

Parliamentarians for Global Action (PGA)
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SEMINAR ON GENDER JUSTICE AND WORKING SESSION ON THE CHALLENGES OF THE RATIFICATION AND IMPLEMENTATION OF THE ROME STATUTE BY INDONESIA

Gender Justice through the domestic implementation of Rome Statute Standards - The Philippine Experience

To the honorable Members of Parliament of the Republic of Indonesia, distinguished parliamentarians from the different countries represented here today, to the delegation from the Parliamentarians for Global Action, and our panel Chair - the Hon. Dr. Hajji Nurhayati Ali Assegaf of the Parliament of Indonesia - LADIES and GENTLEMEN, good morning. Assalamualaikum!

If I were to describe our country's governing Constitution which our people enshrined in 1987, I would describe it in two words: SOCIAL JUSTICE. In the words of one of our former Chief Justices of the Supreme Court¹, the Philippine Constitution mandates the state to "promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty." One of the central tenets of our bedrock law is the provision found in Article 2 (Section 14) which avers², "***The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.***"

The recognition of the fundamental equality before the law of women and men in a landmark document like our Constitution may sound surprising in that day and age where more strides in behalf of women have been made in many more different parts of the world,

¹ Chief Justice Artemio Panganiban, *Speech before the Georgetown School of Law*. 2006.

² 1987 Philippine Constitution.

but it could not have come at a better time: It proceeded from gains of the United Nations Decade for Women (lasting from 1976 to 1985) which brought to the fore the issue of gender-based violence, particularly violence against women (VAW). This phenomenon, which was previously regarded as rare or non-existent, was given focal attention as its incidence all over the world became very alarming³.

Since then, our country has more than made up for lost time in the pursuit of gender justice by proceeding, in quick succession, to pass national legislation in support of the social justice objective:

- In **1991**, Congress passed Republic Act (RA) 7192 or the “*Women in Development and Nation Building Act*” to promote the integration of women as full and equal partners of men in development and nation building. The National Economic and Development Authority was given primary responsibility for carrying out the purposes of this law that grants women, regardless of their marital status, full legal capacity to act and to enter into contracts; equal access to membership in all social, civic and recreational clubs as well as the right of admission into military schools; and full opportunity for full-time homemakers to participate in government-sponsored social security schemes;

- In **1995**, Congress passed RA 7877 or the “*Anti-Sexual Harassment Act*” declaring sexual harassment unlawful in the work, education or training environment and protecting the dignity of workers, employees, and applicants for employment as well as students in educational institutions or training centers;

- In **2004**, we also passed RA 9263 or the “*The Anti-Violence against Women and their Children Act*” in recognition of the need to protect the family and its members particularly women and children from violence and threats to their personal safety and security. This law included a 3-level protection order (*Barangay*, Temporary and Permanent Protection Order), the establishment of a Women and Child Desk at every police precinct, and the training of judges and lawyers as well as establishment of women and children-friendly courts. In fact, the government’s National Commission for Women regularly hands out the Gender Justice Awards to deserving judges;

³ *A Deeper Look at Violence Against Women*, <http://www.monitor.uceace.org/pdf/Violence%20Against%20Women%20in%20the%20Philippines.pdf>. Accessed May 20, 2016.

- In **2009**, various existing laws and policies to empower and protect women and ensure equal rights and opportunities for men and women were further strengthened with the enactment of RA 9710, otherwise known as *The Magna Carta of Women*. It added comprehensiveness to existing legislation by establishing clear guidelines for equal employment opportunities, establishment of a Violence Against Women Desk in every barangay, increased recruitment of women in the police and military, special leave privileges for women, and the allocation of 5% of every government agency and local government unit for gender and development (or GAD) programs;

- Other noteworthy laws include the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act* (RA 7610), the *Anti-Rape Law of 1997* (RA 8353), *Rape Victim Assistance and Protection Act of 1998* (R.A. 8505), and the *Anti-Trafficking in Persons Act of 2003* (RA 9208).

- On December 2009, Republic Act 9851 or the “*Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity*” was signed into law, providing a breakthrough for the enforcement of international humanitarian law (IHL) as well as human rights in the Philippines. This was considered more significant than RA 9745⁴, the “*Anti-Torture Act of 2009*” signed just a month earlier on November 2009. Congress delivered this significant one-two punch for human rights and IHL.

Although the Philippines signed the Rome Statute on December 28, 2000 it was not until August 2011 that we ratified the Statute. This could be considered ironic and surprising considering that the Philippines actively participated in the drafting of the Rome Statute during the Rome Conference of 1998, and signed the treaty shortly thereafter on December 2000. From then on, the Philippine Senate passed many resolutions filed by legislators urging ratification of the Rome Statute. Among these were the resolutions (both filed by women legislators) filed by Sen. Loren Legarda and Sen. Miriam Defensor Santiago in June 2001 and August 2006, respectively, urging the Executive to complete its ratification process so that the Philippines may benefit from the mandate of the ICC in ending impunity for war crimes, crimes against humanity and genocide. Steps toward ratifying the Rome Statute significantly progressed under the presidency of Benigno Aquino III and after the visit of

⁴ Soliman M. Santos Jr., *R.A. No. 9851 – breakthrough law for IHL enforcement in the Philippines*. <http://www.predda.org/media/research-documents/r-a-no-9851-breakthrough-law-for-ihl-enforcement-in-the-philippines/>. Accessed May 20, 2016.

ICC President Judge Sang Hyun Song in March 2011⁵. The Instrument of Ratification of the treaty was signed by President Aquino on May 6, 2011 and submitted to the Senate for concurrence of at least two-thirds of its members. On August 4, 2011, Senate Resolution 546 ("Resolution Concurring in the Ratification of the Rome Statute of the ICC) was filed by the Senate Foreign Relations Committee. Rightly so, two of the Rome Statute's strongest women advocates - Committee Chair Sen. Loren Legarda and head of its subcommittee on the ICC, Sen. Miriam Defensor Santiago - delivered the coup d' grace during their sponsorship of the measure on the Senate floor, after which the resolution passed approval on second reading without amendments. The Philippine Senate made its vote of concurrence during a third and final reading on 23 August 2011.

Prior to granting its concurrence, the Senate made careful consideration of the inputs, recommendations and endorsement of the following government agencies: Department of Foreign Affairs, Department of Justice, Department of National Defense, Commission on Human Rights, Armed Forces of the Philippines, Philippine National Police, and the National Security Council. The following organizations were also heavily involved in this process: Philippine Coalition for the ICC, Coalition for the ICC Asia Pacific, Philippine Alliance of Human Rights Advocates, and Amnesty International Philippines.

In concurring with the country's ratification of the Rome Statute, the Senate averred that ***"the Rome Statute adopts the principle of complementarity, which recognizes a State's right to exercise jurisdiction over these crimes; the Court will only act if such State is unable or unwilling to carry out the investigation and prosecution of the crime"***.

I laud the efforts of our counterparts here in the Parliament of Indonesia in proceeding with comprehensive diligence and delicate care toward its ratification of the Rome Statute. Nothing less is expected. But if I were to sum up the Philippine experience in order for your country to benefit from our lessons: Ratifying the Statute, in our country's case, provided us with a third-level instrument in the pursuit not only of social justice, but specifically gender justice. The first level came with POSITIVE CONSTRUCTION or FRAMING, when we

⁵ Coalition for the International Criminal Court. <http://www.iccnw.org/?mod=country&iduct=138>. Accessed May 20, 2016.

enshrined it in our 1987 Constitution. The second level came with SPECIFIC LEGISLATION providing both incentives and, more importantly, penal sanctions for specific offenses in keeping with the principles of “*no punishment without a law*” (Nulla poena sine lege) and “*no crime without a law*” (Nullum crimen sine lege). The third level was added if only to reserve a mechanism to stamp out and address - as a final resort - **the most serious crimes of international concern** by exercising jurisdiction over persons perpetrating such crimes, but only if the State is either unwilling or unable to prosecute them.

In ratifying the Rome Statute, the Philippines has added another pillar to its pursuit of the **rule of law** - a journey which is yet to take a long course as the country transitions toward becoming a true liberal democracy. Before I end, allow me to bring to mind the words of John Rawls in his tome *Political Liberalism*⁶. According to Rawls, there are three inter-related tenets or normative aspirations of the *Rule of Law*:

- 1) **legal entitlement** - where citizens can depend on the objective meaning of existing laws and not upon the grace of political elites;
- 2) **legal justice** - that similar cases be treated similarly; and
- 3) **legal rationality** - that decision-making is rationally constrained.

Allow me to reassure our Indonesian neighbors, as well as our brothers and sisters on a similar journey towards their ratification of the Rome Statute, the campaign for the universality of the Rome Statute will allow for OBJECTIVITY in dealing with our citizens, JUSTICE in the redress of the most grievous of wrongs, and REASON prevailing above all else in such pursuits.

Thank you, everyone, for listening and a pleasant day to all!

⁶ As found in *Building the Rule of Law in the Philippines*, by Edsel Tupaz. <http://www.jurist.org/sidebar/2012/01/edsel-tupaz-davide.php>. Accessed May 20, 2016.