

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

15th Congress
First Regular Session

House Bill No. 223

Introduced by Hon. Lorenzo R. Tañada III

EXPLANATORY NOTE

The story of the disappearance of agriculturist and activist Jonas Burgos once more highlights the importance of this measure. He was going through his regular routine that fateful day of April 28, 2007, when he was forcibly taken by armed men at a mall in Quezon City. He has been missing for more than 3 years now without any lead as to where and how he is.

Jonas' story is the also the story of hundreds more missing in the country. We have the cases of Redemptorist priest Rudy Romano, Benedictine deacon Carlos Tayag, university professor Charlie del Rosario, labor and human rights lawyer Hermon C. Lagman, student activists Rizalina Ilagan, Gerardo Faustino and Emmanuel Yap and many more who disappeared during the Martial Law years. Jonas Burgos, Karen Empeño, and Sherlyn Cadapan joined the list when they disappeared just a few years ago.

Indeed, not only is there the possibility of cruel, inhuman or degrading treatment, torture and worst, death, a real threat in enforced disappearance. But not knowing what exactly happened to the disappeared person makes closure next to impossible for the loved ones left behind.

It is unfortunate then that given the large number of the disappeared during the previous administration, the Arroyo government has not taken significant action on any of these cases. The missing remained as "statistics" in the country. The Karapatan Human Rights Group's records show that from January 21, 2001 to October 31, 2008 there are a total of 201 victims of enforced or involuntary disappearances.

Strictly speaking, the Marcos regime registered the highest number of reported victims of enforced disappearances with a total of 855. Still, reports of enforced or involuntary disappearances continue to be one of the worst forms of human rights violations in our country even in the present time.

Last Congress, the Commission on Human Rights strongly supported the approval of the proposed bill on "Anti-Enforced or Involuntary Disappearances." Stating that "the urgency of the passage of the bill is grounded upon the numerous cases of disappearances primarily perpetrated or participated in by agents of the state", the bill further expressed that "judicial remedies such as *habeas corpus* has proved ineffective in locating and bringing before the courts people who have disappeared".

With the limitations of the *habeas corpus*, it can be said that new measures such as the Rule on the *Writ of Amparo* and Rule on the *Writ of Habeas Data* are welcome remedies for families of victims of disappearances.

Sad to say that even with this development, the Philippines is not yet a party to the Convention for the Protection of All Persons from Enforced Disappearances. But even then, from an international law perspective, even without being parties to the Convention, states like the

Philippines are obliged to respect, protect and fulfil the right of its citizen to not to be a victim of enforced disappearance.

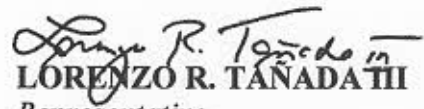
More unfortunate is that the Philippines has no statute defining and punishing the crime of enforced disappearance. Though the Philippines have criminal laws defining and punishing the crimes of kidnapping and arbitrary detention, these crimes are not the same thing. They do not name the evil of the enforced or involuntary disappearance. Neither do they capture the gravity of the offence of the enforced or involuntary disappearance.

For that reason, the need to pass a legislation to bring justice to enforced or involuntary victims is in order. Our efforts must also pave the way for an enactment of a law that will deter the commission of these politically-motivated abductions.

Among the salient features of this 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. Liability of commanding officers/superiors or equivalent senior officials of the offender for failure to prevent, discontinue or uncover an enforced disappearance.

It is my fervent hope that this very important bill be passed at the soonest possible time by the 15th Congress.


LORENZO R. TANADA III
Representative
4th District, Quezon

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

15th Congress
First Regular Session

0001 223
House Bill No. _____

Introduced by Representative Lorenzo R. Tañada III

AN ACT DEFINING AND PENALIZING THE CRIME OF 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 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 person 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 of the Philippines (CHRP), 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. 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, which shall include, among others, the following:

- (a) The identity 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 having decided the deprivation of liberty and the reasons for the deprivation of liberty;
- (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 victim before and after the deprivation of liberty;
- (g) In the event of death during the deprivation of liberty, the identity, circumstances and cause of death of the victim as well as the destination of the human remains; and
- (h) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.

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 superior of the unit concerned of the AFP or the equivalent senior official of the offender shall be held accountable for “neglect of duty” under the doctrine of “command responsibility” if he has knowledge or, owing to the circumstances at the time, should have known that a crime or offense shall be committed, is being committed, or has been committed by his subordinates or by others within his area of responsibility and, despite such knowledge, he did not take preventive or corrective action either before, during or immediately after its commission, who has the authority to prevent, or investigate allegations of torture but failed to prevent or investigate allegations of

such act whether deliberately or due to negligence shall, without prejudice to criminal liability, be held administratively liable under the principle of command responsibility.

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 mayor* shall be imposed on the immediate officer who, by inexcusable negligence, failed to do an act that would prevent or avert the commission of the crime of involuntary disappearance.

(e) The penalty of *prision correccional* shall be imposed against any person who defies, ignores or unduly delays compliance with a *habeas corpus*, *writ of amparo*, and *writ of 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.

(f) 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 law.

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 and Probation Laws.* – 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. The provisions of Presidential Decree No. 968, otherwise known as the Probation Law of 1976, particularly Section 4, as amended by Presidential Decree No. 1990, shall not apply to persons convicted of the crime of enforced or involuntary disappearance.

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. *Restitution and Compensation to Victims of Enforced or Involuntary Disappearance and/or Their Next-of-Kin.* – 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 next-of-kin 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. 24. *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 CHRP, 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. 25. *Implementing Rules and Regulations.* – Within thirty (30) days from the effectivity of this Act, the Department of Justice (DOJ), the CHRP, the Families of Victims of Enforced or Involuntary Disappearance (FIND) and the Families of *Desaparecidos* for Justice (FDJ), 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. 26. *Monitoring of Compliance.* – A monitoring group is hereby created to periodically 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 (1) Undersecretary of the Department of Justice;
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 from the Senate Committee on Oversight;
5. One (1) representative from the House Committee on Oversight; and
6. Representatives of all interested nongovernment human rights organizations.

SEC. 27. *Suppletory Applications.* – The provisions of the Revised Penal Code shall be suppletory to this Act.

SEC. 28. *Appropriations.* – 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.

SEC. 29. *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. 30. *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. 31. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,