

A faint, stylized illustration of the scales of justice is centered in the background of the top half of the cover. The scales are depicted with a central fulcrum and two pans hanging from a curved beam, all rendered in a light, sketchy style against the dark background.

R.A. No. 9851

**A breakthrough law for
International
Humanitarian Law
enforcement
in the Philippines**

With the complete text of R.A. No. 9851
- Philippine Act on Crimes Against International
Humanitarian Law, Genocide, and Other
Crimes Against Humanity



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**A breakthrough law for
International Humanitarian Law
enforcement in the Philippines**



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R.A. No. 9851: a breakthrough law for IHL enforcement in the Philippines

By Atty. Soliman M. Santos, Jr.

Republic Act No. 9851, the new "Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity" signed into law on 11 December 2009, is a breakthrough law for the enforcement of international humanitarian law (IHL) as well as human rights in the Philippines. For the first time here, a national statute defines and penalizes "the most serious crimes of concern to the international community as a whole" – namely, war crimes, genocide, and crimes against humanity. This could be even more significant than R.A. No. 9745, the "Anti-Torture Act of 2009" signed into law about a month earlier on 10 November 2009. To the credit of the 14th Congress and of the Arroyo administration, they have delivered this significant one-two punch for human rights and IHL, and possibly a few more good Pacquiao-like punch combinations, during the "last round" of this Congress and administration before bowing out in mid-2010. But credit is also due to the various human rights and IHL advocates in civil society and in government who have worked long and hard for these and related legislation as well as administrative measures.

This new law will enable the Philippines to prosecute the international crimes itself, contribute to an effective international criminal justice regime, strengthen its national criminal justice system, and generally bring its national law into conformity with international standards as well as up-to-date with important developments in international law. It can no longer be said that the Philippines is "unable" to prosecute war crimes, genocide, and crimes against humanity for the simple reason that there is no Philippine law defining and penalizing these serious international crimes as such. Such inability could even justify the "complementary" (i.e. secondary) jurisdiction of the International Criminal Court (ICC) over such crimes. It has been said that "Criminal legislation is the most appropriate and effective means of dealing with all serious violations of IHL." But, as we shall explain further below, R.A. No. 9851 is a **special law, not an amendment to the Revised Penal Code**, because this law is **not simply criminal law but also international criminal law, international humanitarian law and international human rights law**. In practical terms, something like the "Ampatuan Massacre" can now be prosecuted as a crime against humanity rather than as a common crime of multiple murder.

R.A. No. 9851 also comes at a time when it can provide some teeth to a new effort for a civilian protection component in the context of the peace process, particularly between the Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF). As a law which enforces both human rights and IHL, it can also co-relate on a parallel basis with the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) between the GRP and the National Democratic Front of the Philippines (NDFP), with more reason as there has been no standing ceasefire between them and as their Joint Monitoring Committee (JMC) mechanism has been perennially stalemated. The fact that R.A. No. 9851 is heavily informed by human rights and IHL, even if it is still a national law, could make those major rebel groups look at or treat it somewhat differently from the usual repressive laws and decrees of the state that they rail against. On another level, R.A. No. 9851 might also contribute to the proper balance between peace and justice, which should not be an either-or proposition.

Key Features and War Crimes

The most important features of R.A. No. 9851 might be outlined as follows:

- Defining and penalizing war crimes, genocide, and "other crimes against humanity."
- Applicability to all individual perpetrators, whether state agents or non-state actors (unlike the Anti-Torture Act which is limited to state-agent perpetrators).
- Applying certain international criminal law principles of irrelevance of official capacity (for immunities), responsibility of superiors (i.e. command responsibility), unlawful superior orders, and non-prescription, among others.
- Instituting a form of universal jurisdiction, albeit qualified.
- Providing for international standards for protection of victims and witnesses, as well as reparations to the former.
- Express applicability of international law, including of specific international treaties.
- Providing for the designation of special courts, prosecutors and investigators, and their effective training in human rights, IHL and international criminal law.
- No requirement of implementing rules and regulations (unlike the Anti-Torture Act)

War crimes [Section 4] are serious violations of IHL or the laws and customs applicable in armed conflicts. These conflicts include armed hostilities between government military and police forces, on one hand, and rebel groups, on the other hand, as well as those between rebel groups, as has been experienced in the Philippines during the past four decades. In R.A. No. 9851, war crimes or "crimes against IHL" are clustered into three categories, as follows:

- a) In case of an international armed conflict (i.e. between or among states), grave breaches of the four Geneva Conventions of 12 August 1949, listing nine (9) acts committed against protected persons or property, as defined.
- b) In case of a non-international armed conflict, serious violations of common Article 3 of the same Geneva Conventions, listing four (4) acts committed against persons taking no active part in hostilities.
- c) Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law (but may be said to be applicable to both international and non-international armed conflicts, unless otherwise specified), listing twenty-five (25) acts, including two (2) specific to international armed conflict.

The minimum standard is that provided by the second category of war crimes, i.e. any of the following acts committed against persons taking no active part in hostilities:

- (1) Violence to life and person, in particular, willful killings of all kinds, mutilation, cruel treatment and torture;
- (2) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (3) Taking of hostages; and,
- (4) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

Some of these same or similar acts – like willful killing (which is consistently used in R.A. No. 9851 rather than murder), physical mutilation, inhuman treatment, torture, committing outrages upon personal dignity, in particular humiliating and degrading treatment, taking of hostages, and deprivation of the rights of fair and regular trial – are also listed under the first and/or third categories of war crimes. But the latter categories also list a greater number of distinct acts which constitute war crimes. Both the latter categories list forcible transfer of population, and ordering the displacement of the civilian population (which is relevant to **internal displacement**), as war crimes. The third category has an **expanded list of sexual offenses**, namely rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence, as war crimes. Incidentally, acts of willful killing, forcible transfer of population, torture, and the same sexual offenses also appear later in R.A. No. 9851 as part of “other crimes against humanity.”

Going back to the third category of war crimes in R.A. No. 9851, we find that **using children (persons under 18 years of age) to participate actively in hostilities is a war crime.** But when it comes to **recruiting children into armed forces or groups**, there is a discrepancy between the cut-off ages for government and dissident armed forces – 15 vs. 18 years of age, respectively. In other words, government armed forces cannot recruit children under 15 years of age (thus, 15-17 year-olds, legally still children, can be recruited), while dissident armed forces cannot recruit children under 18 years of age (thus, legally no children can be recruited); otherwise, such respective recruitment is a war crime. This appears to be a violation of the convention or tradition of reciprocity, as well as the customary IHL rule that children (not qualified as to whether under 15 or 18 years of age) must not be recruited into armed forces or armed groups (these must refer to state and non-state armed forces/groups, respectively). It also makes for a strange legal situation where rebel groups are held to a higher standard than government armed forces – by a national law that will be definitely harder to enforce with rebel groups outside the fold of the law than with government armed forces who are official agents of the law. There may be also a constitutional issue here of equal protection of the law for children, whether recruited by government or dissident armed forces.

Basically, war crimes are serious violations of the protection that should be accorded to civilians or non-combatants during armed conflict, as well as serious violations of the established limitations on the methods and means of warfare, for the benefit also of the combatants. Thus, under the third category of war crimes in R.A. No. 9851, we find these listed, among others:

- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities.
- Intentionally directing attacks against civilian objects, that is, objects which are not military objectives. (For example, houses, schools, churches, mosques, farms, cell sites, power transmission towers, public transport and other civilian infrastructure.)
- Launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct military advantage anticipated.

In terms of serious violations of the limitations of the methods (i.e. tactics) of warfare, the third category of war crimes in R.A. No. 9851 lists the following, among others:

- Killing, wounding or capturing an adversary by resort to perfidy (i.e. treachery or betrayal of confidence).
- Declaring that no quarter will be given (e.g. taking no survivors).

- Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols.

In terms of serious violations of the limitations of the means (i.e. weapons) of warfare, the third category of war crimes in R.A. No. 9851 has this indicative and non-exhaustive short list of prohibited means of warfare:

- (i) Poison or poisoned weapons;
- (ii) Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (iii) Bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which do not entirely cover the core or are pierced with incisions; and
- (iv) Weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict.

Unlike the first three items in this short list, the fourth and last item does not mention specific weapons and, for that matter, methods of warfare, but instead provides certain criteria about the weapons and methods the employment of which would constitute a war crime. For example, the criterion of "inherently indiscriminate" could be applied, among others, to **victim-activated anti-personnel landmines**, which are themselves totally banned under the 1997 Ottawa Treaty.

Genocide and "Other Crimes Against Humanity"

Genocide [Sec. 5] under R.A. No. 9851 means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, religious, social or any similar stable and permanent group as such:

- (1) Killing members of the group;
- (2) Causing serious bodily or mental harm to members of the group;
- (3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (4) Imposing measures intended to prevent births within the group;
- (5) Forcibly transferring children of the group to another group.

In the Philippine historical context of recent decades, genocide was an issue raised by the Moro National Liberation Front (MNLF) against the Marcos dictatorship. There is now in R.A. No. 9851 national legal basis to prosecute this issue as a crime. What remains to be established then is the factual basis, if any, for a case of genocide committed against the *Bangsamoro*.

“Other crimes against humanity” [Sec. 6] under R.A. No. 9851 means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Willful killing;
- (b) Extermination;
- (c) Enslavement;
- (d) Arbitrary deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime defined in this Act;
- (i) Enforced or involuntary disappearance of persons;
- (j) Apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Actually, this is more or less the established international legal definition of crimes against humanity, but R.A. No. 9851 uses the terminology “other crimes against humanity.” We can only surmise for now that Congress must have considered the preceding war crimes and genocide as also being “crimes against humanity” in a loose or generic sense. But crimes against humanity constitute a specific concept developed in customary international law, unlike war crimes and genocide that were largely developed through treaty international law (e.g. the 1907 Hague and 1949 Geneva Conventions, and the 1948 Genocide Convention). The key concept in crimes against humanity is the qualification “as part of a widespread or systematic attack directed against any civilian population.” In other words, it is not just the above-enumerated acts but such acts “as part of a widespread or systematic attack directed against any civilian population.”

An “attack directed against any civilian population” is defined [Sec. 3(e)] under R.A. No. 9851 as “a course of conduct involving the multiple commission of acts referred to in Section 6 of this Act against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.” Note “multiple commission of acts referred to” and “pursuant to or in furtherance of a State or organizational policy.” The latter clearly indicates that this could be perpetrated by a non-state armed group. And the attack must be “widespread or [NOT and] systematic” to make this a crime against humanity.

As already indicated early on above, something like the "Ampatuan Massacre" -- involving multiple willful killing as part of a systematic pre-planned attack directed by Ampatuan clan leaders (who were also public officials) against a group of civilians led by rival Mangudadatu clan members -- can be characterized as a crime against humanity.

Crimes against humanity, the legal definition of which is well-established and generally accepted, would actually also be a good fall back (repeat, just fall back) in the absence of a well-established and generally accepted legal definition of terrorism. The Philippines now has its first anti-terrorism law in R.A. No. 9372, the so-called "Human Security Act of 2007," but its definition of terrorism is questionable, as it is in fact being currently questioned in a constitutionality suit before the Supreme Court. One Senator had asked, however, that this anti-terrorism law be applied to the "Ampatuan Massacre." R.A. No. 9851 itself, which defines and penalizes "other crimes against humanity," cannot be applied to the "Ampatuan Massacre" which occurred before this new law took effect.

It is also clear that crimes against humanity and genocide have *no nexus (connection) with armed conflict*, unlike war crimes which have that context. Crimes against humanity and genocide, as with terrorism, can be committed during peace time, as well as during war time. When committed during war time, those three crimes can to some extent be framed and addressed by IHL; and when committed during peace time, by international human rights law. In fine, therefore, R.A. No. 9851 is a law for enforcement not only of IHL but also of human rights (even though, during its bill stage, it was popularly referred to as the "IHL Bill").

Torture and Enforced Disappearance, Perpetrators and Penalties

It will be noted that the specific act of torture is mentioned under war crimes and "other crimes against humanity" in R.A. No. 9851, while the specific act of enforced or involuntary disappearance of persons is mentioned under "other crimes against humanity" therein. Both acts are defined in this new law. Here "torture" is defined [Sec. 3(s)] as "the intentional infliction of severe pain or suffering, whether physical, mental, or psychological, upon a person in the custody or under the control of the accused." Quite significantly, unlike the definition of torture in the likewise new but slightly older R.A. No. 9745 ("Anti-Torture Act of 2009"), there are no qualifications as to perpetrator ("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") and as to purpose ("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"). Clearly, the definition of "torture"

in R.A. No. 9851 is of much wider application (including to non-state actors) than that in R.A. No. 9745.

Surely, this is a less than ideal situation of two Philippine statutes having two different definitions of torture, even if these are applied to two different situations: torture *per se* (apply R.A. No. 9745 and its definition) and torture as part of war crimes or “other crimes against humanity” (apply R.A. No. 9851 and its definition). Eventually, those definitions will have to be harmonized one way or the other. The “root cause” of this discrepancy lies in the definition models used by R.A. No. 9745 and by R.A. No. 9851, respectively, namely the different definitions of torture in the 1984 Convention Against Torture and in the 1998 Rome Statute of the International Criminal Court (ICC).

This kind of discrepancy could be “replayed” when it comes to still another new human rights and IHL-related law, that on **enforced disappearance**. In R.A. No. 9851, “enforced or involuntary disappearance of persons” is defined [Sec. 3(g)] as “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.” Note “State or a political organization,” with the latter clearly indicating that this could be perpetrated by a non-state armed group. This was modeled on the definition of “enforced disappearance of persons” in the aforesaid Rome Statute.

The pending bills in Congress for an “Anti-Enforced or Involuntary Disappearance Act,” however, invariably carry the qualification “committed by government authorities or by persons or groups of persons acting with the authorization, support or acquiescence of such person in authority” – in short, state agents. This is modeled on the definition of “enforced disappearance” in the 2006 International Convention for the Protection of all Persons from Enforced Disappearance. It remains to be seen how an “Anti-Enforced or Involuntary Disappearance Act” will take final shape in its definition of the crime, given the already existing definition in R.A. No. 9851.

It is clear that, for war crimes, genocide and “other crimes against humanity” under R.A. No. 9851, **the perpetrators who may be held accountable for these serious international crimes are not limited to state agents and may include non-state actors** – which is in accordance with the factual reality. Of course, liability is based on individual criminal responsibility [Sec. 8] of natural, not juridical, persons. But as we shall discuss shortly, there is also a form of command responsibility [Sec. 10]. We had also noted above the role of “State or organizational policy” when it comes to “other crimes against humanity” and of “a State or a political organization” when it comes to enforced or involuntary

disappearance of persons as part of "other crimes against humanity." In other words, there are also individual leaders or commanders, whether state or non-state, who would be responsible for certain policies or decisions that result in these crimes.

As for **penalties** [Sec. 7] for war crimes, genocide and "other crimes against humanity," R.A. No. 9851 provides the main penalty of imprisonment of *reclusion temporal* in its medium to maximum period (i.e. 14 years, 8 months to 20 years) and a fine ranging from Php 100,000 to Php 500,000. A Bicolano human rights lawyer, however, wryly commented that the main imprisonment penalty imposed is the same as that for the felony of *estafa* (swindling), which is certainly of a much lower level of criminal depravity than war crimes, genocide and crimes against humanity. He added, from the wisdom of private law practice, that such a penalty would make itailable, and that if he were the prosecutor, he would just file "good ol' murder" and recommend no bail – which has already been a prevalent prosecutorial practice of "reframing" cases of political offenses like rebellion into cases of common crimes like murder or illegal possession of firearms.

Under Sec. 7 of R.A. No. 9851, the court shall also impose the corresponding accessory penalties under the Revised Penal Code, especially where the offender is a public officer. In this way, a slightly heavier burden is imposed on state agents, which is justifiable by their bounden duty to uphold, if not enforce, the law. In this sense, official capacity is still relevant notwithstanding a subsequent provision on "irrelevance of official capacity." While international law like the Geneva Conventions and the Genocide Convention may already define those serious international crimes, it is generally still the national criminal law and jurisdiction which provides for and imposes the penalties (one exception is the Rome Statute precisely because it sets up its own court, the ICC). The imposition of penal sanctions is among the few non-self-executing clauses of the main IHL and human rights treaties, thus necessitating domestic penal legislation.

Official Capacity, Command Responsibility, Unlawful Orders, Non-Prescription

On the **irrelevance of official capacity** [Sec. 9] as far as war crimes, genocide, and "other crimes against humanity" are concerned, R.A. No. 9851 provides, among others, that "official capacity as a head of state or government, a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Act." Also, "Immunities or special procedural rules that may attach to the official capacity of a person under Philippine law other than the established constitutional immunity from suit of the Philippine President during his/her tenure, shall not bar the court from exercising its jurisdiction over such a person." This is one particular matter where a Philippine constitutional standard was made an

exception to the higher international criminal law standard of non-immunity of heads of state or government for these serious international crimes.

R.A. No. 9851 quite significantly provides for **command responsibility** as an operative principle of criminal liability for the first time on the level of a national statute through a provision on **responsibility of superiors** [Sec. 10], thus: "a superior shall be criminally responsible as a principal for such crimes committed by subordinates under his/her effective command and control, or effective authority and control as the case may be, as a result of his/her failure to properly exercise control over such subordinates, where:

- (a) The superior either knew or, owing to the circumstances at the time, should have known that the subordinates were committing or about to commit such crimes; and
- (b) The superior failed to take all necessary and reasonable measures within his/her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution."

While the context of this provision refers to war crimes, genocide, and "other crimes against humanity" under R.A. No. 9851, this sets a statutory precedent for its extension to the cases of other serious crimes like torture, enforced disappearances, and extrajudicial killings in the corresponding special laws, if any, on such crimes. This Philippine statutory codification of the doctrine of command responsibility, we might say, is only fitting because the roots of the doctrine are usually traced to the 1946 ruling in the Yamashita case for atrocities committed by the Japanese armed forces in the Philippines during the Second World War, albeit the relevant ruling is the one by the U.S., not the Philippine, Supreme Court.

The historical development or evolution of the doctrine was extensively discussed in the 2007 Melo Commission Report on extrajudicial killings, which recommended a special law for strict chain-of-command responsibility for police and military forces and other government officials with respect to such killings and other offenses committed by personnel under their command, control or authority. The 2007 National Consultative Summit on Extrajudicial Killings and Enforced Disappearances convened by the Supreme Court recommended the enactment of a law to address the lack of understanding of the doctrine of command responsibility. The 2007 Alston Mission Report on extrajudicial killings in the Philippines specifically recommended that "The necessary measures should be taken to ensure that the principle of command responsibility, as it is understood in international law, is a basis for criminal liability within the domestic legal order." R.A. No. 9851 is thus a major step forward in acting on these several related recommendations.

In its provision on **orders from a superior** [Sec. 12], R.A. No. 9851 clarifies that “orders to commit genocide or other crimes against humanity are **manifestly unlawful**.” In customary IHL, every combatant has in fact a duty to disobey a manifestly unlawful order. So, this could also extend to war crimes, and not just the aforesaid two serious international crimes. In R.A. No. 9851’s provision on **non-prescription** [Sec. 11], “The crimes defined and penalized under this Act, their prosecution, and the execution of sentences imposed on their account, shall not be subject to any prescription.” This is already well-established for war crimes in customary IHL.

Universal Jurisdiction, Protection of Victims and Witnesses

Also significant in R.A. No. 9851, though of a perhaps lesser degree than the statutory codification of the command responsibility doctrine, is the provision on **jurisdiction** [Sec. 17] which might be characterized as a **qualified universal jurisdiction**. On one hand, the State shall exercise jurisdiction over war crimes, genocide, and “other crimes against humanity” regardless of where the crime is committed. On the other hand, there has to be a nexus to the Philippines, whereby the accused is a Filipino citizen, or is present in the Philippines, or has committed the crime against a Filipino citizen. But the second condition, whereby the accused is present in the Philippines, brings this quite close to full universal jurisdiction. Such an accused could be a foreigner who has committed the crime against another foreigner and has done so outside the Philippines, but who has come to be present in the Philippines – the State can then exercise jurisdiction over him.

Universal jurisdiction is actually explained in R.A. No. 9851’s Declaration of Principles and State Policies [Sec. 2(e)]: “The most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.” The idea is to allow for “**justice without borders**” so that there are “**no safe havens**” for war criminals and the like.

Also in R.A. No. 9851’s Declaration of Principles and State Policies [Sec. 2(f)], we find this adherence to **universal human rights**: “The State shall guarantee persons suspected or accused of grave crimes under international law all rights necessary to ensure that their trials will be fair and prompt in strict accordance with national and international law and standards for fair trials. It shall also protect victims, witnesses and their families, and provide appropriate redress to victims and their families. It shall ensure that the legal systems in place provide accessible and gender-sensitive avenues of redress for victims of armed conflict.” This policy declaration most clearly indicates that R.A. No. 9851 is

definitely informed by human rights and not just by IHL. And we deal here with the human rights of the accused, the victims and the witnesses. Noteworthy is the policy of gender-sensitive avenues of redress.

We see these human rights principles operationalized in the provisions on **protection of victims and witnesses** [Sec. 13] and on reparations to victims [Sec. 14]. For example, take these provisions:

- As an exception to the general principle of public hearings, the court may, to protect the victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or is a witness, unless otherwise ordered by the court, having regard to all the circumstances, particularly the views of the victim or witness.
- Where the personal interests of the victims are affected, the court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the court in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the courts consider it appropriate in accordance with the established rules of procedure and evidence.

Applicability of International Law

R.A. No. 9851 provides that in its application and interpretation, Philippine courts shall be guided by the following international law sources [Sec. 15]:

- (a) The 1948 Genocide Convention;
- (b) The 1949 Geneva Conventions I-IV, their 1977 Additional Protocols I and II and their 2005 Additional Protocol III;
- (c) The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, its First Protocol and its 1999 Second Protocol;
- (d) The 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the Involvement of Children in Armed Conflict;
- (e) The rules and principles of customary international law;
- (f) The judicial decisions of international courts and tribunals;
- (g) Relevant and applicable international human rights instruments;
- (h) Other relevant international treaties and conventions ratified or acceded to by the Republic of the Philippines; and

- (i) Teachings of the most highly qualified publicists and authoritative commentaries on the foregoing sources as subsidiary means for the determination of rules of international law.

No other Philippine statute has shown this much adherence to international law. Certainly not the Philippine anti-terrorism law R.A. No. 9372 which, instead of making reference to the 12 international anti-terrorism conventions as it should have, makes reference to 12 Revised Penal Code provisions and special laws. Unlike R.A. No. 9851 having a section on Applicability of International Law, what R.A. No. 9372 has is a section on Applicability of the Revised Penal Code – a 1932 domestic law which is basically an extension of the Spanish Penal Code of 1870, being applied to post-9/11, 2001 terrorism!

Aside from the above-said treaties mentioned as “sources” for R.A. No. 9851, its provisions actually have sources from these other treaties not mentioned: the Hague Conventions and Regulations of 1899 and 1907, the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes, the 1994 Convention on the Safety of United Nations and Associated Personnel, the 1899 Hague Declaration (IV,3) concerning Expanding Bullets, the 1925 Geneva Gas Protocol, the 1976 Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques, the 1993 Chemical Weapons Convention, the 1945 Nuremberg Charter, the 1945 Tokyo Tribunal Charter, the 1993 Statute of the International Criminal Tribunal for the former Yugoslavia, the 1994 Statute of the International Criminal Tribunal for Rwanda, and the 1998 Rome Statute of the International Criminal Court (ICC).

And among the various major treaty sources of R.A. No. 9851, several have actually not yet been ratified by the Philippines: the 1954 Hague Convention for the Protection of Cultural Property, the 1977 Additional Protocol I of the 1949 Geneva Conventions, and the 1998 Rome Statute. Their not yet being ratified rightly did not bar the sovereign Philippine Congress, in the exercise of its plenary legislative power, from adopting some of their provisions into the national criminal law. Indeed, it has been said, “When these offenses are separately defined in national criminal law, the independence of this definition of international law can permit the repression of a breach of one of the treaties (e.g. Additional Protocol I), even if the treaty has not been ratified by the prosecuting State.” Ratification has another function, which is to bind the Philippines with a particular international treaty regime, in terms of both obligations and benefits. And so, because the Philippines has not yet ratified the Rome Statute, it is not yet part of the ICC system.

But the above-indicated sources are not only treaty international law but also “the rules and principles of customary international law.” R.A. No. 9851’s Declaration of Principles and State Policies [Sec. 2(a) & (d)] lays the basis for this in two particular semi-repetitive paragraphs:

- The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to a policy of peace, equality, justice, freedom, cooperation, and amity with all nations.
- The state adopts the generally accepted principles of international law, including the Hague Conventions of 1907, the Geneva Conventions on the protection of victims of war and international humanitarian law, as part of the law of our nation.

The first paragraph is actually Art. II, Sec. 2, including the incorporation clause, of the Philippine Constitution. The second paragraph is actually a restatement of the 1949 Philippine Supreme Court ruling in the *Kuroda* case of another Japanese war criminal in the Philippines that “the rules and regulations of the Hague and Geneva conventions form part of and are wholly based on the generally accepted principles of international law... Such rules and principles, therefore, form part of the law of our nation even if the Philippines was not a signatory to the conventions embodying them.”

In other words, as far as the primary IHL treaties like the Hague and Geneva Conventions are concerned, the rules and regulations therein are already deemed incorporated into Philippine law. Therefore, in a sense, R.A. No. 9851 merely “re-legislated” these rules and regulations for clarity and updating, and also because the treaties themselves require domestic penal legislation. It consolidated those principles, rules and regulations in one comprehensive law in so far as the domestic penal aspect of serious international crimes is concerned.

In fine, R.A. No. 9851 is a marriage of national criminal law and aspects of international law. The result is a different framework from pure or ordinary criminal law. This different framework is justified by the difference between common crimes and serious international crimes – just as different diseases require different medical treatment.

Special Courts, Prosecutors, Investigators, and Training

Under R.A. No. 9851 [Sec. 18], the Regional Trial Courts shall have original and exclusive jurisdiction over the international crimes punishable under this Act. The Supreme Court shall designate special courts to try cases involving crimes punishable under this Act. For these cases, the Commission on Human Rights, the Department of Justice, the Philippine National Police or other concerned law enforcement agencies shall designate prosecutors and investigators as the case may be. Just as significant, the State shall ensure that judges, prosecutors and investigators, especially those designated for purposes of this Act, receive effective training in human rights, international humanitarian law and international criminal law.

Thus, this new law can and should be a catalyst for the infusion of more international law (and thus more cosmopolitan and less parochial) consciousness among Filipino lawyers and law students through the law curriculum and continuing legal education. This can be considered part of a broader educational and consciousness-building effort on IHL and human rights which is crucial for their implementation and enforcement, in conjunction with criminal prosecution.

Though penal sanctions are indispensable to ensure respect for IHL and human rights, such sanctions are insufficient in themselves to put an end to acts contrary to IHL and human rights. These norms need to be placed within a suitable regulatory framework which will lay down the behavior complying with or prohibited by IHL and human rights. In sum, the Philippines through R.A. No. 9851 may be said to be availing of the best that has been created by humanity in terms of international law to prevent and punish the worst acts of inhumanity.

Some Final Remarks

Two paragraphs in R.A. No. 9851's Declaration of Principles and State Policies must be commented on, as we round out this preliminary discussion of this new breakthrough law. The first one [Sec. 2(c)] is a rather strange formulation: "It shall be the responsibility of the State and all other sectors concerned to resolve armed conflict in order to promote the goal of 'Children as Zones of Peace'." First of all, the mention of a policy to "**resolve armed conflict**" and "**Children as Zones of Peace**" is good because this indicates a peace orientation. However, the resolution of armed conflict is for much more than "in order to promote the goal of 'Children as Zones of Peace'." The concept of peace zones in the Philippines was in fact devised in the context of, and as a buffer against, ongoing or continuing armed conflict. The resolution of this conflict itself, and the subsequent building of peace, would then in fact presumably obviate the need for peace zones, including the concept of "Children as Zones of Peace." At the same time, while resolving the armed conflict and achieving a peace settlement would remove the context or occasion for war crimes, peace time could still witness genocide and crimes against humanity.

The second paragraph [Sec. 2(g)] provides that "The State recognizes that the application of the provisions of this Act shall not affect the legal status of the parties to a conflict, nor give an implied recognition of the status of belligerency." There is no issue with the first concept of non-effect on the **legal status** of the parties to a conflict, as this is well-established in IHL. The issue is with the second concept of **status of belligerency** (SOB) which is an obsolete or outmoded concept in modern international law, a concept that has in fact been superseded by IHL. Lingering notions of SOB on both sides of the GRP-NDFP armed conflict have in fact continued to be a major problem that has bedeviled their more-off-than-on peace process. By mentioning the term SOB in a national

statute, this could only reinforce the NDFP's obsession with, and the GRP's corresponding paranoia about, this concept. What is already obsolete internationally is somehow being renewed nationally. This perhaps shows that, notwithstanding the international law application breakthroughs with R.A. No. 9851, the Philippines still has more updating to do in international law consciousness.

The true test of R.A. No. 9851 is of course in the practice of adherence, implementation and enforcement. This starts with an appreciation of its breakthrough nature and features for the enforcement of IHL and human rights. And for effective implementation, unlike the Anti-Torture Act R.A. No. 9745, the newer R.A. No. 9851 need not wait for implementing rules and regulations. It also leads the way now for the easier passage of other more specific IHL-related legislation like the still pending bills on landmines and on internal displacement. Let the practice begin *now na*, if we have to say it this way, rather than a "tigerish" *just do it*, these days.

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S No. 2669
H No 6633

Republic of the Philippines
Congress of the Philippines
Metro Manila

Fourteenth Congress
Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-seventh day of July, two thousand nine.

REPUBLIC ACT NO. 9851

AN ACT DEFINING AND PENALIZING CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND OTHER CRIMES AGAINST HUMANITY, ORGANIZING JURISDICTION, DESIGNATING SPECIAL COURTS, AND FOR RELATED PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

**CHAPTER I
INTRODUCTORY PROVISIONS**

Section 1. *Short Title.* - This Act shall be known as the "Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity".

SEC. 2. *Declaration of Principles and State Policies.* -

- (a) The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to a policy of peace, equality, justice, freedom, cooperation and amity with all nations;
- (b) The State values the dignity of every human person and guarantees full respect for human rights, including the rights of indigenous cultural communities and other vulnerable groups, such as women and children;
- (c) It shall be the responsibility of the State and all other sectors concerned to resolve armed conflict in order to promote the goal of "Children as Zones of Peace";
- (d) The State adopts the generally accepted principles of international law, including the Hague Conventions of 1907, the Geneva Conventions on the protection of victims of war and international humanitarian law, as part of the law of our nation;
- (e) The most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes,

it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes;

(f) The State shall guarantee persons suspected or accused of having committed grave crimes under international law all rights necessary to ensure that their trial will be fair and prompt in strict accordance with national and international law and standards for fair trial. It shall also protect victims, witnesses and their families, and provide appropriate redress to victims and their families. It shall ensure that the legal systems in place provide accessible and gender-sensitive avenues of redress for victims of armed conflict, and

(g) The State recognizes that the application of the provisions of this Act shall not affect the legal status of the parties to a conflict, nor give an implied recognition of the status of belligerency.

CHAPTER II DEFINITION OF TERMS

SEC. 3. For purposes of this Act, the term:

(a) "Apartheid" means inhumane acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group or groups and committed with the intention of maintaining that regime.

(b) "Arbitrary deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under domestic or international law.

(c) "Armed conflict" means any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized armed groups or between such groups within that State: *Provided*, That such force or armed violence gives rise, or may give rise, to a situation to which the Geneva Conventions of 12 August 1949, including their common Article 3, apply. Armed conflict may be international, that is, between two (2) or more States, including belligerent occupation; or non-international, that is, between governmental authorities and organized armed groups or between such groups within a State. It does not cover internal disturbances or tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(d) "Armed forces" means all organized armed forces, groups and units that belong to a party to an armed conflict which are under a command responsible to that party for the conduct of its subordinates. Such armed forces shall be subject to an internal disciplinary system which enforces compliance with International Humanitarian Law.

(e) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in Section 6 of this Act against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.

(f) "Effective command and control" or "effective authority and control" means having the material ability to prevent and punish the commission of offenses by subordinates.

(g) "Enforced or involuntary disappearance of persons" means the arrest, detention, or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing from the protection of the law for a prolonged period of time.

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

(i) "Extermination" means the intentional infliction of conditions of life, *inter alia*, the deprivation of access to food and medicine, calculated to bring about the destruction of a part of a population.

(j) "Forced pregnancy" means the unlawful confinement of a woman to be forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

(k) "*Hors de combat*" means a person who:

(1) is in the power of an adverse party;

(2) has clearly expressed an intention to surrender; or

(3) has been rendered unconscious or otherwise incapacitated by wounds or sickness and therefore is incapable of defending himself; *Provided*, That in any of these cases, the person abstains from any hostile act and does not attempt to escape.

(l) "Military necessity" means the necessity of employing measures which are indispensable to achieve a legitimate aim of the conflict and are not otherwise prohibited by International Humanitarian Law.

(m) "Non-defended locality" means a locality that fulfills the following conditions:

(1) all combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;

(2) no hostile use of fixed military installations or establishments must have been made;

(3) no acts of hostility must have been committed by the authorities or by the population; and

(4) no activities in support of military operations must have been undertaken.

(n) "No quarter will be given" means refusing to spare the life of anybody, even of persons manifestly unable to defend themselves or who clearly express their intention to surrender.

(o) "Perfidy" means acts which invite the confidence of an adversary to lead him/her to believe he/she is entitled to, or is obliged to accord, protection under the rules of International Humanitarian Law, with the intent to betray that confidence, including but not limited to:

- (1) feigning an intent to negotiate under a flag of truce;
- (2) feigning surrender;
- (3) feigning incapacitation by wounds or sickness;
- (4) feigning civilian or noncombatant status; and
- (5) feigning protective status by use of signs, emblems or uniforms of the United Nations or of a neutral or other State not party to the conflict.

(p) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of identity of the group or collectivity.

(q) "Protected person" in an armed conflict means:

- (1) a person wounded, sick or shipwrecked, whether civilian or military;
- (2) a prisoner of war or any person deprived of liberty for reasons related to an armed conflict;
- (3) a civilian or any person not taking a direct part or having ceased to take part in the hostilities in the power of the adverse party;
- (4) a person who, before the beginning of hostilities, was considered a stateless person or refugee under the relevant international instruments accepted by the parties to the conflict concerned or under the national legislation of the state of refuge or state of residence;
- (5) a member of the medical personnel assigned exclusively to medical purposes or to the administration of medical units or to the operation of or administration of medical transports; or
- (6) a member of the religious personnel who is exclusively engaged in the work of their ministry and attached to the armed forces of a party to the conflict, its medical units or medical transports, or non-denominational, noncombatant military personnel carrying out functions similar to religious personnel.

(r) "Superior" means:

- (1) a military commander or a person effectively acting as a military commander; or
- (2) any other superior, in as much as the crimes arose from activities within the effective authority and control of that superior.

(s) "Torture" means the intentional infliction of severe pain or suffering, whether physical, mental, or psychological, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.

(t) "Works and installations containing dangerous forces" means works and installations the attack of which may cause the release of dangerous forces and

consequent severe losses among the civilian population, namely: dams, dikes, and nuclear, electrical generation stations.

**CHAPTER III
CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW,
GENOCIDE AND OTHER CRIMES AGAINST HUMANITY**

SEC. 4. War Crimes. - For the purpose of this Act, "war crimes" or "crimes against International Humanitarian Law" means:

(a) In case of an international armed conflict, grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (1) Willful killing;
- (2) Torture or inhuman treatment, including biological experiments;
- (3) Willfully causing great suffering, or serious injury to body or health;
- (4) Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
- (5) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (6) Arbitrary deportation or forcible transfer of population or unlawful confinement;
- (7) Taking of hostages;
- (8) Compelling a prisoner of war or other protected person to serve in the forces of a hostile power; and
- (9) Unjustifiable delay in the repatriation of prisoners of war or other protected persons.

(b) In case of a non-international armed conflict, serious violations of common Article 3 to the four (4) Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

- (1) Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;
- (2) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (3) Taking of hostages; and

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

(c) Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law, namely:

(1) Internationally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(2) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(3) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions or Additional Protocol III in conformity with international law;

(4) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(5) Launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be excessive in relation to the concrete and direct military advantage anticipated;

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

(7) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives, or making non-defended localities or demilitarized zones the object of attack;

(8) Killing or wounding a person in the knowledge that he/she is *hors de combat*, including a combatant who, having laid down his/her arms or no longer having means of defense, has surrendered at discretion;

(9) Making improper use of a flag of truce, of the flag or the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions or other protective signs under International Humanitarian Law, resulting in death, serious personal injury or capture;

(10) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives. In case of doubt whether such building or place has been used to make an effective contribution to military action, it shall be presumed not to be so used;

(11) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind, or to removal of tissue or organs for transplantation, which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his/her interest, and which cause death to or seriously endanger the health of such person or persons;

(12) Killing, wounding or capturing an adversary by resort to perfidy;

(13) Declaring that no quarter will be given;

(14) Destroying or seizing the enemy's property unless such destruction or seizure is imperatively demanded by the necessities of war;

(15) Pillaging a town or place, even when taken by assault;

(16) Ordering the displacements of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(17) Transferring, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(18) Committing outrages upon personal dignity, in particular, humiliating and degrading treatments;

(19) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions or a serious violation of common Article 3 to the Geneva Conventions;

(20) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(21) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols;

(22) In an international armed conflict, compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(23) In an international armed conflict, declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(24) Committing any of the following acts:

(i) Conscripting, enlisting or recruiting children under the age of fifteen (15) years into the national armed forces;

(ii) Conscripting, enlisting or recruiting children under the age of eighteen (18) years into an armed force or group other than the national armed forces; and

(iii) Using children under the age of eighteen (18) years to participate actively in hostilities; and

(25) Employing means of warfare which are prohibited under international law, such as:

(i) Poison or poisoned weapons;

(ii) Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(iii) Bullets which expand or flatten easily in the human body, such as bullets with hard envelopes which do not entirely cover the core or are pierced with incisions; and

(iv) Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict.

Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act.

SEC. 5. Genocide - (a) For the purpose of this Act, "genocide" means any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, religious, social or any other similar stable and permanent group as such:

(1) Killing members of the group;

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

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

(4) Imposing measures intended to prevent births within the group; and

(5) Forcibly transferring children of the group to another group.

(b) It shall be unlawful for any person to directly and publicly incite others to commit genocide.

Any person found guilty of committing any of the acts specified in paragraphs (a) and (b) of this section shall suffer the penalty provided under Section 7 of this Act.

SEC. 6. Other Crimes Against Humanity - For the purpose of this Act, "other crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Willful killing;

(b) Extermination;

- (c) Enslavement;
- (d) Arbitrary deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime defined in this Act;
- (i) Enforced or involuntary disappearance of persons;
- (j) Apartheid; and
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act.

CHAPTER IV PENAL PROVISIONS

SEC. 7. Penalties. - Any person found guilty of committing any of the acts provided under Sections 4, 5 and 6 of this Act shall suffer the penalty of *reclusion temporal* in its medium to maximum period and a fine ranging from One hundred thousand pesos (Php 100,000.00) to Five hundred thousand pesos (Php 500,000.00).

When justified by the extreme gravity of the crime, especially where the commission of any of the crimes specified herein results in death or serious physical injury, or constitutes rape, and considering the individual circumstances of the accused, the penalty of *reclusion perpetua* and a fine ranging from Five hundred thousand pesos (Php 500,000.00) to One million pesos (Php 1,000,000.00) shall be imposed.

Any person found guilty of inciting others to commit genocide referred to in Section 5(b) of this Act shall suffer the penalty of *prision mayor* in its minimum period and a fine ranging from Ten thousand pesos (Php 10,000.00) to Twenty thousand pesos (Php 20,000.00).

In addition, the court shall order the forfeiture of proceeds, property and assets derived, directly or indirectly, from that crime, without prejudice to the rights of *bona fide* third (3rd) parties. The court shall also impose the corresponding accessory penalties under the Revised Penal Code, especially where the offender is a public officer.

CHAPTER V
SOME PRINCIPLES OF CRIMINAL LIABILITY

SEC. 8. *Individual Criminal Responsibilities.* - (a) In addition to existing provisions in Philippine law on principles of criminal responsibility, a person shall be criminally liable as principal for a crime defined and penalized in this Act if he/she:

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

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

(3) In any other way contributes to the commission or attempted commission of such a crime by a group of person acting with a common purpose. Such contribution shall be intentional and shall either:

(i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime defined in this Act; or

(ii) be made in the knowledge of the intention of the group to commit the crime.

(b) A person shall be criminally liable as accomplice for facilitating the commission of a crime defined and penalized in this Act if he/she aids, abets or otherwise assists in its commission or attempted commission, including providing the means for its commission.

(c) A person shall be criminally liable for a crime defined and penalized in this Act if he/she attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intention. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Act for the attempt to commit the same if he/she completely and voluntarily gave up the criminal purpose.

SEC. 9. *Irrelevance of Official Capacity.* - This Act shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a head of state or government, a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Act, nor shall it, in and of itself, constitute a ground for reduction of sentence. However:

(a) Immunities or special procedural rules that may be attached to the official capacity of a person under Philippine law other than the established constitutional immunity from suit of the Philippine President during his/her tenure, shall not bar the court from exercising its jurisdiction over such a person; and

(b) Immunities that may be attached to the official capacity of a person under international law may limit the application of this Act, but only within the bounds established under international law.

SEC. 10. *Responsibility of Superiors.* - In addition to other grounds of criminal responsibility for crimes defined and penalized under this Act, a superior shall be criminally responsible

as a principal for such crimes committed by subordinates under his/her effective command and control, or effective authority and control as the case may be, as a result of his/her failure to properly exercise control over such subordinates, where:

(a) That superior either knew or, owing to the circumstances at the time, should have known that the subordinates were committing or about to commit such crimes;

(b) That superior failed to take all necessary and reasonable measures within his/her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

SEC. 11. *Non-prescription.* - The crimes defined and penalized under this Act, their prosecution, and the execution of sentences imposed on their account, shall not be subject to any prescription.

SEC. 12. *Orders from a Superior.* - The fact that a crime defined and penalized under this Act has been committed by a person pursuant to an order of a government or a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless all of the following elements occur:

(a) The person was under a legal obligation to obey orders of the government or the superior in question;

(b) The person did not know that the order was unlawful; and

(c) The order was not manifestly unlawful.

For the purposes of this section, orders to commit genocide or other crimes against humanity are manifestly unlawful.

CHAPTER VI PROTECTION OF VICTIMS AND WITNESSES

SEC. 13. *Protection of Victims and Witnesses.* - In addition to existing provisions in Philippine law for the protection of victims and witnesses, the following measures shall be undertaken:

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

(b) As an exception to the general principle of public hearings, the court may, to protect the victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of the victim of sexual violence or a child who is a victim or is a witness, unless otherwise ordered by the court, having regard to all the circumstances, particularly the views of the victim or witness;

(c) Where the personal interests of the victims are affected, the court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the court in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the court considers it appropriate in accordance with the established rules of procedure and evidence; and

(d) Where the disclosure of evidence or information pursuant to this Act may lead to the grave endangerment of the security of a witness or his/her family, the prosecution may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and to a fair and impartial trial.

SEC. 14. *Reparations to Victims.* - In addition to existing provisions in Philippine law and procedural rules for reparations to victims, the following measures shall be undertaken:

(a) The court shall follow principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision, the court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and state the principles on which it is acting;

(b) The court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation; and

(c) Before making an order under this section, the court may invite and shall take account of representations from or on behalf of the convicted person, victims or other interested persons.

Nothing in this section shall be interpreted as prejudicing the rights of victims under national or international law.

CHAPTER VII APPLICABILITY OF INTERNATIONAL LAW AND OTHER LAWS

SEC. 15. *Applicability of International Law.*- In the application and interpretation of this Act, Philippine courts shall be guided by the following sources:

(a) The 1948 Genocide Convention;

(b) The 1949 Geneva Conventions I-IV, their 1977 Additional Protocols I and II and their 2005 Additional Protocol III;

(c) The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, its First Protocol and its 1999 Second Protocol;

(d) The 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the Involvement of Children in Armed Conflict;

(e) The rules and principles of customary international law;

- (f) The judicial decisions of international courts and tribunals;
- (g) Relevant and applicable international human rights instruments;
- (h) Other relevant international treaties and conventions ratified or acceded to by the Republic of the Philippines; and
- (i) Teachings of the most highly qualified publicists and authoritative commentaries on the foregoing sources as subsidiary means for the determination of rules of international law.

SEC. 16. *Suppletory Application of the Revised Penal Code and Other General or Special Laws.* - The provisions of the Revised Penal Code and other general or special laws shall have a suppletory application to the provisions of this Act.

CHAPTER VIII JURISDICTION

SEC. 17. *Jurisdiction.*- The State shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of a crime defined and penalized in this Act, regardless of where the crime is committed, provided, any one of the following conditions is met:

- (a) The accused is a Filipino citizen;
- (b) The accused, regardless of citizenship or residence, is present in the Philippines; or
- (c) The accused has committed the said crime against a Filipino citizen.

In the interest of justice, the relevant Philippine authorities may dispense with the investigation or prosecution of a crime punishable under this Act if another court or international tribunal is already conducting the investigation or undertaking the prosecution of such crime. Instead, the authorities may surrender or extradite suspected or accused persons in the Philippines to the appropriate international court, if any, or to another State pursuant to the applicable extradition laws and treaties.

No criminal proceedings shall be initiated against foreign nationals suspected or accused of having committed the crimes defined and penalized in this Act if they have been tried by a competent court outside the Philippines in respect of the same offense and acquitted, or having been convicted, already served their sentence.

SEC. 18. *Philippine Courts, Prosecutors and Investigators.* - The Regional Trial Courts of the Philippines shall have original and exclusive jurisdiction over the crimes punishable under this Act. Their judgments may be appealed or elevated to the Court of Appeals and to the Supreme Court as provided by law.

The Supreme Court shall designate special courts to try cases involving crimes punishable under this Act. For these cases, the Commission on Human Rights, the Department of Justice, the Philippine National Police or other concerned law enforcement agencies shall designate prosecutors or investigators as the case may be.

The State shall ensure that judges, prosecutors and investigators, especially those designated for purposes of this Act, receive effective training in human rights, International Humanitarian Law and International Criminal Law.

**CHAPTER IX
FINAL PROVISIONS**

SEC. 19. *Separability Clause.* - If, for any reason or reasons, any part or provision of this Statute shall be held to be unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 20. *Repealing Clause.* - All laws, presidential decrees and issuances, executive orders, rules and regulations or parts thereof inconsistent with the provisions of this Statute are hereby repealed or modified accordingly.

SEC. 21. *Effectivity.* - This Act shall take effect fifteen (15) days after its complete publication in the *Official Gazette* or in two (2) newspapers of general circulation.

Approved,

Sgd. **PROSPERO C. NOGRALES**
*Speaker of the House of
Representatives*

Sgd. **JUAN PONCE ENRILE**
President of the Senate

This Act which is a consolidation of Senate Bill No. 2669 and House Bill No. 6633 was finally passed by the Senate and the House of Representatives on October 14, 2009 and October 16, 2009, respectively.

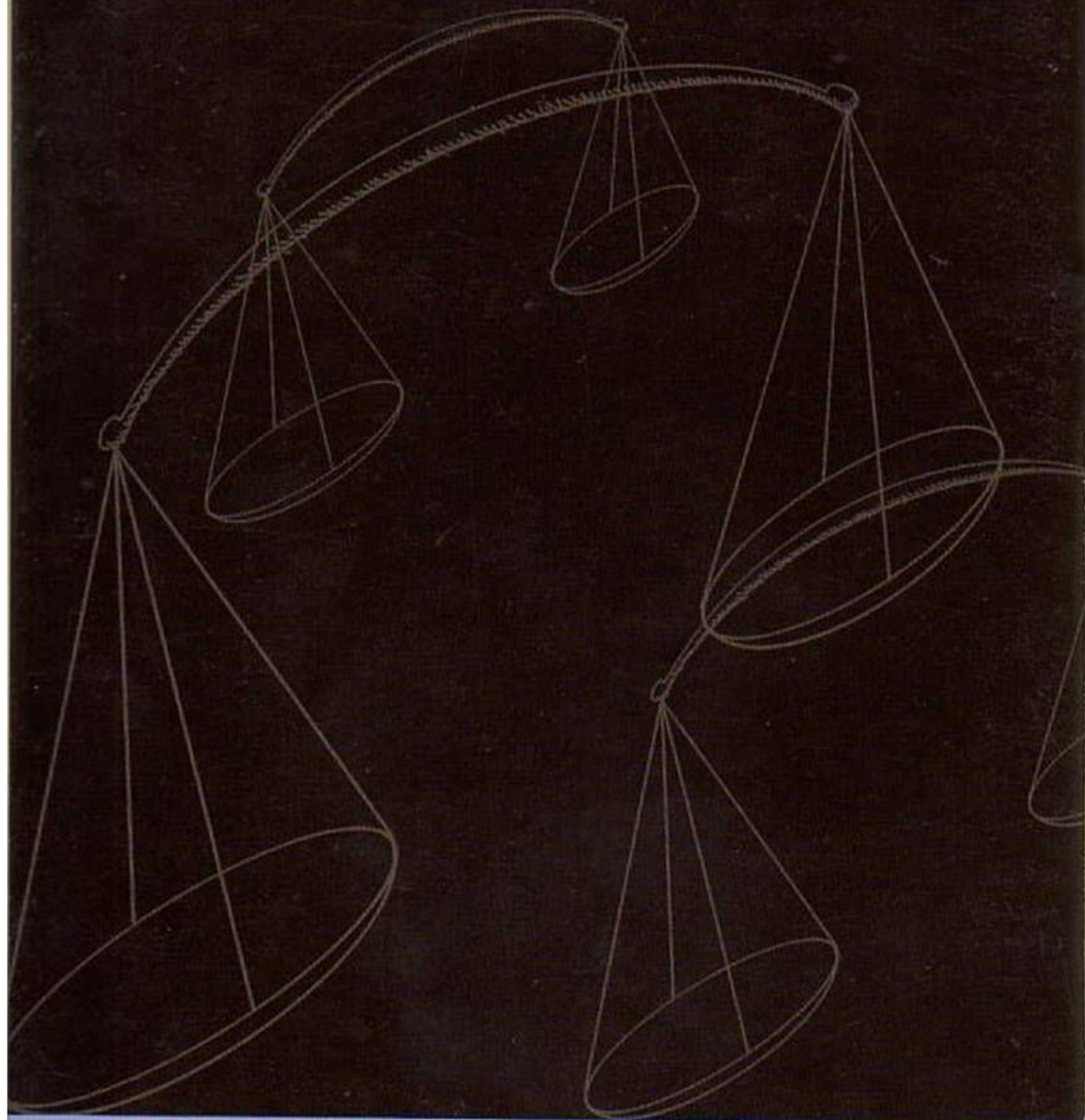
For:

Sgd. **MARILYN B. BARUA-YAP**
Secretary General

Sgd. **EMMA LIRIO-REYES**
Secretary of the Senate

Approved: December 11, 2009

Sgd. **GLORIA MACAPAGAL-ARROYO**
President of the Philippines



**Civil Society Initiatives for
International Humanitarian Law (CSI-IHL)**