

SEVENTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
First Regular Session

HOUSE OF REPRESENTATIVES
H.B. No. **2834**

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Introduced by Representative Herminio Harry L. Roque Jr.

EXPLANATORY NOTE

Acting on the Constitutional principle that the Philippines renounces war as an instrument of national policy and adopts generally accepted principles of international law as part of the law of the land, the Philippines has made strides in strengthening its commitment and adherence to international humanitarian law.

Republic Act 9851, the “Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity” was enacted on 11 December 2009. The law defined war crimes, crimes against humanity and genocide as being criminal. Furthermore, it codified the applicability of the exercise of universal jurisdiction for these crimes.

When Republic Act No. 9851 (the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and other Crimes Against Humanity) was signed on December 11, 2009, the Philippines was already a signatory of but had yet to ratify the Rome Statute of the International Criminal Court (ICC). While the definitions of these crimes under RA 9851 were very similarly worded as in the Rome Statute, there are nevertheless variations in their definitions, which could change the elements, the coverage (i.e. the people affected) or the scope, whether exclusively applicable either to international or non-international armed conflict, or both.

Upon the Philippines’ ratification of the Rome Statute on 30 August 2011, it became obligatory on the part of the Philippines to adopt the terms and principles of the said instrument, among which is the complementary role of the International Criminal Court to the national criminal jurisdiction. For the complementary role of the ICC to apply, the definitions of these crimes under the Rome Statute and national laws must be the same – a requirement not currently met by RA 9851. This amendatory bill aims to address this gap by means of the following:

1. Revising the definitions of the (i) crime of genocide, (ii) crimes against humanity and (iii) war crimes to follow strictly their definitions in the Rome Statute of the ICC;

2. Deleting specific acts identified by RA 9851 as falling under any of the above crimes but were not identified as such under the Rome Statute. Some of the deleted acts were the following:
 - a. Section 4. *War Crimes*. a. (9) Unjustifiable delay in the repatriation of prisoners of war or other protected persons.
 - b. Section 4. *War Crimes*. c. (6) Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilian or damage to civilian objects, and causing death or serious injury to body or health.
 - c. Section 4. *War Crimes*. c. (16) 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.
3. Integrating the Elements of Crimes (as approved by members of the Assembly of States Parties of the ICC) to assist in the interpretation and application of the crimes;
4. Following the Rome Statute in enumerating distinctly the war crimes committed in international and non-international armed conflicts (as opposed to RA 9851 where no express distinction was made); and
5. Providing for the complementary and cooperation clauses to guide in the actual prosecution of the enumerated crimes.

At this time where we are engaged in what is slowly revealing itself as an all-out “war” against drug syndicates, we must refine the metes and bounds of the State’s monopoly on the use of force against its own people. Hence, the passage of this law is strongly urged.¹



HARRY L. ROQUE JR.

¹This bill is an output of the Technical Working Group of the International Criminal Court (ICC) implementation project of the Institute of International Legal Studies of the U.P. Law Center. The working group was composed of members and experts from the following agencies: the Institute of International Legal Studies-UP Law Center, the U.P. College of Law; the Department of Justice; the Department of Foreign Affairs; the Office of the Solicitor General; the Coalition of the International Criminal Court (CICC-Asia); the Commission on Human Rights, the Department of National Defense, and the Philippine Coalition for the International Criminal Court (PCICC).

HOUSE OF REPRESENTATIVES
H.B. No. **2834**

Introduced by Representative Harry L. Roque Jr.

1
2 **AN ACT AMENDING REPUBLIC ACT NO. 9851 “AN ACT DEFINING AND**
3 **PENALIZING CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW,**
4 **GENOCIDE AND OTHER CRIMES AGAINST HUMANITY, ORGANIZING**
5 **JURISDICTION, DESIGNATING SPECIAL COURTS, AND FOR RELATED**
6 **PURPOSES”**

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

7 **CHAPTER I**
8 **GENERAL PROVISIONS**

9 **SECTION 1.** *Short Title.* — This Act shall be known as the “IHL Amendatory Act”

10 **CHAPTER II**
11 **AMENDMENT OF DEFINITION OF TERMS**

12 **SECTION 2.** Section 3 (a) of Republic Act No. 9851 is hereby amended to read as
13 follows:

14 “(a) “Apartheid” means inhumane acts of a character similar to those referred to in
15 section 6, committed in the context of an institutionalized regime of systematic
16 oppression and domination by one racial group over any other racial group or
17 groups and committed with the intention of maintaining that regime;”

18 **SECTION 3.** Section 3 (b) of Republic Act No. 9851 is hereby amended to read as
19 follows:

“(b) “Arbitrary 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;”

SECTION 4. Section 3 (g) of Republic Act No. 9851 is hereby amended to read as follows:

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

SECTION 5. Section 3 (j) of Republic Act No. 9851 is hereby amended to read as follows:

“(j) “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;”

SECTION 6. Section 3 (s) of Republic Act No. 9851 is hereby amended to read as follows:

“(s) “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;”

CHAPTER III

AMENDMENT OF CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW,
GENOCIDE AND OTHER CRIMES AGAINST HUMANITY

1 **SECTION 7.** Section 4 (a) of Republic Act No. 9851 is hereby amended to read as
2 follows:

3 “Section 4. *War Crimes.* — For the purpose of this Act, “war crimes” or “crimes
4 against International Humanitarian Law” means:

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

9 “(i) Willful killing;

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

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

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

14 “(v) Willfully depriving a prisoner of war or other protected person of the
15 rights of fair and regular trial;

16 “(vi) Unlawful arbitrary deportation or transfer or forcible transfer or
17 population or unlawful confinement;

18 “(vii) Taking of hostages; and

19 “(viii) Compelling a prisoner a prisoner of war or other protected person to
20 serve in the forces of a hostile power.

21 **SECTION 8.** Section 4 (b) of Republic Act No. 9851 is hereby amended to read as
22 follows:

23 “(b) In case of an armed conflict not of an international character, serious
24 violations of common Article 3 to the four (4) Geneva Conventions of 12
25 August 1949, namely, any of the following acts committed against persons
26 taking no active part in the hostilities, including member of the armed forces
27 who have laid down their arms and those placed *hors de combat* by sickness,
28 wounds, detention or any other cause;

- "(i) Violence to life and person, in particular, 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; and
- "(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.

SECTION 9. Section 4 (c) of Republic Act No. 9851 is hereby amended to read as follows:

- "(c) 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 civilian objects, that is, object which are not military objectives;"
 - "(iii) 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;"
 - "(iv) 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;
 - "(v) 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;

- 1 "(vi) Attacking or bombarding, by whatever means, towns, villages,
2 dwellings or buildings which are undefended and which are not
3 military objectives;
- 4 "(vii) Killing or wounding a combatant who, having laid down his/her arms
5 or no longer having means of defense, has surrendered at discretion;
- 6 "(viii) Making improper use of a flag of truce, of the flag or the military
7 insignia and uniform of the enemy or of the United Nations, as well as
8 of the distinctive emblems of the Geneva Conventions, resulting in
9 death, serious personal injury;
- 10 "(ix) Intentionally directing attacks against buildings dedicated to religion,
11 education, art, science or charitable purposes, historic monuments,
12 hospitals and places where the sick and wounded are collected,
13 provided they are not military objectives;
- 14 "(x) Subjecting persons who are in the power of an adverse party to
15 physical mutilation or to medical or scientific experiments of any kind
16 which are neither justified by the medical, dental or hospital treatment
17 of the person concerned nor carried out in his/her interest, and which
18 cause death to or seriously endanger the health of such person or
19 persons;
- 20 "(xi) Killing or wounding treacherously individuals belonging to the hostile
21 nation or army;
- 22 "(xii) Declaring that no quarter will be given;
- 23 "(xiii) Destroying or seizing the enemy's property unless such destruction or
24 seizure is imperatively demanded by the necessities of war;
- 25 "(xiv) Pillaging a town or place, even when taken by assault;
- 26 "(xv) Ordering the displacement of the civilian population for reasons related
27 to the conflict, unless the security of the civilians involved or
28 imperative military reasons so demand;
- 29 "(xvi) The Transferring, directly or indirectly, by the occupying power of
30 parts of its own civilian population into the territory it occupies, or the
31 deportation or transfer of all or parts of the population of the occupied
32 territory within or outside this territory;

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

"(xviii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

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

"(xx) 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;

"(xxi) 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;

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

"(xxiii) Committing any of the following acts:

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

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

"3) "Using children under the age of eighteen (18) years, or using them to participate actively in hostilities.

"(xxiv) Employing the following means:

"1) "Poison or poisoned weapons;

"2) "Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

- 1 "3) "Bullets which expand or flatten easily in the human body,
2 such as bullets with hard envelopes which do not entirely cover
3 the core or are pierced with incisions; and
4 "4) "Weapons, projectiles and material and methods of warfare
5 which are of the nature to cause superfluous injury or
6 unnecessary suffering or which are inherently indiscriminate in
7 violation of the international law of armed conflict.¹

8 **SECTION 10.** Section 4 of Republic Act No. 9851 is hereby amended to include a
9 new subsection (d) to read as follows:

10 "(d) Other serious violations of the laws and customs applicable in armed conflicts
11 not of an international character within the established framework of
12 international law, namely, any of the following acts:

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

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

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

23 "(iv) Intentionally directing attacks against buildings dedicated to religion,
24 education, art, science or charitable purposes, historic monuments,
25 hospitals and places where the sick and wounded are collected,
26 provided they are not military objectives;

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

¹ The elements of war crime of employing projectiles and material and methods of warfare will have to be drafted once weapons, projectiles or material or methods of warfare have been included in an annex to the Rome Statute of the International Criminal Court.

- 1 "(vi) Committing rape, sexual slavery, enforced prostitution, forced
2 pregnancy, as defined in article 7, paragraph 2 (f) of the Rome Statute,
3 enforced sterilization, and any other form of sexual violence also
4 constituting a serious violation of article 3 common to the four Geneva
5 Conventions;
6 "(vii) Conscripting or enlisting children under the age of fifteen years into
7 armed forces or groups or using them to participate actively in
8 hostilities;
9 "(viii) Ordering the displacement of the civilian population for reasons related
10 to the conflict, unless the security of the civilians involved or
11 imperative military reasons so demand;
12 "(ix) Killing or wounding treacherously a combatant adversary;
13 "(x) Declaring that no quarter will be given;
14 "(xi) Subjecting persons who are in the power of another party to the
15 conflict to physical mutilation or to medical or scientific experiments
16 of any kind which are neither justified by the medical, dental or
17 hospital treatment of the person concerned nor carried out in his or her
18 interest, and which cause death to or seriously endanger the health of
19 such person or persons; and
20 "(xii) Destroying or seizing the property of an adversary unless such
21 destruction or seizure be imperatively demanded by the necessities of
22 the conflict.

23 **SECTION 11.** Section 5 of Republic Act No. 9851 is hereby amended to read as
24 follows:

25 "Section 5. *Genocide*. — For the purpose of this Act, "genocide" means any of the
26 following acts committed, in whole or in part, a national, ethnical, racial or religious
27 group, as such:

- 28 "(a) Killing members of the group;
29 "(b) Causing serious bodily or mental harm to members of the group;
30 "(c) Deliberately inflicting on the group conditions of life calculated to bring about
31 its physical destruction in whole or in part;

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

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

"Any person found guilty of committing any of the acts specified in this section shall suffer the penalty provided under Section 7 of Republic Act No. 9851."

SECTION 12. Section 6 of Republic Act No. 9851 is hereby amended to read as follows:

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

"(a) Murder;

"(b) Extermination;

"(c) Enslavement;

"(d) Arbitrary deportation or forcible transfer of population;

"(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

"(f) Torture;

"(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

"(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime defined in this Act;

"(i) Enforced or involuntary disappearance of persons;

"(j) Apartheid; and

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

SECTION 13. *Elements of Crimes*. —

- 1 (a) The Elements of Crimes of the Rome Statute of the International Criminal
2 Court is hereby adopted and shall assist in the application and interpretation of
3 the crimes defined and enumerated in Republic Act No. 9851, as amended by
4 this Act.
- 5 (b) The Elements of Crimes of the Rome Statute of the International Criminal
6 Court is hereby integrated as Annex 1 hereof.
- 7 (c) Any amendment to the Elements of Crimes of the Rome Statute of the
8 International Criminal Court shall be adopted accordingly.

9 **CHAPTER IV**
10 **FINAL PROVISIONS**

11 **SECTION 14. *Repealing Clause.*** — All laws, presidential decrees and issuances,
12 executive orders, rules and regulations or parts thereof inconsistent with the provisions of this
13 Act are hereby repealed or modified accordingly. However, the provisions of this Act are
14 without prejudice to the jurisdiction of the domestic courts in the prosecution of acts that may
15 otherwise fall under their exclusive jurisdiction pursuant to existing laws.

16 **SECTION 15. *Separability Clause.*** — If, for any reason or reasons, any part or
17 provision of this Act shall be held to be unconstitutional or invalid, other parts or provisions
18 hereof which are not affected thereby shall continue to be in full force and effect.

19 **SECTION 16. *Suppletory Application of existing rules and Regulations.*** — In the
20 absence of any applicable provision in this Act, the pertinent provisions in the Revised Rules
21 of Court of the Philippines, decrees, issuances, rules and regulations may, in the interest of
22 expeditious justice and whenever practicable and convenient, be applied in a suppletory
23 character and effect.

24 **SECTION 17. *Effectivity.*** — This Act shall take effect fifteen (15) days after its
25 complete publication in the Official Gazette or in two (2) newspapers of general circulation.

26 Approved,