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### ABSTRACT:

*The study traces feminist engagement with international law and examines the Philippine women's movements' engagement with the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), particularly its Optional Protocol (OP) mechanisms. Using the three Philippine OP CEDAW cases as benchmarks, the study examines the Philippines' compliance with international women's human rights jurisprudence and the constraints and challenges in their implementation in the current political context. Through a feminist perspective on international law, the study problematizes the reach and the limits of international women's human rights jurisprudence and their potential in advancing women's dreams of equality and gender justice.*

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### ABSTRACT:

*The focus of this paper is on the determination of how the government projects developed and implemented in line with the Gender Mainstreaming requirement of the Magna Carta of Women have addressed the needs of women in society. Reports of the Commission on Audit will be instrumental as the utilization and outcome of the Gender and Development budget shall be annually monitored and evaluated in terms of its success in influencing the gender-responsive implementation of agency programs funded by the remaining ninety-five percent budget.*

*Through the use of quantitative information provided in the reports made by the Commission on Audit, a proper evaluation can then be made if the government, as a whole, have effectively made change work for women. Recommendations can then be made on how government funds and efforts can be used to actually and effectively make change work for women.*

From Estribillo to Carriedo: Affirming the Indefeasibility of Agrarian Reform Titles Under the Philippine Agrarian Reform Programs  
**Atty. Mary Claire A. Demaisip**

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ABSTRACT:

*Agrarian reform in the Philippines is viewed as a vehicle to realize social change that will even out the distribution of wealth, resources and opportunities among Filipinos. Under the land transfer scheme, agricultural lands covered by agrarian reform programs are acquired by the State and distributed to qualified farmer beneficiaries. For farmers, land is more than a source of livelihood; it is a means to free themselves from poverty. Farmer beneficiaries, therefore, rely on the indefeasibility of agrarian reform titles to lend security on their land ownership.*

*This article explores the issues surrounding the indefeasibility of agrarian reform titles and other threats to land tenure security by examining pertinent cases decided by the Supreme Court.*

Hunger for Equality: Gendered Food Insecurity and Rural Women in Agriculture  
**Aireen Keith S. Macalalad**

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ABSTRACT:

*Rural women in agriculture account for producing more than 50 percent of the world's food, yet they represent more than 70 percent of the world's hungry and malnourished population who are disproportionately affected by malnutrition and food insecurity. While carrying multiple burdens as food producers, food processors, servers, cooks, primary caregivers, mothers, and farm household decision-makers, they likewise face systemic inequities and multi-faceted discrimination at home, in the community, and in the workplace.*

*Women in agriculture are not just right-holders of the right to adequate food, not mere beneficiaries of government food programs, but they are, as food producers, partners of the government in attaining food security. Ending hunger and realizing women's rights as human rights are closely intertwined and interdependent.*

*This paper proposes that the full realization of the right to adequate food cannot be achieved without women's rights. It explores the gender dimension surrounding the Filipino rural women's access to food with the end view of proposing possible policy recommendations and corresponding legal remedies. It also examines the legal structure and policy framework governing gender equality and the right to adequate food in the domestic setting.*

ABSTRACT:

*Foster care is recognized by both the Convention on the Rights of the Child and the United Nations (UN) Guidelines for the Alternative Care of Children as a mode of alternative care. The UN Guidelines defined foster care as situations where children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children's own family that has been selected, qualified, approved, and supervised for providing such care.*

*The main principle underpinning the UN Guidelines is that all preventive actions to strengthen families, and to provide suitable alternative care when necessary, should be founded on a case-to-case basis, which leads to appropriately tailored responses to specific circumstances that are, at all times, in the best interests of the child. Given the different needs of children in different stages of their lives, foster care is not an answer in itself, rather it is part of the answer. It is merely part of the continuum of care choices.*

*This essay seeks to analyze whether the present legal framework on foster care is compliant with international standards. The scope of this essay will focus on the Foster Care Act of 2012, its implementing rules, regulations, and guidelines, and internationally accepted standards concerning foster care.*

ABSTRACT:

*In recent times, we have been witnessing stories on surrogacy coming into our consciousness, at least in the local setting — all thanks to celebrity babies who are brought in this world through surrogacy like Scarlet Snow Belo Kho and the Sanchez-Roxas twins. As surrogacy has become very real and is indeed a growing “trend” especially among the affluent who are childless, the controversy and doubts about its ethical limits, as well as its legal dilemma also start to hound and surface.*

*The conceptual problem in surrogacy — the production of a child for a fee — reduces both women and children to commodities in commerce: things, akin to the generic experiments that are done with animals who are bred for certain purposes, reducing women to the status of breeding animals. On the legal aspect, the question of maternity looms largely as who would be considered the mother of the child for purposes of the Civil Register Act. Can the surrogate mother who delivered them is to be so considered? Or is it the donor of the egg implanted after the in vitro fertilization? If the donor of the fertilized ovum would register the child as hers, would that not amount to simulation of birth, which is a criminal act because she never delivered the child in the first place?*

*These issues should be the driving force to impel Congress to legislate necessary measures on surrogacy, consistent with the provisions of the Constitution and our family values. This way, the Filipina may know where she is standing in this legal conundrum.*

The Right to Adequate Housing: Analysis of Impacts of Forced  
Eviction Cases in Metro Manila, Philippines  
**Catherine Joy P. Esteves**

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ABSTRACT:

*Forced evictions are not inevitable side-effects of urbanization and development. These are human interventions which must be properly and cautiously carried out while strictly observing international laws and regulations.*

*The State bears the duty to ensure the enjoyment of human rights. If those affected by evictions are unable to provide for themselves, the government is obliged to take all appropriate measures using its available resources, to ensure that adequate alternative housing or resettlement is available. There must be assurances from the government that it will take the necessary steps to prevent the forced evictions of people from their homes and if eviction is absolutely necessary, the government must strictly follow the proper procedure. With the state's obligation to protect, fulfill and respect the realization of human rights, it is therefore indispensable that if the actual forced eviction cases in the country run counter to what is prescribed by law, the state has the duty to do something, whether it calls for prosecuting state agents and criminalizing their acts. Otherwise, a threat to right to adequate housing may lead to curtailment of the enjoyment of all other human rights. These interdependency, indivisibility, and interrelatedness of right to adequate housing and other human rights, therefore, should not be ignored.*

Where has Maria Clara Gone? A Legal Scrutiny of the Maria Clara  
Doctrine as Applied in Law and Jurisprudence in the Philippines  
**Ma. Sophia Isabella P. De Castro**

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ABSTRACT:

*Rape is one of the most common crimes against women, and because of fear, embarrassment and lack of proper education, it is underreported. To address the under reporting,, Philippine laws were enacted to protect the rights of women in prosecuting rape cases. In 1960, the Supreme Court likewise introduced the Maria Clara Doctrine, which requires that woman's testimony, although uncorroborated by evidence should be given more credence and weight, based on the premise that a Filipino woman will not concoct a story that she was abused if it did not happen.*

*A recent case, however, described the Maria Clara Doctrine as a "misconception, particularly in this day and age, which does not only put the accused at an unfair disadvantage, but creates a travesty of justice," hence, leading to the relaxation of its application. The Supreme Court likewise stressed that in affirming a conviction of rape, it should be based on credible, natural, convincing testimony of the victim which should also be consistent with human nature and not merely rely on the doctrine.*

*This study seeks to determine the significance and effectiveness of the Maria Clara Doctrine as a principle and doctrine in the Philippine Legal Practice. It aims to determine the implications of its strict application or relaxation in handling rape cases and whether its application promotes gender bias and cultural misconception.*

ABSTRACT:

*The transfer of jurisdiction of cases involving rehabilitation and insolvency proceedings, from the Securities and Exchange Commission (SEC) to the Regional Trial Courts (RTCs) or the specialized courts, suggest the lack of definite basis for such. Laws are unclear on the difference of insolvency and rehabilitation, and legislative deliberations are also bereft of such differentiation.*

*This study explores the impact of such transfer of jurisdiction over rehabilitation proceedings from SEC to RTC, and the possibility of reverting the jurisdiction from the RTC to SEC. It inquires on the necessity, benefeciality, and practicability of the transfer of jurisdiction and examines the existing legal and procedural issues under the current rehabilitation proceedings. It likewise discusses the measures that can be adopted by our legislators to address existing issues.*

## NOTE FROM THE EDITORIAL BOARD

Welcome to the inaugural issue of the SAN SEBASTIAN LAW JOURNAL, the official student-led law journal of the San Sebastian College of Law.

It is the mission of the JOURNAL to uphold the ideals of the rule of law, stimulate meaningful discourse, disseminate legal knowledge, advance legal scholarship and understanding, and foster a tradition of asking and solving complex legal questions.

The JOURNAL aspires to be one of the leading platforms of academic legal discussion by curating thought-provoking and contemporary pieces on legal theories and practice, public policy, and legislative developments. The JOURNAL likewise intends to be a training ground for future legal practitioners and scholars who are not only bar exam- and practice-ready but are also prepared for academic careers in the legal profession by promoting critical thinking and analogical reasoning.

The Editorial Board undertakes to make legal scholarship more accessible to law students, researchers, and the general public. For the maiden issue of the JOURNAL, we present a diverse selection of articles on women's human rights jurisprudence (*page 1*), Magna Carta of Women's gender mainstreaming requirement (*page 48*), indefeasibility of agrarian reform titles (*page 57*), right to adequate food (*page 90*), foster care (*page 115*), surrogacy and filiation (*page 145*), right to adequate housing (*page 156*), the Maria Clara doctrine (*page 166*), and jurisdiction over corporate rehabilitation (*page 185*).

As part of this continuing commitment, we are proud to announce that the JOURNAL obtained its own International Standard Serial Number, an international identifier for serials and continuing resources. In the future, we aim to expand our platform to mixed print and digital formats for increased audience reach and engagement.

We gratefully acknowledge the support of Dean Teodoro A. Pastrana and Associate Dean Rolly Francis C. Peoro for helping us initiate and realize this promising academic project. We would also like to thank Atty. Krissi Shaffina Twyla A. Rubin, Atty. Mary Claire A. Demaisip, Atty. Erik Lawrence S. Dy, and Atty. Steve Paolo A. Mercano for taking interest in the publication and supporting our initial effort to produce a student-edited publication.

The next issue will focus on emerging legal developments in the country, including recently enacted substantive and procedural laws as well as new jurisprudential doctrines. We eagerly welcome individual or collaborative submissions by law students, legal scholars, practitioners, and academicians to contribute and help shape the early development of this publication.

We hope that this issue will be the first of many as we strive to bring academic legal writing and scholarship closer to the *Sebastinian* community, one volume at a time.

**THE 2019-2020 EDITORIAL BOARD**  
**April 2020**





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# A DREAM DEFERRED? REACH, LIMITS, AND POTENTIAL OF WOMEN'S HUMAN RIGHTS JURISPRUDENCE IN THE PHILIPPINES\*

ATTY. KRISSI SHAFFINA TWYLA A. RUBIN\*\*

## I. THE DREAM OF GENDER JUSTICE



*I died in court that day the rapist was acquitted, but the knowledge that there was recourse to justice outside of Philippine courts brought me back to life<sup>1</sup>*

A local unit of the Philippine National Police recently drew flak for issuing an advisory titled “Reminders for Preventing Rape.”<sup>2</sup> The advisory provided tips for women to prevent rape: don’t drink while out on date, don’t wear skimpy clothes, don’t go out with strangers, learn self-defense.<sup>3</sup> Confronted for the patent victim blaming, the local police immediately recalled the advisory and apologized. The incident, however, reflects the pervasiveness of victim blaming and of rape myths and stereotypes even by state officials. Several months back, the current President of the

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\* Dissertation submitted in fulfilment of the requirement for the degree of LLM Law and Gender, SOAS University of London. Cite as Krissi Shaffina Twyla Rubin, *A Dream Deferred? Reach, Limits, and Potential of Women’s Human Rights Jurisprudence in the Philippines*, 1 San Sebastian L.J., (page number), (page cited) (2020).

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<sup>1</sup> Karen Vertido, *General Discussions Elaborating a Draft General Recommendation on Women and Access to Justice*, OHCHR, available at <http://www.ohchr.org/documents/HRBodies/CEDAW/AccessToJustice/Ms.KarenVertido.pdf> (last accessed 26 July 2018).

<sup>2</sup> *Angono cops sorry for anti-rape tips*, ABS-CBN NEWS (19 July 2018), available at <http://news.abs-cbn.com/news/07/19/18/angono-cops-sorry-for-anti-rape-tips> (last accessed 26 July 2018).

<sup>3</sup> *Ibid.*

Philippines cracked series of rape jokes in his speeches.<sup>4</sup> The rabid defense of supporters, and the President's dismissal of criticisms reflect how rape is trivialized and rendered acceptable by some members of the Philippine population. It also reveals how the country's political climate influence issues of gender.

In Sorsogon City, the City Mayor issued and enforced a pro-life executive order (E.O.),<sup>5</sup> despite the existence of laws<sup>6</sup> ensuring access to full range of family planning commodities. The E.O. resulted in denial of access to modern contraceptives, increased pregnancy, and additional burden for women.<sup>7</sup>

The above-mentioned incidents reflect a stark contrast with the Philippines' reputation as a beacon of women's human rights in Asia,<sup>8</sup> as an early champion of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and as Asia's most gender-equal country.<sup>9</sup>

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<sup>4</sup> Suyin Heynes, *Women in the Philippines Have Had Enough of President Duterte's 'Macho' Leadership*, TIMES (23 July 2018), available at <http://time.com/5345552/duterte-philippines-sexism-sona-women/> (last accessed 26 July 2018).

<sup>5</sup> *Sorsogon declares itself pro-life city*, BICOL STANDARD (2 February 2015), available at <http://www.bicolstandard.com/2015/02/sorsogon-pro-life-city-bicol.html> (last accessed 26 July 2018).

<sup>6</sup> Magna Carta of Women (R.A. No. 9710) and Responsible Parenthood and Reproductive Health Law (RPRH, R.A. No. 10354).

<sup>7</sup> Donna C. Pazzibugann, *CHR: Sorsogon City depriving women of artificial contraceptives*, INQUIRER.NET (14 November 2016), available at <http://newsinfo.inquirer.net/843981/chr-sorsogon-city-depriving-women-of-artificial-contraceptives> (last accessed 26 July 2018).

<sup>8</sup> Veneracion Rallanza, *Is the Philippines leading the way in advancing Women's Human Rights*, ATENEO DE MANILA UNIVERSITY (10 December 2014), available at <http://www.ateneo.edu/news/research/philippines-leading-way-advancing-women%E2%80%99s-empowerment-blueboard-ma-lourdes-veneracion> (last accessed 26 July 2018).

<sup>9</sup> Anna Gabriela Mogato, *Phil- Still the most gender equal country in Asia- report*, BUSINESS WORLD (2 November 2017), available at <http://www.bworldonline.com/phl-still-gender-equal-country-asia-report/> (last accessed 26 July 2018).

Despite ratification of the CEDAW and its Optional Protocol (OP), the passage of the Magna Carta of Women (R.A. No. 9710), the country's localization of CEDAW, and despite being the only country in Asia with successfully decided cases with the CEDAW Committee, gender justice remains a continuing struggle. Notwithstanding the CEDAW Committee views in *Karen Tayag Vertido v. Philippines* (2010), *RPB v. Philippines* (2014), and the CEDAW Reproductive Health (RH) Inquiry (2015), barriers to women's access to justice and reproductive health rights persist. This brings to mind Merry's (2006) observation that there are "fissures between global settings where human rights are being codified" and the "local communities where the subjects of these rights live and work."<sup>10</sup>

In this paper, I posit two inquiries: What is the traction of international women's human rights (WHR) jurisprudence in domestic contexts? What does this reveal of their limits, reach, and potential in advancing women's dreams of equality and gender justice?

The first section locates this study within the ambit of international feminist legal theory by tracing feminist engagement with international law, its journey from the margins, its influence on women's human rights, and its continuing challenges. The second section focuses on Philippine women's movements and their contribution to international WHR jurisprudence. This covers the discussion of the three OP CEDAW cases: *Karen Tayag Vertido v. Philippines* (*KTV v. Phil.*), *RPB v. Philippines* (*RPB v. Phil.*) and the CEDAW RH Inquiry. The third section reviews the compliance of the Philippine Government with the OP CEDAW cases by

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<sup>10</sup> SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE, TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE (2006), 3.

reviewing published policies, programs, and jurisprudence. The last section engages feminist legal perspectives on international law and interrogates the reach, limits, and potential of these WHR jurisprudence in Filipino women's pursuit of gender justice in the current context of the Philippines.

Using the three WHR cases as benchmarks, this study argues that feminist engagement with the law has been a process of continuous compliance and resistance. While the success of OP CEDAW cases fulfills in part women's clamor for justice, international gains do not automatically translate to domestic compliance. Implementation remains context dependent, particularly on the strength of feminist and women's movements, the current political, economic, and cultural contexts prevailing in the State, and the ability of advocates to continuously translate and localize gains within the country's current context of power and contestation.

When Karen Tayag Vertido, the complainant in *KTV v. Phil.*, sent her individual communication to the CEDAW Committee in 2007, she was invoking CEDAW and its OP mechanism to intervene in her case. Domestic remedies have failed her, but the OP mechanism gave her hope.<sup>11</sup> She said "she died" when the accused was acquitted by the lower courts, but that the OP mechanism "brought her back to life."<sup>12</sup> While this study is necessarily limited to three OP CEDAW cases, it also engages on the development of feminist engagement in international law and women's movement in the Philippines.

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<sup>11</sup> Vertido, *supra* n1.

<sup>12</sup> Vertido, *supra* n1.

## II. THE JOURNEY FROM THE MARGINS: CEDAW AND FEMINIST ENGAGEMENT WITH INTERNATIONAL LAW

The narrative of international women's human rights is a narrative of feminist struggle and continuing contestations. Feminist issues and women's human rights have not been always visible and recognized in international law. This section locates the study within feminist engagement with international law, tracing how it influenced CEDAW's journey from the margins to recognition and the continuing contestations in the field.

### *Transforming CEDAW*

CEDAW, known as the women's convention, was adopted in 1979 after a series of world conferences on women, and after intense effort put in by advocates in the UN Commission on the Status of Women (CSW).<sup>13</sup> CEDAW commentators agree on its importance as the first international instrument on women.<sup>14</sup> Its adoption has been considered a "milestone" and was meant to address the silences and exclusion of women and women's issues in international human rights law.<sup>15</sup>

As a negotiated document, CEDAW has its innate weaknesses. It has been criticized for its failure to address the continuing public and private divide, its silence on violence against women, and its structures

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<sup>13</sup> Arvonne S. Fraser, *Becoming Human: The Origins and Development of Women's Human Rights*, 21 HUMAN RIGHTS QUARTERLY 853 (1999).

<sup>14</sup> Shanti Dairam, *CEDAW, Gender, and Culture*, in Baksh and Harcourt (eds), THE OXFORD HANDBOOK OF TRANSNATIONAL FEMINIST MOVEMENTS (2015).

<sup>15</sup> Susan Zwingel, *From Intergovernmental Negotiations to (Sub) national Change, A Transnational Perspective on the Impact of CEDAW*, 7(3) INT'L FEMINIST JOURNAL OF POLITICS 403 (2005).

that differed with other human rights treaty bodies.<sup>16</sup> During its adoption in 1979, it has no complaint mechanism procedure and it has been referred to as a “second class instrument,”<sup>17</sup> and a “poor cousin of human rights bodies.”<sup>18</sup> Charlesworth, Chinkin, and Wright (1991) pose the query whether CEDAW provides a real or merely “chimera” possibility of change for women.<sup>19</sup>

Despite the existence of CEDAW, Charlesworth, Chinkin, and Wright highlight women’s exclusion from international law and how this exclusion manifest in the law’s structure and normative standards.<sup>20</sup> Through a holistic and theoretical critique of international law, feminist perspectives on international law focuses on exposing these “silences and structural biases” and have as its goal their “rethinking and revision.”<sup>21</sup>

Since the publication of Charlesworth, Chinkin, and Wright article, changes in women’s human rights law have taken place. Feminist critiques together with the sustained engagement by women’s movement in the CSW, CEDAW Committee, and world conferences on women have influenced and transformed the convention from a “classical intergovernmental regime to a transnational network enforcing women’s rights.”<sup>22</sup>

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<sup>16</sup> Hilary Charlesworth, Christine Chinkin, & Shelley Wright, *Feminist Approaches to International Law*, 85(4) AM. J. INT’L L. 613-645 (1991).

<sup>17</sup> Loveday Hodson, *Women’s Rights and the Periphery: CEDAW’s Optional Protocol*, 25(2) The European Journal of International Law 561-562 (2014) citing Theodor Meron.

<sup>18</sup> Zwingel, *supra* n15, 405.

<sup>19</sup> Charlesworth et. al., *supra* n16, 631.

<sup>20</sup> Charlesworth et. al., *supra* n16, 614.

<sup>21</sup> Charlesworth et. al., *supra* n16, 621.

<sup>22</sup> Zwingel, *supra* n15, 404.

Tracing the development of CEDAW, Zwingel recognizes that while it began as an intergovernmental agreement “fraught with weak mechanism for enforcement” and shaped by “secular feminist understanding of equality,” it has since been normatively and structurally strengthened and utilized by feminists in holding states accountable.<sup>23</sup> CEDAW also results to increased attention to gender issues in the UN, becoming a treaty with “increasing global profile and authority.”<sup>24</sup>

CEDAW's innate weaknesses have been subsequently addressed by state practice and the adoption of general recommendations (GR) by CEDAW experts which interpret treaty provisions.<sup>25</sup> GR 19 is one of the GRs that transforms CEDAW, it makes clear that violence against women (VAW) is a form of discrimination against women and bringing it within the purview of the convention. It also provides that states are liable not only for its own acts but also of private acts if they fail to act with due diligence to address the same.<sup>26</sup> Chinkin considers this “a significant reconceptualization of human rights law that cut through the public-private distinction.”<sup>27</sup>

Subsequent international processes influenced by transnational women's movement further gathered momentum for women's human rights. The world conferences in Vienna and Beijing further established women's human rights in the global agenda and resulted, in part, to the

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<sup>23</sup> Zwingel, *supra* n15, 27; See Dairam, *supra* n14.

<sup>24</sup> Zwingel, *supra* n15, 406.

<sup>25</sup> Zwingel, *supra* n15, 405.

<sup>26</sup> UN CEDAW Committee, General Recommendation No. 19, HRI/GEN/1/Rev.8, 29 July 1994.

<sup>27</sup> Christine Chinkin, *Feminist, Approach to International Law*, OXFORD PUBLIC INTERNATIONAL LAW (October 2010) available at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e701>

incorporation of feminist language in international law.<sup>28</sup> The conferences also became venues for women to reiterate the need to adopt an independent complaint mechanism for the convention.

In 1999, the independent complaint mechanism was established through the General Assembly's adoption of the Optional Protocol Mechanism. A product of a "delicate negotiation," the OP vests jurisdiction on the Committee to receive individual complaints and to conduct inquiries for grave and systemic violation of women's human rights.<sup>29</sup>

With the adoption of the OP, the CEDAW Committee's working condition has improved.<sup>30</sup> This allows the Committee to transform the constructive dialogues with states into critical in depth analysis with open spaces for participation and reports from women's organizations.<sup>31</sup> The OP mechanism, on the other hand, provides an opportunity to expand and transform human rights by accommodating the voices of women from the periphery and bringing them into the center of women's human rights.<sup>32</sup>

The transformation of CEDAW through continued feminist engagement has brought the convention closer to women's lives and to contemporary feminist thinking.<sup>33</sup> Charlesworth notes these positive changes but admits continuing challenges.<sup>34</sup>

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<sup>28</sup> Fraser, *supra* n13, 904.

<sup>29</sup> Hodson, *supra* n17, 564.

<sup>30</sup> Zwingel, *supra* n15, 405.

<sup>31</sup> Zwingel, *supra* n15, 405.

<sup>32</sup> Hodson, *supra* n17, 561.

<sup>33</sup> Merry, *supra* n10, 78.

<sup>34</sup> Hilary Charlesworth, *The Women Question in International Law*, 1(1) AM. J. INT'L L. 35 (2011).

*The exile of inclusion, and continuing contestations*

The language of feminism and women's human rights has progressed from its position in the margins. Feminist ideas and rhetoric have now been absorbed in international law and institutions.<sup>35</sup> There is, however, considerable disagreement on the extent of this feminist influence and recognition, their blind spots and exclusions, and on their impact on women's empowerment.

In one extreme, there is a claim that feminism is already "running things" and "walking the halls of power" in international law.<sup>36</sup> Halley coins the term "governance feminists" to refer to feminism that rules, those who have acquired influence and expertise in international law and who are often unaware of their own powers.<sup>37</sup>

There are also writers who question problematic assumptions of other feminists. Third world and post-colonial feminists like Mohanty,<sup>38</sup> Kapur,<sup>39</sup> and Narayan<sup>40</sup> call out the gender and cultural essentialism of western feminists, and the fixation on "victim rhetoric" by international women's human rights.

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<sup>35</sup> *Ibid.*

<sup>36</sup> Charlesworth, *supra* n34, 36, citing Janet Halley.

<sup>37</sup> *Ibid.*

<sup>38</sup> Chandra Mohanty, *Under Western Eyes* in Lewis and Mills, *Feminist Postcolonial Theory*, ROUTLEDGE (2016).

<sup>39</sup> Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/ Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1, 36 (2002).

<sup>40</sup> UMA NARAYAN, *DISLOCATING CULTURES: IDENTITIES, TRADITIONS, AND THIRD-WORLD FEMINISM* (1997).

These continuing contestations highlight blind spots and stress not only the limits of current gains, but also how these gains could be problematic and in need of further feminist reflection. Fionnuala Ní Aoláin, for instance issued a caveat against equating female presence in international law with that of power and influence. She notes how advances remain “patchy,” structures and institutions “male-dominated,” and how “women have primarily intervened on questions and issues traditionally coded female.”<sup>41</sup>

More to the point, Charlesworth counters Halley’s claim regarding feminism’s power over international law. She posits that despite all talk of ‘gender and mainstreaming, women’s lives remain in the periphery of international institutions’.<sup>42</sup> Despite appearances, feminist projects have ‘limited success in empowering women and improving their lives’.<sup>43</sup> Implementation not only remained partial and selective, they were also ‘without regard to context or with empathy for their intended beneficiaries.’<sup>44</sup>

Dianne Otto, taking stock of feminist gains and continuing contestations, coined the phrase ‘exile of inclusion’.<sup>45</sup> She uses it to describe how as ‘feminist ideas make their way into legal texts and places of power,’ opening new possibilities for progressive change, and yet become the tools of powerful actors committed to maintaining the gendered status quo.<sup>46</sup>

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<sup>41</sup> Fionnuala Ni Aolain, *Feminism Facing International Law*, 22(4) EUROPEAN JOURNAL OF WOMEN’S STUDIES 457 (2015).

<sup>42</sup> Hilary Charlesworth, *Talking to Ourselves: Feminist Scholarship in International Law*, in Kuovo and Pearson (eds), *FEMINIST PERSPECTIVES ON CONTEMPORARY INTERNATIONAL LAW* (2014), 23.

<sup>43</sup> *Ibid.*, 31.

<sup>44</sup> Charlesworth, *supra* n42, 37.

<sup>45</sup> Diane Otto, *The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade*, 10 MELB. J. INT’L L. 11, 11-26 (2009).

<sup>46</sup> *Ibid.*

She stresses the importance of both 'critique and activism,' resistance and compliance, to be able to work with the possibilities without falling into institutional co-optation.<sup>47</sup>

*Walking the tightrope between resistance and compliance*

Feminist engagement with international law focuses on twin tasks - that of exposing silences and biases of law, and second, the overtly political agenda for change towards empowerment of women.<sup>48</sup> Feminists are always engaged in both resistance and compliance and this tension is 'built into the heart of the feminist project within international law'.<sup>49</sup>

Despite this, the development of women's human rights has shown that it is precisely this simultaneous critique and activism, resistance and compliance that foster changes in international law from one that excludes women, to one that includes women 'albeit' in limited manner.<sup>50</sup> It is through this tension that boundaries of international law are expanded, that gains claimed are challenged, and where blind spots in feminist critiques are revealed. CEDAW's transformation and its journey from the margins is a product of this paradox, and its continuing relevance and effectivity also depend on it.

Thus, despite claims of feminist success in international law, feminists are quick to resist and critique while at the same time re-

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<sup>47</sup> Otto, *supra* n45.

<sup>48</sup> Chinkin, *supra* n27.

<sup>49</sup> SARI KOUVO AND ZOE PEARSON, FEMINIST PERSPECTIVES ON CONTEMPORARY INTERNATIONAL LAW (2014), 5.

<sup>50</sup> Charlesworth, *supra* n42, 37.

imagining, reconfiguring other methods and spaces of engagement. This may include proposing a focus on feminist method for feminist messages as in the case of Charlesworth; recognizing different subjectivities and peripheral subjects as in the case of Kapur and Hodson; and championing vernacularization, translation, and domestic implementation as in the case of Zwingel, Reilley, and Merry.

Charlesworth emphasizes ‘that feminist messages without feminist method are unlikely to bring change.’<sup>51</sup> This relates to Kapur and Hodson’s views. Instead of universalizing tendencies of traditional women’s human rights law, Kapur recommends finding ways to advance feminist politics ‘without subjugating other subjectivities.’<sup>52</sup> She rejects the idea of a ‘singular truth’ about all women, recognizes multiple subjectivities, and focuses on the peripheral subject and her locations of resistance.’<sup>53</sup>

More specific to CEDAW, Hodson argues that CEDAW’s position both at the center and periphery of international law is its ‘very strength.’<sup>54</sup> Through the OP, the Committee is positioned to heed and respond to the voices of women in the periphery.<sup>55</sup> It is in this constant travel from the center to the periphery that the Committee can influence and transform international law by expanding its frame of reference.<sup>56</sup>

Feminist acts of resistance and compliance also abound in treaty implementation and compliance. Engaged in the rethinking of traditional women’s human rights law, these writers re-imagine the relationships

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<sup>51</sup> Charlesworth, *supra* n42, 24.

<sup>52</sup> Kapur, *supra* n41, 37.

<sup>53</sup> Kapur, *supra* n41, 3.

<sup>54</sup> Hodson, *supra* n17, 567.

<sup>55</sup> Hodson, *supra* n17, 567.

<sup>56</sup> Hodson, *supra* n17, 577 citing Baxi.

between the global and the local, looking at the importance of appropriation, translation, and vernacularization.

In the case of Zwingel, she recognizes the role of CEDAW in creating global norms on gender equality. However, she argues that 'the legitimacy and authority of global norms depends on their active interpretation within national and local contexts'.<sup>57</sup> In contrast to traditional view of international law as a result of a global discourse, Zwingel looks into 'contextualized appropriation as crucial in making norms pervasive'.<sup>58</sup> She also stresses the importance of the 'reciprocal interrelation between global, national, and local spheres for 'sustainable enforcement of a normative framework'.<sup>59</sup>

The emphasis on 'contextualized appropriation' of global norms also resonates in the work of Merry and Reilley. Merry focuses on how global law is translated into the vernacular, highlighting the role of activists who 'serve as intermediaries between different cultural understandings of gender, violence, and justice'.<sup>60</sup> Instead of espousing the view of women's human rights as enforceable by virtue of being agreed on and codified globally, she draws attention to the 'fissures between global settings and the communities where the subjects of these rights live and work'.<sup>61</sup> For human rights ideas to have an impact, 'they need to become part of the consciousness of ordinary people around the world'.<sup>62</sup> This view is likewise espoused by Reilley on her emphasis on cosmopolitan

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<sup>57</sup> Zwingel, *supra* n15, 400.

<sup>58</sup> Zwingel, *supra* n15, 417.

<sup>59</sup> Zwingel, *supra* n15, 416.

<sup>60</sup> Merry, *supra* n10, 2.

<sup>61</sup> Merry, *supra* n10, 2.

<sup>62</sup> Merry, *supra* n10, 3.

feminism, and on the need to understand human rights as ‘continually contested and (re) constituted through concrete, bottom-up struggles in local global nexuses where the universal and the particular meet’.<sup>63</sup>

### *Towards Examination of Women’s Jurisprudence*

The review has so far shown the journey of CEDAW from the margins and the role of feminist engagement with international law to such development. Through the years, CEDAW has been subjected to extensive feminist analysis, this has resulted to its transformation and continuing contestations. However, very few feminist analysis have been undertaken on the OP cases and on the manner that women’s movements engage with the process. Addressing this gap and drawing on feminist perspective on international law, a deeper analysis of the domestic traction of women’s human rights jurisprudence is undertaken, particularly in the context of the Philippines.

## **III. HARNESSING THE POWER OF CEDAW: PHILIPPINE CONTRIBUTION TO WOMEN’S HUMAN RIGHTS JURISPRUDENCE**

### *Philippine women’s movement*

Women’s movements in the Philippines form part of the global transnational movements for women’s human rights. Feminists and women’s organizations are very much active in UN world conferences, the

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<sup>63</sup> NIAMH REILLY, WOMEN’S HUMAN RIGHTS SEEKING GENDER JUSTICE IN A GLOBALIZING AGE (2009), 37-38.

CSW, and even in CEDAW.<sup>64</sup> Prior to the movement's foray into the transnational sphere, women's movements in the Philippines have been described as 'militant, nationalist, cross-cultural, and borne out of the country's colonial past and nationalist struggles.<sup>65</sup> While most narratives trace the origin of the movement in the early 1900s, it was not until the late 1970s and early 1980s that feminist organizations flourished, with roots in the nationalist struggle, conscious of cross sectoral movements, but borne of the need to recognize women specific issues.<sup>66</sup>

The overthrow of the Marcos dictatorship in 1986 led to wider democratic spaces and resulted in the proliferation of non-government organizations (NGOs).<sup>67</sup> Some feminist organizations turned their attention to the law - advocating changes, creating coalitions, and becoming part of transnational networks. Sama-Samang Inisyatiba ng Kababaihan sa Pagbabago ng Batas at Lipunan (Combined Initiatives of Women for Change in Law and Society or SIBOL), one of the coalitions engaging with the law aimed to use law to transform society for the people's benefit, more particularly, women.<sup>68</sup> It was instrumental in initiating legal reforms that benefitted Filipina women including the amendments to the country's rape law, defining it as a crime against persons instead of a crime against chastity.<sup>69</sup>

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<sup>64</sup> Mina Roces, *Rethinking 'the Filipino woman' A century of women's activism in the Philippines, 1905-2006*, in Roces and Edwards (eds) *WOMEN'S MOVEMENTS IN ASIA* (2010) 34, 47.

<sup>65</sup> Dorothy Friesen, *The Women's Movement in the Philippines*, 1 *NWSA JOURNAL* 4 (1989).

<sup>66</sup> Sylvia Estrada-Claudio & Aida Santos, *The Women's Movement(s) and Social Movements: Conjectures and Divergences*, EUROPE SOLIDAIRE SANS FRONTIERES (26 May 2005), available at <http://www.europe-solidaire.org/spip.php?article530>.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

Women's movements also actively participated in the world conferences on women, engaged with the CSW and campaigned for the adoption of the OP CEDAW. Aside from active support for the OP, women's organizations also began participating in the country report mechanisms of the convention. In 2007, SIBOL, working with regional organization International Women's Human Rights Watch-Asia Pacific (IWRRAWAP) drafted a shadow report on the Philippines' combined 3rd and 4th report.<sup>70</sup> In the subsequent reporting cycle, and during the country's 5th report in 2006, a comprehensive shadow report was submitted after a collaborative effort gathering more than 100 women's organization all over the country.<sup>71</sup> The series of consultations for the reports was led by a feminist legal NGO, Women's Legal and Human Rights Bureau (WLB) and attests to the then growing national and international network of feminists and women's rights advocates.<sup>72</sup>

It is in the context of this dynamic women's movement that the OP CEDAW cases came to be filed with the CEDAW Committee. Two decades after gaining freedom from dictatorship, and after successful legislative advocacy, feminist organizations and advocates also focused on the opportunities presented by transnational human rights networks.

### *Resort to OP CEDAW*

The OP CEDAW was adopted in 1999 and entered into force on 22 December 2000. At present, there are 109 states party to the Protocol.<sup>73</sup>

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<sup>70</sup> UNIFEM, *Going CEDAW in the Philippines*, WFSP (2009), available at [https://hrbaportal.org/wp-content/files/Going-CEDAWfinal\\_small.pdf](https://hrbaportal.org/wp-content/files/Going-CEDAWfinal_small.pdf).

<sup>71</sup> *Ibid.*, 55.

<sup>72</sup> UNIFEM, *supra* n70.

<sup>73</sup> UN Treaty Collection, *Status of Treaties*, OP-CEDAW (UNTC), available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8-b&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en).

Since 2000, the CEDAW Committee has registered 67 cases from 24 countries, of these cases, 16 have been admissible and decided on the merits.<sup>74</sup> The Philippines signed the OP CEDAW on 21 March 2000 and ratified it on 12 November 2003.<sup>75</sup> In November 2007, the first case from the Philippines and from Asia was brought before the Committee for consideration.

The establishment of the OP is meant to address structural gaps in CEDAW and to strengthen enforcement mechanism for women's human rights.<sup>76</sup> Under the OP, state parties recognize the competence of the Committee to receive and consider individual communications and requests for inquiry regarding grave and systematic violations of women's human rights.<sup>77</sup> Beyond providing redress for specific persons, the OP is also an important mechanism for initiating legal and judicial reforms, contributing to progressive jurisprudence that will impact domestic and international bodies.<sup>78</sup>

Notwithstanding the limited number of decided cases, the importance of OP mechanism in shaping and expanding international law is recognized. Hodson sees the transformative potential of the Committee's jurisprudence as it departs from the 'normative and structural limitations' of international human rights law.<sup>79</sup> Reilly calls this its 'disruptive

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<sup>74</sup> UN CEDAW Committee, *Statistical Survey on Individual Complaints*, UN OHCHR, available at <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>.

<sup>75</sup> UNIC, *supra* n74.

<sup>76</sup> Andrew Byrnes & Jane Connors, *Enforcing the Human Rights of Women: A Complaints Procedure for the Women's Convention?*, 21 BROOK. J. INT'L L. 679 (2017), 684.

<sup>77</sup> OP CEDAW (adopted 6 October 1999 entry into force 10 December 2000), UNTS vol. 2131, p. 83, Arts. 1, 2, 8.

<sup>78</sup> UNIFEM, *supra* n70, 64.

<sup>79</sup> Hodson, *supra* n17.

potential’ as against traditional international law which has been ‘deeply shaped by hegemonic Western, neoliberal male biases’.<sup>80</sup> For IWRAWAP, the OP is an important mechanism for redress as women had limited access to domestic remedies.<sup>81</sup> Resort to the OP is an opportunity for women’s movement to broaden understanding of the Convention and to challenge persisting ‘traditional patriarchal social models’ including those embodied in international human rights law.<sup>82</sup> For these academics and advocates, the OP CEDAW is both a site of resistance and compliance, critique, and activism.

The Philippine ratification of the OP CEDAW has opened another layer of redress for Filipino women. This is a gain that feminist organizations availed of as seen in the three successful OP cases.

***KTV vs. Philippines:*<sup>83</sup> *Paving the way for the concreteness of the Protocol in women’s lives***

The communication of KTV, filed on 29 November 2007 was the Committee’s first rape case from the Asian region and the world.<sup>84</sup> On 29<sup>th</sup> of March 1996 KTV, then a 42-year-old career woman, was raped by her boss. The boss volunteered to take KTV home after an office event but instead drove into a motel garage where the rape occurred.<sup>85</sup> A criminal

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<sup>80</sup> Reilley, *supra* n63, 66.

<sup>81</sup> IWRAWAP, *The OP CEDAW as a mechanism for implementing women’s human rights*, IWRAWAP Occasional Papers Series No. 13, 3 (2009).

<sup>82</sup> *Ibid.*

<sup>83</sup> *Karen Tayag Vertido v. The Philippines*, CEDAW Communication No. 18/2008 UN Doc CEDAW/C/46/D18/2008 (16 July 2010).

<sup>84</sup> UNIFEM, *supra* n70, 63.

<sup>85</sup> KTV, *supra* n83, 3.

case for rape was filed the day after and trial ensued from 1996-2005 until the accused was acquitted on 25 April 2005.<sup>86</sup>

The Court dismissed the case of KTV as it found her account unbelievable, particularly, that she was unable to escape when there were opportunities to do so.<sup>87</sup> The Court further reasoned that if she fought the act, the defendant, who was already a sextagenarian would not have ejaculated.<sup>88</sup>

The crux of KTVs communication is the gender-based myths and stereotypes about rape and rape victims that the court relied on, which led to the acquittal of the accused and her revictimization.<sup>89</sup> More specifically, KTV alleged violations of Articles 2 (c), (d), (f) and Article 5 (a) of the Convention. In brief, Article 2 (c), (d) and (f) pertained to access to remedies, protection from discrimination in institutions, and prohibition of discriminatory policies and practice; while Article 5(a) directs the State to address harmful cultural practices and stereotypes.

KTV emphasized that her case was not isolated, but was 'one among many trial court decisions in rape that discriminate against women and perpetuate discriminatory beliefs about rape victims'.<sup>90</sup> The communication did not only seek for personal redress, it also aimed to realize 'far reaching changes in Philippine laws, in the justice system, and in social-political culture'.<sup>91</sup>

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<sup>86</sup> KTV, *supra* n83, 4.

<sup>87</sup> KTV, *supra* n83, 4.

<sup>88</sup> KTV, *supra* n83, 4.

<sup>89</sup> KTV, *supra* n83, 13.

<sup>90</sup> KTV, *supra* n83, 8.

<sup>91</sup> UNIFEM, *supra* n70, 65.

On July 2010, the Committee ruled in favor of KTV holding that the State violated its obligations under Article 2 (c) and (f), and Article 5 (a) of CEDAW read in conjunction with GR 19 on VAW.<sup>92</sup> The Committee cited the delay in the proceedings and the Court's reliance on gender stereotypes in its decisions. It stressed the effect of stereotypes on women's right to fair and just trial, and cautioned against the creation of 'inflexible standards' of what defines a rape victim.<sup>93</sup> In the end, the Committee recognized that KTV suffered 'moral and social damage as result of the 'excessive duration of the trial proceedings' and as a result of 'revictimization through the stereotypes and gender-based myths relied upon in the judgment'.<sup>94</sup>

The Committee's recommendations ranged from personal to structural, starting with a recommendation for the payment of compensation, to recommendations directed at changing the laws on rape, ensuring legal proceedings on sexual violence cases are pursued without delay, and are 'fair and impartial,' free from prejudice and stereotypes, and last for the conduct of training for legal professionals.<sup>95</sup>

As the first communication from Asia, the case of KTV gathered support from domestic and regional women's movements. The dismissal of her case became an opportunity to test the OP mechanism as an avenue for redress. During the preparation of the Communication, KTV was assisted by Atty. Evalyn Ursua, lead counsel and chair of feminist legal NGO Women's Legal and Human Rights Bureau. In 2007, WLB gained funding support from UNIFEM, precursor of UN Women, for the KTV communication and for the training of other women's groups in the use of

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<sup>92</sup> KTV, *supra* n83, 7.

<sup>93</sup> KTV, *supra* n83, 14.

<sup>94</sup> KTV, *supra* n83, 16.

<sup>95</sup> KTV, *supra* n88, 17.

the Optional Protocol.<sup>96</sup> A research team was then organized which drafted the initial communication followed by a presentation of the draft to lawyers, psychiatrists, academicians, and activists for comment prior to the filing.<sup>97</sup> It was the convergence of all these factors that contributed to the success of KTVs communication before the Committee.

In many ways, the communication and its success carried not only the hope and dreams of KTV, but of all Filipino women. KTVs speech, read by her daughter during the submission of the Communication expresses this when she said *'The document carried my name, but in reality it carries the name of every Filipino woman. For the outcome of this endeavor hopefully will change the way the judiciary and every pillar of justice handles every case of rape.'*<sup>98</sup> The sentiment is shared by KTVs counsel, holding that the case could be a 'milestone' and that 'whatever happens will make a difference' in the Philippines and in Asia as it can 'pave way for other Filipinos to see the concreteness of the Protocol in their lives.'<sup>99</sup>

Looking at the ruling's influence in international law, KTV remains a crucial jurisprudence on the impact of gender stereotypes and rape myths to women's access to justice. It firmly settles the connection between judicial stereotyping and discrimination under CEDAW, mandating states to address the same not only thru through personal compensation but also through legislation, adoption of policies and measures, and capacity building.

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<sup>96</sup> UNIFEM, *supra* n70, 64.

<sup>97</sup> UNIFEM, *supra* n70, 65.

<sup>98</sup> UNIFEM, *supra* n70, 64.

<sup>99</sup> UNIFEM, *supra* n70, 63.

***RPB vs. Philippines:<sup>100</sup> Highlighting intersectionality***

The second successful communication from the Philippines was the case of RPB, a deaf mute 17-year old girl who was raped by a 19-year old neighbor in her own residence.<sup>101</sup> RPB filed a criminal case for rape on the same day, with her sister interpreting for her. The case remained pending from 21 June 2006 until 31 January 2011 when the Court acquitted J.<sup>102</sup>

In rendering a judgment of acquittal, the Court found RPB's actions during and after the rape incredible.<sup>103</sup> It held that RPB 'failed to prove that the sexual intercourse was not consensual'.<sup>104</sup> The court took it against RPB that she did not 'summon every ounce of her strength' to resist the act.<sup>105</sup> The Court reasoned that she could have tried to escape or shout for help stating that 'her being a deaf mute does not render her incapable of creating noise;' and that she 'could have slapped, punched, kicked and pushed the accused'.<sup>106</sup> It even took notice that RPB's clothes were intact thus, 'does not evince a struggle on her part.'<sup>107</sup>

In her communication, RPB contends that the trial court's decision was discriminatory, denied her of justice and was in violation of the State's obligation under CEDAW. She cited violations under Article 2 (c), (d) and (f) of the Convention.<sup>108</sup> To support her claim, RPB pointed out how the court relied on gender-based myths and stereotypes and how it failed to

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<sup>100</sup> *RPB v. The Philippines*, Communication No. 34/2011, UN Doc.CEDAW/C/57/D/34/2011 (2014)

<sup>101</sup> RPB, *supra* n100, 2.

<sup>102</sup> RPB, *supra* n100, 3.

<sup>103</sup> RPB, *supra* n100, 4.

<sup>104</sup> RPB, *supra* n100, 4.

<sup>105</sup> RPB, *supra* n100, 4.

<sup>106</sup> RPB, *supra* n100, 4.

<sup>107</sup> RPB, *supra* n100, 4.

<sup>108</sup> RPB, *supra* n100, 5.

consider her rape in the context of her disability.<sup>109</sup> RPB argued that her case illustrated the 'systemic discrimination against victims of sexual violence in the Philippine judicial system,' she drew attention to the 'peculiar evidentiary burdens imposed on women in rape trials' and the existence of a 'standard of behavior for rape victims' failing which, the case would be dismissed.<sup>110</sup>

RPB made clear in the communication the multiple sites of her discrimination, seeking the Committee to consider that State party has discriminated against her as a 'deaf mute girl victim of rape' and to consider the harm brought about by the intersectionality of gender, age, and disability.<sup>111</sup> The communication invoked both CEDAW and the Convention on the Rights of Persons with Disability (UNCRPD).

On 21 February 2014, the Committee issued its views on the case. The Committee held that state party failed in its obligations under the Convention, violating the rights of RPB particularly under 2 (c), (d) and (f), read in conjunction with Article 1 of the Convention and GR Nos. 18 and 19.<sup>112</sup>

The Committee stressed that the right to an effective remedy is inherent in the Convention under Article 2 (c) thereof.<sup>113</sup> This right is reiterated under GR 19 on violence against women, and more specific to

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<sup>109</sup> RPB, *supra* n100, 5.

<sup>110</sup> RPB, *supra* n100, 5.

<sup>111</sup> RPB, *supra* n100, 10.

<sup>112</sup> RPB, *supra* n100, 13.

<sup>113</sup> RPB, *supra* n100, 13.

women with disabilities, by GR 18 which recognizes the vulnerability and multiple discrimination experienced by women with disabilities.<sup>114</sup>

The Committee's views paid particular attention to the intersecting forms of discrimination suffered by RPB and recognized that she 'suffered material and moral damage and prejudice, in particular by the excessive duration of the trial proceedings, by the court's failure to provide her with the free assistance of sign language interpreters and by the use of the stereotypes and gender-based myths and disregard for her specific situation as a mute and deaf girl in the judgment.'<sup>115</sup>

The Committee's recommendations included the provision of monetary compensation for RPB, the provisions of free psychological counselling and therapy, and of barrier-free education with interpreting.<sup>116</sup> The remaining recommendations pertain to amendment of the law, ensuring accessibility through provision of free and adequate access to interpreters, ensuring legal proceedings are fair, impartial, and free from prejudice and stereotypes regarding a victim's gender, age and disability, and the provision of training and capacity building.<sup>117</sup>

While the case of RPB is similar with that of KTV, it contributes to women's human rights jurisprudence through emphasis on intersectional forms of discrimination in accessing justice. RPB also surfaces the experiences of deaf women and establishes that accessibility of remedies is as important as the existence of remedies free from prejudice and harmful stereotypes.

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<sup>114</sup> RPB, *supra* n100, 13.

<sup>115</sup> RPB, *supra* n100, 16-17.

<sup>116</sup> RPB, *supra* n100, 17.

<sup>117</sup> RPB, *supra* n100, 17.

While the role of women's movements was not as pronounced in RPB as in the case of KTV and the RH Inquiry, RPB was nevertheless assisted by the Philippine Deaf Resources Center (PDRC) during the trial of her case. The absence of sign language interpreters in courts made her rely on NGOs like PDRC.<sup>118</sup> RPB was also assisted in her communication by Atty. Evalyn Ursua, the same counsel who represented KTV. Like KTV, RPBs success was expected to create positive change for women's access to justice, particularly for women with disability.

***RH Inquiry:<sup>119</sup> Establishing grave and systemic violations***

The third WHR jurisprudence from the Philippines accessed the OP CEDAW through the inquiry mechanism. An inquiry is a separate modality of accessing remedies provided under Article 8 of the OP. The process vests the Committee with jurisdiction to receive information indicating grave and systematic violations of women's human rights and to thereafter invite the state party to cooperate in the examination of the information concerned.<sup>120</sup> The procedure is envisioned to 'cover a broader range of issues than was possible with individual complaints mechanism,' it is also meant to 'recommend measures combating structural causes of violations.'<sup>121</sup> The inquiry process is always conducted with confidentiality and with cooperation of the state party.<sup>122</sup>

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<sup>118</sup> RPB, *supra* n100, 4.

<sup>119</sup> UN CEDAW Committee, *Summary of the inquiry concerning the Philippines under article 8 of the OP CEDAW*, CEDAW/C/OP.8/PHL/1 (22 April 2015).

<sup>120</sup> OPCEDAW, *supra* n77, art. 8.

<sup>121</sup> Jane Connors, *Optional Protocol* in Chinkin & Freeman (eds.), *UN CEDAW Commentary* (Oxford: OUP, 2012) 660.

<sup>122</sup> *Ibid.*, 660.

The RH inquiry was triggered by a joint submission of national, regional, and international women's organizations.<sup>123</sup> Received by the Committee on 2 June 2008, it alleged grave and systematic violations of women's reproductive health rights as a result of the issuance of Executive Order 003 in the City of Manila. The subject E.O. was issued by the City Mayor in 2002 and affirmed as a matter of policy a 'pro-life' stance discouraging the use of artificial contraceptives.<sup>124</sup> The issuance resulted in a ban of artificial contraceptives in the City of Manila. The local elections in 2007 led to the issuance of a revised E.O. No. 030. However, matters remained unchanged as the subsequent E.O., while not prohibiting artificial contraceptives, still imposed a funding ban on the same.<sup>125</sup> From the initial submission in 2008, additional information followed, reaching to a total of six submissions until 2012. These detailed the continuing grave and systemic violation of women's reproductive health rights in the City of Manila.<sup>126</sup>

Following OP Procedures and required permissions, Pramila Patten and Violeta Neubauer, CEDAW experts, conducted a country visit from 19-23 November 2012. During their visit, the experts conducted interviews with various stakeholders and visited government offices, hospitals, clinics and lying in centers. They also interviewed sixty (60) women ranging from ages 19-49 years of age from the City of Manila.

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<sup>123</sup> The Joint submission was from the Task Force CEDAW with Engenderrights and Women Lead as convenor and with 10 other member organizations; IWRAWAP, based in Malaysia, and the New York based Center for Reproductive Rights. See Inquiry (n119), 2.

<sup>124</sup> Inquiry, *supra* n119, 2.

<sup>125</sup> Inquiry, *supra* n119, 2.

<sup>126</sup> Clara Rita Padilla & Anita Visbal, *Advancing Reproductive Rights Using the Inquiry Procedure of OP-CEDAW*, UNIFEM (2010), 9.

In 2015, seven years after the filing of the joint submission, the Committee's views on the RH inquiry was released. The Committee found grave and systematic violation of women's human rights in the City of Manila due to the issuance and implementation of both E.O. No. 003 and E.O. No. 030. At the onset the Committee observed that the church continues to hold 'considerable influence on public policy making' and 'religion has been relied upon as the basis for sexual and reproductive health policies, including at the level of local government units.'<sup>127</sup>

The result of the inquiry showed that the State committed 'grave' and 'systematic' violation of women's human rights, particularly pertaining to the following: Article 12 on right to health in relation to Article 2 (c), (d), (f) on access to remedies, protection from discrimination in institutions, and prohibition of discriminatory policies and practices; Article 5 (a) on modifying customs and practices that discriminate women and Article 10 (h) on access to health related information. The Committee also found separate breach of Article 16 (1) (e) pertaining to the same rights between men and women to decide freely the number and spacing of children and to access to information in relation thereto.

The Committee established that the issuance of the EOs resulted in a ban of modern contraceptives as well as misinformation on modern contraceptives. It elaborated on how this had direct impact on women's health, especially economically disadvantaged women who will be unable to control the number and spacing of their children.<sup>128</sup>

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<sup>127</sup> Inquiry, *supra* n119, 3.

<sup>128</sup> Inquiry, *supra* n119, 5.

In finding that the violations were grave, the Committee considered ‘scale, prevalence, nature, and impact of the violation found’.<sup>129</sup> It discussed the ‘number of women affected, the dire consequences’ to women as a result of the EOs such as ‘higher rates of unwanted pregnancies and unsafe abortions, increased maternal morbidity and mortality and increased exposure to sexually transmitted diseases and HIV’.<sup>130</sup> In terms of the violations’ systematic nature, the Committee observed that there was a ‘prevalent pattern of violation,’ they were not isolated but were the results of policies deliberately adopted by two consecutive Mayors of the City.<sup>131</sup> The Committee also noted that combined existence and implementation of the two EOs for the span of twelve years indicate that this was condoned by the central government.<sup>132</sup>

As a result of the inquiry, the Committee proceeded to recommend a whole range of actions to the State Party. It divided its recommendations into those pertaining to institutional and legal framework and the second on access to reproductive health and services. For the institutional and legal frameworks, the Committee’s recommendations focused on review of laws, enforcement of those that promote RH, strengthening of monitoring and oversight mechanisms, ensuring access to remedies, and conduct of capacity building for the judiciary.<sup>133</sup> On sexual and reproductive health and rights, the recommendations include ensuring universal access to full range of contraceptives, commodities, and services, ensuring effective remedies; regulating the practice of conscientious objection; and the conduct of systematic training and awareness raising.<sup>134</sup>

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<sup>129</sup> Inquiry, *supra* n119, 14.

<sup>130</sup> Inquiry, *supra* n119, 14.

<sup>131</sup> Inquiry, *supra* n119, 15.

<sup>132</sup> Inquiry, *supra* n119, 15.

<sup>133</sup> Inquiry, *supra* n119, 16.

<sup>134</sup> Inquiry, *supra* n119, 17.

The RH Inquiry was only the second inquiry conducted by the Committee since the adoption of the OP and the first covering reproductive health and rights. This has made the views of the Committee of particular importance. It has made clear the scope of state obligation under Article 12 on right to health and drew attention to how religious influence impact policies and women's access to reproductive health commodities, services, and information. The RH inquiry has also showed the strong convergence of women's organizations in accessing the OP mechanism, supporting the process, and in continuing calls for accountability post-inquiry. This is evident in the preparations undertaken for the joint submission and request for inquiry, the evidence gathering within affected community, the number of submissions and the active engagement of the Task Force led by Engenderights and supported by Center for Reproductive Rights and IWRAWAP.<sup>135</sup>

### *Drawing Connections: Women's movements and WHR Jurisprudence*

The review of OP cases from the Philippines demonstrate two important points: one, the role of women's movements in the successful engagement with the OP mechanism; and two, how feminist engagement with the OP brought voices and experiences of women from the periphery into the center of discussion, thereby 'expanding the universe' of international women's human rights law.<sup>136</sup>

These OP cases benefited from the vibrant women's movement in the Philippines. Assistance included research and preparation of the

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<sup>135</sup> Padilla & Visbal, *supra* n126, 9.

<sup>136</sup> Hodson, *supra* n17, 577 citing Baxi on the role of OP cases in expanding human rights.

communication/joint submission, community organizing and data gathering, advocacy and campaigns, and in reporting and monitoring once the Committee views are issued. Thus, in the case of KTV and RPB, the assistance of feminist counsel Atty. Evalyn Ursua was crucial, more so in KTV where advocacy and funding support was available through WLB and UNIFEM. The series of trainings conducted by WLB on CEDAW provided opportunities to present the case in domestic and regional fora, consolidating support for KTV even before the Communication was filed.<sup>137</sup>

In the case of the RH inquiry, the extensive groundwork needed to gather data and interview women affected by the discriminatory EOs were undertaken by the Philippine Task Force on CEDAW. The international and regional support for the seven-year RH inquiry process were provided by international NGO CRR and regional IWRAWAP.<sup>138</sup> Even after the release of the views in the case, calls for accountability continued.

The cases also illustrate how feminist and women's engagement with the OP provides an opportunity to bring voices and experiences of women from the periphery into the center of discussion. Through well-crafted communication and joint submissions, the cases were able to convince the Committee to consider and to rule on issues it has not heard or discussed in depth before.

Clearly, these cases mark the success of Philippine women's movements and that of feminist transnational networks in engaging with the OP mechanism as a form of redress for violation of women's human

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<sup>137</sup> UNIFEM, *supra* n75, 65.

<sup>138</sup> UNIFEM, *supra* n75, 65.

rights. However, success in engaging with international law such as the OP mechanism does not automatically translate to successful local implementation. For while literature suggests that these WHR jurisprudence have gained regional and international recognition, their implementation and their impact on women's lives in the Philippines remain an open question.

In looking at the traction of these WHR cases in domestic spheres, one is faced with the challenge posed by Zwingel and Merry on interpretation of norms within national and local contexts.<sup>139</sup>

#### IV. REVIEW OF COMPLIANCE AND IMPLEMENTATION

##### *Going CEDAW: State implementation of WHR Views*

Under the OP CEDAW procedure, the issuance of the CEDAW views or summaries does not mark the end of the process. It requires that after the issuance of the views, the same shall be transmitted to the State Party who shall consider them and within six months provide its responses and actions thereto.<sup>140</sup> The State is likewise directed to publish the views of the Committee and disseminate the same.

In the case of KTV, the State's response to the views was sent April of 2011.<sup>141</sup> For RPB and the RH Inquiry, the State has yet to submit the mandated information. Perusal of the State report to the CEDAW (2015)

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<sup>139</sup> Zwingel, *supra* n15, 400; Merry, *supra* n10, 3.

<sup>140</sup> OPCEDAW, *supra* n82, art. 7 (4); art. 8 (4).

<sup>141</sup> Philippines, *Response to the Views of Committee in Communication 18/2000* (April 2011).

shows no mention of the cases.<sup>142</sup> It is only in response to the List of Issues Prior Reporting in 2016 (LOIPR)<sup>143</sup> that the State provided brief updates on the implementation of the Committee views. After the issuance of the 2016 concluding observations of the Philippines' review, the State provided additional information on its RH inquiry implementation<sup>144</sup> and its comment to the concluding observations.<sup>145</sup> These documents outline how the State addressed the Committee views in the WHR cases, they also provide justifications for State inaction in some recommendations.

### *The Absence of a Comprehensive Plan: Selective and Limited Implementation of Views*

Since the release of Committee views in the three OP cases, the State has not adopted a comprehensive plan to strategically address the Committee's views. This has resulted in the limited and selective implementation of recommendations that fail to address underlying structural issues. This section describes in brief the State's implementation of Committee views thus far covering the period from 2010 to 2018.

In two (KTV and RPB) of the three OP cases, the grant of compensation and other services has been recommended by the Committee. The grant is in recognition of the damage and prejudice that the complainant suffered because of the case. Notwithstanding the grant, the State has not provided for compensation and other services in any of

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<sup>142</sup> Philippines, *Combined 7<sup>th</sup> and 8<sup>th</sup> Report, Philippines* (2 March 2015) CEDAW/C/PHL/7-8.

<sup>143</sup> Philippines, *Replies of the Philippines* (22 April 2016), CEDAW/C/PHL/Q/7-8/Add.1.

<sup>144</sup> Philippines, *Additional Information* (7 July 2016), available at [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PHL/INT\\_CEDAW\\_COB\\_PHL\\_25000\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PHL/INT_CEDAW_COB_PHL_25000_E.pdf).

<sup>145</sup> Philippines, *Comment on Concluding Observations* (30 August 2016), available at [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PHL/INT\\_CEDAW\\_AIS\\_PHL\\_24469\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PHL/INT_CEDAW_AIS_PHL_24469_E.pdf).

the cases. The State is resolute on its stand on 'compensation,' stating that the grant has to be consistent with State laws, and that in the absence of a law recognizing compensation by treaty bodies, it cannot be granted.<sup>146</sup> This refusal prompted NGOs to highlight that justice remains elusive for KTV and RPB and to reiterate calls for the State to comply with its treaty obligations under CEDAW.<sup>147</sup>

Another set of recommendations in the WHR cases pertains to legislative and policy reforms. State compliance in this area has been lagging, except in the area of RH and in post abortion care. While proposed legislations have been filed establishing 'lack of consent' as central to the crime of rape, these measures never moved beyond proposal since 2014.<sup>148</sup> On the other hand, the recommendation to decriminalize abortion has been consistently ignored by the State and no effort has been undertaken even to propose the measure in Congress.

There are, however, a few developments particularly on RH. One is the ruling of *Imbong vs. Ochoa*<sup>149</sup> which upheld the constitutionality of the RH law in 2015. It was hailed for its defense of the law against religious fundamentalist opposition. The State reports that with the success of the law, E.O. No. 003 and E.O. No. 030 of the City of Manila are effectively revoked.<sup>150</sup> The law also sets in place oversight and monitoring through the national and regional implementation teams and regular reports to

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<sup>146</sup> See: Response (n 141), 2; Replies (n 143), 4.

<sup>147</sup> *Shadow reports from: Philippine Women on Asean, Commission on Human Rights Philippines*, PHILIPPINE ALLIANCE OF WOMEN WITH DISABILITIES (PAWID) AND ENGENDERIGHTS (OHCHR), available at [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/countries.aspx?CountryCode=PHL&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=PHL&Lang=EN).

<sup>148</sup> State Report, *supra* n142, 5.

<sup>149</sup> G.R. No. 204819, 8 April 2014.

<sup>150</sup> Replies, *supra* n143, 23.

Congress.<sup>151</sup> The ruling, however, has its downside as it also struck down eight key RH provisions such as access to RH commodities and services by minors and married women without requiring parental and spousal consent, respectively.<sup>152</sup>

Another positive policy development is the adoption by the Department of Health (DOH) of the 2016 Policy on the Prevention and Management of Abortion Complications. The policy guides the provision of post-abortion care in public and private health facilities and features safeguards such as confidentiality and the inapplicability of conscientious objection in the provision of services.<sup>153</sup> It must be noted though that in these two successful compliances, the ground work of advocates cannot be discounted.

On recommendations pertaining to access to justice and capacity building on CEDAW and gender, state submissions primarily consist of a rundown of training sessions conducted and attended by members of the Court and of the programs and projects of the Committee on Gender Responsiveness in the Judiciary (CGRJ).<sup>154</sup> The submissions also report on programs established to fast track cases in the judiciary such as ‘the speedy trial act’ ‘judicial affidavit rule’ and the ‘rules on continuous trial in criminal cases.’<sup>155</sup> Specific to reasonable accommodation for women with disabilities, the State reiterates the existence of Supreme Court memorandum circulars issued in 2004 authorizing the Court

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<sup>151</sup> Comment, *supra* n145.

<sup>152</sup> Buena Bernal, SC Declares RH Law Constitutional, *RAPPLER* (8 April 2014), available at <https://www.rappler.com/nation/54946-supreme-court-rh-law-constitutional>.

<sup>153</sup> Mellisa Upreti & Jihan Jacob, *The Philippines’ new postabortion care policy*, 141(2) *IJGO* 268-275 (2018).

<sup>154</sup> See State Report, *supra* n142, 11; Replies, *supra* n23.

<sup>155</sup> See State Report, *supra* n142, 11.

Administrator to approve requests of lower courts for the hiring of sign language interpreters.<sup>156</sup>

What is immediately apparent in this enumeration of policies, programs, and activities is that they are not specifically structured and designed in response to the Committee's views in the OP cases. Except for the training programs initiated by the CGRJ, these programs are not developed in response to specific gender issues, particularly the need to address persistent gender stereotyping in the judiciary. These state reports of implementation are also directly challenged by shadow reports from the Philippine Women on ASEAN, the Philippine Association of Women with Disabilities (PAWID), Engenderights, and the Commission on Human Rights of the Philippines (CHRP). These shadow reports provide accounts of continuing barriers in women's access to justice, the prevalence of stereotyping and prejudice, and the unavailability of sign language interpreters despite the mentioned SC circulars, and of emerging forms of violence against women.<sup>157</sup>

### *Continuing Judicial Challenges*

The limited and selective implementation of Committee views extends further to court decisions. It is manifested in the decided cases on rape and in the Supreme Court's decisions in the RH cases.

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<sup>156</sup> Replies, *supra* n143, 25.

<sup>157</sup> See Shadow report submissions for the 6th and 7th session, available at [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/countries.aspx?CountryCode=PHL&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=PHL&Lang=EN).

## *Rape*

The crux of the Committee's recommendations in both KTV and RPB pertains to judicial stereotyping and their impact on women's access to justice. State compliance with Committee views in these cases would mean a gender sensitive judiciary free from prejudice and stereotypes. If these views were heeded by the Courts, a shift in perspective would have been expected from 2010 onwards, the year the views in KTV were released. However, such was not the case. Two studies that reviewed mostly Supreme Court cases showed that despite an attitude of belief towards victim survivors of rape, gender stereotypes in the judiciary persists.

In 2010, CHRP partnered with the Ateneo Human Rights Center (AHRC) to conduct a review of cases from lower, appellate, and the Supreme Court from 2010 to 2011. The study observed increased sensitivity of the Courts to victim survivors of rape. However, it also observed the existence of double standards in favor of minor complainants to the prejudice of complainants who do not fit the 'profile of a victim.'<sup>158</sup> This meant that while the Court has been more ready to believe complainants of rape, most of those that the Court believed are those who are young. This line of analysis was further developed in another study covering the longer period from 2010 to 2018.

As a follow through study, the AHRC, through Atty. Amparita Sta. Maria conducted a subsequent review of Supreme Court jurisprudence

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<sup>158</sup> AHRC, *Analyzing Trends in the Promotion of Gender Equality in Judicial Decisions on Women*, AHRC (2011), available at [https://docgo.net/philosophy-of-money.html?utm\\_source=analyzing-trends-in-the-promotion-of-gender-equality-in-sc-decisions-on-women-final-version](https://docgo.net/philosophy-of-money.html?utm_source=analyzing-trends-in-the-promotion-of-gender-equality-in-sc-decisions-on-women-final-version).

covering a longer period from 2010 to 2018.<sup>159</sup> The findings continue to affirm the persistence of gender bias in Supreme Court cases and that such is highlighted in rape cases.

At the onset, the study observed a paradigm shift in Supreme Court decisions. For one, recent jurisprudence has settled the existence of marital rape with a decision specifically citing CEDAW.<sup>160</sup> There is also an observed judicial leaning towards the credibility of victim survivors abandoning doctrines on the need for 'tenacious resistance' and rigid standards on how rape victims should react when raped. It was, however, observed that this attitude of belief mostly favored minors and those who are of age but with the mental age of minors. As such, rape cases reviewed for the study showed that 'if the victims were minors, young and immature, and not exposed to the world, they were accorded credibility by all levels of the judiciary.'<sup>161</sup> Not faulting consistent reliance on such doctrine, the study warned how such stereotype 'prejudice mature women because courts now require a higher quantum of proof as regards their own credibility and non-consent to rape.'<sup>162</sup>

These rigid standards as applied to mature women manifested itself in two recent cases. In *People v. Marquez*,<sup>163</sup> the Supreme Court

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<sup>159</sup> Amparita Sta Maria, *An Analysis of Supreme Court decisions on Rape and Sexual Assault*, HUSTISYA NATIN (20 June 2018), available at <http://www.hustisyanatin.org/wp-content/uploads/2018/06/Hustisya-Paper-final.pdf> (last accessed 29 July 2018).

<sup>160</sup> *Ibid.*, 6-7; see cases: *People v. Velasco*, G.R. No. 190318, 27 November 2013 (14 years old); *People v. Quintos*, G.R. No. 199402, 12 November 2014 (21 years old but with the mental age of 12); and others cited in the study.

<sup>161</sup> Sta. Maria, *supra* n159, 6-7; See cases: *People v. Velasco*, G.R. No. 190318, 17 November 2013 (14 years old); *People v. Quintos*, G.R. No. 199402, 12 November 2014 (21 years old but with the mental age of 12); and others cited in the study.

<sup>162</sup> Sta. Maria, *supra* n159, 16.

<sup>163</sup> G.R. No. 212193, 15 February 2017.

reinstated the doctrine of ‘tenacious resistance,’ holding that a 24-year old teacher cannot possibly be raped by two minor boys. The decision was also riddled with stereotypes, insisting that ‘resistance must be manifested before the rape is consummated,’ and implying the impossibility of the rape ‘just because the woman was older than the accused and the fact that they were actually friends’.<sup>164</sup> In *People v. Amarela*,<sup>165</sup> the court stated that ‘we simply cannot be stuck to the Maria Clara stereotype of a demure and reserved Filipino woman’ and should see the ‘empowered role of women in society.’ The Court then proceeded to dismiss the case holding that a woman’s consent prior to the act of penetration ‘however reluctantly given, or if accompanied with mere verbal protests and refusals, prevents the act from being rape provided the consent is willing and free of initial coercion’.<sup>166</sup>

The study finds these two cases alarming for reinstating ‘tenacious resistance,’ for sending the message that women are expected to resist at the first instance invalidating forms of resistance thereafter, and for perpetuating the stereotyped view that ‘men cannot control their biological urges’ once the act has begun.<sup>167</sup> The case of *Amarela* is also striking as it acknowledges gender stereotypes, yet uses such reasons to dismiss a complainants’ account of rape. It fails to consider that most of the favorable cases of rape in the SC has been in favor of young women and girls and have been particularly harsh on ‘mature’ women just as what the Court did in the case.<sup>168</sup>

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<sup>164</sup> Sta Maria, *supra* n159, 19.

<sup>165</sup> G.R. Nos. 225642-43, 17 January 2018.

<sup>166</sup> Sta. Maria, *supra* n159 citing *Amarela*, 20.

<sup>167</sup> Sta Maria, *supra* n159, 26.

<sup>168</sup> Sta Maria, *supra* n159, 6.

These recent decisions of the Court perpetuate the same rape myths and stereotypes debunked in the cases of KTV and RPB. They also illustrate the persistence of gender stereotypes in the judiciary.

## ***RH***

The Supreme Court decisions in the RH cases brought before it reveal traces of continuing influence of the church. The observation by the Committee in the RH Inquiry holds true, that while the separation of the church and state is mandated, state policies continue to be affected by religious beliefs.<sup>169</sup> To recall, *Imbong* upheld the constitutionality of the RH law in 2014; however, there are dark undersides to the decision that have marred and will continue to mar women's right to health. *Imbong* has stricken out eight key provision of the RH law, including provisions that allow access to RH services to married women and minors without spousal and parental consent. It also has struck down the provisions providing penalties for public officers who refuse to implement the law, or health providers who refuse service by invoking 'conscientious objection.'<sup>170</sup> In contradiction then of the RH Inquiry views, *Imbong* justifies denial of full range of contraceptives to certain individuals and it also excuses refusal to implement the law, even among public officials. It is for this reason that subsequent controversies on the implementation of the RH law invoke *Imbong* as a defense/justification. Thus, when religious petitioners sought a restraining order on certain contraceptives, they cited *Imbong*.<sup>171</sup> In

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<sup>169</sup> Inquiry, *supra* n119, 3.

<sup>170</sup> Buena, *supra* n152.

<sup>171</sup> Aya Tantiangco, *The crusade against contraceptives and reproductive rights*, GMA NEWSONLINE, 18 December 2017, available at <http://www.gmanetwork.com/news/news/specialreports/636969/the-crusade-against-contraceptives-and-reproductive-rights/story>.

defending the issuance of her Pro-Life EO which resulted in the ban of modern contraceptives, Mayor Sally Lee of Sorsogon City raises *Imbong* as a defense.<sup>172</sup> In a case filed against her with the CHRP, the mayor argued that her refusal, based on conscientious objection, was allowed by law. This is despite clear findings of violations in the RH inquiry regarding similar issuances from the City of Manila, and Committee recommendations that the state should ensure full RH access and regulate the practice of ‘conscientious objection.’<sup>173</sup>

At present, all restraining orders against RH have already been lifted.<sup>174</sup> The *de facto* ban on modern contraceptives in Sorsogon City is augmented by resources and manpower from the Central government.<sup>175</sup> The CHRP has also ruled that Mayor Sally Lee violated CEDAW in issuing the Pro-Life EO and recommended the filing of administrative cases against her.<sup>176</sup> While these mark progress on compliance, it is nonetheless apparent that for as long as judicial and structural barriers against full implementation of RH exist, women’s right to health will always face continuing threats.

### *Problematizing Compliance*

The review of State’s compliance with OP views indicate that despite clear gains in the OP CEDAW, translation and appropriation of these gains locally has not been forthcoming. State’s accession to the

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<sup>172</sup> CHRP ‘Sorsogon City Resolution’ (2017) available at <https://www.scribd.com/document/378548166/CHR-Sorsogon-Resolution>

<sup>173</sup> Inquiry, *supra* n119, 17.

<sup>174</sup> Lian Buan, *TRO on Implanon contraceptive implants deemed lifted*, RAPPLER (13 November 2017), available at <https://www.rappler.com/nation/188290-tro-implanon-deemed-lifted>.

<sup>175</sup> Comment, *supra* n145, 9.

<sup>176</sup> CHRP, *supra* n172.

CEDAW and its OP, its participation in the OP cases do not automatically translate into compliance with the case recommendations.

What is evident from the review instead is a selective and limited implementation of Committee views fueled mostly by calls for accountability by advocates and few government champions. In this sense, advocates shape not only what can be gained through the OP process, they also contribute greatly to what in turn can be realized as a result of these gains.

For instance, Atty. Padilla shared how constant calls for accountability achieve implementation gains. Post- Inquiry, Mayor Atienza apologized for the issuance of the EO and the DOH engagement resulted in a policy on post-abortion care.<sup>177</sup> More recently, Engenderights with CRR, CHR, and IWRAWAP conducted a follow up session with the CEDAW Committee on the RH Inquiry, a first of such session for the Committee.<sup>178</sup> In the cases of RPB and KTV, NGOs make use of shadow reports to constantly remind the State of its continuing non-compliance with treaty obligations.

On the part of the State, champions from within such as the Philippine Commission on Women and the CHR bring OP cases to the attention of the State through follow up forum, trainings, and publications. Still, a comprehensive framework of implementation involving different government agencies and stakeholders remains wanting with the full potential of Committee recommendations yet to be fulfilled.

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<sup>177</sup> Email Correspondence with Atty. Clara Rita Padilla (20 August 2018).

<sup>178</sup> *Ibid.*

### *State's Changing Terrain*

Recently, the political climate in the Philippines has dramatically shifted. The election of President Rodrigo Duterte in 2016 has signaled challenging times for human rights advocates. At the onset, Duterte's presidency was already marked with serious human rights violations related to his campaign against drugs. He has also been under fire for his treatment of women, from rape jokes uttered during his campaign and even after he has assumed office.<sup>179</sup> In his most recent rape joke, he attributed the number of rapes in Davao City to the number of beautiful women in the place.<sup>180</sup> These are relevant developments as it has been expressed by many women and feminist groups that in a short time, Duterte's rule has brought the gains of women's movements drastically backward.<sup>181</sup> In this current context, how then can the OP gains continue to be relevant?

## **V. LIMITS, REACH, AND POTENTIAL OF INTERNATIONAL WHR JURISPRUDENCE IN THE PHILIPPINES' CHANGING TERRAIN**

There is no question that KTV, RPB, and the RH Inquiry have already gained regional and international recognition. These cases are considered milestones in women's human rights and are cited by academicians, researchers, and human rights practitioners.<sup>182</sup> The question, however, has been on their traction in domestic spaces. How gains

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<sup>179</sup> Heynes, *supra* n4.

<sup>180</sup> Darrel Placido, 'Many beautiful women': Duterte jokes about Davao City rape cases, ABS-CBN (30 August 2018), available at <https://news.abs-cbn.com/news/08/30/18/many-beautiful-women-duterte-jokes-about-davao-city-rape-cases>.

<sup>181</sup> Heynes, *supra* n4.

<sup>182</sup> See Shah Niaz, *Judicial Resource Book on Violence Against Women for Asia* (The Commonwealth, 2018); Mary Jane Real, *CEDAW Casebook, An analysis of Case Law in Southeast Asia* (UN Women, 2016).

obtained in international bodies are implemented domestically and able to affect changes in women's lives.

Merry and Zwingel provide guidance, holding that global norms are effective only in so far as their active interpretation, translation, and appropriation in local and national contexts.<sup>183</sup> This could also be said for gains obtained through the OP mechanism.

The preceding discussion has, however, shown that implementation of Committee's views has been limited and selective. As Committee views are recommendatory in nature, compliance rests on State's priority and discretion. The absence of a comprehensive and strategic framework for implementation permits the State to pick and choose which views it will implement. For an international mechanism meant to offer redress beyond the domestic sphere, these limited and selective implementation disappoint, and are stark reminders of international law's limited reach in the domestic sphere.

However, from the perspective of advocacy, pushing boundaries of the law, and holding states into account, it can be said that these cases have been successful. The process of filing the OP case, the convergence of domestic, regional, and international organizations in the effort to seek redress, and the process of seeking accountability and implementation has been empowering.<sup>184</sup> The complaint and inquiry processes have also been effective in making the State respond, answer, and defend its failure to perform its obligations under the Convention. In the area then of advocacy,

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<sup>183</sup> See Merry, *supra* n10; Zwingel, *supra* n15.

<sup>184</sup> See reports documenting the OP process for KTV (UNIFEM, n70 ) and the RH inquiry (Padilla n126).

these OP cases have gained much traction. This is a nod to Dairam when she states that the biggest gain of CEDAW for her is how it ‘energized’ NGO activism to ‘demand accountability from government.’<sup>185</sup> It also reflects the success of feminists and advocates as translators and mediators of women’s human rights norms, invoking CEDAW and its OP, and making them relevant in the lives of women on the ground.<sup>186</sup>

### *OP Cases in Shifting Terrains*

To date there are still several recommendations in the three OP cases that are in need of implementation. However, the current Philippine context presents challenges in the continued implementation of WHR recommendations. As rights in general are under attack, Committee gains are challenged and flouted. CEDAW Committee views on the harms of stereotyping in cases of rape come to face to face with the reality of rape jokes and victim blaming, and of wider rights violations.

It is in junctures like this that feminists in the tradition of compliance and resistance, re-imagine ways and manners of engagement. For these WHR cases to be relevant, it is proposed that calls for accountability have to be grounded in the current political, economic, and cultural context and be able to join the current conversation in solidarity with social movements. Continued calls for accountability have to also reimagine different avenues for continued implementation, this could mean exploring methods of working and establishing partnerships in the vernacularization of Committee views.

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<sup>185</sup> Dairam, *supra* n35, 386-389.

<sup>186</sup> Merry, *supra* n10, 3.

For instance, the Committee's views in KTV and RPB have much to convey on the harms of stereotyping and of state obligations regarding gender stereotypes, these could be invoked in the conversations on the current administration's sexism and machismo. WHR jurisprudence could further enrich current campaigns against Duterte's sexism and macho governance such as women led campaigns *#BabaeAko* (I am a woman) and *#everywoman*. Doing so saves these WHR jurisprudence from oblivion, ensures continued relevance, while at the same time contributing to the richness of discourse and resistance that draws upon previous gains.

Continued calls for compliance with WHR jurisprudence can also include the exploration of other avenues and methods of engagement and establishing partnerships. Instead of 'top down' approach, a horizontal or comparative approach could be explored. Through this approach, the judiciary is convinced of the importance of WHR jurisprudence, emphasizing how these WHR cases have enriched other jurisdictions citing studies and bench books on gender stereotyping. Other strategies could also include maximizing partnerships, particularly with PCW, CHR, and the CGRJ, with their clear mandates on women's empowerment, these agencies present opportunity for the creation of an implementation framework and in undertaking efforts to address the demands of Article 5(e), CEDAW's foremost article dealing with gender stereotyping. Other possible areas of engagement include invoking OP gains in cross-movement work, drawing links between poverty and access to RH services or access to justice; or drawing Committee views on access to remedies with the different forms of violence women experience in the current administration. This could mean linking KTV and RPB views on access to

remedies in the current drug war and their impact on women or exploring state obligation in relation to poverty and women's economic rights.

These are but few of the possibilities, the point being that in the tradition of compliance and resistance, other areas and opportunities for engagement must be explored. As advocates make use of OP gains in countering Duterte's attack and surfacing how he perpetrates gender stereotypes that impact women's access to justice, other sites of resistance could also be explored. This is in recognition of the contextual nature of compliance and implementation of Committee views, and the role of advocates in continually interpreting, translating, and appropriating gains in light of current contexts and positions. After all it has been stressed that the relevance of OP gains, and of CEDAW as whole, depend on their 'active interpretation' and 'appropriation' within current national contexts.<sup>187</sup>

## VI. CONCLUSION



*And today I am so happy because I am with people who dream the same dream. With so many of us, how can we fail to eventually make the dream come true?*<sup>188</sup>

The research asks, are women's dream of gender justice deferred when much of the views of the Committee remain unimplemented? A simplistic answer would be a yes, KTV and RPBs dreams of justice were deferred, they were not provided compensation; the women of Manila may have access to contraceptives, but barriers continue to exist, and a Pro-Life E.O. continues to be in place in Sorsogon City. However, a simplistic answer would not do. It would discount the significance of these cases in

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<sup>187</sup> Zwingel, *supra* n15.

<sup>188</sup> Vertido, *supra* n1.

successfully bringing domestic grievances before international tribunals and it would deny recognition of advocates who made the success possible.

Assessing the impact of the WHR jurisprudence, it is true that implementation has been selective and limited but it is not entirely a dream deferred. KTV, RPB, and the women in Manila no longer occupy the same position they did prior to the OP success. Women's movements have been mobilized, the State has been held to answer and act (albeit limited), and regional and international recognition has been gained. KTV recognized this when, despite lack of compensation and unfulfilled recommendations, she expressed continued hope in the collective undertaking towards gender justice.<sup>189</sup>

Rather than a dream deferred, what is more apt is perhaps, *a dream that is alive* and in continuing struggle and process of fulfillment. For even as gains may have been limited in so far as state compliance is concerned, the role of these cases in movement building and expanding women's human rights cannot be discounted. What is crucial is the understanding that international gains do not automatically translate into effective domestic compliance, and that the traction of OP cases are largely context dependent. They rely on the strength of women's movements and transnational feminist networks, but they are also primarily constrained by current political, economic, and cultural contexts prevailing in the State. This means continued implementation and relevance of OP views would be impossible without localization and translation of OP gains within the country's current context of power and contestation.

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<sup>189</sup> Vertido, *supra* n1.