

*A Speech delivered by Atty. Leila M. de Lima, Chairperson,
Commission on Human Rights, at the Forum on
Enforced Disappearances organized by the AFAD and
Ateneo Human Rights Center, held on 30 May, 2008
Manila, Philippines*

**A RENEWED URGENCY TO ADOPT THE UN DRAFT CONVENTION
ON THE PROTECTION OF ALL PERSONS FROM ENFORCED OR
INVOLUNTARY DISAPPEARANCES**

To our partners in human rights advocacy, the Asian Federation Against Involuntary Disappearances ("*AFAD*") and the Ateneo Human Rights Center, good afternoon. Allow me to express my pleasure and gratitude to the organizers of this forum for the opportunity to share my views on the Enforced and Involuntary Disappearances. This being my initial collaboration with the Ateneo Human Rights Center and the AFAD, I am very hopeful that this is a promising beginning to a sustained partnership between the Fourth Commission and those present today.

The CHR is in a period of transition at this time. With the pending appointments of new commissioners and my own recent appointment, a new set of individuals will be leading the CHR. As with any change in leadership, there comes the challenge to sustain the successes of predecessors and improve on their work.

However, while there is changing of the guards, so to speak, the guiding principles of the CHR remains the same. The mandate of the CHR as enshrined in the 1987 Constitution, together with Executive Order 163 and the Paris Principles, grant the CHR the following powers and functions, among others:

1. Investigate all forms of human rights violations;
2. Provide legal measures for the protection of human rights;
3. Exercise visitorial powers;
4. Establish a continuing program of human rights research and information campaigns;
5. Monitor government compliance with human rights treaty obligations; and
6. Recommend to Congress effective measures to promote human rights.

The mandate of the Commission, however, would be hollow rhetoric if its application does not meet the changing circumstances surrounding the nation today. In many modern constitutions of civilized nations, the provisions contained therein are constantly re-interpreted in a manner that effectively addresses the persisting conditions that prevail. In the same vein, the CHR, which is a creation of our Constitution, must always be at the forefront of the evolution of the human rights advocacy in line with constant re-interpretation of its mandate.

The rising public awareness of enforced or involuntary disappearances highlights an opportunity in human rights advocacy to push for a further refinement of existing laws, particularly in the realm of disappearances. The CHR represents an institutionalization of the protection of human rights and therefore must be at the front lines of this movement to ratify the International Convention for the Protection of All Persons from Enforced Disappearances, or the International Convention Against Enforced Disappearances (hereinafter, the "*ICAED*").

Enforced or involuntary disappearances are not new issues to human rights advocates. In 1979, the United Nations General Assembly expressed concern over this issue in a Resolution entitled "*Disappeared Persons*". By 1980, the Working Group on Enforced or Involuntary Disappearances was established and was the first thematic mechanism set up by the UN Human Rights Programme to deal with specific violations of human rights. Records of enforced and involuntary disappearances in the Philippines include disappearances that predate the Commission itself. In the 2007 Report of the Working Group on Enforced or Involuntary Disappearances, there are **615 outstanding cases** of disappearances in the country starting from 1980 amounting to an increase of 14 outstanding cases from the 2006 report. The

CHR has documented **636 cases of involuntary disappearances** since 1985 and even more are being verified. Of the 636 verified cases, **406 remain missing** [while in 92 cases, the abducted have surfaced alive, 62 have been found dead and 76 have an undetermined status].

While enforced or involuntary disappearances are far fewer now than they were decades earlier, the challenge now is not only to note the reducing incidents, but to arrive at a consensus that one disappearance is one too many; not only is it a violation of human rights as enshrined in the Constitution and applicable International Law, but is personally and collectively repugnant to the sensibilities of every Filipino.

Now more than ever, we are all closest to crossing the threshold in finally ratifying and legislating laws that address the bestial crime of Enforced or Involuntary Disappearances. At the moment, several bills addressing Enforced or Involuntary Disappearances have been consolidated and are pending in Congress. The ICAED is being carefully studied by the Executive Department. The Commission has urged the government to initiate the ratification process to demonstrate their willingness to ensure protection against this grave human rights violation. However, the tipping point in our endeavor to ratify the ICAED must not be left to the Government alone. Civil society, especially human rights advocates, together with the CHR, must generate the needed clamor and civic consciousness in every corner of Philippine society to finally compel the ratification of the ICAED.

The ICAED is indeed an innovation in the fight against Enforced or Involuntary Disappearances. It is one of the strongest human rights treaties ever adopted by the UN. Key to its strength is the definition of enforced disappearance, universal jurisdiction, reparations and implementation.

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

The key aspects of the ICAED 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 ICAED likewise requires the States Parties to:

a. **Make enforced disappearance a criminal offense under national law (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 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).

The ICAED by itself is not sufficient especially since a critical obligation found therein directs ratifying governments to enact legislation to carry out the provisions of the Convention, particularly criminalizing cases of Enforced Disappearances. For this reason, the pro-active initiatives in Congress to enact laws that substantially carry out the intent of the still-unratified ICAED even before its ratification are very laudable and commendable. The response in the Legislature is an instrumental aspect in our cause to find those who are still missing and to prevent any further enforced disappearances. However, the net effect of pushing for the ratification of the ICAED would be to compel the Philippine Government to pass the implementing legislation.

The ratification of the ICAED is indeed critical: (a) as an added impetus to congressional initiatives; (b) to ensure that the pending bills conform to the standards, or at least the minimum standards prescribed in the Convention; (c) to drum up continued advocacy against enforced disappearances; and (d) specifically, on the part of CHR, for clearer and firmer legal and procedure framework for a strengthened investigative powers.

There has been much media exposure, both in the domestic and international arena, for the disappearance cases of Jonas Burgos and the two UP students, Sherlyn Cadapan and Karen Empeño. However, there are many other less publicized cases that are no less deserving of our unwavering efforts to put an end to enforced disappearances.

The case of Jonas Burgos who was abducted at Gotesco Commonwealth on 28 April 2007 remains a top priority and is still under investigation by the CHR.

Sherlyn Cadapan and Karen Empeño were abducted by armed men on 26 June 2006 in Hagonoy, Bulacan. On 13 March 2008, forensic experts exhumed a body of an unidentified woman found in Labrador, Pangasinan. Initial findings show that the exhumed remains is not of either Sherlyn or Karen. At present, the CHR is still investigating the case further.

It is in the context of the pain and anguish of the families of those who disappeared, as so bravely confided to us today by the other guest speakers, that we must consolidate our efforts, not only to generate greater public awareness, but to bring such awareness to a flash point where the public clamor for the ratification of the ICAED and passage of relevant law is cross-sectional and unrelenting. Through our combined efforts and sacrifices, may no one ever again be subjected to this affront to freedom and human dignity. Thank you very much.