Fighting Domestic Violence - The Philippines

6. Special issues

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# 6.1 Battered woman syndrome

# 6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered Woman Syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

Yes. Under Philippine law, battered woman syndrome may be pleaded as self-defense. In general, a successful invocation of self-defense requires the concurrence of three elements: (i) unlawful aggression; (ii) reasonable necessity of the means employed to prevent or repel it; and (iii) lack of sufficient provocation on the part of the person defending herself.[124]

However, if a victim were found by the courts to be suffering from battered woman syndrome, she would not incur any criminal and civil liability, even in the absence of any of the elements required under Philippine criminal law to justify self-defense.

However, battered woman syndrome has only been discussed as a defense in the case of *People v. Genosa*, where the victim committed parricide by killing her spouse. It has yet to be determined whether battered woman syndrome would be applicable as a defense in other crimes, especially if they are less serious (e.g., physical injuries).

Under the law, "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.[125] In determining the woman's state of mind at the time of committing the crime, the courts will be assisted by expert psychiatrists/psychologists.[126]

**Battery** under the law refers to an act of inflicting physical harm upon the woman or her child, resulting in physical and psychological or emotional distress.[127] The cycle of violence has three phrases: (i) the tension-building phase; (ii) the acute battering phase; and (iii) the tranquil phase.

To successfully invoke battered woman syndrome as self-defense, there are three requirements. **First**, there must be at least two battering episodes between the victim and her intimate partner. **Second**, the final acute battering episode preceding the killing of the batterer must have produced in the battered person's mind an actual fear of imminent harm from her batterer and an honest belief that she needed to use force to save her life. **Third**, at the time of the killing, the batterer must have posed probable grave harm to the accused based on the history of violence perpetrated by the former against the latter.[128]

# 6.2 Domestic violence in the workplace

# 6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

Under the VAWC Act, a victim of acts under this law may apply for a *barangay* protection order, temporary protection order or permanent protection order. The relief granted under a protection order serves to safeguard the victim from further harm, minimize any disruption in the victim's daily life, and facilitate the opportunity and ability of the victim to independently regain control over her life. Law enforcement agencies will enforce it.[129] The court with jurisdiction may issue either a temporary protection order or a permanent protection order upon an application.[130] The application for a protection order must be in writing, signed and verified under oath by the applicant. It may be filed as an independent action or as incidental relief in any civil or criminal case filed based on the VAWC Act.[131]

However, the VAWC Act only applies to any act or a 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 outside the family abode.[132]

The Philippine legal system does not have a specific law dealing with employee victims of domestic violence. The VAWC Act generally applies to any kind of setting so long as the requirements under the previous paragraph are satisfied.

# 6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

Philippine law is silent on this matter. However, under the Labor Code of the Philippines, an employee may terminate the employee-employer relationship without just cause by serving a written notice on the employer at least one month in advance.[133]

On the other hand, an employee may terminate the relationship without serving any notice on the employer for any of the following just causes:

serious insult by the employer or their representative to the honor and person of the employee

inhuman and unbearable treatment of the employee by the employer or their representative

committing a crime or offense by the employer or their representative against the person of the employee or any of the immediate members of their family

other causes analogous to any of the foregoing[134]

# 6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

No, there is no leave provided under the law for family members of domestic violence victims. However, under the VAWC Act, the victim is entitled to a 10-day paid leave of absence, extendable when the necessity arises as specified in the protection order.[135]

# 6.3 Immigration

# 6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents from using immigration laws to perpetrate domestic violence against their spouse?

No, Philippine law does not have any provisions intended to prevent abusers who are citizens or permanent residents of the Philippines from using immigration laws to perpetrate domestic violence against their spouse.

# 6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?

A battered immigrant cannot obtain special immigration remedies when cooperating with law enforcement. However, under Section 37(a)(3) of the Philippine Immigration Act of 1940, being convicted of a crime involving moral turpitude is one of the grounds for deportation. As such, deportation proceedings may be commenced upon the conviction of a person involving moral turpitude.

# 6.3.3 Does domestic violence law discuss asylum accessibility?

Philippine domestic violence laws do not discuss asylum accessibility.

# 6.4 Armed forces

# 6.4.1 Can a victim seek a military protective order if the abuser is in active military?

No, no law in the Philippines allows for the issuance of a military protective order if the abuser is in active military.

# 6.5 Child custody and child/spousal support

# 6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

Granting a victim custody of children in domestic violence cases is one of the available reliefs in a protection order. The Supreme Court has laid out the following standards in determining custody. The judge is to make use of the "best interests of the child" standard. The fact that a woman is suffering from battered woman syndrome should not disqualify her from having custody of the child. Lastly, in no case will the custody of minor children be given to the batterer of the woman.[136]

# 6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

Yes, the rules do not provide any limitation on witnesses who may testify.

# 6.6 Housing rights of domestic violence victims

# 6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

Philippine law is silent on this matter.

# 6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

Philippine law is silent on this matter. However, this is subject to contractual stipulations if they are part of the agreed grounds for the termination of the lease. There could be a broad provision in the contract under which domestic violence may fall that may be used as a basis for termination.

# 6.6.3 Can an order exclude the abuser from the residence?

Yes, an order can exclude the abuser from the residence. Under the VAWC Act, a protection order may include the following reliefs:

removal and exclusion of the abuser from the residence of the victim, regardless of the ownership of the residence, either temporarily for the purpose of protecting the victim or permanently where no property rights are violated[137]

directing the abuser to stay away from the victim and designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment or any specified place that the latter frequents[138]

# 6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

Protection orders under the VAWC Act may allow the removal or exclusion of the abuser from the residence of the victim, regardless of ownership. However, the law does not mention preventing the alienation or mortgage of the property or residence. Although, there is a catch-all relief enumerated under the same provision that states that the protection order may provide other forms of relief as the court deems necessary to protect and provide for the safety of the victim and any designated family or household member, provided that the victim and any designated family or household member consents to the relief.[139] This may be used as a basis for prohibiting the alienation or mortgage of the property.

Furthermore, the Rules on Family Homes should be considered. The rules depend on when the family home was constructed. For family homes constructed before 3 August 1988, the Civil Code of the Philippines applies. For those constructed after this date, the Family Code of the Philippines applies. However, both codes make it clear that family homes may be sold, alienated or encumbered with the consent of both the person who constituted the house and their spouse.[140] Under the Civil Code of the Philippines, alienation also requires the approval of the court.[141] On the other hand, under the Family Code of the Philippines, the court only becomes involved when there is conflict.[142]

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