
PARTICIPANTS' PAPERS

DOMESTIC VIOLENCE IN THE PHILIPPINES FROM A PROSECUTION PERSPECTIVE

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I. INTRODUCTION

Violence against women remains a pervasive crisis globally, with one out of three women worldwide having been subjected to physical or intimate/sexual partner violence, or both, at least once.¹ This figure was also said to have increased dramatically during the onset of Covid-19, with UN Women calling it a “shadow pandemic.” In the Philippines, while there is a seemingly downward trend or decrease in the number of reported domestic violence (DV) cases based on the 2019-2022 figures from the Philippine National Police (PNP) database,² experts and policymakers are concerned that this does not accurately reflect the magnitude of the problem, as DV cases remain largely unreported.

This paper will examine the Philippine response to DV from a prosecution perspective. It will discuss the legal framework in addressing DV, the mechanisms in place and the government agencies primarily involved in responding to DV, from law enforcement, prosecution, policymaking and legislation. It will also consider the current challenges in prosecuting DV cases and provide recommendations in order to improve the Philippine response to DV.

II. LEGAL FRAMEWORK

A. Republic Act No. 9262, or the Anti-Violence Against Women and Their Children Act of 2004

The primary legislation that principally addresses domestic violence in the Philippines is Republic Act No. 9262 (R.A. No. 9262), or the Anti-Violence Against Women and Their Children Act. Enacted in March 2004, the passage of the law is part of the Philippine compliance to its commitments under the Universal Declaration of Human Rights, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC) and other international human rights instruments.³

The law defines “*violence against women and their children*” as any act or a 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.⁴ It further lists four (4) forms of DV, that is:

- a. Physical violence;
- b. Sexual violence;
- c. Psychological violence;

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¹ UN Women, Facts and Figures, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>

² FOI (Freedom of Information) Request, Philippine Commission on Women, <https://www.foi.gov.ph/requests/aglzfMvmb2ktcGhyHQsSB0NvbnRlbnQiEFBDVy0zOTE5Mzg5Mjc3MTIM>; last accessed: 2 January 2024

³ Sec. 2, Declaration of Policy, R.A. No. 9262.

⁴ Sec. 3, Definition of Terms, R.A. No. 9262.

d. Economic Abuse.⁵

On 21 September 2004, the Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC) adopted and approved the implementing rules and regulations of R.A. No. 9262. Likewise, the Supreme Court issued A.M. No. 04-10-11-SC, dated 19 October 2004, providing for the “Rule on Violence Against Women and Children”. The said rule applies to petitions for protection orders in cases of violence against women and their children under R.A. No. 9262 and enables the courts to manage and monitor the said cases.

B. Republic Act No. 8369, or the Family Courts Act of 1997⁶

Even prior to the enactment of R.A. No. 9262, jurisdiction over cases of DV has been vested before the Family Courts. Specifically, Republic Act No. 8369, or the Family Courts Act of 1997, provides that cases of DV include those acts of gender-based violence that result, or are likely to result, in physical, sexual or psychological harm or suffering to women, and other forms of physical abuse such as battering or threats and coercion which violate a woman's personhood, integrity and freedom movement.⁷

With the enactment of R.A. No. 9262, the law now provides that Regional Trial Courts, designated as a Family Court, shall have original and exclusive jurisdiction over cases of violence against women and their children under this law. In the absence of such court in the place where the offence was committed, the case shall be filed in the Regional Trial Court where the crime or any of its elements was committed at the option of the complainant.⁸

C. Relevant Jurisprudence

1. Constitutionality of R.A. No. 9262

In *Garcia vs. Hon. Drilon*,⁹ the Supreme Court upheld the constitutionality of R.A. No. 9262 after the same was questioned by petitioner Garcia on the ground that its violative of the equal protection clause. It held that the law was based on a valid classification and did not violate the equal protection clause by favouring women over men as victims of violence and abuse to whom the State extends its protection. It further recognized that the law rests on substantial distinctions, that is, the unequal power relationship between women and men and the fact that women are more likely than men to be victims of violence.

2. Battered Woman Syndrome

Prior to the enactment of R.A. No. 9262, the Supreme Court in *People vs Genosa*,¹⁰ acknowledged that Battered Woman Syndrome may be considered as a form of self-defence, provided that the following are present: *First*, each of the phases of the cycle of violence must be proven to have characterized at least two battering episodes between the appellant and her intimate partner. *Second*, the final acute battering episode preceding the killing of the batterer must have produced in the battered person's mind an actual fear of an imminent harm from her batterer and an honest belief that she needed to use force in order to save her life. *Third*, at the time of the killing, the batterer must have posed probable – not necessarily immediate and actual – grave harm to the accused, based on the history of violence perpetrated by the former against the latter.¹¹

3. Marital Infidelity as Psychological Abuse

In *AAA vs BBB*,¹² the Supreme Court affirmed that what R.A. No. 9262 criminalizes is not the marital infidelity *per se* but the psychological violence causing mental or emotional suffering on the wife. Further, the

⁵ Ibid.

⁶ Enacted: 28 October 1997

⁷ Section 5 (k), R.A. No. 8369.

⁸ Sec. 7, R.A. No. 9262.

⁹ G.R. No. 179267, 25 June 2013.

¹⁰ G.R. No. 135981, 15 January 2004.

¹¹ Section 26 of R.A. No. 9262 now provides that “Battered Women Syndrome” is a complete defence. Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal or civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defence under the Revised Penal Code.

¹² G.R. No. 212448, 11 January 2018.

Supreme Court acknowledged that acts of violence against women and their children may manifest as transitory or continuing crimes. Thus, even if the alleged extra-marital affair causing the offended wife mental and emotional anguish is committed abroad, the case may be filed within the Philippines where the victim is a resident in view of the anguish suffered being a material element of the offence.

4. Economic Abuse for the Purpose of Controlling the Woman

In complaints anchored under economic abuse, the Supreme Court held in *Acharon vs People*¹³ that the mere failure to provide financial support is not enough. *There must be allegation and proof that the act was done with the intent to control or restrict the woman's and/or her child's or her children's actions or decisions.* It is this element of specific intent to control or restrict the woman's and/or her child's or her children's actions or decisions which is the defining characteristic that makes the act of "deprivation of financial support" under Section 5(e) of R.A. 9262 criminally punishable.

5. Mothers May Be Charged for Violation of R.A. No. 9262

In *Knutson vs Hon. Sarmiento-Flores*,¹⁴ the Supreme Court ruled that mothers who maltreat their children resulting in physical, sexual or psychological violence defined and penalized under RA No. 9262 are not absolved from criminal liability notwithstanding that the measure is intended to protect both women and their children. The law covers situations where the mother committed violent and abusive acts against her own child and further allows the father of the offended party to apply for protection and custody orders on behalf of the minor.

III. GOVERNMENT EFFORTS TO ADDRESS DOMESTIC VIOLENCE

A. Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC)¹⁵

R.A. No. 9262 established the Inter-Agency Council on Violence Against Women and their children (IAC-VAWC) to ensure the effective implementation of the law and to act as the lead coordinator and monitoring body on VAWC initiatives. Member-agencies are tasked to formulate programmes and projects to eliminate VAW based on their mandates as well as develop capability programmes for their employees. The members of the IAC-VAWC are as follows:

- (a) Department of Social Welfare and Development (DSWD);
- (b) National Commission on the Role of Filipino Women (NCRFW);
- (c) Civil Service Commission (CSC);
- (d) Commission on Human Rights (CHR)
- (e) Council for the Welfare of Children (CWC);
- (f) Department of Justice (DOJ);
- (g) Department of the Interior and Local Government (DILG);
- (h) Philippine National Police (PNP);
- (i) Department of Health (DOH);
- (j) Department of Education (DepEd);
- (k) Department of Labor and Employment (DOLE); and
- (l) National Bureau of Investigation (NBI).

The IAC-VAWC has the following core functions¹⁶:

1. Promotion of the Anti-VAWC Act through public information and advocacy such as conducting massive information dissemination campaigns on the various issues and problems relative to VAWC;
2. Capacity-building of stakeholders working on VAWC;

¹³ G.R. No. 224946. 9 November 2021.

¹⁴ G.R. No. 239215. 12 July 2022.

¹⁵ Sec. 39, R.A. No. 9262; Section 52, Implementing Rules.

¹⁶ Section 52, Implementing Rules and Regulations, R.A. No. 9262.

3. Development of comprehensive programmes for VAWC victim-survivors, such as an integrated referral system between and among stakeholders to ensure a holistic approach in handling VAWC cases and standards for the delivery of services for victim-survivors of VAWC to ensure the timely, systematic, synchronized and effective response to cases of VAWC;
4. Networking with other stakeholders and creation of mechanisms to ensure the participation of NGO's, academe, private sector, civic and religious groups in the implementation and monitoring of VAWC cases;
5. Monitoring of the implementation of the Act, promulgation of rules and regulations and issuance of policies, memoranda and circulars directing all stakeholders working on VAWC to submit periodic reports on their VAWC-related efforts and services, including VAWC statistics, to the Council;
6. Conducting research to include the integrated approach to eliminate VAWC, nature and root causes of VAWC, battered woman syndrome, violence within lesbian relationships, violence committed against marginalized women, rehabilitation of VAWC perpetrators and documentation of good practices as bases for policy formulation and programme development.

B. Joint Memorandum Circular No. 2010-1 (Creation of Local Committees on Anti-Trafficking and Violence Against Women and Their Children)

To ensure that relevant government agencies and stakeholders are able to immediately address cases of human trafficking and violence against women and their children (VAWC), the Local Committees on Anti-Trafficking and Violence Against Women and their Children (LCAT-VAWC) were established in order to facilitate the implementation of the laws at the local levels. It provides a parallel structure at the local level that will monitor and oversee the implementation of the laws on trafficking and VAWC. It was also meant to empower and mobilize resources of the local community in the prevention, protection, recovery and reintegration of victim-survivors.¹⁷

C. 18-Day Campaign to End Violence Against Women

R.A. No. 9262 mandates government agencies and local government units (LGUs) to establish programmes such as, but not limited to, education and information campaigns and seminars or symposia on the nature, causes, incidence and consequences of such violence particularly towards educating the public on its social impacts.¹⁸

One of the primary education and information campaigns undertaken by the government is the annual holding of the 18-day Campaign To End Violence Against Women, spearheaded by the Philippine Commission on Women. The campaign kicks off every 25 November which is declared as the National Consciousness Day for the Elimination of VAWC.¹⁹ The campaign culminates on 12 December, which marks the signing in the year 2000 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women, and Children under the UN Convention Against Transnational Organized Crime.²⁰

IV. VICTIM SUPPORT SERVICES AND AVAILABLE REMEDIES

A. Mandatory Programmes and Services

In order to facilitate the healing, recovery and social reintegration of DV victims, the following programmes, benefits and appropriate services shall be made available to them through the Department of Social Welfare and Development and the concerned local government unit (LGU)²¹:

¹⁷ JMC 2010-1 dated 18 October 2010.

¹⁸ Section 32, R.A. No. 9262.

¹⁹ Republic Act No. 10398.

²⁰ "18 Day Campaign to End VAW", Philippine Commission on Women, <https://pcw.gov.ph/18-day-campaign-to-end-vaw/> ; last accessed: 2 January 2024.

²¹ Section 40, R.A. No. 9262; Section 39, Implementing Rules.

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- a) Provide emergency shelter, psycho-social counselling and other rehabilitation services to victim-survivors of VAWC;
- b) Ensure that service providers in institutions/centres for women and children are gender sensitive and uphold the rights of women and children;
- c) Make available relevant skills training and other livelihood development services to victim-survivors of violence against women;
- d) Ensure the successful social reintegration and after-care of victim-survivors and their children; and
- e) Continue to develop relevant programmes and strategies to ensure protection, healing, recovery and social reintegration and address emerging needs and concerns of victim-survivors of violence.

Likewise, health programmes and services shall immediately be provided through a socialized scheme by the Women and Children Protection Unit (WCPU) in DOH-retained hospitals or in coordination with LGUs or other government health facilities.²²

B. Victim Relief and Remedies

In addition to the above-listed mandatory services, the victim-survivor may obtain the remedy of a protection order from the *barangay* or from the court. A protection order is an order issued under R.A. No. 9262 for the purpose of preventing further acts of violence against a woman or her child and granting other necessary relief. This is to safeguard the victim-survivor from further harm, minimizing any disruption in the victim-survivor's daily life, and facilitating the opportunity and ability of the victim-survivor to independently regain control over her life.²³

1. Barangay Protection Order (BPO)²⁴

Barangay Protection Orders (BPO) are issued by the *barangays* and granted ex parte, without notice and hearing to the respondent. The order is effective for fifteen (15) days and enforceable within the *barangay* that issued the BPO. It orders the perpetrator/respondent to desist from committing acts such as causing physical harm to the woman or her child. It may also contain a prohibition on the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the victim-survivor, directly or indirectly.

2. Temporary Protection Order/Permanent Protection Order

Temporary Protection Order (TPO) is a protection order issued ex parte by the court on the date of filing of the application. It is effective for thirty (30) days and enforceable anywhere in the Philippines. On the other hand, a Permanent Protection Order (PPO) is issued by the court after notice and hearing and is likewise enforceable anywhere in the Philippines. Regardless of the conviction or acquittal of the respondent in a criminal prosecution under the Act, the Court must determine whether or not the PPO shall become final.

V. CURRENT CHALLENGES IN THE PROSECUTION RESPONSE

Violence against women and their children is a public offence which may be prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.²⁵ While this may be so, it cannot be denied that the most important proof of the commission of DV is through the testimony of the victims themselves. This is particularly relevant in proving psychological violence, as affirmed by the Supreme Court in *Dinamling vs People*,²⁶ thus:

Psychological violence is the means employed by the perpetrator, while mental or emotional

²² Section 40, R.A. No. 9262; Section 40, Implementing Rules.

²³ Section 8, R.A. No. 9262; Section 11, Implementing Rules.

²⁴ Ibid.

²⁵ Section 25, R.A. No. 9262.

²⁶ 761 Phil. 356 (2015).

anguish is the effect caused to or the damage sustained by the offended party. To establish psychological violence as an element of the crime, it is necessary to show proof of commission of any of the acts enumerated in Section 5(i) or similar such acts. And to establish mental or emotional anguish, it is necessary to present the testimony of the victim as such experiences are personal to this party. (Emphasis supplied.)

Accordingly, prosecution of DV cases is highly dependent on the cooperation and willingness of victims to testify. While the initial point of contact for DV cases is from the LGU, through the *barangay* VAW desk or police/law enforcement officers, it is acknowledged that not all reported cases reach the stage of filing a complaint before the Prosecutor's Office due to one or more factors:

- a. disinterest of the victim in further pushing through with the case due to lack of trust in the justice system (e.g. delays, expensive litigation, etc.);
- b. pardon or forgiveness given by the victim;
- c. victim is financially dependent on the perpetrator;
- d. victim's interest in keeping the peace or keeping the family intact;
- e. shame or embarrassment in further pursuing the case.

While for the other types of VAWC or DV such as physical abuse, sexual abuse and economic abuse may be proven by evidence other than the testimony of the victim, proof of psychological violence and the element of mental or emotional anguish must be established through the testimony of victims themselves, as their lived experience. Thus, once a case for DV or violation of R.A. No. 9262 is brought before a Prosecutor for prosecution before the courts, it is necessary that the cooperation of victims is sought at the earliest opportune time. Otherwise, the prosecution may run the risk of having the victim lose interest during the course of the trial if they are not apprised of their rights and remedies under the law. Of particular importance is Section 29 of R.A. No. 9262 which provides for the duties that prosecutors must observe when dealing with victims of DV. Prosecutors are encouraged to communicate with the victim in a language understood by the woman or her child and inform the victim of her/his rights including legal remedies available and procedure, and privileges for indigent litigants.²⁷ This is in consonance with the affirmation made by R.A. No. 9262 that victims of DV have rights, and further emphasizes the following rights in addition to their rights under existing laws²⁸:

- (a) to be treated with respect and dignity;
- (b) to avail of legal assistance from the Public Attorneys Office (PAO) of the Department of Justice (DOJ) or any public legal assistance office;
- (c) To be entitled to support services from the DSWD and LGUs;
- (d) To be entitled to all legal remedies and support as provided for under the Family Code; and
- (e) To be informed of their rights and the services available to them including their right to apply for a protection order.

While the law provides that it is the prosecutor's duty, including that of court personnel, to inform the victim regarding their rights and available remedies, the point of contact between a prosecutor and/or court personnel is already well within the course of the criminal justice chain, and at this point victims may already have desisted or decided not to pursue the case. Crucial information regarding their case and legal options must be communicated to victims at the first contact.

Currently, the first point of contact of DV victims is with the Barangay VAW Desk. The Barangay VAW Desk Officer is mandated to assist victims of DV in securing BPOs and facilitating the provision of necessary services.²⁹ They are required to inform the victim-survivor of their rights, the solutions and remedies available and the processes involved. More than providing options, victim survivors should also be encouraged and given the opportunity to decide for themselves which available remedies to avail of. This can be attained by providing a victim-centred approach by placing the victims at the centre of consideration, putting the

²⁷ Section 29, R.A. No. 9262.

²⁸ Section 35, R.A. No. 9262.

²⁹ Memorandum Circular No. 2023-104 dated 28 July 2023, Guidelines on the Operationalization of the Barangay Violence Against Women Desk, Department of Interior and Local Government.

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victim's safety and dignity at the core of any criminal justice intervention.³⁰

VI. RECOMMENDATIONS

Given the foregoing realities and to reduce case attrition at the prosecutor and court level of DV cases, the following recommendations are put forward:

- a. provide continuous training of persons and agencies involved in responding to DV cases to acquaint and reinforce the nature, extent and causes of violence against women and their children;
- b. provide capacity-building to prosecutors regarding techniques in the effective handling of DV victims as witnesses;
- c. ensure that legal rights and remedies, as well as information on available services and facilities, are communicated in a practical and timely manner to victims of DV by frontline responders, mindful of the rights-based approach and giving them the autonomy of choice;
- d. intensify the conduct of massive information dissemination campaigns on DV;
- e. consider institutional reforms in order to provide more benefits and compensation to DV victim survivors, other than the award of actual, compensatory, moral and exemplary damages.³¹

³⁰ UNODC, *Blueprint for Action: an Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women*, UNODC *Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women*; https://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf; last accessed: 2 January 2024.

³¹ Republic Act No 7309, The Board of Claims grants an award not exceeding Ten Thousand Pesos (Php10,000) to victims of violent crimes. Several pending amendatory bills have been filed seeking to increase the said award to Fifty Thousand Pesos (Php50,000); SBN-884 filed by Senator Francis Escudero; https://legacy.senate.gov.ph/lis/bill_res.aspx?congress=19&q=SBN-884; last accessed: 2 January 2024.