

HOUSE OF REPRESENTATIVES

HOUSE BILL No. 5709

By Representatives Lagman, Hontiveros-Baraquel, Ocampo, Casiño, Beltran, Maza, Ilagan, Escudero, Santiago (N.), Codilla, Nicolas, Go, Defensor (M.), Tañada, Cua (J.), Hataman, Del Mar, Datumanong, Singson (E.), Fuentebella, Villarosa, Defensor (A.), Gonzales (N.), Zamora (R.), Antonino-Custodio, Villafuerte, Padilla, Zialcita, Villar, Yap, Uy (R.S.), Locsin, Cayetano, Plaza, Vinzons-Chato, Rodriguez, Lopez (J.), Guingona, Mitra, Villanueva, Tupas, Chipeco, De Guzman, Binay, Prieto-Teodoro, Fernandez, Angara, Suarez, Coquilla, Alfelor, Aggabao, Alcala, Albano, Biazon, Cerilles, Kho, Mandanas, Gunigundo, Daza, Gullas, Apostol, Remulla, Biron, Lopus, Silverio, Umali (A.), Joson, Asilo, Estrella (R.), Alvarez (A.), Roman, Umali (C.), Angping, Malapitan, Garin, Miraflores, Crisologo, Emano, Jaafar, Akbar, Valdez, Velarde, Diaz, Domogan, Mamba, Diasnes, Lagbas, Amante, Chungalao, Garcia (A.), Clarete, Singson (R.), Lacson, Romulo, Roxas, Ungab, Cagas, Piamonte, Susano, Cajayon, Magsaysay, Bagatsing, Bravo, Mercado, Nava, Ong, Abaya, Gonzales (A.), Mendoza, Tieng, Gatchalian, Romualdo, Pancrudo, Aquino, Cari, Soon-Ruiz, Salimbangon, Limkaichong, Dumarpa, Zamora (M.), Yu, Amatong, Bondoc, Castro, Cabilao, Garcia (P.), Garcia (P.J.), Garay, Fua, Coscolluela, Puno, Gatlabayan, Ferrer, Ablan, Lim, Agbayani, Pablo, Pingoy, Noel, Cruz-Gonzales, Climaco, Puentevella, Mariano, Solis and Arago, PER COMMITTEE REPORT No. 1601

**AN ACT PENALIZING THE COMMISSION OF ACTS OF TORTURE
AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR
PUNISHMENT, PRESCRIBING PENALTIES THEREFORE
AND FOR OTHER PURPOSES**

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 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 torture, physical harm, force, violence, threat or intimidation or any act that impairs his/her free will; and that secret detention places, solitary, *incommunicado* or other similar forms of detention, whether torture may be carried out with impunity, are hereby prohibited; and
- (c) to fully adhere to the principles and standards on the absolute condemnation and prohibition of torture set by the 1987 Philippine Constitution and various international instruments such as 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 and Degrading Treatment or Punishment (CAT), to which the Philippines is a State party.

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 or her for an act he/she 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 within the consent or acquiescence of a person in

authority public official 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 a document made by the military, police or any law enforcement agency of the government, listing the names of persons and organizations that it perceived 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 beatings, 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 or 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 bodies 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 bags 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 the 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 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 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 as a Nonderogable Right.* - Torture is hereby declared a criminal act. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability, or any other public emergency, may be invoked as a justification for torture.

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

SECTION 7. *Exclusionary Rule.*-Any confession, admission or statement obtained as a result of torture shall not be invoked as evidence in any proceedings, except a person accused of torture as evidence that said confession, admission or statement was made.

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

The State through its appropriate agencies shall ensure the safety of the complainant or victim and all other persons involved in the investigation and prosecution of cases of torture and other cruel, inhuman and degrading treatment or punishment such as the legal counsel, witnesses, relatives of the victims, representatives of human rights organizations and media. They shall be entitled to the Witness Protection, Security and Benefit Program, as provided under Republic Act No. 6981, and other laws, rules and regulations. They shall be protected from ill-treatment and any act of intimidation or reprisal as a result of the complaint or filing of charges. Any person committing such acts shall be punished under existing laws.

SECTION 9. 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 10. Assistance in Filing a Complaint. - The Commission on Human Rights of the Philippines (CHRP) and the Public Attorney's Office (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 nearest him/her as well as from human rights non-government organizations (NGOs).

SECTION 11. Right to Physical 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 a physical examination by an independent and competent doctor of his/her own choice. If such person cannot afford the services of his/her doctor, he/she shall be provided by the State with a competent and independent doctor to conduct physical examination. 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 shall have the right to immediate access to quality medical treatment.

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

- (a) The name, age and address of the patient;
- (b) The name and address of the nearest kin of the patient;
- (c) The name and address of the person who brought the patient to a hospital clinic or to a health care practitioner for physical and psychological examination;
- (d) The nature and probable cause of the patient's injuries and trauma;
- (e) The approximate time and date when the injury and/or trauma was sustained;
- (f) The place where the injury and/or trauma was sustained;
- (g) The time, date and nature of treatment necessary; and
- (h) The diagnosis, 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, executed in the presence and assistance of his/her counsel.

SECTION 12. *Criminal liability.*- 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 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 a lower ranking personnel to subject a victim to torture or other cruel, inhuman and degrading treatment or punishment for whatever purpose shall be held equally liable as principal.

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;
- (b) By concealing the act of torture or other cruel, inhuman and degrading treatment or punishment and/or destroying the effects of 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 13. *Liability of Commanding Officer or Superior.* The immediate superior of the unit concerned of the Armed Forces of the Philippines or the equivalent senior official of the offender shall be held accountable for "neglect of duty" under the doctrine of "command responsibility if he/she has knowledge of or, owing to the circumstances at the time, should have know 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 actions 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, without prejudice to criminal liability, be held administratively liable under the principle of command responsibility.

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 *prison mayor* in its medium and maximum periods shall be imposed if, in consequence of torture, the victim shall have the 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.

- (d) The penalty of *prison mayor* in its minimum and medium periods shall be imposed if, in consequence of torture, the victim shall 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.
- (e) The penalty of *prison correccional* in its maximum period to *prison mayor* in its minimum period shall be imposed if, in consequence of torture, the victim shall be ill or incapacitated for labor for more than thirty (30) days but not more than ninety (90) days.
- (f) The penalty of *prison correccional* in its maximum period shall be imposed on the immediate officer who, either deliberately or by inexcusable negligence, failed to do an act even if he/she has knowledge 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.
- (g) The penalty of *prison 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 of constituting cruel, inhuman or degrading treatment or punishment.

SECTION 15. *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 effects of exempting them from any criminal proceedings and sanctions.

SECTION 16. *Nonexclusivity or Double Jeopardy Under International Law.* - Notwithstanding the provisions of the foregoing section, any investigation, trial and decision in any Philippine court or other agency for any violation of this Act shall be without prejudice to any investigation, trial, decision or any other legal or administrative process before the appropriate international court or agency under applicable international human rights and humanitarian laws.

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

For the purpose of determining whether there are such grounds, The Secretary of Foreign Affairs and the Secretary of Justice in coordination with the Chairperson of the CHRP, shall take into account all relevant considerations including, where applicable, 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 and Other Cruel, Inhuman and Degrading Treatment or Punishment.* - Any person who has suffered torture and other cruel, inhuman and degrading treatment or punishment shall have the right to claim for compensation as provided for under Republic Act No. 7309: *Provided,* That in no case shall the compensation be any lower than Ten Thousand Pesos (P10,000.00). The victim shall also have the right to claim for compensation from such other financial relief programs that may be available to him/her.

SECTION 19. *Rehabilitation Program for Victims of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and of Offenders.* - Within one (1) year from the effectivity of this Act, the Department of Social Welfare and Development (DSWD), together with the Department of Justice (DOJ) and the Department of Health (DOH) and such other concerned government agencies, shall formulate a comprehensive rehabilitation program for 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 treatment or punishment shall likewise be formulated by the same agencies.

SECTION 20. *Monitoring of Compliance of 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 CHRP, with the following as members: an undersecretary of the DOJ, 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 respective chairpersons of two (2) nationally organized human rights NGOs, one of whose functions is the monitoring of cases of torture and other cruel, inhuman and degrading treatment or punishment.

SECTION 21. *Education and Information Campaign.* The CHRP, 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 the 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 the right against torture in human rights education courses in all primary, secondary and tertiary level academic institutions nationwide.

SECTION 22. *Suppletory Applications.* - The provisions of the Revised Penal Code shall be suppletory to this Act.

SECTION 23. *Appropriations.* - The amount necessary for the initial implementation of this Act shall be charged against the current year's appropriations of the CHRP and the DOJ. 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 CHRP, with the active participation of human rights NGOs, shall jointly promulgate the rules and regulations for the effective implementation of this 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 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 at least two (2) newspapers of general circulation.

Approved,