

**[ COMMISSION ON HUMAN RIGHTS, December 10, 2010 ]**

**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**