

13<sup>th</sup> CONGRESS OF THE REPUBLIC )  
OF THE PHILIPPINES )  
First Regular Session )

'04 JUL -6 AM 12:24

SENATE

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S. NO.                      **1367**

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**Introduced by Senator Ralph G. Recto**

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**EXPLANATORY NOTES**

This legislation shall be known as the "Anti-Enforced or Involuntary Disappearance Act of 2004".

This bill seeks to safeguard the life and liberty of every individual against enforced or involuntary disappearance and of persons under investigation against torture, force, violence, threat or intimidation or any act which impairs a person's free will.

Its salient features include the following:

1. It defines enforced or involuntary disappearance as an act committed when a person is deprived of his liberty, in whatsoever form for political reasons by agents of the State or by private persons or group of persons acting with the authorization, support or acquiescence of the State, followed by an absence of information, or refusal to acknowledge the deprivation of liberty or information or concealment of the fate or whereabouts of the disappeared person thus placing such person outside the protection of laws.
2. It holds the immediate Commanding officer or equivalent Senior Official criminally liable for an enforced or involuntary disappearance.
3. It imposes a maximum penalty of reclusion perpetua consistent with the bill's philosophy of protecting one's right to life.
4. It provides for preventive suspension for all accused perpetrators and other participants in the commission of enforced or involuntary disappearance.
5. It considers the act of concealing the fate and the whereabouts of the persons who have disappeared as a continuing offense.
6. It excludes perpetrators from the coverage of a statute of limitation and the coverage of any special amnesty law or similar measure.
7. It likewise provides for monetary compensation and restitution of honor and reputation to victims of enforced or involuntary disappearance who surfaced alive and /or their next-of-kin.

In this regard, emphasis must be laid on the provision of the Constitution that guarantees the sanctity of life and liberty of all.

In view of the foregoing, approval of this bill is earnestly sought.

  
**RALPH G. RECTO**

13<sup>th</sup> CONGRESS OF THE REPUBLIC )  
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SENATE  
S. BILL NO. 1367

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Introduced by Senator Ralph G. Recto

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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:*

1       **SECTION 1. Short Title.** - This Act shall be known as the "Anti-  
2 Enforced or Involuntary Disappearance Act of 2004".

3  
4       **SEC.2 Declaration Of Policy.** - It is hereby declared a policy of  
5 the State safeguard the life and liberty of the citizens. Further, no person under  
6 investigation shall be subjected to torture, force, violence, threat or intimidation or  
7 any act which impairs a person's free will. Towards these ends, appropriate  
8 penalties shall be imposed on the government officials or agents of the State who  
9 caused the enforced or involuntary disappearance of persons arrested, detained  
10 or abducted.

11  
12       **Sec. 3. Definition of Enforced Or Involuntary Disappearance.** -  
13 For purposes of this Act, enforced or involuntary disappearance  
14 shall be deemed committed when a person is deprived of his liberty, in  
15 whatsoever form for political reason(s) by agents of the State, or by  
16 private persons or group of persons acting with the authorization, support  
17 or acquiescence of the State, followed by an absence of information, or  
18 refusal to acknowledge the deprivation of liberty or information or  
19 concealment of the fate or whereabouts of the disappeared person thus  
20 placing such person outside the protection of laws.

21

1 In the event of prosecution fails to prove political motive, the  
2 deprivation of liberty of the victim who surfaces alive shall be punishable  
3 as kidnapping under the Revised Penal Code. If the victim is  
4 subsequently found dead or his disappearance persists for over three (3)  
5 years, he is presumed killed by those responsible for his arrest, or  
6 abduction, and the act enforced or involuntary disappearance in either  
7 case shall be punishable as murder.

8  
9 **Sec.4. Liability of Commanding Officer.** - The  
10 immediate commanding or equivalent Senior Official shall be held  
11 criminally liable for an enforced or involuntary disappearance. Any failure  
12 on his part, whether done with deliberate intent or negligence, to avert an  
13 act of enforced or involuntary disappearance shall be taken as evidence of  
14 conspiracy.

15  
16 **Sec. 5. Penalties.** - (a) The penalty of *reclusion perpetua*  
17 shall be imposed upon the following persons:

- 18 1. Those who directly committed the act of enforced or  
19 involuntary disappearance;
- 20 2. Those who directly forced, instigated, encouraged or  
21 induced others to commit the act of enforced or involuntary  
22 disappearance;
- 23 3. Those who cooperated in the act of enforced or involuntary  
24 disappearance by committing another act without which the  
25 act of enforced or involuntary disappearance would not have  
26 been carried out;
- 27 4. Those officials who allowed the act of enforced or  
28 involuntary disappearance when it is within their power to  
29 stop the commission of such act;
- 30 5. Those who cooperated in the execution of the act of  
31 enforced or involuntary disappearance by previous or  
32 simultaneous acts.

33  
34 (b) The penalty of *reclusion temporal* shall also be imposed upon the  
35 persons who, having knowledge of the act of enforced or  
36 involuntary disappearance.

37 (c) The penalty of *reclusion perpetua temporal* shall also be imposed  
38 upon the persons who, having knowledge of the act of enforced or

1 involuntary disappearance, and without having participated therein,  
2 either as principals or accomplices, took part subsequent to its  
3 commission in any of the following manners:  
4 1. by themselves profiting from or assisting the offender to  
5 profit from the effects of the act of enforced or involuntary  
6 disappearance;  
7 2. by concealing the act of enforced or involuntary  
8 disappearance, and/or destroying the effects or instruments  
9 thereof, in order to prevent its discovery;  
10 3. by harboring, concealing, or assisting in the escape of the  
11 principal(s) in the act of enforced or involuntary  
12 disappearance, provided the accessory acts are done with  
13 the abuse of the official's public functions.  
14  
15 **SEC.6. Preventive Suspension.** - The accused perpetrators  
16 of and other participants in the commission of enforced or involuntary  
17 disappearance shall be suspended and prohibited from performing any  
18 official duties upon the filing of the information in the proper court until the  
19 promulgation of judgment.  
20  
21 **SEC.7. Civil Liability.** - Enforced or involuntary  
22 disappearance shall render their perpetrators and State authorities which  
23 organized, acquiesced in or tolerated such disappearances liable under  
24 the law.  
25  
26 **SEC.8. Unlawful Order.** - An order from a superior officer  
27 or a public authority causing the commission of enforced or involuntary  
28 disappearance is unlawful and cannot be invoked as a justifying  
29 circumstance.  
30  
31 **SEC.9. Continuing Offense.** - An act constituting  
32 enforced or involuntary disappearance shall be considered a continuing  
33 offense as long as the perpetrators continue to conceal the fate and the  
34 whereabouts of the persons who have disappeared and these facts  
35 remain unclarified.  
36  
37 **SEC.10. Exclusion from the Coverage of the Statute of**  
38 **Limitations.** The prosecution of persons responsible for enforced or

1 involuntary disappearance shall not prescribe unless the victim resurfaces  
2 alive, in which case, the prescriptive period shall start to run from the date  
3 of his reappearance.  
4

5 **SEC.11. Exclusion from the Coverage of Special Amnesty Law.**

6 Persons who have committed the act of enforced or involuntary  
7 disappearance shall not benefit from any special amnesty law or similar  
8 measures that will have the effect of exempting them from any criminal  
9 proceedings and sanctions.  
10

11 **SEC.12. Compensation to and/or Rehabilitation of Victims of**  
12 **Enforced or Involuntary Disappearance and/or their next-of-kin.**

13 The victims of enforced or involuntary disappearance who  
14 surfaced alive shall be entitled to monetary compensation and restitution  
15 of honor and reputation. The nearest of kin, as provided for in Article 887  
16 of the Civil Code, of a victim of an enforced or involuntary disappearance  
17 may claim for compensation as provided for under R.A. 7309 and other  
18 financial relief programs of the Government. The package of  
19 indemnification shall be without prejudice to other legal remedies that may  
20 be available to them.  
21

22 In order that the nearest of kin of victims of enforced or involuntary  
23 disappearance and the victims who surfaced alive may be effectively  
24 reintegrated into the mainstream of society and in the process of  
25 development, the State through the Commission on Human Rights shall  
26 provide them with appropriate medical care and rehabilitation free of  
27 charge.  
28

29 **SEC.13 State's Protection.** - The State through its appropriate  
30 agencies shall ensure the safety of all persons involved in the  
31 investigation and prosecution of enforced or involuntary disappearance  
32 cases namely, the complainant(s), legal counsel, witnesses and relatives  
33 of the victims of involuntary disappearance. They shall likewise be  
34 protected from ill treatment and any acts of intimidation or reprisal as a  
35 result of the complaint or investigation. Any person committing such ill  
36 treatment and/or acts of intimidating or reprisal shall be punished under  
37 existing laws.  
38

1       **SEC.14.     *Implementing Rules and Regulations.*** -       The  
2 Department of Justice (DOJ), the Commission on Human Rights (CHR)  
3 and the Families of Victims of Involuntary Disappearance (FIND) shall  
4 jointly promulgate the rules and regulations for the effective  
5 implementation of this Act and shall ensure the full dissemination of the  
6 same to the public, in consultation with other human rights organizations  
7 such as the Asian Federation Against Involuntary Disappearance,  
8 KARAPATAN and others.

9  
10       **SEC.15.     *Monitoring of Compliance with this Act.*** -       An  
11 Oversight Committee is hereby created to periodically oversee the  
12 implementation of this Act. The group shall be headed by a  
13 Commissioner of the Commission on Human Rights and with the following  
14 as members:

- 15  
16               1.     One Undersecretary of the Department of Justice;  
17               2.     One representative from the Senate Committee on Justice  
18               and Human Rights;  
19               3.     One representative each from the House Committees on  
20               Justice and Civil, Political and Human Rights; and  
21               4.     Secretary-General of the Families of Victims of Involuntary  
22               Disappearance.

23  
24       **SEC.16.     *Suppletory Applications.*** -       The provisions of the  
25 Revised Penal Code shall be suppletory to this Act.

26  
27       **SEC.17.     *Appropriations.*** -       The funds necessary for the  
28 effective implementation of this Act shall be sourced from the contingent  
29 fund of the President for fiscal year 2004 and subsequently included in the  
30 budget of the Commission on Human Rights under the General  
31 Appropriations Act of the year following the enactment of this Act.

32  
33       **SEC.18.     *Enforced or Involuntary Disappearance Fund.*** -

34               In addition to the funding sources provided for in the preceding  
35 section, two percent (2%) of the filing fees in civil cases and special  
36 proceedings before all courts, including the Court of Appeals and the  
37 Supreme Court, shall be collected to constitute an enforced or involuntary  
38 disappearance fund.

1

2

**SEC. 19. Separability Clause.-** If any provisions of this Act is  
3 declared invalid, the remainder thereof not affected thereby shall continue to be  
4 in full force and effect.

5

**SEC. 20. Repealing Clause. -** All laws, decrees, executive  
6 orders, rules and regulations and other issuances or parts thereof inconsistent  
7 with the provisions of this Act are hereby repealed or modified accordingly.

8

**Sec.21. Effectivity. –** This Act shall take effect fifteen (15) days after its  
9 complete publication in at least two (2) national newspapers of general  
10 circulation.

11

*Approved,*

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