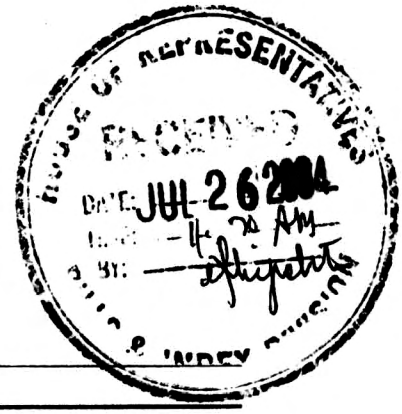
Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



THIRTEENTH CONGRESS
First Regular Session

HB NO. 1624

Introduced by **Rep. Roseller L. Barinaga**

EXPLANATORY NOTE

This proposed bill seeks to define and penalize crimes particularly those which are defined under the International Humanitarian Law. By adopting the corresponding principles of criminal responsibility espoused by the IHL, this bill also operationalizes the universal jurisdiction and is empowering special courts in the country to try cases involving grave crimes such as genocide, crimes against humanity, war crimes, grave breaches of specific UN Conventions, serious violations of applicable laws and customs, and other crimes against the humanitarian law, which the Philippines has no jurisdiction over.

Broadly, the present criminal laws of the Philippines are not adequate to deal with such grave crimes as they do not adopt the terms of reference of the International Humanitarian Law and, for that matter, the International Criminal Law. The mere absence of a national law that properly defines and penalizes serious crimes over which the International Criminal Court has jurisdiction would deprive the country and its people of the opportunity to render justices to those who have grossly violated the law.

This bill, therefore, adopts a national legislation that would eventually punish the abovementioned serious crimes as well as other grave violations of International Humanitarian Law.

Approval of this bill is an urgent concern for the country and people.

ROSELLER L. BARINAGA
Representative
2nd District, Zamboanga del Norte

Congress of the Philippines)
Thirteenth Congress)
First Regular Session)

HOUSE OF REPRESENTATIVES

HB NO. 1624

Introduced by **Rep. Roseller L. Barinaga**

AN ACT
DEFINING AND PENALIZING CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, ADOPTING CORRESPONDING PRINCIPLES OF CRIMINAL RESPONSIBILITY, OPERATIONALIZING UNIVERSAL JURISDICTION, DESIGNATING SPECIAL COURTS, AND FOR RELATED PURPOSES

PART 1
INTRODUCTORY PROVISIONS

Article 1
Short Title

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

Article 2
Declaration of Principles and State Policies

1. 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. [*Source: Philippine Constitution, Art. II, Sec. 2*]

2. The State values the dignity of every human person and guarantees full respect for human rights. [*Source: Philippine Constitution, Art. II, Sec. 11*]

3. Among the generally accepted principles of international law incorporated into Philippine law are the rules and principles of land warfare and of humanitarian law under the Hague Conventions and the Geneva Conventions, and human rights as defined in the Universal Declaration of Human Rights. [*References: Kuroda vs. Jalandoni, 83 Phil. 171; Reyes vs. Bagatsing, 125 SCRA 553; Borovsky vs. Commissioner, 90 Phil. 107; PAFLU vs. Secretary of Labor, 27 SCRA 40; Boy Scouts of the Philippines vs. Araos, 102 Phil. 1080; Mejoff vs. Director, 90 Phil. 70; Chirskoff vs. Commissioner, 90 Phil. 256; and Andreu vs. Commissioner, 90 Phil. 347*]

4. 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. [*Source: Rome Statute of the International Criminal Court (hereinafter "Rome Statute"), Preamble, fourth & fifth paragraphs*]

5. It is the duty of every State to exercise its criminal jurisdiction over those responsible for certain international crimes, wherever, by whoever and against whoever these may be committed, so that its Courts can exercise universal and extraterritorial jurisdiction over grave violations of human rights and international humanitarian law. [*References: Rome Statute, Preamble, sixth paragraph; Amnesty International, "Universal Jurisdiction: 14 Principles on the Effective Exercise of Universal Jurisdiction," Principle 1*]

6. The State shall ensure that its Courts can exercise jurisdiction over anyone suspected or accused of grave crimes under international law, whatever the official capacity of the suspect or accused at the time of the alleged crime or anytime thereafter, no matter when the crimes occurred, with no time limit on the liability to prosecution of such persons. [*Reference: Amnesty International, "Universal Jurisdiction: 14 Principles...," Principles 2, 3 & 4*]

7. The State shall ensure that persons on trial in its Courts for the commission of grave crimes under international law are only allowed to assert defenses that are consistent with international law. [*Reference: Amnesty International, "Universal Jurisdiction: 14 Principles...," Principle 5*]

8. 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 international law and standards for fair trials. [*Reference: Amnesty International, "Universal Jurisdiction: 14 Principles...," Principle 9*]

9. The Courts must protect victims, witnesses and their families, and award appropriate redress to victims and their families. [*Reference: Amnesty International, "Universal Jurisdiction: 14 Principles...," Principle 11*]

10. In implementing international humanitarian law, the State shall adopt the most progressive definitions and standards in international law. [*Reference: Human Rights Watch, "Making the International Criminal Court Work: A Handbook for Implementing the Rome Statute"*]

PART 2
MOST SERIOUS CRIMES OF INTERNATIONAL CONCERN

Article 3
Genocide

The Court shall exercise jurisdiction over the crime of genocide. For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in

whole or in part, a national, ethnical, racial, religious, political, social or any similar stable and permanent group, as such:

a) Killing members of the group;

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

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

d) Imposing measures intended to prevent births within the group;

e) Forcibly transferring children of the group to another group.

[*Reference: Rome Statute, Art. 6. The phrase "political, social or any similar stable and permanent group" was added based on jurisprudence in The Prosecutor vs. Jean-Paul Akayesu, Case No. ICTR-96-4-T, 2 September 1998, Judgment, paragraph 701.*]

Article 4
Crimes Against Humanity

1. The Court shall have jurisdiction over crimes against humanity. For the purpose of this Statute, "crime 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) Murder;

b) Extermination;

c) Enslavement;

d) 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 as defined in paragraph 3, 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 within the jurisdiction of the Court;

i) Enforced disappearance of persons;

j) The crime of apartheid;

k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1, the following shall mean –

a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

b)"Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

c) "Enslavement" refers to 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;

d) "Deportation or forcible transfer of population" refers to forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

e) "Torture" refers to the intentional infliction of severe pain or suffering, whether physical or mental, 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;

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

g) "Persecution" refers to the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

h) "The crime of apartheid" refers to inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

i) "Enforced disappearance of persons" refers to 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.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

[*Source: Rome Statute, Art. 7*]

Article 5
War Crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means –

a) 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:

(i) Willful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Willfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

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

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

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

(iii) 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;

(iv) Intentionally 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 overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion;

(vii) Making improper or perfidious use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death, serious personal injury or capture;

[*Same as the corresponding provision in the Rome Statute but with the additions of "perfidious" based on Additional Protocol I, Art. 85, para. 3 (f), and of "capture" based on Additional Protocol I, Art. 37, para. 1.*]

(viii) The transfer, 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;

(ix) 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;

(x) 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 or her interest, and which cause death to or seriously endanger the health of such person or persons;

[*Same as the corresponding provision in the Rome Statute but with the addition of "removal of tissue or organs for transplantation" based on Additional Protocol I, Art. 11, par. 2 (c).*]

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

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

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) 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;

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

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

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

(xx) Employing 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, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute.

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 4, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

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

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

(xxv) 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;

(xxvi) Conscripting or enlisting children under the age of eighteen years into the national armed forces or using them to participate actively in hostilities.

[*The corresponding provision in the Rome Statute provides for fifteen years. This was changed here to eighteen years based on the higher standard of the 2000 Optional Protocol to the 1989 Convention on the Rights of the Child.*]

c) In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four 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 armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

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

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

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

d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

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

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

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

(iii) 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;

(iv) 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;

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

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 4, enforced sterilization, and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of eighteen years into armed forces or groups or using them to participate actively in hostilities;

[*The corresponding provision in the Rome Statute provides for fifteen years. This was changed here to eighteen years based on the higher standard of the 2000 Optional Protocol to the 1989 Convention on the Rights of the Child.*]

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

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

4. Notwithstanding the categorization of war crimes and grave breaches into those applicable in international armed conflict and those applicable in internal armed conflict in this and other articles, there shall be no such distinction in scope of application where acts committed in internal armed conflict would be qualified as war crimes and grave breaches if committed in international armed conflict.

[*A new provision not found in the Rome Statute, this was based on the recommendation of the International Committee of the Red Cross and on the example of other country legislation.*]

[*Source: Rome Statute, Art. 8, unless otherwise indicated above.*]

PART 3
OTHER CRIMES AGAINST HUMANITARIAN LAW

Article 6
Other Grave Breaches of Additional Protocol I

The Court shall have jurisdiction over the following other acts regarded as grave breaches of the 1977 Additional Protocol I to the 1949 Geneva Conventions, when committed willfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

i) 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;

ii) making non-defended localities and demilitarized zones the object of attack; and

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

[*Source: Additional Protocol I, Art. 85, para. 3 (c) & (d), and para. 4(b), respectively. These are the three grave breaches provisions which are not mentioned in the Rome Statute.*]

Article 7
Misuse and Abuse of the Red Cross and Other Protective Emblems

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

1. The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the 1949 Geneva Conventions, of the emblem or the designation "Red Cross" or "Geneva Cross," or any sign or designation constituting an

imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times. [*Source: Geneva Convention I, Art. 53, first para.*]

2. It is prohibited to make improper use of the distinctive emblem of the red cross, red crescent or red lion and sun or of other emblems, signs or signals provided for by the Conventions or by Additional Protocol I. It is also prohibited to misuse deliberately in an armed conflict other internationally recognized protective emblems, signs or signals, including the flag of truce, and the protective emblem of cultural property. [*Source: Additional Protocol I, Art. 38, para. 1*]

3. It is prohibited to make use of the distinctive emblem of the United Nations, except as authorized by that Organization. [*Source: Additional Protocol I, Art. 38, para. 2*]

Article 8
Violations Against Cultural Property and Places of Worship

1. In addition to the war crimes under Article 5, paragraph 2(b)(ix), the Court shall have jurisdiction over violations against cultural property and places of worship in the event of armed conflict, as follows:

i) committing any acts of hostility directed against the historic monuments, works of art or places or worship which constitute the cultural or spiritual heritage of peoples

ii) using such objects in support of the military effort

iii) making such objects the object of reprisals

[Source: *Additional Protocol I, Art. 53*]

2. Any person commits an offense within the meaning of the 1999 Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property if that person intentionally and in violation of the Convention and this Protocol commits any of the following acts:

i) making cultural property under enhanced protection the object of attack;

ii) using cultural property under enhanced protection or its immediate surroundings in support of military action;

iii) extensive destruction or appropriation of cultural property protected under the Convention and this Protocol;

iv) making cultural property protected under the Convention and this Protocol the object of attack;

v) theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention.

[*Source: 1999 Second Protocol to the 1954 Hague Convention on the Protection of Cultural Property, Art. 15, para. 1*]

Article 9
Violations Against the Involvement of Children in Armed Conflict

In addition to the war crimes under Article 5, paragraphs 2(b)(xxvi) and 2(e)(vii), the Court shall have jurisdiction over violations against the involvement of children in armed conflict when committed during peace time. The armed forces of the State as well as other armed groups shall not, under any circumstances, recruit or use in hostilities persons under the age of 18 years. [*Reference: 2000 Optional Protocol to the 1989 Convention of the Rights of the Child on the involvement of children in armed conflict, Arts. 4 & 5. The adopts a common higher standard for the minimum age for compulsory and voluntary recruitment by armed forces of the State and by non-state armed groups, unlike the Optional Protocol's Art. 3 which allows voluntary recruitment of persons under 18 by armed forces of the State.*)

PART 4
INTERNATIONAL HUMANITARIAN LAW VIOLATIONS BASED ON PHILIPPINE EXPERIENCE

[*Source: Government of the Republic of the Philippines (GRP)-National Democratic Front (NDF) Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL), Part IV, Arts. 2 & 3*]

Article 10
Scope of Application to Persons

The generally accepted principles and standards of international humanitarian law apply to the following persons:

i) civilians or those taking active part in the hostilities

ii) members of armed forces who have surrendered or laid down their arms

iii) those placed *hors de combat* by sickness, wounds or any other cause

iv) persons deprived of their liberty for reasons related to armed conflict and

v) relatives and duly authorized representatives of above-named persons

Article 11
Prohibited Acts

The Court shall have jurisdiction over the following prohibited acts. The following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the persons in the preceding Article:

a) violence to life and person, particularly killing or causing injury, being subjected to physical of mental torture, mutilation, corporal punishment, cruel or degrading treatment and all acts of violence and reprisals, including hostage-taking, and acts against the physical well-being, dignity, political convictions and other human rights

b) holding anyone responsible for an act that he/she has not committed and punishing anyone without complying with all the requisites of due process

c) requiring persons deprived of their liberty for reasons related to the armed conflict to disclose information other than their identity

d) desecration of the remains of those who have died in the course of the armed conflict or while under detention, and breach of duty to tender immediately such remains to their families or to give them a decent burial

e) failure to report the identity , personal condition and circumstances of a person deprived of his/her liberty for reasons related to the armed conflict to the Parties to enable them to perform their duties and responsibilities under this Agreement and under international humanitarian law

f) denial of the right of relatives and duly authorized representatives of a person deprived of liberty for reasons related to the armed conflict to inquire whether a person is in custody or under detention, the reasons for the detention, under what circumstances the person in custody is being detained, and to request directly or through mutually acceptable intermediaries for his/her orderly and expeditious release

g) practices that cause of allow the forcible evacuations or forcible reconcentration of civilians involved in military or imperative military reasons so demand; the emergence and increase of internally displaced families and communities, and the destruction of the lives and property of the civilian population

h) maintaining, supporting and tolerating paramilitary groups such as armed religious fanatical groups, vigilante groups, private armed groups of businessmen, landlords and politicians, and private security agencies which are being used in land and labor disputes and the incursions from mining, real estate, logging, tourism or other similar projects or programs; and

i) allowing the participation of civilian or civilian officials in military field operations and campaigns.

PART 5
PENALTIES

[*Reference: Rome Statute, Arts. 77 & 78*]

Article 12
Range of Penalties for Crimes under Part 2

The main penalty of imprisonment for crimes under Part 2 shall be for a specified number of years within a range from 21 to 30 years. When justified by the extreme gravity of the crime and the individual circumstances of the convicted person, the Court may impose a term within a range from 31 to 40 years.

Article 13
Range of Penalties for Crimes under Part 3

1. The main penalty of imprisonment for crimes under Article 6 shall be for a specified number of years within a range from 21 to 30 years.

2. The main penalty of imprisonment for crimes under Article 7 shall be for a specified number of years within a range from 1 to 10 years.

3. The main penalty of imprisonment for crimes under Article 8 shall be for a specified number of years within a range from 11 to 20 years.

4. The main penalty of imprisonment for crimes under Article 9 shall be for a specified number of years within a range from 1 to 10 years.

Article 14
Range of Penalties for Crimes under Part 4

The main penalty of imprisonment for crimes under Part 4 shall be for a specified number of years within a range from 11 to 20 years. When justified by the extreme gravity of the crime and the individual circumstances of the convicted person, the Court may impose a term within a range from 21 to 30 years.

Article 15
Additional Penalties

In addition to imprisonment, the Court may order,

1. a fine under the criteria provided for in the Rules of Procedure and Evidence

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

[*Source: Rome Statute, Art. 77(2)*]

Article 16
Determination of the Sentence

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

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

3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 40 years. [*Source: Rome Statute, Art. 78*]

PART 6
PRINCIPLES OF CRIMINAL RESPONSIBILITY

Article 17
Elements of Crimes

Elements of Crimes of the Rome Statute of the International Criminal Court shall assist Philippine Courts in the interpretation and application of Articles 3, 4 and 5. [*Reference: Rome Statute, Art. 9(1)*]

Article 18
Non-Diminution of International Law

Nothing in this Statute shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute. [*Reference: Rome Statute, Art. 10*]

Article 19
Jurisdiction Ratione Temporis

The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute. [*Source: Rome Statute, Art. 11(1)*]

Article 20
Ne Bis In Idem

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

2. No person shall be tried by another court for a crime under Parts 2, 3 and 4 of this Act for which that person has already been acquitted or convicted by the Courts, unless the proceedings in the first court were:

a) for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court or

b) conducted not independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, under the circumstances, was inconsistent with an intent to bring the person concerned to justice. [*Source: Rome Statute, Art. 20*]

Article 21
Applicable Law

1. The Court shall apply:

a) In the first place, this Statute and jurisprudence interpreting this Statute.

b) In the second place, where appropriate, applicable instruments and developments in international law enumerated in Article 40.

c) In the third place, by applicable principles and rules of customary international law, especially the established principles of international humanitarian law, international criminal law and human rights.

d) Failing that, general principles of law recognized by civilized nations, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

2. The application and interpretation of law pursuant to this Article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender, race, color, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

[*Reference: Rome Statute, Art. 21*]

Art. 22
Nullum Crimen Sine Lege

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

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

3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

[*Source: Rome Statute, Art. 22*]

Art. 23
Nulla Poena Sine Lege

A person convicted by the Court may be punished only in accordance with this Statute. [*Source: Rome Statute, Art. 23*]

Article 24
Non-Retroactivity *Ratione Personae*

1. No person shall be criminally responsible for conduct prior to the entry into force of the ICC Statute.

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

[*Source: Rome Statute, Art. 24*]

Article 25
Individual Criminal Responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.

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

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

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

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

c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons 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 within the jurisdiction of the Court; or

ii) Be made in the knowledge of the intention of the group to commit the crime;

e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

f) 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 intentions. 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 Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

[*Source: Rome Statute, Art. 25*]

Article 26
Exclusion of Jurisdiction over Persons under Eighteen

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

[*Source: Rome Statute, Art. 26*]

Article 27
Irrelevance of Official Capacity

1. This Statute 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 Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

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

[*Source: Rome Statute, Art. 27*]

Article 28
Responsibility of Commanders and Other Superiors

In addition to other grounds of criminal responsibility under this Law for crimes within the jurisdiction of the Court:

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

i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

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

i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

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

[*Source: Rome Statute, Art. 28*]

Article 29
Non-Applicability of Statute of Limitations

The crimes within the jurisdiction of the Court shall not be subject to any Statute of Limitations. [*Source: Rome Statute, Art. 29*]

Article 30
Mental Element

1. Unless otherwise provided, a person shall be person shall be criminally responsible and liable for punishment for the crimes enumerated in this Act only if the material elements are committed with intent and knowledge. A person has intent and knowledge were:

a) in relation to conduct, that person means to engage in that conduct;

b) in relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events

2. Knowledge under this Article means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.

[*Source: Rome Statute, Art. 30*]

Article 31
Grounds for Excluding Criminal Responsibility

1. In addition to other grounds for excluding criminal liability provided for in this Act, a person shall not be criminally responsible if, at the time of that person's conduct:

a) the person suffers from mental disease or defect that destroys that persons capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law

b) the person is in a state of intoxication that destroys the person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person as become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in a conduct constituting a crime within the jurisdiction of the Court

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

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

i) made by other persons

ii) constituted by other circumstances beyond the person's control

2. The Court shall determine the applicability of the grounds for exclusion of criminal responsibility under this Act to the case before it.

3. At trial, the Court may consider a ground for excluding criminal responsibility other than those enumerated herein where such a ground is derived from the applicable law under Article 21 herein. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

[*Source: Rome Statute, Art. 31*]

Article 32
Mistake of Fact or Mistake of Law

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

2. A mistake of law as to whether a particular type f conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided in the succeeding Article.

[*Source: Rome Statute, Art. 32*]

Article 33
Superior Order and Prescription of Law

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government of a superior, whether military or civilian, shall not relieve that person or criminal responsibility unless:

a) the person was under a legal obligation to obey the orders of the Government or superior in question.

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

c) The order was not manifestly unlawful. However, orders to commit genocide or crimes against humanity are manifestly unlawful.

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

[*Source: Rome Statute, Art. 33*]

PART 7
FAIR TRIAL GUARANTEES

Article 34

Rights of Persons During an Investigation

1. In respect of an investigation under this Act, a person:

a) shall not be compelled to incriminate himself or herself to confess his or her guilt

b) shall not be subjected to any form of coercion, duress of threat, to torture or to any form of cruel, inhuman or degrading treatment or punishment

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

d) shall not be subjected to arbitrary arrest and detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures which shall be established under this Act.

2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that a person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9 of the ICC Statute, that person shall also have the following rights of which he or she shall be informed prior to being questioned:

a) To be informed, prior to being questioned, that there are grounds to believe that he or she committed a crime within jurisdiction of the Court

b) To remain silent, without such silence being a consideration in the determination of guilt or innocence

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

d) To be questioned in the presence of counsel unless that person has voluntarily waived his or her right to counsel.

[*Source: Rome Statute, Art. 55*]

Article 35
Presumption of Innocence

1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.

2. The onus is on the Prosecutor to prove the guilt of the accused.

3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

[*Source: Rome Statute, Art. 66*]

Article 36
Rights of the Accused

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

a) To be informed promptly and in detail, the nature cause and content of the charge, in a language which the accused fully understands and speaks;

b) To have adequate time and facilities for the preparation of the defense and to communicate freely with counsel of the accused's choosing in confidence;

c) To be tried without undue delay;

d) Subject to removal from the courtroom if the accused continues to disrupt the trial, to be present at the trial, to conduct the defense in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance of this right, and to have legal assistance assigned by the court in any case where the interests of justice so require, and without payment if the accused lack sufficient means to pay for it;

e) to examine, or have examined, the witnesses against him or her to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defenses and to present other evidence admissible under this Statute;

f) to have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks;

g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt of innocence;

h) To make an unsworn oral or written statement in his or her defense;

i) not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal

3. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defense evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt, the court shall decide.

[*Source: Rome Statute, Art. 67*]

Article 37
Protection of the Victims and Witnesses

1. The 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 to all relevant factors, including age, gender (see definition in Article 4 under Crimes against Humanity) 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 Prosecution 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 a fair and impartial trial.

2. As an exception to the principle of public hearings provided for in Article 36, Paragraph 1 herein, 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.

3. 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 considers it appropriate in accordance with the respective Rules of Procedure and Evidence.

4. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or 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 a fair and impartial trial.

5. A State-Party may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

[*Source: Rome Statute, Art. 68*]

Article 38
Reparations to Victims

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 will state the principles on which it is acting. [*Reference: Rome Statute, Art. 75(1)*]

PART 8
RELATIONSHIP WITH OTHER LAWS

Article 39
Relationship with the Constitution

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

Article 40
Relationship with International Law

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

1. the 1998 Rome Statute of the International Criminal Court, its Elements of Crimes, and its Rules of Procedure and Evidence;

2. the 1949 Geneva Conventions I-IV and their 1977 Additional Protocols I & II;

3. the 1954 Hague Convention for the Protection of Cultural Property and its 1999 Second Protocol;

4. the 2000 Optional Protocol to the 1989 Convention on the Rights of the Child;

5. international criminal law jurisprudence from the international criminal tribunals, especially as may come from the International Criminal Court in The Hague;

6. teachings of the most highly qualified publicists and authoritative commentaries on the foregoing sources as subsidiary means for the determination of rules of law.

Article 41
Relationship with the Revised Penal Code

The Revised Penal Code shall be suppletory to this Statute for purposes of criminal investigation, prosecution and trial of crimes under this Statute. For these purposes, in case of conflict, this Statute shall prevail over the Revised Penal Code.

Article 42
Relationship with the Revised Rules on Criminal Procedure

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

Article 43
Relationship with Military Law

The application of military law to persons subject to military law for acts which are also 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 9
JURISDICTION AND COURTS

Article 44
Universal Jurisdiction

The State 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 of the State or posed no direct threat to the State's own particular security interests. [*Reference: Amnesty International, "Universal Jurisdiction: 14 Principles for the Effective Exercise of Universal Jurisdiction"*]

Article 45
Designation and Training of Special Courts and Prosecutors

1. 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 the case may be, crimes under this Statute. The courts referred to here shall be at the Regional Trial Court level and special divisions of the Court of Appeals.

2. The State shall ensure that judges, prosecutors and investigators, especially those designated for purposes of this Statute, receive effective training in human rights, international humanitarian law and international criminal law.

[*Reference: Amnesty International, "Universal Jurisdiction: 14 Principles...," Principle 14*]

PART 10
FINAL PROVISIONS

Article 46
Repealing Clause

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

Article 47
Separability Clause

If, for any reason or reasons, any part or provision of this Act 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.

Article 48
Effectivity

This Act shall take effect fifteen (15) days after its publication in two national newspapers of general circulation.

Approved.