

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 2926

Introduced AKBAYAN Representatives Walden F. Bello and Kaka J. Bag-ao

EXPLANATORY NOTE

Our Constitution guarantees full respect for human rights by the State and provides that the State values the dignity of every human person (Sec. 11, Art. II, 1987 Constitution). It further provides for full protection to the rights to life, liberty and security of all persons.

These provisions reflect our adherence to the major international human rights instruments to which we are signatories and a State Party, including the Universal Declaration of Human Rights, the International Covenant for Civil and Political Rights, and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, among others. But more importantly, it reflects our dark experience as a people under the yoke of martial law and the tyrannical and dictatorial rule of former President Ferdinand Marcos, and our resolve after the EDSA revolution that the human rights violations that our people suffered, including the many cases of forced or involuntary disappearances, shall never again be repeated.

Unfortunately, more than 20 years since the adoption and ratification of our Constitution, cases of forced or involuntary disappearances continue, together with extrajudicial killings. The Melo Commission, the Alston Report and the Supreme Court-initiated Summit all condemned the high incidence of these human rights violations and made recommendations to address the problem.

Among the recommendations are the Philippines' ratification of the Rome Statute and its signing and ratification of the recently adopted International Convention for the Protection of All Persons from Enforced Disappearances. It was also recommended to pass legislation criminalizing forced or involuntary disappearances and torture.

It is against this background that this bill is filed. It conforms to the features of other bills filed for the same purpose, but differs in its universal coverage of all persons who are responsible for these acts, in accordance with the definition and high standard set by the Rome Statute that established the International Criminal Court. With its adoption, the bill would be an effective instrument to address and check this phenomenon.



WALDEN F. BELLO



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

Be it 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 “Anti-Enforced or Involuntary Disappearance Act of 2008”.

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 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 violation, 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 have the following meanings:

- (1) “Enforced or involuntary disappearance” refers to the arrest, detention, abduction or any other form of deprivation of liberty of persons by, or with the authorization, support or acquiescence of government authorities or a political organization, including armed rebel groups, followed by a refusal to acknowledge that deprivation of liberty or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law.
- (2) “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.
- (3) “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 military targets that it could deal with through the use of military means allowed by domestic and international law. It also refers to a similar document drawn up by political organizations, including armed rebel groups, listing their own perceived enemies.

SEC. 4. *Non-Derogability 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. *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. 6. *Order of Battle.* – An Order of Battle, as defined in Section 3 (3), official or otherwise, issued by the military, police or any law enforcement agency of the Government, or by a political organization including armed rebel groups, shall not justify an enforced or involuntary disappearance and its perpetrator(s) shall be subject to the penalties provided under section 19 of this Act.

SEC. 7. *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. 8. *Exclusion from the Coverage of the 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. 9. *Exclusion from the Coverage of Special Amnesty and Probation Laws.* – 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 thereof, as amended by Presidential Decree No. 1990, shall not apply to persons convicted of the crime of enforced or involuntary disappearance.

SEC. 10. *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. 11. *Person Keeping or Detaining Victim 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 on 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, the City or Provincial 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. 12. *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. 13. *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. 14. *Prohibition against Secret Detention Centers.* – Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited.

SEC. 15. *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 authority who deprived the person 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 circumstances and cause of death and 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. 16. *Visit 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. 17. *Disposition of a Proceeding for a Writ of Habeas Corpus or a Writ of Amparo and Compliance with a Judicial Order.* – A proceeding for the issuance of a writ of *habeas corpus* or a writ of *amparo* filed in 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. 18. *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, as provided in Section 19; 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 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 court order of release from a proceeding for the issuance of a writ of *habeas corpus* or a writ of *amparo* filed on behalf of the victim of enforced or involuntary disappearance or to immediately follow or comply with such order or other appropriate judicial orders.

(e) The penalty of *arresto mayor* shall be imposed against any person who violates the provisions of Sections 10, 11, 12, 13, 14 and 15 of this Act.

SEC. 19. Command Responsibility; Liability of Commanding Officer or Superior. – The commanding officer or superior or the equivalent senior official of the military, police or other law enforcement agencies, or other authorities or political organizations, including armed rebel groups, who has effective command and control, or effective authority and control, as the case may be, of the forces under him/her, shall be held liable under the principle of command responsibility for acts of enforced or involuntary disappearance committed by said forces as a result of his/her failure to exercise control properly over such forces, where said commanding officers or authorities knew or, owing to the circumstances at the time, should have known that said forces were committing or about to commit such crimes, and failed to take all necessary and reasonable means within his/her power to prevent or repress their commission, or to submit the matter to the competent authorities for investigation and prosecution.

SEC. 20. Preventive Suspension. – 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. 21. *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 release, maltreatment of prisoners, unlawful arrest, incriminating innocent persons, physical injuries, murder and any other appropriate criminal offense/s in special laws.

SEC. 22. *Incentives.* – 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.

SEC. 23. *State Protection from Intimidation or Reprisal.* – 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. 24. *Restitution and Compensation to 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 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. 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 CHRP, 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 the 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 regulation for the effective implementation of this Act and shall ensure the full dissemination of the same to the public.

SEC. 27. *Monitoring of Compliance with this Act.* – An oversight committee is hereby created to periodically oversee the implementation of this Act. The committee shall be headed by a commissioner of the CHRP and with the following as members: one undersecretary of the DOJ, the chairperson of the Senate Committee on Justice and Human Rights, the respective chairpersons of the House of Representatives' Committees on Justice and Human Rights and the respective chairpersons or secretaries-general of FIND and FDJ.

SEC. 28. *Supplementary Application.* – The provisions of the Revised Penal Code shall be supplementary to this Act.

SEC. 29. *Separability Clause.* – If, for any reasons, any section or provision of this Act is declared unconstitutional or invalid, the 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,