

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 4936



Introduced by Hon. Silvestre H. Bello, III

EXPLANATORY NOTE

One achievement the Philippines can always be proud of in the legislative arena is that it holds the distinction of being the first, and still the only country in Asia to categorically define, criminalize, and penalize the act of involuntary disappearance – a grievous affront to fundamental human rights. When Republic Act No. 10353, the Anti-Enforced or Involuntary Disappearances Law of 2012 came into force on 13 January 2013, this country took the proverbial first step in the journey of a thousand miles toward the destination of putting an end to the culture of impunity.

The law incorporated such features as the crime, exemptions from the claim of exempting circumstances, vicarious liability for commanding officers, and limitations on amnesty. It even took novel steps such as the extension of complementary protection in a manner not unlike the 1951 Convention Relating to the Status of Refugees to persons in danger of being forcibly disappeared if they are returned, deported, or extradited to their home countries.

However, first steps, as they usually come, are rarely ever flawless. And its passage, while generally welcomed, was not without its critics. These critics took issue with the law's constricted focus on State actors or private parties acting under the auspices of the State.

The critics were correct.

The unwarranted attention given to State actors took some shimmer out of the flashpoint moment. For indeed, there is no difference between the same acts committed by State officials, State-funded or

sanctioned perpetrators, and private persons or groups without the permission of the State. The distinction was uncalled for and a calibration is in order.

This law seeks to amend the Anti-Enforced or Involuntary Disappearance Act of 2012 to punish the said crime even when committed by non-state actors, who are accountable for a sizeable number of disappearances carried out in the Philippines and should accordingly be acknowledged and punished. Concomitantly, related provisions, most notably those concerning liability and the effects thereof, are likewise made applicable to these non-state groups.

Additionally, an Oversight Committee composed of the same officers originally tasked with drafting the Implementing Rules and Regulations of the Act shall be created to periodically monitor compliance implementation of the various, multi-faceted provisions of the Act.

All these seek to close the gaps which have been left open by the original law, its implementing rules, and those which may have come before it, to wit: the Revised Penal Code and other special penal laws, and the judicial rules of *habeas corpus* and the writ of *amparo*.

More importantly, this addresses the reality that in the end it is the victims and their parents, siblings, partners, children, and friends who are affected when people are inexplicably spirited away, their respective fates unknown and their earthly remains nowhere to be found. This is twice as painful for those left; they know not what to do, continuously hounded by questions and doubts and unable to move on with their lives. The smallest measure of justice makes a world of difference.

Regardless of who the perpetrator is, the people affected and the effects upon them are the same. Pain, come to think of it, is universal.

The foregoing, it is felt, are very compelling reasons for the amendment of the original legislation.



SILVESTRE H. BELLO, III

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**AN ACT TO STRENGTHEN THE ANTI-ENFORCED OR
INVOLUNTARY DISAPPEARANCE ACT OF 2012, AMENDING
FOR THE PURPOSE REPUBLIC ACT NO. 10353**

*Be it enacted by the Senate and House of Representatives of the
Philippines in Congress assembled:*

Section 1. Section 3 (b) of Republic Act No. 10353, otherwise known as the Anti-Enforced or Involuntary Disappearance Act of 2012, shall be amended to read as follows:

“(b) *Enforced or involuntary disappearance* refers to the arrest, detention, abduction or any other form of INVOLUNTARY deprivation of liberty committed by agents of the State or by persons or group of persons acting with OR WITHOUT the authorization, support or acquiescence of the State, OR ANY NON-STATE GROUPS, 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.”

Section 2. Section 3(c) of the same Act is hereby amended to read as follows:

“(c) *Order of Battle* refers to a document made by the military, police or any law enforcement agency of the government, OR ANY NON-STATE GROUPS, listing the names of the persons and organizations that it perceives

to be enemies of the State.” [and which it considers as legitimate combatants that it could deal with, through the use of means allowed by domestic and international law]”.

Section 3. Section 3(d) of the same Act is hereby amended to read as follows:

“(d) *Victim* refers to the person who has [suffered harm] DISAPPEARED as a direct result of an enforced or involuntary disappearance as defined in letter (b) of this Section.”

Section 4. Section 5 of the same Act is hereby amended to read as follows:

“Section 5. *“Order of Battle” or Any Order of Similar Nature, Not Legal Ground, for Enforced or Involuntary Disappearance* – An “Order of Battle”, or any order of similar nature, official or otherwise, from a superior officer or public authority, OR ANY NON-STATE GROUPS, causing the commission of enforced or involuntary disappearance is unlawful and cannot be invoked as a justifying, MITIGATING or exempting circumstance. Any person receiving such an order shall have the right to disobey it.”

Section 5. Section 9 of the same Act is hereby amended to read as follows:

“Section 9. *Duty of Inquest/Investigating Public Prosecutor or any Judicial or Quasi-Judicial Official or Employee.* - Any inquest/investigating public prosecutor or any judicial or quasi-judicial official or employee who learns that the person delivered for inquest or preliminary investigation or for any other process is a victim of enforced or involuntary disappearance shall have the duty to immediately disclose the victim’s whereabouts to his or her immediate family, relatives, lawyer/s, or to a human rights organization by the most expedient means.

HE SHALL ALSO HAVE THE RIGHT TO REFUSE THE REMOVAL OF THE VICTIM OF ENFORCED OR INVOLUNTARY DISAPPEARANCE FROM HIS PRESENCE UNLESS HE IS PERSONALLY ASSURED THAT THE VICTIM'S FAMILY, RELATIVES, LAWYER/S OR A HUMAN RIGHTS ORGANIZATION HAVE BEEN INFORMED OF THE VICTIM'S WHEREABOUTS."

Section 6. The first paragraph of Section 10 of the same Act is hereby amended to read as follows:

"Section 10. *Official Up-to-Date Register of All Persons Detained or Confined.* – All persons detained or confined BY THE MILITARY, POLICE AND LAW ENFORCEMENT AGENCIES shall be placed 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."

Section 7. Section 14 of the same Act is hereby amended to read as follows:

"Section 14. *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 WHO HAVE EFFECTIVE COMMAND AND CONTROL, OR EFFECTIVE AUTHORITY AND CONTROL, AS THE CASE MAY BE, OF THE FORCES UNDER HIM/HER, shall be held liable as a principal to the crime of enforced or involuntary 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 such commanding officer has knowledge of or, owing to the circumstances at the time, should have known that an enforced or involuntary disappearance is being committed, or has been committed by subordinates or by others within the officer's area of responsibility and, despite such

knowledge, did not take preventive or coercive action either before, during or immediately after its commission, when he or she has the authority to prevent or investigate allegations of enforced or involuntary disappearance but failed to prevent or investigate such allegations, whether deliberately or due to negligence, shall also be held liable as principal.”

Section 8. Section 15 (5) (b) of the Act is hereby deleted.

“[Section 15 (5) (b). The penalty of reclusion temporal and its accessory penalties shall be imposed upon those who shall commit the act of enforced or involuntary disappearance in the attempted stage as provided for and defined under Article 6 of the Revised Penal Code.]”

Section 9. Section 15 (5)(c), together with its sub-numbers (1), (2) and (3), is now assigned as Section 15 (5) (b).

Section 10. Section 15 (5)(c)(3) is amended and now reads as follows:

“Section 15. - (5)(b)(3) “By harboring, concealing or assisting in [the escape of the principal/s in the act of enforced or involuntary disappearance, provided such accessory acts are done with the abuse of official functions] ANY MANNER THE PERPETRATORS OF THE CRIME OF ENFORCED OR INVOLUNTARY DISAPPEARANCE.”

Section 11. Section 21 is hereby amended to read as follows:

“Section 21 *Continuing AND TRANSITORY CRIME [Offense]*. – [An act constituting] THE CRIME OF enforced or involuntary disappearance shall be considered both a continuing [offense] CRIME, 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, AND A TRANSITORY CRIME FOR PURPOSES OF PROSECUTING ITS PERPETRATORS.”

Section 12. The first paragraph of Section 26 is hereby amended to read as follows:

“Section 26. 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 and shall include immediate expunging or rectification of any derogatory record, information or public declaration on his or her person, personal circumstances, status, and/or organizational affiliation by the appropriate government or private agency or agencies concerned.”

Section 13. The second and third paragraphs of Section 26 are hereby deleted.

“[The immediate relatives of a victim of enforced or involuntary disappearance may also claim for compensation as provided for under Republic Act No. 7309, entitled “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 the relief programs of the government.]

[The package of indemnification for both the victims and the immediate relatives within the fourth civil degree of consanguinity or affinity shall be without prejudice to other legal remedies that may be available to them.]”

Section 14. Section 27 is hereby amended and new sub-sections (a), (b) and (c) are added, to read as follows:

“Section 27. Rehabilitation of AND COMPENSATION TO Victims and/or Their Immediate Relatives, and Offenders. – In order that the victims of enforced or involuntary disappearance who surfaced alive and/or their immediate relatives within the fourth civil degree of consanguinity or affinity, OR IMMEDIATE RELATIVES OF

VICTIMS WHO CONTINUE TO REMAIN MISSING AND UNACCOUNTED FOR, may be effectively reintegrated into the mainstream of society and in the process of development, the State, or through the CHR, in coordination with the Department of Health, the Department of Social Welfare and Development, and the concerned non-government organizations, shall provide them with appropriate medical AND PSYCHOLOGICAL COUNSELLING AND/OR CARE, including rehabilitation, free of charge."

a) VICTIMS WHO HAVE RESURFACED, AND/OR THEIR RELATIVES, SHALL AUTOMATICALLY BE ELIGIBLE FOR THE GOVERNMENT'S WITNESS PROTECTION PROGRAM AND BENEFITS IF THEY DESIRE TO PRESS CHARGES AGAINST THEIR CAPTORS/ PERPETRATORS. THE RELATIVES OF VICTIMS WHO REMAIN MISSING SHALL BE PROVIDED APPROPRIATE GOVERNMENT PROTECTION AGAINST PSYCHOLOGICAL PRESSURE OR PHYSICAL HARM OR FROM ANY FORM OF HARASSMENT IN THEIR QUEST FOR JUSTICE FOR THEIR MISSING RELATIVES.

b) UPON PROPER VALIDATION, VICTIMS WHO HAVE RESURFACED SHALL BE MONETARILY COMPENSATED WITH THE AMOUNT OF PESOS TEN THOUSAND (PHP10,000) FOR EVERY MONTH THAT THEY REMAINED MISSING AS A RESULT OF THE ENFORCED OR INVOLUNTARY DISAPPEARANCE TO COMPENSATE FOR THEIR LOSS OF EARNING DURING THE PERIOD OF SUCH ENFORCED OR INVOLUNTARY DISAPPEARANCE.

c) UPON PROPER VALIDATION, THE IMMEDIATE RELATIVES WITHIN THE FOURTH CIVIL DEGREE OF CONSANGUINITY OR AFFINITY OF A VICTIM OF ENFORCED OR INVOLUNTARY DISAPPEARANCE WHO REMAIN MISSING AND UNACCOUNTED FOR MAY ALSO CLAIM FOR COMPENSATION AS PROVIDED FOR UNDER REPUBLIC ACT NO. 7309, ENTITLED "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 THE RELIEF PROGRAMS OF THE
GOVERNMENT."

Section 15. The second paragraph of Section 27 is hereby assigned as sub-section (d) and amended to read as follows:

d) "Towards the attainment of restorative justice, a parallel rehabilitation program for persons who have [committed] BEEN CONVICTED OF enforced or involuntary disappearance shall likewise be implemented without cost to such offenders."

Section 16. A new paragraph is hereby appended to Section 27, to read as follows:

"THE PACKAGE OF INDEMNIFICATION FOR BOTH THE VICTIMS AND THE IMMEDIATE RELATIVES WITHIN THE FOURTH CIVIL DEGREE OF CONSANGUINITY OR AFFINITY SHALL BE WITHOUT PREJUDICE TO OTHER LEGAL REMEDIES WHICH MAY BE AVAILABLE TO THEM."

Section 17. A new Section 29 is hereby inserted between Sections 28 and 30 of the same Act, to read as follows:

"Section 29. *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 an undersecretary of the DOJ and with at least one representative from each member-agency/organization of the Implementing Rules and Regulations Committee."

Section 18. Sections 29, 30, 31, 32, and 33 of the same Act are hereby renumbered accordingly.

Section 19. *Separability Clause.* If, for any reason, any provision of this Act is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected shall continue to be in full force and effect.

Section 20. *Repealing Clause.* All laws, executive orders, presidential decrees, rules and regulations or parts thereof which are inconsistent with any provision of this Act are hereby repealed or amended accordingly.

Section 21. *Effectivity Clause.* This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation or the *Official Gazette*, which shall not be later than seven (7) days after the approval thereof.

Approved,