

# Women's Priority Legislative Agenda

*by Atty. Adoracion P. Cruz Avisado, PhD<sup>1</sup>*

Advocates for women and children's rights as human rights, continue to ask the question: When will the sufferings of many victims of Violence Against Women and Children (VAWC) in the Philippines ever end? This is indeed a valid question considering the reality in our country where there is a pervasive intertwining culture of patriarchy, corruption, and impunity.

It is so sad that despite the fact that we are regarded by many other countries in Asia as advanced in the areas of law and policy

---

<sup>1</sup> Adoracion P. Cruz Avisado is a developmental lawyer and a Christian feminist. She has been in the forefront of advocating women and children's rights as human rights for decades. She was a litigator for 14 years where most of the cases she handled were for women, children, and marital and family related cases. She serves as a constant Resource Person in the areas of Gender Equality and Human Rights of Women and Children as well as Gender, Law and Justice, in the local, national and international arena. She served as Presiding Judge of the Regional Trial Court (RTC) Branch 9 in Davao City, from 1999 to 2004 where she became a recipient of multiple awards including those coming from the 3 branches of the national government among others. During the centenary celebrations of the Supreme Court she was given a Special Award for "Transparency and Advocacy of Judicial Reform". Despite the fact that her court was the only designated Drugs Court in Davao city at that time, for two years in a row, the Executive branch of the government awarded her for "Speedy Disposition of Cases". Likewise, the Oversight Committees of both the House of Representatives and Senate awarded her in 2003, for "Pro-Active Measures in the Administration of Justice". In 2004, she tendered her irrevocable resignation to the Supreme Court when she saw a miscarriage of justice happening to one court stenographer, who complained of being sexually harassed by the Judge in another branch of the RTC in Davao City. She saw how the fraternity ties in the judiciary is being misused and abused when her request for additional drugs court in Davao city was denied. She saw the domination and subordination in the Judiciary that impact on judicial independence. Upon resignation, her family established ACCCTTS Center, a family funded ministry and the Transformative Justice Institute (TJI), dedicated to advocate and work for the transformation of the Philippine Justice System. She serves as Chairperson of both ACCCTTS and TJI.

designed to protect women and children, many continue to suffer different kinds of abuses such as physical, psychological, sexual and economic. As a country, we are committed to uphold and respect the Universal Declaration of Human Rights (UDHR)<sup>2</sup>, the United Nations Convention for the Elimination of All Forms of Discrimination Against Women (UNCEDAW)<sup>3</sup>, and the Convention on the Rights of the Child (UNCRC).

Our very own 1987 Constitution expressly provides for the important role of women<sup>4</sup> and the youth in nation building. Women are ensured about their fundamental equality before the law with men. We already have a host of statutes crafted to put a stop to the sufferings of victims of abuses and inequality. Still, there are remaining State policies that are discriminatory to women. It is in this regard that the Transformative Justice Institute (TJI) continues to work with the Philippine Commission on Women in crafting and popularizing the needed Legislative and Policy Measures to ensure that the Constitutional provisions geared towards “Gender Equality” and respect for “Women’s Rights” are achieved and realized.

### **Dynamic Philippine Commission On Women (PCW)**

It is heartwarming to know that the Philippine Commission on Women (PCW) continues to push for more policies designed to ensure gender equality. As Chairperson of the TJI, I gave a statement of support as a Final Reactor during the September 11, 2013 Forum with Legislators and Stakeholders held at Sulo Riviera Hotel, Quezon City.

<sup>2</sup> The Universal Declaration of Human Rights (UDHR) that provides for equality for all was passed by the United Nations in 1948.

<sup>3</sup> The United Nations on the Convention for the Elimination of All Forms of Discrimination Against Women (UNCEDAW) was passed by the United Nations in 1979. The Philippine government signed it in 1980 and was ratified in 1981.

<sup>4</sup> Article II Section 14 of the Philippine Constitution provides “ The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men”.

PCW Chairperson, Ms Remedios “Remmy” I. Rikken talked about the continuing struggle of the Filipino women as she tackled the topic on “Women Making Legislative Herstory: Reliving Experiences in Upholding Women’s Rights.” She mentioned that because of the continuing failure of some instrumentalities in government, including the Judiciary to administer justice in accordance with existing laws, our group, the Transformative Justice Institute, and other like minded allies are offering an alternative mode of facilitating “Justice and Healing” that will pave the way for the healing of traumatized victims and correction, rehabilitation and reformation of the doers of violence. This will be in consonance with the Restorative Justice approach in administering cases.

Empowerment of women is vital in achieving gender equity and equality. Thus, we should continue to push for programs and policies in achieving the same. The Philippine Commission on Women (PCW) prepared these Policy Briefs after consultation with various groups and stakeholders. In order that people from Mindanao can support the Women’s Priority Legislative Agenda (WPLA), I am presenting here some of the salient points of each policy recommendation that were given during the Forum with the representatives of the 16<sup>th</sup> Congress. The presentation will focus on these points: (1) Issue; (2) Importance of the issue; (3) Existing laws or policy issuances related to the issue; (4) Policy Recommendation; and (5) Conclusions. As Mindanaoans, let us do our part by talking to our Representatives in Congress and write to our Senators to fully support the WPLA.

## Policy Brief No. 1

### *“Extending Social Protection for Women in the Informal Sector: Enacting a Magna Carta of Workers in the Informal Economy”*

#### **What is the Issue?**

Informal employment in the Philippines has been a way of life for many Filipinos. Many workers who lose their jobs tend to find refuge in the informal economy, which provides them a means of economic support. For lack of productive employment opportunities, the jobseekers are forced to seek short-term or temporary employment or create employment for themselves for survival or income augmentation.<sup>5</sup> To some extent, this condition must have helped keep the economy resilient as laid-off/unemployment workers easily shift to small-scale household production to earn a living.<sup>6</sup> The National Statistics Office’s 2013 Labor Force Survey results show that workers in the informal economy reached 16.088 million, or 42.53 percent of the country’s working population of 37. 819 million workers.<sup>7</sup>

The growth of informal employment can be attributed to the large portion that has come from women in self-employment. The feminization of poverty and discrimination mean the most vulnerable and marginalized groups tend to end up in the informal economy. Women are likely to move in and out of the labor force because they are more likely to be required to balance the demands of domestic and child rearing activities and their income generating activities<sup>8</sup>.

<sup>5</sup> Cleofe S. Pastrana. *The Informal Sector and Non-Regular Employment in the Philippines* (2009).

<sup>6</sup> Estrella V. Domingo. *Measuring the Non-Observed Economy (NOE): The Philippines experience 2004*.

<sup>7</sup> National Statistics Office. *Labor Force Survey, 2013*.

<sup>8</sup> Women’s Legal Bureau. *Research in the Consistency of National Legislation on Women and Children with Major International Rights Covenants Signed by the Philippine Government, 2008*.

Given the role to balance productive and reproductive work, women decide to tolerate small income, poor working environment, and even exploitative work arrangements, normally experienced while working in the informal economy.

#### **Why Is the Issue Important?**

Contrary to the usual notion, the workers in the informal economy are productive and contribute a significant share in the country’s economy. The informal sector in 2006 accounted for 61 percent of the Gross Domestic Product (GDP) of the Philippines, representing the almost PHP4 billion income. However, workers in the informal sector do not receive sufficient social protection and benefits, and their invisibility in the country’s economy causes lack of access to economic opportunities. Specifically, women in the informal economy are vulnerable to various forms of exploitation. They are at high risk in times of illness, disability, work injury, maternity, unemployment and old age.

Government financial institutions also underserve most women in the informal economy, mainly because the cost of delivery is higher than the capacity of women to meet the stringent requirements. The lack of access to productive resources is often characterized by poor infrastructure such as communication facilities, transport and poor farm/factory to market roads.

Women are also exposed to a working environment not protected by health and safety standards. Poor working conditions make them vulnerable to occupational health and safety hazards.

The lack of representation in governance and decision making structures is also a pressing issue that women in the informal economy face. They are usually excluded or underrepresented in the decision-making processes, and they lack opportunities to have a voice in crafting policies or programs. While NGOs such as Alliance for Workers in the Informal Economy or Magna Carta for Informal

Sector Alliance advocate for the needs of the informal sector, the specific needs of women in this sector has to be represented through policy interventions.

### **What are the existing laws or policy issuances related to the issue?**

The 1987 Philippine Constitution mandates the State to ensure the welfare of all workers. Article II Section 9 declares that

The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

R.A. 8425 or the Social Reform and Poverty Alleviation Act is the first national legislation to recognize the informal sector, through its inclusion as one of the basic sectors. It defines workers in the informal sector as

[P]oor individuals who operate businesses that are very small in scale and are not registered with any national government agency, and to the workers in such enterprises who sell their services in exchange for subsistence level wages or other forms of compensation.

Adopting the definitions formulated by the 15<sup>th</sup> International Conference of Labor Statisticians, the Delhi Group and the ILO-UNDP Project, the National Statistics Coordination Board, through Resolution No, 15 Series of 2002, released the official definition of the informal sector.

The informal sector consists of 'units' engaged in the production of goods and services with the primary objective of generating employment and incomes to the persons concerned in order to earn a living. These units typically operate at a low level of organization, with little or no division between labor and capital as factors

of production. It consists of household unincorporated enterprises that are market and non-market producers of goods as well as market producers of services. Labor relations where they exist, are based on casual employment, kinship or personal and social relations rather than formal or contractual arrangements.<sup>9</sup>

R.A. 10606 or the National Health Insurance Act of 2013 ensures Philhealth coverage for all Filipinos, including members of the informal economy. Section 5 of the said Act mandates the enrolment of members in the informal economy to avail of health benefits with the assistance of the financial arrangements provided by Philhealth. The law also allocated a seat in the Board of Directors of Philhealth for a permanent representative from members in the informal economy.

### **Policy Recommendation**

The Labor Code and other legislation that could protect their rights do not cover the big majority of workers in the informal sector who are mostly women. The Philippine Commission on Women (PCW) pushes for the enactment of a law that provides for the protection and empowerment of the Filipino women in the informal sector. PCW advocates for the passage of the Magna Carta of Workers in the Informal Economy (MACWIE) that

1. Promotes the total well being of all workers in the informal economy and ensures their human dignity, economic advancement and access to justice by providing timely services including social, political, economic and legal;
2. Recognizes, promotes, protects and fulfills the rights of every worker in the informal sector including the right to self-organization, decent work, just and humane working conditions, and access to social protection;

<sup>9</sup> [http://www.ncsb.gov.ph/resolutions/2002/15\\_1.asp](http://www.ncsb.gov.ph/resolutions/2002/15_1.asp)

3. Recognizes the roles and contributions of workers in the informal economy and make them visible in the national and local statistics;
4. Develops and enhances their entrepreneurial skills and capabilities to become more productive and self-reliant citizens thereby ensuring participation in mainstream economic activities;
5. Promotes gender equity and equality and protect women and workers in the informal economy against gender-based discrimination, exploitation and abuse; to advance women's social, economic, political and reproductive rights; and improve their access to social protection and participation in decision making bodies.

## Conclusion

Women work two-thirds of the world's working hours, produce half of the world's food, yet earn only 10 percent of world's income and own less than one percent of the world's property.<sup>10</sup> Addressing the conditions of women in the informal economy contributes to poverty reduction, improving lives of a large portion of the working population in the Philippines. When living and working conditions of female informal workers improve, so does their productivity, which leads to increased income, contributes to overall economic growth, and reduces poverty in the long term.<sup>11</sup>

While economic empowerment leads to political empowerment this is not true in the case of the prostituted women. The prostituted women should not be punished. They should be considered as victims.

<sup>10</sup> Message from Navi Pillay, UN High Commissioner for Human Rights, Human Rights Day, 2009.

<sup>11</sup> Lota, Bertulfo. *Women and the Informal Economy* (2011).

## Policy Brief No. 2

*"Addressing the System of Prostitution in the Philippines, Imposing Penalties for Perpetrators Providing Protective Measures and Support Services for Victims: Enacting the Anti-Prostitution Law (Amending Articles 202 And 341 of the Revised Penal Code)"*

### What is the issue?

Prostitution, a form of sexual exploitation and violence against women and girls is a human rights violation. It is an exploitative system that commodifies, objectifies and dehumanizes women, men and children who are being sold within the system. It reinforces the subordinate status of the more vulnerable individuals who are more often, women and children as it serves the instant sexual gratification of the more privileged "clientele" who are mostly male.

Worldwide, the prostitution business has a clear link to human trafficking for sexual exploitation and to Internet pornography. The United Nations Special Rapporteur on Trafficking in Persons reports that "... for the most part, prostitution as actually practiced in the world usually does satisfy the elements of trafficking."<sup>12</sup>

The common underlying cause and what primarily sustains both prostitution, trafficking, and pornography is demand. Prostitution has become institutionalized, organized, and globalized through human trafficking and the Internet. Different forms of prostitution thus exist, like street solicitation, bars, brothels, *akyat-barko*, massage parlors, escort services, sex tourism, cybersex, local and international trafficking.

There are too many women and girls who are lured to prostitution. Men and boys are also being exposed for sexual purposes. In the 1998

<sup>12</sup> Sigma Huda, United Nations Commission on Human Rights, "Integration of the Human Rights of Women and A Gender Perspective: Report of the Special Rapporteur on human rights aspects of the victims of trafficking in persons, especially women and children" 2006.

study by the International Labor Organization (ILO), it was estimated that there were at least 400,000 to 500,000 prostituted persons in the Philippines with an estimated 60,000 to 100,000 children. In 2004, the number of those exploited in prostitution alone reached 600,000 and it ballooned to 800,000 in 2005. In a 2009 study, there were around 800,000 prostituted persons in the Philippines; half of them are children. Annually, it is estimated that 3,266 children are forced into prostitution. The Philippines ranks fourth among the nations with the most number of children in prostitution as revealed in a study of the UNICEF. Prostitution may now be the country's fourth largest source of GNP according to the study by the Psychological Trauma Program of the University of the Philippines.<sup>13</sup>

Prostitution thrives because of gender inequality and lack of respect for women's human rights clearly manifested on the false notion that women are inferior, sexual objects and commodities while men are superiors, decision-makers and owners of properties. The system also thrives because of complex socio-cultural and economic factors – poverty, under-education, unemployment, and economic disparity and power relations, making it easier for those who have more money to exploit more vulnerable people and lead them into prostitution and the sex trade. Women do not make a rational choice in entering prostitution; they settle with the limited options available to them bearing conditions of inequality that are set by the customers who pay women to do what they want them to do. At some point, State policies which are gender blind on the issue of prostitution may even result in compromising Filipino women's bodily integrity to sex tourists, foreign and local, military and big business. Our society has made prostitution "hidden in plain sight"- although it is everywhere, we tend to disregard and do not give priority to addressing it.

<sup>13</sup> Statistics presented in the Privilege Speech of Senator Pia S. Cayetano on the Anti-Prostitution Bill (SBN 2341), September 26, 2011.

### **Why is the issue important?**

Our existing legislation on prostitution is discriminatory against women as it views prostituted women as criminals who engage in the sex industry for monetary gain. Women are viewed as the cause of ill in the society, not those who create the demand side of prostitution. The gender inequality in prostitution is also manifested through the stigma attached to prostituted persons that perpetuates male domination over women and girls' bodies. Such discrimination has the potential to impair the fundamental dignity and personhood of women and girls.

### **What are the existing laws or policy issuances related to the issue?**

Article II, Section 11 of the 1987 Philippine Constitution provides that "the State values the dignity of every human person and guarantees full respect for human rights." In addition, Article XIII, Section 1 states that

Congress shall give highest priority to the enactment of measures that protect and enhance the rights of all people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for common good.

RA 9710 or the Magna Carta of Women (MCW) specifically recognized that prostitution is an act of violence against women (VAW) from which women should be protected. Section 12 of this law provides for the amendment or repeal of laws that are discriminatory to women, which, among others, include Article 202 of the Revised Penal Code (RPC) on the definition of prostitution.

RPC Article 341 on White Slave Trade imposes penalty of imprisonment from 2 years, 4 months and one day to 6 years "upon any person who in any manner, or under any pretext, shall engage in the business or shall profit by prostitution or shall enlist the services of any other person for the purpose of prostitution."

RA 9208 as amended by RA 10364 or the Expanded Anti-Trafficking in Persons Act explicitly defines prostitution as “any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.” It also penalizes the use of trafficked persons for prostitution and gives legal protection to prostituted persons who are victims of trafficking.

### **Policy Recommendation**

It is worthwhile to note that addressing the issue of prostitution necessarily starts with strengthening the legal framework within which law enforcement agencies work. There must be significant efforts to reduce the incidence of prostitution focusing on its “demand side” and broaden the base of illegality of the said act. This means that criminal liability should be shifted to clients (customers or recipients of sexual services) and the exploiters (pimps, traffickers, brothel owners). Detaining women in prostitution is not the answer. It is time to remove the penalty imposed on them in order to uphold their rights. It is recommended that the Revised Penal Code provision on Prostitution and White Slave Trade be amended as follows:

1. Redefine prostitution – as “any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.”
2. Define person exploited in prostitution or a prostituted person – to refer to “a woman, man or child, used, employed or exploited for another person’s sexual gratification or pleasure, and for the monetary gain or profit of others.”
3. Target the demand side; criminalize those who exploit people in prostitution – the problem of prostitution will be effectively addressed if those who fuel its demand are penalized. Putting

in place a national law that explicitly identifies those who buy persons in prostitution and other people and businesses involved in such activities will eventually reduce its demand.

4. Decriminalize women in prostitution; regard them as victims NOT criminals – this consists only of the removal of penal sanctions to women in prostitution, without taking any further measures to regulate or legalize prostitution. This should recognize that prostituted persons are not criminals but victims of the system of prostitution that deserve protection, not punishment. This however, does not automatically exempt prostituted persons who themselves commit any of the prohibited acts (such as pimping other people) from criminal liability.
5. Establish support mechanisms for prostituted persons to get out of the system of prostitution – recognizing that the road to recovery for survivors of prostitution is long and arduous. The government shall facilitate the provision of support services to victims such as psychosocial counseling to help them in their healing process; legal assistance in order to seek redress against the perpetrators; and referral to appropriate training and other government programs that will open for them doors to economic opportunities.

The rationale for criminalization of the demand side is that restrictive laws will deter individuals from taking part in the activity, or failing that, they will at least be punished for the act of taking advantage of another person’s vulnerability. It is aimed at ensuring that those who induce persons into prostitution and thereafter exploit them are dealt with appropriately. On the other hand, decriminalization of the prostituted persons seems to be the only way to eliminate discriminatory enforcement and, at the same time, requiring the law enforcement officers to prosecute crimes perpetrated on them.

### **Policy Brief No. 3<sup>14</sup>**

#### *“Addressing the Inequality in our Penal Law on Adultery and Concubinage: Enacting the Anti-Marital Infidelity Law”*

#### **What is the issue?**

Marital infidelity is a violation or breach of good faith and confidence by one or both spouses to the matrimonial vows. It is also a major spousal pressure that eventually causes the breakdown of marriage as a foundation of the family.

Our present laws on adultery and concubinage under the Revised Penal Code both constitute marital infidelity, but these are deemed as discriminatory and nebulous. While both aim to punish marital infidelity of the spouses, there is a higher burden put on wives than on husbands. This disparity in the treatment of the law is seen in the evidentiary requirement for the two crimes and there is a huge underlying difference if the male or female spouse committed the infidelity. For the wife, adultery means one act of sexual intercourse provable through circumstantial evidence while for the husband, evidentiary requirement for concubinage is higher by proving that the sexual intercourse with a woman who is not his wife is under scandalous circumstances; that he is keeping another woman in the conjugal home; or that he is cohabiting with her in another dwelling. Our present law also imposes higher penalty to married women who commit infidelity as compared to married men<sup>15</sup>. The usual reasoning for the distinction is that the infidelity of the wife can result in introducing alien blood into the family; that an illegitimate child could be passed off as the husband's and he will end up supporting and giving his name to

<sup>14</sup> Policy Brief No. 3 was prepared by the PCW after series of consultations with various groups pushing for Women's Rights and Gender Equality.

<sup>15</sup> The penalty for women who commit adultery ranges from 2 years, 4 months and 1 day to a maximum of 6 years, while the penalty for men who commit concubinage ranges from 6 months and 1 day to a maximum of 4 years and 2 months.

the said child. It is also claimed that this probability does not arise if it is the husband who commits concubinage.

#### **Why is the issue important?**

The penal provisions on adultery and concubinage both constitute marital infidelity but are viewed differently by predominantly chauvinist society. The disparity in treatment stems from gender biases that use double standards in being more lenient thus seemingly accepting the infidelity of men as normal, but more stringent on women who are expected to be one who is faithful to her husband no matter what. The discriminatory provisions in the law should be amended.

#### **What are the existing laws or policy issuances related to the issue?**

Section 12 of RA 9710 or the Magna Carta of Women (MCW) provides for the amendment or repeal of laws that are discriminatory to women. These laws include, among others, Articles 333 and 334 of the Revised Penal Code on adultery and concubinage.

The 1987 Philippine Constitution- Article II on Declaration of Principles and State Policies particularly on Section 14 provides that “The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.” Article XV, Section 2 also provides that the State shall protect the marriage as inviolable social institution and foundation of family life.

#### **Policy Recommendation**

Marital infidelity should remain an illegal act because it is not only a crime against the other spouse but also a breach to the marital vows. Marriage is a special contract such that it is a three-party agreement that involves the spouses and the State. Although the personal rights of the spouses are involved, the State also considers itself as an

offended party, not because of a breach of public order but because of the violation of marital vows that the State itself protects. The State regulation of marital relationships that criminalizes infidelity will help strengthen the marriage as an institution by serving as deterrent for both spouses from testing the minefield of extramarital affairs.

The law should not distinguish between the infidelities of a man from those of a woman. After all, they gave the same marriage vows and the unfaithful husband does not any less betray the wife than a husband whose wife broke her vows. To address this gender bias, it is recommended that Revised Penal Code provision on Adultery and Concubinage be amended as follows:

1. Define "marital infidelity" as committed by "any legally married person who shall have sexual intercourse with another person other than the legal spouse, and by the person who has sexual intercourse with the married person, knowing that person to be legally married, even if the marriage be subsequently declared void";
2. Impose the same penalties for offending parties for the same gravity of offense committed;
3. Mandate that the crime of marital infidelity shall not be prosecuted except upon complaint filed by the offended spouse;
4. Provide that the offended party shall be barred from instituting a criminal prosecution if said party is also guilty of committing the offense.

While this proposal will not guarantee that the spouses will remain faithful to the marital vows, equalizing the grounds and penalties for marital infidelity will give women the option to file criminal charges against a philandering husband; an option which although present in our current law, is inutile given the nature and degree of burden needed to file and prove the crime of concubinage.

## Policy Brief No. 4

*"Ensuring Women's Equal Rights in Marriage and Family Relations: Repealing the Law on Premature Marriage"*

### What is the issue?

Article 351<sup>16</sup> of the Revised Penal Code (RPC) provides for the criminal prohibition for women to remarry under these circumstances:

1. Within 301 days from the date of the death of her husband, or prior to delivery if she was pregnant at the time of her husband's death; or
2. Prior to the delivery of her child or the expiration of 301 days after annulment or dissolution of her previous marriage.

This provision serves the same purpose as the RPC provision on adultery, which is the protection of lineage or avoiding confusion to paternity and filiation.

### Why is the issue important?

Article 351 is discriminatory as it curtails the right of a woman to marry under the above circumstances, by penalizing them should they commit any of those acts. It makes any woman, even those who are beyond childbearing years or medically proven to be incapable of bearing children, who marries within 300 days from termination of her marriage whether by death of the first husband, annulment or nullity of marriage, a criminal act.

<sup>16</sup> Article 351. Premature marriages. Any widow who shall marry within three hundred and one day from the date of the death of her husband, or before having delivered if she shall have been pregnant at the time of his death, shall be punished by arresto mayor and a fine not exceeding 500 pesos.

The same penalties shall be imposed upon any woman whose marriage shall have been annulled or dissolved, if she shall marry before her delivery or before the expiration of the period of three hundred and one day after the legal separation.

While there may have been no conviction using Article 351, the threat of its application remains a barrier to women's equal rights on matters relating to marriage and family relations. For example, in the application for marriage license forms being used by the Philippine Consulate General in Osaka, Japan; Hong Kong and Shanghai<sup>17</sup>, it is clearly indicated that a "widow may not contract another marriage within 301 days from the date of the death of her husband, or before having delivered if she shall have been pregnant at the time of his death."

The law also has the effect of an enforced mourning period for the woman that clearly is discriminatory given that no such mourning period is enforced on men.

#### **What are the existing legislations or policy issuances related to the issue?**

Republic Act No. 9710 or the Magna Carta of Women provides that the government shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. This includes ensuring that women and men have the same rights to enter into and leave marriages. Further, the provision on equal treatment before the law mandates the State to take steps to review and amend and/or repeal existing laws that are discriminatory to women, which include Article 351 of the RPC.

The Family Code of the Philippines (FCP) provides a sufficient framework by which the purpose of RPC Article 351 to prevent doubtful paternity and protect the rights of common children may be achieved without restricting women's rights to remarry. Article 168<sup>18</sup> of the Family Code in effect already recognizes the

<sup>17</sup> Website links: <http://www.osakapcg.com/marriage/mlwidow.pdf>; <http://www.philcongenshanghail.org/down/notarials8-Form-for-Marriage-License.doc>, last viewed on July 31, 2013.

<sup>18</sup> Article 168. If the marriage is terminated and the mother contracted another marriage within three hundred days after such termination of the former marriage, these rules shall govern in the absence of proof to the contrary: (1) A child born before one hundred

contracting of a subsequent marriage of a woman within 300 days from the termination of the previous marriage as it provides the rule that shall govern the paternity and filiation of a child born by a woman who contracted marriage within 300 days from the termination of the previous marriage.

Articles 170<sup>19</sup> and 171<sup>20</sup> of the same Code provide sufficient remedies by which a father or any of his heirs may impugn the legitimacy of a child born under such circumstances. Moreover, Articles 103<sup>21</sup> and 130<sup>22</sup> of the Family Code mandates that the

---

eighty days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within three hundred days after the termination of the former marriage; (2) A child born after one hundred eighty days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the three hundred days after the termination of the former marriage.

<sup>19</sup> Article 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

If the husband or, in his default, all of his heirs do not reside at the place as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband of his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

<sup>20</sup> Article 171. The heirs of the husband may impugn the filiation of the child within the periods prescribed in the preceding article only in the following cases: (1) If the husband should die before the expiration of the period fixed for bringing the action; (2) If he should die after the filing of the complaint, without having desisted therefrom; or (3) If the child was born after the death of the husband.

<sup>21</sup> Article 103. Upon the termination of the marriage by death, the community property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.

If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the community property either judicially or extra-judicially within one year from the death of the deceased spouse. If upon the lapse of the said period, no liquidation is made, any disposition or encumbrance involving the community property of the terminated marriage shall be void.

Should the surviving spouse contract a subsequent marriage without complying with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage.

<sup>22</sup> Article 130. Upon the termination of the marriage by death, the conjugal partnership property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.

If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership property either judicially or extra-judicially within one year from

regime of complete separation of property shall govern the property relations of the subsequent marriage should a surviving spouse marry another without liquidating the community or conjugal property to settle the estate of the deceased spouse.

### Policy Recommendation

Article 351 of the RPC should be expressly repealed in its entirety, for being discriminatory to women by arbitrarily curtailing a woman's right to marry.

Aside from the fact that it has already been sufficiently addressed in the Family Code, the reason for which the law was created no longer exists today since the question of paternity can now be easily resolved due to the advent in medical technology, such as DNA testing.

### Policy Brief No. 5

*"Upholding the Right of Life and Security of Spouses and Daughters: Repealing Article 247 of the Revised Penal Code"*

### What is the issue?

In some jurisdiction, there are the so-called laws in defense of honor. Under such laws, husbands or family members are exempted from criminal liability for the murders or other forms of violence they committed against their wives, daughters or sisters. The

---

the death of the deceased spouse. If upon the lapse of said period is made, no liquidation is made, any disposition or encumbrance involving the conjugal property of the terminated marriage shall be void.

Should the surviving spouse contract a subsequent marriage without complying with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage.

rationale behind such laws is that women's unacceptable sexual behavior besmirches family honor.<sup>23</sup> A somewhat similar law still exists in Article 247<sup>24</sup> of the Revised Penal Code.

### Why is the issue important?

Death penalty has been outlawed in our country with the enactment of RA 9346 in 2006<sup>25</sup> but Article 247 practically penalizes with death a spouse or daughter who is caught in the act of committing sexual intercourse. Under the law, a spouse adjudged guilty of killing or inflicting serious physical injuries on the other spouse caught in the act of committing sexual intercourse with another person shall only be penalized with *destierro*. In contrast to the penalties for parricide or serious physical injuries, *destierro* only prohibits the convicted person from entering court – designated places or a specified radius of those places. This is not so much a penalty but a means of protecting the convicted person from retaliation of the family members of the deceased.

The law has been rationalized as follows: "(The) law, when the circumstances provided by this article are present considers the spouse.... as acting in a justified burst of passion."<sup>26</sup> While passion

---

<sup>23</sup> Santos, Aida F. et.al. *Toward a Gender Responsive Legislation*. National Commission on the Role of Filipino Women, (NCRFW), 1999. Note: NCRFW was renamed Philippine Commission on Women (PCW) under RA 9710, the Magna Carta of Women in 2009.

<sup>24</sup> Article 247. Death or physical injuries inflicted under exceptional circumstances. – Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter or shall inflict upon them any serious physical injury, shall suffer the penalty of *destierro*.

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age, and their seducer, while the daughters are living with their parents.

Any person who shall promote or facilitate the prostitution of his wife or daughter, or shall otherwise have consented to the infidelity of the other spouse shall not be entitled to the benefits of this article

<sup>25</sup> RA 9346 – An Act Prohibiting the Imposition of Death Penalty in the Philippines.

<sup>26</sup> *People of the Philippines vs. Gonzales*, 69 Phil 65, quoted in *Toward a Gender – Responsive Legislation*. NCRFW, 1999.

can be considered as a mitigating circumstance that could lower the penalty by one degree under other circumstances, Article 247 provides a different appreciation of passion as it provides for the absolution of the convicted person.

There are gender-based assumptions underlying this that should be exposed, such as (1) that women should keep a particular sexual conduct or should maintain certain moral standards; (2) that they are wards or property of the men or the parents; and (3) that their deviation from the sexual or "moral" norm (the "good-bad woman" dichotomy), excuses the parents, particularly the fathers' and husbands' killing or injuring them.<sup>27</sup>

#### **What are the existing laws or policy issuances related to the issue?**

Republic Act No. 9710 or the Magna Carta of Women provides that the government shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. Further, the provision on equal treatment before the law mandates the State to take steps to review and amend and/or repeal existing laws that are discriminatory to women, which include Article 247 of the RPC.

The 1987 Constitution Article III, Section 1 provides that, "No person shall be deprived of life, liberty or property without due process of law."

RPC Article 246 provides that "any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse shall be guilty of parricide and shall be punished with the penalty of *reclusion perpetua*."

Sexual Infidelity is a ground for legal separation under the Family Code of the Philippines. It is also considered a crime under

<sup>27</sup> Santos, Aida F. et.al. Toward Gender Responsive Legislation. NCRFW, 1999.

specific circumstances provided for in Articles 333<sup>28</sup> and 334<sup>29</sup> of the Revised Penal Code.

As regards the provision pertaining to daughters, the Declaration of Policy of Republic Act 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act mandates that,

The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies.... Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

#### **Policy Recommendation**

It is recommended that Article 247 of the RPC be repealed, consistent with the Constitutional provision that "no person shall be deprived of life, liberty or property without due process of law." Said provision clearly rejects the policy of allowing people to take the law into their hands.

It is further recommended that the circumstances referred to in Article 247 should be treated as a possible mitigating circumstance that would allow imposition of lesser penalty, but not absolute exemption.

<sup>28</sup> Article 333. Who are guilty of adultery. Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married, even if the marriage be subsequently declared void.

Adultery shall be punished by prision correccional in its medium and maximum periods.

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

<sup>29</sup> Article 334. Concubinage. Any husband who shall keep a mistress in the conjugal dwelling, or, shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by prision correccional in its medium and maximum periods. The concubine shall suffer the penalty of destierro.

## **Policy Brief No. 6**

### *“Ensuring Women’s Equal Rights in Marriage and Family Relations: Removing Inequalities in the Exercise of Parental Consent to Marry as Provided for In the Family Code”*

#### **What is the issue?**

Article 14<sup>30</sup> of the Family Code of the Philippines (FCP) provides that If the mother consents but the father objects to the marriage, there is no valid consent to said marriage.<sup>31</sup> If the marriage is celebrated without the required consent, said marriage is voidable under Article 45 (1)<sup>32</sup> of the Code. On the other hand, even when the mother may have serious objections to withhold consent to the marriage, the child’s father could decide otherwise.

#### **Why is the issue important?**

The said provisions in Article 14 of the Family Code are inconsistent with the concepts of equality and non-discrimination. Men and women are equal before the law, and the fact that they are married should not restrict the rights of women or lower her status to only second to her spouse. Article 14 arbitrarily places the father’s

<sup>30</sup> Article 14. In case either or both of the contracting parties, not having been emancipated by a previous marriage are between the ages of eighteen and twenty-one, they shall, in addition to the requirements of the preceding articles, exhibit to the local civil registrar, the consent to their marriage of their father, mother, surviving parent or guardian, or persons having legal charge of them, in the order mentioned. Such consent shall be manifested in writing by the interested party, who personally appears before the proper local civil registrar, or in the form of an affidavit made in the presence of two witnesses and attested before any official authorized by law to administer oaths. The personal manifestation shall be recorded in both applications for marriage license, and the affidavit, if one is executed instead, shall be attached to said applications.

<sup>31</sup> Jose N. Nolleto. *The Family Code of the Philippines Annotated* p. 26 (2009).

<sup>32</sup> Article 45. A marriage may be annulled for any of the following causes, existing at the time of the marriage: (1) That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife.

decision above that of the mother’s. The law does not even provide for a situation when the father’s decision may be overturned.

The preference given by the law to the father’s decision shows that the male is still considered as the wiser parent. The proxy-standard of sex is again used in the law, disregarding the contribution of the mother in the rearing of her children. The law seems to belittle the work and role of the mother and looks down on her ability to make intelligent decisions.

#### **What are the existing legislations or policy issuances related to the issue?**

Again here the PCW cites Republic Act No. 9710 that provides for government to eliminate all discriminatory laws such as Article 14 of the Family Code of the Philippines.

#### **Policy Recommendation**

It is recommended that Article 14 of the Family Code be amended to remove the bias for the father’s decision to give or withhold consent to a son or daughter’s marriage. There are two possible options for this: (1) require the consent of either of the parents; or (2) require the consent of both parents

#### **Conclusion**

The Family Code of the Philippines is often cited as one that is replete with provisions that implement the observance of fundamental equality before the law of women and men as enshrined in our Constitution. However such progressive provisions of the Code is being pulled back, if not totally negated by the fact that they still contain provisions which give utmost importance to the decision of the husband or father despite the fact that the spouses are presumed to be of equal status within the family. Thus, there is a need to amend Article 14.

## Policy Brief No. 7

### *“Ensuring Women’s Equal Rights in Marriage and Family Relations: Removing Inequalities in the Administration and Enjoyment of Community Property or Conjugal Partnership under The Family Code”*

#### What is the issue?

Article 96<sup>33</sup> of the Family Code of the Philippines is repeated in Article 124<sup>34</sup> of the Code, except that Article 124 applies to conjugal partnership of gains.<sup>35</sup> While the provision on joint administration of property is a welcome development, the law proceeded with giving preference to the decision of the husband in case of disagreement with the wife. The basis of decision making should be one’s qualification or fitness to make decisions, but the present law is oblivious as to who between the spouses can make a better decision borne out of professional, educational or personal experiences on managing

<sup>33</sup> Article 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband’s decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision. In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be considered as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

<sup>34</sup> Article 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband’s decision shall prevail, subject to recourse to the court by the wife for a proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

<sup>35</sup> Conjugal Partnership of Gains is the default property relation prior to the effectivity of the Family Code of the Philippines on August 3, 1988.

family matters. It blindly presumes that the man will always know the best thing to do with the property. The wife will have to resort to filing a case in court for her decision to be respected.

#### Why Is the Issue Important?

Articles 96 and 124 still reflect the age-old view that the husband’s decision shall prevail in family matters. The said provisions discriminate against women by using the proxy standard of sex in presuming that all males are more intelligent and wiser, that they possess better judgment, and are therefore fit to make decisions than their wives.

The fact that the law gives the wife five years within which to sue in order to question the contract entered into by her husband does not create the balance. To avail of this remedy, the wife has to have the resources to hire a lawyer, take the risk of suing her husband and worse, strain their marital relations, which may cause further deterioration of the family.

#### What are the Existing Legislations or Policy Issuances Related to the Issue?

PCW still cites RA 9710 or the Magna Carta of Women that provides for government to take appropriate measures in eliminating discriminatory laws against women that include Articles 96 and 124 of the Family Code.

#### Policy Recommendation

It is recommended that repealing the entire second sentence of the first paragraph of both provisions amend Articles 96 and 124. Instead of favoring the decision of the husband, the law should just require the consent of both spouses since the property involved is one that belongs to their community or conjugal property which they own in equal parts. This will encourage mutual decision-making that will contribute to strengthening the family as a basic unit of our society.

## Policy Brief No. 8

*“Ensuring Women’s Equal Rights in Marriage and Family Relations: Removing Inequalities in the Exercise of Parental Authority over the Person and Legal Guardianship over the Property of Common Children as Provided for In the Family Code”*

### What is the Issue?

The concepts of equality and non-discrimination are exemplified in Articles 211<sup>36</sup> and 225<sup>37</sup> of the Family Code provisions that give joint parental authority over the person and legal guardianship over the property of common children to both parents. However, such notion of equality and non-discrimination becomes illusive since the law also provides that in case of disagreement, the father’s decision should be allowed unless there is a Court ruling against it.

### Why is the issue important?

The option given to the mother by the provisions quoted above to go to Court to question the father’s decision and convince the

<sup>36</sup> Article 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father’s decision shall prevail, unless there is a judicial order to the contrary.

Children shall always observe respect and reverence towards their parents and are obligated to obey them as long as the children are under parental authority.

<sup>37</sup> Article 225. The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, the father’s decision shall prevail, unless there is a judicial order to the contrary.

Where the market value of the property or the annual income of the child exceeds P50,000.00, the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than ten per centum (10%) of the value of the property or annual income, to guarantee the performance of the obligations for general guardians.

A verified petition for approval of the bond shall be filed in the proper court of the place where the child resides, or if the child resides in a foreign country, in the proper court of the place where the property or any part thereof is situated.

The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations referred to in the second paragraph of this Article shall be heard and resolved.

The ordinary rules on guardianship shall be merely supplementary except when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried, in which case the ordinary rules on guardianship shall apply.

Court to decide in favor of her is misleading and actually contrary to the concepts of equality and non-discrimination. This option is unrealistic. We cannot presume that all women have the financial resources to do that and as a result, many women will not be able to formalize their objection to the decision of their husband. And assuming that the woman is financially independent, the decision to sue her husband is not something that can be taken lightly. In most instances, although the woman believes that her husband’s decision is wrong, she will not likely file a case in Court, knowing fully well that aside from the costly and tedious process it will go through, such action would lead to a greater disagreement and rift in the family.

With the volume of cases being handled by Courts, it is very likely that too much time have elapsed before a Court gives an order, rendering it useless. For example, if the parents disagree over which school the child should attend, a court decision favorable to the mother might not be of any use if the decision came out beyond the enrolment period. The mother will no longer be able to enroll the child in the school of her choice during that academic year despite a favorable decision from the court. Although it may be argued that the child could transfer to that school the following academic year, the uncertainty and confusion may have emotional and psychological effects on the child which is contrary to serving their best interest.

### What are the existing legislations or policy issuances related to the issue?

Here again the PCW cites RA 9710, the Magna Carta of Women.

The Declaration of Policy of Republic Act 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act mandates that,

The best interests of children shall be paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

### **Policy Recommendation**

It is recommended that repealing the entire second sentence of the first paragraph of Articles 211 and 225 amend the FCP. Parents have equal rights over the common children, and providing for equal rights in the exercise of parental authority over the person and legal guardianship over their property will encourage mutual decision making between the spouses that will contribute to serving the best interest of the child and strengthening the family as a basic unit of our society. Instead of automatically favoring the decision of the father, the law should require the decision of both parents, taking into consideration the best interest of the child.

### **Conclusion**

While joint exercise of parental authority is provided for in the law, the provisions mentioned above negates it, as they still reflect age-old view that the father's decision shall prevail in matters concerning children.

Legislative proposals to repeal the said provisions in the Family Code were filed but remained pending during the previous Congress despite strong legal and practical bases. It is hoped that, in the interest of fulfilling their mandate under the Constitution and the Magna Carta of Women, as well as ensuring the best interest of the child, our legislators will prioritize and favor the immediate enactment of a law to amend the said provisions.

### **Policy Brief No. 9**

*"Recognizing Serious Physical and Sexual Abuse as Ground for Legal Separation: Amending the Family Code provision on legal separation"*

### **What is the issue?**

Women and children suffer from acts of violence and serious abuses. The 2008 National Demographic and Health Survey (NDHS) conducted by the National Statistics Office (NSO) revealed that one in five women aged 15-49 has experienced physical violence since age 15 and one in ten has experienced sexual violence; 14.4 percent of married women have experienced physical abuse from their husbands; and more than one-third (37%) of separated or widowed women have experienced physical violence, implying that domestic violence could be the reason for separation or annulment. Moreover, emotional and other forms of non-physical violence are the most common types of spousal violence (23% of ever-married women). Meanwhile, among ever-married (composed of married, separated or widowed) women, one in seven has experienced physical violence by their husbands, while eight percent have experienced sexual violence by their husbands.

Under the Article 55 (1)<sup>38</sup> of the Family Code, repeated physical violence is a ground for filing an action for legal separation. Legal separation could be an option for women who suffer from an abusive spouse but following the above provision, a physically abused wife will have to go back home where the abusive partner is and will have to wait in fear for the repetition of beating before she can file an action for legal separation.

<sup>38</sup> Article 55. A petition for legal separation may be filed on any of the following grounds:  
(1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner.

### **Why is the issue important?**

Domestic violence may take different forms such as physical violence, sexual violence, emotional insults and economic deprivation as a means to dominate and manipulate one partner in relationship. However, the most apparent among these forms is physical violence that is often manifested as wife beating. Physical violence may be a single, manual act or a series of different acts, or a combination of assault with or without use of weapons. It is resorted to by an individual as method of establishing control and power in a relationship.<sup>39</sup>

With the general physical strength differences between men and women, women are more likely to receive serious physical injuries than men. Women can also be violent, but their actions form a small percentage of domestic violence. Men often commit serious abuses like physical violence against women and girls. That is why women frequently become victims of physical violence perpetrated by men who are, or who have been in positions of trust, intimacy, and power. Since violence is a cycle abuse, the same partner will subject most victims of this intimate partner violence to more than one instance of physical abuse.

There are only a few comparable statistics on psychological violence, emotional torture, and economic abuse of women at the hands of intimate partners, probably because these are harder to capture in evidence, and a full picture of the deeper and more insidious levels of violence defies quantification. While the impact of physical abuse may be more visible than psychological abuse, repeated isolation and insults, forced isolation, limitations on social mobility, constant threats of violence and injury and denial of economic resources are more subtle and insidious forms of violence. The victim – survivors report that ongoing psychological violence,

<sup>39</sup> The Philippine Plan for Gender – Responsive Development (1995 – 2025).

emotional torture and living under terror is often more unbearable than the physical brutality<sup>40</sup>. The physical violence experienced by the victims is usually accompanied by psychological abuse, emotional insults, and in many cases by sexual assault.

The ground for legal separation in Article 55(1) of the Family Code is specifically limited to physical violence or grossly abusive conduct. It requires that the physical violence experienced must be of serious degree but does not have to amount to an attempt against the life of the victim (petitioner). The violence must also be repeated to the extent that life with the abuser (defendant) becomes extremely difficult for the victim (petitioner)<sup>41</sup>. These circumstances reinforce the batterer's attempts to control and demean their victims and contribute in perpetuating violence against women particularly within the sanctity of the home, as exacerbated by this law.

### **What are the existing laws and policy issuances related to the issue?**

Section 12 of RA 9710 or the Magna Carta of Women (MCW) provides for the amendment or repeal of laws that are discriminatory to women. It includes Article 55(1) on the requirement for the repeated physical abuse and grossly abusive conduct as a ground for legal separation. It also defines violence against women (VAW) as

[A]ny act of gender – based violence that results in, or is likely to result in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life.

RA 9262 or the Anti- Violence Against Women and Their Children Act of 2004 considers violence against women and their

<sup>40</sup> UNICEF, "Domestic Violence Against Women and Girls" (Innocent Digest No. 6 June 2000), p. 4.

<sup>41</sup> Arturo M. Tolentino. *Commentaries and Jurisprudence on the Civil Code of the Philippines* (Volume 1, 1961).

children as a public crime. Section 2 of this law called on the State “to protect the family and its members, particularly women and children from violence and threats to their personal safety and security.”

### Policy Recommendation

It is proposed that Article 55(1)<sup>42</sup> of the Family Code be amended to consider not only the number of times violence is perpetrated, but also the severity or gravity of the violence done since the very life or security of the woman is at stake as she is exposed to greater risk of severe violence. The proposed amendment shall read as follows:

**Article 55.** A petition for legal separation may be filed on any of the following grounds:

1. Serious physical or sexual violence, repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner; xxx”

<sup>42</sup> Article 55. A petition for legal separation may be filed on any of the following grounds:  
(1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;

xxx

### Policy Brief No. 10

*“Strengthening Law Enforcement and Protection  
Against Sexual Offenses: Expanding the  
Anti-Sexual Harassment Law”*

### What is the issue?

Sexual harassment and other forms of sexual violence in public spaces is an everyday occurrence for women and girls around the world – in urban and rural areas in both developed and developing countries.<sup>43</sup> Women and girls are sexually harassed, in streets, in parks and plazas, in schools, in work places, and while using public transportation.<sup>44</sup> It is a social issue that is deeply rooted in power relations between men and women, and underlies the view that women are still deemed as the “weaker sex”.

Philippine culture has long tolerated and even encouraged sexual harassment by even joking about it.<sup>45</sup> Many women who are afraid to lose their jobs or fail a subject in school tend to be quiet even when they are harassed.

Before the passage of Republic Act 7877, also known as the Anti-Sexual Harassment Act of 1995, Philippine Laws, including the Labor Code, were silent on sexual harassment. Women subjected to unwanted sexual advances in the workplace, though, had recourse to legal relief by citing other offenses such as “acts of lasciviousness” and “slander by deed.”<sup>46</sup>

Republic Act 7877 is considered landmark legislation as it finally gave a name and legal recognition to such unwelcome sexual advances. Section 3 defines sexual harassment as

<sup>43</sup> UN WOMEN (2013). *Safe Public Spaces with and for Women and Girls*, UN WOMEN.

<sup>44</sup> Lambrick, M. and Rainero L. *Safe Cities*. UN WOMEN. February 2010.

<sup>45</sup> Feliciano, M. S. *Philippine Law on Sexual Harassment in the Workplace*. Philippine Law Journal (1996).

<sup>46</sup> Yang, Elizabeth and Abao, Carmel. *Sexual Harassment in the Philippines: Defining the Issue*

committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person who, having authority, influence or moral ascendancy over another in a work or training education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object.

However, the definition of sexual harassment in RA 7877 is limiting. It does not specifically address the issue of “hostile environment” (resulting from) sexual harassment between peers or co-employees.<sup>47</sup> Under the law, sexual harassment presupposes the existence of authority, influence or moral ascendancy between the offender and the offended party. But in many instances, both the offender and the offended party are peers or have the same rank or status, while in some cases, the offended party happens to be the superior officer. These circumstances could not be considered within the context of RA 7877.

#### **Why is the issue important?**

Whether walking in city streets, using public transport, going to school, or selling goods at the market, women and girls are subject to the threat of sexual harassment and violence. This reality of daily life limits women’s freedom to get an education, to work, to participate in politics – or simply to enjoy their own neighborhoods. According to the Civil Service Commission, a total of 150 cases of sexual harassment have been recorded, from 1994 to 2012, of which 101 cases were resolved, while 20 were referred to the agencies involved.<sup>48</sup> Data on Compliance of Higher Educational Institutions, with RA 7877 show that in 2011, 42 complaints from State Universities and Colleges (SUCs) and 49 complaints from Private Higher Educational

<sup>47</sup> Ibid.

<sup>48</sup> Civil Service Commission, Statistical Data on Sexual Harassment Cases

Institutions (HEIs) were reported to the CHED.<sup>49</sup> However, the number of cases in the private sector is difficult to account due to lack of centralized reporting system. These numbers do not completely represent the situation of sexual harassment in the Philippines, but show that it is happening in the educational or training institutions, in the workplace and even in religious institutions. Many women do not fall within the purview of the current Anti-Sexual Harassment Law.

#### **What are the existing laws or policy issuances related to the issue?**

Section 13 of the Magna Carta of Women (RA 9710) provides for Equal Access and Elimination of Discrimination in Education, Scholarships, and Training. Section 16 of the law’s implementing rules and regulations mandates concerned agencies to develop programs and policies to prevent Violence Against Women (VAW), including institutional mechanisms for complaints in rape, sexual harassment, and other forms of violence and discrimination against women, and provide assistance to students, faculty, or personnel who have been victims of VAW.

The Civil Service Commission (CSC) promulgated Administrative Disciplinary Rules on Sexual Harassment Cases through Resolution No. 01-0940 dated May 21, 2001. Among other things, this policy enactment of the CSC:

1. Took into account not only the Anti – Sexual Harassment Law of 1995 as legal basis but also the Philippine Constitution, the Administrative Code of 1987 as well as the Vienna Declaration and Programme of Action and Beijing Declaration and Platform of Action;

<sup>49</sup> Yadao – Sison, Carmelita. Compliance of Higher Education Institutions with the Anti – Sexual Harassment Act of 1995.

2. Laid down the procedural rules governing the handling and disposition of administrative cases involving sexual harassment;
3. Specified the various categories of sexual harassment (i.e. light, less grave and grave acts of sexual harassment) and their corresponding penalties; and
4. Directed all government offices and agencies to formulate their own administrative rules on sexual harassment. Notably, the CSC Rule removed the requirement of the law that the offender should be one with authority, influence or moral ascendancy over the victim hence it also covers sexual harassment among peers.

### **Policy Recommendation**

The Philippine Commission on Women (PCW) pushes for the enactment of a law that will expand the Anti-Sexual Harassment Law with the following salient provisions:

1. Expanding the scope of acts constituting sexual harassment by redefining sexual harassment as:
  - (a) An act, or series of acts, either physically or verbally or with the use of electronic, or available technology or any other means committed inside or outside the place of employment, training or education, which includes unwelcome, offensive behavior or a sexual nature that has or could have a detrimental effect on the conditions of an individual's employment or education, job performance or opportunities;
  - (b) A conduct of sexual nature and other conduct based on sex affecting the dignity of a person, which is unwelcome, unreasonable, and offensive to the recipient; and
  - (c) A conduct that creates an intimidating, hostile or humiliating working, education or training environment for the recipient.

2. Including peer- to-peer sexual harassment within the definition of law; and
3. Strengthening the monitoring mechanism to ensure that public and private offices create and operationalize a Committee on Decorum and Investigation (CODI) tasked to handle cases on sexual harassment.

### **Conclusion**

Gender-based violence is deeply rooted in the unequal relations between men and women. The State has the obligation to ensure that gender-based violence is eliminated through effective legislations and policies for women. The Anti-Sexual Harassment Law has been in place for almost 18 years now; it is time to amend the provisions of the law to strengthen law enforcement and protection against sexual offenses.

### **Support of Mindanaoans Needed**

As readers of the Mindanao Law Journal would note, the Policy Briefs prepared by the Philippine Commission on Women are all in accordance with the Philippine Constitution and existing laws. The PCW painstakingly consulted multi-disciplinary groups and stakeholders before making the policy proposals. Everyone must support these proposed policies.

In my response during the September 11, 2013 forum with legislators or their representatives from Congress, I pointed out that while we are advanced in passing progressive laws compared with other Asian countries in the past, we need to act as speedily as possible to pass the proposed policies. However, given the reality that the Philippines is very weak and poor in the areas of application, enforcement, implementation, observance, and compliance of our laws, I appealed to the legislators to ensure budget allocation for the implementation of RA 8369 for the creation of the Regular Family

Courts in the Philippines. I stressed that the cases pertaining to VAW and family relations are heard by the Acting Family Courts, which in the observation of many advocates were just arbitrarily designated by the Supreme Court as such. As a consequence there are so many complaints from court users and lawyers against many Acting Judges of the Acting Family Courts.

My Transformative Justice blog (<http://dorycruzavisado.blogspot.com>) for September 2013 pertains to this call to create the regular Family Courts.