

Republic Act No. 9745 – Anti-Torture Act of 2009

- R.A. 9745 punishes **torture** inflicted by a person in authority or agent of a person in authority upon another in his/her custody.
- **Torture**, as punished under the law, may either be **physical or mental/psychological**.
- **Physical torture** is a form of treatment or punishment that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:
 - (1) Systematic beating, head-banging, 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 or acid, or 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 objects 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.
- **Mental/psychological torture** refers to acts 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 will 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.
- R.A. 9745 also punishes the infliction of **other cruel, inhuman and degrading treatment or punishment** by a person in authority or agent of a person in authority against another person in custody. **Other cruel, inhuman and degrading treatment or punishment** refers to a deliberate and aggravated treatment or punishment, not falling under physical or mental torture as defined in the law, which attains a level of severity sufficient to cause suffering, gross humiliation or debasement to the person in custody. The assessment of the level of severity will 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.
 - R.A. 9745 prohibits and punishes the establishment, operation and maintenance of **secret detention places, solitary confinement, incommunicado** or other similar forms of detention, where torture may be carried out with impunity.
 - The Philippine National Police (PNP), the Armed Forces of the Philippines (AFP) and other law enforcement agencies, as well as their regional offices, are required to submit to the Commission on Human Rights (CHR) and make available to the public at all times, **a list of all detention centers and facilities under their respective jurisdictions with the corresponding data on the prisoners or detainees** incarcerated or detained in such facilities, such as the names, date of arrest and incarceration, and the crime or offense committed. The list should be updated within the first 5 days of every month at the minimum. Failure to comply with this requirement is punishable under the law and the penalty will be imposed on the responsible officers or personnel of the AFP, the PNP and other law enforcement agencies.
 - Any confession, admission or statement obtained as a result of torture is **inadmissible in evidence** in any proceeding, except if the same is used as evidence against a person or persons accused of committing torture.
 - A victim of torture has the right:
 - (a) To have an **impartial investigation** by the CHR and other concerned government agencies such as the Department of Justice (DOJ), the Public Attorney's Office (PAO), the PNP, the National Bureau of Investigation (NBI) and the AFP;

- (b) To have the investigation of the torture **completed within a maximum period 60 working days** from the time a complaint for torture is filed, and to have any appeal resolved within the same period;
 - (c) To have **sufficient government protection** for himself/herself and other persons involved in the investigation/prosecution such as his/her lawyer, witnesses and relatives, against all forms of harassment, threat and/or intimidation as a consequence of the filing of the complaint for torture or the presentation of evidence for such complaint;
 - (d) To be given sufficient protection in the manner by which he/she testifies and presents evidence in any forum to avoid further trauma; and
 - (e) To claim for **compensation** under Republic Act No. 7309,* which in no case should be lower than ₱10,000.00, and under other existing laws and regulations.
- **A writ of *habeas corpus* or writ of *amparo* or writ of *habeas data* proceeding**, if instituted on behalf of the victim of torture or other cruel, degrading and inhuman treatment or punishment, should be **disposed of expeditiously**, and any order of release by virtue of such proceeding, or other appropriate order of a court relative to such proceeding, should be **executed or complied with immediately**.
 - The CHR and the PAO shall render **legal assistance** in the investigation and monitoring and/or filing of the complaint for a person who suffers torture and other cruel, inhuman and degrading treatment or punishment, or for any interested party. The victim or interested party may also seek legal assistance from the Barangay Human Rights Action Center (BRRAC) nearest him/her as well as from human rights non-government organizations (NGOs).
 - The following are liable as **principals** for the crime of torture or other cruel or inhuman and degrading treatment or punishment:
 - (a) Any person who actually participated or induced 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 or other cruel, inhuman and degrading treatment or punishment by previous or simultaneous acts;
 - (b) Any superior military, police or law enforcement officer or senior government official who issued an order to any lower ranking personnel to commit torture for whatever purpose; and
 - (c) The immediate commanding officer of the unit concerned of the AFP or the immediate senior public official of the PNP and other law enforcement agencies, if:
 1. By his act or omission, or negligence, he has led, assisted, abetted or allowed, whether directly or indirectly, the commission of torture by his/her subordinates; or
 2. 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 will 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.

- Any public officer or employee will 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 in its commission, either as principal or accomplice, takes part subsequent to its commission:
 - (a) By 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; or
 - (b) By concealing the act of torture or other cruel, inhuman and degrading treatment or punishment and/or destroying the effects or instruments of torture 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, provided the accessory acts are done with the abuse of the official's public functions.
- A **state of war** or a **threat of war, internal political instability**, or any **other public emergency**, or a document or any determination comprising an **“order of battle”** can **never be invoked as a justification for torture** and other cruel, inhuman and degrading treatment or punishment.

“Order of Battle” refers to any document or determination 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.

- The **penalties** under R.A. 9745 are:

Reclusion perpetua – if the torture:

- (a) results in death of any person;
- (b) results in mutilation;
- (c) is committed with rape;
- (d) is committed with other forms of sexual abuse and, as a consequence, the victim becomes insane, imbecile, impotent, blind or maimed for life; or
- (e) is committed against children.

Reclusion temporal – if the torture results in insanity, complete or partial amnesia, fear of becoming insane or suicidal tendencies of the victim due to guilt, worthlessness or shame.

Prision correccional – if the torture results in psychological, mental and emotional harm other than those described in the preceding paragraph.

Prision mayor in its medium and maximum periods – if in consequence of torture, the victim loses the power of speech or the power to hear or to smell, or loses an eye, a hand, a foot, an arm or a leg, or loses the use of any such member, or becomes permanently incapacitated for labor.

Prision mayor in its minimum and medium periods – if, in consequence of torture, the victim becomes deformed or loses any part of his/her body other than those aforementioned, or loses the use of such part, or becomes ill or incapacitated for labor for more than 90 days.

Prision correccional in its maximum period to *prision mayor* in its minimum period – if, in consequence of torture, the victim becomes ill or incapacitated for labor for more than 30 days but not more than 90 days.

Prision correccional in its minimum and medium period – if, in consequence of torture, the victim becomes ill or incapacitated for labor for 30 days or less.

Arresto mayor – if the act constitutes cruel, inhuman or degrading treatment or punishment as defined in the law.

Prision correccional – for those who establish, operate and maintain secret detention places and/or effect or cause to effect solitary confinement, incommunicado or other similar forms of prohibited detention where torture may be carried out with impunity.

Arresto mayor – to be imposed on responsible officers or personnel of the AFP, the PNP and other law enforcement agencies for failure to perform his/her duty to maintain, submit or make available to the public an updated list of detention centers and facilities with the corresponding data on the prisoners or detainees incarcerated or detained in said centers/facilities.

- If the commission of any crime punishable under Title Eight (Crimes Against Persons) and Title Nine (Crimes Against Personal Liberty and Security) of the Revised Penal Code is attended by any of the acts constituting torture and other cruel, inhuman and degrading treatment or punishment, the penalty to be imposed will be in its **maximum period**.
- Torture as a crime will not absorb or will not be absorbed by any other crime or felony committed as a consequence, or as a means in the conduct or commission, of torture. Torture will be treated as a **separate and independent criminal act**, the penalties for which will be imposed without prejudice to any other criminal liability under domestic and international laws.
- Persons who have committed any act of torture will **not benefit from any special amnesty law** or similar measures that will have the effect of exempting them from any criminal proceedings and sanctions.

- No person will be expelled, returned or extradited to another State where there are substantial grounds to believe that such person will be in danger of being subjected to torture. The Secretary of the Department of Foreign Affairs (DFA) and the Secretary of the DOJ, in coordination with the Chairperson of the CHR, will determine whether such grounds exist, taking into account all relevant considerations including the existence in the requesting State of a consistent pattern of gross, flagrant or mass violations of human rights. (*Refouler*)
- The Department of Social Welfare and Development (DSWD), the DOJ and the Department of Health (DOH) and such other concerned government agencies, and human rights organizations are tasked to formulate a **comprehensive rehabilitation program** for torture victims and their families, and a parallel rehabilitation program for persons who committed torture.
- Every person arrested, detained or under custodial investigation is given the right:
 - (a) Before and after interrogation, to be **informed of his/her right to demand physical examination** by an independent and competent doctor of his/her own choice. If he/she cannot afford the services of his/her own doctor, he/she will be provided by the State with a competent and independent doctor to conduct physical examination. If the person arrested is female, she will be attended to preferably by a female doctor.
 - (b) To **immediate access to proper and adequate medical treatment**.

These rights may be waived by the person arrested, detained or under custodial investigation, provided the **waiver** was made knowingly and voluntarily, in writing, and executed in the presence and assistance of his/her counsel.

- The State shall endeavor to provide the victim with **psychological evaluation** if available under the circumstances.
- The physical examination and/or psychological evaluation of the victim should be contained in a **medical report**, duly signed by the attending physician and detailing the victim's medical history and the physician's findings, including the nature and probable cause of the victim's injury, pain, disease and/or trauma, and the approximate time and date when it/they was/were sustained. The report shall be attached to the custodial investigation report and considered a public document.

* An Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for other purposes.