

Republic of the Philippines
Congress of the Philippines
Metro Manila

Fourteenth Congress
Third Regular Session

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

REPUBLIC ACT NO. 9745

AN ACT PENALIZING TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT AND PRESCRIBING PENALTIES THEREFOR

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-Torture Act of 2009**".

Section 2. Statement 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 of any person in authority or, agent of a person 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, incommunicado or other similar forms of detention, where torture may be carried out with impunity, are prohibited; and
- (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; various international instruments to which the Philippines is a State party such as, but not limited to, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and all other relevant international human rights instruments to which the Philippines is a signatory.

Section 3. Definitions. - For purposes of this Act, the following terms shall mean:

- (a) "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.
- (b) "Other cruel, inhuman and degrading treatment or punishment" refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this 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.
- (c) "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.

(d) "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.

Section 4. Acts of Torture. - For purposes of this Act, 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, headbanging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;
- (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 5. *Other Cruel, Inhuman and Degrading Treatment or Punishment.* - Other cruel, inhuman or degrading treatment or punishment refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this 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 6. *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 7. *Prohibited Detention.* - Secret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out with impunity. Are hereby prohibited.

In which case, the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP) and other law enforcement agencies concerned 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, date of arrest and incarceration, and the crime or offense committed. This list shall be made available to the public at all times, with a copy of the complete list available at the respective national headquarters of the PNP and AFP. A copy of the complete list shall likewise be submitted by the PNP, AFP and all other law enforcement agencies to the Commission on Human Rights (CHR), such list to be periodically updated, by the same agencies, within the first five (5) days of every month at the minimum. Every regional office of the PNP, AFP and other law enforcement agencies shall also maintain a similar list for all detainees and detention facilities within their respective areas, and shall 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 8. *Applicability of the Exclusionary Rule; Exception.* - Any confession, admission or statement obtained as a result of torture shall be inadmissible in evidence in any proceedings, except if the same is used as evidence against a person or persons accused of committing torture.

Section 9. *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) To have a prompt and an impartial investigation by the CHR and by agencies of government concerned such as the Department of Justice (DOJ), the Public Attorney's Office (PAO), the PNP, the National Bureau of

Investigation (NBI) and the AFP. A prompt investigation shall mean a maximum period of sixty (60) working days from the time a complaint for torture is filed within which an investigation report and/or resolution shall be completed and made available. An appeal whenever available shall be resolved within the same period prescribed herein,

(b) To have sufficient government protection against all forms of harassment; threat and/or intimidation as a consequence of the filing of said complaint or the presentation of evidence therefor. In which case, the State through its appropriate agencies shall afford security in order to ensure his/her safety and all other persons involved in the investigation and prosecution such as, but not limited to, his/her lawyer, witnesses and relatives; and

(c) To be accorded sufficient protection in the manner by which he/she testifies and presents evidence in any fora in order to avoid further trauma.

Section 10. *Disposition of Writs of Habeas Corpus, Amparo and Habeas Data Proceedings and Compliance with a Judicial Order.* - A writ of habeas corpus or writ of amparo or writ of habeas data proceeding, if any, filed on behalf of the victim of torture or other cruel, degrading and inhuman treatment or punishment shall be disposed of expeditiously and any order of release by virtue thereof, or other appropriate order of a court relative thereto, shall be executed or complied with immediately.

Section 11. *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.

The victim or interested party may also seek legal assistance from the Barangay Human Rights Action Center (BRRAC) nearest him/her as well as from human rights nongovernment organizations (NGOs).

Section 12. *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. 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 physical examination. The State shall endeavor to provide the victim with psychological evaluation if available under the circumstances. If the person arrested is a female, she shall be attended to preferably by a female doctor. Furthermore, any person arrested, detained or under custodial investigation, including his/her immediate family, shall have the right to immediate access to proper and adequate medical treatment. The physical examination and/or psychological evaluation of the victim shall be contained in a medical report, duly signed by the attending physician, which shall include in detail his/her medical history and findings, and which shall be attached to the custodial investigation report. Such report shall be considered a public document.

Following applicable protocol agreed upon by agencies tasked to conduct physical, psychological and mental examinations, the medical reports shall, among others, include:

- (a) The name, age and address of the patient or victim;
- (b) The name and address of the nearest kin of the patient or victim;
- (c) The name and address of the person who brought the patient or victim for physical, psychological and mental examination, and/or medical treatment;
- (d) The nature and probable cause of the patient or victim's injury, pain and disease and/or trauma;
- (e) The approximate time and date when the injury, pain, disease and/or trauma was/were sustained;
- (f) The place where the injury, pain, disease and/or trauma was/were sustained;
- (g) The time, date and nature of treatment necessary; and
- (h) The diagnosis, the prognosis and/or disposition of the patient.

Any person who does not wish to avail of the rights under this provision may knowingly and voluntarily waive such rights in writing, executed in the presence and assistance of his/her counsel.

Section 13. Who are Criminally Liable. - Any person who actually participated 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 act of torture or other cruel, inhuman and degrading treatment or punishment by previous or simultaneous acts shall be liable as principal

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 principals.

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 acts 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 principals.

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.

Section 14. 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 this 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 this 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 this Act.

Section 15. *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 16. *Exclusion from the Coverage of Special Amnesty Law.* - 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 17. *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 18. *Compensation to Victims of Torture.* - Any person who has suffered torture shall have the right to claim for compensation as provided for under Republic Act No. 7309: Provided, That in no case shall compensation be any lower than Ten thousand pesos (P10,000.00). Victims of torture shall also have the right to claim for compensation from such other financial relief programs that may be made available to him/her under existing law and rules and regulations.

Section 19. *Formulation of a Rehabilitation Program.* - Within one (1) year from the effectivity of this Act, the Department of Social Welfare and Development (DSWD), the DOJ and the Department of Health (DOH) and such other concerned government agencies, and human rights organizations shall formulate a comprehensive rehabilitation program for victims of torture and their families. The DSWD, the DOJ and the DOH shall also call on human rights nongovernment organizations duly recognized by the government to actively participate in the formulation of such program that shall provide for the physical, mental, social, psychological healing and development of victims of torture and their families. Toward the attainment of restorative justice, a parallel rehabilitation program for persons who have committed torture and other cruel, inhuman and degrading punishment shall likewise be formulated by the same agencies.

Section 20. *Monitoring of Compliance with this Act.* - An Oversight Committee is hereby created to periodically oversee the implementation of this Act. The Committee shall be headed by a Commissioner of the CRR, 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.

Section 21. *Education and Information Campaign.* - The CHR, the DOJ, the Department of National Defense (DND), the Department of the Interior and Local Government (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 training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. The Department of Education (DepED) and the Commission on Higher Education (CHED) shall also ensure the integration of human rights education courses in all primary, secondary and tertiary level academic institutions nationwide.

Section 22. *Applicability of the Revised Penal Code.* - The provisions of the Revised Penal Code insofar as they are applicable shall be supplementary to this 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 23. *Appropriations.* - The amount of Five million pesos (Php5,000,000.00) is hereby appropriated to the CHR for the initial implementation of tills Act. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the annual General Appropriations Act.

Section 24. *Implementing Rules and Regulations.* - The DOJ and the CHR, with the active participation of human rights nongovernmental organizations, shall promulgate the rules and regulations for the effective implementation of tills Act. They shall also ensure the full dissemination of such rules and regulations to all officers and members of various law enforcement agencies.

Section 25. *Separability Clause.* - If any provision of this Act is declared invalid or unconstitutional, the other provisions not affected thereby shall continue to be in full force and effect.

Section 26. *Repealing Clause.* - All laws, decrees, executive orders or rules and regulations contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 27. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,

(Sgd.) **PROSPERO C. NOGRALES**
Speaker of the House of
Representatives

(Sgd.) **JUAN PONCE ENRILE**
President of the Senate

This Act which is a consolidation of House Bill No. 5709 and Senate Bill No. 1978 was finally passed by the House of Representatives and the Senate on September 2,2009.

(Sgd.) **MARILYN B. BARUA-YAP**
Secretary General
House of Representatives

(Sgd.) **EMMA LIRIO-REYES**
Secretary of Senate

Approved: **November 10, 2009**

(Sgd.) **GLORIA MACAPAGAL-ARROYO**
President of the Philippines