

10 JUL -5 P1:14

SENATE

S. B. No. 100

Introduced by Senator FRANCIS G. ESCUDERO

EXPLANATORY NOTE

This proposed legislation is consistent with one of the fundamental concepts enshrined in the Bill of Rights that "No person shall be deprived of life, liberty or property without due process of law"¹. It seeks to put further into operation Section 11, Article II of the Constitution which declares as a State policy the value of human dignity and the guarantee of full respect to human rights.

Every now and then our society bears witness to cases of involuntary and forced disappearances. Cases that have placed our country under the tight watch of human rights groups both local and international, and even foreign governments. Just recently, incidents of missing persons, famous of which is the Jonas Burgos case, have been reported and confirmed. And worse it is the military that allegedly effects and perpetrates these disappearances.

Indeed, any law that seeks to temper State power must be proceeded against with caution so that State security and protection can likewise be guaranteed.

However, if it becomes apparent that the very existence of humanity is being trampled upon by the agents of the State in the exercise of its power, there must be no compromise for a strong legislation with effective corrective penal measures, even if it would mean tilting the balance much more in favor of individual rights and human dignity.

This bill makes a crime enforced or involuntary disappearance which refers to the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, 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. It provides as maximum penalty the penalty of *reclusion perpetua*, classified as an afflictive penalty equivalent to twenty (20) years and one (1) day to forty (40) years of imprisonment, without prejudice to civil and administrative liabilities.

In view of the foregoing, I earnestly request that we work on the immediate passage of this bill.


FRANCIS G. ESCUDERO

¹ Section 1, Article 111 of the 1987 Constitution.

Introduced by Senator Francis G. Escudero

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

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 "Enforced or
2 Involuntary Disappearance Act".

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

13 Furthermore, the State adheres to the principles and standards on the
14 absolute condemnation on human rights set by the 1987 Philippine Constitution
15 and various international instruments such as but not limited to the International
16 Covenant on Civil and Political Rights (ICCPR), and the Convention Against

1 Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
2 (CAT), to which the Philippine is a State party.

3 **SEC. 3. Definitions.** - For purposes of this Act, the following terms shall
4 mean:

5 (1) *"Enforced or involuntary disappearance"* refers to the arrest,
6 detention, abduction or any other form of deprivation of
7 liberty committed by agents of the State or by persons or
8 groups of persons acting with the authorization, support or
9 acquiescence of the State, followed by a refusal to
10 acknowledge the deprivation of liberty or by concealment of
11 the fate or whereabouts of the disappeared person, which
12 places such person outside the protection of the law.

13 (2) *"Victim"* refers to the disappeared person and any individual
14 who has suffered harm as a direct result of an enforced or
15 involuntary disappearance as defined above.

16 **SEC. 4. Permanent Prohibition of Enforced or Involuntary Disappearance.** - The
17 prohibition of enforced or involuntary disappearance and the fundamental
18 safeguards for its prevention shall not be suspended under any circumstances
19 including political instability, threat of war, state of war or other public
20 emergencies.

21 **SEC. 5. "Order of Battle" Not Legal Ground for Enforced or Involuntary**
22 *Disappearance.* - An "Order of Battle", official or otherwise, issued by the
23 military, police or any other law enforcement agencies of government, shall not
24 justify or be made an exemption from an enforced or involuntary disappearance
25 as defined and penalized in this Act.

26 **SEC. 6. Right of a Victim.** - It shall be the absolute right of a victim of
27 enforced or involuntary disappearance to have immediate access to any form of
28 communication available in order for him/her to inform his/her family, relative,

1 friend, lawyer or any human rights organization on his/her whereabouts and
2 condition.

3 **SEC. 7. *Duty to Report Victims of Enforced or Involuntary Disappearance.*** -

4 Any person, not being a principal, accomplice or accessory, who keeps a victim
5 of enforced or involuntary disappearance or who shall learn or have information
6 of such fact or that a person is a victim of enforced or involuntary disappearance,
7 shall immediately report in writing the circumstances and whereabouts of the
8 victim to any office, detachment or division of the Philippine National Police
9 (PNP), the Armed Forces of the Philippines (AFP), the Department of National
10 Defense (DND), the City or Provincial Prosecutor, the Commission on Human
11 Rights (CHR) or any human rights organization and, if known, the victim's
12 family, relative, or lawyer.

13 **SEC. 8. *Duty to Certify an Inquiry into a Possible Victim's Whereabouts.*** - In

14 case a family member, relative, friend or lawyer of a possible victim, or human
15 rights organization or member of the media inquires into a possible case of
16 enforced or involuntary disappearance, specifically the supposed victim's
17 whereabouts, with the PNP, AFP, NBI, or similar agencies of government,
18 hospitals, morgues, the officer or personnel concerned shall issue a
19 corresponding certification on such inquiry, stating among others in clear and
20 unequivocal manner the date and time of inquiry, details of the inquiry and the
21 response to the inquiry.

22 **SEC. 9. *Official Up-to-Date Register of All Persons Detained or Confined.*** - All

23 persons to be detained or confined pursuant to existing laws and rules and
24 regulations shall be placed solely in officially recognized and controlled places of
25 detention or confinement where an official up-to-date register of such persons
26 shall be maintained.

27 Within forty-eight (48) hours from the time of arrest, the following details,
28 among others, shall be recorded in the register:

- 1 (a) The identity of the person deprived of liberty or arrested;
- 2 (b) The date, time and location where the person was arrested and
3 the identity of the arresting authority;
- 4 (c) The ground or legal basis for the deprivation of liberty or arrest;
- 5 (d) The agency of government having control over the deprivation
6 of liberty or arrest;
- 7 (e) The place of detention or confinement and the date and time of
8 admission to such place of detention or confinement;
- 9 (f) Records of physical, mental and psychological condition of the
10 person detained or confined before and after detention or
11 confinement;
- 12 (g) In the event of death during detention or confinement, the
13 circumstances and cause of death and the destination of the
14 human remains;
- 15 (h) In the event of a release or transfer, the date and time of release
16 or transfer to another place of detention or confinement, and the
17 person or institution responsible for the transfer.

18 All information contained in the register shall be regularly or upon
19 request reported to the CHR or any other agencies of government tasked to
20 monitor and protect human rights and shall be made available to the public.

21 **SEC. 10.** *Submission of list of Government Detention Facilities.* – Within six
22 (6) months from the *effectivity* of this Act and as may be requested by the CHR
23 thereafter, all government agencies concerned shall submit an updated inventory
24 or list of all officially recognized and controlled detention or confinement
25 facilities, and the list of detainees or persons deprived of liberty under their
26 respective jurisdictions to the CHR.

27 **SEC. 11.** *Immediate Issuance and Compliance of the Writs of Habeas Corpus and*
28 *Amparo.* – All proceedings pertaining to the issuance of the writs of *habeas corpus*

1 and *amparo* shall be dispensed with expeditiously. As such, all courts and other
2 concerned agencies of government shall give priority to such proceedings.

3 Moreover, any order issued or promulgated pursuant to such writs or
4 their respective proceedings shall be executed and complied with immediately.

5 **SEC. 12.** *Visitation/Inspection of Places of Detention and Confinement.* -The
6 CHR or its duly authorized representative are hereby mandated and authorized
7 to conduct regular, independent, unannounced and unrestricted visits to or
8 inspection of all places of detention and confinement.

9 **SEC. 13.** *Liability of Commanding Officer or Superior.* - The immediate
10 commanding officer or superior or the equivalent senior official of the offender
11 who has the power, prerogative or authority to prevent or uncover a crime of
12 enforced or involuntary disappearance but fails to do so, deliberately or
13 negligently, shall be held liable under the principle of command responsibility.

14 **SEC. 14.** *Penal Provisions.* - (a) The penalty of *reclusion perpetua* shall be
15 imposed upon the following persons:

- 16 (1) Those who directly committed the act of enforced or involuntary
17 disappearance;
- 18 (2) Those who directly forced, instigated, encouraged or induced others
19 to commit the act of enforced or involuntary disappearance;
- 20 (3) Those who cooperated in the act of enforced or involuntary
21 disappearance by committing another act without which the act of
22 enforced or involuntary disappearance would not have been
23 consummated;
- 24 (4) Those officials who allowed the act or abetted in the consummation of
25 enforced or involuntary disappearance when it is within their power
26 to stop or uncover the commission thereof; and
- 27 (5) Those who cooperated in the execution of the act of enforced or
28 involuntary disappearance by previous or simultaneous acts.

1 (b) The penalty of *reclusion temporal* shall be imposed upon those who shall
2 commit the act of enforced or involuntary disappearance in the attempted stage
3 as provided for and defined under Article 6 of the Revised Penal Code.

4 (c) The penalty of *reclusion temporal* shall also be imposed upon persons who,
5 having knowledge of the act of enforced or involuntary disappearance and
6 without having participated therein, either as principals or accomplices, took
7 part subsequent to its commission in any of the following manner:

8 (1) By themselves profiting from or assisting the offender to profit
9 from the effects of the act of enforced or involuntary
10 disappearance;

11 (2) By concealing the act of enforced or involuntary disappearance
12 and/or destroying the effects or instruments thereof in order to
13 prevent its discovery; or

14 (3) By harboring, concealing or assisting in the escape of the
15 principal/s in the act of enforced or involuntary disappearance,
16 provided such accessory acts are done with the abuse of official
17 functions.

18 (d) The penalty of *prision correccional* shall be imposed against persons who
19 defy, ignore or unduly delay compliance with any order duly issued or
20 promulgated pursuant to the writs of *habeas corpus* or *amparo* or their respective
21 proceedings.

22 (e) The penalty of *arresto mayor* shall be imposed against any person who
23 shall violate the provisions of Sections 6, 7, 8, 9 and 10 of this Act.

24 **SEC. 15. Preventive Suspension.** - Government officials and personnel who
25 are found to be perpetrators of or participants in any manner in the commission
26 of enforced or involuntary disappearance as a result of a preliminary
27 investigation conducted for that purpose shall be preventively suspended or
28 summarily dismissed from the service, depending on the strength of the

1 evidence so presented and gathered in the said preliminary investigation or as
2 may be recommended by the investigating authority.

3 **SEC. 16. *Civil Liability.*** – The Act of enforced or involuntary disappearance
4 shall render its perpetrators and the State agencies which organized, acquiesced
5 in or tolerated such disappearance liable under civil law.

6 **SEC. 17. *Prosecution of the Offense.*** – In the event the prosecution fails to
7 prove all the elements of enforced or involuntary disappearance and the victim
8 appears, the act shall be made punishable as kidnapping under the Revised
9 Penal Code. If the victim, however, is found dead or his/her disappearance
10 persists for over three years, the act of enforced or involuntary disappearance in
11 either case shall be made punishable as murder under the Revised Penal Code.

12 **SEC. 18. *Independent Liability.*** – The criminal liability of the offender
13 under this Act shall be independent of or without prejudice to the prosecution
14 and conviction of the said offender for any violation of Republic Act No. 7438,
15 otherwise known as “An Act Defining Certain Rights of Person Arrested,
16 Detained or Under Custodial Investigation as well as the Duties of the Arresting,
17 Detaining, and Investigating Officers, and Providing Penalties for Violations
18 Thereof”.

19 **SEC. 19. *Nonexclusivity or Double Jeopardy Under International Law.*** – Any
20 investigation, trial and decision in any Philippine court, or body for any violation
21 of this Act shall be without prejudice to any investigation, trial, decision or any
22 other legal or administrative process before any appropriate international court
23 or agency under applicable international human rights and humanitarian law.

24 **SEC. 20. *Unlawful Order.*** – An order from a superior officer or a public
25 authority causing the commission of enforced or involuntary disappearance is
26 unlawful and cannot be invoked as a justifying circumstance.

27 **SEC. 21. *Incentives.*** – Any offender who volunteers information that leads
28 to the discovery of the victim of enforced or involuntary disappearance shall be

1 immune from any criminal liability under this Act, provided that the said
2 offender appears to be not the most guilty.

3 **SEC. 22. *Continuing Offense.*** – An act constituting enforced or involuntary
4 disappearance shall be considered as a continuing offense as long as the
5 perpetrators continue to conceal the fate and whereabouts of the victim, and the
6 victim has not reappeared.

7 **SEC. 23. *Statute of Limitation Exemption.*** – The prosecution of persons
8 responsible for enforced or involuntary disappearance shall not prescribe unless
9 the victim surfaces alive. In which case, the prescriptive period shall be twenty-
10 five (25) years from the date of such reappearance.

11 **SEC. 24. *Special Amnesty Law Exclusion.*** – Persons who are guilty of the act
12 of enforced or involuntary disappearance shall not benefit from any special
13 amnesty law or other similar executive measures that shall exempt them from
14 any penal proceedings or sanctions.

15 **SEC. 25. *State Protection.*** – The State through its appropriate agencies shall
16 ensure the safety of all persons involved in the search, investigation and
17 prosecution of enforced or involuntary disappearance. They shall likewise be
18 protected from any form of intimidation or reprisal.

19 **SEC. 26. *Compensation/Rehabilitation of Victims and Restitution of Honor and***
20 *Reputation.* – The victims of enforced or involuntary disappearance shall be
21 entitled to monetary compensation, medical and psychological rehabilitation and
22 restitution of honor and reputation. Such restitution of honor and reputation
23 shall include immediate expunging or rectification of any derogatory record,
24 information or public declaration/statement on his/her personal circumstances,
25 status, person or affiliation by the appropriate agencies of government.

26 A relative of a victim of enforced or involuntary disappearance within the
27 fourth civil degree of consanguinity or affinity, may also claim for compensation
28 as provided for under Republic Act No. 7309, otherwise known as “An Act

1 Creating a Board of Claims under the Department of Justice for Victims of Unjust
2 Imprisonment or Detention and Victims of Violent Crimes and For Other
3 Purposes”, and other relief programs of the government.

4 Any package of indemnification for both the victim and his/her relative as
5 defined above shall be without prejudice to other legal remedies that may be
6 available to them under existing laws.

7 **SEC. 27. *Implementing Rules and Regulations.*** – Within thirty (30) days from
8 the effectivity of this Act, the Department of Justice (DOJ), the CHR, the Families
9 of Victims of Involuntary Disappearances (FIND) and the Desaparecidos shall
10 jointly promulgate the rules and regulations for the effective implementation of
11 this Act and shall ensure the full dissemination of the same to the public in
12 consultation with human rights organizations such as but not limited to the
13 Asian Federation Against Enforced or Involuntary Disappearance (AFAD), the
14 KARAPATAN, Task Force Detainees of the Philippines (TFDP) and other human
15 rights organizations.

16 **SEC. 28. *Suppletory Applications.*** – The applicable provisions of the Revised
17 Penal Code shall have suppletory application insofar as they are consistent with
18 the provisions of this Act.

19 **SEC. 29. *Separability Clause.*** – If for any reason, any section or provision of
20 this Act is declared unconstitutional or invalid, such other sections or provisions
21 not affected thereby shall remain in full force and effect.

22 **SEC. 30. *Repealing Clause.*** – All laws, decrees, executive orders, rules and
23 regulations and other issuances or parts thereof inconsistent with the provisions
24 of this Act are hereby repealed, amended or modified accordingly.

25 **SEC. 31. *Effectivity.*** – This Act shall take effect fifteen (15) days after its
26 publication in at least two newspapers of general circulation or the Official
27 Gazette.

28 *Approved,*