


**THIRTEENTH CONGRESS OF THE  
REPUBLIC OF THE PHILIPPINES**  
First Regular Session

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5 JAN 17 2008

SENATE

RECEIVED BY: 

S.B. No. 1885

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Introduced by **Senator Francis N. Pangilinan**

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### EXPLANATORY NOTE

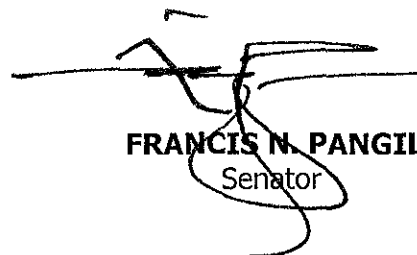
Enforced or involuntary disappearance is committed when a person is arrested, detained or abducted against his/her will or is deprived of his/her liberty by officials or employees of any branch, subdivision, agency or instrumentality of Government, or by organized groups or private individuals acting on behalf of, or with the support of, or with direct or indirect, consents or acquiescence of the Government, and who subsequently disappeared or refuse to disclose his/her fate or acknowledge that he/she was detained, thus placing such person outside the protection of the laws.

At present, there are numerous test cases of involuntary disappearance pending before the courts. However, since involuntary disappearance is not considered a crime under the Philippine law, the cases presently filed in court are lodged as kidnapping, murder or serious illegal detention, or a combination of the last two crimes. This bill is proposed to call the crime by its correct name.

It should be recognized that any act of enforced or involuntary disappearance constitutes a violation of the rights to liberty and security of a person, as well as the person's right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. Hence, the phenomenon of enforced or involuntary disappearance must be finally addressed through adequate legislation directly penalizing its commission.

The bill also aims to deter, if not totally eradicate the commission of this heinous act by any officer or agent of the State to ensure that no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied of equal protection of the laws.

The immediate approval of this bill is earnestly requested.



**FRANCIS N. PANGILINAN**  
Senator

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**AN ACT  
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:*

**Article I  
GENERAL PROVISIONS**

**SECTION 1. Title.** – This Act shall be known as the “Anti-Enforced or  
Involuntary Disappearance Act of 2005.”

**SEC. 2. Declaration of policy.** – It is hereby declared as the policy of  
the State to safeguard the life and liberty of the citizens. Further, no person under  
investigation shall be subjected to torture, force, violence, threat or intimidation or any  
act which impairs his/her free will. Towards these ends, appropriate penalties shall be  
imposed on the government officials or agents of the State who caused the enforced or  
involuntary disappearance of persons, arrested, detained or abducted.

**SEC. 3. Involuntary Disappearance, When Committed.** – For  
purposes of this Act, enforced or involuntary disappearance shall be deemed committed  
when the person is arrested, detained or abducted against his/her will or otherwise  
deprived of his/her liberty by officials or employees of any branch, subdivision, agency  
or instrumentality of government, or by organized groups or private individuals acting on  
behalf of, or with the support, direct or indirect, consent or acquiescence of the  
Government, and who subsequently disappeared for at least 48 hours. These forces  
then conceal the whereabouts of the disappeared or refuse to disclose his/her fate or to  
acknowledge that he/she was detained, thus placing such person outside the protection  
of the laws.

**SEC. 4. Commanding Officer or Senior Official.** – The immediate  
Commanding Officer or equivalent Senior Official shall be held criminally liable for an  
enforced or involuntary disappearance. Any failure on his/her part, whether done with  
intent or negligence, to avert an act or enforced or involuntary disappearance shall be  
taken as evidence of conspiracy.

**SEC. 5. Penalty and Persons Liable.** – 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 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;

The penalty for reclusion temporal shall be imposed upon those who attempt to commit the offense of enforced or involuntary disappearance.

The penalty of reclusion temporal shall be imposed upon the person who, having knowledge of the act enforced or involuntary disappearance, and without having participated therein, either as principals or accomplice, took part subsequent to its commission in any of the following manners:

- (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 of instruments thereof, in order to prevent its discovery;
- (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.

**SEC. 6. Suspension.** – The alleged perpetrators of and other participants in the commission of enforced or involuntary disappearance shall be suspended and prohibited from performing any official duties during the investigation and trial of the case.

**SEC. 7. Civil Liability.** – Enforced or involuntary disappearance shall render their perpetrators and the State authorities which organized, acquiesced in or tolerated such disappearances liable under civil law.

**SEC. 8. Order of Superior Officer or Public Authority.** – An order from a superior officers or a public authority cannot be invoked as justification fore taking part in the commission of an enforced or involuntary disappearance.

**SEC. 9. 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 the whereabouts of the persons who have disappeared and these facts remain unclarified.

**SEC. 10. Prescription.** – There shall be no time limit to the prosecution of a person responsible for the commission of enforced or involuntary disappearance.

**SEC. 11. Non-applicability of Amnesty.** – 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.

**SEC. 12. Restitution.** – The victims of enforced or involuntary disappearance who surfaced alive shall be entitled to monetary compensation and restitution of honor and reputation. The nearest kin, as provided for in Article 887 of the civil code, of a victim of an enforced or involuntary disappearance may claim for compensation as provided for under R.A. 7309 and other financial relief programs of Government. The package of indemnification shall be without prejudice to other legal remedies that may be available to them.

**SEC. 13. Rehabilitation.** – In order that the nearest of kin of victims of enforced or involuntary disappearance and the victims who surfaced alive may be affectively reintegrated into the mainstream of society and in the process of development, the State shall provide them with appropriate medical care and rehabilitation free of charge.

**SEC. 14. Protection of Persons Involved In Prosecution.** – The State through its appropriate agencies shall ensure the safety of all persons involved in the prosecution and investigation on enforced or involuntary disappearance cases such as the complaint (s), legal counsel, witnesses and relatives of the victims of involuntary disappearance. They shall likewise be protected from ill treatment and any acts of intimidation or reprisal as a result of the complaint or investigation. Anyone committing such acts shall be criminally liable.

**SEC. 15. Rules and Regulations.** – The Department of Justice, in collaboration with and concurrence of the Commission on Human Rights and the Families of Victims of Involuntary Disappearance (FIND) shall 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. 16. Monitoring Group.** – A Monitoring group is hereby created to periodically monitor compliance with this Act. The group shall be headed by a Commissioner of the Commission on Human Rights and with 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 on Political, Civil and Human Rights; and
- (4) The Secretary-General of the Families of victims of Involuntary Disappearance (FIND).

**SEC. 17. Supplementary Application of the Revised Penal Code.** – The provisions of the Revised Penal Code on punishable offenses shall be supplementary to this Act.

**SEC. 18. Funds.** – The funds necessary for the effective implementation of this Act shall be included in the budget of the Commission on Human Rights and the Department of Justice under the General Appropriations Act of the year following the enactment of this Act.

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

**SEC. 20. 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 modified accordingly.

**SEC. 21. Effectively Clause.** – This Act shall take effect fifteen (15) days upon its publication in at least two (2) newspapers of general circulation.

***Approved.***