

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL No. 2824

Introduced by AKBAYAN Representatives Walden F. Bello and Kaka J. Bag-ao

EXPLANATORY NOTE

This bill seeks to amend Republic Act No. 9745, otherwise known as The "Anti-Torture Act of 2009," so that its definition of "torture" and consequent application are not limited to state-agent perpetrators and their victims. This amendment will harmonize its definition of torture with that in the newer R.A. No. 9851, the "Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity," align the Philippine Anti-Torture Act with the latest developments in international criminal law and uphold the constitutional principle of equal protection of the law to victims of torture committed by non-state actors. More fundamentally, however, this will align the law with the factual reality that torture is also actually perpetrated by non-state actors, especially non-state armed groups.

The experience in recent Philippine history most relevant to this were the anti-infiltration purges in the Communist Party of the Philippines-New People's Army (CPP-NPA) during the 1980s, in which at least a thousand or so of its cadres, members, commanders and fighters were tortured, forcibly disappeared or extra-judicially killed within the CPP-NPA in a number of regions, most notably Mindanao ("*Kampanyang Ahas*") and Southern Tagalog ("*Oplan Missing Link*"). The latter purge was notably documented in a book entitled *To Suffer Thy Comrades: How the Revolution Decimated Its Own* (Manila: Anvil Publishing, Inc., 2001) written by one of its survivors, now NGO worker Robert Francis B. Garcia. This has also been documented internationally by the international NGO Redress Trust-London in a major policy study, *Not Only the State: Torture by Non-State Actors – Towards Enhanced Protection, Accountability and Effective Remedies*. Published in 2006, it acknowledged the Philippine inputs, particularly from the case of the CPP-NPA purges.

R.A. No. 9745's definition of torture and its application, limited to that "inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority", does not provide equal protection of the law to victims of torture perpetrated by non-state actors. From the point of view of the victims, there is no difference whether it is committed by a state or non-state perpetrator. The proposed amendment of R.A. No. 9745's definition to remove that quoted qualification, therefore, corrects this constitutional infirmity in the law.

R.A. No. 9745's definition of torture follows that of the 1984 UN *Convention Against Torture* (CAT). But there has since been a new and improved definition of torture in international criminal law, namely that found in the 1998 *Rome Statute of the International Criminal Court* (ICC Statute): "the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under control of

the accused.” The beauty of this simple definition is that there are no more qualifications not only as to perpetrator but also as to purpose (e.g. “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”). The simple definition of the 1998 ICC Statute, therefore, makes for much wider application and consequently protection of the law.

It is that simple definition of torture that is adopted in the new R.A. No. 9851 as among the acts that may be constitutive of war crimes and other crimes against humanity, with the addition of one particular form of torture: “the intentional infliction of severe pain or suffering, whether physical, mental or psychological, upon a person in the custody or under control of the accused.” But it is a less than ideal situation that two Philippine statutes, R.A. No. 9745 and R.A. No. 9851, have two different definitions of torture, even if these are applied to two different situations. These definitions will have to be harmonized one way or the other. We submit that R.A. No. 9745 should follow R.A. No. 9851 on this, considering among others that R.A. No. 9851 is not only the newer or later law but also the law aligned or informed by the latest developments in international criminal law.

Even the 1984 CAT, which R.A. No. 9745 seeks to implement, provides in its Art. 1(2), that its definition of torture is “without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.” Thus, without prejudice to the 1998 ICC Statute and R.A. No. 9851 which contain definitions of wider application. As regards state agents having the higher responsibility to uphold the rule of law, such official capacity can be treated as an *aggravating circumstance*, but not an *element of the crime* that would leave out non-state perpetrators – and their victims. In the final analysis, it is the victims -- the rights-holders -- and their human rights that matter. “All human rights for all,” including the victims of torture.

The bill also would amend the definition of “other cruel, inhuman and degrading treatment or punishment” accordingly.

Thus, the soonest approval of this bill is earnestly prayed for.



WALDEN F. BELLO



KAKA J. BAG-AO

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FOURTEENTH CONGRESS
First Regular Session

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Introduced by **AKBAYAN** Representatives Walden F. Bello and Kaka J. Bag-ao

AN ACT
AMENDING REPUBLIC ACT No. 9745, THE "ANTI-TORTURE ACT OF 2009"

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

SECTION 1. *Amendment to Declaration of Policy.* – Paragraphs (b) and (d) of Section 2 of Republic Act No. 9745 are hereby amended to read as follows:

"Sec. 2. *Declaration of Policy.* – It is hereby declared the policy of the State:

"x x x

"(b) To ensure that the human 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 OR UNDER THE CONTROL of any person [in authority or agent of a person in authority] shall be subject to any physical, psychological or mental harm, force, violence, threat or intimidation or any act that impairs his or her free will or in any manner demeans or degrades human dignity;

"x x x

"(d) To fully adhere to the principles and standards on the absolute condemnation and prohibition of torture as provided for in the 1987 Philippine Constitution; various international instruments to which the Philippines is a State party such as, but not limited to, 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 All Forms of Cruel, Inhuman and Degrading Treatment or Punishment (CAT); and all other relevant international human rights AND INTERNATIONAL HUMANITARIAN LAW instruments [to which the Philippines is a signatory].

Sec. 2. *Amendment of Definitions of "Torture" and "Other cruel, inhuman and degrading treatment or punishment."* – Paragraphs (a) and (b) of Section 3 of Republic Act No. 9745 are hereby amended to read as follows:

"Sec. 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/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 with the consent or acquiescence of a person in authority or agent of a person in authority.] THE INTENTIONAL INFLECTION OF SEVERE PAIN OR SUFFERING, WHETHER PHYSICAL, MENTAL, OR PSYCHOLOGICAL, UPON A PERSON IN THE CUSTODY OR UNDER THE CONTROL OF THE ACCUSED. 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] UPON A PERSON IN THE CUSTODY OR UNDER THE CONTROL OF THE ACCUSED, which attains a level of severity causing suffering, gross humiliation or debasement to the latter."

Sec. 3. *Amendment to Sec. 4* – Paragraphs (a) and (b) of Section 4 of Republic Act No. 9745 are hereby amended to read as follows:

"Sec. 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 OR UNDER HIS/HER CONTROL that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body such as:

"x x x

"(b) 'Mental/psychological torture' refers to acts committed by a person [in authority or agent of a person in authority] UPON ANOTHER IN HIS/HER CUSTODY OR UNDER HIS/HER CONTROL which are calculated to

affect or confuse the mind and/or undermine a person's dignity and morale, such as:

"x x x."

Sec. 4. *Amendment to Sec. 5* – Section 5 of Republic Act No. 9745 is hereby amended to read as follows:

"Sec. 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 HIS/HER custody OR UNDER HIS/HER CONTROL, which attains a level of severity sufficient to cause suffering, gross humiliation or debasement to the latter. x x x"

Sec. 5. *Addition to Penalties.* – Sec. 14 of R.A. No. 9745 is hereby amended by adding the following last paragraph, to read as follows:

"Sec. 14. *Penalties.* – x x x

"x x x

"WHERE THE OFFENDER WAS A PERSON IN AUTHORITY OR AGENT OF A PERSON IN AUTHORITY AT THE TIME OF THE COMMISSION OF THE CRIME, THIS SHALL BE TREATED AS AN AGGRAVATING CIRCUMSTANCE, REGARDLESS OF WHETHER ADVANTAGE WAS TAKEN BY THE OFFENDER OF HIS/HER PUBLIC POSITION."

Sec. 4. *Separability Clause.* – If any provision of this Act is declared invalid or unconstitutional, the other provisions not affected thereby shall remain continue to be in full force and effect.

Sec. 5. *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. 6. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,