

FOURTEENTH CONGRESS OF THE REPUBLIC )  
 OF THE PHILIPPINES )  
 First Regular Session )

7 NOV 12 1975

SENATE  
 S. No. 1861

RECEIVED BY:




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Introduced by Senator Miriam Defensor Santiago

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#### EXPLANATORY NOTE


In the last century, millions of children, women, and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity. These include genocide, war crimes, and crimes against humanity which are defined as the systematic or widespread crimes directed against the civilian population and include such acts as mass rape, sexual slavery, torture, and enforced disappearances. The Philippines has suffered such atrocities in the course of a number of armed conflicts, both international and local. These grave crimes threaten the peace, security, and well-being of the international community, but sadly, only a handful of the crimes' perpetrators have ever been brought to justice by national courts. Although the Philippines has ratified several international humanitarian law treaties including the 1949 Geneva Conventions and Additional Protocol II, and numerous international human rights treaties, there is no municipal law defining and penalizing these serious crimes which would allow national courts to acquire criminal jurisdiction over these acts.

According to the International Committee of the Red Cross Advisory Service on International Humanitarian Law, "Criminal legislation is the most appropriate and effective means of dealing with all serious violations of international humanitarian law." States continue to bear the primary obligation to implement international humanitarian law, and prevent and punish violations of it. This bill seeks to fulfill that obligation.

This bill adopts the framework of international humanitarian law and international criminal law conventions in order to benefit from the progressive developments in the international sphere of law. By adopting the wording of these treaties, the Philippines can

refer to international jurisprudence in interpreting and applying particular provisions of the source international treaty.

Any development of higher international human rights standards should be welcomed as an impetus to improve Philippine human rights standards. Thus, this bill proposes the adoption of international principles of criminal responsibility and proposes the operationalization of universal jurisdiction. By providing all national courts with universal jurisdiction over grave crimes under international law, an integrated system of investigation and prosecution of crimes under international law will be established. This will help to eventually eliminate safe havens for the perpetrators and end impunity.

  
MIRIAM DEFENSOR SANTIAGO

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AN ACT  
DEFINING AND PENALIZING CRIMES AGAINST INTERNATIONAL  
HUMANITARIAN LAW AND OTHER SERIOUS INTERNATIONAL CRIMES,  
ADOPTING CORRESPONDING PRINCIPLES OF CRIMINAL RESPONSIBILITY,  
APPLYING UNIVERSAL JURISDICTION,  
AND DESIGNATING SPECIAL COURTS

1 *Be it enacted by the-Senate and the House of Representatives of the Philippines in*  
2 *Congress assembled:*

3 PART 1. INTRODUCTORY PROVISIONS

4 ARTICLE 1  
5 Short Title

6 This Act shall be known as the "Philippine Statute on Crimes Against  
7 International Humanitarian Law."

8 ARTICLE 2  
9 Declaration of Principles and State Policies

10 (A) The Philippines renounces war as an instrument of national policy, adopts the  
11 generally accepted principles of international law as part of the law of the land, and  
12 adheres to a policy of peace, equality, justice, freedom, cooperation, and amity with all  
13 nations.

14 (B) The State values the dignity of every human person and guarantees full  
15 respect for human rights.

16 (C) The principles, rules and regulations of The Hague Conventions and the  
17 Geneva Conventions on warfare and international humanitarian law form part of the law  
18 of our nation.

19 (D) The most serious crimes of concern to the international community as a whole  
20 must not go unpunished and their effective prosecution must be ensured by taking

1 • measures at the national level, in order to put an end to impunity of the perpetrators of  
2 these crimes and thus contribute to the prevention of such crimes, it being the duty of  
3 every State to exercise its criminal jurisdiction over those responsible for international  
4 crimes.

5 (E) The State shall guarantee to persons suspected or accused of grave crimes  
6 under international law all rights necessary to ensure that their trials will be fair and  
7 prompt in strict accordance with international law and standards for fair trials. It shall  
8 also protect victims, witnesses and their families, and provide appropriate redress to  
9 victims and their families.

## 10 PART 2. THE MOST SERIOUS CRIMES OF INTERNATIONAL CONCERN

### 11 ARTICLE 3 12 Genocide

13 The international crime of genocide shall be punishable under this Statute. For the  
14 purpose of this Statute, “genocide” means any of the following acts committed with  
15 intent to destroy, in whole or in part, a national, ethnical, racial, religious, political, social  
16 or any similar stable and permanent group, such as:

17 (A) Killing members of the group;

18 (B) Causing serious bodily or mental harm to members of the group;

19 (C) Deliberately inflicting on the group conditions of life calculated to bring about  
20 its physical destruction in whole or in part;

21 (D) Imposing measures intended to prevent births within the group;

22 (E) Forcibly transferring children of the group to another group.

### 23 ARTICLE 4 24 Crimes Against Humanity

25 (A) Crimes against humanity shall be punishable under this Statute. For the  
26 purpose of this Statute, “crimes against humanity” means any of the following acts when  
27 committed as part of a widespread or systematic attack directed against any civilian  
28 population, with knowledge of the attack:

29 (1) Murder;

- 1 (2) Extermination;
- 2 (3) Enslavement;
- 3 (4) Deportation or forcible transfer of population;
- 4 (5) Imprisonment or other severe deprivation of physical liberty in  
5 violation of fundamental rules of international law;
- 6 (6) Torture;
- 7 (7) Rape, sexual slavery, enforced prostitution, forced pregnancy,  
8 enforced sterilization, or any other form of sexual violence of  
9 comparable gravity;
- 10 (8) Persecution against any identifiable group or collectively on political,  
11 racial, national, ethnic, cultural, religious, gender as defined in  
12 paragraph (C), or other grounds that are universally recognized as  
13 impermissible under international law, in connection with any act  
14 referred to in this paragraph or any crime within the jurisdiction of the  
15 Court;
- 16 (9) Enforced disappearance of persons;
- 17 (10) The crime of apartheid;
- 18 (11) Other inhumane acts of similar character intentionally causing  
19 great suffering, or serious injury to body or to mental or physical  
20 health.

21 (B) For the purpose of paragraph (A):

- 22 (1) "Attack directed against any civilian population" means a course of  
23 conduct involving the multiple commission of acts referred to in  
24 paragraph (A) against any civilian population, pursuant to or in  
25 furtherance of a State or organizational policy to commit such attack;
- 26 (2) "Extermination" includes the intentional infliction of conditions of  
27 life, *inter alia* the deprivation of access to food and medicine,  
28 calculated to bring about the destruction of part of a population;

1 (3) "Enslavement" means the exercise of any or all of the powers  
2 attaching to the right of ownership over a person and includes the  
3 exercise of such power in the course of trafficking in persons, in  
4 particular women and children;

5 (4) "Deportation or forcible transfer of population" means forced  
6 displacement of the persons concerned by expulsion or other coercive  
7 acts from the area in which they are lawfully present, without grounds  
8 permitted under international law;

9 (5) "Torture" means the intentional infliction of severe pain or suffering,  
10 whether physical or mental, upon a person in the custody or under pain  
11 or suffering arising only from, inherent in or incidental to, lawful  
12 sanctions;

13 (6) "Forced pregnancy" means the unlawful confinement of a woman  
14 forcibly made pregnant, with the intent of affecting the ethnic  
15 composition of any population or carrying out other grave violations of  
16 international law. This definition shall not in any way be interpreted as  
17 affecting national laws relating to pregnancy;

18 (7) "Persecution" means the intentional and severe deprivation of  
19 fundamental rights contrary to international law by reason of the  
20 identity of the group or collectivity;

21 (8) "The crime of apartheid" means inhumane acts of a character similar  
22 to those referred to in paragraph (A), committed in the context of an  
23 institutionalized regime of systematic oppression and domination by  
24 one racial group over any other racial group or groups and committed  
25 with the intention of maintaining that regime;

26 (9) "Enforced disappearance of persons" means the arrest, detention, or  
27 abduction of persons by, or with the authorization, support or  
28 acquiescence of, a State or a political organization, followed by a  
29 refusal to acknowledge that deprivation of freedom or to give

1 information on the fate or whereabouts of those persons, with the  
2 intention of removing them from the protection of the law for a  
3 prolonged period of time.

4 (C) For the purpose of this Statute, it is understood that the term “gender” refers  
5 to the two sexes, male and female, and also to those of gay, lesbian, and other sexual  
6 orientations, within the context of society. The term “gender” does not indicate any  
7 meaning different from the above.

8 ARTICLE 5  
9 War crimes

10 (A) War crimes shall be punishable under this statute.

11 (B) For the purpose of this Statute, “war crimes” means:

12 (1) Grave breaches of the Geneva Conventions of 12 August 1949, namely,  
13 any of the following acts against persons or property protected under the  
14 provisions of the relevant Geneva Convention:

15 (a) willful killing;

16 (b) torture or inhuman treatment, including biological experiments;

17 (c) willfully causing great suffering, or serious injury to body or health;

18 (d) extensive destruction and appropriation of property, not justified by  
19 military necessity and carried out unlawfully and wantonly;

20 (e) compelling a prisoner of war or other protected person of the rights of  
21 fair and regular trial;

22 (f) willfully depriving a prisoner of war or other protected person of the  
23 rights of fair and regular trial;

24 (g) unlawful deportation or transfer or unlawful confinement;

25 (h) taking of hostages.

26 (2) Other serious violations of the laws and customs applicable in  
27 international armed conflict, within the established framework of  
28 international law, namely, any of the following acts:

- 1 (a) intentionally directing attacks against the civilian population as such or  
2 against individual civilians not taking part in hostilities;
- 3 (b) intentionally directing attacks against civilian objects, that is, objects  
4 which are not military objectives;
- 5 (c) intentionally directing attacks against personnel, installations, material,  
6 units or vehicles involved in a humanitarian assistance or  
7 peacekeeping mission in accordance with the Charter of the United  
8 Nations, as long as they are entitled to the protection given to civilians  
9 or civilian objects under the international law of armed conflict;
- 10 (d) intentionally launching an attack in the knowledge that such attack will  
11 cause incidental loss of life or injury to civilians or damage to civilian  
12 objects or widespread, long-term and severe damage to the natural  
13 environment which would be clearly excessive in relation to the  
14 concrete and direct overall military advantage anticipated;
- 15 (e) attacking or bombarding, by whatever means, towns, villages,  
16 dwellings or buildings which are undefended and which are not military  
17 objectives;
- 18 (f) killing or wounding a combatant who, having laid down his arms or no  
19 longer having means of defense, has surrendered at discretion;
- 20 (g) making improper or perfidious use of a flag of truce, of the flag or of  
21 the military insignia or uniform of the enemy or of the United Nations,  
22 as well as of the distinctive emblems of the Geneva Conventions,  
23 resulting in death, serious personal injury or capture;
- 24 (h) the transfer, directly or indirectly, by the Occupying Powers of parts of  
25 its own civilian population into the territory it occupies, or the  
26 deportation or transfer of all of the parts of the population of the  
27 occupied territory within or outside this territory;
- 28 (i) intentionally directing attacks against buildings dedicated to religion,  
29 education, art, science, or charitable purposes, historic monuments,



1 hospitals and places where the sick and wounded are collected,  
2 provided they are not military objectives;

3 (j) subjecting persons who are in the power of an adverse party to physical  
4 mutilation, or to medical or scientific experiments of any kind, or to  
5 removal of tissue or organs for transplantation, which are neither  
6 justified by the medical, dental or hospital treatment of the person  
7 concerned nor carried out in his or her interest, and which caused death  
8 to or seriously endanger the health of such person or persons;

9 (k) killing or wounding treacherously individuals belonging to the hostile  
10 nation or army;

11 (l) declaring that no quarter will be given;

12 (m) destroying or seizing the enemy's property unless such destruction or  
13 seizure be imperatively demanded by the necessities of war;

14 (n) declaring abolished, suspended or inadmissible in a court of law the  
15 rights and actions of the nationals of the hostile party;

16 (o) compelling the nationals of the hostile party to take part in the  
17 operations of war directed against their own country, even if they were  
18 in the belligerent's service before the commencement of the war;

19 (p) pillaging a town or place, even when taken by assault;

20 (q) employing poison or poisoned weapons;

21 (r) employing asphyxiating, poisonous or other gases, and all analogous  
22 liquids, materials or devices;

23 (s) employing bullets which expand or flatten easily in the human body,  
24 such as bullets with a hard envelope which does not entirely cover the  
25 core or is pierced with incisions;

26 (t) employing weapons, projectiles and material and methods of warfare  
27 which are of a nature to cause superfluous injury or unnecessary  
28 suffering or which are inherently indiscriminate in violation of the  
29 international law of armed conflict, provided that such weapons,

1 projectiles and materials and methods of warfare are the subject of a  
2 comprehensive prohibition and are included in an annex to this Statute;

3 (u) committing outrages upon personal dignity, in particular humiliating  
4 and degrading treatment;

5 (v) committing rape, sexual slavery, enforced prostitution, forced  
6 pregnancy, enforced sterilization, or any other form of sexual violence  
7 also constituting a grave breach of the Geneva Conventions;

8 (w) utilizing the presence of a civilian or other protected person to render  
9 certain points, areas or military forces immune from military  
10 operations;

11 (x) intentionally directing attacks against buildings, material, medical units  
12 and transport, and personnel using the distinctive emblems of the  
13 Geneva Conventions in conformity with international law;

14 (y) intentionally using starvation of civilians as a method of warfare by  
15 depriving them of objects indispensable to their survival, including  
16 willfully impeding relief supplies as provided for under the Geneva  
17 Conventions;

18 (z) conscripting or enlisting children under the age of eighteen years into  
19 the national armed forces or using them to participate actively in  
20 hostilities;

21 (aa) The following acts when committed willfully and in violation of the  
22 relevant provisions of the 1949 Geneva Conventions or the 1977  
23 Additional Protocol I:

24 (i) launching an attack against works or installations  
25 containing dangerous forces in the knowledge that such  
26 attack will cause excessive loss of life, injury to civilians or  
27 damage to civilian objects, and causing death or serious  
28 injury to body or health;

1 (ii) making non-defended localities and demilitarized zones the  
2 object of attack, and causing death or serious injury to body  
3 or health; and

4 (iii) unjustifiable delay in the repatriation of prisoners of war or  
5 civilians.

6 (3) In the case of an armed conflict not of an international character, serious  
7 violations of Article 3 common to the four Geneva Conventions of 12  
8 August 1949, namely, any of the following acts committed against  
9 persons taking no active part in the hostilities, including members of  
10 armed forces who have laid down their arms and those placed *hors de*  
11 *combat* by sickness, wounds, detention or any other cause:

12 (a) Violence to life and person, in particular murder of all kinds,  
13 mutilation, cruel treatment and torture;

14 (b) Committing outrages upon personal dignity, in particular humiliating  
15 and degrading treatment;

16 (c) Taking of hostages;

17 (d) The passing of sentences and the carrying out of executions without  
18 previous judgment pronounced by a regularly constituted court,  
19 affording all judicial guarantees which are generally recognized as  
20 indispensable.

21 (4) Paragraph (B)(3) applies to armed conflicts not of an international  
22 character and thus does not apply to situations of internal disturbances  
23 and tensions, such as riots, isolated and sporadic acts of violence or  
24 other acts of a similar nature.

25 (5) Other serious violations of the laws and customs applicable in armed  
26 conflicts not of an international character, within the established  
27 framework of international law, namely, any of the following acts:

28 (a) Intentionally directing attacks against the civilian population as such  
29 or against individual civilians not taking direct part in hostilities;

- 1 (b) Intentionally directing attacks against buildings, material, medical  
2 units and transport, and personnel using the distinctive emblems of  
3 the Geneva Conventions in conformity with international law;
- 4 (c) Intentionally directing attacks against personnel, installations,  
5 material units or vehicles involved in a humanitarian assistance or  
6 peacekeeping mission in accordance with the Charter of the United  
7 Nations, as long as they are entitled to the protection given to  
8 civilians or civilian objects under the international law of armed  
9 conflict;
- 10 (d) Intentionally directing attacks against buildings dedicated to religion,  
11 education, art, science or charitable purposes, historic monuments,  
12 hospitals and places where the sick and wounded are collected,  
13 provided they are not military objectives;
- 14 (e) Pillaging a town or place, even when taken by assault;
- 15 (f) Committing rape, sexual slavery, enforced prostitution, forced  
16 pregnancy, as defined in Article 4, enforced sterilization, and any  
17 other form of sexual violence also constituting a serious violation of  
18 Article 3 common to the four Geneva Conventions;
- 19 (g) Conscripting or enlisting children under the age of 18 years into  
20 armed forces or groups or using them to participate actively in  
21 hostilities;
- 22 (h) Ordering the displacement of the civilian population for reasons  
23 related to the conflict, unless the security of the civilians involved or  
24 imperative military reasons so demand;
- 25 (i) Killing or wounding treacherously a combatant adversary;
- 26 (j) Declaring that no quarter will be given;
- 27 (k) Subjecting persons who are in the power of another party to the  
28 conflict to physical mutilation or to medical or scientific experiments  
29 of any kind which are neither justified by the medical, dental or

1 hospital treatment of the person concerned nor carried out in his or  
2 her interest, and which cause death to or seriously endanger the  
3 health of such person or persons;

4 (I) Destroying or seizing the property of an adversary unless such  
5 *destruction or seizure be imperatively demanded by the necessities*  
6 *of the conflict;*

7 (6) Paragraph (B)(5) applies to armed conflicts not of an international  
8 character, and thus, does not apply to situations of internal disturbances  
9 and tensions, such as riots, isolated and sporadic acts of violence or  
10 other acts of a similar nature. It applies to armed conflicts that take place  
11 in the territory of a State when there is protracted armed conflict  
12 between governmental authorities and organized armed groups or  
13 between such groups.

14 (C) Nothing in paragraph (B)(3) and (5) shall affect the responsibility of a  
15 Government to maintain or re-establish law and order in the State or to defend the unity  
16 and territorial integrity of the State, by all legitimate means.

17 ARTICLE 6  
18 Scope of Application

19 (A) Notwithstanding the categorization of war crimes and grave breaches into  
20 those applicable in international armed conflict and those applicable in internal armed  
21 conflict in this and other articles, there shall be no such distinction in scope of application  
22 *where acts committed in internal armed conflict would be qualified as war crimes and*  
23 *grave breaches if committed in international armed conflict.* This non-distinction in scope  
24 of application shall likewise apply to other articles like Article 7 and 8 derived from rules  
25 of international armed conflict.

26 (B) This statute shall cover Philippine forces on peace-keeping, combat or similar  
27 missions abroad with the same non-distinction in scope of application where acts  
28 committed in internal armed conflict would be qualified as war crimes and grave  
29 breaches if committed in international armed conflict.

1 PART 3. OTHER CRIMES AGAINST HUMANITARIAN LAW

2 ARTICLE 7

3 Misuse and Abuse of the Red Cross and Other Protective Emblems

4 In addition to the war crimes under Article 5, paragraph B(2)(g), the Court shall  
5 have jurisdiction over the following prohibitions on the misuse and abuse of the red cross  
6 and other protective emblems, in cases not resulting in death, serious physical injury or  
7 capture:

8 (A) The use by individuals, societies, firms or companies either public or private,  
9 other than those entitled thereto under the 1949 Geneva Conventions, of the emblem or  
10 the designation "Red Cross" or "Geneva Cross," or any sign or designation constituting  
11 an imitation thereof, whatever the object of such use, and irrespective of the date of its  
12 adoption, shall be prohibited at all times.

13 (B) It is in particular prohibited to display the said emblem or words on signs,  
14 posters, announcements, leaflets or commercial documents, or to affix them to goods or  
15 packaging, or to sell, offer for sale or place in circulation goods thus marked.

16 (C) By reason of the tribute paid to Switzerland by the adoption of the reversed  
17 Federal colors, and of the confusion which may arise between the arms of Switzerland  
18 and the distinctive emblem of the Convention, the use by private individuals, societies or  
19 firms, of the arms of the Swiss Confederation, of marks constituting and imitation  
20 thereof, whether as trademarks or commercial marks, or as parts of such marks, or for a  
21 purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss  
22 national sentiment, shall be prohibited at all times.

23 (D) It is prohibited to make use of the distinctive emblem of the United Nations,  
24 except as authorized by that Organization.

25 ARTICLE 8

26 Violations Against Cultural Property and Places of Worship

27 (A) In addition to the war crimes under Article 5, paragraph (B)(2)(i), the Court  
28 shall have jurisdiction over violations against cultural property and places of worship in  
29 the event of armed conflict, as follows:

1 (1) committing any acts of hostility directed against the historic monuments,  
2 works of art or places of worship which constitute the cultural or spiritual  
3 *heritage of peoples*;

4 (2) using such objects in support of the military effort; and

5 (3) making such objects the objects of reprisals.

6 (B) Punishable under this Statute, when committed willfully and in violation of  
7 the 1949 Geneva Conventions or the 1977 Additional Protocol I, is making the clearly-  
8 *recognized historic monuments, works of art or places of worship which constitute the*  
9 *cultural or spiritual heritage of peoples and to which special protection has been given by*  
10 *special arrangement, for example, within the framework of a competent international*  
11 *organization, the object of attack, causing as a result extensive destruction thereof, where*  
12 *there is no evidence of using such objects in support of the military effort by the adverse*  
13 *party, and when such historic monuments, works of art and places of worship are not*  
14 *located in the immediate proximity of military objectives;*

15 (C) Any person commits an offense within the meaning of the 1999 Second  
16 Protocol to the 1954 Hague Convention for the Protection of Cultural Property if that  
17 person intentionally and in violation of the Convention and this Protocol commits any of  
18 *the following acts, and which shall be punishable under this Statute:*

19 (1) *making cultural property under enhanced protection the object of attack;*

20 (2) *using cultural property under enhanced protection or its immediate*  
21 *surroundings in support of military action;*

22 (3) *extensive destruction or appropriation of cultural property protected under the*  
23 *Convention and this Protocol;*

#### 24 ARTICLE 9

#### 25 Violations Against the Involvement of Children in Armed Conflict

26 In addition to the war crimes under Article 5, paragraph (B)(2)(z) and (B)(5)(g),  
27 the Court shall have jurisdiction over violations against the involvement of children of  
28 children in armed conflict when committed during peace time. The armed forces of the

1 State as well as other armed groups shall not, under any circumstances, recruit or use in  
2 hostilities persons under the age of 18 years.

3 PART 4. PENALTIES

4 ARTICLE 10

5 *Range of Penalties for Crimes under Part 2*

6 The main penalty of imprisonment for crimes under Part 2 shall be for a specified  
7 number of years within a range from fifteen (15) to thirty (30) years. When justified by  
8 the extreme gravity of the crime and the individual circumstances of the convicted  
9 person, the Court may impose a term within a range from thirty (30) to forty (40) years.

10 ARTICLE 11

11 *Range of Penalties for Crimes under Part 3*

12 (A) The main penalty of imprisonment for crimes under Article 7 shall be for a  
13 specified number of years within a range from one (1) to five (5) years.

14 (B) The main penalty of imprisonment for crimes under Article 8 shall be for a  
15 specified number of years within a range from five (5) to fifteen (15) years.

16 (C) The main penalty of imprisonment for crimes under Article 9 shall be for a  
17 specified number of years within a range from one (1) to ten (10) years.

18 ARTICLE 12

19 *Additional Penalties*

20 In addition to imprisonment, the Philippine Court may order:

21 (A) a fine under the criteria provided for in the Rules of Procedure and Evidence;

22 and/ or

23 (B) a forfeiture of proceeds, property and assets derived directly or indirectly  
24 from that crime, without prejudice to the rights of bona fide third parties.

25 ARTICLE 13

26 *Determination of the Sentence*

27 (A) In determining the sentence, the Court shall, in accordance with the Rules of  
28 Procedure and Evidence, take into account such factors as the gravity of the crime and the  
29 individual circumstances of the convicted person.



1 (B) In imposing a sentence of imprisonment, the Court shall deduct the time, if  
2 any, previously spent in detention in accordance with an order of the Court. The Court  
3 may deduct any time otherwise spent in detention in connection with conduct underlying  
4 the crime.

5 (C) When a person has been convicted of more than one crime, the Court shall  
6 pronounce a sentence for each crime and a joint sentence specifying the total period of  
7 imprisonment. This period shall be no less than the highest individual sentence  
8 pronounced and shall not exceed forty (40) years.

9 PART 5. PRINCIPLES OF CRIMINAL RESPONSIBILITY

10 ARTICLE 14  
11 Elements of Crimes

12 Elements of Crimes of the Rome Statute of the International Criminal Court (ICC)  
13 shall assist Philippine Courts in the interpretation and application of Articles 3, 4 and 5.

14 ARTICLE 15  
15 Non-Diminution of International Law

16 Nothing in this Statute shall be interpreted as limiting or prejudicing in any way  
17 existing or developing rules of international law for purposes other than this Statute.

18 ARTICLE 16  
19 *Ne Bis In Idem*

20 (A) Except as provided herein, no person shall be tried before the Courts with  
21 respect to conduct which formed the basis of crimes for which the person has been  
22 convicted or acquitted by the Court.

23 (B) No person shall be tried by another court for a crime under Parts 2 and 3 of  
24 this Statute for which that person has already been convicted or acquitted by a Philippine  
25 Court.

26 (C) No person who has been tried by another court for conduct also proscribed  
27 under Parts 2 and 3 of this Statute shall be tried by a Philippine Court unless the  
28 proceedings in the other court:

- 1 (1) were for the purpose of shielding the person concerned from criminal  
2 responsibility for crimes within the jurisdiction of the Philippine Court; or  
3 (2) otherwise were not conducted independently or impartially in connection with  
4 the norms of due process recognized by international law and were conducted  
5 in a manner which, under the circumstances, was inconsistent with an intent to  
6 bring the person concerned to justice.

7 ARTICLE 17  
8 Applicable Law

9 (A) The Philippine Court shall apply:

- 10 (1) In the first place, this Statute and jurisprudence interpreting this Statute.  
11 (2) In the second place, where appropriate, applicable instruments and  
12 developments in international law enumerated in Article 36.  
13 (3) In the third place, by applicable principles and rules of customary  
14 international law, especially the established principles of international  
15 humanitarian law, international criminal law and human rights.  
16 (4) Failing that, general principles of law recognized by civilized nations,  
17 provided that those principles are not inconsistent with this Statute and with  
18 international law and internationally recognized norms and standards.

19 (B) The application and interpretation of law pursuant to this Article must be  
20 consistent with internationally recognized human rights, and be without any adverse  
21 distinction founded on grounds such as gender, as defined in Article 4, race, color,  
22 language, religion or belief, political or other opinion, national, ethnic or social origin,  
23 wealth, birth or other status.

24 ARTICLE 18  
25 *Nullum Crimen Sine Lege*

26 (A) A person shall not be criminally responsible under this Statute unless the  
27 conduct in question constitutes, at the time it takes place, a crime within the jurisdiction  
28 of the Philippine Court.

1 (B) The definition of a crime shall be strictly construed and shall not be extended  
2 by analogy. In case of ambiguity, the definition shall be interpreted in favor of the person  
3 being investigated, prosecuted or convicted.

4 (C) This Article shall not affect the characterization of any conduct as criminal  
5 under international law independently of this Statute.

6 ARTICLE 19  
7 *Nulla Poena Sine Lege*

8 A person convicted by the Philippine Court may be punished only in accordance  
9 with this Statute.

10 ARTICLE 20  
11 Change in the Law

12 In the event of a change on the law applicable to a given case prior to a final  
13 judgment, the law more favorable to the person being investigated, prosecuted or  
14 convicted shall apply.

15 ARTICLE 21  
Individual Criminal Responsibility

16 (A) The Philippine Court shall have jurisdiction over natural persons pursuant to  
17 this Statute.

18 (B) A person who commits a crime within the jurisdiction of the Court shall be  
19 individually responsible and liable for punishment in accordance with this Statute.

20 (C) In accordance with this Statute, a person shall be criminally responsible and  
21 liable for punishment for a crime within the jurisdiction of the Court if that person:

22 (1) commits such a crime, whether as an individual, jointly with another or  
23 through another person, regardless of whether that other person is criminally  
24 responsible;

25 (2) orders, solicits or induces the commission of such a crime which in fact occurs  
26 or is attempted;

27 (3) for the purpose of facilitating the commission of such a crime, aids, abets or  
28 otherwise assists in its commission or its attempted commission, including  
29 providing the means for its commission;

1 (4) in any other way contributes to the commission of such a crime by a group of  
2 persons acting with a common purpose. Such contribution shall be intentional  
3 and shall either:

4 (a) be made with the aim of furthering the criminal activity or criminal  
5 purpose of the group, where such activity or purpose involves the  
6 commission of a crime within the jurisdiction of the Court; or

7 (b) be made in the knowledge of the intention of the group to commit the  
8 crime;

9 (5) in respect of the crime of genocide, directly and publicly incites others to  
10 commit genocide;

11 (6) attempts to commit such a crime by taking action that commences its  
12 execution by means of a substantial step, but the crime does not occur because  
13 of circumstances independent of the person's intentions. However, a person  
14 who abandons the effort to commit the crime or otherwise prevents the  
15 completion of the crime shall not be liable for punishment under this Statute  
16 for the attempt to commit that crime if that person completely and voluntarily  
17 gave up the criminal purpose.

18 (D) No provision in this Statute relating to individual criminal responsibility shall  
19 affect the responsibility of States under international law.

## 20 ARTICLE 22

### 21 Exclusion of Jurisdiction over Persons under Eighteen

22 The Philippine Court shall have no jurisdiction over any person who was under  
23 the age of 18 at the time during the alleged commission of the crime.

## 24 ARTICLE 23

### 25 Irrelevance of Official Capacity

26 (A) This Statute shall apply equally to all persons without any distinction based  
27 on official capacity. In particular, official capacity as a Head of State or Government, a  
28 member of a Government or parliament, an elected representative or a government

1 official shall in no case exempt a person from criminal responsibility under this Statute,  
2 nor shall it, in and of itself, constitute a ground for reduction of sentence.

3 (B) Immunities or special procedural rules which may attach to the official  
4 capacity of a person, whether under national or international law, shall not bar the  
5 Philippine Court from exercising its jurisdiction over such a person.

6 ARTICLE 24  
7 Responsibility of Commanders and Other Superiors

8 In addition to other grounds of criminal responsibility under this Statute for  
9 crimes within the jurisdiction of the Philippine Court:

10 (A) A military commander or person effectively acting as a military commander  
11 shall be criminally responsible for crimes within the jurisdiction of the Court committed  
12 by forces under his effective command and control, or effective authority and control as  
13 the case may be, as a result of his failure to exercise control properly over such forces,  
14 where:

15 (1) That military commander or person either knew or, owing to the  
16 circumstances of the time, should have known that the forces were committing  
17 or about to commit such crimes; and

18 (2) That military commander or person failed to take all necessary and reasonable  
19 measures within his power to prevent or repress their commission or to  
20 submit the matter to the competent authorities for investigation and  
21 prosecution.

22 (B) With respect to superior and subordinate relationships not described in  
23 paragraph (A), a superior shall be criminally responsible for crimes within the  
24 jurisdiction of the Court committed by subordinates under his effective authority and  
25 control, as a result of his failure to exercise control properly over such subordinates,  
26 where:

27 (1) The superior either knew, or owing to the circumstances at the time, should  
28 have known that the subordinates were committing or about to commit such  
29 crimes; and

1 (2) The superior failed to take all necessary and reasonable measures within his  
2 power to prevent or repress their commission or to submit the matter to the  
3 competent authorities for investigation and prosecution.

4 ARTICLE 25  
5 Non-Applicability of Statute of Limitations

6 (A) The crimes within the jurisdiction of the Philippine Court shall not be subject  
7 to any Statute of Limitations.

8 (B) The prosecution of crimes pursuant to this Statute and the execution of  
9 sentences imposed on their account shall not be subject to any statute of limitations.

10 ARTICLE 26  
11 Mental Element

12 (A) Unless otherwise provided, a person shall be criminally responsible and liable  
13 for punishment for the crimes enumerated in this Statute only if the material elements are  
14 committed with intent and knowledge. A person has intent and knowledge where:

15 (1) *in relation to conduct, that person means to engage in that conduct;*

16 (2) *in relation to a consequence, that person means to cause that consequence or is*  
17 *aware that it will occur in the ordinary course of events.*

18 (B) Knowledge under this Article means awareness that a circumstance exists or a  
19 consequence will occur in the ordinary course of events.

20 ARTICLE 27  
21 Grounds for Excluding Criminal Responsibility

22 (A) In addition to other grounds for excluding criminal liability provided for in  
23 this Statute, a person shall not be criminally responsible if, at the time of that person's  
24 conduct:

25 (1) the person suffers from mental disease or defect that destroys that person's  
26 capacity to appreciate the unlawfulness or nature of his conduct, or capacity to  
27 control his conduct to conform to the requirements of law;

28 (2) the person is in a state of intoxication that destroys the person's capacity to  
29 appreciate the unlawfulness or nature of his conduct, or capacity to control his

1           conduct to conform to the requirements of law, unless the person has become  
2           voluntarily intoxicated under such circumstances that the person knew, or  
3           disregarded the risk, that, as a result of the intoxication, he was likely to  
4           engage in a conduct constituting a crime within the jurisdiction of the  
5           Philippine Court;

6           (3) the person acts reasonably to defend himself or another person or, in the case  
7           of war crimes, property which is essential to the survival of the person or  
8           another person or property which is essential for accomplishing a military  
9           mission, against an imminent and unlawful use of force in a manner  
10          disproportionate to the degree of danger to the person or the other person or  
11          property protected. The fact that the person was involved in a defensive  
12          operation conducted by forces shall not in itself, constitute a ground for  
13          excluding criminal responsibility under this subparagraph; or

14          (4) The conduct which is alleged to constitute a crime within this Statute has been  
15          caused by duress resulting from a threat of imminent death or of continuing or  
16          imminent serious bodily harm against that person or another person, and the  
17          person acts necessarily and reasonably to avoid this threat. Provided that the  
18          person does not intend to cause greater harm than the one sought to be  
19          avoided. Such a threat may either be:

20               (a) made by other persons; or

21               (b) constituted by other circumstances beyond the person's control.

22          (5) The Court shall determine the applicability of the grounds for exclusion of  
23          criminal responsibility under this Statute to the case before it.

24          (C) At trial, the Court may consider a ground for excluding criminal responsibility  
25          other than those enumerated herein where such a ground is derived from the applicable  
26          law under Article 17 herein. The procedure relating to the consideration of such a ground  
27          shall be provided for in the Rules of Procedure and Evidence.

1 ARTICLE 28  
2 Mistake of Fact or Mistake of Law

3 (A) A mistake of fact shall be a ground for excluding criminal responsibility only  
4 if it negates the mental element required by the crime.

5 (B) A mistake of law as to whether a particular type of conduct is a crime within  
6 the jurisdiction of the Philippine Court shall not be a ground for excluding criminal  
7 responsibility. A mistake of law may, however, be a ground for excluding criminal  
8 responsibility if it negates the mental element required by such a crime, or as provided in  
9 Article 29.

10 ARTICLE 29  
11 Superior Orders

12 (A) The fact that a crime within the jurisdiction of the Philippine Court has been  
13 committed by a person pursuant to an order of a Government or of a superior, whether  
14 military or civilian, shall not relieve that person of criminal responsibility unless the order  
15 was not manifestly unlawful.

16 (B) For the purpose of this Article, orders to commit genocide or crimes against  
17 humanity are manifestly unlawful.

18 PART 6. FAIR TRIAL GUARANTEES

19 ARTICLE 30  
20 Rights of Persons During an Investigation

21 (A) With respect to an investigation under this Statute, a person:

22 (1) shall not be compelled to incriminate himself to confess his guilt;

23 (2) shall not be subjected to any form of coercion, duress of threat, to torture or to  
24 any form of cruel, inhuman, or degrading treatment or punishment;

25 (3) shall, if questioned in a language other than a language the person fully  
26 understands and speaks, have, free of any cost, the assistance of a competent  
27 interpreter and such translations as are necessary to meet the requirements of  
28 fairness; and



1 (4) shall not be subjected to arbitrary arrest and detention, and shall not be  
2 deprived of his liberty except on such grounds and in accordance with such  
3 procedures which shall be established under this Statute.

4 (B) Where there are grounds to believe that a person has committed a crime  
5 within the jurisdiction of the Philippine Court and that a person is about to be questioned  
6 either by the Prosecutor, or by national authorities, that person shall also have the  
7 following rights of which he shall be informed prior to being questioned:

8 (1) To be informed, prior to being questioned, that there are grounds to believe  
9 that he committed a crime within the jurisdiction of the Court;

10 (2) To remain silent, without such silence being a consideration in the  
11 determination of guilt or innocence;

12 (3) To have legal assistance of the person's choosing or, if the person does not  
13 have legal assistance, to have legal assistance assigned to him, in any case  
14 where the interests of justice so require, and without payment by the person in  
15 any such case if the person does not have sufficient means to pay for it; and

16 (4) To be questioned in the presence of counsel unless that person has voluntarily  
17 waived his right to counsel.

18 ARTICLE 31  
19 Presumption of Innocence

20 (A) Everyone shall be presumed innocent until proven guilty before the Philippine  
21 Court in accordance with the applicable law.

22 (B) The onus is on the Prosecutor to prove the guilt of the accused.

23 (C) In order to convict the accused, the Court must be convinced of the guilt of  
24 the accused beyond reasonable doubt.

25 ARTICLE 32  
26 Rights of the Accused

27 (A) In the determination of any charge, the accused shall be entitled to a public  
28 hearing, having regard to the provisions of this Statute, to a fair hearing conducted  
29 impartially, and to the following minimum guarantees, in full equality:

- 1 (1) To be informed promptly and in detail, the nature, cause and content of the  
2 charge, in a language which the accused fully understands and speaks;
- 3 (2) To have adequate time and facilities for the preparation of the defense and to  
4 communicate freely with counsel of the accused's choosing in confidence;
- 5 (3) To be tried without undue delay;
- 6 (4) Subject to removal from the courtroom if the accused continues to disrupt the  
7 trial, to be present at the trial, to conduct the defense in person or through  
8 legal assistance assigned by the court in any case where the interests of justice  
9 so require, and without payment if the accused lack sufficient means to pay  
10 for it;
- 11 (5) To examine, or have examined, the witness on his behalf under the same  
12 conditions as witnesses against him. The accused shall also be entitled to raise  
13 defenses and to present other evidence admissible under this Statute;
- 14 (6) To have, free of any cost, the assistance of a competent interpreter and such  
15 translations as are necessary to meet the requirements of fairness, if any of the  
16 proceedings of or documents presented to the Philippine Court are not in a  
17 language which the accused fully understands and speaks;
- 18 (7) Not to be compelled to testify or to confess guilt and to remain silent, without  
19 such silence being a consideration in the determination of guilt or innocence;
- 20 (8) To make an unsworn oral or written statement in his defense; and
- 21 (9) Not to have imposed on him any reversal of the burden of proof or any onus  
22 of rebuttal.

23 (B) In addition to any other disclosure provided for in this Statute, the Prosecutor  
24 shall, as soon as practicable, disclose to the defense evidence in the Prosecutor's  
25 possession or control which he believes shows or tends to show the innocence of the  
26 accused or to mitigate the guilt of the accused, or which may affect the credibility of  
27 prosecution evidence. In case of doubt, the Court shall decide.

ARTICLE 33

Prosecution of the Victims and Witnesses

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3 (A) The Philippine Court shall take appropriate measures to protect the safety,  
4 physical and psychological well-being, dignity and privacy of victims and witnesses. In  
5 so doing, the Court shall have regard to all relevant factors, including age, gender, as  
6 defined in Article 4, health, and the nature of the crime, in particular, but not limited to,  
7 where the crime involves sexual or gender violence or violence against children. The  
8 Prosecution shall take such measures particularly during the investigation and  
9 prosecution of such crimes. These measures shall not be prejudicial to or inconsistent  
10 with the rights of the accused and a fair and impartial trial.

11 (B) As an exception to the principle of public hearings provided for in Article 33,  
12 the Court may, to protect the victims and witnesses or an accused, conduct any part of the  
13 proceedings in camera or allow the presentation of evidence by electronic or other special  
14 means. In particular, such measures shall be implemented in the case of a victim of  
15 sexual violence or a child who is a victim or is a witness, unless otherwise ordered by the  
16 Court, having regard to all the circumstances, particularly the views of the victim or  
17 witness.

18 (C) Where the personal interests of the victims are affected, the Court shall permit  
19 their views and concerns to be presented and considered at stages of the proceedings  
20 determined to be appropriate by the Court in a manner which is not prejudicial to or  
21 inconsistent with the rights of the accused and a fair and impartial trial. Such views and  
22 concerns may be presented by the legal representatives of the victims where the courts  
23 consider it appropriate in accordance with the respective Rules of Procedure and  
24 Evidence.

25 (D) Where the disclosure of evidence or information pursuant to this Statute may  
26 lead to the grave endangerment of the security of a witness or his family, the Prosecution  
27 may, for the purposes of any proceedings conducted prior to the commencement of the  
28 trial, withhold such evidence or information and instead submit a summary thereof. Such

1 measures shall be exercised in a manner which is not prejudicial to or inconsistent with  
2 the rights of the accused and a fair and impartial trial.

3 ARTICLE 34  
4 Reparations to Victims

5 (A) The Philippine Court shall follow principles relating to reparations to, or in  
6 respect of, victims, including restitution, compensation, and rehabilitation. On this basis,  
7 in its decision the Court may, either upon request or on its own motion in exceptional  
8 circumstances, determine the scope and extent of any damage, loss and injury to, or with  
9 respect to, victims and will state the principles on which it is acting.

10 (B) The Court may make an order directly against a convicted person specifying  
11 appropriate reparations to, or in respect of, victims, including restitution, compensation  
12 and rehabilitation.

13 (C) Before making an order under this Article, the Court may invite and shall take  
14 account of representations from or on behalf of the convicted persons, victims or other  
15 interested persons.

16 (D) Nothing in this Article shall be interpreted as prejudicing the rights of victims  
17 under national or international law.

18 PART 7. RELATIONSHIP WITH OTHER LAWS

19 ARTICLE 35  
20 Relationship with the Constitution

21 This Statute shall supplement the Constitution, especially its Bill of Rights, its relevant  
22 provisions on international law and human rights, and jurisprudence thereon.

23 ARTICLE 36  
24 Relationship with International Law

25 In the application and interpretation of this Statute, the Philippine Court shall be  
26 guided by the following instruments and developments in international law:

27 (A) The 1998 Rome Statute on the International Criminal Court, its Elements of  
28 Crimes and its Rules of Procedure and Evidence;

1 (B) The 1949 Geneva Conventions I-IV and their 1977 Additional Protocols I &  
2 II;

3 (C) The 1954 Hague Convention for the Protection of Cultural Property and its  
4 1999 Second Protocol;

5 (D) The 2000 Optional Protocol to the 1989 Convention on the Rights of the  
6 Child;

7 (E) International criminal law jurisprudence from the international criminal  
8 tribunals, especially as may come from the International Criminal Court in The Hague;

9 (F) Relevant and applicable international human rights instruments and  
10 jurisprudence, mainly from the United Nations system; and

11 (G) Teachings of the most highly qualified publicists and authoritative  
12 commentaries on the foregoing sources as subsidiary means for the determination of rules  
13 of law.

14 ARTICLE 37  
15 Relationship with the Revised Penal Code  
16 And Other Relevant Laws

17 The Revised Penal Code shall be suppletory to this Statute for purposes of  
18 criminal investigation, prosecution and trial of crimes under this Statute. For these  
19 purposes, in case of conflict, this Statute shall prevail over the Revised Penal Code. The  
20 same relationship with this Statute applies to the Civil Code of the Philippines and special  
21 laws of a criminal and/ or civil nature, such as on matters of civil liability.

22 ARTICLE 38  
23 Relationship with the Revised Rules on Criminal Procedure

24 The Revised Rules of Criminal Procedure shall be suppletory to this Statute, to  
25 the relevant and applicable provisions of the Rome Statute of the International Criminal  
26 Court and its Rules of Procedure and Evidence, and to additional special rules of criminal  
27 procedure as may be formulated by the Supreme Court for the investigation, prosecution  
28 and trial of crimes under this Statute.

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ARTICLE 39  
Relationship with Military Law

The application of military law to persons subject to military law for acts which may be constitutive of crimes under this Statute shall be without prejudice to the investigation, prosecution and trial of said persons for crimes under this Statute.

PART 8. JURISDICTION AND COURTS

ARTICLE 40  
Universal Jurisdiction

(A) The Statute shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of the crimes defined and penalized in this Statute, no matter where these crimes occurred, even if they took place in the territory of another state, involved suspects or victims who are not nationals or residents of the State, or posed no direct threat to the State's own particular security interests.

(B) However, in any of the latter cases, i.e. if the crimes took place in the territory of another state, involved suspects or victims who are not nationals or residents of the State, or posed no direct threat to the State's own particular security interests, the relevant Philippine national authorities may dispense with prosecuting a crime punishable under this Statute and in lieu thereof transfer suspected or accused persons in the Philippines to the appropriate international court, if any, or to another state which may prosecute or be prosecuting the crime due to some link with that state.

ARTICLE 41  
Philippine Courts, Prosecutors, and Investigators

(A) The Regional Trial Courts of the Philippines shall have original and exclusive jurisdiction over the international crimes punishable under this Statute. Their judgments may be appealed or elevated to the Court of Appeals and to the Supreme Court under the existing system of jurisdiction of Philippine courts.

(B) The appropriate instrumentalities of the State, namely the Supreme Court, the Department of Justice, and the Commission on Human Rights, shall respectively designate special courts, prosecutors and investigators to investigate, prosecute and try, as

1 the case may be, crimes under this Statute. The special courts refer to designated  
2 branches of the Regional Trial Court and designated divisions of the Court of Appeals.

3 PART 9. FINAL PROVISIONS

4 ARTICLE 42  
5 Repealing Clause

6 All laws, presidential decrees and issuances, executive orders, rules and  
7 regulations or parts thereof inconsistent with the provisions of this Statute are hereby  
8 repealed and modified accordingly.

9 ARTICLE 43  
10 Separability Clause

11 If, for any reason, any part or provision of this Statute shall be held to be  
12 unconstitutional or invalid, other parts or provisions hereof which are not affected  
13 thereby shall continue to be in full force and effect.

14 ARTICLE 44  
15 Effectivity Clause

16 This Statute shall take effect fifteen (15) days after its publication in at least two  
17 national newspapers of general circulation. This publication shall not be later than seven  
18 (7) days after the approval hereof.

19 Approved,