



**EnGendeRights, Inc.**  
*Asserting Gender Equality*

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**TO: CEDAW Secretariat**

Office of the High Commissioner for Human Rights

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**RE: Gender-based Violence, Marriage, and Family Relations Report for the 64th CEDAW Session (Review on the Philippines)**

EnGendeRights is submitting this report to provide independent information on gender-based violence (GBV), marriage, and family laws in the Philippines. This submission is intended to assist the Committee on the Elimination of Discrimination against Women (the Committee) during its 64<sup>th</sup> Session in July 2016 for its review of the Philippines' compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The State is mandated to refrain from engaging in violence against women (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.<sup>1</sup>

**1. State of Philippine Laws, Policies, and Practices on GBV**

**A. Rape (Article 1, 2, 3, 6; General Recommendation 19)**

There is a high incidence of rape in the Philippines with one woman raped every 71 minutes based on 2014 Philippine National Police (PNP) statistics. Reports of rape-slays are also commonplace. Despite the Anti-Rape Law of 1997 and the Rape Victim Assistance and Protection Act of 1998, numerous rape complaints are dismissed by prosecutors and judges,<sup>2</sup> showing that many rape survivors are not given credence and are denied justice. Many judges and public prosecutors still do not understand the realities of rape as GBV.<sup>3</sup>

Adding to the problem of numerous rape complaint dismissals, is the proposed bill decreasing the penalty for rape and shortening the prescriptive period for rape under the

Draft Criminal Code submitted by the Department of Justice to the House of Representatives.<sup>4</sup>

In the views on the Karen Tayag Vertido vs. Philippines (Communication No. 18/2008) adopted by the CEDAW Committee on July 16, 2010,<sup>5</sup> the CEDAW Committee recommended that the Philippine anti-rape law should center on the lack of consent as the core of the definition of rape.<sup>6</sup>

### **A.1. Denial of Access to Emergency Contraceptives for Rape Survivors**

While over 130 countries have registered emergency contraceptive pills (ECPs) that can prevent pregnancy resulting from rape, the Philippines has no registered ECPs. Postinor, the only previous ECP registered, has been delisted since 2001.<sup>7</sup> Many health care providers, social workers, police officers, and lawyers are not aware that rape victims can use different methods of emergency contraception such as the Yuzpe method using the combined oral contraceptives and dedicated ECPs. Even the current language of the Reproductive Health Law (RH Law) restricts the access of rape victims to ECPs by disallowing national government hospitals from purchasing ECPs<sup>8</sup> thereby leaving only the local government hospitals to purchase and dispense ECPs.

### **A.2. Denial of Access to Post-Exposure Prophylaxis for Rape Survivors**

Many government HIV testing and counseling centers are not aware that rape victims can prevent HIV transmission by availing of post-exposure prophylaxis (PEP) within three days from the rape with the 28-day regimen of anti-retrovirals.

### **A.3. Denial of Access to Safe and Legal Abortion for Rape Survivors**

The Philippines has one of the most restrictive abortion laws around the world that does not even allow access to safe and legal abortion for rape victims.<sup>9</sup>

### **A.4. Lack of Access to DNA Analysis**

While rape incidence throughout the country is high, there is only one PNP DNA laboratory and one National Bureau of Investigation (NBI) DNA laboratory for the whole country. There are very few PNP medico-legal officers and very few social workers, psychiatrists, and psychologists who provide psycho-social counseling for rape survivors. It is even very common for girl rape victims to wait three months before they receive any form of psycho-social counseling.<sup>10</sup> While Republic Act 8505 requires rape crisis centers to be set up in every province and city, many provinces and cities have not established their rape crisis centers.

### **A.5. Denial of Access to Sexuality Education that Tackles GBV and human rights**

The sexuality education required under the RH Law can prevent rape incidence by tackling GBV and women's human rights, but the Department of Education (DepEd) is

still in the process of drafting its sexuality education modules. This becomes extremely problematic with the implementation of the K-12 program, because there are 16 to 18-year old girls who are still in senior high school who are vulnerable to sexual abuse but are not receiving comprehensive sexuality education.

### **RECOMMENDATIONS:**

- Revise the Anti-Rape Law by reviewing the definition of rape law to place lack of consent at its center, remove the requirement in the rape law that sexual assault be committed by force or violence and any requirement of the proof of penetration, redefine sexual assault that require proof by the accused of steps taken to ascertain whether the complainant was consenting and use women's form of resistance and coercive circumstances as basis; extend the prescriptive period for rape and rape-slay;
- Enact laws and policies ensuring access to ECPs, PEPs, and safe and legal abortion for rape survivors; Allot budget to train service providers to dispense ECPs and PEPs;
- Ensure access to DNA Analysis and admission of DNA evidence for cases filed by rape survivors throughout the Philippines; Conduct routine checks of DNA samples of cold cases for rape and rape-slay cases;
- Increase the number of PNP medico-legal officers and social workers, psychiatrists, and psychologists who provide psycho-social services for rape survivors;
- Establish rape crisis centers in every province and city as provided under Republic Act 8505;
- Produce a monthly report of the number of rape cases that were dismissed and appealed by the Office of the Solicitor General to the higher courts;
- Enhance sharing of criminal information between courts and the PNP throughout the country on accused facing criminal charges for rape with unserved warrants of arrest to facilitate the arrest of perpetrators; Enhance the profiling of perpetrators of rape and rape-slay to aid in prevention and prosecution.

### **B. Intimate Partner Violence**

Studies show that three out of five Filipino women have been victims of physical abuse.<sup>11</sup> The Anti-Violence against Women and Their Children Act of 2004 (Anti-VAWC Act) took effect 12 years ago, but there is still an ongoing disjunct between the law and how the law is being implemented in barangays, police stations, and courts.<sup>12</sup> There are judges who delay the release of Permanent Protection Orders, issue limited Protection Orders or refuse to issue Contempt Orders for violations of Protections Orders issued under the Anti-VAWC Act.<sup>13</sup>

### **RECOMMENDATIONS:**

- Amend certain provisions to strengthen measures to fully protect the abused women;
- There must be continuing legal education for members of the barangay, police, and judiciary on GBV.

### **C. Prostitution and Human Trafficking**

Women in prostitution in the Philippines are still penalized under the Revised Penal Code.<sup>14</sup> The existing criminal law imposing imprisonment on women in prostitution disregards the fact that many are lured to prostitution because of the desperation due to poverty and lack of alternative sources of income. There is also the occurrence of predatory pimping of adolescents and young women and girls where illegal recruiters/traffickers roam around the communities targeting them.<sup>15</sup>

### **RECOMMENDATIONS:**

- The penal provisions imposed on women in prostitution must be repealed;
- Implement the Expanded Anti-Trafficking Law to the fullest extent;
- The Philippine government must properly address problems associated with women in prostitution and trafficked women including by increasing access to education through study now-pay later schemes, ensure state universities in each province, city, and municipality, awarding more scholarships, among others, and by increasing access to work and financial assistance/loans for women.

### **D. Sexual Harassment**

The Anti-Sexual Harassment Act of 1995<sup>16</sup> 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.”<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> 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*.<sup>20</sup> 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 respondent's acts result in creating an intimidating, hostile or offensive environment for the employee.<sup>21</sup>

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.<sup>22</sup>

### **RECOMMENDATIONS:**

- RA 7877 should be amended to cover sexual harassment outside of the employment, training and educational environment identifying places such as but not limited to streets, parks, schools, markets, and public transportation. The penalty and fine should also be increased while the prescriptive period should be lengthened. To do away with the varied and regressive interpretation of RA 7877, the requirement of authority, influence, and moral ascendancy should be removed;
- Workplace, training and education 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.”

### **E. Stalking**

There is no national law penalizing stalking although there are now local ordinances penalizing stalking such as in Quezon City.<sup>23</sup> Some rape and rape-slay cases start with stalking<sup>24</sup> stressing the importance of enacting a national law against stalking.

### **RECOMMENDATION:**

- Enact a national law against stalking

### **ADDITIONAL RECOMMENDATIONS ON GBV:**

- Train barangay officials, medico-legal, police, prosecutors, and judges on gender-responsive handling of GBV cases and ensure the designation of gender focal points for the police, prosecutors, and judges at every local government unit level;

- Investigate and prosecute reported cases of GBV against Filipino women working as au pairs in countries like Denmark;
- Revise Rules on Criminal Procedure and enact policies to enhance the role of prosecutors to actively investigate GBV cases including by collaborating with police and conducting crime scene investigation;
- Produce annual reports of GBV cases filed with the prosecutor and courts including the proportion of cases filed vis-a-vis dismissed by prosecutor and acquitted in court;
- Ensure functional Local Committees on Anti-Trafficking and Violence Against Women and Their Children (LCAT VAWC) throughout the country; Include transport groups in the LCAT VAWC;
- Create local and national committees for other forms of GBV like rape and sexual harassment;
- Create a nationwide emergency hotline for GBV cases; Establish shelters for GBV survivors accessible for all the local government units
- Ensure access to sexuality education that tackles GBV and human rights.

## **2. State of Philippine Laws, Policies, and Practices on Marriage and Family Relations**

### **A. Non-availability of Absolute Divorce in the Philippines (Article 16)**

There is no absolute divorce or no-fault divorce in the Philippines. There is only annulment of marriage under Art. 36 of the Family Code. Cases for annulment of marriage are costly and inaccessible to poor women and court decisions nullifying marriages are difficult to obtain because of varying judicial interpretations.<sup>25</sup>

#### **RECOMMENDATION:**

- Divorce must be made available.

### **B. Discriminatory Provisions in the Family Code (Article 16)**

The husband's decision prevails over the wife in cases where there is disagreement on the administration or enjoyment of community property and over the exercise of parental authority.<sup>26</sup>

#### **RECOMMENDATION:**

- Repeal the discriminatory provisions in the Family Code.

### **C. Discriminatory Provisions in the Muslim Code and Discriminatory Practices (Articles 16, 5)**

The Muslim Code allows the following:

- a. polygamy,
- b. early marriage (at age 15)
- c. arranged marriages (females aged 12-14)
- d. the husband is given the authority to choose the family residence
- e. the husband can deny his permission to his wife to practice a profession or occupation of her choice.

Under Muslim law, girls are allowed to marry at age 15 rather than age 18. By allowing girls in the Philippines to marry at such a young age, the Philippine government is perpetuating a harmful practice to girls that greatly impacts these adolescent women's education, health, and their total well-being.

In some indigenous communities, polygamy and abduction for forced cohabitation are still practiced.

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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>

**RECOMMENDATION:**

- Repeal the discriminatory provisions in the Muslim Code.<sup>30</sup>

**D. Discriminatory Penal Provisions on Adultery (Article 3)**

Adultery is still penalized in the Philippines.<sup>31</sup> In many countries around the world, the criminal provisions imposed on adultery have already been repealed.<sup>32</sup>

The intended purpose of the criminal provision on adultery is protect the rights of real heirs. However, many adultery cases are filed by estranged husbands who have long been separated from their wives and who have no intention of reuniting with their wives nor do they have any intention of supporting the illegitimate child of their wives.<sup>33</sup> Many adultery cases are filed to harass women and sometime to threaten and coerce them to transfer contested property in the name of the estranged husband.<sup>34</sup>

**RECOMMENDATION:**

- Repeal the criminal provisions on adultery under the Revised Penal Code.

## SUGGESTED QUESTONS FOR THE STATE

We hope that the Committee will consider addressing the following questions to the Philippine government:

1. What efforts are being done by the government to pay compensation for rape victims as recommended by the Committee?
2. What are the efforts of the government to address the incidence of wives being killed by their husbands or intimate partners?

We hope that the information provided in this report is useful during the Committee's review of the Philippine government's compliance with CEDAW. If you have any questions, or would like further information, please do not hesitate to contact us at [padillaclara@yahoo.com](mailto:padillaclara@yahoo.com) and [engenderights@gmail.com](mailto:engenderights@gmail.com).

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<sup>1</sup> General Recommendation 19, para, 9; 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.

<sup>2</sup> Quezon City Protection Center case reports of cases from December 2011 onwards; Clara Rita A. Padilla, A Call for Philippine Implementation of Women's Rights Under CEDAW, 53 ATENEO Law Journal 765-803 (2008) [hereafter Padilla, ALJ, 2008].

<sup>3</sup> Padilla, ALJ, 2008.

<sup>4</sup> Criminal Code Committee, The Criminal Code of the Philippines, available at [https://www.doj.gov.ph/files/ccc/Criminal\\_Code\\_September-2014\(draft\).pdf](https://www.doj.gov.ph/files/ccc/Criminal_Code_September-2014(draft).pdf).

<sup>5</sup> Communication under the Optional Protocol to the Convention on the Elimination of Discrimination Against Women, Letter from CEDAW views on Karen Vertido Communication Vertido to CEDAW Committee (Nov. 29, 2007) [hereafter KTV Comm.].

<sup>6</sup> KTV Comm.

<sup>7</sup> BFAD Bureau Circular 18, s. 2001, December 7, 2001.

<sup>8</sup> Reproductive Health Law, Republic Act 10354.

<sup>9</sup> Revised Penal Code, Articles 256-259.

<sup>10</sup> Prior experience of Quezon Protection Center from 2011 up to the last quarter of 2015 when referring child abuse cases to the Philippine General Hospital-Child Protection Unit (PGH-CPU). Towards the end of the last quarter of 2015, the QC Protection Center hired its own psychologist; Experience of EnGendeRights in their Paralegal trainings throughout the country conducted from 2004 onwards.

<sup>11</sup> National Demographic and Health Survey, 2013.

<sup>12</sup> Quezon City Protection Center record of barangay actions on Barangay Protection Orders; EnGendeRights experience from paralegal trainings conducted throughout the Philippines since 2004 onwards.

<sup>13</sup> Padilla, ALJ, 2008; EnGendeRights experience from paralegal trainings conducted throughout the Philippines since 2004 onwards.

<sup>14</sup> Article 202, Revised Penal Code, Act No. 3815 (1930).

<sup>15</sup> Quezon City Protection Center case reports of cases from December 2011 onwards.

<sup>16</sup> 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).

<sup>17</sup> *Id.*, Section 3.

<sup>18</sup> Padilla, ALJ, 2008, at 11.

<sup>19</sup> *Bundy v. Jackson*, 641 F. 2d 934 (1981)

<sup>20</sup> *Domingo v. Rayala*, G.R. Nos. 155831, 155840, & 158700, Feb. 18, 2008.

<sup>21</sup> *Id.*

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<sup>22</sup> Padilla, ALJ, 2008.

<sup>23</sup> Quezon City Ordinance SP. 2501.

<sup>24</sup> Quezon City Protection Center case reports of cases from December 2011 onwards.

<sup>25</sup> Padilla, ALJ, 2008

<sup>26</sup> Family Code Articles 96, 124, 211, 225.

<sup>27</sup> General Recommendation No. 21, supra note 117, paragraph 36.

<sup>28</sup> *Id.*

<sup>29</sup> General Recommendation No. 19, supra note 19, paragraph 11.

<sup>30</sup> 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. In Turkey, the 1926 code, which replaced the Ottoman system, prohibited both polygamy and repudiation; 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//1/TUN/1 (Apr. 7-18 2003), available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/TN/A\\_HRC\\_WG6\\_1\\_TUN\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/TN/A_HRC_WG6_1_TUN_1_E.pdf); Mona Eltahawy, Turkish Law Recognizes Women, Men as Equals, available at <http://www.womensenews.org>.

<sup>31</sup> Revised Penal Code, Art. 333.

<sup>32</sup> Padilla, ALJ, 2008.

<sup>33</sup> Padilla, ALJ, 2008.

<sup>34</sup> *Id.*