



Republika ng Pilipinas

**Komisyon ng Karapatang Pantao**  
(Commission on Human Rights)

**Position Paper on  
“Anti-Enforced Disappearance”**

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*Enforced disappearance is a particularly cruel human rights violation; a violation of the person who has disappeared and a violation of those who love them.*  
- Amnesty International

Enforced disappearances persist in many countries all over the world, having been an ubiquitous feature of the second half of the twentieth century since they were committed in large scale in Nazi-occupied Europe. The Philippines is no exception. Several disappearances have already been recorded the recent years with the Jonas Burgos case as the most publicized.

Every enforced disappearance violates various human rights including, but not limited to: the right to liberty and security of persons, the right to dignity of a person, the right not to be discriminated upon, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, the right to effective remedies under the law, the right to due process and fair trial, the right to a family life and ultimately, the right to life if the person disappeared is eventually killed or continues to elude knowledge of the victims true fate.

The International Convention for the Protection of All Persons from Enforced Disappearance (Convention Against Enforced Disappearance or ICED) was adopted by the UN General Assembly on 20 December 2006. It is a culmination of the years of hard work by associations of relatives of victims, non-governmental organizations such as the International Coalition Against Enforced Disappearances and key governments.

The Convention Against Enforced Disappearance is one of the strongest human rights treaties ever adopted by the UN. Key to this is the definition of enforced disappearance, universal jurisdiction, reparations and implementation.

ICED provisions introduce important new standards – such as the right to know the truth about the fate of a disappeared person. The Convention aims at preventing enforced disappearances, establishing the truth when this crime occurs, punishing the perpetrators and providing reparations to the victims and their families.

But the Convention alone will not stamp out enforced disappearance; to be truly effective it must be ratified by all states, and government must enact effective legislation to implement it – in accordance with their international obligations.

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**Ang Karapatang Pantao ay para sa lahat. Panindigan natin ito.**

Commonwealth Avenue, U.P. Complex, Diliman, 1101, Quezon City, Philippines  
Tel. Nos. 928-5655 • 927-0172 • 928-2018



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Hence, the efforts of the past Congress as well as those of other relevant stakeholders to ensure the ‘right not to be disappeared’ even before the Convention was adopted by the United Nations are very noble, commendable and relevant.

The passage of the bills on enforced disappearance on third reading at the 13th Congress showed the pro-active response of the legislature to the seeming culture of impunity permeating the country the past years.

The Commission on Human Rights joins in these efforts to have a law against enforced disappearances passed that is compliant with the international convention against enforced disappearances as well as the signing and ratification of the said convention by the Philippines.

### **Recommendations**

The Commission notes that most of the versions of the bills filed in Congress on the subject are basically consistent with each other. More importantly, many of the provisions contain key elements and are consistent with the Convention Against Enforced Disappearance.

Key aspects of the Convention are as follows:

- a. It recognizes the right of any person not to be subjected to enforced disappearance. No exceptional circumstances, not even a state of war may be invoked as justification (Article 1);
- b. It recognizes that in certain circumstances enforced disappearance constitutes a crime against humanity (Article 5);
- c. It establishes the right of victims, who include the families of the disappeared person – to know the truth regarding the enforced disappearance and to receive reparations (Article 24);

The Convention likewise requires the States Parties to:

- a. Make enforced disappearance a criminal offense under national (Article 4), make the offense punishable by appropriate penalties (Article 7), and strictly limit any statute of limitations (Article 8);
- b. Hold any person involved in an enforced disappearance criminally responsible, as well as their superiors who knew or should have known what they were doing, and prohibit superior orders as a defense (Article 6);
- c. Submit those suspected of carrying out enforced disappearances who are found on their territory to the competent authorities, extradite them to another state, or surrender them to an international criminal court (Article 9 and 11);
- d. Investigate complaints and reports of enforced disappearance, protect witnesses and others involved in the investigation against ill-treatment and



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intimidation, and ensure that the investigating body has the necessary powers and resources to conduct the investigation effectively (Article 12);

- e. Institute stringent safeguards for the protection of people deprived of their liberty (Articles 17, 18 and 21);
- f. Ensure all officials responsible for detainees are trained in the provisions of the Convention (Article 23);
- g. Search for the disappeared person and, in the event of death, locate, respect and return their remains (Article 24);
- h. Take measures to resolve the legal situation of those whose fate has not been clarified and of their relatives (Article 24);
- i. Prevent and punish the wrongful removal of the children of victims of enforced disappearance, and search for, identify and where appropriate return those children to their families (Article 25).

Most of the above salient features of the Convention as mentioned are found in the bills filed. The Commission further notes that the bills provide for even greater protection and were structured in a way that addresses the exigencies of our domestic milieu.

On the matter of the definition of enforced disappearance, we maintain that the minimum standards provided under the Convention must be set in place. This does not mean, however, that the authors are bound from extending the application of the Convention by providing additional protection without sacrificing or limiting its relevance. Hence, it is observed that the definition providing for an additional requirement of political motive may be a way of delimiting the purpose of the law. The Convention covers all forms of enforced disappearances regardless of the motive, intent or purpose.

On the other hand, the provisions on command responsibility, enforced disappearance as a continuing offense, writ of habeas corpus as an expeditious remedy, proscription of “orders of battle,” preventive suspension and the provision for incentives are significant innovations and are worth looking into.

The inclusion of the “Writ of Amparo” and the “Writ of Habeas Data” as extraordinary remedies are highly recommended and recognized.

The Commission likewise observes that it was given several functions under the proposed bills. While no objection is being interposed on the additional functions given, the Commission only submits that the function to provide “appropriate medical care and rehabilitation free of charge” is impracticable for several reasons. For this purpose, we respectfully affirm the Commission’s Comment on the “Request for Assistance in Rehabilitation of Victims of Torture” which was made in response to recommendations of



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drafters of the then proposed bills on torture giving the same function to the Commission and we quote:

“The Commission, by reason of the powers expressly granted under the Constitution, lacks sufficient facilities to participate in activities pertaining to rehabilitation. It has already been conducting regular jail visitations to police stations, jails and other penal establishments. Proper documentations are being made accordingly. As an independent national human rights institution under the Paris Principles, the authority of the Commission, however, encompasses that of making sure that the rehabilitation activities and facilities comply with both international and national standards. Further, in order to protect victims of torture, the CHR can help in referring and endorsing the same to the proper rehabilitation centers.

In so doing, the Commission believes that it is necessary to establish institutional network with BALAY, PREDA and the Department of Health for the rehabilitation of victims. While it appears that so many things are yet to be done with so many victims yet to benefit in this regard, the Commission is convinced that building up of institutions is usually the first step to better protection and promotion of human rights of all.”

It can be observed that the present proposed bills on torture does not contain a similar provision that they once bear in the previous versions of the bills. We request that the same be done in the present versions of the bills on enforced disappearance.

Having stated the minor recommendations for the consideration of the Committee, we reiterate our support to the present effort of Congress to enact a law against enforced disappearances. The Commission likewise advocates the signing and ratification of the Convention Against Enforced Disappearances.

Issued on June 2, 2008 at Quezon City, Philippines.

FOR THE COMMISSION:

**Sgd. ATTY. LEILA M. DE LIMA**  
Chairperson