

Republic of the Philippines }
FOURTEENTH CONGRESS }
First Regular Session }

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SENATE

Bill No. 1307

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.

¹ Section 1, Article III of the 1987 Constitution.

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

A handwritten signature in black ink, appearing to be 'Francis G. Escudero', written in a cursive style with a horizontal line through the middle.

FRANCIS G. ESCUDERO

Republic of the Philippines)
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Bill No. 1307

RECEIVED

Introduced by Senator FRANCIS G. ESCUDERO

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

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

SECTION 1. *Short Title.* - This Act shall be known as the "Anti-Enforced or Involuntary Disappearance Act of 2007". *eca*

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

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

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

SEC. 4. *Permanent Prohibition of Enforced or Involuntary Disappearance.* - The prohibition of enforced or involuntary disappearance and the fundamental safeguards for its prevention shall not be suspended under any circumstances

including political instability, threat of war, state of war or other public emergencies.

SEC. 5. "Order of Battle" Not Legal Ground for Enforced or Involuntary Disappearance.— An "Order of Battle", official or otherwise, issued by the military, police or any law enforcement agency of the government, shall not justify an enforced or involuntary disappearance and shall subject the perpetrators to the same corresponding penalties provided in this Act.

SEC. 6. Right of Victim of Enforced or Involuntary Disappearance. — It shall be the absolute right of a victim of enforced or involuntary disappearance to immediately inform his/her family, relatives, lawyer/s or a human rights organization by all means that are available and expeditious, by cellular or landline telephone, letter, courier, electronic mail, telegram, radio or other means, on his/her whereabouts and condition.

SEC. 7. Person/s Keeping, Arresting or Detaining Victim/s of Enforced or Involuntary Disappearance. — Any person/s, not being a principal, accomplice or accessory who keeps, arrests or detains a victim of enforced or involuntary disappearance or who shall learn or have information of such fact, shall immediately report in writing on the circumstances and whereabouts of such victim to the nearest office of the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), the Department of the Interior and Local Government (DILG), the Department of National Defense (DND), the City or Provincial Public Prosecutor, the Commission on Human Rights (CHR) as well as the victim's family, relatives, lawyer/s or to a human rights organization by the most expedient means.

SEC. 8. Duty of Person/s to Certify in Writing on the Results of Inquiry into a Possible Victim's Whereabouts. — In case a family member, relative, lawyer, human rights organization or member of the media inquires with a member or official of any police or military detention center, the PNP or any of its agencies, the AFP or any of its agencies, the National Bureau of Investigation (NBI) or any other agency or instrumentality of the government, as well as any hospital or morgue, public or private, on the presence or whereabouts of a reported victim of enforced or involuntary disappearance, such member or official shall immediately issue a certification in writing to the inquiring person or entity on the presence or absence and/or information on the whereabouts of such possible victim.

SEC. 9. Duty of Inquest/Investigating Public Prosecutor or any Judicial or Quasi-judicial Employee or Official. — Any inquest or investigating public prosecutor, or any judicial or quasi-judicial employee or official who learns of an enforced or involuntary disappearance and upon whom the victim of such disappearance is delivered for inquest or preliminary investigation or for any other judicial process, shall have the duty to immediately disclose such circumstances and the victim's whereabouts to his/her immediate family, relatives, lawyer/s or to a human rights organization by the most expedient means.

SEC. 10. Official Up-to-Date Register of All Persons Detained or Confined. — All persons deprived of liberty shall be held solely in officially recognized and controlled places of detention or confinement where an official up-to-date

register of such persons shall be maintained. All information contained in the register shall be made available to the relatives, lawyers, judges, official bodies and to all persons who have legitimate interest in the information, which shall include, among others, the following:

- (a) The identity of the person deprived of liberty;
- (b) The date, time and location where the person was deprived of liberty and the identity of the authority who deprived the person of liberty;
- (c) The authority having decided the deprivation of liberty and the reasons for the deprivation of liberty;
- (d) The authority controlling the deprivation of liberty;
- (e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
- (f) Records of physical, mental and psychological condition of the victim before and after the deprivation of liberty;
- (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the human remains; and
- (h) The date and time of release or transfer to another place or detention, the destination and the authority responsible for the transfer.

SEC. 11. *Disposition of a Habeas Corpus Proceeding and Compliance with a Judicial Order.* - A habeas corpus proceeding filed on behalf of the victim of enforced or involuntary disappearance shall be disposed of expeditiously, and any order of release by virtue thereof or other appropriate order of a court relative thereto shall be executed or complied with immediately.

SEC. 12. *Visits to or Inspection of All Places of Detention.* - Competent representatives of the Commission on Human Rights shall conduct regular, independent, unannounced and unrestricted visits to or inspection of all places of detention and confinement.

SEC. 13. *Liability of Commanding Officer or Superior.* - The immediate commanding officer or superior or the equivalent senior official of the offender who has the power, opportunity or authority to prevent or uncover a crime of enforced or involuntary disappearance but failed to avert, discontinue or uncover any act of enforced or involuntary disappearance whether deliberately or due to negligence shall be held liable under the principle of command responsibility.

SEC. 14. *Penal Provisions.* - (a) 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 committing 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; and
 - (5) Those who cooperated in the execution of the act of enforced or involuntary disappearance by previous or simultaneous acts.
- (b) The penalty of *reclusion temporal* shall be imposed upon those who attempt to commit the offense of enforced or involuntary disappearance.
- (c) The penalty of *reclusion temporal* shall also be imposed upon the persons who, having knowledge of the act of enforced or involuntary disappearance and without having participated therein, either as principals or accomplices, took part subsequent to its commission in any of the following manner:
- (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 or instruments thereof in order to prevent its discovery; or
 - (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.
- (d) The penalty of *prision correccional* shall be imposed against any person who defies, ignores or unduly delays compliance with a *habeas corpus* proceeding filed on behalf of the victim of enforced or involuntary disappearance or to immediately follow or comply with an order of release by virtue of such *habeas corpus* proceeding or other appropriate judicial order.
- (e) The penalty of *arresto mayor* shall be imposed against any person who violates the provisions of Sections 6, 7, 8, 9 and 10 of this Act.

SEC. 15. Preventive Suspension. – The perpetrators of and other participants in the commission of enforced or involuntary disappearance shall be preventively suspended or prohibited from performing any official duties or summarily dismissed pursuant to Republic Act No. 8551, otherwise known as

the "Philippine National Police Reform and Reorganization Act of 1998" and other laws, rules and regulations.

SEC. 16. *Prosecution of the Offense.* – In the event the prosecution fails to prove the political motive, the deprivation of liberty of the victim who surfaces alive shall be punishable as kidnapping under the Revised Penal Code. If the victim is subsequently found dead or his/her disappearance persists for over three years, he/she is presumed killed by those responsible for his/her arrest or abduction, and the act of enforced or involuntary disappearance in either case shall be punishable as murder.

SEC. 17. *Liability Under Other National Criminal Laws.* – The liability of the offender under this Act shall be independent of, in addition to, or without prejudice to prosecution and conviction for violation of other applicable laws including Republic Act No. 7438, otherwise known as "An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining, and Investigating Officers, and Providing Penalties for Violations Thereof", as well as the Revised Penal Code, including arbitrary detention, delay in the delivery of detained persons, delaying release, maltreatment of prisoners, unlawful arrest, incriminating innocent person, physical injuries, murder and any other appropriate criminal offense/s in special laws.

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

SEC. 19. *Unlawful Order.* – An order from a superior officer or a public authority causing the commission of enforced or involuntary disappearance is unlawful and cannot be invoked as a justifying circumstance.

SEC. 20. *Incentives.* – Any offender who volunteers information that leads to the discovery of the victim of enforced or involuntary disappearance shall be immune from a criminal charge under this Act and shall be exempt from criminal prosecution, provided said offender appears not to be the most guilty of the crime.

SEC. 21. *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 whereabouts of the persons who have disappeared and that these facts remain unverified.

SEC. 22. *Exclusion from the Coverage of a Statute of Limitation.* – The prosecution of persons responsible for enforced or involuntary disappearance shall not prescribe unless the victim surfaces alive, in which case, the prescriptive period shall be twenty-five (25) years starting from the date of his/her reappearance.

SEC. 23. *Exclusion from the Coverage of Special Amnesty Law.* – 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. 24. *State Protection.* – The State through its appropriate agencies shall ensure the safety of all persons involved in the search, investigation and prosecution of enforced or involuntary disappearance including the victims, their families, complainants, witnesses, representatives of human rights organizations, media and legal counsel. They shall likewise be protected from any act of intimidation or reprisal as a result of the filing of charges. Any person committing such ill treatment and/or acts of intimidation or reprisal shall be punished under existing laws.

SEC. 25. *Compensation to and/or Rehabilitation of Victims of Enforced or Involuntary Disappearance and/or Their Next-of-Kin.* – The victims of enforced or involuntary disappearance who surfaced alive shall be entitled to monetary compensation, rehabilitation and restitution of honor and reputation. Such restitution of honor and reputation shall include immediate expunging or rectification of any derogatory record, information or public declaration/statement on his/her personal circumstances, status, person or affiliation by the appropriate government or private agency or agencies concerned. The next-of-kin of a victim of enforced or involuntary disappearance may also claim for compensation as provided for under Republic Act No. 7309, otherwise known as “An Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes”, and other relief programs of the government. The package of indemnification for both the victims and the next-of-kin shall be without prejudice to other legal remedies that may be available to them. In order that the nearest of kin of victims of enforced or involuntary disappearance and the victims who surfaced alive may be effectively reintegrated into the mainstream of society and in the process of development, the State through the CHR shall provide them with appropriate medical care and rehabilitation free of charge.

SEC. 26. *Implementing Rules and Regulations.* – Within thirty (30) days from the effectivity of this Act, the Department of Justice (DOJ), the CHR, the Families of Victims of Involuntary Disappearance (FIND) and the Desaparecidos shall jointly promulgate the rules and regulations for the effective implementation of this Act and shall ensure the full dissemination of the same to the public in consultation with human rights organizations such as the Asian Federation Against Enforced or Involuntary Disappearance (AFAD), the KARAPATAN and other human rights organizations.

SEC. 27. *Monitoring of Compliance with this Act.* – An oversight committee is hereby created to periodically oversee the implementation of this Act. The group shall be headed by a commissioner of the CHR and with the following as members: one undersecretary of the DOJ, the chairperson of the Senate Committee on Justice and Human Rights, the respective chairpersons of the House of Representatives’ Committees on Justice and Human Rights, the respective secretary generals of the FIND and the Desaparecidos.

SEC. 28. *Suppletory Applications.* – The provisions of the Revised Penal Code shall be suppletory to this Act.

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

SEC. 30. *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, amended or modified accordingly.

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

Approved,