



Women's Priority Legislative Agenda for the 17th Congress

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

Philippine
Commission
on Women



POLICY BRIEF NO. 10

This policy brief provides the rationale for repealing Article 247 of the Revised Penal Code which exempts a spouse/parent who inflicts serious harm or death upon the other spouse/minor daughter caught having sexual intercourse with another person.

WHAT IS THE ISSUE? WHAT HAS BEEN OUR RECENT EXPERIENCE/S WITH REGARDS TO 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 rationale behind such laws is that women's unacceptable sexual behavior besmirches family honor.¹ Honor-killing is a practice which has been widely, if not universally condemned as it violates the basic tenets of human and women's rights. Yet, a somewhat similar law still exists in the current Revised Penal Code (RPC):

“Art. 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.”

WHY IS THE ISSUE IMPORTANT?

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 parricide² or serious physical injuries³, *destierro* only prohibits the convicted person from entering court-designated places or a specified radius of those places. *Destierro* is mere banishment and, as held in a case, is intended more for the protection of the accused from retaliation of the family members of the deceased than a punishment.⁴ On the other hand, if the physical injuries inflicted are less than serious, the offender is exempt from punishment.

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.”⁵ While indeed, passion and obfuscation can legally be considered as a mitigating circumstance which could lower the penalty by one degree under other circumstances, Article 247 unreasonably provides a different appreciation of passion in the context of family honor, such that it is given much regard even at the expense of human lives. This is evidenced by the fact that the convicted person is given absolution from the crime.

Technically speaking, the first paragraph of the law applies to both the husband and the wife as the term used was “any legally married person”. Note, however, that the said provision seems to have been originally crafted in contemplation of a situation where a man catches his wife in bed with another. This is seen from the consistent use of the terms “he” or “his” when referring to the offender. At any rate, said provision must not be countenanced because it is a clear violation of human rights. A person’s anger or extreme passion cannot be a license to inflict physical harm or death upon a spouse, even when caught having sexual intercourse with another. There is a law which criminalizes the act of sexual infidelity after all and it is even a ground for legal separation. By maintaining Article 247 in the RPC, we are effectively giving more importance to a person’s reputation, image and esteem than to actual lives of people.

The third paragraph of Article 247 pertains to daughters under eighteen (18) years of age. This is more problematic than the first two paragraphs for two reasons:

1. The law, which applies only to daughters and not sons, blatantly discriminates against women and reinforces the notion that female children are treated as inferior to male children who are given more freedom and importance in the family. The law is clearly based on unfair gender-based assumptions, such as:
 - Women should keep a particular sexual conduct or should maintain certain moral standards;
 - Women are wards or property of the men or the parents; and
 - Women’s deviation from the sexual or “moral” norm (the “good-bad woman” dichotomy), excuses the parents, particularly the fathers’ killing or injuring them.”
2. By allowing parents to inflict harm or to kill a minor daughter under the above-stated “exceptional” circumstance, the law contradicts the well-established principle of promoting the best interest of children at all times, embodied not only in our domestic laws but also in international covenants to which we are a signatory.

WHAT ARE THE EXISTING LAWS OR POLICIES 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.” Further, Article III, Section I provides that, *“No person shall be deprived of life, liberty, or property without due process of law.”*

Section 12 of Republic Act 9710 or the Magna Carta of Women (MCW) provides for the amendment or repeal of laws that are discriminatory to women which, among others, would include Article 247 of the RPC.

With regards to the provision pertaining to daughters, Republic Act No. 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.”*

WHAT ARE THE CONSIDERATIONS IN ADDRESSING THIS ISSUE IN THE COUNTRY?

Promoting women’s rights and gender equality

Repealing Article 247 of the RPC will help eliminate discrimination against women, promote women’s rights and enhance the status of women in the Philippine society. It will also uphold the right to life of girl children.

Responding to International Commitments

Repealing Article 247 responds to the Philippine Government’s State Obligation under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), particularly the State obligation to repeal all discriminatory laws and practices, and provide effective mechanisms and remedies where women can seek redress for rights violations of their rights.

It is also in response to the Convention of the Rights of the Child, particularly the State obligation to put the best interests of the child as a primary consideration in all actions concerning children⁷, and to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members⁸, and protect the child from all forms of physical or mental violence,

injury or abuse while in the care of parent(s), legal guardian(s) or any other person.⁹

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.*” The circumstances referred to in Article 247 may be treated as a possible mitigating circumstance that would allow imposition of lesser penalty, but definitely not absolute exemption.

CONCLUSION

The infliction of physical injuries and/or death upon a person due to mere passion or emotions should not find any place in our laws today. This is a clear violation of human rights and must therefore not be tolerated. Moreover, to essentially allow parents to commit this crime against their minor daughter is to discriminate against women who do not conform to society’s conservative expectations of what her sexual behavior should be. To maintain Article 247 in the RPC is to blatantly disregard the various other laws and international commitments that we have which uphold human rights and the rights of women and children.

It is hoped that our legislators will prioritize and favor the immediate enactment of a law to repeal the Article 247 of the RPC, 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.

ENDNOTES

¹ Santos, Aida F. et. al. Toward a Gender-Responsive Legislation. National Commission on the Role of Filipino Women, 1999

² Article 246, Revised Penal Code.

³ Article 263, Ibid.

⁴ People vs Araquel, G.R. No. L-12629, 09 December 1959.

⁵ People vs. Gonzales, 69 Phil 65

⁶ Santos, Aida F. et. al. Toward a Gender-Responsive Legislation. National Commission on the Role of Filipino Women, 1999

⁷ Article 3, Convention of the Rights of the Child.

⁸ Article 2, Ibid.

⁹ Article 19, Ibid.