

## The Philippine Penal Code: Breaching human rights

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Criminal law in the Philippines has its foundation in a single book of legislation called the Penal Code, which came into effect on 1 January 1932. This Penal Code was introduced by the Philippines' colonisers, the United States of America, and has remained in force since then. The Code defines a wide range of crimes with their corresponding punishments, and for the purposes of this article, theft, robbery, adultery, concubinage and resistance to authority will be focused upon. Not having been updated or altered since its date of enactment has severe implications on human rights today. In particular, this article will evaluate how the Penal Code has created a disparity of treatment between the sexes, and scrutinize its severe punishments against petty crime and its effects on children's rights.

To examine the severity of punishments in the Penal Code we needn't look further than article 308 on theft, which describes the punishment for a person convicted of theft in the following circumstances:

4. Arresto mayor in its medium period to prision correccional in its minimum period (*2 months to 2 years and 4 months*), if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.
5. Arresto mayor to its full extent (*6 months*), if such value is over 5 pesos but does not exceed 50 pesos.
6. Arresto mayor in its minimum and medium periods (*1 to 4 months*), if such value does not exceed 5 pesos.

It is necessary to consider the value of the peso and its purchasing power today, in order to appreciate the extent of the crime of theft in these provisions. As of 25 May 2011, one Philippine Peso is worth USD 0.02, and its purchasing power can allow you to consume 33 grams of rice (the weight of an average tablespoon). If an individual steals to the value of USD 1-4 (6.6kgs of rice) he could be sentenced to over two years in prison; if he steals just USD 1 (200 grams of rice) he could be sentenced to six months; and stealing an amount as low as USD 0.02 (66 grams of rice) could result in four months imprisonment.

It is thus clear that leniency in the Philippines is a myth, and the notion of the crime fitting the punishment is non-existent. For instance, what can one steal that is less than the value of USD 0.02, or what can one steal to feed a family that has a rice weight of less than a tablespoon? This is not to advocate or excuse theft by individuals; however, it is necessary to realize that petty theft is a daily occurrence, particularly given that half of the Filipino population struggle to meet their food expenses<sup>1</sup>. In the interests of justice and liberty, petty crimes deserve petty punishment. A Roman philosopher and Emperor, Marcus Aurelius once said that "*poverty is the mother of crime*". If we seek to apply justice in the Philippines, we need to change the current legislation of brutal punishment and focus our energies on combating this "mother of crime".

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<sup>1</sup> [http://www.ibon.org/ibon\\_articles.php?id=3](http://www.ibon.org/ibon_articles.php?id=3). The IBON Foundation is an internationally recognized Filipino NGO that studies the most urgent socio-economic issues confronting Filipino society. It regularly surveys the standards of education and poverty in the Philippines.

## Child rights

To understand the effects of the Penal Code on child rights, we can look at the Philippine Juvenile Justice and Welfare Act of 2006, which establishes various safeguards for children's rights. The developments made in the issue of child rights however, is undone by the draconian penalties in the Penal Code.

In the Juvenile Justice and Welfare Act there is a noteworthy provision for 'diversion' where a minor offender (15 to 18 years) can avoid court proceedings and a prison sentence by partaking in a community based rehabilitation and restoration programme. This provision is subject to the following conditions: (1) if the penalty is less than six years, diversion is automatic; (2) if the penalty is above six years but a discernment test by a social worker determines that the child was unaware of breaking the law at the time, he can get diversion; (3) if the penalty is over six years but below 12 years, the judge can award diversion at his discretion.

A common crime committed by children in the Philippines is robbery, which holds the following penalties under article 299 of the Penal Code:

Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by reclusion temporal (*12 to 20 years*), if the value of the property taken shall exceed 250 pesos (\$5)

When the offenders do not carry arms, and the value of the property taken exceeds 250 pesos (\$5), the penalty next lower in degree (*6 to 12 years*) shall be imposed.

The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed 250 pesos (\$5).

When said offenders do not carry arms and the value of the property taken does not exceed 250 pesos, they shall suffer the penalty prescribed in the two next preceding paragraphs, in its minimum period (*6 to 8 years*)

According to the Penal Code, the punishment for robbery is in all cases above six years of imprisonment, regardless of whether it was armed or unarmed robbery, or whether it involved theft of less than USD 5. This being the case, no child having committed robbery can be automatically placed on the diversion programme under the Juvenile Justice and Welfare Act. As a result, the child will be imprisoned until he is considered for the second condition for diversion, the discernment test. Experience shows that it will take between four months to a year before this condition will be met. Moreover, the discernment test is not helpful in obtaining diversion for the majority of juveniles accused of robbery, as most 15-18 year olds will nearly always have known they were committing a crime, unless suffering from any mental disability. Thereafter, this test has evolved into a mechanism for delay against the child's rights to a speedy trial and due process. Lastly, it is left to a judge during court proceedings to determine whether the child should be placed on diversion. Judges have proved to be inconsistent in their decision from child to child,

from day to day and from court to court, thereby denying diversion to children in circumstances where they would get it otherwise.

Michael Posados for instance, was a 17 year old boy charged for stealing a bicycle on 11 March 2010. He was held for over one month in a holding cell in Mandaluyong City Police Station before being brought to the PREDA home for boys. The legal team at the PREDA Home requested the court that he be placed on a diversion program on June 24, but there was no reply.

Finally, on 8 March 2011, we wrote to the court highlighting his minority, the pettiness of the crime and the fact that he had already served beyond the minimum sentence; these were sufficient grounds to dismiss the case. While the plea was noted by the judge, she did not allow for dismissal. She did however, allow for his release and return to his family, which was greatly appreciated by Michael. Nevertheless, it still means that he has an ongoing legal case, and if convicted he could still receive a custodial sentence.

Another 17-year-old charged with robbery of a cell phone was Ruel Nelida, on 14 April 2010. He was subsequently brought to the PREDA home for boys on July 17. The judge denied him both diversion and a release and return to his family. Again, we submitted a served sentence plea to the court on 27 January 2011, noting his minority, the pettiness of his crime and stating that if the minor was proved guilty his sentence would have to be reduced due to these mitigating circumstances. As a result, the sentence would not be greater than what he has already served. A reply to this motion was not forthcoming, however the judge provisionally dismissed the case on May 17, as the complainant did not attend any hearing. Ruel will thankfully be reunited with his family within the coming number of days.

It can thus be seen that the outdated stringent penalties in the Penal Code dismantles the effectiveness of the Juvenile Justice Welfare Act, particularly the applicability of the diversion programme. This is troubling due to the considerable number of children charged with robbery. The PREDA<sup>2</sup> Home for boys in conflict with the law shows that there is a yearly average rate of 33 percent of minor residents who face criminal charges of robbery, and who are unable to obtain diversion. While 50php would have been the equivalent of a middle class weekly wage in 1932, today it is merely the price of a can of coke; that both incur the same penalty surely indicates that the colonizers had greater respect for justice to the Filipino, than the Filipino has for his fellow countryman today.

### **Gender inequality**

The Penal Code should also be examined in terms of gender, as inequality between the sexes in the 1930s was an accepted norm. Therefore, many laws debilitating to women still exist at present. Articles 333 and 334 of the Penal Code provide definitions for the crimes of adultery and concubinage for instance.

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<sup>2</sup> The PREDA (Peoples' Recovery Empowerment and Development Assistance) Foundation is a three time Nobel Prize nominated NGO that works in the area of child protection. It was established in 1974 and is based in Olongapo, Philippines.

Article 333. Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her knowing her to be married, even if the marriage be subsequently declared void. Adultery shall be punished by prison correccional in its medium and maximum periods (2 to 6 years).

If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed (2 to 6 months).

Article 334. Any husband who shall keep a mistress in the conjugal dwelling or shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by prison correccional in its minimum and medium periods (6 months to 4 years and 2 months).

The concubine (the woman who committed the acts with the infidelity with the husband) shall suffer the penalty of destierro (banishment of 25km from the residence of the husband).

The difference in these two articles is that a wife must prove that her husband keeps a mistress in the family home, or in some other dwelling, or that they were caught in the acts of scandalous circumstances, i.e. “*go together through the street of the town, and commit acts in plain sight of the community without caution and with effrontery*”<sup>3</sup>, while a husband only needs to show that intercourse was committed, even if he abandoned her for a few years. The law makes it more difficult for a husband to be charged with adultery than a wife: most mistresses are not kept in the family home, nor would the husband cohabit with her in any other house, nor would it be easy to find the husband and his mistress in scandalous circumstances. This clearly violates the fundamental principle of equality before the law for both men and women, as found in various international treaties as well as the Philippines’ constitution.

As can be seen, the Penal Code has outrageous provisions that perpetuates inequality and violates human rights. It is a shame that the Philippine government continues to allow such laws to rule society. The numerous executive orders and presidential decrees passed to amend various parts of the Penal Code are not enough; the Code itself must be fully updated. Apart from the provisions mentioned above, ridiculous provisions such as it being a criminal offence to resist or disobey your teacher or professor also exist today, with the penalty of 1-6 months imprisonment with a fine of 500 pesos; or, if the disobedience is ‘not serious’, imprisonment of 1-30 days with a fine of 10-100 pesos. Overall, and without doubt, this demonstrates that sheer backwardness and ineffectiveness of the Philippine government to enact good and just laws for its people.

The Philippines is a country crying out the realization of its human rights, and if the government maintains to be of the people, for the people and by the people, it needs to listen to such cries and abolish this Penal Code. Laws based upon the principle of *Noxiae poena par esto*<sup>4</sup>, ‘let the punishment fit the crime’ must be introduced, and justice must be applied.

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<sup>3</sup> US v. Casipong, 20 Phil. 178

<sup>4</sup> Marcus Tullius Cicero, *De Legibus* (bk. III, 20)

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