



# Women's Legal and Human Rights Bureau, Inc.

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(formerly Women's Legal Bureau)

## Unveiling Justice: Women's Access to Justice in the Philippines

1. Access to justice is a fundamental right guaranteed under Article 8 of the Universal Declaration of Human Rights: "Everyone has the right to an effective remedy by competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) mandates State parties to condemn all forms of discrimination against women and to this end shall pursue by all appropriate means and without delay a policy of eliminating all forms of discrimination against women.
2. Women's movements in the Philippines critical engagement in the law and the legal system and the struggle for State's accountability to women's rights have spelled gains in terms of formalizing equality through the passage of several of women-friendly laws, particularly those addressing violence against women. Republic Act (R.A.) 8353 or the Anti-Rape Law of 1997 redefined rape from a private to a public offense and expanded its scope to include rape by sexual assault. R.A. 9208 or The Anti-Human Trafficking in Persons law passed in 2003, penalizes trafficking with emphasis that the same may be committed with or without the victim's consent or knowledge. In 2004, R.A. 9262, the Violence against Women and their Children (VAWC) Act was passed into law, penalizing acts of violence committed by husbands and intimate partners. And most recently, in 2009, R.A. 7610 or the Magna Carta of Women has been passed by the Philippine legislature. Yet, effective enforcement of these laws lags far behind which brings into question the State's commitment to end violence against women and realize equality in society.

### Defining Access to Justice<sup>1</sup>

3. In a study on women's access to justice<sup>2</sup>, the overlapping barriers are: gender insensitivity of the legal system and their actors, stigmatization and re-victimization, economic and cultural barriers, inefficiency of the system, corruption and the perceived impunity enjoyed by the perpetrators of the acts of violence against women. The incidence of violence against women continues to rise. Government's own data shows that 20% or one in five women aged 15-49 experienced physical violence since age 15 and 8.7% or almost one in every ten women aged the same have experience sexual violence; both of these and other forms of VAW committed by intimate partners<sup>3</sup>. In, 2010 reported cases rose by 59.2% from 2009, yielding the highest

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<sup>1</sup> Access to justice is a fundamental right guaranteed by the international human rights instruments such as the Universal Declaration of Human Rights as well as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. CEDAW's provisions are directed towards the realization of substantive equality and due diligence, obliging States to undertake measures to respect, protect, promote and fulfil the recognition of equality of rights for women.

<sup>2</sup> The women's access to justice (ATJ) study was borne out of the Women's Legal and Human Rights Bureau's 2010 research on Mapping of Domestic Legal Remedies on Violence against Women. The research was carried out in line with accessing human rights mechanisms such as the CEDAW, which requires exhaustion of domestic legal remedies for its Optional Protocol (OP). Three consultation workshops in Quezon City, Cebu and Davao were held in February 2010 for this research. Different women's groups and women experts on access to justice in the country were able to participate in the consultation-workshops. Likewise, the framework developed was adapted from the Regional Meeting on Sexual Violence and Access to Justice organized by the WLB in Thailand in 2009, attended by women's groups in the Southeast Asian Region.

<sup>3</sup> National Statistics Coordination Board. <http://www.nscb.gov.ph>

record of reported cases of VAW to the Philippine National Police thus far<sup>4</sup>. These numbers however are not conclusive of the incidence of VAW in the country; they do not as yet account for VAW cases that remain unreported.

4. The elements of access to justice<sup>5</sup> and the enabling environment for access to justice must both be present for access to justice for women to exist. The passage of a law is not an indication that justice has been served to victims of VAW. Access likewise takes into account the necessary political, economic, social and cultural contexts and conditions which enable and empower women to access justice in cases of violence.

## **Access to Justice in cases of Violence against Women (VAW)**

### *Violence against women and their children (VAWC)*

5. In cases of VAWC<sup>6</sup>, the incarceration or the conviction of the accused is often not the main concern of the woman-survivor. What has been observed by NGOs assisting women-survivors of VAW is that the concern of the woman-survivor is more on protection orders, support services, custody of children and support. Another challenge in VAWC is the need for the woman-survivor to be economically independent and empowered. In her act of filing charges against her former intimate partner, she needs to be able to stand on her own and to support her children. This has become the main concern for many women. During consultations among service providers, participants relate that women they assist refuse to leave an abusive husband because of their financial dependence on their husbands, thus the question: “how will I be able to raise my children?” or “how will we survive if we leave?” These are challenged under the VAWC Act.
6. The Filipino culture of giving primacy to the family, sometimes do not help at all in cases of VAWC. The social stigma of having a broken family, of filing cases against one’s husband and of leaving the family home, often discourage women from leaving abusive relationships. The manner that society and religion insists on the wife to be more forgiving and forbearing likewise do not help, for they give the impression that it is woman’s destiny to suffer and bear suffering in silence.”

### *Rape and sexism in the judiciary*

7. In 2008, a Communication under the OPCEDAW was filed against the Republic of the Philippines (KTV vs. The Philippines) for its violation of the positive obligations as a State Party to the CEDAW, committing discrimination against a woman victim of rape. The judge’s decision relied upon discriminatory gender-based myths and misconceptions about rape and rape victims.<sup>7</sup> The decision was rendered in bad faith, without basis in law and in fact, to the great injury of the author. Moreover, the case from which the Communication is based on is not an isolated one and in fact points to systemic discrimination against women, particularly on rape cases. Trial court decisions discriminate against women and perpetuate discriminatory beliefs about rape victims and aid in continuing violation of the victim. These rulings are based on erroneous assumptions and notions about the ideal ‘rapeable’ woman, the natural standard behavior of a rape victim, consensual sex and forms of consent, coercion and resistance, and the rights of women in intimate relations hence the consequent obligations of the State to protect. The Supreme Court may well be partly liable as many of the

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<sup>4</sup> Philippine Commission on Women. (2010). Fact sheet Filipino women and men.

<sup>5</sup> In WLB’s ATJ research, the Elements of access to justice include adequacy of remedies, women’s critical engagement and participation, effective and accountable legal system, legitimacy, and cultural shifts in viewing violence against women

<sup>6</sup> “Under RA 9262 or the Anti-Violence Against Women and their Children Act, “violence against women and their children” refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.”

<sup>7</sup> Culled from the Communication submitted by Karen Vertido to the Committee on the Elimination of all forms of Discrimination Against Women to seek relief through the Optional Protocol of the CEDAW.

principles trial court judges use to justify dismissals or acquittals premised on such erroneous assumptions are based on Supreme Court decisions. The Philippine Anti-Rape Law and how it is interpreted by the Supreme Court is full of contradictions that after 30 years of ratification to the CEDAW, myths and misconceptions on rape cases and discriminatory assumptions in jurisprudence continue to place rape victims at a legal disadvantage and significantly reduce their chances of obtaining redress for the violation they suffered.

8. The response of the Philippine Government to the CEDAW<sup>8</sup> Views on the said communication is dismal at best, and is indicative of continuing grave neglect of women's rights. It disregarded the plea of the Communication and the recommendation of the Committee to take actions to reform the judiciary and the legal system of the country but more repulsive is the implicit negligence of the State to rectify its violations of women's rights.
9. Lawyers and court officers cannot claim independence when they are so plainly influenced by or held captive by discriminatory and sexist beliefs. Gender bias and gender-based discrimination pervades deeply the judiciary— an institution that is charged with an obligation to promote, respect and protect the rights of women— as evident in the KTV Case, the acquittal of US Corp Daniel Smith in 2009 after being convicted of rape by the regional trial court, and many other trial court cases in the country. For people to enjoy genuinely effective domestic legal remedies, the officials of the justice system – in the person of judges and lawyers – must thus be imbued with the principle of independence and reflect it in the exercise of their mandates and their sworn duties of dispensing justice.

#### *Violence against women migrants<sup>9</sup>*

10. The Philippine government is liable in its promotion of labor exportation as a development track which discriminates against Filipino women migrant workers on the basis of sex and gender. Filipino women's labor migration has become known as “[constituting] the widest flow of contemporary migration in the world today....” where a majority of migrating women are tracked into unrecognized and lower paid care/domestic work, whose invisibility reproduces the exploitation of women's unvalued and unpaid time and labor, as well as increases their vulnerability to abuse.
11. The Philippine government is complicit in its violations of Filipino women migrants rights under the CEDAW and the General Recommendation 26 because of its indiscriminate and deliberate promotion of labor migration, targetting large numbers of women to fill the high demand especially for household service work, though fully aware of the unregulated conditions of work, the history of abuse, the many potentials for domestic and sexual violence, low wages, long hours, and other abuse, vulnerabilities of high demand for work in sectors that remain informal and irregular, bereft of adequate legal protection, -- like service work and work in the entertainment industry – has the effect of impairing the recognition, enjoyment and exercise by women of their rights. There is likewise the issue of intermarriages and the problem of acquiring support and recognition from estranged foreigner-fathers of Filipino children. The difficulty of the laws involved – conflict of laws – prevent and discourage Filipina mother from pursuing further their claims for support for their children. This in effect deprives these women and their children of what legally they are supposed to be entitled to.
12. The remedies available to OFWs and migrant women under RA 8042, is of particular concern considering the continued increase in the number of Filipino Migrant Workers, as well as the increase of VAW complaints by OFWs and migrants. Migrant women workers who are victims of abuse are a special class as the current domestic laws of the country do not provide specific remedies for them. The Labor Code and RA 8042, do not spell out the remedies that these women may resort to in cases of abuse. For such reason, they are in especially vulnerable position. Though RA10022, amending RA8042, as a form of protection restricts deployment of Filipino workers to countries/territories where the Philippines has a bilateral or any agreement that will uphold the rights of Filipino workers, this does not answer to the more fundamental question of

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<sup>8</sup> <http://pcw.gov.ph/index.php/cedaw-philippines/109-op-cedaw-/550-pcw-response-philippines-un-cedaw-karen-vertido-case>

<sup>9</sup> In 2009, the WLB conducted a research on accountabilities of the Philippine Government to the Filipino women migrants, focusing on women in domestic work under the CEDAW and General Recommendation 26. Data from this section came from the said research as well as on the Access to Justice study cited above.

neglect of the State to provide better alternatives for work in the country. Even so, this provision has not been in full implementation, nor has there been a transparent plan regarding the implementation of such.

13. A reading of these laws would readily reveal that there exists no clear remedy available for women migrant workers who are victims of violence. Both the Labor Code (PD 442) and RA 8042, fail to address the needs and provide remedies for migrant women victims of violence when the act of violence is committed outside of the country. With the government's persistent adoption labor migration and overseas work as a policy and a strategy in keeping the country's economy afloat, the complaints of women migrant workers continue to amass. The problems faced by migrant women has been acknowledged by the Philippines in its submission<sup>10</sup> to the CEDAW, the report identify: "non-payment of salaries and contract violations, illegal detention, physical and sexual abuse, and the consequent psychological and emotional distress caused by separation from their families."<sup>11</sup> The continued rise of overseas employment among Filipino women has brought with it the continued rise as well of cases of violence against Filipina overseas workers committed outside of the country. Stories of physically and sexually abused Filipinas in foreign shores abound, and yet, no law and no legislation in the country is able to address the problem. Bound by the territorial jurisdiction of the country's penal laws, Filipinas abroad are left without recourse. The remedies accorded to OFWs are inadequate to address the abuse they suffered. Support services are obviously lacking.

#### *ICT-related VAW as an emerging form of VAW*

14. With the emergence of ICT<sup>12</sup> also comes the alarming proliferation of technology-related violence that gravely stigmatizes and targets women. As WLB's study<sup>13</sup> on ICT, VAW and sexuality suggests, emerging forms of ICT-related violence against women (VAW)<sup>14</sup> are in need of serious attention and legal recognition from the state actors. What makes an offense ICT-related VAW is when ICT is used as the medium, mode, place of commission (commonly tagged as "cyberspace") and a system unto itself in the perpetration of VAW. Existing laws on VAW does not guarantee the prosecution of ICT-related VAW, and brings into question the adequacy of the current laws and of the whole legal system to render justice for such cases.
15. Protecting women from harm is always of prime importance. There is a clear need for legislative efforts towards adapting procedural and investigative tools to the specificities of new technology,<sup>15</sup> which can include the issuance of rules or the institution of capacity-building programs in addressing ICT-related VAW especially in the law enforcement sector and other government, private sector and multi-stakeholder bodies.<sup>16</sup>
16. Women's representation in these processes should also be ensured, as integral to their claiming of justice. Women's rights in relation to ICT should be both and promoted, cognizant of women's empowerment and exercise of agency.<sup>17</sup> With women's lack of access to ICT, the state's existing human rights obligations should extend to taking steps to ensure women's access to the Internet<sup>18</sup> (including national plans of action) and limitations or restrictions on freedom of expression comply with agreed international standards.<sup>19</sup> The UPR process must include internet related human rights issues, particularly relating to freedom of expression, the right to information, and access to information.

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<sup>10</sup> Combined fifth and sixth periodic report to the Committee dated 2 August 2004

<sup>11</sup> Par. 69 supra

<sup>12</sup> Information and Communications Technology

<sup>13</sup> The study conducted by WLB intended to comprehensively map the terrain of existing Philippine laws and jurisprudence and analyze the existing policy framework on ICT, VAW and Sexuality.

<sup>14</sup> In the study technology-related VAW was dubbed as "ICT-related VAW" which range in different forms- from cyberharassment which includes cyberstalking, blackmail and threats, monitoring and surveillance, and trolling and flaming; to cyberpornography and cybertrafficking, among others.

<sup>15</sup> For example, in the case of domestic violence, that an interim protection order extends to harassment done via SMS or the internet.

<sup>16</sup> Such as the National Telecommunications Commission, internet intermediaries, and telecommunication companies.

<sup>17</sup> Jac sm Kee "Women's rights and the internet at the Human Rights Council" 31 May 2011 [www.genderIT.org](http://www.genderIT.org)

<sup>18</sup> Jessica Umanos Soto "Philippines Violence against women and ICT" 3 August 2010, [www.genderIT.org](http://www.genderIT.org)

<sup>19</sup> Frank La Rue "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression" (26 April 2011, A/HRC/17/27).

## *Divorce*

17. Infidelity, violence, abandonment and arbitrary dissolution of marriage are ‘male strategies’ to informally end and do away with the responsibilities and commitments in marriage. Society and culture have tolerated these acts. Women are rarely able to access the provision on concubinage due to the legal system’s inherent ambivalence towards providing women substantive access to justice. The Committee expresses its concern about the lack of a law on divorce, making it impossible for women to obtain legal divorce. *The Committee urges the State party 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. It also recommends that women be granted the right to initiate divorce on the same terms as men.* (emphasis supplied)
18. The absence of a divorce law in this country affects more women than men because more women suffer from failed marriages due to their economic and many other forms of disempowerment. The absence of a divorce law is detrimental as it forces individuals to remain in irreparable relationships, exposes women and children to violence. Divorce can be a remedy to these situations and an enabling mechanism for individuals to pursue their well-being and development.

## *Reproductive Health*

19. Existence of political will is a condition precedent for an enabling environment for women’s access to justice. After decades of bargaining and struggle in Congress, the RH Bill still suffers from aggressive tactical assaults that deliberately delays its passage into law, despite glaring data on maternal mortality rate and poor health of many women in the country, in effect denying women their reproductive health rights. Addressing the issue of VAW should not only focus on granting legal assistance to women victims of violence; proactive programs should likewise be implemented, included among them is the provision of reproductive health services for women. Developmental and integrative approach is facilitative for women’s access to justice as it recognizes that women’s experiences and women’s lives cannot be compartmentalized.

## *Gender and Development Budget Policy*

20. Budget has been an a persistent problem in the country, eternally cited as reason for inadequacy (total absence) of services, incompetence of duty bearers, and the overall ineffectivity of mechanisms to respond to violence against women. The product of many years of advocacy by women’s groups, the GAD Budget Policy embedded in a specific provision of the General Appropriations Act (GAA) that provides for support of the implementation of GAD Plans from at least five percent of the allocations of government agencies and local governments. This has been subjected to misalignment and abuse and is crowded out by debt service priorities.
21. However, a senate report on GAD implementation indicates the inconsistency and unreliability of public resource allocations for gender. The biggest fall was from 2003 when allocation reached Php4.7 billion or five times its amount in 2002 to less than a billion pesos or Php951.7 million in 2007.<sup>20</sup> It spiked up to P6.5 billion in 2006 but in 2010 dropped to almost the same level as when the policy began to be enforced. The whole 15 years since implementation, the GAD allocation never made it to one percent of the total budget of the national government.<sup>21</sup>

## **Gaps and Challenges in Available Domestic Remedies**

22. It is recognized that available legislations are important for women to access justice in cases of violence, for these are the remedies present and available under the laws of the land. It does not end with enacting

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<sup>20</sup> Senate Economic Planning Office. Policy Brief. “Engendering a gender responsive budget: A look at the GAD Budget policy.” March 2010. < <http://senate.gov.ph/publications/PB%202010-03%20-%20Engendering%20a%20gender%E2%80%90responsive%20budget.pdf>

<sup>21</sup> ibid

legislations which spell women's rights in cases of abuse. There is the need to look into how the available remedies are able to respond, in practice and in reality, to women who suffer from violence and abuse. <sup>22</sup>

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<sup>22</sup> Please see Annex A for a detailed discussion of the gaps in the Philippine law on VAW.