

THIRTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
First Regular Session

04 JUN 30 P4:37

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SENATE

S. No. 350

Introduced by Senator S. R. Osmeña III

EXPLANATORY NOTE

The Philippines is a signatory to major international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture. As enshrined in Article 7 of the ICCPR and other standards, "No one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment." By ratifying the Convention on Torture, the Philippines became bound by its provisions and thereby committed itself to "take effective legislative, administrative, judicial and other measures" to prevent torture in any territory under its jurisdiction.

Likewise, Section 19(2), Article III of the Constitution provides that "The punishment of physical and psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law."

Under Executive Order 163, the Philippine Commission on Human Rights (PCHR) was established to give effect to the State policy that "the State values the dignity of every human person and guarantees full respect for human rights."

Despite international and domestic commitments, torture in the Philippines persists, constituting as one of the most serious assaults on the principle of respect for human dignity. Techniques of torture used in recent years mirror those used in the 1970s and 1980s. These torture methods include electro-shocks, the use of plastic bags to suffocate detainees, burning detainees with cigarettes, beating with fists, metal pipes or gun barrels and placing chilli peppers on the detainees' eyes or genitals. These techniques are used to extract information and force confessions. Those most at risk of torture are alleged members of armed opposition groups and their suspected sympathizers, ordinary criminal suspects and members of poor or marginalized communities, including women and children, who are suspected of committing criminal acts.

While the absolute prohibition on torture and ill-treatment under international law is affirmed in the Philippine Constitution, it has not yet been reflected in domestic law. It is therefore imperative that the government take immediate steps to prevent torture and ill-treatment in custody. This bill therefore seeks to fill in the gap by specifically defining and penalizing acts of torture, criminalizing the same in whatever stage it may have been committed and in whatever nature the participation of

perpetrators of torture is, and imposing the penalties proportional to the gravity of the offense.

In view of the foregoing, passage of this bill is earnestly requested.

A handwritten signature in black ink, appearing to read "S. Osmeña III", written in a cursive style.

SERGIO OSMEÑA III

Senator

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S E N A T E

S. No. 350

Introduced by Senator S. R. Osmeña III

AN ACT
PENALIZING THE COMMISSION OF ACTS OF TORTURE AND FOR OTHER
PURPOSES

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

1 SECTION 1. *Short Title* – This Act shall be known as the “**Anti-Torture**
2 **Act of 2004**”.

3 SEC. 2. *Statement of Policy.* It is hereby the policy of the State to fully
4 adhere to the principles and standards on the absolute condemnation and
5 prohibition of torture set by the Constitution and various international
6 instruments, including the UN Convention Against Torture and Other Cruel,
7 Inhuman or Degrading Treatment or Punishment, to which the Philippines is a
8 signatory. Towards this end, the State shall ensure that the rights of all persons,
9 including suspects, detainees or prisoners are respected at all times.

10 SEC. 3. *Definition of Terms.* “Torture” as used in this Act shall mean any
11 act by which severe pain or suffering, whether physical, mental or
12 pharmacological is intentionally inflicted by or at the instigation of or with
13 consent or acquiescence of a public official or other person acting in an official
14 capacity, on a person for such purposes as obtaining from him or a third person
15 information or confession, punishing him for an act he has committed or
16 suspected of having committed, or intimidating and coercing him/her or a third

1 person, or for any reason based on discrimination of any kind, when such pain
2 or suffering is inflicted for the purpose of extracting information or confession.

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

5 A. Physical Torture:

- 6 1) systematic beatings, headbangings, punching, kicking, striking with
7 truncheons, rifle butts, jumping on the stomach;
- 8 2) food deprivation or forcible feeding with spoiled food, animal or
9 human excreta or other food not normally eaten by the victim;
- 10 3) electric shocks;
- 11 4) cigarette burning, burning by electrically heated rods, hot oil, acid;
12 by the rubbing of pepper or other chemical substances on mucous
13 membranes, or acids or spices directly on the wounds;
- 14 5) the submersion of the victim's head in water or water polluted with
15 excrement, urine, vomit and/or blood until on the brink of suffocation;
- 16 6) being tied or forced to assume fixed and stressful bodily positions;
- 17 7) rape and sexual abuse, including the insertion of foreign bodies into
18 the sex organs or rectum or electrical torture of the genitals;
- 19 8) mutilation, such as amputation of the essential parts of the body
20 such as the genitalia, ears, tongue, etc.;
- 21 9) dental torture or the forced extraction of the teeth;
- 22 10) harmful exposure to the elements such as sunlight and extreme
23 cold;
- 24 11) the use of plastic bags and other materials placed over the victim's
25 head to the point of asphyxiation; and
- 26 12) other forms of aggravated and deliberate cruel, inhuman or
27 degrading physical treatment or punishment.

28 B. Mental/ Psychological Torture:

- 29 1) blindfolding;

- 1 2) threatening the victims or their families with bodily harm, execution
2 or other wrongful acts;
- 3 3) confining them in solitary cells or in cells put up in public places;
- 4 4) confining them in solitary cells against their will or without prejudice
5 to their security;
- 6 5) prolonged interrogation of victims so as to deny the person normal
7 length of sleep and/or rest;
- 8 6) maltreating a member of the victim's family;
- 9 7) witnessing the torture sessions by the victim's family or relatives;
- 10 8) denial of sleep/rest;
- 11 9) shame infliction such as stripping the victims naked, parading them
12 in public places, shaving their heads or putting marks on their bodies
13 against their will; and
- 14 10) other forms of deliberate and aggravated cruel, inhuman or
15 degrading mental treatment or punishment.

16 C. Pharmacological Torture:

- 17 1. administration of drugs to induce confession and/or reduce mental
18 competency;
- 19 2. the use of drugs to induce extreme pain or certain symptoms of
20 disease; and
- 21 3. other forms of deliberate and aggravated cruel, inhuman or
22 degrading pharmacological treatment or punishment.

23 SEC. 4. *Criminal Liability.* Torture as defined in Section 2 of this Act is
24 hereby declared as a criminal act. The individuals who actually participated in
25 the infliction of deliberate and aggravated physical, mental and pharmacological
26 harm, as well as the individuals present during the commission of said acts shall
27 be liable as principals. An order from a superior officer or from a superior in the
28 office or public authority shall not be invoked as a justification of torture.

1 SEC. 5. *Liability of Commanding Officer.* The immediate Commanding
2 Officer or equivalent Senior Official shall be held liable as accessory to the crime
3 for any acts of omission or negligence on his part that may have led to the
4 commission of overt acts of deliberate and aggravated torture by his
5 subordinates. However, he shall be liable as principal if he is present during the
6 act of torture, whether he participated or not in the act of torture.

7 SEC. 6. *Right to Medical Examination.* Any person arrested, detained or
8 under custodial investigation shall have the right to demand a medical
9 examination by an independent and competent doctor of his own choice before
10 and after interrogation, which shall be conducted outside the influence of the
11 police or security forces. If such person cannot afford the services of his own
12 doctor, he shall be provided with a competent and independent doctor by the
13 investigating officer with the female victim provided with a female doctor.

14 The medical report shall include in detail the history and the findings of
15 the physical examination and shall be attached to the custodial investigation
16 report, otherwise, such investigation report shall be deemed null and void and of
17 no effect whatsoever.

18 SEC. 7. *Penalties.* Torture that results in the loss of life of any person
19 shall be considered as murder and shall be punishable as such.

20 Torture that results to sexual abuse of the victim shall be considered as
21 rape and shall be punishable as such.

22 A person found guilty of any other form of physical and/or
23 *pharmacological torture shall suffer:*

24 a) The penalty of *reclusion temporal*, if in consequence of the physical
25 and/or pharmacological torture, the victim shall become insane, imbecile,
26 impotent, blind, or maimed for life;

27 b) The penalty of *prision mayor* in its medium and maximum periods, if in
28 consequence of the physical and/or pharmacological torture, the victim shall
29 have lost the use of speech or the power to hear or to smell, or shall have lost

1 an eye, a hand, a foot, an arm, or a leg or shall have lost the use of any such
2 member, or shall have become incapacitated for the work in which he/she was
3 theretofore habitually engaged;

4 c) The penalty of *prision mayor* in its minimum and medium periods, if in
5 consequence of the physical and/or pharmacological torture, the victim shall
6 have become deformed, or shall have lost any other part of his body, or shall
7 have lost the use thereof, or shall have been ill or incapacitated for the
8 performance of the work in which he was habitually engaged for a period of
9 more than 90 days; and,

10 d) The penalty of *prision correccional* in its maximum period to *prision*
11 *mayor* in its minimum period, if the consequences of the physical and/or
12 pharmacological torture shall have caused the illness or incapacity for labor of
13 the victim for more than thirty days.

14 If mutilation results as a consequence of physical and pharmacological
15 torture, the offender shall suffer the penalty of *reclusion perpetua* in its
16 maximum period.

17 Mental torture shall be punishable with *reclusion temporal* or a fine of not
18 less than Fifty Thousand Pesos (P50,000.00) or both, at the discretion of the
19 court.

20 A public official or employee found guilty of deliberate and aggravated
21 torture shall be permanently disqualified from holding any appointive or elective
22 position in the government.

23 The penalty of imprisonment from three (3) years to six (6) years or a fine
24 of not less than Twenty Thousand Pesos (P20,000.00) or both, at the discretion
25 of the court, shall be imposed upon any arresting public officer, employee or any
26 investigating officer who violated the provision of Section 4 of this Act.

27 The above penalties shall be without prejudice to other legal remedies
28 available to the victim under the law.

1 SEC. 8. *Protection of Victims of and Witnesses to Torture.* Any individual
2 who alleges he has been subjected to deliberate and aggravated torture shall
3 have the right to complain to and to have his case promptly and impartially
4 examined by, the competent authorities. Steps shall be taken to ensure that the
5 complainant and witnesses are protected against all ill treatment or intimidation
6 as a consequence of his complaint or any given evidence.

7 SEC. 9. *Compensation to Victims of Torture.* Any person who has
8 suffered torture shall have the right to claim for compensation as provided for
9 under Republic Act No. 7309, otherwise known as the "Board of Claims Act of
10 1999", and under other financial relief programs that may be available to him.

11 SEC. 10. *Implementing Rules and Regulations.* The Department of
12 Justice and the Commission on Human Rights, in consultation with human rights
13 non-governmental organizations duly recognized and accredited by the
14 government shall promulgate the rules and regulations for the effective
15 implementation of this Act. They shall also ensure the full dissemination of such
16 rules and regulations to all officers and members of various law enforcement
17 agencies.

18 SEC. 11. *Repealing Clause.* All laws or any part thereof, inconsistent
19 herewith are hereby deemed repealed or modified accordingly.

20 SEC. 12. *Effectivity.* This Act shall take effect fifteen (15) days after its
21 publication in at least two (2) newspapers of general circulation.

22 Approved,