

SALIGAN Batas

Amended Law Penalizes Internet Intermediaries Promoting Trafficking

Internet intermediaries, including internet service providers, data processing and web hosting providers, and internet search engines, may now be prosecuted for, knowingly or by gross negligence, allowing their internet infrastructure to be used for the purpose of promoting trafficking in persons.

The Expanded Anti-Trafficking in Persons Act of 2022, or Republic Act (R.A.) No. 11862, brings the law into the digital sphere by recognizing that many of the acts that constitute trafficking in persons are done using the internet and other digital platforms. The act was signed into law on June 23, 2022, amending further the Anti-Trafficking in Persons Act of 2003 (R.A. 9208), which was first amended in 2012 by R.A. No. 10364.

Under this law, internet cafes, kiosks, hotspots, and money transfer or remittance centers may also be prosecuted for knowingly or by gross negligence allowing the use of their facilities or services for the purpose of promoting trafficking in persons.



Private Sector Duties and Responsibilities Established

The amended law also imposes obligations on internet intermediaries and requires them, among others, to [1] adopt in their terms of service the prohibition of any form of child sexual abuse and exploitation material (CSAEM) on their platforms; [2] compile and maintain a comprehensive list of URLs related to the sexual exploitation of children; [3] immediately block access to or remove any internet address, URL, or website that contains CSAEM within 24 hours from notice of the Department of Justice (DOJ), Philippine National Police (PNP), National Bureau of Investigation (NBI), or Department of Information and Communications Technology-Cybercrime Investigation and Coordinating Center (DICT-CICC) or upon knowledge of the existence of an attempt to commit or an actual act of trafficking in persons being committed within their control; and [4] provide the DOJ, PNP, NBI, or DICT-CICC the subscriber information of any person who gained or attempted to gain access to an internet site or application which contains any form of sexual exploitation of children, all of which are subject to conditions laid out in the new law.

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Other private establishments are also obligated to notify authorities to combat trafficking, subject to specific conditions:

- Operators of internet cafes, money transfer and remittance centers, transport services, malls, and other similar establishments must notify the PNP or NBI within 48 hours of any act constituting trafficking in persons taking place within their premises or using their facilities or services.
- Tourism enterprises must notify the Department of Social Welfare and Development (DSWD), DOJ, Department of Labor and Employment (DOLE), PNP, or the NBI within 48 hours that trafficking in persons is being committed in their premises.
- Financial intermediaries must report any suspected financial activity or transaction related to trafficking in persons to concerned law enforcement agencies.

Acts that Constitute Trafficking in Persons Expanded

The production, creation, or distribution of CSAEM is now one of the purposes for which trafficking in persons may be committed as defined under the new law. CSAEM is defined as “photos, images, videos, recordings, streams, or any other representation or form of media, depicting acts of sexual abuse and exploitation of a child or representation of a child as a sexual object, whether or not generated digitally or by, through, and with the use of information and communications technology” and includes “materials that focus on real or simulated genitalia or other private body parts of a child.”

The law also now penalizes persons who “recruit, transport, obtain, transfer, harbor, maintain, offer, hire, provide, receive, or adopt a child for deployment abroad as a migrant worker,” provided that in cases of

overseas domestic work, a “child” is anyone aged below 24 years old.

In addition, it also penalizes persons who knowingly or by gross negligence facilitate, assist, or help in the entry into the Philippines persons who are convicted sex offenders for the purpose of trafficking in persons, as well as those who cause the introduction or encounter of persons who are suspected or convicted sex offenders in any jurisdiction to a child. ■



Advancing the Rights of Workers is an Endless Struggle

A Feature on SALIGAN Paralegal Ross Natividad

“The battle for advancing worker's rights is a never-ending struggle, and knowing the law is a necessary arsenal for ordinary workers to ensure that their rights are respected and protected.”

These were the gist that Ross learned from his experience as a union leader. Ross Natividad has been an employee of the Yellow Bus Line (YBL) since 2006. He never imagined that he would one

day take the helm of the Yellow Bus Line Employees Union (YBLEU).

Before working in YBL, Ross was employed in several private companies. He saw

firsthand how the rights of the workers were violated and how employees were too afraid to go to the appropriate government agencies to seek redress of their concerns in the workplace. These experiences led him to start his advocacy for advancing the rights of the workers. This advocacy was further nurtured when he started working in YBL. It was the first time he worked in a company that has a labor union.

In March 2007, Ross became a regular employee and a member of the YBLEU. During that time, he was amazed by the union officers who introduced themselves and oriented the new members on their rights as union members.

In July and August 2007, three separate bombings occurred in the Yellow Bus Line units in Sultan Kudarat. The union officers were implicated in the bombing incidents. That same year, he heard about SALIGAN as the legal counsel of the accused officers. In those trying moments of the union, he witnessed the unity, candor, and valor of the officers of the YBLEU, and the strength and unity of the YBLEU.

In 2015, Ross was elected as Vice President of YBLEU. He, together with the other newly elected union officers, participated in the Lakas ng

Mangagawang Paralegal (LAMPARA) training program of SALIGAN and completed the training after three years in 2018.

During the said trainings, he fondly recalled how he became more sober and conscientious in looking at labor issues affecting the management and the union. Prior to the training, he was known as a hot-headed person and was always among the first to call for picketing or strikes to protect the rights of workers. Ross expressed his sentiment that legal education is vital tool for any union officer. The rights of workers can only be truly advanced if the union officers understand the labor laws and procedures affecting the workers. Otherwise, they would be lost in a legal maze and make mistakes that are detrimental to their cause.

On July 1, 2020, Ross was elected as President of YBLEU. He recalled that at the height of the pandemic when the transportation industry was brought to a halt, YBL was only operating less than ten percent of its fleet. The union members were in a state of panic with an uncertain future at their doorsteps. Ross narrated that he requested a series of meetings with the top management of the company to discuss the

problems currently hounding them. One of the commitments that Ross secured with the management was that no workers of the company will be laid off or retrenched. The company also provided small financial assistance to their workers. The YBLEU released the savings of the members per its mandatory savings program. Ross also applied and availed of financial assistance from the Department of Labor and Employment for all of the union members of YBL.

Presently, Ross is sitting as a representative of the labor sector in different government agencies. For YBLEU, Ross has taken the role of a mentor to the newly elected officers. He has been consistently advising, guiding, and sharing his experience with the new officers.

For Ross, being a union president is just another chapter of his life as a labor advocate where the struggles for advancing the right of workers never ends.



Mr. Ross Natividad

Breaching the Iron Curtain

Update on the Inheritance of Nonmarital Children under *Aquino v. Aquino*

“MAY a child born of unmarried parents inherit from their grandparents? The answer used to be complicated. That was until the landmark decision of the Supreme Court in *Aquino v. Aquino*, penned by Justice Marvic M.V.F. Leonen in 2021.

The Iron Curtain Rule

Prior to the decision, the iron curtain rule prevented a child born out of wedlock from inheriting from their parents’ “legitimate” children and relatives. Such a child,² which the Court now refers to as a “nonmarital” child, would be allowed to inherit from their parents’ relatives only if the latter were also nonmarital. Thus, a nonmarital child could not inherit from their grandparent, unless their parent was, like them, a nonmarital child. The rule also applies in the reverse: The marital children and relatives of a parent of a nonmarital child could not inherit from the nonmarital child. The exception is when the nonmarital child or their parent’s marital relative is made a testamentary heir by way of a will.

The rule stemmed from the Court’s previous interpretation of Article 992 of the New Civil Code. The provision reads:

Article 992. An illegitimate child has no right to inherit ab intestato from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.

A long line of jurisprudence interpreted this provision as an exception to the general rule that blood relatives may inherit from each other by intestate succession³ or, as used by the provision, succession *ab intestato*. Thus, in *Diaz v. Intermediate Appellate Court*,⁴ the Supreme Court, citing *Manresa*, described the restrictive exception as an “iron curtain” between the nonmarital child and their parents’ marital relatives:

Article 992 of the New Civil Code provides a barrier or iron curtain in that it prohibits absolutely a succession ab intestato between the illegitimate child and the legitimate children and relatives of the father or mother of said legitimate child. They may

*have a natural tie of blood, but this is not recognized by law for the purposes of Art. 992. **Between the legitimate family and the illegitimate family there is presumed to be an intervening antagonism and incompatibility.** The illegitimate child is disgracefully looked down upon by the legitimate family; the family is in turn, hated by the illegitimate child; the latter considers the privileged condition of the former, and the resources of which it is thereby deprived; the former, in turn, sees in the illegitimate child nothing but the product of sin, palpable evidence of a blemish broken in life; the law does no more than recognize this truth, by avoiding further grounds of resentment.*

Thus, petitioners herein cannot represent their father Pablo Santero in the succession of the [latter] to the intestate estate of his legitimate mother Simona Pamuti Vda. de Santero, because of the barrier provided for under Art. 992 of the New Civil Code. [Citation omitted; italics in the original; emphases supplied.]

Breaching the Iron Curtain

Aquino has partially changed this rule. Now, according to

1 G.R. Nos. 208912 & 209018, December 7, 2021.

2 The terms “illegitimate child” and “legitimate child” have been abandoned by the Supreme Court in favor of “nonmarital child” and “marital child,” respectively, to avoid the derogatory connotations of the former. See *Gocolay v. Gocolay*, G.R. No. 220606, January 11, 2021.

3 Intestate succession refers to succession without a will, as opposed to testate succession which refers to succession through a will.

4 G.R. No. L-66574, June 17, 1987, 234 PHIL 636-644.

the Court, a nonmarital child may inherit from their grandparents by way of representation regardless of the marital status of the latter. This change reduces the discrimination under the law between marital and nonmarital children. Now, any child may inherit from any of their grandparents by way of representation.

To clarify, a child inherits from their grandparent by way of representation if their parent predeceased their grandparent. In such a scenario, the child represents their parent in the latter's share in the inheritance from their grandparent. For example, X has two children, A and B, with A having two children of their own, C and D. If A passed away before X, and X died without a will, C and D will represent A's share in the estate left behind by X. Meanwhile, B who remains alive will inherit in their own right from X's estate. Thus, assuming they are the only remaining heirs, C and D will equally share in what should have been the $\frac{1}{2}$ share of A in X's estate, while B will get the other half. In short, B will get $\frac{1}{2}$ of X's estate while C and D will get $\frac{1}{4}$ each.

This right of representation is granted by Article 982 of the New Civil Code. The provision reads:

Article 982. The grandchildren and other descendants shall inherit by right of representation, and if any one of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions.

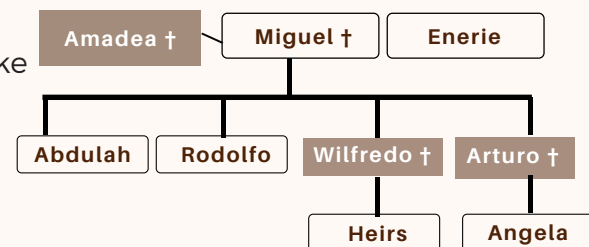
In *Aquino*, the Court ruled that this provision should apply to grandchildren regardless of their birth status or the marital status of their grandparents, as the provision itself does not make any such distinctions. The Court however clarified that this new doctrine will apply only when the nonmarital child has a right of representation to their parent's share in their grandparent's estate. It will not necessarily apply to a nonmarital child seeking to inherit from their collateral relatives (e.g. their siblings who are marital children) in their own right.

The case

How did the Court arrive at this new doctrine?

In *Aquino*, Amadea Angela K. Aquino (Angela) was seeking to inherit from the estate of her alleged grandfather, Miguel T. Aquino, who died without a will in 1999. Miguel had four sons with his first wife, Amadea C. Aquino, who already died earlier in 1977. The sons were Abdulah,

Rodolfo, Wilfredo, and Arturo. Like their mother, Wilfredo and Arturo also predeceased Miguel. Thus, when Miguel died, he left behind: 1) his second wife, Enerie B. Aquino; 2) two sons who were still living, Abdulah and Rodolfo; 3) the heirs of Wilfredo; and, allegedly, 4) Angela who was claiming to be the only child of Arturo.



Angela alleged that Arturo died before she was born in 1978. Although her parents were not married, there was no legal impediment for them to marry. Arturo supposedly died before he was able to marry Angela's mother. Nonetheless, according to Angela, Arturo's family recognized her as Arturo's child, with Abdulah serving as her godfather. Angela claimed that Miguel even supported her and intended to include her in his estate.

Abdulah and Rodolfo opposed Angela's claim to be included in Miguel's estate for two reasons. First, according to them, Angela was not able to prove that she was indeed Arturo's

child. Second, even if she was Arturo's child, she could not inherit from Miguel because she was a nonmarital child and Arturo was a marital child of Miguel and Amadea. Thus, the iron curtain rule would bar her from inheriting from Arturo's marital relatives, such as Arturo's father, Miguel.

The Supreme Court ruled on these two arguments. It stated the issues in this wise: 1) whether or not Angela can inherit from Miguel's estate; and 2) whether or not Angela was able to prove that she was Arturo's child.

The Ruling

In ruling on the first issue, the Court traced the history of the iron curtain rule in jurisprudence interpreting the Spanish Civil Code, the New Civil Code, and the Family Code. The Court noted that its most recent decision interpreting Article 992 of the New Civil Code was promulgated more than three decades ago in 1990. Meanwhile, the New Civil Code itself took effect more than 70 years ago in 1950.

Since then, several legal developments on children's rights have taken place. The Child and Youth Welfare **Code**⁵ was enacted in 1974.

The present Constitution, recognizing children's rights, was ratified in 1987. The Family Code, which sought to improve the conditions of nonmarital children by granting them additional rights and privileges, took effect in 1988. Then, in 1990, the Philippines signed and ratified the United Nations Convention on the Rights of the Child (UNCRC) which includes a commitment to nondiscrimination between children and the protection of their best interests. In line with the UNCRC, several laws have been passed to protect the best interests of children. One example is the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act.⁶

Further, the Court noted that the assumption underlying the iron curtain rule, i.e. that there is an "intervening antagonism" between the nonmarital child and their parents' marital relatives, is not necessarily true. Nonmarital children are not always the outcome of an extramarital affair. Their parents might not have married simply by choice and not because of any legal impediment. Alternatively, the parents might have been underage or the mother might have been a victim-survivor of sexual assault. In

these cases, the law cannot expect the parents to enter marriage. It might also be the case that the father died before the child's birth and before being able to marry the mother, as was allegedly Angela's case.

Thus, the Court abandoned the assumption behind the iron curtain rule. It ruled that, in cases wherein a nonmarital child seeks to inherit from their grandparent by way of representation, Article 982 and not Article 992 of the New Civil Code should be applied. This is more in accord with developments in the law mandating nondiscrimination between children and protecting the best interests of the child.

Nonetheless, according to the Court, the application of Article 982 did not automatically grant Angela the right to a share in Miguel's



⁵ P.D. No. 603.

⁶ R.A. No. 7610.

estate. The Court still had to rule on the second issue, particularly, whether Angela was able to prove that she was Arturo's child. The Supreme Court, however, is not a trier of facts. Thus, it remanded the case to the trial court for the reception of evidence of Angela's filiation. If Angela would be able to prove before the trial court that she was indeed Arturo's child, then she would be entitled to a share in Miguel's estate by way of representation, regardless of her or Arturo's birth status.

The Court concluded with a quote from the dissenting opinion of Justice Gregorio Perfecto in *Malonda v. Vda. de Malonda*⁷:

*All children are entitled to equal protection from their parents. **Only a distorted concept of that parental duty, which springs from and is imposed by nature, may justify discriminatory measures to the prejudice of those born out of illicit sexual relations.** The legal or moral violations upon which some of our present day legal provisions penalize illegitimate children with social,*

*economic, and financial sanctions, are perpetrated by the parents without the consent or knowledge of the children. If the erring parents deserve to have their foreheads branded with the stigma of illegitimacy, **it is iniquitous to load the innocent children with the evil consequences of that stigma.** There can be illegitimate parents but there should not be any illegitimate children.* [Emphases supplied.] ■

New Law Expands Coverage and Benefits for Solo Parents

On June 4, 2022, Republic Act (RA) 11861 or the Expanded Solo Parents Welfare Act lapsed into law, granting additional benefits to solo parents and consequently amending RA 8972 or the Solo Parents' Welfare Act of 2000.

The new law introduced some changes on who can be solo parents. Section 7 of RA 11861 shortened the one-year period for persons situated in the following circumstances to be considered as solo parent:

- Detention of the spouse for at least three months of service of sentence for a criminal conviction.
- Legal separation or de facto separation for at

- least six (6) months as long, and the solo parent is entrusted with the custody of the children;
- Abandonment of spouse for at least six months

The law also provides that the spouse or family members of overseas Filipino workers (OFWs), or guardian of a child of an OFW can be considered as solo parents, subject to the condition that the OFW, the spouse, family member or guardian of the child of the OFW belongs the low/semi-skilled worker category and has been away from the Philippines for an uninterrupted period of 12 months.

In addition, grandparents who are senior citizens are

also granted the same benefits as solo parents, provided they have the sole parental care and support over their grandchildren.

It also increased the age threshold of children or dependent of solo parents who are unmarried and unemployed to twenty-two (22) years old and below. Those who over 22 years old but are unable to fully take care or protect themselves from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition are also considered as children. However, this definition of children shall be used only for the purpose of availing benefits under this law.

⁷ G.R. No. 49081, May 28, 1948, 81 PHIL 149-156.

The new legislation expanded the benefits of a solo parent to include monthly subsidy of Php 1,000.00 for minimum wage earners who are not recipients of any cash subsidy from the government, and a ten percent (10%) discount

and VAT exemption in the purchase of basic goods such as baby's milk, food, sanitary diapers, vaccines, duly prescribed medicines and micronutrient supplements subject to the conditions required in the law.

Furthermore, the law has shortened the period of service rendered from at least one year to at least six months in order for a solo parent to avail the paid parental leaves of not more than seven days. ■

Government gears for 'responsible' open-pit mining

On April 14, 2021, former President Rodrigo Duterte issued Executive Order (EO) No. 130 lifting the 9-year moratorium on new mining agreements. This comes after the implementation of Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law, doubling the rate of excise tax on minerals, mineral products, and quarry resources from 2% to 4%, satisfying the condition on the lifting of the moratorium imposed in 2012 by virtue of EO No. 79. The latter provides that no new mineral agreements shall be entered into until a new law rationalizing existing revenue sharing schemes and mechanisms has taken effect.

While EO No. 130 is silent on the lifting of administrative ban, the Department of Environment and Natural Resources (DENR) issued Administrative Order (AO) No. 2021-40, lifting the specific prohibition against the open-pit method of mining for copper, gold, silver and

complex ores enforced under AO No. 2017-10. Among the mining projects affected by the 2017 prohibition are the \$5.9-billion Tampakan copper project in South Cotabato and the \$2-billion King-king copper-gold project in Compostela Valley.

What is open-pit mining?

Open-pit mining is a surface mining method that extracts the minerals from the earth through an open pit created in the ground. It was banned in 2017 after former DENR Secretary Gina Lopez declared it as "perpetual liabilities" in the absence of proper technology (DENR, 2017). Specifically, the method has been associated with waste dumping, high toxicity in the area, and mine tailing spills. The Interfacing Development Interventions for Sustainability (IDIS), an environmental non-government organization dedicated to the protection and preservation of Davao's watersheds, explained in a statement that open-pit

mining also entails mass deforestation as it requires large hectares of land for operational processes (Minda News, 2022). The Marcopper mining incident in 1996, considered as the worst mining disaster in Philippine history, was the first to use open pit mining in copper concentrate production.

Open-pit mining, however, is also seen as a key contributor to the country's economy. The DENR estimates that around P11 billion in annual government revenues and more than 20,000 jobs will be generated by the open-pit mining projects that have now been given the green light. This is particularly relevant as the government is taking steps to revitalize the country's pandemic-hit economy. To address the environmental concerns, the government assures that strict monitoring and enforcement of environmental standards will be undertaken to avoid the negative impacts of using the method.

Safeguards under AO No. 2021-40

Under AO No. 2021-40, open-pit mining is considered a globally-accepted method of mining and is the most feasible option for mining near-surface or shallow ore deposits. It further states that there are presently best-practice control strategies and technologies that can avoid or manage its environmentally adverse consequences. Section 8 of the AO requires mining tenement holder to conduct baseline information gathering and evaluation, and incorporate the same in a Mining Project Feasibility Study. Based on such document, the DENR-Mines and Geosciences Bureau (DENR-MGB) shall determine whether the proposed mining project complies with the following conditions:

- It will not pose possible hazard to public health and safety resulting from ground failure or physical deterioration;
- It will not release hazardous chemicals to the environment, or the proponent has presented proven and acceptable techniques to control the same through internationally accepted containment, collection, and treatment methods that will outlive the life of the mine, including its complete decommissioning.

Thus, the mining operation should be able to:

- a. Prevent generation or acceleration of acid rock drainage and other heavy metals that may contaminate land and water bodies;
 - b. Reduce use of freshwater resources and avoid or mitigate disruption of water table; and
 - c. Reduce the risk of perpetual maintenance or liability associated with the surface mining method to be used.
- It is grounded on adequate information so as to enable the project proponent to conduct a comprehensive stakeholders' involvement process, to ensure that all interests and concerns are considered, and that there is social acceptability of the project since the commencement of the exploration activities;
 - It is accompanied by appropriate programs for surface and subsurface slope-stability monitoring of potential slope failures, and has assured the mitigation of the effects thereof and the safety of personnel, communities, infrastructure and equipment; and

- There is sufficient accumulated geological data to conduct proper and accurate assessment of local geology, rock mass characteristics, hydrogeology, and surface hydrology.

AO No. 2021-40 also saw the creation of an Oversight Committee that will assess surface mining in the country, ensure their compliance with environmental standards, set policies and parameters, and enforce the law, rules, and regulations in case of violations. ■

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SALIGAN

SENTRO NG ALTERNATIBONG
LINGAP PANLEGAL



(+63)(2)4266001 LOC.
4858-4860



WWW.SALIGAN.ORG



SALIGAN@SALIGAN.ORG



/SALIGAN.ALAC

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