

**United Nations Office on Drugs and Crime United Nations Division for the Advancement of Women** 

### **Background:**

Since 1995, violence against women (VAW) has captured the attention of the government and legislators in the Philippines, propelled by the demand of a growing women's human rights movement and the Convention on the Elimination of All Forms of Discrimination Against Women, its Optional Protocol<sup>1</sup> as well as other international conventions. The Beijing Conference on Women in 1995 heightened the demand of women's rights advocates for laws protecting women from violence.

Progressive reforms in laws protecting women was brought about by several factors beginning with the democratization process that began in the 1986 People Power Revolution after the fall of the Marcos dictatorship, the 1987 Constitution<sup>2</sup> that has specific provisions on the rights of women and fundamental equality before the law of men and women, the increasing number of women's organizations in the provinces with links to Metro Manila based women's rights organizations,<sup>3</sup> and the participation of women legislations who are becoming increasingly aware of the need for gender equality and the elimination of VAW. This period marks the contribution of women legislators who were elected in the 1988 elections and thereafter<sup>4</sup>.

#### Laws on VAW before the 1987 Constitution

#### In Criminal law:

<sup>&</sup>lt;sup>1</sup> Ratified by the Philippine Senate on November 12, 2003.

<sup>&</sup>lt;sup>2</sup> The 1987 Constitution was formulated by a Constitutional Commission composed of sectoral representatives

Before special laws addressing VAW were passed, women could only resort to the Revised Penal Code<sup>5</sup> for offenses committed against them by their husbands such as physical injuries or attempted or frustrated parricide. If committed by their intimate partners, they could be charged for physical injuries, attempted or frustrated homicide, or rape. A woman could not charge her husband with rape. There was no offense of "battering," so that the offense would fall under "physical injuries." There was no offense called "sexual harassment," and instead, such acts would fall under "Acts of Lasciviousness." <sup>6</sup>

Other forms of violence, e.g., verbal, emotional, psychological,

#### ART XIII Social Justice and Human Rights

Sec. 14 The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.

#### Laws on Violence Against Women (VAW)

Since 1995 there are six (6) laws on VAW in the Philippines, and a Family Courts Act<sup>10</sup> that provides for the jurisdiction of Family Courts in cases involving domestic violence, violence against women, and cases wherein the complainant or defendant is a child. These are the Anti-Sexual Harassment Act of 1995, the Anti-Rape Act of 1997, the Rape Victims Assistance Act, An Act Declaring Unlawful the Matching of Filipino Mail Order Brides to Foreigners, Anti-Trafficking in Persons Act of 2003, and Anti-Violence Against Women and Their Children Act of 2004.

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<sup>&</sup>lt;sup>10</sup> Republic Act No.8369, (1997).

The Anti –Sexual Harassment Act of 1995 or Republic Act No. 7877 (February 14,1995)

The Anti-Sexual Harassment Act of 1995 covers work, education or training-

committed by inserting the penis into another person's mouth or anal orifice, or any instrument or object, into the genitalia or anal orifice of another person

b.

EGM/GPLVAW/2008/EP.12 22 August 2008 Convention on the Protection of Migrant Workers and their Families, UN Conventional Against Transnational Organized Crime including its Protocol to Prevent, Suppress, and Punish Trafficking In Persons, Especially Women and Children. The Senate was keen on passing the Anti-Trafficking in Persons Act after it had ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children. As a result, the law defines trafficking in persons following the definition the UN Protocol.

#### The salient features of this law are:

- a) It emphasizes the vulnerability of victims, so that trafficking can be committed with or without the consent of the trafficked persons, who are considered victims.
- b) It imposes a penalty of 20 years imprisonment and a fine for acts of trafficking and 15 years and a fine for acts that promote trafficking
- c) The penalty is maximum (life imprisonment) when the victim is below 18 years old, when offender a syndicate of three or more, when offender is an ascendant, parent, sibling, guardian or person who exercised authority over the victim, or a public officer or employee or military or law enforcer, or committed by a syndicate of three or more persons or if committed against three or more persons, when the trafficked person is recruited to engage in prostitution with any member of the limitary or law enforcement agencies
- d) It penalizes the person who buys or engages the services of a trafficked person
- e) Trafficking is a public crime, so that any person who has personal knowledge of the crime may file the complaint

1981, and the Optional Protocol on the CEDAW, which was ratified by the Philippine Senate in 2003.

The broad definition of VAW in the law was patterned after the Declaration on the Elimination of Violence Against Women, as referring to "any act or series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty." It covers all forms of violence, such as physical, sexual, psychological, and economic. Economic abuse includes deprivation of support of the lawful wife and minor children, which is a common problem in the Philippines.

The law is gender-specific, protecting the rights of women only and their children. Only women may file actions under the Anti-VAWC Act, while the offenders may either be men or women with whom the victims are or were in lesbian relationships, because the definition includes past or present sexual or dating relationships.

The Anti-VAWC acts provides for both the civil remedy of a protection order and a criminal action. An *ex parte* Temporary Protection Order shall be issued by the Judge within twenty-four hours from the filing of the verified application upon a finding that there is reasonable ground to believe that an imminent danger of violence to the woman and her children exists or is about to

After hearing on the merits, a Permanent Protection Order may be granted.

The relief of Temporary and Permanent Protection Order may be filed as an independent action, or together with an action for damages, support, custody, legal separation, or nullity of marriage. If the offended party chooses to file a criminal action, the petition for protection order is deemed instituted with the criminal action<sup>17</sup> so that a Temporary Protection Order may be issued during the trial. In case of conviction, the permanent protection order shall issue as a matter of course. If it results to an acquittal, where the judgment declares that the quantum of evidence is not enough to sustain a conviction beyond reasonable doubt, the court shall determine whether or not to issue a permanent protection order<sup>18</sup>.

Following the Framework for model legislation on domestic violence by the UN Special Rapporteur on VAW, the Anti-VAWC Act has:

# (1) Complaints mechanism and duties of police officers, in:

Sec. 29. Duties of prosecutors and court personnel to inform the woman of her rights, remedies, procedure, and privileges for indigent litigants.

Sec. 30. Duties of *Barangay* (village) Officials and Law Enforcers: They must respond immediately to a call for help by entering the dwelling if necessary whether or not a protection order has been issued and ensure the safety of the victim; confiscate deadly weapon;

<sup>&</sup>lt;sup>17</sup> A.M. No. 04-10-11 SC (Rule on Violence Against Women and Their Children), Sec. 33 (b).

<sup>18</sup> ld.

transport the victim to a save place of their choice or to a clinic or hospital; assist victim in taking personal belongings from the house; ensure enforcement of protection orders issued by the village official or by the courts.

Sec. 31. Duties of health care providers

Sec. 32. Duties of other government agencies and local government units, such as education and information campaign on VAW and the law

### (2) Ex parte Protection Orders

An *ex parte* Temporary Protection Order ("TPO") shall be issued by the Judge within twenty-four (24) hours from the filing of the verified application upon a finding that there is reasonable ground to believe that an imminent danger to the woman exists or is about to recur.

Who may file for protection orders

A petition for protection order may be filed by any of the following<sup>19</sup>:

- a) offended party
- b) parents or guardians

c)

- d) officers or social workers of the Department of Social Welfare and Development or social workers of local government units (provinces, cities, municipalities)
- e) police officers, preferable thos in women and children's desks
- f) Punong Barangay (chairperson of the village council) or kagawad (any council member)
- g) lawyer, counselor, therapist or healthcare provider of the petitioner
- *h*) At least two (2) concerned responsible citizens of the city or municipality where the violence occurred and who has personal knowledge of the offense.

If the petitioner is not the offended party, the petition must be accompanied with an affidavit of the petitioner attesting to the fact that he or she has authority to file the petition, the circumstances of the abuse, and the circumstances of consent given or refusal to consent of the offended party to file the petition<sup>20</sup>.

### Contents of a protection order

A TPO can include: a) removal of the offender from the home regardless of ownership, b) delivery of financial support to the woman and minor children, c) automatic remittance of a percentage of the offender's salary or income as support for the woman, d) stay away order, 4) granting of temporary or permanent custody of minor children to the woman, 5) possession of a vehicle or automobile, 6) the

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<sup>&</sup>lt;sup>20</sup> A.M. No. 04-10-11 SC, Sec. 10.

posting of a Bond to Keep the Peace to ensure compliance with the protection order. A TPO is valid for thirty (30) days and shall be extended until judgment.

A Permanent Protection Order shall be issued after hearing on the

e) it may be availed of whether or not the woman seeks relief in court by applying for a protection order

#### (3) Addresses both criminal and civil proceedings:

The law gives the woman the remedy of protection order which she can file as an independent civil action or together with other civil actions such as legal separation or nullity of marriage, or an action for custody, support or for damages.

A woman may also file a criminal action for violation of the Anti-VAWC Act and a protection is deemed included in the criminal action unless reserved or filed separately.

## (4) <u>Provides for support services for victims:</u>

Sec. 40. Programs and services for victims such as free legal assistance, counseling, psycho-social services, rehabilitation programs and livelihood assistance.

### (5) Programs for perpetrators:

Sec. 41. Counseling and treatment of offenders; the Court can order the offender to submit to psychiatric treatment or confinement.

#### (6) <u>Training for police and judicial officials 22</u>:

The law provides that all agencies involved in responding to VAW and their children cases shall be required to undergo education and training on a) the nature and causes of VAW and their children; b) legal rights and remedies of victims, c) services available, d) legal duties of police officers to make arrests and offer protection and assistance, and,

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f) techniques for handling incidents of VAW. The Police in coordination with local governments shall establish an education and training program on how to handle VAW cases properly.

The Judiciary has its own training on gender equality and gender-sensitivity for judges conducted by the Philippine Judicial Academy. The Supreme Court has a Committee on Gender —Responsiveness of the Judiciary with Justices as chairpersons.

*In addition, the Anti-VAWC Act has provisions:* 

- (7) <u>Prohibiting the mediation or conciliation</u> of VAWC cases in the village level (the Local Government Code requires mediation by village officials when complaints are punishable with imprisonment of less than one year or fine of Five Thousand Pesos), and a prohibition against judges and village officials from influencing the woman to compromise or abandon any of the reliefs in the protection order<sup>23</sup>.
- (8) Providing for an Inter-Agency Council on Violence Against Women<sup>24</sup>, composed of national government agencies tasked to have programs to eliminate VAW and to monitor the implementation of the law. The Inter-Agency Committee on VAW formulated the Implementing Rules and Regulations on Republic Act No. 9262, which provides for duties of and guidelines and training programs for implementers.

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<sup>&</sup>lt;sup>23</sup> Id. at Sec. 33.

<sup>&</sup>lt;sup>24</sup> Id. at Sec. 39.

- (9) <u>Providing for Battered Woman Syndrome as a justifying circumstance</u>, where the woman does not incur any criminal or civil liability<sup>25</sup>. In no case shall custody of minor children of a woman suffering from battered woman syndrome shall be granted to the batterer<sup>26</sup>.
- (10) Providing for exemption of persons intervening from liability. Any person, private individual or police authority or *barangay* official who responds or intervenes without using restraint greater than necessary to ensure the safety of the victim shall not incur any criminal, civil or administrative liability<sup>27</sup>.
- (11) <u>Providing for a hold departure order</u> against the respondent

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gender-sensitivity and VAW, but this is not replicated in the provincial

his property (he can be removed from the house and a vehicle may be given to the woman regardless of ownership) through an *ex parte* TPO, and c) it is an undue delegation of judicial power to the *barangay* (village) officials who have the power to issue the *Barangay* Protection Order.

It is hoped that the ruling of the Supreme Court in this case would lay to rest the issues that continue to be used to erode the effectiveness of the law, and will give us the jurisprudence that women need as a weapon for ending gender inequality and eliminating violence against women.