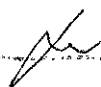


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SENATE

S. No. 1978

Prepared jointly by the Committees on Justice and Human Rights and Finance with Senators Ejercito-Estrada, Biazon, Defensor-Santiago and Escudero and Enrile as authors thereof

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

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

1 **SECTION 1. Short Title.** - This Act shall be known as the "Anti-Torture Act
2 of 2007".

3

4 **SEC. 2. Statement of Policy.** - It is hereby declared the policy of the
5 State:

6 (a) To ensure that the rights of all persons, including suspects,
7 detainees and prisoners are respected at all times; and that no person placed
8 under investigation or held in custody of any person in authority shall be
9 subjected to physical, psychological, mental or pharmacological harm, force,
10 violence, threat or intimidation or any act that impairs his/her free will or in any
11 manner demeans or degrades human dignity; and

1 (b) To fully adhere to the principles and standards on the absolute
2 condemnation and prohibition of torture set by the 1987 Philippine Constitution
3 and various international instruments, such as, but not limited to, the
4 International Covenant on Civil and Political Rights (ICCPR), the Convention on
5 the Rights of the Child (CRC), the Convention on the Elimination of All Forms of
6 Discrimination Against Women (CEDAW) and the Convention Against Torture
7 and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to
8 which the Philippines is a State party.

9
10 **SEC. 3.** *Torture, When Committed.* - "Torture" shall be deemed
11 committed when an act by which severe pain or suffering, whether physical,
12 psychological, mental or pharmacological, is intentionally inflicted on a person
13 for such purposes as: obtaining from him/her or a third person information or a
14 confession; punishing him/her for an act he/she or a third person has committed
15 or is suspected of having committed; intimidating or coercing him/her or a third
16 person; or for any reason based on discrimination of any kind. And that such
17 pain or suffering is inflicted by or is made at the instigation of or with the
18 consent or acquiescence of a public official or other person acting in an official
19 capacity.

20 It does *not* include pain or suffering arising only from inherent or
21 incidental to lawful sanctions.

22 For purposes of this Act, torture shall include, but not be limited to,
23 the following:

24 (a) *Physical torture*, which shall be understood as referring to
25 such cruel, inhuman or degrading treatment which causes pain, exhaustion,
26 disability or dysfunction of one or more parts of a person's body, such as:

- 1 1. Systematic beating, headbanging, punching, kicking,
2 striking with truncheons, rifle butts, and jumping on the stomach;
- 3 2. Food deprivation or forcible feeding with spoiled
4 food or drink, animal or human excreta, wine or such other substance not
5 normally taken;
- 6 3. Electric shocks;
- 7 4. Cigarette burning, burning by electrically heated
8 rods, hot oil, acid; rubbing of pepper or other chemical substances on mucous
9 membranes, or acids or spices or other similar or harmful substances, directly on
10 the wounds;
- 11 5. Water treatment or the submersion of the head in
12 water or water polluted with excrement, urine, vomit and/or blood until, or
13 almost at, the brink of suffocation;
- 14 6. Being tied up, hanged or forced to assume fixed and
15 stressful bodily positions;
- 16 7. Rape, including the insertion of foreign objects into
17 the sex organ or rectum, or electrocution of the genitals, nipple, breast or rectum;
- 18 8. Other forms of sexual abuse;
- 19 9. Mutilation, like the amputation of the essential parts
20 of the body such as the genitalia, ears, tongue, etc.;
- 21 10. Dental torture or the forced extraction of the teeth;
- 22 11. Harmful exposure to elements such as extreme heat
23 and cold as well as animals or insects;
- 24 12. Suffocation or the use of plastic bags or other
25 materials placed over the head almost or up to the point of asphyxiation; or
- 26 13. Other analogous or similar forms of aggravated and
27 deliberate cruel, inhuman or degrading physical treatment or punishment;

1 (b) *Mental/psychological torture*, which shall be understood as
2 referring to such cruel, inhuman or degrading treatment calculated to affect or
3 confuse a person's mind and/or undermine his/her dignity and morale, such as:

- 4 1. Blindfolding;
- 5 2. Threatening to commit or committing criminal or
6 other wrongful acts;
- 7 3. Confinement in solitary cells;
- 8 4. Prolonged interrogation so as to deny normal length
9 of sleep and/or rest;
- 10 5. Causing unscheduled or arbitrary transfers from one
11 place to another so as to create a reasonable belief of summary execution;
- 12 6. Causing torture session/s to be witnessed by any
13 other person
- 14 7. Denial of sleep and/or rest;
- 15 8. Subjecting a person to shame such as stripping
16 him/her naked, parading him/her in public places, shaving his/her heads or
17 putting marks or objects on his/her bodies against his/her will;
- 18 9. Illegal detention; or
- 19 10. Other analogous or similar forms of deliberate and
20 aggravated cruel, inhuman or degrading mental treatment or punishment.

21 (c) *Pharmacological Torture* which shall be understood as
22 referring to such cruel, inhuman or degrading treatment through the
23 administration of drugs or similar substances to induce from a person confession
24 and/or reduce his/her mental competency, such as;

- 25 1. The use of drugs or other substances to induce pain,
26 discomfort, anxiety, suffering, anguish, distress, insanity, psychosis or certain
27 symptoms of any disease; or

1 2. Other analogous or similar forms of deliberate and
2 aggravated cruel, inhuman or degrading pharmacological treatment or
3 punishment.

4

5 **SEC. 4.** *Freedom from Torture, an Absolute Right.* - Torture as a
6 criminal act applies to all circumstances. A state of war or a threat of war,
7 internal political instability, or any other public emergency, or that the person is
8 a combatant, political enemy, or a fugitive, shall not and can never be invoked as
9 a justification for torture.

10

11 **SEC. 5.** *Prohibited Detention.* - Secret detention places, solitary
12 confinement, incommunicado or other similar forms of detention, where torture
13 may be carried on with impunity, are hereby prohibited.

14

 In which case, the Philippine National Police (PNP), the
15 Armed Forces of the Philippines (AFP) and other law enforcement agencies
16 , concerned shall make an updated list of all detention centers and facilities under
17 their respective jurisdictions with the corresponding data on the prisoners or
18 detainees incarcerated or detained therein such as, among other, names, date of
19 arrest and incarceration, and the crime or offense committed. This list shall be
20 made available to the public at all times.

21

22 **SEC. 6.** *Applicability of the Exclusionary Rule; Exception.* - Any
23 confession, admission or statement obtained as a result of torture shall be
24 inadmissible in evidence in any proceedings, except if the same is used as
25 evidence against a person or persons accused of committing torture.

26

1 **SEC. 7.** *Institutional Protection of Torture Victims.* – A victim of torture

2 shall have the following rights in the institution of a criminal complaint for
3 torture:

4 1. To have a prompt and an impartial investigation by the
5 agencies of government concerned such as the Department of Justice (DOJ), the
6 Commission on Human Rights (CHR), the PNP, the AFP and the National
7 Bureau of Investigation (NBI). A prompt investigation shall mean a maximum
8 period of thirty (30) days from the time a complaint for torture is filed within
9 which an investigation report and/or resolution shall be completed and made
10 available.

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

17 Any person committing such acts of harassment, threat, and/or
18 intimidation shall be criminally liable as an *accessory* to the crime of torture
19 subject of the complaint without prejudice to any other crime or offense
20 committed by virtue of said acts.

21 3. To be accorded sufficient latitude, consideration and
22 protection in the manner by which he/she testifies and presents evidence in any
23 *fora* so as to ensure his/her psychological, mental and social well-being and
24 avoid further trauma.

25

26 **SEC. 8.** *Assistance in Filing a Complaint.* – A party who suffered
27 torture and other cruel, inhuman and degrading treatment or punishment, or

1 any interested party on their behalf, may seek legal assistance in the proper
2 handling and filing of the complaint from any of the government agencies
3 concerned specifically the DOJ, CHR, the PNP, the AFP, the NBI, the Barangay
4 Human Rights Action Center nearest them, and human rights non-government
5 organizations duly recognized by the government.

6

7 **SEC. 9.** *Right to Physical, Medical and Psychological Examination.* -

8 Every person arrested, detained or under custodial investigation shall have the
9 right to be informed of his/her right to demand physical, pharmacological and
10 psychological examinations and/or medical treatment by an independent and
11 competent doctor or specialist or expert of his/her own choice before and after
12 arrest, detention or investigation, which shall be conducted outside the influence
13 of the police or security forces. If such person cannot afford the services of
14 his/her own doctor or specialist or expert, he/she shall be provided by the State
15 with a competent and independent doctor. If the person arrested is a female, she
16 shall be provided with a female doctor.

17 The medical report or any report pertinent for the above
18 examinations and/or treatment, if the person so arrested, detained or
19 investigated upon availed of said right, shall include in detail the patient's
20 medical history and the findings of the physician concerned with his/her
21 signature affixed, and shall be attached to the report on such arrest, detention or
22 investigation. Otherwise, said report shall be deemed null and void and of no
23 legal effect.

24 Following applicable protocol agreed upon by agencies, medical
25 reports or any report equivalent thereto shall, among others, include the
26 following:

27 (1) The name, age and address of the patient or victim;

1 (2) The name and address of the nearest kin of the
2 patient or victim;

3 (3) The name and address of the person who brought the
4 patient or victim for physical, pharmacological and psychological examination,
5 and/or medical treatment

6 (4) The nature and probable cause of the patient or
7 victim's injury, pain and disease and/or trauma;

8 (5) The approximate time and date when the injury, pain,
9 disease and/or trauma was/were sustained;

10 (6) The place where the injury, pain, disease and/or
11 trauma was/were sustained;

12 (7) The time, date and nature of treatment necessary; and

13 (8) The diagnosis, the prognosis and/or disposition of
14 the patient or victim.

15 A person can waive his/her right under this section only in writing
16 and with the assistance of an independent and competent counsel, preferably of
17 his/her own choice.

18 **SEC. 10.** *Who are Criminally Liable.* - Any person who actually
19 participated in the infliction of torture or who is present during the commission
20 of said act shall be liable as *principal*.

21 Any superior military, police or law enforcement officer or senior
22 government official who issued an order to any lower ranking personnel to
23 commit torture for whatever purpose shall be held equally liable as *principals*.
24 Any order to commit torture from any superior officer, superior in the office or
25 public authority shall be illegal and can never be invoked as a justification for the
26 commission thereof.

1 The immediate commanding officer of the unit concerned of the
2 AFP or the immediate senior public official of the PNP and other law
3 enforcement agencies shall be held liable as *accessory* to the crime of torture for
4 any act or omission, or negligence committed by him/her that shall have led,
5 assisted or abetted the commission of torture by his/her subordinates.

6
7 **SEC. 11. Penalties.** - (a) The penalty of *reclusion perpetua* shall be
8 imposed if as a consequence of torture or in the commission thereof the victim: is
9 a woman or a minor; died; was raped or sexually abused; or became insane,
10 imbecile or impotent.

11 (b) The penalty of *reclusion temporal* in its medium and
12 maximum periods shall be imposed, if as a consequence of torture or in the
13 commission thereof, the victim lost the use of speech, the power to hear or to
14 smell, an eye, a hand, a foot, an arm or a leg, or the use of any such member, or
15 his/her capacity for the work in which he/she was theretofore habitually
16 engaged permanently.

17 (c) The penalty of *prision mayor* in its maximum period to
18 *reclusion temporal* in its minimum period, if as a consequence of torture or in the
19 conduct or commission thereof the victim was deformed, or lost any other part of
20 his/her body or the use thereof or his/her capacity for the work in which he/she
21 was theretofore habitually engaged for a period of more than ninety (90) days;

22 (d) The penalty of *prision mayor* in its minimum and medium
23 periods if as a consequence of torture or in the commission thereof the victim
24 became ill or incapacitated for the work in which he/she was therefore
25 habitually engaged for a period of more than thirty (30) days; and

26 (e) The penalty of *prision correccional* in its maximum period to
27 *prision mayor* in its minimum period, if as a consequence of torture or in the

1 commission thereof the victim became ill or incapacitated for to work for a
2 period of thirty (30) days or less.

3
4 **SEC. 12.** *Torture as a Separate and Independent Crime.* - Torture as a
5 crime shall not absorb or shall not be absorbed by any other crime or felony
6 committed as a consequence, or as a means in the conduct or commission
7 thereof. In which case, torture shall be treated as a separate and independent
8 criminal act whose penalties shall be imposable without prejudice to any other
9 criminal liability provided for by law.

10
11 **SEC. 13.** *Applicability of Refouler.* - No person shall be expelled,
12 returned or extradited to another State where there are substantial grounds to
13 believe that such person shall be in danger of being subjected to torture. For the
14 purposes of determining whether such grounds exist, the Secretary of the
15 Department of Foreign Affairs (DFA) and the Secretary of the DOJ, in
16 coordination with the Chairperson of the CHR, shall take into account all
17 relevant considerations including, where applicable and not limited to, the
18 existence in the requesting State of a consistent pattern of gross, flagrant or mass
19 violations of human rights.

20
21 **SEC. 14.** *Compensation to Victims of Torture.* - Any person who has
22 suffered torture shall have the right to claim for compensation as provided for
23 under Republic Act No. 7309: *Provided*, That in no case shall compensation be any
24 lower than Ten Thousand Pesos (P 10,000.00). Victims of torture shall also have
25 the right to claim for compensation from such other financial relief programs that
26 may be made available to him/her under existing law and rules and regulations

1 **SEC. 15.** *Formulation of a Rehabilitation Program.* – Within one year
2 from the effectivity of this Act, the Department of Social Welfare and
3 Development (DSWD), DOJ and the Department of Health (DOH) and such
4 other concerned government agencies, shall formulate a comprehensive
5 rehabilitation program for victims of torture and their families. The DSWD, the
6 DOJ and the DOH shall also call on human rights non-government organizations
7 duly recognized by the government to actively participate in the formulation of
8 such program that shall provide for the physical, mental, social, psychological
9 and spiritual healing and development of victims of torture and their families.

10
11 **SEC. 16.** *Organizational Responsibility.* – The AFP, the PNP, the NBI
12 and other law enforcement and investigative agencies are hereby given
13 organizational responsibility and obligation in overseeing the strict and effective
14 implementation of this Act. As such, they shall create a division or a unit
15 specifically designed for the said purpose.

16
17 **SEC. 17.** *Education and Information Campaign.* – The CHR, the DOJ, the
18 Department of National Defense (DND) and such other concerned organizations
19 in both the public and private sectors shall ensure appropriate education and
20 information campaigns on torture.

21 Torture as a crime shall be included in the training program of all
22 law enforcement agencies, the military, medical personnel and public officials.
23 The Department of Education (DepEd) and the Commission on Higher
24 Education (CHED) shall also ensure the integration of human rights education in
25 the formal curricula of all primary, secondary and tertiary level in all academic
26 institutions nationwide.

1 **SEC. 18.** *Suppletory Applications.* – The provisions of the Revised Penal
2 Code in so far they are applicable shall be suppletory to this Act.

3

4 **SEC. 19.** *Implementing Rules and Regulations.* – The DOJ and the CHR,
5 with the active participation of human rights non-governmental organizations,
6 shall promulgate the rules and regulations for the effective implementation of
7 this Act. They shall also ensure the full dissemination of such rules and
8 regulations to all officers and members of various law enforcement agencies.

9

10 **SEC. 20.** *Separability Clause.* – If any provision of this Act is declared
11 invalid or unconstitutional the other provisions not affected thereby shall
12 continue to be in full force and effect.

13

14 **SEC. 21.** *Repealing Clause.* – All laws, decrees, executive orders or
15 rules and regulations contrary to or inconsistent with the provisions of this Act
16 are hereby repealed or modified accordingly.

17

18 **SEC. 22.** *Effectivity.* – This Act shall take effect fifteen (15) days after
19 its publication in at least two newspapers of general circulation.

20 Approved

21