

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 98

Introduced by **HON. EDCCEL C. LAGMAN** and **HON. LORENZO R. TAÑADA III**

EXPLANATORY NOTE

Enforced or involuntary disappearance is a continuing menace to civil liberties and mocks the sanctity and inviolability of human life. It violates not only the right to liberty and security of person, the rights 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 especially 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 their captors.

Most victims of enforced or involuntary disappearance who are still missing are presumed to have been extra-legally killed. Some parents of *desaparecidos* have already died, yet not a single perpetrator of this heinous offense has been convicted and penalized. There are cases pending before the courts filed by families of victims but in the absence of a law penalizing enforced disappearance as a distinct crime, the cases are lodged as kidnapping, serious illegal detention and/or murder.

It is high time that we call a spade a spade. This proposed "Anti-Enforced or Involuntary Disappearance Act" defines and penalizes enforced or involuntary disappearance as a special crime separate from kidnapping, serious illegal detention or murder.

Enforced disappearance is a global offense that has driven families of victims across continents to the United Nations to push for the adoption of a legally-binding instrument that prohibits and seeks to put an end to this heinous offense or crime against humanity. The steadfast intercontinental struggle for a quarter of a century bore fruit in the 2006 International Convention for the Protection of All Persons from Enforced Disappearance.

Under the Convention, enforced disappearance refers to "the arrest, detention, abduction, or any other form of deprivation of liberty 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 place such person outside the protection of the law". Article 4 of the Convention mandates each State Party to "take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law".

This bill is a cogent response to the Convention. It adopts the Convention's definition of enforced disappearance even as it seeks to impose penalties for its commission. Other salient features of the bill are:

1. Continuing character of enforced disappearance as long as the whereabouts of the disappeared person have not been determined with certainty;

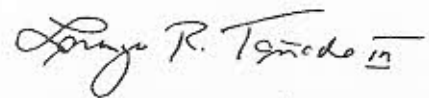
2. Non-derogability of the right against enforced disappearance and the enforcement of safeguards for its prevention under all circumstances including political instability, threat of war, state of war or any other public emergency;
3. Expeditious disposition of *habeas corpus*, *amparo* and *habeas data* proceedings and immediate compliance with any release order by virtue of such proceedings;
4. Limited application of the statute of limitations only when the victim surfaces alive, in which case, the prescription period shall be 25 years starting from the date of his/her reappearance;
5. Penal sanctions for enforced disappearance ranging from *arresto mayor* to *reclusion perpetua* depending on the gravity of the offense;
6. Right to 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 and/or official bodies with legitimate interest in such information and the condition of the detainees;
7. Preventive suspension or summary dismissal of perpetrators of and other participants in the commission of enforced disappearance pursuant to R.A. 8551, the "Philippine National Police Reform and Reorganization Act of 1998" and other laws, rules and regulations;
8. Liability of commanding officers/superiors or equivalent senior officials of the offender for failure to prevent, discontinue or uncover an enforced disappearance;
9. Provision for compensation, restitution and rehabilitation.

The anti-disappearance bill was first introduced in the Eighth Congress and was refiled in all the following Congresses. It was approved on third and final reading by the House of Representatives during the Thirteenth and Fourteenth Congresses and was subsequently transmitted to the Senate. Lamentably, the Senate failed to act on it.

Accordingly, Congress is urged to pass this legislation with dispatch in order to uphold the right of every person to be protected from enforced or involuntary disappearance which remains unabated.



EDCEL C. LAGMAN



LORENZO R. TAÑADA III

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

Be it enacted by the Senate and the 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 2010**”.

SEC. 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.

SEC. 3. *Definitions.* – For purposes of this Act, the following terms shall mean:

(a) “Enforced or involuntary disappearance” refers to the arrest, detention, abduction or any other form of deprivation of liberty committed by government authorities or by persons or groups of persons acting with the authorization, support or acquiescence of such persons in authority, 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.

(b) “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 above.

(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 that it considers as legitimate targets as combatants that it could deal with, through the use of means allowed by domestic and international law.

SEC. 4. *Nonderogability 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 circumstances including political instability, threat of war, state of war or other public emergencies.

SEC. 5. *Right of a Person Under Detention.* – It shall be the absolute right of a person under detention to immediately inform his/her family, relatives, lawyer/s or a human

rights organization by all means that are available and expeditious, by cellular or landline telephone, letter, courier, electronic mail, telegram, radio or other means, on his/her whereabouts and condition.

SEC. 6. *Person/s Keeping or Detaining Victim/s of Enforced or Involuntary Disappearance.* – Any person, not being a principal, accomplice or accessory who keeps or detains a victim of enforced or involuntary disappearance or who shall learn or have information of such fact, shall immediately report in writing the circumstances and whereabouts of such victim to the nearest office of the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), the Department of the Interior and Local Government (DILG), the 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. 7. *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 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 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 the inquiring person or entity on the presence or absence and/or information on the whereabouts of such disappeared person.

SEC. 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 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/her immediate family, relatives, lawyer/s or to a human rights organization by the most expedient means.

SEC. 9. *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. 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 containing among others the following information:

- (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 or 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/her cell, the reason or purpose for such removal and the date and time of his/her return to his/her cell;
- (i) A summary of the physical, mental and medical findings on the detained or confined person after each interrogation;
- (j) The names and addresses of 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.

The updated list of all detention centers and facilities along with the register of detainees and/or prisoners shall be made available at the respective national headquarters of the PNP, AFP and all other law enforcement agencies.

A copy of the complete list and register 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 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 of all detention facilities within their respective jurisdictions together with the up-to-date register of detainees and/or prisoners and shall make the same available to the members of the family or relatives within the fourth civil degree of consanguinity or affinity of the person under custody or detention, lawyer(s), judges, official bodies and all persons who have legitimate interest in the whereabouts and condition of the persons deprived of liberty who upon demand shall be issued a certified true copy of the entries in the register without delay or restriction or requiring any fees whatsoever including documentary stamp tax, notarial fees and the like. This certified true copy shall be attested to by the person who has custody of the register or who allowed the party concerned to scrutinize it at the time the demand for the certified true copy is made.

SEC. 10. *Disposition of Writs of Habeas Corpus, Amparo and Habeas Data Proceedings and Compliance with a Judicial Order.* – A writ of habeas corpus, writ of amparo and habeas data proceedings filed on behalf of the victim of enforced or involuntary disappearance 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.

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

SEC. 12. *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 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 he or she has knowledge of or, owing to the circumstances at the time, should have known that an enforced disappearance is being committed or has been committed by his or her subordinates or by others within his or 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 or she has the authority to prevent or investigate allegations of enforced disappearance but failed to prevent or investigate such allegations, whether deliberately or due to negligence shall also be liable as principal.

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; 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* 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 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*, That 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 writs of *habeas corpus*, *amparo*, and *habeas data* proceedings filed on behalf of the victim of enforced or involuntary disappearance or deliberately fails to immediately follow or comply with an order of release by virtue of a *habeas corpus* proceeding or other appropriate judicial orders.

(e) The penalty of *arresto mayor* shall be imposed against any person who violates the provisions of Sections 5, 6, 7, 8 and 9 of this Act.

SEC. 14. Preventive Suspension and/or Other Administrative Remedies. – The perpetrators of and other participants in the commission of enforced or involuntary disappearance shall be preventively suspended or prohibited from performing any official duties or summarily dismissed pursuant to Republic Act No. 8551, otherwise known as the "Philippine National Police Reform and Reorganization Act of 1998", and other applicable laws, rules and regulations.

SEC. 15. 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 Republic Act No.

7438, otherwise known as "An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof", as well as the Revised Penal Code, including arbitrary detention, delay in the delivery of detained persons, delaying the release of detained persons, maltreatment of prisoners, unlawful arrest, incriminating innocent person, physical injuries, murder and any other appropriate criminal offense/s in special laws.

SEC. 16. *Nonexclusivity 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 laws.

SEC. 17. *Unlawful Order.* – An "order of battle" or any 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. Any person receiving such an order shall have the right to disobey it.

SEC. 18. *Exemption from Criminal Prosecution.* – Any person receiving an order 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*, That said offender appears not to be the most guilty of the crime.

SEC. 19. *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.

SEC. 20. *Exclusion from the Coverage of a Statute of Limitations.* – 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 starting from the date of his/her reappearance.

SEC. 21. *Exclusion from the Coverage of Special Amnesty Law.* – In order not to depreciate the crime of enforced or involuntary disappearance, 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. 22. *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 the victims, their families, complainants, witnesses, legal counsel and representatives of human rights organizations and media. 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. 23. *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 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.

SEC. 24. *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/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 may also claim for compensation as provided for under Republic Act No. 7309, otherwise known as "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 next-of-kin shall be without prejudice to other legal remedies that may be available to them.

SEC. 25. *Rehabilitation of Victims and Offenders.* – 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 CHR, in coordination with the Department of Health, the Department of Social Welfare and Development 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.

SEC. 26. *Implementing Rules and Regulations.* – Within thirty (30) days from the effectivity of this Act, the DOJ, 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.

SEC. 27. *Monitoring of Compliance.* – An Oversight Committee is hereby created to periodically monitor and ensure compliance with this Act. The Committee shall be headed by a Commissioner of the CHR with the following as members:

1. One (1) Undersecretary of the DOJ;
2. One (1) representative from the Senate Committee on Justice and Human Rights;
3. One (1) representative each from the House Committees on Justice and Human Rights;
4. One (1) representative each from the Minority in the Senate and in the House of Representatives;

The Committee shall encourage the active participation of concerned nongovernment organizations (NGOs) in exercising its oversight functions. NGOs may request the Committee to conduct inquiries on documented violations of this Act.

SEC. 28. *Suppletory Applications.* – The provisions of the Revised Penal Code shall be suppletory to this Act.

SEC. 29. *Appropriations.* – The initial sum of Ten million pesos (PhP 10,000,000.00) is hereby allocated to be charged equally against the current appropriations of the CHR and DOJ as provided for by the General Appropriations Act for fiscal year 2010. Any deficiency in appropriations shall be taken from other appropriate funding sources. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the budgets of the CHR and the DOJ under the General Appropriations Act.

SEC. 30. *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.

SEC. 31. *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.

SEC. 32. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation which shall not be later than seven (7) days after the approval thereof.

Approved,