

## **Implementing Rules and Regulations of the Anti-Torture Act of 2009**

**Section 1. Title.** – This shall be known as the implementing rules and regulations of Republic Act No. 9745, otherwise known as the “Anti-Torture Act of 2009”.

**Section 2. Purpose.** – These rules and regulations are hereby promulgated to promote policies, establish the institutional mechanism, prescribe the procedures and guidelines to prevent all forms of torture and other cruel, inhuman and degrading treatment or punishment and ensure the implementation of R.A. No. 9745.

**Section 3. Declaration of Policy.** – It is hereby declared the policy of the State:

- (a) To value the dignity of every human person and guarantee full respect for human rights;
- (b) To ensure that the human rights of all persons including suspects, detainees and prisoners are respected at all times; and that no person placed under investigation or held in custody by any person in authority or agent of a person in authority shall be subjected to physical, psychological or mental harm, force, violence, threat or intimidation or any act that impairs his/her free will or in any manner demeans or degrades human dignity;
- (c) To ensure that secret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out with impunity, are prohibited;
- (d) To fully adhere to the principles and standards on the absolute condemnation and prohibition of torture as provided for in the 1987 Philippine Constitution;
- (e) To uphold at all times the inherent rights and dignity of all persons as enshrined and guaranteed in the following international instruments:
  - (i) International Covenant on Civil and Political Rights (ICCPR);
  - (ii) Convention on the Rights of the Child (CRC);
  - (iii) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
  - (iv) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
  - (v) Universal Declaration on Human Rights, and
  - (vi) all other relevant international human rights instruments to which the Philippines is a signatory.

**Section 4. Construction.** – These implementing rules and regulations shall be construed to achieve the objectives of the Anti-Torture Act of 2009.

**Section 5. Definition of Terms.** – The following shall be defined as:

**Torture** – refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third

person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

**Other cruel, inhuman and degrading treatment or punishment** - refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of the Act, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter.

**Victim** – refers to the person subjected to torture or other cruel, inhuman and degrading treatment or punishment as defined above and any individual who has suffered harm as a result of any act(s) of torture, or other cruel, inhuman and degrading treatment or punishment.

**Order of Battle** – refers to any document or determination 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 that it considers as legitimate targets as combatants that it could deal with, through the use of means allowed by domestic and international law.

**Act** – refers to Republic Act No. 9745 or the Anti-Torture Act of 2009.

**Person in authority** – refers to any person directly vested with jurisdiction, whether as an individual or as a member of a court or government corporation, board, or commission.

**Agent of a person in authority** – refers to any person who, by direct provision of law or by election or by appointment of a competent authority, is charged with the maintenance of public order and the protection and security of life and property including any person who comes to the aid of persons in authority.

**Custodial investigation** – shall include the practice of issuing an invitation to a person who is investigated in connection with an offense he/she is suspected to have committed, without prejudice to the liability of the inviting officer for any violation of law, as defined in R.A. No. 7438 or “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”.

**Interrogation** – refers to the process of questioning an arrested or detained person in relation to any violation of law.

**Solitary confinement** – is a form of imprisonment in which a prisoner(s) or detainee(s) is denied contact with any other persons, except members of the prison or detention staff. Solitary confinement also exists when occasional access to the prisoner(s) or detainee(s) is subjected to the discretion of the jailer or prison or detention authority.

**Incommunicado** – refers to a condition wherein a person under investigation or detention is deliberately prohibited, without valid reason, from communicating in any manner with any person other than the persons holding him/her under custody.

**Prohibited custody** – refers to the captivity or deprivation of liberty of an individual, whether static or mobile, without just cause.

**Prohibited detention.** – refers to secret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out with impunity.

**Right to own choice** – refers to the right of all persons in custody to be informed in oral or written form, in a language or dialect understood by the alleged torture victim or the person concerned, of the right to demand a physical examination by a physician of his/her own choice.

**Independent and competent doctor** – refers to any physician freely chosen by the victim or his /her duly authorized representative/s to conduct physical examination and treatment of tortured victims. Physicians who belong to agencies that are involved in the arrest and detention of the victim are not included, unless the victim specifically allowed such examination and when circumstances so require.

**Right to Physical Examination** – refers to the right of every person arrested, detained or under custodial investigation to prompt and thorough examination for the purpose of determining whether or not torture has been inflicted. This also refers to access without any delay to such an examination, which shall be made before and after any act of interrogation and immediately before and after any transfer of the person to places of detention.

**Barangay Human Rights Action Center (BHRAC)** – refers to the barangay institutional mechanism, which receives and refers complaints of human rights violations, including torture.

**Section 6. Acts of Torture.** – For purposes of these rules and regulations, torture shall include, but not be limited to the following:

- (a) Physical torture is a form of treatment or punishment inflicted by a person in authority or agent of a person in authority upon another in his/her custody that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:
  - (1) Systematic beating, head banging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach. For purposes of these rules, stomach shall mean abdomen.
  - (2) Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;
  - (3) Electric shock;

- (4) Cigarette burning; burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s);
  - (5) The submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation;
  - (6) Being tied or forced to assume fixed and stressful bodily position;
  - (7) Rape and sexual abuse, including the insertion of foreign objects into the sex organ or rectum, or electrical torture of the genitals;
  - (8) Mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue, etc.;
  - (9) Dental torture or the forced extraction of the teeth;
  - (10) Pulling out of fingernails;
  - (11) Harmful exposure to the elements such as sunlight and extreme cold;
  - (12) The use of plastic bag and other materials placed over the head to the point of asphyxiation;
  - (13) The use of psychoactive drugs to change the perception, memory, alertness or will of a person, such as:
    - (i) The administration of drugs to induce confession and/or reduce mental competency; or
    - (ii) The use of drugs to induce extreme pain or certain symptoms of a disease; and
  - (14) Other analogous acts of physical torture; and
- (b) Mental/Psychological Torture refers to acts committed by a person in authority or agent of a person in authority which are calculated to affect or confuse the mind and/or undermine a person's dignity and morale, such as:
- (1) Blindfolding;
  - (2) Threatening a person(s) or his/her relative(s) with bodily harm, execution or other wrongful acts;
  - (3) Confinement in solitary cells or secret detention places;
  - (4) Prolonged interrogation;
  - (5) Preparing a prisoner for a show trial, public display or public humiliation of a detainee or prisoner;
  - (6) Causing unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he/she shall be summarily executed;
  - (7) Maltreating a member/s of a person's family;
  - (8) Causing the torture sessions to be witnessed by the person's family, relatives or any third party;
  - (9) Denial of sleep/rest;
  - (10) Shame infliction such as stripping the person naked, parading him/her in public places, shaving the victim's head or putting marks on his/her body against his/her will;
  - (11) Deliberately prohibiting the victim to communicate with any member of his/her family; and
  - (12) Other analogous acts of mental/psychological torture.

**Section 7. Other Cruel, Inhuman and Degrading Treatment or Punishment.** - Other cruel, inhuman and degrading treatment or punishment refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of the Act, inflicted by a person in authority or agent of a person in authority against another person in custody, which attains a level of severity sufficient to cause suffering, gross humiliation or debasement to the latter. The assessment of the level of severity shall depend on all the circumstances of the case, including the duration of the treatment or punishment, its physical and mental effects and, in some cases, the sex, religion, age and state of health of the victim.

**Section 8. - Freedom from Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, An Absolute Right.** - Torture and other cruel, inhuman and degrading treatment or punishment as criminal acts shall apply to all circumstances. A state of war or a threat of war, internal political instability, or any other public emergency, or a document or any determination comprising an "order of battle" shall not and can never be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment.

**Section 9. Nature of the Offense.** - Any person having personal knowledge of the circumstances involving the commission of the crime may file a complaint under acts punishable by Sections 6 and 7 hereof.

**Section 10. Secret Detention Places, Solitary Confinement, Incommunicado or Other Similar Forms of Detention.** - No individual, whether arrested, detained, or under custodial investigation, restricted or deprived of liberty for any reason, shall be kept in secret detention, solitary confinement, held incommunicado, prohibited custody or other similar forms of detention.

Under no circumstance shall such detention centers be allowed and, if found, its use as a secret detention center shall be discontinued immediately.

**Section 11. Inspection by the CHR of Detention, Rehabilitation, Confinement and Other Similar Facilities.** - The Commission on Human Rights (CHR) shall exercise its visitorial powers at any time over jails, prisons and detention facilities and it shall have unrestricted access to any detention facility inside military camps, police lock-up cells, jails, prisons, youth homes, and any detention, rehabilitation, confinement and other similar facilities.

The custodial authorities shall validate or verify the identity and authority of the CHR visitation team without delay.

**Section 12. List of Detention Centers, Facilities and Register of Detainees and Prisoners.** - The Philippine National Police (PNP), Armed Forces of the Philippines (AFP), National Bureau of Investigation (NBI), Bureau of Jail Management and Penology (BJMP), Bureau of Corrections (BuCor), Philippine Drug Enforcement Agency (PDEA) and all other law enforcement agencies and local chief executives having jurisdiction over provincial jails shall make an updated list of all detention centers and facilities under their respective jurisdictions with the corresponding data on the prisoners or detainees incarcerated or detained therein such as, among others, names, dates of arrest and incarceration, and the crime or offense charged.

Such list shall be periodically updated by the said agencies and local chief executives within the first five (5) days of every month at the minimum.

Within sixty (60) days from the adoption of these rules and regulations, the CHR shall prescribe a standard format and guidelines for reporting the list of detention centers and facilities at the national and regional and local levels. It shall also prescribe the contents of register of detention centers and facilities.

The updated list shall be made available to the public at all times, with copies available at the respective national headquarters or offices of the abovementioned agencies; Provided, however, that any records of children or of persons involved in sexual violence cases shall not be accessible to the public pursuant to R.A. No. 7610, R.A. No. 8353, R.A. No. 9344 and other related laws.

**Section 13. Compliance of Regional Offices.** – All regional or similar offices of the agencies referred to in the preceding section shall also maintain a similar list of all detention centers and facilities within their respective jurisdictions together with the up-to-date register of detainees and/or prisoners, make the same available to the public at all times at their respective regional headquarters, and submit a copy, updated in the same manner provided above, to the respective regional offices of the CHR.

**Section 14. Applicability of the Exclusionary Rule; Exception.** -Any confession, admission or statement obtained as a result of torture shall be inadmissible in evidence in any proceeding, except if the same is used as evidence against a person or persons accused of committing torture.

**Section 15. Institutional Protection of Torture Victims and Other Persons Involved.** – A victim of torture shall have the following rights in the institution of a criminal complaint for torture:

(a) A victim of torture shall have the right to a prompt and impartial fact- finding investigation within the period of sixty (60) days by the CHR, PNP, DOJ/NBI, AFP and other concerned government agencies where the complaint is lodged.

The Public Attorney's Office (PAO) shall assist the victim/s in the preparation of affidavits and other legal documents.

When the case is referred to the Department of Justice (DOJ) or the Ombudsman for preliminary investigation, the 60-day period shall be reckoned from the filing of the complaint before said agencies.

(b) A child shall always be accompanied by a social worker from the Local Social Welfare and Development Office (LSWDO). The LSWDO shall ensure that medical examination is conducted, preferably with the presence of the parent or legal guardian. The LSWDO shall likewise ensure the filing of a complaint to the appropriate agencies.

**Section 16. Government Protection Against All Forms of Harassment, Threat and/or Intimidation.** – Upon filing of the complaint, during trial and until the case reaches final disposition, the victim, as well as other persons involved in the investigation and prosecution of the case, shall be provided with sufficient government protection such as placing the persons being investigated under preventive suspension during the period of administrative investigation, filing a motion in court to transfer the detainee to a safe place and other remedies as may be provided for by law.

The factors to be considered in granting protection may include, among others, the following:

- (1) Power and position of the perpetrators;
- (2) Capacity and access to resources of the accused;
- (3) History of retaliatory action of the accused;
- (4) Economic, social status, and gender of the victim and other involved persons;
- (5) Degree of severity of the act complained of; and
- (6) Geographical distance between the victim/other involved persons and the accused.

The victim of torture and witnesses to torture may avail of the benefits under R.A. No. 6981, otherwise known as the “Witness Protection, Security and Benefit Act”, and other applicable laws.

**Section 17. Manner of Testifying and Presentation of Evidence.** – Torture victims and witnesses to torture shall be accorded sufficient protection in the manner by which he/she testifies and presents evidence in any forum in order to avoid further trauma. Appropriate government agencies may coordinate with concerned civil society organizations in providing such protection.

Whenever necessary, closed circuit television testimony and one-way mirrors and such devices shall be utilized in the taking of testimony to prevent direct interaction between the victim/s and accused.

Psychiatrists or psychologists, especially trauma experts, shall provide victims and witnesses in-court assistance when necessary, in accordance with the rules of court. Child psychologist, child psychiatrist or Court Appointed Special Advocate/Guardian Ad Litem (CASA/GAL) shall also be provided to children, in accordance with the existing rules on examination of a child witness.

**Section 18. Assistance in Filing a Complaint.** – The CHR and the PAO shall render legal assistance in the investigation and monitoring and/or filing of the complaint for a person who suffers torture and other cruel, inhuman and degrading treatment or punishment, or for any interested party thereto, regardless of whether the complainant is indigent or not.

The victim or interested party may also seek legal assistance from the Integrated Bar of the Philippines (IBP) and human rights nongovernment organizations (NGOs), among others.

The Barangay Human Rights Action Centers (BHRACs), through the Barangay Human Rights Action Officers (BHRAOs), shall render assistance in the following manner:

- (1) Conduct information education campaign on this law;
- (2) Refer victims of torture to the CHR or other appropriate agency for the conduct of investigation or for legal assistance.

The Department of Interior and Local Government (DILG) and CHR shall conduct information dissemination at the grassroots level to ensure that the citizenry will utilize the BHRAC in filing complaints.

**Section 19. Right to Physical, Medical and Psychological Examination.** – Before and after interrogation, every person arrested, detained or under custodial investigation shall have the right to be informed of his/her right to demand physical examination by an independent and competent doctor of his/her own choice. The implementation of this right shall likewise ensure that the person has access to a medical examination for the purpose of documenting possible allegations of torture or other ill-treatment.

If such person cannot afford the services of his/her own doctor, he/she shall be provided by the State with a competent and independent doctor to conduct a physical examination. The State shall likewise provide the victim with a psychological evaluation if available under the circumstances. The medical examination shall be conducted at no cost to the victim, and under no circumstance will he/she be required to pay for laboratory fees, testing fees, x-rays, or any and all other expenses. Failure to prove incapacity to pay shall not be a ground to deny physical examination. If further consultations are necessary, the funds for this purpose may likewise be provided by other agencies that provide financial assistance, such as the Philippine Charity Sweepstakes Office (PCSO) and Philippine Amusement and Gaming Corporation (PAGCOR).

In case of the Department of Health (DOH), each Center for Health Development (CHD) shall ensure that victims are referred to the appropriate health facilities in their jurisdiction. In case of the local government units (LGUs), the local health units may also provide assistance. The social worker conducting the intake interview may recommend to the LGUs the grant of financial /medical assistance.

**Section 20. Access to Physical, Medical and Psychological Examination for Treatment, An Immediately Executory Right.** – The right to immediate access to proper and adequate physical, medical and psychological examination for treatment of any person arrested, detained or under custodial investigation, and his/her immediate family member such as the parents, brothers and sisters, spouse and children, is an inherent right that is immediately executory upon demand of the victim without need of any court order or any legal process.

**Section 21. Female victims/detainees.** – If the person arrested and/or detained is female, she shall be attended to by a female doctor. In cases where female doctors are unavailable, male doctors will be allowed, provided that there is a written or oral consent from the person arrested,

and the examination is done in the presence of a family member, preferably female, of sufficient age and discretion, or a representative of any organization authorized by the victim.

Facilities for female victims/detainees shall be exclusive to them and separate from the facilities for male victims/ detainees.

In case of victims of sexual torture, utmost care and sensitivity shall be observed in the medical examination of the victim. If specialized care is necessary, the victim shall be referred to the appropriate specialists.

**Section 22. Obligation of the Medical Examiners.** – All medical examiners conducting the examinations described in these rules and regulations are under a legal and ethical obligation to conduct a diligent and complete medical examination. Any violation of this obligation by conduct or omission shall be referred to the relevant authorities and medical associations for further investigation. All medical reports must be duly signed by the examining physician.

**Section 23. Medical Report.** – The medical report with respect to a medical examination conducted on the torture victim shall be considered a public document, Provided, that any person who seeks to avail of the medical report has legal interest on the same, Provided further, that medical reports involving children and victims of sexual violence shall be kept confidential in conformity with existing laws.

**Section 24. Contents of the Report.** – The physician who conducted the medical examination and psychological evaluation shall prepare and sign the report which shall contain the following information:

**(I) Case information**

- (1) Date and time of examination
- (2) Place of examination
- (3) Address of referring agency/ person
- (4) Address of immediate relative or contact person
- (5) Name/position of person requesting the examination
- (6) Case number
- (7) Duration of evaluation in hours and minutes
- (8) Subject's full name (given name, middle name and surname)
- (9) Subject's birth date
- (10) Subject's birthplace
- (11) Subject's gender
- (12) Reason for examination
- (13) Subject's ID Number
- (14) Clinician's name
- (15) When present, interpreter's name
- (16) Whether or not informed consent was given by the subject. If none, reason/s why
- (17) Name and position of person accompanying the subject

- (18) Name and position of persons present during examination
- (19) Whether or not subject is restrained during examination. If “yes”, how/why?
- (20) Name and position of person to whom the medical report is to be transferred/submitted
- (21) Transfer date
- (22) Transfer time
- (23) For subjects in custody, whether or not medical evaluation/investigation was conducted without restriction
- (24) Provide details of any restriction

## **(II) Background information**

- (1) General information (age, occupation, education, family composition, etc.)
- (2) Past medical history
- (3) Review of prior medical evaluations of torture and ill-treatment
- (4) Psychosocial history pre-arrest

## **(III) Victim’s allegations of torture and ill-treatment**

- (1) Summary of detention and abuse
- (2) Circumstances of arrest and detention
- (3) Initial and subsequent places of detention (chronology, transportation and detention conditions)
- (4) Narrative account of ill-treatment or torture (in each place of detention)
- (5) Review of torture methods

## **(IV) Physical symptoms and disabilities**

Describe the development of acute and chronic symptoms and disabilities and the subsequent healing processes.

- (1) Acute symptoms and disabilities
- (2) Chronic symptoms and disabilities

## **(V) Physical examination**

- (1) General appearance
- (2) Skin
- (3) Face and head
- (4) Eyes, ears, nose and throat
- (5) Oral cavity and teeth
- (6) Chest and abdomen (including vital signs)
- (7) Genitourinary system
- (8) Musculoskeletal system
- (9) Central and peripheral nervous system
- (10) Anogenital examination

**(VI) Photographs**

**(VII) Diagnostic test results**

**(VIII) Interpretation of findings**

Physical evidence

(A) Correlate the degree of consistency between the history of acute and chronic physical symptoms and disabilities with allegations of abuse.

(B) Correlate the degree of consistency between physical examination findings and allegations of abuse.

The absence of physical findings does not exclude the possibility that torture or ill-treatment was inflicted.

(C) Correlate the degree of consistency between examination findings of the individual with knowledge of torture methods and their common after-effects used in a particular region.

**(IX) Conclusions and recommendations**

Physical

(1) Statement of opinion on the consistency between all sources of evidence cited above (physical and psychological findings, historical information, photographic findings, diagnostic test results, knowledge of regional practices of torture, consultation reports, etc.) and allegations of torture and ill-treatment.

(2) Reiterate the symptoms and disabilities from which the individual continues to suffer as a result of the alleged abuse.

(3) Provide any recommendations for further evaluation and care for the individual.

(4) If necessary, provide recommendation for rehabilitation program.

**(X) Consultations**

**(XI) Physician's Certification on the conduct of physical examination**

The undersigned physician(s) shall certify that he/she was allowed to work freely and independently and permitted to speak with and examine (the subject) in private, without any restriction or reservation, and without any form of coercion being used by the detaining authorities.

In case restrictions were imposed, the certification shall include said restrictions. The physician(s) shall certify that he/she had to carry out the evaluation with restrictions and shall state the same.

“ I hereby certify that I was allowed to work freely and independently and permitted to speak with and examine (the subject) in private, without any restriction or reservation, and without any form of coercion being used by the detaining authorities”.

“ I hereby certify that I was allowed to examine (the subject) with restrictions”. (State the restrictions)

**(XII) Clinician’s signature, date, place**

**(XIII) Relevant annexes**

A copy of the clinician’s curriculum vitae, anatomical drawings for identification of torture and ill-treatment, photographs, consultations and diagnostic test results, among others.

**(XIV) Psychological history/examination**

- (1) Methods of assessment
- (2) Current psychological complaints
- (3) Post-torture history
- (4) Pre-torture history
- (5) Past psychological/psychiatric history
- (6) Substance use and abuse history
- (7) Mental status examination
- (8) Assessment of social functioning
- (9) Psychological testing
- (10) Neuropsychological testing

**(XV) Interpretation of findings**

Psychological evidence

- (A) Correlate the degree of consistency between the psychological findings and the report of alleged torture.
- (B) Provide an assessment of whether the psychological findings are expected or typical reactions to extreme stress within the cultural and social context of the individual.
- (C) Indicate the status of the individual in the fluctuating course of trauma-related mental disorders over time, i.e. what is the time frame in relation to the torture events and where in the course of recovery is the individual?

(D) Identify any coexisting stressors impinging on the individual (e.g. ongoing persecution, forced migration, exile, loss of family and social role, etc.) and the impact these may have on the individual.

(E) Mention physical conditions that may contribute to the clinical picture, especially with regard to possible evidence of head injury sustained during torture or detention.

#### **(XVI) Conclusions and recommendations**

Psychological

- (1) Statement of opinion on the consistency between all sources of evidence cited above (physical and psychological findings, historical information, photographic findings, diagnostic test results, knowledge of regional practices of torture, consultation reports, etc.) and allegations of torture and ill-treatment.
- (2) Reiterate the symptoms and disabilities from which the individual continues to suffer as a result of the alleged abuse.
- (3) Provide any recommendations for further evaluation and care for the individual.
- (4) If necessary, provide recommendation for rehabilitation program.

#### **(XVII) Consultations**

#### **(XVIII) Physician's Certification on the conduct of psychological examination**

The undersigned physician(s) shall certify that he/she was allowed to work freely and independently and permitted to speak with and examine (the subject) in private, without any restriction or reservation, and without any form of coercion being used by the detaining authorities.

In case restrictions were imposed, the certification shall include the said restrictions. The physician(s) shall certify that he/she had to carry out the evaluation with restrictions and shall state the same.

“ I hereby certify that I was allowed to work freely and independently and permitted to speak with and examine (the subject) in private, without any restriction or reservation, and without any form of coercion being used by the detaining authorities”.

“ I hereby certify that I was allowed to examine (the subject) with restrictions”. (state the restrictions)

**(XIX) Clinician's signature, date, place**

**(XX) Relevant annexes**

A copy of the clinician's curriculum vitae, anatomical drawings for identification of torture and ill-treatment, photographs, consultations and diagnostic test results, among others.

**Section 25. Waiver of the Right to Physical, Medical and Psychological Examination.** – Any person who does not wish to avail of the rights to physical, medical and psychological examination as prescribed in the Act may knowingly and voluntarily waive such rights in writing, executed in the presence and assistance of a counsel of his/her own choice and in a language he/she understands.

**Section 26. Principal.** – (a) Any person who directly participated, forced or induced another in the commission of torture or other cruel, inhuman and degrading treatment or punishment or who cooperated in the execution of the offense by another act without which it would not have been accomplished or who cooperated in the execution of the offense by previous or simultaneous acts shall be liable as a principal.

(b) Any superior military, police or law enforcement officer or senior government official who issued an order to any lower ranking personnel to commit torture for whatever purpose shall be held equally liable as principal.

(c) The immediate commanding officer of the unit concerned of the AFP or the immediate senior public official of the PNP and other law enforcement agencies shall be held liable as a principal to the crime of torture or other cruel or inhuman and degrading treatment or punishment for any act or omission, or negligence committed by him/her that shall have led, assisted, abetted or allowed, whether directly or indirectly, the commission thereof by his/her subordinates. If he/she has knowledge of or, owing to the circumstances at the time, should have known that the act of torture or other cruel, inhuman and degrading treatment or punishment shall be committed, is being committed, or has been committed by his/her subordinates or by others within his/her area of responsibility and, despite such knowledge, did not take preventive or corrective action either before, during or immediately after its commission, when he/she has the authority to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment but failed to prevent or investigate allegations of such act, whether deliberately or due to negligence shall also be liable as a principal.

**Section 27. Accomplice.** – Any person who, not being included in Section 26 hereof, cooperate in the execution of torture or other cruel, inhuman and degrading treatment or punishment by previous or simultaneous acts is an accomplice.

**Section 28. Accessories.** – Any public officer or employee shall be liable as an accessory if he/she has knowledge that torture or other cruel, inhuman and degrading treatment

or punishment is being committed and without having participated therein, either as principal or accomplice, takes part subsequent to its commission in any of the following manner:

- (a) By themselves profiting from or assisting the offender to profit from the effects of the act of torture or other cruel, inhuman and degrading treatment or punishment;
- (b) By concealing the act of torture or other cruel, inhuman and degrading treatment or punishment and/or destroying the effects or instruments thereof in order to prevent its discovery; or,
- (c) By harboring, concealing or assisting in the escape of the principal/s in the act of torture or other cruel, inhuman and degrading treatment or punishment; Provided that the accessory acts are done with the abuse of the official's public functions.

If in the event a child is involved in the act of inflicting torture, the handling and treatment of said child shall be in accordance with R.A. No. 7610, R.A. No. 9344 (Juvenile Justice and Welfare Act) and other related laws. In case of doubt, the interpretation of any of the provisions of these rules and regulations shall be construed liberally in favor of the child involved in torture acts, i.e., consistent with the best interests of the child, the declared state policy, the rights of the child and principles of restorative justice.

**Section 29. Penalties.** – (a) The penalty of *reclusion perpetua* shall be imposed upon the perpetrators of the following acts:

- (1) Torture resulting in the death of any person;
  - (2) Torture resulting in mutilation;
  - (3) Torture with rape;
  - (4) Torture with other forms of sexual abuse and, in consequence of torture, the victim shall have become insane, imbecile, impotent, blind or maimed for life; and
  - (5) Torture committed against children.
- (b) The penalty of *reclusion temporal* shall be imposed on those who commit any act of mental/psychological torture resulting in insanity, complete or partial amnesia, fear of becoming insane or suicidal tendencies of the victim due to guilt, worthlessness or shame.
  - (c) The penalty of *prision correccional* shall be imposed on those who commit any act of torture resulting in psychological, mental and emotional harm other than those described in paragraph (b) of this section.
  - (d) The penalty of *prision mayor* in its medium and maximum periods shall be imposed if, in consequence of torture, the victim shall have lost the power of speech or the power to hear or to smell; or shall have lost an eye, a hand, a foot, an arm or a leg; or shall have lost the use of any such member; or shall have become permanently incapacitated for labor.
  - (e) The penalty of *prision mayor* in its minimum and medium periods shall be imposed if, in consequence of torture, the victim shall have become deformed or shall have lost any part of his/her body other than those aforesaid, or shall have lost the use thereof,

or shall have been ill or incapacitated for labor for a period of more than ninety (90) days.

- (f) The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for labor for more than thirty (30) days but not more than ninety (90) days.
- (g) The penalty of *prision correccional* in its minimum and medium period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for labor for thirty (30) days or less.
- (h) The penalty of *arresto mayor* shall be imposed for acts constituting cruel, inhuman or degrading treatment or punishment as defined in Section 5 of the Act.
- (i) The penalty of *prision correccional* shall be imposed upon those who establish, operate and maintain secret detention places and/or effect or cause to effect solitary confinement, incommunicado or other similar forms of prohibited detention as provided in Section 7 of the Act where torture may be carried out with impunity.
- (j) The penalty of *arresto mayor* shall be imposed upon the responsible officers or personnel of the AFP, the PNP and other law enforcement agencies for failure to perform his/her duty to maintain, submit or make available to the public an updated list of detention centers and facilities with the corresponding data on the prisoners or detainees incarcerated or detained therein, pursuant to Section 7 of the Act.

This is without prejudice to the provisions of R.A. No. 7438 or “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.”

**Section 30. Torture as a Separate and Independent Crime.** – Torture as a crime shall not absorb or shall not be absorbed by any other crime or felony committed as a consequence, or as a means in the conduct or commission thereof. In which case, torture shall be treated as a separate and independent criminal act whose penalties shall be imposable without prejudice to any other criminal liability provided for by domestic and international laws.

**Section 31. Inapplicability of Amnesty.** – In order not to depreciate the crime of torture, persons who have committed any act of torture shall not benefit from any special amnesty law or similar measures that will have the effect of exempting them from any criminal proceedings and sanctions.

**Section 32. 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 torture. For the purposes of determining whether such grounds exist, the Secretary of the Department of Foreign Affairs (DFA) and the Secretary of the 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.

**Section 33. Who May Avail of Compensation.** – Any person who has suffered torture as defined in the Act, or in the victim’s absence or incapacity, his/her immediate family, shall have the right to claim for compensation provided for under existing laws, rules and regulations.

In case of death of the victim, the compensation accruing to him/her shall form part of his/her estate.

**Section 34. Application for Claims, Where Filed.** – The application for claims shall be filed with the Board of Claims under the DOJ as provided for in R.A. No. 7309. Request for financial assistance may also be filed with the CHR.

**Section 35. Who May File.** – The victim, a relative of the victim within the fourth degree of consanguinity, or an authorized human rights NGO may assist the victims in filing a claim.

**Section 36. Amount of Compensation.** – Where there is a finding that torture had been committed, the amount of compensation in R.A. No. 7309 shall not be less than ten thousand pesos (PhP10, 000.00).

Victims of torture shall also have the right to claim for compensation from such other financial relief programs that may be made available to them under existing laws, including the right to apply for the grant of financial assistance from the CHR.

**Section 37. Rehabilitation Program.** – Toward the attainment of restorative justice, rehabilitation programs shall be provided for the physical, psychological and social healing and development of victims of torture and their families.

The victims of torture and their families shall be entitled to avail of the rehabilitation program based on the recommendation of the examining physician in the Medical and Psychological Report.

A parallel rehabilitation program shall also be provided for persons who have been convicted by final judgment of torture and other cruel, inhuman and degrading punishment.

**Section 38. Responsible agencies.** – Within one (1) year from the effectivity of the Act, the rehabilitation program shall be formulated by the following agencies:

- Department of Social Welfare and Development (DSWD)
- Department of Health (DOH)
- Department of Justice (DOJ)
- Department of Interior and Local Government (DILG)
- Commission on Human Rights (CHR)
- Council for the Welfare of Children (CWC)
- Armed Forces of the Philippines (AFP)
- Bureau of Corrections (BuCor)
- Bureau of Jail Management and Penology (BJMP)

National Bureau of Investigation (NBI)  
Philippine Drug Enforcement Agency (PDEA)

Human rights nongovernment organizations duly recognized by the government shall also be called to actively participate in the formulation of such program.

The role and participation of survivors of torture shall be given due consideration by inviting female and male survivors who will be able to represent their collective feelings and opinions on the formulation of a rehabilitation program.

**Section 39. Components of the Rehabilitation Program.** – The comprehensive rehabilitation program to be developed by the aforementioned agencies shall provide for the physical, mental, social, psychological healing and development of victims of torture and their families.

The parallel rehabilitation program for persons who have committed torture and other cruel, inhuman and degrading punishment shall be developed for their mental, social, psychological healing and re-integration.

**Section 40. Funding for the Rehabilitation Program.** – The agencies mandated to provide services for the rehabilitation of the victims/perpetrators of torture shall provide the necessary budget for the implementation of the rehabilitation program.

**Section 41. Monitoring of Compliance with the Act.** – An Oversight Committee (OC) is hereby created to periodically oversee the implementation of the Act. The Committee shall be headed by a Commissioner of the CHR, with the following as members: the Chairperson of the Senate Committee on Justice and Human Rights, the respective Chairpersons of the House of Representatives' Committees on Justice and Human Rights, and the Minority Leaders of both houses or their respective representatives in the minority.

The OC shall regularly conduct meetings and submit an annual report to the President on the implementation of the Act. The annual report, which shall be made publicly available, shall include, among others:

- (a) Identification of the strengths and weaknesses in the implementation of the Act;
- (b) Appraisal of the performance of the government agencies in relation to their duties and responsibilities under the Act; and
- (c) Recommendations on how to improve the implementation of the Act

The OC shall call the attention of the departments and agencies concerned to perform their respective duties and responsibilities under the Act and these Rules, and assist them if necessary to ensure the effective implementation of the Act.

**Section 42. Active participation of the NGOs.** – The OC recognizes the active participation of concerned NGOs in exercising its oversight functions. NGOs may request the Committee to conduct inquiries, consultations, and/or ocular inspections regarding documented violations of the Act.

**Section 43. Mandatory Education and Training on Prohibition Against Torture.-**

The CHR, the DOJ, the Department of National Defense (DND), the DILG and such other concerned parties in both the public and private sectors shall ensure that education and information regarding prohibition against torture and other cruel, inhuman and degrading treatment or punishment shall be fully included in the following:

- (a) Government personnel and officials: A continuing education on human rights, prohibition against torture and other cruel, inhuman and degrading treatment or punishment shall be provided to prosecutors, investigators, personnel and officials with custodial and correctional functions and other government personnel and officials who may be involved in the implementation of programs under the Act.
- (b) Law enforcement and security personnel and officials: The education and training shall be integrated in basic curricula in the military and police academies. Continuing education shall likewise be provided for law enforcement and security personnel.
- (c) Medical Personnel: The DOH shall provide adequate formal training for physicians in government health institutions and agencies that provide medical and forensic services to victims of all types of violence, especially cases of torture.

It shall endeavor to provide the same training to private medical practitioners in coordination with the Philippine Medical Association and other medical societies or colleges.

(d) Inclusion in formal education curricula: The Department of Education (DEPED) and the Commission on Higher Education (CHED), in consultation with the CHR, shall ensure the integration of human rights, anti-torture and other related laws in all primary, secondary and tertiary level academic institutions nationwide.

**Section 44. Information dissemination.** – The concerned agencies shall ensure that the information disseminated is comprehensive, clear and in a manner easy to understand. Efforts must be undertaken to inform the public on the definition of torture, what their rights and duties are in relation to it, and how they can be part of sustainable solutions to eradicate the culture of torture. The tri-media should be employed so that the information reaches the widest audience possible.

**Section 45. Torture as a Non-Prescriptible Offense.-** The statute of limitation or prescription period shall not apply to torture cases.

**Section 46. Applicability of the Revised Penal Code.** - The provisions of the Revised Penal Code insofar as they are applicable shall be supplementary to the Act. Moreover, if the commission of any crime punishable under Title Eight (Crimes Against Persons) and Title Nine (Crimes Against Personal Liberty and Security) of the Revised Penal Code is attended by any of the acts constituting torture and other cruel, inhuman and degrading treatment or punishment as defined herein, the penalty to be imposed shall be in its maximum period.

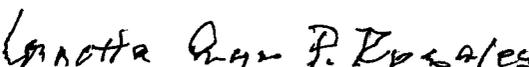
**Section 47. Appropriations.** - The amount of Five million pesos (Php5,000,000.00) is hereby appropriated to the CHR for the initial implementation of the Act. Thereafter, such sums as may be necessary for the continued implementation of the Act shall be included in the annual General Appropriations Act.

**Section 48. Separability Clause.** - If any provision of these IRR is declared invalid or unconstitutional, the other provisions not affected thereby shall continue to be in full force and effect.

**Section 49. Effectivity.** - These IRR shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Done in the City of Manila, this 10<sup>th</sup> day of December 2010.

  
**LEILA M. DE LIMA**  
Secretary of Justice

  
**LORETTA ANN P. ROSALES**  
Chair, Commission on Human Rights