

Strengthening Responses to Violence against Women: Overcoming Legal Challenges in the Anti-Violence against Women and their Children Act

*SALIGAN Women's Unit**

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I. INTRODUCTION

Confined within the walls of what are supposed to be considered homes are various abuses against women. In silence, countless women endure many forms of violence for the sake of their children and families. The much publicized cases of Maria Teresa Carlson¹ and Marivic Genosa² are but glimpses of what battered women have to bear every single day of their lives.

* Sentro ng Alternatibong Lingap Panligal (SALIGAN) is a legal resource non-governmental organization doing developmental legal work with farmers and fishers, workers, the urban poor, women, and local communities for over 20 years. Through its women's program, SALIGAN works with both the government and the non-government organization (NGO) community for the enactment and the enforcement of laws relevant to women's empowerment. From 1992 to 1995, the SALIGAN lobbied for the passage and worked for the effective implementation of the Anti-Sexual Harassment Act, conducting trainings and awareness raising activities on the law and facilitating the drafting of sexual harassment policies in companies and schools. As member of PILIPINA, a national network of people's organization and non-government organization advocating for women's rights, SALIGAN also supported the passage of the Anti-Rape Bill. From 1999 to 2002, SALIGAN was active in the advocacy for the passage of the Anti-Trafficking in Persons Bill. SALIGAN became a member of the Coalition against Trafficking in Women - Asia Pacific (CATW-AP). As member of CATW-AP, SALIGAN participated in the technical working group in the House of Representatives. During the same years, SALIGAN also prioritized the advocacy for the passage of the bill on domestic violence. It became an active member of the Task Force Justice for Maria Teresa Carlson, the network that attempted to unite the women's groups in

In 8 March 2004, through the efforts of various groups advocating the elimination of violence against women, and through the voices of countless women who mustered the courage to break their silence, Republic Act No. 9262 (R.A. No. 9262) or the Anti-Violence against Women and their Children Act (Anti-VAWC Act)³ was enacted into law. With its enactment came the elimination of the legal distinction between the private and the public as the law recognized abuses committed against women by their intimate partners as a violation of human rights. Its passage marked the recognition of domestic violence as a public offense, one that is perpetrated not only against a private complainant but against an entire society; a crime that is not merely a simple case of marital dispute.

As a public crime, the "acts of violence" defined by the Anti-VAWC Act specifically includes abuses common to victim-survivors of domestic violence, in addition to those that can be found in the Revised Penal Code.⁴ It empowers any person having public knowledge of the circumstances involving the commission of an abusive act to file a criminal complaint.⁵ It also recognizes the battered woman syndrome as a legal defense⁶.

As a civil remedy, the Anti-VAWC Act has made the process of securing a restraining order against perpetrators easier and more immediate by providing for the legal remedy of Protection Orders both in Courts and in

consideration for the two bills on violence against women pending in Congress at the time — the Anti-Domestic Violence and the Anti-Abuse of Women in Intimate Relationships. SALIGAN acted as the secretariat of the task force that drafted the unity bill version. Together with its partner organizations, SALIGAN continues to work for the passage of legislative measures relevant to the empowerment of marginalized women such as the Anti-Prostitution Bill, the Reproductive Health Bill, and the Magna Carta of Women Bill.

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1. Jenny F. Manongdo, *No Longer Victims But Survivors*, MANILA BULLETIN, Nov. 13, 2005, available at <http://www.mb.com.ph/issues/2005/11/13/MTNN2005111348958.html> (last accessed Jan. 7, 2008).
2. *People v. Genosa*, 419 SCRA 537 (2004).
3. An Act Defining Violence against Women and their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes [Anti-VAWC Act], Republic Act No. 9262, § 2 (2004).
4. *Id.* § 5.
5. *Id.* § 25.
6. *Id.* § 26.

*Barangays*⁷ with specific provisions on the reliefs available to victims-survivors.⁸

As a holistic response to a societal problem, the Anti-VAWC Act mandates courts,⁹ local government units,¹⁰ and various national government institutions and agencies¹¹ to provide services and establish programs for the prevention and elimination of VAWC and for the protection of VAWC victim-survivors. The law also created the Inter-Agency Council on Violence against Women and their Children Act (IAC-VAWC) to serve as lead coordinator and monitoring body of VAWC initiatives¹² and to ensure the effective implementation of the law.

Truly a landmark legislation, the Anti-VAWC Act not only gives legal recognition to the problem that was rarely spoken of before, but also provides for remedies, both conventional and innovative, to women victim-survivors of VAW, giving hope to several women who have yet to break free from the abusive relationships they are in.

One of the leading legal resource non-government organizations working towards the empowerment of women and other basic sectors is Sentro ng Alternatibong Lingap Panligal (SALIGAN). It is faced with a new challenge with the law's enactment in 2004. At this time, Congress was no longer the only arena to advocate for policies addressing the elimination of violence against women at home; government institutions mandated to implement the law now equally share the responsibility. For its part, the Supreme Court issued the Rule on Violence against Women and Their Children.¹³ It was to be the rule observed in the litigation of Anti-VAWC cases.

With these new legal developments, SALIGAN steered the litigation component of its women program towards accepting cases that involved the application and implementation of the Anti-VAWC Act. Considered as

7. *Id.* §§ 8 & 14.

8. *Id.* § 8.

9. Anti-VAWC Act, § 29; Department of Justice, National Commission on the Role of Filipino Women, Department of Social Welfare and Development, Department of the Interior and Local Government, Department of Health, Philippine National Police, The Rules and Regulation Implementing the Anti-Violence against Women and Their Children of 2004, [Implementing Rules], § 46 (2004).

10. Anti-VAWC Act, § 30; Implementing Rules, §§ 47 & 51.

11. Anti-VAWC Act, § 32; Implementing Rules, §§ 48 & 50.

12. Implementing Rules, § 52.

13. Supreme Court, Re: Rule on Violence against Women and Their Children, A.M. No. 04-10-11-SC [RULE ON VIOLENCE], NOV. 15, 2004.

“test” or “priority” cases, SALIGAN, together with its partner organizations, provided legal representation to indigent women who are victim-survivors of domestic violence. The legal struggles that confront women victim-survivors in asserting their rights through litigation are presented in this Paper.

II. SURVEY OF ANTI-VAWC CASES

After three years of effectivity of the Anti-VAWC Act, there is a need to measure how far government institutions mandated to implement the law have come in recognizing the rights and in affording protection to marginalized women. Data from the Philippine National Police and selected Family Courts are presented in this article to demonstrate the efforts of the government in making the law a reality to victim-survivors of domestic abuse. Records provided by the Philippine National Police reflect the number of criminal complaints received by the Directorate for Investigation and Detective Management (DIDM) through the Women's and Children Protection Center (WCPC) from the year 2005 up to the 3rd quarter of 2007. With respect to cases filed in Court, the data presented are based on the survey SALIGAN conducted in the Family Courts in Quezon City and in the Bicol Region. Lastly, an overview of SALIGAN cases is also provided to capture the organization's efforts in litigating Anti-VAWC cases.

While limited in scope and in geographical area, the data provided shows the current legal setting for cases involving the Anti-VAWC Act: the number of cases filed, number of cases resolved, length of time to resolve, and the most common grounds and reliefs availed. In some instances, the data also shows the capability of our Court personnel in addressing cases concerning the law.

A. Philippine National Police

The records of the Philippine National Police (PNP)¹⁴ reflect a total of 924 complaints filed for violation of Anti-VAWC Act throughout the Philippines in the year 2005.¹⁵ In 2006, the number increased to 1,279 complaints.¹⁶ For this year, there are 1,649 reported complaints for Anti-VAWC Act with physical injuries or wife battery having a separate count of 1,248.¹⁷ These numbers show an increasing pattern to the number of criminal cases received by the PNP. This trend may be attributed to the

14. *See*, Cases regarding Anti-VAWC Act and Physical injuries or Wife Battery Cases reported to the PNP for the years 2005 to 2007.

15. *See*, Anti-VAWC Act reported cases for the year 2005.

16. *See*, Anti-VAWC Act cases reported for the year 2006.

17. *See*, Anti-VAWC Act and Physical injuries or Wife Battery Cases reported for the First Quarter of 2007.

awareness of more women of their rights under the law brought about by the information campaigns conducted by different stakeholders. Or, in the alternative, the rise in numbers may be caused by the complete apathy of the perpetrators to the legislation. It is, however, not an accurate gauge to the number of cases filed in Courts as most complainants desist from pursuing the case. Moreover, many incidents of abuse are still left unreported simply because many women still opt to remain silent, choosing not to report the abuses committed against them.

At best, these data give us an overview of how prevalent the issue of VAW is in the country. The yearly increase in the number of reported cases in the PNP can be appreciated as indicative that more and more women are empowered to fight for their rights and seek refuge under the law. However, it may also be reflective of the sad fact that an increasing number of VAW still occurs in spite of a clear policy set forth in the law against it.

B. Family Courts¹⁸

Data for Anti-VAWC cases actually filed in Court were based on the answers of Family Courts to the survey SALIGAN conducted in Quezon City and through the efforts of SALIGAN's office in Naga, Bicol Province. Respondents to the survey are composed of two Family Courts in Quezon City¹⁹ and three Family Courts in the Bicol Province.²⁰ The year covered by the inventory varies since the data were based from cases made available by the Family Courts at the time the survey was made.

In the data from one Family Court in Quezon City, covering the period from January to July 2007, there were 13 applications for protection order filed. As of November 2007, these cases remain pending in Court. Criminal cases filed before the said court involving the Battered Women Syndrome²¹

18. See, Tables on Data on Protection Orders filed in Courts and Data on Criminal Cases on Anti-VAWC Act filed in Family Courts. See also, An Act Establishing Family Courts, Granting Them Exclusive Original Jurisdiction Over Child and Family Cases, Amending Batas Pambansa Blg. 129, as Amended, Otherwise known as the Judiciary Reorganization Act of 1980, Appropriating Funds Therefor and For Other Purposes, Republic Act No. 8369 (1997).

Family Courts are Regional Trial Courts which have exclusive original jurisdiction over child and family cases.

19. The two Family Courts in Quezon City are Branch 86 and Branch 102.

20. The Family Courts are Branch 20 and 28 in Naga City and Branch 29, 56 and 57 in Libmanan, Camarines Sur.

21. Battered Woman Syndrome refers to a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse. In section 26 of Anti-VAWC Act, victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding

(BWS) also remain pending. No data was available as to the number of applications for protection order granted, denied or dismissed.

The data provided by another Family Court covers a longer period, from 2005 to November 2007. Around 28 applications for protection order were filed before said Court, all of which were granted. As to the criminal cases filed involving BWS, 46 cases were reported as actually filed. However, 26 of these were dismissed either due to the filing of the complainant of an Affidavit of Desistance or due to the complainant's failure to appear.

Based on the data gathered from the two Family Courts in Quezon City, the shortest recorded period to get a Temporary Protection Order (TPO) is between one to four days from the filing of the application; but the actual issuance of a Permanent Protection Order (PPO) takes around six months to one year from the granting of the TPO. The allegation of physical abuse appears to be a crucial factor in the judge's decision to grant the application for a protection order. This can be deduced from the finding that the most common relief granted by courts is a prohibition against physical violence. This same relief is also the most violated provisions of a Temporary Protection Order.

Data from the two Family Courts also shows that in matters of legal representation, it is the lawyers from the Public Attorney's Office (PAO) who act as counsel to either the victim-survivor or the respondent. There are two cases filed before one Court, where the PAO lawyer served as a counsel for both parties. In terms of the capability to provide services required by law, the judges, public attorneys, and prosecutors assigned to family courts were shown to have attended trainings on gender sensitivity and the Anti-VAWC Act.

For the Bicol Region, one family court in Naga City provided data from August 2005 to August 2007. Within this period, 17 applications for protection order were filed — 11 of which were granted TPOs and one was issued a PPO. As of November 2007, eight applications for protection order are still pending. Eight were dismissed due to amicable settlement of parties and one was dismissed due to the declaration of the presumptive death of the respondent. With respect to criminal cases filed, there were 17 complaints for physical abuse and only one for economic abuse (*i.e.*, failure to give support). Most of the criminal cases are still pending; one case was provisionally dismissed because of the parties' failure to appear.

The case status report provided by another court in Naga City covered the period from December 2004 to April 2007. During said period, the Court received a total of 11 applications for protection order, and issued four

the absence of any of the elements for justifying circumstances involving the commission of the crime.

TPOs and three PPOs. As of November 2007, four applications for protection order are still pending and three cases were dismissed due to the parties' settlement. Criminal cases for violation of the Anti-VAWC Act are mostly based on physical abuse, although there are some based on economic abuse. No resolution has been issued for the criminal cases although some were provisionally dismissed, archived, or withdrawn.

The last of the courts surveyed in the Bicol region were those in Libmanan, Camarines Sur. Since there are no family courts in Camarines Sur, only one clerk of court was assigned to all three Regional Trial Courts which handled the three family cases involved. The data for said courts are therefore lumped together. For the three courts, there were nine protection orders filed for the period covering January 2005 to July 2007. As of November 2007, they have granted five TPOs and six PPOs, while one application for protection order is still pending. No data was given on the number of applications for protection order denied, but there were seven civil cases involving Anti-VAWC Act that were dismissed due to settlement, reconciliation or non-appearance of the parties during trial. As to the criminal cases involving VAWC, there were six cases filed which involved physical abuse, three involved psychological abuse, and two involved economic abuse. None of the cases involving physical abuse and psychological abuse have been resolved; however, the cases involving economic abuse were all subjected to amicable settlement.

C. SALIGAN Cases²²

1. Manila Office

The first case²³ handled by SALIGAN concerning Anti-VAWC was a Petition for Permanent Protection Order for physical abuse. It was filed on 11 June 2004 in Quezon City, three months after the Anti-VAWC Act took effect. In the said case, the TPO was issued on 12 August 2004, or two months and one day after its filing in Court. The PPO for said case was granted on 29 September 2004. The reliefs provided in the protection order included a restraint on violence and communication between the petitioner, her parents and relatives and the respondent, custody over the children given

22. See, Inventory of SALIGAN cases on Anti-VAWC Act as of November 2007 which includes pertinent information as to the period of issuance of a TPO, PPO, period for resolution, reliefs available, and the court and gender of the judge which handled the case [hereinafter SALIGAN Inventory].

23. *Id.* In this case, the TPO was issued two months and one day from its filing while the PPO was issued three and a half months from the issuance of a TPO. Moreover, there was an allegation of physical abuse. The case was eventually resolved within three and a half months by a male judge of the Regional Trial Court (RTC) Branch in Quezon City.

to the petitioner, and an order for Department of Social Welfare and Development's (DSWD) assistance.

A month after the initial test case was filed, another application for the issuance of PPO²⁴ involving physical abuse was accepted by SALIGAN. Unlike the previous case, the TPO was issued by a Family Court in Manila only six days from the date of filing while the PPO was issued nearly three months hence. The reliefs granted included an order to the respondent to stay away from and not to harm the petitioner with custody of the children as well as the award of possession of personal properties given to petitioner.

The disparity of the initial action taken by the two Family Courts is very striking. While one Family Court took months to issue a TPO, it only took days for another to grant the same. The length of time to issue a TPO from its filing varies from one Family Court to the other. As can be seen in the inventory of cases SALIGAN represented, a TPO may be issued as immediately as within the day²⁵ or as late as 82 days²⁶ from the filing of the petition; the average period for the issuance of a TPO being one month from the initial filing.

The same observation applies to the period for the issuance of a PPO. The case inventory shows that it may be as short as 15 days²⁷ or as long as two years and two months from the issuance of a TPO.²⁸ The "longest" case

24. *Id.* In this case, the PPO was issued three months and 19 days from the issuance of a TPO. The case was resolved within three months and 25 days by a female judge in the RTC Branch 29 of Manila.

25. *Id.* In this case, the TPO was issued within the day of its filing, and the PPO was issued three months and 19 days from the issuance of such TPO. Although there was no an allegation of physical abuse, the reliefs granted by the courts included an order to the respondent to stay away from and not to harm the petitioner with custody of the children. This case was handled by a male judge in RTC Branch 172 of Valenzuela.

26. *Id.* In this case, the TPO was issued 82 days from the day of its filing (by motion in a nullity case). Although no economic provisions were included in the prayer, there was an allegation of physical abuse. Thus, the reliefs granted by the courts included an order to the respondent to stay away from and not to harm the petitioner. The case, which is handled by a male judge, is currently pending in the RTC Branch 84 of Quezon City.

27. *Id.* In this case, no data was available as to the period of issuance of the TPO. However, the PPO was said to have been issued 15 days from the issuance of the TPO. There was an allegation of physical abuse. Thus, the reliefs granted by the courts included an order to the respondent to stay away from and not to harm the petitioner with custody of the children and visitorial rights. The case was resolved by a female judge in the RTC Branch 89 of Quezon City.

28. *Id.* In this case, the TPO was issued 21 days from its filing while the PPO was issued two years and two months from the issuance of such TPO. There was an

on file is a petition for the declaration of nullity of marriage with a prayer for the issuance of PPO.²⁹ Filed on 8 September 2005, the case still awaits the issuance of a PPO as of November 2007.

To date, SALIGAN has represented 18 cases involving the Anti-VAWC Act either civil or criminal. Among these, ten cases were resolved with PPOs already issued, and one case was initially denied due to a technicality but was subsequently granted. There are still five cases pending with the family courts with one case on appeal with the Court of Appeals.

Among the most common reliefs availed of and granted under the law are: the prayer to order the perpetrator to stay away from the victim-survivor; provision of support as well as the possession of the conjugal dwelling and other conjugal properties; custody of the children given to the mother; and prohibition to harm or commit violence. Among these reliefs, the one most commonly prayed for by the victim-survivor is the restraint on the respondent from committing acts of violence or from communicating with the victim-survivor. Thus, an allegation of physical abuse is considered as a persuasive factor in the grant of a protection order.

2. Bicol Office

Anti-VAWC cases handled by SALIGAN's Bicol Office include applications for Protection Orders, legal separation with an incident application for Protection Order, and criminal complaints for violation of Anti-VAWC Act.

The first case handled by the branch was filed on 20 September 2004.³⁰ However, petitioner eventually withdrew from pursuing the case. The next case that was handled by the branch was filed on 3 January 2005.³¹ Although the TPO was issued, the case was likewise dismissed eventually by the death of the respondent. The succeeding cases on VAWC that were handled by the branch were mostly dismissed due to the amicable settlement of the parties involved. The handling lawyer manifested that, in most of the cases, the judge himself or herself encouraged the parties to enter into a settlement.

allegation of physical abuse. Thus, the reliefs granted by the courts included an order to the respondent to stay away from and not to harm the petitioner. The case, handled by a male judge, is currently on appeal in the RTC Branch 94 of Quezon City.

29. See *supra* text accompanying note 26.

30. See, SALIGAN Inventory. In this case, no period for the issuance of the TPO and the PPO was given. With regard to the status of the case, the application was withdrawn, and the judge just encouraged the parties to settle the case amicably.

31. *Id.* In this case, no period for the issuance of the TPO and the PPO was given. In such case, the respondent died while the case was ongoing.

The shortest period it took to have a TPO issued is within the day³² or the following day³³ from the filing of the petition for protection order. The longest period took more than a year after the filing of the petition³⁴ to be issued. As to the length of time it takes for a PPO to be issued, no sufficient data was given by the branch although in one of the cases, it was indicated that a PPO was issued after five months and 12 days.³⁵

To date, a total of 16 cases on the Anti-VAWC Act were handled by the Bicol branch. Among the 16 cases, six were dismissed due to amicable settlement of the parties, death of the respondent, and the parties' lack of interest, and one was withdrawn by the petitioner. Only four cases were resolved with both TPO and PPO issued. In one of the resolved cases, the respondent was found guilty of Indirect Contempt and was penalized with imprisonment for 20 days and a fine of ₱ 10,000.00.³⁶ The remaining six cases are still pending in court as of November 2007.

III. ISSUES AND CHALLENGES

A. VAWC as a Public Offense

The Anti-VAWC Act is a penal legislation insofar as it defines punishable acts of violence, treats of their nature, and provides for their punishment. The law defines violence against women and their children as:

32. *Id.* In this case, the TPO was immediately issued upon filing while the period for the issuance of a PPO is still ongoing. With regard to the status of the case, the parties are still trying to reach a settlement with the judge continuing to encourage the parties to settle the case.

33. *Id.* In this case, the TPO was issued one day from its filing while the period for the issuance of a PPO is still ongoing. The case is still pending. Here, the parties entered into a compromise agreement as to the issue of support, but the respondent failed to comply. Thus, respondent was cited for contempt.

In another case, the TPO was issued one day from its filing while the PPO was issued five months and 12 days from the issuance of such TPO. The case has already been resolved with the respondent being cited for indirect contempt and sentenced for 20 days of imprisonment and a fine of ₱ 10,000.00.

34. *Id.* In this case, the TPO was issued more than one year from its filing while the period for the issuance of a PPO from a TPO is still ongoing. With regard to the status of the case, it is still pending.

35. *Id.* In this case, the TPO was issued one day from its filing while the PPO was issued five months and 12 days from the issuance of the TPO. With regard to the status of the case, it has already been resolved with the respondent being cited for indirect contempt, sentenced for imprisonment of 20 days, and fined the amount of ₱ 10,000.00.

36. See *supra* text accompanying note 35.

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.³⁷

The law also provides for specific penalties for acts of violence.³⁸ Violations of protection orders issued by both the court and the *barangay* are also treated as punishable acts.³⁹

Three years after its effectivity, prosecution of acts of violence under the Anti-VAWC Act remains to be a challenge to victim-survivors, service-providers and lawyers. This is greatly due to the lack of detailed and sincere appreciation of the provisions of the law. Many vital provisions which are key to the speedy and just resolution of cases are often disregarded. Some of these are discussed below:

1. The court, upon filing of a criminal case for Anti-VAWC Act, should issue a TPO as a matter of course.

The filing of a complaint for a criminal action is one of the remedies specifically provided for the crime of VAWC.⁴⁰ In such a case, the petition for protection order, which is civil in nature, is deemed included in the criminal case, unless the offended party reserves the right to institute the petition for protection order separately,⁴¹ or said petition was filed ahead of the complaint for criminal action.⁴²

In cases where the petition for protection order is deemed instituted with the criminal action, the filing of the criminal action in court should necessarily include the issuance of a TPO. This is because a preliminary investigation⁴³ had already been conducted by the prosecutor⁴⁴ before filing

37. Anti-VAWC Act, § 3 (a).

38. *Id.* § 6.

39. *Id.* § 12.

40. RULE ON VIOLENCE, § 6.

41. *Id.* § 33 (b).

42. *Id.* § 33 (a).

43. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 112, § 1. ("[a] preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.")

44. *Id.* § 2.

the same in court.⁴⁵ The filing of the criminal case in court, therefore, presupposes the finding of a probable cause by the prosecutor, *i.e.* the presence of the acts of violence under Anti-VAWC Act. This warrants the issuance of a TPO pending final determination of the case.

2. Criminal cases filed under Anti-VAWC Act should not be the subject of a compromise.

In *Genova v. De Castro*,⁴⁶ compromise is defined as:

an agreement between two or more persons who, for preventing or putting an end to a lawsuit, adjust their respective positions by mutual consent in the way they feel they can live with. Reciprocal concessions are the very heart and life of every compromise agreement, where each party approximates and concedes in the hope of gaining balance by the danger of losing.⁴⁷

However, compromise is prohibited in any act constituting violence against women and their children,⁴⁸ which includes physical, sexual, psychological and economic abuse.⁴⁹ The subject of the compromise in a criminal case is limited to the civil liability arising from the offense, but it shall not extinguish the public action for the imposition of the penalty.⁵⁰ In fact, an offer of compromise by the accused in a criminal case may be received in evidence as an implied admission of guilt.⁵¹

Compromise is especially an issue in cases of economic abuse. When the cause of action involves withholding of support by the accused, the amount of support is often the subject of compromise between the parties. Moreover, husbands would negotiate for the wife to execute an affidavit of desistance for the dismissal of the criminal case and in exchange, they would enter into a compromise agreement on the amount of support. Such, however, should not be the case.

If compromise is generally prohibited as regards the criminal liability of the accused because the social and public interest demands the punishment

45. *Id.* §§ 1 & 9 (a).

46. *Genova v. De Castro*, 407 SCRA 165 (2003).

47. *Id.* at 172.

48. RULE ON VIOLENCE, § 23.

49. Anti-VAWC Act, § 3 (a).

50. The Civil Code of the Philippines [NEW CIVIL CODE], Republic Act No. 386, art. 2034 (1950).

51. REVISED RULES ON EVIDENCE, rule 130, § 27.

of the offender,⁵² more so should it be prohibited in the crime of violence against women and their children.

3. The enumeration of acts of violence under the Anti-VAWC Act is not exclusive; it includes similar acts such as marital infidelity.

In defining the prohibited acts consisting of violence against women and their children, the Anti-VAWC Act does not limit the prohibited acts to those enumerated in the law as it contains a catch-all provision: "Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, *including, but not limited to*, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child or children."⁵³

Following the principle of *ejusdem generis*,⁵⁴ psychological violence would therefore include other similar acts like marital infidelity or extra-marital affairs, as it causes mental and emotional anguish, public ridicule and humiliation to the woman and her child. Furthermore, the law enumerates by way of example, acts of physical, sexual, psychological and economic violence, but does not limit the acts to such enumeration.⁵⁵

Acts causing mental or emotional anguish, such as marital infidelity, are punished by *prision mayor*.⁵⁶ However, the law does not define marital infidelity in particular. The Revised Penal Code, on the other hand, addresses marital infidelity in two forms: adultery and concubinage. Following the suppletory application of the Revised Penal Code,⁵⁷ marital infidelity under the Anti-VAWC Act may be interpreted to equate concubinage. Concubinage is committed by a "husband who shall keep a mistress in the conjugal dwelling, or shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place."⁵⁸ It is punished by *prision correccional*. It is also classified as a crime against chastity, which can only be filed by the offended

52. United States v. Leano, 6 Phil. 368, 372 (1906).

53. Anti-VAWC Act, § 5 (i) (emphasis supplied).

54. RUPERTO G. MARTIN, STATUTORY CONSTRUCTION 67 (6d ed. 1984). Under the principle of *ejusdem generis*, where general terms follow the designation of particular things or classes of persons or subjects, the general terms will be construed to include those things or persons of the same nature as those specifically enumerated.

55. Anti-VAWC Act, § 3.

56. *Id.* § 6 (f).

57. Anti-VAWC Act, § 47; An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 10 (1932).

58. *Id.* art. 334.

party, and the crime must be charged against both the husband and the mistress. Such requirements are absent under the Anti-VAWC Act.

Since the Anti-VAWC Act seeks to address violence against women in intimate and domestic relationships, the interpretation of marital infidelity, being an act causing mental or emotional anguish, should not be limited to concubinage. Moreover, the penalty prescribed under the Anti-VAWC Act is more stringent than that under the Revised Penal Code.

4. The Supreme Court has yet to provide construction of the provisions of the Anti-VAWC Act.

Three years after the effectivity of the Anti-VAWC Act, the Supreme Court has yet to provide construction for the absurdities and gaps in the law. As a consequence, legal interpretations of the Anti-VAWC Act are usually taken from those of the common crimes penalized under the Revised Penal Code.

One issue raised in the focus group discussions held by SALIGAN⁵⁹ is the difference in the treatment of the circumstance of relationship under the Anti-VAWC Act and under the Revised Penal Code.

Under the Act, relationship is an element of the offense itself. Meaning, for the crime to be prosecuted under it, the act or acts must be committed by a person against a woman who may be a wife or former wife, or with whom the abuser has or had a sexual or dating relationship, or with whom the abuser has a common child; or the woman's child, whether legitimate or illegitimate.⁶⁰ Being inherent and inseparable from the offense, relationship cannot, in any way, affect the penalty to be imposed because the qualification given to the crime is derived from the relationship between the offender and the offended party.⁶¹

On the other hand, under the Revised Penal Code, relationship is generally aggravating in the crimes against persons.⁶² Aggravating circumstances are those which, if attendant in the commission of the crime, serve to increase the penalty.⁶³ However, relationship in this case is limited to the following: spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degree of the offender.⁶⁴

Based on the foregoing, the following possible conclusions can be made:

59. Focus group discussion held in SALIGAN Office, Quezon City (Apr. 16, 2007).

60. Anti-VAWC Act, § 3 (a).

61. 1 LUIS REYES, THE REVISED PENAL CODE ANNOTATED 467 (2001).

62. *Id.* at 465.

63. *Id.* at 317.

64. REVISED PENAL CODE, art. 15.

- (1) If the relationship between the offender and the offended party is legitimate, meaning, the abused is the wife or child of the abuser, it is better to prosecute the offense under the Revised Penal Code for relationship to be appreciated as aggravating;
- (2) If the abused victim-survivor is a former wife, or someone with whom the abuser has or had a sexual or dating relationship, or someone with whom the abuser has a common child, or if the victim-survivor is the woman's child, the offense should be prosecuted under Anti-VAWC Act, since relationship is an element thereof.

Applying the above-mentioned principle to specific acts of violence such as physical injury and rape would result in such effects as will be discussed below.

Serious Physical Injury

The Anti-VAWC Act does not define serious physical injury but provides a penalty thereof,⁶⁵ such as *prision mayor*.⁶⁶ Being an element of the offense, relationship cannot be appreciated to aggravate the penalty to its maximum period.

On the other hand, the penalty provided by the Revised Penal Code varies according to the effects created by the violent act.⁶⁷ For example, if due to the violent act of the perpetrator, the abused woman suffers from physical injuries that cause the incapacity for labor of the injured person for more than 30 days, the penalty to be imposed is *arresto mayor*⁶⁸ in its maximum period.⁶⁹ If the offended party is the spouse or descendant of the offender, the penalty imposed is higher, in our example, *prision correccional*⁷⁰ in its minimum and medium periods.⁷¹

In the case of serious physical injury, prosecuting the offense under the Anti-VAWC Act has the following advantages:

- (1) With the exception of the first instance of physical injury under the Revised Penal Code, such as that an injured person shall become insane, imbecile, impotent or blind,⁷² the penalty

65. Anti-VAWC Act, § 6 (a).

66. REVISED PENAL CODE, art. 27. The penalty is six years and one day to 12 years.

67. *Id.* art. 263.

68. *Id.* art. 263 (4).

69. *Id.* art. 27. The penalty is four months and one day to six months.

70. *Id.* art. 263.

71. *Id.* art. 27. The penalty is six months and one day to four years and two months.

72. REVISED PENAL CODE, art. 263 (1).

provided by the Anti-VAWC Act is graver than that of the Revised Penal Code; and

- (2) The scope of relationship under the Anti-VAWC Act is broader than that of the Revised Penal Code as the former includes those committed against a wife or former wife, or with whom the abuser has or had a sexual or dating relationship, or with whom the abuser has a common child; or the woman's child, whether legitimate or illegitimate,⁷³ while the latter only recognizes acts committed against the wife and descendant.⁷⁴

Rape

Under the Anti-VAWC Act, rape is an act of sexual violence.⁷⁵ Rape under this law covers that act which is committed by any person against a woman, who is his wife, former wife, or against a woman with whom the person has had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate.⁷⁶ However, the law does not provide a definition of rape nor does it provide a specific penalty thereof.⁷⁷ In this case, the provisions of the Revised Penal Code on rape will have to apply with all the legal effects.⁷⁸

Under the Anti-Rape Act⁷⁹ (incorporated as articles 266-A to 266-D of the Revised Penal Code), the crime of rape is committed either through sexual intercourse or sexual assault.⁸⁰ Rape through sexual intercourse shall

73. Anti-VAWC Act § 3 (A).

74. REVISED PENAL CODE, art. 263.

75. Anti-VAWC Act, § 3 (B) (a).

76. *Id.* § 3 (a).

77. *Id.* § 6.

78. *People v. Simon*, 234 SCRA 555, 574-75 (1994).

79. An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes [The Anti-Rape Law of 1997], Republic Act No. 8353 (1997).

80. REVISED PENAL CODE, art. 266-A provides:

Rape is committed –

- (1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - a) Through force, threat or intimidation;
 - b) When the offended party is deprived of reason or is otherwise unconscious;
 - c) By means of fraudulent machination or grave abuse of authority;

be punished by *reclusion perpetua*.⁸¹ It further provides that the mandatory penalty of death is imposed when the victim-survivor is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim-survivor.⁸² However, under present laws, death penalty is prohibited and *reclusion perpetua* is imposed in lieu of death.⁸³

It is important to consider that *reclusion perpetua* is classified as a single indivisible penalty,⁸⁴ meaning, regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime, the penalty will have to be applied by the courts.⁸⁵

Therefore, regardless of any relationship present between the offender and the victim-survivor, it will not affect the penalty to be imposed, whether it is prosecuted under the Anti-VAWC Act or under the Anti-Rape Act.

5. Violence includes psychological abuse and economic abuse, which are treated as criminal offenses by the Anti-VAWC Act.

Domestic violence usually connotes physical and/or sexual violence. These kinds of abuse have already been recognized as crimes in the Revised Penal Code. Psychological and economic abuse, however, are of a different nature. Because of its innate subtlety, these kinds of abuses are often left out as cause of action in criminal complaints. There being no physical manifestations for such kinds of abuse, even the victim-survivors themselves find it hard to relate psychological abuse and economic abuse as a violation of their rights. The inclusion of these kinds of abuses in the enumeration of acts of violence in the Anti-VAWC Act,⁸⁶ however, leaves no room for doubt. Physical abuse and economic abuse are forms of violence and are criminal offenses.

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

- (2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

81. *Id.* art. 266-B. The penalty is 20 years and one day to 40 years.

82. REVISED PENAL CODE, art. 266-B.

83. An Act Prohibiting the Imposition of Death Penalty in the Philippines, Republic Act No. 9346 (2006).

84. REYES, *supra* note 61, at 731.

85. REVISED PENAL CODE, art. 63.

86. Anti-VAWC Act, § 5.

Psychological or Emotional Abuse

Psychological or emotional abuse refers to the humiliation or intimidation of another person, to wit:

It is at least as damaging as physical abuse. Battered women often cite psychological humiliation and isolation as their worst battering experiences. Many battered women are ignored, ridiculed, criticized, punished, threatened, and manipulated with lies and contradictions. Too often, the women become depressed and lose confidence in themselves.⁸⁷

Under the Anti-VAWC Act, psychological violence refers to "acts or omissions causing or likely to cause mental or emotional suffering of the victim-survivor such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse, and marital infidelity."⁸⁸

In prosecuting psychological violence, the complainant has to prove two things. First, evidence must be adduced to prove the commission or omission of the act like intimidation, harassment, stalking, or repeated verbal abuse. Second, it must be shown that such act was the cause of the mental or emotional suffering of the victim-survivor. Although not required, the impact of the violence to the victim-survivor's life will be best proved by the evaluation and testimony of an expert witness, such as a psychiatrist or psychologist.

Economic Abuse

Before the passage of the Anti-VAWC Act, economic aspects of domestic relationships are addressed by the provisions on support under the Family Code.⁸⁹ In cases of refusal to provide sufficient support, a petition for support was allowed to be filed in the appropriate court.

Economic violence, however, should not be confined to the issue of support, to wit:

Economic abuse means having no access to family money. It implies that the abusive partner maintains control of the family finances, deciding without regard for the other person how the money is to be spent or saved, thereby reducing the woman to complete dependence for money to meet her personal needs. Even though a woman may live in a comfortable house, wear good clothing or have children who are well-equipped with toys and luxuries, she may have no control over what monies come into the family or over any decisions about what will be brought. Economic

87. NOW DEFENSE AND EDUCATIONAL FUND, THE STATE-BY-STATE GUIDE TO WOMEN'S LEGAL RIGHTS 34 (1987).

88. Anti-VAWC Act, § 3 (C).

89. The Family Code of the Philippines [FAMILY CODE], Executive No. 209, Title 8 (1987).

abuse can include withholding or restricting money needed for necessities like food or clothing, preventing her from getting or keeping a job, taking her money, denying her independent access to money and excluding her from financial decision-making.⁹⁰

The Family Code first sought to address this issue by providing that either spouse may exercise any legitimate profession, occupation, business, or activity without the consent of the other.⁹¹ While it recognized the right of women spouses to pursue their economic right, it was not sufficient to address economic abuse in domestic relationships as it did not treat violation of such rights as punishable offense.

Under the Anti-VAWC Act, economic abuse refers to acts that make or attempt to make a woman financially dependent such as the withdrawal of financial support or preventing the victim-survivor from engaging in any legitimate profession, occupation, business, or activity; deprivation or threat of deprivation of financial resources; destroying household property; and controlling the victim-survivor's own money or properties or solely controlling the conjugal money or properties.

In the prosecution of economic abuse, the complainant has to prove the presence of the act and that the purpose of such act is to make the woman financially dependent. This action should be treated separately from that of a petition for support which only determines the entitlement of the petitioner to and the amount of support.

No Compromise

Again, cases of psychological and economic abuse should not be the subject of compromise between parties.⁹² These types of violence are real and have a lifelong impact on a person, even after the abusive relationship has ended.

6. The Anti-VAWC Act must be liberally construed in favor of the offended party.

Since the Anti-VAWC Act is a piece of social legislation, the provisions of the law should be liberally construed in favor of the private complainant to promote the protection and safety of victim-survivors of violence against women and their children.⁹³ Any doubt should be interpreted in such a way as to give meaning to the purpose for which the Anti-VAWC Act was enacted such as to put an end to violence experienced by women and their children in domestic and intimate relationships.

90. PRINCE EDWARD ISLAND WOMAN ABUSE PROTOCOLS (2000).

91. FAMILY CODE, art. 73.

92. RULE ON VIOLENCE, § 23 (d).

93. Anti-VAWC Act, § 4.

Social legislation is a "broad category of law that protects or promotes the welfare of society or segments of it in furtherance of social justice."⁹⁴ It recognizes levels of oppression and power imbalance in the society and seeks to address such by providing remedies and venue for the oppressed class to redress their grievances. Among the popular pieces of social legislation are the Labor Code⁹⁵ and the Comprehensive Agrarian Reform Law.⁹⁶ Statutes granting rights to laborers, debtors and the poor or the persons known to be suffering from disadvantages are liberally construed in their favor⁹⁷ to give life to the purpose for which it was enacted.

The enactment of the Anti-VAWC Act is a recognition of the oppression being experienced by women and their children in intimate and domestic relationships. The State, under the concept of *parens patriae*, recognized the need to protect women and children from violence and threats to their personal safety and security.⁹⁸

It is well known that criminal laws are liberally construed in favor of the accused and that the degree of evidence required to convict is proof beyond reasonable ground such as the degree of proof which produces conviction in an unprejudiced mind, otherwise, the accused is entitled to an acquittal.⁹⁹ This is so because conviction in a criminal case is punished by imprisonment, which is a deprivation of liberty, and in certain cases, a deprivation of the right to life.

However, it is SALIGAN's position that although the Anti-VAWC Act is a penal statute in so far as it defines acts of violence against women and children and penalizes the same, it should be liberally construed in favor of the offended party because it is a piece of social legislation intended to protect women who are victim-survivors of abuse.

B. The Protection Order as a Remedy

1. Court-Issued Protection Order

Waiver of Filing Fees

94. CESARIO A. AZUCENA, EVERYONE'S LABOR CODE 7 (2001).

95. A Decree Instituting a Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Ensure Industrial Peace based on Social Justice, Presidential Decree No. 442, as amended (1974).

96. Comprehensive Agrarian Reform Law, Republic Act No. 6657 (1988).

97. MARTIN, *supra* note 53, at 49.

98. Anti-VAWC Act, § 2.

99. REVISED RULES ON EVIDENCE, rule 134, § 2.

Payment of filing fees presents an obstacle in initiating a petition for the issuance of a protection order as most of those who seek this remedy have no means to support themselves and suffer from economic abuse from their spouses.

Like any other legal proceeding, the payment of docket fees and other expenses are required in filing for a protection order. Section 11 (f) of the Anti-VAWC Act, however, provides that the petitioner may request for the waiver of application fees until hearing. The law goes on further to state that if the victim-survivor is an indigent or there is an immediate necessity due to imminent danger or threat of danger to act on an application, the court shall accept the application without payment of the filing fee, and of transcript of stenographic notes,¹⁰⁰ and other fees.

While filing as a pauper litigant or indigent is not a new concept in legal procedure, the exemption due to imminent danger or threat of danger to the petitioner is an innovation brought about by the law. In including it as a ground for exemption, the law recognized the urgent need to secure the safety of the petitioner by accepting its application for a protection order absent any payment of docket or legal fees. The law therefore seeks to give to the petitioner immediate access to a protection order in the event that any danger or threat of danger against her person is present.

It is sad to note, however, that requests for waiver of payment of docket fees based on this ground is not recognized in filing for a petition for a protection order. In actual practice, indigency is the only accepted exemption to the payment of legal fees. As such, petitioners are forced to produce documents evidencing their lack of financial capacity to sue even if danger or threat of danger upon her is alleged in the petition for protection order. Worse, even criminal cases involving prohibited acts under the Anti-VAWC Act are not exempted from payment of docket fees as some courts now subject criminal cases to payment of fees.

Even asserting a pauper litigant status in filing cases is not made easy as affidavits and certifications as to financial status are required from petitioner before she may be allowed to file a petition. Compliance to these requirement takes time and more importantly, monetary expense, things which the petitioner obviously does not have. Often, support groups of the petitioner contribute to the payment of legal fees just to facilitate the filing and issuance of the protection order. However, payment of docket fees without the corresponding recognition of the court that petitioner is a pauper litigant does not exempt her from fees that will be incurred throughout the duration of the case.

100. Anti-VAWC Act, §§ 11 & 38.

Needless to say, the lack of information, awareness, and specific policy of the courts in implementing the exemptions from filing fees in relation to the Anti-VAWC Act, erodes the intent of the law to provide immediate protection to the petitioner by ensuring the issuance of a protection order in the soonest possible time.

Mandatory Period for Issuance of TPO

The mandatory and speedy issuance of a protection order is a clear policy set forth in the law. As stipulated in the provisions, a TPO must be issued on the date of the filing of the application after *ex parte* determination that sufficient ground exists for the issuance of a protection order. Furthermore, priority over all other proceedings is given to hearings involving the determination of the basis for the application for a protection order. The law went as far as to provide for the suspension of other proceedings in order to hear applications for a protection order. It also stipulated that failure to act within the reglementary period absent any justifiable cause also renders the official or judge concerned administratively liable.¹⁰¹

For a victim-survivor of violence, urgency in the issuance of a protection order cannot be stressed enough. The issuance of a protection order is the first legal recognition of the violence that is being experienced by the petitioner. And through the protection order, the Court is able to penetrate and intervene in private relationships of persons where abuse and violence is present. It is able to provide protection and secure the human rights of citizens from further violation.

Thus, protection orders must be viewed differently from its traditional misconception that it simply concerns domestic affairs. It should be recognized that a denial of the issuance of a protection order is a denial of the protection of human rights. In the same manner that an accused imprisoned is denied of his right every day that he is detained unlawfully, such also may be said for every day that a woman is denied of a protection order as she is made to endure the abuses against her person from the respondent.

Prohibited Pleadings as Scrap of Paper

In addition to the provision on the mandatory period with in which to decide cases, the Supreme Court promulgated rules on Violence against Women and Their Children which specifically provide for the prohibited filing of certain pleadings¹⁰² that may cause to delay or prolong the litigation of the case. Among those included in the list of prohibited pleadings are Dilatory Motions for Postponement and Motions for extension of time to file opposition, affidavit, position paper and other pleadings.

101. *Id.* § 18.

102. RULE ON VIOLENCE, § 22.

However, in the case of non-appearance of the respondent and in the non-availability of the lawyer representing the respondent during the scheduled hearing, the courts, as a matter of course, resets the said hearing to a later date notwithstanding the period stipulated to hear the case under the law, as well as the prohibitions mentioned in the Rules issued by the Supreme Court on the matter.

Motions for Postponements and Motions for Extension of Time to file pleading are often used as dilatory tactics to prolong the case. This increases the emotional and financial strain on the part of the petitioner. For instance, one petition for issuance of a protection order handled by SALIGAN took more than two years before the PPO was finally issued.

As a general rule in litigation, prohibited pleadings must be treated as "mere scraps of paper" which should not be taken cognizance of by the courts. Thus, in the event of filing of such in cases involving the Anti-VAWC Act, such motions should be stricken from the record for being prohibited and filing it should be deemed a waiver of the party's right to be present in the hearing.

Finality of PPO or Appeal

A PPO is defined under the law as a protection order issued by the court after notice and hearing.¹⁰³ It is tantamount to a decision of a court in a civil proceeding after properly hearing the merits of the case. Its issuance marks the end of the process of determination of the court. If after hearing it finds no basis to make the TPO permanent, the court issues an order denying the petition for a PPO. On the other hand, if it sufficiently finds valid ground to make TPO permanent, it shall issue an order granting the petition for a PPO.

By its very nature, a PPO, once issued cannot be amended or revised. The law provides only one exception whereby a PPO may be terminated – when the very person in whose favor the order was issued applies for its revocation. Other than that, no attack on the PPO may be made or recognized by the Court.

The rules promulgated by the Supreme Court¹⁰⁴ strengthen this construction as it expressly prohibits any motion challenging the executory nature of a PPO.¹⁰⁵ It specifically prohibits any Motion for New Trial, or for Reconsideration of a Protection Order, or for the Reopening of a Trial.

¹⁰³ Anti-VAWC Act, § 16.

¹⁰⁴ See generally, RULE ON VIOLENCE.

¹⁰⁵ Resolution of the Court En Banc Dated October 15, 1991 Providing for the Revised Rule on Summary Procedure for Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial

These considered, any pleading filed after the issuance of a permanent protection order through motions and/or manifestations with the intent of modifying, amending, revising the previously issued PPO should be dismissed outright by the court as it undermines the very nature of PPO and defeats the very purpose of the permanency of such order.

It is obvious that the intent of the law is to have the PPO binding on the parties for as long as the person in whose favor it was issued deems it necessary for her and her children's protection. No attack on the provisions of the PPO should be allowed by the court as it very well violates the provision of the law and the legal process but more importantly, it violates the right of the woman and the child whom the laws seeks to protect.

Executory Nature Pending Appeal

The well-founded consideration afforded by law to women victim-survivor does not diminish the right of the party aggravated by the issuance of a PPO to appeal. Any aggrieved party may appeal the issuance of a PPO by filing a notice of appeal with the court that rendered the final order or judgment within fifteen days from notice and serving a copy thereof upon the adverse party.¹⁰⁶ But this appeal does not stay the enforcement of the PPO¹⁰⁷ as the

Courts [REVISED RULES ON SUMMARY PROCEDURE], § 22 (1991). The following pleadings, motions or petitions shall not be allowed in the cases covered by this Rule:

- (a) Motion to dismiss the complaint or to quash the complaint or information except on the ground of lack of jurisdiction over the subject matter, or failure to comply with the preceding section;
- (b) Motion for a bill of particulars;
- (c) Motion for new trial, or for reconsideration of a judgment, or for opening of trial;
- (d) Petition for relief from judgment;
- (e) Motion for extension of time to file pleadings, affidavits or any other paper;
- (f) Memoranda;
- (g) Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court;
- (h) Motion to declare the defendant in default;
- (i) Dilatory motions for postponement;
- (j) Reply;
- (k) Third party complaints;
- (l) Interventions.

¹⁰⁶ RULE ON VIOLENCE, § 31.

¹⁰⁷ *Id.*

grant of such is immediately executory.¹⁰⁸ A judgment granting the issuance of a PPO has been declared by the Supreme Court in clear terms as one that is immediately executory. Thus, it falls among those referred to under rule 39, section 4 of the rules of Court as judgments not stayed by appeal.¹⁰⁹

The precise terms by which the law pronounces the character of a PPO as immediately executory should completely abate all attempts to use the remedy of an appeal as means to delay the effects of a PPO which, after all, is always issued after proper notice and hearing. Offending parties often insist on the stay of execution of a PPO upon appeal; clearly, this is against the law. A party contesting a PPO may only be granted relief upon final reversal of such order. Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances.¹¹⁰

Rules on the execution of PPOs recognize the urgency underlying the issuance of these orders and reinforce the purpose stated in the Anti-VAWC Act of "preventing further acts of violence against a woman or her child" and "of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life."¹¹¹

2. *Barangay* Protection Order

In addition to filing a criminal case and a petition for protection order in Court, the Anti-VAWC Act also provides for the filing for an application for a protection order with the *Barangay*. The *Barangay* Protection Order (BPO) is a protection order issued by the *Punong Barangay* or any available *Barangay Kagawad*, ordering the perpetrator to desist from causing or threatening to cause physical harm to the woman or her child.¹¹² It is an innovative remedy put forth in the law as the *Barangay* is the most immediate local government

¹⁰⁸ *Id.* § 30.

¹⁰⁹ 1997 RULES OF CIVIL PROCEDURE, rule 39, § 4.

Sec. 4. *Judgments not stayed by appeal.* – Judgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support.

¹¹⁰ *Id.* rule 39, § 5.

¹¹¹ Anti-VAWC Act, § 8.

¹¹² *Id.* § 14.

unit able to give protection to the victim-survivor. Although not exclusive to the other remedies provided by the Anti-VAWC Act, the BPO may also be considered as an alternative to judicial remedies, which makes much use of resources, financial and otherwise, as well as time in the disposition of cases.

Taking all these into consideration, the BPO is said to be the most efficient and effective remedy in providing assistance and protection to victim-survivor of VAW. However, experiences of clients, paralegals and partner social counselors in availing of BPOs tell us otherwise. Some of the common difficulties encountered by women victim-survivors in availing of this remedy are thus discussed below.

Ex Parte Issuance of a BPO

As one of the protection orders that may be availed of under the law, the BPO is the easiest, cheapest and the fastest order to avail of as the victim-survivor needs only to file her application for a BPO in accordance to the requisite provided by the Anti-VAWC Act, such as that it has to be in writing, signed by the applicant, and in a language understood by her. The application shall then be attested before the *Punong Barangay*, who has jurisdiction over the application.¹¹³

The *Punong Barangay* or *Kagawad* available at the time of the application for a BPO must accept the application and assist the victim-survivor in her application. He or she must also prioritize the application over all other proceedings.¹¹⁴ Upon receipt of the application, the *Punong Barangay* or *Kagawad* must determine the merits of the content of the application, such as the names and addresses of the petitioner and the respondent, the description of the relationship between the petitioner and the respondent, the circumstances of the abuse, and the reliefs sought by the petitioner.¹¹⁵

This determination must be done *ex parte*, that is, without notice and hearing to the respondent.¹¹⁶ Nevertheless, the victim-survivor or petitioner may be accompanied by any non-lawyer advocate, such as a social worker, in the proceedings before the *Punong Barangay*.¹¹⁷ Immediately, upon the conclusion of the *ex parte* proceedings, the *Punong Barangay* or *Kagawad* must determine whether or not the BPO must be issued based on the merits of the application.

¹¹³ Implementing Rules, § 14 (a).

¹¹⁴ *Id.*

¹¹⁵ Anti-VAWC Act, § 11 (a) - (d).

¹¹⁶ Implementing Rules, § 14 (b), ¶ 2.

¹¹⁷ *Id.*

If the application is meritorious, the *Punong Barangay* or *Kagawad*, must issue the BPO on the same day of application, immediately upon the conclusion of the *ex parte* proceedings. If the *Punong Barangay* is unavailable to act on the application for BPO, the application shall be acted upon by any available *Barangay Kagawad*. In such a case, the order must be accompanied by an attestation by the *Barangay Kagawad* that the *Punong Barangay* was unavailable at the time of the issuance of the BPO.¹¹⁸ The BPO shall state the last known address of the respondent, the date and time of issuance, and the protective remedies prayed for by the victim-survivor or petitioner.¹¹⁹

Despite the clear provisions of law, the *ex parte* issuance of the BPO does not really happen.¹²⁰ According to some social workers who have assisted victim-survivors in availing of a BPO, there are instances when the *Punong Barangay* does not follow the *ex parte* determination of an application of a BPO, but would just require hearing and give notice to the respondent.

This is a clear violation of the law's mandate to *barangay* officials to issue a BPO to the applicant on the date of filing, after *ex parte* determination of the basis of the application.¹²¹ Moreover, the requirement of a hearing prolongs the process for an application of a BPO, which should be available on the same day of the application.

Immediate Service of the BPO to the Respondent

Immediately after the issuance of an *ex parte* BPO, the *Punong Barangay* or *Kagawad* shall personally serve a copy of the same on the respondent, or direct any *barangay* official to effect personal service. The BPO is deemed served upon receipt thereof by the respondent or by any adult who received the BPO at the address of the respondent. In case the respondent or any adult at the residence of the respondent refuses, for whatever cause to receive the BPO, it shall likewise be deemed served by leaving a copy of the BPO at the said address in the presence of at least two witnesses. The *barangay* official serving must issue a certification setting forth the manner, place and date of service, including the reasons why the same remain unserved.¹²²

Again, in reality, this mandate is not observed. In one of the focus group discussions sponsored by SALIGAN, one of the participants manifested that some of the *barangay* officials refuse to issue and serve BPOs, especially in cases where they have close ties with the respondent.¹²³ This is a clear

118. *Id.*

119. *Id.* ¶ 1.

120. Anti-VAWC Act, § 14.

121. *Id.*

122. Implementing Rules, § 14 (c).

123. NNFVPP Consultations in Boso-boso Highlands Tanay, Rizal (Oct. 4, 2007).

violation of the law and the rules which order not only the immediate issuance of the BPO but also the immediate service of the BPO to the respondent, or to any adult or to at least two witnesses present, at the residence of the respondent, and that even if the BPO is unserved, the *Punong Barangay* or *Kagawad* must explain the reason for such. Therefore, desistance of the *barangay* official due to personal reasons cannot excuse the non-service of the BPO. Instead, another *barangay* official must be ordered to do the service. The erring official must be reported to the *Sanggunian* for failure to perform his or her duty and made liable for gross neglect of duty or misfeasance.¹²⁴

Automatic Renewal of BPO

The Anti-VAWC Act provides that a BPO shall be effective for 15 days.¹²⁵ However, unlike the provision on automatic renewal or extension for TPO,¹²⁶ no similar provision can be found for BPOs. However, the rules mandate that within 24 hours after a BPO is issued, a *Punong Barangay* or in her or his absence or inability, any available *Barangay Kagawad* shall assist the victim-survivor or petitioner in filing for an application for a TPO or PPO with the nearest court in the place of residence of the victim-survivor.¹²⁷ And that the issuance of a BPO shall not preclude the victim-survivor or petitioner from applying for a TPO or a PPO.¹²⁸

The absence of a provision on automatic renewal or extension of a BPO upon its expiration causes some problems to the victim-survivors, as was made evident in the focus group discussions that SALIGAN conducted. As mentioned by a social worker, "there are *barangay* officials who require the petitioner to refile the application for it to be renewed which causes additional difficulties to the victim-survivor since she has to go through the whole process again."¹²⁹ And in extreme cases, the *barangay* officials do not allow a renewal of a BPO — the reason being that it should only be availed of once. Instead the *barangay* officials would advise the victim-survivor to file directly an application for a TPO with the court, without assisting the victim-survivor, despite the mandate that the *Punong Barangay* or *Kagawad* should assist the victim-survivor in the filing for an application for a TPO or PPO with the court.

Another problem that is brought about by the absence of a provision mandating an automatic renewal or extension of the BPO is the recurrence

124. Implementing Rules, § 47 (p), ¶ 2.

125. Anti-VAWC Act, § 14.

126. *Id.* § 16.

127. Implementing Rules, § 14 (d).

128. *Id.* § 14 (g).

129. Focus group discussion held in SALIGAN Office, Quezon City (July 25, 2007).

of the act of abuse or violence during the interim, since the victim-survivor does not have any protection. In one of the focus group discussions that SALIGAN conducted, it was mentioned that "there was a case where the perpetrator stayed away from the victim-survivor during the effectivity of the BPO. After its expiration, however, the perpetrator went back to the conjugal dwelling where the victim-survivor stays. As a consequence, the victim-survivor has to apply for another BPO whenever a previously issued BPO expires."¹³⁰

Prohibition against Influencing the Victim-Survivor to Compromise Anti-VAWC Cases

The Anti-VAWC Act provides that a *Punong Barangay* or *Kagawad* shall not order, direct, force or in any way unduly influence the applicant to compromise or abandon any of the reliefs sought in the application for protection order. Failure to comply shall render the official administratively liable.¹³¹

As previously mentioned in this paper, VAWC, as a criminal act, is considered by the law as a public offense. And like other criminal acts, an act of VAW should not be subject to compromise. The mere fact that the remedy availed of by the victim-survivor is a BPO does not remove such prohibition since under the law, any influence by the *barangay* officials to the victim-survivor to compromise any of the reliefs the former sought in her application for a BPO shall be considered a punishable act.¹³²

But again, in reality, there are cases which are compromised by the *barangay* officials because of the "Kumpare System" prevailing in the community. A service provider expressed that there are instances when a *barangay* official would deny outright an application for a BPO because he or she knows the perpetrator.¹³³ In another case, the *Punong Barangay* who is a friend of the perpetrator, talked to the victim-survivor, which in the end, resulted to a compromise and amicable settlement between the parties.¹³⁴

Other Requirements for the Issuance of a BPO

In order to apply for a BPO, the application must be in writing, signed by the victim-survivor or petitioner, and in a language understood by her.¹³⁵ These are the only requirements provided by law, which make it easier for a victim-survivor to apply for a BPO as compared to an application for a TPO

^{130.} *Id.*

^{131.} Implementing Rules, § 14 (b) ¶ 2.

^{132.} Anti-VAWC Act, § 33.

^{133.} *See*, Implementing Rules.

^{134.} *Id.*

^{135.} Anti-VAWC Act, § 14.

or PPO. In fact, a mere oral report to a *barangay* official of an act of VAW is acceptable. Once a *barangay* official receives a report on an act of VAW, it is his or her duty to verify the information and if necessary, even seek the assistance of the police.¹³⁶ Whether or not a protection order has been issued, a *barangay* official must immediately respond to a call for help or a request for assistance or protection of the victim-survivor by entering the dwelling.¹³⁷ Also, the *barangay* official has the duty to interview the victim-survivor and witnesses to determine the facts, and inform the victim-survivor of their rights and remedies. In order to preserve the testimony of the victim-survivor and the witnesses, said official should document the interview in writing or record the testimonies by audio or videotape with the consent of the victim-survivor.¹³⁸ However, based on the focus group discussions SALIGAN conducted, there are other requirements that *barangay* officials ask from the victim-survivors or petitioners such as filing fees, medico-legal reports, and affidavit and personal appearance of the victim-survivor or petitioner.

Another concern of service providers is that *barangay* officials and police officers always ask for the medico-legal report as basis for filing an application for protection order. A sworn statement of the applicant for BPO would not suffice as proof for the physical abuse committed against her if not accompanied by a medico-legal report evidencing the same. In case of other kinds of violence mentioned under the law, the statement of the victim-survivor must be accompanied by affidavits of witnesses. This requirement to support sworn affidavit of the application with additional evidence in the form of medico-legal report and/or affidavits of other witnesses casts needless strain to the applicant who needs immediate and urgent legal protection.

The *barangay* officials also require some sort of filing fee which is totally absent from the law. Under the law, the BPO shall be issued free of charge.¹³⁹ In fact, even in cases filed before the Courts, if the victim-survivor is an indigent, the Court shall accept the application without payment of the filing fee and other fees and of transcript of stenographic notes.¹⁴⁰ With more reason should a BPO be available without charge to the complainant.

Lastly, there are *barangay* officials who require that the application be filed by the victim-survivor or petitioner herself. If somebody files the application in behalf of the victim-survivor, even if such person has personal knowledge of the circumstances of the abuse, the application will not be

^{136.} Implementing Rules, § ¶ 2 (a).

^{137.} *Id.* (b).

^{138.} *Id.* (c).

^{139.} *Id.* § 14 (d).

^{140.} Anti-VAWC Act, § 38.

entertained even if there is a valid reason for the non-appearance of the victim-survivor. This is a clear violation, since the law provides that, aside from the offended party, an application for a protection order may also be filed by the parents or guardians of the offended party; ascendants, descendants, or collateral relatives within the fourth civil degree of consanguinity or affinity; officers or social workers of the DSWD or social workers of local government units; or at least two concerned responsible citizens of the city or municipality where the VAW occurred and who has personal knowledge of the offense committed.¹⁴¹

Violations of BPO

As much as the Anti-VAWC Act intends to protect VAW victim-survivors, BPOs are sometimes reduced to mere scraps of paper as they are easily violated. The law provides for several remedies and sanctions in cases where protection order is violated. It likewise provides for sanctions in case of violations of any of the duties and responsibilities mandated by law to officials concerned.

Violation of a BPO shall be punishable by imprisonment of 30 days without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.¹⁴² In fact, the law mandates that a notice of the sanction must be printed on the protection order issued.¹⁴³ On the other hand, if the *barangay* official failed or neglected to perform her or his duty, the proper case may be filed against him or her.

A BPO which involves physical abuse, in general, orders the perpetrator to immediately cease and desist from causing or threatening to cause physical harm to the victim-survivor. It may require the removal and exclusion of the respondent from the residence of the petitioner and further direct the respondent to stay away from the petitioner.¹⁴⁴ However, at the *barangay* level, the removal of the perpetrator often times does not take place, which results to continuous access of the abuser to commit the violence against the woman. In some cases, even if the violence is occurring or even when the *barangay* official has personal knowledge that an act of abuse was committed, they do not arrest the abuser, even if the law allows the arrest of the perpetrator even absent a warrant.¹⁴⁵

Another violation of BPO occurs when the respondent reneges on his financial responsibility to his family. Monetary reasons are sometimes used as

141. *Id.* § 9.

142. *Id.* § 21.

143. *Id.* § 17.

144. *Id.* § 8 (c) (d).

145. Implementing Rules, § 47, ¶ 2 (d).

lures either to not file BPO or to desist from implementing the same. The law addresses this issue by mandating *barangay* official to call the respondent for counseling and explain to him his legal obligations to support his wife.¹⁴⁶

Threat to the Security of the Service Providers

One protection that the law explicitly provides to persons intervening in cases of VAWC, such as the *barangay* officials, is exemption from any civil, criminal, or administrative liability.¹⁴⁷ The law also provides that the privacy, identity, as well as the location of the service providers, including non-government organizations and people's organization, shall not be disclosed by any person who has knowledge of such.¹⁴⁸ However, these safeguards are not sufficient to provide the needed security to service providers. Unlike the victim-survivors, service providers have no protection orders to guard them against harassment or any act of retaliation by the perpetrators. The only recourse available to them is to file appropriate cases against the perpetrator.

IV. AN ADVOCACY BEYOND LEGISLATION

The enactment of the Anti-VAWC Act is a legal milestone in the advocacy against VAW as it contributes to women's empowerment by providing specific remedies by which women can be free from the bondage of abusive domestic and intimate relationships. Through the law's blatant condemnation of domestic violence, women have found an ally in the legal realm. Armed with their rights under the law, more and more women are coming out to put an end to the abusive situations they were made to suffer as can be seen in the data from the Philippine National Police.

The SALIGAN's advocacy to end domestic violence, however, does not end with the passage of the Anti-VAWC Act. Based from experiences in handling VAWC cases, together with that of their partners and paralegals, SALIGAN have fully recognized the need to improve the manner by which the law is implemented either through awareness of the people responsible for the proper execution of the law, or through subsequent legislation amending problematic provisions of the law. Indeed, the issues and challenges presented in this paper are but a few of the legal absurdities they have faced in the cases that they have represented.

Since most of the problems encountered in handling and litigating VAWC cases are due to the ignorance and indifference of those tasked by the law to implement the same, ensuring that concerned officials are properly trained and equipped with the necessary knowledge of the law as well as gender-sensitive values is vital and indispensable in the delivery of

146. *Id.* ¶ 2 (p).

147. Anti-VAWC Act, § 34.

148. Implementing Rules, § 45.

services provided for in the law. Likewise, initiatives from respective government agencies, inter-agency cooperation, and non-governmental organizations and people's organization (NGO-PO) as well as their involvement in the development of subsequent policies that will aid the effective implementation of the law are crucial in ensuring the success and accomplishment of the purpose for which the law was enacted.

The enactment of the Anti-VAWC Act is an important step in the struggle to end VAW. However, it is only the first step. The struggle continues as advocates against VAW are now faced with an equally difficult task of making sure that the letters of the law are given life, so that the protection given to women victims and survivors of VAW cease to be empty words and instead be the actual freedom and power to finally live their lives in peace.

Responsive Law Enforcement Approach to Combating Child Trafficking

*Nina Patricia Sison-Anoyo**

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I. INTRODUCTION

Trafficking in persons is a modern-day form of slavery, a new type of global slave trade. Perpetrators prey on the most weak among us, primarily women and children, for profit and gain. They lure victims into involuntary servitude and sexual slavery. Today we are again called by conscience to end the debasement of our fellow men and women. As in the 19th century, committed abolitionists around the world have come together in a global movement to confront this repulsive crime.

- Secretary Condoleezza Rice¹

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