



Women's
Priority
Legislative
Agenda
for the 18th Congress

Upholding the Right to Life and Security of Spouses and Daughters

by Repealing Article 247 of the
Revised Penal Code

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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? WHY IS THE ISSUE IMPORTANT?

Honor-based violence is defined as an offense disproportionately committed against women, which “has or may have been committed to protect the honor of the family and/or community”.ⁱ Now commonly associated with regions in India, North Africa and the Middle Eastⁱⁱ, honor-based violence is considered as an antiquated and brutal practice done through shooting, drowning, acid attacks, burning, stoning, or burying the victim alive, among many other forms.

Beyond being a customary practice in some countries, laws in defense of “honor” are sometimes in place which exempt husbands or family members from criminal liability for the killings or violence inflicted against their wives, daughters or sisters if these women’s sexual behaviors defy societal or cultural gender norms or standards and thus besmirch the patriarchal family’s honor or reputation.ⁱⁱⁱ

The Philippines has a similar law that condones the honor-based violence and honor-killing. The Revised Penal Code (RPC), enacted in 1930, still carries an antiquated provision which justifies the infliction of grave or mortal harm to a spouse or a minor daughter, under the pretext of family honor, to wit:

“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.”

Under the law, a person who has caught their spouse in the act of committing sexual intercourse and has killed either or both of them or inflicted serious physical injuries either of both of them, shall only be penalized with *destierro*.

In contrast to the penalties of imprisonment for parricide^{iv} or serious physical injuries^v, *destierro* only prohibits the convicted person from entering court-designated places or a specified radius of those places. *Destierro* is mere banishment and, and serves to protect the killer or attacker from retaliation of the family members of the deceased rather than as a punishment.⁴

On the other hand, if the physical injuries inflicted are less than serious, the offender is exempt from any punishment.

Strictly speaking, Article 247 does not actually define a crime. It provides rather, a defense which may be invoked by the accused if the killing or infliction of injuries was done under the circumstances under the said provision. In essence, Article 247 presumes that a spouse or a parent is acting in a “justified burst of passion”^{vi}. However, this comes at the expense of the safety and security others, especially women.

While the first two paragraphs of Article 247 of the RPC are applicable to both spouses, case records show that victims are predominantly the wives. Moreover, the third paragraph of Article 247 pertains only to daughters and not the sons. These clearly show that the law is based on discriminatory gender-based assumptions, such as:

- Women should keep a particular sexual conduct or should maintain certain moral standards while men enjoy more freedom and importance in the family;
- Daughters are wards or property of 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.

Honor-based violence is gender-based violence. It is carried out under the pretext that a woman’s value greatly relies on preserving her virginity and on strictly conforming to patriarchal standards for acceptable sexual behavior. It also assumes that the honor and reputation of a family must always be defended and protected by the stereotypical male head, even at the expense of the lives of the family members which are usually women.

It must be noted that under our criminal law, “passion and obfuscation” is a mitigating circumstance that could only lower the penalty of a certain crime to some degree. And yet, under Article 247 of the RPC, such outburst motivated by passion serves as an absolatory cause which can exempt a person from the prescribed penalties for parricide and serious physical injuries. This implies that the law still gives weight and importance to the socially-constructed concept of honor which is heavily gendered and discriminatory. Thus, there is a pressing need to repeal Article 247 of the RPC as it violates the basic rights of women to life and security.

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 thereof states that, “No person shall be deprived of life, liberty, or property without due process of law.”

Republic Act No. 9710 otherwise known as the Magna Carta of Women (MCW) provides that “The State shall ensure that all women shall be protected from all forms of violence as provided for in existing laws. Agencies of government shall give priority to the defense and protection of women against gender-based offenses and help women attain justice and healing. Towards this end, measures to prosecute and reform offenders shall likewise be pursued” (Section 9). Section 12 of the MCW also provides that the “State shall take steps to review and, when necessary, amend and/or repeal existing laws that are discriminatory to women” (emphasis supplied).

Republic Act No. 9710 or the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act” states 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.”

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 consistent with the Convention of the Rights of the Child, particularly the obligation of Party States to put the best interests of the child as a primary consideration in all actions concerning children^{vii}, 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 members^{viii}, 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.^{ix}

POLICY RECOMMENDATION

Article 247 of the Revised Penal Code disregards the human rights of women and children, especially daughters, and as such, should not have any place in our laws today. Hence, it is recommended that Article 247 of the RPC be repealed.

The circumstances referred to in Article 247 may be treated as a possible mitigating circumstance that would allow imposition of a lesser penalty, but not their absolute exemption from the penalties prescribed for parricide, serious physical injuries, or other physical injuries.

It is hoped that our legislators will prioritize and favor the immediate enactment of a law to repeal 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 under international human rights law.

ⁱ <https://www.cps.gov.uk/legal-guidance/honour-based-violence-and-forced-marriage>

ⁱⁱ Preliminary Examination of so-called ‘Honour Killings’ in Canada”, Department of Justice of Canada, culled from <https://www.justice.gc.ca/eng/rp-pr/cj-ip/fv-vf/hk-ch/p3.html#f41>, citing Matthew A. Goldstein, “The biological roots of heat-of-passion crimes and honour killings,” *Politics and the Life Sciences* 21,2 (2002): 28-37.

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

^{iv} Article 246, Revised Penal Code.

^v Article 263, *Ibid*.

^{vi} *People vs. Gonzales*, 69 Phil 65

^{vii} Article 3, Convention of the Rights of the Child.

^{viii} Article 2, *Ibid*.

^{ix} Article 19, *Ibid*.