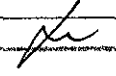


FOURTEENTH CONGRESS )  
 REPUBLIC OF THE PHILIPPINES )  
 First Regular Session )

7 AUG 28 P 3:38

SENATE BILL NO. **1489**

Introduced by Senator M. A. Madrigal

RECEIVED BY: 

**EXPLANATORY NOTE**

Enforced disappearance is said to be the most cruel form of human rights violations. It is most cruel because the possibility of torture and murder of the victim is real, but closure for the victim's family is almost impossible.

In the Philippines, the repeated cases of enforced disappearances have established a systematic pattern that can only be considered a crime against humanity.

During the martial law regime, there were at least 737 cases of disappearances, mostly of youth activists who were never to be seen or heard from again. The pattern has continued into the current administration of President Macapagal Arroyo which alone has to answer for 184 cases from 2001 to August 2007.

However, no specific offense related to enforced disappearance has been recognized despite its unabated occurrence for the past decades. Existing criminal laws, particularly on kidnapping, illegal detention and murder, do not suffice to cover enforced disappearances, the circumstances of which occur after or without official arrest or custody. Current laws are also insufficient to punish its perpetrators and fail to capture the gravity of the issue.

This bill seeks to fill this void by defining and penalizing the crime of enforced or involuntary disappearance. It recognizes that enforced disappearance needs its own penal law primarily because the crime is commissioned by the State or agents acting at its supposed behest and behalf, instead of against it. The bill is meant not only as an instrument of prosecution and punishment, but also as a mechanism for protection and deterrence.

Other salient provisions of this bill include: prohibiting secret detention places, establishing duties of agents of the state, establishing the criminal liability even for accomplices and superiors of the perpetrators of enforced disappearances, obligating the government to maintain an updated official register of *desaparecidos*, requiring immediate investigations and a regular report on actions taken regarding enforced disappearances, allowing access to any place where there are reasonable grounds to believe the *desaparecido* may be present, providing restitution to victims and their next of kin, and ensuring education and training regarding this Act among law enforcers.

This bill upholds the International Convention for the Protection of All Persons from Enforced Disappearance which to date awaits the country's signing and ratification.


For the sake of all those who will never have a grave to their name, approval of this bill is most urgently sought so that the crime done to them may never be repeated.

  
 M. A. MADRIGAL

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

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

**SECTION 1. Short Title.** – This Act shall be known as the “An Act Defining and Penalizing the Crime of Enforced or Involuntary Disappearance.”

**SECTION 2. Declaration of Policy.** – The State values the dignity of every human being and guarantees full respect for human rights. 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.

**SECTION 3. Definitions of Terms.** – 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, whether valid or otherwise, with or without a warrant, that are 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 the refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. It is conclusively presumed that a person is removed from the protection of the law for a period of time of at most thirty-six (36) hours when the other elements or circumstances of enforced or involuntary disappearance concur.
2. **Victim of Enforced or Involuntary Disappearance** – Refers to any individual against whom the crime of enforced disappearance as defined above has been committed.

**SECTION 4. Prohibition on Secret Detention.** – It is hereby prohibited to hold a person in secret detention. This includes any place, facility or location other than officially recognized detention centers of government instrumentalities and that are beyond the reach of adequate supervision, accountability or law.

**SECTION 5. No Legal Justification for Enforced Disappearance.** – No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of 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 disappearance and shall subject the persons involved in such act to the corresponding penalties provided in this Act.

**SECTION 6. Rights of Persons Arrested, Detained or Deprived of Liberty.** – It shall be the

absolute right of a person who has been arrested, detained or deprived of liberty to immediately inform his/her family, relatives, lawyer/s or a human rights organization by all means that are available and expeditious, by cellular phone, landline, courier, letter, electronic mail, telegram, radio or other means, on his or her whereabouts and condition.

Any person depriving, denying or delaying such exercise of the victim's right shall be subjected to the penalties under Section 12 hereof.

**SECTION 7. Duties of Agents of the State.** – It shall be the duty of agents of the State or persons or groups of persons acting with the authorization, support or acquiescence of the State, who arrest, detain, order or enforce the deprivation of liberty of a person to ensure the following:

1. To hold any person deprived of liberty only in officially recognized and supervised places of detention;
2. To immediately report in writing on the circumstances and whereabouts of such person deprived of liberty to the nearest office of the Philippine National Police (PNP), Armed Forces of the Philippines (AFP), Department of Interior and Local Government (DILG), Department of National Defense (DND), the City or Provincial Public Prosecutor, the Commission on Human Rights (CHR) as well as the person's family, relatives, lawyer/s or to a human rights organization by the most expedient means;
3. To allow any person deprived of liberty to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law;
4. To guarantee access by the competent and legally authorized authorities and institutions to the places where persons are deprived of liberty, if necessary with prior authorization from a judicial authority;
5. To guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.
6. To take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released and to assure the physical integrity of such persons and their ability to exercise fully their rights at the time of release.

Failure to perform these duties by negligence or otherwise shall subject agents of the State involved in the arrest, detention or deprivation of liberty of persons to the penalties under Section 12 hereof.

**SECTION 8. Powers of Investigating Authority.** Where there are reasonable grounds to believe that a person has been subjected to enforced disappearance, the Commission on Human Rights shall undertake an investigation, even if there has been no formal complaint. Said Commission shall –

1. Have the necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigation;
2. Have access, if necessary with the prior authorization of a judicial authority, which shall rule promptly on the matter, to any place of detention or any other place where there are

reasonable grounds to believe that the disappeared person may be present.

3. Ensure that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defense counsel, or at persons participating in the investigation.

**SECTION 9. 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/s, human rights organization or member of the media inquires with a member or official of any police or military detention center, the *Philippine National Police (PNP)* or any of its agencies, the *Armed Forces of the Philippines (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 disappearance, such member or official shall immediately issue a certification in writing to such inquiring person or entity on the presence or absence and/or information on the whereabouts of such possible victim.

The failure of such person to perform this mandatory duty shall subject him/her to the penalties under Section 12.2 hereof, regardless of whether or not the said victim turns out to be in their power, authority, control, or custody at the time of the inquiry.

**SECTION 10. 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 such disappearance and upon whom the victim of enforced disappearance is delivered for inquest or preliminary investigation or for any other judicial process, shall have the duty to immediately inform such circumstance and the victim's whereabouts to his/her immediate family, relative, or lawyer/s or to a human rights organization by the most expedient means.

The failure of such Inquest or Investigating Public Prosecutor or any judicial or quasi-judicial employee or official to perform this duty by negligence or otherwise shall subject him/her to the penalties under Section 12.2 hereof.

**SECTION 11. Defying, Ignoring, or Unduly Delaying Compliance with a Judicial Order.** – The penalties provided for in Section 12 hereof 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 disappearance or to immediately follow or comply with an order of release by virtue of such *habeas corpus* proceeding or other appropriate judicial order.

**SECTION 12. Penalties.** – The following penalties shall be meted:

1. The penalty of *reclusion perpetua* shall be meted upon the following persons for the commission of enforced disappearance –
  - a. Those who directly committed the act of enforced disappearance;
  - b. Those who directly force or induce others to commit the act of enforced disappearance;
  - c. Those who cooperated in the act of enforced disappearance by another act without which the act of enforced or involuntary disappearance would not have been carried out;
  - d. Those who allowed the act of enforced disappearance when it is within their power to stop the commission of such act;
  - e. Those who cooperated in the execution of an act of enforced disappearance by previous or simultaneous acts.

Provided, however, that should the victim be surfaced alive at or before the time of trial, the penalty next lower in degree shall be imposed.

2. The penalty of *reclusion temporal* shall be imposed on those who attempt to commit enforced disappearance, and on persons who having knowledge of the act of enforced disappearance but without having participated therein either as principals or accomplices took part subsequent to its commission in any of the following acts:
  - a. By themselves profiting from or assisting the offender to profit from the effects of the act of enforced disappearance;
  - b. By concealing the act of enforced disappearance, and/or destroying the effects or instruments thereof, in order to prevent its discovery;
  - c. By harboring, concealing, or assisting in the escape of the offenders, whether principals or accomplices, in the act of enforced disappearance.

Provided, further, that the crime of enforced disappearance shall not prescribe.

**SECTION 13. Liability of Commanding Officer or Senior Official.** – The immediate Commanding Officer or equivalent Senior Official shall be held criminally liable for an enforced disappearance by virtue of the doctrine of command responsibility. Any failure on his/her part, whether done with intent or negligence, to avert an act of enforced disappearance shall be taken as evidence of conspiracy. He/she shall be meted the penalty of *reclusion perpetual*.

**SECTION 14. Civil Liability.** – Enforced disappearance shall render their perpetrators and the State authorities which organized, acquiesced in or tolerated such disappearances liable under civil law.

**SECTION 15. 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 R.A. 7438 (An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation, as well as Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties Therefor) 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 offenses in special laws.

**SECTION 16. Non-Exclusivity 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.

**SECTION 17. Order of Superior Officer or Public Authority.** – An order from a superior officers or a public authority cannot be invoked as justification for taking part in the commission of an enforced disappearance.

**SECTION 18. Continuing Offense.** – An act constituting enforced 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.

**SECTION 19. Prescription.** – There shall be no time limit to the prosecution of a person responsible for the commission of enforced disappearance.

**SECTION 20. Non-applicability of Amnesty.** – Persons who have committed the act of enforced 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.

**SECTION 21. Incentives and Restrictions.** – Any offender who volunteers information that leads to the discovery of the victim of enforced 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.

The alleged perpetrators of and other participants in the commission of enforced disappearance shall be suspended and prohibited from performing any official duties or be the subject of promotion or reassignment of post during the pendency of the case, whether at the level of investigation, criminal or administrative, trial and appeal of the case.

**SECTION 22. Protection of Victims, Their Families, Legal Counsels, Human Rights Organizations, Media and Witnesses of Enforced Disappearance.** – The State through its appropriate agencies shall ensure the safety of all persons involved in the search, investigation and prosecution of cases of *enforced disappearance including the victims, their families, complainants, witnesses, representatives of human rights organizations, members of media and legal counsels.* They shall likewise be protected from any act of intimidation or reprisal as a result of the filing of charges. Anyone committing such acts shall be held criminally liable.

**SECTION 23. Compensation to Next-of-Kin of a Victim of Enforced Disappearance.** – The next-of-kin of a victim of enforced disappearance may claim for compensation as provided for under Republic Act 7309 and other relief programs of the Government, primarily, but not limited to, financial compensation and without prejudice to other legal remedies that may be available to him or her.

**SECTION 24. Rehabilitation of Surfaced Victim.** – The State shall provide for the indemnification and rehabilitation free of charge of a victim of enforced disappearance. He or she shall be entitled to monetary compensation and restitution of honor and reputation, without prejudice to other legal remedies that may be available to him or her. 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.

**SECTION 25. Implementing Rules and Regulations.** – The Department of Justice and the Commission on Human Rights, in regular consultation and close coordination with organizations of victims of human rights violations shall promulgate the rules and regulations for the effective implementation of this Act, and shall ensure the full public dissemination of such.

**SECTION 26. Monitoring of Compliance.** – A Monitoring Group is hereby created to regularly monitor and check compliance with this Act. A Commissioner of the Commission on Human Rights shall head the Group which shall have 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 Civil, Political and Human Rights;
4. One representative from the Senate Committee on Oversight;
5. One representative from the House Committee on Oversight;
6. Representatives of non-government human rights organizations known to be actively involved in cases of enforced or involuntary disappearance.

**SECTION 27. Official Register.** – The Commission on Human Rights, in coordination with the Philippine National Police (PNP), Armed Forces of the Philippines (AFP), Department of Interior and Local Government (DILG), Department of National Defense (DND), the City or Provincial Public Prosecutor and human rights organizations, shall compile and maintain an up-to-date official register and/or records of victims of enforced disappearance and all other persons that have been arrested, detained or deprived of liberty, which shall be made promptly available upon request. The information contained therein shall include, as a minimum:

1. The identity of the person deprived of liberty;
2. The date, time and place where the person was deprived of liberty and the identity of the

authority that deprived the person of liberty;

3. The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;
4. *The authority responsible for supervising the deprivation of liberty;*
5. 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, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for such transfer;
6. *Elements relating to the state of health of the person deprived of liberty;*
7. In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains;
8. The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.

**SECTION 28. Education and Training.** The Government shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Act, in order to:

1. Prevent the involvement of such officials in enforced disappearances;
2. Emphasize the importance of prevention and investigations in relation to enforced disappearances;
3. Ensure that the urgent need to resolve cases of enforced disappearance is recognized.

**SECTION 29. Supplementary Application of the Revised Penal Code.** – The provisions of the Revised Penal Code on punishable offenses shall be supplementary to this Act.

**SECTION 30. Sources of Funds.** – The funds necessary for the implementation of this Act shall be included in the budgets of the Commission on Human Rights and Department of Justice under the General Appropriations Act of the year following the enactment of this Act.

**SECTION 31. 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 amended accordingly.

**SECTION 32. 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.

**SECTION 33. Effectivity.** – This Act shall take effect fifteen (15) days upon its publication in at least two (2) newspapers of national circulation.

**Approved,**