

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3046

Introduced by Reps. NERI JAVIER COLMENARES, TEDDY A. CASIÑO,
RAFAEL V. MARIANO, LUZVMINDA C. ILAGAN,
RAYMOND V. PALATINO, EMERENCIANA A. DE JESUS,
ANTONIO L. TINIO and RUFUS B. RODRIGUEZ

EXPLANATORY NOTE

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

The phenomenon of enforced or involuntary disappearance has largely been left undefined, unchecked and unpunished in our country. No specific offense related to it has been recognized despite its systematic occurrence for the past 30 years.

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

Subsequent administrations after the Marcos regime failed not only to put an end to this practice, but allowed the abhorrent trend to persist. In the past regime (2001-June 30, 2010), there are at least 206 documented cases of victims of enforced disappearances. The series of abduction of Jonas Burgos, Ma. Luisa Posa-Dominado, Nilo Arado, Sherilyn Cadapan and Karen Empeno, to name a few, underscore the gravity of the problem. Then and now, the perpetrators have remained unpunished and free to commit the act over and over.

The United Nations recognizes the gravity of the phenomenon and deems it as a crime against humanity. What particularly distinguishes the crime of enforced or involuntary disappearance from the ordinary crime of kidnapping is its commission by agents of the

State and private individuals acting with the support, authorization or acquiescence of State agents not to mention the fact that ordinary kidnapping or serious illegal detention is already addressed by existing penal laws. The reason for the concern of the United Nations is if the crime is perpetrated by the very states-parties who formally bound itself under UN treaties and resolutions to protect its people from enforced disappearance.

For decades now, the phenomenon has been a nameless, undefined incident in Philippine laws. It is time that it be defined and penalized in the interest of upholding the most basic rights and principles which define the essence of life, humanity and justice. The Philippines ratified the International Covenant of Civil and Political Rights which requires, under Article 2, that the Philippine government and each State Party "undertakes to take the necessary steps in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant."

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

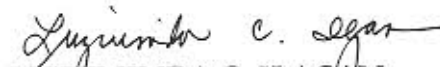
If we are to fulfill our obligations under Article 2 of the ICCPR, the House of Representatives should work for the immediate approval of this Bill.

Approved,

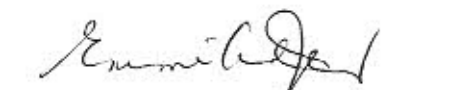

NERI JAVIER COLMENARES
Bayan Muna

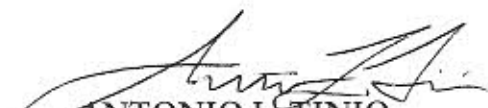
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RUFUS B. RODRIGUEZ
2nd District, Cagayan de Oro City

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

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 Disappearance Act of 2010.”

SECTION 2. Declaration of Policy. The State values the dignity of every human person and guarantees full respect for human rights for which highest priority shall be given to the enactment of measures for the enhancement of the right of all people to human dignity, the prohibition against secret detention places, solitary, incommunicado, or other similar forms of detention, the provision for penal and civil sanctions for such violations, and compensation and rehabilitation for the victims and their families, particularly with respect to the use of torture, force, violence, threat, intimidation or any other means which vitiate the free will of persons abducted, arrested, detained, disappeared or otherwise removed from the effective protection of the law.

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

1. ***Enforced or Involuntary Disappearance*** is 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 or its agents, 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 a person outside the protection of the law.

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

2. ***Victim of Enforced or Involuntary Disappearance*** refers to any individual against whom the crime of enforced or involuntary disappearance as defined above has been committed. The family of the victim is recognized as a victim for the harm they have suffered as a result of enforced disappearance and in so far as they are accorded the right to compensation, restitution and rehabilitation.

SECTION 4. No Justification. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked by government or its agents as a justification for enforced disappearance. Enforced disappearance is a crime under any circumstances.

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

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

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

SECTION 7. Duty of Person/s to Certify in Writing on the Results of Inquiry into a Possible Victim's Whereabouts. In case a family member, relative, lawyer/s, human rights organization or member of the media inquires with a member or official of any police or military detention center, the Philippine National Police (PNP) or any of its agencies, the Armed Forces of the Philippines (AFP) or any of its units or offices, the National Bureau of Investigation (NBI), or any other agency or instrumentality of the Government, as well as any hospital or morgue, public or private, on the presence or whereabouts of a reported victim of enforced or involuntary disappearance, such member or official shall immediately issue a certification in writing to such inquiring person or entity on the presence or absence and/or information on the whereabouts of such possible victim.

The failure of such person to perform this mandatory duty, or the issuance of a false certificate, shall subject him/her to the penalties under Section 11 (iii) hereof, regardless of

whether or not the said victim turns out to be in their power, authority, control, or custody at the time of the inquiry.

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

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

SECTION 9. Defying, Ignoring, or Unduly Delaying Compliance with a Judicial Order. The penalties provided for in Section 11 (iii) hereof shall be imposed against any person who defies, ignores, or unduly delays compliance with a *habeas corpus* or a *writ of amparo* 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* or *writ of amparo* proceeding or other appropriate judicial order.

SECTION 10. Liability of Commanding Officer or Superior. The immediate commanding officer or any other senior official of those who committed the acts referred to in Section 11 (i) who has knowledge or owing to the circumstances at the time should have known that the crime of enforced disappearance shall be committed, is being committed or has been committed by his or her subordinates or by others within his area of responsibility and (ii) he or she failed to take preventive or corrective actions before, during or immediately after the commission of such crime or fails, whether deliberately or due to negligence, or fails to investigate the same, and submit the matter to competent authorities for their investigation and prosecution, shall suffer the penalty of reclusion temporal.

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

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

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

(ii) The penalty of *prision mayor* shall be imposed:

- a. on those who attempt to commit enforced or involuntary disappearance,
- b. on 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 acts:
 - b.1 By themselves profiting from or assisting the offender to profit from the effects of the act of enforced or involuntary disappearance;
 - b.2 By concealing the act of enforced or involuntary disappearance, and/or destroying the effects or instruments thereof, in order to prevent its discovery;
 - b.3 By harboring, concealing, or assisting in the escape of the offenders, whether principals or accomplices, in the act of enforced or involuntary disappearance.

(iii) The penalty of *prision correccional* shall be imposed on persons who commit the acts described in Section 6, Section 7, Section 8 and Section 9 of this Act.

Provided, that the crime of 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 or her reappearance.

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

SECTION 13. Non-Exclusivity or Double Jeopardy Under International Law.

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

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

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

SECTION 15. Unlawful Order. An order from a superior officer or public authority causing the commission of enforced disappearance is unlawful and cannot be invoked as a justifying circumstance. Any person receiving such order shall have the duty to disobey it.

SECTION 16. Protection of Victims, Their Families, Legal Counsel, Human Rights Organizations, Media and Witnesses of Enforced or Involuntary Disappearance. The State through its appropriate agencies shall ensure the safety of all persons involved in the search, investigation and prosecution of enforced or involuntary disappearance including the victims, their families, complainants, witnesses, representatives of human rights organizations, media and legal counsel. They shall likewise be protected from any act of intimidation or reprisal as a result of the filing of charges.

SECTION 16. Compensation to Next-of-Kin of a Victim of Enforced or Involuntary Disappearance. The next-of-kin of a victim of enforced or involuntary disappearance may claim for compensation as provided for under Republic Act No. 7309 and other relief programs of the Government, primarily, but not limited to, financial compensation, and without prejudice to other legal remedies that may be available to him or her.

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

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

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

1. One Undersecretary of the Department of Justice;
2. One representative from the Senate Committee on Justice and Human Rights;
3. One representative from the House Committee Human Rights;

4. One representative each from Desaparacidos and Families of Involuntary Disappearance (FIND) and, at the discretion of the group, one more Representative of other human rights organizations advocating against enforced disappearances.

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

SECTION 21. Repealing Clause. All laws, decrees, executive orders, rules and regulations and other issuances or parts thereof inconsistent with the provisions of this Act are hereby repealed or amended accordingly.

SECTION 22. Separability Clause. If, for any reason, any section or provision of this Act is declared unconstitutional or invalid, such other sections or provisions not affected thereby shall remain in full force and effect.

SECTION 23. Effectivity. This Act shall take effect fifteen (15) days upon its publication in at least two (2) newspapers of general circulation.

Approved,