

Ref: TG ASA 35/2012.088

H.E. BENIGNO SIMEON AQUINO III
President, Republic of the Philippines
Malacañang Palace, Manila
Philippines

**AMNESTY
INTERNATIONAL**



AMNESTY INTERNATIONAL INTERNATIONAL SECRETARIAT
Peter Benenson House, 1 Easton Street,
London WC1X 0DW, United Kingdom
T: +44 (0)20 7413 5500 F: +44 (0)20 7956 1157
E: amnestyis@amnesty.org W: www.amnesty.org

22 December 2012

Dear Mr President,

BUILDING ON THE ANTI-ENFORCED DISAPPEARANCE ACT AND SIGNING THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

Amnesty International welcomes your promulgation of the "Act defining and penalizing enforced or involuntary disappearance" as an important move forward in the struggle against enforced disappearance in the Philippines, where hundreds of cases remain unresolved.

The Act, which makes enforced disappearance criminal under national law, contains a number of positive provisions, such as: the broad definition of victim, the prohibition of secret detention, the non-applicability of amnesty to those suspected of criminal responsibility, the inadmissibility of a superior orders defence, the non-derogability of the right not to be subjected to enforced disappearance, the requirement of a periodically updated registry of all persons in all detention centres, and compensation, restitution and rehabilitation for victims and their families.

However, the Anti-Enforced Disappearance Act falls short of international law and standards. Amnesty International calls on Philippine authorities to amend the Act, or, where possible, address the following omissions in its Implementing Rules and Regulations, so bringing the Act further in line with international law and standards:

- The Act contains no provision criminalizing enforced disappearance committed by persons or groups acting without the authorization, support or acquiescence of the state. The Philippines has already made enforced disappearance committed by any person a criminal offence, when committed as part of a widespread or systematic attack against any civilian population, through the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity. Therefore, the exclusion of non-state agents as able to commit random or isolated acts of enforced disappearance – that is to say, when enforced disappearance does not amount to a crime against humanity – should be amended accordingly.
- The provision contained in Section 14 regarding "command responsibility" appears to be limited just to the "immediate commanding officer" in the military or the "immediate senior official" in the police. Under international law (see, for example, article 6 of the International Convention on the Protection of all Persons from Enforced Disappearance), any superior – not only an immediate one – who knew, or disregarded information which clearly indicates that his or her subordinates were committing or about to commit a crime of enforced disappearance, may be found criminally responsible. Section 10 of the Philippine Act on Crimes against International Humanitarian Law, Genocide, and Other Crimes against Humanity, on the contrary, does not contain such a restriction on superiors, either with regard to genocide, crimes against humanity or war crimes.

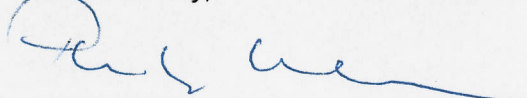
- The lack of a provision vesting jurisdiction in the Philippines' courts for enforced disappearance committed abroad is also a matter of concern. The Philippines should take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance, not only when the offence is committed in any territory under its jurisdiction, but also when the alleged offender or the disappeared person is a Philippine national; or when the alleged offender (regardless of his or her nationality) is present in any territory under the Philippines jurisdiction, unless it extradites or surrenders him or her to another state or surrenders him or her to an international criminal tribunal. Section 17 of the Philippine Act on Crimes against International Humanitarian Law, Genocide, and Other Crimes against Humanity contains a broad provision on jurisdiction, which is absent under the Anti-Enforced Disappearance Act.
- Section 22 permits some forms of statutory limitations – when the victim surfaces alive. Amnesty International is of the view that enforced disappearance, as a crime under international law, in all cases, should never be subjected to statute of limitations.
- Although the Anti-Enforced Disappearance Act provides in Section 26 for reparation to some extent, other forms of reparation are not encompassed in the Act, such as satisfaction and guarantees of non-repetition, as provided in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Amnesty International recommends the authorities to amend the Act so as provide for all forms of reparation.

Another important means of now helping to ensure that domestic legislation on enforced disappearances in the Philippines complies with international law and standards is for the Philippines to promptly ratify the International Convention for the Protection of All Persons from Enforced Disappearance, without any reservation or declaration amounting to a reservation, and implement its provisions into national law.¹ The competence of the Convention's treaty body, the Committee on Enforced Disappearances, to receive and consider communications from victims or their relatives, or other states parties, should also be recognized. Amnesty International therefore urges you, Mr. President, to now sign the Convention, thereby paving the way towards ratification, and further demonstrating your government's commitment to ending enforced disappearance in the country.

Furthermore, Amnesty International recommends that the Philippines extend an invitation to the UN Working Group on Enforced and Involuntary Disappearances.

Amnesty International acknowledges that the Anti-Enforced Disappearance Act is a milestone in the Philippines after over two decades of campaigning against enforced disappearances. The organization hopes that the government's effective implementation of this law, with the above-mentioned amendments, and ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, will greatly contribute to the elimination of enforced disappearance in the Philippines.

Yours sincerely,



For Salil Shetty
Secretary General

¹ When implementing the International Convention into national law, the Philippines should bear in mind the Amnesty International *Checklist for Effective Implementation of the International Convention for the Protection of All Persons from Enforced Disappearance*, November 2011, AI Index: IOR 51/006/2011, (<http://www.amnesty.org/es/library/info/IO51/006/2011/en>).