



A Call for Philippine Implementation of Women's Rights Under CEDAW

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Cite as 52 ATENEO L.J. 765 (2008).

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I. INTRODUCTION

There exists a *de jure* discrimination in the country rooted from reliance on Spanish colonial laws and the *de facto* non-separation of church and state. Such proves to be detrimental most especially to women's rights both in law and in its implementation. Testaments to this prejudice are the preference on the *padre de familia* (father of the family) in the Family Code,¹ and the lack of a comprehensive reproductive health care law up to now, among others.

This Article tackles the existing discrimination against women in law, policy, and practice and discusses Philippine obligations in light of the Convention on the Elimination of Discrimination against Women (CEDAW).² CEDAW is the second most ratified treaty³ — second only to the Convention on the Rights of the Child.⁴ The very essence of CEDAW is the principles of equality and non-discrimination of women and the concurring state obligations under it.⁵

"Discrimination against women" is defined under article 1 of CEDAW to cover "any distinction, exclusion or restriction made on the basis of sex ... in the political, economic, social, cultural, civil or any other field"⁶ that has "the effect or purpose of impairing or nullifying the recognition,

1. The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209 (1988).
2. Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sep. 3, 1981 [hereinafter CEDAW].
3. CEDAW has undergone 185 ratifications. See, Office of the High Commissioner for Human Rights, CEDAW Status of Ratification, available at <http://www2.ohchr.org/english/bodies/ratification/8.htm> (last accessed May 19, 2008).
4. Convention on the Rights of the Child, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sep. 2, 1990. This has been ratified 193 times. See, Office of the High Commissioner for Human Rights, CRC Status of Ratification, available at <http://www2.ohchr.org/english/bodies/ratification/11.htm> (last accessed May 19, 2008).
5. CEDAW, arts. 2 & 3.
6. *Id.* art. 1.

enjoyment or exercise by women of their human rights and fundamental freedoms."⁷

Since the Philippines "adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations,"⁸ CEDAW, as a legally binding treaty, creates an obligation on the part of the national government to enact and implement laws and policies that comply with international laws and standards. Having ratified CEDAW on 3 August 1981⁹ or more than 26 years ago, the Philippines is legally bound to uphold its provisions. In addition, reviewing our compliance with CEDAW will place the country in perspective as to how far we have gone and what other steps are needed for us to gain equality and non-discrimination of women.

II. CEDAW APPLICATION IN PHILIPPINE COURTS

A survey of Philippine jurisprudence reveals that there are only few Supreme Court cases citing CEDAW. In the separate opinion of Justice Romero in *Romualdez-Marcos v. Commission on Elections*,¹⁰ CEDAW was quoted to uphold a widow's right to fix her domicile distinct from that of her deceased husband.¹¹ In *Philippine Telegraph and Telephone Company v. National Labor Relations Commission*,¹² the woman's right to work and right against discrimination based on marriage were upheld when private respondent was terminated from work for having concealed the fact that she was married in violation of a company policy against hiring married women.¹³ The constitutional provisions on the role of women in nation-building and fundamental equality before the law of women and men were also used to bolster respondent's claim.¹⁴ Lastly, in the 2004 case of *Central Bank*

7. *Id.*
8. PHIL. CONST. art. II, § 2.
9. See, Office of the High Commissioner for Human Rights, CEDAW Status of Ratification, available at <http://www2.ohchr.org/english/bodies/ratification/8.htm> (last accessed May 19, 2008).
10. *Romualdez-Marcos v. Commission on Elections*, 248 SCRA 300 (1995).
11. *Id.* at 346. (Romero, J., separate opinion).
12. *Philippine Telegraph and Telephone Company v. National Labor Relations Commission*, 272 SCRA 596 (1997).
13. *Id.* at 598-99.
14. *Id.* at 601-02. See, PHIL. CONST. art. II, § 14 & art. XIX, § 3.

Employees Association, Inc. v. Bangko Sentral ng Pilipinas,¹⁵ CEDAW was used as basis for equality under international law.¹⁶

The responsibility of the judiciary is broadened with the promulgation by the Supreme Court of the Rule on the Writ of *Amparo*.¹⁷ This writ is particularly significant in giving aid to women who have disappeared, were tortured, and raped.¹⁸ The role of the judiciary is crucial in effecting the release and in ending the continuous torture and sexual abuse being committed against the victims.

III. VIOLENCE AGAINST WOMEN

Pursuant to General Recommendation No. 19 on Violence against Women (VAW) prepared by a committee specifically formed to monitor the implementation of CEDAW, gender-based violence is defined as “violence which is directed against a woman because she is a woman or which affects women disproportionately.”¹⁹ The State, being a key player to end this cycle of violence, is mandated to:

refrain from engaging in VAW, to exercise due diligence to prevent, investigate and, punish acts of VAW and to provide access to just and effective remedies including medical assistance to victims; to take appropriate and effective action whether those acts are perpetrated by the State, by private persons or by armed groups or warring factions.²⁰

15. Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas, 446 SCRA 299 (2004).

16. *Id.* at 376.

17. RULE ON THE WRIT OF AMPARO, A.M. No. 7-9-12-SC (Oct. 24, 2007).

18. Take for instance the case of two university students, Sheryll Cadapan and Karen Empeño, who were disappeared since June 26, 2006. See, Jim Loughran, The Philippines: kidnapping and ill-treatment of human rights defenders Sheryll Cadapan and Karen Empeño in military custody, available at <http://www.frontlinedefenders.org/node/1358> (last accessed May 19, 2008); Dabet Castañeda, 2 Missing UP Students Tortured, Raped inside Military Camp, available at <http://www.bulatlat.com/2007/11/2-missing-students-tortured-raped-inside-military-camp> (last accessed May 19, 2008).

19. Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, art. 1, U.N. Doc. No. A/47/38 (1992), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (last accessed May 19, 2008) [hereinafter General Recommendation No. 19].

20. Extension of mandate of U.N. Special Rapporteur on Violence against Women (UNSRVAW) by the Commission on Human Rights in 2003, 59th sess., Res. 2003/45.

Below is an appraisal of particular manifestations of VAW and the response of the Philippines on these matters.

A. Rape

Incidences of rape remain high, with an average of eight women raped every day²¹ and an average of nine children raped daily.²²

The Anti-Rape Law of 1997²³ brought positive changes; however, the law imposes a lighter penalty for “rape by sexual assault” committed with the insertion of an object or instrument into the vaginal orifice, as opposed to rape by penile penetration.²⁴ Implicit in this provision is a disregard for the traumatic effects of an assault of this nature.²⁵

The enactment of the Rape Victim Assistance and Protection Act of 1998²⁶ provides support to rape victims. Its *rape shield* provision prohibits admissibility of past sexual conduct of the rape victim. Then again, it further provides that past sexual conduct is admissible if found “relevant by the court.”²⁷ This exception subjects the provision to judicial interpretation that may undermine its very purpose. In the essence of CEDAW prohibiting discrimination against women, past sexual conduct of rape victims is never relevant as evidence in rape cases since no woman asks to be raped.

A clear example of the irrelevance of past sexual conduct and “manner of dress” of the rape victim is the fact that young children, six years old and below, are also raped. This certainly dispels the erroneous view of blaming the victim and clearly shows that the blame rests on no one else but the

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

22. *Id.*

23. An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes [The Anti-Rape Law of 1997], Republic Act No. 8353 (1997).

24. Clara Rita Padilla, Philippine Submission to Equality Now Workshop on Litigating for Sex Equality (June 9-11, 2001) (transcript available on file with the Center for Reproductive Rights) at 17 [hereinafter Padilla, Litigating for Sex Equality]. This workshop was held in Nairobi, Kenya.

25. WOMEN'S LEGAL BUREAU, WOMEN'S HEALTH AND THE LAW, 69-71 (1997).

26. An Act Providing Assistance and Protection for Rape Victims, Establishing for the Purpose a Rape Crisis Center in Every Province and City, Authorizing the Appropriation of Funds Therefor, and for Other Purposes [Rape Victim Assistance and Protection Act of 1998], Republic Act No. 8505 (1998).

27. *Id.* § 6.

perpetrator. Judges and public prosecutors who rule on criminal cases and rape complaints must not yield to the lame excuses of perpetrators that perpetuate sexism, patriarchy, and discrimination against women.

Despite the enactment of both The Anti-Rape Law of 1997 and the Rape Victim Assistance and Protection Act of 1998, numerous complaints for rape are dismissed at the level of preliminary investigation and in the Regional Trial Courts.²⁸ Definitive data on the number of dismissals and acquittals among rape complaints are unavailable from the Department of Justice and from the judiciary. However, there are judges and public prosecutors who still do not understand the realities of rape as gender-based violence, ignoring the fact that rape is life-threatening.²⁹ Others do not recognize that the demeanor of rape victims during investigations and while testifying may vary. They also fail to receive reports of rape with credulity.³⁰ Some disregard the findings of post-traumatic stress disorder among victims of sexual violence.³¹ Although the Supreme Court ruled that the “[a]bsence of hymenal lacerations does not disprove sexual abuse,”³² it is possible that many judges and public prosecutors may continue to mistake the absence of hymenal lacerations as conclusive proof that rape did not occur due to deeply entrenched personal beliefs and lack of sensitization.

28. Padilla, *Litigating for Sex Equality*, *supra* note 24, at 18 (citing *People v. Miranda*, Criminal Case No. Q96-65569 (Regional Trial Court, National Capital Judicial Region, Branch 103, Quezon City 1998)). *See*, SOLIMAN M. SANTOS, JR., ET AL., *JUSTICE AND HEALING: TWIN IMPERATIVES FOR THE TWIN LAWS AGAINST RAPE* (2001).

29. Padilla, *Litigating for Sex Equality*, *supra* note 24, at 19 (citing *People v. Miranda*, Criminal Case No. Q96-65569 (Regional Trial Court, National Capital Judicial Region, Branch 103, Quezon City 1998) and *People v. Ortega*, Criminal Case No. 42865-99 (Regional Trial Court, 11th Judicial Region, Branch 17, Davao City; hearings on Feb. 29, 2000, Apr. 17, 2000, and Apr. 18, 2000)). *See*, SOLIMAN M. SANTOS, JR., ET AL., *JUSTICE AND HEALING: TWIN IMPERATIVES FOR THE TWIN LAWS AGAINST RAPE* (2001).

30. *See*, *People v. Salarza, Jr.*, 277 SCRA 578, 588 (1997). The Supreme Court held that:

Rape is a charge easy to make, hard to prove and harder to defend by the party accused, though innocent. Experience has shown that unfounded charges of rape have frequently been proffered by women actuated by some sinister, ulterior or undisclosed motive ... On more than one occasion it has been pointed out that in crimes against chastity the testimony of the injured women should not be received with precipitate credulity.

31. Padilla, *Litigating for Sex Equality*, *supra* note 24, at 18.

32. *People v. Llanita*, 364 SCRA 505, 519 (2001).

Many private and public prosecutors and judges also fail to accept *res gestae* evidence in rape cases. When the rape occurred with only the perpetrator and the private complainant, *res gestae* evidence is very important since the very first persons to whom the private complainant related the rape incident while she was in a state of trauma are crucial witnesses.³³ There are also judges who due to lack of receptiveness toward rape survivors scold the women for crying in court while testifying.³⁴

To comply with the due diligence obligation of the Philippines in preventing, investigating, and punishing acts of VAW specifically rape, it is imperative that misconceptions associated with rape cases be corrected, thus, eliminating disbelief and judgmental attitudes toward rape survivors. Hence, it is important to affirm the following line of jurisprudence:

- (1) The rape survivor's testimony must be received with credence.
 - [W]hen a woman says that she had been raped, she says in effect all that is necessary to show that she had indeed been raped ...³⁵
- (2) There is no standard form of human behavioral response.
 - It is settled doctrine that there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.³⁶
 - We have also stated before that the workings of a human mind placed under emotional stress are unpredictable and people react differently — some may shout, some may faint,

33. *See*, REVISED RULES ON EVIDENCE, rule 130, § 42. The provision refers to *res gestae* evidence as “[s]tatements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof”

34. Padilla, *Litigating for Sex Equality*, *supra* note 24, at 18 (citing *People v. Miranda*, Criminal Case No. Q96-65569 (Regional Trial Court, National Capital Judicial Region, Branch 103, Quezon City 1998) and *People v. Ortega*, Criminal Case No. 42865-99 (Regional Trial Court, 11th Judicial Region, Branch 17, Davao City; hearings on Feb. 29, 2000, Apr. 17, 2000, and Apr. 18, 2000)).

35. *People v. Lascuna*, 225 SCRA 386, 399 (1993); *See*, *People v. Joya*, 227 SCRA 9 (1993); *People v. Budol* 143 SCRA 241 (1986); *People v. Pasco*, 181 SCRA 233 (1990).

36. *People v. Arnan*, 224 SCRA 37, 43 (1993) (citing *People v. Flores*, 217 SCRA 613 (1993)).

and some may be shocked into insensibility, while others may openly welcome the intrusion.³⁷

- 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 mental shock they experience. Yet it can never be successfully argued that the latter are any less sexual victims than the former.³⁸
- [V]ictims of sexual transgression respond differently to their ordeal.³⁹
- Different people act differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.⁴⁰

(3) Failure to immediately report the crime to the authorities does not destroy the credibility of the complaint.

- Failure in making prompt report to the proper authorities does not destroy the truth *per se* of the complaint.⁴¹
- Long silence and delay in reporting a crime of rape has not always been construed as an indication of false accusation. Under the circumstances, [private complainant's] protracted silence and resistance in reporting the matter should not cast doubt on the veracity of her accusation.⁴²
- On the claim that the delay in reporting the crime to the authorities for around six months is reason enough to doubt the credibility of the complainant, the Court has held in a long line of cases that delay in reporting the crime is not sufficient to doubt the truthfulness of the accusation.⁴³

37. *People v. Malunes*, 247 SCRA 317, 326 (1995) (citing *People v. Caradilla*, 133 SCRA 413 (1983)); see, *People v. Matrimonio*, 215 SCRA 613 (1992); *People v. Miranda*, 262 SCRA 351 (1996); *People v. Talledo*, 262 SCRA 544 (1996); *People v. Villanueva*, 254 SCRA 202 (1996); *People v. Talaboc*, 256 SCRA 441 (1996).

38. *People v. Ibay*, 233 SCRA 15, 25 (1994).

39. *People v. Cabebe*, 290 SCRA 543, 555 (1998).

40. *People v. Luzorta*, 286 SCRA 487, 491 (1998) (citing *People v. Talaboc*, 256 SCRA 441 (1996)).

41. *People v. Sagun*, 303 SCRA 382, 385 (1999).

42. *People v. Plaza*, 242 SCRA 724, 729-30 (1995).

43. *People v. Jimenez*, 250 SCRA 349, 357 (1995).

- [T]he pronouncement of the appellant that the unreasonable delay in the filing of the complaint entitles him to an acquittal must also fail. We have already ruled that 'the silence of the offended party in a case of rape, or her failure to disclose ... without loss of time to persons close to her and to report the matter to the authorities, does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue, and fabricated.'⁴⁴

The 2006 CEDAW Committee Concluding Comments⁴⁵ on the Philippines raised its concerns about the Anti-Rape Law of 1997 provision extinguishing the criminal action upon subsequent forgiveness by the wife.⁴⁶

In the communication by Karen Vertido to the CEDAW Committee,⁴⁷ she cited seven cases which led to the acquittal of rape perpetrators to highlight discrimination against women as evidenced by the following five elements:

- (1) the "sweetheart defense" or a variation thereof, which asserts that the sexual act is consensual because intimate or sexual relations existed or exist between the complainant and the accused;
- (2) the court's appreciation of the complainant's conduct before, during and after the alleged rape. The main line of reasoning is that the complainant did not exhibit the "natural" reaction of a woman who claims to have been violated;
- (3) the absence of injury, both on the part of the accused and of the complainant;

44. *People v. Abendaño* 242 SCRA 531, 539-40 (1995) (citing *People v. Junio*, 227 SCRA 826 (1994)).

45. Committee on the Elimination of Discrimination against Women, Concluding Comments of the Committee on the Elimination of Discrimination against Women: Philippines, available at http://www.ncrfw.gov.ph/inside_pages/downloads/cedaw/concluding_comments.pdf (last accessed May 19, 2008) [hereinafter Concluding Comments].

46. The Anti-Rape Law of 1997, art. 266-C, ¶ 2. The provision states:

Art. 266-C. Effect of Pardon. - ...

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*.

47. Communication under the Optional Protocol to the Convention on the Elimination of Discrimination Against Women, Letter from Karen Vertido to CEDAW Committee (Nov. 29, 2007).

- (4) the nature, the amount or severity, and the perceived effects of the force, threat or intimidation as applied to the complainant;
- (5) the understanding of the concept of consent and how it is manifested or communicated.⁴⁸

In the same communication, Vertido asked the CEDAW Committee to recommend to the Philippines, as a State party to CEDAW, to

develop an education and training program for trial court judges and public prosecutors specifically on sexual violence designed to make them understand sexuality issues and the psychosocial sequelae of sexual violence, appreciate properly medical and other evidence, adopt an interdisciplinary approach in investigating and deciding cases, and rid them of myths and misconceptions about sexual violence and its victims; undertake a serious review of jurisprudential doctrines of rape and other forms of sexual violence towards abandoning those that are discriminatory or that violate the Women's Convention, among others.⁴⁹

48. *Id.* at 78-89.

49. *Id.* at 99. Part of the relief in Vertido's communication included:

- (b) Develop an education and training program for trial court judges and public prosecutors specifically on sexual violence that is designed to make them understand sexuality issues and the psychosocial sequelae of sexual violence, appreciate properly medical and other evidence, adopt an interdisciplinary approach in investigating and deciding cases, and rid them of myths and misconceptions about sexual violence and its victims. The program should include a system of monitoring and evaluation of the effectiveness of the education and training on the judges and prosecutors concerned;
- (c) Undertake a serious review of jurisprudential doctrines on rape and other forms of sexual violence towards abandoning those that are discriminatory or that violate the rights guaranteed under general international human rights law, the Women's Convention and other human rights conventions;
- (d) Establish a monitoring system for trial court decisions in cases of rape and other sexual offenses to ensure their compliance with the proper standards in deciding cases and their consistency with the provisions of the Women's Convention and other human rights conventions;
- (e) Compile and analyze data on the number of sexual violence cases filed in the prosecution offices and in the courts, the number of dismissals and their bases, towards addressing discriminatory practices and decisions through education and training and other appropriate measures; and
- (f) Provide for the right to appeal of victims of rape in cases of acquittals that are anchored on discriminatory grounds.

B. Sexual Harassment

To address another form of violence against women, the Anti-Sexual Harassment Act of 1995⁵⁰ embodied the noble intent of proscribing sexual harassment in the workplace, education, and training environment. However, the actual provisions of the law are problematic. It provides that there is *demand, request, or requirement of a sexual favor* with the use of "authority, influence, or moral ascendancy."⁵¹ The way that the law is phrased subjects it to judicial interpretation where strict interpretation has led to countless dismissals in the preliminary investigation level and acquittals in the courts.

It would be best to amend the law to cover any unwanted conduct of a sexual nature in the workplace, educational, and training environment. Sexual harassment should be defined as "an act, or a series of acts involving any unwelcome sexual advance, request or demand for a sexual favor, or other verbal or physical behavior of a sexual nature, committed in a work-related, training or education related environment"⁵² to expressly cover all acts of sexual harassment and do away with judicial interpretation. The penalty for sexual harassment should also be increased to clearly show the strong intent to proscribe sexual harassment. As of now, the law provides lower penalties than acts of lasciviousness with only one month to six months imprisonment and/or fine of ₱ 10,000.00 to ₱ 20,000.00.⁵³

Like rape, sexual harassment, can happen anywhere and anytime. In cases of sexual harassment, the psychological impact on the victim is important and not the intent of the harasser.⁵⁴ That is why it is very unfortunate that in the 2002 case of *Aquino v. Acosta*,⁵⁵ the Supreme Court found no convincing evidence to sustain the charge for sexual harassment by ruling that, "[w]hat we perceive to have been committed by respondent judge are casual gestures of friendship and camaraderie, nothing more, nothing less. In kissing complainant, we find no indication that respondent was motivated by malice or lewd design."⁵⁶ It was also erroneous for the Supreme Court to uphold the finding of the Investigating Justice that, "[a] mere casual buss on the cheek is not a sexual conduct or favor and does not

50. An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes [Anti-Sexual Harassment Act of 1995], Republic Act No. 7877 (1995).

51. *Id.* § 3.

52. See, Civil Service Commission, Administrative Disciplinary Rules on Sexual Harassment Cases, Resolution No. 01-0940, § 3 (2001).

53. *Id.* § 7.

54. *Bundy v. Jackson*, 641 F. 2d 934 (1981).

55. *Aquino v. Acosta*, 380 SCRA 1 (2002).

56. *Id.* at 9.

fall within the purview of sexual harassment under R.A. No. 7877.”⁵⁷ It is dangerous to rule that “there is no showing that respondent judge demanded, requested or required any sexual favor from complainant in exchange for ‘favorable compensation, terms, conditions, promotion or privileges’ specified under Section 3 of R.A. 7877,”⁵⁸ since this strict interpretation can perpetuate the commission of sexual harassment in the workplace with impunity. With such a restricted interpretation, forced kisses and embraces that are unwanted sexual acts to the victim will not fall under the law. Such limited interpretation will perpetuate discrimination against women — sexual harassment generally being a gender-based violence with most women as victims.

It is also unfortunate that in the 2007 case of *Alcuizar v. Carpio*,⁵⁹ the Supreme Court did not find evidence constituting sexual harassment despite the finding of Executive Justice Investigator, Associate Justice Teresita Dy-Liacco Flores that respondent judge be adjudged guilty of sexual harassment. Reversing the finding of investigating justice is seldom done by the Supreme Court.⁶⁰ Moreover, there were clear forced kisses despite protests by complainant, and even touching of complainant’s legs, among others. The standard used by the Supreme Court which required that, “[t]he quantum of proof required to support the administrative charges or to establish the ground for the removal of a judicial officer should ... be proven beyond reasonable doubt”⁶¹ is contrary to the usual substantial evidence standard. Unwittingly, the standard used in this particular case will tend to embolden judicial officers to continue committing sexual harassment instead of exacting the high standards of conduct that is mandated from judicial officials under the canons.

Until the law is amended, however, it is imperative for prosecutors, judges, and justices to rule that any unwanted act of a sexual nature to which a woman is subjected to, such as forced kisses, grabbing of breast, is already a “demand or requirement of a sexual favor” as held in the 2008 case of *Rayala v. Domingo*.⁶² In *Rayala*, the Supreme Court stated that:

It is not necessary that the demand, request or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned...from the acts of the offender. ... It is enough that the

57. *Id.* at 10.

58. *Id.* at 11.

59. *Alcuizar v. Carpio*, 529 SCRA 216 (2007).

60. *Id.* at 223-25.

61. *Id.* at 225.

62. *Domingo v. Rayala*, G.R. Nos. 155831, 155840, & 158700, Feb. 18, 2008.

respondent’s acts result in creating an intimidating, hostile or offensive environment for the employee.⁶³

Furthermore, it is essential that prosecutors, judges, and justices rule that male co-workers can sexually harass a female co-worker and even male subordinates can sexually harass a female on a higher position because of the reality of gender relations. Thus, not only those in a position of power in the workplace, educational, and training institution sexually harass — vertical type or *quid pro quo* type of sexual harassment — but also any co-worker and subordinate can sexually harass because of gender relations between men and women, known as horizontal or hostile environment type of sexual harassment, that falls under the use of “influence” under the Anti-Sexual Harassment Act of 1995.

The existing gender relations between men and women manifest in the way male sexual harassers view women as “sex objects” is clear subordination of women. These male harassers believe that they can sexually harass women and get away with it.

Women have the right to a safe and healthy workplace, educational and training environment where their right to work and to study should be respected. Sexual harassment must be addressed effectively, otherwise, it will perpetuate and pervade the workplace, educational, and training environment without being punished. Sexual harassment must not be committed with impunity and the perpetrators must be held accountable for their actions to effectively eliminate sexual harassment.

C. Prostitution and Trafficking

In 2005, about 800,000 women and children were victims of prostitution.⁶⁴ The overwhelming figures of victims of prostitution and trafficking have triggered global awareness and global action against these crimes.

In the domestic level, the provisions of the Revised Penal Code⁶⁵ continue to focus law enforcement attention on women in prostitution, rather than on their exploiters. Article 202 on vagrancy is still being used to round up and imprison women in prostitution or is sometimes used to extort money or sexual favors.⁶⁶ Furthermore, the existing criminal law imposing imprisonment on women in prostitution disregards the fact that many are

63. *Id.*

64. Alexander Martin Remollino, ‘Palit-Bigas’ Prostitution, available at <http://www.bulatlat.com/news/5-37/5-37-prosti.htm> (last accessed May 19, 2006).

65. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815 (1930).

66. Padilla, *Litigating for Sex Equality*, *supra* note 24, at 20.

lured in to prostitution because of poverty and lack of alternative sources of income. Many women were forced in to prostitution because they were rape or incest victims or their families were abusive to them in the past.⁶⁷

Detaining women in prostitution is not the answer. The CEDAW Committee recommended “educational and economic opportunities”⁶⁸ for women in prostitution to provide them adequate options “thereby reducing and eliminating their vulnerability to exploitation and traffickers”⁶⁹ and “reintegrat[ing them] into society and provid[ing] rehabilitation, social integration and economic empowerment programmes to women and girls who are victims of exploitation and trafficking.”⁷⁰ The CEDAW Committee also urged the Philippines to “prosecute and punish traffickers and those who exploit the prostitution of women, and provide protection to victims of trafficking.”⁷¹

On the other hand, the Anti-Trafficking in Persons Act of 2003⁷² affords legal protection to trafficked persons by recognizing them as victims who should not be penalized for crimes directly related to the acts of trafficking or in obedience to the order made by the trafficker.⁷³ A Quezon City ordinance also recognizes persons in prostitution as victims — imposing penalties only on the perpetrators, such as the pimps and recipients of the sexual act, while providing services to persons in prostitution through education campaigns against prostitution, crisis intervention service, education and socio-economic assistance, sustainable livelihood skills training, financial support for scale businesses, integration and complete after-care programs, health services, counseling, and temporary shelter.⁷⁴

67. Clara Rita Padilla, *Rethinking Policies on Women*, SOROPTIMIST BALITA, Sep. 2005, at 3 [hereinafter Padilla, *Rethinking Policies on Women*].

68. Concluding Comments, *supra* note 45, ¶ 20.

69. *Id.*

70. *Id.*

71. *Id.*

72. An Act to Institute Policies to Eliminate Trafficking In Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations, and for Other Purposes [Anti-Trafficking in Persons Act of 2003], Republic Act No. 9208 (2003).

73. *Id.* § 17.

74. An Ordinance Addressing the System of Prostitution, Imposing Penalties on its Perpetrators, Providing Protective Measures and Support Services for the Prostituted Persons, and for Other Purposes, Quezon City Ordinance No. SP-1516, §§ (i) & (ii), (2005).

It would be good for legislators and members of the judiciary to emulate the Quezon City Regional Trial Court decision⁷⁵ of Judge Marcelino F. Bautista, Jr. where he declared the vagrancy provision under article 202, paragraph two unconstitutional. Judge Bautista stated in the decision, “we cannot see how poverty should be a criminal act. ... [T]he very thought of punishment of a person because of poverty smacks of elitism and a violation of the equal protection of the law clause.”⁷⁶

It is time to remove the penalty imposed on women in prostitution and to uphold their rights as protected by CEDAW.

D. Violence against Women in Intimate Relationships

Violence against women in intimate relationships is prevalent in the Philippines. Studies show that three out of five women in the Philippines have experienced some form of battery and other physical abuse.⁷⁷

Although the Anti-Violence against Women and Their Children Act of 2004⁷⁸ is a very potent law, there is still an ongoing disjunct between the law and how the law is being implemented in barangays, police stations, and courts. There are judges who do not issue Protection Orders⁷⁹ and some judges are hesitant to issue contempt orders against respondent husbands who clearly violate the provisions of Protection Orders.⁸⁰ There are husbands who sought to eject their wives from their homes as a form of abuse.⁸¹ Will the courts allow wives or even common-law wives to be ejected despite the law protecting the woman's right to stay in her residence regardless of its ownership? There are husbands who dissipate the couples' property. Will the courts allow banks and Registers of Deeds to allow the

75. JP v. LN-D, Civil Case No. Q96-26153 (Regional Trial Court, National Capital Judicial Region, Branch 215, Quezon City 1996).

76. *Id.* at 7.

77. Gina Mission, The Economic Cost of Violence Against Filipino Women, available at http://gina.ph/CyberDyaryo/features/cd1999_0520_014.htm (last accessed May 19, 2008).

78. An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes [Anti-Violence against Women and Their Children Act of 2004], Republic Act No. 9262 (2004).

79. CBS v. ACC, CA-G.R. CV No. 88682, Civil Case No. Q-04-52761 (Regional Trial Court, National Capital Judicial Region, Branch 222, Quezon City 2006).

80. Padilla, *Rethinking Policies on Women*, *supra* note 67; see, LOP v. ASDP, Special Civil Action No. Q07-61077 (Regional Trial Court, National Capital Judicial Region, Branch 220, Quezon City 2008).

81. ALC v. CBS, Civil Case No. 35-34201 (Municipal Trial Court, National Capital Judicial Region, Branch 35, Quezon City 2005).

dissipation of the couples' property in clear violation of protection orders or will the courts issue contempt orders?

In the CEDAW Committee case of *A.T. v. Hungary*,⁸² it was alleged in the communication or complaint that Hungary failed to provide effective protection from domestic violence from L.F. amounting to a breach of articles 2 and 5 (a) in conjunction with article 16 of CEDAW.⁸³ The CEDAW Committee recommended that Hungary, *inter alia*, provide regular training on CEDAW and its Protocol to judges, lawyers, and law enforcement officials.⁸⁴ It also recommended A.T. to receive reparation proportionate to the harm undergone and to the gravity of the violations.⁸⁵

In light of the Philippine obligations under the CEDAW, the Philippines should also provide regular training on the CEDAW and its Protocol to judges, lawyers, and law enforcement officials pursuant to the CEDAW Committee's recommendation in the *Hungary* case.

IV. REMEDYING DISCRIMINATION IN LAWS RELATING TO FAMILY, SEXUALITY, SEXUAL ORIENTATION AND GENDER IDENTITY, AND REPRODUCTION

After identifying the status of Philippine compliance in the many faces of violence committed against women, it is high time to lobby for more effective and beneficial laws directed to combat this ongoing oppression. The present state calls for greater vigilance from the lawmakers in filling the void in the legal landscape and rethinking particular provisions of currently operating laws.

A. Enactment of Divorce Law

One of the leading issues confronting Filipino women in the context of marriage and family life includes the absence of a clear divorce law. Women whose husbands are abusing them can only obtain nullity of marriage under article 36 of the Family Code where it must be shown that either or both of the parties are psychologically incapacitated.⁸⁶ Although the Supreme Court rules provide that expert opinion need not be presented,⁸⁷ some courts still

82. *A.T. v. Hungary*, Communication No. 2/2003, UN Doc. CEDAW/C/32/D/2/2003 (2005).

83. *Id.* ¶ 1.1.

84. *Id.* ¶ 9.6 (II) (iv).

85. *Id.* ¶ 9.6 (I) (i).

86. Padilla, *Litigating for Sex Equality*, *supra* note 24, at 16.

87. RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES, A.M. No. 02-11-10-SC (2003), § 2 (d), ¶ 2.

require expert evidence of medical or clinical causes of psychological illness.⁸⁸ Hence, court decisions nullifying marriages are difficult to obtain because of varying judicial interpretations as to what constitutes psychological illness and the lack of appreciation of evidence of physical, emotional, and psychological abuses.⁸⁹ Moreover, cases for nullity of marriage are costly and inaccessible to poor women. Without specific divorce legislation, article 36 makes it hard for women in abusive relationships to leave their abusive husbands⁹⁰ thereby allowing the continuance of domestic violence and abusive marriages.

The CEDAW Committee expressed "its concern about the lack of a law on divorce, making it impossible for women to obtain legal divorce"⁹¹ and urged the Philippines "to introduce and support vigorously legislation which permits divorce, allows women to remarry after divorce, and grants women and men the same rights to administer property during marriage and equal rights to property on divorce."⁹²

As a result of the lack of divorce, many women cohabit with their current partners without having their marriage nullified⁹³ and some women are dismissed from government service precisely because of these "immorality issues."⁹⁴ Such dismissals for "immorality" do not take into consideration the fact that there are many married women who were previously in abusive relationships and now may have found comfort in their current loving relationships.⁹⁵

B. Repeal or Judgment of Unconstitutionality of the Adultery and the "Marital Infidelity Bills"

Under the Revised Penal Code, a married woman commits adultery if she has sexual intercourse with a man other than her husband.⁹⁶ A married male, on the other hand, can be convicted of "concubinage" only if his mistress cohabits with him in the conjugal dwelling or in another dwelling, or if he

88. Padilla, *Litigating for Sex Equality*, *supra* note 24, at 18.

89. *Id.*

90. Padilla, *Rethinking Policies on Women*, *supra* note 67, at 3.

91. Concluding Comments, *supra* note 45, ¶ 31.

92. *Id.* ¶ 32.

93. Padilla, *Rethinking Policies on Women*, *supra* note 67, at 3.

94. *Id.*

95. *Id.*

96. REVISED PENAL CODE, art. 333.

has intercourse with a woman other than his wife under "scandalous" circumstances.⁹⁷

In many countries around the world, the criminal provisions imposed on adultery have already been repealed.⁹⁸ The intended purpose of the criminal provision on adultery under Philippine law is to protect the rights of real heirs. Many adultery cases, however, had been filed by estranged husbands who had long been separated from their wives and who had no intention of reuniting with their wives nor did they have any intention of supporting the illegitimate child of their wives. Moreover, the outdated concern of protecting the right of real heirs could easily be proven by DNA tests proving paternity.

The pending bills on "marital infidelity"⁹⁹ seeking to equalize the penalty between the wife and the husband infringe upon the right to have sexual relations. Equality in law does not simply mean equalizing the penalties for certain crimes for both women and men and especially not for "marital infidelity" cases. The essence of CEDAW provides for substantive equality such that the effect of laws would not discriminate against women. Equalizing the penalty for marital infidelity cases would discriminate women since the reality is that most marital infidelity cases are filed by men rather than women — more men still have more money than women and men use these marital infidelity cases against their wives as a form of abuse and torture and as a means to coerce their wives to transfer contested property to them.¹⁰⁰ Criminalizing marital infidelity is not the answer. It is time to repeal or declare unconstitutional the adultery and even the concubinage laws in the Philippines.

C. Repeal of the Punitive Provisions on Women who Marry Within the 301-day Period

97. *Id.* art. 334.

98. Agence France-Presse, Sexual Violence, Abortion in the Spotlight on Women's Day, available at http://news.inq7.net/world/index.php?index=1&story_id=68774 (last accessed Aug. 2, 2006).

99. See, An Act Defining and Penalizing Marital Infidelity Amending for the Purpose Articles 333, 334 and 344 of Act No. 3815, Otherwise Known as the Revised Penal Code, House Bill No. 999, 14th Cong. (2007); An Act Repealing the Law on Adultery and Concubinage and Defining in Lieu Thereof the Crime of Marital Infidelity, Amending for the Purpose Articles 333, 334, and 344 of Act Numbered Three Thousand Eight-Hundred and Fifteen, as Amended, Otherwise Known as the Revised Penal Code, House Bill No. 1820, 14th Cong. (2007).

100. There have been cases where the author has defended married women against adultery cases that have been filed by the estranged husbands merely to harass or threaten these women.

The Penal Code penalizes widows, divorced women or women whose marriages have been annulled or dissolved if they get married within 301 days from the death, divorce, or separation of their husbands.¹⁰¹ This provision clearly discriminates against women and violates women's sexual and reproductive rights¹⁰² and women's right to marry.¹⁰³

D. Repeal of the Discriminatory Provisions in the Family Code

Marital laws that are biased in favor of the husband violate article 16 of CEDAW. Some of the laws that regulate marriage under the Family Code discriminate against women. For example, the husband's decision prevails where there is a disagreement on the administration or enjoyment of community property and over the exercise of parental authority.¹⁰⁴

Article 16 of the Convention mandates states parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. Particularly, such measures shall ensure, on a basis of equality of men and women, the same rights and responsibilities during marriage and at its dissolution;¹⁰⁵ the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children, provided that in all cases the interests of the children shall be paramount;¹⁰⁶ the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;¹⁰⁷ and the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.¹⁰⁸

E. Repeal of the Discriminatory Provisions in the Muslim Code

Certain provisions of the Muslim Code¹⁰⁹ discriminate against women such as those pertaining to polygamy,¹¹⁰ early marriages (allowed at age 15),¹¹¹

101. REVISED PENAL CODE, art. 351.

102. See, CEDAW, art. 12.

103. See, CEDAW, art. 16.

104. See, FAMILY CODE, arts. 96 & 211.

105. CEDAW, art. 16 (c).

106. *Id.* art. 16 (f).

107. *Id.* art. 16 (g).

108. *Id.* art. 16 (h).

109. A Decree to Ordain and Promulgate a Code Recognizing the System of Filipino Muslim Laws, Codifying Muslim Personal Laws, and Providing for its Administration and for Other Purposes [CODE OF MUSLIM PERSONAL LAWS OF THE PHILIPPINES], Presidential Decree No. 1083 (1977).

arranged marriages of females aged 12-14,¹¹² and unequal rights of women and men in marriage relations including the husband's authority to choose the family residence,¹¹³ the husband's denial of permission to his wife to practice a profession or occupation of her choice,¹¹⁴ and the husband's authority over children prevailing over the wife.¹¹⁵

The provision under article 27 of the Muslim Code allowing polygamy under certain conditions¹¹⁶ is inherently discriminatory and, as cited by the CEDAW Committee General Recommendation No. 21, a harmful traditional practice that "contravenes a woman's right to equality with men,"¹¹⁷ that can have "serious emotional and financial consequences for her and her dependents."¹¹⁸

In predominantly Muslim countries such as Tunisia, Turkey, and Uzbekistan, polygamy has already been prohibited. In Tunisia, polygamy was abolished under the Personal Status Code immediately after Tunisia gained independence in 1956.¹¹⁹ In Turkey, the 1926 code, which replaced the Ottoman system, prohibited both polygamy and repudiation.¹²⁰

110. *Id.* arts. 27-29.

111. *Id.* art. 16 (1) & (2).

112. *Id.* art. 16 (3).

113. *Id.* art. 35.

114. *Id.* art. 36 (3).

115. CODE OF MUSLIM PERSONAL LAWS OF THE PHILIPPINES, arts. 71 (1) & 79.

116. *Id.* art. 27. The provision states:

By a husband. Notwithstanding the rule of Islamic law permitting a Muslim to have more than one wife but not more than four at a time, no Muslim male can have more than one wife unless he can deal with them with equal companionship and just treatment as enjoined by Islamic law and only in exceptional cases.

117. Committee on the Elimination of Discrimination against Women, General Recommendations Made by the Committee on the Elimination of Discrimination Against Women, General Recommendation No. 21, ¶ 14, available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (last accessed May 19, 2008) [hereinafter General Recommendation No. 21].

118. *Id.*; see, EnGendeRights, Discussions at the Pre-Test of the Paralegal Trainers' Training Module for Muslim Religious Leaders, Provincial Health Officers, Shari'a Lawyers, Councilors, and Judges (Nov. 24- 25, 2005). This training was held in Davao City.

119. See, Human Rights Council, National Report Submitted in Accordance with Paragraph 15 (a) of the Annex to the Human Rights Council Resolution, 5/1: Tunisia, A/HRC/WG.6/11/TUN/1 (Apr. 7-18 2003), available at

The provisions of the Muslim Code allowing marriages under 18 are inherently discriminatory against female children. In the CEDAW General Recommendation No. 21 on Equality in Marriage and Family Relations, the CEDAW Committee identified 18 as the appropriate legal age of marriage for both men and women.¹²¹ The Committee also cited the finding of the World Health Organization that when girls marry and have children, their health can be adversely affected and their education impeded.¹²² In CEDAW General Recommendation No. 19, the Committee defined forced marriage as a form of violence posing actual threats to women and perpetuating their subordinate roles in society.¹²³

In Morocco, the minimum age for marriage was raised from 16 to 18 years.¹²⁴ In Bangladesh, child marriage and betrothal are prohibited and shall have no legal effect.¹²⁵

The CEDAW Committee also specifically raised its concerns on the "existing discriminatory provisions of the Code of Muslim Personal Laws, which permit marriage of girls under the age of 18, polygamy and arranged marriages,"¹²⁶ "the practice of early Marriage... among Muslim women,"¹²⁷ and "encourage[d] the State party to intensify dialogue with the Muslim community in order to remove discriminatory provisions from the Code of Muslim Personal Laws."¹²⁸

http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/TN/A_HRC_WG6_1_TUN_1_E.pdf (last accessed May 19, 2008).

120. Mona Eltahawy, Turkish Law Recognizes Women, Men as Equals, available at <http://www.womensenews.org/article.cfm/dyn/aid/777> (last accessed May 19, 2008).

121. General Recommendation No. 21, *supra* note 117, ¶ 36.

122. *Id.*

123. *Id.* ¶ 11. The comment of the Committee on articles 2 (f), 5, and 10 (c) reads: "Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision."

124. Amnesty International, Amnesty International Report 2005, Morocco, available at <http://web.amnesty.org/report2005/mar-summary-eng> (last accessed Jan. 31, 2006).

125. Committee on the Elimination of Discrimination Against Women, Fifth Periodic Report of State Parties: Bangladesh, CEDAW/C/BGD/5 (Jan. 3, 2003).

126. General Recommendation No. 21, *supra* note 117, ¶ 11.

127. *Id.* ¶ 29.

128. *Id.* ¶ 12.

F. *Addressing Lesbian Rights, Discrimination of Lesbians and Gender Identity
Discrimination in Philippine Courts*

The CEDAW Committee's General Recommendation No. 21 recognized that "[t]he form and concept of the family can vary from State to State, and even between regions within a State."¹²⁹ The Committee also asked states parties to re-conceptualize lesbianism as a sexual orientation and to abolish penalties for its practice.¹³⁰ The Human Rights Committee (HRC), the committee tasked to monitor the implementation of the International Covenant on Civil and Political Rights (ICCPR),¹³¹ recognized in General Comment 19 that the concept and structure of family may differ from state to state and that the right to marry and found a family may be based on diverse definitions of families and relationships.¹³²

There is widespread discrimination against lesbians, bisexuals, and transgender women in the Philippines, yet no national law explicitly protects homosexuals from discrimination nor promotes their rights. While a Quezon City ordinance prohibits discrimination in the workplace on the basis of sexual orientation,¹³³ in Makati City, a dress code is imposed on gay men working for the city government.¹³⁴ There are anti-discrimination bills based on sexual orientation pending in the 14th Congress, but none has yet been passed into law.¹³⁵

129. *Id.* ¶ 13.

130. Committee on the Elimination of Discrimination Against Women, Concluding Observations on Kyrgyzstan, U.N. Doc. A/54/38, ¶¶ 95-142, ¶ 128 (1999).

131. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976 [hereinafter ICCPR].

132. Office of the High Commissioner for Human Rights, Covenant on Civil and Political Rights General Comment 19, ¶ 2, available at http://www.unhcr.org/reference/pdf/Gen_Comment23_on19.PDF (last accessed May 19, 2008).

133. An Ordinance Prohibiting All Acts of Discrimination Directed Against Homosexuals in Any Office in Quezon City Whether in the Government or in the Private Sector, and Providing Penalties for Violation Thereof, Quezon City Ordinance No. SP-1309 (2004).

134. Clara Rita Padilla & Flordeliza C. Vargas, *Lesbians and Philippine Law*, WOMEN'S JOURNAL ON LAW & CULTURE, July-Dec. 2001, at 61. The article cited Makati City Memorandum dated Aug. 16, 2000 which imposes a dress code for gay men working for the city government "prohibiting wearing of girl's attire by gay employees including putting on make-up and lipstick."

135. An Act Prohibiting Discrimination on the Basis of Sexual Orientation and Gender Identity and Providing Penalties Therefor, House Bill No. 956, 14th Cong. (2007); An Act Prohibiting Discrimination Against Persons on Account of Ethnic Origin and/or Religious Belief, House Bill No. 3012, 14th Cong.

The 2007 Yogyakarta Principles¹³⁶ affirming the rights to sexual orientation applies international human rights standards in relation to sexual orientation and gender identity. The members of the human rights experts' group were the former United Nations High Commissioner for Human Rights and former President of Ireland Mary Robinson; United Nations (UN) Special Rapporteurs including Philip Alston, UN Special Rapporteur on extrajudicial, summary and arbitrary executions and Paul Hunt, UN Special Rapporteur on the right to the highest attainable standard of health; and current and former members of human rights treaty bodies, judges, academics and human rights defenders. Sonia Onufer Corrêa of Brazil, who co-chaired the experts' group said: "[W]omen, men and persons whose sexuality does not conform with dominant norms face rape, torture, murder, violence, and abuse because of their sexual orientation or gender identity. These Principles affirm that human rights admit no exceptions."¹³⁷

To state the truth about the freedom to express one's sexuality, there are many countries allowing same-sex marriages, civil unions, and the like. Same-sex marriages are recognized in Netherlands, Canada, South Africa, and even in the predominantly Catholic countries such as Belgium and Spain.¹³⁸ Recognition of the rights of homosexuals by Muslims can be seen in the example of Iranian clerics who recently gave approval to gender

(2007); An Act to Establish Criminal Liability for Unlawful Discrimination Based on Disparate Treatment, House Bill No. 2902, 14th Cong. (2007); An Act to Prohibit Discrimination and Preferential Treatment on the Basis of Sex, Ethnicity, Physical Condition, Religious Belief or Political Affiliation in Connection with Admission to an Institution of Higher Education Participating in Any Program Authorized under the Commission on Higher Education, House Bill No. 2683, 14th Cong. (2007).

136. Yogyakarta Principles - Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=48244e602> (last accessed May 19, 2008).

137. International Gay and Lesbian Human Rights Commission, *Experts Release Groundbreaking Principles on Sexual Orientation, Gender Identity, and Human Rights: "Yogyakarta Principles" Call for Action Worldwide Against Discrimination and Abuse* (Mar. 26, 2007).

138. See, Wikipedia, Homosexuality laws of the world, available at http://en.wikipedia.org/wiki/Homosexuality_laws_of_the_world (last accessed May 20, 2008). The following are the same-sex unions recognized in other countries: (1) Civil Partnerships in United Kingdom and Falkland Islands; (2) Civil Unions in Mexico City, New Zealand, Buenos Aires City, Colombia, and Uruguay; (3) Registered Partnerships in Czech Republic, Denmark, Finland, Germany, Iceland, Luxembourg, Norway, Slovenia, Sweden, and Switzerland; (4) Civil Unions, Domestic Partnerships, Same-Sex Marriage in certain states in the United States; and (5) Registered and Domestic Partnerships in Australia.

reassignment surgery to transgendered people.¹³⁹ In Lebanon, a small public campaign exists to legalize homosexual relations in private between consenting adults.¹⁴⁰

In the Philippines, there is no legal recognition of marriage or partnership with regard to lesbians, bisexuals and transgender women. It is significant, however, that women victims of abuse in lesbian relationships are accorded the same protection under the Anti-Violence against Women and Their Children Act of 2004 since section 3 includes "any person with whom the woman has or had a sexual dating relationship."¹⁴¹

The ICCPR, a treaty that the Philippines has ratified, protects lesbians against discrimination on the basis of equal protection.¹⁴² Pertinent provisions of this treaty are as follows: article 2 (1) which prohibits discrimination on the basis of "other" status; article 3 which provides for equal right of men and women; and article 23 speaks on equality of rights to marriage.

Cases decided by the HRC uphold the right to sexual orientation. In the case of *Toonen v. Australia*,¹⁴³ the HRC found that the prohibition of private homosexual behavior is an arbitrary intrusion on privacy rights¹⁴⁴ under article 17 of the ICCPR and the right against discrimination¹⁴⁵ under article 2 of the same document. After the decision, Tasmania repealed the law in question.¹⁴⁶ In the case of *Young v. Australia*,¹⁴⁷ the Repatriation Commission denied Young's application for pension for his war veteran same-sex partner of 38 years.¹⁴⁸ The HRC decision found a violation by Australia of article 26 of the ICCPR on equality before the law and non-discrimination¹⁴⁹ and that Mr. Young is entitled to reconsideration of his

139. *Id.*

140. *Id.*

141. Anti-Violence against Women and Their Children Act of 2004, § 3.

142. See ICCPR, art. 26.

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

144. *Id.* ¶ 8.6.

145. *Id.* ¶ 7.3.

146. *Id.*

147. *Young v. Australia*, Communication No. 941/2000, U.N. Doc. CCPR/C/78/D/941/2000 (2003).

148. *Id.* ¶ 2.1.

149. *Id.* ¶ 10.4.

pension application without discrimination based on his sex or sexual orientation, if necessary through an amendment of the law.¹⁵⁰

In the 2003 Concluding Observations on the Philippines,¹⁵¹ the HRC urged the Philippine government to "take the necessary steps to adopt legislation explicitly prohibiting discrimination"¹⁵² and "to pursue its efforts to counter all forms of discrimination"¹⁵³ pertaining to sexual orientation. The Committee further urged the Philippines to "strengthen human rights education to forestall manifestations of intolerance and de facto discrimination."¹⁵⁴

In a case on discrimination of a lesbian mother with regard to the custody of her children, one Regional Trial Court judge made pronouncements in open court that the lesbian woman's relationship with her lesbian partner was "abnormal."¹⁵⁵

However, in the case of *Pablo-Gualberto v. Gualberto V*,¹⁵⁶ the Philippine Supreme Court held that sexual preference does not prove parental neglect or incompetence.¹⁵⁷ This recognizes that lesbian mothers have a right to custody of their children and their sexual orientation as lesbians does not make them "unfit" to have parental authority over their children as contemplated under article 213 of the Family Code. It was, however, mentioned in the decision that the husband failed to "demonstrate that [the respondent Joycelyn] carried on her purported relationship with a person of the same sex in the presence of their son"¹⁵⁸ or that "the son was exposed to the mother's alleged sexual proclivities or that his proper moral and psychological development suffered as a result."¹⁵⁹ It is discriminatory against

150. *Id.* ¶ 12.

151. Human Rights Committee, Concluding Observations of the Human Rights Committee: Philippines, CCPR/CO/79/PHL, available at <http://www.unhcr.ch/tbs/doc.nsf/0/5c1a26dde6327efoc1256df300525589?Op=endocument> (last accessed May 20, 2008).

152. *Id.* ¶ 18.

153. *Id.*

154. *Id.*

155. In the Matter of Petition for Habeas Corpus of Minors ASC, et al. v. JRP, Special Proceeding No. Q04-52635 (Regional Trial Court, National Capital Judicial Region, Branch 86, Quezon City) (petition for *habeas corpus* with a subsequent application for a Temporary/Permanent Protection Order under Republic Act No. 9262).

156. *Pablo-Gualberto v. Gualberto V*, 461 SCRA 450 (2005).

157. *Id.* at 477.

158. *Id.* at 478.

159. *Id.*

lesbians to suggest that there would be a different ruling given such evidence presented in court.¹⁶⁰ It would discriminate against lesbians to view that the show of affection of a lesbian couple's love negatively influences the well-being of the child.¹⁶¹ This continues to perpetuate the homophobic situation where heterosexual couples can show affection in front of their children while lesbian couples cannot do the same simply because they are lesbians.¹⁶²

In the recent Philippine Supreme Court case of *Silverio v. Republic*,¹⁶³ a male to female transgendered person was denied her petition to change her sex and name in her birth certificate. There are cases where the HRC found that the petition for change of name should be granted because the right to choose one's name and identity is covered by the right to privacy under article 17 of the ICCPR.¹⁶⁴ In the cases of *Goodwin v. United Kingdom*¹⁶⁵ and *Case of I. v. United Kingdom*,¹⁶⁶ the European Court of Human Rights considered the cases of two transsexual women who claimed that the United Kingdom's refusal to change their legal identities and papers to match their postoperative genders constituted discrimination. Reversing a number of its previous decisions — and offering a major victory for transgender people's rights — the Court held that their right to respect for their private lives, and also their right to marry, had been violated (articles 8 and 12 of the European Convention).

G. Reproductive Rights

CEDAW recognizes protection of women's reproductive rights when it declares "maternity as a social function" that must be inculcated in family education programs of State parties.¹⁶⁷ The Philippines is still far from imbibing this principle given the following problems left unresolved:

a. Lack of access to the full range of contraceptive methods

160. Clara Rita A. Padilla, *What is Best for Our Children?*, SOROPTIMIST BALITA (Dec. 2005).

161. *Id.*

162. *Id.*

163. *Silverio v. Republic*, 537 SCRA 373 (2007).

164. *See*, *Coeriel and Aurik v. The Netherlands*, Communication No. 453/1991, UN Doc. CCPR/C/52/D/453/1991 (1994).

165. *Goodwin v. United Kingdom*, Application No. 28957/95, 35 EHRR 447 (2002).

166. *Case of I v. United Kingdom*, Application No. 25680/94 (2002).

167. CEDAW, art. 5.

About half of all pregnancies in the Philippines, approximately 1.43 million a year,¹⁶⁸ are unintended. The Health Department has noted that Filipino women on the average have one child more than they want. According to the United Nations Population Fund, State of the World Population 2007 report on the Philippines, at least 200 Filipino women die for every 100,000 live births, compared to only 17 deaths in the United States, six in Canada, four in Spain, five in Italy, 41 in Malaysia, 30 in Singapore, and 44 in Thailand.¹⁶⁹ These deaths could have been avoided if more Filipino women had access to reproductive health information and health care.

At the core of reproductive rights lies the right to reproductive self-determination. This right is defined as the right to decide the number and spacing of one's children and to have the information and means to do so.¹⁷⁰ Knowing which medically safe and effective methods of contraception will help individuals and couples to determine freely and responsibly the number, spacing, and timing of their children. This in turn should ensure that all children are properly provided for by their parents.

The failure of the Philippine government to ensure universal access to the full range of contraceptive methods and reproductive health services exposes women to health risks associated with unplanned pregnancy including unsafe abortion and maternal mortality. The CEDAW Committee, tasked to monitor the implementation of the convention, in its General Recommendation No. 24 on Women and Health called upon states parties to prioritize the prevention of unwanted pregnancy through family planning and sex education and to reduce maternal mortality rates through safe motherhood services and prenatal assistance.¹⁷¹

Article 10 (h) of the CEDAW requires states parties to take measures to guarantee access to "information to help to ensure the health and well-being

168. Susheela Singh, et al., *Unintended Pregnancy and Induced Abortion in the Philippines: Causes and Consequences*, available at <http://www.guttmacher.org/pubs/2006/08/08/PhilippinesUPIA.pdf> (last accessed May 20, 2008).

169. *See*, United Nations Population Fund, *State of World Population 2007: Unleashing the Potential of Urban Growth*, 86-95 (2007).

170. *See*, CEDAW, art. 16.1 (e); Beijing Declaration and Platform for Action, U.N. Doc. A/CONF. 177/20 & A/CONF. 177/20/Add. I, ¶ 96 (1995); International Conference on Population and Development (ICPD), ICPD Programme of Action, ¶ 7.3 (1994).

171. Committee on the Elimination of Discrimination against Women, *General Recommendations Made by the Committee on the Elimination of Discrimination Against Women*, General Recommendation No. 24, ¶ 31 (c), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (last accessed May 20, 2008) [hereinafter *General Recommendation No. 24*].

of families, including information and advice on family planning."¹⁷² The CEDAW Committee has further elaborated on these rights:

Decisions to have children or not, ... must not ... be limited by ... Government. In order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in article 10 (h) of the Convention.¹⁷³

Increased access to, and adequate information on, contraceptive methods will reduce the number of unwanted pregnancies, eliminate the need for abortion and prevent maternal deaths.

In the concluding observations issued by the CEDAW Committee on the Philippine combined third and fourth periodic report in 1997, the Committee already explicitly recommended that reproductive and sexual health services, including family planning and contraception, be made available and accessible to women throughout the country.¹⁷⁴ The 2006 CEDAW Concluding Comments reiterated its concern about the "inadequate recognition and protection of the reproductive health and rights of women in the Philippines"¹⁷⁵ and "the high maternal mortality rates particularly the number of deaths resulting from induced abortions, high fertility rates, inadequate family planning services, the low rates of contraceptive use and difficulties in obtaining contraceptives."¹⁷⁶ The CEDAW Committee urged the Philippines as a State party to

take concrete measures to enhance women's access to health care, in particular to sexual and reproductive health services, in accordance with article 12 of the Convention and the Committee's general recommendation 24 on women and health. It requests the State party to strengthen measures aimed at the prevention of unwanted pregnancies, including by making a comprehensive range of contraceptives more widely available and affordable and without any restriction and by increasing knowledge and awareness about family planning.¹⁷⁷

b. Denial of access to emergency contraception

Giving rape victims access to emergency contraception (EC) like levonorgestrel can help them prevent unwanted pregnancies. So far, the Arroyo administration has deliberately failed to act upon a request to register

¹⁷² CEDAW, art. 10 (h).

¹⁷³ General Recommendation No. 21, *supra* note 117, ¶ 22.

¹⁷⁴ Concluding Comments, *supra* note 45, ¶ 536.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* ¶ 535.

¹⁷⁷ *Id.* ¶ 536.

levonorgestrel since it was made in December 2006. The denial of access to EC has no basis in medical science. The World Health Organization defines EC as a method of preventing pregnancy. It does not interrupt pregnancy, and is therefore not considered a method of abortion, according to this respected health institution.

Countries with constitutional protection of life from the moment of conception allow EC. These are Chile (Supreme Court of Chile approved the sale and distribution of Postinor); Peru (Peruvian Society for Obstetrics and Gynecology supported access to EC); and Hungary (has registered levonorgestrel). Other predominantly Catholic countries allowing access to levonorgestrel are Poland and Spain, among others.¹⁷⁸

- c. Lack of a comprehensive reproductive health care law including lack of sexuality education for adolescents and lack of accountability of government officials denying access to the full range of contraceptive methods

The proposed Comprehensive Reproductive Health Care Law¹⁷⁹ includes compliance with the obligation of the government to "provide sex education targeted at girls and boys, with special attention to the prevention of early pregnancies and sexually transmitted diseases" under CEDAW.¹⁸⁰ According to the CEDAW Committee, "the high rate of teenage pregnancies, ... present a significant obstacle to girls' educational opportunities and economic empowerment."¹⁸¹

For the longest time, foreign donors have provided for the contraceptive needs of Filipino women, until the phase-down of condoms in March 2003, pills in 2007, injectables in 2008, and intrauterine devices (IUDs) on a later date with projections that stock-out will occur six months after the last shipment. It is now up to the government to take up the slack. But rather than antagonize the Catholic Church, our politicians toe its line of prescribing only natural family planning methods, no matter how inadequate, unsuitable or ineffective they are to most women.

¹⁷⁸ See, Clara Rita A. Padilla, EnGendeRights Position Paper on Levonorgestrel as an Emergency Contraceptive Pill (2007). This paper was submitted to the Technical Panel of Obstetrics-Gynecology Specialists created by the Philippine Bureau of Food and Drugs (BFAD). Predominantly Catholic countries that allow levonorgestrel are Argentina, Belgium, Bolivia, Brazil, Colombia, Cuba, Dominican Republic, Ecuador, El Salvador, France, Mexico, Poland, Portugal, Slovenia, Spain, and Venezuela.

¹⁷⁹ See, An Act Providing for Reproductive Health Care Structures and Appropriating Funds Therefor, House Bill No. 812, 14th Cong. (2007).

¹⁸⁰ Concluding Comments, *supra* note 45, ¶ 536.

¹⁸¹ *Id.* ¶ 535.

The administration's policy of refusing to give women access to suitable contraceptive methods has seeped down to local politics and ordinances, as in Executive Order No. 3¹⁸² which led the city government of Manila in 2000 to refuse distribution of modern contraceptives in government clinics. Such policies reflect religious fundamentalism in our laws, where the beliefs of those in government are imposed on others. Government officials should respect plurality in our society and respect the rights of its citizens, regardless of their faith. Clear laws and policies upholding our reproductive rights should address these anomalies.

- d. Repeal of criminal provisions imposed on women who induce abortion and those who assist them

Many countries all over the world have been liberalizing their abortion laws. The CEDAW Committee stated that "barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures"¹⁸³ and that "[w]hen possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion."¹⁸⁴

The CEDAW Committee has recognized that restrictive abortion laws result in a violation of women's right to life.¹⁸⁵ It has, on several occasions, recommended that State parties remove punitive provisions imposed on women who undergo abortion.¹⁸⁶ It has praised at least one State party for

182. Jaileen F. Jimeno, In Manila, Pills and Condoms Go Underground, available at <http://www.pcij.org/stories/2005/pills.html> (last accessed May 20, 2008).

183. General Recommendation No. 24, *supra* note 171, ¶ 14.

184. *Id.*

185. See, The Center for Reproductive Rights & University of Toronto Programme of Reproductive Sexual Health Law, Bringing Rights To Bear: An Analysis of the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights, at 145, available at http://www.reproductiverights.org/pdf/pub_bo_tmb_full.pdf (last accessed May 12, 2008) [hereinafter Bringing Rights to Bear]. See, e.g., Belize, U.N. Doc. A/54/38, ¶ 56 (July 1, 1999); Chile, U.N. Doc. A/54/38, ¶ 228 (July 9, 1999); Colombia, U.N. Doc. A/54/38, ¶ 393 (Feb. 4, 1999); Dominican Republic, U.N. Doc. A/53/38, ¶ 337 (May 14, 1998); Paraguay, U.N. Doc. A/51/38, ¶ 131 (May 9, 1996).

186. General Recommendation No. 24, *supra* note 171, ¶ 31 (c). See also, Bringing Rights To Bear, *supra* note 185, at 145. See, e.g., Argentina, U.N. Doc. A/52/38 Re v.1, Part II, ¶ 319 (July 23, 1997); Chile, U.N. Doc. A/50/38, ¶ 158 (May 31, 1995); Colombia, U.N. Doc. A/54/38, ¶ 394 (Feb. 4, 1999); Dominican Republic, U.N. Doc. A/53/38, ¶ 349 (May 14, 1998); Ireland, U.N. Doc. A/54/38, ¶ 186 (July 1, 1999); Mexico, U.N. Doc. A/53/38, ¶ 408 (May 14, 1998); Panama, U.N. Doc. A/55/38/Re v.1, ¶ 201 (July 2, 1998);

amending its restrictive legislation.¹⁸⁷ Furthermore, the CEDAW Committee has emphasized the vital link between illegal, unsafe abortion, and high rates of maternal mortality¹⁸⁸ by consistently making the point that lack of access to contraceptive methods and family planning services, as well as restrictive abortion laws, tend to coincide with the prevalence of unsafe abortions that contributes to high rates of maternal mortality.¹⁸⁹

The Philippines has one of the most restrictive abortion laws in the world — penalizing the woman who undergoes abortion and the person assisting the woman without providing clear exceptions even when the woman's life or health is in danger, the pregnancy is the result of rape, or fetal impairment.¹⁹⁰ The Philippine Constitution provides that "[t]he State shall equally protect the life of the mother and the life of the unborn from conception."¹⁹¹ This provision has no counterpart in the 1935 and 1973 constitutions. Although the provision equally protects the unborn from conception, it does not explicitly prohibit abortion.

Paraguay, U.N. Doc. A/51/38, ¶ 131 (May 9, 1996); Peru, U.N. Doc. A/53/38/Rev.1, ¶ 340 (July 8, 1998).

187. Bringing Rights To Bear, *supra* note 185, at 146. See, e.g., Belgium, U.N. Doc. A/51/38, ¶ 181 (May 9, 1996).

188. Bringing Rights To Bear, *supra* note 185 at 146; See, e.g., Antigua and Barbuda, U.N. Doc. A/52/38/Re v.1, Part II, ¶ 258 (Aug. 12, 1997); Chile, U.N. Doc. A/54/38, ¶¶ 209, 228 (July 9, 1999); Georgia, U.N. Doc. A/54/38, ¶ 111 (Jan. 7, 1999); Greece, U.N. Doc. A/54/38, ¶ 207 (Feb. 1, 1999); Guyana, U.N. Doc. A/50/38, ¶ 621 (May 31, 1995); Hungary, U.N. Doc. A/51/38, ¶ 254 (May 9, 1996); Lithuania, U.N. Doc. A/55/38, ¶ 158 (June 6, 2000); Mauritius, U.N. Doc. A/50/38, ¶ 196 (June 31, 1995); Mongolia, U.N. Doc. A/56/38, ¶ 273 (Feb. 2, 2001); Paraguay, U.N. Doc. A/51/38, ¶ 131 (May 9, 1996).

189. Bringing Rights To Bear, *supra* note 185, at 146. See, e.g., Antigua and Barbuda, U.N. Doc. A/52/38/Re v.1, Part II, ¶ 258 (Aug. 12, 1997); Chile, U.N. Doc. A/54/38, ¶¶ 209, 228 (July 9, 1999); Georgia, U.N. Doc. A/54/38, ¶ 111 (July 2, 1999); Greece, U.N. Doc. A/54/38, ¶ 207 (Feb. 1, 1999); Guyana, U.N. Doc. A/50/38, ¶ 621 (May 31, 1995); Hungary, U.N. Doc. A/51/38, ¶ 254 (May 9, 1996); Lithuania, U.N. Doc. A/55/38, ¶ 158 (June 16, 2000); Mauritius, U.N. Doc. A/50/38, ¶ 196 (May 31, 1995); Mongolia, U.N. Doc. A/56/38, ¶ 273 (June 2, 2001); Paraguay, U.N. Doc. A/51/38, ¶ 131 (May 9, 1996); Ukraine, U.N. Doc. A/51/38, ¶ 287 (May 9, 1996); Venezuela, U.N. Doc. A/52/38/Rev.1, ¶ 236 (Aug. 12, 1997).

190. REVISED PENAL CODE, arts. 256-59; See, Pacifico Agabin, *The Legal Perspective on Abortion*, J. OF REPROD. HEALTH, RTS. & ETHICS 2 (1995). The Philippine restriction on abortion, one of the vestiges of Spanish colonization in the Philippines, was lifted directly from the old Spanish Penal Code of 1870.

191. PHIL. CONST. art. II, § 12.

Hungary also has a constitutional provision protecting life from conception but still permits abortion up to 12 weeks of gestation.¹⁹² The life of the unborn is not placed exactly on the same level as the life of the woman¹⁹³ as shown by laws and jurisprudence of countries worldwide allowing abortion on various grounds.¹⁹⁴ Furthermore, international human rights standards provide tremendous support for the right to safe and legal abortion.¹⁹⁵

As stated above, Filipino women do not have access to safe and legal abortion despite statistics in 2000 showing 473,000 women induced abortions;¹⁹⁶ 79,000 women were hospitalized for complications;¹⁹⁷ 800 women died due to complications¹⁹⁸ (or two women die every day) and 12%

192. Law No. 79 of Dec. 17, 1992 (Hu.), translated in 44 IDHL 249-50 (1993).

193. Glanville Williams, *The Fetus and the "Right to Life,"* 33 CAMBRIDGE L.J. 71, 78 (1994); See R.J. Cook & B.M. Dickens, *Human Rights and Abortion Laws*, 65 INT'L J. OF GYNECOLOGY & OBSTETRICS 85 (1999) (citing *Christian Lawyers Association of South Africa v. The Minister of Health*, Case No. 16291/97 (1998)). The *Christian Lawyers Association* case involves a group that sued the South African Minister of Health to declare the 1996 Choice on Termination of Pregnancy Act unconstitutional based on section 11 of the 1996 Constitution providing that "everyone has the right to life" and on the argument that a fetus is included in "everyone" since life of a human being starts at conception. The Court ruled that "everyone" was a legal alternative expression to "every person," and historically legal personhood commences only at live birth. The Court ruled that it was not necessary to address the claim on the biological beginning of human life, since it cannot be concluded that the human life that had begun was that of a legal person. The Court followed the observation that "the question is not whether the conceptus is human but whether it should be given the same legal protection as you and me."

Under article 41 of the New Civil Code, a fetus must be born alive, that is, completely delivered from the mother's womb, to be considered a person endowed with legal personality.

194. See, Poster, Center for Reproductive Rights, *The World's Abortion Laws 2005*.

195. Karen Llantoy v. Peru, Communication No. 1153/2003, CCPR/C/85/D/1153/2003 (2005); See, *Bringing Rights to Bear*, *supra* note 185.

196. Singh, et al., *supra* note 168, at 4.

197. *Id.* at 5. The global statistics shows that 585,000 women die annually from pregnancy-related causes. 80,000 of these women die from unsafe abortion. I.H. Shah et al., *Unsafe Abortion*, World Health Organization Annual Technical Report (1999). There are 20 million unsafe abortions each year, 95% of which take place in developing countries with Southeast Asia accounting for about 40% of global maternal mortality. See, World Health Organization, *Making Pregnancy Safer in South-East Asia*, Regional Health Forum, (2002).

198. *Id.*

of maternal deaths were due to unsafe abortion.¹⁹⁹ The statistics also shows the following: nine in 10 women are married/consensual union; more than half have at least three children; two-thirds are poor; nearly 90% are Catholic; 27 out of every 1,000 women induce abortion; and 18 induced abortions per 100 pregnancies.²⁰⁰

In 2000, the DOH introduced the Prevention and Management of Abortion and its Complications (PMAC) policy,²⁰¹ which aims to improve the health care services for women suffering complications from induced abortion. Although the PMAC policy was enacted in 2000, it has only been implemented in pilot hospitals.²⁰² Hence, there is an urgent need to broaden the policy to include more hospitals and to support it with enforceable guidelines and mechanisms to protect women from discrimination by health care providers. Safe abortion service providers who provide the much-needed services that only women seek have been subjected to harassment by police operatives, with some even facing baseless criminal charges.²⁰³

In the case of Colombia, a Colombian citizen challenged in the Constitutional Court on 14 April 2005 the former Colombian abortion law that outlawed the procedure under all circumstances.²⁰⁴ The argument in the petition included CEDAW and Human Rights Committee's recommendations that Colombia decriminalize abortion under the most extreme cases.²⁰⁵ In the Constitutional Court's decision, the Colombian abortion law was declared unconstitutional. Colombia now permits abortion on the following circumstances: when the woman's life or health is in danger; when the pregnancy is the result of rape; and when the fetus has

199. *Id.*

200. *Id.*

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

202. *Id.* at 2. For the coverage of PMAC, Administrative Order No. 45-B provides: that, "For the first year of implementation, PMAC shall initially be implemented in four (4) pilot hospital sites By the end of the fifth year of implementation (end of 2004), 50 DOH-retained hospitals shall be providing quality PMAC services."

203. Clara Rita A. Padilla, Presentation Before the Integrated Bar of the Philippines Eastern Vizayas Convention, Gender Issues in Legal Ethics (Apr. 28, 2006). This presentation was held in Cebu.

204. Women's Health Journal, Abortion law challenged in constitutional court, Jan.-Mar. 2005, available at http://findarticles.com/p/articles/mi_moMDX/is_1_2005/ai_n17209597 (last accessed May 20, 2008).

205. *Id.*

malformation incompatible with life outside the uterus.²⁰⁶ Compare this with the Philippine law that provides no expressed exceptions.

In the communication *K. Llantoy v. Peru*²⁰⁷ filed with the Human Rights Committee, a 17-year old woman was prevented from terminating her risky pregnancy of an anencephalic fetus — a fetus with a partial brain.²⁰⁸ In KL's case, the fetus died five days after birth and KL fell into a deep depression.²⁰⁹

The finding of the Human Rights Committee was: forcing her to carry her pregnancy to a term constituted cruel and inhuman treatment in violation of article 7 of the ICCPR;²¹⁰ violated her right to privacy under article 17;²¹¹ and violated her right to receive the special care she required as an adolescent girl from the health system under article 24.²¹² The State party was recommended to provide an effective remedy to the author, including compensation, and to adopt measures to prevent similar violations from occurring in the future.²¹³

To state the truth about other predominantly Catholic countries allowing abortion, there is Spain,²¹⁴ Belgium, France, Italy, Poland,²¹⁵ and Hungary whose constitution protects life from conception but permits abortion up to 12 weeks of gestation. Recent ones are from Colombia, and Mexico City, which legalized abortion in the first trimester without restriction, and Portugal which allows abortion up to 10 weeks of pregnancy.

206. Women's Link Worldwide, Colombia's highest court rules in favor of easing one of the world's most restrictive abortion laws, available at http://www.womenslinkworldwide.org/pdf_press/press_release_2006510_col.pdf (last accessed May 13, 2008).

207. *K. Llantoy v. Peru*, Case No. 1553/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).

208. *Id.* ¶ 2.1.

209. *Id.* ¶¶ 2.5 & 2.6.

210. *Id.* ¶ 6.3.

211. *Id.* ¶ 6.4.

212. *Id.* ¶ 6.5.

213. *K. Llantoy v. Peru*, Case No. 1553/2003, U.N. Doc. CCPR/C/85/D/1153/2003, ¶ 8 (2005).

214. Center for Reproductive Rights, *Spain permits abortion on grounds of rape and fetal impairment*. See, Poster, Center for Reproductive Rights, *The World's Abortion Laws 2005*.

215. Center for Reproductive Rights, *Religious Voices Worldwide Support Choice: Pro-choice Perspectives in Five World Religions*, available at http://www.reproductiverights.org/pub_fac_atkrel.html (last accessed May 20, 2008). See, Poster, Center for Reproductive Rights, *The World's Abortion Laws 2005*.

As can be seen, Spain has liberalized its laws to allow abortion and yet we are left to contend with our old colonial laws.

In its August 2006 Concluding Comments on the Philippines, the CEDAW Committee recommended for the Philippines as a State party to consider the problem of unsafe abortion as a matter of high priority and

consider reviewing the laws relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion and provide them with access to quality services for the management of complications arising from unsafe abortions and to reduce women's maternal mortality rates in line with the Committee's general recommendation 24 on women and health and the Beijing Platform for Action.²¹⁶

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

V. POLITICAL PARTICIPATION AND GOVERNANCE

CEDAW General Recommendation No. 23 on Political and Public life provides that

States parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, ... the right: ... (b) [t]o participate in the formulation of government policy and the implementation thereof²¹⁷

In predominantly Muslim countries such as Indonesia, Bangladesh, and Pakistan, quota systems were instituted to increase women's participation in political life. The use of temporary special measures, in accordance with article 4, paragraph 1, of CEDAW²¹⁸ and the Committee's General Recommendation No. 25 on temporary special measures to increase

216. Concluding Comments, *supra* note 45, ¶ 28.

217. Committee on the Elimination of Discrimination against Women, General Recommendation No. 23, art. 7, U.N. Doc. No. A/52/38 (1997), available at <http://www.unhchr.ch/tbs/doc.nsf/o/ca12c3a4ea8d6c53c1256d500056e56f?Op=endocument> (last accessed May 20, 2008).

218. Committee on the Elimination of Discrimination against Women, General Recommendation No. 25, art. 4, ¶ 1, A/59/38 Part I; CEDAW/C/2004/1/WP.1/Rev.1 (2004), available at [http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf) (last accessed May 20, 2008).

women's equal participation in political and public life is one way to achieve marked improvement in women's *de facto* and *de jure* equality.

The CEDAW Committee raised its concern on

the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and society. These stereotypes present a significant impediment to the implementation of the Convention ... as well as of the disadvantaged position of women in a number of areas, including in all sectors of the labour market and in political and public life.²¹⁹

The Committee called upon the Philippines

to establish concrete goals and timetables and to take sustained measures, including temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation 25 on temporary special measures, to accelerate women's equal participation in political and public life and ensure that the representation of women in political and public bodies reflects the full diversity of the population, particularly indigenous women and Muslim women.²²⁰

It also recommended to the Philippines to "implement training programmes and awareness-raising campaigns to highlight the importance to society as a whole of women's full and equal participation in leadership positions at all levels of decision-making."²²¹

The intentional failure on the part of the Philippine government to ensure the protection and fulfillment of sexual and reproductive rights is a clear violation of its obligations under international law. The impunity with which the Philippine government has been routinely violating the sexual and reproductive rights of Filipino women under the cloak of executive power of its officials, violates the basic rights of its citizens. President Gloria Macapagal-Arroyo's failure to uphold Filipino women's sexual and reproductive rights is an example of poor governance. As enunciated in 1987 Constitution, "[s]overeignty resides in the people and all government authority emanates from them."²²² Thus, as a representative of the Filipino people, the President is obligated to uphold women's sexual and reproductive rights.

219. Concluding Comments, *supra* note 45, ¶ 17.

220. *Id.* ¶ 24.

221. *Id.*

222. PHIL. CONST. art. II, § 1.

VI. PHILIPPINE STATUS OF RATIFICATION AND REPORTING ON THE MAJOR HUMAN RIGHTS TREATIES

The Philippines has ratified several treaties including the CEDAW, the Civil and Political Rights Covenant,²²³ the Economic, Social and Cultural Rights Covenant,²²⁴ the Convention on the Rights of the Child,²²⁵ the Convention Against Torture,²²⁶ the Convention on Racial Discrimination,²²⁷ the Migrants Convention,²²⁸ and the Convention on the Rights of Persons with Disabilities.²²⁹ The Philippines has not ratified the Rome Statute of the International Criminal Court,²³⁰ the Optional Protocol to the Convention on the Rights of Persons with Disabilities,²³¹ and the International Convention for the Protection of All Persons from Enforced Disappearance.²³²

The Special Rapporteurs on extrajudicial summary or arbitrary executions,²³³ situation of human rights and fundamental freedoms of

223. ICCPR, *supra* note 131.

224. International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3; G.A. Res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), *entered into force* Jan. 3, 1976.

225. Convention on the Rights of the Child, 1577 U.N.T.S. 3; G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sep. 2, 1990.

226. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85; GA Res. 39/46, annex, 39 UN GAOR Supp. (No. 51) at 197, UN Doc. A/39/51 (1984), *entered into force* June 26, 1987.

227. International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195; G.A. Res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), *entered into force* Jan. 4, 1969.

228. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 30 I.L.M. 1517; G.A. Res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), *entered into force* July 1, 2003.

229. Convention of the Rights of Persons with Disabilities, G.A. Res. 61/611, U.N. Doc. A/61/6:1 (2006), *entered into force* May 3, 2008.

230. Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90; U.N. Doc. A/CONF.183/9 (1998), *entered into force* July 1, 2002.

231. Optional Protocol on the Rights of Persons with Disabilities, UN Doc. A/61/611 (2006), *entered into force* May 3, 2008.

232. International Convention for the Protection of All Persons from Enforced Disappearance, E/CN.4/2005/WG.22/WP.1/Rev.4 (2005).

233. United Nations Human Rights Council, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council:" Preliminary*

indigenous people,²³⁴ the human rights of migrants,²³⁵ and the Representative of the Secretary-General on internally displaced persons²³⁶ have issued reports on the Philippines. The Philippines, however, has not issued a "standing invitation" to the Special Rapporteurs despite having been pointed out in the April 2008 United Nations Human Rights Council review on the Philippines.²³⁷

The Philippines has been delayed in submitting its reports to the treaty-monitoring bodies. The delayed and combined country reports due are the following: the CEDAW Committee 7th and 8th country reports in 2010; Committee on Economic, Social and Cultural Rights 5th country report on 30 June 2010; Human Rights Committee 3rd country report overdue since 1 November 2006; Committee on the Rights of the Child 3rd and 4th country report overdue since 19 September 2007; and Committee against Torture 2nd to 5th reports overdue since 1992, 1996, 2000, and 2004.

VII. CONCLUSION

Having ratified CEDAW, the Philippines signified its intent as a State party to be bound by its obligations to the convention. As a State party, it has to fulfill its obligation to enact laws and policies, establish case laws and practices that are in line with very the basic principles of CEDAW on equality and non-discrimination of women. The CEDAW must be used to the fullest extent possible, through "all appropriate means"²³⁸ and even through "temporary special measures"²³⁹ or more popularly known as affirmative action, for the "full realization"²⁴⁰ of women's rights as

Note on the Visit of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, to the Philippines (Feb. 12-21, 2007), A/HRC/4/20/Add.3 (Mar. 22, 2007).

234. United Nations Economic and Social Council, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Mr. Rodolfo Stavenhagen*, E/CN.4/2003/90/Add.3 (Mar. 5, 2003).
235. United Nations Economic and Social Council, *Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro*, E/CN.4/2003/85/Add.4 (Nov. 1, 2002).
236. United Nations Economic and Social Council, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis M. Deng*, E/CN.4/2003/86/Add.4 (Feb. 3, 2003).
237. United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review, A/HRC/WG.6/1/PHL/4* (Apr. 16, 2008). A standing invitation is an open invitation for the Rapporteurs to visit the Philippines.
238. CEDAW, art. 2.
239. *Id.* art. 4.
240. *Id.* art. 24.

recognized under the Convention. Whether in the legislative, executive, or judicial field, or as private actors, all are called to fulfill their obligations to respect, protect, and fulfill women's rights.