

SALIGAN Batas

18-Day Campaign to End VAW 25 November - 12 December 2023

REVIEW OF SUPREME COURT JURISPRUDENCE ON R.A. 9262:

SALIGAN recommends amendments to the Anti-VAWC Law, institutionalization of key measures, and strengthening existing protection mechanisms and mandatory services.

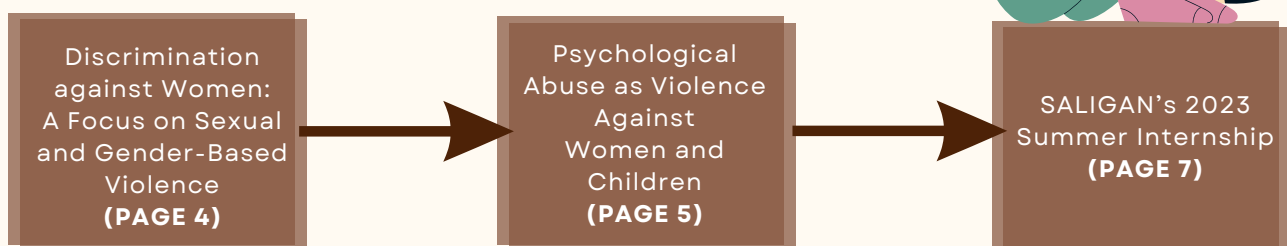
Republic Act No. 9262, or the Anti-Violence Against Women and their Children Act is an important piece of legislation that has impacted the notions of power and gender that exist in dating relationships and marriages in the Philippines. The nuances of that impact can be found in decisions promulgated by the Supreme Court on cases involving this law that has been in effect for 19 years. In partnership with the Philippine Commission on Women, SALIGAN wrote a paper* on its findings from a review of key court decisions on issues pertaining to R.A. No. 9262 and developed some recommendations for legislators, legal practitioners, and other stakeholders who are interested in examining and improving the effects of the law on gender-based violence.

The paper identified persistent questions of law concerning the litigation of R.A. No. 9262 cases and proposed recommendations to amend the law so that interpretations of its provisions can be said to fully promote the protection and safety of women and their children from violence.

□ There is a need to clarify that an offended party under the law should either be the woman or her child and that the offender should be the woman's present or former spouse or partner and not the woman herself. The paper recommends a reordering



WHAT'S INSIDE?



of the phrase defining the term “violence against women and their children” to clarify the intent of the law, with the following wording for Section 3 (a):

“Violence against women and their children” refers to any act or a series of acts committed against a woman or her child by the woman’s spouse, former spouse, or a person with whom the woman has or had a sexual or dating relationship or with whom she has a common child, 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.

□ The paper recommends the resolution of an apparent conflict involving protection orders under the Rule on Violence Against Women and their Children and the Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors. A harmonization between the two Rules may be to require the filing of a separate petition for a protection order every time, under either of the two Rules. The Rules may then provide that the filing of one petition

should prevent the filing of another petition involving the same parties, provided that the remedy of an ex parte temporary protection order should always be available to a victim-survivor of VAWC.

□ Instead of providing different penalties for deprivation of financial support to a woman or her child depending on whether it caused mental or emotional anguish, public ridicule, or humiliation, a uniform penalty of prison may be adopted for the offense, whether committed under Section 5 (e) or Section 5 (i) of R.A. No. 9262. It can hardly be argued that deprivation of support should be punished more lightly because of the absence of proof of mental or emotional anguish.

Observations were also made as to gaps in the law that have proven to be obstacles to the just prosecution of R.A. No. 9262 cases and have warranted amendments as to how these gaps may be filled.

□ The law does not expressly cover acts of VAWC committed outside the Philippines. Although the Supreme Court has ruled in favor of upholding the jurisdiction of our local courts over acts of marital infidelity committed abroad, it was based on the element

of mental or emotional anguish that may have occurred within Philippine territory. To remove any doubt or possibility of a change in doctrine, the law may be amended to include a provision that grants jurisdiction to local courts over any act penalized by R.A. No. 9262 even if committed outside the Philippines, as applicable, whether or not such act constitutes an offense at the place of its commission.

□ The law currently does not provide for remedial and support mechanisms for women migrant workers who suffer from acts of VAWC committed against them, preventing them from seeking protection under R.A. No. 9262. Mechanisms and venues for prosecuting VAWC cases and seeking protective remedies and services abroad, especially for women in migrant work, may be explored.



□ While courts have relied on the non-restrictive language of R.A. No. 9262 to punish acts of VAWC committed through information and communications technology (ICT) or other electronic means, the law does not explicitly and specifically punish such acts. Writing penalties for this form of VAWC into the law may prevent confusion and guide service providers and enforcers. As data on the Internet can hardly be erased, victims-survivors of “electronic” VAWC constantly and continuously suffer from the violence committed against them in cyberspace.

□ Actions against violations of women’s sexual and reproductive health rights, such as forced sterilization, forced abortion, forced pregnancy, and denial of access to methods of contraception or fertility control are not explicitly excluded by the current wording of the R.A. No. 9262, but such actions would have to fall under specific punishable acts that may require the victims-survivors to prove additional elements for conviction. The law may be amended so that such acts of violence against sexual and reproductive health rights are penalized.

□ In cases of economic abuse possibly committed by foreign defendants, our courts have had to rely on the doctrine of processual presumption to conclude that they are liable to provide support to his child in the Philippines. Conflicts of laws regarding support may also be resolved through amendatory legislation. This may require amending the Family Code to carve out an exception to the principle of nationality.

□ Another possible amendment to the Family Code that requires consideration is the expansion of divorce in the country. The lack of a universally applicable divorce law in the Philippines poses serious harm and problems for victims-survivors of VAWC. Despite suffering VAWC and its effects, Filipino women are stuck in marriages with their own abusers. It bears noting that, generally, Filipino women married to Filipino men are at a significant disadvantage on this score compared to Filipino women married to foreigners. Whereas the latter may divorce their husbands, the former may not, unless they are in Muslim marriages. Socioeconomic inequality is also at play: Actions for

annulment or the declaration of nullity of marriage are costly in terms of time and money. Divorce, especially in its uncontested form or through a summary administrative proceeding, can become the inexpensive option of a victim-survivor. If Philippine laws were to truly protect victims-survivors of VAWC, they should be allowed to terminate their marriages with perpetrators.

The paper also recommends the institutionalization of a few measures that would aid in the prevention of violence that may be committed against women and their children under R.A. No. 9262.

□ Based on recommendations of the Committee on the Elimination of Discrimination against Women in General Recommendation No. 35, the integration of age-appropriate content on gender equality, gender stereotyping, gender-based violence including VAWC, and comprehensive sexual and reproductive health education into school curricula with a human rights approach has to be prioritized. Education from early childhood to adolescence may address and eradicate harmful stereotypes, prejudices, customs, and practices that promote or normalize VAWC.

□ The paper recommends the classification or tagging of media content depicting gender-based violence by relevant agencies, as the portrayal of women in the media is known to preserve harmful stereotypes and views that embolden perpetrators of VAWC.

□ Aside from protection orders that restrict the possession of firearms after the fact of violence, content on gender-based violence including VAWC may be integrated into gun safety seminars. Such seminars are required for the issuance of licenses to own and possess firearms under our existing laws.

Finally, the paper recommends the strengthening of existing protection mechanisms and mandatory services provided to victims-survivors of VAWC

□ Gender-fair and gender-sensitive language may be

required by the law in all proceedings related to VAWC, whether in pleadings and decisions or in verbal communication from enforcers and service providers. The use of victim-blaming arguments and unfair or insensitive language may be dealt with administratively, either in accordance with the Civil Service Law or under the disciplinary authority of the Supreme Court.

□ Lawyers, including prosecutors, public attorneys, and judges, should receive training on gender sensitivity, gender-fair language, and gender-responsive case management. This can be integrated into the mandatory continuing legal education (MCLE) program or at least made a requirement for prosecutors, public attorneys, and judges.

□ The provision may be expanded so that it declares unlawful any publicity or

statement that results in the further suffering of the victim or that may be construed as blaming victims for the violence committed against them, similar to the provision on confidentiality in the Expanded Anti-Trafficking in Persons Act of 2022.

□ R.A. No. 9262 may be amended to include provisions and mandates that would provide victims-survivors of violence committed under the law, where warranted, immediate protection in the form of services such as shelters, financial aid, crisis centers, hotlines, and medical, psychosocial and counseling services.

** The paper was presented during the 53rd Meeting of the Inter-Agency Council on Violence Against Women and their Children on July 14, 2023. The scope of the review was limited to 34 Supreme Court decisions selected by the Philippine Commission on Women, and the paper does not purport to be a complete assessment of the impact of R.A. No. 9262 on issues concerning gender-based violence and access to justice.*

Discrimination against Women: A Focus on Sexual and Gender-Based Violence

Discrimination against women is a global issue that affects various aspects of life, from unequal treatment to unequal opportunities. One of the most serious forms of discrimination against women is sexual and gender-based violence, which almost always leads to severe physical and psychological damage. Recently, the United Nations' Committee on the Elimination of Discrimination Against Women (CEDAW) issued an important ruling on the subject matter. The case involved the Malaya Lolos.

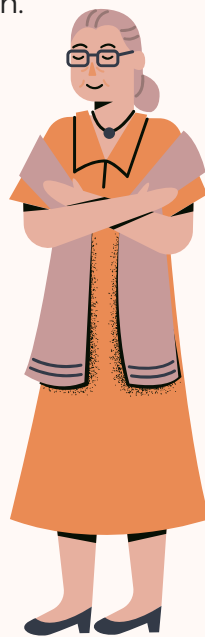
The Malaya Lolas

The Malaya Lolas is a group of Filipino women who were subjected to sexual violence and slavery by Japanese soldiers during World War II. They were taken from their homes and brought to a military brothel, then called Bahay na Pula or Red House. The women – known as “comfort women” – experienced physical and psychological torture, rape, and inhumane detention in the hands of the Japanese soldiers. They were released when the war ended, but the consequences of their traumatic experience remained for the rest of their lives. These include physical scars, permanent damage to their reproductive capacity, mental health issues, and strained social relationships including marriage.

The CEDAW Ruling

CEDAW called out the Philippine government’s failure to redress the discrimination against and suffering of the Malaya Lolas, including lack of support and reparations. The Committee’s feedback extended to the “institutionalized framework of wartime sexual slavery” that perpetuated the survivors’ victimization. CEDAW noted that while war veterans are entitled to special treatment from the

Philippine government, such as pensions and educational benefits, victims of wartime slavery were not even afforded reparation and protection needs. Thus, CEDAW ruled that the Philippines violated its obligations under the Convention on the Elimination of All Forms of Discrimination against Women.



CEDAW called for holistic and proportional restitution, including but not limited to financial compensation, social benefits, and rehabilitative services. These reparations are to be tailored to the specific nature and extent of the victims’ suffering. Additionally, CEDAW advised the establishment of nationwide reparation scheme to provide redress, not just for the Malaya Lolas, but for all victims of wartime sexual and gender-based violence.

Implications

The CEDAW ruling emphasized the need for States parties to understand the multi-dimensional harm inflicted upon women subjected to sexual and gender-based violence. It calls for a varied strategy: legislative reform, adequate complaints mechanisms, and substantial reparations. These measures should also ensure that women’s legal rights are actively enforced and realized.

The ruling also places the burden on the State to amend any existing law or policy that may be inherently discriminatory. This is necessary to eliminate the systemic gender biases that further marginalize the victims of wartime sexual and gender-based violence.

The CEDAW ruling’s emphasis on education also shows how important it is to acknowledge history and teach the public to reduce widespread discrimination. By including the story of the Malaya Lolas in education, CEDAW hopes to create a kinder next generation.

Beyond Legal Mandates

Although comprehensive, CEDAW’s recommendations do not extend to issues of social support and services –

areas where the Philippine government has been notably lacking. Enhanced healthcare, psychological counseling, and legal aid are important elements of a well-rounded strategy to combat gender-based discrimination. Moreover, educational interventions aimed at military and police forces can be influential in the changing of attitudes toward gender equality.

Conclusion

The CEDAW ruling on the case of the Malaya Lolos underscores the critical importance of confronting the complicated issue of

discrimination against women, with emphasis on wartime sexual and gender-based violence. The Committee's recommendations function as a clarion call for comprehensive legislative and social reforms aimed at fulfilling States parties' legal obligations under international law. While focusing on the Philippine context, the principles delineated have broader applicability and serve as a precedent for how legal mechanisms can be employed to mitigate, and ultimately eradicate, gender-based discrimination and violence.

By ensuring the implementation of these recommendations, States parties can make significant progress in eliminating systemic inequality and validating the human rights of all citizens, leading to an equitable and just society.



Psychological Abuse as Violence Against Women and Children

Domestic violence is a complex, multifaceted issue. Despite being around for centuries, only recently did society recognize its non-physical aspects such as psychological violence and economic abuse. Recently, the Supreme Court decided a case involving marital infidelity as a form of psychological violence. In *XXX v. People*, G.R. No. 250219, Mar. 1, 2023, the high court affirmed that the accused was guilty of a violation of Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004 (“Anti-VAWC Act”) upon the finding of his “marital infidelity, his cohabitation with CCC who even bore him a child, and his abandonment of [his child with the offended party]” resulting in the latter’s trauma. The case established criminal culpability for “causing mental or emotional anguish, public ridicule or humiliation to the woman or her child” through marital infidelity under Section 5(i) of Anti-VAWC Act when the element of psychological violence is present.

The case of XXX and his OFW wife

XXX and his wife AAA married in 2006 and had one daughter, BBB. Due to difficult financial circumstances,

AAA decided to work in Singapore in 2008 to sustain their family. In 2015, AAA learned of XXX’s affair with CCC. She also discovered that CCC was pregnant with XXX’s child. According to AAA, CCC

sent her text messages to taunt and spite her. In response, AAA sought the help of the Department of Social Welfare and Development (DSWD) to get custody of BBB. She also filed a case against XXX.

BBB was nine years old at the time of the trial. She testified that she willingly went with her mother and confirmed that XXX had a girlfriend, CCC, whom XXX would bring home every now and then. When asked to explain why she was crying, BBB said that it was because her father and CCC had an affair, and that she wanted her father and mother to reconcile. BBB said that she no longer loved her father.

XXX countered that he had custody of BBB before October 2015, arguing that AAA forcibly took her away. He denied knowing CCC but later admitted they had attended the same secondary school. He further stated that he ceased providing support for BBB after her removal, as AAA restricted their contact.

The Regional Trial Court (RTC) convicted XXX of inflicting psychological violence on AAA and BBB through emotional and psychological abandonment. It held that the emotional and psychological toll caused by his indiscretions are far worse than physical abandonment.

XXX appealed to the Court of Appeals (CA), contending that the RTC erred when it considered psychological violence when the charge only pertained to economic

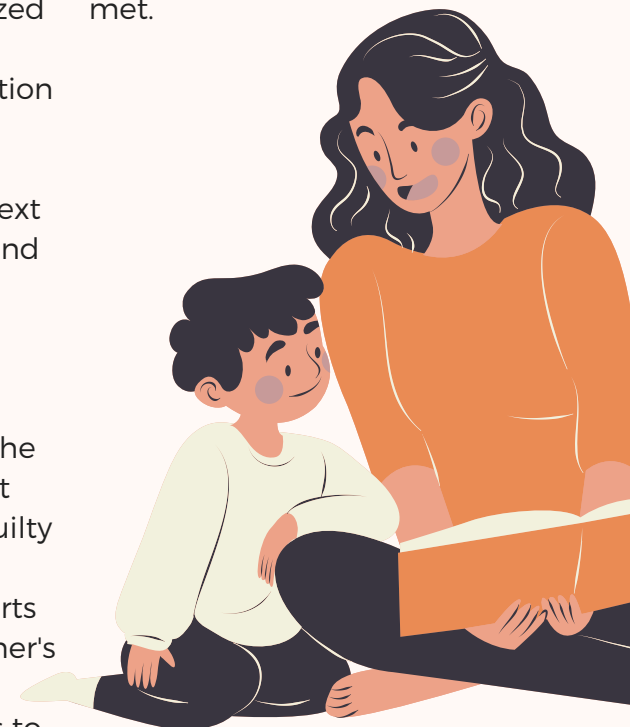
abuse. He further argued that the Information accused him of deprivation of financial support and abandonment, without considering that AAA had custody of BBB from seven months of age until October 2015.

The CA denied the petition, maintaining that the Information charged XXX with both deprivation of financial support and abandonment of AAA and BBB which may be considered subsumed in the phrase “similar acts or omissions” mentioned under Sec. 5(i) of RA 9262. While the prosecution was not able to establish that XXX denied financial support, the prosecution was able to show that XXX had abandoned them, which caused them mental and emotional anguish. The CA emphasized that abandonment is not limited to physical separation but extends to emotional abandonment and alienation, supported by text messages between AAA and XXX.

Upon examination of the facts and the arguments presented by both sides, the Supreme Court found that the petitioner is indeed guilty of violating Sec. 5(i) of RA 9262. The evidence supports the claim that the petitioner's actions caused emotional and psychological distress to

both AAA and BBB. His marital infidelity, as corroborated by his daughter and the discovered text messages, is not simply a private matter but an act that has created a toxic emotional environment for his family. Furthermore, his cessation of emotional and financial support amplifies the psychological violence inflicted upon his wife and daughter.

The defense's argument that he had custody of BBB and only ceased support when AAA took her away does not absolve him of the emotional and psychological abandonment proven in this case. Therefore, the court concurred with the decisions made by the RTC and the CA. All elements required to establish a violation of Sec. 5(i) of RA 9262 have been met.



The impact of the ruling

In a country where extramarital affairs of men are normalized – even justified by the “failure” of their wives to meet their sexual needs – the case of XXX sends a clear and significant message. Women’s psychological well-being deserves to be protected. When the act of abandonment or infidelity causes mental or emotional anguish, public ridicule, or humiliation, criminal liability under the Anti-VAWC Act may arise.

The case of XXX is also a significant development in

the understanding of psychological abuse in our legal system. Unlike physical abuse, establishing psychological abuse is far more challenging because it leaves no tangible, physical scars on the victim. Yet, it is no less harmful. Here, the Supreme Court recognized the gravity and impact of psychological harm on women and children. This is a welcome departure from a history of overlooking non-physical forms of abuse and underscores the broader protective scope of the law.

But while the case is a big step in the right direction toward the promotion of

women’s rights, practical realities demand that this should be accompanied by the increased awareness and training of the police, prosecutors, and judges in handling psychological abuse cases. Protocols in handling such cases should be strengthened in view of both their insidiousness and sensitivity. Schools, workplaces, and communities must also work together to raise awareness on psychological violence in order to help victim identify its signs, promote its recognition as a crime, and prevent victim-blaming.

SALIGAN’s 2023 Summer Internship

SALIGAN concluded its eight-week summer internship program, which ran from June to August 2023 and participated in by eight law students from different law schools who completed their internship in the SALIGAN offices in Manila, Bicol and Mindanao. Four of these law students were hosted by the Manila Office, namely: Jaymi Margot Bondoc of the Angeles

University Foundation in Pampanga, Gabrielle Bea Tardio of the De La Salle University, Jessica Bacud of the University of the Philippines - Diliman and Paulinne Stephany Santiago of the University of Santo Tomas. SALIGAN Bicol hosted Paolo Jamer of the University of Nueva Caceres in Naga City and Hannah Louise Lee of the De La Salle University, while Rachelle Ann A. Dumpit and Hosanna Charis G. Aliposa of the University of the Philippines – Diliman completed their internship with the SALIGAN Mindanaw Office.

The internship commenced with the Basic Orientation Seminar where the interns were introduced to SALIGAN’s programs, advocacies and policies while Atty. Arlene “Kaka” Bag-ao, an alumna of SALIGAN, shared her experiences as an alternative



SALIGAN 2023 interns with staff at the SALIGAN office in Quezon City.

lawyer. This was followed by immersion in partner organizations such as RIDERS-SENTRO, Community Multiversity Organization, National Union of Workers in Hotels, Restaurants and Allied Industries, Urban Poor Associates, Talikala Inc., Bantay Familia and the Naga City People's Council which exposed the interns to the work and advocacies of these organizations and have dialogues with the communities on issues affecting them. A series of Continuing Legal Education sessions on topics such as housing rights, engagement of children in the governance process, women and girls' protection, indigenous people's rights and workplace sexual harassment was also conducted throughout the internship program.


During the internship, the interns served as resource person and facilitator during the paralegal training sessions and lobbying sessions, drafted session guides for module development and position paper on various government policies, developed IEC materials, and assisted the lawyers in the legal consultations. These allowed the interns to work on the different strategies and familiarize themselves on the core programs of SALIGAN.

According to Paulinne Stephany Santiago, her notable experience in the internship was immersing in the work of the partner organizations and communities of SALIGAN, how empowered they are and how they promoted the fundamental rights of its member communities.

Jessica Bacud gained appreciation on the use of the Filipino language in discussing legal matters and popular education of laws. Meanwhile, Jaymi Bondoc realized the importance of non-government organizations in filling the gaps of government's obligations to the people.

Lastly, the internship gave Gabrielle Tardio a better understanding on why the rights of the marginalized are being advocated for, inspired her to be more selfless for people in need of better legal representation, and helped her on developing the kind of lawyer she wants to be in the future.




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