

EIGHTEENTH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
FIRST REGULAR SESSION)



HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

House Bill No. 2801

EXPLANATORY NOTE

Within one year from ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,¹ the Philippines is obligated to establish a national preventive mechanism.² It is one, or several visiting bodies, set up, designated or maintained, at the domestic level, for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.³ This proposed measure, that establishes the NPM, aims at compliance by the Philippines of its duty, as a State Party to the OPCAT.


RUFUS B. RODRIGUEZ

¹ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 4 February 2003, 2375 UNTS 237, entered into force 22 June 2006 (OPCAT), art 17. Upon ratification, a State Party may make a declaration postponing its obligation to do so (OPCAT, art 24). But the Philippines has not made such a declaration.

² NPM.

³ OPCAT, art 3. Mechanisms established by a decentralized unit may be designated as NPMs for the purposes of the OPCAT, if they are in conformity with its provisions (OPCAT, art 17).

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AN ACT
ESTABLISHING A NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE IN THE
PHILIPPINES

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 “**Torture Prevention Act**”.

SECTION 2. Declaration of Policy. – The State is fully committed to the prevention of torture, and the establishment of an independent national preventive mechanism, in compliance with its obligations under the Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment. This mechanism is a visiting body set-up for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. The State will provide the necessary resources to ensure the functional independence of this mechanism.

SECTION 3. Philippine Torture Prevention Commission. The Philippine Torture Prevention Commission is hereby established as the national preventive mechanism of the Philippines. It shall be composed of a Chairperson and four Members, who must be chosen in an open, transparent and inclusive process. Only individuals with proven track records in the promotion of human rights shall form part of the Commission. Among the Chairperson and Members, there must be gender balance, adequate representation of ethnic and minority groups in the country, and diversity of expertise, including the relevant legal and health-care expertise.

The Chairperson and the Members of the Commission shall not, during their tenure, hold any other office or employment. Neither shall they engage in the practice of any profession or in the active management or control of any business which, in any way, may be affected by the functions of their office, nor shall they be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the government, any of its sub-divisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.

The Chairperson and the Members of the Commission shall be appointed by the President for a term of seven years without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. The President shall give due consideration to nominations by civil society organizations engaged in the promotion of the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.

The Chairperson and the Members of the Commission shall receive the same salary as the Chairperson and the Members, respectively, of the Constitutional Commissions, which shall not be decreased during their term of office.

SECTION 4. Powers. – The powers of the Commission include the power: (a) to examine regularly the treatment of the persons deprived of their liberty in places of detention, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment; (b) to make recommendations to the relevant authorities, with the aim of improving the treatment and the conditions of the persons deprived of their liberty, and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations; and (c) to submit proposals and observations concerning existing or draft legislation.

The visiting mandate of the Commission shall extend to all places of deprivation of liberty. Deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. These detention places include all, and any suspected, places of deprivation of liberty, which are within Philippine jurisdiction, over which Philippine authorities exercise effective control.

The Commission shall carry out unannounced visits to all, and any suspected, places of deprivation of liberty, in a manner, and with sufficient frequency, to make an effective contribution to the prevention torture and other cruel, inhuman or degrading treatment or punishment

SECTION 5. Access. – The Commission shall have (a) access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places, and their location; (b) access to all information referring to the treatment of those persons, as well as their conditions of detention; (c) access to all places of detention and their installations and facilities; (d) opportunity to have private interviews with the persons deprived of their liberty, without witnesses, either personally or with a translator, if deemed necessary, as well as with any other person, who the Commission believes may supply relevant information; (e) liberty to choose the places they want to visit, and the persons they want to interview; and (f) right to have contacts with the Subcommittee on the Prevention of Torture, to send it information, and to meet with it.

SECTION 6. Privilege. – No authority or official may order, apply, permit or tolerate, any sanction against any person or organization, for having communicated to the Commission any information, whether true or false, and no such person or organization may be otherwise prejudiced in any way. Confidential information collected by the Commission shall be considered privileged. No personal data may be published without the express consent of the person concerned. The Commission shall ensure that any confidential information acquired in the course of its work is fully protected.

SECTION 7. Dialogue. – The competent authorities shall examine the recommendations of the Commission, and enter into a dialogue with it, on possible implementation measures. These authorities shall enter into a follow-up process with the Commission, with a view to the implementation of any recommendations, which the Commission may make. These authorities shall also publish and widely disseminate the annual reports of the Commission.

SECTION 8. Implementing Rules and Regulations. – The CHR shall issue the necessary rules and regulations to implement the provisions of this Act within sixty (60) days from its effectivity.

In the formulation of the rules and regulations, the Commission shall coordinate with the DSWD, the DND, the DILG, the DENR, the DOH and shall likewise consult with the LGUs and human rights non-governmental organizations and people's organizations.

SECTION 9. Repealing Clause. - All laws, decrees, executive orders, memorandum orders, memorandum circulars, administrative orders, ordinances or any part thereof, inconsistent with the provisions of this Act are hereby deemed repealed or modified accordingly.

SECTION 10. *Separability Clause.* – If any part or provision of this Act shall be declared unconstitutional or invalid, the other portions hereof which are not affected thereby shall remain full force and effect.

SECTION 11. *Effectivity.* – This act shall take effect fifteen (15) days upon its publication in at least two (2) newspapers of national circulation.

Approved,