



## HOUSE OF REPRESENTATIVES

H. No. 98

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BY REPRESENTATIVES LAGMAN, TAÑADA, BELLO, BAG-AO, ESCUDERO, COLMENARES, CASIÑO, MARIANO, ILAGAN, PALATINO, DE JESUS, TINIO, RODRIGUEZ (R.), TUPAS, RELAMPAGOS, ABAYA, DIMAPORO (F.), AUMENTADO, PANGANDAMAN (S.), ARAGO, LAPUS, ONG, FERNANDEZ, CALIMBAS-VILLAROSA, ALCALA, CHIPECO, GARCIA (P.), MAGSAYSAY (M.), CASTELO, BATOCABE, ALVAREZ (A.), BARZAGA, FARIÑAS, QUIMBO, SARMIENTO (M.) AND TEODORO

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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:*

1           SECTION 1. *Short Title.* – This Act shall be known as the  
2 “Anti-Enforced or Involuntary Disappearance Act of 2012”.

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

1 with respect to the use of torture, force, violence, threat, intimidation or any  
2 other means which vitiate the free will of persons abducted, arrested, detained,  
3 disappeared or otherwise removed from the effective protection of the law.

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

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

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

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

21 SEC. 4. *Nonderogability of the Right Against Enforced or Involuntary*  
22 *Disappearance.* -- The right against enforced or involuntary disappearance  
23 and the fundamental safeguards for its prevention shall not be suspended under  
24 any circumstances including political instability, threat of war, state of war or  
25 other public emergencies.

26 SEC. 5. *Right of a Person Under Detention.* -- It shall be the absolute  
27 right of a person under detention to immediately inform his or her family,  
28 relatives, lawyer/s or a human rights organization by all means that are

1 available and expeditious, by cellular or landline telephone, letter, courier,  
2 electronic mail, telegram, radio or other means, on his or her whereabouts and  
3 condition.

4       SEC. 6. *Person/s Keeping or Detaining Victim/s of Enforced or*  
5 *Involuntary Disappearance.* – Any person, not being a principal, accomplice  
6 or accessory who keeps or detains a victim of enforced or involuntary  
7 disappearance or who shall learn or have information of such fact, shall  
8 immediately report in writing the circumstances and whereabouts of such  
9 victim to the nearest office of the Philippine National Police (PNP), the Armed  
10 Forces of the Philippines (AFP), the Department of the Interior and Local  
11 Government (DILG), the Department of National Defense (DND), the city or  
12 provincial public prosecutor, the Commission on Human Rights of the  
13 Philippines (CHR), as well as the victim’s family, relatives, lawyer/s or to a  
14 human rights organization by the most expedient means.

15       SEC. 7. *Duty to Certify in Writing on the Results of Inquiry into a*  
16 *Reported Disappeared Person’s Whereabouts.* – In case a family member,  
17 relative, lawyer, representative of a human rights organization or a member of  
18 the media inquires with a member or official of any police or military detention  
19 center, the PNP or any of its agencies, the AFP or any of its agencies, the  
20 National Bureau of Investigation (NBI) or any other agency or instrumentality  
21 of the government, as well as any hospital or morgue, public or private, on the  
22 presence or whereabouts of a reported victim of enforced or involuntary  
23 disappearance, such member or official shall immediately issue a certification  
24 in writing to the inquiring person or entity on the presence or absence and/or  
25 information on the whereabouts of such disappeared person.

26       SEC. 8. *Duty of Inquest/Investigating Public Prosecutor or any*  
27 *Judicial or Quasi-Judicial Employee or Official.* – Any inquest or  
28 investigating public prosecutor, or any judicial or quasi-judicial employee or

1 official who learns that the person delivered for inquest or preliminary  
2 investigation or for any other judicial process is a victim of enforced or  
3 involuntary disappearance shall have the duty to immediately disclose the  
4 victim's whereabouts to his or her immediate family, relatives, lawyer/s or to a  
5 human rights organization by the most expedient means.

6       SEC. 9. *Official Up-to-Date Register of All Persons Detained or*  
7 *Confined.* – All persons deprived of liberty shall be held solely in officially  
8 recognized and controlled places of detention or confinement where an official  
9 up-to-date register of such persons shall be maintained. Relatives, lawyers,  
10 judges, official bodies and all persons who have legitimate interest in the  
11 whereabouts and condition of the persons deprived of liberty shall have free  
12 access to the register containing, among others, the following information:

13       (a) The identity or name, description and address of the person  
14 deprived of liberty;

15       (b) The date, time and location where the person was deprived of  
16 liberty and the identity of the person who made such deprivation of liberty;

17       (c) The authority who decided the deprivation of liberty and the  
18 reasons for the deprivation of liberty or the crime or offense committed;

19       (d) The authority controlling the deprivation of liberty;

20       (e) The place of deprivation of liberty, the date and time of admission  
21 to the place of deprivation of liberty and the authority responsible for the place  
22 of deprivation of liberty;

23       (f) Records of physical, mental and psychological condition of the  
24 detained or confined person before and after the deprivation of liberty and the  
25 name and address of the physician who examined him or her physically,  
26 mentally and medically;

1 (g) The date and time of release or transfer of the detained or confined  
2 person to another place of detention, the destination and the authority  
3 responsible for the transfer;

4 (h) The date and time of each removal of the detained or confined  
5 person from his or her cell, the reason or purpose for such removal and the  
6 date and time of his or her return to his or her cell;

7 (i) A summary of the physical, mental and medical findings of the  
8 detained or confined person after each interrogation;

9 (j) The names and addresses of the persons who visit the detained or  
10 confined person and the date and time of such visits and the date and time of  
11 each departure;

12 (k) In the event of death during the deprivation of liberty, the identity,  
13 the circumstances and cause of death of the victim as well as the destination of  
14 the human remains; and

15 (l) All other important events bearing on and all relevant details  
16 regarding the treatment of the detained or confined person.

17 The updated list of all detention centers and facilities along with the  
18 register of detainees and/or prisoners shall be made available at the respective  
19 national headquarters of the PNP, the AFP and all other law enforcement  
20 agencies.

21 A copy of the complete list and register shall likewise be submitted by  
22 the PNP, the AFP and all other law enforcement agencies to the CHR, such list  
23 to be periodically updated by the same agencies within the first five (5) days of  
24 every month at the minimum.

25 Every regional office of the PNP, the AFP and other law enforcement  
26 agencies shall also maintain a similar list of all detention facilities within their  
27 respective jurisdictions together with the up-to-date register of detainees and/or  
28 prisoners and shall make the same available to the members of the family or

1 relatives within the fourth civil degree of consanguinity or affinity of the  
2 person under custody or detention, lawyer/s, judges, official bodies and all  
3 persons who have legitimate interest in the whereabouts and condition of the  
4 persons deprived of liberty who upon demand shall be issued a certified true  
5 copy of the entries in the register without delay or restriction or requiring any  
6 fees whatsoever including documentary stamp tax, notarial fees and the like.  
7 This certified true copy shall be attested to by the person who has custody of  
8 the register or who allowed the party concerned to scrutinize it at the time the  
9 demand for the certified true copy is made.

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

17 SEC. 11. *Visits to or Inspection of All Places of Detention.* –  
18 Competent representatives of the CHR shall conduct independent, regular  
19 and/or unannounced and unrestricted visits to or inspection of all places of  
20 detention and confinement.

21 SEC. 12. *Liability of Commanding Officer or Superior.* – The  
22 immediate commanding officer of the unit concerned of the AFP or the  
23 immediate senior official of the PNP and other law enforcement agencies shall  
24 be held liable as a principal to the crime of enforced disappearance for acts  
25 committed by him or her that shall have led, assisted, abetted or allowed,  
26 whether directly or indirectly, the commission thereof by his or her  
27 subordinates. If he or she has knowledge of or, owing to the circumstances at  
28 the time, should have known that an enforced disappearance is being

1 committed, or has been committed by his or her subordinates or by others  
2 within his or her area of responsibility and, despite such knowledge, did not  
3 take preventive or corrective action either before, during or immediately after  
4 its commission, when he or she has the authority to prevent or investigate  
5 allegations of enforced disappearance but failed to prevent or investigate such  
6 allegations, whether deliberately or due to negligence, shall also be held liable  
7 as principal.

8 SEC. 13. *Penal Provisions.* – (a) The penalty of *reclusion perpetua*  
9 shall be imposed upon the following persons:

10 (1) Those who directly committed the act of enforced or involuntary  
11 disappearance;

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

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

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

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

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

24 (c) The penalty of *reclusion temporal* shall also be imposed upon the  
25 persons who, having knowledge of the act of enforced or involuntary  
26 disappearance and without having participated therein, either as principals or  
27 accomplices, took part subsequent to its commission in any of the following  
28 manner.

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

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

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

9 (d) The penalty of *prision correccional* shall be imposed against any  
10 person who defies, ignores or unduly delays compliance with the *writs of*  
11 *habeas corpus, amparo* and *habeas data* proceedings filed on behalf of the  
12 victim of enforced or involuntary disappearance or deliberately fails to  
13 immediately follow or comply with an order of release by virtue of a *habeas*  
14 *corpus* proceeding or other appropriate judicial orders.

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

17 SEC. 14. *Preventive Suspension and/or Other Administrative*  
18 *Remedies.* – The perpetrators of and other participants in the commission of  
19 enforced or involuntary disappearance shall be preventively suspended or  
20 prohibited from performing any official duties or summarily dismissed  
21 pursuant to Republic Act No. 8531, otherwise known as the "Philippine  
22 National Police Reform and Reorganization Act of 1998", and other applicable  
23 laws, rules and regulations.

24 SEC. 15. *Liability Under Other National Criminal Laws.* – The  
25 liability of the offender under this Act shall be independent of, in addition to  
26 or without prejudice to prosecution and conviction for violation of other  
27 applicable laws including Republic Act No. 7438, entitled "An Act Declaring  
28 Certain Rights of Person Arrested, Detained or Under Custodial Investigation



1 as well as the Duties of the Arresting, Detaining, and Investigating Officers,  
2 and Providing Penalties for Violations Thereof”, as well as the Revised Penal  
3 Code, including arbitrary detention, delay in the delivery of detained persons,  
4 delaying the release of detained persons, maltreatment of prisoners, unlawful  
5 arrest, incriminating innocent person, physical injuries, murder and any other  
6 appropriate criminal offense/s in special laws.

7         SEC. 16. *Nonexclusivity or Double Jeopardy Under International*  
8 *Law.* – Notwithstanding the provisions of the foregoing section, any  
9 investigation, trial and decision in any Philippine court or other agency for any  
10 violation of this Act shall be without prejudice to any investigation, trial,  
11 decision or any other legal or administrative process before the appropriate  
12 international court or agency under applicable international human rights and  
13 humanitarian law.

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

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

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

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

6           SEC. 21. *Exclusion from the Coverage of Special Amnesty Law.* – In  
7 order not to depreciate the crime of enforced or involuntary disappearance,  
8 persons who have committed the act of enforced or involuntary disappearance  
9 shall not benefit from any special amnesty law or similar measures that will  
10 have the effect of exempting them from any criminal proceedings and  
11 sanctions.

12           SEC. 22. *State Protection.* – The State, through its appropriate  
13 agencies, shall ensure the safety of all persons involved in the search,  
14 investigation and prosecution of enforced or involuntary disappearance  
15 including the victims, their families, complainants, witnesses, legal counsel and  
16 representatives of human rights organizations and media. They shall likewise  
17 be protected from any act of intimidation or reprisal as a result of the filing of  
18 charges. Any person committing such ill-treatment and/or acts of intimidation  
19 or reprisal shall be punished under existing laws.

20           SEC. 23. *Applicability of Refouler.* – No person shall be expelled,  
21 returned or extradited to another State where there are substantial grounds to  
22 believe that such person shall be in danger of being subjected to enforced  
23 disappearance. For purposes of determining whether such grounds exist, the  
24 Secretary of the Department of Foreign Affairs (DFA) and the Secretary of the  
25 Department of Justice (DOJ) in coordination with the Chairperson of the CHR,  
26 shall take into account all relevant considerations including where applicable  
27 and not limited to, the existence in the requesting State of a consistent pattern  
28 of gross, flagrant or mass violations of human rights.

1           SEC. 24. *Restitution and Compensation to Victims of Enforced or*  
2 *Involuntary Disappearance and/or Their Immediate Relatives.* – The victims  
3 of enforced or involuntary disappearance who surface alive shall be entitled to  
4 monetary compensation, rehabilitation and restitution of honor and reputation.  
5 Such restitution of honor and reputation shall include immediate expunging or  
6 rectification of any derogatory record, information or public  
7 declaration/statement on his or her person, personal circumstances, status  
8 and/or organizational affiliation by the appropriate government or private  
9 agency or agencies concerned.

10           The immediate relatives of a victim of enforced or involuntary  
11 disappearance may also claim for compensation as provided for under  
12 Republic Act No. 7309, entitled “An Act Creating a Board of Claims Under  
13 the Department of Justice for Victims of Unjust Imprisonment or Detention  
14 and Victims of Violent Crimes and for Other Purposes”, and other relief  
15 programs of the government.

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

19           SEC. 25. *Rehabilitation of Victims and Offenders.* – In order that the  
20 nearest-of-kin of victims of enforced or involuntary disappearance and the  
21 victims who surfaced alive may be effectively reintegrated into the mainstream  
22 of society and in the process of development, the State, through the CHR, in  
23 coordination with the Department of Health, the Department of Social Welfare  
24 and Development and the concerned nongovernment organization/s, shall  
25 provide them with appropriate medical care and rehabilitation free of charge.

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

1           SEC. 26. *Implementing Rules and Regulations.* – Within thirty (30)  
2 days from the effectivity of this Act, the DOJ, the CHR, the Families of  
3 Victims of Involuntary Disappearance (FIND) and the Families of  
4 *Desaparecidos* for Justice (*Desaparecidos*), in consultation with other human  
5 rights organizations, shall jointly promulgate the rules and regulations for the  
6 effective implementation of this Act and shall ensure the full dissemination of  
7 the same to the public.

8           SEC. 27. *Monitoring of Compliance.* – An Oversight Committee is  
9 hereby created to periodically monitor and ensure compliance with this Act.  
10 The Committee shall be headed by a Commissioner of the CHR with the  
11 following as members:

12           (a) One (1) Undersecretary of the DOJ;

13           (b) One (1) representative from the Senate Committee on Justice and  
14 Human Rights;

15           (c) One (1) representative each from the House Committees on Justice  
16 and Human Rights; and

17           (d) One (1) representative each from the Minority in the Senate and in  
18 the House of Representatives.

19           The Committee shall encourage the active participation of concerned  
20 nongovernment organizations (NGOs) in exercising its oversight functions.  
21 NGOs may request the Committee to conduct inquiries on documented  
22 violations of this Act.

23           The Oversight Committee shall be in existence for a period of five (5)  
24 years and its Secretariat shall come from the existing Secretariat personnel of  
25 the CHR.

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

1           SEC. 29. *Appropriations.* – The funds necessary for the  
2 implementation of this Act shall be included in the budgets of the CHR and the  
3 DOJ in the annual General Appropriations Act.

4           SEC. 30. *Separability Clause.* – If, for any reason, any section or  
5 provision of this Act is declared unconstitutional or invalid, such other sections  
6 or provisions not affected thereby shall remain in full force and effect.

7           SEC. 31. *Repealing Clause.* – All laws, decrees, executive orders,  
8 rules and regulations and other issuances or parts thereof inconsistent with the  
9 provisions of this Act are hereby repealed, amended or modified accordingly.

10          SEC. 32. *Effectivity.* – This Act shall take effect fifteen (15) days  
11 after its publication in at least two (2) newspapers of general circulation which  
12 shall not be later than seven (7) days after the approval thereof.

Approved,

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