

**Republic Act
No. 9745**

**Anti-Torture Act of
2009**

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2022 UST-MJRSI PRE BAR REVIEW

The Anti-Torture Act of 2009

- The Anti-Torture Act of 2009 defined and punished torture and other cruel, degrading and inhuman treatment or punishment as well as prohibited detention
- The Anti-Torture Act operationalizes Sections 12 and 19 in the Bill of Rights or Title III of the 1987 Constitution

Declaration of Policies

1. To value the dignity of every human being and guarantee full respect for human rights
2. To ensure 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 of any person in authority or agent of a person of authority, shall be subjected to physical, psychological or mental harm, force, violence, threat or intimidation or any act that impairs his/her free will or in any manner demeans or degrades human dignity
3. To ensure that secret detention places, solitary, *incommunicado* or other similar forms of detention, where torture may be carried out with impunity, are prohibited
4. To fully adhere to the principles and standards on the absolute condemnation and prohibition of torture as provided for in the 1987 Philippine Constitution and various international instruments [Rep. Act No. 9745, sec. 2]

Section 12, Title III, 1987 Constitution

Section 12

1. Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

2. No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited.

3. Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

4. The law shall provide for penal and civil sanctions for violations of this Section as well as compensation to the rehabilitation of victims of torture or similar practices, and their families.

2022 UST-MJRSI PRE BAR REVIEW

Section 19, Title III, 1987 Constitution

Section 19

1. Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*.
2. The employment of physical, 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.

Acts punished in Rep. Act No. 9745

1. Torture [Rep. Act No. 9745, sec. 14(a) to (g)]
2. Other cruel, degrading or inhuman treatment or punishment [Rep. Act No. 9745, sec. 14(h)]
3. Establishment, operation and maintenance of secret detention places and/or effecting or causing to effect solitary confinement, *incommunicado* or other similar forms of prohibited detention [Rep. Act No. 9745, sec. 14(i)]
4. Failure of officers or personnel of the AFP, PNP or other law enforcement agencies to maintain, submit or make available to the public an updated list of detention centers and facilities with corresponding data on the prisoners or detainees incarcerated therein [Rep. Act No. 9745, sec. 14(j)]

Torture

"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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. [Rep. Act No. 9745, sec. 3(a)]

Two kinds of torture

1. Physical torture
2. Mental or Psychological Torture [Rep. Act No. 9745, sec. 4]

2022 UST-MJRST PRE BAR REVIEW

Physical torture

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 that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body. [Rep. Act No. 9745, sec. 4]

Mental or psychological torture

Mental or psychological torture refers to acts committed by a person in authority or agent of a person in authority which are calculated to affect or confuse the mind and/or undermine a person's dignity and morale. [Rep. Act No. 9745, sec. 4]

Other cruel, inhuman or degrading treatment or punishment

"Other cruel, inhuman and degrading treatment or punishment" refers to a deliberate and aggravated treatment or punishment not constituting torture, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter. [Rep. Act No. 9745, sec. 3(b)]

Torture and other cruel, inhuman or degrading treatment or punishment

Cruel, inhuman and degrading punishment involves causing suffering, gross humiliation, or debasement to a person in custody. Torture, on the other hand, generally involves intentionally causing severe mental or physical agony for a specific purpose or for any reason based on discrimination. [Separate Opinion, Justice Mario Victor “Marvic” Leonen, In the Matter of the Urgent Petition for the Release of Prisoners on Humanitarian Grounds, G.R. No. 252117, 28 July 2020]

People v. Tongko

G.R. No. 123567, 5 June 1998

Roberto Tongko was convicted of estafa for postdating 10 checks amounting to P100,000.00, which were dishonored, and sentenced to 27 years of *reclusion perpetua*.

On appeal, he questioned, among others, that the is too harsh and violates the admonition in Article 19(1), Title III of the 1987 Constituting that no cruel, inhuman or degrading punishment should be imposed.

The Supreme Court held that the prohibition of cruel and unusual punishments is generally aimed at the form or character of the punishment rather than its severity in respect of duration or amount, and apply to punishments which never existed in America or which public sentiment has regarded as cruel or obsolete, for instance, those inflicted at the whipping post or in the pillory, burning at the stake, breaking on the wheel, disemboweling, and the like.

It takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the Constitution. The fact that the punishment authorized by the statute is severe does not make it cruel and unusual. Expressed in other terms, it has been held that to come under the ban, the punishment must be "flagrantly and plainly oppressive," "wholly disproportionate to the nature of the offense as to shock the moral sense of the community."

2022 UST-MJRSI PRE BAB REVIEW

Death penalty is not cruel, inhuman or degrading punishment

The Philippine Supreme Court has repeatedly ruled that the death penalty is not a cruel, inhuman or degrading punishment, particularly in *Harden v. Director of Prisons*, 81 Phil. 741 [1948], to wit:

“The penalty complained of is neither cruel, unjust nor excessive. In *Ex-parte Kemmler*, 136 U.S., 436, the United States Supreme Court said that ‘punishments are cruel when they involve torture or a lingering death, but the punishment of death is not cruel, within the meaning of that word as used in the constitution. It implies there something inhuman and barbarous, something more than the mere extinguishment of life.’ [People v. Echegaray, G.R. No. 117472, 7 February 1997]

Person in authority

A person in authority is any person vested directly with jurisdiction, whether as an individual or as a member of some court or governmental corporation, board or commission. [Rev. Pen. Code, art. 152]

A barangay chairperson shall be deemed as a person in authority. [Rev. Pen. Code, art. 152]

Teachers, professors and persons charged with the supervision of public or duly recognized private schools, colleges and universities and lawyers in the actual performance of their professional duties or on the occasion of such performances shall be deemed persons in authority. [Rev. Pen. Code, art. 152]

Agent of person in authority

Any person who, by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property and any person who comes to the aid of a person in authority shall be deemed an agent of a person in authority. [Rev. Pen. Code, art. 152]

Who are liable as principals

1. 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 shall be liable as principal [Rep. Act No. 9745, sec. 13]
2. 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 shall be held equally liable as principals [Rep. Act No. 9745, sec. 13]

3. 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 shall be held liable as a principal for any act or omission, or negligence committed by him/her that shall have led, assisted, abetted or allowed, whether directly or indirectly, the commission thereof by his/her subordinates [Rep. Act No. 9745, sec. 13]
4. The immediate commanding officer of the APF or immediate senior official of the PNP who, having knowledge of the commission of such acts by his/her subordinates, failed to prevent or investigate allegations of such act, whether deliberately or due to negligence shall also be liable as principals [Rep. Act No. 9745, sec. 13]

Doctrine of command responsibility

The evolution of the command responsibility doctrine finds its context in the development of laws of war and armed combats. According to Fr. Bernas, “command responsibility,” in its simplest terms, means the “responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict.” In this sense, command responsibility is properly a form of criminal complicity.

While there are several pending bills on command responsibility, there is still no Philippine law that provides for criminal liability under that doctrine. [Rubrico v. Macapagal-Arroyo, G.R. No. 183871, 18 February 2010]

Elements of doctrine of command responsibility

The doctrine of command responsibility holds military commanders and other persons occupying positions of superior authority criminally responsible for the unlawful conduct of their subordinates. For the doctrine to apply, the following elements must be shown to exist: (i) the existence of a superior-subordinate relationship; (ii) the superior knew or had reason to know that the criminal act was about to be or had been committed; and (iii) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator (Joaquin Bernas, S.J. Command Responsibility, February 7, 2007). [Separate Opinion, Justice Brion, [Rubrico v. Macapagal-Arroyo, G.R. No. 183871, 18 February 2010]

Who are liable as accessories

Any public officer or employee who has knowledge that torture or other cruel, inhuman and degrading treatment or punishment is being committed and without having participated therein as principal or accomplice, takes part subsequent to its commission:

(1) By themselves profiting from or assisting the offender to profit from the effects of the act or torture or other cruel, inhuman or degrading treatment or punishment

(2) 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

(3) 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, That the accessory acts are done with the abuse of the official's public functions. [Rep. Act No. 9745, sec. 13]

2022 UST-MJRSI PRE BAR REVIEW

Prohibited detention

Secret detention places, solitary confinement, *incommunicado* or other similar forms of detention, where torture may be carried out with impunity are hereby prohibited. [Rep. Act No. 9745, sec. 7]

2022 UST-MJRS PRE BAR REVIEW

Updated list of detention centers and facilities

The Philippine National Police (PNP), the Armed Forces of the Philippines (AFP) and other law enforcement agencies concerned shall make an updated list of all detention centers and facilities under their respective jurisdictions with the corresponding data on the prisoners or detainees incarcerated or detained therein. This list shall be made available to the public at all times. Failure to do so is punishable. [Rep. Act No. 9745, sec. 7 and 14(j)]

Penalties for torture

The penalties for acts of torture vary on whether the said torture resulted to death, rape or other sexual abuse, mutilation, torture against children, serious physical injuries, less serious physical injuries and slight physical injuries ranging from *reclusion perpetua* as the severest to *prision correccional* in its minimum and medium periods as the lowest penalty that may be imposed. [Rep. Act No. 9745, sec. 14(a) to (g)]

The penalty is *reclusion perpetua* if the torture result to: (a) death of any person; (b) mutilation; (c) rape; (d) other forms of sexual abuse; and (e) for torture committed against children. [Rep. Act No. 9745, sec. 14(a)]

Penalties for torture

The penalties may be *prision mayor* in its medium and maximum periods or *prision mayor* in its minimum and medium periods or *prision correccional* in its maximum period to *prision mayor* in its minimum period in case serious physical injuries are caused, depending on the nature of the serious physical injuries. [Rep. Act No. 9745, sec. 14(d) to (f)]

The penalty of *prision correccional* in its minimum and medium periods will be imposed if it caused less serious physical injuries or slight physical injuries. [Rep. Act No. 9745, sec. 14(g)]

Penalties for torture

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. [Rep. Act No. 9745, sec. 14(b)]

The penalty of *prision correccional* shall be imposed on those who commit any act of torture resulting in psychological, mental and emotional harm other than those described in paragraph (b) of this section. [Rep. Act No. 9745, sec. 14(c)]

Penalty for other cruel, inhuman or degrading treatment or punishment

This is punished by *arresto mayor*. [Rep. Act No. 9745, sec. 14(h)]

2022 UST-MJRSI PRE BAR REVIEW

Penalty for prohibited detention

The penalty of *prision correccional* shall be imposed upon 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 as provided in Section 7 of this Act where torture may be carried out with impunity. [Rep. Act No. 9745, sec. 14(i)]

Penalty for failure to maintain updated list of detention centers

The penalty of *arresto mayor* shall be imposed upon the 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 therein. [Rep. Act No. 9745, sec. 14(j)]

Other salient features of Rep. Act No. 9745

1. Applicability of the Revised Penal Code and appreciation as a special aggravating circumstance in some crimes in the RPC
2. Absolute rights
3. Torture as a separate and independent crime
4. Exclusion from the coverage of amnesty law
5. Compensation to victims of torture
6. Applicability of the exclusionary rule

Applicability of the Revised Penal Code and appreciation as a special aggravating circumstance

The provisions of the Revised Penal Code insofar as they are applicable shall be suppletory to this Act.

Moreover, 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 as defined herein, the penalty to be imposed shall be in its maximum period. [Rep. Act No. 9745, sec. 22]

Absolute right

Torture and other cruel, inhuman and degrading treatment or punishment as criminal acts shall apply to all circumstances. [Rep. Act No. 9745, sec. 6]

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" shall not and can never be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment. [Rep. Act No. 9745, sec. 6]

Torture as a separate and independent crime

Torture as a crime shall not absorb or shall not be absorbed by any other crime or felony committed as a consequence, or as a means in the conduct or commission thereof. In which case, torture shall be treated as a separate and independent criminal act whose penalties shall be imposable without prejudice to any other criminal liability provided for by domestic and international laws. [Rep. Act No. 9745, sec. 15]

Maltreatment of prisoners in Article 235 of the Revised Penal Code

Article 235 of the Revised Penal Code punishes any public officer or employee who shall overdo himself/herself in the correction or handling of a prisoner or detention prisoner under his/her charge, by the imposition of punishments not authorized by regulations or by inflicting such punishments in a cruel and humiliating manner.

The penalty is higher if the purpose of the maltreatment is to extort a confession or to obtain some information from the prisoner.

Maltreatment of prisoners in Article 235 of the Revised Penal Code

The offender will be guilty of two crimes: maltreatment of prisoners in addition to his/her liability for the physical injuries or damage caused.

2022 UST-MJRSI PRE BAR REVIEW

Exclusion from amnesty or similar measures

In order not to depreciate the crime of torture, persons who have committed any act of torture shall not benefit from any special amnesty law or similar measures that will have the effect of exempting them from any criminal proceedings and sanctions. [Rep. Act No. 9745, sec. 16]

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 (P10,000.00).

Victims of torture shall also have the right to claim for compensation from such other financial relief programs that may be made available to him/her under existing law and rules and regulations. [Rep. Act No. 9745, sec. 18]

Republic Act No. 7309

The law created a Board of Claims under the Department of Justice to receive, evaluate, process and investigate claims for compensation filed by the following:

- (a) any person who was unjustly accused, convicted and imprisoned but subsequently released by virtue of a judgment of acquittal;
- (b) any person who was unjustly detained and released without being charged;
- (c) any victim of arbitrary or illegal detention by the authorities as defined in the Revised Penal Code under a final judgment of court; and
- (d) any person who is a victim of violent crimes.

However, there is a ceiling on the award, specifically P1,000.00 for unjust detention and P10,000.00 in other cases.

Exclusionary rule

Any confession, admission or statement obtained as a result of torture shall be inadmissible in evidence in any proceedings, except if the same is used as evidence against a person or persons accused of committing torture.
[Rep. Act No. 9745, sec. 8]

2022 UST-MJRSTEP BAR REVIEW

First conviction for torture only in 2016

The first conviction for torture under the Anti-Torture Act occurred in 2016, seven years after its enactment, when a policeman was convicted by a Municipal Trial Court in Angeles City. PO2 Jerick Jimenez was sentenced to an indeterminate sentence of *arresto mayor* of two months and one day to a maximum of *prision correccional* of two years and four months. Jimenez was found guilty of torturing Jerry C. Corre after he was arrested for allegedly dealing in shabu. The torture, motivated by an attempt to squeeze out a confession from Corre, including “systematic beating, punching, kicking, striking with a rod, blindfolding, and electric shock”. [Manila Standard, First conviction under anti-torture law since 2009, 3 April 2016] The conviction was appealed.