

[REPUBLIC ACT NO. 9745, November 10, 2009]

**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 Representative of the Philippines in Congress assembled:

SECTION 1. *Short Title.* — This Act shall be known as the "Anti-Torture Act of 2009".

SEC. 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 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, *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.

SEC. 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.

SEC. 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. "Metal/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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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 in 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 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.

SEC. 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.

SEC. 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 (BHRAC) nearest him/her as well as from human rights nongovernment organizations (NGOs).

SEC. 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 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 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.