

Republic Act No. 10353

S. No. 2817

H. No. 98

**Republic of the Philippines
Congress of the Philippines
Metro Manila
Fifteenth Congress
Third Regular Session**

Begun and held in Metro Manila, on Monday, the twenty-third day of July, two thousand twelve.

[REPUBLIC ACT NO. 10353]

AN ACT DEFINING AND PENALIZING ENFORCED OR INVOLUNTARY DISAPPEARANCE

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 2012”.

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 confinement, *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. Furthermore, the State adheres to the principles and standards on the absolute condemnation of human rights violations set by the 1987 Philippine Constitution and various international instruments such as, but not limited to, the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which the Philippines is a State party.

SEC. 3. *Definitions.* –For purposes of this Act, the following terms shall be defined as follows:

- (a) *Agents of the State* refer to persons who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the government, or shall perform in the government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class.
- (b) *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.

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

(d) *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 in letter (b) of this Section.

SEC. 4. *Non-derogability of the Right Against Enforced or Involuntary Disappearance.* –The right against enforced or involuntary disappearance and the fundamental safeguards for its prevention shall not be suspended under any circumstance including political instability, threat of war, state of war or other public emergencies.

SEC. 5. *“Order of Battle” or Any Order of Similar Nature, Not Legal Ground, for Enforced or Involuntary Disappearance.* – An “Order of Battle” or any order of similar nature, official or otherwise, 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 or exempting circumstance. Any person receiving such an order shall have the right to disobey it.

SEC. 6. *Right of Access to Communication.* – It shall be the absolute right of any person deprived of liberty to have immediate access to any form of communication available in order for him or her to inform his or her family, relative, friend, lawyer or any human rights organization on his or her whereabouts and condition.

SEC. 7. *Duty to Report Victims of Enforced or Involuntary Disappearance.* – Any person, not being a principal, accomplice or accessory, who has an information of a case of enforced or involuntary disappearance or who shall learn of such information or that a person is a victim of enforced or involuntary disappearance, shall immediately report in writing the circumstances and whereabouts of the victim to any office, detachment or division of the Department of the Interior and Local Government (DILG), the Department of National Defense (DND), the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), the National Bureau of Investigation (NBI), the City or Provincial Prosecutor, the Commission on Human Rights (CHR) or any human rights organization and, if known, the victim’s family, relative, or lawyer.

SEC. 8. *Duty to Certify in Writing on the Results of Inquiry into a Reported Disappeared Person’s Whereabouts.* –In case a family member, relative, lawyer, representative of a human rights organization or a 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 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 disappeared person, stating, among others, in clear and unequivocal manner the date and time of inquiry, details of the inquiry and the response to the inquiry.

SEC. 9. Duty of Inquest/Investigating Public Prosecutor or any Judicial or Quasi-Judicial Official or Employee. –Any inquest or investigating public prosecutor, or any judicial or quasi-judicial official or employee who learns that the person delivered for inquest or preliminary investigation or for any other judicial process is a victim of enforced or involuntary disappearance shall have the duty to immediately disclose the victim’s whereabouts to his or 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 detained or confined shall be placed solely in officially recognized and controlled places of detention or confinement where an official up-to-date register of such persons shall be maintained. Relatives, lawyers, judges, official bodies and all persons who have legitimate interest in the whereabouts and condition of the persons deprived of liberty shall have free access to the register.

The following details, among others, shall be recorded, in the register:

- (a) The identity or name, description and address of the person deprived of liberty;
- (b) The date, time and location where the person was deprived of liberty and the identity of the person who made such deprivation of liberty;
- (c) The authority who decided the deprivation of liberty and the reasons for the deprivation of liberty or the crime or offense committed;
- (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 detained or confined person before and after the deprivation of liberty and the name and address of the physician who examined him or her physically, mentally and medically;
- (g) The date and time of release or transfer of the detained or confined person to another place of detention, the destination and the authority responsible for the transfer;
- (h) The date and time of each removal of the detained or confined person from his or her cell, the reason or purpose for such removal and the date and time of his or her return to his or her cell;
- (i) A summary of the physical, mental and medical findings of the detained or confined person after each interrogation;

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

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

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

Provided, That the details required under letters (a) to (f) shall be entered immediately in the register upon arrest and/or detention.

All information contained in the register shall be regularly or upon request reported to the CHR or any other agency of government tasked to monitor and protect human rights and shall be made available to the public.

SEC. 11. *Submission of List of Government Detention Facilities.* –Within six (6) months from the effectivity of this Act and as may be requested by the CHR thereafter, all government agencies concerned shall submit an updated inventory or list of all officially recognized and controlled detention or confinement facilities, and the list of detainees or persons deprived of liberty under their respective jurisdictions to the CHR.

SEC. 12. *Immediate Issuance and Compliance of the Writs of Habeas Corpus, Amparo and Habeas Data.* – All proceedings pertaining to the issuance of the writs of *habeas corpus*, *amparo* and *habeas data* shall be dispensed with expeditiously. As such, all courts and other concerned agencies of government shall give priority to such proceedings. Moreover, any order issued or promulgated pursuant to such writs or their respective proceedings shall be executed and complied with immediately.

SEC. 13. *Visitation /Inspection of Places of Detention and, Confinement.* –The CHR or its duly authorized representatives are hereby mandated and authorized to conduct regular, independent, unannounced and unrestricted visits to or inspection of all places of detention and confinement.

SEC. 14. *Liability of Commanding Officer or Superior.* - The immediate commanding officer of the unit concerned of the AFP or the immediate senior official of the PNP and other law enforcement agencies shall be held liable as a principal to the crime of enforced or involuntary disappearance for acts committed by him or her that shall have led, assisted, abetted or allowed, whether directly or indirectly, the commission thereof by his or her subordinates. If such commanding officer has knowledge of or, owing to the circumstances at the time, should have known that an enforced or involuntary disappearance is being committed, or has been committed by subordinates or by others within the officer's area of responsibility and, despite such knowledge, did not take preventive or coercive action either before, during or immediately after its commission, when he or she has the authority to prevent or investigate allegations of enforced or

involuntary disappearance but failed to prevent or investigate such allegations, whether deliberately or due to negligence, shall also be held liable as principal.

SEC. 15. *Penal Provisions.* – (a) The penalty of *reclusion perpetua* and its accessory penalties 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 consummated;
- (4) Those officials who allowed the act or abetted in the consummation of enforced or involuntary disappearance when it is within their power to stop or uncover the commission thereof; 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* and its accessory penalties shall be imposed upon those who shall commit the act of enforced or involuntary disappearance in the attempted stage as provided for and defined under Article 6 of the Revised Penal Code.

(c) The penalty of *reclusion temporal* and its accessory penalties shall also be imposed upon 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 such accessory acts are done with the abuse of official functions.

(d) The penalty of *prision correctional* and its accessory penalties shall be imposed against persons who defy, ignore or unduly delay compliance with any order duly issued or promulgated pursuant to the writs of *habeas corpus*, *amparo* and *habeas data* or their respective proceedings.

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

SEC. 16. *Preventive Suspension/Summary Dismissal.* –Government officials and personnel who are found to be perpetrators of or participants in any manner in the commission of enforced or involuntary disappearance as a result of a preliminary investigation conducted for that purpose shall be preventively suspended or summarily dismissed from the service, depending on the strength of the evidence so presented and gathered in the said preliminary investigation or as may be recommended by the investigating authority.

SEC. 17. *Civil Liability.* –The act of enforced or involuntary disappearance shall render its perpetrators and the State agencies which organized, acquiesced in or tolerated such disappearance liable under civil law.

SEC. 18. *Independent Liability.* –The criminal liability of the offender under this Act shall be independent of or without prejudice to the prosecution and conviction of the said offender for any violation of 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”; Republic Act No. 9745, otherwise known as “An Act Penalizing Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and Prescribing Penalties Therefor”; and applicable provisions of the Revised Penal Code.

SEC. 19. *Nonexclusivity or Double Jeopardy Under International Law.* – Any investigation, trial and decision in any Philippines court, or body for any violation of this Act shall; be without prejudice to any investigation, trial, decision or any other legal or administrative process before any appropriate international court or agency under applicable international human rights and humanitarian law.

SEC. 20. *Exemption from Prosecution.* – Any offender who volunteers information that leads to the discovery of the victim of enforced or involuntary disappearance or the prosecution of the offenders without the victim being found shall be exempt from any criminal and/or civil liability under this Act: *Provided,* That said offender does not appear to be the most guilty.

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 disappeared person and such circumstances have not been determined with certainty.

SEC. 22. *Statue of Limitations Exemption.* – 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 from the date of such reappearance.

SEC. 23. *Special Amnesty Law Exclusion.* – Persons who are charged with and/or guilty of the act of enforced or involuntary disappearance shall not benefit from any special amnesty law or other similar executive measures that shall exempt them from any penal proceedings or 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, but not limited to, the victims, their families, complainants, witnesses, legal counsel and representatives of human rights organizations and media. They shall likewise be protected from any intimidation or reprisal.

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

SEC. 26. *Restitution and Compensation to Victims of Enforced or Involuntary Disappearance and/or Their Immediate Relatives*. –The victims of enforced or involuntary disappearance who surface 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 or her person, personal circumstances, status, and/or organizational affiliation by the appropriate government or private agency or agencies concerned.

The immediate relatives of a victim of enforced or involuntary disappearance, within the fourth civil degree of consanguinity or affinity, may also claim for compensation as provided for under Republic Act No. 7309, entitled “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 immediate relatives within the fourth civil degree of consanguinity or affinity shall be without prejudice to other legal remedies that may be available to them.

SEC. 27. *Rehabilitation of Victims and/or Their Immediate Relatives, and Offenders*. – In order that the victims of enforced or involuntary disappearance who surfaced alive and/or their immediate relatives within the fourth civil degree of consanguinity or affinity, may be effectively reintegrated into the mainstream of society and in the process of development, the State, through the CHR, in coordination with the Department of Health, the Department of Social Welfare and Development (DSWD) and the concerned nongovernment organization/s, shall provide them with appropriate medical care and rehabilitation free of charge.

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

SEC. 28. *Implementing Rules and Regulations.* – Within thirty (30) days from the effectivity of this Act, the DOJ, the DSWD, the CHR, the Families of Victims of Involuntary Disappearance (FIND) and the Families of *Desaparecidos* for Justice (*Desaparecidos*), in consultation with other human rights organizations, 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.

SEC. 29. *Suppletory Applications.* – The applicable provisions of the Revised Penal Code shall have suppletory application insofar as they are consistent with the provisions of this Act.

SEC. 30. *Appropriations.* –The amount of Ten million pesos (P10,000,000.00) is hereby appropriated for the initial implementation of this Act by the CHR. Subsequent fluids for the continuing implementation of this Act shall be included in the respective budgets of the CHR and the DOJ in the annual General Appropriations Act.

SEC. 31. *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. 32. *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. 33. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation or the *Official Gazette*, which shall not be later than seven (7) days after the approval thereof.

Approved,

(Sgd.) FELICIANO BELMONTE JR. <i>Speaker of the House of Representatives</i>	(Sgd.) JUAN PONCE ENRILE <i>President of the Senate</i>
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This Act which is a consolidation of Senate Bill No. 2817 and House Bill No. 98 was finally passed by the Senate and the House of Representatives on October 16, 2012.

(Sgd.) MARILYN B. BARUA-YAP <i>Secretary General House of Representatives</i>	(Sgd.) EMMA LIRIO-REYES <i>Secretary of the Senate</i>
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Approved: DEC 21 2012

(Sgd.) **BENIGNO S. AQUINO III**
President of the Philippines