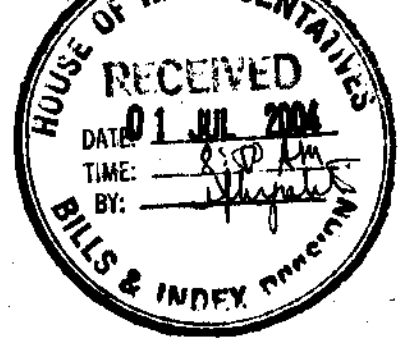


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

Thirteenth Congress
First Regular Session

HOUSE BILL NO. 11



Introduced by **HONORABLE EDCCEL C. LAGMAN**

EXPLANATORY NOTE

Enforced or involuntary disappearance is a sudden and forcible arrest, detention or abduction of a person or group of persons who are actually or allegedly involved in social transformation or in upholding and defending the civil, political, economic, social and cultural rights of the people. It is perpetrated directly or indirectly by agents of the State who refuse to disclose the whereabouts of the victims or to acknowledge the detention with the intention of depriving them protection of the law for a prolonged period of time.

Involuntary disappearance is one of the most cruel forms of human rights violations. It violates not only the right to liberty and security of the person, the right against "torture, force, violence, threat, intimidation..., secret detention places, solitary, incommunicado or other forms of similar detention, which are guaranteed by the Constitution, but practically all human rights including the right to life. The victims are deprived of due process of law and are forced to endure unimaginable indignities and atrocities in the hands of the perpetrators.

The State resorts to involuntary disappearance to stifle dissent and to silence political activists. The atrocious offense is practiced in no less than 65 States. In the Philippines, The Families of Victims of Involuntary Disappearance (FIND) has already documented 1,662 out of the 1,871 reported cases of enforced or involuntary disappearance as of March 2004. Of these cases 1,094 are still missing, 327 have surfaced alive and 241 found dead. Eight hundred fifty-five (855) involuntarily disappeared during the Marcos regime, 820 under the Aquino administration, 87 under Ramos, 58 under Estrada and 51 under the Macapagal-Arroyo dispensation.

Involuntary disappearance may no longer be rampant but is still unabated. Not a single case has been resolved. No perpetrator has been punished. No victim or his/her family has been indemnified.

The families and relatives of some victims have filed in court 14 cases. In the absence, however, of a law penalizing involuntary disappearance, the cases are lodged as kidnapping, murder, serious illegal detention or a combination of the last two offenses. It is, therefore, urgent to enact a special law defining and penalizing enforced or involuntary disappearance as a crime distinct from kidnapping, serious illegal detention or murder. Hence, this bill.

As its salient features this bill:

- Adopts the United Nations definition of enforced or involuntary disappearance as an act committed when the person is arrested, detained or abducted against his/her will or otherwise deprived of his/her liberty by officials or employees of any branch, subdivision, agency or instrumentality of Government or by organized groups or private individuals acting on behalf of or with the support, direct or indirect, consent or acquiescence of the Government, and who refuse to disclose the victims fate or to acknowledge that he/she was detained, thus placing such person outside the protection of the law;
- Considers enforced or involuntary disappearance as a continuing offense as long as the perpetrators continue to conceal the fate and the whereabouts of the persons who have disappeared and the facts remain unverified;
- Disallows time limitation for the prosecution of persons responsible for the commission of enforced or involuntary disappearance;
- Prescribes *reclusion temporal* or *reclusion perpetua*, depending on the gravity of the offense, as penalties for enforced or involuntary disappearance;
- Excludes perpetrators of enforced or involuntary disappearance from coverage of any amnesty law or similar measures that will have the effect of exonerating the offenders;
- Holds the immediate commanding officer or equivalent senior officer of the perpetrators of enforced or involuntary disappearance criminally liable for the same offense;
- Proscribes an order from a superior officer or public authority from being invoked as justification for taking part in the commission of an enforced or involuntary disappearance;
- Entitles victims of involuntary disappearance who reappeared alive to monetary compensation, rehabilitation, and restitution of honor and reputation, the nearest of kin of the victims may claim compensation under applicable laws and other financial relief programs of Government without prejudice to other legal remedies that may be available to them;
- Prohibits enforced or involuntary disappearance and the suspension of fundamental safeguards for its prevention under all circumstances including political instability, threat of war, state of war or other public emergency;
- Proscribes "order of battle" as a ground for the commission of enforced or involuntary disappearance;
- Mandates holding of persons deprived of liberty only in officially recognized and controlled places of detention where up-to-date registers of such persons shall be maintained;
- Requires competent representatives of the Commission on Human Rights to conduct regular, independent, unannounced and unrestricted visits of inspection to all places of detention;
- Guarantees right information on the whereabouts of detained persons and access to the places where they are held by their families, relatives, lawyers, judges and other

persons with legitimate interest in such information and the condition of the detainees;

- Provides for preventive suspension of perpetrators of enforced or involuntary disappearance upon filing of information or complaint in the proper civilian court until the promulgation of judgment;
- Holds perpetrators and State authorities which organized, acquiesced in or tolerated enforced or involuntary disappearance liable under civil law;
- Mandates appropriate government agencies to ensure the safety of the victims and all persons involved in the search, investigation and prosecution of enforced or involuntary disappearance;
- Creates an enforced or involuntary disappearance fund sourced from the 2% of the filing fees in civil cases and special proceedings before all courts including the Court of Appeals and the Supreme Court;
- Creates an Oversight Committee headed by a Commissioner of the Philippine Commission on Human Rights to periodically oversee compliance with the Anti-Disappearance Act.

This bill does not only seek to impose penalties on the perpetrators of enforced or involuntary disappearance but also to provide greater protection from this odious transgression of human rights.

Crimes committed by agents of the State against the very people they have sworn to protect are indeed reprehensible acts that must be punished severely as the people's defenders become their assailants. The people vest the State with vast powers for the protection of the people's rights and the promotion of their welfare. Thus, if the State uses these powers to mastermind and execute wrongful and cruel acts, like enforced or involuntary disappearance that deprive the people of the dignity that makes them human, the State must be held liable both criminally and civilly.

Accordingly, Congress is urged to pass this legislation that seeks to institute remedies that address violations of the right of every person to be protected from enforced or involuntary disappearance.


EDCEL C. LAGMAN

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

Thirteenth Congress
First Regular Session

HOUSE BILL NO. _____

11

Introduced by **HONORABLE EDCCEL C. LAGMAN**

AN ACT
DEFINING AND PENALIZING ENFORCED OR INVOLUNTARY DISAPPEARANCE AND FOR
OTHER PURPOSES.

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 2004".

SEC. 2. Declaration of Policy. – The State values the dignity of every human being 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 the people to human dignity, the prohibition against enforced or involuntary disappearance, the provision for penal and civil sanctions for violations thereof, and compensation and rehabilitation of the victims and their families. Further, no acts of torture, force, violence, threat or intimidation or any act which vitiates the free will shall be employed against the person abducted, arrested, detained, disappeared or otherwise removed from the effective protection of the law.

SEC. 3. Definition of Enforced or Involuntary Disappearance. – For purposes of this Act, enforced or involuntary disappearance shall be deemed committed when a person is deprived of his/her liberty, in whatsoever form for political reason(s) by agents of the State or by private persons or group of persons acting with the authorization, support or acquiescence of the State, followed by an absence of information, or refusal to acknowledge the deprivation of liberty and information, or concealment of the fate or whereabouts of the disappeared person thus placing such person outside the protection of the law.

In the event the prosecution fails to prove political motive, the deprivation of liberty of the victim who surfaces alive shall be punishable as kidnapping under the Revised Penal Code. If the victim is subsequently found dead or his/her disappearance persists for over three (3) years, he/she is presumed killed by those responsible for his/her arrest or abduction, and the act of enforced or involuntary disappearance in either case shall be punishable as murder.

SEC. 4. Permanent Prohibition of Enforced or Involuntary Disappearance. The prohibition of enforced or involuntary disappearance and the fundamental safeguards for its prevention shall not be suspended under any circumstances including political instability, threat of war, state of war or other public emergencies.

SEC. 5. "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 and shall subject the perpetrators to the same corresponding penalties provided in this Act.

SEC. 6. 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, electronic mail, telegram, radio or other means, on his or her whereabouts and condition.

SEC. 7. Duty of Person(s) Keeping, Arresting, or Detaining Victim(s) 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 the 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.

SEC. 8. 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 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 possible victim.

SEC. 9. 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 disclose such circumstances and the victim's whereabouts to his/her immediate family, relatives, or lawyer/s or to a human rights organization by the most expedient means.

SEC. 10. Official Up-to-Date Register of All Persons Detained or Confined. All persons deprived of liberty shall be held solely in officially recognized and controlled places of detention or confinement where an official up-to-date register of such persons shall be maintained. All information contained in the register shall be made available to the relatives, lawyers, judges, official bodies and to all persons who have legitimate interest in the information.

SEC. 11. Visits of Inspection to All Places of Detention. Competent representatives of the Commission on Human Rights shall conduct regular, independent, unannounced and unrestricted visits of inspection to all places of detention and confinement.

SEC. 12. Liability of Commanding Officer. – The immediate Commanding Officer or equivalent Senior Official shall be held liable for an enforced or involuntary disappearance. Any failure on his/her part, whether done with deliberate intent or negligence to avert an act of enforced or involuntary disappearance shall be taken as evidence of conspiracy.

SEC. 13. Penal Provisions. – (a) The Penalty of *reclusion perpetua* 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 carried out;

4. Those officials who allowed the act of enforced or involuntary disappearance when it is within their power to stop the commission of such act;

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* shall be imposed upon those who attempt to commit the offense of enforced or involuntary disappearance.

(c) The penalty of *reclusion temporal* shall also be imposed upon the 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 manners:

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;
3. by harboring, concealing, or assisting in the escape of the principal(s) in the act of enforced or involuntary disappearance, provided the accessory acts are done with the abuse of the official's public functions.

(d) The penalty of *prision correccional* 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.

(e) The penalty of *arresto mayor* shall be imposed against any person who violates the provisions of Sections 6, 7, 8 and 9 of this Act.

SEC. 14. Preventive Suspension. – The perpetrators of and other participants in the commission of enforced or involuntary disappearance shall be preventively suspended and prohibited from performing any official duties upon the filing of the information or complaint in the proper court until the promulgation of judgment.

SEC. 15. Civil Liability – Enforced or involuntary disappearance shall render its perpetrators and the State authorities which organized, acquiesced in or tolerated such disappearance liable under civil law.

SEC. 16. Unlawful Order. – An order 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 circumstance.

SEC. 17. 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 the whereabouts of the persons who have disappeared and these facts remain unverified.

SEC. 18. Exclusion from the Coverage of A Statute of Limitation. – 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 start to run from the date of his/her reappearance.

SEC. 19. Exclusion from the Coverage of Special Amnesty Law. – Persons who have committed the act of enforced or involuntary disappearance 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.

SEC. 20. State's 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 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. Any person committing such ill treatment and/or acts of intimidation or reprisal shall be punished under existing laws.

SEC. 21. Compensation to and/or Rehabilitation of Victims of Enforced or Involuntary Disappearance and/or Their Next-of-Kin. – The victims of enforced or involuntary disappearance who surfaced 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/her personal circumstances, status, person, or affiliation by the appropriate government or private agency or agencies concerned.

The next-of-kin of a victim of enforced or involuntary disappearance may also claim for compensation as provided for under Republic Act 7309 and other relief programs of the Government.

The package of indemnification for both the victims and the next-of-kin shall be without prejudice to other legal remedies that may be available to them.

In order that the nearest of kin of victims of enforced or involuntary disappearance and the victims who surfaced alive may be effectively reintegrated into the mainstream of society and in the process of development, the State through the Commission on Human Rights shall provide them with appropriate medical care and rehabilitation free of charge.

SEC. 22. Implementing Rules and Regulations. – Within thirty (30) days from the effectivity of this Act, the Department of Justice (DOJ), the Commission on Human Rights (CHR) and the Families of Victims of Involuntary Disappearance (FIND) 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 in consultation with other human rights organizations such as the Asian Federation Against Enforced or Involuntary Disappearance, KARAPATAN and other human rights organizations.

SEC. 23. Monitoring of Compliance With This Act. – An Oversight Committee is hereby created to periodically oversee the implementation of this Act. The group shall be headed by a Commissioner of the Commission on Human Rights and with the following as members: One Undersecretary of the Department of Justice, Chairperson of the Senate Committee on Justice and Human Rights, respective Chairpersons of the House of Representatives Committees on Justice and Civil and Political and Human Rights and the Secretary General of the Families of Victims of Involuntary Disappearance (FIND).

SEC. 24. Supplementary Applications. – The provisions of the Revised Penal Code shall be supplementary to this Act.

SEC. 25. Appropriations. – The funds necessary for the effective implementation of this Act shall be sourced from the contingent fund of the President for fiscal year 2004 and subsequently included in the budget of the Commission on Human Rights under the General Appropriations Act of the year following the enactment of this Act.

SEC. 26. Enforced or Involuntary Disappearance Fund. – In addition to the funding sources provided for in the preceding section, two percent (2%) of the filing fees in civil cases and special proceedings before all courts, including the Court of Appeals and the Supreme Court, shall be collected to constitute an enforced or involuntary disappearance fund.

SEC. 27. Separability Clause. – If any provision of this Act is declared invalid, the remainder thereof not affected thereby shall continue to be in full force and effect.

SEC. 28. 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 modified accordingly.

SEC. 29. Effectivity. – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved.