SEXUAL VIOLENCE AS A MEDICO-LEGAL ISSUE: AN OVERVIEW OF INTERNATIONAL AND PHILIPPINE NATIONAL LAWS

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ABSTRACT

This article is a product of a research that identifies the pertinent existing Philippine laws and policies related to sexual violence in the country. It examines the effect of medical responses and interventions to the administration of justice. It also identifies and examines the gaps and problems in the Philippine medical-legal system. A brief discussion on international human rights treaties to which the Philippines is a state signatory is provided as a backgrounder.

INTRODUCTION

Sexual violence is a serious medical and health concern directly and indirectly affecting a significant number of the population, and the country in general. In 2002, sexual crimes have composed majority of the violence against women (VAW) cases reported to the Philippine National Police (PNP). Rape and attempted rape was the second most fre-quently reported crime, following wife battering. This was followed by acts of lasciviousness, which is also a form of sexual violence.

Statistics from the Department of Health (2001) culled from cases brought to DOH hospitals also provide a picture of sexual violence as a serious health concern.

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Table 1: Comparative Statistics on Violence Against Women from the Philippine National Police, 2000-2002

Type	2000	2001	2002
Rape	3,298	3,475	3,794
Incestuous Rape	1,158	1,191	524
Attempted Rape	605	610	646
Acts of Lasciviousness	2,037	1,914	1,974
Wife Battering	5,668	4,577	5,058
Child Battering	2,274	1,973	2,155
Sexual Harassment	73	93	109
Sex Trafficking / White Slavery	62	25	70
Neglect / Abandonment	75	19	63
Prostitution	52	—	30

Table 2: Number of Sexual Violence Cases Brought to the DOH (2001)

	Sexual Violence		Physical and
	Incest	Non-Incest	Sexual Abuse
1st Quarter	336	127	463
2nd Quarter	147	224	371
3rd Quarter	168	27	195
4th Quarter	74	30	104
Total	725	**408**	**1,133**

Of this number, the DOH notes that majority of the victim-survivors are female (98%), under age brackets 25-44 (23%), 11-14 (20%), and 15-17 (19%).

The effects of sexual violence are grave and often long lasting, bearing on the physical and psychosocial health of its victim-survivors. Particularly within families, sexual abuse is often the culmination of a long history of physical and psychological abuse.

(Guerrero and Sobritchea, 1997: 42-43). Likewise, the impact of violence is not limited to the victim-survivors alone but, often, it also affects the mental health of people who are part of the families or live in communities where the violence is happening. Thus, medical intervention for sexual violence cases entails a whole range of medical services to restore the health of victim-survivors and address the psychosocial effects of the abuse.

That sexual violence targets women and girl children disproportionately is another consideration. Several studies of the profile of victim-survivors point to the crosscutting nature of the violation with respect to age, civil status, social status and education. The common factor is their sex, that is, the majority of victim-survivors are female.[1] (Guerrero and Sobritchea, 1997; Arugaan ng Kalakasan, 1996; Women's Legal Bureau, 1995.) This has implications on what type of facilities, services and equipment for medical examinations are necessary, and how medical and medico-legal examinations should be conducted.

Sexual violence violates the fundamental rights of the victim-survivors to life, liberty and security, which are assured to all peoples by international and national laws, such as the International Bill of Human Rights and the Philippine Constitution, respectively. Philippine laws define and penalize forms of sexual violence such as rape, acts of lasciviousness, sexual harassment, prostitution and trafficking.

Apart from the attack itself, the lack or inadequacy of health and medico-legal services particular to sexual violence cases compounds the violation of human rights suffered by victim-survivors. Notably, judges and lawyers still rely heavily on the medical evidence presented in sexual violence cases, especially rape, despite the settled rule that medical evidence is only corroborative of the survivor's testimony. Because of this, victim-survivors are also deprived of their right to effective legal remedy.

Indeed, sexual violence is one area where the medicine and the law necessarily intersect.

Research Objectives and Methods

We need not emphasize that sexual violence is a violation of human rights of women and girl children, and that the serious impact on the overall physical and psychological well-being on victim-survivors is a critical health concern. At the same time, medical practitioners should be aware of the legal implications of their work with victim-survivors as they also play a major part in bringing to justice sexual violence cases.

The objectives of the research are the following:

1. Identify the existing laws and national policies affecting the medical management of sexual violence cases in the Philippines, including medico-legal examinations of victim-survivors;
2. Examine how medical responses and intervention affect the administration of justice, including the judicial appreciation and interpretation of forensic evidence; and,
3. Identify and examine the existing problems and gaps in the medical-legal system in the Philippines.

The research was largely confined to reviewing pertinent laws, national policies and literature on the medical-legal responses to sexual violence in the country. A brief discussion on international human rights treaties to which the Philippines is a state party was also incorporated to provide an international background of the legal context of sexual violence. A cursory review of the jurisprudence on sexual violence cases was likewise conducted to come up with illustrative cases on the role of medical evidence in the legal process.

National laws and policies were categorized into two groups in order to facilitate discussion:

- Laws and policies defining the forms of sexual violence
- Laws and policies prescribing procedures for handling sexual violence cases which also have an impact on their medical management

It is important to note that while there is a medical protocol currently in use for women victim survivors of violence,[2] there is no national protocol specific to the medical management of sexual violence cases to date.

Scope and Limitations

The study attempts to map out the existing national laws and policies influencing medical management of sexual violence cases in the country, with the following parameters:

1. Definition of sexual violence

   While sexual violence *per se* is not defined under any Philippine law, some of its forms are. Specifically, the study includes the legal definitions of rape, acts of lasciviousness, sexual harassment, prostitution and trafficking, which are the most common forms of sexual violence according to the statistics of the Philippine National Police (See table 1).

2. Women's and girl children's experience of sexual violence

   The research focuses on sexual violence as experienced by women and children, these groups being the most vulnerable to, and comprising the greater majority of the cases of sexual assaults.

3. On the national laws and policies included

   One of the devolved services under the Local Government Code of 1991 is health services. Because of this, local

government units have broad powers to define their respective local health agenda guided by the policies set by the national government agencies concerned, such as the Department of Health. This research only covers and discusses national policies and does not include local health-related ordinances.

Overview of International Laws on Sexual Violence

Any discussion of human rights must necessarily refer to the International Bill of Human Rights, which is the standard in measuring government compliance and adherence to human rights principles. The International Bill of Human Rights is comprised of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on Economic, Cultural and Social Rights (ICECSR). These outline the inherent, indivisible and inalienable human rights of peoples, which include the rights to life, liberty, security of person, equality, physical and mental health and well-being. Particular to health, it is prescribed in the ICECSR that every human being is entitled to enjoy the highest attainable standard of physical and mental health (Article 12, ICECSR) and conditions which assure medical service and medical attention. (Article 12(d) ICECSR).

Sexual violence as a human rights violation is elaborated in several international human rights instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention on the Suppression of Traffic in Persons and of the Exploitation of Prostitution of Others, and the International Convention on the Protection of the Rights of All Migrant Workers and their Families. Particularly the CEDAW and the CRC, these Conventions are bases of international and

national advocacy to protect women who are the most vulnerable to sexual violence.

The CEDAW, which entered into force in 1981, was drafted in 1979 to address gender-based discrimination against women around the world. It serves as the basis for demanding accountability from states parties to respect, protect and promote women's human rights. While the CEDAW specifically mentions only trafficking and exploitation of prostitution of women as one of the critical areas that must be addressed by states parties, (Article 6, CEDAW), its comprehensive definition of discrimination against women effectively outlaws all acts violating women's human rights, including sexual violence:

> (Article 1) ... The term "discrimination against women" shall mean 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 of 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, cultural, civil or any other field.

Thus, apart from the act of sexual violence against the woman, which in itself is already a form of discrimination against women (who are most likely to be targeted by this abuse because of her sex), the lack or inadequacy of national mechanisms, programs and services to address this violation also discriminates against women by impairing the exercise of her right to legal remedies and health, for instance.

In addition to CEDAW, the United Nations Declaration on the Elimination of Violence Against Women (DEVAW) categorically states that sexual violence is a form of violence against women, and recognizes the different loci or level where it can occur:

> (Article 2) Violence against women shall be understood to encompass, but not limited to, the following:

(a) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
(b) physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
(c) physical, sexual and psychological violence perpetrated or condoned by the State wherever it occurs.

In effect, the foregoing imply that a holistic and strategic approach to eliminate violence should also involve actions involving or targeting the family, the general community, and the State.

The CRC, on the other hand, is more explicit with its reference to address sexual abuse and sexual exploitation of children. These are found in Articles 19 and 34 of the Convention, which state that:

> (Article 19, para. 1) State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, *including sexual abuse*, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. [italics supplied]
>
> (Article 34) States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
>
> (a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;
(c) The exploitative use of children in pornographic performances and materials.

Finally, international human rights instruments and declarations set the standards in addressing sexual violence and forward the obligations of states parties to the conventions. Ratification by a government of an international human rights instrument, such as the CEDAW and CRC, signifies its intention to adhere to the principles and standards it prescribes. In general, the state obligations under international conventions are the following: (WLB, 1997:3).

- the obligation to *respect*, which implies an obligation by states not to interfere in the exercise of human rights
- the obligation to *protect*, which implies a duty to prohibit non-state parties (e.g. individual persons) from violating human rights of others
- the obligation to *ensure*; and
- the obligation to *promote* human rights, the latter two implying a duty to take affirmative action for the realization of human rights.

The Philippines, as a state party to CEDAW and the CRC, is thus obliged to translate these general obligations into concrete actions which should include:

(1) Legislative actions whether through policy reform, enactment or enforcement to remove barriers to the exercise of women's and children's human rights;
(2) Institutionalization of mechanisms or structures that will facilitate direct service delivery, and addressing discrimination against women and children;

(3) Actions towards facilitating information and education of women and children, and society in general, against gender-based discrimination; and,
(4) Researches and data collection of the prevalence, causes and consequences of the different forms of violence against women and children, and the effectiveness of measures to prevent and redress it.

National Laws Addressing Sexual Violence

The Philippine Constitution, as the primary law of the land, defines the national policies governing human rights and health both in broad and specific terms. Three articles of the Constitution bear quoting:

> The State values the dignity of every human person and guarantees full respect for human rights (Article II, Section 11).
>
> The State shall protect and promote the right to health of the people and instill health consciousness among them (Article II, Section 15).
>
> The State shall 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. These shall be priority for the needs of the underprivileged, sick, elderly, disabled, *women and children.* The State shall endeavor to provide medical care to paupers (Article 13, Section 11) [italics supplied]

Clearly, these articles declare that the protection and promotion of basic human rights and right to health of all people, particularly the marginalized groups such as women and children, are priorities of the State. These policies in turn are translated into laws that define and detail further State actions to address human rights violations and health concerns and issues, including sexual violence. Acts of sexual violence (e.g. rape) are considered

crimes and penalized under Philippine law. Supreme Court interpretations of laws are important to cite as these have the force of law and set how crimes of sexual violence are to be viewed within the judicial system.

Republic Act 8353 or the Anti-Rape Law

The Anti-Rape Law was enacted in 1997 after years of advocacy by women's human rights groups to make the law more reflective of and responsive to the experience of abuse of victim-survivors. There are three significant changes brought about by the new law: broadening of the definition of rape, classification of rape as a crime against persons, and the recognition of marital rape.

(1) Expanded definition of rape

The definition of the act of rape is now broadened to address the experiences of women and children who have been sexually violated through other acts apart from penile penetration of the vagina. Penile penetration of the anus and mouth of the victim, as well as the insertion of objects into the vagina or anus are also considered rape. This definition also recognizes the reality of sexual violations against male, especially male children.

Significantly, however, rape by penile penetration of the vagina has a higher penalty than and rape committed through other acts, which is also known as rape by sexual assault.

The absence of consent constitutes an essential element of rape. Non-consent would mean that the sexual acts stated above are done:

a) through force, threat, or intimidation;
b) when the victim is deprived of reason or is unconscious;

c) by means of fraudulent machination or grave abuse of authority; and,
d) when the victim is under 12 years of age (statutory rape) or is demented, even though none of the other circumstances above be present. (Article 226-A & 226-B, Revised Penal Code).

It is clear from the foregoing that the fact that the victim did not sustain physical injuries is not indicative of consent to the sexual act as other factors such as threat of further harm or intimidation, or rendering the woman unconscious may negate struggling against the attacker.

(2) The reclassification of rape from a crime against chastity to a crime against persons

By classifying rape as a crime against chastity to a crime against persons, a higher penalty is now imposed on the crime.

Under the death penalty law (RA 7659), rape in certain instances is considered as a heinous crime and can be penalized by death.[3] Specifically, these instances are:

(a) when the victim is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative within the third civil degree , or the common-law spouse of the parent of the victim
(b) when the victim is under the custody of the police or military authorities
(c) when rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity
(d) when the victim is a religious or a child below seven years of age
(e) when the offender knows that he is afflicted with AIDS

(f) when committed by any member of the AFP or the PNP or any law enforcement agency
(g) when by reason or the occasion of rape, the victim suffered permanent physical mutilation.

Several criticisms have been raised against death penalty for rape cases, specifically for incest rape cases. Heinous as the crime may be, studies by health professionals, particularly psychologists and psychiatrists working with victim-survivors of incest rape, indicate that instead of facilitating reporting of crimes of rape, women and girl children have become more reluctant to come forward and seek justice. Often, the perpetrator of incest is the breadwinner of the family, thus, raising the concern of economic survival when the perpetrator is arrested, detained and possibly, meted a death sentence. (Madrid and Sugue-Castillo, 2002).

The reclassification of rape to a crime against persons also means that rape can now be prosecuted upon the complaint of any concerned citizen, health professionals included. It is no longer just the victim-survivor, her parents, grandparents or guardian who have the charge of initiating the complaint. Republic Act 7610 or the Special Protection for Children Act goes further to mandate health practitioners to report instances of child abuse (including sexual abuse) to the Department of Social Welfare and Development within 48 hours after examination and knowledge of the same. (Section 4, IRR, RA7610).

Another implication of the reclassification is that the victim's pardon of the offender no longer extinguishes the perpetrator's criminal liability and will not put an end to the prosecution of the offense. The only instances when pardon can end the prosecution or erase the criminal liability is:

- when it is granted by the wife to the husband, or
- when the pardon takes the form of a valid marriage between the offender and the victim after the commission of the rape, provided that the marriage conforms to legal requirements for valid marriages.

(3) The recognition of marital rape

Marital rape is now implicitly recognized in the provision on pardon in R.A. 8353:

> In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty. Provided, that the crime shall not be extinguished or the penalty shall not be abated if the marriage is void *ab initio*. (Madrid and Sugue-Castillo, 2002).

By failing to explicitly define marital rape as an actionable offense, the law merely reflects the prevailing view, both under social norms and the law, that a husband could not possibly rape his wife because the bonds of marriage give the man proprietary rights over his wife, including consortium.

Second, because the law recognizes pardon for the crime, it negates the public character of the rape and the state interest in prosecuting the same. In effect the provision on pardon indicates that the State will prosecute vigorously rape cases when the victims are unmarried but will leave the matter up to the married victim. It has been argued that if rape is a violation of human rights, then it stands that civil status and other factors will not change the basic context: that it is a violation of a woman's intrinsic worth and dignity as a human being.

(4) The rape shield under RA 8505

RA 8505 or the Rape Victim Assistance and Protection Act of 1998 is a twin law of RA 8393. One innovation introduced by this law, in relation to the new law on rape is the rape shield (Section 6), i.e., the sexual history and conduct of the woman may not be admitted in court as evidence in prosecutions for rape, unless the judge deems it material and relevant.

Acts of Lasciviousness (Article 336 of the Revised Penal Code)

The Revised Penal Code, under Article 336 punishes acts of lasciviousness. This crime can be committed against persons of either sex. The elements of this crime are almost similar to rape, i.e.:

(1) that the offender commits any act of lasciviousness or lewdness;
(2) that it is done under any of the following circumstances: a) by using force or intimidation, b) when the offended party is deprived or reason, or otherwise unconscious, c) when the offended party is under 12 years of age; and,
(3) that the offended party is another person of either sex.

Unlike rape, however, there is no penetration of the vaginal orifice by a penis, or insertion of a penis into the anus or mouth, or insertion of an object into the vaginal orifice or anus of the victim. It is sufficient that the perpetrator had a lewd design in performing the act(s).

Acts of lasciviousness are classified as a *crime against chastity* not a *crime against persons* like rape. This means that: (1) only specific persons can initiate the complaint, in this case, the victim-survivor, her parents, grandparents or guardian; and, (2) express pardon granted by any of the persons mentioned above, or the

subsequent marriage between the victim and the perpetrator extinguishes the criminal liability.

Republic Act 7877 or the Anti-Sexual Harassment Act

Under the law, sexual harassment may be committed only in workplaces, and in education and training-related environments. In broad strokes, sexual harassment committed when sexual favors are elicited in exchange for work benefits, promotions or, in education and training environments, better grades, or when the act creates a hostile environment for the victim. Thus, sexual harassment covers a wide range of acts from making offensive jokes about a person's body, unwanted kissing, touching, to sexual assault. In this sense, rape can be considered an extreme form of sexual harassment, and there had been instances wherein victim-survivors of rape have opted to file a case of sexual harassment rather than rape against the perpetrator. Because not all forms of sexual harassment may be physical, the psychosocial impact on the woman becomes even more significant and crucial in the medical responses to sexual harassment cases and their prosecution.

Sexual harassment may be filed as a criminal, administrative or a civil case. Employers, heads of offices, education or training institutions are mandated by law to create a Committee on Decorum and Investigation (CDI) that will investigate and resolve administrative complaints of sexual harassment. The CDI is also responsible for conducting awareness-raising activities in the workplace or education and training environment to promote understanding of sexual harassment and prevent future incidents. Finally, employers, heads of offices, education or training institutions are held liable for damages together with the perpetrator if they were informed of such acts and no immediate action was taken on the complaint.

Prostitution (Article 202 of the Revised Penal Code)

Several criminal provisions penalize the following persons involved in prostitution:

(1) prostitutes (except children) who are defined by law as "women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct..."[4]
(2) pimps or procurers
(3) those engaged in the business of prostitution
(4) those profiting from the business of prostitution
(5) those enlisting the services of women and children in prostitution
(6) those who habitually associate with prostitutes

The law clearly defines prostitution as a crime, but also penalizes women who are exploited in the system. It ignores the reality that many women are in the prostitution out of economic necessity. The so-called profit earned by women in prostitution is also questionable as often payment is channeled through pimps or owners of bars or clubs where these women may be working. Often, these women are also forced to endure physical, psychological and sexual abuses from the customers. Prostituted women are also more vulnerable to sexually transmitted infections and diseases such as HIV/AIDS, and do not receive medical attention.[5]

Republic Act 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act

RA 7610 is a comprehensive law addressing child abuse, exploitation and discrimination, which necessarily include sexual violence. Under Section 2 of its Implementing Rules and Regulations, sexual abuse against children is defined as:

(g) ... [T]he employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in sexual intercourse or lascivious conduct or the molestation, prostitution or incest with children;

(h) Lascivious conduct means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh or buttocks or the introduction of any object into the genitalia, anus, mouth of any person, whether the same or opposite sex, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of genitals or pubic area of the person;

(i) Exploitation means the hiring, employment, persuasion, inducement or coercion of a child to perform in obscene exhibitions and indecent shows, whether live or in video, pose, or model in obscene publications or pornographic materials to sell or distribute the said materials.

The explicit definition of the law on child prostitution is striking in comparison to the vagueness of the law on prostitution covering adults. Article III, Section 5 of RA 7610 clearly states that prostitution of children is exploitative and is a form of sexual abuse.

Republic Act 9208 or the Anti-Trafficking of Persons Act

RA 9802 was enacted only in February 2003. Under the law, trafficked persons are regarded as exploited and, thus, not penalized for crimes related to the acts of trafficking (e.g. falsification of documents), or acts done in obedience to the trafficker (Sec. 17). Second, there is also recognition by the law of the need for psychosocial services, apart from medical treatment of injuries, of victim-survivors, thus, makes it mandatory (Sec. 23).

Significantly, the legal definition of trafficking includes maintaining or hiring a person to engage in prostitution and pornography (Sec. 4(e)). This presents a positive movement from the prevailing notion of prostitution as a crime perpetrated by prostituted women.

Court Appreciation of Sexual Violence

Supreme Court decisions interpreting laws also have the force of law under the doctrine of *stare decisis*. Thus, under the Philippine legal system, a combination of written laws and jurisprudence govern.

Judicial decisions give insight on how the judicial actors perceive sexual violence. The way the Supreme Court views the nature of the crime of rape and all other sexual crimes, in general, is very significant in that it affects the way evidence is appreciated and, thus, impacts on how cases of this category are won or lost. In turn, this is very much relevant in the medico-legal context because evidence procured during medical or medico-legal examinations, e.g. physical examinations of the victim, factor into the prosecution of the case. What medico-legal officers must look for in cases of sexual violence, how they conduct physical examinations and the preservation of such evidence all have a bearing on evidentiary rules and legal proceedings.[6]

Fundamental Guiding Principles

There are three fundamental guiding principles in the review of rape cases, invariably stated in the following manner (Santos *et al.,* 2001):

1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove it;

2) in view of the intrinsic nature of the crime where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and,
3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.

However, the fundamental question is: why is the victim-survivor doubly burdened with the baseless assumption that an accusation of rape can be easily made, which is not so assumed in other crimes? The first two principles above shift a heavy burden on the victim-survivor to present evidence other than her own testimony, but in most instances such evidence may be impossible to produce due to the systemic barriers that the victim-survivor has to contend with.

Rape Myths

A study of the Women's Legal Bureau (WLB) of 478 Supreme Court decisions on rape cases from 1961 to 1992 showed the biases of the legal system against women, who are majority of the victim-survivors of rape. In brief, the WLB study noted the following notions of rape, inconsistent with the reality of the crime as reflected in statistics and experience of its victim-survivors (WLB, 1995):

(a) Rape happens only to young, pretty or desirable women.
(b) Rape is a crime of lust or passion.
(c) Rape involves the loss of a woman's prized possession, her "chastity".
(d) Men can have sex freely with women deemed to be of loose morals because these women have nothing to lose.
(e) Rape is committed by maniacs or perverts.
(f) Rape happens only in poorly lit or secluded places.

(g) Sexy clothes incite men to rape.
(h) When a woman's "chastity" is threatened, she exerts every effort to protect it, whether by violent resistance, escape attempts or screams for help.
(i) When violated, a woman's first reaction is to tell her family, particularly her menfolk — father, brothers or husband — who must be informed of the assault upon the woman's, and thus the family's, honor.
(j) Rape charges are fabricated by women seeking to avenge a slight or to extort money.

These notions are indicative of a pervading mindset which redounds to how evidence is appreciated and, therefore, how evidence is procured in medico-legal examinations. That rape is a crime of lust or passion discounts the fact that men are actually motivated by power in committing crimes of sexual violence. The gravity of the offense is downgraded because men are excused for being the slaves of their desires. The "woman of loose morals" theory is directly related to notions of "chastity" which puts the emphasis on the woman's state of virginity or non-virginity. Medico-legal examinations put undue emphasis on the presence of physical evidence of virginity. Further, the notion that a chaste woman will do everything in her power to resist an attack on her honor reverses the burden of proof to the victim. The woman becomes the party who must prove that she resisted the advances, and, therefore, there must be signs of resistance on her body and this must manifest in the physical examination.

The prevailing notions about rape and sexual violence, therefore, inform not just how cases are decided and won, but also how the criminal justice system works in its entirety: from the appreciation of relevant evidence by medico-legal and law enforcement officers, to the prosecutors' requirement of what constitutes probable cause, and up to the judicial system which

is the ultimate arbiter of legal justice. Women victim-survivors of sexual violence are implicated in a whole system of values which puts undue emphasis on gender requirements. If the woman does not fit the stereotype notion of a "victim", more often than not, a whole range of remedies are denied to her, from medical attention to an unbiased medico-legal examination, to an unbiased prosecution all the way to an unbiased trial.

Physical Force Not an Essential Element of Rape

These prevalent notions however are tempered by certain Supreme Court pronouncements which have declared repeatedly that manifest resistance on the part of the victim is not a necessary nor essential element of rape. Force, as the means employed to consummate the act, is not required to be absolute. In People vs. Errojo (229 SCRA 49, 1994), the Supreme Court had occasion to rule:

> It bears repeating that the force and violence required in rape cases is relative; when applied, it need not be overpowering or irresistible. What is essential is that the force used is sufficient to consummate the purpose which the offender had in mind, or to bring about the result. The force and violence necessary in rape is naturally a relative term, depending on the age, size and strength of the parties and their relation to each other. *All consideration of whether it was more or less irresistible is beside the point* (People v. Corro, 197 SCRA 121, 1991). [italics supplied]

In People v. Querido (252 SCRA 745, 1994), where a medico-legal certificate indicating no physical injuries were found on the woman's body was presented in Court, the Court in effect ruled that the absence of physical findings of force employed on the woman's body does not negate rape:

> When a woman says that she has been raped, she says in effect all that is necessary to show that rape was committed and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof. In rape cases, submission does not necessarily imply volition. *Well-settled is the rule that absence of external signs of physical injuries does not negate the commission of the crime of rape. Proof of injuries is not necessary because this is not an essential element of the crime.* (People v. Rabanes, 208 SCRA 768, 1992; People v. Abonada, G.R. No. 50041, 1/27/1989; People v. Olivar, G. R No. 101577, 11/13/1992; People v. Grefiel, 215 SCRA 596). [italics supplied]

In People v. dela Pena (233 SCRA 576, 1994), a medical examination was conducted on the victim but it showed no sign of injury on the victim's genitalia. The Court ruled that:

> Settled is the rule that full penetration of the vaginal orifice is not an essential ingredient in the commission of the crime of rape. The mere touching of the external genitalia by a penis capable of consummating the sexual act constitutes carnal knowledge. It is likewise settled that the absence of physical findings on medical examination does not negate a finding that carnal knowledge had actually occurred. The absence of seminal fluid, spermatozoa, abrasions, lacerations, hematoma, etc. around the genital area or the presence of an intact hymen does not automatically lead to a conclusion that no act of rape had occurred or that the act was in fact consensual. *In fact, the absence of a medical certificate is not indispensable in the crime of rape.* [italics supplied]

The foregoing shows that the reliance of law enforcement officers, prosecutors and even some judges on the submission of medical certificate as evidence in a prosecution for rape is mistaken. The presence of a medical certificate, and what it says is not essential to prosecute rape.

Psychosocial Sequelae of Rape in Supreme Court Decisions

Even prior to the progressive changes introduced by the new rape law, the Supreme Court, in the case of People v. Ibay [233 SCRA 15, (1994)], had recognized the psychosocial impact[7] of rape on the victim-survivors, thus:

> 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 cannot successfully be argued that the latter are any less sexual victims than the former.

Rape and Virginity

> This prudent posture is understandable for rape stigmatizes the victim worse than the perpetrator. In the present as in the past, our culture puts premium in purity and virginity as virtues. A non-virgin, even if deflowered against her will, is oftentimes treated, albeit secretly, with unkind scowl and scorn in our society....

The foregoing was lifted from a Supreme Court decision in a rape case. Two comments need to be made regarding these statements. One, the first observation reflects and reinforces the mindset bedeviling the appreciation of sexual violations against women, namely, the undue importance placed on a woman's virginity or virtue—as if a non-virgin cannot be raped or that only chaste women get raped. Value judgments that have no legal significance should not be made part of jurisprudence. This comment has a grave significance on evidence gathering and collection for undue and unnecessary emphasis would be placed on finding out whether a victim was a virgin or not. Second, the Court in its second comment seems to imply that it is up to the

medico-legal professional to make a finding of rape (i.e., whether the woman is "positive" or "negative" for rape[8]). Determining whether rape happened or not is something that medico-legal professionals are not competent to do because rape is a legal concept.

The concept of virginity is a social construct that does not exist in medical parlance and medico-legal professionals are not competent to make such an assessment. Besides, the concept itself is loaded with connotations that are laden with social values, once again something that is beyond the purview of both medical and legal value systems. As stated in People v. Salinas (232 SCRA 274, 1994):

> As for the intact hymen, this is no proof that no rape had been committed. A broken hymen is not an essential element of rape, not even where the victim is an innocent child...

Laws on the Medical Management of Sexual Violence

This section examines how medico-legal practice with respect to sexual violence is regulated by existing laws and national policies.

Republic Act 8344

Republic Act 8344 is also known as "An Act Prohibiting the Demand of Deposits or Advance Payments for the Confinement or Treatment of Patients in Hospitals and Medical Clinics". The law defines "emergency" thus:

> a condition or state of a patient wherein based on the objective findings of a prudent medical officer on duty for the day there is immediate danger and where delay in initial support and treatment may cause loss of life or cause permanent disability to the patient. (Section 2)

A "serious case" on the other hand is defined as:

> a condition of a patient characterized by gravity or danger wherein based on the objective findings of medical officer on duty for the day there is immediate danger and where delay in initial support and treatment may cause loss of life or cause permanent disability to the patient. (Section 2)

The problem, however, is whether cases where patients come to hospitals for medical aid because of sexual assault can be considered serious or emergency cases. More often than not, unless such a patient comes in with physical injuries serious enough to merit immediate medical attention, no hospital would even admit him or her once it is known that he or she is a victim of sexual assault. Most hospitals in fact turn away sexual assault victims and refer them instead to the police, where they may not be given the proper attention that they need.

Second, whether a case of sexual violence falls under either category depends upon the gravity of the injuries sustained by the victim. This again, however, brings us back to physical injuries being the benchmark, even if crisis intervention may be called for to address psychological needs.

Republic Act 8505

RA 8505, or the Rape Victim Assistance and Protection Act of 1998, may be the only law which addresses directly the regulation of medico-legal practice in this country in relation to sexual violence. It forwards many considerations in the management of rape cases that recognize that true nature of the crime of rape, as espoused by the Anti-Rape Law, i.e., that the crime of rape, is a violation of a woman's person and dignity, rather than her chastity or body.

Among the salient provisions of the law are the:

(1) establishment of rape crisis centers nationwide as a one-stop center that will provide medical, psychosocial and legal assistance to victim-survivors
(2) recognition of psychosocial impact and trauma brought about by rape and the need to address this through provision of counseling and other related services
(3) assigning of female police officers, examining physicians and prosecutors to handle rape cases as much as possible.

There are also notable provisions in its Implementing Rules and Regulations which discuss the management of rape cases, specifically:

- Rule 3, on the Duties and Responsibilities of the Investigating Police Officer, Examining Physician, Prosecutor and Social Worker or Crisis Workers;
- Rule 4 on the Assistance for the Recovery of Rape Survivors;
- Section 13, Rule 4 on the Rehabilitation of Perpetrators; and,
- Rule 5 on the Confidentiality and Privacy of Rape Survivors.

The law also outlines the specific duties and responsibilities of the examining physician in sexual violence cases:

a. Before Examination:

- ensure that the medico-legal examination shall be conducted by a woman, or if unavailable, in the presence of a duly authorized woman;
- ensure that only the person(s) expressly authorized by the rape survivor are allowed inside the examination room.

b. During Examination

- conduct a speedy and thorough examination of the survivor so that humiliation as a result of repetitious procedures may be minimized; and,
- treat the victim with gentleness and utmost respect

c. After Examination

- prepare an official Medico-Legal Report based on the findings of the examination ensuring that it is duly endorsed by the Chief and the Director of the Medico-Legal Division or duly authorized representatives with its corresponding case number. The Medico-Legal Report is prepared within two or three days unless other requirements are requested like x-ray, pregnancy test, ultrasound and others which would take a longer period of medical analysis; and,
- prepare and issue an initial report if there is an immediate need for the Medico-Legal Report (e.g., the suspect is detained).

d. Post Examination Assistance

- refer all cases of rape to the rape crisis center or other government organization concerned, or to the hospital of choice for medical attention and counseling if not yet referred; and,
- appear and testify in court as an expert witness on the case.

Rule 4, entitled "Assistance for the Recovery of Rape Survivors", outlines the healing, recovery and reintegration program of rape survivors:

a. a healing, recovery and reintegration program for rape survivors shall be adopted and consistently implemented

by all rape crisis centers. Underlying said programs should be the following:

- that rape is a stress causing circumstance that tests the capacity of the individual, and therefore, rape survivors should be provided full support and understanding. It shall be a policy that the credibility and character of the survivor shall not be questioned as the victim should never be blamed for the rape that occurred;
- that the therapeutic applications should focus on helping the survivor's return to her or his previous level of adaptation. The primary goal of interventions therefore facilitate the survivor's reintegration;
- that the therapeutic applications should increase the survivor's capacity to adopt and maintain control since rape produces helplessness, feelings of vulnerability, fear, deception and humiliation;
- that confidentiality should be maintained by the service providers. They should assure the survivors that they can withhold information and feelings about their abuse from significant persons in their lives for this may disrupt relationships;
- that the service providers should sensitize the family and friends of rape survivors to the meaning of rape so they can support the survivor; and,
- that counseling for the immediate family members of the survivors is necessary to avoid criticizing or blaming the survivor

b. upon the assessment of a duly authorized psychologist or psychiatrist, psycho-therapy shall be provided to the victim; and,

c. rape survivors should be informed of the range of their options, the advantages and disadvantages of each one of

their options, the challenges and all the possible consequences of their options so that they could make sound decisions.

Significantly, the law recognizes that perpetrators of sexual assault are in need of rehabilitation as well, and that a referral system for services to facilitate such shall be established (Sec. 3, IRR, RA 8505).

Rule 5 discusses the confidentiality and privacy of rape survivors and in Section 14(a) states that only persons expressly authorized by the offended party shall be allowed inside the room where the investigation, medical or physical examination is being conducted. Further, that "appropriate protocols shall be developed and observed at any stage of the investigation, prosecution and trial of rape cases." The same section further provides for administrative or criminal liability for personnel who violate any rule of R.A. 8505.

Republic Act 7610

Republic Act 7610's Implementing Rules and Regulations makes mandatory the reporting by medical health practitioners of instances of child abuse (necessarily including sexual abuse) when it appears, after examination, that a child suffered abuse, within 48 hours from knowledge of the same. Those responsible are the head of any public or private hospital, medical clinic or similar institution, as well as the attending physician and nurse.

Medical-Legal Management of Sexual Violence Cases

Because of the peculiar nature of sexual violence, that is, it is both a crime and a source of trauma for its victims, its

management requires the active participation of different disciplines. At some point the medical and legal requirements intersect. Immediate medical attention may be called for when a rape victim goes to report the incident to the police or other law enforcement agency. In this case the rape investigation would have to take into account the need for immediate medical attention of the victim, and such need takes precedence over and above the investigation itself. When the victim goes to a medical facility first before reporting the incident to the police, medical attention would have to include proper provisions for the preservation of physical evidence that could be found on the patient's body for the purpose of prosecuting the case later on. However, the victim-survivor's needs for immediate medical treatment, particularly when serious physical injuries are present, should always take precedence over forensic examination.

It must be emphasized that anything done in these areas (medical treatment, investigation and forensic examination) is with the end in view of healing the victim. A victim of sexual violence has experienced a loss of control and power, necessarily losing all sense of self-determination. Medical and legal management are aimed at restoring this vital attribute. Medical management aims to restore health of both body and mind and to preserve vital evidence. Legal management aims to provide justice by giving the victim a means with which to regain personal and social empowerment and to right a wrong, as well as to restore social equilibrium. In the end, the victim must be able to say that she has been empowered again and is able to take control of her body and her personal space.

Medical Treatment and Management

The medical management of victims of sexual violence includes the whole gamut of medical services necessary to address

the physical, psychological, and emotional needs of a person who has been victimized by sexual abuse. Thus, it is not only treatment of physical injuries but includes all interventions necessary to restore the health of the patient, including psychiatric and psychological management. It is borne out of a recognition that the sexual abuse survivor has gone through a harrowing experience that leaves not just physical injuries but also injuries to the psyche that necessitate treatment for his or her complete rehabilitation.

The first step is the medical examination of the victim. Whether the latter goes to the police first or to a medical facility, the first and most vital responsibility is to focus on his or her immediate needs, especially the need for medical attention. It is possible that survivors may not be aware that they have injuries because they are under shock, or they have injuries that would only be evident under medical examination. This is necessary even if days or weeks have already elapsed since the woman was attacked. Some hospitals have a standard set of medical examinations for survivors of sexual violence. Apart from treatment of injuries, rape survivors may also be tested for venereal disease and pregnancy (Warner, 1980:27-28). They are also referred to crisis or counseling centers, if the medical facility does not have a social worker or psychologist at hand.

Republic Act 8505, or the Rape Victim Assistance Act, was enacted in recognition of this need. It aims to establish rape crisis centers as the focal points of rape victim assistance and protection in litigation and recovery. R.A. 8505's declaration of policy embodies this objective:

> It is hereby declared the policy of the State to provide the necessary assistance and protection of rape victims. Towards this end, the government shall coordinate its various agencies and non-government organizations to work hand in hand for

> the establishment and operation of a rape crisis center in every province and city that shall assist and protect rape victims in the litigation of cases and their recovery. (Section 2)

The Rules and Regulations Implementing the Rape Victims Assistance and Protection Act, in its Rule 1 Section 3(c), defines Rape Crisis Center as a "facility where a comprehensive network of services and support activities are available in a particular province or city to victims of rape and other forms of sexual abuse, their family and the community in general, including programs for sexual assault awareness and prevention. The Rape Crisis Center will be established in areas where there are (sic) high incidence of rape cases. It may be located in any suitable place or government hospital or health clinic and will be established by creating or upgrading existing facilities or by establishing or building upon existing networks providing sup-port and assistance to victims of rape (and other forms of sexual abuse).

The following are the functions of a rape crisis center:

(1) provide victims of rape and other forms of sexual abuse with psychological counseling, medical and health services, including their medico-legal examination;
(2) secure free legal assistance or service, when necessary, for victims of rape and other sexual abuse;
(3) assist victims of rape and other forms of sexual abuse in evidence gathering and in the investigation to hasten the arrest of offenders and filing of cases in court;
(4) ensure the privacy and safety of victims of rape;
(5) provide psychological counseling and medical services whenever necessary for the family of victims of rape and other forms of sexual abuse;
(6) adopt and implement programs that are survivor-sensitive for the recovery of victims of rape and other forms of sexual abuse;

(7) assist the government in raising public awareness on rape and other forms of sexual abuse and encourage volunteerism and the participation of various sectors of the country for increased individual and community safety awareness;
(8) develop a referral system that would be made available based on need of the survivors, such as temporary shelter, education and skills training.

Parenthetically, Republic Act 8344 penalizes the refusal of hospitals or medical clinics to attend to emergency cases.

The medical management of sexual abuse victims also includes diagnosis of and treatment for sexually transmitted diseases (STD). In this manner, the physical examination of the patient is not just for the purpose of administering immediate treatment for injuries but also to determine whether treatment for STD is necessary.

Diagnosis of pregnancy is also part of the medical management of the sexual violence victim. Since abortion in this country is illegal, however, the options open to the said victim are limited. Unless the issue of abortion is categorically addressed by specific legislation, the prescription of abortifacients, for example, even if consented to by the patient, is also illegal. Medical officers administering to the patient/survivor of sexual violence have to test for possible pregnancy but may not prescribe medication that could terminate such pregnancy.

Medico-Legal Examination

As has been discussed earlier, sexual violence is criminalized. The legal management of cases of sexual abuse may start with the medical/physical examination because of the necessity of preserving evidence later on useful for prosecution. Furthermore, medical facilities may be the entry points of these victims and

medical attention may have to be coupled with forensic examination. Thus, medical management is crucial in the role it plays in the preservation of evidence and the correlation of physical evidence with legal issues.

As opposed to a medical examination for the purpose of treating a patient for possible injuries, the medico-legal examination has the end in view of uncovering or unearthing evidence contained in the person's body for legal purposes. Thus, properly, there are two dimensions to the physical examination of a victim of sexual assault: to gather information for the proper medical care of the patient, and to gather samples and document observations that may serve as evidence. (Warner, 1980:52).

Therefore, the medico-legal examination is the interface between medicine and the law. It is basically applying certain fields in answering legal issues. The approach is ideally multi-disciplinary, but the focus, however, is on the application of forensic medicine.

There are four primary points to consider in the physical examination and collection of evidence: a) if the victim was capable of giving consent to intercourse, b) if force was used, c) if vulvar penetration occurred, and d) if physical evidence from the rapist is present (*Ibid.*).

The Chain of Evidence

The term "chain of evidence" refers to the custody of evidence. Evidence must be accounted for during each step, from collection to its introduction in the courtroom. If the chain of evidence is broken, the evidence that has been so carefully collected may be worthless. (Ibid : 57). Because of the need to preserve evidence, the responsibility of the medical attendant becomes two-pronged: that of giving immediate medical attention to the victim and at

the same time making sure that any physical evidence on the victim's body is preserved or recorded.

It has often been argued that evidence of rape to be presented in court in which the chain of custody has been broken is rendered inadmissible. This view is, however, incorrect, for flaws in the preservation and custody of evidence do not render the evidence inadmissible under the rules of evidence but merely incredible, meaning that its credibility may be in doubt. However, errors in the manner of preservation may render the evidence worthless, as for example sperm samples that have dried up or a torn panty with bloodstains which have been washed. When they are finally presented in court, these things will be irrelevant and immaterial for they will not be able to establish any logical connection between the commission of the crime and the victim or the accused.

Issues and Concerns

Discussions from the previous sections of this study have shown the vital role the medical profession plays in the management of sexual violence cases, and how medical practice ultimately impacts this — whether one regards it as a medical or health concern, or a legal concern. Below are some of the major issues and concerns in the health sector that were identified to hinder the effective and efficient handling of sexual violence cases.

Lack of Awareness of Health Professionals on the Issue of Sexual Violence

The undue reliance on physical injuries, the insistence on looking for signs of women's "de-virginized state", and outright dismissing sexual violence cases as non-emergency cases gives indication to the general lack of awareness of health professionals

on the issue of sexual violence. This is a serious concern, given the role they play in the treatment of such cases and the damage they can make on the physical and mental health of the victim-survivor. There have been many cases where the health professionals themselves and the way they conducted the medical examination re-traumatized the woman so much so that it was as if she endured a "re-rape".[9]

Second, important pieces of evidence which may prove crucial to the prosecution of the crime (should the woman decide to file charges), may be lost because of the practitioner's inadequate knowledge of what to collect and how to preserve them. It is also significant to note at this point that medico-legal practice is also replete with myths with regard to its handling of rape cases. Some of these have already been debunked by the Anti-Rape Law or medical science, such the absence or presence of spermatozoa as an indication of rape, and virginity and the intact hymen. However, these myths persist, and often statements based on such find their way to medico-legal reports to the detriment of criminal case filed by the victim-survivor.

In this light, it is necessary that health professionals become aware of the issue of sexual violence and understanding not only its medical context, but also its legal and social aspects.

Existing Gaps in the Health Sector

The devolution of health services in the country (as mandated by the Local Government Code of 1991) has a significant impact on the health service delivery particularly to indigent people living in remote areas. Local Government Units (LGUs) comprise the political subdivisions of the country, which includes 78 provinces, 82 cities, 1,525 municipalities and 41, 939 barangays or villages—the smallest political subdivision. (Latest updates are 79 provinces and 115 cities. Ed.) With the devolution, provincial

and district hospitals are operated and maintained by the provincial or city government while the Rural Health Units also known as the Municipal Health Offices, and the barangay health stations are under the management of the municipal office. The latter two health centers offer primary care while secondary health care is offered at the level of the district or provincial hospitals. Because the LGUs have autonomy in managing the health service delivery in their area of jurisdiction, there is no uniformity of health care across the country.

Two glaring issues and concern arise from the lack of uniformity in health services:

(1) **Standardization** of medico-legal management of sexual violence cases which includes both standardized basic medical treatment of victim-survivors, and collection of medical evidence. It is apparent that a national protocol on the medical management/medico-legal examination is needed, not only to set minimum standards in addressing sexual violence cases, but also to set standards of knowledge and skill necessary for any health professional with regard to handling sexual violence cases. It has been said that a forensic examination done according to standard protocol is more easily defensible in court (*Ibid* : 165).

(2) **Access to quality services** needed by the victim-survivors, again including both medical treatment and forensic examination for future prosecution of the crime. It is a reality that the budget of the devolved medical facilities largely de-depends on the allocation from LGUs, which may or may not see sexual violence as a health issue, much less a critical one.

It also becomes a concern of access when local medical facilities are poorly-equipped, while national hospitals are congested with patients.

In addition to these, there is also the inadequate networking and referral systems between medical facilities, and medical facilities with other institutions such as law enforcement agencies, NGOs, as well as legal organizations to holistically address the needs of the victim-survivor.

The Need for an Integrated Response to Cases of Sexual Violence

Republic Act 8505 and its IRR seek to address this problem by mandating a multi-disciplinary team of professionals in rape crisis centers. It further outlines clearly the roles of each. It seems, then, that the problem of an integrated response has been solved.

However, this may not be the case when rape crisis centers are not the entry point of sexual assault cases/survivors. In a case where some other facility is the first entry point, the lack of a coordinating mechanism among agencies aggravates the victim-survivor's plight.

Mandatory Reporting as Possible Deterrent to Medical Attention

It has been shown earlier that in cases of child abuse, for example, health professionals are penalized for not reporting cases. This may have an implication on the admission of such children to hospitals. Where a medical attendant for example suspects that a child may be the victim of abuse, he or she may refuse treatment to the latter for fear of the heavy responsibility of reporting it to authorities.

On the other hand, medical attention may be the primary concern of a victim/survivor, and not prosecution. It must be remembered that an adult still has the last say on whether to

report the incident or not. Even with the classification of most sexual violence crimes as public crimes, and, hence, it is no longer just the private individual who may report it, still, without the victim's cooperation or if the latter decides outright against legal prosecution, then, a case would not normally prosper. The medical attendant, however, is still constrained under the law to report it.

Lack of Institutionalized Mechanisms for the Continuing Training and Education of Medico-Legal Professionals

Although RA 8505 mandates the continued training of medical health professionals on gender sensitivity and the like, it fails to provide for continued training in the area of forensic medicine for professionals in that field. New technology, for example, may have become available in the meantime which would make prosecution of cases easier. DNA testing, for example, has now been developed as a way of establishing identity—and this may be used to identify perpetrators where they are unknown. However, without the necessary facilities and the training and competency required to make use of such technology, then, it will be useless. At best, individual agencies or institutions design their own curricula for continuing education of their medico-legal professionals.

Even for basic procedures, however, there is no uniform standard by which medico-legal professionals are tested for competency and the like. There is no uniform mechanism by which they are mandated to upgrade their technical competency. In particular, it is not known whether basic management of sexual violence cases is integrated into medical or training, including psychological response, prophylaxis for STDs and pregnancy, and referrals and legal information.

CONCLUSION

The study aims to set out in broad strokes the legal context of sexual violence in the country, highlighting the important role that the medical profession plays in the medico-legal management of such cases. Integral to the discussion has been the role of medical professionals in addressing sexual violence as a health issue: as numbers of victim-survivors increase by the year, more and more felt the need for responsive and appropriate health services for them. Issues and concerns have also been identified with regard to the existing practices and, implied in their discussion, are the recommendations which this study forwards.

The major recommendations of the study are as follows:

(1) There is an urgent need for a national medical-legal protocol on the management of sexual violence cases. This protocol is significant as a minimum standard that will be adopted by medical facilities, covering the basic medical treatment, examinations and procedures to be administered to victim-survivors, and what evidence to collect, and how to collect and preserve them. Equally important is the standard, which the protocol may also set, with regard to the knowledge and skills required of responding health professionals to sexual violence cases, and definitions and terms to be used in reports.

(2) Alongside a national protocol should be continuous research that will improve the current knowledge base of the medical and legal professions, particularly where they intersect in the management of sexual violence cases. The role of forensic psychology and psychiatry in the Philippine legal system is one area where more knowledge needs to be established, in addition to training on how to appreciate them in court.

(3) Research can also be used for lobbying and advocacy for the victim-survivor's human rights, and against sexual violence in general. An area of advocacy that has been identified and may need to be further established is on the Death Penalty Law. There have been already studies and articles written on how this law deters many victim-survivors of sexual violence from reporting the crime, and aggravates their mental health.

(4) Continuous training of people in the legal system, necessarily including health professionals and lawyers, to appreciate medical evidence.

End Notes

[1] DOH hospitals are those not devolved to the local government units pursuant to the Local Government Code of 1991. This includes 50 hospitals around the country.

[2] The PGH Women's Desk headed a task force to draft this protocol, which is now used as a guide by various hospital-based women's crisis centers all over the country. This project was undertaken with the support of the UNFPA.

[3] It is significant to note that rape cases comprised the largest number of death penalty convictions since the law was re-imposed in 1993. As of 15 December 2002, 997 crimes were penalized with death penalty, 455 of which involved rape. (www.hrnow.org/policy/Death_Penalty_June_25_2003.doc)

[4] A strong critique of the current law on prostitution (and its treatment by society in general) is its discrimination against women. Whereby prostituted children are considered by law to be exploited, adult women are regarded as having consented and willingly engaged in prostitution. Second, it is the prostituted women more than the owners of establishments and their male "customers" who are often the focus of blame for this "social evil" (WLB, "Challenging and Subverting the System of Prostitution: A Policy Paper,"1999).

[5] While there are laws and ordinances which require regular health check-ups for persons applying for or is engaged in food service and entertainment work (including those who work in bars or sauna parlors), a closer look show

that the intent of the law is not to promote women's health but to protect their customers (*Ibid,* p.6).

[6] Cases presented in this section are limited to only rape cases. Furthermore, these are cases decided under the old Anti-Rape law. It must be noted, too, that not all sexual violence cases reach Supreme Court level for various reasons, including non-appeal of lower courts' decisions by either the complainant or the accused.

[7] There is yet to be jurisprudence on the Rape Trauma Syndrome (RTS) and Post-Traumatic Stress Disorder (PTSD), and their role in the prosecution of rape cases, although there is already a case at the trial court level where the concepts have been presented to explain the victim-survivor's response to rape. RTS and PTSD has been significant in this case to deconstruct the myth that all women would physically fight off her assailant, scream, or shout for help (See Santos, et al., (2001) pp.21-22).

[8] This has been shared by police officers themselves during the validation-workshop of the training manual, *Addressing Rape in the Legal System* (WLB, 2001). What they specifically mean "positive" or "negative findings" is unclear.

[9] A. Barlett, an emergency room physician, describes in her article "Clinical Assessment of Sexual Trauma: Interviewing Adult Survivors of Childhood Abuse" the usual set-up of a medical examination of a victim-survivor of rape: "A stranger makes a very quick intimate contact and inserts an instrument into the vagina with very little control or decision-making on the part of the victim; that is a symbolic set-up of a psychological re-rape" (as quoted in WLB, *Addressing Rape in the Legal System,* 2001, p. 160).

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