working to promote civil and political rights – notably freedom of expression and freedom of thought, conscience and association – as well as economic, social and cultural rights, notably collective rights such as the right to food and access to natural resources, including trade-unionists, and also those working for minorities' and community rights, children's rights, indigenous peoples's rights, among others.

These attacks on human rights defenders were by no means limited to the Philippines. Despite the international recognition of what is known today as the International Bill of Human Rights, many countries not only continue to violate the rights of their people, but also attack human rights workers and advocates who criticize governments for human rights abuses.

The international community, intending to protect an important cog in the mechanisms for the protection of human rights, agreed to respond these attacks and promulgated a resolution intended to emphasize the rights and importance of human rights defenders.

In recognition of the valuable roles of human rights monitors, documentarists, rapporteurs, and advocates, the United Nations General Assembly, in its 85th Plenary Meeting on December 9, 1998, through General Assembly Resolution A/RES/53/144 the "*Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally*

Recognized Human Rights and Fundamental Freedoms" or what is known in the United Nations as the Declaration on Human Rights Defenders.

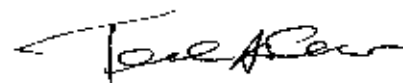
Considering the important role of human rights defenders in the protection of human rights in the country and the Philippine government's international commitment to promote, defend and protect human rights, it is imperative that the Congress should put into law that commitment as enshrined in the UN General Assembly Resolution on the rights of human rights defenders. It is necessary that the relevant provisions of this Declaration are translated into a binding commitment not only to protect human rights but also those that work for the protection of these rights so that they may be able to fulfill their important role in the promotion, protection and defense of human rights and fundamental freedoms.

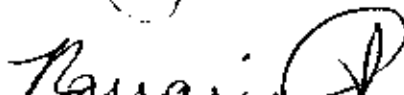
In this light, a law protecting human rights defenders and penalizing any violations of their rights in the pursuance of their advocacy must be immediately enacted.

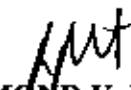
For these reasons, the expeditious approval of this bill is earnestly urged.

Approved,

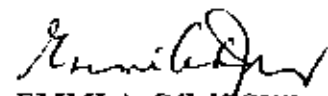

NERI JAVIER COLMENARES
Bayan Muna Party-List


TEDDY A. CASIO
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RAFAEL V. MARIANO
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RAYMOND V. PALATINO
Kabataan Party


LUZVIMINDA C. ILAGAN
Gabriela Women's Party


EMMI A. DE JESUS
Gabriela Women's Party


ANTONIO L. TINIO
ACT Teachers Party

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HOUSE BILL NO. 5379

Introduced by Reps. **NERI JAVIER COLMENARES, TEDDY A. CASIÑO,**
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Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

TITLE I- GENERAL PROVISIONS

SECTION 1. *Short Title.* – This Act shall be known as the “**HUMAN RIGHTS DEFENDERS’ PROTECTION ACT OF 2011**”.

SEC. 2. *Declaration of Policy.* – Consistent with the principles enshrined in the 1987 Constitution, the standards set by international humanitarian and human rights laws, and the international laws and conventions adhered to by the Philippines, it is hereby declared a State policy to promote and protect the rights of individuals engaged in the promotion and protection of human rights and fundamental freedoms in the country.

This is so because the State recognizes the important role and the valuable work of individuals, groups and associations in contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources.

Likewise, the State is cognizant of the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the local and national levels.

In this wise, the State therefore acknowledges its prime responsibility and duty to adopt such steps as may be necessary to create all conditions as well as legal guarantees required to ensure that all individuals engaged in the promotion and protection of human rights under its jurisdiction are able, individually and in association with others, to enjoy all their rights and freedoms in practice.

SEC. 3. *Definitions.* – As used in this Act, the following terms shall mean:

- (a) **GOVERNMENT PERSONNEL** – shall mean all persons currently employed in government whether elected or appointed, whether contractual, casual or permanent, including those serving as consultants;
- (b) **GOVERNMENT UNIT** – shall include all, but not be limited to, departments, bureaus, offices, boards, commissions, courts, tribunals, councils or *sanggunian*, authorities, administrations, centers including health centers, institutes, state colleges and universities, government owned and controlled corporations, local government units which shall include a *purok* or *sitio*, governmental organizations, and any grouping of the Armed Forces of the Philippines, Philippine National Police or other state security forces, including a patrol of three military, police personnel, paramilitary or military assets as defined herein, shall be considered a government unit;
- (c) **HEAD OF GOVERNMENT UNIT** – shall mean the highest responsible officer of the named government unit;
- (d) **HUMAN RIGHTS** – any of the entitlements inherent to any individual, organization, or state enumerated in the Bill of Rights and Declaration of Principles of the Philippine Constitution, the rule on Habeas Corpus, the Rule on the Writ of Amparo, the Rules on the Writ of Habeas Data, the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention Against Torture, and the Rome Statute on the International Criminal Court and other similar or pertinent international instruments or conventions;
- (e) **HUMAN RIGHTS DEFENDER** – any individual who is *bona fide* connected to any human rights organization whose main or substantial work and advocacy is to promote the respect for, foster knowledge of, and protect any forms of human rights and fundamental freedoms;
- (f) **HUMAN RIGHTS ORGANIZATION** – any non-government organization or association which has as one of its main purposes the advocacy, enforcement, and defense of any human right;

- (g) **HUMAN RIGHTS VIOLATION** – is any act committed by any government personnel and/or unit, military affiliate, paramilitary, police and/or military asset, or any agent of the state or an individual acting in its behalf, in violation of any human rights of any individual, group or organization, registered or otherwise from which injury and damage to any individual, mental or physical, or property or reputation or privacy of any individual or organization shall be occasioned;
- (h) **SUPERIOR OFFICER** – shall mean the next government official who has supervisory or control powers over the head of the government unit to whom the said head reports and shall include, but not limited to, the president, the department secretaries, the chief of staff of the Armed Forces of the Philippines, the commanding general or rear admirals of any service in the Armed Forces of the Philippines, the director general of the Philippine National Police;

SEC. 4. Presumptions and Prohibitions. –

a.) The following shall be presumed under this Act:

- (1) A MISSION ORDER (MR) is a proof of being involved in a military operation.
- (2) A person held to account for a human rights violation is presumed to be a government personnel, or a military affiliate, or a paramilitary, or a military asset when any government personnel who is asked in his official capacity about the identity of the former denies in general terms the designation, position and assignment of the same without giving any information that will lead to the identification of the suspected human rights violator.
- (3) Any act of false labeling or name calling a human rights defender, or accusing him/her of any offense, or any other kind of vilification, shall be presumed to be the act of the government personnel reported to have labeled, name called, accused or vilified the human rights defender, if within three days from being notified of having made such act, said government personnel does not make any public disclaimer of his reported labeling, name calling or accusation.
- (4) Any act of surveillance against a human rights defender reported to the proper government office shall be presumed to be an act of a government agent, if within three days from being notified of such act, the government office to whom the act of surveillance was reported does not identify the individual who is doing the act of surveillance, and the latter's designation, position or assignment.
- (5) Any act of threat and intimidation against a human rights defender through mobile phone, land phone or the internet reported to the proper government office shall be presumed to be an act of a government agent, if within three days from being notified of such act, the government office does not identify the possible perpetrators of said act of threat or intimidation.

- (6) Any bonafide member of a human rights organization shall be presumed to be human rights defenders within the meaning of this act.
 - (7) Any complaint for human rights violations is presumed to be true and valid, unless proven otherwise. This presumption, however, does not include the criminal, civil or administrative liability of the individual/s accused to have perpetrated the said human rights violation, which liability shall be proven by evidence beyond reasonable doubt, preponderance of evidence or substantial evidence, as the case may be.
 - (8) Any denial of any document or refusal to produce or present said document by the government personnel or office or unit who has custody of the same when required to be presented by any competent authority pursuant to any of the provisions of this Act shall establish the allegation to which the said document is offered to prove.
- b.) The following shall not be applicable or cannot be invoked in any criminal, civil, and administrative complaint for any violation of this Act:
- 1) Presumption of regularity in the performance of duty;
 - 2) Presidential immunity from suit;
 - 3) Confidentiality of any military activity, or that it is or affects national security interests, if the issues raised are related to the work of human rights defenders; and
 - 4) Executive Privilege as a defense .

TITLE II. RIGHTS OF HUMAN RIGHTS DEFENDERS

SEC. 5. *Right to promote and protect human rights.* - A human rights defender, individually or in association with others, shall have the right to meet or assemble peacefully, form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

SEC. 6. *Right to information about human rights.* - He/she, individually and in association with others, has the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, and to discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

SEC. 7. *Right to develop and advocate human rights ideas.* - He/she, individually and in association with others, has the right to develop and discuss new human rights ideas and principles and to advocate their acceptance.

SEC. 8. *Right to participate in public affairs.* - He/she, individually and in association with others, has the right to have effective access, on a nondiscriminatory basis, to participation in the government and in the conduct of public affairs. This includes the right to submit to

governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving his/her functioning and to draw attention to any aspect of his/her work that may hinder or impede the promotion, protection and defense of human rights and fundamental freedoms.

SEC. 9. *Right to provide paralegal or legal assistance.* - He/she, individually and in association with others, has the right to offer and provide professionally qualified paralegal or legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

SEC. 10. *Right to unhindered access to communication with human rights bodies.* - He/she, individually and in association with others, has the right to unhindered access to and communication with local, regional, national and international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

SEC. 11. *Rights against vilification.* He/she, individually and in association with others, has the right against any act of false labeling or name calling, or of malicious and fabricated accusations against him/her of any offense, or from any other kind of vilification.

SEC. 12. *Right to participate in activities against human rights violations* - He/she, individually and in association with others, has the right to participate in activities against violations of human rights and fundamental freedoms.

SEC. 13. *Right to solicit, receive and utilize resources.* - He/she, individually and in association with others, has the right to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present United Nations Declaration on Human Rights Defenders.

Sec. 14. *Right to establish a sanctuary to human rights victims and/or their families.* - He/she, individually and in association with others, has the right to establish sanctuaries for any human rights violation victim and/or their immediate families.

Said sanctuary shall be considered established if and when he/she gives confidential notice to the Commission on Human Rights that said place, building or area has been constituted as a sanctuary, and as such, entry to the said place, building or area including an area of a radius of 100 meters around the said place, building or area shall be prohibited to any government personnel, military asset, military affiliate, military unit, or paramilitary unit.

SEC. 15. *Right to file an action involving human rights violations – human rights organizations or associations as complainants.* He/she, individually and in association with others, has the right to file a complaint or a petition for any violation of human rights violations. However, the consent of the victim must first be obtained as much as possible. In the absence of such consent, the human rights organization or association may proceed with filing the complaint or petition unless the lack or absence of consent is based on the threat to the life, liberty or security of the victim or his or her family.

SEC. 16. *Right to access documents of government units and personnel, paramilitary units and personnel, and military affiliate and government assets.* - He/she, individually and in association with others, has the right to have effective access to all government documents that pertain to any human rights defenders and/or organizations and/or his/her/its/their activities and any document of such kind, including but not limited to an order of battle, shall not be considered confidential nor classified or which partakes of executive privilege, or that which affects national security and said document/s shall be open to public scrutiny.

TITLE 3. OBLIGATIONS OF THE GOVERNMENT

SEC. 17. *Obligations of the government.* - The government shall have the following obligations:

- (a) To take all precautionary measures to ensure the protection of all human rights defenders against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure, or any other arbitrary action as a consequence of their legitimate exercise of their rights and duties as human rights defenders;
- (b) To mandate all its officers and employees, under pain of administrative sanctions, not to participate, by act or by failure to act where required, in violating human rights and fundamental freedoms, and the heads of offices or superior officers not to subject any individual who refuses to participate in acts which violate or will violate acts to protect, defend, uphold, and foster human rights, to punishment or adverse action of any kind for refusing to do so;
- (c) To require Human Rights Education as an obligatory curriculum in the, primary and secondary levels, with an actual week spent with a human rights defender in the locality;
- (d) To require Human Rights Education as a six-unit subject (three as a lecture course and three as a laboratory subject, which may include 20 hours work with any human rights organization in the locality) in all colleges and universities;
- (e) It shall also be the duty of any government personnel, unit, government asset, paramilitary and military affiliate to put into writing any instructions, orders, or commands he or she or it issues to a subordinate or received by him or her or it from a higher officer including the head of the government unit and to document any action he or she or it takes in response to said instruction, order or command including but not limited to operation report, spot report, evaluation report and accomplishment report or any report or documentation submitted to the commanding or superior or higher officer issuing said instruction, order or command and that a logbook or journal shall be maintained listing all instructions, orders, commands, issued and/or received, and all responses to said instructions and all reports in compliance to said instructions, orders, commands in the said book or journal in a day to day, month to month and year to year order, and the said documents and logbooks and/or journals shall not be disposed of unless and until the Commission on Human Rights shall allow otherwise.

TITLE 4. REMEDIES TO ENFORCE THE RIGHTS

SEC. 18. *Petition to Access Government Documents.* - A request for access to any document that pertain to any human rights defender, defenders and/or organizations and or his/her/its/their activities and any document of such kind, including but not limited to an order of battle shall be made through a petition before the court in accordance with the Rules of Amparo promulgated by the Supreme Court through AM No. 07-9-12 and/or Habeas Data likewise promulgated by the Supreme Court through AM No. 08-1-16.

The documents so requested may not be specified by its title, heading, as any description by class, kind, nature or function is sufficient for purposes of the petition and respondent must deliver all documents as defined.

The government unit, personnel, asset, paramilitary unit or personnel (and military affiliate) shall, upon receipt of the order of the court, including the superior officers up to the level of the Chief of Staff, the Secretary of National Defense, and the Executive Secretary shall immediately furnish the said document or require the concerned government unit, personnel, asset, paramilitary unit or personnel (and military affiliate) to do so.

The documents can be inspected in chambers or executive session if the said documents contain data and information that infringe on the privacy or security of, or that which involves the reputation of the petitioner or of anybody mentioned and included in the said document.

SEC. 19. *Petition for Temporary Protection Order.* - A request for a Temporary Protection Order in favor of a human rights defender and against any government personnel and units, paramilitary personnel and units, military assets (or military affiliates), shall be made through a petition before the Commission on Human Rights.

The Commission shall immediately issue forthwith a Temporary Protection Order after a petition shall be filed before it, and which can only be revoked after there is finding that said petition is without any ground. However, a petitioner's well-grounded belief that he/she is under threat because of his/her work as a human rights defender shall constitute sufficient ground for a Temporary Protection Order to be maintained and not revoked.

Furthermore, the Commission, *motu proprio* or upon a complaint, may cite any government personnel and units, paramilitary personnel and units, military assets, or military affiliates for direct contempt for refusing to abide by the Temporary Protection Order.

The Commission shall promulgate its Rules and Procedures covering the Petition for Temporary Protection Order and the Complaint for Contempt above-described within thirty (30) days from the effectivity of this Act.

SEC. 20. *Motion to Dismiss Criminal Complaint* - A human rights defender can ask the prosecutor or the court to dismiss a criminal complaint or information filed against him/her on the ground that the said complaint/information is necessarily related to his/her work as such human rights defender, or that the same is contravention of the letter and spirit of this Act.

The foregoing, however, shall not bar the prosecutor or the judge from dismissing the criminal complaint or information *motu proprio* if and when he/she, by a mere reading of the complaint/information and its supporting documents, finds the said complaint/information violates the above-mentioned grounds.

In addition, he/she shall dismiss the complaint/information outright if it is a *prima facie* case of harassment. In this regard, a complaint/information is *prima facie* a harassment suit if the complaining witnesses, or any other witness against the human rights worker, is a military, police or any state security force which has been complained of by the human rights defender or his/her/its organization, or the unit, any member thereof or the superior of such military, police or state security force, or a rebel returnee or an alleged co-conspirator in a criminal act, or when the due process rights of the human rights workers – statutory or constitutional – shall have been violated. This section shall apply retroactively to existing cases against human rights defenders.

TITLE 5. PROTECTION OF WITNESSES OF VIOLATIONS OF THIS ACT

SEC. 21. *Protection of any informant under this Act.* - Any individual who shall provide information and/or testify in any proceedings about any violations of this Act committed by any government personnel, government unit, government asset, paramilitary (and military affiliate) shall have all the rights and protections provided in this Act and shall be considered for the purpose of his/her protection and only for such information and/or testimony a human rights defender.

SEC. 22. *How any threat to a witness shall be considered.* - Any act that shall threaten or attempt to threaten, harass or attempt to harass in any manner any individual who shall testify against a government personnel, government unit, government asset, paramilitary (and military affiliate) in any proceedings under this Act shall be considered committed by the acts of the government personnel, government unit, government asset, paramilitary (or military affiliate) to whom the testimony is being made against.

SEC. 23. *Protection for government personnel, government asset, paramilitary (and military affiliate) who provides evidence against any human rights violations.* - No head of a government unit or superior officer or higher officer (or handler of a military affiliate) may discharge, demote, suspend, threaten, harass, sanction or in any manner discriminate against any government personnel because of any lawful act done by the government personnel, government asset, paramilitary (and/or military affiliate) to provide information, cause information to be provided, or initiate or otherwise assist in an investigation regarding any conduct which the government personnel, government asset, paramilitary (and/or military affiliate) reasonably believes constitutes a violation of any provision prescribed in this Act.

TITLE 5. PENALTIES

SEC. 24. *Penalty for violations of Sections 5 to 16 of this Act.* - The penalty of *prision mayor* in its maximum period to *prision temporal* in its medium period without privilege of parole shall be imposed upon any government personnel or the whole complement of a government unit,

the paramilitary personnel or the whole complement of the paramilitary unit, the government asset (and/or the military affiliate) who violates any of the rights of a human rights defender defined in Sections 5 to 16 of this Act.

SEC. 25. *Penalty for destroying, altering, or falsifying records and document.* – The penalty of *prison temporal* in its minimum to its medium period or a fine of ONE HUNDRED THOUSAND PESOS (Php100,000.00) or both, at the discretion of the court, shall be imposed upon any government personnel or the whole complement of a government unit, the paramilitary personnel or the whole complement of the paramilitary unit, the government asset (and/or the military affiliate) who impede, obstruct, or influence any preliminary investigation, administrative investigation and/or petition by altering, destroying, mutilating, concealing, covering up, falsifying, or making any false entries in any record, document, or specimen whereof, relative to any matter involving any human rights defenders, defenders or organizations or activities.

SEC. 26. *Penalty for any other violations of this Act.* – The penalty of *prison temporal* in its minimum period or a fine of ONE HUNDRED THOUSAND PESOS (Php100,000.00) or both, at the discretion of the court, shall be imposed upon any individual who violates any other provisions of this Act.

SEC. 27. *Violations of this Act as aggravating circumstances.* – Any violations of any provisions of this Act committed on the occasion of a commission of a crime defined in any penal laws shall be considered an aggravating circumstance in the imposition of the penalty in said crime.

SEC. 28. *Non-applicability of the Probation Law* – Any violations of any provisions of this Act which shall constitute the main crime or as an aggravating circumstance shall not entitle the offender or the accused to the privileges of probation under the probation law.

TITLE 8. FINAL PROVISIONS

SEC. 29. *Repealing Clause.* – All laws, presidential decrees, executive orders, rules and regulations or parts thereof which are inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 30. *Separability Clause.* – If any part or provision of this Act shall be held unconstitutional or invalid, other provisions, which are not affected thereby, shall continue to be in full force and effect.

SEC. 31. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in a national newspaper of general circulation.

Approved,