



HOUSE OF REPRESENTATIVES

H. No. 5709

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AN ACT PENALIZING THE COMMISSION OF ACTS OF 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
2 Act of 2009”.

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

5 (a) to value the dignity of every human person and guarantee full
6 respect for human rights;

7 (b) to ensure that the rights of all persons, including suspects, detainees
8 and prisoners are respected at all times; that no person placed under
9 investigation or held in custody by any person in authority or agent of a person
10 in authority shall be subjected to torture, physical harm, force, violence, threat
11 or intimidation or any act that impairs his/her free will; and that secret
12 detention places, solitary, *incommunicado* or other similar forms of detention,
13 where torture may be carried out with impunity, are hereby prohibited; and

14 (c) to fully adhere to the principles and standards on the absolute
15 condemnation and prohibition of torture set by the 1987 Philippine
16 Constitution and various international instruments, such as the International
17 Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights
18 of the Child (CRC), the Convention on the Elimination of All Forms of
19 Discrimination Against Women (CEDAW) and the Convention Against
20 Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
21 (CAT), to which the Philippines is a State party.

1 SEC. 3. *Definitions.* – For purposes of this Act, the following terms
2 shall mean:

3 (a) “Torture” refers to an act by which severe pain or suffering,
4 whether physical or mental, is intentionally inflicted on a person for such
5 purposes as obtaining from him/her or a third person information or a
6 confession; punishing him/her for an act he/she or a third person has
7 committed or is suspected of having committed; or intimidating or coercing
8 him/her or a third person; or for any reason based on discrimination of any
9 kind, when such pain or suffering is inflicted by or at the instigation of or with
10 the consent or acquiescence of a person in authority or agent of a person in
11 authority. It does not include pain or suffering arising only from, inherent in or
12 incidental to lawful sanctions.

13 (b) “Other cruel, inhuman and degrading treatment or punishment”
14 refers to a deliberate and aggravated treatment or punishment not enumerated
15 under Section 4 of this Act, inflicted by a person in authority or agent of a
16 person in authority against a person under his/her custody, which attains a level
17 of severity causing suffering, gross humiliation or debasement to the latter.

18 (c) “Victim” refers to the person subjected to torture or other cruel,
19 inhuman and degrading treatment or punishment as defined above and any
20 individual who has suffered harm as a result of any act(s) of torture, or other
21 cruel, inhuman and degrading treatment or punishment.

22 (d) “Order of Battle” refers to a document made by the military, police
23 or any law enforcement agency of the government, listing the names of persons
24 and organizations that it perceives to be enemies of the State and that it
25 considers as legitimate targets as combatants that it could deal with, through
26 the use of means allowed by domestic and international law.

27 SEC. 4. *Acts of Torture.* – For purposes of this Act, torture shall
28 include, but not be limited to, the following:

1 (a) Physical torture is a form of treatment or punishment inflicted by a
2 person in authority or agent of a person in authority upon another in his/her
3 custody that causes severe pain, exhaustion, disability or dysfunction of one or
4 more parts of the body, such as:

5 (1) systematic beating, headbanging, punching, kicking, striking with
6 truncheon or rifle butt or other similar objects, and jumping on the stomach;

7 (2) food deprivation or forcible feeding with spoiled food, animal or
8 human excreta and other stuff or substances not normally eaten;

9 (3) electric shock;

10 (4) cigarette burning; burning by electrically heated rods, hot oil, acid;
11 by the rubbing of pepper or other chemical substances on mucous membranes,
12 or acids or spices directly on the wound(s);

13 (5) the submersion of the head in water or water polluted with
14 excrement, urine, vomit and/or blood until the brink of suffocation;

15 (6) being tied or forced to assume fixed and stressful bodily position;

16 (7) rape and sexual abuse, including the insertion of foreign bodies into
17 the sex organ or rectum, or electrical torture of the genitals;

18 (8) mutilation or amputation of the essential parts of the body such as
19 the genitalia, ear, tongue, etc.;

20 (9) dental torture or the forced extraction of the teeth;

21 (10) pulling out of fingernails;

22 (11) harmful exposure to the elements such as sunlight and extreme
23 cold;

24 (12) the use of plastic bag and other materials placed over the head to
25 the point of asphyxiation;

26 (13) the use of psychoactive drugs to change the perception, memory,
27 alertness or will of a person, such as:

1 (i) the administration of drugs to induce confession and/or reduce
2 *mental competency; or*

3 (ii) the use of drugs to induce extreme pain or certain symptoms of a
4 disease; and

5 (14) *other analogous acts of physical torture; and*

6 (b) Mental/Psychological torture refers to acts committed by a person
7 in authority or agent of a person in authority which are calculated to affect or
8 *confuse the mind and/or undermine a person's dignity and morale, such as:*

9 (1) blindfolding;

10 (2) threatening a person(s) or his/her relative(s) with bodily harm,
11 execution or other wrongful acts;

12 (3) confinement in solitary cells or secret detention places;

13 (4) prolonged interrogation;

14 (5) preparing a prisoner for a "show trial", public display or public
15 humiliation of a detainee or prisoner;

16 (6) causing unscheduled transfer of a person deprived of liberty from
17 one place to another, creating the belief that he/she shall be summarily
18 executed;

19 (7) maltreating a member/s of a person's family;

20 (8) causing the torture sessions to be witnessed by the person's family,
21 relatives or any third party;

22 (9) denial of sleep/rest;

23 (10) shame-infliction such as stripping the person naked, parading
24 him/her in public places, shaving the victim's head or putting marks on his/her
25 body against his/her will;

26 (11) deliberately prohibiting the victim to communicate with any
27 member of his/her family; and

28 (12) *other analogous acts of mental/psychological torture.*

1 SEC. 5 *Other Cruel, Inhuman and Degrading Treatment or*
2 *Punishment.* – Other cruel, inhuman or degrading treatment or punishment
3 refers to a deliberate and aggravated treatment or punishment not enumerated
4 under Section 4 of this Act, inflicted by a person in authority or agent of a
5 person in authority against another person in custody, which attains a level of
6 severity sufficient to cause suffering, gross humiliation or debasement to the
7 latter. The assessment of the level of severity shall depend on all the
8 circumstances of the case, including the duration of the treatment or
9 punishment, its physical and mental effects and, in some cases, the sex,
10 religion, age and state of health of the victim.

11 SEC. 6. *Freedom from Torture as a Nonderogable Right.* – Torture is
12 hereby declared a criminal act. No exceptional circumstances whatsoever,
13 whether a state of war or a threat of war, internal political instability or any
14 other public emergency, may be invoked as a justification for torture.

15 An “Order of Battle” or any order from a superior officer or public
16 authority shall not be invoked as a justification for the commission of torture.

17 SEC. 7. *Exclusionary Rule.* – Any confession, admission or statement
18 obtained as a result of torture shall not be invoked as evidence in any
19 proceedings, except against a person accused of torture as evidence that said
20 confession, admission or statement was made.

21 SEC. 8. *Protection of Persons Involved in the Investigation and*
22 *Prosecution of Torture and Other Cruel, Inhuman and Degrading Treatment*
23 *or Punishment.* – Any individual who alleges that he/she has been subjected to
24 torture and other cruel, inhuman and degrading treatment or punishment shall
25 have the right to complain to and to have his/her case promptly and impartially
26 examined by competent authorities.

27 The State through its appropriate agencies shall ensure the safety of the
28 complainant or victim and all other persons involved in the investigation and

1 prosecution of cases of torture and other cruel, inhuman and degrading
2 treatment or punishment such as the legal counsel, witnesses, relatives of the
3 victims, representatives of human rights organizations and media. They shall
4 be entitled to the Witness Protection, Security and Benefit Program, as
5 provided under Republic Act No. 6981, and other laws, rules and regulations.
6 They shall be protected from ill-treatment and any act of intimidation or
7 reprisal as a result of the complaint or filing of charges. Any person
8 committing such acts shall be punished under existing laws.

9 SEC. 9. *Disposition of Writs of Habeas Corpus, Amparo and Habeas*
10 *Data Proceedings and Compliance with a Judicial Order.* – A writ of habeas
11 *corpus* or writ of *amparo* or writ of *habeas data* proceeding, if any, filed on
12 behalf of the victim of torture or other cruel, degrading and inhuman treatment
13 or punishment shall be disposed of expeditiously and any order of release by
14 virtue thereof, or other appropriate order of a court relative thereto, shall be
15 executed or complied with immediately.

16 SEC. 10. *Assistance in Filing a Complaint.* – The Commission on
17 Human Rights of the Philippines (CHRP) and the Public Attorney's Office
18 (PAO) shall render legal assistance in the investigation and monitoring and/or
19 filing of the complaint for a person who suffers torture and other cruel,
20 inhuman and degrading treatment or punishment, or for any interested party
21 thereto.

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

25 SEC. 11. *Right to Physical and Psychological Examination.* – Before
26 and after interrogation, every person arrested, detained or under custodial
27 investigation shall have the right to be informed of his/her right to demand a
28 physical examination by an independent and competent doctor of his/her own

1 choice. If such person cannot afford the services of his/her own doctor, he/she
2 shall be provided by the State with a competent and independent doctor to
3 conduct physical examination. The State shall endeavour to provide the victim
4 with psychological evaluation if available under the circumstances. If the
5 person arrested is a female, she shall be attended to preferably by a female
6 doctor. Furthermore, any person arrested, detained or under custodial
7 investigation shall have the right to immediate access to quality medical
8 treatment.

9 The physical examination and/or psychological evaluation of the victim
10 shall be contained in a medical report which shall include in detail his/her
11 *medical history and findings, and which shall be attached to the custodial*
12 *investigation report.* Following applicable protocol agreed upon by agencies,
13 medical reports shall, among others, include the following:

- 14 (a) The name, age and address of the patient;
- 15 (b) The name and address of the nearest of kin of the patient;
- 16 (c) The name and address of the person who brought the patient to a
17 hospital clinic or to a health care practitioner for physical and psychological
18 examination;
- 19 (d) The nature and probable cause of the patient's injuries and trauma;
- 20 (e) The approximate time and date when the injury and/or trauma was
21 sustained;
- 22 (f) The place where the injury and/or trauma was sustained;
- 23 (g) The time, date and nature of treatment necessary; and
- 24 (h) The diagnosis, prognosis and/or disposition of the patient.

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

1 SEC. 12. *Criminal Liability.* – Any person who actually participated or
2 induced another in the commission of torture or other cruel, inhuman and
3 degrading treatment or punishment or who cooperated in the execution of the
4 act of torture by previous or simultaneous acts shall be liable as principal. Any
5 superior military, police or law enforcement officer or senior government
6 official who issued an order to a lower ranking personnel to subject a victim to
7 torture or other cruel, inhuman and degrading treatment or punishment for
8 whatever purpose shall be held equally liable as principal.

9 Any public officer or employee shall be liable as an accessory if he/she
10 has knowledge that torture or other cruel, inhuman and degrading treatment or
11 punishment is being committed and without having participated therein, either
12 as principal or accomplice, takes part subsequent to its commission in any of
13 the following manner:

14 (a) By themselves profiting from or assisting the offender to profit
15 from the effects of the act of torture or other cruel, inhuman and degrading
16 treatment or punishment;

17 (b) By concealing the act of torture or other cruel, inhuman and
18 degrading treatment or punishment and/or destroying the effects or instruments
19 thereof in order to prevent its discovery; or

20 (c) By harboring, concealing or assisting in the escape of the
21 principal/s in the act of torture or other cruel, inhuman and degrading treatment
22 or punishment: *Provided*, That the accessory acts are done with the abuse of
23 the official's public functions.

24 SEC. 13. *Liability of Commanding Officer or Superior.* – The
25 immediate superior of the unit concerned of the Armed Forces of the
26 Philippines or the equivalent senior official of the offender shall be held
27 accountable for “neglect of duty” under the doctrine of “command
28 responsibility” if he/she has knowledge of or, owing to the circumstances at the

1 time, should have known that acts of torture or other cruel, inhuman and
2 degrading treatment or punishment shall be committed, is being committed or
3 has been committed by his/her subordinates or by others within his/her area of
4 responsibility and, despite such knowledge, did not take preventive or
5 corrective action either before, during or immediately after its commission,
6 when he/she has the authority to prevent or investigate allegations of torture or
7 other cruel, inhuman and degrading treatment or punishment but failed to
8 prevent or investigate allegations of such act, whether deliberately or due to
9 negligence, shall, without prejudice to criminal liability, be held
10 administratively liable under the principle of command responsibility.

11 SEC. 14. *Penalties.* – (a) The penalty of *reclusion perpetua* shall be
12 imposed upon the perpetrators of the following acts:

13 (1) Torture resulting in the death of any person;

14 (2) Torture resulting in mutilation;

15 (3) Torture with rape;

16 (4) Torture with other forms of sexual abuse and, in consequence of
17 torture, the victim shall have become insane, imbecile, impotent, blind or
18 maimed for life; and

19 (5) Torture committed against children.

20 (b) The penalty of *reclusion temporal* shall be imposed on those who
21 commit any act of mental/psychological torture resulting in insanity, complete
22 or partial amnesia, fear of becoming insane or suicidal tendencies of the victim
23 due to guilt, worthlessness or shame.

24 (c) The penalty of *prision mayor* in its medium and maximum periods
25 shall be imposed if, in consequence of torture, the victim shall have lost the
26 power of speech or the power to hear or to smell; or shall have lost an eye, a
27 hand, a foot, an arm or a leg; or shall have lost the use of any such member; or
28 shall have become permanently incapacitated for labor.

1 (d) The penalty of *prision mayor* in its minimum and medium periods
2 shall be imposed if, in consequence of torture, the victim shall have become
3 deformed or shall have lost any part of his/her body other than those
4 aforesaid, or shall have lost the use thereof, or shall have been ill or
5 incapacitated for labor for a period of more than ninety (90) days.

6 (e) The penalty of *prision correccional* in its maximum period to
7 *prision mayor* in its minimum period shall be imposed if, in consequence of
8 torture, the victim shall have been ill or incapacitated for labor for more than
9 thirty (30) days but not more than ninety (90) days.

10 (f) The penalty of *prision correccional* in its maximum period shall be
11 imposed on the immediate officer who, either deliberately or by inexcusable
12 negligence, failed to do an act even if he/she has knowledge or, owing to the
13 circumstances at the time, should have known that acts of torture or other
14 cruel, inhuman or degrading treatment or punishment shall be committed, is
15 being committed or has been committed by his/her subordinates or by others
16 within his/her area of responsibility and, despite such knowledge, did not take
17 preventive or corrective action either before, during or immediately after its
18 commission, when he/she has the authority to prevent or investigate allegations
19 of torture or other cruel, inhuman and degrading treatment or punishment.

20 (g) The penalty of *prision correccional* in its minimum and medium
21 period shall be imposed if, in consequence of torture, the victim shall have
22 been ill or incapacitated for labor for thirty (30) days or less.

23 (h) The penalty of *arresto mayor* shall be imposed for acts constituting
24 cruel, inhuman or degrading treatment or punishment.

25 SEC. 15. *Exclusion from the Coverage of Special Amnesty Law.* – In
26 order not to depreciate the crime of torture, persons who have committed any
27 act of torture shall not benefit from any special amnesty law or similar

1 measures that will have the effect of exempting them from any criminal
2 proceedings and sanctions.

3 *SEC. 16. Nonexclusivity or Double Jeopardy Under International Law.*

4 – Notwithstanding the provisions of the foregoing section, any investigation,
5 trial and decision in any Philippine court or other agency for any violation of
6 this Act shall be without prejudice to any investigation, trial, decision or any
7 other legal or administrative process before the appropriate international court
8 or agency under applicable international human rights and humanitarian laws.

9 *SEC. 17. On Refouler.* – No person shall be expelled, returned or
10 extradited to another State where there are substantial grounds for believing
11 that such person would be in danger of being subjected to torture and other
12 cruel, inhuman and degrading treatment or punishment.

13 For the purpose of determining whether there are such grounds, the
14 Secretary of Foreign Affairs and the Secretary of Justice, in coordination with
15 the Chairperson of the CHRP, shall take into account all relevant
16 considerations including, where applicable, the existence in the requesting
17 State of a consistent pattern of gross, flagrant or mass violations of human
18 rights.

19 *SEC. 18. Compensation to Victims of Torture and Other Cruel,*
20 *Inhuman and Degrading Treatment or Punishment.* – Any person who has
21 suffered torture or other cruel, inhuman and degrading treatment or punishment
22 shall have the right to claim for compensation as provided for under Republic
23 Act No. 7309: *Provided,* That in no case shall the compensation be any lower
24 than Ten thousand pesos (P10,000.00). The victim shall also have the right to
25 claim for compensation from such other financial relief programs that may be
26 available to him/her.

1 SEC. 19. *Rehabilitation Program for Victims of Torture and Other*
2 *Cruel, Inhuman and Degrading Treatment or Punishment and of Offenders.* –

3 Within one (1) year from the effectivity of this Act, the Department of Social
4 Welfare and Development (DSWD), together with the Department of Justice
5 (DOJ) and the Department of Health (DOH) and such other concerned
6 government agencies, shall formulate a comprehensive rehabilitation program
7 for victims of torture and their families. Toward the attainment of restorative
8 justice, a parallel rehabilitation program for persons who have committed
9 torture and other cruel, inhuman and degrading treatment or punishment shall
10 likewise be formulated by the same agencies.

11 SEC. 20. *Monitoring of Compliance with this Act.* – An oversight
12 committee is hereby created to periodically oversee the implementation of this
13 Act. The committee shall be headed by a commissioner of the CHRP, with the
14 following as members: an undersecretary of the DOJ, the chairperson of the
15 Senate Committee on Justice and Human Rights, the respective chairpersons of
16 the House of Representatives' Committees on Justice and Human Rights and
17 the respective chairpersons of two (2) nationally organized human rights
18 NGOs, one of whose functions is the monitoring of cases of torture and other
19 cruel, inhuman and degrading treatment or punishment.

20 SEC. 21. *Education and Information Campaign* – The CHRP, the
21 DOJ, the Department of National Defense (DND), the Department of the
22 Interior and Local Government (DILG) and such other concerned parties in
23 both the public and-private sectors shall ensure that education and information
24 regarding the prohibition against torture and other cruel, inhuman and
25 degrading treatment or punishment shall be fully included in the training of law
26 enforcement personnel, civil or military, medical personnel, public officials
27 and other persons who may be involved in the custody, interrogation or
28 treatment of any individual subjected to any form of arrest, detention or

1 imprisonment. The Department of Education (DepEd) and the Commission on
2 Higher Education (CHED) shall also ensure the integration of the right against
3 torture in human rights education courses in all primary, secondary and tertiary
4 level academic institutions nationwide.

5 SEC. 22. *Suppletory Applications.* – The provisions of the Revised
6 Penal Code shall be suppletory to this Act.

7 SEC. 23. *Appropriations.* – The amount necessary for the initial
8 implementation of this Act shall be charged against the current year's
9 appropriations of the CHRP and the DOJ. Thereafter, such sums as may be
10 necessary for the continued implementation of this Act shall be included in the
11 annual General Appropriations Act.

12 SEC. 24. *Implementing Rules and Regulations* – The DOJ and the
13 CHRP, with the active participation of human rights NGOs, shall jointly
14 promulgate the rules and regulations for the effective implementation of this
15 Act. They shall also ensure the full dissemination of such rules and regulations
16 to all officers and members of various law enforcement agencies.

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

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

23 SEC. 27. *Effectivity.* – This Act shall take effect fifteen (15) days after
24 its publication in at least two (2) newspapers of general circulation.

Approved,