

# AN ANALYSIS OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (RICO) ACT OF THE UNITED STATES OF AMERICA: A PROPOSAL FOR A POLICY ON RACKETEERING IN THE PHILIPPINES

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## Introduction

Iloilo Ex-mayor Jed Patrick Mabilog was removed from office in 2017 because of his alleged unexplained wealth. The ombudsman ordered Mabilog's removal for serious dishonesty. The Court of Appeals (CA) has dismissed an administrative complaint filed against Mabilog in connection with this money. The CA's 19th Division granted Mabilog's petition challenging the Office of the Ombudsman's decision of August 27, 2019, in a 24-page judgement published on June 11, 2021. An Alberta, Canada geodetic engineering firm hired the wife of Mabilog as vice president for finance and comptroller in which boosted Mabilog's net worth, which the CA agreed with.<sup>2</sup>

Mabilog rejected all of the charges leveled against him. Mabilogs' residence, according to his family, cost barely P6.7 million. He contended that even if the home was completed in 2013, it could not have cost less than P6.7 million unless the Mabilogs got deep discounts from municipal vendors.<sup>3</sup> The Philippine Star editorial team commented that it would be easier for the government to investigate Mabilog and other officials suspected of similar infractions if the Philippines has laws against racketeering. The Racketeer Influenced and Corrupt Organizations Act, or RICO Act, which has been in effect in the United States since 1970, empowers the state to imprison even the leaders of a criminal organization who directed or participated in the commission of offenses such as murder and drug trafficking.<sup>4</sup>

In 1970, the RICO Act was enacted by the US Congress and was termed the "ultimate hit man" in mob prosecutions. Prosecutors could only pursue mob-related crimes on a case-by-case basis before RICO. Because a different mobster committed each crime, the police were only able to investigate individual criminals rather than a criminal organization as a whole before the enactment of RICO law.

Since the legislation is so broad, it is used by both governmental and civil parties against a wide range of legitimate and unlawful businesses. RICO allows any person participating in a corrupt organization to be prosecuted. That implies the government may go after high leadership as well as hitmen and capos in mob charges. RICO created significantly increased punishments. Moreover, while the Act was created to prosecute the Mafia, prosecutors have used it to sue a wide range of organized criminal groups over the last 37 years, including street gangs, gang cartels, corrupt police agencies, and even politicians.

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<sup>1</sup> UST Law Review Research Editor; the author would like to thank Mr. Raul Gabriel M. Manalo for his valuable efforts to construct a comprehensive history of American-Italian mafia and their impact on economy and security of the U.S.

<sup>2</sup> Jenifer Rendon, CA Reverses Ruling on Mabilog's Dismissal, THE PHILIPPINE STAR, 1 (July 21, 2021), <https://www.philstar.com/nation/2021/07/21/2113894/ca-reverses-ruling-mabilogs-dismissal>

<sup>3</sup> The Philippine Star, EDITORIAL - Battling racketeers, THE PHILIPPINE STAR, 1 (September 3, 2017), <https://www.philstar.com/opinion/2017/09/03/1735630/editorial-battling-racketeers>

<sup>4</sup> *Id.*

A person must participate in a pattern of racketeering activities tied to a business to violate RICO. The list includes mail and wire fraud, which is significant. These transgressions are referred to as “predicate” offenses.

An enterprise is necessary. A criminal family, a street gang, or a drug cartel might be involved. However, it might also be a business, a political party, or a managed care organization. The business just has to be a separate entity; nonetheless, an enterprise is not the same as a person. As a result, a corporation may be the business through which people commit crimes, but it cannot be both a human and a business.

Prosecutors may also attach assets, preventing them from being taken out of the country before a trial. Even though RICO threatens racketeers with lengthy jail sentences, the law’s true force lies in its civil component. Anyone who has been harmed by a RICO violation may file a civil action and collect triple damages if they win.

A plaintiff must establish the following to win a RICO claim:

- 1) *There is criminal activity* – You must prove that the defendant committed one of the RICO offenses listed above, which include mail and wire fraud. However, if you file a claim based on fraud, the court will scrutinize your claim closely.
- 2) *Criminal Activity Pattern.* – One offense is insufficient.
- 3) *A pattern of at least two offenses must be shown* – A pattern demands that the crimes be connected in some way—same victim, same tactics, same participants—or that they are continuous, implying that they occurred over at least a year within the limitations of the law.<sup>5</sup>

Throughout a three-year study period, the 37 local prosecutors' offices that reported RICO prosecutions prosecuted a total of 174 cases using different State RICO statutes. The bulk of these cases (27 percent) were classed as drug cases, with trafficking/distribution as the primary offense. RICO-related activity involving gambling accounted for 16 percent of the charges. Consumer fraud was the most common kind of fraud in this study's sample, accounting for 16 percent of all cases (consumer fraud, investment fraud, and bank fraud). In ten percent of the cases, fencing/provision of illegal items was involved, with the bulk of them being automobile "chop-shop" networks.

During telephone conversations, local prosecutors offered a variety of reasons for invoking RICO. They said that one of RICO's most important features was the prospect of higher penalties than those imposed by normal state law. They believed RICO forced them to impose harsh penalties on what some may consider minor illegal behavior when viewed separately, but which, when added together, warranted more severe punishment. According to one prosecutor, RICO was more successful than aggregating individual charges for certain white-collar offenses. According to another reply, escort firms catering to prostitution networks were shut down, cash was confiscated, and the owners were sentenced to long jail terms under his state's RICO legislation.

Local prosecutors who used them often contended that state RICO provisions allowed for adjustable sanctions for a wide variety of offenses not available under other statutes. According to them, state RICO statutes might be used to obtain injunctions prohibiting RICO offenders from continuing to control a corporation where criminal activity was concentrated. (An injunction may be issued either as a result of a criminal conviction or a civil decision.)

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<sup>5</sup> Racketeer Influenced and Corrupt Organizations (RICO) Law, JUSTIA, <https://www.justia.com/criminal/docs/rico/>

Finally, one prosecutor's office expressed delight with his state's RICO legislation because it allowed him to make great progress in ending street gang "turf fights."<sup>6</sup>

## Legislative background

### *A. Social milieu*

Organized crime is a network of highly centralized businesses set up to engage in criminal operations. Cargo theft, fraud, robbery, kidnapping for ransom, and the demand for "protection" fees are all crimes committed by such groups. The sale of unlawful products and services that have a continuing public demand, such as narcotics, prostitution, loan-sharking (i.e., usury), and gambling, is the main source of income for these criminal syndicates.<sup>7</sup> Mafia is a hierarchical group of criminals that are mostly of Italian or Sicilian ancestry. The phrase can refer to both a traditional Sicilian criminal organization and a criminal organization in the United States.<sup>8</sup>

During the 60s and 70s, the majority of the source of heroin is in the United States, which were smuggled often by the Sicilian Mafia and the American Mafia, the La Cosa Nostra (LCN).<sup>9</sup> Sicilians would enter the United States through Canada or Mexico as they were fugitives escaping from Italy for crimes ranging from murder to trafficking.<sup>10</sup> Many Mafia members fled Italy to avoid arrest by the police.<sup>11</sup> The Pizza connection case came from the Bonnano family of the New York LCN. They were mainly responsible for the massive importation of heroin in the United States, which amounted to more than 300 million USD. Their influence originated during the prohibition era in the 1920s with the help of certain government agencies.<sup>12</sup>

The prohibition era during the 1920s was a catalyst for the rise of the influence of the Mafia and their involvement with government institutions.<sup>13</sup> The origins of organized criminal groups started during the prohibition era. Through the 20<sup>th</sup> century, examples of such groups would be the Italian Mafia, Russian Mafia, the Japanese Yakuza, and Chinese Tongs. Their activities would include gambling, loan sharking, prostitution, and narcotics trafficking.<sup>14</sup> The Triads and Sicilian Mafia's origins began as a simple group that provided aid and created a community for their members. Groups then formed to seek profit outside the law, which mixed with some political motives. Thus, they would often establish enterprises with numerous connections that expanded their influence outside their local reach.<sup>15</sup> The Triads dominated in the importation of heroin into the United States. Since 1985, their production of other drugs such as Coca and Opium has grown through their connections in Asia.

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<sup>6</sup> Donald J. Rebovich, Kenneth R. Coyle & John C. Schaaf, Local Prosecution of Organized Crime: The Use of State, U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS BUREAU OF JUSTICE STATISTICS, 11, (October 1993), <https://bjs.ojp.gov/content/pub/pdf/lpocusricos.pdf>

<sup>7</sup> The Editors of Encyclopaedia Britannica, "Organized Crime" definition, BRITANNICA, 1, (November 19, 2019), <https://www.britannica.com/topic/organized-crime>

<sup>8</sup> The Editors of Encyclopaedia Britannica, "Mafia" definition, BRITANNICA, 1, (Apr 17, 2013), <https://www.britannica.com/topic/Mafia>

<sup>9</sup> Sean McWeeney, The Sicilian Mafia and its Impact on the United States, FBI Law Enforcement Bulletin, February 1987.

<sup>10</sup> *Id.* at 5

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 6

<sup>13</sup> George Gilligan, Organize Crime and Corrupting the Political System, Journal of Financial Crime Vol. 7 (2), 149-152, 1999.

<sup>14</sup> Kristin Finklea, Organized Crime in the US: Trends and Issues for Congress, Congressional Research Service, 4, December 22, 2010

<sup>15</sup> Roy Godson and William Olson, International Organized Crime, Society 32, 19, January 1995, page 21

Human trafficking of illegal Chinese aliens into the United States has also been a business of the Triads.<sup>16</sup>

The LCN emerged in the 1930s from Sicilian immigrants in US cities. While they do not have a formal connection with the original Sicilian Mafia, they drew their traditions from such. Despite being a distinct American organization, the LCN has a large international connection for their businesses in alcohol and heroin from foreign entities.<sup>17</sup> Colombians were once the main suppliers of marijuana to the United States.

After WWII, Luciano (a young Sicilian Mafia) made a deal with the government wherein his family would protect US naval ships in exchange for certain favors. Luciano continued to work with the US government thus, establishing his Mafia's influence in the mid 20<sup>th</sup> century.<sup>18</sup> In the 70s, they have also exploited cocaine and have amassed wealth comparable to the GDPs of countries such as Bolivia, Colombia, and Peru.<sup>19</sup>

### *B. Economic and Security Impact*

The US Senate discussions before RICO indicates that Congress viewed organized crime as a threat to the economy.<sup>20</sup> An estimate of 50 billion dollars is on illegal drug sales. Colombian cartels make a profit of about 20 billion dollars annually. By comparison, Colombia's GDP is only around 45 billion, and the combined budgets of Colombia, Bolivia, and Peru are only about 9 billion annually. Chinese Triads may not be as large as the Colombians but still dwarf other organized crime groups in terms of profit.<sup>21</sup>

Organized crime can weaken the US Economy through illegal activities such as cigarette trafficking and tax evasion scams. When it comes to cigarette trafficking, it results in a loss of tax revenue. This leads to businesses raising taxes for consumers and placing an increased economic burden on consumers. On the other hand, counterfeit currency is also an issue wherein organized crime groups would counterfeit fake fifty and one hundred dollar bills, thus damaging the value of the US Dollar.<sup>22</sup>

The provision for civil damages creates a right to recover for anyone whose business is injured due to a violation.<sup>23</sup> Because of the costs to enforce the RICO act, the law is not as cost-efficient, thus the probability of catching particular individuals is low, but at the very least, the penalty should be high.<sup>24</sup> The major cost of RICO is the efficient behavior it scares off. Many of the activities it attempts to deter are those that serve a useful purpose. If penalties are too severe, it may limit potentially advantageous activities (i.e., contracts, advertising, etc.), which could likely be the most major cost of civil RICO.<sup>25</sup>

Since WWII, organized crimes would include activities using violence, extortion, bribery, and murder to advance their interests. The Sicilian Mafia, in particular, has been involved with

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<sup>16</sup> *Id.* at 27.

<sup>17</sup> *Id.* at 22-23.

<sup>18</sup> John Davis, *Mafia Dynasty: The Rise and Fall of the Gambino Crime Family*, New York Harper Paperbacks, 61, 1994.

<sup>19</sup> Godson & Olson, *supra* note 15

<sup>20</sup> Extraterritorial Application of RICO: Protecting US Markets in a global economy, Kristen Neller, Univ. of Michigan Law School, *Michigan Journal of Int'l Law*, Vol. 14 (2), 1993

<sup>21</sup> Godson & Olson, *supra* note 15, at 23.

<sup>22</sup> Finklea, *supra* note 14..

<sup>23</sup> Economics of Civil RICO, Rubin and Zwirb, UC Davis Vol. 20, page 885

<sup>24</sup> *Id.* at 900.

<sup>25</sup> *Id.* at 910-911.

assassinations and other interferences with the government in an attempt to corrupt them.<sup>26</sup> Criminal organizations pose a threat to public order and businesses. The La Cosa Nostra (LCN; Sicilian families) conducts numerous activities such as penetrating unions, money laundering, prostitution, etc. that can be organized for profit.<sup>27</sup> Based on the chart, it follows that after the 9/11 attack, the FBI reorganized, prioritizing counterterrorism efforts over traditional crime. Thus, FBI agent utilizations for organized crime matters decreased from 2001 to 2004 for possible reasons such as terrorism being a bigger priority than organized crime and a lack of manpower.<sup>28</sup>

Diplomatic relations between the United States, France, and Turkey through the Drug Enforcement Administration and the French and Italian police halted the French Connection in the early 1970s.<sup>29</sup> The cases shown show that there has been no consistent increase or decrease in organized crime prosecutions. This may be because of administration priorities or disproportionate statistics.<sup>30</sup>

### *C. Criminal activities*

Organized Criminal groups involve themselves in the public interest for money, power, or prestige.<sup>31</sup> There are 4 characteristics of corruption coming from criminal organizations in public office:

- 1) Bribers/Kickbacks are demanded them to conduct legitimate business
- 2) Payments are demanded by the organizations for politicians to maintain influence
- 3) Payments are demanded to maintain illegitimate businesses
- 4) There is systemic top-down corruption to maintain the rule of top families.<sup>32</sup>

Activities of some criminal organizations would include gambling, loansharking, narcotics, prostitution, and bootlegging. Criminal organizations can undermine competition through ways such as price cutting and violent coercion of suppliers and customers. The acquisition of legitimate enterprises by organized criminals allows them to venture into other forms of crimes such as bankruptcy fraud.<sup>33</sup> In the RICO cases as of 1987, there have been 236 cases wherein 30% of which involve corruption of government officials. Nevertheless, these cases mostly involve law enforcement corruption and on a local level.<sup>34</sup> Today, one of the means for Asian traffickers to smuggle goods is through mules wherein heroin is placed onto their stomachs and intestines to transport the drugs into the country.<sup>35</sup> The Immigration and Naturalization Service (INS) apprehended more than 6k illegal immigrants from countries such as China and Hong Kong. An independent study, however, indicates that there could be as many as 50k illegal immigrants smuggled into the United States since the 90s.<sup>36</sup>

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<sup>26</sup> Godson & Olson, *supra* note 15, at 18-29.

<sup>27</sup> *Id.* at 25.

<sup>28</sup> Finklea, *supra* note 14.

<sup>29</sup> Sean McWeeney, The Sicilian Mafia and its Impact on the United States, FBI Law Enforcement Bulletin, 4, February 1987.

<sup>30</sup> Finklea, *supra* note 14, at 14-55.

<sup>31</sup> Gilligan, *supra* note 13, at 147.

<sup>32</sup> *Id.*

<sup>33</sup> Gerard Lynch, RICO: The Crime of being a criminal, Parts I & II, Columbia Law Review, Vol. 87 (4), 669-670, May 1987

<sup>34</sup> *Id.* at 735-737.

<sup>35</sup> Godson & Olson, *supra* note 15.

<sup>36</sup> *Id.* at 28.

Corruption is needed to facilitate the operations of organized crime groups. As their establishment grew, their capability of utilizing violence also grew rampant, thus perpetuating a cycle of corruption into the system.<sup>37</sup> Many of the activities of organized crime groups meet consumer demand, be it legal or illegal. Thus, mafia groups tend to meet public and private roles that intersect with their criminal interests.<sup>38</sup>

#### *D. Legislative history of Racketeering Influenced and Corrupt Practices Act (RICO Act)*

Professor G. Robert Blakey is the leading expert on the Racketeer Influenced and Corrupt Organizations Act in the United States (RICO). The Crime Control Act of 1973, the Omnibus Crime Control Act of 1970, and the Organized Crime Control Act of 1970, Title IX of which is known as RICO, were all passed because of Blakey's vast legislative drafting experience. In 22 of the more than 30 states that have implemented racketeering statutes, he was intimately involved in the formulation and implementation of RICO-type legislation.<sup>39</sup> Congress determined that organized crime, notably the LCN, had penetrated and abused several legal enterprises and labor organizations across the United States, posing "a new danger to the American economic system."<sup>40</sup>

The Congress finds that organized crime in the United States is a sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy through unlawful conduct, the illegal use of force, fraud, and corruption; organized crime derives a significant portion of its power from money obtained from illegal endeavors such as syndicated gambling, loan sharking, property theft and fencing, and the importation and distribution of controlled substances, business and labor unions, as well as to sabotage and corrode our democratic processes. Organized criminal operations in the United States jeopardize the nation's economic system, injure innocent investors and competitors, stifle free competition, obstruct interstate and international trade, jeopardize domestic security, and jeopardize the nation's and citizens' general welfare. Because flaws in the law's evidence-gathering process prevent the development of legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those involved in organized crime, and because the government's sanctions and remedies are unnecessarily limited in scope and impact, organized crime continues to grow.

The goal of this Act is to eradicate organized crime in the United States by strengthening legal instruments in the evidence-gathering process, introducing new criminal prohibitions, and providing harsher punishments and new remedies to deal with individuals who engage in illegal activities.<sup>41</sup> RICO does not only apply to "mobsters" or "organized crime" as those words are commonly understood. Rather, it encompasses the acts that Congress deemed to be indicative of organized crime, regardless of who is involved.<sup>42</sup>

### **Salient provisions**

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<sup>37</sup> Gilligan, *supra* note 13, at 147.

<sup>38</sup> *Id.* at 148.

<sup>39</sup> Faculty Directors: G. Robert Blakey, UNIVERSITY OF NOTRE DAME, 1, <https://law.nd.edu/directory/g-blakey/>

<sup>40</sup> Staff of the Organized Crime and Gang Section U.S. Department of Justice, Washington, D.C., CRIMINAL RICO: 18 U.S.C. §§1961-1968 A Manual For Federal Prosecutors(2016), U.S. DEPARTMENT OF JUSTICE, 4, <https://www.justice.gov/archives/usam/file/870856/download>

<sup>41</sup> Section 1 of Pub. L. No. 91-452 (RICO)

<sup>42</sup> RICO: A Brief Sketch, CONGRESSIONAL RESEARCH SERVICE, i, (August 3, 2021), <https://crsreports.congress.gov>

RICO condemns

- (1) any person who
  - a. invests in, or
  - b. acquires or maintains an interest in, or
  - c. conducts or participates in the affairs of, or
  - d. conspires to invest in, acquire, or conduct the affairs of
- (2) an enterprise which
  - a. engages in, or
  - b. whose activities affect, interstate or foreign commerce
- (3) through
  - a. the collection of an unlawful debt, or
  - b. the patterned commission of various state and federal crimes.

RICO violations carry the following criminal penalties: (a) forfeiture of any property acquired as a result of the violation and any property interest in the enterprise involved in the violation; and (b) imprisonment for not more than 20 years, or life in the case of one of the predicate offenses; and/or a fine of not more than twice the gain or loss associated with the offense, or \$250,000 for individuals and \$500,000 for corporations. Because RICO shares predicate crimes with the federal money laundering law and, to a lesser degree, the Travel Act, an action involving a RICO violation or a RICO predicate offense violation may also result in criminal liability under the Travel Act and money laundering provisions. Federal law also has a version of the RICO enterprise's "hitman" offense, which criminalizes the commission of numerous violent acts at the direction of a RICO business.<sup>43</sup>

Civil liability may also be imposed for RICO offenses. The courts have the authority to award treble damages, costs, and attorneys' fees to anyone harmed in his business or property by a RICO violation, as well as to enjoin future RICO violations, order divestiture, dissolution, or reorganization, or restrict an offender's future professional or investment activities.<sup>44</sup>

RICO may be violated by anybody. The "person" does not need to be a mobster or even a human being; "any individual or organization capable of owning a legal or beneficial interest in property" will suffice.<sup>45</sup>

For enterprise, such a term encompasses two distinct types of connection. "Any person, partnership, company, organization, or other legal entity" falls within the first group. The second category encompasses "any union or group of persons who are related but are not a legal organization." Each category denotes a distinct kind of company covered by the statute—those recognized as legal entities and those not recognized as legal entities. As a result, the word "enterprise" refers to both legal and illicit businesses.

The term "enterprise" as used in sections 1962(a) and (b) <sup>46</sup>refers to property acquired via an illegal pattern of racketeering action or money earned through an unlawful pattern of racketeering activity.

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<sup>43</sup> *Id.* at 2.

<sup>44</sup> *Id.* at 3.

<sup>45</sup> *Id.*

<sup>46</sup> In exact terms, 18 U.S.C. § 1962 declares the following:

"(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling

In comparison, the “enterprise” referred to in section 1962(c) is the vehicle used to perpetrate the illegal racketeering pattern. The Supreme Court has stated that “RICO protects both a genuine ‘business’ and the public against individuals who would unlawfully exploit an ‘enterprise’ (whether legitimate or illegitimate) as a vehicle for ‘unlawful... activities.’” Thus, the Court accepted that a legal firm may be a “victim” of racketeering behavior under section 1962(c) and (d).<sup>47</sup>

*Conduct, invest or use* – RICO prohibits four types of illicit activity, as reflected in section 1962’s four subsections: (a) acquiring or operating an enterprise using racketeering proceeds; (b) controlling an enterprise through racketeering activities; (c) conducting the affairs of an enterprise through racketeering activities; and (d) conspiring to acquire, control, or conduct an enterprise through racketeering activities.<sup>48</sup>

*Acquire or preserve* – The second proscription, 18 U.S.C. 1962(b), is similar to the first, except that it prohibits the purchase or control of an entity solely via the predicates’ income rather than through the predicates’ income. It is prohibited for (1) any individual (2) to acquire or retain an interest in or control of (3) a commercial company (4) via (a) the collection of an illegal debt or (b) a pattern of predicate crimes. As with subsection 1962(a), the terms “person” and “business” may be synonymous. A connection between predicate crimes and the acquisition of control must exist. What defines “interest” or “control” is determined on a case-by-case basis. The defendant must demonstrate that he or she had a major part in the operation of the firm, although total control is not required. In summary, as one court explained, “Plaintiffs must allege that ‘(1) the Defendants engaged in [collection of an unlawful debt]; (2) to acquire or maintain, directly or indirectly; (3) any interest or control over an enterprise; or (4) whose activities affect interstate or foreign commerce.’”<sup>49</sup>

*Conduct of Affairs* – Subsection 1962I makes it illegal for (1) any person, (2) any person employed by or linked with, (3) any commercial enterprise, and (4) any person to conduct or participate in the conduct of the company’s business. (5) by the collection of an illegitimate debt or the commission of a sequence of predicate crimes. Subsection 1962I is the most often prosecuted substantive basis for RICO or civil action. Although subsection 1962I seems to be less onerous than subsections 1962(a) and (b), courts have not always interpreted it liberally. Thus, in any allegation of a violation of its rules, the terms “person” and “business” must normally be distinguished. However, for subsection 1962, a corporate body and its single shareholder are sufficiently different (c). In the “conduct or participate in the conduct” provision of subsection 1962(c), the Supreme Court established a managerial hierarchy in which only those who control the operation or management of the firm fulfill the “conduct” element. Liability is not confined to a business’s “top management,” but also to individuals inside the enterprise who exercise extensive discretion in carrying out higher management orders. Conviction

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or participating in control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection, if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern of racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

“(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

“(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct, or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.

“(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.”

<sup>47</sup> RICO: A brief sketch, *supra* note 42.

<sup>48</sup> *Id.* at 4.

<sup>49</sup> *Id.* at 5.



does not require the commission of an economic predicate crime or the commission of a predicate offense with economic motivation.

*Conspiracy* – Under paragraph 1962(d), conspiracy is defined as (1) an agreement between (2) two or more (3) parties to invest in, acquire, or operate the business of (4) a commercial firm (5) in a way that violates 18 U.S.C. 1962(a), (b), or (c) (c). The agreement alone constitutes the offense, not any full, coordinated violation of the other three RICO subsections. In contrast to the standard conspiracy legislation, a RICO conspiracy is complete upon agreement, even if none of the participants ever does an overt act toward the completion of the conspiracy’s illegal goal. Contrary to what some lower courts formerly believed, a defendant is not required to commit or consent to conduct two or more predicate crimes. It is sufficient that the defendant planned, in collaboration with another, to pursue an activity that, if successful, would fulfill all of the RICO’s requirements. Both the government and private plaintiffs may be needed to establish the existence of a RICO-qualified business in some districts.<sup>50</sup> A conspirator is accountable for the conspiracy itself as well as any anticipated substantive violations committed by any of the conspirators in furtherance of the common plan, until the plot’s aims are accomplished, abandoned, or the conspirator withdraws. A RICO conspiracy’s statute of limitations extends until the scheme’s aims are achieved or abandoned, or until the defendant withdraws. As a general rule, a person must take intentional action to leave a conspiracy, either by reporting to authorities or conveying his intentions to his co-conspirators. The person is responsible for demonstrating that he has done so.<sup>51</sup>

*Predicate Infractions* – The majority of RICO infractions are motivated by a pattern of racketeering activity, defined as the coordinated conduct of two or more specified state or federal crimes. The following state and federal offenses may be used to establish a RICO violation: To establish “racketeering conduct,” the predicate crime must be committed; no need exists that the defendant or anyone else has been convicted of the predicate offense. On the other hand, a conviction for a predicate crime does not exclude a later RICO prosecution, nor does conviction or acquittal preclude a subsequent RICO civil action.<sup>52</sup>

*Pattern* – The pattern of racketeering activities element of RICO requires (1) the commission of two or more predicate offenses, (2) that the predicate offenses be connected and not simply isolated events, and (3) that they are committed under circumstances implying either the continuation of criminal activity or the threat of such continuation.

Section 1961(5) makes the first element explicit: “To constitute a ‘pattern of racketeering conduct,’ at least two acts of racketeering activity are required.” The last two aspects, relationship, and continuity are derived from RICO’s legislative history. This history “demonstrates that Congress did have a pretty open idea of a pattern in mind. A pattern is not developed via occasional action... [A] person cannot be liable to RICO punishment only for committing two significantly dissimilar and independent criminal crimes. Rather than that, the word ‘pattern’ needs the demonstration of a connection between the predicates and the danger of continued behavior. It is this combination of continuity and interaction that results in a pattern.” For related predicates: If “criminal acts... have the same or similar purposes, outcomes, participants, victims, or methods of commission, or are otherwise connected by distinguishing characteristics and are not isolated events,” the commission of predicate offenses constitutes the requisite related pattern.

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<sup>50</sup> *Id.* at 8

<sup>51</sup> *Id.* at 9

<sup>52</sup> RICO: A brief sketch, *supra* note 42.

For permanence, the law distinguishes between two types of continuity: pre-existing (“closed-ended”) and anticipated (“open-ended”). The first is defined as “a sequence of connected predicates that spans a significant amount of time.” Precedent activities lasting a few weeks or months and posing little prospect of future criminal activity do not meet these criteria.” The second occurs when a chain of related predicates has started and, without intervention, would continue indefinitely. The Supreme Court has defined a pattern that spans time but poses no danger of recurrence as having “closed-ended” continuity; and a pattern that poses a threat of recurrence as having “open-ended” continuity. In the instance of a “closed-ended” pattern, lower courts have been unwilling to determine that predicate activity lasting less than a year is adequate to show continuity. Whether the threat of future predicate behavior is sufficient to establish an “open-ended” pattern of continuity is context-dependent and relies on the nature of the predicate crimes and the company. While the number of linked predicates may be minimal and their occurrences may be close together in time, the racketeering actions themselves entail a distinct danger of recurrence that extends endlessly into the future, providing the necessary continuity. In other instances, the danger of continuity may be proved by demonstrating that the predicate actions or crimes are routinely committed by a continuing organization. The danger “is often assumed when the enterprise’s primary or fundamental activity is illegal.”<sup>53</sup>

*Unlawful Debt Collection* – collecting an illegitimate debt may result in criminal and civil responsibility under RICO in one of two ways. To begin, each substantive RICO violation is premised on either “a pattern of racketeering activities” or the “collection of an unauthorized debt.” The collection of an illegitimate debt seems to be the only situation in which the conduct of a single predicate crime may support a RICO prosecution or cause of action. No evidence of trend seems to be required. Second, when paired with the fear of damage, the recovery of an illegitimate debt creates an extortionate credit transaction (loan sharking), a distinct criminal crime. This criminal violation fits the criteria of racketeering activity and hence may generate RICO liability as a predicate offense when committed as part of a “pattern of racketeering activity.”<sup>54</sup>

The *Double Jeopardy Clause* bans a person from being prosecuted or sentenced for the same crime twice. Two crimes are distinct if one has an element that is not present in the other. Double jeopardy problems might arise in two ways in the context of RICO: 1) A defendant is charged with a RICO conspiracy and a substantive RICO crime; and 2) A defendant is charged with a substantive RICO offense and racketeering conduct constituting the RICO offense. The Supreme Court has long acknowledged that “in the majority of instances, distinct sentences may be imposed for the conspiracy to commit an act and for the deed itself.”<sup>55</sup>

*Violent Crimes in Aid of Racketeering (VICAR)* – Under 18 U.S.C. 1959, violence in aid of racketeering (VICAR) is a series of RICO-related federal proscriptions that prohibit committing, attempting to commit, or conspiring to commit any of several specific violent state or federal predicate offenses with the intent of receiving a reward from a RICO enterprise. “To establish a VICAR conviction, the government must establish the following: (1) the existence of the criminal organization; (2) that the organization is a racketeering enterprise; (3) that the defendants committed [or attempted or conspired to commit] a violent crime; and (4) that they acted with the intent of advancing their position in [or gaining entrance to] the racketeering enterprise.”<sup>56</sup>

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<sup>53</sup> *Id.* at 14.

<sup>54</sup> *Id.* at 15.

<sup>55</sup> *Id.* at 29.

<sup>56</sup> RICO: A brief sketch, *supra* note 42, at 25.

A RICO breach carries a slew of criminal and civil penalties, including imprisonment, fines, restitution, forfeiture, triple damages, lawyers' fees, and a variety of equitable limitations.<sup>57</sup> Section 1962 of the RICO Act carries criminal penalties. A breach of section 1962 is penalized under section 1963(a) by a fine or a period of imprisonment not to exceed 20 years, or by both. If the RICO violation is founded on racketeering action that carries a maximum punishment of life imprisonment as a predicate act, the maximum sentence for the RICO violation is likewise life imprisonment. Additionally, § 1963(a) requires the forfeiture of all property to the United States, regardless of any state law requirement. This includes any property interest acquired or maintained in violation of section 1962,<sup>50</sup> as well as any interest in, security for, claim against, or property or contract right of any kind providing a source of influence in the RICO enterprise, as well as any proceeds from racketeering activity or unlawful debt collection.

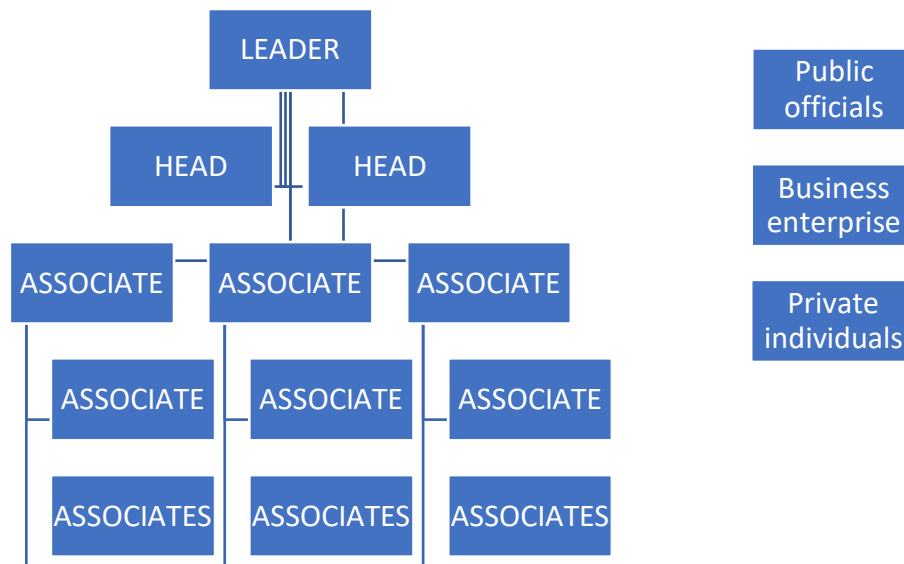
Section 1963(b) defines the type and nature of “property” subject to criminal forfeiture under the RICO Act, including real property and tangible and intangible personal property, and extends criminal forfeiture to any property transferred to a person other than the defendant, unless the transferee establishes that he or she is a bona fide purchaser.

Sections 1963(d)–(m) outline certain measures and processes that the government may take in response to a court order regarding the disposal of property forfeited under the RICO Act's criminal forfeiture provisions. For a breach of section 1962, RICO criminal forfeiture is to be imposed “in addition to any other penalty.” A criminal forfeiture award is included in the offender's punishment, not in the main crime for which the defendant was convicted.<sup>58</sup>

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<sup>57</sup> *Id.* at 39.

<sup>58</sup> Office of General Counsel, U.S. Sentencing Commission, Rico Guideline, U.S. SENTENCING COMMISSION, 7, (March 2020), [https://www.ussc.gov/sites/default/files/pdf/training/primers/2020\\_Primer\\_RICO.pdf](https://www.ussc.gov/sites/default/files/pdf/training/primers/2020_Primer_RICO.pdf)



*Illustration*

In this setup, the leader approves a criminal activity advised by the heads of the syndicate. The associates have their respective teams. If one would rather rely on the concept of conspiracy, at most, only the associates would be implicated. However, with the RICO law, the leaders of any group can be tried for crimes if they greenlighted others to do the crimes or help with the crimes. The public officials, business enterprises, and private individuals would be indicted as well so long as it is proven that they played a role in the organization of the crime because they are used by the group as an instrument to achieve criminal activity or they acquired such money or goods from organizations/people through illicit means.

**Legislation in the Philippines**

*A. Conspiracy*

There are no laws in the Philippines to eradicate racketeering. The nearest law would be Article 8 of the Revised Penal Code. The said provision says that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To establish conspiracy, the following elements must concur: (1) two or more persons came to an agreement, (2) the agreement concerned the commission of the felony, and (3) the execution of the felony was decided upon. It is fundamental for conspiracy to exist that there must be unity of purpose and unity

in the execution of the unlawful objective.<sup>59</sup> In a conspiracy, an act committed by one is considered an act committed by all. Once the prosecution establishes conspiracy beyond a reasonable doubt, all conspirators will be held equally accountable for the felony committed, even if not all conspirators engaged in the actual conduct of the crime. Thus, the prosecution needs to prove not just the offense itself, but also the conspiracy beyond a reasonable doubt.

The components of conspiracy, like the actual act constituting the crime, must be established beyond a reasonable doubt. The established rule is that proof of real assistance, rather than mere knowledge or agreement of unlawful conduct, is necessary to prove conspiracy. Positive and convincing evidence must be shown to prove a conspiracy. It must be established as unequivocally and persuasively as the conduct of the crime. A person's mere presence at the scene of a crime does not automatically qualify him as a conspirator since conspiracy transcends companionship.<sup>60</sup> The conspiracy to commit a crime must be conscious, and it must exceed companionship. Thus, mere attendance at the site of the crime does not constitute conspiracy in and of itself. Even knowledge of, or consent to, or willingness to collaborate with, a conspiracy is insufficient to render one a party, without direct involvement in the commission of the crime with the intent of furthering the common plan and goal.<sup>61</sup> Exceptions to the rule of non-prosecution of conspiracy are conspiracy and proposal to commit coup d'etat, rebellion, or insurrection.<sup>62</sup>

#### *B. Senate Bill No. 1285 introduced by Senator Manny Villar*

This Senate Bill titled, “Anti-Racketeering and Organized Syndicates Act” did not manage to grow into a law. The explanatory note of the law explains that the relentless growth of organized and syndicated crime has significantly harmed the government's development efforts. What is dejecting is law enforcement officers' and government officials' participation in organized crime. Consequently, a new class of criminals emerged: the criminal aristocracy. Thus, the State places a premium on implementing and executing new and harsher laws against organized crime to improve the country's peace and order situation. This proposed bill intended to end the rule of crime lords – abduction, vehicle theft, drug trafficking, and organized gambling — who have been laundering the revenues of these crimes into legal businesses. It is the policy of the State to give priority to enacting and enforcing new and stronger measures against organized criminality to enhance the peace and order condition of the country.<sup>63</sup>

“Racketeering activity” is defined in the bill as any attempt or act involving kidnapping, murder, homicide, or illegal possession of a firearm; robbery, bribery, and other anti-graft and corrupt practices, gambling and belting, misappropriation of funds or property; engaging in monetary transactions improperly derived from the bill's specified unlawful activities; and blackmail. This bill creates new offenses, including direct or indirect participation in an enterprise, engaged in a pattern of racketeering activity; using or investing money or property obtained through a pattern of racketeering activity; acquiring or maintaining interest or control in any business or enterprise through a pattern of racketeering activity, and conspiring to commit any of the aforementioned acts. Anyone who breaches the legislation receives a harsh ten- or twelve-year jail sentence. If the infringement is based on

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<sup>59</sup> Luis Reyes, Revised Penal Code Book I, p. 131, (19<sup>th</sup> Ed. Manila, 2017)

<sup>60</sup> *People vs Comadre*, GR 153559, June 8, 2004

<sup>61</sup> *People vs Salga*, GR 233334, July 23, 2018

<sup>62</sup> An Act Revising The Penal Code and Other Penal Laws, Act No. 3815, article 136, (1930)

<sup>63</sup> Anti-Racketeering and Organized Syndicates Act, Senate Bill No. 1285, 15<sup>th</sup> Cong, 1<sup>st</sup> Sess, 2013, SEC. 2. Declaration of Policy

racketeering activities, the maximum punishment is life imprisonment or execution, with a fine of one hundred thousand pesos (P100,000.00) to one million pesos (P 1,000,000.00). Additionally, offenders lose any interest, security, claim, or property gained via the willful violation of the law.<sup>64</sup>

Prohibited Activities are:

It is criminal for any individual to associate with or participate in any company that engages in a pattern of racketeering activities, whether directly or indirectly.

It is forbidden for any person who has obtained money or property as a result of a pattern of racketeering conduct to use or invest any portion of such money or property, directly or indirectly, in any investment in the creation or operation of any company, legitimate or illegitimate.

It shall be criminal for any individual to acquire or retain by force any stake or control of any company, enterprise, legitimate or illegitimate, via a pattern of racketeering conduct.

No person shall collude to violate any of the requirements of subsections (1), (2), or (3).<sup>65</sup>

Evidence required – The Court may receive and evaluate evidence and information that would be inadmissible under the rules of evidence during the hearing on the writ of preliminary injunction. At a hearing to prosecute breaches of this statute, the solitary testimony of a participant or conspirator, if credible, may be used to convict the other defendants.<sup>66</sup>

### **Relevant U.S. Jurisprudence**

#### *The Cowboy Mafia*

During the 1970s, a network of marijuana smugglers known as the Cowboy Mafia operated in the United States. They were considered the most prolific drug traffickers in Texas at the time. The group imported about 106 tons of marijuana in 1977 and 1978. The smuggling ring's 26 members were convicted in 1979.<sup>67</sup>

Rex C. Cauble appealed his conviction on a ten-count indictment alleging he broke the Racketeer Influenced and Corrupt Organizations Act (RICO), the Travel Act, and misapplied bank funds. Cauble, a rich Texas businessman, was suspected of being the “Cowboy Mafia’s” range boss, a loosely-knit gang responsible for importing and trafficking roughly 147,000 pounds of marijuana between 1976 and 1978. Cauble was charged with substantive RICO violations based on the conduct of an enterprise through a pattern of racketeering activity and the investment of racketeering activity income in an interstate enterprise, conspiracy to violate RICO, three violations of the Travel Act, and four counts of misapplication of bank funds, according to the indictment.

The Court decided, after reviewing the sixteen-volume record, that the trial was fair, the evidence was substantial, and the claims of mistake were unfounded. Cauble Enterprises, a formal partnership comprising of Cauble, his wife, and his son, was accused in this case as the enterprise utilized in violation of both paragraphs (a) and (c) of Section 1962. The statute’s Section 1962(a) forbids the use of criminally obtained cash to acquire or retain a stake in a business via legal methods. The unauthorized use of a business is prohibited under Section 1962(c). A conspiracy to violate RICO’s

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 2.

<sup>67</sup> U.S. v. Hawkins, et al., 658 F.2d 279 (1981)

substantive provisions is criminal under Section 1962(d), which requires the government to establish that the defendant agreed to engage in the enterprise's operations via a practice of racketeering. Each provision stipulates that the business must have an impact on interstate trade. RICO makes it illegal for a business to engage in a pattern of racketeering behavior, not only for the defendant to engage in a racketeering crime. As a result, there must be a link between the business, the defendant, and the racketeering pattern.

Cauble claims that the government failed to establish beyond a reasonable doubt that he assisted and abetted either the smuggling incidents or the acts of travel, and so the proof of the RICO predicate charges was insufficient. When assessing whether the evidence is adequate, the court considers whether a reasonable jury might have been satisfied beyond a reasonable doubt of the defendant's guilt. Hawkins and Washington both testified that Cauble was aware of the smuggling, in their judgment. Foster informed McKesson that Cauble was aware of the smuggling, according to McKesson.

Cauble's knowledge was also supported by a large amount of circumstantial evidence. This included Cauble Enterprises' large loans to Foster, including one that was to be reloaned to Hawkins, Cauble's communications with Carlos Gerdes, his trips to Las Vegas, his paying Foster to look for a boat, and his making significant changes in Cauble Enterprises' business practices during the smuggling years. There was further testimony that only Cauble had the authority to allow the usage of the plane. One of the pilots was fired for flying the plane without Cauble's approval to get it cleaned. This evidence lent credence to the theory that Cauble was aware of the plane's many purposes. Cauble claims that the government failed to establish that he was in any manner culpably linked with any firm, hence all of his RICO convictions must be overturned. The Court sees this as a challenge to the government's proof of both a RICO enterprise and a link between the enterprise, racketeering acts, and Cauble.

Cauble claims that the government's evidence only established that the racketeering actions were undertaken by and linked to a business—in reality, the “Cowboy Mafia,” and that the government, therefore, failed to adduce sufficient evidence to show that Cauble Enterprises was the RICO enterprise. The existence of an enterprise is “proven by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit,” according to the Supreme Court in *Turkette*. In cases where the government alleges that a legal entity is an enterprise, proof that the entity has a legal existence satisfies the enterprise element. This is because, by definition, a legal entity, such as a partnership, has a discernible structure, functions as a continuous unit, and serves a single purpose for its members and workers.

Cauble Enterprises is a limited partnership created under Texas law, according to the government's documentation. It demonstrated that the partnership has a structured organization and has been in operation since 1972 to maximize long-term capital appreciation for the participants. It showed that Cauble Enterprises is distinct from both the person, Rex C. Cauble, and the racketeering activities it was attempting to prosecute. The government accomplished its burden of showing the enterprise aspect after demonstrating the existence of this entity.

Cauble claims that the government's evidence showed a link between smuggling and the “Cowboy Mafia,” rather than Cauble Enterprises. As a result, he claims that the evidence was inadequate to show that he “conducted” Cauble Enterprises' activities “via” racketeering crimes. Because the Court believes a reasonable jury may infer Cauble assisted and abetted the commission of the accused racketeering activities, they want to know if his position in Cauble Enterprises helped the crimes' commission and if the acts harmed Cauble Enterprises. A reasonable jury may find, based on the

evidence, that none of the acts of travel would have occurred if Cauble had not been able to send the Cauble Enterprises jet and utilize the assets of Cauble Enterprises to pay for commercial flights. Furthermore, a jury may plausibly find that Cauble's position in Cauble Enterprises enabled him to make monies available for loans, ranches, and other assets of the company that the smugglers exploited. As a result, the government's proof was adequate to show that the defendant's position in the company aided in the conduct of the racketeering offenses.

Cauble was charged with ten felonies, including three charges of violating the Racketeer Influenced and Corrupt Organizations Act (RICO), three counts of violating the Travel Act, and four counts of misapplication of bank money. In 1982, a jury found him guilty on all counts. Cauble was sentenced to consecutive five-year terms on each count and compelled to renounce his interest in Cauble Enterprises. Cauble was freed from jail after spending five years based on time served and good behavior. Cauble pled not guilty and maintained his innocence until his death. He was charged with ten charges, including three counts of violating the Racketeer Influenced and Corrupt Organizations (RICO) law, three counts of violating the Travel Act, and four counts of misapplication of bank money. He was convicted on all charges in 1982 by a jury. He was sentenced to five years in prison on each count and his stake in Cauble Enterprises was forfeited. He was freed from jail following a five-year sentence based on time served and good behavior. Cauble maintained his innocence throughout his life.<sup>68</sup>

#### *Gambino crime family*

Gambino crime family is a mafia in the U.S. Its illicit activities include labor and construction racketeering, gambling, loansharking, extortion, money laundering, prostitution, fraud, hijacking, and fencing. LoCascio rose to prominence in the 1950s as a bookmaker and loanshark for the Gambino family. He was then raised to the rank of caporegime of a crew in the Bronx, New York. After leader Paul Castellano's assassination in December 1985, Gotti became the new Gambino boss, and LoCascio became a member of his inner circle. When underboss Joseph Armone was imprisoned in 1987, LoCascio assumed the role of acting underboss; subsequently, when Gotti reorganized his administration, appointing Salvatore "Sammy the Bull" Gravano to Armone's post, LoCascio assumed the role of acting consigliere. Gotti was one of the most powerful and violent criminal leaders in the United States during his heyday. Gotti was convicted of five murders, murder conspiracy, racketeering, obstructing justice, tax evasion, unlawful gambling, extortion, and loansharking in 1992.<sup>69</sup>

The indictment's first and second counts accused Gotti and Locascio of substantive and conspiracy RICO offenses. Numerous offenses alleged as racketeering actions in the RICO charges were also charged separately in the indictment. Gotti was charged with the following predicate acts: conspiracy to kill and murder Paul Castellano, Thomas Bilotti's murder, conspiracy to murder and murder Robert DiBernardo, conspiracy to murder and murder Liborio Milito, and obstruction of justice during the Thomas Gambino trial. Gotti and Locascio were charged with the following predicate acts: conspiracy to murder and murder Louis DiBono, conspiracy to murder Gaetano Vastola, operating an illegal gambling business in Queens, New York, operating an illegal gambling business in Connecticut, conspiracy to make extortionate credit extensions, and obstructing justice in the investigation of the Castellano murder. Gotti and Locascio were additionally charged with conspiracy to impede grand jury investigations, bribery of a public official, and conspiracy to defraud

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<sup>68</sup> *U.S. v. Rex C. Cauble, Individually and Doing Business As Cauble Enterprises*, 706 F.2d 1322 (5th Cir. 1983), Aug. 11, 1983

<sup>69</sup> *U.S. v. Locascio*, 6 F.3d 924, 2d Cir., October 8, 1993



the United States on separate charges. On April 2, 1992, John Gotti and Frank Locascio were convicted of RICO violations and eventually sentenced to life in prison.

The Gambino family was regarded as the most powerful American mafia family at the time of his takeover, with annual revenue of \$500 million.<sup>70</sup>

### *The Chicago Outfit*

The Chicago Outfit (alternatively referred to as the Outfit, the Chicago Mafia, the Chicago Mob, the Chicago crime family, the South Side Gang, or The Organization) is a 19<sup>th</sup>-century Italian-American organized criminal organization headquartered in Chicago, Illinois. The Outfit grew to prominence in the 1920s under the leadership of Johnny Torrio and Al Capone, and the decade was characterized by deadly gang fights over control of illegal alcohol distribution during Prohibition. The Outfit has been involved in a variety of criminal activities since then, including loansharking, illicit gaming, prostitution, extortion, political corruption, and murder. Capone was convicted of income tax cheating in 1931, and Paul Ricca took over as leader of the Outfit. From 1943 until he died in 1972, he shared authority with Tony Accardo; with Ricca's death, Accardo assumed total control of the Outfit and was one of the longest-serving bosses of all time until his death in the early 1990s. Though it never completely dominated organized crime in Chicago, the Outfit has long been the most powerful, brutal, and biggest criminal organization in the city and the Midwest in general. Unlike other mafia groups, such as the Five Families of New York City, the Outfit has always been a united group.<sup>71</sup>

Apart from murder, the indictments include extortion of financial payments from multiple persons as "street tax" to enable them to conduct different companies, as well as providing usurious loans dubbed "juice loans." These loans bore interest rates ranging from 1 to 10% every week, equating to 52 to 520 percent per year. When the conspirators made juice loans, they relied on the borrower's understanding that delaying or failing to repay the loans could result in the use of violence or other crimes against the borrower, and indeed, the conspirators used violence, intimidation, and threats to collect these debts; conducting, managing, and owning all or part of illegal gambling businesses in violation of Illinois law, including illegal sports betting and video gambling machines. Members and associates of the Outfit collected debts incurred in connection with these illegal gambling businesses; using violence, intimidation, and threats to instill discipline within the Outfit by requiring adherence to its edicts and instructions; and punishing behavior by Outfit members, associates, and others that the Outfit's hierarchy believed was detrimental to the Outfit's interests; obstructing justice by intimidating, harming, and killing witnesses and potential witnesses and; keeping detailed documents and ledgers of their loansharking and bookmaking operations.<sup>72</sup>

### *Government officers*

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<sup>70</sup> Susan Heller Anderson and David W. Dunlap, NEW YORK DAY BY DAY: Seeking Castellano's Killers, THE NEW YORK TIMES, 1, (December 30, 1985), <https://web.archive.org/web/20130501190153/http://www.nytimes.com/1985/12/30/nyregion/new-york-day-by-day-seeking-castellano-s-killers.html>

<sup>71</sup> Family Secrets Of the Murderous Kind, FEDERAL BUREAU OF INVESTIGATION, 1, (October 1, 2007), [https://archives.fbi.gov/archives/news/stories/2007/october/famsecrets\\_100107](https://archives.fbi.gov/archives/news/stories/2007/october/famsecrets_100107)

<sup>72</sup> Patrick J. Fitzgerald, 14 Defendants Indicted For Alleged Organized Crime Activities: "Chicago Outfit" Named As RICO Enterprise In Four-Decade Conspiracy Alleging 18 Mob Murders And 1 Attempted Murder, U.S. DEPARTMENT OF JUSTICE UNITED STATES ATTORNEY NORTHERN DISTRICT OF ILLINOIS, 1, (April 25, 2005), [https://www.justice.gov/archive/usao/iln/chicago/2005/pr0425\\_01.pdf](https://www.justice.gov/archive/usao/iln/chicago/2005/pr0425_01.pdf)

A civil RICO complaint filed in federal court in Hartford against two Connecticut attorneys has survived the lawyers' summary judgment arguments and is scheduled to enter trial next week. Leonard A. Fasano and Todd R. Bainer face charges of wire, mail, and bankruptcy fraud in connection with a scheme to conceal their client's assets from a judgment creditor. Fasano is a partner in Fasano, Ippolito & Lee in New Haven. He is also a former Republican state senator and assistant minority leader. Bainer is a Branford attorney. Their alleged misbehavior stretches back to 1998, when Cadle Company, a nationwide debt collection firm, attempted to collect a \$90,747 federal judgment against Fasano's client Charles Flanagan for defaulting on a \$75,000 loan. Bainer served as general attorney for Thompson & Peck Inc., a New Haven-based insurance firm that Flanagan co-owned with Stanley Prymas, another co-defendant in Cadle's civil Racketeer Influenced and Corrupt Organizations Act complaint.<sup>73</sup> In 2005, a federal jury fined Fasano \$500,000 under the RICO statute for fraudulently assisting a client in concealing assets during a bankruptcy lawsuit.<sup>74</sup>

Another case is that a federal grand jury indicted Michael Conahan on Wednesday, charging the former Luzerne County judges with racketeering, extortion, bribery, money laundering, fraud, and tax evasion. According to a press release issued by U.S. Attorney Dennis Pfannenschmidt, the indictment alleges Conahan and Ciavarella received millions of dollars in illegal payments in connection with improper actions they took to facilitate the construction and operation of the PA and Western PA Child Care juvenile detention centers. Prosecutors are also seeking forfeiture of at least \$2.8 million, which they claim is the profits of illegal behavior, according to the announcement.<sup>75</sup> Former Luzerne County Court of Common Pleas Judges Michael Conahan and Mark Ciavarella were indicted by a federal grand jury in the Middle District of Pennsylvania on 48 counts. Many local and national press termed the situation the "Kids for Cash Scandal." Mark Ciavarella was found guilty of racketeering by a federal jury on February 18, 2011, for his role in taking illicit payments from Robert Mericle, the creator of PA Child Care, and Attorney Robert Powell, a co-owner of the institution. In federal court, Ciavarella is charged with 38 further charges.<sup>76</sup>

#### *Other pending cases*

Several persons have filed a class-action lawsuit against a group that they claim pushed a bogus land transaction that promised tax benefits but ended up costing the participants money while generating millions of dollars for the promoters and their associates. It was filed in the U.S. District Court for the Northern District of Georgia on behalf of the individuals who were victims of land fraud. The lawsuit was filed against promoters of certain syndicates, which are defined as a group of partnerships under federal law but limited liability companies under state law. To the best of their ability and with the intent of claiming tax deductions for granting a conservation easement on the land—in which the landowner gives up the right to develop the land—the promoters persuaded the participants to acquire stakes in the syndicates, according to the lawsuit. If a taxpayer meets the conditions of Section 170 of the Internal Revenue Code, he or she may be entitled to claim a charitable deduction equal to the value of the easement that was donated (h). However, if the IRS disallows the

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<sup>73</sup> Lawyers Face Civil RICO Charges, LAW, 1, <https://www.law.com/ctlawtribune/almID/900005429159/Lawyers-Face-Civil-RICO-Charges/?slreturn=20211118035346>

<sup>74</sup> Perception Not Reality Is What Counts, LAW, 1, (July 4, 2005), <http://www.ctlawtribune.com/id=900005432056/Perception-Not-Reality-Is-What-Counts?mcode=0&curindex=0>

<sup>75</sup> Terrie Morgan-Besecker, Ex-judges hit with 48 counts, TIMES LEADER, 1, (September 10, 2009), <https://www.timesleader.com/archive/264043/stories-ex-judges-hit-with-48-counts118222>

<sup>76</sup> Distraught mother confronts Ciavarella outside courthouse – VIDEO, TIMES LEADER, 1, (February 19, 2011), <https://web.archive.org/web/20110220000624/http://www.timesleader.com/news/Deliberations-resume-in-Ciavarella-trial.html>

deduction or determines that the value of the donated rights was artificially inflated, the taxpayer may lose the deduction as well as incur hefty financial penalties. The Internal Revenue Service has been attempting to limit the use of syndicated conservation easements for some years.

It was alleged by the taxpayers in their lawsuit that the defendants engaged in organized crime by persuading hundreds, if not thousands, of clients to follow the approach even though they were aware that it was “fatally defective.” In the complaint, it is stated that “this racketeering enterprise injured Plaintiffs and the Class by causing Plaintiffs and the Class to pay substantial fees and transaction costs, be subjected to interest and penalties from the IRS, and incur additional accounting and legal fees and expenses to deal with the IRS fallout.”<sup>77</sup>

Another case is healthcare fraud. Federal prosecutors say that eleven persons, including the mayor of Socorro, two lawyers, and numerous current and former public officials, utilized a bribery and kickback scheme to acquire contracts for Access HealthSource, a local healthcare provider. The inner workings of the company were revealed in a 27-page indictment made public on Thursday. They are all charged with six counts of bribery and fraud in the indictment. The majority of them are also accused of breaking the Racketeer Influenced and Corrupt Organizations Act (RICO). Access “manipulated” public authorities to gain contracts worth up to \$150 million, according to David Cuthbertson, the FBI special agent in charge in El Paso. Other firms that competed for health-care and legal contracts in school districts and the county, he continued, were also victims of these charges. Cuthbertson stated, “There are genuine vendors who have been denied of their rights to compete fairly and truthfully.” For many years, Access served as a third-party administrator for local governments’ healthcare programs. Access held contracts with the city, county, and three major school districts between 1998 and 2007. This is the eighth indictment in a long-running FBI investigation that began in 2004. 13 people have pled guilty to criminal activity as a result of the inquiry thus far. A total of 17 suspects are included in the seven indictments.<sup>78</sup>

## Critique on the RICO Law

### *A. Questions of Constitutional Law*

Various sections of RICO have been challenged on several constitutional grounds throughout the years. Most of them go after the RICO scheme in general or the forfeiture component in particular. Vagueness, ex post facto, and double jeopardy have all been used as broad challenges. The right to counsel, high penalties, cruel and unusual punishment, and estate forfeiture have all been used to challenge the legitimacy of RICO forfeiture.

1. *Double Jeopardy* – Even a broad explanation of RICO raises concerns about double jeopardy and ex post facto issues. RICO is built on the backs of other crimes. At first look, double jeopardy seemed to bar any attempt to prosecute someone with RICO for a crime for which they had previously been tried. Similarly, ex post facto appears to exclude a RICO accusation based on a predicate offense committed before RICO was adopted or before the felony was added to the RICO predicates list. On closer inspection, neither creates insurmountable challenges in the vast majority of cases. The Constitution’s double jeopardy provision states that no one “should be subjected to being twice put in peril of life or limb for the same offense.” It criticizes numerous prosecutions or penalties for the same offense in general terms. Multiple penalties are prohibited as a preventive measure. Unless

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<sup>77</sup> Aysha Bagchi, Participants in IRS-Targeted Land Deals Sue Alleged Promoters, BLOOMBERG TAX, 1, (March 28, 2020), <https://news.bloombergtax.com/daily-tax-report/participants-in-irs-targeted-land-deals-sue-alleged-promoters>

<sup>78</sup> Ramon Bracamontes and Gustavo Reveles Acosta, Public corruption: Feds allege bribery, kickbacks, EL PASO TIMES, 1, (September 3, 2020), [https://archive.md/20120729165544/http://www.elpasotimes.com/news/ci\\_15979435](https://archive.md/20120729165544/http://www.elpasotimes.com/news/ci_15979435)

otherwise stated, it is assumed that Congress does not intend to impose numerous penalties for the same offense. Nonetheless, the courts have determined that Congress intended to allow “consecutive sentences for both predicate conduct and the RICO offense,” as well as the substantive RICO offense and the RICO conspiracy to commit the substantive RICO offense.<sup>79</sup>

Multiple prosecutions face an even higher hurdle. The Supreme Court has traditionally followed the so-called Blockburger rule, which holds that offenses are considered similar if they have the same features unless one demands proof of an element that the other does not. According to the courts, the Double Jeopardy Clause does not preclude repeated RICO prosecutions of the same defendants on counts involving different predicate acts, enterprises, or patterns. In the instance of several prosecutions of the same business, they have been more open to double jeopardy arguments. They have used a totality of the circumstances test, which looks at things like “(1) the time of the various activities charged as parts of [the] separate patterns; (2) the identity of the persons involved in the activities under each charge; (3) the statutory offenses charged as racketeering activities in each charge; (4) the nature and scope of the activity the government seeks to punish under each charge; and (5) the places where the activities took place under each charge.” The Supreme Court’s affirmation of the dual sovereign doctrine’s ongoing validity in *Gamble v. United States* shows that the Double Jeopardy Clause does not bar further state-federal prosecutions.

If the law would be legislated in the Philippines, absorption of crimes can be applied. There is a rule known as “Hernandez doctrine” that states that the elements of a crime are integrated into the overall offense and cannot be punished separately or by applying Article 48 of the Revised Penal Code to the individual elements.

2. *Ex post facto clause* – Ex post facto clauses prohibit punishment for past conduct that was not a crime at the time it was committed, increased punishment over that which accompanied a crime at the time it was committed, and punishment made possible by the removal of a defense that existed at the time the crime was committed. However, because RICO offenses are thought to continue from the beginning of the first predicate offense to the commission of the last, a RICO prosecution can be challenged ex post facto even if it is based on pre-enactment predicate offenses if the pattern of predicate offenses spans the legislative action date. Furthermore, prosecutions are becoming less likely to rely on pre-RICO enactment predicate charges as time goes on.<sup>80</sup>

In the Philippines, Ex post facto clause is written in the 1987 Constitution. However, to guarantee against the punishment for past conduct that was not a crime at the time it was committed, legislators could insert a provision in the law to further flesh out the Constitutional mandate.

3. *Ambiguity* – The void-for-vagueness theory mandates that criminal legislation specify the criminal crime in such a way that ordinary people may grasp what activity is forbidden while also avoiding arbitrary and discriminatory enforcement. After Justice Scalia and three other Justices hinted at its vulnerability to such a challenge, vagueness became a more popular constitutional target for RICO critics. Following that, the courts appear to have consistently rejected the argument that RICO is unconstitutionally vague, either in general or as applied to the facts at hand.<sup>81</sup>

In the Filipino setting, void-for-vagueness doctrine is usually discussed only for free speech or defamation laws. However, legislators could be more specific in definition of terms and enumerating the prohibitions in the bill. An Implementing Rules and Regulation would be a good accompaniment

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<sup>79</sup> RICO: A Brief Sketch, supra note 42, at 30.

<sup>80</sup> *Id.* at 31.

<sup>81</sup> *Id.*

to the bill. The DOJ, in its enforcement of the law, may release internal rules regarding its enforcement, stating further the specifics of the law.

4. *Cruel and Unusual Punishment* – The Cruel and Unusual Punishment Clause of the Eighth Amendment prohibits the imposition or execution of punishment that is disproportionate to the offense of conviction. As a result, it prohibits the imposition of an obligatory life sentence without the possibility of parole for homicides committed when the accused was under the age of 18, but only if the sentencing authority has the discretion to impose a less harsh punishment.<sup>82</sup>

This is also guaranteed by the 1987 Constitution. This problem, if this would be present in the Philippines's RICO bill, is easily remedied by inserting a provision on penalties and computation thereof. The Department of Justice also releases internal rules for computation of penalties to flesh out crime legislations and the corresponding punishments.

### *B. Commentaries*

In a criminal RICO case, the judge and jury are prohibited from inferring an adverse inference from a defendant's use of the Fifth Amendment privilege against self-incrimination. In a civil RICO lawsuit, however, there is no such prohibition. Critics argue that forcing a party in a civil RICO case who is concerned about future criminal responsibility to renounce his or her fifth amendment privilege to mount an effective civil defense is unjust. Once a party gives testimony in a civil lawsuit, the privilege against self-incrimination is essentially forfeited, and the testimony can be utilized in a future criminal prosecution. Critics argue that the RICO Act should be changed to allow a civil RICO case to be stayed (delayed) until a criminal RICO proceeding is completed.

The punishments are so severe that they may be disproportionate to the seriousness of the offense. Critics have compared the employment of RICO to stomping on a bug with a sledgehammer. The statute stipulates a 20-year jail sentence for each conviction of racketeering, as well as the forfeiture of the defendant's full stake in the "racketeering business," even if only a small portion of the money was obtained via illicit means.

Because RICO allows for asset freezing before trial, firms or people accused of RICO offenses may face financial devastation before even going to trial. The Princeton/Newport defendants' attorneys argue that the firm was put out of business before the trial due to the freezing of millions of dollars in assets.

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### **Similar Situation in the Philippines**

If a similar law, more or less patterned after the RICO law, is enacted in the Philippines, it would help eradicate various criminal organizations in both the private and public sectors. Below are some of the notorious syndicates and scams that gripped the nation:

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<sup>82</sup> RICO: A Brief Sketch, supra note 42, at 32.

<sup>83</sup> Shannon P. Duffy, *HMOs Can't be Sued Under RICO Without Claims of Actual Injuries*, THE LEGAL INTELLIGENCER, 1, (August 14, 2000). <https://law.jrank.org/pages/9629/Racketeering-RICO-IN-NEED-FEFORM.html>

## *A. Gangs*

### *Bahala Na Gang*

Divino Talastas, a native of Bulacan born in the early 1920s and subsequently relocated to Sampaloc with his siblings, founded the Bahala Na Gang in Sampaloc, Manila, Philippines, in the early 1940s. The Bahala Na Gang grew in popularity among Filipino immigrants in the United States, particularly in California. Sets of Bahala Na Gang appeared in the San Diego, Los Angeles, San Jose, San Francisco Bay Area, Stockton, Sacramento, and Las Vegas areas of Nevada. Older members, who are often in their 50s, make up the majority of the organization's membership.

The Bahala Na Gang has been one of the most sought-after criminal gangs in the fight since President Rodrigo Duterte launched his drug campaign in 2016. On August 17, 2017, 25 accused criminals, including one gang member, were slain in separate police shootouts and narcotics raids. On April 18, 2019, a gang member was shot and killed in Manila street. Nio Baccay, a member, was apprehended in a buy-bust operation in Quezon City in 2017. He was found guilty of illegally selling methamphetamine. After a tip and diligent observation, BNG member Crisanto Maguddatu was apprehended by the Manila Police District in Sampaloc, Manila, in 2018. During the raid, a packet of shabu and a .38 caliber pistol were discovered with him. Robert Yabut y Marmol and Raymart Yabut y Marmol, members of the Sigie Sigie Sputnik (gang), Sputnik gang, were apprehended in a buy-bust operation in June 2020. Gerald Agustin and May Junio were also apprehended in late October 2020 for three sachets of shabu valued at 81,600 pesos.<sup>84</sup>

The precise translation of this gang's name (Come what may) reveals its political leanings. The Bahala Na's appeared to have the least organization and were constrained by the fewest regulations, other than allegiance, of the four gangs. These gang members were almost "psychopathic" in their outlook, often referring to "thrill kills" or raiding rivals merely for the fun of it.<sup>85</sup>

### *Sigie Sigie Sputnik Gang*

The Sigie Sigie Spnitnik Gang is one of the most powerful and well-known gangs in Manila, with influence and territory extending across the slums of Tondo. They are also one of the gangs that operate in Manila's biggest prisons, such as Manila City Jail and New Bilibid Prison. This group was perhaps the most structured and well-organized combat gang in the Manila City Jail at the time of this investigation. The gang's slogan indicates the organization's combative nature: "He who comes to destroy us will be annihilated himself." This is an obvious allusion to the Sputniks' belief that "Province Mates" such as the Visayan OXO group had "invaded" Manila's Tagalog region. There appears to be a complex value system at work here that revolves around loyalty and involves at least four Filipino concepts: Pakikisama (friendship), Napasubo (a circumstance from which one cannot withdraw once committed), Hiya (shame), and Utang Na Loob (gratitude).<sup>86</sup>

There are the joint operatives of the Regional Intelligence Division, NCRPO; MPD Police Station 4 (Sampaloc, Manila Police District; and Manila District Field Unit for the successful arrest of the leader of the Sigie-Sigie Sputnik Gang and Nonoy Robbery/Snatching Group along Loreto St. Sampaloc, Manila on July 27, 2020, at around 4:00 PM. The operation was part of the "OPLAN

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<sup>84</sup> Richard C. Paddock, Tahoe Towns Grapple With a Big City Problem—Gangs, LA TIMES, 1, (March 14, 1993), [http://articles.latimes.com/1993-03-14/news/mn-907\\_1\\_lake-tahoe](http://articles.latimes.com/1993-03-14/news/mn-907_1_lake-tahoe)

<sup>85</sup> Franklin G. Ashburn, Some Recent Inquiries Into The Structure-Function Of Conflict Gangs In The Manila City Jail, UNIVERSITY OF THE PHILIPPINES ASIAN STUDIES, 138

<sup>86</sup> *Id.* at 134.

PAGTUGIS,” in which operators undertook a manhunt for a wanted individual, which culminated in the suspect’s capture. Rolando Loyola a.k.a Eduardo Loyola Jr. y Quinagoran & a.k.a. Nonoy, male, 29 years old, unmarried, jobless, and a resident of no. 87 Loreto St. Sampaloc, Manila, according to the investigation report. The above-mentioned suspect is wanted for violating Republic Act 7610, as evidenced by a pending warrant of arrest issued by HON. Judge Silverio Q. Castillo of Regional Trial Court, Branch 48, Manila on December 14, 2016, with a bail recommendation of Php 80,000.00. Before the warrant was returned to the originating court, the apprehended suspect was sent to MANILA DFU for appropriate paperwork and disposal.<sup>87</sup>

### *OXO Gang*

The OXO Gang: The OXO brand, which was created in the National Penitentiary in Muntinlupa in 1956 in reaction to “maltreatment by the Tagalogs,” was the other significant combat gang imprisoned. It was among the OXO’s that a strong lingual and cultural rivalry developed. According to the members questioned, the Tagalogs see them (the Sigue Sigue Sputniks, both in and out of jail) as members of a lower socioeconomic level and as “dumb.” As a result, the Visayans had to band together to “defend themselves against mistreatment.”

All of the OXO members interviewed insisted on having “good employment” and being diligent workers. When the “Manila Boys” (described as “pure Tagalogs”) refuse to let them live and work in peace, conflict ensues. They must then protect their dignity, pride, and “territories.” The requirements for leadership, as well as the position and function of individual gang members, were hazy, except for group devotion and an almost obsessive passion for “friendship” and brotherhood. The “regulations” are passed down down the generations by word of mouth, and there appears to be no complex or sophisticated ritual of trial and punishment for those who violate social standards.<sup>88</sup>

### *B. Political issues*

#### *Hello Garci Scandal (Gloriagate)*

Former President Gloria Macapagal Arroyo was implicated in the controversy for allegedly rigging the 2004 national election in her favor. Arroyo and Noli de Castro were elected to the presidency and vice presidency, respectively, according to the official election results. During this election, hundreds of national and municipal offices were also up for grabs. The controversy and crisis began in June 2005, when audio recordings of President Arroyo and then-Election Commissioner Virgilio Garcillano on the phone, purportedly discussing the manipulation of the 2004 national election results, were made public.

Arroyo conceded that it was her voice on the tapes in a statement released on June 27, 2005, but argued that the talk was not about cheating the polls. Despite this, she apologized to the country and stated that the call was a “mistake of judgment.” Garcillano made his first public appearance in July 2005, denying suspicions of cheating. Arroyo’s Cabinet members resigned, including those who

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<sup>87</sup> Leader Of Sigue-Sigue Sputnik Gang And Nonoy Robbery/Snatching Group Arrested In Sampaloc, Manila, PHILIPPINE NATIONAL POLICE, 1, (July 28, 2020), <https://ncrpo.pnp.gov.ph/leader-of-sigue-sigue-sputnik-gang-and-nonoy-robbery-snatching-group-arrested-in-sampaloc-manila/>

<sup>88</sup> ASHBUM, *supra* note 85, at 137.

persuaded her to perform the “I am sorry” broadcast. They also asked for the president’s resignation. Arroyo did not resign.

When the minority in the lower chamber of Congress sought to impeach Arroyo, the situation became even worse. In September 2005, the Arroyo-led majority coalition prevented this, and no trial was held. Electoral fraud and its purported cover-up were among the allegations leveled against Arroyo and her suspected government allies. Some of the charges were refuted by the Arroyo government, while others were disputed in court. Attempts to impeach Arroyo were blocked by the House of Representatives, which was dominated by Arroyo’s coalition. Virgilio Garcillano, Arroyo’s most well-known suspected electoral commission collaborator, went AWOL for a few months before returning to the capital in late 2005. There are still allegations of suspected government conspirators who assisted in his escape, as well as another alleged cover-up. Garcillano denied any misconduct both before and after his abduction. The Department of Justice exonerated Garcillano of perjury allegations in December 2006.<sup>89</sup>

### *Pharmally Contract Deal Controversy*

The Senate blue ribbon committee hearings revealed that Pharmally amassed P10 billion in pandemic deals between 2020 and 2021 although it was a small, newly formed firm lacking the financial resources, track record, and credibility necessary to handle large-ticket government procurement. What began as a probe on state auditors’ findings that the Department of Health (DOH) misappropriated P67 billion in pandemic funding in 2020 morphed into a full-fledged dual congressional investigation of the Duterte administration’s pandemic contracts. Among the officials implicated in the scandal are Bong Go, a former Duterte aide who became a senator, and Lloyd Christopher Lao, a former budget undersecretary who served as a volunteer election lawyer for the President and eventually headed the Department of Budget and Management’s Procurement Service (PS-DBM). Lao had approved the Duterte administration’s contracts with Pharmally.<sup>90</sup>

### *Maguindanao massacre*

Fifty-eight people were killed in Ampatuan town, Maguindanao province, on Nov. 23, 2009. The dead included 32 journalists and media personnel, two attorneys, six motorists traveling the same road, and the wife and sisters of Esmael “Toto” Mangudadatu, who was deputy mayor of Buluan town in Maguindanao at the time. The Mangudadatu ladies were their route to Shariff Aguak to register Toto’s candidacy for the 2010 gubernatorial elections. The convoy featured media professionals and members of the community press, including television and radio broadcasters.

The media practitioners and employees —mostly from General Santos City and Koronadal City — were covering the submission of Mangudadatu’s certificate of candidacy, which his wife, Genalin, would handle. Additionally, the case epitomized the violence that has tarnished the country’s electoral record. The Ampatuans were Maguindanao’s governing clan: Andal Ampatuan Sr. was the province’s governor, while Andal Jr., or Datu Unsay, was the mayor of Ampatuan town. Mangudadatu’s challenge was newsworthy, a story that captivated not only the local community but the entire country. The Ampatuans became major partisans in national politics after then-President Gloria Macapagal Arroyo

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<sup>89</sup> Pauline Macaraeg, [LOOK BACK: The ‘Hello, Garci’ scandal](https://www.rappler.com/newsbreak/iq/look-back-gloria-arroyo-hello-garci-scandal/), RAPPLER, 1, (January 5, 2021), <https://www.rappler.com/newsbreak/iq/look-back-gloria-arroyo-hello-garci-scandal/>

<sup>90</sup> Mara Cepeda, [LIST: Everything you need to know about the Pharmally pandemic deals scandal](https://www.rappler.com/newsbreak/iq/list-everything-need-to-know-pharmally-covid-19-pandemic-deals-scandal/), RAPPLER, 1, (December 17, 2021), <https://www.rappler.com/newsbreak/iq/list-everything-need-to-know-pharmally-covid-19-pandemic-deals-scandal/>



openly recognized them as significant friends. Genalin Mangudadatu's caravan drove via a route guarded by police checkpoints.

Personnel of the Philippine National Police (PNP) were charged in connection with the killings, including P/Cinsp. Sukarno Dicay, the 15<sup>th</sup> Regional Mobile Group's head at the time, as well as at least 60 other police officers and numerous members of the Ampatuan clan. Datu Unsay was arrested on suspicion of murder. This meant that the prosecution had to establish not only that he murdered the victims, but also that he did it in a manner that ensured his impunity. Additionally, the prosecution charged conspiracy.

On Jan. 5, 2010, the hearings began. Identifying such a large number of suspects required time. And some were not located. Only 81 of the 98 apprehended individuals had been arraigned by early 2013. With the number of defendants listed on the same charge sheet, no one can anticipate a speedy trial. Eight of the defendants died throughout the trial. Andal Ampatuan Sr. died of a heart attack in prison on July 17, 2015. Suwahid Upham, a prospective witness, was assassinated in June 2010. Upham stated in a media interview that he was one of those responsible for the victims' deaths and that Datu Unsay shot Genalyn Mangudadatu, Esmael "Toto" Mangudadatu's wife.

Witness – Esmael Enog was assassinated after testifying in court that he had been ordered by his employer, Alijol Ampatuan, to transport armed men to Barangay Malating, the location of the slaughter. Although only 31 people were initially charged with the massacre, the number of suspects was boosted to 197 after the Philippine National Police's Criminal Investigation and Detection Group (CIDG) added additional names to the list of suspects.<sup>91</sup>

### *C. Business scams*

#### *Aman Futures pyramid scam case*

The Aman Group is a swindling gang that defrauded the investing public with an investment hoax dubbed "Ponzi Plan". The Aman Group established a shell corporation, the "Aman Futures Inc" purports to be allowed by the Securities and Exchange Commission to participate in future stock trading when, in reality, it is not. The firm collected investments from over 10,000 individuals and compensated them with significant interest rates within a short period. When the Aman Group learned that the NBI was investigating, the responders refused to cash out the investors' money, claiming that the investment was automatically reinvested.<sup>92</sup>

#### *KAPA Investments Scam*

Kapa Community Ministry International (Kapa) asserts that it has aided in the financial development of millions of Filipinos. It assured Filipinos that if they made a single gift, they would get 30% of the total for the rest of their lives. Despite the warning signs, Kapa's investors defended the organization and accused the government of being "anti-poor" for demanding the closure of the ostensible religious group. The organization's head, Pastor Joel Apolinario, claims to have as many as 5 million investors, making it one of the greatest hoaxes in Philippine history. The SEC said that although no one has come forward to file a complaint, they do have witnesses who can assist in building the case. To join Kapa, investors must complete a brief form and contribute a minimum of

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<sup>91</sup> Center For Media Freedom And Responsibility (Cmfr) And Freedom For Media, Freedom For All Network, [The Ampatuan Massacre: Summary of Case Trial](https://pcij.org/article/3503/the-ampatuan-massacre-summary-of-case-trial), PHILIPPINE CENTER FOR INVESTIGATIVE JOURNALISM, 1, (December 18, 2019), <https://pcij.org/article/3503/the-ampatuan-massacre-summary-of-case-trial>

<sup>92</sup> [Another Syndicated Estafa Case to be Filed Against Manuel Amalilio, Samuel Co and Other Respondents in Aman Futures Scam](https://www.doj.gov.ph/news_article.html?newsid=207), DEPARTMENT OF JUSTICE, 1, (July 22, 2013), [https://www.doj.gov.ph/news\\_article.html?newsid=207](https://www.doj.gov.ph/news_article.html?newsid=207)

P10,000 and a maximum of P2 million. According to the contract, the contribution would be utilized to further Kapa's purpose of "religious faith promotion and creation of livelihood initiatives for the benefit of its members." Kapa guarantees that the money contributed will increase at a rate of 30% per month for the rest of the donor's life.

An individual who "donates" P10,000 per year would earn P36,000 per year, a return of 360 percent. In comparison to other forms of investing, mutual funds typically grow at a rate of between 5% and slightly more than 9%. According to the SEC, Kapa's money-taking activities constituted a Ponzi scheme, a kind of investment program that promises impossibly high returns and compensates investors using funds given by subsequent investors. Members from the beginning defend Kapa and testify to their financial gain. The issue is that the money they obtained was gained through the efforts of others. Without new members and further public investment, the pooled funds will expire after three months. Kapa combined traditional con artistry with cutting-edge technology. Due to social media, disinformation spreads more quickly this time. Kapa's method worked with a religious veneer and contemporary technologies. The SEC issued a warning against Kapa as early as 2017. The commission issued a halt and desist order in February 2019, followed by an order of revocation in April. Kapa's assets were frozen by the Court of Appeals on June 4. Simultaneous searches by the National Bureau of Investigation on many Kapa regional offices have already taken place.<sup>93</sup>

#### *Legacy Group scam*

The P14.1 billion fraud, which was initially disclosed by the Philippine Daily Inquirer in 2008, involves the defunct Legacy Group acquiring many financially ailing thrift and rural banks. It persuaded consumers to deposit their monies in these banks with high rates, after which the bank owner would siphon off cash, leaving the Philippine Deposit Insurance Corp. to pay up the insured deposits of the banks' clients that ultimately folded. The PDIC said in a statement that the Court of Appeals' 11<sup>th</sup> Division in Manila upheld the Monetary Board of the Bangko Sentral ng Pilipinas' decision to administratively indict Andrew Jereza, former manager of the Rizal Commercial Banking Corp.'s Bacolod branch, for "conducting banking business in an unsafe and unsound manner."<sup>94</sup>

#### *Rigen scam*

The Securities and Exchange Commission (SEC) has advised the public against investing in Davao-based Rigen Marketing, which has been soliciting investments with high-yielding claims of quick returns. Rigen, situated in Tagum City, Davao del Norte, entices investors with a guaranteed 400 percent return in as little as a month, the SEC stated in a May 24 alert. Rigen, for example, guarantees a P20,000 return on a P5,000 investment and a P150 registration fee. Meanwhile, a P50,000 investment plus a P1,500 registration cost might generate P200,000.<sup>95</sup>

The benefits and criticism of the US's RICO law weighed and analyzed; it is proposed that a law patterned after the RICO law be enacted in the Philippines. Considering the constitutional questions,

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<sup>93</sup> Ralf Rivas, [EXPLAINER: How Kapa Ministry took advantage of investors](https://www.rappler.com/newsbreak/iq/232805-explanation-how-kapa-community-ministry-took-advantage-investors/), RAPPLER, 1, (June, 11, 2019), <https://www.rappler.com/newsbreak/iq/232805-explanation-how-kapa-community-ministry-took-advantage-investors/>

<sup>94</sup> Jess Diaz & Aurea Calica, [Legacy pyramiding bared](https://www.philstar.com/headlines/2009/02/03/436666/legacy-pyramiding-bared), THE PHILIPPINE STAR GLOBAL, 1, (February 3, 2009), <https://www.philstar.com/headlines/2009/02/03/436666/legacy-pyramiding-bared>

<sup>95</sup> Doris Dumlao-Abadilla, [Avoid Rigen Marketing, SEC tells public](https://business.inquirer.net/271224/avoid-rigen-marketing-sec-tells-public), INQUIRER, 1, (May 25, 2019) <https://business.inquirer.net/271224/avoid-rigen-marketing-sec-tells-public>

the following guidelines taken from the United States Institute of Peace research policy on reforming criminal laws:

1. *Assess the existing laws and criminal justice system* - gathering all applicable laws, such as the state constitution, legal codes, legislation, rules, bylaws, standard operating procedures, relevant and binding precedents, and even executive or presidential edicts or decrees, is part of the legal framework assessment. This analysis will aid in determining which sections should be repealed, changed, or replaced, as well as which new ones should be included. To maintain conformity with international human rights or criminal law treaties to which the state is a signatory, new measures are often required. In the Philippines, it is better to assess first our Revised Penal Code and our special penal laws, identify the parts which are problematic, and which are redundant. It is also better if we skim through our international treaties such as human rights. It should be a relevant step because we need to comply with the agreements with the international treaty and at the same time avoid conflicting laws that most of the time are sources of judicial flip-flopping. Lawmakers should strive to harmonize our penal laws.

2. *Criminal law reform is a holistic endeavor; changes to one part of the law may have unintended consequences in other areas* - When actors choose the small-scale or focused, approach, they should be aware that changes in one area of the law sometimes have unintended consequences in other areas. Reformers should evaluate the link between new, revised, and existing provisions throughout the criminal justice continuum and the larger legal framework when revising or adding new provisions to the law. Changes in criminal procedure laws, for example, may have ramifications for police powers or detention laws; changes in the criminal code, such as the addition of new criminal offenses, may necessitate changes in criminal procedure laws. In the Philippines, the best way for legislators to create this law is to construct an ad hoc committee in Congress. That way, they will have their own set of the team that will dedicate to studying such complex legislation.

3. *Set realistic time boundaries for large-scale transformation; the process will take years, not months.* - Given the flaws in domestic legislation in certain post-conflict nations, the urge to make large-scale changes quickly is understandable. However, a feeling of haste may lead to legislation being drafted so rapidly that they are unworkable when implemented. Given the time limits, prioritizing the areas that need improvement and focusing on the most crucial first is critical. In the Philippines, hurriedly adopted legislation, such as the Bayanihan Act for the COVID-19 outbreak, has caused uncertainty among law enforcement officials. It would be smart to study and design our RICO law carefully and deliberately to identify problematic areas.

4. *Examine various legal models, but use caution when transferring laws from one state to another.* - Legal provisions being transferred from one legal system to another is uncommon. In legal writing, references to past models are often employed, which may save the drafter from having to reinvent the wheel. The technique, on the other hand, is critical in deciding whether a transplant will be successful. Local conditions and culture, among other things, must be carefully addressed, as should several various legal frameworks that may be implemented. Foreign sources of law used in the development of new legislation will almost certainly need to be adapted for use in the new environment. It is far more practical for our legislators to pattern our RICO bill from the US RICO law, however, some considerations should be taken in the creation such as the social background of the people, culture, laws, and religion.

5. *The procedure should be as comprehensive and wide as feasible* - Police officers, judges, attorneys, paralegals, prosecutors, prison officials, court administrators, the staff of civil society organizations and victims' groups that specialize in criminal justice problems, law professors, and other criminal justice actors should all be consulted.

6. *Calculate the impact of legislative changes on resources and finances* – since RICO is a very complex law that involves multiple branches of the government cooperating and mobilizing the police forces in the best way possible to eradicate criminal syndicates, it should be imperative to at least provide a budget for the implementation of such a law. New legislation should be examined in terms of resource consequences both before and throughout the drafting process. To allow drafters to assess the theoretical advantages of new legislation against its practical practicality, a financial study of the expected costs of proposed changes must be conducted, among other things.

7. *Once laws have been adopted, the process of law reform does not cease* - The application of new legislation should be prioritized during and after its formulation and approval. The most critical factor in ensuring efficient implementation is ensuring that criminal justice actors are informed of the new legislation and are trained in its provisions before it takes effect. Curricula at training institutions and universities will also need to be updated. It is also critical to raise people's knowledge of their new legal duties and rights; public education initiatives are critical in this respect.

### **Conclusion**

This paper proposes to legislate criminalizing racketeering activity in the Philippines and to create a law more or less patterned after the US RICO law, an improved version that can better serve our problems with crime syndicates and corrupt politicians. The history and social milieu of racketeering and RICO law are discussed to provide a social context on why this law was enacted and its purpose for implementation such a rigid law. The cases have been discussed to measure the effectiveness of the law in purging criminal syndicates that have long plagued the US streets, such as the Cowboy Mafia, Gambino crime family, and corruption of taxes. To balance the proposal, the constitutional criticisms and critiques are tackled for it to be a consideration in creating such a complex law, as well as the pertinent recommendations for Philippine setting. Ex post facto laws, cruel and unusual punishment, and void-for-vagueness doctrine, and other constitutional doctrines are discussed as criticisms against the RICO law. Examples of situations in the Philippines that can be corrected by RICO law are also discussed to provide an application in the Filipino context, among which are Filipino crime gangs, business scams, and political scandals. As a product of this study, guidelines are created that will serve as a framework for our RICO bill if it were to be proposed.