



HOUSE OF REPRESENTATIVES

H. No. 5886

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

*Be it enacted by the Senate and 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 2009”.

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

13 SEC. 3. *Definitions.* – For purposes of this Act, the following terms
14 shall mean:

15 (a) “Enforced or involuntary disappearance” refers to the arrest,
16 detention, abduction or any other form of deprivation of liberty committed by
17 government authorities or by persons or groups of persons acting with the
18 authorization, support or acquiescence of such person in authority, followed by
19 a refusal to acknowledge the deprivation of liberty or by concealment of the
20 fate or whereabouts of the disappeared person, which places such person
21 outside the protection of the law.

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

4 (c) "Order of Battle" refers to a document made by the military, police
5 or any law enforcement agency of the government, listing the names of persons
6 and organizations that it perceives to be enemies of the State and that it
7 considers as legitimate targets as combatants that it could deal with, through
8 the use of means allowed by domestic and international law.

9 SEC. 4. *Nonderogability of the Right Against Enforced or Involuntary*
10 *Disappearance.* – The right against enforced or involuntary disappearance and
11 the fundamental safeguards for its prevention shall not be suspended under any
12 circumstances including political instability, threat of war, state of war or other
13 public emergencies.

14 SEC. 5. *Right of a Person Under Detention.* – It shall be the absolute
15 right of a person under detention to immediately inform his/her family,
16 relatives, lawyer/s or a human rights organization by all means that are
17 available and expeditious, by cellular or landline telephone, letter, courier,
18 electronic mail, telegram, radio or other means, on his/her whereabouts and
19 condition.

20 SEC. 6. *Person/s Keeping or Detaining Victim/s of Enforced or*
21 *Involuntary Disappearance.* – Any person, not being a principal, accomplice
22 or accessory who keeps or detains a victim of enforced or involuntary
23 disappearance or who shall learn or have information of such fact, shall
24 immediately report in writing the circumstances and whereabouts of such
25 victim to the nearest office of the Philippine National Police (PNP), the Armed
26 Forces of the Philippines (AFP), the Department of the Interior and Local
27 Government (DILG), the Department of National Defense (DND), the city or
28 provincial public prosecutor, the Commission on Human Rights of the

1 Philippines (CHRP), as well as the victim's family, relatives, lawyer/s or to a
2 human rights organization by the most expedient means.

3 SEC. 7. *Duty to Certify in Writing on the Results of Inquiry into a*
4 *Reported Disappeared Person's Whereabouts.* – In case a family member,
5 relative, lawyer, representative of a human rights organization or member of
6 the media inquires with a member or official of any police or military detention
7 center, the PNP or any of its agencies, the AFP or any of its agencies, the
8 National Bureau of Investigation (NBI) or any other agency or instrumentality
9 of the government, as well as any hospital or morgue, public or private, on the
10 presence or whereabouts of a reported victim of enforced or involuntary
11 disappearance, such member or official shall immediately issue a certification
12 in writing to the inquiring person or entity on the presence or absence and/or
13 information on the whereabouts of such disappeared person.

14 SEC. 8. *Duty of Inquest/Investigating Public Prosecutor or Any*
15 *Judicial or Quasi-Judicial Employee or Official.* – Any inquest or
16 investigating public prosecutor, or any judicial or quasi-judicial employee or
17 official who learns that the person delivered for inquest or preliminary
18 investigation or for any other judicial process is a victim of enforced or
19 involuntary disappearance shall have the duty to immediately disclose the
20 victim's whereabouts to his/her immediate family, relatives, lawyer/s or to a
21 human rights organization by the most expedient means.

22 SEC. 9. *Official Up-to-Date Register of All Persons Detained or*
23 *Confined.* – All persons deprived of liberty shall be held solely in officially
24 recognized and controlled places of detention or confinement where an official
25 up-to-date register of such persons shall be maintained. All information
26 contained in the register shall be made available to the relatives, lawyers,
27 judges, official bodies and to all persons who have legitimate interest in the
28 information, which shall include, among others, the following:

- 1 (a) The identity of the person deprived of liberty;
- 2 (b) The date, time and location where the person was deprived of
3 liberty and the identity of the person who made such deprivation of liberty;
- 4 (c) The authority having decided the deprivation of liberty and the
5 reasons for the deprivation of liberty;
- 6 (d) The authority controlling the deprivation of liberty;
- 7 (e) The place of deprivation of liberty, the date and time of admission
8 to the place of deprivation of liberty and the authority responsible for the place
9 of deprivation of liberty;
- 10 (f) Records of physical, mental and psychological condition of the
11 victim before and after the deprivation of liberty;
- 12 (g) In the event of death during the deprivation of liberty, the identity,
13 circumstances and cause of death of the victim as well as the destination of the
14 human remains; and
- 15 (h) The date and time of release or transfer to another place of
16 detention, the destination and the authority responsible for the transfer.

17 SEC. 10. *Disposition of Writs of Habeas Corpus, Amparo and Habeas*
18 *Data Proceedings and Compliance with a Judicial Order.* – A writ of habeas
19 *corpus, writ of amparo and habeas data* proceedings filed on behalf of the
20 victim of enforced or involuntary disappearance shall be disposed of
21 expeditiously, and any order of release by virtue thereof or other appropriate
22 order of a court relative thereto shall be executed or complied with
23 immediately.

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

1 SEC. 12. *Liability of Commanding Officer or Superior.* – The
2 immediate superior of the unit concerned of the AFP or the equivalent senior
3 official of the offender shall be held accountable for “neglect of duty” under
4 the doctrine of “command responsibility” if he has knowledge or, owing to the
5 circumstances at the time, should have known that a crime or offense shall be
6 committed, is being committed, or has been committed by his subordinates or
7 by others within his area of responsibility and, despite such knowledge, he did
8 not take preventive or corrective action either before, during or immediately
9 after its commission, who has the authority to prevent, or investigate
10 allegations of torture but failed to prevent or investigate allegations of such act
11 whether deliberately or due to negligence shall, without prejudice to criminal
12 liability, be held administratively liable under the principle of command
13 responsibility.

14 SEC. 13. *Penal Provisions.* -- (a) The penalty of *reclusion perpetua*
15 shall be 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 enforced or
22 involuntary disappearance would not have been carried out;

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

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

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

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

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

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

13 (3) By harboring, concealing or assisting in the escape of the
14 principal/s in the act of enforced or involuntary disappearance: *Provided*, That
15 the accessory acts are done with the abuse of the official's public functions.

16 (d) The penalty of *prision mayor* shall be imposed on the immediate
17 officer who, by inexcusable negligence, failed to do an act that would prevent
18 or avert the commission of the crime of involuntary disappearance.

19 (e) The penalty of *prision correccional* shall be imposed against any
20 person who defies, ignores or unduly delays compliance with a *habeas corpus*,
21 *writ of amparo*, and *writ of habeas data* proceedings filed on behalf of the
22 victim of enforced or involuntary disappearance or deliberately fails to
23 immediately follow or comply with an order of release by virtue of a *habeas*
24 *corpus* proceeding or other appropriate judicial orders.

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

27 SEC. 14. *Preventive Suspension and/or Other Administrative*
28 *Remedies.* – The perpetrators of and other participants in the commission of

1 enforced or involuntary disappearance shall be preventively suspended or
2 prohibited from performing any official duties or summarily dismissed
3 pursuant to Republic Act No. 8551, otherwise known as the “Philippine
4 National Police Reform and Reorganization Act of 1998”, and other applicable
5 laws, rules and regulations.

6 SEC. 15. *Liability Under Other National Criminal Laws.* – The liability
7 of the offender under this Act shall be independent of, in addition to, or
8 without prejudice to prosecution and conviction for violation of other
9 applicable laws including Republic Act No. 7438, otherwise known as “An Act
10 Defining Certain Rights of Persons Arrested, Detained or Under Custodial
11 Investigation as well as the Duties of the Arresting, Detaining and Investigating
12 Officers, and Providing Penalties for Violations Thereof”, as well as the
13 Revised Penal Code, including arbitrary detention, delay in the delivery of
14 detained persons, delaying the release of detained persons, maltreatment of
15 prisoners, unlawful arrest, incriminating innocent person, physical injuries,
16 murder and any other appropriate criminal offense/s in special laws.

17 SEC. 16. *Nonexclusivity or Double Jeopardy Under International Law.*
18 – Notwithstanding the provisions of the foregoing section, any investigation,
19 trial and decision in any Philippine court or other agency for any violation of
20 this Act shall be without prejudice to any investigation, trial, decision or any
21 other legal or administrative process before the appropriate international court
22 or agency under applicable international human rights and humanitarian law.

23 SEC. 17. *Unlawful Order.* – An “order of battle” or any order from a
24 superior officer or a public authority causing the commission of enforced or
25 involuntary disappearance is unlawful and cannot be invoked as a justifying
26 circumstance. Any person receiving such an order shall have the right to
27 disobey it.

1 SEC. 18. *Exemption from Criminal Prosecution.* – Any person
2 receiving an order who volunteers information that leads to the discovery of
3 the victim of enforced or involuntary disappearance shall be immune from a
4 criminal charge under this Act and shall be exempt from criminal prosecution:
5 *Provided,* That said offender appears not to be the most guilty of the crime.

6 SEC. 19. *Continuing Offense.* – An act constituting enforced or
7 involuntary disappearance shall be considered a continuing offense as long as
8 the perpetrators continue to conceal the fate and whereabouts of the
9 disappeared person and such circumstances have not been determined with
10 certainty.

11 SEC. 20. *Exclusion from the Coverage of a Statute of Limitations.* –
12 The prosecution of persons responsible for enforced or involuntary
13 disappearance shall not prescribe unless the victim surfaces alive, in which
14 case, the prescriptive period shall be twenty-five (25) years starting from the
15 date of his/her reappearance.

16 SEC. 21. *Exclusion from the Coverage of Special Amnesty and*
17 *Probation Laws.* – In order not to depreciate the crime of enforced or
18 involuntary disappearance, persons who have committed the act of enforced or
19 involuntary disappearance shall not benefit from any special amnesty law or
20 similar measures that will have the effect of exempting them from any criminal
21 proceedings and sanctions. The provisions of Presidential Decree No. 968,
22 otherwise known as the Probation Law of 1976, particularly Section 4, as
23 amended by Presidential Decree No. 1990, shall not apply to persons
24 convicted of the crime of enforced or involuntary disappearance.

25 SEC. 22. *State Protection.* – The State, through its appropriate
26 agencies, shall ensure the safety of all persons involved in the search,
27 investigation and prosecution of enforced or involuntary disappearance
28 including the victims, their families, complainants, witnesses, legal counsel and

1 representatives of human rights organizations and media. They shall likewise
2 be protected from any act of intimidation or reprisal as a result of the filing of
3 charges. Any person committing such ill-treatment and/or acts of intimidation
4 or reprisal shall be punished under existing laws.

5 SEC. 23. *Restitution and Compensation to Victims of Enforced or*
6 *Involuntary Disappearance and/or Their Next-of-Kin.* – The victims of
7 enforced or involuntary disappearance who surface alive shall be entitled to
8 monetary compensation, rehabilitation and restitution of honor and reputation.
9 Such restitution of honor and reputation shall include immediate expunging or
10 rectification of any derogatory record, information or public
11 declaration/statement on his/her person, personal circumstances, status, and or
12 organizational affiliation by the appropriate government or private agency or
13 agencies concerned.

14 The next-of-kin of a victim of enforced or involuntary disappearance
15 may also claim for compensation as provided for under Republic Act
16 No. 7309, otherwise known as “An Act Creating a Board of Claims Under the
17 Department of Justice for Victims of Unjust Imprisonment or Detention and
18 Victims of Violent Crimes and for Other Purposes”, and other relief programs
19 of the government.

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

23 SEC. 24. *Rehabilitation of Victims and Offenders.* – In order that the
24 nearest-of-kin of victims of enforced or involuntary disappearance and the
25 victims who surfaced alive may be effectively reintegrated into the mainstream
26 of society and in the process of development, the State through the CHRP, in
27 coordination with the Department of Health, the Department of Social Welfare

1 and Development and the concerned nongovernment organization/s, shall
2 provide them with appropriate medical care and rehabilitation free of charge.

3 Toward the attainment of restorative justice, a parallel rehabilitation
4 program for persons who have committed enforced or involuntary
5 disappearance shall likewise be implemented without cost to such offenders.

6 SEC. 25. *Implementing Rules and Regulations.* – Within thirty (30)
7 days from the effectivity of this Act, the Department of Justice (DOJ), the
8 CHRP, the Families of Victims of Enforced or Involuntary Disappearance
9 (FIND) and the Families of *Désaparecidos* for Justice (FDJ), in consultation
10 with other human rights organizations, shall jointly promulgate the rules and
11 regulations for the effective implementation of this Act and shall ensure the full
12 dissemination of the same to the public.

13 SEC. 26. *Monitoring of Compliance.* – A monitoring group is hereby
14 created to periodically monitor and check compliance with this Act. A
15 Commissioner of the Commission on Human Rights shall head the group
16 which shall have the following as members:

- 17 1. One (1) Undersecretary of the Department of Justice;
- 18 2. One (1) representative from the Senate Committee on Justice and
19 Human Rights;
- 20 3. One (1) representative each from the House Committees on Justice
21 and Human Rights;
- 22 4. One (1) representative from the Senate Committee on Oversight;
- 23 5. One (1) representative from the House Committee on Oversight; and
- 24 6. Representatives of all interested nongovernment human rights
25 organizations.

26 SEC. 27. *Suppletory Applications.* – The provisions of the Revised
27 Penal Code shall be suppletory to this Act.

1 SEC. 28. *Appropriations.* – The funds necessary for the implementation
2 of this Act shall be included in the budgets of the Commission on Human
3 Rights and Department of Justice under the General Appropriations Act of the
4 year following the enactment of this Act.

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

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

11 SEC. 31. *Effectivity.* – This Act shall take effect fifteen (15) days after
12 its publication in at least two (2) newspapers of general circulation.

Approved,

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