



# Women's Priority Legislative Agenda for the 17th Congress

## 9

### Enacting the Anti-Prostitution Law: Amending Articles 202 and 341 of the Revised Penal Code (RPC)



#### POLICY BRIEF NO. 9

*This policy brief provides the rationale for amending Articles 202 and 341 of the Revised Penal Code on Prostitution and White Slave Trade. It also presents recommendations on how to address the system of prostitution in the Philippines by providing legal protection and support services for its victims and shifting the criminal liability to those who exploit people in prostitution.*

#### WHAT IS THE ISSUE? WHAT HAS BEEN OUR RECENT EXPERIENCE/S WITH REGARDS TO 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, especially young girls; as it serves the instant sexual gratification of the more privileged "cliente" who are mostly male.

Different forms of prostitution exist, like street solicitation, bars, brothels, "akyat-barko", massage parlors, escort services, sex tourism, cybersex, local and international sex trafficking. The most common underlying cause that primarily sustains prostitution is "demand". It is the customer's demand for sex or sexual exploitation that fuels prostitution; if there were no customers, users or buyers, or when demand is counteracted, there would be much-decreased supply or the number of victims would reduce.

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 study by the International Labor Organization (ILO), it was estimated that there were at least half a million prostituted persons in the Philippines.<sup>1</sup> In 2004, the number of those exploited in prostitution alone reached 600,000 which ballooned to 800,000 in

in 2005. In a 2009 study entitled "Philippines: Women Struggling to Achieve Sexual Equality"<sup>2</sup>, there were around 800,000 prostituted persons in the Philippines.

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, are considered as sexual objects and commodities, while men are superior, are the decision-makers and the 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 and power 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. Overall, prostitution is not a choice as survivors of prostitution have described it as "the choice made by those who have no choice".<sup>3</sup> Women are forced into prostitution by gender discrimination, race discrimination, poverty, abandonment, debilitating sexual and verbal abuse, lack of formal education, or a job that does not pay a living wage.<sup>4</sup>

Article 202 of the RPC as amended by R.A. 10158 provides:

*"Article 202. Prostitutes; Penalty. – For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.*

*Any person found guilty of any of the offenses covered by this article shall be punished by arresto menor or a fine not exceeding 200 pesos, and in case of recidivism, by arresto mayor in its medium period to prision correccional in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.”*

Notably, the above provision focuses law enforcement and legal sanctions exclusively on prostituted women. This is clearly an affront to women as it continues to criminalize prostituted women, while letting the customers and the pimps go unscathed.

### WHY IS THE ISSUE IMPORTANT?

The enactment of RA 10158 or an act decriminalizing vagrancy only repealed Article 202 provisions in the RPC that pertains to vagrancy, leaving behind the provision that penalizes prostituted women, notwithstanding their exploitation in the prostitution. 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, but not those who are on the demand side of prostitution. The gender inequality in prostitution is also manifested through the stigma attached to prostituted persons which perpetuates male domination over women and girls' bodies. Such discrimination impairs the fundamental dignity and personhood of women and girls.

### WHAT ARE THE EXISTING LAWS OR POLICIES RELATED TO THE ISSUE?

The **1987 Philippine Constitution** provides that “the State values the dignity of every human person and guarantees full respect for human rights” (Article II, Section 11). It also states that “the 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 equitable diffusing wealth and political power for the common good”(Article XIII, Section 1).

The **Magna Carta of Women (MCW) or RA 9710** specifically recognizes that prostitution is an act of violence against women (VAW) from which women should be protected. The MCW also 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 (Section 12).

**RPC Article 341 on White Slave Trade, as amended by B.P. Blg. 186** imposes penalty of imprisonment from 8 to 12 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.”

The **Anti-Trafficking in Persons Act or RA 9208 as amended by RA 10364** 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 (Section 11) and gives legal protection to prostituted persons who are victims of trafficking (Section 17).

**An Act Decriminalizing Vagrancy or RA 10158** only repealed Article 202 provisions in the RPC that pertain to vagrancy, leaving behind the provision that penalizes prostituted women.

**Quezon City Ordinance No. SP-1516, series of 2005<sup>5</sup>** recognizes persons in prostitution as victims. It imposes penalties only on the perpetrators, such as the pimps and recipients of the sexual act. It also provides services to persons exploited in prostitution through education campaigns against prostitution, crisis intervention service, education and socio-economic assistance, sustainable livelihood skills training, financial support for scale businesses, integration and complete after-care programs, health services, counseling, and temporary shelter.

The **Philippine Plan for Gender-Responsive Development (1995-2025)**, comprehensively tackles violence against women (VAW) within the context of a national development framework, and views prostitution as a human rights violation and identifying the decriminalization of women in prostitution as a starting point in addressing the problem. According to the PPGD, “the desired effect of such legislation is that women and children should no longer be arrested or fined like criminals.”

### WHAT ARE THE EXPERIENCES OF OTHER COUNTRIES IN ADDRESSING THIS ISSUE?

Sweden is the first European Union Member State where purchasing sexual services is considered a criminal offense punishable with up to one year of imprisonment. The government also decriminalizes women in prostitution by helping them get out of the

system and rebuild their lives.<sup>6</sup> The Swedish model on prostitution was adopted by Norway and Iceland in 2009 and is now referred to as the “Nordic Model”<sup>7</sup>. The Nordic Model was also adopted by France in 2013 and Northern Ireland in 2015.

In Venezuela, a landmark ruling given by the Ministry of Labor rejected the view that prostitution should not be considered work because it lacks the basic elements of dignity and social justice. The Socialist Republic of Vietnam punishes pimps, traffickers, brothel owners, and buyers – sometimes publishing buyer’s names in the mass media. For women in prostitution, the government finances medical, educational, and economic rehabilitation.

In October 2000, the U.S. passed the Victims of Trafficking and Violence Protection Act of 2000<sup>8</sup>. Under this law, penalties for traffickers are raised and protections for victims increased. Reasoning that desperate women are unable to give meaningful consent to their own sexual exploitation, the law adopts a broad definition of sex trafficking so as not to exclude the so-called consensual prostitution or trafficking that occurs solely within the United States.

## WHAT ARE THE CONSIDERATION IN ADDRESSING THE ISSUE IN THE COUNTRY?

### Promoting women’s rights and gender equality

Gender equality will remain unattainable as long as men buy, sell and exploit women and children by prostituting them<sup>9</sup>. Addressing the system of prostitution by penalizing the real culprits in the sex industry, meaning the traffickers, pimps, customers or buyers of sex and the exploiters, and decriminalizing those who are exploited in the system of prostitution, will eventually lead to eradicate the problem of prostitution.

### Responding to International Commitments

The **Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others** which was approved by the UN General Assembly states that “prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community”.

The **UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** requires the State to “take all appropriate

measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women” (Article 6).

The **Committee on the Elimination of Discrimination Against Women General Recommendation 19** in 1992 stated that “States parties are required by article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.”

The **Declaration on the Elimination of Violence Against Women (DEVAW)** adopted by the UN General Assembly in 1993 recognized prostitution as an act of violence against women and urged States Parties to pursue without delay a policy to eliminate it.

The Beijing Platform for Action (BPfA) adopted in 1995 defined trafficking in women and forced prostitution as a form of violence against women (Article 113 [b]).

The **UN Secretary General’s Bulletin** in 2003 on **Special measures for protection from sexual exploitation and sexual abuse** recognizes that sexual exploitation and sexual abuse violate universally recognized international legal norms and standards, and that exchange of money, employment, goods or services for sex, including sexual favors or other forms of humiliating, degrading or exploitative behavior, is prohibited.

The 2006 CEDAW Committee Concluding Comments on the 5th and 6th Philippine Country Report raised its concerns on the exploitation of prostitution that continues to thrive in the Philippines and the low rates of prosecution and conviction of those who exploit the prostitution of women. It called on the Philippine government to discourage the demand for prostitution, facilitate the reintegration of prostituted persons into society and provide rehabilitation, social integration and economic empowerment programs to women and girls who are victims of exploitation and trafficking.

## POLICY RECOMMENDATION

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 a law amending the RPC provisions on Prostitution and White Slave Trade be enacted taking into

consideration the following provisions:

1. **Define prostitution** – as “any act, transaction, scheme or design involving the purchase, promotion of sale or use of a person by another, for sexual intercourse, lascivious conduct, including sexual favors or other forms of humiliating, degrading or exploitative behavior, 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, child or any person with different sexual orientation or gender identity 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 which 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 of prostitution (such as pimping other people) from criminal liability.
5. **Establish support mechanisms for prostituted persons to get out of the system of prostitution** – recognize 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 the criminalization of the demand side is to punish those who exploit people in prostitution 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 is the only way to eliminate enforcement of discriminatory law and would help end sexual exploitation of women and prostituted persons.

## CONCLUSION

Legislative measures to amend Article 202 of the Revised Penal Code were filed in the previous Congresses but did not prosper. To this end, it is with hope that our legislators, consistent with their mandates under the Constitution and the Magna Carta of Women, shall give highest priority to the enactment of measures that protect and promote the rights of women and favor the immediate enactment of the anti-prostitution law.

## ENDNOTES

<sup>1</sup> ILO, “World of Work, Workplace Violence: A New Global Problem”, September/October 1998, available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/dwcms\\_080629.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/dwcms_080629.pdf)

<sup>2</sup> Magnolia Yrasuegui and Priya Esselborn of Deutsche Welle, “Philippines: Women Struggling to Achieve Sexual Equality”, 1 December 2009, available at <http://www.dw.com/en/philippines-women-struggling-to-achieve-sexual-equality/a-4465029-1>

<sup>3</sup> Melissa Farley, “Prostitution, trafficking and cultural amnesia: What we must not know in order to keep the business of sexual exploitation running smoothly,” *Yale Journal of Law and Feminism*, (2006), 102.

<sup>4</sup> *Ibid.*, 102-103.

<sup>5</sup> An Ordinance Addressing the System of Prostitution, Imposing Penalties on its Perpetrators, Providing Protective Measures and Support Services for the Prostituted Persons, and for Other Purposes.

<sup>6</sup> Actual text of the law states: “A person who obtains casual sexual relations in exchange for payment shall be sentenced - unless the act is punishable under the Swedish Penal Code - for the purchase of sexual services to a fine or imprisonment for at the most six months. Attempt to purchase sexual services is punishable under Chapter 23 of the Swedish Penal Code” (Sweden, Law Prohibiting the Purchase of Sexual Services) 1998.

<sup>7</sup> Nordic Model (sometimes known as the Sex Buyer Law) is an approach to prostitution that decriminalizes all those who are prostituted, provides support services to help them exit, and makes buying people for sex a criminal offence, in order to reduce the demand that drives sex trafficking. Available at <https://nordicmodelnow.org/what-is-the-nordic-model/>

<sup>8</sup> Victims of Trafficking and Violence Protection Act of 2000, 28 October 2000, available at <http://www.state.gov/documents/organization/10492.pdf>.

<sup>9</sup> Swedish Ministry of Industry, Employment and Communication’s “Prostitution and Trafficking in Women”, Fact Sheet October 2004.