



Trafficking Of Women And Children

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About The Author

Judge Nimfa Cuesta Vilches is a graduate of the Ateneo de Manila University and the Ateneo Law School. From 1983-1989, she worked as an Attorney in the Offices of Justices Hermogenes Concepcion, Jr., Jose Y. Feria and Teodoro Padilla, Supreme Court of the Philippines, Manila.

In 1989, she was appointed as Municipal Trial Court Judge of Barugo, Leyte, and was assigned to the Metropolitan Trial Courts of Manila, Makati, and Caloocan. In 1999, she was appointed as Presiding Judge, Regional Trial Court, Branch 48, Manila.

Judge Vilches received trainings on Children's Rights at Oxford University, England, sponsored by the British Council; Trafficking In Persons at Hertfordshire, United Kingdom, sponsored by the British Council and the Supreme Court of the Philippines; Evidence and Role of the Judge at the University of Nevada in Reno, USA; DNA and Forensic Matters at the Home Office United Kingdom, arranged by the British Embassy, Manila; The Legal and Technical Aspects of DNA at Applied Biosystem in Foster City, California, USA; Crimes Against Children conducted by the US Federal Bureau of Investigation and the Department of Justice; and Juvenile Justice, conducted by the National Council of Juvenile and Family Court Judges in Houston, Texas, USA.

The professional qualifications of Judge Vilches are: Professor, Ateneo Law School and recipient of the Chief Justice Ramon Aveceña Professorial Chair in Civil Law for the year 2003-2004; a Member of the Faculty and Research Group of the Philippine Judicial Academy (PhilJA), Supreme Court; Lecturer for the UP Law Center and Institute of Judicial Administration UP-IJA) to train Nepal judges and justices, the Integrated Bar of the Philippines (IBP) and the Public Attorneys Office (PAO) for the mandatory continuing legal education program, and gives trainings for UNICEF.

In May 2002, Judge Vilches was chosen as a Member of the Philippine Delegation to the UN Special Session for Children in New York, USA; was a Delegate-Rapporteur to the 1st Australasian Judicial Forum in Manila in January 2003, and was a Delegate-Rapporteur, Asia-Europe Experts Meeting in Manila in March 2003. In August 2003, Judge Vilches was elected Chair of the Task Force on Justice for Children, Council for the Welfare of Children, Office of the President.

Judge Vilches has written the articles "DNA And The Courts" and "Are You Ready To Be A CASA/GAL Volunteer?" which have been widely published locally and internationally. In 1999, she started a program in the country called CASA/GAL composed of trained community volunteers who promote the best interests of children in court. CASA/GAL was voted by UNICEF as one of the ten best practices in Asia. Judge Vilches has also written a book on "B.P.22: FAQs" published by Rex Bookstore which is for release soon.

Since the promotion of Judge Vilches to the Regional Trial Court of Manila in February 1999, she has topped in the number of cases disposed with a least average of 30 cases per month.

A girl child in the Philippines is discriminated upon early in life due to culture-based and family reinforced gender biases. For instance, despite her special nutritional needs in preparation as future mother and nurturer, the girl child is allotted less food than her father and her brothers. When money for education is scarce, her brothers are given the preference.

The Filipino girl child takes the stereotyped role of her mother who is portrayed as an abused and submissive woman relegated to domestic work. Moreover, the public considers girls and women as sex objects and typifies them as club/bar entertainers, beauty pageant contestants, and racy or pornographic film stars.

The pejorative expectations that Filipino society has on women and children are compounded by problems of extreme poverty; massive labor export; globalization; porous borders; aggressive tourism campaigns; negative portrayal of women by mass media; pornography on-line and internet chat-rooms; the practice of mail-order brides; inter-country adoption; and joint military exercises in the country with visiting forces from abroad. These factors cause women to become easy victims of sex-trafficking and other forms of sexual exploitation either in the Philippines or in countries of destination.

To date, more than 4 million Filipinos are unemployed and 40% of them are women. There were around 600,000 prostitutes in the Philippines in the year 2000 and 50,000 of them were children. In September 2002, a staggering number of 1.6 million Filipinos left the

country to work abroad and 48% of them are female. In the first quarter of the year 2003, there were 2,872 sexually abused and exploited children. Further, the number of girl children in the year 2000 which was estimated at 16.7 million will significantly increase to 17.4 million in 2005.

Anti-Trafficking in Persons Act of 2003

For a considerable length of time, trafficking and sexual exploitation of women and children hardly mattered to the Filipino man and woman. This in turn made it difficult for the victims to seek redress in court for the violence and abuses committed against them. But with the sex trade reaching global proportions, the Philippine legislature was prompted to enact Republic Act 9208 or the "Anti-Trafficking in Persons Act Of 2003" on 26 May 2003.

Giving Legal Focus to Victims

The anti-trafficking law is a milestone in the promotion of human dignity and protection of persons specially women and children against any threat of violence and exploitation. It seeks to eliminate trafficking; the establishment of necessary institutional mechanisms for the protection and support of trafficked persons; and provides penalties for violations of the law.

Trafficked persons outside of the Philippines fall under the category of "overseas Filipino in distress" entitled to all legal assistance extended by the Migrant Workers and Overseas Filipinos Act. Additionally, the anti-trafficking law recognizes that trafficked persons are victims and as such, are not penalized for crimes directly related to any act of trafficking. As a consequence, consent of the trafficked person to the intended trafficking is assumed to be irrelevant.

International Instruments Compliant

Providing a strong framework for the anti-trafficking law are universally accepted instruments and conventions to which the Philippines is a signatory, among which are: the United Nations Universal Declaration on Human Rights; United Nations Convention on the Rights of the Child; United Nations Convention on the Protection of Migrant Workers and Their Families; United Nations Convention Against Transnational Organized Crime including its Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children; and the Convention on the Elimination of All Forms of Discrimination Against Women.

A Comprehensive Law

Trafficking under the new law is interpreted in its broadest sense. It refers to recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force

or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person.

Trafficking also means the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

Nationals of foreign countries who are trafficked in the Philippines come within the purview of the law. Such persons are entitled to the same protection, assistance and services given to trafficked Filipinos. The foreign nationals are permitted continued presence in the country for a length of time as necessary to effect prosecution of offenders.

Acts of Trafficking

The following are deemed acts of trafficking committed either by a person or an entity when done for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage: (a) to recruit, transport, transfer, harbor, provide or receive a person on the pretext of domestic or overseas employment, training or apprenticeship; (b) introduce or match for a consideration any Filipino woman to a foreign national for marriage for the purpose of trading her for prostitution; (c) offer or contract marriage; (d) undertake or organize tours and travel plans; (e) maintain or hire a person; and, (f) adopt or facilitate adoption.

Any undue recruitment, hiring, adoption, and movement of persons and children for removal or sale of organs or for the children to engage in armed activities in the Philippines or abroad are also considered acts of trafficking.

Unlawful Acts Which Promote or Facilitate Trafficking

A person may be held liable under the law for promoting or facilitating trafficking by doing any or a combination of the following acts: (a) knowingly lease space or building; (b) furnish fictitious certificates to comply government regulatory and pre-departure requirements; (c) publish propaganda materials; (d) assist in the exit and entry of persons from/to the country with fraudulent documents; (e) deprive or destroy passports and personal documents to prevent trafficked persons from leaving the country and for obtaining assistance; or (f) knowingly benefit services from persons held to a condition of involuntary servitude, forced labor or slavery.

All those who create demand for trafficking of women and children that usually results in prostitution are punished under the above provisions of the law.

Qualified Offenses of Trafficking

No less than a penalty of life imprisonment and a fine of not less than P2 million is inflicted on the offender in special instances of trafficking such as follows: (a) when the trafficked

person is a child [below 18 years old or over but unable to care of self]; (b) when adoption is effected under the Inter-Country Adoption Law; (c) when committed by a syndicate [group of 3 or more persons in conspiracy] or in large scale [against 3 or more persons]; (d) when committed by a person exercising parental authority over the victim or by a public officer or employee; (e) when trafficked person is recruited to engage in prostitution with military or law enforcement agencies; (f) when offender is a member of the military or law enforcement agencies; and (g) when by reason or on occasion of the trafficking, the victim dies, becomes insane, suffers mutilation or is afflicted with human immunodeficiency virus (HIV) or the acquired immune deficiency syndrome (AIDS).

Worthy of note at this juncture is the recent effort of the Philippine Government to include as predicate crime under the Anti-Money Laundering Law child prostitution. Predicate crimes are those which would trigger immediate investigation by the anti-money laundering council making it easier to stop the flow of money from illegal activities.

Use of Trafficked Persons for Prostitution is an Offense

Any person who buys or engages the services of trafficked persons for prostitution is penalized with 6 months of community service and a fine of P50,000 for the first offense. An imprisonment and fine of P100,000 are imposed for the second and subsequent offenses.

Anti-Trafficking Law Complements Other Legislations

The anti-trafficking act reinforces related laws such as Republic Act 7610 on the Special Protection of Children Against Child Abuse, Exploitation and Discrimination; Republic Act 7658 Prohibiting the Employment of Children Under Fifteen Years Old; Republic Act 7877 on Anti-Sexual Harassment; Republic Act 8042 on Migrant Workers and Overseas Filipinos; Republic Act 8043 on Inter-country Adoption; Republic Act 8353 or the Anti-Rape Law; and Republic Act 8505 on Rape Victim Assistance and Protection.

Inter-Agency Approach

An Inter-Agency Council Against Trafficking is established under the new law. It is chaired by the Secretary of Justice and co-chaired by the Secretary of the Department of Social Welfare and Development. The other members are heads of the departments on foreign affairs, labor, overseas employment, immigration, law enforcement; commission on the role of women; and 3 representatives from NGOs.

Among the important functions of the Council are: (a) to formulate programs that will prevent trafficking; (b) promulgate rules and regulations to implement the law; (c) monitor strict implementation; (d) coordinate inter-agency projects; (e) conduct massive information campaign; (f) direct other agencies to immediately respond to problems of trafficking; (g) assist in the filing of cases against offenders; (h) formulate programs for reintegration of trafficked persons; (i) secure assistance from government and NGOs to implement the law; (j) share information and have continuing research on the patterns and schemes of trafficking; and (k) initiate training programs.

Repatriation and Extradition

Trafficked Filipinos abroad are repatriated regardless of whether their travel to another country is documented or not. But if repatriation will expose the victim to greater risks, the Philippines make representations with the host country for an extension of residency permit and protection. However, trafficking in persons shall be included among extraditable offenses.

Prosecution of Offenders

Any person with actual knowledge of trafficking may initiate a complaint in the court where the crime was committed or where the victim resides. If the offended party decides to file a separate action for damages resulting from the act of trafficking, no court fees are required to be paid.

The victim has a period of 10 years within which to commence a criminal complaint. Where trafficking is carried out by a syndicate or when done in large scale, the period to prosecute is 20 years from the time the victim is released from the conditions of bondage.

Pursuant to the Rape Victim Assistance and Protection Act, the investigation of offenses committed against women must be handled by an all-female team of police officers, examining physicians and prosecutors. Protective measures such as the right to privacy and closed-door investigations are accorded to the victim.

The personal circumstances of the trafficked victim are not to be disclosed to the public and the investigation is conducted in a language known or familiar to the victim. Every trafficked woman or child enjoys preferential entitlement to the benefits under Republic Act 6981 or the Witness Protection Program.

When the persons trafficked are children, the Special Protection of Children Act and the Rule on Examination of a Child Witness mandate that there must only be a single interview by a multidisciplinary group of professionals recorded in audio or video tape. In this way, the child victim does not suffer the damaging effect of feeling re-victimized through a series of repeated questioning.

Justice for the Victims

Inside the courtroom, a child victim is presumed to be a competent witness and is entitled to the services of support persons such as a trained child advocate or a guardian ad litem. If there is a substantial likelihood that the child will suffer trauma from testifying in front of the offender, the Rule on Examination of a Child Witness provides for alternative ways to testify such as by live-link television or video-taped deposition.

When women or girls are the offended parties, the "sexual shield rule" bars the offender from offering evidence which tends to establish the fact that the victims engaged in other sexual behaviors or show proof of their sexual predisposition. This demonstrates good

court practice by way of being gender and child sensitive when dealing with cases on women and children.

Philippine courts are likewise venturing into the use of DNA forensic evidence to prove sexual offenses against very young child victims whose testimonial capacities are limited and inadequate. The judges are altogether open to the idea of knowing how a set of behavioral patterns common to victims of violence against women and children like the "[battered woman syndrome](#)" and the "child sexual abuse accommodation syndrome" would impact court dispositions of trafficking offenses.

When child victims are involved, the Rule on Examination of a Child Witness allows the court to accept hearsay evidence. Medical certificates are not required to commence a criminal case of sexual abuse neither are such evidences necessary to make a finding of guilt.

The anti-trafficking law clearly outlines the penalty and fine to be imposed on the offender. It further authorizes the court to order the confiscation and forfeiture of the proceeds and instruments derived from trafficking.

Where the offender seeks on appeal to a higher court a reduction of the penalty applied, appellate courts adopt the policy of according weight to the findings of the lower court judges who were in the best position to observe the demeanor of the parties.

Trust Fund

All fines imposed by the courts on the offender and the proceeds or properties forfeited used in trafficking accrue to a Trust Fund which is administered by the Inter-Agency Council Against Trafficking. The fund is utilized exclusively for programs that prevent acts of trafficking; protect and rehabilitate the victim; and reintegrate trafficked persons into the community.

Aside from the mandatory services which have to be made available to victims of trafficking, programs that are on priority list of the of the Trust Fund are research and data collection; technical support to government and non-government organization (NGOs); seminars for consensus building; and awareness raising regarding trafficking in persons.

Aftercare

Finally, to ensure the recovery and re-entry of the victim to the community, courts direct government agencies to make available the mandatory services contemplated by the anti-trafficking law which are as follows: (a) emergency shelter or housing; (b) counseling; (c) free legal services; (d) medical or psychological services; (e) livelihood and skills training; and (f) educational assistance to a trafficked child.