

HUMAN RIGHTS OF PERSONS DEPRIVED OF LIBERTY



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The human rights of persons deprived of liberty are protected by:

- ❑ **The Bill of Rights of the 1987 Constitution;**
- ❑ **Domestic laws; and**
- ❑ **International human rights instruments.**

The Bill of Rights:

- ▣ **Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.**

Article III, Section 12:

- ❑ Persons under investigation for an offense have the following rights:
 - To remain silent;
 - To competent and independent counsel;
 - To be provided with counsel if they cannot afford one;
 - Against waiving these rights except in writing and in the presence of counsel; and
 - To be informed of these rights;

Persons under investigation for an offense also have the following rights:

- **Not to be tortured, forced, threatened, intimidated, or subjected to any other means which vitiate the free will;**
- **Not to be kept in secret detention places, solitary, incommunicado, or other similar forms of detention.**
- **Any confession or admission obtained in violation of this section shall be inadmissible in evidence against him.**

Rights of persons deprived of liberty:

- ❑ 1. The right to bail, except for offenses punishable by reclusion perpetua, when evidence of guilt is strong, and even when the privilege of the writ of habeas corpus is suspended.
- ❑ 2. The right to avail of the privilege of the writ of *habeas corpus* to secure one's liberty, except when it is validly suspended.

Rights of persons deprived of liberty:

- ❑ 3. Not to be detained solely by reason of one's political beliefs.
- ❑ 4. Not to be subjected to involuntary servitude (except as punishment for a crime where one has been duly convicted).

Rights of persons in all criminal prosecutions:

- ❑ 1. To due process of law;
- ❑ 2. To be presumed innocent until the contrary is proved;
- ❑ 3. To be heard by himself and counsel;
- ❑ 4. To be informed of the nature and cause of the accusation against him;
- ❑ 5. To have a speedy, impartial, and public trial;

Rights of persons in all criminal prosecutions:

- ❑ 6. To meet the witnesses face to face; and
- ❑ 7. To have compulsory process to secure the attendance of witnesses and production of evidence in his behalf.

Rights of persons in all criminal prosecutions:

- 8. Not to be a witness against himself:
 - Any confession or admission obtained in violation of this section shall be *inadmissible in evidence against him.*

Rights of persons in all criminal prosecutions:

- ❑ 9. To a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies;
- ❑ 10. Not to be subjected to cruel, degrading or inhuman punishment;
- ❑ 11. Not to be meted out the death penalty unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it.

Domestic Laws Protecting the Human Rights of Persons Deprived of Liberty:

- ▣ **R.A. 7438, Code of Custodial Investigation;**
- ▣ **R.A. 9745, Anti-Torture Law;**
- ▣ **Article 32, Civil Code;**
- ▣ **Among others.**

R.A. 7438, Code of Custodial Investigation:

- Sec. 2(c):
- “The custodial investigation report shall be reduced to writing by the investigating officer...[B]efore [it] is signed or thumbmarked...it shall be read and adequately explained to him by his counsel...in the language or dialect known to [him/her], otherwise such investigation report shall be null and void and of no effect whatsoever.”

R.A. 7438, Sec. 2(e):

- **“Any waiver by a person arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing and signed by such person in the presence of his counsel; otherwise the waiver shall be null and void and of no effect.”**

The Anti-Torture Law



R.A. 9745

R.A. 9745

- "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."

R.A. 9745

- "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."

□ *"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."*

■ Sec. 16, R.A. 9745

Section 7. *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.**

List of Detention Centers and Data on Prisoners:

- The PNP, AFP and other law enforcement agencies 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 such as, among others, names, date of arrest and incarceration, and the crime or offense committed.

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- *This list shall be made available to the public at all times, with a copy of the complete list available at the respective national headquarters of the PNP and AFP.*

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- ❑ **A copy of the complete list will also be submitted by the PNP, AFP and all other law enforcement agencies to the CHR [to be periodically updated within the first 5 days of every month at the minimum].**

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- **Every regional office of the PNP... also maintain a similar list for all detainees and detention facilities within their respective areas, and shall make the same available to the public at all times at their respective regional headquarters, and submit a copy, updated in the same manner, to the respective CHR regional offices.**

Section 12. *Right to Physical, Medical and Psychological Examination:*

- **Before and after interrogation,** every person arrested, detained or under custodial investigation shall have the **right to be informed of his/her right to demand physical examination by an independent and competent doctor of his/her own choice.**

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- If such person cannot afford the services of his/her own doctor, he/she shall be provided by the State with a competent and independent doctor to conduct physical examination.

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- The State shall endeavor to provide the victim with psychological evaluation if available under the circumstances. If the person arrested is a female, she shall be attended to preferably by a female doctor.

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- ❑ Any person arrested, detained or under custodial investigation, including his/her immediate family, shall have the right to immediate access to proper and adequate medical treatment.

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- The physical examination and/or psychological evaluation of the victim shall be contained in a medical report, duly signed by the attending physician, which shall include in detail his/her medical history and findings, and which shall be attached to the custodial investigation report. Such report shall be considered a public document.

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- Any person who does not wish to avail of the rights under this provision *may knowingly and voluntarily waive such rights in writing, executed in the presence and assistance of his/her counsel.*

Article 32, Civil Code



Article 32, Civil Code:

“Any public officer or employee, or any private individual who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

- ❑ (1) **Freedom of religion;**
- ❑ (2) **Freedom of speech;**
- ❑ (3) **Freedom to write for the press or to maintain a periodical publication;**
- ❑ (4) **Freedom from arbitrary or illegal detention;**

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- ❑ (5) Freedom of suffrage;
 - ❑ (6) The right against deprivation of property without due process of law;
 - ❑ (7) The right to a just compensation when private property is taken for public use;
 - ❑ (8) The right to the equal protection of the laws;
 - ❑ (9) The right to be secure in one's person, house, papers and effects against unreasonable searches and seizures;
 - ❑ (10) The liberty of abode and of changing the same;

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- ❑ (11) The privacy of communication and correspondence;
 - ❑ (12) The right to become a member of associations or societies for purposes not contrary to law;
 - ❑ (13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;
 - ❑ (14) The right to be free from involuntary servitude in any form;
 - ❑ (15) The right of the accused against excessive bail;

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- (16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf;

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- (17) Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;

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- (18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional;
 - (19) Freedom of access to the courts.

Article 32 also provides that:

- ❑ The aggrieved party has a right to commence an entirely separate and distinct civil action for damages and other relief.
- ❑ The civil action will proceed independently of any criminal prosecution and is proved by a preponderance of evidence.
- ❑ The indemnity will include moral damages.
- ❑ Exemplary damages may also be adjudicated.
- ❑ The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

Article 32 “fundamental to democracy” and a “fundamental innovation”

- The framers of the Civil Code described Article 32 as “*one of the fundamental articles introduced in the New Civil Code to implement democracy.*”
- The Supreme Court in one case declared that Article 32 was clearly intended to create a distinct cause of action for violations of constitutional rights, regardless of the defendant’s motive or intent. *This is a fundamental innovation in the Civil Code...xxx*

Article 32 and human rights

Article 32 is most appropriate for human rights cases because it was *intended precisely to protect individual rights*. It is also the *most advantageous* because--

- ❑ Article 32 does not recognize the defense of good faith or lack of malice; and
- ❑ Article 32 imposes liability not only on persons *directly* responsible for violating another's basic rights but also on anyone who *indirectly obstructs, defeats, violates or in any manner impedes or impairs* such rights.

Good faith not a defense.

“Public officials in the past have abused their powers on the pretext of justifiable motives or good faith in the performance of their duties. Precisely, the object of the Article is to put an end to official abuse by the plea of good faith.”

Persons indirectly responsible also liable.

- ▣ Article 32 imposes liability on anyone who “...*directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs*” the enumerated rights.
- ▣ This is where the concept of command responsibility comes in.

Aberca v. Ver, G.R. No. L-69866, 15 April 1988:

“[Under] Article 32 [of the Civil Code]...it is not the actor alone...who must answer for damages...[but also]...the person indirectly responsible...By this provision, the principle of accountability of public officials under the Constitution acquires added meaning and a larger dimension. No longer may a superior official relax his vigilance or abdicate his duty to supervise his subordinates, secure in the thought that he does not have to answer for their transgressions...”

Obra v. CA, G.R. No. 120852 October 28,
1999:

“...*Petitioner Dumpit claims* that unlike the superior officers in Aberca, he had no knowledge of the acts of his subordinates since they did not file an "after-incident report" which was the standard procedure in these cases. He claims that *all he did was to endorse the request to Major Densen*, the Intelligence Officer of RUC-1, to coordinate with the BMGS and implement the order accordingly.

“These contentions have no merit. It was sufficiently proved...that *the seizure of the truck was effected upon the orders of petitioner Dumpit, acting on the request of petitioner Obra.* Private respondents' witnesses testified that when they asked the military men who stopped them upon their entry to the "Mamakar" mining site, the soldiers told them that they were acting upon the orders of "the general in Camp Dangwa." Sgt. Morales even issued a certification that the truck was seized "as per orders." XXX

“It was clear from petitioner Obra's letter to petitioner Dumpit that assistance was sought for the seizure of private respondents' truck. Thus, when petitioner Dumpit endorsed the request to his subordinates for proper action, there could not have been any other foreseeable consequence but the eventual seizure of the truck.”

Domestic Remedies that Protect the Human Rights of Persons Deprived of Liberty:

- ❑ Writ of *habeas corpus*;
- ❑ Writ of injunction;
- ❑ Writ of *amparo*;
- ❑ Writ of *habeas data*.

International human rights instruments:

- **Universal Declaration of Human Rights (1948);**
- **International Covenant on Economic, Social and Cultural Rights (1976);**
- **International Covenant on Civil and Political Rights (1976);**
- **Declaration and Action Programme on the Establishment of a New International Economic Order (1974);**
- **Economic Rights and Duties of States (1974).**

The Universal Declaration of Human Rights

- ❑ **Not a treaty but a proclamation of basic rights and fundamental freedoms.**
- ❑ ***“The basic international statement of the inalienable and inviolable rights of all members of the human family.”***
- ❑ ***“The common standard of achievement for all peoples in all nations.”***
 - ❑ U.N. Human Rights Fact Sheet No. 7

The Universal Declaration of Human Rights

- **First time that all the States agreed, in a single document, on a comprehensive catalogue of the rights of the human person.**
- ***“In the United Nations, the Declaration has an authority surpassed only by the [U.N.] Charter.”***

The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR)

- ❑ **Treaties** -- binding on the States that have ratified them.
- ❑ Adopted by General Assembly in 1966; entered into force in 1976.
- ❑ The Philippines signed both Covenants in 1966; ratified the ICESCR on 1974 and the ICCPR on 1986, both without reservations.

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- **“Together with the Universal Declaration of Human Rights, the ICESCR, ICCPR and its Optional Protocols form the ‘International Bill of Human Rights.’”**

International Covenant on Economic, Social and Cultural Rights (1966)

- **Recognizes the following rights:**
 - **To work, to free choice of employment and to fair wages;**
 - **To form and join unions;**
 - **To social security and to adequate standards of living;**
 - **To freedom from hunger and to health; and**
 - **To education.**

International Covenant on Civil and Political Rights (1966)

- ❑ **Recognizes the following rights:**
 - **To life, liberty and security of person, including immunity from arbitrary arrest and retroactive sentences;**
 - **To privacy;**
 - **To be free from cruel, inhuman or degrading treatment and from torture and slavery;**
 - **To a fair trial;**
 - **To recognition as a person before the law;**

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- **To freedom of thought, conscience and religion;**
 - **To freedom of opinion and expression;**
 - **To liberty of movement, including the right to emigrate;**
 - **To peaceful assembly and freedom of association.**

Individuals may file complaints under the First Optional Protocol of the ICCPR:

- ❑ **Individuals may file, under the First Optional Protocol, complaints of human rights violations against States that have ratified the ICCPR.**
- ❑ **Complaints are filed with the Human Rights Committee.**

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- ❑ **The Philippines acceded to the First Optional Protocol in 1989.**
 - ❑ **It entered into force in November of that year.**


The Second Optional Protocol to the ICCPR:

- ❑ Aim is to abolish the death penalty.
- ❑ Only one reservation allowed:
 - *Time of war pursuant to a conviction for a most serious crime of a military nature committed in wartime.*
- ❑ Right to life is non-derogable.

Before I end...



“(S)tates have an obligation to organize their whole apparatus so that human rights may be adequately protected.”



Supreme Court annotation on the Writ of *Amparo*, citing decisions of the Inter-American Court of Human Rights