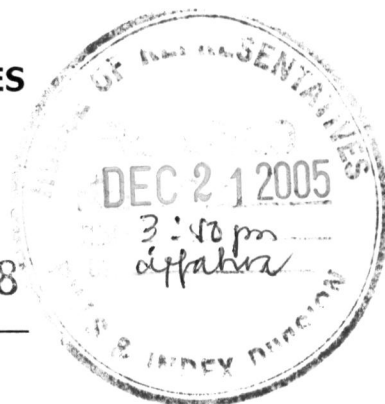


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS
Second Regular Session

4998

HOUSE BILL NO. _____



**Introduced by Akbayan Representatives Mario "Mayong" Joyo Aguja,
Loretta Ann P. Rosales and Ana Theresia Hontiveros-Baraquel**

EXPLANATORY NOTE

This is a bill for a "Philippine Statute on Crimes Against International Humanitarian Law and Other Serious International Crimes." **Why is this law necessary?** During the last century, and continuing on early in this century, millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity. The Philippines has had its share of suffering such atrocities in the course of a number of major armed conflicts, both international and internal, in its history, from the Filipino-American War at the turn of the 20th Century up to the present-day "anti-terrorist" wars with the New People's Army, Moro Islamic Liberation Front and Abu Sayyaf in the early 21st Century. Such grave crimes threaten the peace, security and well-being of the world. Only a handful of those responsible for these crimes have ever been brought to justice by national courts.

It was the lack of national legislation implementing international humanitarian law (IHL), particularly the absence of domestic laws repressing grave crimes under international law, in countries like Rwanda and the former Yugoslavia which, among others, led to the unimaginable atrocities there in modern times, and in turn to the necessity of creating *ad hoc* international criminal tribunals for those countries. These two *ad hoc* tribunals have paved the way for the establishment of the International Criminal Court (ICC) on 1 July 2002. The ICC shall be complementary to national criminal jurisdictions, with the former exercising jurisdiction only when the latter are unable or unwilling to do so.

A national criminal jurisdiction would be unable to do so if, in the first place, it has no national law defining and penalizing the same serious crimes over which the ICC has subject matter jurisdiction, namely genocide, crimes against humanity and war crimes. This is the present case with the Philippines. It is about time the Philippines do its part and adopt national legislation punishing these most serious

crimes as well as other grave violations of IHL, especially since the imposition of penal sanctions is among the few non-self-executing clauses of the main IHL treaties.

According to the International Committee of the Red Cross (ICRC) Advisory Service on IHL, **"Criminal legislation is the most appropriate and effective means of dealing with all serious violations of IHL."** For the Philippines, its present criminal laws are not adequate for the simple reason that they do not adopt the terms of reference of IHL and, for that matter, international criminal law.

Still, the ICC and other international tribunals are unlikely ever to be able to replace entirely the role of national courts and the need for effective national criminal legislation. In fact, national criminal jurisdictions are still primary over the ICC. **States continue to bear the primary obligation to implement IHL, and prevent and punish violations of it. This Philippine Statute seeks to fulfill that obligation.**

With all the more reason when one considers the Philippine tradition of adherence to the international rule of law, human rights and IHL, as shown by its Constitution, jurisprudence and accession to a good number of relevant treaties. The Philippines has made commitments and has its obligations under international law. But it can and should also benefit from the progressive developments of international law. **This will enable the Philippines to prosecute the international crimes itself, strengthen its national criminal justice system, contribute to an effective international criminal justice regime, and generally bring its national law into conformity with international standards as well as up-to-date with important developments in international law.** These too are reasons why this law is necessary.

Speaking of the Philippine humanitarian tradition, particularly jurisprudence, there is the 1949 Supreme Court decision in the case of *Kuroda vs. Jalandoni* (83 Phil. 171) where it was ruled 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.*" (italics supplied) In fact, the same decision referred to "generally accepted principles and policies of international law *which are part of our Constitution.*" (italics supplied)

In other words, it may be said, that 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, **this proposed Philippine Statute would, in a sense, be merely "re-legislating" these rules and regulations for clarity and updating, and also because the treaties themselves require domestic penal legislation.**

Who are the prime movers for this law? How was the task of law drafting undertaken? The Department of Foreign Affairs (DFA)-Office of the

United Nations and International Organizations (UNIO), then under Assistant Secretary Rosalinda V. Tirona, initiated an inter-agency "Forum on National Legislation on IHL" to commemorate IHL Day (12 August) in 2001. The most important output arising from this forum was a framework paper which advocated for one comprehensive law on IHL violations instead of separate penal laws for each and every IHL treaty ratified by the Philippines. The main model or reference for this comprehensive law, at least for the key parts, would be the 1998 *Rome Statute of the International Criminal Court*, being the highest development of international criminal law.

The actual task of law drafting was eventually passed on by DFA-UNIO to the Philippine National Red Cross (PNRC) National IHL Committee, led by Justice Leonor Ines Luciano, on 9 May 2002 at its meeting which designated a task force of several lawyers for the purpose. The ICRC-Manila Head of Delegation provided modest financial assistance. The ICRC Regional Legal Adviser in Bangkok provided crucial technical assistance in terms of reference materials, including the German Draft Code of Crimes Against International Law (CCAIL) which is similar in approach with this Philippine Statute.

The initial draft of this bill was first subjected to solicited comments from various stakeholders, both governmental and non-governmental, and legal experts, both local and foreign, for the rest of 2002. A second round consisted of a focused workshop for presentation and critique of this bill with key legal experts on 21 February 2003. The end result is this bill in its present form.

What is in this law? Well, the full title captures most of it: "An Act Defining and Penalizing Crimes Against International Humanitarian Law and Other Serious International Crimes, Adopting Corresponding Principles of Criminal Responsibility, Operationalizing Universal Jurisdiction, Providing for Special Courts, and for Related Purposes." Other significant parts of the law are a Declaration of Principles and State Policies, Fair Trial Guarantees (not only for suspects and accused but also for victims and witnesses), and Relationship with Other Laws.

This is a **special law, not an amendment to the Revised Penal Code**, because, as will become more evident below, this law is not simply criminal law. In criminalizing violations of IHL, this law adopts the option of specific criminalization of offenses laid down in the IHL treaties by adopting the wording of the treaties. The result is a different framework from pure criminal law or ordinary criminal jurisdiction..

Part 2 on the "Most Serious Crimes of International Concern" (genocide, crimes against humanity, and war crimes) correspond to the same crimes defined and penalized by the 1998 *Rome Statute of the International Criminal Court* (hereinafter *Rome Statute*). The *Rome Statute* represents the highest development of international criminal law to date, particularly for the enforcement of international humanitarian law and human rights. It is also on this basis that Parts 4 (Penalties), 5 (Principles of Criminal Responsibility) and 6 (Fair Trial Guarantees) draw heavily from the *Rome Statute*.

This proposed Philippine Statute is not *per se* national legislation for the implementation of the *Rome Statute*. The former merely uses the latter as a model or source. The latter itself draws heavily from other established sources: the 1948 *Genocide Convention*, customary international law on crimes against humanity, the 1949 *Geneva Conventions* and their 1977 *Additional Protocols*, the *Hague Conventions* of 1899 and 1907, the 1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*, the 1989 *Convention on the Rights of the Child*, and the 1994 *Convention on the Safety of United Nations and Associated Personnel*.

The Rome Statute also provides for "Elements of Crimes" for further clarity on what constitute genocide, crimes against humanity and war crimes. This, as well as forthcoming jurisprudence from the ICC, are seen to greatly assist and guide Philippine Courts in interpreting and applying this proposed Philippine Statute which makes specific references (in Articles 14 & 36) to the said "Elements of Crimes."

Part 3 on "Other Crimes Against International Humanitarian Law" draws from the following sources in international law:

- (1) the 1949 *Geneva Conventions I* and its 1977 *Additional Protocol I*, as regards misuse and abuse of the Red Cross and other protective emblems;
- (2) the 1954 *Hague Convention for the Protection of Cultural Property* and its 1999 *Second Protocol*; and
- (3) the 2000 *Optional Protocol* to the 1989 *Convention on the Rights of the Child*, particularly on the involvement of children in armed conflict.

As of now, the Philippines has **ratified** the 1949 *Geneva Conventions* and 1977 *Additional Protocol II*, the 1948 *Genocide Convention*, the 1968 *Convention on the Non-Applicability of Statutory Limitations to War Crimes*, and the 2000 *Optional Protocol* to the 1989 *Convention on the Rights of the Child*, among others. It has **signed but not yet ratified** the *Rome Statute*, 1977 *Additional Protocol I*, and the 1954 *Hague Convention for the Protection of Cultural Property* and its 1999 *Second Protocol*, among others. We submit that the latter situation of these treaties being signed but not yet ratified **does not bar our sovereign Congress from adopting certain provisions thereof as part of our national legislation in the exercise of its plenary legislative power.**

The ICRC Advisory Service on IHL has 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 of a treaty signifies our international obligation to become part of its international regime and to implement it, which is not limited to legislative measures. But we also have the sovereign choice to implement it or otherwise adopt applicable parts of it by national legislation, even if we are not obliged to. In the former case, the constitutional basis is the operation of the treaty clause; in the latter case, it is plenary legislative power. The ratification process for the

international treaties concerned can take its due course independently of this legislative initiative. If legislation turns out to come ahead of ratification, then it would only mean that, when ratification follows, there would already be implementing legislation in place and we would have already complied with that particular treaty obligation.

As it is, under the 1969 *Vienna Convention on the Law of Treaties*, signature on a treaty, even without yet ratification, is already an expression of consent to be bound by a treaty. As it is also, the law of armed conflict as embodied in some primary IHL treaties – the 1949 *Geneva Conventions*, the 1907 *Hague Convention IV*, the 1948 *Genocide Convention*, and the 1945 *Nuremberg Charter* – has acquired the status of customary international law and, therefore, binds all, including the Philippines. More so, considering the ruling of the Supreme Court in the *Kuroda* case that the principles, rules and regulations of the Hague Conventions and the Geneva Conventions on warfare and international humanitarian law form part of the law of our nation. **This proposed Philippine Statute seeks to consolidate those principles, rules and regulations in one comprehensive law in so far as the domestic penal aspect of serious international crimes is concerned.**

Parts 2, 3, 4, 5, and 6 of this proposed Philippine Statute deliberately copied as verbatim as possible the same wordings from the international sources. The reason for this is **to be able to benefit from international jurisprudence interpreting and applying particular provisions of the source international treaty. Thus, the provisions of this law sourced from the *Rome Statute* and other named international conventions should be retained as much as possible.** Where applicable, the provisions of this proposed Philippine Statute also indicate in brackets the “Source” (if copied basically verbatim from the source) or “Reference” (if not an exact or complete version from the reference) after each article.

Only in a few exceptional instances has this law substantively deviated from the source, and this is in pursuit of a law drafting policy of adopting the most progressive definitions and standards in international law. This is also the case with the German Draft Code of Crimes Against International Law (CCAIL). In this proposed Philippine Statute, a bracketed note [*N.B.*] with explanation on the deviation from the source is indicated right after the particular provision. One example is the adoption of 18 years of age (per the *Optional Protocol to the Convention on the Rights of the Child*) instead of 15 years of age (per *Rome Statute*) as the minimum age for participation and recruitment of persons in armed conflict. See Article 5, Paragraphs 2(b)(xxvi) and 2(e)(vii), and Article 8.

Also, notwithstanding the categorization of war crimes and grave breaches into those applicable in international armed conflict and those applicable in internal armed conflict in certain international conventions like the *Rome Statute* and the *Geneva Conventions and Additional Protocols*, **this proposed Philippine Statute (in Article 6) does away with this distinction in cases where acts committed in internal armed conflict would be qualified as war crimes and grave breaches if committed in international armed conflict.** The ICRC

recommends states to adopt and enact legislation necessary to repress grave breaches of the Geneva Conventions and Additional Protocol I regardless of whether they are committed in international or internal armed conflict. This approach has been followed in the legislation of certain states like Belgium, Canada, Denmark, Finland, the Netherlands, Norway, Sweden and Tajikistan. To be clear, this adopts for internal armed conflict the higher standards of international armed conflict for purposes of this proposed Philippine Statute only; it does not change the characterization of an internal armed conflict into one of international armed conflict.

By now, it should be evident that **this law is not simply criminal law; it is also international criminal law, international humanitarian law and international human rights.** Or one might describe this law as a marriage of criminal law and aspects of international law. The latter is clear from Article 17 on "Applicable Law" and Article 36 on "Relationship with International Law." This unprecedented role of international law in a Philippine law and its subject matter of serious crimes of international concern require corresponding principles of criminal responsibility (Part 5) and fair trial guarantees (Part 6) which meet the latest international standards for the investigation, prosecution and trial of these crimes.

There should be no issue here of double-standards because the latest international standards enhance or augment the rights of the accused under the Constitution. The Constitution itself would be the last to begrudge the enhancement or augmentation of human rights. Whatever higher international human rights standards should in fact be welcomed as an impetus to improve Philippine human rights standards. The substantial distinction in the frameworks of ordinary domestic criminal law, on one hand, and of international criminal law, humanitarian law and human rights, on the other, justifies the adoption of germane principles of criminal responsibility and fair trial guarantees in accordance with international standards.

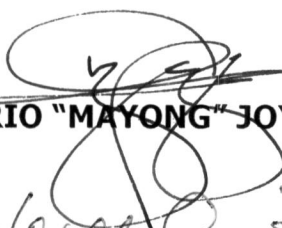
More so when one considers the possibility of foreigners coming under the jurisdiction of Philippine Courts for crimes under this proposed Philippine Statute because of the operationalization of the principle of **universal jurisdiction (Article 40) which allows for "justice without borders" so that there are "no safe havens" for war criminals and the like.**

Thus also the need for designation and training of special courts and prosecutors (Article 41). Over the long-term, we will be able to develop a pool of judges and prosecutors, some of whom may move on to serve with the International Criminal Court and other international tribunals. Their training can be considered **part of a broader educational and consciousness-building effort on international humanitarian law and human rights which is crucial for their implementation, in conjunction with criminal prosecution.** This law can also be the catalyst for the infusion of more international law consciousness among Filipino lawyers and law students through the law curriculum and continuing legal education.

Though penal sanctions are indispensable to ensure respect for IHL, they are insufficient in themselves to put an end to acts contrary to IHL. These norms need

to be placed within a suitable regulatory framework which will lay down the behavior complying with or prohibited by IHL. **There should be "no fear" from the military and police sectors about harassment suits arising out of this law.** Precisely, one aspect in the international standards for fair trial guarantees of the rights of the accused are safeguards against malicious prosecution. Ultimately, it is military and police discipline and strict adherence to IHL and human rights in practice that will obviate any harassment suits. This proposed Philippine Statute should instead be taken as a challenge to upgrade that discipline and adherence in the best interests of all concerned.

In sum, the Philippines must avail of the best that has been created by humanity in terms of international law to prevent and punish the worst acts of inhumanity. The soonest approval of this bill is therefore most earnestly sought.



MARIO "MAYONG" JOYO AGUJA



LORETTA ANN P. ROSALES



ANA THERESIA HONTIVEROS-BARAQUEL

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 4998



Introduced by Akbayan Representatives Mario "Mayong" Joyo Aguja, Loretta Ann P. Rosales and Ana Theresia Hontiveros-Baraquel

AN ACT DEFINING AND PENALIZING CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW AND OTHER SERIOUS INTERNATIONAL CRIMES, ADOPTING CORRESPONDING PRINCIPLES OF CRIMINAL RESPONSIBILITY, OPERATIONALIZING UNIVERSAL JURISDICTION, DESIGNATING SPECIAL COURTS, AND FOR OTHER 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 and Other Serious International Crimes."

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. The principles, rules and regulations of the Hague Conventions and the Geneva Conventions on warfare and international humanitarian law form part of the law of our nation.

[Source: Kuroda vs. Jalandoni, 83 Phil. 171]

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

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

5. 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. It shall also protect victims, witnesses and their families, and provide appropriate redress to victims and their families.

[References: Articles 9, 10 and 11 of the Universal Declaration of Human Rights; Articles 9, 14 and 15 of the International Covenant on Civil and Political Rights; the UN Standard Minimum Rules for the Treatment of Prisoners; the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Articles 7 and 15 of the Convention against Torture; the UN Basic Principles on the Independence of the Judiciary; the UN Guidelines on the Role of Prosecutors; and the UN Basic Principles on the Role of Lawyers, among others.]

PART 2. MOST SERIOUS CRIMES OF INTERNATIONAL CONCERN

Article 3 Genocide

The international crime of genocide shall be punishable under this Statute. 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, of the International Criminal Tribunal for Rwanda.]

Article 4

Crimes Against Humanity

1. Crimes against humanity shall be punishable under this Statute. 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:
 - (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" 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;

- (d) "Deportation or forcible transfer of population" means 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" means 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" means 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" means 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" means 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" 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 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, and also to those of gay, lesbian and other sexual orientations, within the context of society. The term "gender" does not indicate any meaning different from the above.

[Source: Rome Statute, Art. 7, with the addition in para. 3 of the phrase "and also to those of gay, lesbian and other sexual orientations," in accordance with the most progressive definition.]

Article 5

War Crimes

1. War crimes shall be punishable under this Statute.

[N.B. The apparent threshold of "in particular when committed as part of a plan or policy or as part of a large-scale commission of crimes" found in the Rome Statute, Art. 8, para. 1 has not been adopted as there is no threshold for war crimes and grave breaches under the 1949 Geneva Conventions, 1977 Additional Protocol I, and customary international law.]

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;

[N.B. 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;

[N.B. 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, para. 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 under international or national law.

[N.B. Same as the corresponding provision in the Rome Statute but with the last phrase "under international or national law" replacing "and are included in an annex to this Statute," to obviate the need for such cumbersome annexing and to allow the option of a comprehensive prohibition under national law.]

- (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.

[N.B. The corresponding provision in the Rome Statute provides for 15 years. This was changed here to 18 years based on the higher standard of the 2000 Optional Protocol to the 1989 Convention on the Rights of the Child.]

- (xxvii) The following acts when committed willfully and in violation of the relevant provisions of the 1949 Geneva Conventions or their 1977 Additional Protocol I:

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

3. 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.]

- (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 judgment 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;

[N.B. The corresponding provision in the Rome Statute provides for 15 years. This was changed here to 18 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.

[N.B. Same as the corresponding provision in the Rome Statute but with the last phrase "all means that are lawful under international law" replacing "by all legitimate means," to ensure international standards.]

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

Article 6

Scope of Application

1. Notwithstanding the categorization of war crimes and grave breaches into those applicable in international armed conflict and those applicable in internal armed conflict in Article 5, 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. This non-distinction in scope of application shall likewise apply to other articles like Articles 7 and 8 derived from rules for international armed conflict.

[N.B. *This is based on the recommendation of the International Committee of the Red Cross Advisory Service on IHL and on the example of other country legislation.*]

2. This Statute shall cover Philippine forces on peace-keeping, combat or similar missions abroad with the same non-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.

PART 3. OTHER CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW

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 following prohibited acts of misuse and abuse of the red cross and other protective emblems, in cases not resulting in death, serious personal injury or capture, shall be punishable under this Statute:

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 in particular prohibited to display the said emblem or words on signs, posters, announcements, leaflets or commercial documents, or to affix them to goods or packaging, or to sell, offer for sale or place in circulation goods thus marked.

[*Source: ICRC Model Law on the Use and Protection of the Red Cross or Red Crescent Emblem*]

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

[*Source: Geneva Convention I, Art. 53, second para.*]

4. 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*]

5. 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) and (e)(iv), the following violations against cultural property and places of worship in the event of armed conflict shall be punishable under this Statute:
 - (a) committing any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples
 - (b) using such objects in support of the military effort
 - (c) making such objects the object of reprisals

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

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

[Source: *Additional Protocol I, Art. 85, para. 4(d)*]

3. 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 which shall be punishable under this Statute:
 - (a) making cultural property under enhanced protection the object of attack;
 - (b) using cultural property under enhanced protection or its immediate surroundings in support of military action;
 - (c) extensive destruction or appropriation of cultural property protected under the Convention and this Protocol.

[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 (e)(vii), the recruitment, enlistment or conscription of children into armed forces or groups when committed during peacetime shall be punishable under this Statute. 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 eighteen 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. This 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. PENALTIES

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

Article 10

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 15 to 30 years. When justified by the extreme gravity of the crime and the individual circumstances of the convicted person, the Philippine Court may impose a term within a range from 30 to 40 years.

Article 11

Range of Penalties for Crimes under Part 3

1. The main penalty of imprisonment for crimes under Article 7 shall be for a specified number of years within a range from 1 to 5 years.
2. The main penalty of imprisonment for crimes under Article 8 shall be for a specified number of years within a range from 5 to 15 years.
3. 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 12

Additional Penalties

In addition to imprisonment, the Philippine Court may order,

1. A fine under the criteria provided for in the Rules of Procedure and Evidence; and/or
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, para. 2]

Article 13

Determination of the Sentence

1. In determining the sentence, the Philippine 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 5. PRINCIPLES OF CRIMINAL RESPONSIBILITY

Article 14

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.

[Source: Rome Statute, Art. 9, para. 1]

Article 15

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.

[Source: Rome Statute, Art. 10]

Article 16

Ne Bis In Idem

1. Except as provided herein, no person shall be tried before a Philippine Court 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 and 3 of this Statute for which that person has already been convicted or acquitted by a Philippine Court.

3. No person who has been tried by another court for conduct also proscribed under Parts 2 and 3 of this Statute shall be tried a Philippine Court unless the proceedings in the other court:
 - (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Philippine Court; or
 - (b) Otherwise were not conducted 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 17

Applicable Law

1. The Philippine 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 36.
 - (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, as defined in Article 4, paragraph 3, 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. 18

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 Philippine 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. 19 **Nulla Poena Sine Lege**

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

[Source: Rome Statute, Art. 23]

Article 20 **Change in the Law**

In the event of a change in 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, para. 2]

Article 21 **Individual Criminal Responsibility**

1. The Philippine 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 22

Exclusion of Jurisdiction over Persons under Eighteen

The Philippine 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 23

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 Philippine Court from exercising its jurisdiction over such a person.

[Source: Rome Statute, Art. 27]

Article 24

Responsibility of Commanders and Other Superiors

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

1. 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:
 - (a) 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
 - (b) 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.

2. With respect to superior and subordinate relationships not described in paragraph 1, 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:
 - (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 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, but with the standard for civilian superiors being made the same as that for military commanders, in accordance with the international law and standard applied consistently since the Nuremberg Judgment and elucidated in the Nuremberg Principles.]

Article 25

Non-Applicability of Statute of Limitations

1. The crimes within the jurisdiction of the Philippine Court shall not be subject to any Statute of Limitations.

[Source: Rome Statute, Art. 29]

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

[Reference: German Draft Code of Crimes Against International Law, Art. 1, Sec. 5]

Article 26

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 Statute 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 27 **Grounds for Excluding Criminal Responsibility.**

1. In addition to other grounds for excluding criminal liability provided for in this Statute, 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 Philippine 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.
 - (d) The conduct which is alleged to constitute a crime within this Statute 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 Statute 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 17 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 28 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 of conduct is a crime within the jurisdiction of the Philippine 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 Article 29.

[Source: Rome Statute, Art. 32]

Article 29 Superior Orders

1. The fact that a crime within the jurisdiction of the Philippine Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless the order was not 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, except for the removal in paragraph 1 of the qualifications (unless) "the person was under a legal obligation to obey the orders of the Government or superior in question" and "the person did not know that the order was unlawful," as these qualifications would be inconsistent with international law since Nuremberg.]

PART 6. FAIR TRIAL GUARANTEES

Article 30 Rights of Persons During an Investigation

1. In respect of an investigation under this Statute, 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; and
 - (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 Statute.
2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Philippine Court and that a person is about to be questioned either by the Prosecutor, or by national authorities, 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; and
 - (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 31 Presumption of Innocence

1. Everyone shall be presumed innocent until proved guilty before the Philippine 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 32 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 Philippine 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; and
 - (i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.
2. 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 33

Protection of the Victims and Witnesses

1. 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 to all relevant factors, including age, gender as defined in Article 4, paragraph 3, 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 33, 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.

[Source: Rome Statute, Art. 68]

Article 34

Reparations to Victims

1. The Philippine 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.
2. 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.
3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims or other interested persons.
4. Nothing in this article shall be interpreted as prejuducing the rights of victims under national or international law.

[Source: Rome Statute, Art. 75]

PART 7. RELATIONSHIP WITH OTHER LAWS

Article 35

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 36 Relationship with International Law

In the application and interpretation of this Statute, the Philippine 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. Relevant and applicable international human rights instruments and jurisprudence, mainly from the United Nations system; and
7. 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 37 Relationship with the Revised Penal Code and Other Relevant Laws

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. The same relationship with this Statute applies to the Civil Code of the Philippines and special laws of a criminal and/or civil nature, such as on matters of civil liability.

Article 38 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 39

Relationship with Military Law

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

PART 8. JURISDICTION AND COURTS

Article 40

Universal Jurisdiction

1. 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 or residents of the State, or posed no direct threat to the State's own particular security interests.

[Reference: Amnesty International, "Universal Jurisdiction: 14 Principles on the Effective Exercise of Universal Jurisdiction" and the Amnesty International Legal Memorandum on "Universal Jurisdiction: The Duty of States to Enact and Implement Legislation"]

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

[Reference: Draft German Code of Crimes Against International Law, Art. 3]

Article 41

Philippine Courts, Prosecutors and Investigators

1. The Regional Trial Courts of the Philippines shall have original and exclusive jurisdiction over the international crimes punishable under this Statute. Their judgments may be appealed or elevated to the Court of Appeals and to the Supreme Court under the existing system of jurisdiction of Philippine courts.
2. 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 special courts refer to designated branches of the Regional Trial Court and designated divisions of the Court of Appeals.

3. 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.

PART 9. FINAL PROVISIONS

Article 42 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.

Article 43 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.

Article 44 Effectivity

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

Approved,