

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)

SENATE
OFFICE OF THE SECRETARY

5 AUG 24 P2:16

SENATE
S.B. No. 2009

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Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

In the report, "Philippines: Torture Persists: Appearance and Reality within the Criminal Justice System" published in January 2003 by Amnesty International, it was observed that torture techniques, including electro-shocks and the use of plastic bags to suffocate detainees, were still used during arrest and custodial investigation.

Amnesty International is not the only international human rights organization which has made such comments. According to the U.S. State Department's 2001 Country Reports on Human Rights Practices, "there were serious problems in some areas. Members of the security services were responsible for extrajudicial killings, disappearances, torture, and arbitrary arrest and detention. There were allegations by human rights groups that these problems worsened as the government sought to intensify its campaign against the terrorist Abu Sayyaf Group (ASG)."

A prohibition on torture is found in Section 19 (2), Article III of the Constitution, which provides that:

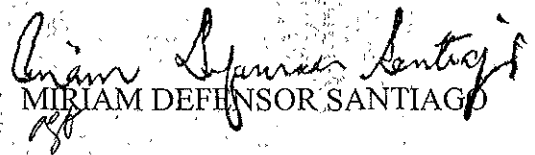
(2) The employment of physical and psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

Furthermore, by signing and ratifying international treaties such as the International Convention on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment, the Convention on the Rights of a Child, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Universal Declaration of Human Rights, the Philippines is obligated to take effective legislative, administrative, judicial and other measures to prevent torture in any territory under its jurisdiction.

However, as observed by Amnesty International, the persistence of torture despite these legal safeguards highlights “a serious discrepancy between the law and its application within the criminal justice system.”

Under the Penal Code, charges can be filed against torturers for felonies such as mutilation, serious physical injuries, rape, and maltreatment of prisoners. Yet, there is a need for a bill which specifically criminalizes acts of torture. This is because the nature of torture is different. Torture is applied to instill fear, punish or exact confessions. It is executed under detention which effectively keeps the victims powerless; it is done by or with the acquiescence of public officers. Victims cannot avail of existing remedies for fear of reprisal; the punishment is inadequate and there are not enough mechanisms that ensure accountability. Under these circumstances, the current laws under which such offenses can be charged are inadequate.

This bill seeks to: (1) penalize all forms of torture; (2) provide for protection of complainants and witnesses; (3) provide for special measures for the protection of children; and (4) provide for the establishment of a rehabilitation program.


MIRIAM DEFENSOR SANTIAGO

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AN ACT
PENALIZING THE COMMISSION OF ACTS OF TORTURE AND OTHER CRUEL,
INHUMAN AND DEGRADING TREATMENT OR PUNISHMENTS, AND
PROVIDING FOR A REHABILITATION PROGRAM FOR VICTIMS

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

SECTION 1. *Short Title.* – This Act shall be known as the “Anti-Torture Act of 2005.”

SECTION 2. *Declaration of Policy.* – It is the policy of the State to:

(a) 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 of any person in authority shall be subjected to physical harm, force, violence, threat or intimidation or any act that impairs his free will; and

(b) fully adhere to the principles and standards on the absolute condemnation and prohibition of torture set by the Constitution and various international instruments to which the Philippines is a signatory, such as the *International Covenant on Civil and Political Rights*, the *Convention on the Rights of a Child*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

SECTION 3. *Torture, When Committed.* – “Torture” shall be deemed committed when: 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 or a third person information or a confession; he is being punished for an act he or a third person has committed or is suspected of having committed; or he is being intimidated or coerced; 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 public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.

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

(a) Physical Torture, which shall be understood as referring to such cruel, inhuman or degrading treatment which causes pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:

(1) systematic beatings, headbangings, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach;

(2) food deprivation or forcible feeding with spoiled food, animal or human excreta or other food not normally eaten;

(3) electric shocks;

(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 wounds;

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

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

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

(8) mutilation, such as amputation of the essential parts of the body such as the genitalia, ears, tongue, etc.;

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

(10) harmful exposure to the elements such as sunlight and extreme cold;

(11) the use of plastic bags and other materials placed over the head to the point of asphyxiation; and

(12) other forms of aggravated and deliberate cruel, inhuman or degrading physical treatment or punishment.

(b) Mental/Psychological Torture, which shall be understood as referring to such cruel, inhuman or degrading treatment calculated to affect or confuse the mind and/or undermine a person's morale, such as:

(1) blindfolding;

(2) threatening a person or such persons related or known to him or her with bodily harm, execution or other wrongful acts;

(3) confinement in solitary cells put up in public places;

(4) confinement in solitary cells against their will or without prejudice to their security;

(5) prolonged interrogation so as to deny normal length of sleep or rest;

(6) preparing a prisoner for a "show trial", public display or public humiliation considerably defeating the political effectiveness of the prisoner;

(7) causing unscheduled transfer of a person from one place to another creating the belief that he shall be summarily executed;

(8) maltreating a member of the person's family;

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

(10) inculcating generalized fear among certain sections of the population;

(11) denial of sleep or rest;

(12) shame infliction such as stripping the person's naked, parading them in public places, shaving their heads or putting marks on their bodies against their will; and

(13) other forms of deliberate and aggravated cruel, inhuman or degrading mental treatment or punishment.

(c) Pharmacological Torture, which shall be understood as referring to such cruel, inhuman or degrading treatment through the use of psychoactive drugs to change the perception, memory, alertness, or will of a person, such as:

(1) administration of drugs to induce confession or reduce mental competency;

(2) the use of drugs to induce extreme pain or certain symptoms of disease; and

(3) other forms of deliberate and aggravated cruel, inhuman or degrading pharmacological treatment or punishment.

SECTION 4. *Freedom from Torture as a Non-Derogable 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.

Secret detention places, solitary, incommunicado or other similar forms of detention, where torture may be carried on with impunity, are hereby prohibited. Any confession, admission or statement obtained as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that said confession, admission or statement was made.

SECTION 5. *Protection of Persons Involved in Prosecution.* – Any individual who alleges he has been subjected to torture shall have the right to complain to and to have his case promptly and impartially examined by, any competent authorities. Steps shall be taken to ensure that the complainant is protected against all ill treatment or intimidation as a consequence of his complaint or any given evidence.

Likewise, the State through its appropriate agencies shall ensure the safety of all other persons involved in the prosecution and investigation on cases of torture such as the legal counsel, witnesses and relatives of the victims of torture. They shall be protected from ill treatment and any act of intimidation or reprisal as a result of the complaint or investigation. Any person committing such acts shall be criminally liable.

SECTION 6. *Assistance in Filing a Complaint.* – A party who suffered torture and other cruel, inhuman and degrading treatment or punishment, or any interested party on his behalf, may seek legal assistance in the proper handling and filing of the complaint from the regional offices of the Commission on Human Rights, the Barangay Human Rights Action Center nearest

his residence, as well as from human rights non-government organizations duly recognized by the government.

SECTION 7. *Right to Physical and Psychological Examination.* – Every person arrested, detained or under custodial investigation shall have the right to be informed of his right to demand a physical and psychological examination by an independent and competent doctor of his choice before and after interrogation, which shall be conducted outside the influence of the police or security forces. If such person cannot afford the services of his own doctor, he shall be provided by the state with a competent and independent doctor. If the person arrested is a female, she shall be provided with a female doctor. Furthermore, every person arrested, detained or under custodial investigation shall have the right to immediate access to quality medical treatment.

SECTION 8. *The Medical Report.* – The medical report shall include in detail the history and the findings of the physical and psychological examination and shall be attached to the custodial investigation report, otherwise, such investigation report shall be deemed null and void and of no effect whatsoever. 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 relatives of the patient;
- (c) the name and address of the person who brought the patient 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 or trauma was sustained;
- (f) the place where the injury or trauma was sustained;
- (g) the time, date and nature of treatment necessary; and
- (h) the diagnosis, the 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 in writing, executed in the presence and assistance of counsel.

SECTION 9. *Special Measures for the Protection of Children.* – Every person below the age of eighteen (18) years shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age. Necessary steps to protect the identity of the child, as well as to prevent the undue and sensationalized publicity of the case shall be undertaken.

Every child deprived of liberty shall be confined in juvenile detention facilities separate from adult offenders, unless it is considered in the child's best interest not to do so. The right of the child to maintain contact with his family through correspondence and visits shall be inviolable, except in exceptional circumstances, *inter alia*, when the abuser is a member of the child's family, etc.

The Court may, in its discretion, upon recommendation of the Department of Social Welfare and Development (DSWD) or such other agency or agencies authorized by the Court, release a child on recognizance, to the custody of his parents or other suitable person.

SECTION 10. *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.

For the purpose of determining whether there are such grounds, the Secretary of Foreign Affairs, the Secretary of Justice, and the Commissioner on Human Rights (CHR), 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 11. *Compensation to Victims of Torture.* – Any person who has suffered torture shall have the right to claim for compensation as provided for under Republic Act No. 7309, otherwise known as the "Board of Claims Act of 1999", *provided* that in no case shall compensation be any lower than ten thousand pesos (P10,000.00). Victims of torture shall also have the right to claim for compensation from such other financial relief programs that may be available to him.

SECTION 12. *Formulation of a Rehabilitation Program.* – Within one (1) year from the effectivity of this Act, the 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. The DSWD, DOJ and DOH shall also call on human rights non-government organizations duly recognized by the government to actively participate in the formulation of a rehabilitation program that shall provide for the physical, mental, social, psychological and spiritual healing and development of victims of torture and their families.

SECTION 13. *Penalty and Persons Liable.* – The penalty of *reclusion perpetua* and a fine not exceeding One Million Pesos (P1,000,000.00), shall be imposed upon the following persons:

- (a) those who directly or indirectly committed any act of torture as herein defined;
- (b) those who directly or indirectly forced, instigated, encouraged, ordered or induced others to commit any act of torture;
- (c) those who cooperated in the commission of any act of torture when it is within their power to stop the commission of such act; and
- (d) those who cooperated in the execution of the act of torture by previous or simultaneous acts.

An order from a superior officer or public authority cannot be invoked as justification for taking part in the commission of any act of torture.

SECTION 14. *Other Penalties.* – Persons held guilty by final judgment of committing the crime of torture beyond reasonable doubt shall also suffer perpetual disqualification from any public office, whether elective or appointive; and forfeiture of all benefits and remuneration due them.

SECTION 15. *Education and Information Campaign.* – The CHR, the DOJ, the Department of National Defense, and such other concerned parties in both the public and private sectors, shall ensure that education and information regarding the prohibition against torture 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 human rights education in the formal curricula of all primary, secondary and tertiary-level academic institutions nationwide.

SECTION 16. *Implementing Rules and Regulations.* – The CHR and the DOJ, in consultation with human rights non-government organizations duly recognized by the government, shall 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 17. *Separability Clause.* – If any provision of this Act is held invalid or unconstitutional, the remainder of the Act or the provision not otherwise affected shall remain valid and subsisting.

SECTION 18. *Repealing Clause.* – Any law, presidential decree or issuance, executive order, letter of instruction, administrative rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

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

Approved,