



# Women's Priority Legislative Agenda for the 17th Congress

12

## Adopting Divorce in the Family Code



### POLICY BRIEF NO. 12

*This policy brief provides the rationale for adopting divorce in the Family Code of the Philippines.*

#### WHAT IS THE ISSUE? WHAT HAS BEEN OUR RECENT EXPERIENCE/S WITH REGARDS TO THE ISSUE?

Based on the figures from the Office of the Solicitor General (OSG), the number of annulment and nullity of cases has been increasing since 2001, from 4,520 to 8,283 in 2010.<sup>1</sup> The 2013 data showed that more females (half of the 10,000 petitions filed) initiate the filing of annulment or nullity proceedings.<sup>2</sup>

Under Philippine laws, married couples who want to end their marriage have limited options. One is through legal separation which will allow couple for les to live apart and separate their possessions, but does not permit them to remarry. Another option is through declaration of nullity of marriage which means the marriage is considered null and void because:

1. It lacks the essential and formal requisites of marriage such as no legal capacity to enter into marriage;
2. It is considered as against public policy (e.g. incestuous and bigamous marriages);
3. It did not conform to the requirement set forth by the Family Code; and
4. It is a case wherein one or both parties is/are psychologically incapacitated to perform the marital obligations thereto.<sup>3</sup>

The last option is annulment which connotes that a marriage contract is valid and existing but was only cancelled or annulled. Based on the Family Code, the grounds for annulment are lack of parental consent, insanity/psychological incapacity; fraud, force, intimidation, or undue influence; impotence; and sexually transmissible diseases.

Annulment has been the best recourse for couples who have problematic marriage.<sup>4</sup> But it comes with a price, as the annulment procedure has been described as a “game of mud-slinging and outsmarting” that makes breaking up uglier and encourages a petitioner to exaggerate problems in order to attain a favorable decision.<sup>5</sup> It is also lengthy, exhaustive, inhumane, and entails expensive court proceeding. In fact, an annulment would cost around Php 300,000 to Php 1,000,000 and could take years to reach promulgation, and decision may not be favorable to the couple.

Married couples should be given an option that clears away a lengthy, exhaustive, inhumane and expensive court proceeding like annulment, but gives them the liberty to start all over again and remarry which legal separation cannot provide. Divorce can be the best alternative given such circumstances.

#### WHY IS THE ISSUE IMPORTANT?

The burden of failed marriage usually falls on women due to the cultural stereotypes and the current legal system that our country has. Women are sometimes solely burdened to financially provide for their children and they balance this with personal struggle of loneliness and social stigma.<sup>6</sup>

The most common cited reasons for the breakdown of marriage are:

- 1) infidelity or extramarital sexual relations or affairs by usually the husband; and in some cases, the wife;
- 2) violence inflicted by the man on the woman or on their children;
- 3) sexual abuse inflicted usually by the husband on children or other close relations.<sup>7</sup>

The above-mentioned reasons are the actual grounds for legal separation under Article 55 of the Family Code of the Philippines. Other grounds cited include attempt to engage in prostitution, imprisonment of more than six years, drug addiction or habitual alcoholism, lesbianism or homosexuality, attempt against the life of petitioner and abandonment.

Take for instance the case of a wife (G.R. No. 126010 December 8, 1999) who tried to get out of her marriage because of a husband who is irresponsible, immature, drunkard and a womanizer, and even gave her a sexually-transmitted disease (STD).<sup>8</sup> She filed for annulment for the reason of psychological incapacity but the court denied her petition on the grounds that chronic sexual infidelity, abandonment, gambling and use of prohibited drugs are not grounds of the spouse's psychological incapacity.<sup>9</sup>

The petitioner's cited reasons are actually grounds for legal separation. By having an option for divorce, abused women like her can pursue a healthy and happy life without their abusive husbands. Discarding long annulment proceedings but will provide them the freedom from various marital legalities such as documents/papers under their married name, conjugal issues on properties and the risk of being charged with adultery should they get involved in a new relationship.<sup>10</sup>

## WHAT ARE THE EXISTING LAWS OR POLICIES RELATED TO THE ISSUE?

Section 19 of RA 9710 or the Magna Carta of Women (MCW) states that "the State shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and shall ensure: (a) the same rights to enter into and leave marriages or common law relationships referred to under the Family Code without prejudice to personal or religious beliefs;"

Article 16 of United Nations' Universal Declaration of Human Rights provides that "men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution".

Likewise, Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) calls upon the State Parties to "take all appropriate measures to eliminate

discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: ... (a) The same right to enter into marriage; (b) The same right to choose a spouse; (c) The same rights and responsibilities during marriage and at its dissolution; ..."

The same is reiterated in CEDAW GR No. 21 (1994) on Equality in Marriage and Family Relations "States parties should be able to adopt the principles contained in the Convention that men and women should have the same rights and responsibilities during marriage and at its dissolution"; CEDAW GR No. 29 (2013) on Economic Consequences of Marriage, Family relations (40) recommends States parties to revise provisions related to divorce and its financial consequences to prevent husbands avoiding financial obligations towards their wives and eliminate different standards of fault for wives than for husbands; and in CEDAW Concluding Observations No. 50 (July 22, 2016):

"(a) Expedite the harmonization of the Family Code and other laws on marriage and family relations with the Convention and the Magna Carta for Women and ensure equality of women and men in marriage as well as upon the dissolution of marriage, including by expediting adoption of the long pending Divorce Bill and taking into account the Committee's general recommendations No. 21 (1994) on equality in marriage and family relations and No. 29 (2013) on economic consequences of marriage, family relations and their dissolution;"

## POLICY RECOMMENDATION

Adopt divorce in the Family Code by repealing the legal separation provision in the Family Code and making its grounds as grounds for divorce. It will benefit both spouses who may have serious problems with their corresponding partners. But given that women are the common victims of physical, sexual and emotional abuses, the proposed measures will give them the opportunity to rebuild a family, regain self-esteem and have an option to remarry.<sup>11</sup>

Specifically, the following are recommended:

1. Adopt provisions on divorce that shall have the following effects:
  - a. Dissolution of marriage;

- b. Right to contract marriage again;
  - c. Dissolution of conjugal partnership of gains;
  - d. Retention of legal status of legitimate and adopted children of the divorced parents;
  - e. Children's custody and financial support shall be determined by the court based on the existing provisions of the Family Code.
2. Repeal of Title III Legal Separation of the Family Code of the Philippines;
  3. Make the grounds for Legal Separation stated in Article 55 as grounds for Divorce as follows:
    - a. Infidelity or extra-marital sexual relations;
    - b. Violence;
    - c. Sexual abuse;
    - d. Attempt to engage in prostitution;
    - e. Imprisonment of more than six years;
    - f. Drug addiction or habitual alcoholism;
    - g. Lesbianism or homosexuality;
    - h. Attempt against the life of the petitioner; and
    - i. Abandonment.
  4. Include provisions in Article 56 in the provisions to safeguard the process from condonation, consensus, connivance and collusion among involved parties, to read:
 

“... the petition for divorce shall be denied on any of the following grounds:

    - a. Where the aggrieved party condoned the offense or act complained of;
    - b. Where the aggrieved party has consented to the commission of the offense or act complained of;
    - c. Where there is connivance between parties in the commission of the offense or act constituting the ground for divorce;
    - d. Where both parties have given ground for divorce;
    - e. Where there is collusion between the parties to obtain the decree of divorce; or
    - f. Where the action is barred by prescription.”
  5. Add a provision that will recognize divorce obtained by a Filipino citizen abroad provided that the ground filed falls under the grounds cited in the Family Code.
  6. Simplify the divorce process and reduce the cost of the procedure;
  7. Review other related provisions in connection with Legal Separation and Divorce to complement the amendments

## CONCLUSION

Married couples who want to end their problematic/dysfunctional marriage should have a legal recourse through a simplified and inexpensive divorce process with grounds as stated under legal separation; hence this proposed measure.

This proposed measure considers the plight of women trapped in a marriage ridden with violence, abuse, oppression and deprivation to be completely free to start a better life.

## ENDNOTES

<sup>1</sup>Office of the Solicitor General

<sup>2</sup>Ana P. Santos, Ending a Marriage in the Only Country that Bans Divorce (The Atlantic, June 2015), <http://www.theatlantic.com/international/archive/2015/06/divorce-philippines-annulment/396449/>

<sup>3</sup>Atty. Lifrendo Gonzales, Annulment vs. Nullity of Marriage in the Philippines (LMG Law Office), <https://www.hg.org/article.asp?id=28719>

<sup>4</sup>Andreo Calonzo & Marc Jayson Cayabyab, More Pinoy Couples Seeking Annulment Despite Cost (GMA News, April 2013),

<http://www.gmanetwork.com/news/story/302435/news/nation/more-pinoy-couples-seeking-annulment-despite-high-cost>

<sup>5</sup>Ana P. Santos, Ending a Marriage....

<sup>6</sup>Edelvina S. Relucio, The Stresses and Coping Reactions of Separated Women: An Exploratory Study (ADMU, 1995)

<sup>7</sup>Veronica Fenix-Villavicencio and Rina Jimenez-David, Our Right to Self-Determination....

<sup>8</sup>Lucita Hernandez v. Court of Appeals and Mario Hernandez (Lepiten and Bojos Law Office), [http://www.lepitenbojos.com/index.php?option=com\\_content&view=article&id=34:lucita-hernandez-vs-court-of-appeals-and-mario-hernandez-g-r-no-126010&catid=21:sc-cases-on-annulment-nullity-of-marriage](http://www.lepitenbojos.com/index.php?option=com_content&view=article&id=34:lucita-hernandez-vs-court-of-appeals-and-mario-hernandez-g-r-no-126010&catid=21:sc-cases-on-annulment-nullity-of-marriage)

<sup>9</sup>Ibid.

<sup>10</sup>Ana P. Santos, Ending a Marriage...

<sup>11</sup>Veronica Fenix-Villavicencio and Rina Jimenez-David, Our Rights to Self-Determination...