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Human Rights of Women *

Women's Legal and Human Rights Bureau, Inc.

Strategic Objectives:

11. *Protect and promote the human rights of women, through the full implementation of all human rights instruments, especially the Convention on the Elimination of All Forms of Discrimination against Women;*
12. *Ensure equality and non-discrimination under law and practice;*
13. *Achieve legal literacy*

INTRODUCTION: WOMEN'S HUMAN RIGHTS AND ACCESS TO JUSTICE

In the Philippines, the construction of a Filipino woman within the cultural context is embedded in a patriarchal system (Dicen & Sta. Ana-Gatbonton, 2010). A paper from the Women's Legal and Human Rights Bureau (WLB) (2010) also brings to light how "[g]ender inequality in social structures, systems and practices remains widespread and rampant, and gravely undermines women's status in the society. Women [and their sexuality] are strongly linked to the society's construction of her image, behavior and characteristics." Filipino women remain more economically, politically and socially disadvantaged compared to men. Women continue to lag behind men in work and economic participation, with women's labor force participation rate as 49.7% against men's 78.3%. In politics and governance, progress has been persistently slow with women only constituting 18.4% of occupied elective positions in the government compared to men who constitute 81.3%. Women's property rights remain a struggle as women holding land ownership agreements only account for 29.33% while men account for 90.67% (National Statistical Coordination Board [NSCB], 2013).

* This report was prepared by the WLB (Women's Legal and Human Rights Bureau, Inc.) WLB consulted members of the Philwomen on ASEAN, a network of women's rights advocates and organizations in the Philippines that promotes women's rights in ASEAN through critical engagement. Philwomen, formed in 2010, is composed of around 80 organizations working on various issues and representing different sectors, including rural and urban poor women, women workers, migrants, lesbians, bisexual and transgender women (LBT), women with disabilities, women in education, and young women, among others.

This report aims to expose the systemic discrimination through the gender-based stereotypes against women as embedded and entrenched in Philippine laws, in the legal system as a whole; and as perpetuated by state actors and duty-bearers, and the society in general. As gender stereotyping underpins and is itself an act of discrimination, and hence a violation against women's rights, women's access to justice has to be called to mind. Paragraph 124(d) of the United Nations Beijing Declaration and Platform for Action [BPfA] (1995) requires States to take measures to ensure that women subjected to violence have "access to just and effective remedies, including compensation and indemnification."

With women's right to be protected and free from discrimination and violence, is the right to effective remedies and redress for the violation perpetuated against them. Access to justice is a fundamental human right guaranteed by the International Bill of Human Rights. The CEDAW and its Optional Protocol (OP), and General Recommendation (GR) Nos. 19 and 25, assure women's right to access justice (Philwomen on ASEAN, 2014).

Strategic Objective 11: Protect and promote the human rights of women, through the full implementation of all human rights instruments, especially the Convention on the Elimination of All Forms of Discrimination against Women

NOT WITHOUT STRUGGLE: SUBSTANTIAL GAINS IN LEGAL REFORM

A testimony as to how women's groups, lawyer advocates, human rights activists and campaigners lobbied hard and advocated to improve the situation of women are the laws that have been passed over the years and which women can now use to hold the government accountable. Compared indeed to other State Parties in the Southeast Asian region, the Philippines has advanced in *de jure* compliance with its obligations under the CEDAW, starting with its constitutional recognition of the role of Filipino women in nation-building and commitment to ensuring the fundamental equality before the law of women and men (1987 Philippine Constitution, Art. II, Sec. 14). These laws today provide opportunities for women by which they can continue claiming CEDAW-guaranteed rights and entitlements, especially since there remain discriminatory provisions in statute books and large gaps in implementation (WLB, 2008).

Passage of the CEDAW Domestic Law as Comprehensive Framework of Women's Rights

The Republic Act No. 9710 or the Magna Carta of Women (MCW) Act enacted in November 2009 is the local translation of CEDAW into Philippine domestic law. The law invokes the indivisibility, interdependence and

inalienability of women's rights. The MCW adopts the Convention's definition on discrimination against women, and call for the State's obligation to recognize, respect, protect, fulfill, and promote *all* human rights and fundamental freedoms of women (WLB, 2010a). As a framework law, it serves as a comprehensive bill of rights for Filipino women.

It importantly calls for the abolition of the unequal structures and practices that perpetuate discrimination and inequality. By this, it establishes that no person should suffer discrimination on the basis of ethnicity, gender, age, language, sexual orientation, race, color, religion, political, or other opinion, national, social, or geographical origin, disability, property, birth, or other status as established by human rights standards (WLB, 2010a).

The Struggle for a Reproductive Health Law

After years of uphill battle and severe, vitriolic backlash from the religious and conservative fronts,¹ the Responsible Parenthood and Reproductive Health Act of 2012 (Republic Act No. 10354) or the Reproductive Health Law (RH law) has been declared constitutional (Bernal, 2011). The bill has suffered a long drawn-out resistance and blockage even after the already protracted and intense negotiations in Congress. The legislation drew much heated public debate mostly questioning women's right to reproductive and sexual health.

The declaration of constitutionality, as with the enactment, was not without compromise. A number of critical provisions were struck down or declared unconstitutional. Further, the law is family-centric rather than highlighting sexual and reproductive health rights as human rights. It upholds marriage as "as an inviolable social institution and the foundation of the family which in turn is the foundation of the nation" (RA 10354, Sec. 2, para. 4).

The law requires the consent of the male spouse in accessing reproductive health procedures, and disallows minors from availing modern methods of family planning without parental consent. Even so, the law serves a turning point in the legal history of women's rights as it promotes "the right to make free and informed decisions, which is central to the exercise of any right, shall not be subjected to any form of coercion and must be fully guaranteed by the State, like the right itself" (RA 10354, Section 3a), and "[r]espect for protection and fulfillment of reproductive health and rights which seek to promote the rights and welfare of every person particularly couples, adult individuals, women and adolescents" (RA 10354, Section 3b), among others. The Reproductive Health law remains a triumph in changing the discourse on women's reproductive rights and sexuality not only in the Philippine legal system, but in public and societal consciousness as well.

¹ It is reported that the Catholic Church led a campaign for 15 years against any form of family planning laws in the Philippines. See Torres-Tupas 2014

Strengthened Protections in the Expanded Trafficking Law

The Anti-Trafficking law has been expanded as amended by Republic Act No. 10364. The acts of trafficking now include those committed with “a scheme, plan, or pattern intended to cause the person either: (1) to believe that if the person did not perform such labor or services, he or she or another person would suffer serious harm or physical restraint; or (2) to abuse or threaten the use of law or the legal processes” (RA 10354, Section 3j). The provision on trafficking of children is further strengthened, which explicitly covers acts such as, offering of a child for prostitution, for the production of pornography, or for pornographic performances; the production and trafficking of drugs; and the use, procuring or offering of a child for illegal activities or work which, by its nature or the circumstances in which it is carried out, is likely to harm the child’s health, safety or morals (RA 10354, Section 3k). The amended law also has a new provision on “Attempted Trafficking in Persons” which also criminalizes acts where the offender failed to or did not execute all the elements of the crime. Acts of attempted trafficking of children are also enumerated.

The provision on the “Acts that Promote Trafficking” has also been expanded which includes among others, tampering with, destroying, or causing the destruction of evidence, or influencing or attempting to influence witnesses, in an investigation or prosecution of a case. The amended law also aims to expedite the initiation and prosecution of cases; and prohibits desistance as basis to dismiss the case. Giving more value to the law are new sections providing for temporary custody of trafficked persons with the local social welfare and development office; and establishing the irrelevance of past sexual behavior, opinion thereof or reputation of victims and consent of victims in cases of deception, coercion and other prohibited means.

Recognition and Protection of the Rights of Domestic Workers

The valuation of domestic work is inextricably linked with the views on women and reproductive work. The stereotyped view of domestic work as part of the reproductive roles expected of women can be seen in the fact that majority of those in domestic work are women. Domestic work, as well as other reproductive work of women that has been utilized as labor fits in the global care chain which reproduces the global gender division of labor. The Philippines is complicit in perpetuating the gender stereotypes on domestic work as it is one among the top sending countries of domestic work worldwide.

Following the ratification of the Philippine government of the International Labour Organization Convention No. 189, otherwise known as the Convention Concerning Decent Work for Domestic Workers, the Philippine Congress passed the Republic Act 10361 also known as Domestic Workers Act of 2013 or *Batas Kasambahay* of 2013. The national legislation paved

the way for the legal recognition of domestic work as work, significantly affording rights to domestic workers. *Batas Kasambahay*, while covers only domestic workers working in the country, is to date, the only law that explicitly provides for the rights of domestic workers. The law covers rights and privileges of domestic workers which include "standard of treatment" prohibiting employers or any members of the household to "subject domestic workers to any kind of abuse nor inflict any form of physical violence or harassment or any act tending to degrade the dignity of a domestic worker;" among others.

The Philippine Framework Plan on Women's Empowerment and Gender Equality

As the primary policy-making, coordinating, and oversight body, the Philippine Commission on Women (PCW), formerly National Commission on the Role of Filipino Women (NCRFW) developed the framework plan for gender mainstreaming dubbed "Women's Empowerment, Development and Gender Equality" (Women's EDGE) Plan for 2013–2016.² The Women's EDGE plan strives to "concretize the gender-responsive provisions of the PDP, and translating them into strategies and programs." Serving as a "companion document" to the Philippine Development Plan (PDP), it guides agencies in mainstreaming the gender dimension in their regular programs, as well as in implementing gender-focused activities.

The said Plan is to be implemented and monitored through the annual gender and development (GAD) plan and budget process, invoking therein "President's Social Contract No. 13" on Gender Equality.

REMAINING CHALLENGES³

State's Failure to Address Structural Inequality

In the protection and promotion of women's human rights, most of the State's compliance with the CEDAW is through legislation. While a significant part of the challenges lies in the full implementation and enforcement of the legal statutes providing for women's human rights; as with the call for women's access to justice, there is a need to look beyond legal measures and into the interplay of politics, economics, and culture to achieve full realization of women's rights and substantive equality. Looking alone at the exist-

² The Women's Empowerment, Development and Gender Equality Plan 2013-2016 is the fourth gender-focused plan formulated by the Philippines since 1989; the first ones being the Philippine Development Plan for Women (PDPW 1989-1992), the Philippine Plan for Gender-Responsive Development (PPGD 1995- 2025), and the Framework Plan for Women (FPW 2004-2010). See http://pcw.gov.ph/sites/default/files/documents/resources/womens_edge_plan.pdf

³ From WLB 2010b

ence of laws protecting women would be limiting as it fails to address the subordinated and subjugated identities of women in law and in society. It would fail to account for the structural inequalities between men and women, the systemic and historic disadvantaged position of women, the culture of impunity in cases of VAW, and the prevailing gender bias and system of patriarchy that continue to persist in the society.

Beyond Legislation: Need for Shift in Consciousness

Meanwhile, the prevailing attitudes of duty bearers and the society as a whole on women's issues and women's position affect women's full enjoyment of rights. As structural inequality has been ingrained in history and in culture, it pervades not only the legal system but also the society as a whole. In effect, women's issues are not taken seriously, myths abound on women's sexuality, and gender bias and discrimination characterize the legal process. It is not surprising that members of social institutions discourage victims from disclosing rape rather than assist them.

Law's Exclusion of Women's Varied Experiences

By the laws' and the legal processes' constant exclusion of women's varied experiences, and by the society's continued failure to recognize the serious nature of violence against women, thereby promoting a culture of impunity, the experiences of women continue to be undermined and rendered invisible.

Strategic Objective 12. *Ensure equality and non-discrimination under law and practice*

GAINS: TRANSFORMING THE LAW TOWARDS WOMEN'S EMPOWERMENT

Advances in Legislative Advocacy⁴

The Anti-Rape Law of 1997 or Republic Act 8353 is a landmark in Philippine legal history where the crime of rape was reclassified from a crime against chastity to a crime against persons. RA 8353 also departed from the kind of evidence required by the old law to prove rape and adopted feminist groups' view of "any physical overt act in any degree from the offended party" as evidence of resistance in prosecuting rape.

⁴Title and subsequent subsection adopted and culled from WLB (2008), *From de jure to de facto Compliance: Bringing Policy Implementation and Law Enforcement in Line with the Women's Convention*.

Another milestone in women's legal history came with the passage of RA 9262 or the Anti-Violence Against Women and Their Children Act of 2004.

Though problems have arisen in the course of implementation, RA 9262 substantively contains the highlights of collaborative lobby and advocacy work by women. It commits the state to "exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the provisions of the UDHR, the CEDAW, CRC and other international human rights instruments of (*sic*) which the Philippines is a party" (RA 9262, Sec. 2). It broadly covers "any act or 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" (RA 9262, Sec. 3).

Repeal of Night Work Prohibition

Albeit spurred by the rising number of Business Processing Outsourcing (BPO) industries in the country (Senate Press Release, 2011), Republic Act No. 10151 entitled "An Act Allowing the Employment of Night Workers," significantly abolished the night work prohibition on women by repealing Article 130 and Article 131 of the Labor Code. The law lifted the prohibition on women from working in industrial companies between 10 P.M. and 6 A.M. of the following day, and between midnight and 6 A.M. of the following day in commercial companies. While the law covers all workers and grants a set of rights to the same, the law has specific provisions on women. Albeit arguably skewed in favor of companies' utilization of labor, by ensuring that women report to work during their pregnancy and post-childbirth, the law provides an alternative to night work for pregnant women before and after childbirth. The provision prohibits dismissal of women while enjoying the said benefit, "except for just and authorized causes that have no connection to pregnancy, childbirth and child care responsibilities" (Palabrica, 2011).

REMAINING CHALLENGES: STEREOTYPING IN THE LAW AND BARRIERS TO WOMEN'S ACCESS TO JUSTICE

While inroads have been made at the *de jure* level, there remain major gaps in eliminating discriminatory gender stereotypes in the law towards transforming the legal system and creating an enabling environment for women to access justice and fully enjoy their rights and fundamental freedoms.

To this day, barriers to access justice such as the “gender insensitivity of the legal system and state actors, stigmatization and re-victimization, economic and cultural barriers, inefficiency of the system, corruption and the perceived impunity enjoyed by the perpetrators of the acts of violence against women” (WLB 2010b) exist and continue to pose obstacles in achieving substantive equality.

Underpinning these barriers are discriminatory provisions in the law that reflect negative stereotypes and prejudices against women. Gender stereotyping in the law is complicit in the systemic discrimination and human rights violations inflicted on women with impunity. These negative stereotypes embedded in and reinforced by the law maintain women’s unequal position in the society and sustain gender inequality.

Sexist bias and gender-based discrimination have been persistently manifest in the judiciary and in the legal system as a whole. Women are more likely to suffer stigmatization and discrimination from the society. The legal affirmation of male authority in marriage and the family with respect to property and the children perpetuates the subordinate position of women in marriage and the family; and the society as a whole. A widow is penalized should they remarry “within three hundred and one days from the date of the death of her husband, or before having delivered if she shall have been pregnant at the time of his death” (Article 351 Revised Penal Code on Premature Marriages, in WLB 2010a). Sexual harassment is abysmally trivialized and dismissed as something that does not cause any real damage to women. This section sets out to uncover select laws that are identified as discriminatory and reinforcing negative gender stereotypes.

Male-privileging: Double Standard in the Revised Penal Code

Found under “Crimes against Chastity” in the Revised Penal Code, provisions on adultery and concubinage reflect the male-privileging double standard, and gender-based prejudice of the law when it comes to issues of infidelity. Higher penalties are imposed on women for committing the same offense as men. When women are found guilty of adultery, the punishment is *prision correccional* in its medium and maximum periods. Men who commit concubinage on the other hand, are punished by *prision correccional* in its minimum and medium periods. Further, the evidence required to prove concubinage is stricter than that of adultery. “Concubinage requires proof while adultery may be premised on circumstance” (Santos, 2013).

The legislative move initiated in Congress towards equalizing the penalties reveals the lack of understanding of the legislature of the principle of substantive equality. The proposed bill attempts to level the field through formal equality; i.e., it sets the same penalties for both male and female spouses. In view of this principle, it must be recognized that “women experience disadvantage and discrimination *because they are women*, for which reason women’s particular contexts must be taken into account. Because these dis-

parities privilege men, same treatment in the law, or gender-neutral measures such as what the bill proposes, will not bring about the substantive equality that women need for the full enjoyment of their rights" (Santos, 2013).

Trivialization of Sexual Harassment as Trivialization of Women's Issues⁵

The Anti-Sexual Harassment law of 1995 (RA 7877) has been found to be weak and problematic in many fronts. The law only addresses sexual harassment that is work, education or training related. Other violations are thus excluded from the coverage of the law.

The law does not define sexual harassment as a sex or gender-based crime. Sexual harassment is not argued as a crucial expression of women's inequality. For complaints to qualify, authority, influence, or moral ascendancy is a basic requirement. Sexual harassment is not viewed as a form of sex discrimination. On one hand, formal, class-based power does not explain sexual harassment against female peers and female superiors. RA 7877 is riddled with vague, problematic language. For examples, offenders defend themselves by declaring they did not "request or demand sexual favors" as stipulated in the law. Sexual harassment is trivialized in the law; hence the penalties assigned are lower than those for other sexual violence related crimes. Sexual harassment is part of the continuum of sexual violence, but in the law it is categorized into levels of severity. Discrimination and sexual harassment become part of culture, validated and affirmed by beliefs and practiced as socially accepted behavior. Victims tend to blame themselves and feel powerless. People are induced into thinking that the idea of women as objects to be possessed is "normal," and therefore, only right.⁶

Despite the law being almost twenty years old, there is very little knowledge about it across the country and very few cases had been prosecuted. The lack of specific mandate for a particular government agency to monitor the implementation and enforcement of Republic Act 7877 aggravates the problem. RA 7877 mandates every workplace and educational or training institution in the public and private sectors to promulgate rules and regulations on sexual harassment to apply within the workplace or institution. This requirement leaves the content of the rules and regulations to the private agency or institution concerned. Among the problems that arise from this is the lack of uniformity in the content of the rules and regulations particularly in terms of definition of and administrative sanctions for sexual harassment. Moreover, RA No. 7877 does not provide safeguards to complainants against retaliatory

⁵ From WLB 2008

⁶ Proceedings of the Roundtable Discussion of Policy Makers and Human Rights Advocates: Revisiting the Issue of Sexual Harassment. 04–05 December 2008, Bulwagang Tandang Sora, CSWCD Building, UP Diliman, Quezon City. Organized by Women's Legal Bureau, in partnership with the Civil Service Commission and the International Labour Organisation

action that may result from filing a sexual harassment charge. The need for safeguards is crucial in cases involving groups particularly vulnerable to reprisal, such as students and employees with no security of tenure.

Pervasive Subordination of Women in the Family Code

The Family Code contains disempowering and discriminatory provisions on women that in turn, buttress women's subordinated position in society. In cases of disagreement when it comes to ownership, administration, enjoyment and disposition of the community property and conjugal partnership property; the Family Code yields the decision-making to the husband. Article 96 states that, "[t]he administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the *husband's decision shall prevail*, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision." Similarly, Article 124 provides, "[t]he administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision."

Ineffective Legal Remedies and Onerous Requirements for Marital Separation

Before the Philippine Constitution established "[m]arriage as an inviolable social institution," and "the foundation of the family that shall be protected by the State" (Article XV, Section 2), divorce was legal at the time of the American colonial period and Japanese Occupation (De Leon, 2014). The same provision on marriage has been upheld and further defended by the Family Code. The move to establish and protect the inviolability of marriage was indomitably contrived by the conservative and male-dominated Roman Catholic Church. Since the country is predominantly Roman Catholic, "with Roman Catholics accounting for 83% of the population," the legislation of divorce has been blocked by the "powerful and conservative church hierarchy, and the dominance of very conservative segments of the Catholic laity" (De Leon, 2014). It is not surprising, therefore, that none can be found in both the Constitution and Family Code which can be interpreted as an opening for divorce. A proposed law was even filed in 2013, barring the passage of divorce (Romero, 2013). In the 15th Congress, the divorce bill was "junked" by the legislature (Romero, 2013).

While the Family Code provides for declaration of nullity of marriage or annulment and legal separation, these, however, are found wanting not only in providing effective remedies for troubled marriages more so (De Leon, 2014), for women trapped in abusive marriages; but it also fails to address the patriarchal roots of marital problems.

It seems that the legal system connives with the Church in making dissolution of marriages practically unobtainable; the onerous, costly, and protracted process of applying for annulment and legal separation makes it difficult, especially for women, to obtain annulment or legal separation served by the Court.

Heterosexist Bias in the Legal System⁷

The Filipino concept of sexuality and notions on gender revolve around ideas of femininity or masculinity and physical sex or sexual intercourse. The only sexual behavior considered legal / moral and normal is heterosexual; other sexualities are pejoratively looked upon and both implicitly and explicitly condemned. Sexuality is predominantly seen from a heteronormative lens. The cisgender⁸-heterosexual binary excludes those outside of the legalized heteronormative order. This leads to other forms of marginalization and exclusion, such as the non-recognition of families that are not based on the heterosexual norm.

Because of the resulting invisibility, lesbian, gay, bisexual and transgender (LGBT) families are rendered differentially more vulnerable to discrimination and violation given the lack of protections and avenues for them to advance their rights (WLB 2010a). Heterosexist bias remains to be felt as the invisibility of lesbian rights and health in government programs continues to exist (Philippine Shadow Report, 2006 in WLB 2010a).

Violent Consequences of Stereotypes to Women with Disabilities and Women of Diverse Sexual Orientation and Gender Identity and Expression (SOGIE)⁹

Violence and Discrimination against Lesbians, Bisexual and Transgender Persons

Two recent studies depict how women who identify or are perceived as lesbians, bisexual, or transgender are more vulnerable to and experience violence both in private and public spheres. In *Kwentong Bebot: Lived Experiences of Lesbians, Bisexual and Transgender Women in the Philippines*¹⁰ (Rainbow Rights

⁷ Excerpt from WLB 2010a

⁸ A cisgender person is someone who identifies as the gender and sex that person was assigned at birth. See <http://www.ohchr.org/documents/hrbodies/cedaw/accesstojustice/iglhrc.pdf>

⁹ Excerpt from the Country Report prepared by Philwomen on ASEAN, which is part of the bigger regional report to be submitted to the ASEAN Intergovernmental Commission on Human Rights (AICHR).

¹⁰ Kwentong Bebot is a nationwide qualitative research on the lived experiences of violence committed against lesbian, bisexual and transwomen in the Philippines. It is part of a five-country report on violence against LBT women entitled "Violence: Through the Lens of Lesbians, Bisexual Women and Trans People in Asia" commissioned by the International Gay and Lesbian Human Rights Commission (IGLHRC).

The report is available at <http://iglhrc.org/sites/default/files/PhilippinesCC.pdf>

Philippines, 2014 in PhilWomen on ASEAN, 2014), sexual and physical violence are the two most reported acts of violence experienced by LBT women, most of which occurred at an early age and were committed by male family members, acquaintances and strangers, both alone and in groups. Similarly, *Breaking Out: Stories of Violence and Poverty Among Lesbians, Bisexual Women, and Trans Men (LBTs) in the Philippines* (GALANG Philippines, 2014 in PhilWomen in ASEAN, 2014) found that LBT people experience egregious forms of psychological/emotional, physical, and sexual violence committed by their own family members or peers.

Social protection programs—insurance and financial assistance made available to members of the Filipino workforce in times of death, disability, retrenchment, natural calamities, and the like—are also inaccessible to LBT people and their families. The study entitled *Policy Audit: Social Protection Policies and Urban Poor LBTs in the Philippines* (GALANG Philippines, 2013 in PhilWomen on ASEAN, 2014) revealed that LBT persons and their families are often prevented from benefiting from social insurance systems. The study also found that access to socialized housing of same-sex couples and their children is hampered when government actors fail to recognize them as legitimate household or family units entitled to the full protection of the law (GALANG Philippines, 2013 in PhilWomen on ASEAN, 2014).

Likewise, the non-recognition of trans women in the gender they identify with prevents them from accessing social services, including but not limited to education, employment, public accommodations, and healthcare and protection from violence (Society of Transsexual Women of the Philippines (STRAP), 2012 in Philwomen on ASEAN, 2014). This was documented in a submission to the Office of the High Commissioner for Human Rights (OHCHR) during the Universal Periodic Review (UPR) on the Philippines in 2011.¹²

Rising Gender-based Violence against Transgender Women

As of this writing, four transgender women have been reported to be murdered in less than a month. These transgender women reside in different cities of the country, such as in Caloocan,¹³ Cebu,¹⁴ Tayabas,¹⁵ and Olongapo City.¹⁶ The case of “Jennifer Laude” from Olongapo City, as with the rest, has been characterized as gender-based violence on the basis of SOGIE. The

¹² Society of Transsexual Women of the Philippines (STRAP) in Philwomen on ASEAN, 2014, “The human rights situation of transgender people in the Philippines” Submission to the 13th Session of the United Nations Human Rights Council Universal Periodic Review 2012. See http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/STRAP_UPR_PHL_S13_2012_SocietyofTranssexualWomenofthePhilippines_E.pdf

¹³ See Francisco 2014b

¹⁴ See Bongcac 2014

¹⁵ See Kantos 2014

¹⁶ See Francisco 2014a

killings of the said transgender women are characterized by such brutality and viciousness that many lesbians, gays, bisexual, and transgender (LGBT) groups pronounced these as hate crimes. The police report corroborated with this claim, stating that the murder was a "crime of hatred."¹⁷

Jennifer Laude's murder in the hands of a US serviceman is not the first case on gender-based violence that implicates the Visiting Forces Agreement (VFA). The rape case of Nicole or the Subic Rape Case in 2005 resonates with the Jennifer Laude case since Nicole suffered the same fate of victim-blaming, backlash, revictimization and stigmatization by the public. Like Jennifer Laude, Nicole was condemned as "chingada"¹⁸ or the woman who asks for it."

Violence and Stigmatization against Women with Disabilities

Women with disabilities are more vulnerable to violence and sexual abuse. Based on a report from the Philippine Deaf Resource Center,¹⁹ violence against deaf women account for half of the total 346 cases involving deaf parties from 2006–2012. Of 243 cases filed by complainants, rape cases filed by deaf females outnumber all other complaints by a ratio of 10:1. The Commission on Human Rights in its sole report on persons with disabilities over a 14-year period only mentions that 64% of 56 cases are on sexual abuse and that 70% are filed by female complainants (CHRP, 2007). In the baseline data gathered by the Philippine Coalition on the UNCRPD concerning Supreme Court cases of persons with disabilities from 2008–2011, 20% of 126 cases are on gender-based violence, almost exclusively on women and girls with intellectual disabilities (Philippine Coalition, 2013).

Despite their clear need for protection from violence and abuse, women with disabilities remain largely outside of State programs and activities for Filipino women in general. There are no specific programs or monitoring to address this need by the Philippine Commission on Women, nor by the National Council on Disability Affairs, or even by the Commission on Human Rights.

Cyber Crime Law's Protectionist Approach: More Harm than Good for Women

In 2012, the Cybercrime Prevention Act, which aimed to address legal issues concerning online interactions and the Philippine Internet, was passed and this drew protests from several fronts. Fifteen groups filed a petition before the Supreme Court questioning its constitutionality that led to a tem-

¹⁷ See Francisco 2014a

¹⁸ The term was used in the paper, "Nicole's Burden: The Chingada in Philippine Discourse" by Danicar Mariano

¹⁹ To date, the only substantial data on violence against deaf women

porary restraining order (TRO). Women's groups questioned the law, specifically the provision on cybersex for being overbroad and vague. "The law presumably addresses sexual violence committed online, which are exploitative and harmful particularly to women, the vagueness and overbreadth of cybersex as content-related offense create a different impact on women, who will be the ones caught up in its wide web and targeted for criminal prosecution. The elements of the crime under the cybersex provision are not well-defined, therefore the law poses more harm to women who are usual victims of sexual violence in cyberspace. The law fails to concretely define what constitutes the violation under the cybersex provision of the law. If the intent of the law is to suppress the occurrence of syndicated and exploitative cybersex, the measure may be ineffective as it fails to consider the transnational nature of sexual violence in cyberspace where site owners or operators and the buyers are beyond the jurisdiction of the Philippines. It will only succeed in arresting women found in local cybersex dens and putting them behind bars" (WLB, 2012). As of this writing, the Supreme Court lifted the TRO and upheld the constitutionality of most of its provisions, including the cybersex provision.

The law supposedly aims to protect the women, as well as children, from exploitation. However, the law instead continues to stereotype women—categorizing them as all victims without recognizing their agency to express their sexuality online. The Philippine government's act of criminalizing sexual behavior or activity of women online does not address the underlying causes of VAW and fails to harness ICT's potential to promote women's empowerment. The law poses more harm to women as they are the ones being put behind bars. In the past years, reports of raids and arrests all over the country have shown that it is women who are being arrested.

This critique holds true with another alarming development in the recent judgment of the Supreme Court on the use of ICT. The Supreme Court upholds the decision of a Catholic school to ban two female students from attending their graduation for posting their "sexy" photos on Facebook.²⁰ This clearly violates the right of individuals to control information about themselves and limits the girls' right to express themselves and their sexuality. Policing sexual behavior online undermines women's freedom to live online and their agency to decide about their body.

Gender-based Stereotypes in Rape: Revictimizing and Denying Women's Access to Justice

As with the case of Karen T. Vertido (KTV), submitted as communication under the Optional Protocol to the CEDAW, another case exemplified how gender stereotyping revictimizes and denies justice to women. KTV's case spanned 10 years which ended in an acquittal. The decision relied upon dis-

²⁰ Rhonda Ave S. Vivares, et. al. vs. St. Theresa's College, et al., G.R. No. 202666, Sept. 29, 2014.

criminatory gender-based myths and misconceptions about rape and rape victims.²¹ The Philippine Government to this day continues to disregard the Views of the CEDAW Committee²² to take actions to reform the judiciary and the legal system of the country. This in turn reflects the negligence and lack of due diligence of the State to rectify its violations of women's rights.

In another rape case this time of a deaf minor, "R," the same myths and misconceptions were used in the Judge's acquittal decision. The case illustrates the systemic discrimination against victims of sexual violence in the Philippine judicial system. The credibility of the complainant in a rape case is mostly based on a standard of behaviour that the courts believe a rape victim should exhibit. Those who satisfy the stereotypes are considered credible, while the others are met with suspicion and disbelief, leading to the acquittal of the accused. These myths and stereotypes constitute discrimination on the basis of gender. The case depicts how the court used gender stereotypes and myths similar to those employed in *Vertido v. the Philippines*.²³

While not discounting the gains from and the contribution of the Anti-Rape law in reclassifying rape as a crime against chastity to a crime against persons,²⁴ the persistence of gender stereotypes in the interpretation of the law by the judiciary has produced more stigmatization, (re)victimization and denial of justice to women. As the KTV communication explained, "...the reasons for the tremendously underreported number of rape cases include the fact that victims are afraid of the stigma that will most likely result from seeking justice, lack confidence in the legal process and often fail to obtain appropriate redress."²⁵

The cases of KTV and R expose the sexist bias of the courts in deciding cases of sexual violence. The issue of women's consent, where the perpetrators should have been required to prove has not been borne in mind by the courts in deciding cases. Often to women's detriment, the courts question

²¹ Karen Tayag Vertido v. The Philippines. Communication No. 18/2008, UN Doc. CEDAW/C/46/D/18/2008 (22 September 2010) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/545/58/PDF/N1054558.pdf?OpenElement>

²² See <http://pcw.gov.ph/index.php/cedaw-philippines/109-op-cedaw-/550-pcw-response-philippines-un-cedaw-karen-vertido-case>

²³ Excerpt from the communication submitted by R to the CEDAW Committee, in *R.P.B. v. The Philippines* Communication No. 34/2011, UN Doc. CEDAW/C/57/D/34/2011 (12 March 2014)

²⁴ The Anti-Rape Law of 1997 eroded the concept of chastity reclassifying the crime s a crime against persons. The law redefined Rape from a private to a public offense and expanded its scope to include rape by sexual assault. Prior to the Anti-Rape Act of 1997, Rape was provided for under Article 335 of the Revised Penal Code, under the title Crimes against Chastity. As a crime against chastity, it implies that only "virtuous" or "chaste" women can be victims of rape, with emphasis laid on the "loss of chastity" rather than the violation of the woman's personhood.

²⁵ Excerpt from the communication submitted by R to the CEDAW Committee, in *R.P.B. v. The Philippines* Communication No. 34/2011, UN Doc. CEDAW/C/57/D/34/2011 (12 March 2014)

women's resistance, where the burden of proof rests on women to prove that they resisted. The courts manifest gender bias, favoring male perpetrators, like in the KTV case where "several references to stereotypes about male and female sexuality being more supportive for the credibility of the alleged perpetrator than for the credibility of the victim" are found in the court decision.

Further, discriminatory provisions still exist in the Rape law, such as the clause where the "subsequent valid marriage between the offended party shall extinguish the criminal action or the penalty imposed;" and "[i]n 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" (RA 8353, Article 266-C). The law has been critiqued for equating severity of the offense with the hierarchical valuation of women's body parts. The law imposes stiffer penalties for rape committed through carnal knowledge than rape through sexual assault. The penalties should be the same because both crimes violate the woman's personhood and dignity (WLB, 2008).

Delayed Implementation of Gender Ombud: Denial of Women's Rights and Access to Justice

The Commission on Human Rights (CHR) is appointed as the "Gender Ombud" as provided by Republic Act 9710 or the Magna Carta of Women. Section 39 of the law establishes the Gender Ombud which is tasked to undertake measures to ensure implementation and compliance with the law by the state agencies. The Gender Ombud is granted a monitoring function, and together with PCW, is tasked to develop indicators and guidelines to comply with their duties related to the human rights of women, including their right to nondiscrimination. The CHR is also expected to establish guidelines and mechanisms, among others, that will facilitate access of women to legal remedies under the Magna Carta Act and related laws, and enhance the protection and promotion of the rights of women, especially marginalized women. Another task of the Commission is to assist in the filing of cases against individuals, agencies, institutions, or establishments that violate the provisions of the Magna Carta Act. Lastly, the CHR has the mandate to recommend to the President of the Philippines or the Civil Service Commission any possible administrative action based on noncompliance or failure to implement the provisions of the Act.

Of late, none has been heard of the efforts of the CHR to operationalize the Gender Ombud. Almost no official pronouncements by the Commission can be found providing information on the same.

Strategic Objective 13. *Achieve legal literacy (BPA 95)*

GAINS

The MCW explicitly establishes women's right to information on policies that affect them (RA 9710, Sec. 26). In its Implementing Rules and Regulations (IRR), "[a]ll government personnel, including appointing authorities, local chief executives (LCEs) of LGUs and those in executive managerial positions involved in the protection and defense of women against gender-based violence" are required to "regularly undergo the mandatory training on gender and human rights, particularly on the cycle and continuum of violence, counseling and trauma healing" (RA 9710, IRR, Sec. 12, para. C). The MCW also mandated government institutions involved in both formal and non-formal education to develop gender-sensitive curricula and gender-fair instructional materials (RA 9710, IRR, Sec. 16). Likewise the law maintains education on sexual and reproductive—health rights (SRHR) including youth sexuality education as part of the women's right to health. Even then, said provision was highly contested and opposed by the religious front as providing an opening for the passage of the Reproductive Health law. Consequently, as with the framework law, the Reproductive Health law's more comprehensive provision on education on SRHR was met with disapproval from the same opposing bloc. Under the RH law, the elements of health care include education [and counseling] on sexuality and reproductive health (RA 10354, Sec. 4, para. 7). The law has a specific provision, albeit criticized by women's rights groups and supporters as heavily watered down and compromised, on age- and development-appropriate reproductive health education (RA 10354, Sec.14).

Particularly for women migrant workers, recognized by BPfA as among those who should be "made aware of their human rights and of the recourse mechanisms available to them" (BPfA para. 233 (i)), the Migrant Workers Act as amended includes provision of information on their rights and remedies available including in destination countries as part of their rightful entitlements. Based on the IRR of the amended Migrant Workers's Act, the Philippine Overseas Employment Administration (POEA) implements the the Pre-Departure Orientation Seminar (PDOS) and Pre-Employment Orientation Seminar (PEOS) that both cover rights of Overseas Filipino Workers (OFWs).

In terms of educating the judiciary to ensure that their rulings and issuances adhere to human rights standards, particularly women's human rights standards as provided by the CEDAW; the Philippine Judicial Academy (PHILJA), hereafter the Academy, created through Republic Act No. 8557 serves as "a training school for justices, judges, court personnel, lawyers and aspirants to judicial posts" (RA 8557, Sec. 3). The Academy is tasked to "pro-

vide and implement a curriculum for judicial education, and shall conduct seminars, workshops and other training programs designed to upgrade their legal knowledge, moral fitness, probity, efficiency, and capability" (RA 8557, Sec. 3). Among its programs and courses are special issues or areas of concern, such as problems of vulnerable and marginalized groups in society. It particularly identified Gender Sensitivity and Women's and Children's Rights as part of its Special Focus Programs.²⁶

REMAINING CHALLENGES

While not lacking in the *de jure* compliance in providing for the foundational framework for women's legal literacy, sadly, almost nothing else can be said of the policies and programs supposedly providing for the same. At the implementation level, there is barely significant ground that has been covered. As many researches exposed, women especially those whose rights have been violated hardly have knowledge about laws and policies, let alone awareness on their rights. Of late, there remains no statistics and monitoring mechanism for estimating the number of women who have significant awareness of laws and their rights.

What is striking moreover is that legal literacy, while provided in separate laws and their respective IRRs, is not specifically made part of the mandate of the important state organs particularly those primarily involved in women's rights promotion and protection, including the judiciary and the Philippine Commission on Women (PCW) itself. There also still persists great resistance even among and within academic institutions to implement the SRHR education provisions of both the MCW and the RH law.

It has mostly been women's NGOs filling in for the State in capacitating grassroots women about laws and their rights. The question remains, where does the mandate to promote legal literacy for women especially at the community level and across marginalized sectors, fall?

CONCLUSION AND RECOMMENDATIONS²⁷

Legislations are crucial for women to access justice in cases of violence. Enactment of laws is not the end and advocates must continue to look into how the available remedies are able to respond in reality to women who suffer from violence and abuse. While the *de jure* protection of women's rights against VAW is in place, the *de facto* enjoyment of rights by women still has a long way to go.

²⁶ See PHILJA website: <http://philja.judiciary.gov.ph/>

²⁷ A large part of the recommendations is culled from WLB (2010b), *Mapping and Analysis of Domestic Legal Remedies to Issues of Violence Against Women*

The Need for Continued Advocacy to Change the Prevailing Attitudes in Society

The existing gender bias, the culture of patriarchy and the deeply entrenched structural inequality between men and women have affected women's access to justice in cases of VAW. Despite gender sensitivity trainings and seminars, gender bias and discrimination continue to haunt women in various circumstances: in society, during investigation and in the courtroom. Changing the attitudes, biases and perspectives of society against discrimination, of course, takes time. There is a need for continued advocacy on women's issues and women's rights. The integration of women's issues in the academe and ensuring positive portrayal of women by media are concrete steps in eliminating culturally entrenched gender bias and discrimination.

The Need for Due Diligence of the State

Due diligence entails a more comprehensive response at different levels of intervention, from individual women, the community, the State and transnational levels. The due diligence standard should: a) focus on State obligation to transform the societal values and institutions that sustain gender inequality while at the same time effectively respond to violence against women when it occurs, and b) examine the shared responsibilities of State and non-State actors with respect to preventing and responding to violence and other violations of women's human rights (Ertürk, 2006).

The states' duty to observe due diligence, involves four obligations: prevention, investigation, punishment and redress of the human rights violation and the obligation to prevent impunity.²⁸

The Need to Strengthen Legal Responses to VAW, Both Substantially and Procedurally

The study, in mapping the available domestic legal remedies in cases of VAW observes the primacy of criminalization as a response to VAW. The passage of special laws for women like the Anti-Rape Law, the Anti-VAWC Law, and the Anti-Trafficking Laws are indeed gains in the struggle against VAW. However, the mapping has shown that the substantive laws on VAW still need modification: there are legislations needing to be passed and there are provisions in existing laws which need amendments. In the same vein, there is also a need to address procedural issues in women's access to justice in VAW to complement the substantial changes.

²⁸ See I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4. A number of inter-American conventions expressly establish the State's obligation to apply due diligence to prevent, investigate and impose penalties for violence against women, such as the Inter-American Convention to Prevent and Punish Torture (Article 6) and the Convention of Belém do Pará (Article 7(b)).

Thus, substantially, it is recommended that lawmakers immediately enact a law which will protect and provide remedies (to cover among others, support services, protective orders, compensation and penalty) for women victims of violence committed outside of the country. Considering the territorial application of criminal laws, treaties/bilateral or unilateral agreements may be entered into by the Office of the President with other head of states in order to reach an agreement/arrangement aimed at Filipina workers, in cases of VAW committed outside of the country's territorial jurisdiction. The absence of a law directly addressing VAW committed against Filipina workers abroad has taken its toll on the millions of Filipina migrant workers and their families.

As to amendments, the study, on the basis of the mapping of remedies and on the analysis of the cases, would recommend a review and amendment of the provisions of the Revised Penal Code, particularly the following: the provisions on adultery and concubinage, with the end of rectifying the bias against women in the manner by which the law defines adultery; the provision criminalizing prostitution, and defining the same as committed by "a woman," the provision on death under exceptional circumstances, which like the provisions mentioned, reflects a patriarchal society's view of what a woman should be, thus perpetuating the discrimination of women in law. The amendment of the Sexual Harassment Act is also recommended. At present, the law covers only sexual harassment in work, education, and training-related environments and by a person exercising authority or moral ascendancy over another. To make it responsive to the calls of the times, the coverage should, like the civil service laws, include sexual harassment among peers, especially in the context of the current rise of Business Process Outsourcing (BPO) companies. The penalty, too, under the current Sexual Harassment law, is too minimal and needs to be increased.

The Need for the Government's Total Commitment and Political Will in Addressing VAW

A constantly cited challenge in women's access to justice in cases of VAW is the culture of impunity prevailing in society, the failure of the system to address abuse, and the trivialization of the abuse committed against women. This is seen in the insensitivity of duty bearers: from investigators, court employees and even judges and justices themselves.

To address the culture of impunity in cases of VAW, there is a need to mainstream women's access to justice in the development agenda of the government, sectoral organizations and service provider institutions. This means that policies and programs should be implemented at all levels, in view, not only of punishing acts of violence against women but also on preventing the same. This could involve training and capacity building seminars on VAW and on women's access to justice, the enactment of procedures within the institution in cases of work or training related VAW and the remedies therefore.

By mainstreaming women's access to justice in the development agenda, the total development and empowerment of women is considered as part and parcel of women's freedom from VAW and their access to justice in cases of VAW. Thus, economic and political laws which serve to empower women should be disseminated to the stakeholders concerned and fully implemented by the government. Foremost among this would be the rights of women as enshrined and assured by the Magna Carta for Women.

Addressing impunity, too, requires political will on the part of the government in addressing VAW. This political will must be manifested in: improved and effective implementation of laws on VAW, the adequacy of facilities and the competence of the duty bearers (the police investigators, the medical practitioners, the psychologists, the prosecutors, the judges) in addressing and responding to VAW; it also must include continued reforms in the judiciary to make processes and procedures more gender sensitive.

Another aspect of political will would be the willingness shown by the government in addressing infractions in the implementation of the law committed by duty bearers themselves. It is important that proper administrative and criminal cases be filed against erring duty bearers who, instead of implementing the laws on VAW, and instead of protecting women, revictimize and discriminate against them. This too, should be done by the Supreme Court in the case of erring judges and other officers of the Court. The message should be made clear: that violence and all forms of discrimination against women shall be punished and neglect of duty and/or corruption shall likewise merit appropriate penalties.

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