



HOUSE OF REPRESENTATIVES

H. No. 4959

BY REPRESENTATIVES LAGMAN, OCAMPO, CASIÑO, DATUMANONG, VIRADOR,
BELTRAN, MARIANO, MAZA, MAGTUBO, BATERINA, AGUJA, CASTRO,
SUMULONG, JAWORSKI AND CABILAO, PER COMMITTEE REPORT
No. 1222

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 “Anti-
2 Enforced or Involuntary Disappearance Act of 2006”.

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, incommunicado, or other similar forms of detention, the
8 provision for penal and civil sanctions for such violations, and compensation

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

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

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

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

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

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

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

13 SEC. 7. *Person/s Keeping, Arresting or Detaining Victim/s of Enforced*
14 *or Involuntary Disappearance.* – Any person/s, not being a principal,
15 accomplice or accessory who keeps, arrests or detains a victim of enforced or
16 involuntary disappearance or who shall learn or have information of such fact,
17 shall immediately report in writing on the circumstances and whereabouts of
18 such victim to the nearest office of the Philippine National Police (PNP), the
19 Armed Forces of the Philippines (AFP), the Department of the Interior and
20 Local Government (DILG), the Department of National Defense (DND), the
21 City or Provincial Public Prosecutor, the Commission on Human Rights (CHR)

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

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

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

1 SEC. 10. *Official Up-to-Date Register of All Persons Detained or*
2 *Confined.* – All persons deprived of liberty shall be held solely in officially
3 recognized and controlled places of detention or confinement where an official
4 up-to-date register of such persons shall be maintained. All information
5 contained in the register shall be made available to the relatives, lawyers,
6 judges, official bodies and to all person who have legitimate interest in the
7 information, which shall include, among others, the following:

8 (a) The identity of the person deprived of liberty;

9 (b) The date, time and location where the person was deprived of
10 liberty and the identity of the authority who deprived the person of liberty;

11 (c) The authority having decided the deprivation of liberty and the
12 reasons for the deprivation of liberty;

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

14 (e) The place of deprivation of liberty, the date and time of admission
15 to the place of deprivation of liberty and the authority responsible for the place
16 of deprivation of liberty;

17 (f) Records of physical, mental and psychological condition of the
18 victim before and after the deprivation of liberty;

19 (g) In the event of death during the deprivation of liberty, the
20 circumstances and cause of death and the destination of the human remains;

21 and

1 (h) The date and time of release or transfer to another place or
2 detention, the destination and the authority responsible for the transfer.

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

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

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

20 SEC. 14. *Penal Provisions.* – (a) The penalty of *reclusion perpetua*
21 shall be imposed upon the following persons:

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

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

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

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

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

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

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

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

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

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

7 (d) The penalty of *prision correccional* shall be imposed against any
8 person who defies, ignores or unduly delays compliance with a *habeas corpus*
9 proceeding filed on behalf of the victim of enforced or involuntary
10 disappearance or to immediately follow or comply with an order of release by
11 virtue of such *habeas corpus* proceeding or other appropriate judicial order.

12 (e) The penalty of *arresto mayor* shall be imposed against any person
13 who violates the provisions of Sections 6, 7, 8, 9 and 10 of this Act.

14 SEC. 15. *Preventive Suspension.* – The perpetrators of and other
15 participants in the commission of enforced or involuntary disappearance shall
16 be preventively suspended or prohibited from performing any official duties or
17 summarily dismissed pursuant to Republic Act No. 8551, otherwise known as
18 the “Philippine National Police Reform and Reorganization Act of 1998” and
19 other laws, rules and regulations.

20 SEC. 16. *Prosecution of the Offense.* – In the event the prosecution
21 fails to prove the political motive, the deprivation of liberty of the victim who
22 surfaces alive shall be punishable as kidnapping under the Revised Penal

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

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

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

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

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

9 SEC. 21. *Continuing Offense.* – An act constituting enforced or
10 involuntary disappearance shall be considered a continuing offense as long as
11 the perpetrators continue to conceal the fate and whereabouts of the persons
12 who have disappeared and that these facts remain unverified.

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

18 SEC. 23. *Exclusion from the Coverage of Special Amnesty Law.* –
19 Persons who have committed the act of enforced or involuntary disappearance
20 shall not benefit from any special amnesty law or similar measures that will
21 have the effect of exempting them from any criminal proceedings and
22 sanctions.

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

9 SEC. 25. *Compensation to and/or Rehabilitation of Victims of*
10 *Enforced or Involuntary Disappearance and/or Their Next-of-Kin.* – The
11 victims of enforced or involuntary disappearance who surfaced alive shall be
12 entitled to monetary compensation, rehabilitation and restitution of honor and
13 reputation. Such restitution of honor and reputation shall include immediate
14 expunging or rectification of any derogatory record, information or public
15 declaration/statement on his/her personal circumstances, status, person or
16 affiliation by the appropriate government or private agency or agencies
17 concerned.

18 The next-of-kin of a victim of enforced or involuntary disappearance
19 may also claim for compensation as provided for under Republic Act No.
20 7309, otherwise known as “An Act Creating a Board of Claims under the
21 Department of Justice for Victims of Unjust Imprisonment or Detention and

1 Victims of Violent Crimes and for Other Purposes”, and other relief programs
2 of the government.

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

6 In order that the nearest of kin of victims of enforced or involuntary
7 disappearance and the victims who surfaced alive may be effectively
8 reintegrated into the mainstream of society and in the process of development,
9 the State through the CHR shall provide them with appropriate medical care
10 and rehabilitation free of charge.

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

19 SEC. 27. *Monitoring of Compliance with this Act.* -- An oversight
20 committee is hereby created to periodically oversee the implementation of this
21 Act. The group shall be headed by a commissioner of the CHR and with the
22 following as members: one undersecretary of the DOJ, the chairperson of the