
Introduced by Senator FRANCIS G. ESCUDERO

EXPLANATORY NOTE


In ancient times, torture was a tool used for punishing criminals for various crimes. It was also a means of interrogating prisoners of war to gather tactical military information on the enemy and was even used as an instrument for political re-education. In the middle ages, it was used to extract confessions or testimonies from suspects in judicial inquiries or trials. However, when societies progressed and as people became more conscious of the sanctity of life, torture became widely condemned as an extreme violation against human rights that has no place in a "civilized world." Even the occurrence of war does not justify its practice, as called for in the four Geneva Conventions.

On December 10, 1984, the United Nations (UN) adopted and opened for signature, the ratification and accession by General Assembly resolution 39/46, better known as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (entered into force on 26 June 1987, in accordance with article 27 (1)). Article 2 of the resolution stated guiding principles on how each state should address the occurrence of torture in their areas which are as follows:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. 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 of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Unfortunately, even with the existence of the UN accord, torture is still taking place in various forms in almost any place in the world, even in our own shores. Their use is motivated by a variety of reasons, which includes those stated earlier.

As a nation that considers itself to be a strong, peace-loving and law abiding state that upholds human rights, it should be our obligation and responsibility that such atrocious acts be stopped at least in our area, for we owe it to our citizenry to give them a society that is free from tyranny, coercion or oppression from anyone or from any quarters in our country.



FRANCIS G. ESCUDERO

Republic of the Philippines)
FOURTEENTH CONGRESS)
First Regular Session)

SENATE

Bill No. 1306

Introduced by Senator FRANCIS G. ESCUDERO

AN ACT
PENALIZING THE COMMISSION OF ACTS OF TORTURE AND OTHER
CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENTS,
PRESCRIBING PENALTIES THEREFOR 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 2007".

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

- (a) 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 of any person in authority shall be subjected to physical harm, force, violence, threat or intimidation or any act that impairs his/her free will; and
- (b) 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 or Degrading Treatment or Punishment (CAT), to which the Philippines is a State party.

SEC. 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/her 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 public official or other person acting in an official capacity. It does not include pain or suffering arising only from inherent 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 and 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 and/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) Other forms of sexual abuse;
 - (9) Mutilation, such as amputation of the essential parts of the body such as the genitalia, ears, tongue, etc.;
 - (10) Dental torture or the forced extraction of the teeth;
 - (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) 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 disease; or
 - (14) Other forms of aggravated and deliberate cruel, inhuman or degrading physical and/or pharmacological treatment or punishment; and

(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 dignity and morale, such as:

- (1) Blindfolding; 28
- (2) Threatening a person or such persons related or known to him/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 and/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/s of a person from one place to another, creating the belief that he/she shall be summarily executed;
- (8) Maltreating a member of the person or 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/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;
- (13) Confinement in jails and prisons under intolerable subhuman conditions; or
- (14) Other forms of deliberate and aggravated cruel, inhuman or degrading mental treatment or punishment.

SEC. 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.

SEC. 5. *Protection of Persons Involved in Prosecution.* – Any individual who alleges he/she has been subjected to torture shall have the right to complain to and to have his/her 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/her 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.

SEC. 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 their behalf, may seek legal assistance in the proper handling and filing of the complaint from the regional offices of the Commission on Human Rights (CHR), the Barangay Human Rights Action Center nearest them, as well as from human rights nongovernment organizations duly recognized by the government.

SEC. 7. *Right to Physical and Psychological Examination.* – Every person arrested, detained or under custodial investigation shall have the right to be informed of his/her right to demand a physical and psychological examination by an independent and competent doctor of his/her own 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/her own doctor, he/she 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. 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:

- (1) The name, age and address of the patient;
- (2) The name and address of the nearest kin of the patient;
- (3) The name and address of the person who brought the patient for physical and psychological examination;
- (4) The nature and probable cause of the patient's injuries and trauma;
- (5) The approximate time and date when the injury and/or trauma was sustained;
- (6) The place where the injury and/or trauma was sustained;
- (7) The time, date and nature of treatment necessary; and

(8) 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.

SEC. 8. *Criminal Liability.* – Torture as defined in Section 3 of this Act is hereby declared as a criminal act. Any person who actually participated in the infliction of torture or who is present during the commission of said act 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 torture a victim for whatever purpose shall be held equally liable as principals. An order from a superior officer or from a superior in the office or public authority shall not be invoked as a justification of torture.

SEC. 9. *Liability.* – The immediate commanding officer of the unit concerned of the Armed Forces of the Philippines (AFP) or the immediate senior public official of the Philippine National Police (PNP) and other law enforcement agencies shall be held liable as accessory to the crime for any act or omission or negligence on his part that may have led to the commission of torture by his/her subordinates.

SEC. 10. *Penalties.* – (a) Torture resulting in the loss of life of any person shall be considered as murder and shall be punishable by *reclusion perpetua*.

(b) Torture with rape shall be punishable by *reclusion perpetua*.

(c) Torture resulting in mutilation shall be punishable by *reclusion perpetua*.

(d) Any person found guilty of any other form of torture shall suffer:

(1) The penalty of *reclusion perpetua*, if other forms of sexual abuse have also been committed and/or in consequence of torture, the victim shall become insane, imbecile, impotent, blind or maimed for life;

(2) The penalty of *reclusion perpetua*, if committed against children;

(3) The penalty of *prision mayor* in its medium and maximum periods, if in consequence of torture, the victim shall have lost the use 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 the work in which he/she was theretofore habitually engaged;

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

(5) The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the consequence of torture shall

have caused the illness or incapacity for labor of the victim for more than thirty (30) days; and

- (6) The penalty of *prision correccional* in its minimum period to *prision correccional* in its medium period, if the consequence of torture shall have caused the illness or incapacity for labor of the victim for thirty (30) days or less.
- (e) Mental/psychological torture resulting in death, complete or partial amnesia, fear of going crazy, insanity or suicidal tendencies of the victim due to guilt, worthlessness or shame shall be punishable with *reclusion temporal* or a fine of not less than Fifty thousand pesos (P50,000.00), or both, at the discretion of the court.

The above penalties shall be without prejudice to the prosecution of other crimes and other legal remedies available to the victim under other existing law/s.

SEC. 11. *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 and the Secretary of Justice, in coordination with the Chairperson of the 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.

SEC. 12. *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: *Provided,* That in no case shall compensation be any lower than Ten thousand pesos (P 10,000.00). Victims of torture shall also have the right to claim for compensation from such other financial relief programs that may be available to him/her.

SEC. 13. *Formulation of a Rehabilitation Program.* - Within one 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. The DSWD, the DOJ and the DOH shall also call on human rights nongovernment 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.

SEC. 14. *Designation of Organizational Responsibility.* - The AFP, the PNP and other law enforcement and investigative agencies shall ensure that the function of overseeing the implementation of this Act shall be specifically assigned to a particular office or unit of the agency concerned.

SEC. 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 and the Commission on Higher Education shall also ensure the integration of human rights education in the formal curricula of all primary, secondary and tertiary level academic institutions nationwide.

SEC. 16. *Suppletory Applications.* - The provisions of the Revised Penal Code shall be suppletory to this Act.

SEC. 17. *Implementing Rules and Regulations.* - The DOJ and the CHR, with the active participation of human rights nongovernmental organizations, 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.

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

SEC. 19. *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.

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

Approved,