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Introduced by Senator Miriam Defensor Santiago

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EXPLANATORY NOTE

Enforced or involuntary disappearance is a sudden and forcible arrest, detention or abduction of a person or group of persons who are actually or allegedly involved in social transformation or in upholding and defending the civil, political, economic, social and cultural rights of the people. It is perpetrated directly or indirectly by agents of the State who refuse to disclose the whereabouts of the victims or to acknowledge the detention with the intention of depriving them protection of the law for a prolonged period of time.

Involuntary disappearance is one of the cruelest forms of human rights violations. It violates not only the right to liberty and security of the person, the right against torture, force, violence, threat, intimidation, secret detention places, solitary, incommunicado or other forms of similar detention, which are guaranteed by the Constitution, but practically all human rights including the right to life. The victims are deprived of due process of law and are forced to endure unimaginable indignities and atrocities in the hands of the perpetrators.

The State resorts to involuntary disappearance to stifle dissent and to silence political activists. The atrocious offense is practiced in no less than 65 States. In the Philippines, The Families of Victims of Involuntary Disappearance (FIND) has already documented 1,662 out of the 1,871 reported cases of enforced or involuntary disappearance as of March 2004. Of these cases 1,094 are still missing, 327 have surfaced alive and 241 found dead. Eight hundred fifty-five (855) involuntarily disappeared during the Marcos regime, 820 under the Aquino administration, 87 under Ramos, 58 under Estrada and 51 under the Macapagal-Arroyo dispensation. Involuntary disappearance may no longer be rampant but is still unabated. Not a

single case has been resolved. No perpetrator has been punished. No victim or his/her family has been indemnified.

The families and relatives of some victims have filed in court 14 cases. In the absence, however, of a law penalizing involuntary disappearance, the cases are lodged as kidnapping, murder, serious illegal detention or a combination of the last two offenses. It is, therefore, urgent to enact a special law defining and penalizing enforced or Involuntary disappearance as a crime distinct from kidnapping, serious illegal detention or murder. Hence, this bill which not only seeks to impose penalties on the perpetrators of enforced or involuntary disappearance but also to provide greater protection from this odious transgression of human rights.

Crimes committed by agents of the State against the very people they have sworn to protect are indeed reprehensible acts that must be punished severely as the people's defenders become their assailants. The people vest the State with vast powers for the protection of the people's rights and the promotion of their welfare. Thus, if the State uses these powers to mastermind and execute wrongful and cruel acts, like enforced or involuntary disappearance that deprive the people of the dignity that makes them human, the State must be held liable both criminally and civilly.

This is a Senate counterpart bill to one filed in the House of Representatives by Rep. Edcel C. Lagman.\*

*Miriam Defensor Santiago*  
MIRIAM DEFENSOR SANTIAGO

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\* This bill was originally filed during the Thirteenth Congress, First Regular Session.

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1 AN ACT  
2 DEFINING AND PENALIZING ENFORCED OR INVOLUNTARY DISAPPEARANCE

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

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

5 SECTION 2. *Declaration of Policy.* – The State values the dignity of every human being  
6 and guarantees full respect for human rights for which highest priority shall be given to the  
7 enactment of measures for the enhancement of the right of the people to human dignity, the  
8 prohibition against enforced or involuntary disappearance, the provision for penal and civil  
9 sanctions for violations thereof, and compensation and rehabilitation of the victims and their  
10 families. Further, no acts of torture, force, violence, threat or intimidation or any act which  
11 vitiates the free will shall be employed against the person abducted, arrested, detained,  
12 disappeared or otherwise removed from the effective protection of the law.

13 SECTION 3. *Definition of Enforced or Involuntary Disappearance.* – For purposes of  
14 this Act, enforced or involuntary disappearance shall be deemed committed when a person is  
15 deprived of his/her liberty, in 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 or acquiescence of the  
17 State, followed by an absence of information, or refusal to acknowledge the deprivation of  
18 liberty and information, or concealment of the fate or whereabouts of the disappeared person  
19 thus placing such person outside the protection of the law.

20 In the event the prosecution fails to prove political motive, the deprivation of liberty of  
21 the victim who surfaces alive shall be punishable as kidnapping under the Revised Penal Code. If

1 the victim is subsequently found dead or his/her disappearance persists for over three (3) years,  
2 he/she is presumed killed by those responsible for his/her arrest or abduction, and the act of  
3 enforced or Involuntary disappearance in either case shall be punishable as murder.

4 SECTION 4. *Permanent Prohibition of Enforced or Involuntary Disappearance.* – The  
5 prohibition of enforced or involuntary disappearance and the fundamental safeguards for its  
6 prevention shall not be suspended under any circumstances including political instability, threat  
7 of war, state of war or other public emergencies.

8 SECTION 5. *"Order of Battle" Not Legal Ground for Enforced or Involuntary*  
9 *Disappearance.* – An "Order of Battle", official or otherwise, issued by the military, police or  
10 any law enforcement agency of the Government, shall not justify an enforced or involuntary  
11 disappearance and shall subject the perpetrators to the same corresponding penalties provided in  
12 this Act.

13 SECTION 6. *Right of Victim of Enforced or Involuntary Disappearance.* – It shall be the  
14 absolute right of a victim of enforced or Involuntary disappearance to immediately inform  
15 his/her family, relative, lawyer(s) or a human rights organization by all means that are available  
16 and expeditious, by cellular phone, landline, courier, electronic mail, telegram, radio or other  
17 means, on his or her whereabouts and condition.

18 SECTION 7. *Duty of Person(s) Keeping, Arresting, or Detaining Victim(s) of Enforced*  
19 *or Involuntary Disappearance.* – Any person(s) keeping, arresting or detaining a victim of  
20 enforced or involuntary disappearance or who shall learn or have information of such fact shall  
21 have the duty to immediately report in writing on the circumstances and whereabouts of such  
22 victim to the nearest office of the Philippine National Police (PNP), Armed Forces of the  
23 Philippines (AFP), Department of the Interior and Local Government (DILG), Department of  
24 National Defense (DND), the City or Provincial Public Prosecutor, the Commission on Human  
25 Rights (CHR) as well as the victim's family, relatives, lawyer(s) or to a human rights  
26 organization by the most expedient means.

1           SECTION 8. *Duty of Person(s) to certify In Writing on the Results of Inquiry into a*  
2 *Possible Victim's Whereabouts.* – In case a family member, relative, lawyer(s), human rights  
3 organization or member of the media inquires with a member or official of any police or military  
4 detention center, the PNP or any of Its agencies, the AFP or any of Its agencies, the NBI, or any  
5 other agency or instrumentality of the Government, as well as any hospital or morgue, public or  
6 private, on the presence or whereabouts of a reported victim of enforced or involuntary  
7 disappearance, such member or official shall immediately issue a certification in writing to the  
8 inquiring person or entity on the presence or absence and/or information on the whereabouts of  
9 such possible victim.

10           SECTION 9. *Duty of Inquest/Investigating Public Prosecutor or any Judicial or Quasi-*  
11 *judicial Employee or Official.* – Any Inquest or Investigating Public Prosecutor or any judicial or  
12 quasi-judicial employee or official who learns of such disappearance and upon whom the victim  
13 of enforced or involuntary disappearance is delivered for inquest or preliminary investigation or  
14 for any other judicial process, shall have the duty to immediately disclose such circumstances  
15 and the victim's whereabouts to his/her immediate family, relatives, or lawyers or to a human  
16 rights organization by the most expedient means.

17           SECTION 10. *Official Up-to-Date Register of all Persons Detained or Confined.* – All  
18 persons deprived of liberty shall be held solely in officially recognized and controlled places of  
19 detention or confinement where an official up-to-date register of such persons shall be  
20 maintained. All information contained in the register shall be made available to the relatives,  
21 lawyers, judges, official bodies and to all persons who have legitimate interest in the  
22 information.

23           SECTION 11. *Visits of Inspection to All Places of Detention.* – Competent  
24 representatives of the Commission on Human Rights shall conduct regular, independent,  
25 unannounced and unrestricted visits of inspection to all places of detention and confinement.

26           SECTION 12. *Liability of Commanding Officer.* – The immediate Commanding Officer  
27 or equivalent Senior Official shall be held liable for an enforced or involuntary disappearance.

1 Any failure on his/her part, whether done with deliberate intent or negligence to avert an act of  
2 enforced or involuntary disappearance shall be taken as evidence of conspiracy.

3 SECTION 13. *Penal Provisions.* – (A) The penalty of *reclusion perpetua* shall be  
4 imposed upon the following persons:

5 (1) Those who directly committed the act of enforced or involuntary  
6 disappearance;

7 (2) Those who directly forced, instigated, encouraged or induced others to  
8 commit the act of enforced or involuntary disappearance;

9 (3) Those who cooperated in the act of enforced or involuntary disappearance by  
10 committing another act without which the act of enforced or involuntary disappearance  
11 would not have been carried out;

12 (4) Those officials who allowed the act of enforced or involuntary disappearance  
13 when it is within their power to stop the commission of such act;

14 (5) Those who cooperated in the execution of the act of enforced or involuntary  
15 disappearance by previous or simultaneous acts.

16 (B) The penalty of *reclusion temporal* shall be imposed upon those who attempt to  
17 commit the offense of enforced or involuntary disappearance.

18 (C) The penalty of *reclusion temporal* shall also be imposed upon the persons who,  
19 having knowledge of the act of enforced or involuntary disappearance, and without having  
20 participated therein, either as participants or accomplices, took part subsequent to its commission  
21 in any of the following manners:

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

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

26 (3) By harboring, concealing, or assisting in the escape of the principal(s) in the  
27 act of enforced or involuntary disappearance, provided the accessory acts are done with  
28 the abuse of the official's public functions.

1 (D) The penalty of *prision coreccional* shall be imposed against any person who defies,  
2 ignores, or unduly delays compliance with a *habeas corpus* or writ of amparo proceeding filed  
3 on behalf of the victim of enforced or involuntary disappearance or to immediately follow or  
4 comply with an order of release by virtue of such proceeding or other appropriate judicial order.

5 (E) The penalty of *arresto mayor* shall be imposed against any person who violates the  
6 provisions of Sections 6, 7, 8 and 9 of this Act.

7 SECTION 14. *Preventive Suspension.* – The perpetrators of and other participants in the  
8 commission of enforced or involuntary disappearance shall be preventively suspended and  
9 prohibited from performing any official duties upon the filing of the information or complaint in  
10 the proper court until the promulgation of judgment.

11 SECTION 15. *Civil Liability.* – Enforced or involuntary disappearance shall render its  
12 perpetrators and the State authorities which organized, acquiesced in or tolerated such  
13 disappearance liable under civil law.

14 SECTION 16. *Unlawful Order.* – An order from a superior officer or a public authority  
15 causing the commission of enforced or involuntary disappearance is unlawful and cannot be  
16 invoked as a justifying circumstance.

17 SECTION 17. *Continuing Offense.* – An act constituting enforced or involuntary  
18 disappearance shall be considered a continuing offense as long as the perpetrators continue to  
19 conceal the fate and the whereabouts of the persons who have disappeared and these facts remain  
20 unverified.

21 SECTION 18. *Exclusion from the Coverage of a Statute of Limitation.* – The prosecution  
22 of persons responsible for enforced or involuntary disappearance shall not prescribe unless the  
23 victim surfaces alive, in which case, the prescriptive period shall start to run from the date of  
24 his/her reappearance.

25 SECTION. 19. *Exclusion from the Coverage of Special Amnesty Law.* – Persons who  
26 have committed the act of enforced or involuntary disappearance shall not benefit from any

1 special amnesty law or similar measures that will have the effect of exempting them from any  
2 criminal proceedings and sanctions.

3 SECTION. 20. *State's Protection.* – The State through Its appropriate agencies shall  
4 ensure the safety of all persons involved in the search, investigation and prosecution of enforced  
5 or involuntary disappearance including the victims, their families, complainants, witnesses,  
6 representatives of human rights organizations, media and legal counsel. They shall likewise be  
7 protected from any act of intimidation or reprisal as a result of the filing of charges. Any person  
8 committing such ill-treatment and/or acts of intimidation or reprisal shall be punished under  
9 existing laws.

10 SECTION 21. *Compensation to and/or Rehabilitation of Victims of Enforced or*  
11 *Involuntary Disappearance and/or Their Next-of-Kin.* - The victims of enforced or involuntary  
12 disappearance who surfaced alive shall be entitled to monetary compensation, rehabilitation and  
13 restitution of honor and reputation. Such restitution of honor and reputation shall include  
14 immediate expunging or rectification of any derogatory record, information or public  
15 declaration/statement on his/her personal circumstances, status, person, or affiliation by the  
16 appropriate government or private agency or agencies concerned.

17 The next-of-kin of a victim of enforced or involuntary disappearance may also claim for  
18 compensation as provided for under Republic Act 7309 and other relief programs of the  
19 Government.

20 The package of indemnification for both the victims and the next-of-kin shall be without  
21 prejudice to other legal remedies that may be available to them.

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

26 SECTION 22. *Implementing Rules and Regulations.* – Within thirty (30) days from the  
27 effectivity of this Act, the Department of Justice (DOJ), the Commission on Human Rights



1 (CHR) and the Families of Victims of Involuntary Disappearance (FIND) shall jointly  
2 promulgate the rules and regulations for the effective implementation of this Act and shall ensure  
3 the full dissemination of the same to the public in consultation with other human rights  
4 organizations such as the Asian Federation Against Enforced or Involuntary Disappearance,  
5 KARAPATAN and other human rights organizations.

6 SECTION 23. *Monitoring of Compliance with this Act.* - An Oversight Committee is  
7 hereby created to periodically oversee the implementation of this Act. The group shall be headed  
8 by a Commissioner of the Commission on Human Rights and with the following as members: an  
9 Undersecretary of the Department of Justice, Chairperson of the Senate Committee on Justice  
10 and Human Rights, respective Chairpersons of the House of Representatives Committees on  
11 Justice and Civil and Political and Human Rights and the Secretary General of the Families of  
12 Victims of Involuntary Disappearance (FIND).

13 SECTION 24. *Suppletory Applications.* -The provisions of the Revised Penal Code shall  
14 be suppletory to this Act.

15 SECTION 25. *Appropriations.* - The funds necessary for the effective implementation of  
16 this Act shall be sourced from the contingent fund of the President for fiscal year in which this  
17 Act is passed and subsequently included in the budget of the Commission on Human Rights  
18 under the General Appropriations Act of the year following the passage of this Act.

19 SECTION 26. *Enforced or Involuntary Disappearance Fund.* - In addition to the funding  
20 sources provided for in the preceding section, two percent (2%) of the filing fees in civil cases  
21 and special proceedings before all courts, including the Court of Appeals and the Supreme Court,  
22 shall be collected to constitute an enforced or involuntary disappearance fund.

23 SECTION 27. *Separability Clause.* - If any provision of this Act is declared invalid, the  
24 remainder thereof not affected thereby shall continue to be in full force and effect.

1           SECTION 28. *Repealing Clause.* – All laws, decrees, executive orders, rules and  
2 regulations and other issuances or parts thereof inconsistent with the provisions of this Act are  
3 hereby repealed or modified accordingly.

4           SECTION 29. *Effectivity.* – This Act shall take effect fifteen (15) days after its  
5 publication in at least two (2) newspapers of general circulation.

Approved.