



*Modernization of Criminal  
Laws in the Philippines  
Towards Universality and  
Technology*

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# BACKGROUND OF THE PHILIPPINE CRIMINAL LEGAL SYSTEM

## Pre-Conquest of the Philippines

- Prior to the early 16<sup>th</sup> century, Ancient Filipinos were bound by:
  - customary laws
  - written laws
- Ferdinand Magellan (*Fernão de Magalhães*)
  - Portuguese explorer
  - Sailed under the flag of Spain
  - discovered the Philippines in 1521



An anonymous portrait of Ferdinand Magellan from the 16th or 17th century (The Mariner's Museum Collection, Newport News, VA).  
<[https://commons.wikimedia.org/wiki/File:Ferdinand\\_Magellan.jpg](https://commons.wikimedia.org/wiki/File:Ferdinand_Magellan.jpg)>  
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# Spanish Penal Laws previously in force in the Philippines (1565-1898)

1. Compilation of the Laws of Indies
2. *Partidas*
3. *Novísima Recopilación*
4. *Autos Acordados* of the *Real Audiencia de Manila*
5. *Other Royal decrees and orders*
6. Spanish *Codigo Penal* (1870)
7. Old Penal Code (1887)

## Penal Laws during American Colonization (1898-1946), Japanese Occupation (1942-1945), up to the present

1. The Revised Penal Code (1930-present)

# The Revised Penal Code

- approved on December 8, 1930
- greatly influenced by the Spanish Penal Code
- mainly based on Old / Classical School of Thought
- the penalties remained in their Spanish origin
  - *reclusion perpetua, reclusion temporal, prision correctional, prision mayor, arresto menor, arresto mayor, destierro*

## • **Book One**

- general principles of criminal law
- territoriality and extra-territoriality
- non-retroactivity of penal laws,
- concept of *dolo* and *culpa*,
- stages of the execution of crime
- circumstances affecting criminal liability
- Penalties

## • **Book Two**

- Classifies the nature of crimes
- Specific crimes
- “Crimes against National Security,”  
“Crimes against Persons,” among others

# Statutory Construction: The Old Penal Code (Spain) vis-à-vis the Revised Penal Code of the Philippines

- In case of **doubt in the interpretation of the Revised Penal Code, the Philippine courts consult the original Spanish text**
  - the word "imprisonment" used in the English text is a wrong translation of the phrase "sufriendo privacion de libertad" used in the Spanish text:

| English   | Spanish  |
|---|--|
| <i>Evasion of service of sentence.</i> — The penalty of <i>prision correccional</i> in its medium and maximum periods shall be imposed upon any convict who shall evade service of his sentence by <u>escaping during the term of his imprisonment</u> by reason of final judgment. | ART. 157. <i>Quebrantamiento de sentencia.</i> — Sera castigado con <i>prision correccional</i> en sus grados medio y maximo el sentenciado que quebrantare su condena, fugandose mientras estuviere <u>sufriendo privacion de libertad</u> por sentencia firme; |

- Proper English translation: “deprivation of liberty” (People vs. Abilong;1948)

# Other Sources of Philippine Criminal Laws

- Special Penal Laws, Local Government Ordinances, Others

## *Mala in se and Mala Prohibita Crimes*

| <b><u>TRADITIONAL</u> DISTINCTION</b>  |  |
|--|--|
| Mala in se<br>("Wrong / Evil in itself")   | Mala Prohibita<br>("Wrong because Prohibited")                                   |
| <ul style="list-style-type: none"><li>• Punished by the Revised Penal Code</li></ul> | <ul style="list-style-type: none"><li>• Punished by Special Penal Laws</li></ul> |
| Examples: Murder, Robbery, Adultery  | Example: Illegal Possession of Firearms  |

### **Better Test to Distinguish between *Mala in Se* and *Mala Prohibita*:**

-Determine the inherent immorality or vileness of the penalized act.

*(Dungo vs. People; G.R. No. 209464)*

# RECENT DEVELOPMENTS IN PHILIPPINE CRIMINAL LAW, MODERNIZATION AND UNIVERSAL JURISDICTION

Universal jurisdiction - “provides for a state’s jurisdiction over crimes against international law even when the crimes did not occur on that state's territory, and neither the victim nor perpetrator is a national of that state. xxx” (European Center for Constitutional and Human Rights; ECCHR)

## I. Suspension of Death Penalty, Imposition of Community Service, Adjustment of the Amount of Imposable Fines

An Act Prohibiting the Imposition of Death Penalty in the Philippines - Republic Act. No. 9346 (2006)

Adjusted Amounts of Imposable Fines - Republic Act. No. 10951 (2017)

Community Service Act of 2019 - Republic Act No. 13362 (2019)

## II. The Digital Space and Cybercrime

Cybercrime Prevention Act of 2012 - Republic Act No. 10175 (2012)

### III. Gender-Related Crimes

- Anti-Sexual Harassment Act of 1995 - Republic Act No. 7877 (1995)
- Safe Spaces Act - Republic Act No. 11313 (2019)
- Anti-Violence Against Women and Their Children Act of 2004 - Republic Act No. 9262 (2004)

### IV. Youth Justice

- Juvenile Justice and Welfare Act - Republic Act No. 9344 (2006)
- Anti-Child Pornography Act of 2009 - Republic Act No. 9775 (2009)
- Raising the Age of Sexual Consent - Republic Act No. 11648 (2022)

### V. Dangerous Drugs Laws

- Republic Act No. 6425 (1972)
- Comprehensive Dangerous Drugs Act of 2002 – Republic Act No. 9165 (2002)

### VI. Anti-Terrorism

- Human Security Act of 2007 – Republic Act No. 9372 (2007)
- The Anti-Terrorism Act of 2020- Republic Act No. 11479 (2020)

### VII. Crimes Against International Humanitarian Law, Genocide and Other Crimes against Humanity – Republic Act No. 9851 (2009)



I. Suspension of Death Penalty,  
Imposition of Community Service,  
Adjustment of the Amount of Imposable Fines

# *An Act Prohibiting the Imposition of Death Penalty in the Philippines*

Republic Act. No. 9346 (2006)

- Instead of death penalty - *reclusion perpetua* or *life imprisonment*
- In observance of the Convention against *Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* (CAT), and *International Covenant on Civil and Political Rights* (ICCPR).

# *Community Service Act of 2019*

Republic Act No. 13362

- Penalties of *arresto menor* and *arresto mayor* be served by rendering community service instead of imprisonment in the place where the crime was committed
- Discretionary upon the courts

# Adjusted Amounts of Imposable Fines

Republic Act. No. 10951 (2017)

- To correspond with **inflation**, the law adjusted:
  - amounts of **imposable fines**
  - **value of property** on which a penalty is based
  - **value of damage** on which a penalty is based
- Triggered by the Supreme Court's decision in *Corpuz v. People* (2014).

# *Corpuz v. People* (2014)

“There seems to be a perceived injustice brought about by the range of penalties that the courts continue to impose on crimes against property committed today, based on the amount of damage measured by the value of money eighty years ago in 1932. xxx

However, this Court cannot modify the said range of penalties because that would constitute judicial legislation.”

Remedy: Article 5 of the RPC

**ART. 5.** *Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties.* — Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, **it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.** xxx

## II. The Digital Space and Cybercrime

# *Cybercrime Prevention Act of 2012*

Republic Act No. 10175

- The Philippines had to adapt with the **complexities of technology** and new realities which may have not been envisioned by current laws
- **The Philippines' compliance with the *Budapest Convention on Cybercrime of the Council of Europe***
  - The Council of Europe recognized the Cybercrime Prevention Act as a full implementation of the Budapest Convention and as a sound cybercrime legislation.

- Recognition that **any** crime may be done in the cyberspace
- “**All crimes defined and penalized by the Revised Penal Code**, as amended, and special laws, if committed by, through and with the use of information and communications technologies” shall be imposed with a penalty **“one (1) degree higher** than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be.” (Section 6)



- Penalizes the following as cybercrimes: (Section 4)
  - a. **Offenses against the confidentiality, integrity and availability of computer data and systems**
    - *i.e. Illegal Access, Illegal Interception, Data Interference, System Interference, Misuse of Devices, and Cyber Squatting*
  - b. **Computer-related Offenses**
    - *i.e. Computer-related Forgery, Computer-related Fraud, Computer-related Identity Theft*
  - c. **Content-related Offenses**
    - *i.e. Cybersex, Child Pornography, Libel*

# Extraterritorial Application of The Cybercrime Prevention Act of 2012

- a) When a violation of the law is **committed by a Filipino** national regardless of the place of commission;
- b) If any of the elements of the crime was **committed within the Philippines;**
- c) If any of the elements of the crime was committed with the use of any **computer system, wholly or partly situated in the Philippines;** or
- d) When the commission of the **crime caused damage to a natural or juridical person who,** at the time the offense was committed, **was in the Philippines.** (Section 21)

# III. Gender-Related Crimes

# *Anti-Sexual Harassment Act of 1995*

Republic Act No. 7877

- Penalizes acts of sexual harassment in a work-related or employment environment and in an education or training environment.
- Requires the offender to have “authority, influence or moral ascendancy” over the victim (Section 3)
- Did not address the issue of sexual harassment among peers or co-employees, or those against a superior

# *Safe Spaces Act*

Republic Act No. 11313 (2019)

- Covers all forms of gender-based sexual harassment committed in public spaces, educational or training institutions, workplace, as well as online space
- **Gender-based online sexual harassment**
  - an online conduct targeted at a particular person that causes or likely to cause another mental, emotional or psychological distress, and fear of personal safety, sexual harassment acts including unwanted sexual remarks and comments, threats, uploading or sharing of one's photos without consent, video and audio recordings, cyberstalking and online identity theft (Section 3[e])

# *Anti-Violence Against Women and Their Children Act of 2004*

Republic Act No. 9262

- Philippines' compliance with **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**
- Seeks to address the prevalence of violence against women and their children by their intimate partners like their husband or ex-husband, live-in partner or former live-in partner, boyfriend/girlfriend or ex-boyfriend/ex-girlfriend, dating partner or former dating partner
- Violence which results in **physical, sexual, psychological harm or suffering or economic abuse** including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.

# *Extraterritorial Application*

- *AAA v. BBB* (2018):
  - the Philippine Supreme Court declared that “**acts of violence against women and their children may manifest as transitory or continuing crimes**; meaning that some acts material and essential thereto and requisite in their consummation occur in one municipality or territory, while some occur in another. In such cases, **the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case**; it being understood that the first court taking cognizance of the same excludes the other. **Thus, a person charged with a continuing or transitory crime may be validly tried in any municipality or territory where the offense was in part committed.**”

## IV. Youth Justice

Philippine laws protecting children as part of the country's adherence *to the United Nations Convention on the Rights of the Child* and its commitment to the international community



# *Juvenile Justice and Welfare Act*

## Republic Act No. 9344 (2006)

- **15 years old** – minimum age of criminal responsibility (Section 6)
- A child above 15 years but below 18 years is also exempt from criminal liability unless he/she has acted with discernment (Section 6)
- The court may allow the child to undergo an intervention/diversion program as a chance to reform

# Raising the Age of Sexual Consent

Republic Act No. 11648 (2022)

- Raised the age of sexual consent from 12 years old to **16 years old** (statutory rape)
- Exception: the offender will be exempt from criminal liability when **ALL** of the following concurs:
  - the age difference between the offender and the victim is not more than three (3) years
  - that the victim is at least 13 years of age, and
  - the sexual act is proven to be consensual, non-abusive, and non-exploitative

# *Anti-Child Pornography Act of 2009*

## Republic Act No. 9775

- Compliance with the ***Convention on the Rights of the Child***, the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, the *International Labor Organization Convention No. 182 on the **Elimination of the Worst Forms of Child Labor*** and the ***Convention Against Transnational Organized Crime***
- Penalizes, among others:
  - a) The **production**, direction, or creation of child pornography
  - b) the **publication**, transmission, sale, distribution, broadcast or promotion of such materials;
  - c) the **possession with intent** to sell, distribute, publish or broadcast such materials; and
  - d) the **willful access** of any form of child pornography (Section 4)

# *Anti-Child Pornography Act of 2009*

## Republic Act No. 9775

- Definition of "child"
  - a. **below eighteen (18) years of age or over, but** unable to fully take care of self from **abuse, neglect**, cruelty, exploitation or has **physical or mental disability**
  - b. **regardless of age** who is presented, depicted or **portrayed as a child**
  - c. computer-generated, **digitally or manually crafted images or graphics** of a person who is represented or who is **made to appear to be a child** (Section 3[a][2])
- Liability is **not limited to the person or persons who actually committed** the specified acts
  - **Internet service providers** are subject to pay hefty fines of up to P3,000,000.00, if they fail to notify authorities (Sections 9 and 15[k])
  - **Internet content hosts** are is given the duty to not host any form of child pornography; the duty to report (Section 11 [a] and [b])

# V. Dangerous Drugs Laws

# Dangerous Drugs Laws

- The Philippines has a strict policy against dangerous drugs
- Republic Act No. 6425 (1972)
  - The Philippines' adherence to the *1961 Single Convention on Narcotic Drugs, Convention on Psychotropic Substances*, and *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*
  - repealed the provisions on dangerous drugs contained in the Revised Penal Code
  - Primarily based on the old or classical theory, as may be seen in the harsh penalties imposed for drug pushers and traffickers (*life imprisonment to death* and a fine ranging from *Five hundred thousand pesos [P500,000.00]* to *Ten million pesos [P10,000,000.00]* for the offense of Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs), and secondarily on the positivist theory, shown through the convict's rehabilitation, instead of imprisonment for drug users

# *Comprehensive Dangerous Drugs Act of 2002*

Republic Act No. 9165, as amended by Republic Act 10640

- Penalizes **drug trading** done **through the use of electronic devices** (Section 3[jj])
- The Philippine Drug Enforcement Agency is given the duty to inspect packages which appear to be transacted through online means (Section 84[i])

## Chain of Custody

- the duly recorded authorized movements and custody of seized drugs xxx from the time of seizure to receipt in the forensic laboratory to safekeeping to presentation in court (DDB Regulation No. 1, Series of 2002)
- Purpose: preserve the integrity of the seized drugs
- Links:
  1. Seizure and marking of the illegal drug by the apprehending officer
  2. Apprehending officer to the investigating officer
  3. Investigating officer to the forensic chemist for laboratory examination
  4. Forensic chemist to the court (*People v. Kamad* [2010])

# VI. Anti-Terrorism



# Philippine Laws on Terrorism

- **No crime of terrorism** under the **Revised Penal Code**
- ***Human Security Act of 2007*** – Republic Act No. 9372
  - terrorism is committed when the following elements concur:
    - (1) predicate crimes;**
    - (2) characteristic: sow and create a condition of widespread and extraordinary fear and panic among the populace; and**
    - (3) purpose: coerce the government to give in to an unlawful demand**  
*(Southern Hemisphere v. Anti-Terrorism Council; 2010)*
- 2020: The Anti-Terrorism Act (Republic Act No. 11479) repealed the Human Security Act

# *Anti Terrorism Act of 2020: Salient Features*

## **1. Inchoate Crimes**

- threat to commit terrorism, planning, training, facilitating, proposal and inciting to terrorism, recruitment, among others

## **2. Removal of requirement of Predicate Crimes**

## **3. Preliminary Proscription**

- Section 27 provides that the Court of Appeals shall issue a preliminary order of proscription within 72 hours from the filing of the application, upon a finding of probable cause based solely on the application of the Department of Justice, to prevent the commission of terrorism.

## **4. Detention without Judicial Warrant of Arrest**

- 14 days, extendible to 10 days

## **5. Extraterritoriality**

# Extraterritorial Application

- SECTION 49. *Extraterritorial Application.* — Subject to the provision of any **treaty** of which the Philippines is a signatory and to any contrary provision of **any law of preferential application**, xxx this Act shall apply:
  1. To a **Filipino citizen or national** who **commits** any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act **outside the territorial jurisdiction** of the Philippines;
  2. To [those] who, although physically outside the territorial limits of the Philippines, **commit** any of the crimes mentioned in Paragraph (a) hereof **inside the territorial limits** of the Philippines;
  3. To individual persons who, although physically outside the territorial limits of the Philippines, commit any of the said crimes mentioned in Paragraph (a) hereof **on board Philippine ship or Philippine airship**;
  4. To individual persons who commit any of said crimes mentioned in Paragraph (a) hereof within any **embassy, consulate, or diplomatic premises** belonging to/occupied by the Philippine government in an official capacity;
  5. To individual persons who, although physically outside the territorial limits of the Philippines, commit said crimes xxx **against Philippine citizens or persons of Philippine descent, where their citizenship or ethnicity was a factor** in the commission of the crime; and
  6. To individual persons who, although physically outside the territorial limits of the Philippines, commit said crimes **directly against the Philippine government.**

In case of an individual who is neither a citizen or a national of the Philippines who commits any of the crimes mentioned in Paragraph (a) hereof outside the territorial limits of the Philippines, the Philippines shall exercise jurisdiction only when such individual enters or is inside the territory of the Philippines: *Provided*, That, in the absence of any request for extradition from the state where the crime was committed or the state where the individual is a citizen or national, or the denial thereof, the ATC shall refer the case to the BI for deportation or to the DOJ for prosecution in the same manner as if the act constituting the offense had been committed in the Philippines.

# VII. Crimes Against International Humanitarian Law, Genocide and Other Crimes against Humanity

- 2009 - Republic Act No. 9851, or the "**Philippine Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity**" was enacted
  - Philippines' adherence to the *Hague Conventions of 1907* and the *Geneva Conventions* on the protection of victims of war and international humanitarian law.
- Penalizes:
  - War Crimes
  - Genocide
  - Other Crimes against Humanity
- 2018: Withdrawal from the Rome Statute of International Criminal Court
- Domestic prosecution of crimes against humanity

# Jurisdiction (Universal)

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

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

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

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

- Double Jeopardy

# *Conclusion*

In view of the **growing number and technological complexities of criminal offenses**, both in the domestic and international *fora*, the Philippines has endeavored to enhance its criminal justice system consistent with its political, social, economic, moral, and cultural environment.

Notably, the Philippine Congress has enacted several statutes in deference to the Philippines' commitment to the international community while **balancing the constitutional rights of the accused and State's right to self-preservation.**

Thank You!