

Engendering Women's Rights A Paralegal Training Manual

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PREFACE

The Philippine government has the duty "to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women (VAW) and to take appropriate and effective action concerning acts of VAW (whether those acts are perpetrated by the State, by private persons or by armed groups or warring factions) and to provide access to just and effective remedies and specialized, including medical assistance to victims."¹

To be able to effectively eliminate VAW, we need to be able to successfully prosecute the perpetrators. Hold them accountable for their actions to put an end to impunity.

The actual prosecution itself is also an important aspect of the healing process of the VAW survivor. They are able to vindicate their rights and finally transcend victimization to become empowered women survivors of VAW.

To successfully address the trauma and needs of women survivors of VAW, it is imperative that service providers (counselors, health practitioners) and those involved in the prosecution (police, public prosecutors, judges) undergo feminist paralegal trainings that discuss gender, rights-based women's human rights, gender-based violence, gender-based discrimination in laws, policies, and practice, feminist counseling, medico-legal/forensic aspect of sexual abuse, psychiatric aspects of trauma of VAW survivors, and sexual and health impact of VAW.

We need policies that clearly provide for medical provision to VAW consequences such as reproductive tract infections, information and access to emergency contraception to prevent unwanted pregnancies, information and access to post-exposure prophylaxis (PEP) to prevent HIV transmission and effective and continued enforcement of the DOH policy on the Prevention and Management of Abortion and its Complications.

Providing paralegal trainings and continued learning sessions for the service providers and those involved in prosecution is important in the successful prosecution of perpetrators and in eliminating VAW. This manual is one step towards that direction.

The various trainings conducted by EnGenderRights including those under the UNFPA 6th Country Programme contributed to the development of this manual. In its entirety, the manual is the embodiment of ideas, efforts, commitment and time of participants, resource persons and the researchers and writers who actively and wholeheartedly shared their thoughts, experiences, expertise and researches.

Every part underwent countless revisions to make the learning process simple and the core messages and legal jargons comprehensible to all women and men who commit themselves to paralegal work. Pre-tests and writeshops were conducted to ensure acceptability to the Bangsamoro community and the indigenous peoples of the Cordilleras.

We would like to thank the following people whose presentations and researches were instrumental in the development of this manual: Atty. Hamid Aminoddin Barra of the Mindanao State University King Faisal Center for Islamic, Arabic and Asian Studies, Atty. Ruth Bawayan from CAWED Law Offices, Yasmin Busran-Lao, Atty. Charrie Calalang, Dr. Ma. Rosanna E. de Guzman of the University of the Philippines Department of Psychiatry and Behavioral Medicine, Dr. Regina dela Paz-Ingente of Davao Doctors Medical Center, Cookee Edwards of Kwazulu Natal Network on Violence against Women (KZN Network) South Africa, Teresa Fernandez of Lihok-Pilipina, Anamabel Garcia of Women's Crisis Center, Judge Macaundas Hadjirasul, Atty. Raissa Jajurie of SALIGAN-Mindanao, Zaitun Kasim of Sisters in Islam (SIS), and Lucia Cynita Rago.

¹ Quote from the extension of mandate of the United Nations Special Rapporteur on VAW by the Commission on Human Rights, 2003, 59th sess., Res. 2003/45.

We would also like to thank our friends who enthusiastically supported the project: the participants and resource persons during the Paralegal Training Module Framework-Setting on July 14-15, 2005 at the Sulo Hotel in Diliman, Quezon City, the Pre-Test of the Paralegal Trainers' Training Module for Muslim religious leaders, provincial health officers, and Shari'a lawyers, councilors, and judges on November 24 to 25, 2005 at Tower Inn, Davao City, the Paralegal Writeshop for Muslim communities in the ARMM and Sultan Kudarat on January 30, 2007, SEAMEO-Innotech Center, Quezon City, the Paralegal Writeshop for Indigenous Peoples in Mountain Province and Ifugao on May 27, 2007, Baguio City, the Visayas Paralegal Training on September 13-15, 2006, Cebu City, the Ifugao and Mountain Province Paralegal Training on July 26-27, Baguio City, and the Paralegal Training for Muslim Communities in ARMM and Sultan Kudarat on August 24-25, 2007, Davao City; Dr. Caster Palaganas from the Philippine Health and Social Science Association (PHSSA), and the United Nations Population Fund (UNFPA) for supporting the publication of this paralegal manual.

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PARALEGAL TRAINING MODULE

- The Paralegal Training is best conducted in three (3) days with a minimum of nine (9) session hours in a day, from 8:00 a.m. to 5:00 in the afternoon. However, if time and budget do not permit, the user may hold the training in phases--one day at a time or one topic at a time.
- The content provides the basic knowledge of women's rights, forms of violations of women's rights; laws and traditions in the Philippines that uphold and violate women's rights, domestic and international remedies that women's rights advocates-activists as well as service providers from the government agencies and non-government organizations can use in addressing violence against women (VAW)
- The organizers may invite experts who can best discuss specific topics in the module.

First Day

I Introduction (45 minutes -one hour depending on the number of participants)

1. Facilitators will open the training by introducing themselves, the sponsoring organizations and the rest of the training staff who will assist in the three-day conduct of the training.
2. Participants will briefly introduce themselves--their current work, organizational affiliations and expectations on the three-day training.

Facilitators may use different approaches in this part of introduction.

Examples:

- a. let the person on the right side introduce the participant on the left (i.e., her work, organization and expectations.
(Participants will be given 5 minutes to talk to their seatmates. Documenters should take note of their expressed expectations)
 - b. let each participant write her/his name, organization and expectations on a meta card. One by one, they will explain what they wrote on the meta card. Stick the meta cards on a wall for everyone to see.
3. Leveling-off of expectations. Facilitators will summarize the expectations of the participants. Go through the objectives and the topics of the three-day course and see if their expectations/specific topics will be discussed in the conduct of the training or make ways to include other expected topics/expectations.
 4. Briefly discuss house rules. This will lessen unexpected problems that may come up during the three-day activity such as: transportation concerns, use of cellular phones during sessions, etc. Break the participants into groups that will be tasked to do the time keeping, recap and prepare ice-breakers. This will lessen the tasks of the facilitators/organizers.

II Gender and Women's Rights (2 hours and 30 minutes)

Methods: Lecture/Workshop

Objectives:

- To understand that men and women have physical, emotional and biological differences and therefore have different roles in the society.
- To know the manifestations of gender bias and why and who perpetuate unequal treatment of women.

- To be able to understand the root cause of gender bias, its effects, consequences and impact to women.
- To understand violence against women-its root cause, forms and impact to women.

Topics:

- Sex and Gender
- Gender Roles
- Gender Bias and its Manifestations

III. Violence against Women and Children (VAWC)

IV. Women's Rights Are Human Rights (30 minutes)

Method: workshop/straight lecture

Objectives:

- To understand the basic concepts of human rights and women's rights.
- To understand that women and men should have equal rights before the law.
- To know the domestic and international legal instruments which provide for the protection of women's human rights.

Topics:

- Nature of human rights
- Women's Rights as Human Rights
 - Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna in June 1993
- CEDAW
 - Equality
 - Non-discrimination
 - Discrimination against women (based on Article 1 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW))
 - State Obligation
- 13 Sexual and Reproductive Health and Rights
- Obligations of States under International Human Rights Law
 - Respect - abstain
 - Protect - to take steps to prohibit violations
 - Fulfill - to provide goods, services, etc
- Models of Equality and Re-visioning Equality
 - Difference or Protectionist
 - Sameness
 - Substantive equality

V. Advancing Women's Rights through United Nations Jurisprudence (30 minutes)

Method: Lecture

Objectives:

- Familiarize the participants with international legal instruments that uphold women's rights.

VI. Introduction to Laws (30 minutes)

Method: straight lecture

Objectives:

- To understand the basic concepts of laws—nature, strengths, flaws and limitations.
- To know the principles behind the paralegal work.
- To understand the use of law in advancing women's rights.

Topics:

- Pointers for Paralegals
- Laws defined
- Paralegal Work

VII. Muslim Women and the Law (2 hours)

Methods: Workshops/Lectures

Objectives:

- To familiarize the participants with laws and justice systems existing in Muslim communities in the Philippines.
- To understand how culture deeply influences written and unwritten laws in a particular society.
- To understand the discriminatory laws as well as the best practices that affect women in the Muslim communities.

Topics:

- Islamic Perspective on Law and Courts
- Muslim Feminist Perspective
- Gender-based Violence and Muslim Women
- Comparative Review of Progressive Legislations in Predominantly Muslim Countries

VIII. Indigenous Women and the Indigenous Justice System in the Cordilleras

Objectives:

- To familiarize the participants with laws and justice systems existing in indigenous communities in the Philippines.
- To understand how culture deeply influences written and unwritten laws in a particular society.
- To understand the discriminatory laws as well as the best practices that affect women in the indigenous communities.

Topics:

- Indigenous and Tribal Peoples Convention, 1989 (No. 169)
- The Indigenous Peoples Rights Act of 1997 (RA 8371)
- Philippine Constitution
- Issues in Indigenous Peoples Justice System
- Indigenous Values

Second Day

IX. Philippine Laws and Women's Rights

Methods: workshop/lecture

Objectives:

- To familiarize the participants with the existing criminal and civil laws, its provisions that uphold as well as discriminate women.
- To be able to use the existing laws in protecting and advancing women's rights.
- To understand the basic principles in criminal and civil laws, procedures in filing criminal and civil charges and how to use these laws to the fullest to be able to protect women's rights.
- To understand the importance of evidences and gathering important information in building -up a strong criminal case.

Topics:

A. Introduction to Criminal Laws (5 hours)

- Characteristics of Criminal Law
- Crimes
- Criminal Liability

B. Criminal Laws

- Republic Act 9262 (Anti-Violence Against Women and their Children Act)
 - Sample Barangay Protection Order
- Republic Act 9208 (Anti-Trafficking in Persons Act)
- Republic Act 8353 (Anti-Rape Law)
- Republic Act 8505 (Rape Victim Assistance and Protection Act)
- Republic Act 7610 (Special Protection of Children Against Abuse, Exploitation and Discrimination Act)
- Republic Act 7877 (Anti-Sexual Harassment Act)
- Discriminatory Revised Penal Code (RPC) Provisions
 - Abortion (RPC Articles 256- 259)
 - Vagrancy and Prostitution (RPC Article 202)
 - Adultery and Concubinage (RPC Articles 333 & 334)
 - Read Article: "Marital Infidelity Does Not Have a Place in Our Penal Laws", By Clara Rita A. Padilla, Nov. 18, 2007

X. Procedure (4 hours)

Topics:

- Steps That A Battered /Abused Woman Can Take
- Criminal Procedure
 - Chart of Criminal Procedure
 - Remedies in Acquittals
- Civil Procedure

XI. Evidence

Topics:

- Evidence
- Implications for the Paralegal
- Evidence in Rape/Sexual Assault (*res gestae*, minor inconsistencies, no standard from of human behavioral response, failure to report)
- Medico-Legal Examination

Third Day

XII Paralegal Skills

Methods: workshops & lectures

Objectives:

- To know the remedies available and interventions that can be applied in addressing cases of violence against women.
- To understand the power of advocacy in advancing the rights of women using domestic and international laws in seeking justice for victims of gender-based violence.

Topics:

- Feminist Counseling
- Affidavit-Making
- Case Handling, Legal Interview and VAWC Referral System

IX. Medical Interventions

Topics:

- Emergency Contraception (EC)
- Post –Exposure Prophylaxis (PEP)
- Prevention and Management of Abortion and Its Complications (PMAC)

X. Women's Political Participation (3 hours)

Topic:

- Political Participation of Indigenous Women in the Cordillera

XI. Gender And Development (GAD)

Topics:

- Gender And Development Budget
- Local Governance
 - Delivery of Basic Services by Local Government Units, Sec. 17 on Basic services and facilities

- Appointive Local Officials
 - Local Special Bodies
 - Local Development Councils
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 Sample Complaint-Affidavit
 Sample Barangay Protection Order
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CHAPTER I INTRODUCTION

- A. Introduction of participants, trainers and staff**
- B. Expectation Check**
- C. Leveling-off : Run-down of the objectives and the three-day module**
- D. Discussion of house rules**

General Objectives:

- To equip the participants with knowledge in domestic and international laws that protect women's human rights;
- To equip the participants with skills in addressing VAWC cases in their respective localities;
- To understand the importance of advocacy and networking in the local and international levels to advance women's rights

Specific Objectives:

- 1) To understand the basic concepts on sex and gender, VAWC, women's rights, human rights and equality;
- 2) To understand domestic laws and international instruments in upholding women's and children's sexual and reproductive health and rights;
- 3) To understand the medico-legal and ethics issue and the importance of meticulous evidence-gathering in building a strong criminal charges for VAWC cases.
- 4) To know other available remedies and immediate aid to victims of VAWC.
- 5) To discuss VAWC referral system, strategy and further training of advocates and service providers in their respective communities.

Expected Outcomes:

- 1) Participants have deeper understanding of women's rights, VAWC and commitment to address these problems;
- 2) Participants are able to integrate the paralegal knowledge and skills in addressing VAWC cases.
- 2) Participants are more confident in addressing VAWC in their communities and contribute in the creation of policies and mechanisms that will address VAWC.
- 3) Strengthened referral group composed of lawyers, prosecutors, social workers, NGOs, police officers, counselors, psychologists, and medico-legal officers to address VAWC and their sexual and reproductive health consequences.

CHAPTER II

GENDER AND WOMEN'S RIGHTS²

Core messages of the topic:

- ❖ Sex vs. Gender
- ❖ Social Constructs
- ❖ Gender Roles
- ❖ Manifestations of Gender Bias
- ❖ Institutions that reinforce social constructs
- ❖ Impact of discrimination against women (denial of rights/opportunities; vulnerabilities: VAW, migration, prostitution)

A. Sex and Gender

Sex refers natural distinguishing variable based on biological characteristics of being a woman or a man. It's the physical attributes pertaining to a person's body contours, features, genitals, hormones, genes, chromosomes, and reproductive organs.

Gender refers to roles, attitudes, and values assigned by culture and society to women and men.

Sexual Difference	Male	Female
Chromosomes	xy	xx
Hormones	androgen	estrogen
	(producing secondary characteristics)	
Genitalia		

B. Gender Roles

Gender roles are culturally defined attitudes, behaviors, and social positions that are based on sex.

- Female/Male : Feminine/Masculine
- Social constructs (views, preconceptions, notions, standards) e.g. child rearing, socialization
- Differ within and across cultures, societies, time and space
- Start after birth and throughout our lives

Gender roles have three aspects:

- **POSITIONS** within the social structure indicating where women and men be or are expected to be. Women are subordinates to men.

² Credits: Anamabel U. Garcia, Women's Crisis Center (WCC), Clara Rita A. Padilla, COOP-Insight, Cy Rago, HASIK, Med Manzanal

- **RULES FOR BEHAVIOR AND INTERACTION** prescribed for men and women
- **RELATIONSHIPS** between women's and men's roles

Patriarchy

*"Patriarchy literally is 'rule by the father' but more generally it refers to a social situation where men are dominant over women in wealth, status and power. Patriarchy is associated with a set of ideas, a 'patriarchal ideology' that acts to explain and justify this dominance and attributes it to inherent natural differences between men and women. Sociologists tend to see patriarchy as a social product and not as an outcome of innate differences between the sexes and they focus attention on the way that gender roles in a society affect power differentials between men and women."*³

C. Gender Bias and its manifestations (at the home, workplace, school, laws, media)

Gender Bias defined- the working definition of gender bias is the *"stereotyped thinking about the nature and roles of women and men. It also refers to the society's perception of the 'worth' of women and men by distinguishing, for example, women's work from men's work."*⁴

Manifestations of Gender Bias

- Marginalization
- Subordination of women
- Stereotyping women
- Multiple Bind

The effects of gender bias such as marginalization, subordination, stereotyping of women and multiple bind affect the status of women in society (at the home, workplace, school, in laws and in media. Examples of the manifestations of gender bias are the lack of access to information on sexual and reproductive health (access to sexual education, contraception, emergency contraception), lack of access to health care services (e.g., maternity care; child care centers), lack of access to credit facilities, lack of ownership such as land titles (the previous practice of *"married to"* in land titles), and denial of registration of vehicles/bank account in the name of the woman, among others.

Herstory

- women were deprived of education
- women were not allowed to join the labor force
- women were not allowed to vote; women had to fight to be able to vote
- traditional harmful practices, i.e. female genital mutilation (FGM)/ female circumcision (FC), Indian sati/bride burning, female infanticide and female sex-selective abortion, honor killings, child marriage and dowry-related violence

³ <http://sociologyindex.com/patriarchy.htm>

⁴ Tuning-in to Women's Voice on Justice, An Initial Review of Literature on Philippine publications on Women and Justice, Womenlead and Alternative Law Groups ALG), 2005; <http://www.alternativelawgroups.org/upimages/Tuning%20in%20to%20Women%20Voices.pdf>

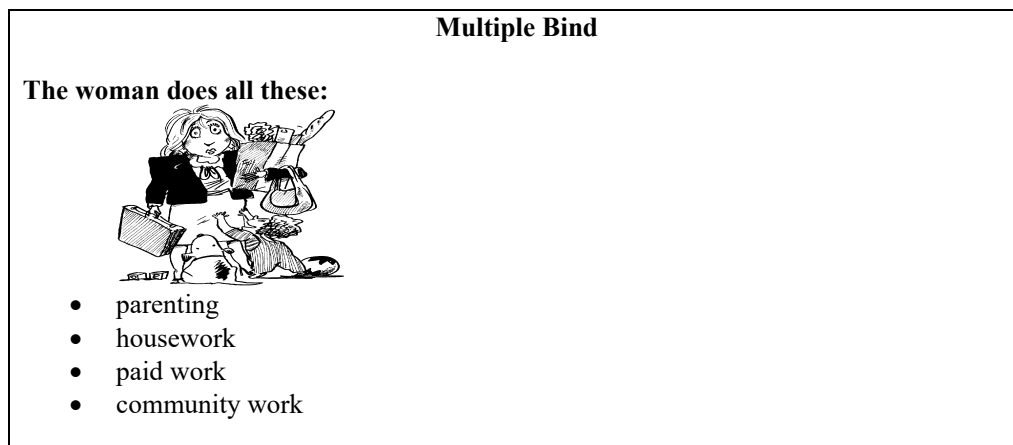
Manifestations of Gender Bias

At home

- lack of importance to women's reproductive and productive work (men as breadwinners"; women as "helper to men")
- Women and children adopting husband's /father's surname
- Decision-making (*padre de familia*; husband's decision holds in the Family Code)

At the workplace

- vertical segregation in the labor force or preference for men in leadership positions
- gender segregation in the workplace
- unequal pay for work of equal value (income inequality)
- discriminated in employment, promotion, training, benefits, i.e. last to be hired, first to be fired ("nabubuntis"), "glass ceiling"



At School

- gender tracking in education

At community/in government

- Denial of opportunities (lack of access to credit, property i.e. land, etc.)
- Dominance of men in politics and government (legislative, local government, executive, judiciary)

In domestic laws

- Discriminatory laws (e.g. Family Code, Code of Muslim Personal Laws, Revised Penal Code)

(see further discussion on discriminatory laws in Chapter X Philippine Implementation of Women's Rights Under CEDAW)

In mass media

Women are portrayed as:

- sex objects, men as sex-starved maniacs
- “virgin or vamp” media images of women
- buying into beauty myth for women and success/achievement images for men

Stereotyping of Women

- emotional, submissive, indecisive
- weak, dependent, subordinate, “*ilaw*” ng tahanan

Institutions that reinforce Gender Bias

- Family
- Church
- School
- Media
- Legal, economic, political system
- State

D. Indicators

1. Land Ownership⁵

Indicator	Women	Men	Ref. Period/ Source
No. of Holders of Cert. of Land Ownership Agreement (CLOA) ⁶	431,222	960,298	June 2006 / DAR
Proportion of Unpaid Family Workers (%)	54.5	45.5	July 2006 / NSO

2. Health Indicators⁷

- Maternal mortality ratio: 200 women die/100,000 live births
 - compared with: 17 in US, 6 in Canada, 4 in Spain, 5 in Italy, 41 Malaysia, 30 Singapore, 44 in Thailand preventable deaths
- 49% contraceptive prevalence rate for married women between the ages of 15-49; 33% modern methods
- 33 births per 1,000 women aged 15-19
- 24 infant mortality per 1,000 live births

⁵ <http://www.nscb.gov.ph/factsheet/pdf07/FS-200703-SS1-01.pdf>

⁶ cumulative as of June 2006

⁷ UNFPA State of the World Population 2007 (Philippines)

3. Education

Indicator	Women	Men	Ref. Period/Source
Functional Literacy Rate (%)	86.3	81.9	2003 / NSO
Simple Literacy Rate (%)	94.3	92.6	2003 / NSO
Distribution of the Population 10 Years Old and Over by Highest Educational Attainment (%)			
No Grade Completed	5.9	6.0	2003 / NSO
Pre-School	2.3	2.3	
Elementary	40.7	43.1	
Secondary	28.8	28.0	
Post Secondary	3.7	4.0	
College Undergraduate	10.3	9.8	
College Graduate and Higher	5.5	3.9	
Not Stated	2.9	2.9	
Most Common Field of Study	Health Related Programs	Engineering Technology and Related Programs	SY 2005-2006 / CHED

4. Work and Economic Participation

Indicator	Women	Men	Ref. Period/ Source
Labor Force Participation Rate (%)	48.8	79.1	Oct 2006 / NSO
Unemployment Rate (%)	6.8	7.6	Oct 2006 / NSO
Proportion of Poor Households by Sex of HH Head (%)	17.0	29.6	2000 / NSCB
Proportion of Poor Women (%)	32.3	Not applicable	2000 SCB/UNDP

5. Political Participation

Women and Men in Public offices⁸

Indicators	Women	Men
Proportion of Occupied elective Positions (%)	16.6	83.4
No. of elected women and Men by position		
President	1	0
VP	0	1
Senators	3	9
Representatives	32	179
Governors	15	62
Vice-Governors	7	71
Mayors	244	1,352
Vice-Mayors	222	1,375
Councilors	2,251	10,881

⁸ Commission on Elections (COMELEC), 2004

E. Gender Fair Society

WHAT DO WOMEN WANT?

RESPECT

Listening to her non-judgmentally *being emotionally affirming and understanding *valuing opinions

TRUST AND SUPPORT

Supporting her goals in life *respecting her right to her own feelings, friends, activities and opinions

SHARED RESPONSIBILITY

Mutually agreeing on a fair distribution of work*making family decisions together

NEGOTIATION AND FAIRNESS

Seeking mutually satisfying resolution to conflict*accepting change *being willing to compromise

ECONOMIC PARTNERSHIP

Making money decisions together *making sure both partners benefit from financial arrangement

HONESTY AND ACCOUNTABILITY

Accepting responsibility for self* acknowledging past use of violence* admitting being wrong* communicating openly and truthfully

NON-THREATENING BEHAVIOR

Talking and acting so that she feels safe and comfortable expressing herself and doing things

RESPONSIBLE PARENTING

Sharing parental responsibilities *being a positive non-violent role model for the children

Vision of a Gender-Fair Society

Gender Biases	Principles
Marginalization	Equal pay for work of equal value Economic independence Economic opportunity
Subordination	Quality participation in decision-making Recognition of capabilities
Multiple Burden	Shared parenting Shared housework
Gender Stereotyping	Liberation from stereotyped images Non-sexist child-rearing Non-sexist language
Violence against Women	Freedom from violence Freedom from harassment
Personal dehumanization	Personhood development Control over one's body, sexuality, and life

A Gender-Responsive Person...

- *Is respectful of the ‘pagkatao’ of every individual across all life cycles and social categories.*
- *Recognizes gender inequalities and biases transmitted from generation to generation, and the need to transform structural and personal inequities and biases.*
- *Commits self to healing relational inequities and biases at the personal and institutional levels.*
- *Works towards empowering and gender-fair relationships in all aspects of life.*

Source: Coop INSIGHT

F. Gender-Fair Language⁹

Avoid gendered noun	Use Gender-neutral nouns instead
Man	Person, individual
Chairman	Chairperson, spokesperson
Freshman	First year student
Mankind	People, humanity, human beings
To man	To operate, to cover, to staff
Congressman	Congressperson, Representative
Man-made	Machine made, synthetic
Cleaning lady	House cleaner, house keeper

⁹ Gender sensitive language, The Writing Center, University of North Carolina

CHAPTER III VIOLENCE AGAINST WOMEN

A. Violence Against Women (VAW)

Violence against women is gender-based violence. This means that these kinds of violence are committed against women because they are women, because society sees women as subordinates of men or not equal to men, therefore are not accorded the same rights as men. These happen to all women across socio-economic classes, in all societies, in all countries.

Therefore, the society expects a “good woman” as the one who stays at home, serves her parents, her husband and children. The woman is blamed for the violence that she is subjected to. She was beaten because she did not cook, she talks too much or she was raped because she wears provocative clothes, she flirts with men, she goes out and drinks with guys. The myth that the woman was raped because of she was dress provocatively is clearly without merit as seen in the examples of young girl-children survivors of rape.

The victim is the one blamed, not the man who committed the crime. In rape cases, complaints are dismissed or the accused is acquitted because the threat to the life and limb of the woman was not taken into consideration.

(see further discussion on rape in Chapter XIV Criminal Laws and VAWC)

Economic and Social Council review of the Nairobi Forward-looking Strategies, Annex to Resolution 1990/15 24 May 1990

"Violence against women in the family and society is pervasive and cuts across lines of income, class and culture must be matched by urgent and effective steps to eliminate its incidence. Violence against women derives from their unequal status in society."

CEDAW Gen. Rec. 19 on Violence Against Women, 1992

- *Inclusion of gender-based violence in gender-based discrimination*
- *gender-based violence is defined as:*
 - *“violence which is directed against a woman because she is a woman or which affects women disproportionately.*
 - *It includes acts which inflict physical, mental or sexual harm or suffering, threats of such as acts, coercion, and other deprivation of liberty.”*
- *States parties to take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act”*

Declaration on the Elimination of Violence Against Women (DEVAW), Gen. Ass. 48th Sess. Res. 48/104, Dec. 93

Article 1

... "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 3

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia :

- (a) The right to life;*
- (b) The right to equality;*
- (c) The right to liberty and security of person;*
- (d) The right to equal protection under the law;*
- (e) The right to be free from all forms of discrimination;*
- (f) The right to the highest standard attainable of physical and mental health;*
- (g) The right to just and favourable conditions of work;*
- (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.*

Article 4

"States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination."

**Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna in June 1993¹⁰
Women's human rights Part I, paragraph 18**

"Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated."

Forms of VAW (Karahasan Laban sa Kababaihan)

Physical abuse

- slapping, hitting, kicking, physical threats such as displaying guns, knife or anything that can be used to hurt the victim physically
- domestic abuse, abuse of women in intimate relationships
- rape, incest

¹⁰ 171 representatives of States adopted by consensus the [Vienna Declaration and Programme of Action](#) of the World Conference on Human Rights

- sexual harassment
- forced prostitution/trafficking for sex/sexual slavery
- traditional harmful practices such as female genital mutilation (FGM), *sati* (involuntary burning of the widow together with her dead husband), bride burning, dowry deaths, and *honor killings*.

Verbal abuse

- Badmouthing
- Name calling
- Cursing

Emotional/Psychological Abuse

- Threats
- Hurting the children, pets or destroying things that would cause emotional pain to the victim

Economic abuse

- Withholding money/financial support
- Preventing the woman to earn her own money or resources

Preliminary Report of the UN Special Rapporteur on VAW E/CN.4/1995/42, 22 November 1994 (par. 6)

The different forms of violence against women include ...all violations of the human rights of women in situations of armed conflict, and in particular, murder, systematic rape, sexual slavery and forced pregnancy, as well as all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of the harmful effects of certain traditional or customary practices, cultural prejudice and religious extremism

VAW in the Family Report of the UN Special Rapporteur on VAW E/CN.4/1996/53

- *makes specific reference to acts of violence such as forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection.*
- *particular vulnerability to violence of, among others, women belonging to minority groups, indigenous women, refugee women, women migrants and women in detention is emphasized.*

VAW in the Family Report of the UN Special Rapporteur on VAW E/CN.4/1999/68 (par. 17)

Violence within the family comprises, inter alia, woman-battering, marital rape, incest, forced prostitution, violence against domestic workers, violence against girls, sex-selective abortions and female infanticide, traditional violent practices against women including forced marriage, son preference, female genital mutilation and honour crimes.

B. Continuum of VAW

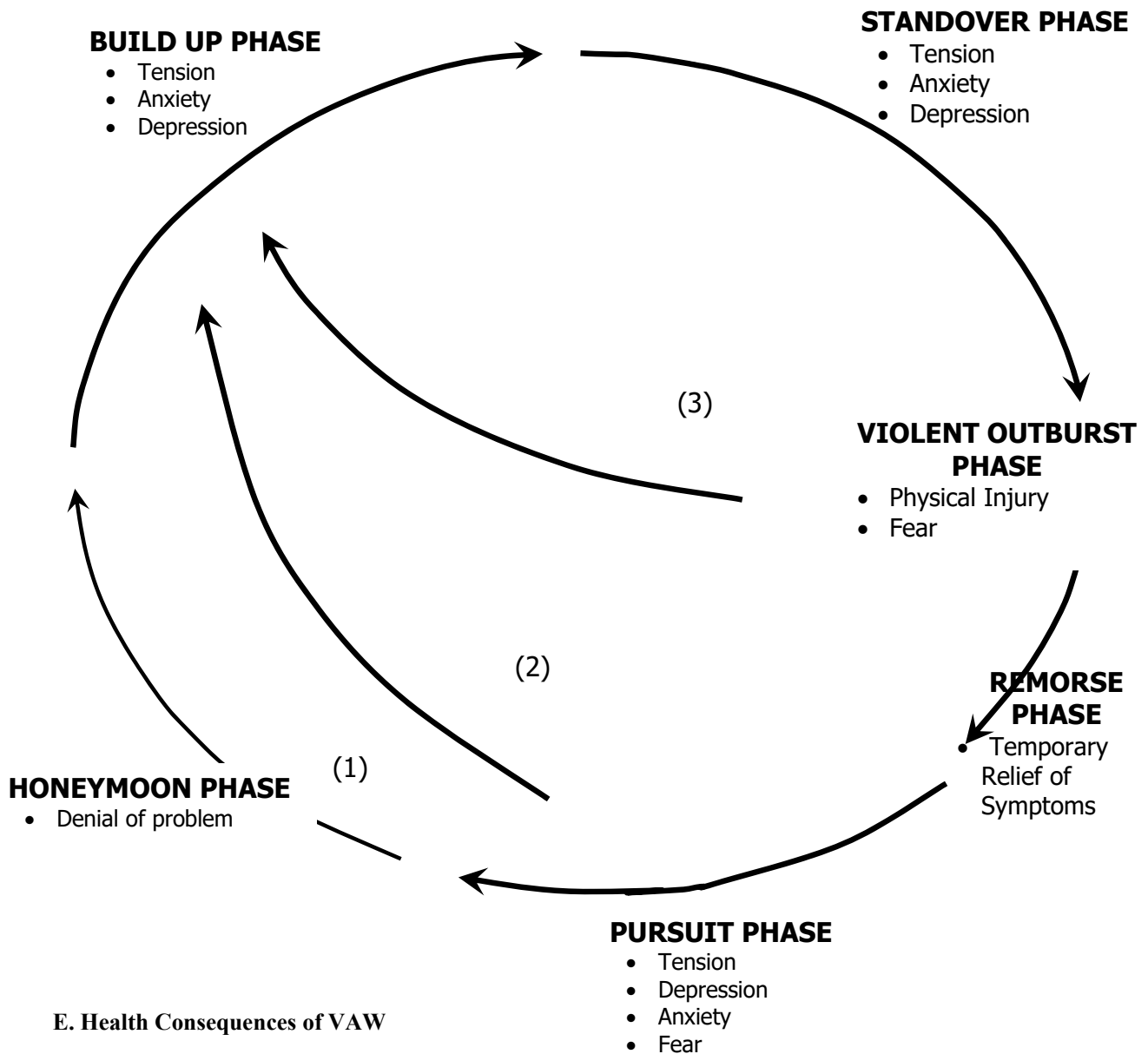
- **PHYSICAL** – pushing – punching – slapping – kicking – throwing objects – strangulation – using weapons – homicide/ suicide – **DEATH**
- **VERBAL/ EMOTIONAL** – name calling – isolation – humiliation – yelling – ignoring – criticizing – **SUICIDE**
- **SEXUAL/ RAPE** – Unwanted touching – false accusations – unfaithfulness – sexual name calling – forced sex – homicide/ suicide - **DEATH**

C. Myths and Realities of VAW

MYTHS	REALITIES
Violence against women are perpetrated by Strangers	Women are mostly at risk from men they know
Gender violence happens only to poor women	Gender violence cuts across all socio-economic groups
Physical punishment is not gender-based violence, it is a form of “discipline”	Violence within the family is as injurious as assaults by strangers
Women are equally violent with men	Though women can be violent, most violence that causes injury is perpetrated by males over females
Physical and verbal abuse tend to disappear as the relationship “grows”	Violence within relationships tend to escalate over time
Violent men are mentally ill	Most violent males are not mentally ill, contrary to common conception
“As long as my husband goes home to me, I don’t mind him hurting me”	Emotional and psychological abuse can be as disabling as physical abuse
Drunkard men tend to be violent	Alcohol exacerbates but does not cause violence against women

D. Cycle of Violence Against Women

SHORTENING OF THE CYCLE OF VIOLENCE



E. Health Consequences of VAW

1. Mental Health Consequences of VAW

- post traumatic stress disorder
- depression
- anxiety
- sexual dysfunction
- eating disorders
- multiple personality disorder

2. Reproductive Health Consequences of VAW

- unwanted pregnancy
- infections
- miscarriage

F. Power and Control The Violence Wheel



G. Root Cause of VAW

The root cause of VAW is **PATRIARCHY** or the belief system that women are not equal to men, they are “something” that men “own” therefore are subject to men’s control and devoid of any rights and privileges accorded to human beings.

- Certain societal conditions and beliefs encourage violence
- Certain responses from the community perpetuate violence

**Studies cited in the Preliminary Report of the UN Special Rapporteur on VAW
E/CN.4/1995/42, 22 November 1994**

- *Economically disadvantaged women are more vulnerable to sexual harassment, trafficking and sexual slavery. They are also employed as bonded labor and low-paid labor. As migrant workers, they often face innumerable hardships in foreign countries.*¹¹
- *Economic exploitation is an important aspect of modern female labor.*
- *Economic equality is a key factor which prevents violence against women.*¹²
*Denying women economic power and economic independence is a major cause of violence against women because it prolongs their vulnerability and dependence. Unless economic relations in a society are more equitable towards women, the problem of violence against women will continue.*¹³

H. Factors that reinforce VAW

- Social perception of use of force or violence as a means to control
- Certain psychological characteristics have been found to be common among offenders who use violence/abuse
 - Internalization of traditional male role
 - Low self-esteem
 - Feelings of insecurity
 - Extreme jealousy
 - Possessiveness
 - Controlling behavior (restricting the partner's movements, relationships with friends and family, restricting career/personal development, manner of dress) Prone to violence (may also have been abused in the past); learned behavior
 - Prone to drug and alcohol abuse
 - Prone to gambling
 - Difficulty in holding on to a job

I. VAW Incidence

1. Rape Incidence¹⁴

- an average of eight women are raped every day
- an average of nine children raped daily

2. Women and children in Prostitution

¹¹ Middle East Watch, Women's Rights Project, Punishing the Victim: Rape and Mistreatment of Asian Maids in Kuwait, New York, August 1992.

¹² David Levinson, Family Violence in Cross Cultural Perspective, Newbury Park, Sage, 1989.

¹³ See Isabella Bakker ed. The Strategic Silence, Gender and Economic Policy, London, Zed, 1994. Also see Susan Bullock, Women and Work, London, Zed, 1994; S.P. Joekas, Women and the World Economy, New York, Oxford, 1987 and United Nations Centre for Transnational Corporations, Women Workers in Multinational Corporations in Developing Countries, UNCTC, Geneva, ILO, 1985.

¹⁴ National Commission on the Role of Filipino Women (NCRFW), VAW Statistics, Violent Crimes Against Women and Children, available at http://www.ncrfw.gov.ph/vaw_watch/vaw_stats.htm (last viewed Oct. 1, 2003).

- estimated 800,000 women and children in forced prostitution in 2005¹⁵
- approximately 500,000 Filipino women engaged in prostitution in 1998¹⁶

3. Some Facts about Women in Prostitution/Trafficking

- victims of rape/incest
- dysfunctional/abusive families
- trafficked
- lured to prostitution because of
 - desperation due to poverty; dire economic circumstances
 - lack of alternative sources of income (lack of skills, education, employment and business opportunities)
- young mothers or engaged in adolescent sex

4. Prostitution and Trafficking

- Whenever there is prostitution there is trafficking
- Practice of first sex of adolescent males with women in prostitution must be stopped
 - an estimated 10.8% of rural girls and 4.7% of urban girls aged 15–19 had already begun childbearing. (1998 NDHS)
 - 31% of young adult males and 15% of young adult females had already engaged in sex. (Young Adult Fertility and Sexuality Survey; between 15–24 years old)

J. Impact of VAW

1. Impact of Rape

- Health Consequences
 - Unintended/unwanted pregnancies
 - lack of access to contraceptives including emergency contraceptives
 - Backstreet abortions
 - lack of access to safe and legal abortion
 - non-implementation of the Prevention and Management of Abortion and its Complications policy
 - Vulnerability to HIV/AIDS
 - lack of access to post-exposure prophylaxis (PEPS)

2. Impact of Prostitution

- Vulnerability to abuse (physical and sexual)
- Health Consequences
 - Unintended/unwanted pregnancies
 - Lack of access to contraceptives including emergency contraceptives
 - Vulnerability to HIV/AIDS lack of access to post-exposure prophylaxis (PEPS)
- Cycle of prostitution

¹⁵ Alexander Martin Remollino, Palit-bigas Prostitution, Tenaganita, (October 25, 2005), *available at* <http://geeklog.tenaganita.net/article.php?story=20051026001552759>.

¹⁶ ILO, The Sex Sector-The Economics and Social Baises of Prostitution in Southeast Asia

CHAPTER IV WOMEN'S RIGHTS ARE HUMAN RIGHTS

Core messages of the topic:

- ❖ Concept of human rights
- ❖ Duty-bearers/rights-holders
 - Obligations (respect, protect, promote, fulfill)
 - Vienna Declaration and Programme of Action 1993
- ❖ Equality
 - Assumptions on women/inequality of the protectionist approach

A. Human Rights

- Inherent - all human beings are born with human rights.
- Inalienable - human rights are inseparable from our personhood.
- Universal- human rights are applicable to everyone.
- Indivisibility/interdependence-human rights cannot be divided from other rights; it is interlinked.

B. Women's Rights as Human Rights

Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna in June 1993, Women's Human Rights Part I, paragraph 18

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights.

The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Women's Rights

- Equality
 - Non-discrimination
 - Discrimination against women (based on Article 1 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW))
 - *“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”*
 - State Obligation
- (see discussion on the next chapter)

Historical Context

- Women were not allowed to vote and had to fight for their right to vote.
- Female genital mutilation/female circumcision recognized as merely a traditional practice and w/o basis in Islam. Progress has been made from States' efforts to disseminate awareness of how harmful these practices are, often with the support of religious leaders.¹⁷
- Polygyny (now prohibited in Tunisia, Turkey, Fiji and Uzbekistan)

13 Sexual and Reproductive Health and Rights¹⁸

- Right to Life
- Right to Liberty and Security of Person
- Right to Equality and to be Free from All Forms of Discrimination
- Right to Privacy
- Right to Freedom of Thought
- Right to Information and Education
- Right to Choose Whether or Not to Marry and to Found and Plan a Family
- Right to Decide Whether or When to Have Children
- Right to Health Care and Health Protection
- Right to Benefits of Scientific Progress
- Right to Freedom of Assembly and Political Presentation
- Right to be Free from Torture and Ill-Treatment
- Right to Development

Obligations of States under International Human Rights Law:

- Respect - abstain/refrain from obstructing women's rights; not to violate
- Protect - to take steps to prohibit/prevent violations and impose sanctions for violations

¹⁷ UN Economic and Social Commission for Western Asia. Arab Regional Ten Year Review and Appraisal of implementation of the Beijing Platform for Action, NY, 1 July 2004

¹⁸ IPPF Charter

- Fulfill - to take appropriate measures (legislative, judicial, administrative, budgetary, economic, among others) to the maximum extent of their available resources to ensure that women realize their rights

Obligation to Fulfill under CEDAW

Art. 2, CEDAW All appropriate means

- to pursue by all appropriate means and without delay a policy of eliminating discrimination against women

Article 24 Full realization of rights

- adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Obligation to Respect, Protect and Fulfil Reproductive Rights as cited under the CEDAW General Recommendation No. 24 on Women and Health

The obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals. States parties should report on how public and private health-care providers meet their duties to respect women's rights to have access to health care. (para. 14)

The obligation to protect rights relating to women's health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations. (para. 15)

The duty to fulfil rights places an obligation on States parties to take appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to ensure that women realize their rights to health care. (para. 17)

Models of Equality and Re-visioning Equality¹⁹

Difference or Protectionist – this assumes that women are different from men. Women are excluded from entitlement to equality with men on the grounds that they are different from men. This has been used to deny women the right to vote, the right to practice of law, etc. Because women were perceived as weak and vulnerable and incapable of decision-making, this served to justify the enactment of protective legislation such as maternity benefits, reservations (w/c meant saving places for women, regardless of merit), etc.

e.g. instead of prohibiting night-work, allow night-work but make the environment safe

¹⁹ Asia Pacific Forum on Women, Law and Development (APWLD), Training Kit, Training of Trainers: Discussion Workshop on FLTP Framework, 21-23 March 2000, Chiang Mai, Thailand

Sameness - Some contend that there should be no recognition of gender difference. Women and men should be considered to be essentially the same and therefore, should be treated the same, that is, exactly the same as men. This sameness approach regards gender difference as irrelevant and argues that recognition of such difference has only reinforced stereotypes and discrimination against women. Laws should therefore, be applied in a totally gender neutral manner.

Substantive equality-this model does not just look at the question of sameness or difference. It addresses the issues of whether the group or individual in question has been historically disadvantaged. It tries to find a way out of this “dilemma of difference.” They argue that by not recognizing gender difference the underlying inequalities are being maintained and perpetuated. The ostensibly gender neutral standards of the equal treatment model are not neutral at all. Rather, they are based on male standards. If you apply these gender-biased standards to women, then women will be punished for their difference and the underlying inequalities will simply be reinforced. They place their arguments about the recognition of gender difference within a substantive approach to equality, that is, gender has been used to historically disadvantage women. Their concern is not with equal treatment but with equal results. It does not see the difference as intrinsic but relational—that is, women are not naturally weak or incapable but have been denied certain opportunities by virtue of their gender. Thus, in order for them to compete on equal terms with men certain temporary special or corrective measures need to be instituted.

(see discussion of due diligence by the State in VAW under the chapter on “Advancing Women’s Rights Through UN Jurisprudence”)

CHAPTER V ADVANCING WOMEN'S RIGHTS THROUGH UNITED NATIONS JURISPRUDENCE

Core messages of the topic:

- CEDAW (equality, non-discrimination, state obligation)
- Equality
 - ❖ De jure & De facto equality
 - ❖ Substantive equality

A. Nature of Human Rights Treaties

- Formal agreements between states
 - guarantee specific rights to individuals.
 - establish state obligations related to the rights.
- Source of international law and legally binding.
- Create mechanisms to monitor states' compliance with their obligations and allow individuals to seek redress for violations of their rights.

B. Consensus Documents

- Consensus documents such as International Conference on Population and Development Programme of Action and Beijing Platform for Action rests on the government's political will to take effect

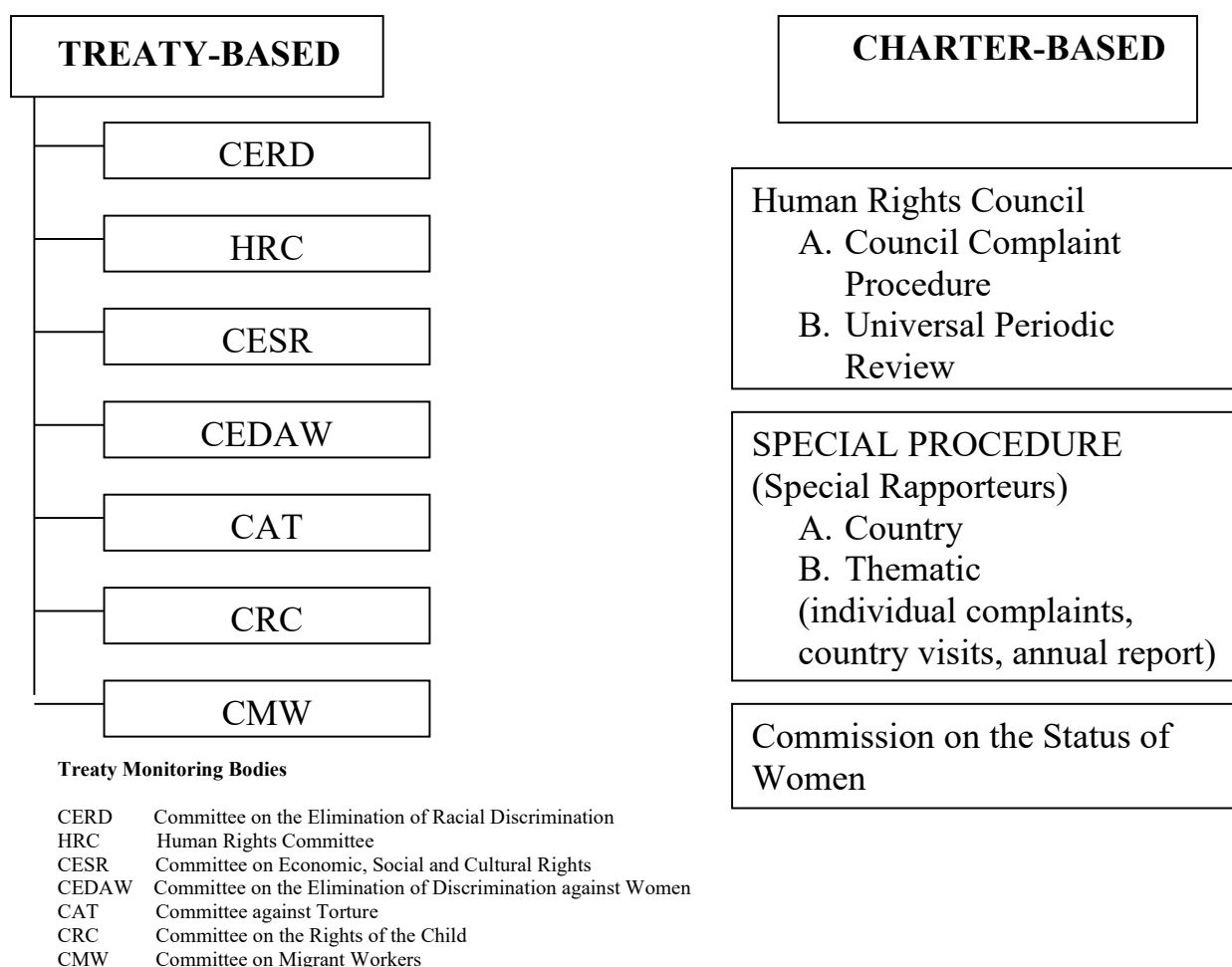
C. Treaties and the Treaty Monitoring Bodies

The international human rights treaties of the United Nations that establish committees of experts (often referred to as "treaty bodies") to monitor their implementation are the following:

Treaty	Treaty Monitoring Body
International Covenant on Economic, Social and Cultural Rights (CESCR)	Committee on Economic, Social and Cultural Rights
International Covenant on Civil and Political Rights (CCPR)	Human Rights Committee
Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP1)	Human Rights Committee
Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty (CCPR-OP2-DP)	Human Rights Committee
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	Committee on the Elimination of Racial Discrimination
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Committee on the Elimination of Discrimination against Women

Treaty	Treaty Monitoring Body
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP)	Committee on the Elimination of Discrimination against Women
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Committee against Torture
Convention on the Rights of the Child (CRC)	Committee on the Rights of the Child
Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict	Committee on the Rights of the Child
Optional Protocol to the Convention on the Rights of the Child (CRC-OP-SC) on the sale of children, child prostitution and child pornography.	Committee on the Rights of the Child
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC)	Committee on Migrant Workers

D. UN Mechanisms²⁰



²⁰ Revised version of the International Service for Human Rights “Advanced Geneva Training Course” 2006 Training Material

E. UN Human Rights Treaty Statistics (as of October 2007)²¹

	CESCR	HRC	CERD	CAT	CRC	CEDAW	CMW
Year of adoption by UNGA	1966	1966	1965	1984	1989	1979	1990
Year of entry into force	1976	1976	1969	1987	1990	1981	2003
Optional Protocols		OP1 (1966), OP2 (1989)		OP-CAT (2002)(not yet into force)	OP-AC (2000), OP-SC (2000)	OP-CEDAW (1999)	
Number of experts in committee	18	18	18	10	18	23	10
Periodical reports due every	5 years	4 years	2 years (in practice 4)	4 years	5 years	4 years	5 years
Inter-state complaints	No	Art. 41	Art. 11	Art. 21	No	OP	Art. 76
Individual complaints	No	OP1	Art. 14	Art. 22	No	OP	Art. 77
Number of ratifications	157	160	173	145	193	185	37

F. Comparative Table: Procedures²²

	CERD	HRC	CESCR	CEDAW	CAT	CRC	CMW
Periodic Report	X	X	X	X	X	X	X
Inter-State complaints	X	X		X	X		Not yet operative
Individ. Complaints	X	X (OP)		X (OP)	X		Not yet operative
Inquiry				X (OP)	X		
Early warning/ urgent action	X						
Follow-up	X	X	X	X	X		To be determined

²¹ *Ibid.*

²² *Ibid.*

G. Treaty Monitoring Body Jurisprudence

- 1) General Recommendations/ Comments
 - 2) Concluding Comments/Concluding Observations
 - 3) Optional Protocol
 - a) individual complaints/communications
 - b) inquiry (CEDAW and CAT)
- note: interim measures to prevent further violations

H. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW; Women's Convention)

1. Information on CEDAW

- international convention adopted by the United Nations General Assembly in 1979 and came into force in 1981
- described as an international bill of rights for women
- consist of a preamble and 30 articles
- defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.
- the second most ratified treaty
- recognizes de facto disadvantages and then seeks changes

2. CEDAW: International Bill of Rights of Women

- Equality (*de facto* and *de jure* equality)
 - realize **substantive equality** between men and women
 - where the outcomes of laws, policies and programs are equal for men and women
 - equality in access, opportunity, results²³
- Non-discrimination
 - Elimination of direct/indirect discrimination, in law and in practice, in both private and public spheres
- State obligation

3. State Obligations

- By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:
 - to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
 - incorporation of the principle of equality in the national constitution
 - enacting relevant legislation on women; pro-active policies to eliminate discrimination in public and private spheres
 - repealing and or revising existing discriminatory laws
 - to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
 - to ensure elimination of all forms of discrimination against women

²³ IWRAW-Asia Pacific, Our Rights Are Not Optional, A Resource Guide

- States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.
- Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice.
 - to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

4. Provisions of the Convention

- Substantive Provisions of CEDAW (Articles 1-16)

PREAMBLE

PART I

Discrimination ([Article 1](#))

- Reaffirm the equality of human rights for women in society and the family [article 1];

Policy Measures ([Article 2](#))

- Pursue a policy of eliminating discrimination against women by all appropriate means and without delay [article 2];
- Remove laws, stereotypes, practices and prejudices that impair women's well-being [article 2 (f) and (g)].

Guarantee of Basic Human Rights and Fundamental Freedoms ([Article 3](#))

- Guarantee women the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men [article 3]

Special Measures ([Article 4](#))

- provides that special (affirmative action) measures aimed at accelerating *de facto* equality between men and women [article 4, paragraph 1] and measures protecting maternity, shall not be considered discriminatory [article 4, paragraph 2].

Sex Role Stereotyping and Prejudice ([Article 5](#))

- Remove laws, stereotypes, practices and prejudices that impair women's well-being [article 5 (a)].

Prostitution ([Article 6](#))

- Suppress all forms of traffic in women and exploitation of prostitution of women [article 6]

PART II

Political and Public Life ([Article 7](#))

- Eliminate discrimination against women in political and public life [article 7]

Representation ([Article 8](#))

- Ensure women the opportunity to represent their Governments at the international level and to participate in the work of international organizations [article 8]

Nationality ([Article 9](#))

- Grant women equal rights with men to acquire, change or retain their nationality [article 9]

PART III

Education ([Article 10](#))

- Ensure women equal rights with men in the field of education [article 10]

Employment ([Article 11](#))

- Eliminate discrimination against women in the field of employment [article 11]

Health ([Article 12](#))

- Eliminate discrimination against women in the field of health care [article 12]

Economic and Social Benefits ([Article 13](#))

Rural Women ([Article 14](#))

- Take into account the special problems faced by rural women and the significant roles that rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy [article 14]

PART IV

Law ([Article 15](#))

- Accord women equality with men before the law [article 15]

Marriage and Family Life ([Article 16](#))

- Eliminate discrimination against women in all matters relating to marriage and family relations [article 16].

PART V

Committee on the Elimination of Discrimination against Women ([Article 17](#))

National Reports ([Article 18](#))

Rules of Procedure ([Article 19](#))

Committee Meetings ([Article 20](#))

Committee Reports ([Article 21](#))

Role of Specialized Agencies ([Article 22](#))

PART VI

Effect on Other Treaties ([Article 23](#))

Commitment of States Parties ([Article 24](#))

Administration of the Convention ([Articles 25-30](#))

5. General Framework

Art. 1, CEDAW Discrimination Against Women

- Any distinction, exclusion or restriction made on the basis of sex
- which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women,
- irrespective of their marital status,
- on a basis of equality of men and women, of human rights and fundamental freedoms
- in the political, economic, social, cultural, civil or any other field.

Art. 2, CEDAW All appropriate means

- to pursue by all appropriate means and without delay a policy of eliminating discrimination against women

Art 3, CEDAW Full Development/advancement of women; guarantee human rights and fundamental freedoms; equality

- to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Art. 4, Temporary special measures

- Adopt temporary special measures aimed at accelerating de facto equality between men and women
- General Recommendation 5 and 25

Art. 5 Modify Gender Role Stereotyping and Prejudice

- Eliminate prejudices and customary practices based on gender roles

Art. 23 Non-derogation

- legislation or international conventions that are more conducive to equality between women and men shall not be affected

Article 24 Full realization of rights

- adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

6. Committee on the Elimination of Discrimination Against Women (CEDAW Committee)

- Monitors the implementation of the Convention (Treaty Monitoring Body)
 - evaluates whether states parties are upholding their obligations under the Convention
- made up of 23 experts nominated by their respective Governments and elected at a meeting of all States Parties that have ratified the Convention
 - each State Party may nominate one expert
 - those elected will serve in a personal capacity for a four-year term

7. CEDAW Committee Reporting Process

- Initial Report after Ratification Periodic Report every 4 years
- Special Reports in special Cases and Situations

8. CEDAW Committee Treaty Monitoring Body Jurisprudence

- **General Comments/Recommendations** where the Committee identifies standards (same with the Committee against Torture, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Human Rights Committee)
- **Concluding Observations/Comments**
 - Positive areas of progress in promotion of women's rights
 - Areas of concern
 - Recommendations to States on upholding their treaty obligations
- **Optional Protocol Optional Protocol to CEDAW (22 December 2000)**
 - **Communication (complaints)** by or on behalf of individuals or groups of individuals (same w/ HRC, CAT, and CERD)
 - **With interim measures** (form of temporary restraining order)
 - Process:

- written explanations of State Party
 - CEDAW transmits views/ recommendations
 - written response and info on action taken
- **Inquiry** by Committee members (may include visit) on grave or systematic violations
 - grave violations, e.g., severe violations relating to right to life, physical and mental integrity, and security of person;
 - systematic violations, e.g. pattern of violations resulting from scheme or policies
 - Process:
 - Committee comments/recommends
 - State Party submits observations

Note: The Philippines ratified the OP on Nov. 12, 2003
 (see <http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm>)

9. CEDAW Committee General Recommendations that Aid the Interpretation of the CEDAW Convention:

General Recommendation	No. 1: Reporting by States parties
General Recommendation	No. 2: Reporting by States parties
General Recommendation	No. 3: article 5, public education campaigns
General Recommendation	No. 4: Reservations
General Recommendation	No. 5: temporary special measures
General Recommendation	No. 6: creation of effective national machinery to monitor and promote women's rights
General Recommendation	No. 7: Resources
General Recommendation	No. 8: implementation of article 8 of the Convention
General Recommendation	No. 9: need for statistical information relating to women
General Recommendation	No. 10: Tenth anniversary of the adoption of CEDAW
General Recommendation	No. 11: Technical advisory services for reporting obligations
General Recommendation	No. 12: violence against women
General Recommendation	No. 13: equal pay for work of equal value
General Recommendation	No. 14: elimination of female circumcision or FGM
General Recommendation	No. 15: women and HIV/AIDS
General Recommendation	No. 16: unpaid women workers in rural and urban family enterprises
General Recommendation	No. 17: unrecognized value of women's work in the gross national product
General Recommendation	No. 18: disabled women
General Recommendation	No. 19: violence against women
General Recommendation	No. 20: Reservations to the Convention
General Recommendation	No. 21: equality in marriage and family relations
General Recommendation	No. 22: Amending article 20 of the Convention
General Recommendation	No. 23: women in political and public life
General Recommendation	No. 24: women and health
General Recommendation	No. 25: Article 4, par 1 on temporary special measures

I. Thematical Issues

8. Health

c) Right to Health

Art. 12, paragraph 1 of Women's Convention or CEDAW

Provides that States Parties must take “*appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.*”

CESCR Art. 12.1

“*The States Parties...recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*”

(See also CESCR Committee General Comment No. 14, Twenty-second session (2000) on the right to the highest attainable standard of health)

d) Reproductive Rights

CEDAW Article 16.1 *States Parties shall . . . ensure, on a basis of equality of men and women . . .*

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights[.]

Paragraph 7.3 of the International Conference on Population and Development (ICPD) Programme of Action

“*...the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so...the right to attain the highest standard of sexual and reproductive health. X x x [the] right to make decisions concerning reproduction free of discrimination, coercion and violence*”

Paragraph 96 of the Beijing Platform for Action states,

“*The human rights of women include their right to have control over and decide freely and responsibly on matters relating to their sexuality, including their sexual and reproductive health, free of discrimination, coercion and violence.*”

CEDAW General Recommendation 24 Women and Health, 20th session (1999)

- States Parties should “ensure universal access for all women to a full range of high-quality and affordable health care, including sexual and reproductive health services”
- Remove barriers to women's access to health services, education and information, including sexual and reproductive health (31.b)
- Prioritize the prevention of unwanted pregnancy through family planning and sex education, reduce maternal mortality (31.c)
- When possible, amend legislation criminalizing abortion to remove punitive provisions imposed on women. (31.c)

Paragraph 7.2, ICPD Programme of Action

“Reproductive health is a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes.”

“Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so.”

“...the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.”

9. Right to Safe and Legal Abortion

UN Treaty Monitoring Bodies

- CEDAW Committee, Committee on the Rights of the Child, Human Rights Committee and the Committee on Economic, Social and Cultural Rights have declared the vital connection between illegal, unsafe abortion and high rates of maternal mortality.
- CEDAW recommended that State parties remove punitive provisions imposed on women who undergo abortion (CEDAW Gen. Rec. No. 24 (20th session, 1999), par. 31 (c))

10. Right of Adolescent Girls to Health

- CEDAW Gen. Rec. 24 (Women and Health) emphasizes special attention to the **health needs** of particularly **vulnerable groups** including **adolescent girls**
- CEDAW has asked states parties to pay particular attention to the **health education of adolescents, including information on family planning methods.**
- it is **age-discrimination** to prohibit the adolescent's access to family planning information and services.

Adolescents' Right to Access to Information and Reproductive Services

Convention on the Rights of the Child (CRC), Article 3, par. 1

- States “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the **best interests of the child** shall be a primary consideration”

In the CEDAW Committee Concluding Observations in the countries below, the committee has asked State Parties to implement sexual education programs :

- Antigua and Barbuda, Belize, Burundi, Chile, Colombia, Democratic Republic of the Congo, Dominican Republic, Greece, Hungary, Jamaica, Kazakhstan, Lithuania, Mongolia, Nepal, Nicaragua, Peru, Republic of Moldova, Romania, Saint Vincent and the Grenadines, Slovakia, Slovenia, Spain, Uganda, United Kingdom of Great Britain and Northern Ireland, Uzbekistan, Vietnam, Zimbabwe²⁴

In the CEDAW Concluding Observations in the countries below, the committee linked sexual education to the prevention of:

- HIV/AIDS (Dominican Republic, Uganda)
- unwanted pregnancies (Belize, Nepal)
- teenage pregnancies Belize, Chile, Greece, Saint Vincent and the Grenadines, United Kingdom of Great Britain and Northern Ireland)
- abortion (Belize, Burundi, Greece, Slovakia, Slovenia, Spain)²⁵

²⁴ Center for Reproductive Rights, Bringing Rights to Bear

²⁵ *Ibid.*

11. Marriage and Family Relations

a) Free and full consent to marry and found a family

- The Universal Declaration of Human Rights (art. 16) and the International Covenants on Civil and Political Rights (art. 23) and on Economic, Social and Cultural Rights (art. 10)
- The Internal Covenant on Civil and Political Rights also articulates the equality of rights of spouses as to marriage, during marriage and at its dissolution (art. 23.4).
- Such rights are set forth in more detail in the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962).

CEDAW Art. 16, paragraph 1 on marriage and family relations

- To take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations (Art. 16, para. 1)
- Must ensure, on a basis of equality of men and women, the same rights and responsibilities during marriage and at its dissolution (Art. 16, para. 1(c))
- Right to enter into marriage with free and full consent and equal rights and responsibilities during marriage and its dissolution,
- Equal rights with respect to reproduction, childrearing, custody, property and protection against child marriage

b) Polygamous Marriages

CEDAW General Recommendation No. 21 Equality in marriage and family relations 13th session (1994), paragraph 14

- The Committee views polygamy as a harmful traditional practice:
- contravenes a woman's right to equality with men
- can have serious emotional and financial consequences for her and her dependants
- ought to be prohibited
- Polygamy violates the constitutional rights of women guaranteeing their equal rights and breaches the provisions of article 5 (a) of the Convention*

*CEDAW Art. 5 State shall take all appropriate measures : (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women

c) Arranged Marriages

CEDAW General Recommendation No. 21 Equality in marriage and family relations 13th session (1994)

- A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being.
- Subject to reasonable restrictions based for example on a woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law. (Comment No. 16 on Art 16 (1) (a) & (b))

d) Marriage of Girl-Children

CEDAW General Recommendation No. 21 Equality in marriage and family relations, Article 16 (2)

- In the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, States are urged to repeal existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child.
- The Committee considers that the minimum age for marriage should be 18 years for both man and woman (Comment No. 36, Art. 16 (2))
- According to the WHO, when girls marry and have children, their health can be adversely affected and their education is impeded; their economic autonomy is restricted. (Comment No. 36, Art. 16 (2))
- This not only affects women personally but also limits the development of their skills and independence and reduces access to employment, thereby detrimentally affecting their families and communities. (Comment No. 37, Art. 16 (2))

e) Equal Rights in Marriage and Family Relations

Human Rights Committee, 39th session (1990), General Comment No. 19, Article 23

- Spouses should have equal rights and responsibilities in the family
- extends to all matters arising from their relationship:
- choice of residence
- running of the household
- education of the children and administration of assets
- applicable to arrangements regarding legal separation or dissolution of the marriage (para. 8)
- Any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody, maintenance or alimony, visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interest of the children (para. 9)

f) Personal Rights including the Right to Choose a Family Name, a Profession and an Occupation

CEDAW General Recommendation No. 21 Equality in marriage and family relations (Art. 16 (1) (g))²⁶

- A stable family is one which is based on principles of equity, justice and individual fulfilment for each member.
- Each partner must therefore have the right to choose a profession or employment that is best suited to his or her abilities, qualifications and aspirations, as provided in article 11 (a) and (c) of the Convention.
- Each partner should have the right to choose his or her name, thereby preserving individuality and identity in the community and distinguishing that person from other members of society. When by law or custom a woman is obliged to change her name on marriage or at its dissolution, she is denied these rights.

²⁶ Comment No. 24, Article 16 (1) (g)

**g) Common Law Principles, Religious and Customary Law Restrict Women's Equal Right in Marriage
CEDAW General Recommendation No. 21 [Equality in marriage and family relations] 13th session (1994)**

- Relying on the application of common law principles, religious or customary law restricts the women's rights to equal status and responsibility within marriage. (Comment No. 17 on Art. 16 (1) (c))

12. Political and Public Life

CEDAW General Recommendation No. 23 on Political and Public life

States parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referendums and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

General Recommendation No. 23 Political and public life, par. 10

In all nations, the most significant factors inhibiting women's ability to participate in public life have been the

- cultural framework of values and religious beliefs
- the lack of services and men's failure to share the tasks associated with the organization of the household and with the care and raising of children.

In all nations, cultural traditions and religious beliefs have played a part in confining women to the private spheres of activity and excluding them from active participation in public life.

13. Violence Against Women

d) Rape as a "crime against humanity"

- rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity
- when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack

*The Rome Statute of the International Criminal Court, Article 7.1 Par. G, 17 July 1998 (entered into force 1 July 2002)

e) Due Diligence of the State in VAW

Three doctrines in dealing with VAW by private actors

UN Special Rapporteur on VAW (VAW in the family E/CN.4/1999/68)

- 1) States have a due diligence duty to prevent, investigate and punish international law violations and pay just compensation.
- 2) equality and equal protection. If it can be shown that law enforcement discriminates against the victims in cases involving VAW, then States may be held liable for violating international human rights standards of equality.
- 3) domestic violence is a form of torture and should be dealt with accordingly.

CEDAW General Recommendation 19

“Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights, or to investigate and punish acts of violence, and for providing compensation”.

Due Diligence by the State whether VAW was committed by State or non-state actors; duty to provide medical assistance

- the duty of Governments to refrain from engaging in VAW and to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of VAW and to take appropriate and effective action concerning acts of VAW,
 - whether those acts are perpetrated by the State, by private persons or by armed groups or warring factions,
 - to provide access to just and effective remedies and specialized, including medical assistance to victims

14. Sexual Orientation

International Covenant on Civil and Political Rights (ICCPR)

- protects lesbians, gays, bisexuals, transgenders (LGBTs) against discrimination on the basis of equal protection (Art. 26)
- prohibits discrimination on the basis of “other” status (Art. 2 (1))
- equal right of men and women (Art. 3)
- equality of rights to marriage (Art. 23)

HRC recognized in General Comment 19

The HRC recognized that:

- The concept and structure of family may differ from state to state
- That the right to marry and found a family may be based on diverse definitions of families and relationships
- Contrary to claims that LGBT relationships are “abnormal”

CEDAW General Recommendation No. 21, Equality in marriage and family relations

Comment No. 13 on Art. 16 (Various forms of family) (Thirteenth session (1994))

- The form and concept of the family can vary from State to State, and even between regions within a State.

2003 Concluding Observations on the Philippines from Human Rights Committee

- Urged the Philippine government to:
 - "take the necessary steps to adopt legislation explicitly prohibiting discrimination“;
 - "to pursue its efforts to counter all forms of discrimination" pertaining to sexual orientation
 - "strengthen human rights education to forestall manifestations of intolerance and de facto discrimination”

CHAPTER VI

PHILIPPINE STATUS OF TREATY RATIFICATIONS

A. Incorporation of International Laws in Philippine Laws²⁷

The Constitution authorized the President to sign a treaty or international agreement and such agreements become valid and effective when ratified by at least two-thirds of all the Members of the Senate.²⁸ The Philippines “adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.”²⁹

B. Status of Ratifications

The Philippines has ratified the following international legal instruments: CEDAW,³⁰ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women,³¹ Convention on the Rights of the Child,³² Optional Protocol to the Convention of the Rights of the Child on the involvement of children in armed conflict,³³ and the Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution, and child pornography,³⁴ the International Covenant on Economic, Social and Cultural Rights,³⁵ Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment,³⁶ the International Covenant on Civil and Political Rights,³⁷ the Optional Protocol to the International Covenant on Civil and Political Rights,³⁸ the International Convention on the Elimination of All Forms of Racial Discrimination,³⁹ and the International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families.⁴⁰

²⁷ An explanation of terminology: Monism emphasizes that international law and municipal law are the two faces of law so there is no need to make separate distinction between them. Dualism stresses that the rules of the systems of international law and municipal law exist separately and cannot purport to have an effect on, or overrule, the other. The theory of transformation is similar to dualism but focuses on transformation of international law to domestic law by the method of specific adoption. The theory of delegation is derived from monism and focuses on authority to execute the international law by the constitution of particular country. Thus international law delegates the authority to constitutions of each nation for its execution. The theory of harmonization emphasizes the importance and co-existence of both laws and interprets both in a harmonious manner.

²⁸ PHILIPPINES CONST, Article VII, Section 21.

²⁹ PHILIPPINES CONST, Article II, Section 2.

³⁰ Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) (*entered into force* Sept. 3, 1981, *for Philippines* 04/09/81).

³¹ Optional Protocol to the Convention on the Elimination of Discrimination against Women, Oct. 6, 1999, G.A. Res. 54/4, U.N. GAOR, 54th Sess., U.N. Doc A/Res/54/4 (1999) (*entered into force* Dec. 22, 2000, *for Philippines* 12/02/04).

³² Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, UN Doc. A/44/49 (1989), *reprinted in* 28 I.L.M. 1448 (*entered into force* Sept. 2, 1990, *for Philippines* 20/09/90).

³³ Optional Protocol to the Convention of the Rights of the Child on the involvement of children in armed conflict, G.A. Res. 54/263, U.N. GAOR, 54th Sess., Agenda Item 116(1), U.N. Doc No. A/RES/54/263 (2001) (*entered into force* Feb. 12, 2002, *for Philippines* 26/09/03 at <http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet> (last visited May 23, 2003) and <http://www.unhchr.ch/html/menu2/6/protocolchild.htm> (last visited June 5, 2003)).

³⁴ Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution, and child pornography, G.A. Res. 54/263, U.N. GAOR, 54th Sess., Supp. No. 49, U.N. Doc A/54/49 (2000) (*entered into force* Jan. 18, 2002, *for Philippines* 28/06/02 at <http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet> (last visited May 23, 2003) and <http://www.unhchr.ch/html/menu2/6/crc/treaties/opsc.htm> (last visited June 5, 2003)).

³⁵ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, at 49, U.N. Doc A/6316 (1966), 999 U.N.T.S. 3 (*entered into force* Jan. 3, 1976, *for Philippines* 03/01/76).

³⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (*entered into force* June 26, 1987, *for Philippines* 26/06/87).

³⁷ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976, *for Philippines* 23/01/87).

³⁸ Optional Protocol to the International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 59, U.N. Doc. A/6316, 999 U.N.T.S. 302 (*entered into force* Mar. 23, 1976, *for Philippines* accession 22/11/89).

³⁹ International Convention on the Elimination of All Forms of Racial Discrimination, 660, U.N.T.S. 195, (*entered into force* Jan. 4, 1969, *for Philippines* 04/01/69, at <http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet> (last visited May 23, 2003)).

⁴⁰ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, annex, UN GAOR, 45th Sess., Supp. (No. 49A), at 262, U.N. Doc. A/45/49 (1990) (*will enter into force* July 1, 2003, *for Philippines* ratified 14/07/03, at

The Philippines has not ratified the Rome Statute of the International Criminal Court, Convention on the Rights of Persons with Disabilities, Optional Protocol to the Convention on the Rights of Persons with Disabilities, and International Convention for the Protection of All Persons from Enforced Disappearance.

Status of Philippine Ratifications of the Principal International Human Rights Treaties (As of 14 July 2006)⁴¹

CESCR	CCPR	CCPR OP1	CCPR OP2	CERD	CEDAW	CEDAW OP	CAT	CAT- OP	CRC	CRC OP AC	CRC OP SC	CMW
03 Jan 76	23 Jan 87	22 Nov 89	-	04 Jan 69	04 Sep 81	12 Feb 04	26 Jun 87a	No action	20 Sep 90	26 Sep 03	28 Jun 02	01 Jul 03

Notes:

a – accession

http://www.ilo.org/public/english/employment/skills/recomm/instr/un_9.htm; http://www.unhchr.ch/html/menu3/b/m_mwctoc.htm (last visited June 5, 2003)).

⁴¹ from the Office of the United Nations High Commissioner for Human Rights

CHAPTER VII

Introduction to Laws

Core messages of the topic:

- ❖ Role of paralegal
- ❖ Characteristics of law
 - created by people; subject to biases/ prejudices
- ❖ Engendering rights
 - Discriminatory laws/policies on women e.g., vagrancy/prostitution, adultery, non-recognition of LGBT rights, non-provision of info and services to health care;
 - Sample ordinances on RH (anti-homosexual discrimination, provision of education & skills training for those engaged in prostitution)

Evocative Questions for the participants:

What is your religion?

Personal questions on how one will deal with the following issues:

- Nullity of marriage where woman is abused (“What god has put together let no one put asunder” vs. actual canon jurisprudence)
- Adultery case filed vs. a battered woman who had an extra-marital
- “Immorality issues” in government service
 - single or married woman, a government employee, was dismissed from work for having a relationship w/ a man/married man
 - single woman, a teacher in a government school or a Catholic school, was dismissed from work for being pregnant
- Gay librarian criminal case vs. a Catholic College for homosexual discrimination in the workplace (QC ordinance)
- Protection Order case for denial of custody of a lesbian mother (effect on the children)
- 15-year old incest victim wanting to terminate her pregnancy
- Woman with an anencephalic fetus wanting to terminate her pregnancy

A. Pointers for Paralegals

- Keep an open mind
- Break mindsets
- Be a vigilant advocate for women's and girl-children's rights
 - eye for discriminatory laws/practices
 - impact of discriminatory laws/practices
 - work towards revision of discriminatory provisions/practices.

B. Laws

1. Nature of Laws

- people create laws
- culture has bearing on the creation of laws (interplay of biases/prejudices, sexism)
 - examples in laws:
 - Discriminatory circumstances and penalties in crime of adultery vs. concubinage under RPC
 - vs. ongoing trend to repeal adultery and concubinage along with advocacy for divorce
 - Family Code (1988) & Muslim Code (1977)
 - Muslim Code allows arranged marriages
 - No national law prohibiting discrimination of lesbians, gays, bisexuals, and transgender people (LGBTs) in the workplace, non-recognition of same-sex union
 - examples in traditions and practices
 - Maranao practice of difference in punishment between single vs. married;
 - Tausug & Maranao practice in elopement where the man is killed when caught in the midst of elopement
- just because the law imposes a penalty it doesn't mean it's right
- a change in policy/law is not enough

2. Historical Changes in Laws

- vagrancy/prostitution vs. QC RTC decision, RA 9208
- PD 772 (Anti-squatting) vs. provision of relocation for urban poor in the Urban Development and Housing Act
- Polygyny (prohibited in Turkey, Tunisia, Fiji and Uzbekistan)
- women were not allowed to vote and had to fight for their right to vote

3. Characteristics of Philippines Laws

- colonial
- fundamentalist (imposition of one's beliefs on others who do not share the same views)

(Note: more discussions on discriminatory laws/policies and traditions will be discussed in the following chapters)

4. Kinds of Laws

- a) Formal laws – are written laws
 - Executive Orders -issued by the president of the Republic of the Philippines (RP)
 - Republic Acts -legislated by the House of Representatives (HOR) and Senate
 - City and Provincial Ordinances - City and Provincial council
- b) Informal laws- are customs, traditions, beliefs and practices that are not necessarily written but have been part of our daily lives up to these days. Usually, these informal laws are the bases of our formal laws.

C. Paralegal Work

1. What is a paralegal?

A paralegal is a person who is knowledgeable with the laws but is not a lawyer therefore cannot represent clients in courts. Anyone who is interested in laws and in defending people's rights can become a paralegal.

What is paralegal work vis-a-vis legal practice?

Paralegal work complements the work of lawyers. They do research, draft affidavits, pleadings and other legal documents.

2. Relevance of paralegal work

Paralegal work is very relevant in a society where the laws are biased to men and to the rich, where justice eludes the vast majority of the populace who cannot afford the financial requirement of “getting justice”—filing fees, reproduction of documents, food and transportation expenses in going to and from the courts, not to mention the sky-rocketing professional fees of lawyers. The reality, very few lawyers offer their services to the marginalized sectors for minimal fee or for free (*pro bono*). There are many women victims who cannot get justice just because they cannot afford to hire private lawyers to represent them in courts.

D. Environmental Scan

3. Reproductive Rights Issues:

Unintended pregnancies/Unmet need

- about half of all pregnancies in the Philippines are unintended (approximately 1.43 million pregnancies)
 - *Singh S et al., Unintended Pregnancy and Induced Abortion in the Philippines: Causes and Consequences, New York: Guttmacher Institute, 2006
- Filipino women on average have one child more than they want (DOH AO No. 50-A s. 2001)
 - consequences of early, frequent and excessive childbearing

Realities

- Unequal power relations between men and women (rape, incest, prostitution, unable to use contraception)
- Lack of access to info and services on
 - modern methods of contraception including emergency contraception
- Unwanted/unintended pregnancy vis-à-vis unmet need for contraception and unsafe pregnancy/ maternal mortality ratio/infant mortality ratio/ unsafe abortion
- Lack of knowledge on medical science and adherence to colonialist policies

- **colonialist law**

- penalty on woman who induce abortion (1932) [consider repeal of provision penalizing the woman & physician for self-induced abortion]

Fundamentalism (imposition of one's beliefs on others who do not share the same views)

- Manila City policy disallowing access to modern contraceptives in government clinics (Exec. Order No. 003 Series of 2000)
- Makati policy where minors are denied free access to reproductive health services (July 23, 2001)
- Taliban experience
- Saudi women not allowed to drive
- President Macapagal-Arroyo's biased governmental support for "natural family planning" (NFP) methods
 - P50 million award to Couples for Christ to promote "natural family planning"
 - questioned at the House of Reps:
 - violation of procurement act
 - improper disbursements of funds

Postinor (emergency contraceptive pill) was delisted by the Bureau of Food and Drugs (BFAD)*

- Erroneous declaration: "abortifacient effect[s] and contravenes existing provisions of law on the matter"
- pharmaceutical company backed out and considered moot and academic
- denies women their right to prevent pregnancy in cases of rape, unprotected sex, contraceptive failure

*Bureau Circular No. 18, s. 2001, Dec. 7, 2001

a) Religious Refusals

- Discriminatory/punitive attitudes towards women suffering from complications arising from unsafe abortion
 - Refusal by hospitals to admit women who are already profusely bleeding
 - Withholding anesthetics during D & C procedures

- delaying proper management of abortion complications
- scolding women and threatening to report them to the authorities
- placing of signs labeling women as "criminals/murderers"

b) Three pillars of Safe Motherhood (cost-effective interventions to cut down maternal deaths)⁴²

- access to family planning
- skilled attendance at birth
- access to emergency obstetric care

c) Effects of adolescent pregnancies

- health risks related to early pregnancy
- Disruption of schooling
- Low skilled work
- Disregard on the welfare of their children
- Repeated pregnancies

4. Right to Sexual Orientation and Gender Identity

d) Lesbian, Gay, Bisexual, Transgender (LGBT) Rights:

- Right to Equality & Equal Protection
- Right vs. Discrimination (Anti-discrimination Laws)
- Right to same-sex marriage/civil union/domestic partnership (right to marry)
- Right vs. violence (Addressing hate crimes)

e) Legal Argumentation

- right to privacy (closeted; as if disreputable) versus right to equality (being out)

f) International Trend

- Recognition of same-sex marriage (e.g. Netherlands, Belgium, Spain, Canada, South Africa)
- Civil Partnership (United Kingdom, Falkland Islands)
- Civil Union (Mexico City, New Zealand, Buenos Aires City, Colombia, Uruguay)
- Registered partnerships (Czech Republic, Denmark, Finland, Germany, Iceland, Luxembourg, Norway, Slovenia, Sweden, Switzerland)
- US Civil Unions: Vermont, Connecticut, New Jersey, and New Hampshire; Domestic partnerships: California, Maine, Oregon Washington, District of Columbia, and Hawaii. Same-sex marriage performed and recognized: in Massachusetts and only recognized in New York and Rhode Island
- Australia (registered and domestic partnerships)

⁴² UNFPA Country Rep. Suneeta Mukherjee, Celebration of World Population Day (July 21, 2007)

<p style="text-align: center;">CHAPTER VIII</p> <p style="text-align: center;">PHILIPPINE LAWS</p>
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A. Philippine Constitution

- “The state values the dignity of every human person and guarantees full respect for human rights.” (Art. 2, Sec. 11)
- “The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.” (Article 2, Section 14)
- the State to protect and promote the right to health of the people and to instill health consciousness among them (Art. 2, Sec. 15)
- “No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws.” (Art. 3, Sec. 1)
- State to adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost... (Art. 8, Sec. 11).
- The State “protect[s] working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.” (Art. 8, Section 14)
- Defends the right of spouses to form a family in accordance with their religious convictions and the demands of responsible parenthood (Art. 15, Sec. 14).
- The State “recognizes the vital role of the youth in nation-building” and “promote[s] and protect[s] their physical, moral, spiritual, intellectual, and social well-being.” (Article 2, Section 13)
- The Constitution also defends “the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development.” (Art. 15, Section 3.2)

Governance

- “Sovereignty resides in the people and all government authority emanates from them” (Article 2, Section 1)
 - government officials are representatives of the Filipino people; they obligated to uphold women’s rights

B. Laws Relating to Women

In the last few years, laws like the Anti-Rape Law of 1997 (RA 8353), the Anti-Trafficking in Persons Act of 2003 (RA 9208) and the Anti-Violence Against Women and their Children Act of 2004 (RA 9262) were passed into law. The Anti-Rape law expressly recognized marital rape and re-classified rape as a crime against persons rather than a crime against chastity. The Anti-Trafficking law provided penalties for a vast range of acts

considered as trafficking. RA 9262 provides protection for abused women and their children against their male partners or former male partners or those with whom they had or are having a dating relationship.

Republic Act 7192 or the “Women in Nation Building Act” was enacted promoting the integration of women as full and equal partners of men in development and nation building. It provides a minimum of 30 percent of all official development funds to be allocated for development programs to benefit rural women.

There are Labor Code provisions protecting the woman’s right to marry and pregnancy in Art. 136 and 137, respectively.

Listing of laws:

- ❖ **Republic Act No. 6955-** An act to declare unlawful the practice of matching Filipino women for marriage to foreign nationals on a mail-order basis and other similar practices, including the advertisement, publication, printing or distribution of brochures, fliers and other propaganda materials in furtherance thereof and providing penalty therefore.
- ❖ **Republic Act 6972** - Mandates the establishment of day care centers in every *barangay*
- ❖ **Republic Act No. 7610** – An Act Providing for Stronger Deterrence and Special Protection against child Abuse, Exploitation and Discrimination, and for other Purposes
- ❖ Supreme Court Rule on Examination of a Child Witness
- ❖ **Republic Act No. 7877**-An Act Declaring Sexual Harassment unlawful in the Employment, Education or Training Environment, and for other Purposes.
- ❖ **Resolution No. 01-0940** - Administrative Disciplinary Rules on Sexual Harassment Cases Civil Service Commission
- ❖ **Republic Act 7192** -Women in Nation Building Act
- ❖ **Republic Act 7322** - Increasing maternity benefits of women in the private sector
- ❖ **Republic Act 7600** - Provides incentives to all government & health institutions with rooming-in and breast-feeding practices
- ❖ **Republic Act 7655** - Increases the minimum wage of domestic helpers
- ❖ **Republic Act No. 8042**- Migrant Workers and Overseas Filipinos Act of 1995
- ❖ **Republic Act No. 8353**- An Act expanding the definition of the crime of rape, reclassifying the same as a crime against persons, amending for the purpose Act No. 3815, as amended, otherwise known as the Revised Penal Code, and for other Purposes.
- ❖ **Republic Act No. 8369**-An Act Establishing Family Courts, Granting them exclusive original jurisdiction over child and family cases, amending Batas Pambansa Bilang 129, as amended, otherwise known as Act of 1980, Appropriating funds therefore and for other purposes
- ❖ **Republic Act No. 8505**- An Act providing Assistance and Protection for rape victims, establishing for the purpose of a rape crisis center in every province and city, authorizing the appropriation of funds therefore, and for other purposes.
- ❖ **Republic Act No. 8972** -The Solo Parents’ Welfare Act of 2000- An Act providing Privileges to Solo Parents and their Children, Appropriating funds therefore and for other Purposes.
- ❖ **Republic Act No. 9208** – An Act to Institute Policies to eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations, and for other.
- ❖ **Republic Act No. 9262**- An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes
- ❖ **Supreme Court Rule No. 04-10-11**- En Banc Supreme Court Resolution on Violation Against Women and their Children
- ❖ **Quezon City Ordinance No. SP- 1516, S-2005:** Addressing the System of Prostitution in Quezon City
- ❖ **Quezon City Ordinance No. SP -1309, S-2003:** An Ordinance Prohibiting All Acts of Discrimination Directed Against Homosexuals in Any Office in Quezon City
- ❖ **Aurora Provincial Ordinance No. 125:** An Ordinance Providing for the Aurora Reproductive Health Care Code of 2005

- ❖ **Presidential Decree No. 1083-A** Decree to Ordain and Promulgate a Code Recognizing the System of Muslim Laws, Codifying Muslim Personal Laws, and Providing for its Administration and for other Purposes

C. Laws relating to provision of Fertility Management

1. Employment of Women and Minors Internal Rules and Regulation Sec. 11 (on Art. 134 of the Labor Code)

- Employers who habitually employ more than two hundred (200) workers in any locality shall provide free family-planning services to their employees and their spouses which shall include but not limited to, the application or use of contraceptives (pills, IUDs, Art. 134)
- BWYW shall prescribe the minimum requirements of family planning services
- DOLE shall develop and prescribe incentive bonus schemes to encourage family planning among female workers

2. Local Government Code

- Sec 17. Delivery of basic services by LGUs including family planning, maternal and child health and nutrition services
- Creation of Local Health Boards

3. Delivery of Basic Services by LGUs, Sec. 17 on Basic services and facilities

- **Health services** – e.g. implementation of programs and projects on
 - primary health care
 - maternal and child care
 - communicable and non-communicable disease control services
 - access to secondary and tertiary health services
 - purchase of medicines, medical supplies, and equipment needed to carry out services

4. Delivery of Basic Services by LGUs, Sec. 17 on Basic services and facilities

- **Social welfare services** including:
 - child & youth welfare
 - women's welfare
 - community-based rehabilitation of vagrants, children in conflict with the law
 - fertility management

<p>CHAPTER IX</p> <p>PHILIPPINE IMPLEMENTATION OF WOMEN’S RIGHTS UNDER CEDAW</p>
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A. De Jure Discrimination

The reliance on Spanish colonial laws and the de facto non-separation of church and state prove to be detrimental most especially to women’s rights both in law and in its implementation (e.g. the penalty imposed on women who induce abortion under Revised Penal Code which was adopted from the Spanish Penal Code; the preference on the *padre de familia* (father of the family) in the Family Code (1988) and the Muslim Code (1977)). Perhaps even the practice of providing low wages to workers may be the vestiges of the oppression of Filipinos during the Spanish and American colonial era.

1. Discriminatory Family Laws

Leading issues confronting Filipino women in the context of marriage and family life include the absence of a clear divorce law, discriminatory penal provisions on adultery and discriminatory provisions in the Family Code⁴³ and the Code of Muslim Personal Laws of the Philippines (Muslim Code).⁴⁴

g) Lack of a specific divorce law

There is no specific divorce law in the Philippines. Women whose husbands are abusing them can only obtain nullity of marriage under Article 36 of the Family Code where it must be shown that either or both of the parties are psychologically incapacitated.⁴⁵ Although the Supreme Court rules provide that expert opinion need not be presented,⁴⁶ some courts still require evidence of medical or clinical causes of psychological illness to be proven by experts.⁴⁷ Hence, court decisions nullifying marriages are difficult to obtain because of varying judicial interpretations including what constitutes psychological illness and the lack of appreciation of evidence of physical, emotional and psychological abuses.⁴⁸ Moreover, cases for nullity of marriage are costly and inaccessible to poor women. Without specific divorce legislation, Article 36 makes it hard for women in abusive relationships to leave their abusive husbands⁴⁹ thereby allowing the continuance of domestic violence and abusive marriages.

h) Dismissals of government employees based on “immorality issues”

As a result of the lack of divorce, many women cohabit with their current partners without having their marriage nullified⁵⁰ and some women are dismissed from government service precisely because of these “immorality issues.”⁵¹ Such dismissals for “immorality” do not take into consideration the fact that a married woman who was previously in an abusive relationship may have found comfort in her current loving relationship.⁵²

⁴³ Executive Order (EO) No. 209 as amended by EO No. 227 The Family Code of the Philippines, Article 96 [hereinafter The Family Code].

⁴⁴ PD 1083, Code of Muslim Personal Laws of the Philippines (1977) [hereinafter *Muslim Code*].

⁴⁵ Clara Rita Padilla, Philippine Submission to Equality Now Workshop on Litigating for Sex Equality, Nairobi, Kenya (June 9-11, 2001) (unpublished submission on file with EnGendeRights) at 16 [hereinafter Litigating for Sex Equality].

⁴⁶ Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, A.M. No. 02-11-10-SC, Sec. 2 (d), par. 2.

⁴⁷ Litigating for Sex Equality, *supra* at 18.

⁴⁸ *Id.*

⁴⁹ Clara Rita Padilla, *Rethinking Policies on Women*, 2 (1) SOROPTIMIST BALITA, page 3, (September 2005) [hereinafter *Rethinking Policies on Women*].

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

i) Repeal of the punitive provisions on adultery

Under the Revised Penal Code, a married woman commits “adultery” if she has sexual intercourse with a man other than her husband.⁵³ There is no corresponding law for males. A married male, on the other hand, can be convicted of “concubinage” only if his mistress cohabits with him in the conjugal dwelling or in another dwelling, or if he has intercourse with a woman other than his wife under “scandalous” circumstances.⁵⁴

In many countries around the world, the criminal provisions imposed on adultery have already been repealed.⁵⁵ The intended purpose of the criminal provision on adultery under Philippine law is to protect the rights of real heirs. However, many adultery cases are filed by estranged husbands who have long been separated from their wives and who have no intention to reunite with their wives nor do they have any intention to support the illegitimate child of their wives. Many adultery cases are filed to harass women and sometimes to threaten and coerce them to transfer contested property in the name of the estranged husband.⁵⁶

j) Repeal of the punitive provisions on women who marry within 301-day period

The Penal Code penalizes widows, divorced women or women whose marriages have been annulled or dissolved if they get married within 301 days from the death, divorce or separation of their husbands..⁵⁷ No such constraints are imposed on the men.

k) Repeal of the discriminatory provisions in the Family Code

Marital laws that are biased in favor of the husband violate Article 16 of the Convention. Some of the laws that regulate marriage under the Family Code discriminate against women. For example, the husband’s decision prevails over the wife in cases where there is disagreement on the administration or enjoyment of community property⁵⁸ and over the exercise of parental authority.⁵⁹

l) Repeal of the discriminatory provisions in the Muslim Code

Certain provisions of the Muslim Code discriminate against women such as those pertaining to polygamy, early marriage (allowed at age 15), arranged marriages (females aged 12-14), and unequal rights of women and men in marriage relations including the husband’s authority to choose the family residence, the husband’s denial of permission to his wife to practice a profession or occupation of her choice and the husband’s authority over children prevailing over the wife.⁶⁰ Under Article 27 of the Muslim Code, polygamy is permitted under certain conditions⁶¹ although they are inherently discriminatory and oppressive to women and lead to impoverishment and psychological abuse of the women and their children.⁶² In Tunisia, polygamy was abolished under the Personal Status Code immediately after Tunisia gained independence in 1956.⁶³ In Turkey, the 1926 code, which replaced the Ottoman system, prohibited both polygamy and repudiation.⁶⁴

⁵³ The Revised Penal Code, art. 333.

⁵⁴ *Id.* art. 334.

⁵⁵ Agence France-Presse, Sexual Violence, Abortion in the Spotlight on Women's Day, Mar 08, 2006, available at http://news.inq7.net/world/index.php?index=1&story_id=68774 (Last visited August 2, 2006).

⁵⁶ There have been cases where Filipino lawyer Atty. Clara Rita A. Padilla has defended married women (name withheld to protect confidentiality of clients) against adultery cases that have been filed by the estranged husbands merely to harass or threaten these women.

⁵⁷ The Revised Penal Code, art. 351.

⁵⁸ The Family Code .

⁵⁹ *Id.* art. 211.

⁶⁰ *Id.*, Arts.16, paras 1-3; 27, 36 (2), (3); 71; 79.

⁶¹ *Id.*, Art. 27. Art. 27 states “notwithstanding the rule of Islamic law permitting a Muslim to have more than one wife but not more than four at a time, no Muslim male can have more than one wife unless he can deal with them with equal companionship and just treatment as enjoined by Islamic law and only in exceptional cases.” *supra* note 178.

⁶² See General Recommendations 21, Equality in Marriage and Family Relations, *supra* note 11, para.14; Discussions at the “Pre-Test of the Paralegal Trainers’ Training Module for Muslim religious leaders, provincial health officers, and Shari’a lawyers, councilors, and judges” conducted by EnGendeRights on Nov. 24 to 25, 2005 at Tower Inn, Davao City.

⁶³ See <http://www.hri.ca/fortherecord2000/documentation/commission/E-CN4-2000-63-add4.htm>

⁶⁴ Turkish Law Recognizes Women, Men as Equals available at <http://www.womensenews.org/article.cfm/dyn/aid/777>

Under Article 16 of the Muslim Code, a Muslim male and female aged 15 can contract marriage.⁶⁵ Upon petition of a male guardian, the Shari'a District Court may order the solemnization of the marriage of a female who, though less than 15 but not below 12 years of age, has attained puberty.⁶⁶ In Morocco, the minimum age for marriage was raised from 16 to 18 years.⁶⁷ In Bangladesh, child marriage and betrothal are prohibited and shall have no legal effect.⁶⁸

Divorce must be available to Filipino women and the provisions that are discriminatory to women in the Family Code, Revised Penal Code, and Muslim Code must be repealed.

2. Lesbian Rights

The Committee's General Recommendation 21 recognizes that "[t]he form and concept of the family can vary from State to State, and even between regions within a State."⁶⁹ The Committee has also asked states parties to reconceptualize lesbianism as a sexual orientation and to abolish penalties for its practice.⁷⁰ The Human Rights Committee (HRC), the committee tasked to monitor the implementation of the International Covenant on Civil and Political Rights (ICCPR), recognized in General Comment 19 that the concept and structure of family may differ from state to state and that the right to marry and found a family may be based on diverse definitions of families and relationships.

There is widespread discrimination against lesbians, bisexual and transgender women in the Philippines, yet no national law explicitly protects homosexuals from discrimination nor promotes their rights. While a Quezon City ordinance prohibits discrimination in the workplace on the basis of sexual orientation,⁷¹ in Makati City, a dress code is imposed on gay men working for the city government.⁷² There are many anti-discrimination bills based on sexual orientation pending in the 13th and 14th Congresses, but none has yet been passed into law.

Further, there is no legal recognition of marriage or partnership with regard to lesbians and bisexual and transgender women. It is significant, however, that women victims of abuse in lesbian relationships are accorded the same protection under the "Anti-Violence against Women and Their Children Act of 2004" since Sec. 3 includes any person with whom the woman has or had "a sexual dating relationship."

Internationally, same-sex marriages/unions are recognized in Netherlands, Canada, United Kingdom and even in the predominantly Catholic countries such as Belgium and Spain.⁷³ Recognition of the rights of homosexuals by Muslims can be seen in the example of Iranian clerics who recently gave approval to gender reassignment surgery to transgendered people.⁷⁴ In Lebanon, a small public campaign exists to legalize homosexual relations in private between consenting adults.⁷⁵

It would be interesting to note the repeal of a criminal law in Tasmania through the 1992 case of *Toonen v. Australia*⁷⁶ where the Human Rights Committee held that the Tasmanian Criminal provisions on private sexual contact between consenting adult homosexual men violate the right to privacy under Article 17 and the right

⁶⁵ Code of Muslim Personal Laws, Art. 16.

⁶⁶ *Id.*, Art. 16, para. 2.

⁶⁷ EnGendeRights, Progressive Legislations and Policies Upholding Women's Rights in predominantly Muslim Countries: A Continuing Challenge (draft on file at EnGendeRights)

⁶⁸ *Id.*

⁶⁹ General Recommendation 21, Equality in Marriage and Family Relations, *supra* note 11, Comment No. 13 on Art. 16 Various forms of family.

⁷⁰ CEDAW Concluding Observations on Kyrgyzstan. 27/01/99. CEDAW/C/1999/I/L.1/Add.3, par. 35.

⁷¹ Quezon City Ordinance No. SP-1309, S-2003: An Ordinance Prohibiting All Acts of Discrimination Directed Against Homosexuals in Any Office in Quezon City Whether in the Government or in the Private Sector, and Providing Penalties for Violation Thereof; effective March 26, 2004

⁷² Makati City Memorandum (August 16, 2000) cited in Clara Rita Padilla and Flordeliza C. Vargas, "Lesbians and Philippine Law," *Women's Journal on Law & Culture*, July-December 2001, Vol. 1, No. 1, at 61; The policy imposes a dress code for gay men working for the city government "prohibiting wearing of girl's attire by gay employees including putting on make-up and lipstick."

⁷³ "Homosexuality laws of the world" available at http://en.wikipedia.org/wiki/Homosexuality_laws_of_the_world

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (Hum. Rts. Comm. 1994).

against discrimination under Article 2 of the ICCPR. After the decision, Tasmania repealed the law in question.⁷⁷

In the 2003 Concluding Observations on the Philippines, the HRC urged the Philippine government to “take the necessary steps to adopt legislation explicitly prohibiting discrimination” and “to pursue its efforts to counter all forms of discrimination” pertaining to sexual orientation.⁷⁸ The Committee further urged the Philippines to “strengthen human rights education to forestall manifestations of intolerance and de facto discrimination.”⁷⁹

The Philippine government should take the necessary steps to adopt legislation explicitly prohibiting discrimination against sexual orientation and to pursue its efforts to counter all forms of discrimination pertaining to sexual orientation.

3. Repeal of Discriminatory Revised Penal Code Provisions

a) Repeal of Vagrancy Provisions

The provisions of the Revised Penal Code continue to focus law enforcement attention on women in prostitution, rather than on their exploiters. Article 202 on vagrancy is still being used to round up and imprison women in prostitution or is sometimes used to extort money or sexual favors.⁸⁰

The existing criminal law imposing imprisonment on women in prostitution disregards the fact that many are lured to prostitution because of the desperation due to poverty and lack of alternative sources of income. The discriminatory provisions imposing penalties on women in prostitution should be repealed. Detaining women in prostitution is not the answer.

b) Repeal of criminal provisions imposed on women who induce abortion and those who assist them

Many countries all over the world have been liberalizing their abortion laws. The CEDAW stated that “barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures”⁸¹ and that “[w]hen possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion.”

The CEDAW Committee has recognized that restrictive abortion laws result in a violation of women’s right to life.⁸² It has, on several occasions, recommended that State parties remove punitive provisions imposed on women who undergo abortion.⁸³ It has praised at least one State party for amending their restrictive legislation.⁸⁴ Furthermore, the CEDAW Committee has emphasized the vital link between illegal, unsafe

⁷⁷ The International Covenant on Civil and Political Rights (ICCPR), a treaty that the Philippines ratified and imposes duties and obligations for our government to uphold, protects lesbians against discrimination on the basis of equal protection. Article 2 (1) prohibits discrimination on the basis of “other” status, while Article 3 on equal right of men and women, and Article 23 on equality of rights to marriage; The HRC recognized in General Comment 19 that the concept and structure of family may differ from state to state and that the right to marry and found a family may be based on diverse definitions of families and relationships.

⁷⁸ Concluding observations of the Human Rights Committee: Philippines : Philippines. 01/12/2003, CCPR/CO/79/PHL, 1 December 2003 available at <http://www.unhchr.ch/tbs/doc.nsf/0/5c1a26dde6327ef0c1256df300525589?Opendocument>

⁷⁹ *Id.*

⁸⁰ Litigating for Sex Equality, *supra*, at 20.

⁸¹ CEDAW General Recommendation No. 24, *supra*, paragraph 14.

⁸² *see* Center for Reproductive Rights and University of Toronto Programme of Reproductive Sexual Health Law, Bringing Rights To Bear (An Analysis of the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights), 2003 [hereinafter Bringing Rights to Bear], *e.g.*, Chile, Colombia, Dominican Republic, Paraguay

⁸³ CEDAW, General Recommendation 24, *supra*, paragraph 31 (c); *Id.*, Bringing Rights To Bear; *see* CEDAW jurisprudence asking states parties to review legislation making abortion illegal, *e.g.*, Argentina, Chile, Colombia, Dominican Republic, Ireland, Mexico, Panama, Paraguay, Peru.

⁸⁴ *Id.*, Bringing Rights To Bear; *See, e.g.*, Belgium.

abortion and high rates of maternal mortality⁸⁵ by consistently making the point that lack of access to contraceptive methods and family planning services, as well as restrictive abortion laws, tend to coincide with the prevalence of unsafe abortions that contributes to high rates of maternal mortality.⁸⁶

The Philippines has one of the most restrictive abortion laws in the world--penalizing the woman who undergoes abortion and the person assisting the woman without providing clear exceptions even when the woman's life or health is in danger, the pregnancy is the result of rape, or fetal impairment.⁸⁷

The Philippine Constitution provides that "[the state] shall equally protect the life of the mother and the life of the unborn from conception".⁸⁸ This provision was not present in the 1935 and 1973 constitutions. The constitutional provision equally protecting the unborn from conception, however, does not prohibit abortion. Hungary also has a constitutional provision protecting life from conception but still permits abortion up to 12 weeks of gestation.⁸⁹ The life of the unborn is not placed exactly on the same level as the life of the woman,⁹⁰ as shown by laws and jurisprudence of countries worldwide allowing abortion on various grounds.⁹¹ Furthermore, international human rights standards provide tremendous support for the right to safe and legal abortion.⁹²

Despite the illegality of abortion, 2000 estimates showed that approximately 473,000 women had abortions;⁹³ an estimated 79,000 women were hospitalized for complications due to abortion;⁹⁴ the abortion rate was 27 per 1,000 women aged 15-44 while the abortion ratio was 18 induced abortions per 100 pregnancies;⁹⁵ and approximately 800 women die every year due to complications resulting from unsafe abortion.⁹⁶

⁸⁵ *Id.*, Bringing Rights To Bear, at 146; see also CEDAW jurisprudence e.g. Antigua and Barbuda, Chile, Georgia, Greece, Guyana, Hungary, Lithuania, Mauritius, Mongolia, Paraguay.

⁸⁶ *Id.*, Bringing Rights To Bear, at 146. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. See e.g. **Antigua and Barbuda**, 12/08/97, U.N. Doc. A/52/38/Rev.1, Part II, ¶ 258; **Chile**, 09/07/99, U.N. Doc. A/54/38, ¶¶ 209, 228; **Georgia**, 01/07/99, U.N. Doc. A/54/38, ¶ 111; **Greece**, 01/02/99, U.N. Doc. A/54/38, ¶ 207; **Guyana**, 31/05/95, U.N. Doc. A/50/38, ¶ 621; **Hungary**, 09/05/96, U.N. Doc. A/51/38, ¶ 254; **Lithuania**, 16/06/2000, U.N. Doc. A/55/38, ¶ 158; **Mauritius**, 31/05/95, U.N. Doc. A/50/38, ¶ 196; **Mongolia**, 02/02/2001, U.N. Doc. A/56/38, ¶ 273; **Paraguay**, 09/05/96, U.N. Doc. A/51/38, ¶ 131; **Ukraine**, 09/05/96, U.N. Doc. A/51/38, ¶ 287; **Venezuela**, 12/08/97, U.N. Doc. A/52/38/Rev.1, ¶ 236.

⁸⁷ The Revised Penal Code of the Philippines, as amended, arts. 256-259 [hereinafter The Revised Penal Code]; Pacifico Agabin, "The Legal Perspective on Abortion", *The Journal of Reproductive Health, Rights and Ethics*, Vol. II, No. 1 (1995), at 2; The Philippine restriction on abortion, one of the vestiges of Spanish colonization in the Philippines, was lifted directly from the old Spanish Penal Code of 1870.

⁸⁸ Philippine Constitution, art. 2, § 12.

⁸⁹ Hungary, Law No. 79 of 17 Dec. 1992 on the Protection of the Life of the Fetus, translated in 44 International Digest of Health Legislation 249-50 (1993).

⁹⁰ Certain cases do not try to answer the question of when human life begins but give answers that human personhood begins with birth. Williams, Glanville, The fetus and the "right to life" Cambridge law J 1994; 33:71-78, at 78; see R.J. Cook, B.M. Dickens, Human Rights and Abortion Laws, International Journal of Gynecology & Obstetrics 65 (1999), at 85, citing Christian Lawyers Association of South Africa v. The Minister of Health, Case No. 16291/97 (10 July 1998) where a group sued the South African Minister of Health to declare the 1996 Choice on Termination of Pregnancy Act unconstitutional based on section 11 of the 1996 Constitution providing that "everyone has the right to life" and on the argument that a fetus is included in "everyone" since life of a human being starts at conception. The Court ruled that "everyone" was a legal alternative expression to "every person," and historically legal personhood commences only at live birth. The Court ruled that it was not necessary to address the claim on the biological beginning of human life, since it cannot be concluded that the human life that had begun was that of a legal person. The Court followed the observation that "the question is not whether the conceptus is human but whether it should be given the same legal protection as you and me."; Under Article 41 of the Philippine Civil Code, a fetus must be born alive (completely delivered from the mother's womb) to be considered a person endowed with legal personality.

⁹¹ See Center for Reproductive Rights, The World's Abortion Laws 2005, poster.

⁹² Karen Llantoy v. Peru Communication No. 1153/2003, CCPR/C/85/D/1153/2003, 17 November 2005; See Bringing Rights to Bear, *supra* note 42, e.g., Argentina, Chile, Costa Rica, Ecuador, Guatemala, Peru, Trinidad and Tobago, Venezuela.

⁹³ Singh S et al., Unintended Pregnancy and Induced Abortion in the Philippines: Causes and Consequences, New York: Guttmacher Institute, 2006, at 4 [hereinafter Singh S et al.].

⁹⁴ *Id.*, Singh S et al., at 5; The global statistics show that five hundred eighty five thousand women die annually from pregnancy-related causes. Eighty thousand of these women die from unsafe abortion. (I.H. Shah et al., *Unsafe Abortion*, Annual Technical Report 1999, WHO). There are 20 million unsafe abortions each year, 95% of which take place in developing countries with South-East Asia accounting for about 40% of global maternal mortality. (WHO, *Making Pregnancy Safer in South-East Asia*, Regional Health Forum, Vol. 6, No. 1, 2002.).

⁹⁵ Fatima Juarez, Josefina Cabigon, Susheela Singh and Rubina Hussain, *The Incidence of Induced Abortion in the Philippines: Current Level and Recent Trends*, International Family Planning Perspectives, Volume 31, Number 3, September 2005 [hereinafter Fatima Juarez, et. al. 2005].

⁹⁶ Singh S et al., *supra*, at 5

In 2000, the DOH introduced the Prevention and Management of Abortion and its Complications (PMAC) policy⁹⁷ which aims to improve the health care services for women suffering complications from induced abortion. Although the PMAC policy was enacted in 2000, it has only been implemented in pilot hospitals.⁹⁸ Hence, there is an urgent need to broaden the policy to include more hospitals and to support it with enforceable guidelines and mechanisms to protect women from discrimination by health care providers.

Safe abortion service providers who provide the much-needed services that only women seek have been subjected to harassment by police operatives with some even facing baseless criminal charges.⁹⁹

It is pertinent to note that several predominantly Catholic countries now allow safe and legal abortion. Belgium, France, and Italy, permit abortion upon a woman's request.¹⁰⁰ Colombia recently liberalized its law to allow abortion in cases where the woman's life or health is in danger, the pregnancy is the result of rape, and/or when the fetus has malformation incompatible with life outside the uterus.¹⁰¹ Spain, on whose laws the Philippine abortion law is based, permits abortion on grounds of rape and fetal impairment.¹⁰²

The law criminalizing abortion does not eliminate abortions; it only makes it dangerous for women who undergo clandestine and unsafe abortion. The criminal provision penalizing the woman and the physician for self-induced abortion must be repealed. Having ratified CEDAW, the Philippines is obligated to make abortion safe and legal.

B. Shadow Report¹⁰³

- Collaborative Shadow Report submission during the 36th Session of the CEDAW Committee (Aug. 7-25, 2007) by EnGendeRights, Center for Reproductive Rights, 3RG-Phils and HDII
- focus on women's reproductive and sexual health rights situation including related discriminatory or inadequate laws and policies

⁹⁷ Department of Health, Prevention and Management of Abortion and Its Complications (PMAC) Policy, Administrative Order No. 45-B, s2000, May 2, 2000 [hereinafter PMAC Policy]

⁹⁸ *Id.*, at 2 citing that "[f]or the first year of implementation, PMAC shall initially be implemented in four pilot hospital sites x x x. By the end of the fifth year of implementation (end of 2004), 50 DOH-retained hospitals shall be providing quality PMAC services."

⁹⁹ Clara Rita Padilla, Gender Issues in Legal Ethics powerpoint presentation, Integrated Bar of the Philippines Eastern Visayas Convention, Cebu, April 28, 2006.

¹⁰⁰ Center for Reproductive Rights, *Religious Voices Worldwide Support Choice: Pro-choice Perspectives in Five World Religions*. Briefing paper. September 2005, available at <http://www.reproductiverights.org> [Center for Reproductive Rights, *Religious Voices*]; Center for Reproductive Rights, *The World's Abortion Laws 2005*, *supra* note 51.

¹⁰¹ Women's Link Worldwide Press Release citing the Colombian Constitutional Court Decision, May 10, 2006 available at http://www.womenslinkworldwide.org/pdf/proj_news_051006releaseb.pdf.

¹⁰² Center for Reproductive Rights, *Religious Voices*, *supra* note 86; Center for Reproductive Rights, *The World's Abortion Laws 2005*, *supra* note 51.

¹⁰³ NGO-CEDAW Dialogue with an oral presentation by Philippine NGOs of three minutes each; Lobbying including providing the CEDAW experts with our Talking Points, Summary of Recommendations, Press releases

Shadow Report (CEDAW provisions/jurisprudence, factual background, statistics, call for recommendations)	CEDAW Concluding Comments August 25, 2006 (concerns, comments, recommendations)
<p>The Right to Health Care, including Reproductive Health Care and Family Planning (Articles 12, 14(2)(b) and (c), and 10(h))</p> <p>lack access to information and reproductive health care services</p> <p>high maternal mortality ratio</p> <ul style="list-style-type: none"> • right to the full range of contraceptive methods including emergency contraception • need for the government to enact a specific Reproductive Health Care law • right to safe and legal abortion <p>Adolescents' Right to Access to Information and Reproductive Services (Articles 10 (h), Article 16(e))</p> <ul style="list-style-type: none"> • adolescent reproductive health including right to sexuality education for adolescents 	<ul style="list-style-type: none"> • access to the full range contraceptive methods (including emergency contraception) • access to safe and legal abortion • sexuality education for adolescents
<p>Equal Rights within Marriage (Articles 16 (c), (d), (f) (g), (h))</p> <p>discriminatory marriage laws</p> <ul style="list-style-type: none"> • repeal of discriminatory Muslim Code provisions <ul style="list-style-type: none"> ○ provisions allowing polygamy, early marriage (at age 15), arranged marriages (females aged 12-14), husband's authority to choose the family residence, husbands to can deny his permission to his wife to practice a profession or occupation of her choice. • repeal of the discriminatory provisions in the Revised Penal Code <ul style="list-style-type: none"> ○ adultery and concubinage ○ penalizing widows, divorced women or women whose marriages have been annulled or dissolved if they get married within 301 days from the death, divorce or separation of their husbands. • right to absolute divorce • repeal discriminatory provisions in the Family Code <ul style="list-style-type: none"> ○ husband's decision prevails over the wife in cases where there is disagreement on the administration or enjoyment of community property and over the exercise of parental authority 	<ul style="list-style-type: none"> • repeal of discriminatory Muslim Code provisions • no mention on repeal of adultery • legalization of divorce • inclusion of definition of discrimination (article 1, CEDAW) in national law to expedite the adoption of pending bills to promptly bring the relevant national laws into line with CEDAW

<p>VAW</p> <ul style="list-style-type: none"> removal of punitive provisions imposed on women in prostitution; provide education, skills training, employment to women in prostitution <ul style="list-style-type: none"> Women in prostitution are still penalized; Art. 202 of the Revised Penal Code is used to round up and imprison women in prostitution or used to extort money or sexual favors.¹⁰⁴ continuing legal education for members of the judiciary on gender-based violence <ul style="list-style-type: none"> existence of judges who do not issue Protection Orders under the Anti-VAWC law and judges who refuse to issue contempt orders on husband's/partners who violate protection orders; many rape complaints are dismissed in the Preliminary Investigation level and in the Regional Trial Level) Repeal the discriminatory provisions in the Revised Penal Code imposed on women. 	<ul style="list-style-type: none"> suppress the exploitation of prostitution of women; discourage the demand for prostitution; provide educational and economic opportunities thereby reducing and eliminating vulnerability to exploitation and traffickers continuous trainings for members of the judiciary concerning gender-based violence
<p>Right to sexual orientation¹⁰⁵</p> <ul style="list-style-type: none"> legal recognition of domestic partnerships or civil unions for lesbians; right to custody of a lesbian mother whether her child be below seven or above seven should be protected; enactment into law of the proposed bill prohibiting discrimination against lesbians including discrimination against lesbians in work and education environments 	<ul style="list-style-type: none"> no mention on lesbian rights but check out express queries on right of same-sex couples during the Aug. 2007 constructive dialogue¹⁰⁶

Quotes from the CEDAW Committee August 25, Concluding Comments on the Philippines:

The CEDAW Committee raised its concern about the “x x Convention [having] been in force in the State party for 25 years” and “the lack of progress in undertaking and completing necessary revisions of discriminatory provisions in national legislation and in enacting a comprehensive legal framework pertaining to gender equality.”

¹⁰⁴ Vagrancy is also used against gays, bisexuals and transgenders. RA 9208 has also been used against gays.

¹⁰⁵ There is no legal recognition of domestic partnerships or civil unions for lesbians; Lesbians suffer discrimination including discrimination in work and education environments.

¹⁰⁶ CEDAW Constructive Dialogue on Art. 16 on marriage as covering homosexual and lesbian rights (39th Session; July 26-Aug.10, 2007); Expert Sylvia Pimentel of Brazil, faculty member at the Pontifical Catholic University of Sao Paulo, questioned Honduras on the subject; Expert Anamah Tan questioned Brazil on whether "married homosexual couples" were protected under the country's marriage laws; Ruth Halperin-Kaddari questioned South Korea on the name and focus of the government's Healthy Family Act. She said traditional notions of the nuclear family seemed to be "judgmental" of other forms of family, such as divorced, cohabitating, and same-sex couples.

In relation to prostitution and trafficking of women and girls, the CEDAW Committee urged the Philippines “to provide them with educational and economic opportunities, thereby reducing and eliminating their vulnerability to exploitation and traffickers” and the **“reintegration of [women in prostitution] into society and provide rehabilitation, social integration and economic empowerment programmes to women and girls who are victims of exploitation and trafficking.”** It urged the Philippines to “prosecute and punish traffickers and those who exploit the prostitution of women, and provide protection to victims of trafficking.”

On health, the Committee “requests the State party to strengthen measures aimed at the prevention of unwanted pregnancies, including by **making a comprehensive range of contraceptives more widely available and without any restriction and by increasing knowledge and awareness about family planning.** The Committee recommends that the State party give **priority attention to the situation of adolescents and that it provide sex education, targeted at girls and boys, with special attention to the prevention of early pregnancies and sexually transmitted diseases.** The Committee recommends that the State party consider reviewing the laws relating to abortion with a view to removing punitive provisions imposed on women who have abortions and provide them with access to quality services for the management of complications arising from unsafe abortions and to reduce women’s maternal mortality rates in accordance with the Committee’s general recommendation 24 on women and health and the Beijing Declaration and Platform for Action.”

The Committee also raised its concerns on the **“existing discriminatory provisions of the Code of Muslim Personal Laws, which permit marriage of girls under the age of 18, polygamy and arranged marriages,” “the practice of early Marriage... among Muslim women,” and “encourage[d] the State party to intensify dialogue with the Muslim community in order to remove discriminatory provisions from the Code of Muslim Personal Laws.”**

CEDAW expressed “its concern about the lack of a law on divorce, making it impossible for women to obtain legal divorce” and urged the Philippines **“to introduce and support vigorously legislation which permits divorce,** allows women to remarry after divorce, and grants women and men the same rights to administer property during marriage and equal rights to property on divorce.”

CEDAW requests “the wide dissemination in the Philippines of the present concluding comments in order to make the people, including government officials, politicians, parliamentarians and women’s and human rights organizations, aware of the steps that have been taken to ensure de jure and de facto equality of women, as well as the further steps that are required in that regard.”

For a copy of the Concluding Comments, please click on the following link:

<http://www.un.org/womenwatch/daw/cedaw/36sess.htm>

C. Gender-Based Discrimination in Philippine Courts

In a case on discrimination of a lesbian mother with regard to the custody of her children, one Regional Trial Court judge made pronouncements in open court that the lesbian woman’s relationship with her lesbian partner was abnormal.

In the recent case of *Gualberto v. Gualberto*, the Philippine Supreme Court held that sexual preference does not prove parental neglect or incompetence.¹⁰⁷ This recognizes that lesbian mothers have a right to custody of their children and their sexual orientation as lesbians does not make them “unfit” to have parental authority over their children as contemplated under Article 213 of the Family Code. Justice Panganiban, however, mentioned in the decision that the husband failed to “demonstrate that [the respondent Joycelyn] carried on her purported relationship with a person of the same sex in the presence of their son” or that “the son was exposed to the

¹⁰⁷ *Gualberto v. Gualberto*, G.R. No. 154994, n.p. (June 28, 2005) available at http://www.supremecourt.gov.ph/jurisprudence/2005/jun2005/154994.htm#_ftn1 (visited August 7, 2006).

mother's alleged sexual proclivities or that his proper moral and psychological development suffered as a result."¹⁰⁸ It is discriminatory against lesbians to suggest that there would be a different ruling given such evidence presented in court.¹⁰⁹ It would discriminate against lesbians to view that the show of affection of a lesbian couple's love negatively influences the well-being of the child.¹¹⁰ This continues to perpetuate the homophobic situation where heterosexual couples can show affection in front of their children while lesbian couples cannot do the same simply because they are lesbians.¹¹¹

D. CEDAW Application in Philippine Courts

There are few Supreme Court cases that cite CEDAW (e.g. in the concurring opinion in *Imelda Romualdez-Marcos vs. COMELEC and Cirilo Roy Montejo*, G.R. 119976, CEDAW was cited in a widow's right to fix her domicile distinct from that of her deceased husband; CEDAW was cited in the footnote in *Secretary of Justice vs. Ralph Lantion et al*; CEDAW was cited as a state obligation in *Philippine Telegraph and Telephone Company vs. NLRC and Grace de Guzman* where the woman was terminated from work for having concealed the fact that she was married in violation of a company policy against hiring married women).

E. Application of Constitutional Guarantees of Equality to Advance Women's Human Rights

In the case of *Philippine Telegraph and Telephone Company vs. NLRC*, the Constitutional provisions on the role of women in nation-building and fundamental equality before the law of women and men were used.

F. Access to Justice

- Rising court fees; high cost of private lawyers
- Lack of programmatic education for judges, court personnel, prosecutors, police, medico-legal
- Corruption
- Public distrust in the system
- Political appointments of judiciary

¹⁰⁸ *Id.*

¹⁰⁹ Clara Rita A. Padilla, *What is Best for Our Children?*, 2 (2) SOROPTIMIST BALITA, (December 2005).

¹¹⁰ *Id.*

¹¹¹ *Id.*

CHAPTER X MUSLIM WOMEN AND THE LAW

Core messages of the topic:

- ❖ Sources of Muslim law
- ❖ Muslim Women's Experiences with the *Shari'a* Courts
 - Access to justice: no. of cases filed vis-à-vis incidence
 - Actual experiences of women in accessing the justice system

PART I - ISLAMIC PERSPECTIVE ON THE LAW AND THE COURTS

A. Islam

- root word SALAM=PEACE;
- to be at peace with God, everyone, oneself;
- to attain this is to completely submit to the will of God

B. What is Shari'a?

- The will of God is that we should pursue *Husn* (the beauty in and of life and character) and avoid *Qubh* (the ugliness in and of life and character). That is the path to be pursued. The path to the watering place. The clear path to be followed. The *Shari'a*.
- The totality of the Islamic system
- The totality of God's law as revealed to the Prophet Mohammad (SAW) (from *Mir-Hosseini*)
- Objective of *Shari'a*- to construct human life on the basis of *Ma'rufah* (virtues) and cleanse it of *munkarah* (vices)¹¹²
- Principle of Shari'a – what is not prohibited is permissible¹¹³

C. Shari'a vs. Fiqh

Shari'a	VS.	Fiqh
<ul style="list-style-type: none"> • based on the <i>Qur'an</i> and the <i>Sunna</i> • sacred and eternal (<i>Mir Hosseini</i>) 		<i>Qur'an, Sunna, Ijma, and Qiyas</i>

¹¹² "Islamic Perspective on the Law and the Courts", Judge Macaundas M. Hadjirasul, Nov. 24, 2005, Davao City

¹¹³ *Ibid.*; "Religion and Sexuality: A Muslim Feminist Perspective", Yasmin Busran-Lao

D. **FIQH** (jurisprudence in Islamic system/understanding)

- Refers to the human understanding and interpretation of the law; not divine, absolute nor perfect , can be interpreted according to the time, circumstances.¹¹⁴
- A legal science with its own distinct body of legal theories and methodology as developed by *fuqaha* (jurists) and in dialogue with other branches of religious and non-religious sciences¹¹⁵
- The knowledge of ones:
 - a) rights and obligations;
 - b) deduced therefrom, or about which the learned have agreed.

E. **Qur'an**

The word **QUR'AN** was derived from the Arabic word **KURRA**, which means to read, recite or discourse. The book containing the revelations of God¹¹⁶

F. **Principles of Islamic law:**

1. The Qur'an is complete but in changing times--when many new things, challenges and issues arise—there is a need (for the ulama) to consult researchers/experts
2. Necessity may make the prohibited permissible
3. Openness - Islam adapts anything that is good. It's the rule of fiqh¹¹⁷

G. **Definition of Hadith and Sunnah**

Hadith – that which is narrated. Sayings of the Prophet (SAW)

Sunnah – a path or way, a manner of life. Practices of the Prophet (SAW)¹¹⁸

H. **Sources of Muslim Law**

1. **Primary:**

- a) Qur'an
- b) Sunnah

2. **Secondary:**

- c) Ijma (consensus)
- d) Qiyas (analogy)

3. **Alternatives to Qiyas:**

- e) Istih'san (juristic preference/equity)
- f) Istislah/al-masalish al-mursala (public good/interest)
- f) istis'hab (presumption of continuity)
- g) Istidlal (reason and logic)

¹¹⁴ Dr. Hamid Barra , Provincial Dialogue, Sept.,2006, Imperial Palace Suites, Quezon City, Philippines

¹¹⁵ "Religion and Sexuality: A Muslim Feminist Perspective", *supra*.

¹¹⁶ "Islamic Perspective on the Law and the Courts", *supra*.

¹¹⁷ Dr. Hamid Barra, *supra*.

¹¹⁸ "Islamic Perspective on the Law and the Courts", *supra*.

When the Prophet (SAW) appointed Mus'adh Bin Jabbal as Governor and dispenser of justice in Yemen, the former asked him and the latter answered, thus:

According to what shall you judge?
According to the Qur'an;

If you find none therein?
According to the traditions of the Messenger of Allah (SWT);

And if you find none therein?
Then I shall interpret with my reason;

Praise be to Allah (SWT) who has favored the messenger of His Messenger with what His Messenger is willing to approve

Ijma (consensus) is an agreement of the jurists among the followers of the Prophet (SAW) in a particular age on a question of law

Hadith: "What Muslims agree to be good is also good in the sight of ALLAH (SWT)"

Qiyas (analogy) is a process of deduction by which the law of the text is applied to cases which, though not covered by the language is covered by the reason (effective cause) of the text.

Istih'san (juristic preference/equity) – "ALLAH desires you ease and good, not hardship."

Ijtihad is the institutionalized practice of interpreting the Shari'a to take into account changing historical circumstances and, therefore, different points of view.

Exercised by assembly including experts in other fields (e.g. use of new drug)¹¹⁹

PART II - Muslim Feminist Perspectives¹²⁰

- Muslims are not monolithic/homogenous in their understanding and practice of Islam
- Islam is compatible with social justice and international standards of human rights
- Strategies for reform call for a paradigm shift in the study and application of Islamic jurisprudence

A. Interpretations of the sacred texts (Qur'an and Sunna)

1. Literalist (conservative, traditionalist)
2. Historical reading and analysis
3. Contextual reading and analysis
4. Feminist reading and analysis

¹¹⁹ "Islamic Perspective on the Law and the Courts", *supra*.

¹²⁰ "Religion and Sexuality: A Muslim Feminist Perspective", *supra*.

B. Literalist reading and analysis

Examples from the Qur'an
Verse on the equal of creation of female and male
Verse on viceregency
Verse on polygyny
Verse on inheritance
Verse on the economic support for women
Verse on modesty (in dress)

C. Contextual Reading and Analysis

Examples from the Qur'an
Verse on polygyny
Verse on inheritance
Verse on the economic support for women
Verse on modesty (in dress)

PART III - GENDER-BASED VIOLENCE AND MUSLIM WOMEN

Violence Against Women – lecture given by Atty. Raissa H. Jajurie¹²¹

A. Outline

- Introduction
- Religious level: Qur'an and the ahadith
- Political level: International documents and Philippine laws on violence against women
- Practical level: Lived realities of Muslim women
- Some recommendations

B. Definition of Violence Against Women

- Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. [DEVAW]

▪ Forms: May be physical, sexual or psychological

▪ Locus: May occur within the family, within the general community, or condoned by the State

Examples:

- Wife battery, rape, prostitution and trafficking in women, sexual harassment, incest, abduction, infidelity, degrading treatment

Other examples:

- honor killings, dowry-related violence, female genital mutilation (FGM)

¹²¹ Lecture given by Atty. Raissa H. Jajurie during the EnGendeRights-sponsored "Paralegal Training for Muslim Communities in ARMM and Sultan Kudarat", Aug. 24-25, 2007, Davao City

C. Religious Level

1. Context: Pre-Islamic Arabia

- Women had virtually no rights: to property, to inheritance, to do productive work, to consent to marriage, in marriage
- Female infanticide was rampant
- Polygamy was unrestricted
- Women were considered the gatekeepers of hell; are sinful beings
- Women are subordinate to men

2. Qur'an on Creation

O mankind! Be dutiful to your Lord, who created you from a single *nafs*, created, of like nature, his mate, and from them twain scattered (like seeds) countless men and women -- Fear Allah, through Whom you demand your mutual (rights) and (reverence) the wombs (that bore you): For Allah ever watches over you. [4:1]

And among His signs is this that He created for you mates from among yourselves, that you may dwell in tranquility with them, and He has put love and mercy between your (hearts): behold! Verily in that are signs for those who reflect [30:21]

3. Qur'an on Treatment of Women

O you who believe! You are forbidden to inherit women against their will. Nor should you treat them with harshness, ... on the contrary, live with them on a footing of kindness and equity. If you take a dislike to them it may be that you dislike a thing which God brings about through it a great deal of good [4:19]

And when you have divorced women and they have fulfilled the term of their prescribed period, either take them back on reasonable basis or set them free on reasonable basis. But do not take them back to hurt them, and whoever does that, then he has wronged himself... [2:31]

4. Qur'an on Man-Woman Relationship

The believers, men and women, are *Auliyâ* (helpers, supporters, friends, protectors) of one another... [9:71]

5. Qur'an on Men and Women

For Muslim men and Muslim women, for believing men and women, for devout men and women, for true men and women, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in God's praise, - For them has God prepared forgiveness and great reward. [33:33]

6. Qur'an on Female Infanticide

And when the news of (the birth) of a female (child) is brought to any of them, his face becomes dark, and he is filled with inward grief!

He hides himself from the people because of the evil of that whereof he has been informed. Shall he keep her with dishonor or bury her in the earth? Certainly, evil is their decision [16:58-59]

7. Qur'an on Incest

Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your foster mother who gave you suck, your foster milk suckling sisters...[4:23]

8. Ahadith

- The Prophet never beat either his wives or his maid [HR Nasâ'I]
- "Never beat God's handmaidens" [Abu Dawud, Ibn Majah, Ahmad ibn Hanbal, Ibn Hibban and Hakim]
- "Could anyone of you beat his wife as if she is a slave, and then lie with her in the evening?" [Bukhari and Muslim]
- If a husband asks his wife to sleep with him, but she refuses and the husband becomes angry, the angels will curse (the wife) until dawn. [Bukhari and Muslim]

9. Surah Al Nisa (4): verse 34

'Ar-rijaalu **qawwaamuuna** 'alan-nisaa- 'i **bimaa** fazzalal-laahu ba 'za hum 'alaa ba 'ziñw-wa bimaaa 'anfaquu min 'am-waalihim. Fas-Saalihaatu **qaanitaatun** haafi-zaatul-lil-gaybi bimaa hafi-zallaah. Wallaati takhaa-fuuna **nushuu**-zahunna fa-'izuuhunna wah-juruuhunna fil-mazaaji-'**iwazribuu - hunn**. Fa-'in 'ata '-nakum falaa tab-guu 'alayhinna sabiilaa : in-nallaaha kaana 'A-liyyaafi-Ka-biiraa.

- *Yusuf Ali*: Men are the protectors of women because Allah has given one more (strength) than the other, and because they support them from their means
- *Pickthall*: Men are in charge of women, because Allah had made one of them to excel the other, and because they spend their property (for the support of women)
- *Shakir*: Men are the maintainers of women because Allah has made some of them to excel others and because they spend out of their property.

Interpretation

- *Qiwama*: Men are the protectors and maintainers of women
- *Faddalah*: Men are superior to women
- *Qanitat*: Women should obey their husband
- *Daraba*: If the woman is disobedient, violence is justified when the first two steps fail

Some Issues in Interpretation

- VAWC goes against the universal value of JUSTICE in the Qur'an
- Human rights do not allow discrimination against women and gender-based violence
- Words in the *ayat* can be subject to many different interpretations

D. Political Level

8. International Documents

- UN Declaration on Human Rights
- Convention on the Elimination of All Forms of Discrimination Against Women, PLUS General Recommendation 19
- 1993 World Conference on Human Rights
- UN Declaration on Violence Against Women Human Rights That Are Violated in VAW
- Right to life
- Right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment
- Right to equal protection according to humanitarian norms in time of international or internal armed conflict

9. Human Rights That Are Violated in VAW

- Right to liberty and security of person
- Right to equal protection under the law
- Right to equality in the family
- Right to the highest standard attainable of physical and mental health
- Right to just and favourable conditions of work

10. Cairo Declaration on Human Rights in Islam

■ **Article 1:** All human beings form one family whose members are united by submission to God and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations.

■ **Article 6 (a):** Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage.

11. Philippine Constitution

■ *Article II: Section 14:*

The State shall recognize the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

12. Some Philippine Laws on VAW

- EO 209: Family Code
- Presidential Decree 1083: Code on Muslim Personal Law
- Revised Penal Code
- Republic Act 8353: Anti-Rape Law
- Republic Act 8505: Rape Victim Assistance Act

- Republic Act 9208: Anti-Trafficking Act
- Republic Act 9262: Anti-VAWC Law

13. Philippine Criminal Laws

- RPC: e.g., seduction, abduction acts of lasciviousness, prostitution, white slave trade
- RA 8353: rape
- RA 9208: trafficking
- RA 9262: domestic violence/ abuse of women in intimate relationships

14. Code of Muslim Personal Laws (CMPL)

- Provides for divorce by *faskh* (or judicial decree), which can be availed of by women in violent relationships
- Also provides for divorce by *tafwid* and *khul'*

E. Lived Reality

7. VAW experienced by Muslim Women

- Wife battery, parricide, non-support, taking of the *mahr*, forced marriage, polygamy, incest, prostitution, abduction, rape, sexual harassment, trafficking, cruel treatment of domestic helpers (most of whom are women), violence to women detainees, violence against women in situation of armed conflict and internal displacement

8. Socio-Political and Economic Situation

- Poverty
- Illiteracy
- Armed conflict; volatile peace and order
- Internal displacement
- Inaccessibility of basic services
- Governance problems

9. Access to Justice

- Women are not aware of their rights under the Code of Muslim Personal Laws, other Philippine laws, and international documents
- Low level of trust in the court system
- Courts and court processes are not always gender-sensitive and friendly to women

10. Economic Factors

- Poverty pushes women to be in vulnerable circumstances, e.g., trafficking, prostitution, overseas work
- Recurrent war hinders development in the macro and micro-level
- Illiteracy propels the cycle of poverty
- Expensive use of machinery for redress discourage/ hinder access to justice

11. Traditional Beliefs

- Some common beliefs about women are repressive and regressive
- E.g., that women are not entitled to education, that women cannot go out of the house, that women cannot initiate divorce, that families should always have the most number of children
- Taboo hinders victims from seeking help

12. Institutions and Mechanisms

- Local Government Units (LGUs) not aware of national laws on VAW
- Lack of gender sensitivity among personnel coming from the police, court and line agencies
- Lack of support services, both government and non-government

F. Recommendations

- Engage in new religious scholarships where the rights of everybody-- both women's and men's-- are recognized, protected and promoted
- Weed out beliefs and practices that are repressive of women's rights and that have no Islamic basis
- Study VAW in Muslim communities: root causes, prevalence, forms, responses, impact
- Generate sex-disaggregated data on VAW
- Sensitize people who respond to VAW cases
- Review of legislation and executive issuances so that laws and policies against VAW are laid down; and women's rights are respected, protected and fulfilled
- Capacitate LGUs in addressing VAW and enforcing laws
- Include women's participation in all levels and in all stages
- Adhere to present international obligations that promote gender equality
- Ensure that judicial and administrative mechanisms that address VAWC, as well as support services for survivors, are put in place and are accessible to survivors

PART IV - Comparative Review of Progressive Legislations and Policies in Predominantly Muslim Countries (Based on the presentations of EnGendeRights “Progressive Legislations and Policies Upholding Women’s Rights in predominantly Muslim Countries: A Continuing Challenge” and Zaitun Kasim’s (Sisters in Islam) presentation, “A Comparative Review of Progressive Legislation and Policies and An Overview of Successful Strategies in Legal Reform”¹²²)

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women’s mobility in marriage	Custody of children	Polygyny
1. Algeria	Prostitution is prohibited by law. ¹²³	17-19 with exceptions (strict to lax) Do not require a <i>wali</i> Force not allowed, no penalties	Under the amended CF, A.36 lists the mutual rights and responsibilities of the spouses and includes: safeguarding the conjugal union and the duties of the personal life; harmonious cohabitation and mutual respect, (Previous provisions on wife obedience and husband’s maintenance of wife have been repealed) ¹²⁴	<i>Talaq</i> can be pronounced, but only in court <i>Talak</i> <i>Tafweed</i> (delegated repudiation) can be inserted on agreement from both parties. <i>Talaq</i> is one of the grounds for divorce. Divorce can be established only through a court judgment. ¹²⁵		Code de la Famille provisions states that divorced women who have custody can also be the guardians of their children. ¹²⁶ Divorced women who have custody can also be guardians (but during marriage, father is still the “natural guardian”)	A court permit is required. ¹²⁷ Polygyny conditional, dissolution only option for existing wife

¹²² EnGendeRights presentation, “Progressive Legislations and Policies Upholding Women’s Rights in predominantly Muslim Countries: A Continuing Challenge”, June 6, 2006, Zamboanga; Zaitun ‘Toni’ Mohamed Kasim of Sisters in Islam presentation, “A Comparative Review of Progressive Legislation and Policies and An Overview of Successful Strategies in Legal Reform”, Manila, January 30, 2007

¹²³ U.S. Department of State, Country Reports on HR Practices, 2003 : Algeria, <http://www.state.gov/g/drl/rls/hrrpt/2003/27924.htm>

¹²⁴ Women Living under Muslim Laws, Knowing Our Rights: Women, Family Laws, and customs in the Muslim world, London, UK, 2006

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Syria, Freedom House, Women’s Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004; Jordan, Freedom House, Women’s Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004; see Zulficar, Mona. The Egyptian Woman in a Changing World. Egyptian Center for Women’s Rights. <http://www.ecwregypt.org/English/researches/2004/changingworld.htm>.

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
				Access to divorce widened through lowering standards of evidence			
2. Bangla Desh	<p>The law Prevention of Women and Children Repression Act 2000.¹²⁸</p> <p>Enacted Acid Crime Prevention Act of 2002 and Acid Control Act of 2002 prohibiting acid violence against women.¹²⁹</p>	<p>18 and no exceptions</p> <p>Woman to sign documents, “forced” (marriage) not defined</p> <p>Child marriage and betrothal are prohibited and shall have no legal effect. The minimum age is 18 for girls.¹³⁰</p> <p>A suit for nullity maybe filed on the grounds that consent was obtained by force or fraud.¹³¹</p>		<p><i>Talaq</i> pronounce d outside of court allowed, but must notify and register</p> <p>Access to divorce widened through lowering standards of <i>talaq</i> <i>tafwid</i></p> <p><i>Talak</i> <i>Tafweed</i> (delegated repudiatio n) is optional clause, with or without conditions , in standard marriage contract.</p>			<p>Conditional polygamy, permission must be sought, penalties</p> <p>A local government authorities’ permission is required.¹³²</p>

¹²⁸ CEDAW Committee. Fifth Periodic Report of State Parties: Bangladesh. CEDAW/C/BGD/5, 3 January 2003.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Women Living under Muslim Laws, Knowing Our Rights: Women, Family Laws, and customs in the Muslim world, *supra*.

¹³² *Id.*

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
3. Cameroon							Choose before marriage – monogamy or polygamy
4. Egypt	Repeal of Law No. 14 of 1999 (Criminal Code) that allows rapists to avoid imprisonme nt if they offered to marry the victim. ¹³³	16 years old – exceptions possible <i>Wali</i> required, alternatives exist Consent required, but undermined		<i>Talaq</i> pronounce d outside of court allowed, but must notify and register There is a strict procedure in husband who will use <i>talaq</i> to divorce his wife; -Women no longer have to prove mistreatm ent in order to divorce their husbands. ¹³⁴	On inheritanc e: Primarily Hanafi, Maliki and Syafie. Adopted Jaafari school regarding inheritanc e (recognise s wills) Egyptian Court recently struck down statutes that prohibited women from obtaining passports or traveling without the permissio		Polygyny conditional, dissolution only option for existing wife women can stipulate in marriage contract the right to divorce if husband practices polygamy /breaches contract. Restricted in marriage contract where husbands are bound by that stipulation --- “no- polygamy” clause. ¹³⁶

¹³³ UNFPA, State of World Population 2000: Lives Together, Worlds Apart: Men and Women in a Time of Change, www.unfpa.org/swp/2000/english (last viewed Sept. 6, 2006) and CEDAW Committee. Combined 4th and 5th periodic report of State Party: Egypt. CEDAW/C/EGY/4-5 30 March 2000

¹³⁴ United Nations Development Program, Program on Governance in the Arab Region, Egypt: Women in Public Life, www.undp-pogar.org/countries/egypt/gender.html (last viewed June 18, 2003).

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
					n of husbands or fathers. ¹³⁵		
5. Fiji		Force (in marriage) not allowed, no penalties					Polygyny is banned.
6. Gambia				Pronounce ment of <i>talaq</i> outside of court valid			Minimal regulation on polygyny
7. India				Access to divorce widened through lowering standards of <i>talaq</i> <i>tafwid</i> Pronounce ment of <i>talaq</i> outside of court valid <i>Talak</i> <i>Tafweed</i> (delegated repudiation) can be inserted on agreement from both parties.			

¹³⁶ Surin, Jacqueline Ann, "Add No-Polygamy Clause in Marriage Contract," says Sisters in Islam.
<http://www.polygamyinfo.com/intnlmedia%20plyg%20168star.htm>. (last viewed, 27 February 2006).

¹³⁵ United Nations Development Program, Program on Governance in the Arab Region, Egypt: Women in Public Life, www.undp-pogar.org/countries/egypt (last viewed Sept. 7, 2006)

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
8. Indonesia	<p>The Domestic Violence Law was ratified with legislature in 2004¹³⁷</p> <p>Presidential Decree No. 88 of 2002 established a national plan to eliminate trafficking.¹³⁸</p>	<p>Under the LM, the minimum age for marriage is 16 for females, and spouses under 21 require parental permission.¹³⁹</p> <p>21 for both, exceptions possible</p>	<p>The rights and responsibilities of the wife are equivalent to the rights and responsibilities of the husband in the life of the household and in the social intercourse in society.¹⁴⁰</p>	<p>The Family Courts Act was amended, which strengthened women's access to divorce, particularly <i>khul'</i>, access to certain economic provisions, making it easier for women to recover marital assets and their own assets they brought into marriage.¹⁴¹</p>	<p>On-going discussion on the Qur'anic provisions as being a <i>minimum</i> that must be given to women.</p>	<p>Women and men have the right to custody of children.¹⁴²</p>	<p>Conditional polygamy, permission must be sought, penalties</p> <p>A court permit is required.¹⁴³</p>

¹³⁷ CEDAW Committee, Combined 4th and 5th Report of State Parties: Indonesia. CEDAW/C/IDN/4-5, 27 July 2005

¹³⁸ CEDAW Committee, Combined 4th and 5th Report of State Parties: Indonesia. CEDAW/C/IDN/4-5, 27 July 2005

¹³⁹ Women Living under Muslim Laws, Knowing Our Rights: Women, Family Laws, and customs in the Muslim world, *supra*.

¹⁴⁰ *Id.*

¹⁴¹ SUMMARY OF PROCEEDINGS, International Consultation on "Trends in Family Law Reform in Muslim Countries" organized by Sisters in Islam, 18-20 March 2006, Kuala Lumpur, Malaysia

¹⁴² Freedom House, Women's Rights in the Middle East and North Africa: Citizenship and Justice, Country Reports: Tunisia, 2004

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
				<i>Talaq</i> not permitted, only through courts			
9. Iran	Prostitution is prohibited by law. ¹⁴⁴	In 2003 – age of marriage raised to 13 (from 9) Below 15 possible, minimum 12 <i>Wali</i> required, alternatives exist Woman to sign documents, forced not defined		<i>Talaq</i> can be pronounced, but only in court			Minimal regulation on polygyny Restricted in marriage contract where husbands are bound by that stipulation --- “no-polygamy” clause. ¹⁴⁵
10. Iraq				<i>Talak Tafweed</i> (delegated repudiation) can be inserted on agreement from both			First wife's permission is required. ¹⁴⁶ A court permit is required. ¹⁴⁷

¹⁴³ Syria, Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004; Jordan, Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004; see Zulficar, Mona. The Egyptian Woman in a Changing World. Egyptian Center for Women's Rights. <http://www.ecwregypt.org/English/researches/2004/changingworld.htm>.

¹⁴⁴ Iran, U.S. Department of State, Country Reports on HR Practices, 2002 : iran, <http://www.state.gov/drl/rls/hrrpt/2005/61688.htm>

¹⁴⁵ Surin, Jacqueline Ann, “Add No-Polygamy Clause in Marriage Contract,” says Sisters in Islam.

<http://www.polygamyinfo.com/intnlmedia%20plyg%20168star.htm>. (last viewed, 27 February 2006).

¹⁴⁶ Malaysia, see Islamic Family Law Act of 1984, No. 303, 23(4)(a)-(d) (1984)(Malay); see article Dossier 3: Memorandum submitted to the committee on proposed reforms to Muslim personal law, Muslim Women's Research and Action Forum, June/July 1988, at [http://www.wluml.org/english/pubsfulltxt.shtml?cmd\[87\]=i-87-bd71bfc313cf7a46fd30924bc69bd5a8&cmd\[190\]=i-190-bd71bfc313cf7a46fd30924bc69bd5a8](http://www.wluml.org/english/pubsfulltxt.shtml?cmd[87]=i-87-bd71bfc313cf7a46fd30924bc69bd5a8&cmd[190]=i-190-bd71bfc313cf7a46fd30924bc69bd5a8), (last viewed Sept. 7, 2006).

¹⁴⁷ Syria, Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004; For Jordan, Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004; see Zulficar, Mona. The Egyptian Woman in a Changing World. Egyptian Center for Women's Rights. <http://www.ecwregypt.org/English/researches/2004/changingworld.htm>.

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
				parties.			
11. Jordan	The Justice Ministry proposed amendment s to Article 98 of the Penal Code which includes severe penalties for honor crimes. ¹⁴⁸ Sexual harassment is punishable under the Revised Penal Code ¹⁴⁹	17-19 with exceptions (strict to lax)					women can stipulate in marriage contract the right to divorce if husband practices polygamy /breaches contract. Restricted in marriage contract where husbands are bound by that stipulation --- “no- polygamy” clause. ¹⁵⁰ A court permit is required. ¹⁵¹
12. Kyrgyzsta n		18 and no exceptions Forced					

¹⁴⁸ Amnesty International Report 2005, Jordan. <http://web.amnesty.org/report2005/jor-summary-eng>. (Last viewed January 31, 2006)

¹⁴⁹ Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Jordan

¹⁵⁰ Surin, Jacqueline Ann, “Add No-Polygamy Clause in Marriage Contract,” says Sisters in Islam.

<http://www.polygamyinfo.com/intnlmedia%20plyg%20168star.htm>. (last viewed, 27 February 2006).

¹⁵¹ Syria, Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004; For Jordan, Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004; see Zulficar, Mona. The Egyptian Woman in a Changing World. Egyptian Center for Women's Rights.

<http://www.ecwregypt.org/English/researches/2004/changingworld.htm>.

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
		marriage criminalised, penalized					
13. Lebanon	Increase in sentence on the law on honor killings. ¹⁵² Sexual harassment is punishable under the Revised Penal Code ¹⁵³						
14. Libya							A court permit is required. ¹⁵⁴
15. Malaysia	Penal Code, Domestic Violence Act of 1994, Shari'a Criminal Offense Act of 1997. ¹⁵⁵ Sexual harassment is punishable under the Revised Penal Code ¹⁵⁶	16 – exceptions possible <i>Wali</i> required, alternatives exist Consent required, but undermined <i>Ijbar</i> recognised		<i>Talaq</i> pronounced outside of court allowed, but must notify and register	Inheritance: Syafie school, male heirs get double share under the <i>faraid</i> distribution.	Some states adopted into their Shari'a legislation the Guardianship of Infants Act of 1961 giving women equal guardianship rights. ¹⁵⁷	Conditional polygamy, permission must be sought, penalties First wife's permission is required. ¹⁵⁸ A court permit is required. ¹⁵⁹

¹⁵² US State Department, Country Report

¹⁵³ Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Lebanon

¹⁵⁴ Syria, Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004; For Jordan, Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004; see Zulficar, Mona. The Egyptian Woman in a Changing World. Egyptian Center for Women's Rights.

<http://www.ecwregypt.org/English/researches/2004/changingworld.htm>.

¹⁵⁵ CRR, Women of the World, Malaysia, 2004

¹⁵⁶ Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Malaysia

¹⁵⁷ See Malaysia's Report to CEDAW Committee

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
16. Morocco	Sexual harassment is punishable under the Revised Penal Code ¹⁶⁰ Removing degrading and debasing terms for women	The minimum age for marriage was raised from 16 to 18 years for girls and boys. Note: male marital tutor (wali) for women to marry was eliminated. ¹⁶¹ A suit for nullity maybe filed on the grounds that consent was obtained by force or fraud. ¹⁶² No wali required, on the basis that a woman cannot be compelled to marry against her will; Minimum age	In the new Family Code of 2005, husbands and wives were accorded equal and joint responsibility of running the household and bringing up the children. -The wife's duty of obedience was rescinded. ¹⁶³	<i>Talaq</i> can be pronounced, but only in court <i>Talak Tafweed</i> (delegated repudiation) can be inserted on agreement from both parties. The right to divorce by mutual consent was established. -The unilateral right of the husband to divorce was placed under	Repeal of regulatory provisions prohibiting women from traveling or having a passport w/o husbands/guardian's authorization (1994). ¹⁶⁵ Morocco re-casting <i>mahr</i> as purely symbolic – to end the link between <i>mahr</i> , obedience, and sexual 'duties'. Implementation still to be seen, though.	Best interest of the child. Cases concerning maintenance to be settled within one month. Paternity tests to determine father;	Restricted in marriage contract where husbands are bound by that stipulation --- "no-polygamy" clause. ¹⁶⁶ A judge authorization is required. ¹⁶⁷ Conditional polygamy, permission must be sought, penalties Women can stipulate in marriage contract the right to divorce if husband practices polygamy /breaches

¹⁵⁸ Malaysia, see Islamic Family Law Act of 1984, No. 303, 23(4)(a)-(d) (1984)(Malay); see article Dossier 3: Memorandum submitted to the committee on proposed reforms to Muslim personal law, Muslim Women's Research and Action Forum, June/July 1988, at [http://www.wluml.org/english/pubsfulltxt.shtml?cmd\[87\]=i-87-bd71bfc313cf7a46fd30924bc69bd5a8&cmd\[190\]=i-190-bd71bfc313cf7a46fd30924bc69bd5a8](http://www.wluml.org/english/pubsfulltxt.shtml?cmd[87]=i-87-bd71bfc313cf7a46fd30924bc69bd5a8&cmd[190]=i-190-bd71bfc313cf7a46fd30924bc69bd5a8), (last viewed Sept. 7, 2006).

¹⁵⁹ Syria, Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004; For Jordan, Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004; see Zulficar, Mona. The Egyptian Woman in a Changing World. Egyptian Center for Women's Rights. <http://www.ecwregypt.org/English/researches/2004/changingworld.htm>.

¹⁶⁰ Morocco, Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004

¹⁶¹ Amnesty International Report 2005, Morocco. <http://web.amnesty.org/report2005/mar-summary-eng>. (Last viewed January 31, 2006)

¹⁶² Women Living under Muslim Laws, Knowing Our Rights: Women, Family Laws, and customs in the Muslim world, *supra* 93.

¹⁶³ Amnesty International Report 2005, Morocco. <http://web.amnesty.org/report2005/mar-summary-eng>. (Last viewed January 31, 2006)

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
		<p>of marriage at 18 for both women and men;</p> <p>Marriage procedures for Moroccans abroad simplified;</p> <p>17-19 with exceptions (strict to lax)</p> <p>Woman to sign documents, forced not defined</p>		<p>strict judicial control.¹⁶⁴</p> <p>Access to divorce widened through lowering standards of evidence , and <i>talaq tafwid</i></p> <p>Equal rights to divorce, no repudiation, must involve court. In all cases of repudiation, it must be ascertained that the woman has received all her vested rights;</p>	<p>Equitable share of assets acquired during the marriage – one step is the choice of how they figure out their property (joint, separate) – Morocco, officials obliged to explain at time of marriage.</p> <p>Allow grandchildren on the daughter's side to inherit just as grandchildren on the son's side, in keeping with the principles of <i>ijtihad</i> and justice in the compulsory legacy;</p>		<p>contract.</p> <p>Polygamy made near impossible with conditions. Women can stipulate in marriage contract that her husband will refrain from taking another wife;</p>

¹⁶⁵ Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004.

¹⁶⁶ Surin, Jacqueline Ann, "Add No-Polygamy Clause in Marriage Contract," says Sisters in Islam. <http://www.polygamyinfo.com/intnlmedia%20plyg%20168star.htm>. (last viewed, 27 February 2006).

¹⁶⁷ Amnesty International Report 2005, Morocco. <http://web.amnesty.org/report2005/mar-summary-eng>. (Last viewed January 31, 2006)

¹⁶⁴ Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
					The couple may agree on a framework for managing assets acquired during marriage, and the judge may assess each spouse's contribution to the development of the family capital.		
17. Nigeria		21 for both, exceptions possible Below 15 possible, minimum 12 Puberty Do not require a wali (requirements not clear)		Pronouncement of <i>talaq</i> outside of court valid			Minimal regulation on polygyny
18. Pakistan	An amendment in law in 2004 removed lacunae to	16 – exceptions possible Woman to sign		<i>Talaq</i> pronounced outside of court allowed, but must	Women can acquire a passport as men do. -Women		A local government authorities' permission is required. ¹⁷¹

¹⁷¹ Women Living under Muslim Laws, Knowing Our Rights: Women, Family Laws, and customs in the Muslim world, London, UK, 2006

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
	<p>facilitate the prosecution of honor killings.¹⁶⁸</p> <p>Sexual harassment is punishable under the Revised Penal Code¹⁶⁹</p>	documents, forced not defined		<p>notify and register</p> <p>The Family Courts Act was amended, which strengthened women's access to divorce, particularly 'khul', access to certain economic provisions, making it easier for women to recover marital assets and their own assets they brought into marriage.¹⁷⁰</p> <p>Access to divorce widened through lowering standards of <i>talaq tafwid</i></p>	are free to travel.		Conditional polygamy, permission must be sought, penalties

¹⁶⁸ CEDAW Committee, Combined Initial, Second, and Third Periodic Reports of State Parties: Pakistan. CEDAW/C/PAK/1-3, 3 August 2005.

¹⁶⁹ Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Pakistan

¹⁷⁰ SUMMARY OF PROCEEDINGS, International Consultation on "Trends in Family Law Reform in Muslim Countries" organized by Sisters in Islam, 18-20 March 2006, Kuala Lumpur, Malaysia

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
				<i>Talak Tafweed</i> (delegated repudiation) is optional clause, with or without conditions, in standard marriage contract.			
19. Philippine s*		Below 15 possible, minimum 12 (puberty) <i>Wali</i> required, alternatives exist		<i>Talaq</i> pronounced outside of court allowed, but must notify and register <i>Talak Tafweed</i> (delegated repudiation) can be inserted on agreement from both parties.	On inheritance: Mindanao: , Philippines: On-going discussion - Compensation paid to daughter or female relative who cares for parents/relatives before applying <i>faraid</i>		Conditional polygamy, permission must be sought, penalties
20. Saudi Arabia		Forced marriage					women can stipulate in

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
		criminalised, penalized					marriage contract the right to divorce if husband practices polygamy /breaches contract.
21. Senegal		16 – exceptions possible Forced marriage criminalised, penalized					choose before marriage – monogamy or polygamy
22. Singapore					Syariah Laws on inheritanc e: If wife makes non- monetary contributi ons to the family, 1/3 to ½ of joint matrimoni al property. If makes monetary contributi ons – may		Conditional polygamy, permission must be sought, penalties First wife's permission is required. ¹⁷²

¹⁷² For Malaysia, see Islamic Family Law Act of 1984, No. 303, 23(4)(a)-(d) (1984)(Malay); see article Dossier 3: Memorandum submitted to the committee on proposed reforms to Muslim personal law, Muslim Women's Research and Action Forum, June/July 1988, at [http://www.wluml.org/english/pubsfulltxt.shtml?cmd\[87\]=i-87-bd71bfc313cf7a46fd30924bc69bd5a8&cmd\[190\]=i-190-bd71bfc313cf7a46fd30924bc69bd5a8](http://www.wluml.org/english/pubsfulltxt.shtml?cmd[87]=i-87-bd71bfc313cf7a46fd30924bc69bd5a8&cmd[190]=i-190-bd71bfc313cf7a46fd30924bc69bd5a8), (last viewed Sept. 7, 2006).

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
					receive more than ½.		
23. Somalia							First wife's permission is required. ¹⁷³
24. Sri Lanka		No fixed age Do not require a <i>wali</i> Consent required, but undermined		Pronounce ment of <i>talaq</i> outside of court valid			Minimal regulation on polygyny
25. Sudan		Puberty Do not require a <i>wali</i> Consent required, but undermined		Pronounce ment of <i>talaq</i> outside of court valid			Minimal regulation on polygyny
26. Syria	Sexual harassment is punishable under the Revised Penal Code ¹⁷⁴				Inheritanc e: On- going discussion on the Qur'anic provisions as being a <i>minimum</i> that must be given to women		women can stipulate in marriage contract the right to divorce if husband practices polygamy /breaches contract. Restricted in

¹⁷³ For Malaysia, see Islamic Family Law Act of 1984, No. 303, 23(4)(a)-(d) (1984)(Malay); see article Dossier 3: Memorandum submitted to the committee on proposed reforms to Muslim personal law, Muslim Women's Research and Action Forum, June/July 1988, at [http://www.wluml.org/english/pubsfulltxt.shtml?cmd\[87\]=i-87-bd71bfc313cf7a46fd30924bc69bd5a8&cmd\[190\]=i-190-bd71bfc313cf7a46fd30924bc69bd5a8](http://www.wluml.org/english/pubsfulltxt.shtml?cmd[87]=i-87-bd71bfc313cf7a46fd30924bc69bd5a8&cmd[190]=i-190-bd71bfc313cf7a46fd30924bc69bd5a8), (last viewed Sept. 7, 2006).

¹⁷⁴ Syria, U.S. Department of State, Country Reports on Human Rights Practices 2002: Syria, www.state.gov/g/drl/rls/hrrpt/2002/18289pf.htm (last viewed June 12, 2003)

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
							marriage contract where husbands are bound by that stipulation --- "no-polygamy" clause. ¹⁷⁵ A court permit is required. ¹⁷⁶
27. Tanzania				<i>Talaq</i> not permitted, only through courts			Minimal regulation on polygyny
28. Tunisia	Rape and spousal rape are punishable by law. ¹⁷⁷ Repeal of Article 207 of the Penal Code that provided husbands who killed their wives to plead attenuating circumstances. ¹⁷⁸	Do not require a <i>wali</i> Forced marriage criminalised, penalized Prohibited forced marriages ¹⁸¹	Enshrined equality of women and men in the family as well as in political, economic, and social spheres. ¹⁸²	<i>Talaq</i> not permitted, only through courts Women may initiate divorce proceedings. Both husband and wife have equal grounds for		Women and men have the right to custody of children. ¹⁸⁴	bans polygamy based on doctrinal evidence and <i>ijtihad</i> (Verse 4:3 as well as 4:129) Polygamy was abolished under the Personal Status Code (immediately after independence in 1956). ¹⁸⁵

¹⁷⁵ Surin, Jacqueline Ann, "Add No-Polygamy Clause in Marriage Contract," says Sisters in Islam.

<http://www.polygamyinfo.com/intnlmedia%20plyg%20168star.htm>. (last viewed, 27 February 2006).

¹⁷⁶ Syria, Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004; For Jordan, Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Morocco, 2004; see Zulficar, Mona. The Egyptian Woman in a Changing World. Egyptian Center for Women's Rights.

<http://www.ecwregypt.org/English/researches/2004/changingworld.htm>.

¹⁷⁷ U.S. Department of State, Country Reports on HR Practices, 2004: Tunisia, <http://www.state.gov/g/drl/rls/hrrpt/2004/41733.htm>. (last viewed February 2, 2006). For Turkey, see US Department of State Country Reports.

¹⁷⁸ The World Organization Against Torture, Violence Against Women in Tunisia, Geneva, 2002

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
	Prostitution is prohibited by law. ¹⁷⁹ law against trafficking ¹⁸⁰			divorce. -Ended the unilateral repudiation of marriage. -A 1981 amendment granted Tunisian women lifelong alimony after divorce instead of lump sum. ¹⁸³			
29. Turkey	Rape and spousal rape are punishable by law. ¹⁸⁶ Law against trafficking ¹⁸⁷ 2004 – The	17-19 with exceptions (strict to lax) Forced marriage criminalised, penalized Under the amended CC,	The husband is no longer the head of the family. -Spouses legally choose and manage the household together. -Women can		Spouses have equal share of marital property if the marriage took place after August 2002. ¹⁹¹	Women and men have the right to custody of children. ¹⁹²	Polygyny is banned. Polygamy is illegal. ¹⁹³

¹⁸¹ CRC, Summary record of the 789th meeting : Tunisia. 05/06/2002. CRC/C/SR.789. (Summary Record), available at http://www.bayefsky.com/summary/tunisia_crc_c_sr.7892002.php

¹⁸² Freedom House, Women's Rights in the Middle East and North Africa: Citizenship and Justice, Country Reports: Tunisia, 2004. The new Article 23 of the Personal Status Code abolishes the duty of the wife to obey her husband and introduces mutual obligation of respect and consultation between the spouses. See Shadow Report of The World Organization Against Torture, Violence Against Women in Tunisia, Geneva, 2002.

¹⁸⁴ Freedom House, Women's Rights in the Middle East and North Africa: Citizenship and Justice, Country Reports: Tunisia, 2004

¹⁸⁵ Freedom House, Women's Rights in the Middle East and North Africa: Citizenship and Justice, Country Reports: Tunisia, 2004

¹⁷⁹ Tunisia, U.S. Department of State, Country Reports on HR Practices, 2004: Tunisia, <http://www.state.gov/g/drl/rls/hrrpt/2004/41733.htm>. (last viewed February 2, 2006)

¹⁸⁰ Tunisia, U.S. Department of State, Country Reports on HR Practices, 2004: Tunisia, <http://www.state.gov/g/drl/rls/hrrpt/2004/41733.htm>. (last viewed February 2, 2006)

¹⁸³ Freedom House, Women's Rights in the Middle East and North Africa: Citizenship and Justice, Country Reports: Tunisia, 2004; Women Living under Muslim Laws, Knowing Our Rights: Women, Family Laws, and customs in the Muslim world, London, UK, 2006

¹⁸⁶ U.S. Department of State, Country Reports on HR Practices, 2004: Tunisia, <http://www.state.gov/g/drl/rls/hrrpt/2004/41733.htm>. (last viewed February 2, 2006). For Turkey, see US Department of State Country Reports.

¹⁸⁷ Turkey, www.state.gov/g/drl/rls/hrrpt/2002/18396pf.htm (last viewed June 12, 2003)

¹⁹¹ U.S. Department of State, Country Reports on Human Rights Practices 2002: Turkey, www.state.gov/g/drl/rls/hrrpt/2002/18396pf.htm (last viewed June 12, 2003).

¹⁹² Freedom House, Women's Rights in the Middle East and North Africa: Citizenship and Justice, Country Reports: Tunisia, 2004

¹⁹³ Nick Read, The Hidden Wives of Turkey, BBC, Tuesday, 30 August, 2005, http://news.bbc.co.uk/1/hi/programmes/this_world/4165896.stm

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
	new government, under the leadership of the Islamist Justice and Development Party accepts reform to the Penal Code to strengthen gender equality and protection of women's rights, particularly sexual and bodily rights.	the minimum age for marriage has been raised from 15 to 18 for females. Under exceptional circumstances, the minimum marriageable age can be lowered to 16 with court permission. ¹⁸⁸ A suit for nullity may be filed on the grounds that consent was obtained by force or fraud. ¹⁸⁹	stipulate in their marriage contract certain conditions, e.g., a) their profession should continue once married, b) that they could visit their own homes. -Spouses have equal rights in choosing a trade. ¹⁹⁰ In 2001, sweeping amendments made to the Civil Code – the family redefined as an entity “based on equality between spouses.”				
30. Uzbekistan		17-19 with exceptions (strict to lax)					Banned

¹⁸⁸ Women Living under Muslim Laws, Knowing Our Rights: Women, Family Laws, and customs in the Muslim world, London, UK, 2006

¹⁸⁹ Women Living under Muslim Laws, Knowing Our Rights: Women, Family Laws, and customs in the Muslim world, London, UK, 2006

¹⁹⁰ U.S. Department of State, Country Reports on Human Rights Practices 2002: Turkey, www.state.gov/g/drl/rls/hrrpt/2002/18396pf.htm (last viewed June 12, 2003).

Issues Countries	Violence Against Women (VAW)	Requirements and Age of marriage	Relationship between Husband and Wife	Divorce	Property Relations and women's mobility in marriage	Custody of children	Polygyny
31. Yemen	Prostitution is prohibited by law. ¹⁹⁴ Prohibited the practice of female genital cutting. ¹⁹⁵ law against trafficking ¹⁹⁶ Specific law prohibiting sexual harassment ¹⁹⁷	Prior to the unification (1990) ,no <i>wali</i> was required, age of marriage is 18 for women, 20 for men. Now, age of marriage was reduced to 15 for both, <i>wali</i> requirement reintroduced.		<i>Talaq</i> not permitted, only through courts			Polygyny conditional, dissolution only option for existing wife

- *not predominantly Muslim country*

¹⁹⁴ Yemen: U.S. Department of State, Country Reports on Human Rights Practices 2002: Yemen, www.state.gov/g/drl/rls/hrrpt/2002/18293.htm (last viewed Sept. 7, 2006)

¹⁹⁵ U.S. Department of State, Country Reports on Human Rights Practices 2002: Yemen, www.state.gov/g/drl/rls/hrrpt/2002/18293pf.htm (Last viewed June 12, 2003); For Egypt, Freedom House, Women's Rights in Middle East and North Africa: Citizenship and Justice, Country Reports: Egypt, 2004.

¹⁹⁶ Yemen, CEDAW Press Release on Yemen, WOM/1358, 14/8/2002

¹⁹⁷ Amnesty International Report 2005: Tunisia. <http://web.amnesty.org/report2005/tun-summary-eng>. (Last viewed on February 2, 2006)

**CHAPTER XI
INDIGENOUS WOMEN
AND THE INDIGENOUS JUSTICE SYSTEM IN THE CORDILLERAS**

Core messages of the topic:

- ❖ Cordillera women's experiences on indigenous justice system, law, courts;
- ❖ Notions of justice, indigenous political institutions vis-à-vis indigenous justice system
- ❖ Access to justice/actual experiences of women in accessing the justice system:
- ❖ No. of cases filed vis-à-vis incidence
- ❖ How are VAW cases resolved?
 - Are the victims/families able to seek justice and reparation/damages?
 - How are the perpetrators punished?
 - Are VAW cases deterred?
 - Do women have representation in the indigenous political system? (representation in barangay councils; success stories)
- ❖ Relevance of the paralegal training vis-à-vis IP rights
 - respect for culture, customs
 - realities
 - deter VAWC
 - free and informed choice of survivors; respect for choice of survivors
 - offer options and argumentation to advocate for women's rights

A. Indigenous and Tribal Peoples Convention, 1989 (No. 169)

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.
2. Such action shall include measures for:
 - (a) Ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; (Art. 2, 2a)

Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.
2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized

human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.
2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.
2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

B. The Indigenous Peoples Rights Act of 1997 (RA 8371)

SEC. 26. Women. - Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs) women shall enjoy equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life. The participation of indigenous women in the decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition.

C. Philippine Constitution

The State recognizes and promotes the rights of ICCs/IPs within the framework of national unity and development.¹⁹⁸

D. Issues in Indigenous Peoples Justice System

1. How are VAW cases resolved?

- Are the victims/families able to seek justice and reparation/damages?
- How are the perpetrators punished?
- Are VAW cases deterred?

2. Do women have representation in the indigenous political system? (representation *barangay* councils; success stories)

E. Indigenous Values

Inayan (Kankanaey)/madi – “do not do”
Lawa – must not do what is “taboo” (e.g. domestic violence)
Paniyo (Ifugao) – “taboo”, “bad”

¹⁹⁸ PHILIPPINES CONST, Article II, Section 22.

CHAPTER XII INTRODUCTION TO CRIMINAL LAW

A. Characteristics of Criminal Law¹⁹⁹

1. Generality

Criminal laws apply to all persons who live or sojourn in the Philippines, irrespective of age, gender, color, race, belief, or personal status.

Exemptions:

- a) heads of state, ambassadors, attaches;
- b) members of Congress (with respect to Congressional speeches or debates).

2. Territoriality

Penal laws are enforceable within the Philippine territory, including its atmosphere, interior waters and maritime zone.

3. Prospectivity

The law shall not apply to acts or omissions committed before its effectivity. Except when it is favorable to the accused (unless he is a habitual delinquent) or when the law provides that it shall have retroactive effect.

B. Crimes

1. Felony

Felony is an act or omission punishable by law. It is committed by means of deceit or fault.

- a) **Deceit**- The act is performed with deliberate intent (freedom, intelligence, and intent).
- b) **Fault**- The wrongful acts results from imprudence, negligence, lack of foresight or lack of skill.

2. Degrees of Execution

- a) **Consummated**- All elements necessary for the accomplishment of the crime are present.
- b) **Frustrated**-All acts that would result in the crime were performed but causes independent on the will of the perpetrator prevented the accomplishment of the crime.
- c) **Attempted**- The offender had started to commit the crime but not all elements were performed by reason of some cause or accident other than his own spontaneous desistance.

¹⁹⁹ This chapter was adapted from the “Manual for Paralegals: Violence Against Women”, Sentro ng Alternatibong Lingap Panlegal (SALIGAN)

C. Criminal Liability

A person who commits a crime may be held liable as principal, accomplice, or accessory

1. Principal

There are three (3) kinds:

- a) **Principal by direct participation:** takes a direct part in the execution of the act.
- b) **Principal by inducement:** directly forces or induces others to commit the crime.
- c) **Principal by indispensable cooperation:** cooperates in the commission of the offense by another act without which it would not have been accomplished.

2. Accomplice

An accomplice is a person who is not a principal but cooperates in the execution of the crime by previous or simultaneous acts.

3. Accessory

An accessory is a person who, having knowledge of the commission of the crime but without participating therein as principal or accomplice, subsequently takes part in its commission by any of the following acts:

- a) by profiting himself or assisting the offender to profit from the crime.
- b) by concealing or destroying evidence or effects or instrument of the crime in order to prevent its discovery.
- c) by harboring, concealing, or assisting in the escape of the principal where the accessory is a:
 - **Public officer:** who abused his/her public functions;
 - **Private person:** the offender is either guilty of treason, parricide, murder or attempt on the life of the Chief Executive or is a habitual criminal.

D. Factors to Consider in Determining Criminal Liability

1. Justifying Circumstances

No crime was committed since the act was done in accordance with the law under the following circumstances:

- a) **Self-defense:** acting in defense of one's person or rights provided there was:
 - 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 a person defending herself.

b) Defensive of relative

Acting in defense of the person or rights of the spouse, ascendants, descendants, or legitimate/natural/adopted brothers or sisters, uncles and aunts, first cousins.

Elements:

- i) unlawful aggression;
- ii) reasonable necessity of the means employed to prevent or repel it; and
- iii) in case the provocation was given by the person attacked, the one making the defense had no part therein.

c. Defense of stranger: Acting in defense of the person or rights of the stranger.

Elements:

- i) unlawful aggression;
- ii) reasonable necessity of the means employed to prevent or repel it; and
- iii) the person defending was not induced by revenge, resentment, or other evil motive.

d. Avoidance of a greater evil

Doing an act which causes damage to another in order to avoid an evil or injury feared to be greater than that done to avoid it.

e. Fulfillment of duty or lawful exercise of right.

f. Obedience to a lawful order by a superior.

2. Exempting Circumstance

A crime was committed but there is no criminal liability because of the presence of extra-ordinary circumstances. This occurs when an element of deceit is absent: freedom, intelligence, or intent.

- a) Insanity or imbecility unless the person acted during a lucid interval;
- b) 15 years of age or under*

However the child shall be subject to an intervention program under Sec. 20 of RA 9344 "Juvenile Justice and Welfare Act of 2006"(sec.6);

- c) 16-17 shall be subjected to an intervention program*

Unless he/she acted with discernment; in such case appropriate proceedings will be conducted

- d) Causing an injury by mere accident without fault or intent of causing it while performing a lawful act with due care;

**Note: not exempt from civil liability*

CHAPTER XIII

CRIMINAL LAWS AND VAWC

PART I – Analysis of Philippine Criminal Laws

A. Criminal Laws

1. Rape

Incidences of rape remain high, with an average of eight women raped every day²⁰⁰ and an average of nine children raped daily.²⁰¹ The Anti-Rape Law of 1997 (Republic Act 8353) brought positive changes, such as the reclassification of rape as a crime against persons, the broadening of the definition of rape to include acts other than penile penetration, and the recognition of marital rape. The law, however, imposes a lighter penalty for "rape by sexual assault" committed with the insertion of an object or instrument into the vaginal orifice, as opposed to rape by penile penetration.²⁰² Implicit in this provision is a disregard for the traumatic effects of an assault of this nature.²⁰³ The enactment of the Rape Victim Assistance and Protection Act of 1998 (Republic Act 8505) provides support to rape victims through psychological counseling, medico-legal examinations, free legal assistance and training programs for handling rape cases. Its rape shield provision prohibiting admissibility of past sexual conduct of the rape victim, however, is subject to judicial interpretation that may undermine its protection since it provides that such evidence is admissible if found "relevant by the court."²⁰⁴

Despite the enactment of both R.A. 8353 and R.A. 8505, numerous complaints for rape are dismissed at the preliminary investigation level and in the Regional Trial Courts.²⁰⁵ Definitive data on the number of dismissals and acquittals among rape complaints are unavailable from the Department of Justice. Many judges and public prosecutors still do not understand the realities of rape as gender-based violence, ignoring the fact that rape is life-threatening.²⁰⁶ Nor do they recognize that the demeanor of rape victims during investigations while testifying may vary. They also fail to receive reports of rape with credulity.²⁰⁷ Often they do not take seriously findings of post-traumatic stress disorder among victims of sexual violence.²⁰⁸ Crucial forensic evidence such as DNA analysis of the perpetrator's semen, hair and skin samples are not widely available,²⁰⁹ hematomas on the neck and arms of the victim's body and samples from the crime scene may be left out in medico-legal examinations. Although medico-legal certificates for child abuse victims were standardized in 2002,²¹⁰ this has yet to be practiced throughout all the medico-legal units in the country. Standard medico-legal certificates for adult sexual assault victims are yet to be introduced. Although the Supreme Court ruled that, "the absence of

²⁰⁰ National Commission on the Role of Filipino Women (NCRFW), VAW Statistics, Violent Crimes Against Women and Children, (last viewed Oct.1, 2003) (copy on file at EnGendeRights).

²⁰¹ *Id.*

²⁰² Clara Rita Padilla, Philippine Submission to Equality Now Workshop on Litigating for Sex Equality, Nairobi, Kenya (June 9-11, 2001) (unpublished submission on file with the Center for Reproductive Rights) at 18 [hereinafter Litigating for Sex Equality].

²⁰³ Women's Legal Bureau, Women's Health and the Law, 69-71 (1997).

²⁰⁴ Litigating for Sex Equality, *supra* at 18; See Rape Victim Assistance and Protection Act of 1998, RA 8505, Sec. 6 (1998).

²⁰⁵ Litigating for Sex Equality, *supra* at 19 citing the case of People of the Philippines vs. Eduardo Miranda (Crim. Case No. Q96-65569) dismissed at the Regional Trial Court level. See Soliman M. Santos, Jr., Merci Llarinas-Angeles, Roberto M. Ador, JUSTICE AND HEALING: TWIN IMPERATIVES FOR THE TWIN LAWS AGAINST RAPE (2001) (copy on file at EnGendeRights).

²⁰⁶ *Id.* citing the cases of People of the Philippines vs. Eduardo Miranda (Crim. Case No. Q96-65569) and Cielo Castro; See *id.* Soliman M. Santos, Jr. et al, JUSTICE AND HEALING.

²⁰⁷ See, e.g., People v. Salarza, Jr., 277 SCRA 578 (Aug. 18, 1997) which held that "...Rape is a charge easy to make, hard to prove and harder to defend by the party accused, though innocent. Experience has shown that unfounded charges of rape have frequently been proffered by women actuated by some sinister, ulterior or undisclosed motive....On more than one occasion it has been pointed out that in crimes against chastity the testimony of the injured women should not be received with precipitate credulity."

²⁰⁸ Litigating for Sex Equality, *supra* note 148, at 19.

²⁰⁹ See The Advisory Board Foundation, Inc., CHILD MALTREATMENT MEDICO-LEGAL TERMINOLOGY AND INTERPRETATION OF MEDICAL FINDINGS: A CONSENSUS OF MEDICAL AND LEGAL CHILD ABUSE PRACTITIONERS IN THE PHILIPPINES, (2d Ed. 2002), available at <http://www.childprotection.org.ph/monthlyfeatures/may2k3b.pdf> for information regarding interpretation of medical findings.

²¹⁰ *Id.*

hymenal lacerations does not disprove sexual abuse,”²¹¹ due to deeply entrenched personal beliefs and lack of sensitization, it is possible that many judges and public prosecutors may continue to mistake the absence of hymenal lacerations as conclusive proof that rape did not occur.

2. Forced Prostitution and Trafficking

The estimated figure of women and children in forced prostitution in 2005 was about 800,000.²¹² The passage of the “Anti-Trafficking in Persons Act of 2003” (Republic Act 9208) is significant in the effort to fight against trafficking. However, provisions of the Revised Penal Code continue to focus law enforcement attention on women in prostitution, rather than on their exploiters. Article 341 on white slave trade and Article 202 on vagrancy are still being used to round up and imprison women in prostitution or are sometimes used to extort money or sexual favors.²¹³

The existing criminal law imposing imprisonment on women in prostitution disregards the fact that many are lured to prostitution because of the desperation due to poverty and lack of alternative sources of income. The discriminatory provisions imposing penalties on women in prostitution should be repealed.

It is significant that the Anti-Trafficking in Persons Act of 2003 accords legal protection to trafficked persons by recognizing them as victims who should not be penalized for crimes directly related to the acts of trafficking or in obedience to the order made by the trafficker.²¹⁴ Quezon City Ordinance No. SP-1516 also recognizes persons in prostitution as victims, thus, imposing penalties only on the perpetrators (pimps, recipient of the sexual act, etc.) while providing services to persons in prostitution such as education campaigns against prostitution, crisis intervention service, education and socio-economic assistance, sustainable livelihood skills training, financial support for scale businesses, integration and complete after-care programs, health services, counseling, and temporary shelter.²¹⁵

Detaining women in prostitution is not the answer. Many women are forced into prostitution because they were rape or incest victims or their families were abusive to them in the past.²¹⁶ There should be legal initiatives designed to provide alternatives to women in prostitution through education, skills training and employment.²¹⁷

3. Domestic Violence (Violence against Women and Children)

Violence against Women is prevalent in the Philippines. Studies show that three out of five women in the Philippines have experienced some form of battery and other physical abuse.²¹⁸ The Philippine National Police (PNP) documented a total of 7,204 cases of VAW in 2004, a seven-fold increase from 1,100 cases in 1996.²¹⁹ The highest record in the police department was in 2001 at 10,343.²²⁰ Cases reported included physical injuries, wife battering and rape: incestuous and attempted.²²¹

²¹¹ *People v. Llanita*, G.R. No. 134101 (September 5, 2001) available at <http://www.supremecourt.gov.ph/jurisprudence/2001/sep2001/134101.htm> (last viewed August 7, 2006).

²¹² Alexander Martin Remollino, *Palit-bigas Prostitution*, TENAGANITA, (October 25, 2005), available at <http://geeklog.tenaganita.net/article.php?story=20051026001552759> (Last visited August 1, 2006).

²¹³ Litigating for Sex Equality, *supra* at 20.

²¹⁴ RA 9208 AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES, Section 17 (May 26, 2003).

²¹⁵ Quezon City Ordinance No. SP-1516, S-2005, Section 6 (i) & (ii), (2005).

²¹⁶ Clara Rita Padilla, *Rethinking Policies on Women*, 2 (1) SOROPTIMIST BALITA, page 3, (September 2005) [hereinafter *Rethinking Policies on Women*].

²¹⁷ *Id.*

²¹⁸ Gina Mission, “The Economic Cost of Violence Against Filipino Women,” *CyberDyaryo*, 20 May 1999, available at http://gina.ph/CyberDyaryo/features/cd1999_0520_014.htm (Last visited August 2, 2006).

²¹⁹ NATIONAL COMMISSION ON THE ROLE OF FILIPINO WOMEN (NCRFW), *THE STATE OF FILIPINO WOMEN 2001-2003*, Chapter 3: Upholding Women’s Rights, NCRFW, 25 (2005) available at <http://www.ncrfw.gov.ph/insidepages/downloads/rsfw2001to2003/default.htm>

²²⁰ *Id.*, at 27.

²²¹ *Id.*

The “Anti-Violence against Women and Their Children Act of 2004” or RA 9262 took effect on March 27, 2004. It defines violence against women and children (VAWC) as any act or series of acts committed by any person against a woman who is his wife or former wife, or with whom the person has or had a sexual dating relationship, or with whom he has had a common child.

Although RA9262 is a very potent law, there is still an ongoing disjunct between the law and how the law is being implemented in barangays, police stations, and courts. Certain judges are hesitant to issue contempt orders against respondent husbands who clearly violate the provisions of Protection Orders (POs).²²²

B. Service Delivery

Much is lacking in terms of health service provision for VAW survivors. In rape cases, there is a need to standardize provision of medication such as anti-biotics to address reproductive tract infections, emergency contraception to prevent unwanted pregnancies and post exposure prophylaxis (PEP) to prevent transmission of HIV.

C. Capacity Building

There is lack of gender sensitizing and lack of understanding of the impact of VAW and the importance of preventing VAW. There is lack of knowledge of international standards based on treaty obligations, jurisprudence from UN Treaty Monitory Bodies, jurisprudence from regional human rights systems and comparative laws from other jurisdictions.

For instance, to ensure proper implementation of RA 9262, trainings with the barangays can be done to provide them information on RA 9262 and their duty in issuing Barangay Protection Orders. Trainings can be done with the Police Women and Children Protection Units where they would be informed of their duties under the law including having a separate blotter for RA 9262 cases. Advocacy can be done with the Supreme Court in issuing a circular for banks and Registers of Deeds (RODs) to recognize POs ordering non-dissipation of real and personal properties. Advocacy can even be done directly with the banks and RODs to simply recognize POs prohibiting dissipation of properties.

In the case of women in prostitution, detaining them is not the answer. If they lack educational opportunities or skills to land them good jobs, then these women would merely go back to prostitution. There are varied reasons why women are forced into prostitution and these reasons should be taken into serious consideration. What many people do not realize is that many women are forced to enter prostitution because they were rape or incest victims or their families were abusive to them in the past. What can be done for women in prostitution is to give them the opportunity to further their education, their skills and to give them opportunity for certain jobs or business ventures.

²²² *Rethinking Policies on Women, supra.*

PART II – Discussion of Philippine Criminal Laws Relating to Women

A. Republic Act 9262

An Act Defining Violence against Women and their Children, Providing for Protective Measures for Victims, Prescribing Penalties therefor and for other Purposes

1. Definition of VAWC

Section 3 of RA 9262 defines VAWC as:

“Violence against women and their children” refers to any actor 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 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.”

2. Persons Covered (Sec. 3)

ANY person may be liable

Victims may be:

- wife
- former wife
- woman with whom person has/had sexual or dating relationship
- woman with whom person has a common child
- child of the woman

“Sexual relations” is defined as single sexual acts which may or may not result in the bearing of a common child.

“Dating Relationship”

- live as husband and wife without benefit of marriage
- romantically involved over time and on a continuing basis during the course of relationship (does not include casual acquaintance or socialization in business or social context)

“Child”

- Below 18
- Above 18 but incapable of taking care of themselves
- Biological child or other children under her care

3. Acts Covered (Sec. 3) and penalties

Generally:

Any act or series of acts, committed within or outside the family abode, which result in or is likely to result in physical, sexual or psychological harm or suffering or economic abuse.

- a) Causing physical harm

serious physical injuries (over 30 days medical attention) = *prision mayor*

less serious physical injuries (10-30 days medical attention) = *prision correccional*
slight physical injuries (1-9 days medical attention) = *arresto mayor*

- b) Threatening to cause physical harm = no case lower than *arresto mayor*
- c) Attempting to cause physical harm = *arresto mayor*
- d) Placing in fear of imminent physical harm = *arresto mayor*
- e) Attempting to compel or compelling to engage in conduct which the woman or child has the right to desist from; or to desist from conduct which woman or child has the right to engage in = *prision correccional*

Penalties

- *Arresto menor* – 1-30 days
- *Arresto mayor* – 30 days and 1 day – 6 months
- *Prision correccional* – 6 months and 1 day-6 years
- *Prision mayor* - 6 years and 1 day – 12 years
- *Reclusion Temporal* -12 years and 1 day – 20 years
- *Reclusion Perpetua* – 20 years 1 day – 40 years

Specifically (Sec. 5 e):

- Attempting to restrict or restricting the woman or her child's freedom of movement or conduct by force, threat of force, physical or other harm, threat of physical or other harm, or intimidation against the woman or her child (penalty: *prision correccional*).

Restricting conduct includes:

- e.1) Threatening to deprive or actually depriving the woman or her child of custody to her/his family;
- e.2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
- e.3) Depriving or threatening to deprive the woman or her child of a legal right;
- e.4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;
- (f) Inflicting or threatening to inflict physical harm on oneself to control the actions or decisions of the woman (*arresto mayor*)
- (g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family (*prision mayor*).
- (h) Engaging in purposeful, knowing or reckless conduct, personally or through another that alarms or causes substantial emotional or psychological distress to the woman or her child (*prision mayor*).

Includes:

- h.1) Stalking or following the woman or her child in public or private places;
- h.2) Peering in the window or lingering outside the residence of the woman or her child;
- h.3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
- h.4) Destroying the property and personal belongingness or inflicting harm to animals or pets of the woman or her child; and
- h.5) Engaging in any form of harassment or violence;
- h.6) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the woman's child/children (*prison mayor*).

4. Character of the Crime

- Public crime (Sec. 25) – complaint can be filed by any citizen with personal knowledge
- Penalties: imprisonment, fine AND mandatory counseling
- Exception to *Katarungang Pambarangay* (because fine is 100,000.00-300,000.00 and it only covers offenses punishable up to 5,000.00 fine or one (1) year imprisonment)
- Prescription

paragraphs a-f (physical, coercion) = 20 yrs
paragraphs g-i (sexual activity, psych, econ) = 10 yrs

5. Protection Orders

a) What is a protection order? (Sec. 8)

Protection Order is an order issued by a *Barangay* Captain, or Kagawad in the absence of the *Barangay* Captain, and the courts to prevent further acts of VAWC and grant relief to safeguard the victim from further harm, minimize any disruption in the victim's daily life, and facilitate opportunity and ability of the victim to regain control of her life.

b) Types of Protection Orders

- Barangay Protection Order (BPO)
- Temporary Protection Order (TPO)
- Permanent Protection Order (PPO)

(through independent action or as incidental relief)

c) Who May Apply for Protection Orders? (Sec. 9)

- Offended party
- Parents or guardians of offended party
- Ascendants, descendants or collateral relatives within 4th degree of consanguinity or affinity (e.g., brother- or sister-in-law, nephew/niece, uncle/aunt, first cousin)
- Officers or social workers of Department of Social Welfare and Development (DSWD) or social workers of Local Government Units (LGUs)

- Police officers, preferably in charge of Women and Children Protection Division (WCPD)
- (Affidavit of circumstances of abuse & consent of survivor)
- *Punong barangay* or *kagawad*
- Lawyer, counselor, therapist or healthcare provider of the petitioner
- At least 2 concerned responsible citizens of the city or municipality where the act occurred and who has personal knowledge of the commission of the acts

○ *PNP shall extend assistance in the application for protection orders brought to their attention.*

d) Enforcement of Protection Orders :

- Law enforcement agencies shall enforce protection orders
- TPO and PPOs may be enforced anywhere in the Philippines;
- Violation of protection orders is fined with Php 5,000.00 – Php 50,000.00 and/or
- imprisonment for six (6) months

e) Duration of Protection Orders

- BPO – 15 days
- TPO – 30 days, renewable (issued on date of filing & ex parte)
- PPO – until revoked by issuing court upon application of the person in whose favor PO was issued (issued upon hearing conducted in 1 day).

f) Administrative Liability of Official/Judge

- Failure to act on an application for a protection order within the reglementary period specified in the previous sections w/o justifiable cause shall render the official or judge administratively liable.

g) Example of BPO:

- against causing/threatening to cause physical harm to the woman/child (sec. 5a & b)
- against harassing, annoying, telephoning, contacting or communicating with the victim-survivor (Sec. 13 b, Rules)

h) Barangay Protection Order

A BPO is issued on the same day of application upon conclusion of ex parte proceedings; effective upon personal service to respondent

The official should:

- Record BPOs in confidential logbook for VAWC;
- Submit all BPOs to PNP-WCPD;
- Submit quarterly report of all BPOs to local DILG;
- Submit Compliance Monitoring Forms (referrals/action taken)

A TPO/PPO can be issued despite the issuance of a BPO or pendency of an application for a BPO

i) Example of TPO/PPO

- against threatening to commit/committing, personally or through another, any of the acts in Section 5;
- harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or indirectly;
- removal and exclusion from residence;
- stay away;
- use of vehicle, etc;
- temporary or permanent custody;
- withhold percentage of support from work;
- against use of firearm/surrender firearm;
- services from DSWD such temporary shelter and other social services;
- other relief (mandatory counseling of respondent (intervention of DSWD in all protection order cases/interview all children involved); prohibition vs. dissipation of properties)

j) Violation of Protection Orders

i) BPO

- file with MTC;
- imprisonment of 30 days

ii) TPO/PPO

- Php 5,000.00 – Php 50,000.00 fine and/or imprisonment of six (6) months;
- contempt of Court under Rule 71 of the Rules of Court

6. Affirmative Relief

- a) Battered Woman Syndrome as a DEFENSE (Sec. 26)
- b) Prohibited defenses – alcohol/illicit drug (Sec. 27)
- c) Custody of children by a victim suffering from BWS (Sec. 28)
- d) Victims' entitlement to paid leave of absence up to 10 days (Sec. 43)
- e) Rights of victims – legal assistance, services from DSWD & LGUs (Sec. 35)
- f) Mandatory Programs and other services – shelters, counseling, psycho-soc, livelihood (Sec. 40)

7. Other Features

- a) Exemption from 6-month cooling off period in legal separation cases (Sec. 19)
- b) Confidentiality – Any person who publishes the name, address, tel, school, bus address, employer or identifying info of the survivor or immediate family member, w/o consent, shall be liable for contempt; violation: 1 yr imprisonment & fine of not more than 500k.

8. Duties of Barangay Official & Law Enforcers

- respond immediately to a call for help or request for assistance or protection of the victim by entering the dwelling if necessary whether or not a protection order has been issued and ensure the safety of the victim/s;
- confiscate any deadly weapon in the possession of the perpetrator or within plain view;
- transport or escort the victim/s to a safe place of their choice or to a clinic or hospital;
- assist the victim in removing personal belongings from the house;

- assist the *barangay* officials and other government officers and employees who respond to a call for help;
- ensure the enforcement of the Protection Orders issued by the *Punong Barangay* or the courts;
- arrest the suspected perpetrator without a warrant when any of the acts of violence defined by this Act is occurring, or when he/she has personal knowledge that any act of abuse has just been committed, and there is imminent danger to the life or limb of the victim as defined in this Act; and
- immediately report the call for assessment or assistance of the DSWD, social Welfare Department of LGUs or accredited non-government organizations (NGOs).
 - Any *barangay* official or law enforcer who fails to report the incident shall be liable for a fine not exceeding Ten Thousand Pesos (P10,000.00) or whenever applicable criminal, civil or administrative liability
 - Philippine National Police –Women and Children Protection Desks (PNP WCPD) should have separate blotter for RA 9262 cases

9. Prohibited Acts of *Barangay*/Court

- Prohibited acts in proceedings in applications for protection orders
 - *Barangay* officials/courts shall not influence the applicant to compromise or abandon relief sought in the application for protection order (Sec. 33)
- Administrative Liability

10. Exemption from Liability of Persons Intervening

- Any person, police, *barangay* official acting in accordance with law & w/o using violence or restraint greater than necessary to ensure safety of the survivor shall not be liable for any criminal, civil or administrative liability (Sec. 34).

11. Where to file the Protection Order

- Family Court where offended party resides;
 - Otherwise, RTC, MTC, MCTC with territorial jurisdiction over offended party's place of residence (SC Rule No. 04-10-11 on VAWC, Sec. 9)

12. Address of Offended Party

- When disclosure of offended party's address will pose danger, it shall be stated in the petition
- Petitioner shall attest that the offended party resides in the municipality or city over which the court has territorial jurisdiction and shall provide a mailing address. (SC Rule No. 04-10-11 on VAWC, Sec. 10)

13. Ex parte issuance of Temporary Protection Order (TPO)

- If the court finds reasonable ground to believe that an imminent danger of VAWC exists or is about to recur (SC Rule No. 04-10-11 on VAWC, Sec. 15)

14. Notice where no TPO is issued *ex parte*

- the clerk of court shall notify the respondent to file an opposition within five days
- the date of the preliminary conference and hearing on the merits shall be indicated on the notice. (SC Rule No. 04-10-11 on VAWC, Sec. 16)

15. Prohibited pleadings/motions²²³

- (a) Motion to dismiss the petition except on the ground of lack of jurisdiction over the subject matter or over the parties;
- (b) Motion for extension of time to file opposition, affidavit, position paper and other pleadings;
- (c) Dilatory motion for postponement;
- (d) Motion for a bill of particulars;
- (e) Third-party complaint;
- (f) Reply;
- (g) Motion to declare the respondent in default;
- (h) Intervention;
- (i) Memorandum;
- (j) Petition for certiorari, mandamus or prohibition against any interlocutory order issued by the court;
- (k) Motion for new trial, or for reconsideration of a protection order, or for reopening of trial; and
- (l) Petition for relief from judgment.

16. Prohibited compromise during Preliminary Conference²²⁴

The court shall not allow compromise on any act constituting the crime of VAWC and other matters, such as:

- The civil status of persons;
- The validity of a marriage, declaration of nullity or annulment of a marriage or of a legal separation;
- Any ground for declaration of nullity or annulment of a marriage or of legal separation;
- Future support;
- The jurisdiction of courts;
- Future legitime.

17. Petition for PO as a separate action or instituted in the criminal action²²⁵

- (a) separate action filed ahead of the criminal action
- (b) If criminal action is filed, the petition for PO is deemed instituted with the criminal action, unless the offended party reserves the right to institute it separately.

18. Petition for Protection Order (PO) filed separately or deemed instituted in the civil action for damages²²⁶

- (a) Separate action filed ahead of the civil action for damages
- (b) If civil action for damages is filed, the petition for PO is deemed instituted with the civil action

²²³ SC Rule No. 04-10-11 on VAWC, Sec. 22

²²⁴ SC Rule No. 04-10-11 on VAWC, Sec. 23

²²⁵ SC Rule No. 04-10-11 on VAWC, Sec. 33

²²⁶ SC Rule No. 04-10-11 on VAWC, Sec. 34

19. Prosecution of Criminal Action

SEC. 36 *Prosecution of criminal action.*—An act of violence covered by R.A. No. 9262 constituting a criminal offense shall subject the offender to criminal proceedings, which shall be governed by the Revised Rules of Criminal Procedure.

Where the judgment of conviction declares that the guilt of the accused has been proved beyond reasonable doubt, the permanent protection order shall issue as a matter of course.

Where the judgment of acquittal declares that the quantum of evidence is not enough to sustain a conviction beyond reasonable doubt, the court shall determine whether or not to issue a permanent protection order.

Where the judgment of acquittal expressly declares that the basis of the offender's criminal liability did not exist, a permanent protection order shall not issue. A temporary protection order that may have been earlier issued shall be dissolved.

20. Venue

SEC. 41 *Venue.*—Applications for *barangay* protection orders shall observe the following rules on venue:

- a) where the parties reside, in the same *barangay*, the dispute shall be brought for settlement in said *barangay*;
- b) where the parties reside in different *barangays* in the same city or municipality, the dispute shall be settled in the *barangay* where the respondent or any one of the respondents actually resides, at the choice of the complainant
- c) disputes arising at the workplace where the contending parties are employed or at the institution where such parties are enrolled for study, shall be brought in the *barangay* where such workplace or institution is located; and
- d) any objection relating to venue shall be raised before the *Punong Barangay* during the proceedings before him. Failure to do so shall be deemed a waiver of such objections. [see implementing rules and regulation]

B. Republic Act 9208 The Anti-Trafficking in Persons Act

1. Who are vulnerable?

- adolescent – about 30 years old
- attained elementary or high school level of education
- from poor and big families, with dependents to support
- from rural areas
- victims of sexual abuse or domestic violence
- have relative who are in prostitution

2. Women who are:

- victims of rape/incest
- dysfunctional/abusive families
- trafficked
- lured to prostitution because of desperation due to poverty; dire economic circumstances
- lack of alternative sources of income (lack of skills, education, employment and business opportunities)
- young mothers or engaged in adolescent sex

3. Whenever there is prostitution there is trafficking

- Practice of first sex of adolescent males with women in prostitution
 - an estimated 10.8% of rural girls and 4.7% of urban girls aged 15–19 had already begun childbearing. (1998 NDHS)
 - 31% of young adult males and 15% of young adult females had already engaged in sex. (Young Adult Fertility and Sexuality Survey; between 15–24 years old)

4. Sec. 3 (a) Definition, R.A. 9208 (Based from Atty. Charrie Calalang’s presentation)²²⁷

- Refers to the 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, or 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.

5. Exploitation at the minimum includes:

- prostitution
- other forms of sexual exploitation
- forced labor or services
- slavery
- servitude
- removal or sale of organs

6. Sec. 17, Legal Protection to Trafficked Persons

- Recognition of the trafficked person as victims;
- Not penalized for crimes directly related to the acts of trafficking or in obedience to the order made by the trafficker;
- Consent is irrelevant;

7. Why are these two sections important?

- Reminders/ guides the public how trafficking can be committed and for what purpose/s
- Avoid mistakes (of arresting, prosecuting and penalizing victims) Sec. 4 Acts of Trafficking
- Recruit, transport, transfer, harbor, provide, **or** receive a person by any means, including those
- Done under the pretext of domestic or overseas employment or training or apprenticeship, for
- The purpose of exploiting such individual.
- Matching any person or a Filipina to a foreign national as provided for in R.A. 6955, for the purpose of exploiting the person.
- Offering or contracting marriage for the purpose of exploiting the person.
- Undertake and organize (sex) tours and travel plans
- Maintain or hire a person for prostitution or pornography
- Adopt or facilitate the adoption of persons for the purpose of exploiting the latter

²²⁷ This section until the end of the discussion on RA 9208 is from Atty. Charrie Calalang’s presentation at the EnGenderRights-sponsored “Paralegal Training Module Framework-Setting”, July 14-15, 2005, Sulo Hotel, Diliman, Quezon City.

- Traffic a person for the purpose of removing or selling the organ of said person
- Traffic a child to engage in armed conflict in the Philippines or abroad

8. Penalty for Acts of Trafficking (Sec. 4)

- 20 years; and
- a fine of Php 1M- 2M

9. Sec. 5 Acts that Promote Trafficking in Persons

- Knowingly use or allow to be used any house, building or establishment to promote trafficking in persons
- Produce, issue, distribute un-issued, tampered or fake counseling certificates, pre-departure requirements and the like to promote trafficking in persons
- Advertise, publish, broadcast, distribute thru the tri-media or by any means, including the use of information technology and the internet, any material that promotes trafficking in persons
- Assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents.
- Facilitate the exit from and/or entry to the country of persons in possession of unissued, tampered or fraudulent travel documents.
- Confiscate, conceal or destroy travel documents or the personal belongings of trafficked person or to prevent them from leaving the country or seek redress from the government or appropriate agencies.
- Knowingly benefit from, or make use of the labor or services of person held to a condition of involuntary servitude, forced labor, or slavery.

10. Penalty for Acts that promote Trafficking (Sec. 5)

- 15 years: and
- a fine Php 500,000-Php 1M

11. Sec. 6 Qualified Trafficking in Persons

- Offended party is a child
- Adoption was effected through R.A. 8043 or “Inter-Country Adoption Act of 1995” for the purpose of exploitation
- Committed by a syndicate or in large scale
- Offender is an ascendant, parent, sibling, guardian or person who exercises authority over the offended party
- Trafficking was committed by a public officer or employee
- The trafficked person was recruited to engage in prostitution with any of the military or law enforcement agencies
- When the offender is a member of the military or law enforcement agencies
- By reason of or on the occasion of the act of trafficking the offended party dies, becomes insane, suffers mutilation or is afflicted with HIV or AIDS

12. Penalty for Qualified Trafficking (Sec. 6)

- Life imprisonment; and
- a fine of Php 2M-Php 5M

13. Sec. 11, Use of Trafficked Person

Any person who buys or engages the services of trafficked persons for prostitution shall be penalized as follows:

First offense – 6 months of community service and fine of Php 50,000.

Second and subsequent offenses – 1 year imprisonment & fine of PhP100,000.

14. Sec. 8, Prosecution of Cases

Who may file a complaint?

- Any person with personal knowledge
- The trafficked person
- The parents
- Spouse
- Siblings
- Children
- Legal guardian

15. Sec. 9, Venue

Where can the criminal action be filed?

- Where the crime was committed;
- Where any of the elements occurred; or
- Where the trafficked person actually resides at the time of the commission of the offense.

16. Sec. 12, Prescriptive Period

- 10 years.
- Except committed by a syndicate or in large scale = 20 years

Note: from the day the trafficked person is delivered or released from conditions of bondage

17. Sec. 7 Confidentiality

- Recognition of the victim's right to privacy during investigation, prosecution and trial
- Investigation, prosecution or trial may be conducted closed-door; in which case, the name and/or other personal circumstances tending to establish the identity shall not be.
- Publication, announcements on television or radio, production of a film, or any use of tri-media facilities or information technology causing the publicity of a trafficking case being prosecuted or heard in court behind closed-doors shall be punished with 6 years imprisonment and a fine of not less than Php 500,000- PhP1M.

18. Sec. 23 Mandatory Services

- Emergency shelter and appropriate housing
- Counseling
- Free legal services
- Medical or psychological services
- Livelihood and skills training
- Educational assistance

Note: *Provision for sustained supervision and follow through mechanism.*

19. Sec. 20. Inter-Agency Council Against Trafficking (IACAT)

- Department of Justice (DOJ) and Department of Social Welfare and Dev't. (DSWD) as Co-Chair
- Department of Foreign Affairs (DFA)
- Department of Labor and Employment (DOLE)
- Philippine Overseas Employment Administration (POEA)
- Bureau of Immigration (BI)
- Philippine National Police (PNP)
- National Commission on the Role of Filipino Women (NCRFW)
- Three (3) non-government (NGO) Representatives for the children, women, and migrant sectors

20. Other Relevant Laws

- **R.A. 8042** or the Migrant Workers and Overseas Filipinos Act of 1995
- **R.A. 6955** or the Mail-Order Bride Law
- **R.A. 7610** or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination
- **R.A. 9231** or the Anti-Child Labor Law
- **Art. 341** or White Slave Trade, Revised Penal Code
- **R.A. 8239** or the Philippine Passport Act of 1996

21. Notes:

- R.A. 9208 is a special law and thus can be filed simultaneously with an offense falling under the Revised Penal Code and/or another special law.
- In the preparation of a complaint, it is advisable to include all the possible crimes that have been committed.
- Do not forget to allege the age/minority of the child and other qualifying circumstance/s.

22. R.A. 9208 and R.A. 8042 (Migrant Workers and Overseas Filipinos Act of 1995)

R.A. 9208	R.A. 8042
<ul style="list-style-type: none"> • Act of trafficking - Recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of exploiting such individual (Sec. 4, a, R.A. 9208) 	<ul style="list-style-type: none"> • <i>Illegal recruitment</i> shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-license or non-holder of authority and includes thirteen other acts whether committed by a licensed or non-licensed, holder or non-holder of authority (Sec. 6, R.A. 8042)

- Purpose: In R.A. 9208, the act of making employment/training offers is a means to place the victim in exploitation; R.A. 8042 does not necessarily have this kind of purpose as such cases may just involve other ordinary labor-related issues
- Prescriptive period: R.A. 9208 - 10/20 years start from delivery or release of the trafficked person from bondage; while R.A. 8042 - 5/20 years reckoned from commission of the crime

23. R.A. 9208 & R.A. 6955 (Mail-Order Bride Law)

R.A. 9208	R.A. 6955
<ul style="list-style-type: none"> • Matching <u>any person, or a Filipina to a foreign national</u> as provided for in R.A. 6955, for the purpose of exploiting the person (Sec. 4, b, R.A. 9208) • <u>Offering or contracting marriage</u> for the purpose of exploiting the person (Sec. 4, c, R.A. 9208) 	<ul style="list-style-type: none"> • To <u>carry on a business</u> that matches Filipinas to foreign nationals through mail-order basis or personal introduction • To <u>advertise or publish propaganda materials</u> calculated to promote such business • To attract or induce Filipinas to <u>become a member</u> of a club or association that promotes such objective <u>for a fee</u> • To <u>use the postal service</u> to promote such prohibited acts (Sec. 2, R.A. 6955)
<ul style="list-style-type: none"> • <u>Matching any person, or a Filipina to a foreign national</u> as provided for in R.A. 6955, for the purpose of exploiting the person (Sec. 4, b, R.A. 9208) • <u>Offering or contracting marriage</u> for the purpose of exploiting the person (Sec. 4, c, R.A. 9208) <p>R.A. 9208 & R.A. 6955</p>	

- R.A. 9208 punishes even **an individual** who shall profit from match-making activities (for trafficking); while R.A. 6955 penalizes only **businesses, clubs (requiring a fee), or advertisers** that engage in match-making.
- In R.A. 9208 the match-making being punished includes those done between **Filipinos**; while R.A. 6955 is constrained to the matching of **Filipinas to foreign nationals**.
- R.A. 9208 – “marriage” is used as a means to commit trafficking.

24. R.A. 9208 & R.A. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination)

- Child Trafficking – trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter (Sec. 7, R.A. 7610)
- Attempt to Commit Child Trafficking (Sec. 8, R.A. 7610):
 - Travel without valid reason and no clearance or written permit
 - Pregnant mother consents to adoption for a consideration
 - Recruitment of women or couples to bear children (for child trafficking)
 - Simulation of birth (for child trafficking)
 - Finding children among low-income families and institutions (for child trafficking)

Penalty: R.A. 9208 imposes a higher penalty (life imprisonment and fine of P2M – P5M) while in R.A. 7610 the imposable penalty is *reclusion temporal* to *reclusion perpetua*.

- In attempting to commit child trafficking in R.A. 7610, only one point of vulnerability was mentioned (low –income families) and specific places were indicated where potential victims could be found.
- Maintain or hire a person for prostitution or pornography (Sec. 4, e, R.A. 9208)
- Under R.A. 7610, the act of inducing a person to become a buyer is being punished for it facilitates or promotes child prostitution.
- The imposable penalty provided in R.A. 9208 is higher than that provided in R.A. 7610 (*Reclusion Temporal* to *Reclusion Perpetua*).

R.A. 9208 & R.A. 7610

R.A. 9208	R.A. 7610
<ul style="list-style-type: none"> • Maintain or hire a person for prostitution or pornography (Sec. 4, e, R.A. 9208) 	<ul style="list-style-type: none"> • Child Prostitution – promoting, facilitating or inducing child prostitution (Sec. 5, a, R.A. 7610), not limited to: <ul style="list-style-type: none"> ▪ Acting as procurer ▪ Inducing a person to be a buyer ▪ Taking advantage of influence or relationship ▪ Use of threat or violence ▪ Giving monetary consideration, goods, or other pecuniary benefit • Deriving profit or advantage, as managers or owners of establishments where prostitution takes place or used as fronts for such (Sec. 5, c, R.A. 7610)

- Under R.A. 7610, the act of inducing a person to become a buyer is being punished for it facilitates or promotes child prostitution.
- The The imposable penalty provided in R.A. 9208 is higher than that provided in R.A. 7610 (*Reclusion Temporal* to *Reclusion Perpetua*).

R.A. 9208	R.A. 7610
<ul style="list-style-type: none"> • Maintain or hire a person for prostitution or pornography (Sec. 4, e, R.A. 9208) 	<ul style="list-style-type: none"> • On Obscene Publications and Indecent Shows (Sec. 9, R.A. 7610) <ul style="list-style-type: none"> ▪ Use children in obscene exhibitions and indecent shows (live or in video) ▪ Use children in obscene publication and pornographic materials (pose or model) ▪ Selling or distributing such materials

- Imposable penalty in R.A. 9208 is higher than that provided in Sec. 9, R.A. 7610 (*Prison Mayor, medium*)
- The act of distributing or selling pornographic materials involving children is punishable under R.A. 7610; whereas Sec. 5, c, R.A. 9208 punishes distribution of materials that promotes trafficking, in the tri-media and the Internet
- Traffic a child to engage in armed conflict in the Philippines or abroad (Sec. 4, h, R.A. 9208)

25. R.A. 9208 & R.A. 9231(Anti-Child Labor Law)

R.A. 9208	R.A. 9231
<ul style="list-style-type: none"> • Traffic a child for slavery, forced labor, involuntary servitude, and armed conflict (Sec. 4, R.A. 9208) 	<p>Worst forms of child labor include:</p> <ul style="list-style-type: none"> • All forms of slavery (under R.A. 9208) or practices similar to slavery such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including recruitment of children for use in armed conflict (Sec. 12-D, 1, R.A. 9231)
<ul style="list-style-type: none"> • Maintain or hire a person for prostitution or pornography (Sec. 4, e, R.A. 9208) 	<ul style="list-style-type: none"> • The use, procuring, offering or exposing of a child for prostitution, for the production of pornography or for pornographic performances (Sec. 12-D, 2, RA. 9231)

- Violations of Sections 12-D, 1 & 2, R.A. 9231 shall be prosecuted and penalized in accordance with the penalty provided for by R.A. 9208
- The following may file the complaints for violation of R.A. 9231:

a) offended party; b) parents or guardians; c) ascendant or collateral relative within the third degree of consanguinity; d) officer, social worker or representative of a licensed child-caring institution; e) Officer or social worker of the Department of Social Welfare and Development; f) *Barangay* chairman of the place where the violation occurred, where the child is residing or employed; or g) at least three (3) concerned, responsible citizens where the violation occurred."

- R.A. 9231 provides for periods within which to resolve cases of anti-child labor:
- Preliminary investigation - terminated within a period of thirty (30) days from the date of filing.
- Corresponding information - filed in court within forty eight (48) hours from the termination of the investigation.
- "Trial of cases - terminated by the court not later than ninety (90) days from the date of filing of information.
- Decision on said cases - rendered within a period of fifteen (15) days from the date of submission of the case.

26. R.A. 9208 and Art. 341 White Slave Trade, RPC

R.A. 9208	Art. 341, RPC
Use of Trafficked Person – buys or engages the services of trafficked persons for prostitution (Sec. 11, R.A. 9208)	Any person who, in any manner, or under any pretext, (1) Shall of <u>engage in the business</u> ; (2) Shall <u>profit</u> by prostitution; or (3) Shall <u>enlist the services of any other person</u> for the purpose of prostitution (Art. 341, RPC)

- Art. 341 can actually be used to support or strengthen Sections 4, e (maintaining or hiring) and/or 11 (use of a trafficked person) of R.A. 9208, as the former punishes not just the pimps (modes 1 & 2) but the buyers/users as well (mode 3)

27. R.A. 9208 & R.A. 7610

R.A. 9208	R.A. 7610
Use of Trafficked Person <ul style="list-style-type: none"> • buys or engages the services of trafficked persons for prostitution (Sec. 11, R.A. 9208) 	<ul style="list-style-type: none"> • Committing the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse (Sec. 5, b, R.A. 7610)

- Under Sec. 5, b, R.A. 7610, Rape or Acts of Lasciviousness as provided for in the RPC can also be used to prosecute those who committed the acts indicated in aforementioned section against a child below 12 years of age.

28. R.A. 9208 & R.A.8239 (Philippine Passport Act of 1996)

R.A. 9208	R.A.8239
<ul style="list-style-type: none"> • Assist in the conduct of <u>misrepresentation or fraud</u> for purposes of facilitating the acquisition of clearances and necessary exit documents (Sec. 5, d, R.A. 9208) • Confiscate, conceal or <u>destroy</u> travel documents or the personal belongings of trafficked person or to prevent them from leaving the country or seek redress from the government or appropriate agencies (Sec.5, f, R.A. 9208) 	<ul style="list-style-type: none"> • Makes any false statement in any application for passport with the intent to induce or secure the issuance of a passport under the authority of the Philippine Government, either for his own use or the <u>use of another</u> (Sec. 19, b 1, R.A. 8239) • <u>Furnishes, disposes, or delivers</u> a passport to any person, for <u>use by another</u> or other than the person for whose use it was originally issued or designed (Sec. 19, d 3, R.A. 8239) • <u>Defaces or destroys</u> a Philippine passport (Sec. 19, d 4, R.A. 8239)

- R.A. 9208 punishes such acts of misrepresentation and/or fraud because they facilitate the trafficking in persons; while R.A. 8239 punishes the tampering or falsification per se
- **Penalty:** violation of Sec. 5, R.A. 9208 is punishable by 15 years imprisonment and a fine not less than P500,000 - P1,000,000; while violation of Sec. 19, b (1) is punishable by a fine of P15,000 to P60,000 and imprisonment of 3 to 10 years & violation of Sec. 19, d (3) & (4) is punishable by a fine of P60,000 to P150,000 and imprisonment of 6 to 15 years.

29. Roles and Responsibilities of LGUs

- Campaign against trafficking through MAIN desks and other agencies.
- Monitor and document trafficking cases.
- Effect cancellation of licenses of establishment
- Enact ordinances or issuances.
- Provide basic social services for the prevention of trafficking, the rescue, recovery, rehabilitation and reintegration of victims.
- Strengthen and mobilize existing committees, councils, special bodies to prevent/suppress trafficking.
- Encourage and support community based initiatives addressing trafficking.

30. Roles and Responsibilities of the NGO Member

- Assist in the formulation of policies and programs.
- Assist in capability building activities of government personnel.
- Undertake programs and activities for the prevention of trafficking cases and in the protection of victims.
- Document cases
- Formulate educational module to address the demand side of trafficking.

31. Giving Protection & Services to Trafficked Victims

a) Responding to Reports or Incidences of Trafficking in Persons:

- Reports may be made to any member of the IACAT, the *barangay* authorities, nearest police or other law enforcement agency, local social welfare and development office, or the local Council for the Protection of Children.
- Setting-up of Task Forces Against TIP:

i) At airports – DOJ, BI, PNP, NBI

ii) At land transportation terminals and local seaports - DOJ, PNP, BI, PPA, PCG in coordination with local authorities, local social welfare and development officers, or active NGOs.

b) Protection Provided for Victims of Trafficking

- Legal protection to victims (Sec. 17, R.A. 9208)
- Rescue within or outside the country (Art. VIII, IRR)
- Mandatory Services (Sec.23, R.A. 9208)
- Preferential Entitlement Under the Witness Protection Program (Sec. 18, R.A. 9208)
- Rehabilitation and Reintegration of Victims (Art. IX, IRR)

Note: Trafficked victims who are foreign nationals are entitled to the same services and programs (Sec. 19, R.A. 9208)

c) Rescue and Recovery of Victims

- Within the country – law enforcement agencies (PNP, NBI), in coordination with LGUs, DOLE, DSWD, DOH
- Outside the country - Philippine Embassies or Consulates

Repatriation shall be the responsibility of the DFA through the OUMWA

d) Sec. 23 Mandatory Services

- Emergency shelter or appropriate housing
 - Within the country – DSWD
 - While outside the country - DFA, through its overseas facilities
- Counseling - DSWD (within or outside the country)
- Medical or psychological services - DOH, DSWD (for psycho-social services)
- Livelihood and skills training - DSWD, DOLE, TESDA.
- Educational assistance - DepEd
- Prosecution
 - Legal advice and preparation for filing cases - POEA
 - Legal aid/ representation - DOJ in coordination with the DSWD, CHR, IBP, NGOs and other volunteer groups.

e) Other services

- Preferential entitlement under the Witness Protection Program. (Sec. 18, R.A. 9208)
- Compensation under the Victims Compensation Act.

f) Rehabilitation and Reintegration

- Responsible agencies: DSWD, LGUs and other concerned agencies.
- The reintegration and rehabilitation program must be comprehensive, gender-sensitive and child-friendly that is R A C –

Responsive to the needs of the victim

Active involvement of the victim is encouraged.

Coordination with NGOs and other members of the civil society is undertaken.

g) Other Responsibilities of Frontline Agencies

- Negotiate for mutual legal assistance and extradition treaties with other countries – DOJ, DFA.
- Advocate and participate regionally and internationally discussions and initiatives on trafficking; forge bilateral and multilateral collaborative projects – DFA, NCRFW.
- Take necessary measures for the implementation of Machine Readable Passports and Visas – DFA.
- Regulate the private sector engaged in the recruitment and overseas placement of workers - POEA .
- Establishment of Anti-Trafficking section under the Women and Children Complaint Desk.
- Take measures to prevent sex tourism – DOT.
- Integrate anti-trafficking efforts – CHR.
- Coordinate with the INTERPOL – NBI.

**C. Republic Act 8353
The Anti-Rape Law of 1997**

1. Three significant changes in the law on rape:

- broadening of the definition of rape;
- recognition of marital rape; and
- reclassification of rape as a crime against persons from a crime against chastity.

2. Definitions

a) **RAPE** -By a man who shall have carnal knowledge of a woman.

b) **RAPE BY SEXUAL ASSAULT**

By any person:

- by inserting his penis into another person's mouth or anal orifice,
- by inserting any instrument or object, into the genital or anal orifice of another person.

3. Rape and Rape by Sexual Assault Committed Under any of the Following Circumstances:

- Through force, threat, or intimidation;
- When the offended party is deprived of reason or otherwise unconscious;
- By means of fraudulent machination or grave abuse of authority; and
- When the offended party is under twelve (12) years of age [less than 12] or is demented, even though none of the circumstances mentioned above be present.

4. Decided Cases

- Penetration = mere touch of the penis on the labia
- Intimidation = knife, gun; father-daughter
- Demented = insane
- Deprived of reason or Unconscious = mental retardation, drugs, asleep
- Use of fingers is considered rape by sexual assault.
- Failure to shout or offer tenacious resistance does not make it voluntary.

5. Additional Supreme Court decisions

- a) Penetration of the penis by entry into the lips of the female organ even without rupture or laceration of the hymen suffices to warrant conviction for rape (Pp. vs. De Guia, 185 SCRA 336).
- b) Laceration of the hymen is not necessary to prove the consummation of the crime of rape (Pp. vs. Tumalad, 188 SCRA 203).
- c) Absence of extensive abrasions on the vaginal wall does not rule out rape, the slightest penetration is enough (Pp. vs. Cervantes, 222 SCRA 365).
- d) When a woman says that she had been raped, she says in effect all that is necessary to show that said crime has been committed (Pp. vs. Lascuna, 225 SCRA 386; Pp. vs. Joya, 227 SCRA 9; Pp. vs. Budol 143 SCRA 241; Pp. vs. Pasco, 181 SCRA 233).
- e) Complainant's willingness and courage to face the interrogation and medical examination is a mute but eloquent proof of the truth of her charge (Pp. vs. Joya, 227 SCRA 9).

- f) There is more reason to believe the words of a woman when she accuses a close relative of having raped her. (Pp. vs. Alvis, Jr., 117 SCRA 362)

6. Penalties

Rape:

- *reclusion perpetua* (20 yrs. 1 day to 40 years) [previously death under certain circumstances].

Rape by sexual assault:

- *prision mayor* (6 years 1 day to 12 years); or
- up to *reclusion temporal* (12 years 1 day to 20 years) or *reclusion perpetua* under certain circumstances.

7. Presumptive Evidence

- Any **physical overt act manifesting resistance** against the act of rape in any degree from the offended party; or
- May be accepted as evidence, where the offended party is so **situated as to render her/him incapable of giving valid consent**.

8. Effect of Pardon

- The subsequent forgiveness by the wife shall extinguish the criminal action or the penalty vs. the legal husband

D. Republic Act 8505 - Rape Victim Assistance and Protection Act of 1998

1. Creation of Rape Crisis Centers

- Establish Rape Crisis Centers in every province and city
- Duty of the DSWD, DOH, DILG, DOJ and a lead NGO

2. Rape Crisis Centers (RA8505) Provides Rape Victims:

- Psychological counseling, medical and health services, including medico-legal examination;
- Free legal assistance;
- Assistance in investigation to hasten the arrest of offenders and the filing of cases;
- Ensure the privacy and safety of rape victims;
- Psychological counseling and medical services for the family of rape victims;
- Undertake training programs for
 - Law enforcement officers, public prosecutors, lawyers, medico-legal officers, social workers, and *barangay* officials
 - on human rights and responsibilities, gender sensitivity, and legal management of rape cases;
- Implement programs for the recovery of rape victims

3. Duties of the police officer

- Immediately refer the case to the prosecutor for inquest/investigation;
- Arrange for counseling and medical services for the offended party; and
- Immediately make a report on the action taken

4. Duty of the police officer or the examining physician (same gender as the offended party)

- ensure that *only persons expressly authorized by the offended party shall be allowed inside the investigating room, medical or physical examination room*

5. A women's desk must be established:

- **In every police precinct** throughout the country
- **To provide a police woman to conduct investigation** of complaints of women rape victims.

6. Female Prosecutor

The preliminary investigation proper or inquest of women rape victims must be *assigned to female prosecutor/prosecutors*.

7. Protective Measures

- The police officer, the prosecutor, the court and its officers, as well as the parties to the complaint shall recognize the
 - Right to privacy of the offended party and the accused at any stage of the investigation, prosecution and trial of a complaint for rape
- The police officer, prosecutor or the court may order :
 - a closed-door investigation, prosecution or trial; and
 - the non-disclosure to the public of the name and personal circumstances of the offended party and /or the accused, or any other information tending to establish their identities.

8. Rape Shield under Victim Assistance and Protection Act of 1998 (RA 8505)

- Evidence of **complainant's past sexual conduct, opinion thereof or of his/her reputation shall not be admitted**
 - Unless, and only to the extent that the court finds, that such evidence is **material and relevant** to the case
- Comments:
 - Subject to judicial interpretation; undermines protection for women.
 - **Past sexual conduct is never relevant.**

9. Problems Encountered In Prosecuting Rape Cases

- Non-implementation of rape crisis centers
- Lack of female medico-legal, police, prosecutors
- Non-availability of rape kits (importance of the availability within 72 hours after the rape incident).

10. Problems Encountered in Treatment of Rape Victim Cases

- Non-dispensation of Emergency Contraceptive Pills (ECPs) or the "morning after pill" (prevention of pregnancy)
- Lack of information on Post Exposure Prophylaxis (PEPs) (prevention of HIV transmission)
- Failure to treat Sexually Transmitted Infections

(Note: see topics on *emergency contraception and post-exposure prophylaxis*)

11. Problems Encountered in Prosecuting Rape Cases

- Sexist attitudes and gender insensitivity in the judicial system
 - Non-recognition of post traumatic stress disorder
 - Lack of receptiveness on the rape survivor
- Many judges and public prosecutors do not understand that:
 - Rape is a crime of violence
 - It happens to women as a gender (gender-based violence)
- Many do not recognize that the woman is placed in a **life-threatening situation** hence the dismissals in the preliminary investigation stage and acquittals in court.
- Victim-blaming (the woman is blamed because “she asked for it” or “she dressed provocatively” when it is there is no one who should be blamed except the rapist; also, the sexist notion is belied by the fact that even girl-children are raped; it is not true that only “young, innocent, naïve, barrio lass” are the ones who are raped)
- Prevailing sexist jurisprudence on rape that rape complaints can be easily fabricated
 - In the 18 August 1997 case of *People vs. Salarza, Jr.* (277 SCRA578), the Supreme Court held:

Xxx Rape is a charge easy to make, hard to prove and harder to defend by the party accused, though innocent. Experience has shown that unfounded charges of rape have frequently been proffered by women actuated by some sinister, ulterior or undisclosed motive. Convictions for such crime should not be sustained without clear and convincing proof of guilt. On more than one occasion it has been pointed out that in crimes against chastity the testimony of the injured women should not be received with precipitate credulity. When the conviction depends on any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion. A little insight into human nature is of utmost value in judging matters of this kind.

12. What Needs to be Changed?

- **Misconceptions must be corrected:**
 - rape complaints are not easily fabricated; when a woman says she was raped it is likely to be true;
 - there is no standard human behavior
 - different people react differently to stimuli (refers to the rape incident itself and the victim’s demeanor in court)
 - Rape can happen anywhere & anytime
 - Mindsets must be changed

13. *Res Gestae* Evidence (exception to hearsay evidence)

- **Statements** made by a person while a **startling occurrence** is **taking place** or **immediately prior** or **subsequent** thereto with respect to the circumstances thereof (Rule 130, Sec. 36 Rules on Evidence)

14. Health consequences of Rape

- reproductive tract infections
- unwanted pregnancy
- physical and mental well-being

15. Health consequences of incest rape victims²²⁸

- Dangerous pregnancy
- Fetal deformity because of blood relationship
- Child becomes suicidal

(see discussion right to safe and legal abortion)

16. Duty-bearers in rape cases:

- *Barangay* officers
- Family/relatives
- Police
- Paralegals
- Counselors
- Lawyers/prosecutors
- Judges

18. Related Laws

RA 7610 – Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act

DOJ Rules and Regulations on the Reporting and Investigation of Child Abuse Cases

RA 8369 - Family Courts Act of 1997

RA 7309 – An Act Creating a Board of Claims under the DOJ for victims of violent crimes

(See the following: prevention of unwanted pregnancies under the topic on Emergency Contraception; prevention of HIV transmission on the topic on Post-exposure Prophylaxis; topic on Prevention and Management of Abortion and its Complications (PMAC) ; press releases on reproductive health and abortion)

E. Republic Act 7610

Special Protection of Children against Child Abuse, Exploitation and Discrimination Act

- Section 5: Child Prostitution
- Section 6: Attempt to Commit Prostitution
- Section 7: Child Trafficking
- Section 8: Obscene Publication and Indecent Shows
- Other Acts of Neglect, Abuse, Cruelty or Exploitation & Other Conditions Prejudicial to the Child's Development

²²⁸ WCC Feminist Action Research on Reproductive Health Needs and Concerns of VAW Survivors

1. Prohibited Acts

a) Child Abuse

Any maltreatment, whether habitual or not, of the child which includes any of the following:

- Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
- Any act by deeds or works which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- Unreasonable deprivation of his or her basic needs for survival, such as food and shelter;
- Failure to immediately give medical treatment to an injured child resulting in serious impairment of his or her growth and development or in his or her permanent incapacity or death.

b) Child Prostitution

- Children who for money, profit or any consideration or due to the coercion or influence or any adult, syndicate or group indulge in sexual intercourse or lascivious conduct are deemed to be children exploited in prostitution and other sexual abuse.
- If below 12, prosecute under RA 8353 or Acts of Lasciviousness (penalty for lasciviousness is *reclusion temporal* in its medium period);
- If above 12, prosecute under 7610.

(Note: Allege age of child and present birth certificate.)

b.1) The following persons shall be penalized under child prostitution:

- i) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
 - Acting as procurer of a child prostitute;
 - Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
 - Taking advantage of influence or relationship to procure a child as a prostitute;
 - Threatening or using violence towards a child to engage him/her as a prostitute; or
 - Giving monetary consideration, goods or other pecuniary benefit to a child with the intent to engage such child in prostitution.
- ii) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse;
- iii) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place.

c) Attempt to Commit Child Prostitution (sec. 6)

i) There is an attempt to commit child prostitution under B (1)

- When any person who, not being a relative of a child who is 10 years or more his junior is found alone with said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area

- Under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse. (*prision mayor*)

ii) There is an attempt to commit child prostitution under B (2) when any person is:

- Receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments.

The penalty to be imposed for an attempt to commit child prostitution shall be two (2) degrees lower than the prescribed for consummated child prostitution.

c.1) The following are NOT included in the crime Attempt to Commit Prostitution:

- Relatives of the child within the 4th civil degree (whether by consanguinity recognized by law, custom, or tradition); or
- Any person merely fulfilling a social, moral or legal obligation.

d) Child Trafficking

Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter shall be criminally liable.

e) Attempt to commit child trafficking

There is an attempt to commit child trafficking:

i) When a child travels alone to a foreign country

- without valid reason
- without clearance issued by the DSWD
- or w/o written permit or justification from the child's parent or legal guardian;

ii) When a pregnant mother executes an affidavit of consent for adoption for a consideration;

iii) When a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking;

iv) When a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar, or any other person simulates birth for the purpose of child trafficking; or

v) When a person engages in the act of finding children among low income families, hospitals, clinics, nurseries, day-care centers, or other child-caring institutions who can be offered for the purpose of child trafficking.

The penalty for an attempt to commit child trafficking shall be (2) degrees lower than the prescribed for consummated child trafficking.

f. Obscene publications and indecent shows

Any person:

- who shall hire, employ, use, persuade, induce, or coerce a child
- to perform in obscene exhibitions and indecent shows (whether live or in video, pose, or model in obscene publications or pornographic materials or to sell or distribute the said material)

g. Other acts of abuse

1. Any person who shall use, coerce, force or intimidate a street child or any other child to:

- beg or use begging as a means of living;
- act as a conduit or middle[person] in drug trafficking or pushing; or
- conduct any illegal activities

2. Penalty

The penalty to be imposed depends on the act committed. The maximum penalty imposable is 20 years and 1 day, while the minimum penalty is 8 years and 1 day.

The penalty prescribed shall be imposed in its maximum period in the following cases:

- When the offender has been previously convicted under this law;
- When the offender is a corporation, partnership, or association, it's officer or employee responsible for the violation of this law;
- When the perpetrator is an ascendant, parent, guardian, step-parent, or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or it's license has expired or has been revoked;
- When the offender is a public officer or employee. And in addition, the penalty of suspension or perpetual or temporary absolute disqualification may also be imposed to said public officer or employee.

When the offender is a foreigner, he shall be deported after service of sentence and forever barred from entry into the country.

The court may also impose a fine for the rehabilitation of the child victim.

F. Sexual Harassment

1. Discussion on Sexual Harassment

a) Philippine Laws on Sexual Harassment

- Anti-Sexual Harassment Act of 1995 (RA 7877); file with the MTC
- Revised Penal Code
 - acts of lasciviousness (Art. 336) = either sex (penalty: *prision correccional*/6 months and one (1) day to six (6) years
- Unjust vexation (Art. 287, 2nd par) – any conduct which unjustifiably coerces, annoys or irritates an innocent person (penalty: *arresto menor*/1 day to 30 days or P5 or P200)
- Slander by Deed (Art. 359)
(penalty: One (1) day to two (2) years and four (4) months or Php 200.00-Php 1,000.00)

b) Definition of Sexual Harassment

Sexual Harassment –unwanted conduct of a sexual nature

- Unwanted
- Conduct of a sexual nature
 - sexual advances
 - requests for sexual favors
 - other verbal, physical, non-verbal acts
- Condition of employment
 - it become a term of condition
 - it discriminates; or
 - it creates a hostile environment

c) Physical Conduct of a sexual nature may include²²⁹:

- unnecessary touching
- patting
- pinching
- brushing against employee's body
- assault
- coercing sexual intercourse

d) Verbal conduct of a sexual nature may include:

- unwelcome sexual advances
- propositions or pressure for sexual activity;
- continued suggestions for social activity outside the workplace after it has been made clear that such suggestions are unwelcome
- offensive flirtations
- suggestive remarks, innuendoes or lewd comments

Such behavior defines women's role as a sexual objects rather than as work colleagues.

e) Non Verbal conduct of a sexual nature refers to:

- display of pornographic or sexually-suggestive pictures, objects or written materials.
- leering
- whistling
- making sexually-suggestive gestures

These behaviors may make women feel uncomfortable or threatened and undermine the position of a woman who seeks to deal with her fellow employees with professional dignity.

f) Types of Sexual Harassment

- Quid Pro Quo (literally, this for that; lay-down or lay-off; sexual blackmail).
- Hostile or Poisoned Environment.

²²⁹ The examples of physical, verbal, non-verbal are based from Rina Jimenez-David's presentation on sexual harassment

g) Quid Pro Quo (vertical)

- Rejection or submission to such conduct is made a condition of employment
- Sexual favors in exchange for a job benefit or job detriment
- Committed by those with power
- Coercive and not consensual



h) Hostile Environment (horizontal or even by subordinates)

- Stereotyped or demeaning insults, suggestive indecent comments, vulgar and indecent language, sexual comments.

i) Some facts

- Majority of those sexually harassed are women
- Majority of harassers are men

***gender relations**

j) Psychological Impact of sexual harassment



- Mental and emotional anguish (feeling of shame/doubt, guilt, inability to trust)
- Effects on physical health
- Loss of income/job loss
- Loss of benefits
- Damage to self-esteem
- Social Isolation

k) Impact of sexual harassment on the organization

- Low employee morale
- High employee turn-over
- Low productivity, high absenteeism
- Litigation
- Tarnished public image

l) Where to file cases?

- Administrative (workplace, educational institution)
- Metropolitan Trial Court, Municipal Trial Court (RA 7877)
- Professional Regulation Commission
- Torts (Art. 2176, Civil Code)
- Civil Service Commission (CSC); Administrative code of 1987
 - grave or slight misconduct
 - conduct prejudicial to the best interest of the service
- CSC Resolution No. 01-0940 (Administrative Disciplinary Rules On Sexual Harassment Cases)
- Ombudsperson

2. Republic Act 7877

Anti-Sexual Harassment Act of 1995

a) Coverage:

- Work-related or employment environment sexual harassment
- Education or training-related sexual harassment

b) Definition of Sexual Harassment Under RA 7877

- Any demand, request or requirement of a *sexual favor*
- There is *use of authority, influence or moral ascendancy*
- Done in a *work-related or employment environment; education or training environment*

c) Harassers under R.A. 7877

- Employer, manager, supervisor, agent of the employer
- Teacher, instructor, professor, coach, trainer
- Employee [student not expressly stated]
- Or any other person who, having authority, influence or moral ascendancy over another (contention: one with pending business, i.e., business needed by the victim, may be held liable)
- One acting as a principal

Query: Would the harasser still be liable if the victim accepted the demand, request or requirement for sexual favor?

d) Sexual harassment in a work-related or employment environment

- The *sexual favor* is made as a *condition* in the *hiring* or in the employment, re-employment or continued employment of said individual, or in *granting* said individual favorable compensation, terms, conditions, promotions, or privileges

- Or the refusal to grant the sexual favor results in the limiting, segregating or classifying the employee which in any way would *discriminate*, deprive or diminish employment opportunities or otherwise adversely affect said employee.

Note: “hiring” necessarily covers applicants

e) Penalties

- 1 month – 6 months; and/or
- Fine of Php 10,000 – P20,000

Prescription: Three years

f) Duty of Employer/Head of Office

- To prevent or deter sexual harassment
- To provide rules and regulations (in consultation and with the approval of the reps of the employees/ students/trainees)
 - procedure for investigation
 - admin sanctions
 - guideline on proper decorum
- Create a Committee on Decorum and Investigation
 - conduct meetings to increase understanding and prevent sexual harassment
 - conduct investigation
 - composition
 - at least 1 each from the management, union (if any), supervisory, rank & file
 - at least 1 each from the admin, teachers, trainers, instruction, professors or coaches and students or trainees
- To disseminate or post a copy of R.A. 7877

g) Solidary Liability for Damages of the Employer, Head of Institution

Requisites:

- Committed in the employment, education or training environment
- Informed of the acts by the offended party
- No immediate action is taken

3. Civil Service Commission (CSC) Resolution No. 01-0940 (Administrative Disciplinary Rules on Sexual Harassment Cases) (Sec. 3)

a) Sexual harassment is:

- an act, or a series of acts
- involving any
 - unwelcome sexual advance,

- request or demand for a sexual favor, or
- other verbal or physical behavior of a sexual nature,
- committed by a government employee or official
 - in a work-related
 - training or education related environment of the person complained of.

b) Work related sexual harassment is committed under the following circumstances (3a)

- (1) submission to or rejection of the act or series of acts is used as a basis for any employment decision (including, but not limited to, matters related to hiring, promotion, raise in salary, job security, benefits and any other personnel action) affecting the applicant/employee; or
- (2) the act or series of acts have the purpose or effect of interfering with the complainant's work performance, or creating an intimidating, hostile or offensive work environment; or
- (3) the act or series of acts might reasonably be expected to cause discrimination, insecurity, discomfort, offense or humiliation to a complainant who may be a co-employee, applicant, customer, or word of the person complained of.

4) What a victim should do?

- Say no
- Document the incident/s
- Report the incident
- Get corroborative evidence
- File case

G. Safe and Legal Abortion

1. Discussion on Access to Safe and Legal Abortion

a) Access to Safe and Legal Abortion

- Context: Filipino women do not have access to safe and legal abortion despite statistics in 2000²³⁰ showing
 - 473,000 women who induced abortions;
 - 79,000 women hospitalized for complications;
 - 800 women who died due to complications (or 2 women die every day)
 - 12% of maternal deaths are due to unsafe abortion
 - 9 in women are married/consensual union
 - more than half have at least 3 children
 - Two-thirds are poor
 - Nearly 90% are Catholic
 - 27 out of every 1,000 women induce abortion
 - 18 induced abortions per 100 pregnancies*
 - Philippine law on abortion is one of the most restrictive in the world
 - penalizing women who undergo abortion without express exceptions on life, health, rape or fetal impairment

²³⁰ Singh S et al., Unintended Pregnancy and Induced Abortion in the Philippines: Causes and Consequences, New York: Guttmacher Institute, 2006

b) CEDAW recommendation for the Philippines:

- to review the laws relating to abortion with a view to removing punitive provisions imposed on women who have abortions
- provide access to quality services for the management of complications arising from unsafe abortions and to reduce women's maternal mortality rates

c) Review of Penalty on abortion

- the law criminalizing abortion does not decrease the number of abortions; it only makes it dangerous for women who undergo clandestine and unsafe abortion
- prosecution of women who undergo abortion and those assisting them is not the answer
- consider repeal of provision penalizing the woman & physician for self-induced abortion
- consider to **allow safe abortion upon demand or under certain exceptions:**
 - when the woman's life or health is in danger;
 - the pregnancy is the result of rape; and/or
 - when the fetus has malformation incompatible with life outside the uterus

d) Safe & legal abortion saves women's lives

- abortion rates did not increase in Canada and Turkey after abortion was legalized
- Netherlands has one of the lowest abortion rates in the world
 - with its liberal abortion law
 - free abortion services
 - widely accessible contraceptives
- Deaths due to abortion fell 85 percent after legalization in the US

e) Predominantly Catholic Countries allowing abortion

- Spain –permits abortion on grounds of rape and fetal impairment.
- Belgium, France & Italy – permit abortion upon a woman's request
- Hungary's constitution protects life from conception but permits abortion up to 12 weeks of gestation.
- Mexico City legalized abortion in the first trimester without restriction (April 24, 2007).
- Portugal –allows abortion up to 10 weeks of pregnancy but with a mandatory three-day "reflection period"
 - up to 12 weeks if her health is at risk
 - up to 16 weeks if the pregnancy is a result of rape
 - any time during the pregnancy to save a woman's life
- Poland – to protect a woman's life and physical health; rape, incest; fetal impairment
- Colombia* – now permits abortion
 - where the woman's life or health is in danger
 - the pregnancy is the result of rape
 - when the fetus has malformation incompatible with life outside the uterus

Note:

Constitutional Challenge on Colombia's Abortion Law

- Colombia's abortion law formerly outlawed the procedure under all circumstances
- Challenged in Constitutional Court by a Colombian citizen (Bogotá, April 14, 2005)
 - argument included CEDAW & ICCPR monitoring bodies have recommended that Colombia decriminalize abortion under the most extreme cases
 - seeking to legalize abortion under certain exceptions:

- a) when the woman's life or health is in danger;
- b) the pregnancy is the result of rape; and/or
- c) when the fetus has malformation incompatible with life outside the uterus

f) World's Religions allowing abortion

- Various Protestant denominations
- Islam
- Hinduism
- Buddhism
- Judaism

Note: The Catholic Church is not monolithic. The Catholic religion is foreign to the Philippines.

g) Attempted abortion as an option²³¹

Marital rape	57%
Incest	27%
Rape	83%

h) Religious Refusals

- Discriminatory/punitive attitudes towards women suffering from complications arising from unsafe abortion
 - Refusal by hospitals to admit women who are already profusely bleeding
 - Withholding anesthetics during D & C procedures
 - delaying proper management of abortion complications

2. Philippine Law

a) Art. II. Sec. 12, Declaration of Principles and State Policies, 1987 Constitution:

“The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. x x x “

Critique:

- There is no such provision was present in our 1935 and 1973 Constitutions. This was a product of lobby by religious groups to prevent the adoption of the Roe vs. Wade ruling (assured a woman the right to terminate her pregnancy during the first trimester upon demand).
- The “unborn” is not a legal person.
- The life of the “unborn” is not placed on the same level as the life of the woman.

²³¹ WCC Feminist Action Research on Reproductive Health Needs and Concerns of VAW Survivors

- **The 1987 Constitutional provision does not prohibit abortion as can be seen in the example of Hungary where its constitution protects life from conception but permits abortion up to 12 weeks of gestation.**

b) Other arguments on abortion

- Geluz vs. CA 2 SCRA 801 (1961) = “medical necessity”
- Pedro Solis (book on Legal Medicine) = therapeutic abortions include to preserve the life of the woman and to preserve her health.
- Solis cites a U.S. case where psychiatrist recommended abortion when the married woman was found to be unstable (case cited by Camp and Purchase, Practical Forensic Medicine, p.32, 1957).

c) Articles 256- 259 of the Revised Penal Code

1. A woman who shall practice an abortion upon herself or shall consent that any person should perform it shall be punishable with imprisonment for two years, four months, and one day to six years.

A lower penalty of six months and one day to four years shall be the penalty for a woman who resorts to abortion to conceal her dishonor.

2. A person (other than the pregnant woman) who commits intentional (knowingly and willful) abortion, through violence or by **administering drugs and beverages**, with or without the consent of the woman upon whom abortion is performed.

The penalty is imprisonment for 12 years and one day to 20 years if the offender used violence; six years and one day to 12 years if violence was not used but abortion was done without the consent of the woman; **or two years, four months, and one day to six years if the woman consented.**

3. A physician or midwife who, taking advantage of his/her scientific knowledge or skill, primarily causes the abortion or assists in the same.

The penalty of imprisonment for 17 years, four months, and one day to 20 years if the offender used violence on the pregnant woman; 10 years and one day to 12 years if violence was not used but abortion was done without the consent of the woman; **or imprisonment for four years, nine months, and 11 days to six years if the woman consented.**

4. A pharmacist who, without proper prescription from a physician, dispenses any abortive.

The penalty is one month and one day to six months imprisonment and a fine of not more than one thousand pesos (P1,000. 00).

d) Prescriptive Period under the Revised Penal Code

- if with violence = 20 years
- no violence, no consent = 15 years
- with consent = 10 years

(see the press release entitled, “**Women’s Rights NGO calls on Candidates to Uphold Women’s Rights**” and the letter to the editor entitled, “**Repeal Penalty on Abortion**” under “Annexes”)

H. Decriminalizing Vagrancy/Prostitution

1. Discussion

(see discussion repeal of the vagrancy provisions under the topic “Philippine Implementation of Women’s Rights Under CEDAW”)

2. Revised Penal Code Provisions

a) ART. 202. *Vagrants and prostitutes-Penalty.* -- The following are vagrants:

1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling;
2. **Any person found loitering about public or semi-public buildings or places or tramping or wandering about the country or the streets without visible means of support;**
3. Any idle or dissolute person who lodges in houses of ill-fame; ruffians or pimps and those who habitually associate with prostitutes;
4. Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose;
5. *Prostitutes:* women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.

Punished by *arresto menor* (1 day- 30 days) or a fine not exceeding 200 pesos

Recidivists punished by *arresto mayor* in its medium period to *prision correccional* in its minimum period (2 mos. & 1 day – 2 yrs & 4 mos.) or a fine ranging from 200 to 2,000 pesos, or both

b) Penalizing engagement in or profiting from prostitution or enlisting the services of another for prostitution

Art. 341. *White slave trade.* – The penalty of *prision mayor* in its medium and maximum periods shall be imposed upon any person who, in any manner, or under any pretext, shall engage in the business or shall profit by prostitution of shall enlist the services of any other person for the purpose of prostitution. (*As amended by Batas Pambansa Bilang. 186, March 16, 1982.*)

c) R.A. 7610 Sec. 6

Attempt to commit child prostitution when any person who, not being a relative, is found alone with the child inside the room of a house, an inn, hotel, motel, pension house, apartelle, vessel, vehicle or any other hidden or secluded area under circumstances leading a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse (prision mayor).

I. Decriminalizing Adultery/Concubinage, Immorality

1. Discussion

(see discussion repeal of the adultery/concubinage, immorality provisions under the topic “**Philippine Implementation of Women’s Rights Under CEDAW**”; see also the article on “**Marital Infidelity Does Not Have a Place in Our Penal Laws**” under “Annexes”)

2. Revised Penal Code Provisions

a) Adultery - the woman is married & she has sexual intercourse with a man other than her husband (2 yrs, 4 mos. 1 day – 6 yrs).

b) Concubinage – the man is married; he keeps a mistress in the conjugal dwelling or in another place or he has sexual intercourse with another under scandalous circumstances (6 mos. 1 day – 4 yrs, 2 mos.).

c) “Immorality”

- Dismissals in government for unmarried female who gets pregnant.
- Dismissals in government for “adulterous relationships”.

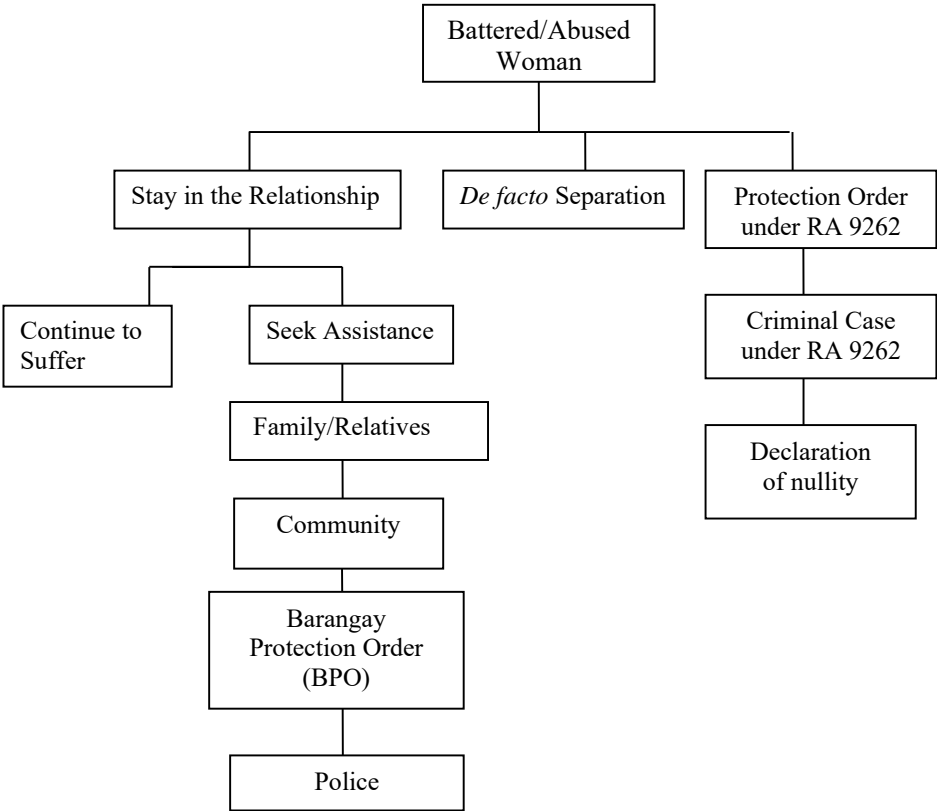
PART III - CHART OF PRESCRIPTION OF CRIMES

Crime	Penalty	Prescription
Unjust Vexation	1 day to 30 days	2 months
Maltreatment (Art. 266): Ill-treatment by deed without causing any injury	1 day to 10 days (<i>arresto menor</i> minimum)	2 months
Slander by Deed	Grave=1 month and 1 day to 4 months Simple=1 day to 30 days	6 months
Slander	Grave= 4 months and 1 day to 6 months Simple= 1 day to 30 days	6 months 2 months
Light Threats		
- Under Art. 285 par. 1 threat using firearms	1 day to 10 days (<i>arresto menor</i> minimum)	2 months
-Under Art. 285 par. 2: threat to commit a crime	1 day to 10 days (<i>arresto menor</i> minimum)	2 months
-Under Art. 285 par. 3: exposure without condition	1 day to 10 days (<i>arresto menor</i> minimum)	2 months
Libel	Prision Correccional min & médium (6 months and 1 day to 4 years and 2 months)	1 year
Sexual Harassment	1 month - 6 months and/or fine 10,000/20,000	3 years
Act of Lasciviousness	6 months and 1 day to 6 years	10 years
Rape by sexual assault -w/ aggravating circumstance	<i>Prision mayor</i> = (6 years and 1 day to 12 years) <i>Reclusion temporal</i> = (12 years and 1 day to 20 years)	15 years 20 years
Rape	<i>Reclusion Perpetua</i> = 20 years and 1 day to 40 years	20 years
RA 9262 paragraphs a-f (physical/coercion)	<i>Arresto mayor-prision mayor</i> (1 month and 1 day -12 years)	20 years
RA 9262 paragraphs g-i (sexual activity, psychological, economic)	<i>Prision mayor</i> (6 years and 1 day-12 years)	10 years
Adultery	<i>Prision correccional</i> medium to maximum (2 years and 4 months to 1 day- 6 years)	10 years
Concubinage	<i>Prision correccional</i> minimum to medium (6 months and 1 day to 4 years and 2 months)	10 years
Bigamy	<i>Prision mayor</i> (6 years and 1 day -12 years)	15 years

CHAPTER XIV

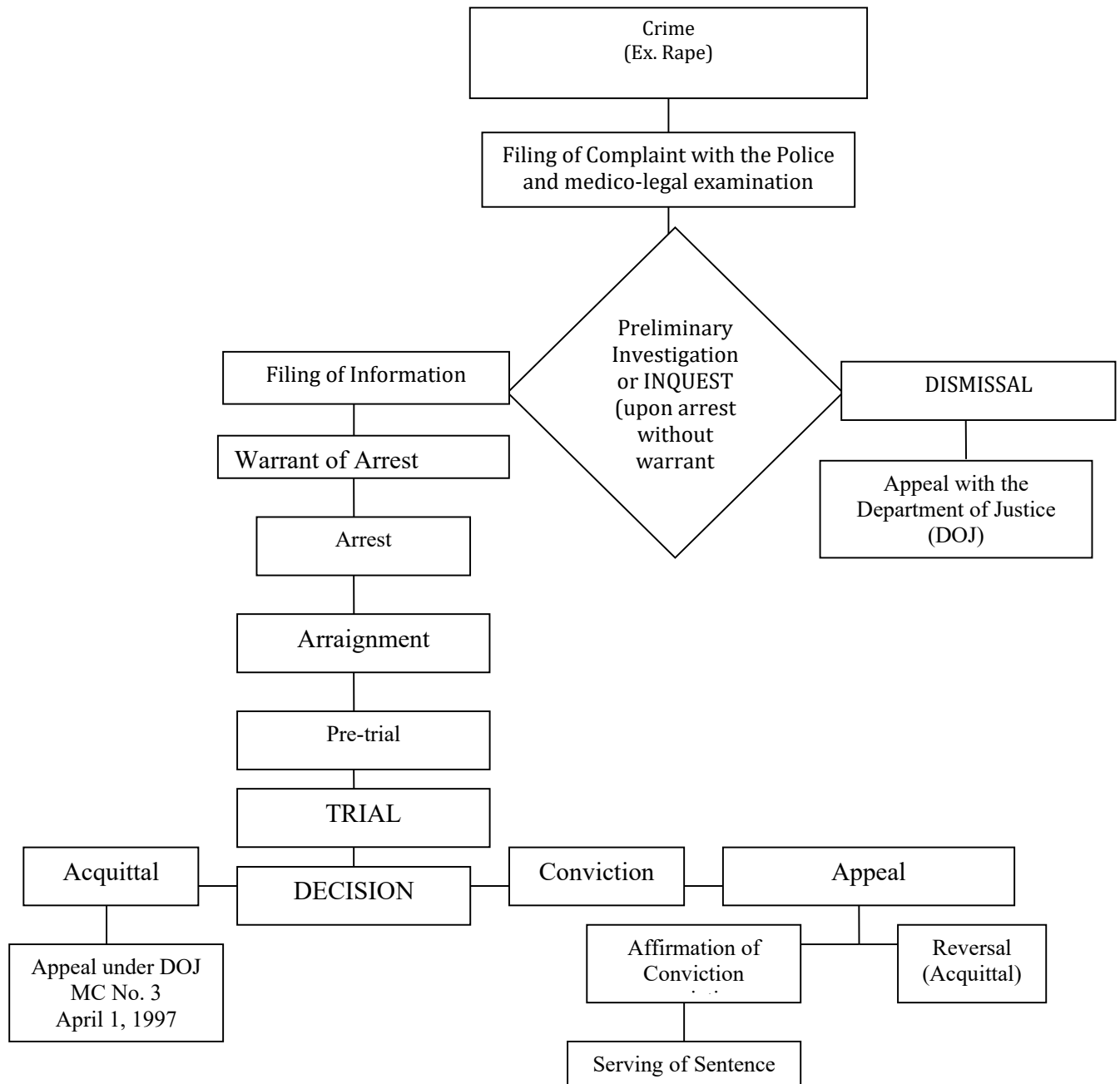
PROCEDURE

A. Steps That a Battered/Abused Woman Can Take



B. Criminal Procedure

B.1. Flowchart of Criminal Procedure



B.2. Remedies in Acquittals

1. DOJ Memorandum Circular No. 3, April 1, 1997

a) Appeal in Acquittals by the Trial Court involving Heinous Crimes

- Acquittals may be appealed as long as a 2nd trial will not be required
- Deprivation of due process or grave abuse of discretion
- When the “criminal trial was a sham” because the prosecution representing the sovereign people in the criminal case was denied due process (e.g. *Galman v. Sandiganbayan*)

b) Procedure:

1. Notice of Appeal to the Court of Appeals (CA) or Supreme Court filed by the handling prosecutor within the trial court upon receipt of decision
2. Submit memorandum within ten (10) days with the City/Provincial Prosecutor
3. Ten (10) days elevate to Chief State Prosecutor
4. Reviewed by Panel within five (5) days
5. Recommendation by Chief State Prosecutor within 15 days to Secretary of Justice
6. Secretary of Justice refers to Solicitor General for drafting of appeal brief or, if appeal is denied due course by the trial court, then motion for reconsideration/petition for *certiorari*

c) Cases

1. People of the Philippines vs. Danilo F. Serrano, Sr., G.R. No. 135451, September 30, 1999

- Such a constitutional guarantee prohibits an appeal from a judgment of acquittal, and the law does not provide for exceptions other than deprivation of due process or grave abuse of discretion under exceptional circumstances. (*People vs. Gomez*, 126 Phil. 640 [1967]; *People vs. Bocar*, 138 SCRA 166 [1985]; *People vs. Navarro*, 63 SCRA 264 [1975]; *People vs. Court of Appeals*, 101 SCRA 450 [1980]; *Aquino vs. Sison*, 179 SCRA 648 [1989]; *Gorion vs. RTC Cebu*, 213 SCRA 138 [1992]; *Galman vs. Sandiganbayan*, 144 SCRA 43 [1986])
- To use the Memorandum Circular of the DOJ to overthrow a constitutional guarantee deeply ingrained to protect the rights of an accused would require more than just a mere statement that the decision was “contrary to the facts and to the law”, as stated by the prosecution in its notice of appeal.

2. People of the Philippines vs. SANDIGANBAYAN and Geronimo Z. Velasco, G.R. No. 140633, February 4, 2002

- The only instance when double jeopardy will not attach is when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction due to a violation of due process, i.e., that the prosecution was denied the opportunity to present its case, as in *Gorion v. Regional Trial Court of Cebu, Br. 17*, *People v. Bocar*, *Portugal v. Reantaso*,²³² *People v. Albano*,²³³ *Saldana v. Court of Appeals*,²³⁴ *People v. Court of Appeals*, or that the trial was a sham, as in *Galman v. Sandiganbayan*.

²³² 167 SCRA 712 (1988).

²³³ 163 SCRA 511 (1988).

²³⁴ 190 SCRA 396 (1990).

C. Civil Procedure²³⁵

1. Filing of the Petition

a) Where filed:

- In the docket section of the court having jurisdiction over the case.

b) Contents:

- Simple, direct and concise but material allegations of facts which form the bases of the cause of action.
- Specific relief sought from the court
- Names and residences of both parties
- Proof of legal capacity of the parties to sue and be sued.

2. Case Raffle

- The case shall be raffled to determine which branch of the court will try the case

3. Service of Summons

a) Definition of Summons

Notice to a respondent that a case has been brought against him/her, and requires an Answer to be filed within 15 days.

b) Purpose of summons:

- In order for the court to acquire jurisdiction over the person of the respondent.

c) Contents of summons:

- Name of the court and the parties to the action
- Direction for respondent to submit an answer within 15 days from receipt of the summons
- Notice that failure to do so, the court will declare the respondent in default and may grant the relief/s applied for.

4. Filing of the Answer

- Document stating the respondent's defenses.
- Function: Simplifies and clarifies the issues
- Effect of failure to file:
 - respondent may be declared in default, except in legal separation, annulment of and declaration of nullity of marriage.

²³⁵ This section was adapted from the Manual for Paralegals: Violence Against Women, SALIGAN

5. Pre- trial

a) Definition

- Mandatory conference between the parties, with their counsels, held in the presence of the judge.

b) Points considered in the Pre-trial:

- Possibility of amicable settlement, simplification of issues.
- Necessity or desirability of amendments to the petition or answer
- Possibility of obtaining stipulations or admissions of facts and of documents
- Number of witnesses
- Other matters as may aid the court in the prompt disposition of the action.

c) Failure to appear at pre-trial:

- Petitioner: action may be dismissed.
- Respondent: petitioner may be allowed to present evidence *ex-parte*.

6. Trial

a) Definition

- Process of investigation and judgment of a legal controversy or dispute

b) Order

- Presentation of petitioner's evidence
- Presentation of respondent's evidence
- Presentation of rebuttal evidence to refute/counter the evidence submitted by the adverse party
- Submission of the party's memorandum.

7. Judgment

- Final adjudication by the court on the claims and defenses raised by the parties during trial.

8. Appeal

- Act of elevating a lower court's decision for review by a higher court.
- Taken by filing a notice of appeal containing the judgment or decision of the lower court, the errors committed by the lower court, the appellant's supporting arguments, and the relief sought for.

CHAPTER XV

EVIDENCE

PART I - EVIDENCE²³⁶

1. Concept of Evidence

Evidence is the means of determining or discovering the truth of an allegation or event.

The testimony of a witness or objects (document, picture, map, drawing, plans, fingerprints, gun, bullet, etc.) presented before a court or tribunal to prove certain allegations are also called evidence.

All evidence presented in court must be perceived by the judge through any of his or her five (5) senses: sight, hearing, touch, smell, or taste.

2. Admissibility

Evidence is admissible only if it is:

- **Competent** : It is not among those excluded by law or prohibited by the rules on evidence;
- **Relevant** : It is a relation to the fact in issue based on logic and the pleadings; and
- **Material**: It may establish the truth or falsify of a fact or allegation.

3. Kinds of Evidence

- **Direct evidence** establishes a fact without the need to refer to inferences or implications.
- **Circumstantial / Indirect evidence** does not directly prove an allegation but such evidence tends to establish its probability.
- **Corroborative evidence** strengthens evidence already presented by means of other evidence that proves allegation.
- **Cumulative evidence** is an additional evidence of the same kind as those already presented and establishes in the same issue.
- **Positive** - it is *positive evidence* when a witness states that an event occurred or s/he knows it transpired.
- **Negative**- it is *negative evidence* when an individual declares that s/he does not know what actually happened.

4. Sources of Evidence (Based on type of evidence)

- **Testimonial evidence** refers to declarations or statement of witnesses.
- **Real or Object evidence** refers to material or physical things, ex. Gun, knife, tattered panties, bottle.)
- **Documentary evidence** refers to public documents, ex. marriage contract, birth certificate, medical certificate, income tax return.

5. Some rules of Evidence

a) Best Evidence Rule-when the subject of the inquiry is the contents of the document, the only evidence admissible is the original document itself.

²³⁶ This section was adapted from the Manual for Paralegals: Violence Against Women, SALIGAN

i) When is this rule INAPPLICABLE?

- When the original is lost, destroyed or cannot be produced in court.
- When the original is in the custody or under the control of the other party or the latter fails to produce it after reasonable notice;
- When the original is a public record or is recorded in a public office for which a certified copy will be sufficient.
- Secondary evidence may be presented when the original document is unavailable

ii) How is this secondary evidence presented?

- Proved the execution or existence of the document
- Establish that the original document was lost without bad faith on the part of the party presenting it;
- Prove the contents of the document by any of the following means :
 - by a copy
 - by a recital of its contents in some authentic document; or
 - by the testimony of witnesses.

b) Parole Evidence Rule

When the terms of an agreement have been reduced to writing, no evidence shall be admissible other than the contents of the written agreement.

i) When is this rule INAPPLICABLE?

- When there is a mistake in the written agreement or fails to express the true intent and agreement of the parties; or the issue is the validity of the written agreement;
- When there is an intrinsic ambiguity in the written agreement.

c) Hearsay Rule -an individual may only testify on matters based on his/her personal knowledge. Thus, s/he can only attest to things that s/he actually saw, smelled, tasted, heard, or touched.

i) Exceptions to Hearsay

Common reputation- this refers to facts, existing previous to the controversy, of public or general interest more than thirty (30) years old, or respecting marriage or moral character.

Res Gestae-these statements made by a person while startling occurrence is taking place. They may also be expressed immediately prior or subsequent to the unexpected incident. In order to be admissible, the utterance must refer to the startling event that transpired.

Testimony at a former proceeding- the testimony of a witness given in a former case or proceeding involving the same parties and subject matter may be given in evidence against the adverse party who had the opportunity to cross examine the witness and the witness is deceased, out of the country, or unable to testify.

Dying declaration-the statement made by a dying person and his/her declaration pertains to the cause and surrounding circumstances of his/her death.

d) Opinion Rule-the opinion rule is not admissible in evidence.

i) Exceptions to Opinion Rule

- The opinion of an expert witness may be received in evidence.
- The opinion of an ordinary witness may be received in evidence IF:
 - It is to identify a handwriting with which s/he has sufficient familiarity.
 - It is to prove the validity of an agreement to which s/he was an attesting witness; and
 - It is to testify on the mental sanity of a person with whom s/he is sufficiently acquainted.

e) Marital Disqualification Rule-neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except when they are the adverse parties to the case. This disqualification shall cease upon the dissolution of marriage brought about by divorce, death, annulment of marriage, or declaration of absolute nullity of marriage.

f) Marital Privilege Rule-the husband or wife cannot be examined without the consent of the other as to any communication received in confidence by one from the other. This disqualification exists even after death of the spouse or dissolution of the marriage.

PART II. Implications for the Paralegals²³⁷

A. In preparing the statements of the witnesses, ensure that:

- i) Only true accounts and not mere opinions are stated; and
- ii) The testimony of the witnesses are based on their own personal knowledge.

B. In taking custody of articles/objects that may be used in evidence.

- i) Request the witness to put a label/mark on it;
- ii) Make a record of the date, time, place and persons within the proximity at the time the articles were turned over to you;
- iii) Take a picture of the object immediately if possible;

C. In Taking pictures, drafting plans or drawing sketches;

- i) Note when it was taken and the persons who witnessed the taking of the picture, the drafting of the plans or the drawing of the sketches;
- ii) Ask the person who took the picture or drafted the plan or drew the sketch to sign it.

PART III. Article on Evidence in Rape/Sexual Assault Cases discussing *res gestae*, minor inconsistencies, no standard form of human behavioral response, failure to report

A. Evidence in Rape/Sexual Assault Cases , Atty. Clara Rita A. Padilla, preliminary research paper

1. Admissibility of *res gestae* evidence for rape/sexual assault cases

According to section 36 of Rule 130, of the Rules, "statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as a part of the *res gestae*." Statements growing out of the nervous excitement and physical condition of the declarant, the utterance of which was made spontaneously and related to the circumstances, are admissible as part of the *res gestae*. (Air France v. Carrasco, L-21438, Sept. 28, 1966, 18 SCRA 155)

²³⁷ This section was adapted from the Manual for Paralegals: Violence Against Women, SALIGAN

The declaration made by complainant victim while still suffering from acute stress disorder and made immediately as she was recovering from shock rendered by the impending fear of another rape, which declaration appears to be natural and spontaneous and made before the victim could contrive or devise a plan to incriminate the accused, her father, would be considered as part of the *res gestae* constituting an exception to the hearsay rule. (as enunciated in *People v. De Gracia*, L-21419, Sept. 29, 1966, 18 SCRA 197.)

The following are cases where statements made by the rape victim were admitted as part of *res gestae*:

In *Frazee v. State*, 79 Okla Crim 224, 153 P2d 637 (1944) a prosecution for rape, there was evidence that immediately after the alleged assault the prosecutrix ran to her neighbor's house and, finding her not at home, called her at her husband's place of business and informed her of the alleged rape. Her neighbor drove home at once and found the prosecutrix at her house, barefooted, crying, and in a hysterical condition, and the prosecutrix again related the details of the offense to her. The court held the declarations of the prosecutrix to the neighbor to be admissible under the *res gestae* rule, saying that the utterances of the prosecutrix were spontaneous and created by and springing from the attack made upon her, and made so soon after the alleged attack and in such a manner as to preclude the idea of deliberation and falsification.

In *Snowden v. United States*, 2 App DC 89 (1893) declarations by a five-year-old child as to the particulars of an assault with intent to rape committed upon her, made to her grandmother shortly after commission of the alleged offense when the grandmother returned home and found the child lying on the floor crying, and made in response to inquiries by the grandmother, were held admissible as part of the *res gestae*.

Similarly, statements made by the victim of a rape "soon after" commission of the offense and to the first person she met, the victim being hysterical and disheveled at the time, were held admissible as part of the *res gestae* in *Hall v. State*. 141 Tex Crim. 607, 150 SW2d 404 (1941).

Statements by the victim of an alleged rape immediately upon being taken to the home of a friend and within a short time after the occurrence of the offense, and while the victim was crying, moaning, hysterical, and bruised and bleeding, were held admissible as part of the *res gestae* in *Palmer v. State*. 134 Tex Crim 390, 115 SW2d 641 (1938).

In *State v. Smith*, 3 Wash 2d 543, 101 P2d 298 (1940) statements by the victim of a rape, made immediately after the alleged occurrence when she went to the home of a neighbor, crying and hysterical, were held admissible as part of the *res gestae*, since the declarations were made under such circumstances as to be spontaneous and unpremeditated

Statements by a ten-year-old girl regarding a rape committed upon her, made immediately after the alleged occurrence, when the little girl ran to her mother, were held admissible as part of the *res gestae* in *Brooks v. Commonwealth*. (235 Ky 19, 29 SW2d 597 (1930).

Statements of the victim of a sexual offense made immediately after the commission thereof and under such circumstances as to indicate spontaneity are admissible as part of the *res gestae*. (*Baber v. United States*, 16 App DC 358, 324 F2d 390, cert den 376 US 972, 12 L ed 2d 86, 84 S Ct 1139; *White v. State*, 237 Ala 610, 188 So 388; *Robinson v. States*, 209 Ga 650, 75 SE2d 9, cert den 345 US 999; 97 L ed 1405, 73 S Ct 1144; *Kyle v. State* (Tex Crim) 365 SW2d 168.)

In a prosecution of her husband for rape, statements made by the wife to a policeman on his arrival at the apartment and on being asked what had occurred were admissible as spontaneous

declarations. The fact that the officer had asked the wife "what happened" was insufficient to destroy the spontaneity of the declarations. (People v. Damen, 28 Ill 2d 464, 193 NE2d 25.)

The admissibility of those statements are predicated upon the common experience that utterances made under such circumstances are devoid of self-interest, and the probability of falsehood is so remote as to be negligible. They are, as a matter of fact, spontaneous and instinctive reaction, produced by a startling or unusual occurrence. The statements are made under such circumstances as to show lack of forethought or deliberate design in the formulation of their content.

Minor inconsistencies do not affect credibility

The Supreme Court has consistently held that minor inconsistencies in the testimony of the witnesses reveal candor and truthfulness of the witnesses' testimony.

Settled is the rule that discrepancies or inconsistencies on minor matters do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witness' honesty. Such inconsistencies, which may be caused by the natural fickleness of memory, even tend to strengthen rather than weaken the credibility of the witness because they erase any suspicion of rehearsed testimony. (People vs. Corpuz 222 SCRA 842)

There is no standard form of human behavioral response

In a case decided by an RTC judge, the judge erroneously relied on the testimony of the medico-legal officer who is not an expert in psychiatric medicine, to prove the psychological make-up of the complainant. The medico-legal's testimony is, as follows:

FISCAL: Will you please read the finding made by your office regarding the appearance of the victim when she was referred placing in the document?

MEDICO-LEGAL WITNESS: It is stated here in the brief history, the victim at the time of the examination was in shock and does not respond, meaning when I talk to her she did not answer and still the mother narrated the alleged rape and then at the bottom of this brief history the doctor recommended the mental status examination.

COURT: She was a little mentally off balance?

MEDICO-LEGAL WITNESS: Yes, your Honor.

COURT: Is that usual in rape cases among the victim is a child?

MEDICO-LEGAL WITNESS: No, your Honor.

x x x

FISCAL: Did you come to know whether mental status examination was conducted in the child?

MEDICO-LEGAL WITNESS: No ma'am.

(TSN dated November 1996 pp. 5-7)

The judge's reliance on the medico-legal's testimony is clearly misplaced. One obvious reason is that the medico-legal is not an expert in behavioral science much less psychiatric medicine. Another very important fact is that the medico-legal was not aware of any mental status examination conducted on the child. Certainly, the medico-legal's view that "shock is not a usual reaction among child victims" would have to give way to contrary evidence presented by the testimony of an expert in psychiatric medicine, i.e., the psychiatrist who was presented in court. The judge's misplaced reliance on the medico-legal's view ignored what should have been the stronger evidence of the victim's psychological make-up, which is characterized by trauma over the very bestial father-daughter incestuous rapes.

No less than the Supreme Court has decided that there is no standard form of human behavioral response.

A person who is raped may react in different ways. She may shout or she may be stifled, shocked, astounded, and be made speechless.

Human behavior varies across persons. There is no such thing as an absolute set of behavioral manifestations for people since no two persons are the same. (John Pinel, *Biopsychology*, USA McGraw Hill Publication, Inc., 1993)

In the case of *People vs. Arnan* 224 SCRA 37 the Supreme Court held that, “It is settled doctrine that there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience (citing also *People vs. Flores* G.R. No. 98069, 27 Jan. 1993).

In the case of *People vs. Ibay* (233 SCRA 15) the Supreme Court held that, “Firstly, that private complainant merely cried and tried to push appellant off her cannot cancel her credibility. Behavioral psychology teaches us that different people react to similar situations dissimilarly. Most women would resist a sexual assault with a wild struggle. Others become virtually catatonic because of the mental shock they experience. Yet, it can never be successfully argued that the latter are any less sexual victims than the former.”

In the case of *People vs. Malunes* 247 SCRA 317 the Supreme Court held that, “We have also stated before that the workings of a human mind placed under emotional stress are unpredictable and people react differently--some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion.” (citing also *People vs. Cabradilla*, 133 SCRA 413; *People vs. Matrimonio* 215 SCRA 613)

It would arrogant of us to decide what is the so-called “proper” behavior or demeanor of a victim of incestuous rape for such crime is so horrific a crime we can never really fully realize the devastating and debilitating effects it has on the victim.

Nonetheless, if it is necessary to recount to an interpretation of an alleged victim’s behavior, Judge Salazar should have at least given more weight to the proper expert evidence on the matter, i.e., the testimony, as in this case, of an expert in the psychiatric field.

Failure to immediately report the crime to the authorities does not destroy the credibility of the complaint

No one has the right to impose on others his or her idea of what “proper demeanor” for a rape/sexual assault victim should be.

The delay in reporting their grievances to the proper authorities does not destroy the truth *per se* of the complaint. (*People vs. Sagun*, 303 SCRA 382 [1999]). The fact is that these complainants practically suffered in silence, certainly, they should not be blamed for the reprehensible and traumatic acts that they were made to suffer.

Human behavior varies from one person to another. There is no such thing as an absolute set of behavioral manifestations for people since no two persons are the same (John Pinel, *Biopsychology*, USA McGraw Hill Publications, Inc. 1993). The court aptly pronounced in *People vs. Ibay*, 233SCRA 15 [1994] that “behavioral psychology teaches us that different people react to similar situations dissimilarly. Most xxx would resist a sexual violation with a wild struggle. Others become virtually catatonic because of mental shock they experience. Yet it can never be successfully argued that the latter are less victims than the former.”

Victims of sexual transgression respond differently to their ordeal (*People vs. Cabebe*, 290 SCRA 543, [1998]). Different people at differently on a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience. (*People vs. Luzorta*, 286 SCRA 487 [1998]).

In case of *People vs. Malunes*, 247 SCRA 317 [1995], the Supreme Court held that “the workings of the human mind placed under emotional stress are unpredictable and people react differently --- some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion” (citing also *People vs. Caradilla*, 133 SCRA 413 [1983]; *People vs. Matrimonio*, 215 SCRA 613 [1992]; *People vs.*

Miranda, 262 SCRA 351 [1996]; *people vs. Talledo*, 262 SCRA 544 [1996]; *people vs. Villanueva*, 254 SCRA 202 [1996]; and *People vs. Talaboc*, 256 SCRA 441 [1996]).

The Supreme Court has consistently held that delay in reporting rape cases has no bearing on the truthfulness of the complaint, to wit:

(a) A thirteen year-old girl who kept silent about being raped and becoming pregnant as a result thereof, is not necessarily lying. x x x Long silence and delay in reporting a crime of rape has not always been construed as an indication of false accusation. Under the circumstances, Maria Rowena's protracted silence and resistance in reporting the matter should not cast doubt on the veracity of her accusation. (*PP vs. Plaza* 242 SCRA 724)

(b) On the claim that the delay in reporting the crime to the authorities of around 6 months is reason enough to doubt the credibility of the complainant, the Court has held in a long line of cases that delay in reporting the crime is not sufficient to doubt the truthfulness of the accusation. (*People V. Jimenez* 250 Scra 349)

(c) The pronouncement of the appellant that the unreasonable delay in the filing of the complaint entitles him to an acquittal must fail. We have already ruled that "the silence of the offended party in a case of rape, or her failure to disclose ... without loss of time to persons close to her and to report the matter to the authorities, does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue, and fabricated. (*PP. vs. Abendano* 242 SCRA 531)

The above cases show, that in cases such as rape, acts of lasciviousness, and sexual harassment, some victims are forced into silence for a long period of time as society still casts stigma to the victims, albeit wrongly, as there is no one to blame for such dastardly acts but the perpetrator of the crime of rape himself.

PART IV. Medico-legal Examination (lecture of Regina de la Paz-Ingente, M.D.)²³⁸

"The 20th century will be remembered as a century marked by violence. It burdens us with its legacy of mass destruction of violence inflicted on a scale never seen and never before possible in human history. But this legacy, the result of new technology in the service of ideologies of hate is not the only one we carry, nor what we must face up to. Less visible but even more widespread is the legacy of day to day individual suffering. It is the pain of children abused by people who should protect them, women injured and maltreated by violent partners, elderly persons maltreated by caregivers and youth bullied by other youths.

*This suffering is a legacy that reproduces itself, as new generations learn from the violence of generations past, as victims learn from victimizers, and as the social conditions that nurture violence are allowed to continue. No city, no community, no country is immune **but neither are we powerless against it.**"*

-Nelson Mandela, 1997

²³⁸ Lecture given by Regina de la Paz-Ingente, M.D., Regional Director (Mindanao), CPU-Net; Child Protection Specialist, Davao Doctors Medical Center, Women and Children Protection Unit), during the EnGendeRights-sponsored "Paralegal Training for Muslim Communities in ARMM and Sultan Kudarat", Aug. 24-25, 2007, Davao City

A. Objectives

- Understand purpose of M-L examination
- Understand meaning of medical findings
- Remember there are many ways of abusing children without resulting in medical findings; therefore proceed with the investigation and filing of cases on basis of child's statement

B. Purpose of Medical Evaluation for Sexual Abuse (SA)

- Evaluate Medical findings
- Gather evidence
- Aid transition into therapy
 - supportive environment
 - feedback clients body is okay

C. Government's call to Action against Domestic Violence

Department of Health A.O. 1-B 1997 created Women and Children Protection Units (WCPUs)

D. Collaborative Response

In collaboration with others (advocates, police, employers, health professionals, friends, policy makers, judges & legal professionals, educators), we can put the pieces together to bring about a solution to the problem of domestic or intimate partner violence.

Together we need to form part of the jigsaw puzzle to find a solution to abuse. No organization no matter how big its budget will be able to solve or end abuse alone. (Emphasize role of the various sectors - parts of the jigsaw puzzle).

E. History: Interview

- Children can give a legal usable testimony if they are questioned carefully and professionally
 - Language development
 - Cognitive development
 - Story-telling capacity
 - Reluctance to disclose

F. Important: CHILD SENSITIVE FORENSIC INTERVIEW

Obtaining History

- Medical and sexual history helps interpret physical findings
- Demeanor and mental state
- Pertinent information regarding incident
- Number of assailants
- Possible risk factors
- Use of weapon, threat, force or restraint
- Body orifices assaulted
- Penetrated with penis/finger/object?

- Ejaculation? Where?
- Other acts?
- Injuries of victim? Assailant?
- Symptoms?
- Activities after assault?

G. Timing of Medical Examination

1. Immediate examination required:

- Sexual Assault within 72 hours
- History of ano-genital bleeding
- Symptomatic sexually transmitted infections (STI's)

2. Non- Acute Examination

- History of sexual assault beyond 72 hours
- Behavioral changes
- Treated sexually transmitted infections (STIs)

3. Preparation for examination

- Respect autonomy
- Obtain written consent (exam, treatment, release of information/photos)
- Explain that consent is NOT an obligation; process and reason for procedures, implications especially for release of information

H. Reminders:

Forensic Examination is time consuming and stressful to patient.

Victims are likely to find examination intrusive.

Weigh needs of patient against the needs of the criminal justice system.

Patients are usually anxious to cooperate if the purpose is explained to them.

I. Sample Consent Form

•Name _____ Address _____ Date of birth_____

•I consent to a medical examination on myself, including the taking of samples if appropriate. I also consent to the consultation and examination - being recorded in writing, video; involving use of photographs, findings being disclosed to police, social services, etc. I also understand that anything I tell the doctor may have to be produced and declared if so ordered by a court.

•Signed_____ Date _____

•Witness _____ Signed_____ Date ____ Relationship_____

Examining Doctor

J. Medical Examination

- History
- Physical examination
- Laboratory examination

K. Examining Doctor

- Familiarity with normal findings
- Recognizes and records findings
- Objective, aware of limitations
- Physician same sex as victim
- Efficient, empathic, caring, unhurried

Note: Doctor responsible for patient's welfare; an investigator gathering evidence of a crime

L. Sensitive/Effective Medical Exam

- Indications for forensic examination
 - done as soon as possible
 - unconscious patient with unexplained injury
- Private place with nurse or assistant present
- Assure safety; explain findings
- Provide follow-up mental health consultation

Give priority to sexual assault cases otherwise you risk loss or contamination of evidence.

Immediate medical needs of victim takes priority over forensic examination.

Evaluate patient carefully if there are complaints of pain, discharge or bleeding.

Private place specially designated place for the examination – or make it seem private, safe secure and well-ventilated

The shorter the interval between the sexual assault and the examination the better to obtain physical evidence.

Avoid activities like brushing teeth, douching, washing bathing swallowing, urinating defecating. Keep clothing used during the incident. Of course this is truly much easier said than done.

M. Advise to Sexual Assault Victim

- Have examination right away
- Contact could have left evidence
- Avoid bathing, brushing, etc.
- Save clothing
- Physical evidence can corroborate testimony

N. Evidence of Sexual Abuse

1. Medical Evidence (Physical Findings, Forensics)
2. Disclosure
3. Behavior-unusual sexual behaviors, symptoms, depression, PTSD
4. Evidence that corroborates the above

O. Genital and anal examination

Three goals:

1. Document and treat injuries
2. Test for STD
3. Collect samples

Toluidine blue dye detects superficial abrasions

Colposcope provides better documentation

P. General Physical Examination

Collect shoes, clothes worn during assault

Undress over two pieces of heavy paper, save top sheet

Collect materials from fingernails

Victim combs pubic hair over paper

Complete and careful physical examination (PE) to look for evidence of recent and past injury

Note:

Pubic hair transfer occurs in approximately 17% of sexual encounters involving intercourse

Strangled? Check neck for redness or swelling

*Restrained by the trunk? Check **axillae** for redness or bruising*

Legs forced apart? Check inside of thighs

Hand placed over mouth? Check inside of lips and gums

*Oral assault ? Look for **petechiae** on palate, gums, swelling of tongue*

Q. General Examination

- Methodical examination – head to foot, right to left, front to back
- Good light source, magnifying lens
- Describe any injury or lesion
- Follow up patient

Color of bruises: Bruises evolve from dark red to blue or black to green to yellow. Determining age of bruises is an inexact process. Yellow coloration, once thought to indicate old bruises can appear as soon as eighteen hours after the injury occurred.

Evolution of colors occurs more quickly in genital area than other tissues because of good blood supply to tissues. Bruises may not appear till 24 hours after injury and may need 1- 4 weeks to heal completely.

R. Documentation

- Clear accurate documentation
- Date, time, place
- Remember: physician is a witness; medical records are evidence
- Other documents include body diagrams, photographs, video/audio taping

S. Medical Evidence Child Sexual Assault (CSA)

- Anogenital findings
- Laceration of hymen; bruising, extension to anal sphincter
- Healed transection of hymen
- Absence of hymenal tissue

T. Medical Evidence CSA

- Findings of sperm or seminal fluid on body
- Pregnancy
- N. gonorrhea
- Syphilis after delivery
- Photographs/video of child being abused
- HIV infection not due to BT

U. Reference samples

- Blood (toxicology, blood groups, DNA)
- Saliva
- Hair
- Urine (toxicology, pregnancy, sperm)

Hair – preferred method for collecting hair? Pluck hair, so hair root can be analyzed.

Obtain hair from different regions of the scalp as well as from pubic and anal regions, chest and beard where applicable.

Semen fluoresces a blue green to orange color at 400 to 480 nanomicros. Other oily substances such as creams, lotions and urine will also fluoresce.

Swab any fluorescent area with two saline-moistened cotton swabs and process.

V. Forensic Evidence Collection

- Evidentiary items
 - oral, vaginal/penile, rectal swabs, smears, washings
 - swabs from semen stains, bite marks
 - pubic hair combings
 - nails scrapings/clippings
 - clothing
 - trace evidence (hairs, fibers, debris)

W. Forensic Specimen collection

- Take two swabs – prosecution, defense
- Obtain from any assaulted orifice
- Swab? Or vaginal wash?
- Bite marks?
- Dry swabs before storage

X. Types of Forensic Analysis

1. Presence of Sperm
 - motile sperm - 7 days (endocervix)
 - non motile sperm lasts 17 days (vagina)
 - few hours (mouth)

2. Sperm survival affected by: pH, temperature, activity after assault, bacteria, saliva, location.
3. Was rapist azoospermic, vasectomized, impotent?

Y. Tests for Sperm presence

- Saline wet mounts, pap smears, collection of sperm from dried swabs, stains, saline washes
- Acid Phosphatase – also found in females not found 12 hours after intercourse in 50% vaginal swabs
- p30 Protein – not found in vaginal fluid in absence of sperm, detected till 27 hours after intercourse, also found in vasectomized men's semen

Z. Seminal Vesicle Specific Protein

--Found in semen but NOT in other human fluids, detected on dried semen stains kept at room temperature up to **6 months**; highly sensitive and specific for semen

AA. Evidence Identifying Assailant Characteristics

- HAIR
- Genetic Markers in Blood, Saliva, Semen
- DNA Typing
 - most specific form of forensic evidence
 - genetic marker found on chromosomes responsible for inheritance
 - very specific- one individual distinguished by DNA type from all others (except identical twin)
 - very stable; more likely to resist degradation
 - sperm rich in DNA

BB. Rape Kit Guidelines

- Clothing
- Swabs and smear
- Fingernail scrapings
- Pubic hair combing

CC. Type of Abuse

- Contact: touching, fondling, oral
finger/object into vulva/anus
masturbation
intercourse; intercrural
prostitution
- Non-contact
Exhibitionism (flashing)
Pornography (acts, anatomy)
Showing pornographic photos, films

DD. Some terms no longer used in CSA evaluation

1. "intact hymen"
2. "Virgin state"
3. Size of hymenal opening

“..Use of the term “intact hymen” is to be discouraged due to its nonspecificity.”
(*American Professional Society on the Abuse of Children-APSAC 1999*)

EE. TEARS

T ear or tenderness
E cchymoses
A brasion
R edness
Swelling

Examples of injuries:

Trauma: hymenal petechia
Hymenal tear and edema
Partial tear of the hymen
Hymenal edema
Hymenal abrasions
Hymenal hemorrhage
Hymenal transection
Perihymenal laceration
Perianal trauma

1. What do we know?

- Majority of child sexual assault (CSA) cases have normal findings
- Children’s injuries heal amazingly well

2. What we do not know?

- Exactly what caused the injury
- When injury occurred
- How many times it happened
- Who did it?

3. Reasons for absence of Physical Findings

- Type of abuse
- Deliberate avoidance to hurt
- Difference in view of “penetration”
- Elasticity of hymen and anal sphincter
- Post assault activities
- Delay in disclosure/exam
- Limitations of equipment, examiner

4. Three possible explanations

- Nothing happened
- Something happened but did not cause injury
- Something happened causing injury which has healed since then

5. Major Issues in Medical Findings

- No definite criteria to establish virginity
- Appearance of vaginal wall and orifice affected by age, hormones, nutrition, examination technique, etc.
- If exam done more than 72 hours after crime
- If victim has bathed
- If condom was used
- Premature ejaculation
- Post-vasectomy; 0 or low sperm
- Size of the penis and the resulting injury to the female genitalia
- The vagina is distensible
- Absence of vaginal lubrication in forced sex explains why genital injury may occur

Can masturbation cause hymenal injuries?

- If the masturbation in girls involves clitoral or labial stimulation, these do not cause hymenal injury. (*Hobbs and Wynne 1987*)
- Studies of self-injurious behavior in 97 mentally retarded children: No genital or anal injuries were reported. (*Fisher et al 1990*)

6. Conclusion

- Most important is the statement of the child and the police investigation to corroborate story of child – collateral interview and gather evidence at the site.

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PART V. Battered Woman Syndrome as Evidence

A. Excerpts from *People of the Philippines vs. Marivic Genosa*, G.R. No. 135981. January 15, 2004

X x x

Admitting she killed her husband, appellant anchors her prayer for acquittal on a novel theory -- the "battered woman syndrome" (BWS), which allegedly constitutes self-defense. Under the proven facts, however, she is not entitled to complete exoneration because there was no unlawful aggression -- no immediate and unexpected attack on her by her batterer-husband at the time she shot him.

Absent unlawful aggression, there can be no self-defense, complete or incomplete. But all is not lost. The severe beatings repeatedly inflicted on appellant constituted a form of cumulative provocation that broke down her

psychological resistance and self-control. This “psychological paralysis” she suffered diminished her will power, thereby entitling her to the mitigating factor under paragraphs 9 and 10 of Article 13 of the Revised Penal Code.

X x x

“16. In the meantime, under date of 17 February 2000, and stamp-received by the Honorable Court on 19 February 2000, undersigned counsel filed an URGENT OMNIBUS MOTION praying that the Honorable Court allow the exhumation of Ben Genosa and the re-examination of the cause of his death; allow the examination of Marivic Genosa by qualified psychologists and psychiatrists to determine her state of mind at the time she killed her husband; and finally, to allow a partial re-opening of the case *a quo* to take the testimony of said psychologists and psychiatrists.

“Attached to the URGENT OMNIBUS MOTION was a letter of Dr. Raquel Fortun, then the only qualified forensic pathologist in the country, who opined that the description of the death wound (as culled from the post-mortem findings, Exhibit ‘A’) is more akin to a gunshot wound than a beating with a lead pipe.

“17. In a RESOLUTION dated 29 September 2000, the Honorable Court partly granted Marivic’s URGENT OMNIBUS MOTION and remanded the case ‘to the trial court for the reception of expert psychological and/or psychiatric opinion on the ‘battered woman syndrome’ plea, within ninety (90) days from notice, and, thereafter to forthwith report to this Court the proceedings taken, together with the copies of the TSN and relevant documentary evidence, if any, submitted.’

“18. On 15 January 2001, Dra. Natividad A. Dayan appeared and testified before the Hon. Fortunito L. Madrona, RTC-Branch 35, Ormoc City.

“Immediately before Dra. Dayan was sworn, the Court *a quo* asked if she had interviewed Marivic Genosa. Dra. Dayan informed the Court that interviews were done at the Penal Institution in 1999, but that the clinical interviews and psychological assessment were done at her clinic.

“Dra. Dayan testified that she has been a clinical psychologist for twenty (20) years with her own private clinic and connected presently to the De La Salle University as a professor. Before this, she was the Head of the Psychology Department of the Assumption College; a member of the faculty of Psychology at the Ateneo de Manila University and St. Joseph’s College; and was the counseling psychologist of the National Defense College. She has an AB in Psychology from the University of the Philippines, a Master of Arts in Clinical [Counseling], Psychology from the Ateneo, and a PhD from the U.P. She was the past president of the Psychological Association of the Philippines and is a member of the American Psychological Association. She is the secretary of the International Council of Psychologists from about 68 countries; a member of the Forensic Psychology Association; and a member of the ASEAN [Counseling] Association. She is actively involved with the Philippine Judicial Academy, recently lecturing on the socio-demographic and psychological profile of families involved in domestic violence and nullity cases. She was with the Davide Commission doing research about Military Psychology. She has written a book entitled ‘Energy Global Psychology’ (together with Drs. Allan Tan and Allan Bernardo). The Genosa case is the first time she has testified as an expert on battered women as this is the first case of that nature.

“Dra. Dayan testified that for the research she conducted, on the socio-demographic and psychological profile of families involved in domestic violence, and nullity cases, she looked at about 500 cases over a period of ten (10) years and discovered that ‘there are lots of variables that cause all of this marital conflicts, from domestic violence to infidelity, to psychiatric disorder.’

“Dra. Dayan described domestic violence to comprise of ‘a lot of incidents of psychological abuse, verbal abuse, and emotional abuse to physical abuse and also sexual abuse.’

x x x

x x x

x x x

“Dra. Dayan testified that in her studies, ‘the battered woman usually has a very low opinion of herself. She has a self-defeating and self-sacrificing characteristics. x x x they usually think very lowly of themselves and so when the violence would happen, they usually think that they provoke it, that they were the one who precipitated the violence, they provoke their spouse to be physically, verbally and even sexually abusive to them.’ Dra. Dayan said that usually a battered x x x comes from a dysfunctional family or from ‘broken homes.’

“Dra. Dayan said that the batterer, just like the battered woman, ‘also has a very low opinion of himself. But then emerges to have superiority complex and it comes out as being very arrogant, very hostile, very aggressive and very angry. They also had (sic) a very low tolerance for frustrations. A lot of times they are involved in vices like gambling, drinking and drugs. And they become violent.’ The batterer also usually comes from a dysfunctional family which over-pampers them and makes them feel entitled to do anything. Also, they see often how their parents abused each other so ‘there is a lot of modeling of aggression in the family.’

“Dra. Dayan testified that there are a lot of reasons why a battered woman does not leave her husband: poverty, self-blame and guilt that she provoked the violence, the cycle itself which makes her hope her husband will change, the belief in her obligations to keep the family intact at all costs for the sake of the children.

x x x

x x x

x x x

“Dra. Dayan said that abused wives react differently to the violence: some leave the house, or lock themselves in another room, or sometimes try to fight back triggering ‘physical violence on both of them.’ She said that in a ‘normal marital relationship,’ abuses also happen, but these are ‘not consistent, not chronic, are not happening day in [and] day out.’ In an ‘abnormal marital relationship,’ the abuse occurs day in and day out, is long lasting and ‘even would cause hospitalization on the victim and even death on the victim.’

x x x

x x x

x x x

“Dra. Dayan said that as a result of the battery of psychological tests she administered, it was her opinion that Marivic fits the profile of a battered woman because ‘inspite of her feeling of self-confidence which we can see at times there are really feeling (sic) of loss, such feelings of humiliation which she sees herself as damaged and as a broken person. And at the same time she still has the imprint of all the abuses that she had experienced in the past.’

x x x

x x x

x x x

“Dra. Dayan said Marivic thought of herself as a loving wife and did not even consider filing for nullity or legal separation inspite of the abuses. It was at the time of the tragedy that Marivic then thought of herself as a victim.

x x x

x x x

x x x

“19. On 9 February 2001, Dr. Alfredo Pajarillo, a physician, who has since passed away, appeared and testified before RTC-Branch 35, Ormoc City.

“Dr. Pajarillo was a Diplomate of the Philippine Board of Psychiatry; a Fellow of the Philippine Board of Psychiatry and a Fellow of the Philippine Psychiatry Association. He was in the practice of psychiatry for thirty-eight (38) years. Prior to being in private practice, he was connected with the Veterans Memorial Medical Centre where he gained his training on psychiatry and neurology. After that, he was called to active duty in the Armed Forces of the Philippines, assigned to the V. Luna Medical Center for twenty six (26) years. Prior to his retirement from government service, he obtained the rank of Brigadier General. He obtained his medical degree from the University of Santo Tomas. He was also a member of the World Association of Military Surgeons; the Quezon City Medical Society; the Cagayan Medical Society; and the Philippine Association of Military Surgeons.

“He authored ‘The Comparative Analysis of Nervous Breakdown in the Philippine Military Academy from the Period 1954 – 1978’ which was presented twice in international congresses. He also authored ‘The Mental Health of the Armed Forces of the Philippines 2000’, which was likewise published internationally and locally. He had a medical textbook published on the use of Prasepam on a Parke-Davis grant; was the first to use Enanthate (siquiline), on an E.R. Squibb grant; and he published the use of the drug Zopiclom in 1985-86.

“Dr. Pajarillo explained that psychiatry deals with the functional disorder of the mind and neurology deals with the ailment of the brain and spinal cord enlarged. Psychology, on the other hand, is a bachelor degree and a doctorate degree; while one has to finish medicine to become a specialist in psychiatry.

“Even only in his 7th year as a resident in V. Luna Medical Centre, Dr. Pajarillo had already encountered a suit involving violent family relations, and testified in a case in 1964. In the Armed Forces of the Philippines, violent family disputes abound, and he has seen probably ten to twenty thousand cases. In those days, the primordial intention of therapy was reconciliation. As a result of his experience with domestic violence cases, he became a consultant of the Battered Woman Office in Quezon City under Atty. Nenita Deproza.

“As such consultant, he had seen around forty (40) cases of severe domestic violence, where there is physical abuse: such as slapping, pushing, verbal abuse, battering and boxing a woman even to an unconscious state such that the woman is sometimes confined. The affliction of Post-Traumatic Stress Disorder ‘depends on the vulnerability of the victim.’ Dr. Pajarillo said that if the victim is not very healthy, perhaps one episode of violence may induce the disorder; if the psychological stamina and physiologic constitutional stamina of the victim is stronger, ‘it will take more repetitive trauma to precipitate the post-traumatic stress disorder and this x x x is very dangerous.’

“In psychiatry, the post-traumatic stress disorder is incorporated under the ‘anxiety neurosis or neurologic anxietism.’ It is produced by ‘overwhelming brutality, trauma.’

x x x

x x x

x x x

“Dr. Pajarillo explained that with ‘neurotic anxiety’, the victim relives the beating or trauma as if it were real, although she is not actually being beaten at that time. She thinks ‘of nothing but the suffering.’

x x x

x x x

x x x

“A woman who suffers battery has a tendency to become neurotic, her emotional tone is unstable, and she is irritable and restless. She tends to become hard-headed and persistent. She has higher sensitivity and her ‘self-world’ is damaged.

“Dr. Pajarillo said that an abnormal family background relates to an individual’s illness, such as the deprivation of the continuous care and love of the parents. As to the batterer, he normally ‘internalizes what is around him within the environment.’ And it becomes his own personality. He is very competitive; he is aiming high all the time; he is so macho; he shows his strong façade ‘but in it there are doubts in himself and prone to act without thinking.’

x x x

x x x

x x x

“Dr. Pajarillo emphasized that ‘even though without the presence of the precipator (sic) or the one who administered the battering, that re-experiencing of the trauma occurred (sic) because the individual cannot control it. It will just come up in her mind or in his mind.’

x x x

x x x

x x x

“Dr. Pajarillo said that a woman suffering post traumatic stress disorder try to defend themselves, and ‘primarily with knives. Usually pointed weapons or any weapon that is available in the immediate

surrounding or in a hospital x x x because that abound in the household.’ He said a victim resorts to weapons when she has ‘reached the lowest rock bottom of her life and there is no other recourse left on her but to act decisively.’

x x x

x x x

x x x

“Dr. Pajarillo testified that he met Marivic Genosa in his office in an interview he conducted for two (2) hours and seventeen (17) minutes. He used the psychological evaluation and social case studies as a help in forming his diagnosis. He came out with a Psychiatric Report, dated 22 January 2001.

x x x

x x x

x x x

“On cross-examination by the private prosecutor, Dr. Pajarillo said that at the time she killed her husband Marivic’s mental condition was that she was ‘re-experiencing the trauma.’ He said ‘that we are trying to explain scientifically that the re-experiencing of the trauma is not controlled by Marivic. It will just come in flashes and probably at that point in time that things happened when the re-experiencing of the trauma flashed in her mind.’ At the time he interviewed Marivic ‘she was more subdued, she was not super alert anymore x x x she is mentally stress (sic) because of the predicament she is involved.’

x x x

x x x

x x x

“20. No rebuttal evidence or testimony was presented by either the private or the public prosecutor. Thus, in accord with the Resolution of this Honorable Court, the records of the partially re-opened trial a quo were elevated.”²³⁹

x x x

First Legal Issue:
Self-Defense x x x

Appellant admits killing Ben Genosa but, to avoid criminal liability, invokes self-defense and/or defense of her unborn child. When the accused admits killing the victim, it is incumbent upon her to prove any claimed justifying circumstance by clear and convincing evidence.²⁴⁰ Well-settled is the rule that in criminal cases, self-defense (and similarly, defense of a stranger or third person) shifts the burden of proof from the prosecution to the defense.²⁴¹

The Battered Woman Syndrome

In claiming self-defense, appellant raises the novel theory of the battered woman syndrome. While new in Philippine jurisprudence, the concept has been recognized in foreign jurisdictions as a form of self-defense or, at the least, incomplete self-defense.²⁴² By appreciating evidence that a victim or defendant is afflicted with the syndrome, foreign courts convey their “understanding of the justifiably fearful state of mind of a person who has been cyclically abused and controlled over a period of time.”²⁴³

²³⁹ Appellant’s Brief, pp. 10-71; *rollo*, pp. 284-345; signed by Atty. Katrina Legarda. Citations omitted.

²⁴⁰ People v. Rabanal, 349 SCRA 655, January 19, 2001; *People v. Cario*, 351 Phil. 644, March 31, 1998; *People v. Baniel*, 341 Phil. 471, July 15, 1997.

²⁴¹ People v. Peralta, 350 SCRA 198, January 24, 2001.

²⁴² See *Ibn-Tamas v. US*, 477 A.2d 626, 1979 DC App. LEXIS 457; *McLuckie v. Abbott*, 337 F.3d 1193; 2003 US App. LEXIS 15240; *DePetrus v. Kuykendall*, 239 F.3d 1057; 2001 US App. LEXIS 1062; *State v. Kelley*, 478 A.2d 364 (1984); *McMaugh v. State*, 612 A.2d 725 (RI 1992); *State v. Frost*, 577 A.2d 1282 (NJ Super. Ct. App. Div. 1990); *State v. Gallegos*, 719 P.2d 1268 (NM Ct. App. 1986); *R. v. Lavallee* (1990) 1 SCR; *Reilly v. The Queen*, (1984) 2 SCR 396.

²⁴³ Symposium on Domestic Violence. Article: “Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law,” LEXSEE 21 Hofstra L. Rev. 801 (Summer 1993), 1161.

A battered woman has been defined as a woman “who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without concern for her rights. Battered women include wives or women in any form of intimate relationship with men. Furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman.”²⁴⁴

Battered women exhibit common personality traits, such as low self-esteem, traditional beliefs about the home, the family and the female sex role; emotional dependence upon the dominant male; the tendency to accept responsibility for the batterer’s actions; and false hopes that the relationship will improve.²⁴⁵

More graphically, the battered woman syndrome is characterized by the so-called “cycle of violence,”²⁴⁶ which has three phases: (1) the tension-building phase; (2) the acute battering incident; and (3) the tranquil, loving (or, at least, nonviolent) phase.²⁴⁷

During the **tension-building phase**, minor battering occurs -- it could be verbal or slight physical abuse or another form of hostile behavior. The woman usually tries to pacify the batterer through a show of kind, nurturing behavior; or by simply staying out of his way. What actually happens is that she allows herself to be abused in ways that, to her, are comparatively minor. All she wants is to prevent the escalation of the violence exhibited by the batterer. This wish, however, proves to be double-edged, because her “placatory” and passive behavior legitimizes his belief that he has the right to abuse her in the first place.

However, the techniques adopted by the woman in her effort to placate him are not usually successful, and the verbal and/or physical abuse worsens. Each partner senses the imminent loss of control and the growing tension and despair. Exhausted from the persistent stress, the battered woman soon withdraws emotionally. But the more she becomes emotionally unavailable, the more the batterer becomes angry, oppressive and abusive. Often, at some unpredictable point, the violence “spirals out of control” and leads to an acute battering incident.²⁴⁸

The **acute battering incident** is said to be characterized by brutality, destructiveness and, sometimes, death. The battered woman deems this incident as unpredictable, yet also inevitable. During this phase, she has no control; only the batterer may put an end to the violence. Its nature can be as unpredictable as the time of its explosion, and so are his reasons for ending it. The battered woman usually realizes that she cannot reason with him, and that resistance would only exacerbate her condition.

At this stage, she has a sense of detachment from the attack and the terrible pain, although she may later clearly remember every detail. Her apparent passivity in the face of acute violence may be rationalized thus: the batterer is almost always much stronger physically, and she knows from her past painful experience that it is futile to fight back. Acute battering incidents are often very savage and out of control, such that innocent bystanders or intervenors are likely to get hurt.²⁴⁹

The final phase of the cycle of violence begins when the acute battering incident ends. During this **tranquil period**, the couple experience profound relief. On the one hand, the batterer may show a tender and nurturing behavior towards his partner. He knows that he has been viciously cruel and tries to make up for it, begging for her forgiveness and promising never to beat her again. On the other hand, the battered woman also tries to convince herself that the battery will never happen again; that her partner will change for the better; and that this “good, gentle and caring man” is the real person whom she loves.

²⁴⁴ *McMaugh v. State*, 612 A.2d 725, 731, quoting L. Walker, *The Battered Woman*, at XV (1979).

²⁴⁵ *People v. Torres*, 128 Misc2d, 129, 488 NYS2d 358; *McMaugh v. State*, 612 A.2d 725.

²⁴⁶ Walker, Lenore, *The Battered Woman Syndrome* (1984), pp. 95-96. Dr. Walker, a clinical psychologist, is an acknowledged expert on BWS in the United States. She is a pioneer researcher in the field. In this book, she reports the results of her study involving 400 battered women. Her research was designed to test empirically the theories expounded in her earlier book, *The Battered Woman* (1979). In 1989, she also wrote *Terrifying Love: Why Battered Women Kill and How Society Responds*.

²⁴⁷ Walker, *Terrifying Love: Why Battered Women Kill and How Society Responds* (Harper Perennial, 1989), p. 42.

²⁴⁸ *Ibid.* See also *R. v. Lavallee, supra*; *Ibn-Tamas v. US, supra*.

²⁴⁹ *Ibid.*

A battered woman usually believes that she is the sole anchor of the emotional stability of the batterer. Sensing his isolation and despair, she feels responsible for his well-being. The truth, though, is that the chances of his reforming, or seeking or receiving professional help, are very slim, especially if she remains with him. Generally, only after she leaves him does he seek professional help as a way of getting her back. Yet, it is in this phase of remorseful reconciliation that she is most thoroughly tormented psychologically.

The illusion of absolute interdependency is well-entrenched in a battered woman's psyche. In this phase, she and her batterer are indeed emotionally dependent on each other -- she for his nurturant behavior, he for her forgiveness. Underneath this miserable cycle of "tension, violence and forgiveness," each partner may believe that it is better to die than to be separated. Neither one may really feel independent, capable of functioning without the other.²⁵⁰

History of Abuse in the Present Case

X X X

In addition, Dra. Natividad Dayan was called by the RTC to testify as an expert witness to assist it in understanding the psyche of a battered person. She had met with Marivic Genosa for five sessions totaling about seventeen hours. Based on their talks, the former briefly related the latter's ordeal to the court *a quo* as follows:

"Q: What can you say, that you found Marivic as a battered wife? Could you in layman's term describe to this Court what her life was like as said to you?

A: What I remember happened then was it was more than ten years, that she was suffering emotional anguish. There were a lot of instances of abuses, to emotional abuse, to verbal abuse and to physical abuse. The husband had a very meager income, she was the one who was practically the bread earner of the family. The husband was involved in a lot of vices, going out with barkadas, drinking, even womanizing being involved in cockfight and going home very angry and which will trigger a lot of physical abuse. She also had the experience a lot of taunting from the husband for the reason that the husband even accused her of infidelity, the husband was saying that the child she was carrying was not his own. So she was very angry, she was at the same time very depressed because she was also aware, almost like living in purgatory or even hell when it was happening day in and day out."²⁵¹

In cross-examining Dra. Dayan, the public prosecutor not merely elicited, but wittingly or unwittingly put forward, additional supporting evidence as shown below:

"Q In your first encounter with the appellant in this case in 1999, where you talked to her about three hours, what was the most relevant information did you gather?

A The most relevant information was the tragedy that happened. The most important information were escalating abuses that she had experienced during her marital life.

Q Before you met her in 1999 for three hours, we presume that you already knew of the facts of the case or at least you have substantial knowledge of the facts of the case?

A I believe I had an idea of the case, but I do not know whether I can consider them as substantial.

X X X

X X X

X X X

Q Did you gather an information from Marivic that on the side of her husband they were fond of battering their wives?

A I also heard that from her?

²⁵⁰ *Ibid.*

²⁵¹ TSN, January 15, 2001, pp. 37-38.

Q You heard that from her?

A Yes, sir.

Q Did you ask for a complete example who are the relatives of her husband that were fond of battering their wives?

A What I remember that there were brothers of her husband who are also battering their wives.

Q Did she not inform you that there was an instance that she stayed in a hotel in Ormoc where her husband followed her and battered [her] several times in that room?

A She told me about that.

Q Did she inform you in what hotel in Ormoc?

A Sir, I could not remember but I was told that she was battered in that room.

Q Several times in that room?

A Yes, sir. What I remember was that there is no problem about being battered, it really happened.

Q Being an expert witness, our jurisprudence is not complete on saying this matter. I think that is the first time that we have this in the Philippines, what is your opinion?

A Sir, my opinion is, she is really a battered wife and in this kind happened, it was really a self-defense. I also believe that there had been provocation and I also believe that she became a disordered person. She had to suffer anxiety reaction because of all the battering that happened and so she became an abnormal person who had lost she's not during the time and that is why it happened because of all the physical battering, emotional battering, all the psychological abuses that she had experienced from her husband.

Q I do believe that she is a battered wife. Was she extremely battered?

A Sir, it is an extreme form of battering. Yes.

Parenthetically, the credibility of appellant was demonstrated as follows:

“Q And you also said that you administered [the] objective personality test, what x x x [is this] all about?

A The objective personality test is the Millon Clinical Multiaxial Inventory. The purpose of that test is to find out about the lying prone[ne]ss of the person.

Q What do you mean by that?

A Meaning, am I dealing with a client who is telling me the truth, or is she someone who can exaggerate or x x x [will] tell a lie[?]

Q And what did you discover on the basis of this objective personality test?

A She was a person who passed the honesty test. Meaning she is a person that I can trust. That the data that I'm gathering from her are the truth.

The other expert witness presented by the defense, Dr. Alfredo Pajarillo, testified on his Psychiatric Report, which was based on his interview and examination of Marivic Genosa. The Report said that during the first three years of her marriage to Ben, everything looked good -- the atmosphere was fine, normal and happy -- until “Ben started to be attracted to other girls and was also enticed in[to] gambling[,] especially cockfighting. x x x. At the same time Ben was often joining his *barkada* in drinking spree.”

The drinking spree of Ben greatly changed the attitude he showed toward his family, particularly to his wife. The Report continued: “At first, it was verbal and emotional abuses but as time passed, he became

physically abusive. Marivic claimed that the viciousness of her husband was progressive every time he got drunk. It was a painful ordeal Marivic had to anticipate whenever she suspected that her husband went for a drinking [spree]. They had been married for twelve years[;] and practically more than eight years, she was battered and maltreated relentlessly and mercilessly by her husband whenever he was drunk.”

Marivic sought the help of her mother-in-law, but her efforts were in vain. Further quoting from the Report, “[s]he also sought the advice and help of close relatives and well-meaning friends in spite of her feeling ashamed of what was happening to her. But incessant battering became more and more frequent and more severe. x x x.”

From the totality of evidence presented, there is indeed no doubt in the Court’s mind that Appellant Marivic Genosa was a severely abused person.

Effect of Battery on Appellant

Because of the recurring cycles of violence experienced by the abused woman, her state of mind metamorphoses. In determining her state of mind, we cannot rely merely on the judgment of an ordinary, reasonable person who is evaluating the events immediately surrounding the incident. A Canadian court has aptly pointed out that expert evidence on the psychological effect of battering on wives and common law partners are both relevant and necessary. “How can the mental state of the appellant be appreciated without it? The average member of the public may ask: Why would a woman put up with this kind of treatment? Why should she continue to live with such a man? How could she love a partner who beat her to the point of requiring hospitalization? We would expect the woman to pack her bags and go. Where is her self-respect? Why does she not cut loose and make a new life for herself? Such is the reaction of the average person confronted with the so-called ‘battered wife syndrome.’”²⁵²

To understand the syndrome properly, however, one’s viewpoint should not be drawn from that of an ordinary, reasonable person. What goes on in the mind of a person who has been subjected to repeated, severe beatings may not be consistent with -- nay, comprehensible to -- those who have not been through a similar experience. Expert opinion is essential to clarify and refute common myths and misconceptions about battered women.²⁵³

The theory of BWS formulated by Lenore Walker, as well as her research on domestic violence, has had a significant impact in the United States and the United Kingdom on the treatment and prosecution of cases, in which a battered woman is charged with the killing of her violent partner. The psychologist explains that the cyclical nature of the violence inflicted upon the battered woman immobilizes the latter’s “ability to act decisively in her own interests, making her feel trapped in the relationship with no means of escape.”²⁵⁴ In her years of research, Dr. Walker found that “the abuse often escalates at the point of separation and battered women are in greater danger of dying then.”²⁵⁵

Corroborating these research findings, Dra. Dayan said that “the battered woman usually has a very low opinion of herself. She has x x x self-defeating and self-sacrificing characteristics. x x x [W]hen the violence would happen, they usually think that they provoke[d] it, that they were the one[s] who precipitated the violence[; that] they provoke[d] their spouse to be physically, verbally and even sexually abusive to them.”

According to Dra. Dayan, there are a lot of reasons why a battered woman does not readily leave an abusive partner -- poverty, self-blame and guilt arising from the latter’s belief that she provoked the violence, that she has an obligation to keep the family intact at all cost for the sake of their children, and that she is the only hope for her spouse to change.

The testimony of another expert witness, Dr. Pajarillo, is also helpful. He had previously testified in suits involving violent family relations, having evaluated “probably ten to twenty thousand” violent family disputes within the Armed Forces of the Philippines, wherein such cases abounded. As a result of his experience with

²⁵² In *R. v. Lavallee*, *supra*.

²⁵³ *Ibid*.

²⁵⁴ Fiona E. Raitt and M. Suzanne Zeedyk, *The Implicit Relation of Psychology and Law: Women and Syndrome Evidence*, pp. 66-67 (Exh. D).

²⁵⁵ Walker, *Terrifying Love*, p. 47.

domestic violence cases, he became a consultant of the Battered Woman Office in Quezon City. As such, he got involved in about forty (40) cases of severe domestic violence, in which the physical abuse on the woman would sometimes even lead to her loss of consciousness.

Dr. Pajarillo explained that “overwhelming brutality, trauma” could result in posttraumatic stress disorder, a form of “anxiety neurosis or neurologic anxiety. After being repeatedly and severely abused, battered persons “may believe that they are essentially helpless, lacking power to change their situation. x x x [A]cute battering incidents can have the effect of stimulating the development of coping responses to the trauma at the expense of the victim’s ability to muster an active response to try to escape further trauma. Furthermore, x x x the victim ceases to believe that anything she can do will have a predictable positive effect.”²⁵⁶

A study²⁵⁷ conducted by Martin Seligman, a psychologist at the University of Pennsylvania, found that “even if a person has control over a situation, but believes that she does not, she will be more likely to respond to that situation with coping responses rather than trying to escape.” He said that it was the cognitive aspect -- the individual’s thoughts -- that proved all-important. He referred to this phenomenon as “learned helplessness.” “[T]he truth or facts of a situation turn out to be less important than the individual’s set of beliefs or perceptions concerning the situation. Battered women don’t attempt to leave the battering situation, even when it may seem to outsiders that escape is possible, because they cannot predict their own safety; they believe that nothing they or anyone else does will alter their terrible circumstances.”²⁵⁸

Thus, just as the battered woman believes that she is somehow responsible for the violent behavior of her partner, she also believes that he is capable of killing her, and that there is no escape.²⁵⁹ Battered women feel unsafe, suffer from pervasive anxiety, and usually fail to leave the relationship.²⁶⁰ Unless a shelter is available, she stays with her husband, not only because she typically lacks a means of self-support, but also because she fears that if she leaves she would be found and hurt even more.²⁶¹

In the instant case, we meticulously scoured the records for specific evidence establishing that appellant, due to the repeated abuse she had suffered from her spouse over a long period of time, became afflicted with the battered woman syndrome. We, however, failed to find sufficient evidence that would support such a conclusion. More specifically, we failed to find ample evidence that would confirm the presence of the essential characteristics of BWS.

The defense fell short of proving all three phases of the “cycle of violence” supposedly characterizing the relationship of Ben and Marivic Genosa. No doubt there were acute battering incidents. In relating to the court *a quo* how the fatal incident that led to the death of Ben started, Marivic perfectly described the tension-building phase of the cycle. She was able to explain in adequate detail the typical characteristics of this stage. However, that single incident does not prove the existence of the syndrome. In other words, she failed to prove that in at least another battering episode in the past, she had gone through a similar pattern.

How did the tension between the partners usually arise or build up prior to acute battering? How did Marivic normally respond to Ben’s relatively minor abuses? What means did she employ to try to prevent the situation from developing into the next (more violent) stage?

Neither did appellant proffer sufficient evidence in regard to the third phase of the cycle. She simply mentioned that she would usually run away to her mother’s or father’s house;²⁶² that Ben would seek her out, ask for her forgiveness and promise to change; and that believing his words, she would return to their common abode.

Did she ever feel that she provoked the violent incidents between her and her spouse? Did she believe that she was the only hope for Ben to reform? And that she was the sole support of his emotional stability and well-

²⁵⁶ Walker, *Terrifying Love*, p. 48.

²⁵⁷ *Id.*, pp. 49-50.

²⁵⁸ *Ibid.*

²⁵⁹ Dr. Lenore Walker’s testimony before the court in *Ibn-Tamas*, *supra*.

²⁶⁰ Psychologist Nancy Kaser-Boyd testifying as an expert on the battered woman syndrome in *Depetris*, *supra*.

²⁶¹ Dr. Lenore Walker’s testimony before the court in *Ibn-Tamas*, *supra*.

²⁶² Her biological parents lived separately.

being? Conversely, how dependent was she on him? Did she feel helpless and trapped in their relationship? Did both of them regard death as preferable to separation?

In sum, the defense *failed to elicit from appellant herself her factual experiences and thoughts that would clearly and fully demonstrate the essential characteristics of the syndrome.*

The Court appreciates the ratiocinations given by the expert witnesses for the defense. Indeed, they were able to explain fully, albeit merely theoretically and scientifically, how the personality of the battered woman usually evolved or deteriorated as a result of repeated and severe beatings inflicted upon her by her partner or spouse. They corroborated each other's testimonies, which were culled from their numerous studies of hundreds of actual cases. *However, they failed to present in court the factual experiences and thoughts that appellant had related to them -- if at all -- based on which they concluded that she had BWS.*

We emphasize that in criminal cases, all the elements of a modifying circumstance must be proven in order to be appreciated. To repeat, the records lack supporting evidence that would establish all the essentials of the battered woman syndrome as manifested specifically in the case of the Genosas.

BWS as Self-Defense

In any event, the existence of the syndrome in a relationship does not in itself establish the legal right of the woman to kill her abusive partner. Evidence must still be considered in the context of self-defense.²⁶³

From the expert opinions discussed earlier, the Court reckons further that crucial to the BWS defense is the state of mind of the battered woman at the time of the offense²⁶⁴ -- she must have actually feared imminent harm from her batterer and honestly believed in the need to kill him in order to save her life.

Settled in our jurisprudence, however, is the rule that the one who resorts to self-defense must face a *real threat* on one's life; and the peril sought to be avoided must be *imminent and actual*, not merely imaginary.²⁶⁵ Thus, the Revised Penal Code provides the following requisites and effect of self-defense:²⁶⁶

“Art. 11. *Justifying circumstances.* -- The following do not incur any criminal liability:

“1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur;

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.”

Unlawful aggression is the most essential element of self-defense.²⁶⁷ It presupposes actual, sudden and unexpected attack -- or an imminent danger thereof -- on the life or safety of a person.²⁶⁸ In the present case, however, according to the testimony of Marivic herself, there was a sufficient time interval between the unlawful aggression of Ben and her fatal attack upon him. She had already been able to withdraw from his violent behavior and escape to their children's bedroom. During that time, he apparently ceased his attack and went to bed. The reality or even the imminence of the danger he posed had ended altogether. He was no longer in a position that presented an actual threat on her life or safety.

Had Ben still been awaiting Marivic when she came out of their children's bedroom -- and based on past violent incidents, there was a great probability that he would still have pursued her and inflicted graver harm -- then, the imminence of the real threat upon her life would not have ceased yet. Where the brutalized person is already suffering from BWS, further evidence of actual physical assault at the time of the killing is not

²⁶³ State v. Kelly, 655 P.2d 1202, 1203 (1982).

²⁶⁴ “The case would rise or fall on whether . . . [appellant] acted in actual fear of imminent harm from her husband when she shot [or injured] him” Depetris v. Kuykendall, *supra*. See also People v. Torres, 128 Misc2d 129, 488 NYS.2d 358.

²⁶⁵ People v. PO3 Langres, 375 Phil. 240, 258, October 13, 1999.

²⁶⁶ See also People v. Plazo, 350 SCRA 433, January 29, 2001; People v. Cario, 351 Phil. 644, March 31, 1998; People v. Timblor, 348 Phil. 847, January 27, 1998.

²⁶⁷ People v. Saul, 372 SCRA 636, December 19, 2001.

²⁶⁸ People v. Galapin, 355 Phil. 212, July 31, 1998; People v. Panes, 343 Phil. 878, August 29, 1997.

required. Incidents of domestic battery usually have a predictable pattern. To require the battered person to await an obvious, deadly attack before she can defend her life “would amount to sentencing her to ‘murder by installment.’”²⁶⁹ Still, impending danger (based on the conduct of the victim in previous battering episodes) prior to the defendant’s use of deadly force must be shown. Threatening behavior or communication can satisfy the required imminence of danger.²⁷⁰ Considering such circumstances and the existence of BWS, self-defense may be appreciated.

We reiterate the principle that aggression, if not continuous, does not warrant self-defense.²⁷¹ In the absence of such aggression, there can be no self-defense -- complete or incomplete -- on the part of the victim.²⁷² Thus, Marivic’s killing of Ben was not completely justified under the circumstances.

Mitigating Circumstances Present

In any event, all is not lost for appellant. While she did not raise any other modifying circumstances that would alter her penalty, we deem it proper to evaluate and appreciate in her favor circumstances that mitigate her criminal liability. It is a hornbook doctrine that an appeal in a criminal case opens it wholly for review on any issue, including that which has not been raised by the parties.²⁷³

From several psychological tests she had administered to Marivic, Dra. Dayan, in her Psychological Evaluation Report dated November 29, 2000, opined as follows:

“This is a classic case of a Battered Woman Syndrome. The repeated battering Marivic experienced with her husband constitutes a form of [cumulative] provocation which broke down her psychological resistance and natural self-control. It is very clear that she developed heightened sensitivity to sight of impending danger her husband posed continuously. Marivic truly experienced at the hands of her abuser husband a state of psychological paralysis which can only be ended by an act of violence on her part.”

Dr. Pajarillo corroborates the findings of Dra. Dayan. He explained that the effect of “repetitious pain taking, repetitious battering, [and] repetitious maltreatment” as well as the severity and the prolonged administration of the battering is posttraumatic stress disorder. Expounding thereon, he said:

“Q What causes the trauma, Mr. Witness?

A What causes the trauma is probably the repetitious battering. Second, the severity of the battering. Third, the prolonged administration of battering or the prolonged commission of the battering and the psychological and constitutional stamina of the victim and another one is the public and social support available to the victim. If nobody is interceding, the more she will go to that disorder....

X X X

X X X

X X X

Q You referred a while ago to severity. What are the qualifications in terms of severity of the posttraumatic stress disorder, Dr. Pajarillo?

A The severity is the most severe continuously to trig[g]er this post[t]raumatic stress disorder is injury to the head, banging of the head like that. It is usually the very very severe stimulus that precipitate this post[t]raumatic stress disorder. Others are suffocating the victim like holding a pillow on the face, strangulating the individual, suffocating the individual, and boxing the individual. In this situation therefore, the victim is heightened to painful stimulus, like for example she is pregnant, she is very susceptible because the woman will not only protect herself, she is also to protect the fetus. So the anxiety is heightened to the end [sic] degree.

²⁶⁹ State v. Gallegos, 104 NM 247, 719 P.2d 1268, citing Eber, The Battered Wife’s Dilemma: To Kill or To Be Killed, 32 Hasting LJ 895, 928 (1981).

²⁷⁰ *Id.*, citing State v. Walker, 40 Wash.App. 658, 700 P.2d 1168 (1985).

²⁷¹ People v. Saul, *supra*.

²⁷² People v. Bato, 348 SCRA 253, December 15, 2000.

²⁷³ People v. Maquiling, 368 Phil. 169, June 21, 1999; People v. Discalsota, GR No. 136892, April 11, 2002.

Q But in terms of the gravity of the disorder, Mr. Witness, how do you classify?

A We classify the disorder as [acute], or chronic or delayed or [a]typical.

Q Can you please describe this pre[-]classification you called delayed or [atypical]?

A The acute is the one that usually require only one battering and the individual will manifest now a severe emotional instability, higher irritability remorse, restlessness, and fear and probably in most [acute] cases the first thing will be happened to the individual will be thinking of suicide.

Q And in chronic cases, Mr. Witness?

A The chronic cases is this repetitious battering, repetitious maltreatment, any prolonged, it is longer than six (6) months. The [acute] is only the first day to six (6) months. After this six (6) months you become chronic. It is stated in the book specifically that after six (6) months is chronic. The [a]typical one is the repetitious battering but the individual who is abnormal and then become normal. This is how you get neurosis from neurotic personality of these cases of post[t]raumatic stress disorder.”

Answering the questions propounded by the trial judge, the expert witness clarified further:

“Q But just the same[,] neurosis especially on battered woman syndrome x x x affects x x x his or her mental capacity?

A Yes, your Honor.

Q As you were saying[,] it x x x obfuscated her rationality?

A Of course obfuscated.”

In sum, the cyclical nature and the severity of the violence inflicted upon appellant resulted in “cumulative provocation which broke down her psychological resistance and natural self-control,” “psychological paralysis,” and “difficulty in concentrating or impairment of memory.”

Based on the explanations of the expert witnesses, such manifestations were analogous to an illness that diminished the exercise by appellant of her will power without, however, depriving her of consciousness of her acts. There was, thus, a resulting diminution of her freedom of action, intelligence or intent. Pursuant to paragraphs 9²⁷⁴ and 10²⁷⁵ of Article 13 of the Revised Penal Code, this circumstance should be taken in her favor and considered as a mitigating factor.²⁷⁶

In addition, we also find in favor of appellant the extenuating circumstance of having acted upon an impulse so powerful as to have naturally produced passion and obfuscation. It has been held that this state of mind is present when a crime is committed as a result of an uncontrollable burst of passion provoked by prior unjust or improper acts or by a legitimate stimulus so powerful as to overcome reason.²⁷⁷ To appreciate this circumstance, the following requisites should concur: (1) there is an act, both unlawful and sufficient to produce such a condition of mind; and (2) this act is not far removed from the commission of the crime by a considerable length of time, during which the accused might recover her normal equanimity.²⁷⁸

Here, an acute battering incident, wherein Ben Genosa was the unlawful aggressor, preceded his being killed by Marivic. He had further threatened to kill her while dragging her by the neck towards a cabinet in which he had

²⁷⁴ “Art. 13. *Mitigating Circumstances.* — The following are mitigating circumstances:
x x x
“9. Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of the consciousness of his acts.”

²⁷⁵ “10. And, finally, any other circumstances of a similar nature and analogous to those above mentioned.”

²⁷⁶ See *People v. Javier*, 370 Phil. 596, July 28, 1999; *People v. Amit*, 82 Phil. 820, February 15, 1949; *People v. Francisco*, 78 Phil. 694, July 16, 1947; *People v. Balneg*, 79 Phil. 805, January 9, 1948.

²⁷⁷ *People v. Lobino*, 375 Phil. 1065, October 28, 1999; *People v. Valles*, 334 Phil. 763, January 28, 1997.

²⁷⁸ I Reyes, *The Revised Penal Code*, p. 272 (1998).

kept a gun. It should also be recalled that she was eight months pregnant at the time. The attempt on her life was likewise on that of her fetus.²⁷⁹ His abusive and violent acts, an aggression which was directed at the lives of both Marivic and her [fetus], naturally produced passion and obfuscation overcoming her reason. Even though she was able to retreat to a separate room, her emotional and mental state continued. According to her, she felt her blood pressure rise; she was filled with feelings of self-pity and of fear that she and her baby were about to die. In a fit of indignation, she pried open the cabinet drawer where Ben kept a gun, then she took the weapon and used it to shoot him.

The confluence of these events brings us to the conclusion that there was no considerable period of time within which Marivic could have recovered her normal equanimity. Helpful is Dr. Pajarillo's testimony²⁸⁰ that with "neurotic anxiety" -- a psychological effect on a victim of "overwhelming brutality [or] trauma" -- the victim relives the beating or trauma as if it were real, although she is not actually being beaten at the time. She cannot control "re-experiencing the whole thing, the most vicious and the trauma that she suffered." She thinks "of nothing but the suffering." Such reliving which is beyond the control of a person under similar circumstances, must have been what Marivic experienced during the brief time interval and prevented her from recovering her normal equanimity. Accordingly, she should further be credited with the mitigating circumstance of passion and obfuscation.

It should be clarified that these two circumstances -- psychological paralysis as well as passion and obfuscation - - did not arise from the same set of facts.

On the one hand, the first circumstance arose from the cyclical nature and the severity of the battery inflicted by the batterer-spouse upon appellant. That is, the repeated beatings over a period of time resulted in her psychological paralysis, which was analogous to an illness diminishing the exercise of her will power without depriving her of consciousness of her acts.

The second circumstance, on the other hand, resulted from the violent aggression he had inflicted on her prior to the killing. That the incident occurred when she was eight months pregnant with their child was deemed by her as an attempt not only on her life, but likewise on that of [the fetus]. Such perception naturally produced passion and obfuscation on her part.

x x x

Epilogue

Being a novel concept in our jurisprudence, the battered woman syndrome was neither easy nor simple to analyze and recognize vis-à-vis the given set of facts in the present case. The Court agonized on how to apply the theory as a modern-day reality. It took great effort beyond the normal manner in which decisions are made -- on the basis of existing law and jurisprudence applicable to the proven facts. To give a just and proper resolution of the case, it endeavored to take a good look at studies conducted here and abroad in order to understand the intricacies of the syndrome and the distinct personality of the chronically abused person. Certainly, the Court has learned much. And definitely, the solicitor general and appellant's counsel, Atty. Katrina Legarda, have helped it in such learning process.

While our hearts empathize with recurrently battered persons, we can only work within the limits of law, jurisprudence and given facts. We cannot make or invent them. Neither can we amend the Revised Penal Code. Only Congress, in its wisdom, may do so.

The Court, however, is not discounting the possibility of self-defense arising from the battered woman syndrome. We now sum up our main points. *First*, each of the phases of the cycle of violence must be proven to have characterized at least two battering episodes between the appellant 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 an imminent harm from her batterer and an honest belief that she needed to use force in order to save her life. *Third*, at the time of the killing, the batterer must have posed probable -- not necessarily

²⁷⁹ According to Dr. Lenore Walker, batterers commonly "escalate their abusiveness" when their wives are pregnant.

²⁸⁰ *Id.*, pp. 17-18.

immediate and actual -- grave harm to the accused, based on the history of violence perpetrated by the former against the latter. Taken altogether, these circumstances could satisfy the requisites of self-defense. Under the existing facts of the present case, however, not all of these elements were duly established.

PART VI. Acute Stress Disorder and Post Traumatic Stress Disorder

A. Excerpts from a Memorandum of Appeal based on Department of Justice Memorandum Circular No. 3 dated 1 April 1997 discussing Acute Stress Disorder

“Complainant’s state was medically diagnosed by a doctor as manifestations of the syndrome of acute stress disorder. As testified by the doctor, a person suffering from said syndrome would experience the following, “first, is the exposure or experience of threat or actual danger to one’s life, or serious injury” which in this case is rape. “Second, there is reaction on the part of the client which is fear or horror or helplessness” as can be easily gleaned from her initial reactions.

1. Private complainant was diagnosed to be suffering from Acute Stress Disorder, which, in the case of females is usually caused by rape.

“This is very similar to what soldiers experience after combat. The components of this syndrome are:

First is exposure or experience of threat or actual danger to one’s life, or serious injury;

Second is, there is a reaction on the part of the client. She has fear or horror or helplessness.

Next, the second component is, re-experiencing traumatic experience in terms of intrusive thoughts or recollection that intrude upon the client;

The third component of that syndrome is the effort to avoid the cue that would trigger the memory or the experience;

And then, the fourth component, this is the hyper arousal state. Under this we can have automatic response. We call it automatic response where you can have increased heart rate, difficulty sleeping. You can have irritability or undue anger.” (Testimony of the doctor)

B. Excerpts from “Psychological trauma of Sex Trafficking Victims” by Ma. Rosanna E. de Guzman discussing acute stress disorder and post traumatic stress disorder²⁸¹

“1. Acute Stress Disorder

The essential features of *Acute Stress Disorder* (Appendix 1) is the development of characteristic anxiety, dissociative, and other symptoms that occurs within 1 month after exposure to an extreme traumatic stressor. As a response to the traumatic event, the individual develops dissociative symptoms: a subjective sense of numbing, detachment or absence of emotional responsiveness; a reduction of awareness of his/ her surroundings; derealization; depersonalization and dissociative amnesia. Following the trauma, the traumatic event is

²⁸¹ Ma. Rosanna E. de Guzman, M.D., F.P.P.A., Women’s Desk, Philippine General Hospital, Department of Psychiatry and Behavioral Medicine, University of the Philippine – College of Medicine; This paper was provided as a hand out in the EnGendeRights-sponsored Paralegal Training Module Framework-Setting, July 14-15, 2005, Sulo Hotel, Diliman, Quezon City.

persistently experienced, and the individual displays marked avoidance of stimuli that may arouse recollections of the trauma and has marked symptoms of anxiety or increased arousal. These may be accompanied with associated symptoms of despair and hopelessness. Survivors may have painful guilt feelings about having survived or about the things they had to do to survive, e.g. giving in to the perpetrator. They are at an increased risk for the development of Post-Traumatic Disorder and the other mental disorders, *Mood Disorders*, *Dissociative Disorders*, *Adjustment Disorders*, and *Schizophrenia and Psychotic Disorders*, which may develop after the trauma.

a) The person has been exposed to a traumatic event in which both of the following were present:

- i) the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others.
- ii) the person's response involved intense fear, helplessness, or horror

b) Either while experiencing or after experiencing the distressing event, the individual has three (or more) of the following symptoms:

- i) a subjective sense of numbing, detachment, or absence of emotional responsiveness
- ii) a reduction in awareness of his or her surroundings (e.g. being in a daze)
- iii) derealization (experience the world as unreal or dreamlike)
- iv) depersonalization (feeling detached from their bodies)
- v) dissociative amnesia (having increasing difficulty recalling specific details of the traumatic event)

c) The traumatic event is persistently reexperienced in at least one of the following ways; recurrent images, thoughts, dreams, illusions, flashback episodes, or a sense of reliving the experience; or distress on exposure to reminders of the traumatic event.

d) Marked avoidance of stimuli that arouse recollections of the trauma (e.g. thoughts, feelings, conversations, activities, places, and people).

e) Marked symptoms of anxiety or increased arousal (e.g. difficulty sleeping, response, and motor restlessness).

f) The disturbances causes clinically significant distress or impairment in social, occupational, or other important areas of functioning or impairs the individual's ability to pursue some necessary task, such as obtaining necessary assistance or mobilizing personal resources by telling family members about the traumatic experience.

g) The disturbance lasts for a minimum o 2 days and a maximum of 4 weeks and occurs within 4 weeks of the traumatic event.

2. Post-traumatic Stress Disorder

The symptoms of *Post-Traumatic Stress Disorder* can be categorized into hyperarousal symptoms, intrusive symptoms and constrictive symptoms.²⁸² The development of these characteristic symptoms follow exposure to an extreme traumatic stressor as rape involving direct personal experience of the event that involves actual or threatened death or serious injury, and/or threat to one's physical integrity. Hyperarousal symptoms reflect the persistent expectation of danger where the rape victim startles easily, reacts irritably to small provocation, and sleeps poorly. Intrusion symptoms occur when the rape victim reexperiences the event as though it was continually recurring in the present with flashbacks and nightmares. Constrictive symptoms manifest as numbing of thoughts and memory and restriction of their lives. All these are powerful emotions produced by a powerful disruption in the rape victim's ordinary life. Unless these emotions are handled properly, they could lead to long-

²⁸² Herman, J.L., *Trauma and Recovery: From Domestic Abuse to Political Terror*, Harper Collins Publisher, 1992, pp. 35 – 40.

standing disability and personality difficulty. Emotional consequences of severe stress and psychological trauma include: depression, anxiety, self-medication through alcohol and drugs, eating disorders and suicide. Rape survivors are 9 times as likely to attempt suicide and suffer severe depression as non-victims.

Thus, law enforcement officers and hospital staff personnel who are the first professionals with whom the victims interact after the crime must be able to cope with the emotional difficulty of dealing with victims of sexual violence. It is imperative that those concerned impress upon the victims that he/she is concerned not only with the arrest and conviction of the offenders but also with the victim's welfare. That is why the first step, when interviewing the victim, is the most crucial one. It is only through the victim that one can elicit the information necessary to complete and analysis of the crime. Therefore, it is essential for the investigator to establish rapport with the victims through a professional and empathic approach to overcome her feelings of fear, guilt, and anger.²⁸³ For it is critical to both the well-being of the victims and to the criminal investigation that she be able to successfully resolve the emotional turmoil being experienced and be able to go through the whole process. If the victim is to proceed to the phase of recovery, the most important accomplishment is to regain control in her life and to establish a reconnection with the world."

a) The person has been exposed to a traumatic event in which both of the following are present:

- i) the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others
- ii) the person's response involved intense fear, helplessness, or horror

b) The traumatic event is persistently reexperienced in one (or more) of the following ways:

- i) Recurrent and intrusive distressing recollections of the event, including images, thoughts, or perceptions
- ii) Recurrent distressing dreams of the event
- iii) Acting or feeling as if the traumatic event were recurring (includes a sense of reliving the experience, illusions, hallucinations, and dissociative flashback episodes, including those that occur on awakening or when intoxicated)
- iv) Intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event
- v) Physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event

c) Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (not present before the trauma), as indicated by three (or more) of the following:

- i) Efforts to avoid thoughts, feelings, or conversations associated with the trauma
- ii) Efforts to avoid activities, places, or people that arouse recollections of the trauma
- iii) Inability to recall an important aspect of the trauma
- iv) Markedly diminished interest or participation in significant activities
- v) Feeling of detachment or estrangement from others
- vi) Restricted range of affect (e.g. unable to have love feelings)
- vii) Sense of foreshortened future (e.g. does not expect to have a career, marriage, children, or a normal life span)

d) Persistent symptoms of increased arousal (not present before the trauma), as indicated by two (or more) of the following):

- i) Difficulty falling asleep
- ii) Irritability or outbursts of anger

²⁸³ Hazelwood R.R. and Burgess A., ed., Practical Aspects of Rape Investigation: A Multidisciplinary Approach, CRC Press, 1995, pp. 140 – 145.

- iii) Difficulty concentrating
- iv) Hypervigilance
- v) Exaggerated startle response

e) Duration of disturbance (symptoms in Criteria B, C, and D) is more than 1 month.

f) The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Specify if:

Acute: if duration of symptoms is less than 3 months

Chronic: if duration of symptoms is 3 months or more

Specify if:

With delayed onset: if onset of symptoms is at least 6 months after the stressor

CHAPTER XVI

PARALEGAL SKILLS

A. Feminist Counseling on VAWC

Core messages of the topic:

Forms of VAW

- Effects on mental health and reproductive health
- Continuum of VAW
- Root causes of VAW
- Certain societal conditions and beliefs encourage violence/relation of gender roles and VAW
- Certain responses from the community perpetuate violence
- Manifestations of abusive behavior
 - internalization of traditional male role
 - low self-esteem/feelings of insecurity
 - extreme jealousy/possessiveness
 - learned abusive behavior
- Feminist counseling methods on VAW

A.1. Feminist Counseling (lecture given by Teresa Fernandez)²⁸⁴

1. Feminism

- An analysis of the role of sexism in society and plan for change
- It is based on women's experience of the world
- Social movement committed to the elimination of oppression and exploitation of women
- A movement of informed women (and men) with critical thinking skills – effectively fortifying advocates and advancing the struggle to eliminate sexism, injustices and inequality in society.

2. Feminist Counseling:

- Looks at the problem of women as not only coming from herself but also in the context of the political, social, economic and cultural environment (it is a framework, not just a technique)
 - Several techniques include: psychoanalysis, transactional analysis, neuro-linguistic program, Jungian-Gestalt, dream analysis, journey writing

²⁸⁴ Lecture of Teresa Fernandez, Executive Director, LIHOK PILIPINA at the EnGenderRights-sponsored Visayas Paralegal Training, Cebu City, September 13-15, 2006.

- It is a program for empowerment to help the woman regain control over her life – political, social, economic activity – to be organized as a person

3. Context:

a) Understanding some aspects of sexism in society:

Gender - It refers to the expected behaviors, dispositions, roles and positions that cultures assign to men and women. It classifies people on the basis of physiological, psychological and socio-cultural characteristics – being feminine or masculine

Aspects	Masculine	Feminine
Rules for behavior and interactions	Expected to be assertive, dominant, brave, independent	Expected to be patient, shy, helpless; Other- oriented
Relationships between men and women's roles	Income earning	Homemaking
Positions with social structure indicating where men and women belong	Public, primary	Private, Secondary

- Socially determined,
- Culturally defined;
- It can change across time and places

b) Gender Divide

Issues	Actor: Men	Actor: Women	Issues
	Arena: Workplace	Arena: Home	
	Division of Labor: Productive	Reproductive	
	Role: Income earning	Roles: Child bearing, child rearing, homemaking	
Pressure	<ul style="list-style-type: none"> • Paid /Valued • Access to: resources, presumed worth 	<ul style="list-style-type: none"> • Not paid/Not valued • Outside work is extension of their domestic functions private 	<ul style="list-style-type: none"> • Non work • Multiple burden

	Stratification: Primary	Stratification: Secondary	
	House - Trabahoan Kaon -	Services - tubig, doctor, escuelahan Kaon	
Can not cry	Access to: Independence, power, resources, position, presumed worth Priorities, Allocations	Focused on Nurturing, Care of Family members, Other- oriented	Marginalization Commodification Stereotyping
	Visibility/Sphere: Public	Visibility/Sphere: Private	
Stereotyping	<ul style="list-style-type: none"> ♦ Men engage in the world of work and politics ♦ Laws regulating transactions among people 	<ul style="list-style-type: none"> ♦ Confined to the private concerns of the family and the home ♦ Not much safeguards under the law 	Violence Internalized subordination

c) Traditional gender roles:

- Divide men and women
- Deny **men** access to the nurturing, emotive other-oriented world of domestic life
- Deny **women** access to the public world of work, achievement, independence
- Limit psychological and social potentials of human beings
- Create gender stereotypes.

d) Concepts that need to be clarified:

- **WORK** generally refers to paid work.
- **POWER**: capacity to do things or change situation; Capacity to influence people
 - Sources of power: money, education, information, guns, goons, position, relations, brute force,
 - Use of power:

Power = domination Note: this is the more familiar use of power	Power = effectiveness, liberation
Power over Power against	Power to Power with Power within

4. Violence

a) An act or state whereby pain, fear or degradation is inflicted on a person by another

b) Some forms:

Physical
Verbal
Emotional

Psychological /Mental
Sexual
Economic

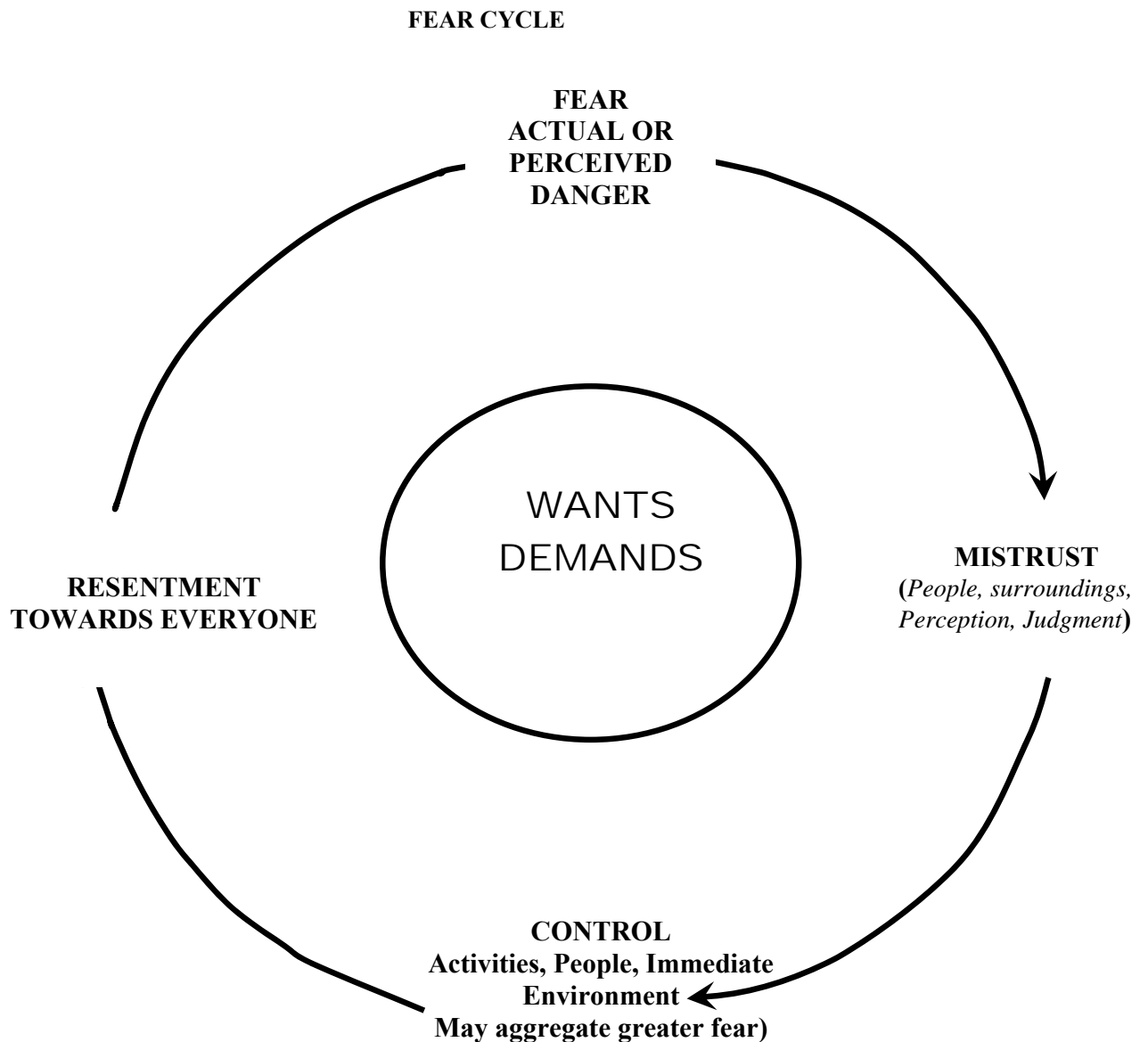
c) When violence is inflicted:

Rights violated	Injury Property destroyed/taken Freedom curtailed Safety at stake	
Feelings	Hurt, pain, fear, degradation	Takes longer to heal
Self Concept/world view changed	I am nothing I am not loved I cannot trust anyone The world is unkind I am at fault	Takes much longer time; even a lifetime

d) Violence Against Women : Abuse of women in intimate relations

- Battering
 - Domestic Violence
 - Family Violence
- Marital Rape
- Rape /Sexual abuse
- Incest
- Sexual harassment
- Sex discrimination
- Reproductive Rights Violation
- Medical abuse
- Abuse of women with physical or mental disabilities
- Ritual abuse within religious cults
- Sexual Slavery, prostitution, trafficking
- Custodial abuse

(refer to figure on “Shortening of the Cycle of Violence” under Chapter III Violence Against Women)



5. Crisis – a disruption in what is otherwise a stable state of equilibrium.

- **Maturation crisis**

- Puberty/adolescence
- Marriage
- Pregnancy
- Death

- **Situational crisis**

5.1) Some stages:

- Pre –crisis
- Traumatic event
- Post crisis: depression, denial, post traumatic stress

6. Counseling:

a) Some principles:

- The woman's safety is always the first priority
- Counseling is used to empower, not control the woman and her significant others
- Helps the woman confront her own internalized sexism and assumptions of powerlessness and be liberated from them
- It is mutual, participatory and client-based
- It is rooted in the socio-political contextual understanding and does not confine itself to scrutiny of purely individual history and dynamics

b) Intervenor:

- Provide support
- Ensure her safety
- Tell her you understand; she is not alone
- Help her go back to the pre crisis stage
- Listening
- Help her define the problem; re-define; managing/resolving the problem
- Do not offer solutions
- Help explore options

c) Characteristic of Good Attending/Listening Skills

1. Good Eye Contact
2. Good Posture
3. Close physical distance
4. Good verbal quality

d) General Guidelines for effective listening

- Provide opportunity for speaker to communicate by talking less yourself.
- Focus on speaker and demonstrate your interest in her through non-verbal ones.
- Listen for what is really being said. I.e. – what her real message is. Listen for feelings.
- Effective active listening is not possible in every situation. It requires concentration, freedom from distraction, openness and honesty.
- In your responses
 - Offer understanding not solutions
 - Avoid shallow response

B. Affidavit-Making

AFFIDAVIT is a document that states something about a certain event.

Republic of the Philippines) Quezon City	} S.S. }	Place of execution Scilicet
AFFIDAVIT -- Title of the document		
I, Angel Locsin, of legal age, married, Filipino, and a resident of 123 Abad Santos Street, Quezon City, after having been sworn in accordance with law, do hereby depose and state that:		} personal circumstances of the affiant
My husband is Piolo Pascual, of legal age, and a resident of 123 Abad Santos Street, Quezon City;		} Body of the affidavit
We were married at the Quezon City Hall on May 31, 1990 before Judge Jaime Salazar of Quezon City;		
We have two children, namely, Corazon who was born on January 23, 2002 and Angelica, born on March 30, 2005;		} Last paragraph of the body
This statement is executed in order to attest to the truth of the foregoing and for the purpose of filing a complaint for violence against my husband .		
IN WITNESS WHEREOF, I have hereunto affixed my signature this __ day of __, 200__, in Quezon City.		} Signature
Angel Locsin Affiant		
SUBSCRIBED AND SWORN TO before me this __ day of __, 200__, affiant exhibiting to me her Community Tax Certificate No. 123456 issued on ____ in ____.		} Jurat
Notary Public Until 31December 2008 IBP PTR		
Doc No : 45 Page No: 19 Book No: 5 Series of 2008		

²⁸⁵ This section was adapted from the Manual for Paralegals: Violence Against Women, SALIGAN

1. Place of execution- found in the uppermost left corner of the document.

Ex. *Republic of the Philippines)*
Quezon City) S.S.

2. Scilicet is the “SS” -written on the space beside the place of execution; means “*in particular*”.

3. Title of the document-written at the center after the space where the place of execution is written.

4. Personal circumstances of the affiant

I, Angel Locsin, of legal age, married, Filipino, and a resident of 123 Abad Santos Street, Quezon City, after having been sworn in accordance with law, do hereby depose and state that:

- The personal circumstances of the affiant are written on the first part of the affidavit.
- The second part of the paragraph states that the affiant freely and willfully executed the affidavit.

5. Body of the affidavit

My husband is Piolo Pascual, of legal age, and a resident of 123 Abad Santos Street, Quezon City;

We were married at the Quezon City Hall on May 31, 1990 before Judge Jaime Salazar of Quezon City;

We have two children, namely, Corazon who was born on January 23, 2002 and Angelica, born on March 30, 2005;

- After the personal circumstances, the affiant then states the allegations that are related to the particular event which is being related.
- The allegations must be of the affiant’s personal knowledge.
- Each paragraph/number should contain one idea or point.

6. Last paragraph of the body

This statement is executed in order to attest to the truth of the foregoing and for the purpose of filing a complaint for violence against my husband .

- The affiant states the reason/s for executing the affidavit.

7. Signature

IN WITNESS WHEREOF, I have hereunto affixed my signature this ____ day of _____, 200__, in Quezon City.

Angel Locsin
Affiant

8. Jurat

SUBSCRIBED AND SWORN TO before me this ___ day of ___, 200 ___, affiant exhibiting to me her Community Tax Certificate No. 123456 issued on _____ in _____.

*Notary Public
Until 31 December 2008
IBP PTR*

*Doc No : 45
Page No: 19
Book No: 5
Series of 2008*

- Certification of an official who is authorized to administer oaths that the statement was signed and subscribed before him/her.

C. Case Handling, Legal Interview and VAWC Referral System

Core messages of the topic:

- **Case handling and legal interview**
 - Importance of filing cases to deter VAWC
- **Workshop Discussion on VAWC Referral System**
 - Importance of collaboration with *barangays*, DSWD/local social welfare office, Police, medico-legal, local NGOs
 - Importance of knowing the contact numbers of crisis centers, social welfare offices, police offices (e.g., Women's Crisis & Child Protection Center of Camp Crame; CPU Net; Women's Crisis Center)
 - Importance of providing counseling on issues related to VAW such as pregnancy, early/abusive marriage, shelter, continuous education of girl-children survivors of VAW and addressing their self-image issues, if any;
 - Custody issues

1. Workshop on VAWC Referral System

a) Process:

Participants will be asked to group together per province. They will be asked to work on the following questions, write their answers in acetates to be presented at the plenary.

i) Levelling-off questions:

Please share with your group the specific and current activities, measures, programs and policies made/created to address VAWC and its related SRH consequences in your respective areas?

ii) Deepening questions:

What are your roles vis-à-vis each other? (For example as an MSWDO, how do I relate with the police, the judge, etc.) How do you link up with each other in your work? What mechanisms, activities, programs would strengthen/improve that linkage? What are the strengths, weaknesses, opportunities and threats (SWOT) in the mechanisms built to address VAWC and SRH consequences? Cite specific cases for each criterion.

iii) Participants will be asked to remain in their previous groupings.

- In the area of indicators for gender and development, including but not limited to maternal mortality rate, contraceptive prevalence use, VAW incidence rate, infant mortality rate, what are the specific steps you can do/initiate/spearhead to attain high quality of health of women and children?
- Please share with one another your “best practices” and “lessons learned” in the process of addressing VAWC in your area. Be sure to discuss the worst practices that should be avoided.
- List down the plans to be done after this training and ways to follow through.

iv) Plenary Reporting/Discussion

<p style="text-align: center;">CHAPTER XVII</p> <p style="text-align: center;">MEDICAL INTERVENTIONS</p>
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A. Emergency Contraception

1. Emergency Contraceptive Pills (ECPs)

Regimen

a) Specifically dedicated ECPs

- progestin; estrogen free; e.g. levonorgestrel
- 1 pill (1.5 mg)/2 pills (750 micrograms each) up to 5 days

b) Oral Contraceptive Pill (estrogen-progestin)

- 2 pills + 2 pills after 12 hours = High-Dose Pills (Femenal, Nordiol, Olygnon, Ovidon, Ovral)
- 4 pills + 4 pills after 12 hours = Low-Dose Pills (Lo-Gentrol, Microgynon 30, Nordette, Rigevidon 21+7, Trust, Lady)

2. IUDs

- within 7 days (PATH, 2004); up to 5 days (WHO 1998)

B. Post Exposure Prophylaxis (PEP) to Prevent HIV transmission

- Antiretroviral drugs used to treat exposure to HIV and prevent infection
- Must be started within 72 hours after exposure to be effective and must be continued for 28 days. PEP reduces the risk of infection by over 90%
- A baseline blood test can be done immediately; followed by further tests at 3 months and 6 months
- Antiretroviral treatment possibly AZT and 3TC for 28 days if testing negative for HIV & having reported the rape within 72 hours.

C. Prevention and Management of Abortion and its Complications (PMAC) (lecture of Anamabel U. Garcia)²⁸⁶

1. Scope of the Problem

- Abortion and its complications has been consistently the number 3 leading cause of hospital discharge in 5 years (1994-1999)
- 300,000 to 500,000 induced abortions are done clandestinely a year.

²⁸⁶ Lecture of Anamabel U. Garcia (Coordinator, Counseling Program, Women's Crisis Center) at the Paralegal Training Module Framework-Setting, July 14-15, 2005, Sulo Hotel, Diliman, Quezon City

- 46 induced abortions done every hour in the country
- 1 in every 5 women ends up being hospitalized due to complications
- Women who have spontaneous abortion can also develop complications and end up being hospitalized.
- Existing health services available for women who have had abortion are limited to the medical treatment of the abortion complications.
- There are no policies and guidelines on PMAC and that women who had induced abortion are discriminated against when they are hospitalized.

2. Goal:

- To improve the health care services for the prevention and management of abortion and its complications in the Philippines.

3. Objectives:

- To strengthen the capability of the country's health care system in the prevention and management of abortion and its complications.
- To improve the accessibility of quality post-abortion care services to all women of reproductive age in the country.
- To address the health and medical care needs of many Filipino women who have had abortion, regardless of cause.
- Women who have abortion are given quality and humane post-abortion care services by competent, compassionate, objective and non-judgmental service providers in a well-equipped institution, complimented by a supportive environment.
- Women with threatened abortion are also given care to prevent them from progressing into a complete abortion.
- Preventive measures established will ensure that future pregnancies are properly timed, thereby excluding abortion.

4. Key Elements of PMAC

- Prevention and treatment of abortion and its complications
- Counseling
- Linkages between PMAC and other reproductive health services

5. Management for Abortion Complications shall include:

- An initial assessment to confirm the presence of complications
- Medical evaluation (brief history, limited physical and pelvic examinations)
- Talking with the patient regarding her medical condition and the treatment plan where initial assessment/ evaluation was conducted
- Stabilization of emergency conditions and treatment of any complications (both complications present before treatment and complications that occur during or after the treatment procedure)
- Conduct of appropriate procedures, specifically uterine evacuation to remove products of conception

- Health education

6. Coverage and Scope of PMAC

Activities to be implemented include the following:

- a) Training of Service Providers on the prevention and management of abortion and its complications, including counseling
- b) upgrading of health facilities in terms of minor renovations and provisions of needed equipment and instruments
- c) strengthening of linkages of appropriate services within the hospital facility with the aim of providing a holistic approach to quality care for PMAC
- d) establishment of an effective referral system to link the community with the appropriate health care facilities for PMAC service
- e) ensuring the availability of necessary supplies and drugs
- f) provision of PMAC service in the health facilities

CHAPTER XVIII

WOMEN'S POLITICAL PARTICIPATION

A. Political Participation of Indigenous Women in the Cordillera (lecture given by Atty. Ruth Bawayan)²⁸⁷

We hold these truths to be self-evident: that all men and women are created equal.

Elizabeth Cady Stanton (1815 - 1902) U.S. campaigner for women's right to suffrage.

I do not wish them to have power over men; but over themselves.

Mary Wollstonecraft (1759 - 1797)

British writer and feminist. Referring to women.

A Vindication of the Rights of Women

1. Outline:

- The Politics of the Community
- The Rights of Women in Political Exercise
- The Political Experience in the Cordillera
- Salient Points in Client Advocacy

2. Development of Women's rights

- UN CEDAW (1981)
- GENDER VIOLENCE AS HUMAN RIGHTS ISSUE
- 1987 Constitution-Fundamental equality between women and men, cites women's role in nation building (Art. II, Sec. 14), recognizes women's maternal and economic role (Art. XIII, Sec.14) and women's special health needs (Art. XIII, Sec. 11)
- RA 6949 – March 8 as National Women's Day

3. Special Laws

i) The Philippine Plan for Gender- Responsive Development (1995-2025) provides for institutionalizing GAD in the whole government budget.

ii) RA 7192

- Women of legal age, regardless of civil status, shall have the capacity to act and enter into contracts which shall in every respect be equal to that of men under similar circumstances

²⁸⁷ Lecture given by Atty. Ruth Bawayan of Oallares-Cawed Law Offices at the EnGendeRights-sponsored Ifugao and Mountain Province Paralegal Training, July 26-27, Baguio City

- In all contractual situations where married have the capacity to act, married women shall have equal rights
- Equal membership in clubs devoted to public purposes
- Admission to military schools
- Voluntary PAGIBIG, GSIS, and SSS coverage
- Instructs government bodies to set aside up to 30 percent of their ODA funds for GAD activities.

4. Women in the Cordilleras

a) Issues on Women's Political Participation in the Cordillera Administrative Region (CAR):

Number of Congresswomen in CAR
 Number of Board Members
 Number of women mayors
 Number of local councilors
 Number of women in the judiciary
 Number of women in prosecutor's service

b) Experience of Women in the Cordilleras

- Only 30 percent of *Sanguniang Panlalawigan* has been constituted with women's representation.
- Women are able to lobby and secure seats in Municipal Fisheries and Aquatic Resources Management Councils and in tripartite councils affecting mining issues, but this is more the exception than the rule.
- Regional Development Councils have generally placed women on the social issue component.
- Women's commissions have been established but those appointed are often wives or relatives of local officials.
- Members of the *barangay* and other local leaders are not aware of legislations which protect women.
- Ten percent of the composition of the Philippine National Police (PNP) is allocated to women but the women's desks are under resourced.
- Members of the judiciary are mostly men, as are those who work for the Prosecution service.
- Financial costs of accessing justice at all levels and lack of information on available remedies.

c) Experience of Women in the Cordillera Political Participation

i) Chico Dam Experience

- Involvement of Bontoc and Kalinga women in dispute resolution and preservation of land for the indigenous peoples in what was supposed to be the largest dam in Asia but displacing hundreds of Indigenous People families and alienating a culture.

ii) Managing Peace and Order

- Involvement of INDIGENOUS WOMEN in preventing petty quarrels, disruption of public peace, alcoholism, delinquency by volunteering to do 'community watch', imposing communal curfew.

iii) Natural Resource Management

- Involvement of INDIGENOUS WOMEN in preventing armed conflict, inter-tribal territorial boundary disputes, activities within indigenous territory using destructive methods for utilization of natural resource i.e. water, trees.

iv) The Mining Experience

- Involvement of Bontoc, Kalinga, Sagada women in preventing multinational companies from pursuing mining activities within indigenous territory and using destructive methods for extraction of minerals.

5. Salient Points for Advocacy

a) Promote Gender Sensitivity

- Maintaining professionalism of service
- Securing absence of discrimination
- Using politically correct language

b) Promote Gender Participation

- Providing information to women.
- Asserting choices for women.
- Being supportive to qualified women in local politics.

c) Promote Gender – Responsive Governance

- Ensuring political visibility of women.
- Knowing women's issues and concerns relative to locale.
- Capacitating women leaders.

6. Political Participation of Indigenous Women in the Cordilleras

"So long as a woman is dependent on a man for her self-image or her self-esteem she will remain without any sense of her own worth—can never be a fully realized human being."

(Attributed to Eleanor Perry (1915 - 1981) U.S. screenwriter)

"The true republic: men their rights and nothing more; women their rights and nothing less."

Susan B. Anthony (1820 - 1906) U.S. social reformer, 1868. Motto printed on the front of her newspaper, The Revolution (1868-1870).

CHAPTER XIX

GENDER AND DEVELOPMENT

PART I - GENDER AND DEVELOPMENT BUDGET

A. Legal Basis for GAD Budget Policy

a) Section 27 of the 1995 General Appropriations Act (and so forth):

“...which directs all government agencies, local government units, government-owned and controlled corporations, state colleges and universities and all instrumentalities of government to allocate at least 5 percent of their annual budgets (or Internal Revenue Allocation for LGUs) for priority programs and projects or activities that address gender issues or women concerns, in accordance with RA 7192 or the Women in Development and Nation Building Act.”

b) DBM Local Budget Memorandum No. 2003-42 which directs local government units to mobilize resources to mainstream and implement gender and development programs using the 5 percent development fund

B. Sources of the GAD Fund

- At least 5% of their regular annual budgets
 - or Internal Revenue Allocation for LGUs
 - = 40% share or formula based on population & land area;
 - = 40% from natural resources
- 30% of Official Development Assistance (ODA) of LGU to fund GAD programs, projects and
- activities (RA 7192)
- Countryside Development Fund (CDF) of members of the House of Representatives
- The asset privatization fund

C. Five Percent (5%) of the Annual Budget Strategy:

- Is a minimum
 - To make agencies think of women
 - To make agencies conscious in encouraging women's participation

D. Examples of Usage of the GAD Budget

- Personal services
- salary of workers directly engaged in GAD programs, projects and activities
- Maintenance and other operating expenses for managing
 - a women's shelter
 - a women's health project
 - training of women in non-traditional occupations
 - training of field workers in GAD

- Building of infrastructure such as women's shelters or training centers and purchase of equipment for the same.

PART II – LOCAL GOVERNANCE

A. Delivery of Basic Services by Local Government Units, Sec. 17 on Basic services and facilities

- Health services – e.g. implementation of programs and projects on
 - primary health care
 - maternal and child care
 - communicable and non-communicable disease control services
 - access to secondary and tertiary health services
 - purchase of medicines, medical supplies, and equipment needed to carry out services
- Social welfare services including:
 - child & youth welfare
 - women's welfare
 - community-based rehabilitation of vagrants, children in conflict with the law
 - fertility management

B. Appointive Local Officials

	Barangay	Municipality	City	Province
Health Officer	none	X	X	X
Planning & Development Coordinator	none	X	X	X
Population Officer (optional)	none	X	X	X
Soc. Services & Development Officer	none	X (optional)	X	X

C. Local Special Bodies

- Local Development Councils
- Health Board
- School Board

1. Local Development Councils

a) Constitution

- Barangay, Municipal, City, Province
- Formulate local development plan/assist the *Sanggunian* in the direction and coordination of development efforts
- Members:
 - Chair: Local Chief Executive;
 - Councilor-chairperson of appropriations committee;
 - Congressional representative/or the representative;
 - Barangay: Sanggunian members
 - Municipal/City: all *Punong Barangays*
 - Provincial: all mayors;
 - Reps of NGOs/POs/duly registered & elected (minimum of $\frac{1}{4}$ of fully organized council)

b) Executive Committee of the Local Development Council

- Local chief executive
- Chair of committee on appropriations of *Sanggunian*
- President of city/municipal league of *Barangays*
- Representative of non-government organizations (NGOs/PO who is a member of the council)

c) Examples of people's councils

- San Jose Delmonte, Bulacan
- Naga People's Council
- Quezon City Chamber of NGO-PO
- Davao
- Cebu

<p style="text-align: center;">CHAPTER XX</p> <p style="text-align: center;">MILLENIUM DEVELOPMENT GOALS</p>
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A. Background on the Millennium Development Goals (MDGs)

In 2000, representatives of 189 nations gathered at the UN for a historic Millenium Summit and adopted the MDGs. Achieving them by the target date of 2015.

B. Eight Goals and 18 Targets to combat:

- poverty
- hunger
- disease
- discrimination vs. women
- degradation of land
- illiteracy

C. Goals and Targets

Goal 1. Eradicate extreme poverty and hunger

Goal 2. Achieve universal primary education

Goal 3. Promote gender equality and empower women

Target 4. Eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015

Goal 4. Reduce child mortality.

Target 5. Reduce by two thirds, between 1990 and 2015, the under-5 mortality rate.

Goal 5. Improve maternal health.

Target 6. Reduce by three quarters, between 1990 and 2015, the maternal mortality ratio

Goal 6. Combat HIV/AIDS, malaria and other diseases.

Target 7. Have halted by 2015 and begun to reverse the spread of HIV/AIDS

Target 8. Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases

Goal 7. Ensure environmental sustainability

Goal 8. Develop a global partnership for development.

CHAPTER XXI

ANNEXES

SAMPLE AFFIDAVIT

Republic of the Philippines)
_____ *City) S.S.*

Affidavit

I, Angel Locsin, of legal age, married, Filipino, and a resident of 123 Abad Santos Street, Quezon City, after having been sworn in accordance with law, do hereby depose and state that:

1. My husband is Piolo Pascual, of legal age, and a resident of 123 Abad Santos Street, Quezon City;
2. We were married at the Quezon City Hall on May 31, 1990 before Judge Rosalinda Pison of Quezon City;
3. We have two children, namely, Corazon who was born on January 23, 2002 and Angelica, born on March 30, 2005;
4. Etc...
5. This statement is executed in order to attest to the truth of the foregoing and for the purpose of filing a complaint for violence against my husband .

IN WITNESS WHEREOF, I have hereunto affixed my signature this ____ day of _____, 200__, in Quezon City.

Angel Locsin
Affiant

SUBSCRIBED AND SWORN TO before me this __ day of ____, 200__, affiant exhibiting to me her Community Tax Certificate No. 123456 issued on _____ in _____.

Notary Public
Until 31 December 2008
IBP PTR

Doc No : 45
Page No: 19
Book No: 5
Series of 2008

SAMPLE COMPLAINT-AFFIDAVIT

REPUBLIC OF THE PHILIPPINES)
QUEZON CITY) S. S.

COMPLAINT-AFFIDAVIT

I, _____, of legal age, Filipino, with residence at _____, Quezon City, after being sworn under oath in accordance with law, do hereby depose and state that:

1. I am filing a case for Violation of Sec. 5.e.3 & 5.e.4 of the Anti-Violence Against Women and Their Children Act of 2004 (RA 9262) and for Light Coercion under Art. 287 paragraph 2 of the Revised Penal Code (RPC) and Light Threat under Art. 283 of the RPC against my estranged husband _____ residing at _____, Metro Manila for threatening and coercing me;

2. I was a battered wife when my husband _____ and I were still living together--he subjected me to physical, verbal, and psychological abuse (Proof of his abuses are the **Police Report** and my **Medico-legal Certificate** attached hereto as Annexes "1" and "2", respectively). He abandoned me more than six years ago. And now, after being separated from him for more than six years, he is still threatening me and subjecting me to all kinds of psychological abuse. *He is threatening to deprive me of my legal right to my land and he wants to control my ownership of a piece of land by wanting the whole property transferred only under his name instead of being placed under the rightful owners—my mother, myself, and Piolo.*

3. The house that Piolo presently lives in is located in a lot in Laguna that my mother bought but was placed in a deed of sale under three names as owners—my mother, myself and my husband Piolo (the **Deed of Sale** is attached hereto as Annex "1"). Now, after finding out that I visited Laguna last November 2007 to have the lot subdivided into four parts—my mother, myself, Piolo, and right of way--Piolo wants to have the whole property all to himself and put it all under his name. *On November 13, 2007, he threatened me by text message that he did not want the property subdivided and that I should place the whole property under his name otherwise he will file an adultery case against me.* His text message read, as follows:

"Well...ayokong mahati yung lote...ayusin mo na lang na ilipat sa akin yung lote at kakalimutan kong mag-file ng adultery case against you..."

4. This threat and coercion falls under the crime of violence against women under Sec. 5.e.3 & 5.e.4 of RA 9262, as follows:

SEC. 5. Acts of Violence Against Women and Their Children.- The crime of violence against women and their children is committed through any of the following acts:

X x x

- e. Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical

or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

5. It is now the imperative task of this Honorable Office of the Prosecutor to uphold the interest of justice and immediately file the information for Violation of Sec. 5.e.3 & 5.e.4 of RA 9262 and for Light Coercion under Art. 287 paragraph 2 of the RPC and Light Threat under Art. 283 of the RPC against Piolo Pascual.

6. I am executing this affidavit to attest to the veracity of all the foregoing for the purpose of filing the criminal complaint for for Violation of Sec. 5.e.3 & 5.e.4 of RA 9262 and for Light Coercion under Art. 287 paragraph 2 of the RPC and Light Threat under Art. 283 of the RPC against Piolo Pascual.

In witness whereof, I have hereunto affixed my hand this ____ day of _____, 2007, at Quezon City.

Affiant

CERTIFICATION

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2007 at Quezon City.

I hereby certify that I have personally examined the affiant and that I am satisfied that she voluntarily executed and understood this counter-affidavit.

Assistant City Prosecutor

SAMPLE BARANGAY PROTECTION ORDER

BARANGAY PROTECTION ORDER

NAME OF RESPONDENT: _____
ADDRESS: _____

ORDER

_____ applied for a Barangay Protection Order (BPO) on _____, under oath stating that: _____

After having heard the application and the witnesses and evidence, the undersigned hereby issues this BPO ordering you to immediately cease and desist from causing or threatening to cause physical harm to and from harassing, annoying, telephoning, contacting or communicating with the person of _____ and/or her child/children namely:

This BPO is effective for fifteen (15) days from receipt.

VIOLATION OF THIS ORDER IS PUNISHABLE BY LAW

Punong Barangay
Date issued: _____

Copy received by: _____

Date received: _____

Served by : _____

ATTESTATION

(in case the Punong Barangay is unavailable)

I hereby attest that Punong Barangay _____ was unavailable to act on the Application for Barangay Protection Order No. _____ filed by _____ on _____ at _____ a.m./p.m. and issue such order.

Barangay Kagawad

**SAMPLE MARRIAGE CONTRACT
(MUSLIM)**

The Contract²⁸⁸

The following are extracts from the marriage contract of
Melissa Hoole and Na'eem Jeenah:



In the name of Allah, most Gracious, most Merciful
Preamble:

“And among His Signs is this that He created for you mates from among yourselves that you may dwell in tranquillity with them and He has put love and mercy between your hearts; verily in that are Signs for those who reflect” (Qur’an, Surah Al Rum, Verse 21)

We, Melissa Jane Hoole and Naeem Jeenah, agree to take each other as marriage partners on the understanding that this contract shall regulate our relationship.
Having both descended from the first single human created by Allah, we acknowledge the basic equality of all people, and especially of each other insofar as our respective rights and responsibilities in our marriage are concerned.

Marriage, we believe, involves the joining of two individuals with the purpose of forming a partnership that will combine their individual strengths, abilities, talents and skills in such a way that the result is greater than the sum of their individual characteristics.

This partnership should be based on the notion of interdependence – a mutually beneficial state where each person retains her/his own individuality and personhood, yet where the partnership and relationship are accorded great significance. It is this principle that underlies this marriage contract. While, from an Islamic perspective, it is clear that marriage is a contract or agreement between two people, it is distinguished in that it is a contract based on love. We pray that our marriage will be blessed by the Love and Mercy of Allah, and we commit ourselves to constantly striving to ensure that love and caring are as the main pillars of our relationship.

Together with love and caring, we commit ourselves to striving for a marriage characterised by mutual respect, appreciation, support, co-operation and loyalty between the spouses. These, we believe, will be essential for the success of our marriage and we commit ourselves to upholding these values as determining factors in our dealings with each other, as advised by the Qur’ān and the example of the Prophet Muhammad (s).

²⁸⁸ Courtesy of Toni Kasim of Sisters In Islam

Furthermore, we commit ourselves to a spirit of openness, trust, strong communication and mutual consultation in our relationship. We will discuss key decisions fully, taking into consideration, among others, the personal, social and economic consequences thereof.

We agree to identify mutually agreed-upon spiritual, career and psychological goals and priorities and strive towards achieving these.

Our daily interactions with each other will be guided by the spirit of fairness, dignity and justice promoted in the Qur'an and known to us in the example of the Prophet Muhammad (on whom be peace).

We will strive to ensure that our interactions with each other are in a spirit of

Love, compassion and generosity

Mutual respect and courtesy

Openness and honesty

Communicating freely and fully at all times

With a willingness to learn from each other and from others

Generously acknowledging each other's love, support and achievements

Having the humility and the courage to admit our mistakes and learn from them.

We understand marriage as a relationship that should be free from abuse, either of an emotional, physical or verbal nature. We therefore undertake to refrain totally from abusive behaviour and speech toward each other and to create an environment within which all members of our family will feel safe.

We agree that decisions will be made following a process of mutual consultation (shura) and agreement by the parties. All key decisions will be discussed fully, taking into consideration, amongst others, the social, economic and academic consequences thereof.

We agree to identify and strive proactively and fully towards achieving mutually-agreed-upon spiritual, financial, career and psychological goals and priorities, both in our individual and joint capacities.

We commit ourselves to relationship building and developing a strong and faithful marriage.

We commit ourselves to leading a healthy lifestyle regarding diet, exercise and stress reduction, and are willing to obtain medical advice and feedback from time to time as a means of ensuring and sustaining our health.

.....

Religious foundation of marriage

We commit ourselves to a life of ongoing learning and growing in understanding – of ourselves, each other, all those we interact with, all of creation, our Creator, and our religion, Islam.

We commit ourselves to creating a home environment which respects and fosters the spirit and message of Islam as upheld in the Qur'an and as demonstrated by Prophet Muhammad (on whom be peace) in his living.

Marriage rights and responsibilities

.....

Financial rights and obligations

Both of us have the right to seek and secure employment, to derive income from business or other investments, to save and invest our savings, and to develop our respective careers.

We commit ourselves to discussing from time to time, as required by our circumstances, a joint budget and financial plan that will be beneficial to our marriage, in the short and long terms.

We may retain individual bank accounts and have the right to manage and dispose of our individual finances and assets as we deem fit.

Financial responsibilities will be determined and shared in a way that is mutually agreeable and equitable depending on our respective circumstances.

Domestic Responsibilities

We agree to share domestic responsibilities. It will not be the sole duty of either spouse to maintain an attractive domestic environment or to provide meals and, in general, to maintain the household.

Social relations

We shall strive to the best of our ability, at all times, to lead a full life – one that takes cognisance of the rights of others – interacting with and contributing to the wellbeing of the various communities we are part of and to society at large.

Respect

Respect is an essential ingredient of any marriage. We will at all times endeavour to respect each other's humanity, intelligence and our family. We will thus give due and serious consideration to the words and actions of each other and other members of our family. Neither of us will have any right to physically, mentally or psychologically abuse the other, no matter what justification or rationalisation could be given for such action.

We both commit ourselves to providing a home environment where each of us is able to maintain her / his privacy.

We commit ourselves to building a respectful family environment where no disrespect is shown by any family member to another.

Sexual relations

Sexual relations will be consensual at all times and will, like all other relations in the marriage, be based on mutual trust and respect.

Polygyny

We both agree to have a monogamous marriage. Naeem agrees that he will not enter into additional polygamous marriages during the validity of this marriage.

Family obligations

We understand that, as a result of our marriage, we will both have new family structures to relate to. We commit ourselves to interacting with our respective spouse's family with respect and kindness at all times.

Any decision regarding our living with any member or members of either family or their living with us will require the explicit consent of both of us. In making such decisions, due regard shall be given to the joint and separate responsibilities that we have.

Children

Melissa accepts the responsibility for child-bearing and breastfeeding of our children. And, during this period, Naeem will be responsible for the material maintenance of the family and household.

We acknowledge that one spouse may take primary responsibility for acting as a child caregiver during the marriage, while the other spouse may assume the burden of support. Any such division of roles will be mutually-agreed to and neither partner will be treated as contributing any less to the family because of that spouse's particular role. Both parents will play an active role in our children's upbringing. We undertake to raise our children in an Islamic family environment, with Islam being the family religion and education of the children in Islam being a joint responsibility of both of us.

At the same time, we commit ourselves to the principle of religious understanding and undertake personally that we will respect, and teach our children to respect, other religious views and philosophies, both within Islam and without.

.....

Divorce and related matters

Dispute resolution procedures and the initiation of divorce proceedings

A dispute will be deemed to have resulted during the marriage if either of us declares it to be so. In the event of such a dispute arising we will first use our ability to listen, communicate and learn to find an internal solution.

Both of us agree to allow the other to express any criticism or concern freely (provided it is done respectfully). We undertake not to be dismissive of the other's concerns without first being self-critical and assessing the criticism or concern from the other's point of view.

If we realize we are at fault in any way (and we may both be partially at fault), we undertake to acknowledge our faults honestly and fully and if either of us has learnt something beneficial from the other's concerns we undertake to express our gratitude to the other for helping us see something about ourselves we might not otherwise have done.

If we are unable to resolve a dispute after reflecting, deeply engaging with each other, praying and asking our Creator for assistance, we will appoint a mutually acceptable facilitator or facilitators to mediate and possibly arbitrate (if mediation fails) in the dispute. Relationship-building and counseling may form part of this process.

If the dispute is of a nature that could lead to the termination of the marriage and counseling has not helped to resolve the dispute, before either of us decides to initiate divorce proceedings, we will make a final effort to save our marriage by undergoing a trial separation for a period of four months.

We will follow this procedure in respect of each such dispute. If, however, after this time (in respect of any such dispute) the marriage relationship still cannot be healed, then either of us may initiate divorce proceedings through a legal forum – which is the only forum that may validly terminate the marriage.

We pray that our marriage will not reach a stage where either of us will consider divorce as an option. Notwithstanding any contrary understanding of any law, we agree that both of us will have an equal right to initiate divorce proceedings and that these will be governed in accordance with the terms stipulated in this contract.

Naeem agrees to use the Islamic jurisprudential mechanism of talaq al-tafwid to delegate the right of talaq to Melissa so that both of us will possess that right. Whichever of us initiates such proceedings, a

procedure of three repudiations will require to be followed as described in the Qur'an in Surah Baqarah verses 228-232.

In addition, Melissa will be able to exercise her right to khula' by which she will be able to initiate a divorce subject to and by the return of the mahr to Naeem.

We will both be able to exercise our right to apply for a faskh to a judicial authority. Among other circumstances, a faskh could be used in cases which involve:

- any physical (threatened or actual) abuse,
- any infidelity, or
- severe or ongoing verbal or emotional abuse.

Such a divorce could be granted unopposed and no trial separation will be necessary.

In all of the three processes above (talaq, khula' and faskh), a divorce will only be deemed to have been effected once presided over and allowed by a judicial authority.

.....

Maintenance

Spousal maintenance and the maintenance of children will be determined in a fair and equitable manner at the time of divorce. If necessary, an arbitrator may be used to determine what a 'fair and equitable' resolution would be. The agreement will be in writing and binding.

Custody of minor children

The custody of minor children that might result from this marriage shall be determined according to the children's best interests. Should the custody of children be contested, the matter shall be referred for dispute resolution as set out in this contract. If agreement is reached, this will be incorporated into an agreement which will be attached to the application for divorce.

Irrespective of who gets custody, there shall be no denial of reasonable visitation rights to the parent that is not granted custody.

If the marriage ends in divorce and a child or children have resulted from the marriage, both parents will be responsible for the financial maintenance of the child or children in proportion to their respective incomes at the time, taking into account the effect of the dissolution of marriage on the working lives of both parents.

.....

Conclusion

We undertake to inspire each other to achieve the best that we are capable of.

May Allah grant us the wisdom, honesty, commitment and strength to make this marriage a successful one. And May He bless us with His Love and Mercy.

Signed on this, the 25th day of December 2007 in Johannesburg, Republic of South Africa.

Naeem Jeenah

Melissa Jane Hoole

Witnesses:

Gordon Hoole

Rosemary Hoole

Fatima Seedat
Nasreen Moolla

This marriage was solemnised on the 25th December 2007 at the University of the Witwatersrand, Johannesburg, Republic of South Africa, by Farhana Ismail:

**EnGendeRights Press Releases,
Letters to the Editor/Opinion Editorial and Position Papers**

A. “CEDAW Issues its Concluding Comments and Urges the Philippines to fulfill its Obligations under the Women’s Convention”, By Clara Rita A. Padilla, September 2, 2006

August 25, 2006, United Nations, New York -- The United Nations Committee on Elimination of Discrimination Against Women (CEDAW) issued its Advance Unedited Concluding Comments on its recently-concluded review of the Philippine government’s report held during its 36th Session from August 7-25.

CEDAW is the committee tasked to monitor the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (Women’s Convention). The Concluding Comments contains CEDAW’s observations and recommendations on the de facto and de jure equality of women in the Philippines and the obligation of the Philippines under the Women’s Convention to eliminate discrimination against women.

“CEDAW issued a very holistic and reality-based Concluding Comments that urges the Philippine government and the Filipino populace to face the hard realities that Filipino women experience in our country and to act on them accordingly,” says Atty. Clara Rita A. Padilla, Executive Director of EnGendeRights. Atty. Padilla submitted their collaborative Shadow Report to CEDAW, presented at the CEDAW-NGO dialogue at the UN and actively lobbied with the CEDAW experts.

EnGendeRights drafted their collaborative Shadow Report together with the Center for Reproductive Rights, Reproductive Rights Resource Group-Philippines (3RG-Phils), and Health Development Initiatives Institute.

CEDAW raised its concern about the “x x Convention [having] been in force in the State party for 25 years” and “the lack of progress in undertaking and completing necessary revisions of discriminatory provisions in national legislation and in enacting a comprehensive legal framework pertaining to gender equality.”

The Committee raised its concerns about the Anti-Rape Law of 1997 provision extinguishing the criminal action upon subsequent forgiveness by the wife. In relation to trafficking of women and girls, CEDAW urged the Philippines “to provide them with educational and economic opportunities, thereby reducing and eliminating their vulnerability to exploitation and traffickers” and the “reintegration of [women in prostitution] into society and provide rehabilitation, social integration and economic empowerment programmes to women and girls who are victims of exploitation and trafficking.” It urged the Philippines to “prosecute and punish traffickers and those who exploit the prostitution of women, and provide protection to victims of trafficking.”

“I’m particularly very excited about the recommendations the Committee raised on health especially because the Committee recommended for the Philippines as a State Party to **‘consider reviewing the laws relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion and provide them with access to quality services for the management of complications arising from unsafe abortions and to reduce women’s maternal mortality rates in line with the Committee’s general recommendation 24 on women and health and the Beijing Platform for Action,’**” says Atty. Padilla.

“The Committee also raised its **concerns on the ‘existing discriminatory provisions of the Code of Muslim Personal Laws, which permit marriage of girls under the age of 18, polygamy and arranged marriages,’ ‘the practice of early Marriage... among Muslim women,’ and ‘encourage[d] the State party to intensify dialogue with the Muslim community in order to remove discriminatory provisions from the Code of Muslim Personal Laws,’**” Atty. Padilla added.

CEDAW expressed “its concern about the lack of a law on divorce, making it impossible for women to obtain legal divorce” and urged the Philippines “to introduce and support vigorously legislation which permits divorce, allows women to remarry after divorce, and grants women and men the same rights to administer property during marriage and equal rights to property on divorce.”

CEDAW requests “the wide dissemination in the Philippines of the present concluding comments in order to make the people, including government officials, politicians, parliamentarians and women’s and human rights organizations, aware of the steps that have been taken to ensure de jure and de facto equality of women, as well as the further steps that are required in that regard.”

Reflecting on all their efforts in drafting their Shadow Report and lobbying with the CEDAW experts and the CEDAW’s Concluding Comments, Atty. Padilla said, “It’s like arguing in court and winning the case. Although I would have wanted for them to also issue their recommendations on the right to sexual orientation, I’m quite pleased with the Committee’s Concluding Comments.”

“A lot of our hard work paid off. We gave the CEDAW experts all kinds of materials from the Shadow Report, highlights/talking points, oral presentation, to our recommendations and even slips of paper with our comments. It’s just a question of the people in government recognizing their full obligation to eliminate discrimination against women in laws and policies and the implementation of these laws and policies. It’s time to spread the word,” Atty. Padilla continued.

The travel grant of EnGendeRights and 3RG-Phils to present their collaborative Shadow Report at CEDAW’s session in New York was through the assistance of Canada Fund, Cordaid, and Global Fund for Women and the upcoming CEDAW Post-Session to be conducted by EnGendeRights to popularize the Concluding Comments is through the assistance of Canada Fund.

For a copy of the Concluding Comments, please click on the following link:
http://www.un.org/womenwatch/daw/cedaw/cedaw36/cc/Philippines_25augrev.pdf

Additional Information:

Paragraph 27 of the Concluding Comments states:

“The Committee expresses its concern about the inadequate recognition and protection of the reproductive health and rights of women in the Philippines. **The Committee is concerned about the high maternal mortality rates particularly the number of deaths resulting from induced abortions, high fertility rates, inadequate family planning services, the low rates of contraceptive use and difficulties in obtaining contraceptives. It is also concerned about the lack of sex education, especially in rural areas. It is concerned at the high rate of teenage pregnancies, which present a significant obstacle to girls’ educational opportunities and economic empowerment.**”

Paragraph 28 the Concluding Comments states:

“The Committee urges the State party to take concrete measures to enhance women’s access to health care, in particular to sexual and reproductive health services, in accordance with article 12 of the Convention and the Committee’s general recommendation 24 on women and health. **It requests the State party to strengthen measures aimed at the prevention of unwanted pregnancies, including by making a comprehensive range of contraceptives more widely available and affordable and without any restriction and by increasing knowledge and awareness about family planning. The Committee recommends that the State party give priority attention to the situation of adolescents and that it provide sex education, targeted at girls and boys, with special attention to the prevention of early pregnancies and sexually transmitted diseases. The Committee urges the State party to consider the problem of unsafe abortion as a matter of high priority. The Committee recommends that the State party consider reviewing the laws relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion and provide them with access to quality services for the management of complications arising from unsafe abortions and to reduce women’s maternal mortality rates in line with the Committee’s general recommendation 24 on women and health and the Beijing Platform for Action.**”

Paragraph 30 the Concluding Comments states:

“30. The Committee calls on the State party to pay special attention to the needs of rural women, indigenous women and Muslim women living in the autonomous region of Muslim Mindanao, ensuring that they have access to health care, social security, education, clean water and sanitation services, fertile land, income -generation opportunities and participation in decision -making processes. The Committee recommends that the State party ensures women’s access to justice through the provision of legal aid and takes steps to prosecute perpetrators of violence against them. It also encourages the State party to provide increased educational opportunities to Muslim girls to discourage early marriages. X x x”

B. “Women’s Rights NGO calls on Candidates to Uphold Women’s Rights”, By Clara Rita A. Padilla, April 30, 2007

“Congressional and local electoral candidates when elected into government posts must uphold women’s rights as protected by the Convention on the Elimination of All Forms of Discrimination against Women (Women’s Convention),” says Atty. Clara Rita A. Padilla, Executive Director of EnGendeRights. She adds, “They must take their stand to protect women’s access to the full range of contraceptive methods including emergency contraception, access to safe and legal abortion, sexuality education for adolescents, skills and education for women in prostitution, legalization of divorce, repeal of discriminatory Muslim Code provisions and lesbian rights.”

These concerns except for lesbian rights were included in the United Nations Committee on Elimination of Discrimination against Women (CEDAW) Concluding Comments during its 36th Session in August 2006. CEDAW monitors the implementation of the Women’s Convention by the Philippine government.

“When elected into office they must provide access to the full range of contraceptive methods in an effort to prevent unintended pregnancy, abortion and maternal mortality and morbidity. They must take a stand in opposing bills restricting access to medically safe methods of contraception such as emergency contraceptive pills, Depo Provera, and IUDs,” Atty. Padilla added.

“Congressional representatives should file bills that uphold women’s rights including bills on Reproductive Health Care, Anti-Discrimination against Sexual Orientation; repeal of the penalty imposed on women who induce abortion and those assisting them as means to decrease maternal

mortality and morbidity related to complications from unsafe abortion; improvement of the implementation of the Policy on Prevention and Management of Abortion Complications; implementation of sexuality education in schools for adolescents; and legalization of divorce,” says Atty. Padilla.

In the House of Representatives, staunch supporters of reproductive health and rights in the past were Nereus Acosta (whose sister Malou Acosta is now running), Benjamin Agarao, Jr., Mayong Aguja (Akbayan), Darlene Antonino-Custodio, Agapito Aquino, Risa Hontiveros-Baraquel (Akbayan), Liza Largoza-Maza (Gabriela Women’s Party), Renato Magtubo (Partido ng Manggagawa), Satur Ocampo (Bayan Muna), Gilbert Remulla, Loretta Ann Rosales (Akbayan), Rolex T. Suplico, Lorenzo R. Tañada III, and Ronaldo B. Zamora.

Atty. Padilla said, “Government officials should follow the lead of local government officials such as Governor Bellaflor Angara-Castillo of Aurora and Governor Glenn Prudenciano of Ifugao who have spearheaded the enactment of ordinances such as “The Aurora Reproductive Health Care Code of 2005” (Provincial Ordinance No. 125 (2005)) supporting increased reproductive health care services, including mandatory sexuality education, responsible parenthood counseling and “Reproductive Health and Responsible Parenthood Ordinance of Ifugao” (Ordinance 2006-33), respectively.”

“We cannot have government officials who use their religious beliefs in governance. Clearly, Gloria Macapagal-Arroyo has wielded her influence in the Department of Health and the Population Commission in vigorously campaigning for the so-called “natural family planning” (NFP) method as a means of courting the religious right,” said Atty. Padilla.

Atty. Padilla cautioned against several local officials who used their administrative powers to completely prohibit the delivery of modern methods of contraceptives and to promote natural family planning. She says, “In recent years, policies banning all “artificial” birth control methods, including condoms, pills, intra-uterine devices and sterilization, were introduced in Laguna, Manila City, and Puerto Princesa in 1995, 2000 and 2001 respectively. The policies introduced in Laguna and Puerto Princesa have since been overturned by subsequent local administrations, but the Manila City Policy still prevails.”

In Makati, pregnant adolescents are denied access to free medical services through an erroneous assumption of Mayor Jejomar Binay that such policy will “discourage the incidence of teenage pregnancies.” Atty. Padilla says, “This policy clearly discriminates against adolescents’ right to access reproductive services and unnecessarily puts them at risk.”

“Another glaring example is the continued conduct of congressional hearings in the 13th Congress on bills filed by blatantly religious party-list groups such as Buhay party-list that aim to prohibit safe and effective methods of contraception including IUDs and emergency contraceptive pills and even increase the penalty for women who induce abortion all stemming from their religious beliefs,” Atty. Padilla continued.

Atty. Padilla says, “We also have the problem of continued arrests by police of abortion service providers and sellers of the medical abortion pill Cytotec. Television crews, who do not understand the issues of women relating to abortion and who are mainly concerned with raising their viewership for purposes of sensationalism, instigated these arrests.”

“Such religious stances have no place in governance. These stances disregard women's realities where half of all pregnancies of Filipino women are unintended and about 200 Filipino women die from maternal-related causes out of every 100,000 live births,” says Atty. Padilla citing the UNFPA

2006 State of the World Population report. Nine in 10 women who induce abortion are married or in a consensual union, more than half have at least 3 children, roughly two-thirds are poor and nearly 90% are Catholic; about 800 women die every year (or two women die every day) due to complications resulting from unsafe abortion; approximately 473,000 women had abortions and an estimated 79,000 women were hospitalized for complications due to unsafe abortion in 2000 (Singh S et al., *Unintended Pregnancy and Induced Abortion in the Philippines: Causes and Consequences*, New York: Guttmacher Institute, 2006, at 4). Such stances endanger women's lives and health violating women's basic right to life and health.

The constitutional provision protecting the life of woman and the unborn from conception allows access to information and services to contraception and even abortion. Chile and Peru have the same constitutional protection of the life of the woman and the unborn from conception and they allow access to emergency contraceptive pills. In Argentina and Belgium, emergency contraceptive pills are available without prescription. Spain, upon whose old Penal Code the Philippine Revised Penal Code penalty imposed on the woman who induced abortion was adopted, allows abortion on grounds of rape and fetal impairment leaving the Philippines to contend with its colonial laws. Belgium, France and Italy allow abortion on demand. Colombia allows abortion on grounds of danger to life and health, rape and fetal malformation incompatible with life outside the uterus. Last April 24, Mexico City legalized abortion in the first trimester without restriction.

All the above-mentioned predominantly Catholic countries belie the claim that restricting access to contraception and even safe and legal abortion in the Philippines is a matter of practice of the Catholic religion. It is simply ignorance of medicine, science and law and clinging to our colonial past.

Catholic women around the world--including more than 60 percent of Catholic women in Trinidad, Tobago and Botswana, and 28 percent in the Philippines--have used contraceptive methods, showing that Catholic women exercise freedom of conscience.

It is the obligation of the Philippine government as cited in the recent CEDAW Concluding Comments on the Philippines to “strengthen measures aimed at the prevention of unwanted pregnancies, including by making a comprehensive range of contraceptives more widely available and without any restriction”; “give priority attention to the situation of adolescents and that it provide sex education, targeted at girls and boys, with special attention to the prevention of early pregnancies and sexually transmitted diseases.”

CEDAW urged the Philippines “to consider the problem of unsafe abortion as a matter of high priority. The Committee recommends that the State party consider reviewing the laws relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion and provide them with access to quality services for the management of complications arising from unsafe abortions and to reduce women’s maternal mortality rates.”

“Elected officials must realize that our very own Constitution states that, ‘Sovereignty resides in the people and all government authority emanates from them.’ Elected officials must be reminded that they are mere representatives of the Filipino people and that their obligation is to the Filipino people and not to themselves,” said Atty. Padilla.

“Elected officials must respect plurality in our society. They should allow access to information and health care services and give primary importance to a person’s right to reproductive self-determination. Fundamental public officials who restrict access to information and health care services do not deserve any place in governance,” Atty. Padilla added.

C. “EnGendeRights Calls on Candidates to Uphold LGBT Rights”, By Clara Rita A. Padilla, April 28, 2007

“Congressional and local electoral candidates when elected into government posts must uphold lesbian, gay, bisexual and transgender (LGBT) rights as protected by the Convention on the Elimination of All Forms of Discrimination against Women (Women’s Convention) and the International Covenant on Civil and Political Rights (ICCPR),” says Atty. Clara Rita A. Padilla, Executive Director of EnGendeRights. She adds, “They must take their stand to uphold LGBT rights.”

“When elected, they should file bills and ordinances that uphold LGBT rights including bills/ordinances on Anti-Discrimination against Sexual Orientation; repeal of the vagrancy provisions under Article 202 of the Revised Penal Code, Reproductive Health Care, implementation of sexuality education in schools for adolescents,” says Atty. Padilla.

“Legislators should support bills repealing the vagrancy provisions of the Revised Penal Code such as House Bill 4804 and House Bill 4436 filed by Liza Largoza-Maza of Gabriela Women’s Party and Joel Virador of Bayan Muna, respectively, in the 13th Congress. These bills intend to put a stop to human rights violations of women in prostitution and homosexuals who are rounded up on the basis of Article 202 of the Revised Penal Code,” continued Atty. Padilla.

Atty. Padilla says, “Government officials should emulate the example of Quezon City legislators in terms of its passage of an ordinance protecting the rights of homosexuals against discrimination in the workplace (Quezon City, Ordinance No. SP-1309, S-2003).”

Legislators should author bills protecting LGBTs against discrimination such as House Bill 634 on Anti-Discrimination against Sexual Orientation filed by Loretta Ann Rosales of Akbayan in the 13th Congress. Staunch supporters of this bill in Congress were Nereus Acosta (whose sister Malou Acosta is now running), Henedina Abad, Mayong Aguja (Akbayan), Justin Marc Chipeco, Risa Hontiveros-Baraquel (Akbayan), Liza Largoza-Maza (Gabriela Women’s Party), Renato Magtubo (Partido ng Manggagawa), Satur Ocampo (Bayan Muna), Lorenzo R. Tañada III, and Joel Virador (Bayan Muna).

Danton Remoto, a gay rights activist running for a congressional post for the 3rd district of Quezon City, when elected into position will strongly advocate for LGBT rights.

Atty. Padilla cautions against party list organizations such as ABA-AKO that have in their line-up a so-called “pro-life” nominee and a platform that campaigns for the “traditional natural Filipino family.” She adds, “This platform discriminates against the rights of LGBT families and even fosters hatred against LGBTs instead of upholding their rights.” Atty. Padilla said, “We cannot have public officials who obstinately preach intolerance without realizing that they are breeding hatred, discrimination and violence against LGBTs who are entitled to equal treatment under the Philippine Constitution.”

In the case of Gualberto vs. Gualberto, G.R. No. 154994, the Philippine Supreme Court recognized that lesbian mothers have a right to custody of their children and their being lesbians do not make them unfit mothers as contemplated under Article 213 of the Family Code. The Supreme Court held that, “sexual preference x x x does not prove parental neglect or incompetence.”

Public officials must heed the international trend toward recognizing the rights of LGBTs. Recognition of same-sex marriage and unions is recognized in Canada, Netherlands, United Kingdom and even in predominantly Catholic countries such as Belgium and Spain.

The ICCPR protects LGBTs against discrimination. In the 2003 Concluding Observations on the Philippines, the Human Rights Committee (HRC), the United Nations Committee tasked to monitor the implementation of the ICCPR, urged the Philippine government to "take the necessary steps to adopt legislation explicitly prohibiting discrimination" and "to pursue its efforts to counter all forms of discrimination" pertaining to sexual orientation. The Committee further urged the Philippines to "strengthen human rights education to forestall manifestations of intolerance and discrimination."

Contrary to the disinformation of fundamentalist groups that "homosexuality is an abnormality," the HRC recognized, in its General Comment 19, that the concept and structure of family may differ from state to state and that the right to marry and found a family may be based on diverse definitions of families and relationships.

In CEDAW's General Recommendation 21, it recognized that "[t]he form and concept of the family can vary from State to State, and even between regions within a State." CEDAW has also asked states parties to reconceptualize lesbianism as a sexual orientation and to abolish penalties for its practice.

A clear expression of the affirmation of the rights to sexual orientation is the March 26, 2007 Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity released by international human rights experts in a worldwide call for action against sexual orientation discrimination. The Principles were adopted by 29 distinguished experts in international law following a meeting in Yogyakarta, Indonesia. Among the group of experts were former United Nations High Commissioner for Human Rights and former President of Ireland Mary Robinson, UN independent experts including Philip Alston (UN Special Rapporteur on extrajudicial, summary and arbitrary executions) and Paul Hunt (UN Special Rapporteur on the right to the highest attainable standard of health), current and former members of human rights treaty bodies, judges, academics and human rights defenders. Sonia Onufer Corrêa of Brazil, who co-chaired the experts' group said, "[W]omen, men and persons whose sexuality does not conform with dominant norms face rape, torture, murder, violence, and abuse because of their sexual orientation or gender identity. These Principles affirm that human rights admit no exceptions."

"It is the duty of the Philippine government to fulfill its obligations to respect, protect and fulfill the rights of LGBTs," Atty. Padilla stressed.

D. "Repeal penalty on abortion", Clara Rita A. Padilla, The Manila Times, Monday, November 14, 2005

IN 2000 estimates showed that despite the illegality of abortion, 473,400 Filipino women induced abortions (Alan Guttmacher Institute and the University of the Philippines Population Institute, 2005). Out of every 100 pregnant women, 18 induced abortions. And because of the illegality, about 78,900 women were hospitalized, and many others died from complications from clandestine and unsafe abortion. This has led to high maternal mortality, with a ratio of 200 deaths per 100,000 live births (UNFPA, 2005 State of the World Population).

Recognizing that criminalizing abortion does not lessen the number of abortion but makes it dangerous for women, the Cairo and Beijing conferences urged countries to review penalties against women who undergo abortions, and the United Nations Committee on the Elimination of Discrimination Against Women recommended that state parties remove punitive provisions imposed on women who undergo abortion.

The United Nations Committees monitoring the implementation of treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights have all linked high rates of maternal mortality with illegal and

unsafe abortion. The same committees have recommended state parties to review their legislation criminalizing abortion.

Having ratified the abovementioned treaties, the Philippines is obligated to repeal the Revised Penal Code provision imposing penalties on women inducing abortion and those assisting them. Predominantly Catholic countries such as Spain, Italy and Belgium make safe and legal abortion available for their women. Indeed, our laws should be compassionate and responsive to women's realities.--Clara Rita A. Padilla, J.D., Executive Director, EnGendeRights, Inc., Veterans Village, Quezon City

E. “Marital Infidelity Does Not Have a Place in Our Penal Laws”, By Clara Rita A. Padilla
Nov. 18, 2007

If I were a lawyer who is out to enrich myself, I would probably say “go ahead and support the ‘marital infidelity’ bills (HB 999 filed by Representative Emmanuel Joel Villanueva and HB 1820 filed by Representatives Liza Maza and Luzviminda Ilagan)”. These bills seek to repeal the adultery and concubinage provisions of the Revised Penal Code and then impose a new crime called “marital infidelity” which equalizes the penalties for marital infidelity.

The reason why lawyers who are out to enrich themselves would do this is because the effect of such a law is indeed the deluge of cases that will be filed by estranged husbands who are out there to perpetually harass their wives who have left them for a more suitable partner. Mind you, it would be the batterer husbands and those who have sought to control their wives who would line up to file these cases and not the ones who respect their wives' freedoms.

But I am not out to enrich myself as a lawyer. I am a lawyer who has spent thirteen years of my professional career devoting my time and efforts in advocating for women's rights—for battered women, women who have been raped, women who are seeking protection orders against their abusive husbands and, yes, women who have long been separated from their husbands but are facing “adultery” cases filed by their husbands.

The Convention on the Elimination of Discrimination against Women (CEDAW) provides for equality and non-discrimination of women. But equality in law does not simply mean equalizing the penalties for certain crimes for both women and men and not especially so for “marital infidelity” cases. The essence of CEDAW provides for substantive equality such that the effect of laws would not discriminate against women. Equalizing the penalty for marital infidelity cases would discriminate women since the reality is that most marital infidelity cases are filed by men rather than women—more men still have more money than women and men use these marital infidelity cases against their wives as a form of abuse and torture on their wives.

In the case of Sheila (not her real name), she was battered by her husband while they were living together. Eventually she left her husband and now she is living with her male partner. Since she left her abusive husband, she has never asked for support for herself and her minor daughter. What does the husband do after six years of separation? He files a case for adultery against her. Now Sheila is tormented—a clear case of abuse under the Anti-Violence against Women and their Children Act (RA 9262).

In many countries around the world, the criminal provisions imposed on adultery have already been repealed. The intended purpose of the criminal provision on adultery under the Revised Penal Code (circa 1932 and directly translated from the old Spanish Penal Code) is to protect the rights of real heirs. Many adultery cases, however, are filed by estranged husbands who have long been separated from their wives and who have no intention to reunite with their wives nor do they have any intention to support the illegitimate child of their wives.

In the case above, you would see that this case along with many others are not filed to protect the rights of heirs but for other reasons such as continued harassment, abuse, and property issues. There are many others like Sheila who have suffered abuse at the hands of their husbands and, rightly so, have chosen to live another life with their new partners. Should women like Sheila serve prison sentence? Most certainly not, they deserve to live peaceful lives free from abuse, coercion, and discrimination.

Adultery, concubinage, and marital infidelity cases do not have any place in our law. On the contrary, these cases continue to perpetuate abuse in the family and impose torment on the children. The transitory years of the young children's lives are put to waste since their parents are constantly feuding.

If the husband and wife cannot be together, then they should nullify the marriage. This is also why we are advocating for divorce so as not to subject the grounds to divorce on the differing interpretations of judges, psychiatrists and psychologists.

Marital infidelity cases also infringe upon one's right to have sexual relations with whom they want to and when they want to. This is the commitment of the Philippines under the International Conference on Population and Development Programme of Action and the Beijing Platform for Action and the obligation of the Philippines under CEDAW and the International Covenant on Economic, Social and Cultural Rights.

We must repeal our laws on adultery and concubinage and certainly not pass any new law on marital infidelity.