

Republic of the Philippines
HOUSE OF REPRESENTATIVES
THIRTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 1556

Introduced by Reps. SATUR C. OCAMPO, TEODORO A. CASIÑO, JOEL G. VIRADOR,
CRISPIN B. BELTRAN, RAFAEL V. MARIANO and LIZA L. MAZA

Explanatory Note

In the Philippines, the phenomenon of forced or involuntary disappearance has largely been left undefined, unchecked and unpunished. No specific offense related to it has been recognized despite its systematic occurrence for the past 30 years.

It was in Latin America where this practice occurred in a massive and orchestrated scale, unparalleled since Adolf Hitler's Night and Fog Decree of 1941 when persons in occupied territories were seized, transported to Germany and then made to disappear without a trace.

The Philippines is one of the countries with the highest number of outstanding cases of involuntary disappearances at present. It was during the Marcos regime when cases of enforced or involuntary disappearance increased in pattern and scope. The victims of involuntary disappearance – who came to be known as *desaparecidos*, following the term used widely in Latin America – were mostly youth activists critical of the dictatorship. Thousands of them were arrested and detained in undisclosed places; at least 737 were never to be seen or heard from again.

Subsequent administrations after the Marcos regime failed not only to put an end to this practice, but allowed the abhorrent trend to persist. Then and now, the perpetrators have remained unpunished and free to commit the act over and over.

The United Nations recognizes the gravity of the phenomenon and deems it as a crime against humanity.

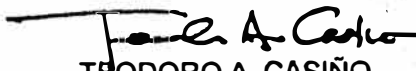
What particularly distinguishes the crime of enforced or involuntary disappearance is its commission mostly by agents of the State and/or private individuals commissioned by them and with the acquiescence of the State. Its persisting pattern through successive administrations underscores that the act appears to be part and parcel of State policy.

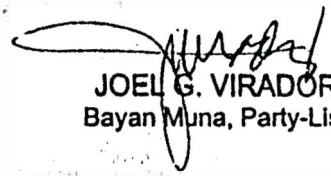
For several decades now, the phenomenon has been a nameless, undefined incident in Philippine laws. It is time that it be defined and penalized in the interest of upholding the most basic rights and principles which define the essence of life, humanity and justice.

This bill is the product of the decades-long experience of human rights lawyers, particularly in handling numerous cases of enforced disappearance. Their rich experience provide the framework and substance of this measure.

Approval of this bill is most urgently sought.


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AN ACT
DEFINING AND PENALIZING THE CRIME OF ENFORCED OR INVOLUNTARY DISAPPEARANCE

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

SECTION 1. Short Title. This Act shall be known as the "An Act Defining and Penalizing The Crime of Enforced or Involuntary Disappearance."

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, 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.

SECTION 3. Definitions. For purposes of this Act, the following terms shall mean:

1. ***Enforced or Involuntary Disappearance*** is committed by officials or employees of any branch, subdivision, agency or instrumentality of Government, or by any private individual or organized groups of private individuals acting on behalf of or with the support, direct or indirect, consent, or acquiescence of the Government when the offender arrests, or detains – validly or otherwise, with or without a warrant – or otherwise abducts one or more persons depriving him or her of liberty and who subsequently disappeared, for political reasons or otherwise with the intention to remove the person or persons from the protection of the law for a period of time of at most thirty-six (36) hours, whether subsequently found or not found dead or alive, as part of a widespread or systematic attack or not, directed against a civilian population and after the arrest, detention or abduction, the offender refuses to acknowledge the deprivation of freedom or to give information on or deliberately conceals the fate or whereabouts of the person or persons arrested, abducted or detained or deny any involvement therein.

It is conclusively presumed that a person is removed from the protection of the law for a period of time of at most thirty-six (36) hours when the other elements or circumstances of enforced or involuntary disappearance concur.

2. ***Victim of Enforced or Involuntary Disappearance*** refers to any individual against whom the crime of enforced or involuntary disappearance as defined above has been committed.

SECTION 4. "Order of Battle" Not Legal Ground for Enforced or Involuntary Disappearance. An "Order of Battle," official or otherwise, issued by the military, police or any law-enforcement agency of the Government, shall not justify an enforced or involuntary disappearance as defined above and shall subject the perpetrators to the same corresponding penalties provided in this Act.

SECTION 5. Right of Victim of Enforced or Involuntary Disappearance. It shall be the absolute right of a victim of enforced or involuntary disappearance to immediately inform his/her family, relative, lawyer/s or a human rights organization by all means that are available and expeditious, by cellular phone, landline, courier, letter, electronic mail, telegram, radio or other means, on his or her whereabouts and condition.

Any person depriving, denying or delaying such exercise of the victim's right shall subject him/her to the penalties under Section 11 hereof.

SECTION 6. Duty of Person/s Keeping, Arresting, or Detaining Victim of Enforced or Involuntary Disappearance. Any person/s keeping, arresting or detaining a victim of enforced or involuntary disappearance or who shall learn or have information of such fact shall have the duty to immediately report in writing on the circumstances and whereabouts of such victim to the nearest office of the Philippine National Police (PNP), Armed Forces of the Philippines (AFP), Department of Interior and Local Government (DILG), Department of National Defense (DND), the City or Provincial Public Prosecutor, the Commission on Human Rights (CHR) as well as the victim's family, relatives, lawyer/s or to a human rights organization by the most expedient means.

The failure of such person to perform this duty by negligence or otherwise shall subject him/her to the penalties under Section 11 (b) hereof.

SECTION 7. Duty of Person/s to Certify in Writing on the Results of Inquiry into a Possible Victim's Whereabouts. In case a family member, relative, lawyer/s, human rights organization or member of the media inquires with a member or official of any police or military detention center, the Philippine National Police (PNP) or any of its agencies, the Armed Forces of the Philippines (AFP) or any of its agencies, the National Bureau of Investigation (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 such inquiring person or entity on the presence or absence and/or information on the whereabouts of such possible victim.

The failure of such person to perform this mandatory duty shall subject him/her to the penalties under Section 11 (b) hereof, regardless of whether or not the said victim turns out to be in their power, authority, control, or custody at the time of the inquiry.

SECTION 8. Duty of Inquest/Investigating Public Prosecutor or any Judicial or Quasi-Judicial Employee or Official. Any Inquest or Investigating Public Prosecutor or any judicial or quasi-judicial employee or official who learns of such disappearance and upon whom the victim of enforced or involuntary disappearance is delivered for inquest or preliminary investigation or for any other judicial process, shall have the duty to immediately inform such circumstance and the victim's whereabouts to his/her immediate family, relative, or lawyer/s or to a human rights organization by the most expedient means.

The failure of such Inquest or Investigating Public Prosecutor or any judicial or quasi-judicial employee or official to perform this duty by negligence or otherwise shall subject him/her to the penalties under Section 11 (b) hereof.

SECTION 9. Defying, Ignoring, or Unduly Delaying Compliance with a Judicial Order. The penalties provided for in Section 11 hereof shall be imposed against any person who defies, ignores, or unduly delays compliance with a *habeas corpus* proceeding filed on behalf of the victim of enforced or involuntary disappearance or to immediately follow or comply with an order of release by virtue of such *habeas corpus* proceeding or other appropriate judicial order.

SECTION 10. Liability of Commanding Officer or Superior. The immediate commanding officer or superior or the equivalent senior official of those referred to in Section 11 hereof who has the power, opportunity or authority to prevent or uncover a crime of enforced or involuntary disappearance but failed to avert, discontinue or uncover any act of enforced or involuntary disappearance whether

deliberately or due to negligence shall be punished with *reclusion temporal*.

SECTION 11. Penalties. The following penalties shall be meted:

1. The penalty of *reclusion perpetual* shall be meted upon the following persons for the commission of enforced or involuntary disappearance –
 - a. Those who directly committed the act of enforced or involuntary disappearance;
 - b. Those who directly force or induce others to commit the act of involuntary disappearance;
 - c. Those who cooperated in the act of enforced or involuntary disappearance by another act without which the act of enforced or involuntary disappearance would not have been carried out;
 - d. Those who allowed the act of enforced or involuntary disappearance when it is within their power to stop the commission of such act;
 - e. Those who cooperated in the execution of an act of enforced or involuntary disappearance by previous or simultaneous acts.

Provided, however, that should the victim surface alive at or before the time of trial, the penalty next lower in degree shall be imposed.

2. The penalty of *reclusion temporal* shall be imposed on those who attempt to commit enforced or involuntary disappearance, and on persons who having knowledge of the act of enforced or involuntary disappearance but without having participated therein either as principals or accomplices took part subsequent to its commission in any of the following acts:
 - a. By themselves profiting from or assisting the offender to profit from the effects of the act of enforced or involuntary disappearance;
 - b. By concealing the act of enforced or involuntary disappearance, and/or destroying the effects or instruments thereof, in order to prevent its discovery;
 - c. By harboring, concealing, or assisting in the escape of the offenders, whether principals or accomplices, in the act of enforced or involuntary disappearance.

Provided, further, that the crime of enforced or involuntary disappearance shall not prescribe.

SECTION 12. Liability Under Other National Criminal Laws. The liability of the offender under this Act shall be independent of, in addition to, or without prejudice to prosecution and conviction for violation of other applicable laws including R.A. 7438 (An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation, as well as Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties Therefor) as well as the Revised Penal Code, including arbitrary detention, delay in the delivery of detained persons, delaying release, maltreatment of prisoners, unlawful arrest, incriminating innocent person, physical injuries, murder and any other appropriate criminal offense/s in special laws.

SECTION 13. Non-Exclusivity or Double Jeopardy Under International Law. Notwithstanding the provisions of the foregoing section, any investigation, trial and decision in any Philippine court or other agency for any violation of this Act shall be without prejudice to any investigation, trial, decision or any other legal or administrative process before the appropriate international court or agency under applicable international human rights and humanitarian law.

SECTION 14. Incentives and Restrictions. Any offender who volunteers information that leads to the discovery of the victim of enforced or involuntary disappearance shall be immune from a criminal charge under this Act and shall be exempt from criminal prosecution, provided said offender appears not to be the most guilty of the crime.

The perpetrators of enforced or involuntary disappearance shall be suspended and prohibited from performing any official duties or be the subject of promotion or reassignment of post during the pendency of the case, whether at the level of investigation, criminal or administrative, trial and appeal of

the case.

SECTION 15. Protection of Victims, Their Families, Legal Counsel, Human Rights Organizations, Media and Witnesses of Enforced or Involuntary Disappearance. 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 the victims, their families, complainants, witnesses, representatives of human rights organizations, media and legal counsel. They shall likewise be protected from any act of intimidation or reprisal as a result of the filing of charges.

SECTION 16. Compensation to Next-of-Kin of a Victim of Enforced or Involuntary Disappearance. The next-of-kin of a victim of enforced or involuntary disappearance may claim for compensation as provided for under Republic Act 7309 and other relief programs of the Government, primarily, but not limited to, financial compensation, and without prejudice to other legal remedies that may be available to him or her.

SECTION 17. Rehabilitation of Reappeared Victim of Enforced or Involuntary Disappearance. The State shall provide for the indemnification and rehabilitation of a victim of enforced or involuntary disappearance. He or she shall be entitled to monetary compensation and restitution of honor and reputation, without prejudice to other legal remedies that may be available to him or her. Such restitution of honor and reputation shall include immediate expunging or rectification of any derogatory record, information or public declaration/statement on his/her personal circumstances, status, person, or affiliation by the appropriate government or private agency or agencies concerned.

SECTION 18. Implementing Rules and Regulations. The Department of Justice and the Commission on Human Rights, in regular consultation and close coordination with organizations of victims of human rights violations shall promulgate the rules and regulations for the effective implementation of this Act, and shall ensure the full public dissemination of such.

SECTION 19. Monitoring of Compliance. A Monitoring Group is hereby created to regularly monitor and check compliance with this Act. A Commissioner of the Commission on Human Rights shall head the Group which shall have the following as members:

1. One Undersecretary of the Department of Justice;
2. One representative from the Senate Committee on Justice and Human Rights;
3. One representative from the House Committee on Civil, Political and Human Rights;
4. One representative from the Senate Committee on Oversight;
5. One representative from the House Committee on Oversight;
6. Representatives of all interested non-government human rights organizations.

SECTION 20. Sources of Funds. The funds necessary for the implementation of this Act shall be included in the budgets of the Commission on Human Rights and Department of Justice under the General Appropriations Act of the year following the enactment of this Act.

SECTION 21. 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 or amended accordingly.

SECTION 22. 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 23. Effectivity. This Act shall take effect fifteen (15) days upon its publication in the *Official Gazette* and in at least two (2) newspapers of national circulation.

Approved,