

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

FIFTEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 3384

Introduced by Representative Pedro P. Romualdo

EXPLANATORY NOTE

Section 11, Article II of the *Constitution* provides that,

“Sec. 11. The State values the dignity of every human person and guarantees full respect for human rights.”

Article 5 of the *Universal Declaration on Human Rights* states that,

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”

while Article 7 of the *International Covenant on Civil and Political Rights* declares that,

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

Acts of torture are, by themselves, deplorable and reprehensible, and should be punished. All individuals must be protected by law against all forms of torture and inhuman and degrading treatment, regardless of the status, station or personality of the perpetrator. Acts of torture can be

committed by anyone. Anti-Torture legislation must, therefore, cover all acts of torture and other forms of cruel, inhuman or degrading treatment.

While Article 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* defines torture as:

“x x x any 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, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him 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 public official or other person acting in an official capacity”

it also provides that:

“This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.”

Thus, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* to which the Philippines is a signatory allows, if not encourages, “national legislation which does or may contain provisions of wider application.”

On November 10, 2009, the President signed into law Republic Act No. 9745 entitled, “An Act Penalizing The Commission Of Acts Of Torture And Other Cruel, Inhuman And Degrading Treatment Or Punishment, Prescribing Penalties Therefor And For Other Purposes.” Unfortunately, Republic Act No. 9745 limits its coverage to acts of torture committed by, and other cruel, inhuman or degrading treatment or punishment inflicted by, “a person in authority or an agent of a person in authority.” Thus, acts of torture committed by members of rebel groups, criminal syndicates and other private persons are not within the purview of, and are not punished by, Republic Act No. 9745.

It is incumbent upon Congress to pass legislation which punishes all acts of torture and other forms cruel, inhuman or degrading treatment. More importantly, we have the responsibility to enact legislation that

would protect each individual against these acts and to prevent their occurrence. This measure seeks to amend Republic Act No. 9745 by punishing all acts of torture and other forms of cruel, inhuman or degrading treatment, whether the same be committed by public officials or their agents or by private individuals.

It should also be recognized, however, that public officers are subject to a higher standard of responsibility. This measure provides that where the offense is committed by a public officer who takes advantage of his public position in the commission of the offense, the penalty to be imposed shall be in its maximum period, similar to what is provided in Article 14(1) in relation to Article 64(3) of the Revised Penal Code.

In view of the foregoing, approval of this bill is earnestly and urgently recommended.



PEDRO P. ROMUALDO

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AN ACT
AMENDING REPUBLIC ACT NUMBERED NINE
THOUSAND SEVEN HUNDRED AND FORTY-
FIVE ENTITLED, “AN ACT PENALIZING THE
COMMISSION OF ACTS OF TORTURE AND
OTHER CRUEL, INHUMAN AND DEGRADING
TREATMENT OR PUNISHMENT,
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. Section 3 of Republic Act No. 9745 is hereby amended to read, as follows:

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 an individual 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. 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 any person against an individual under his/her custody or detention, whether such detention be lawful or not, 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 perceives 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 2. Section 4 of Republic Act No. 9745 is 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 any person, upon another in his/her custody or detention, whether such custody or detention is lawful or not, that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:

(1) systematic beating, 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 and 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 bag 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 any person 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 a 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 3. Section 5 of Republic Act No. 9745 is hereby amended to read, as follows:

Section 5. *Other Cruel, Inhuman and Degrading Treatment or Punishment.* – Other cruel, inhuman or degrading treatment or punishment refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by any person against another person in custody or under detention, 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 4. Section 6 of Republic Act No. 9745 is hereby amended to read, as follows:

SEC. 6. *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. The crime of torture, as defined and punished in this Act, shall not be absorbed in the offenses of rebellion and insurrection as defined in Article 134 of the Revised Penal Code, as amended. 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 5. Section 12 of Republic Act No. 9745 is hereby amended to read, as follows:

SEC. 12. *Criminal Liability.* – Any person who actually participated or induced, directed or commanded 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 person 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 himself profiting from or assisting the offender to profit from the effects of the act of torture or other cruel, inhuman and degrading treatment or punishment;

(b) By concealing the act of torture or other cruel, inhuman and degrading treatment or punishment and/or destroying the effects or 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.

Section 6. Section 13 of Republic Act No. 9745 is hereby amended to read, as follows:

Section 13. *Liability of Commanding Officer or Superior.* – If an offense defined in Section 4 or 5 of this Act is committed by a member of the Armed Forces of the Philippines, the Philippine National Police or other law enforcement agency of the Government in the performance of his official functions or duties and by taking advantage of his official position, the offender's immediate superior in the unit or office Armed Forces of the Philippines, Philippine National Police or other law enforcement agency 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 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 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 7. Section 14 of Republic Act No. 9745 is hereby amended to read, as follows:

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; *Provided* that, if the offender is a public officer who took advantage of his position in the commission of the offense, the penalty herein prescribed shall be imposed in its maximum period.

(c) The penalty of *prision mayor* in its medium and maximum periods shall be imposed if, in consequence of torture, the victim shall have 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; *Provided* that, if the offender is a public officer who took advantage of his position in the commission of the offense, the penalty herein prescribed shall be imposed in its maximum period.

(d) The penalty of *prision mayor* in its minimum and medium periods shall be imposed if, in consequence of torture, the victim shall have become deformed or shall have lost any part of his/her body other than those aforecited, 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; *Provided* that, if the offender is a public officer who took advantage of his position in the commission of the offense, the penalty herein prescribed shall be imposed in its maximum period.

(e) The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period shall be imposed if, in consequence of torture, the victim shall have been ill or incapacitated for labor for more than thirty (30) days but not more than ninety (90) days; *Provided* that, if the offender is a public officer who took advantage of his position in the commission of the offense, the penalty herein prescribed shall be imposed in its maximum period.

(f) The penalty of *prision correccional* in its maximum period shall be imposed on the immediate superior, as provided in Section 13 of this Act, 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 or 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 *prision 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; *Provided* that, if the offender is a public officer who took advantage of his position in the commission of the offense, the penalty herein prescribed shall be imposed in its maximum period.

(h) The penalty of *arresto mayor* shall be imposed for acts constituting cruel, inhuman or degrading treatment or punishment; *Provided* that, if the offender is a public officer who took advantage of his position in the commission of the offense, the penalty herein prescribed shall be imposed in its maximum period.

Section 8. *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.

Section 9. *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 10. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,