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Alumni Profile

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ALUMNI PROFILES



Studying law in Argentina just after the Dirty War, Professor **Claudia Martin** believes that she was part of a generation that went to law school to study human rights. “I never wanted to be a traditional lawyer,” Martin notes, “and in the mid-eighties democracy had just returned to Argentina, prosecutions of the Juntas Militares were taking place, the human rights book, *Nunca Mas* came out, and we all found a reason to be lawyers.” Many of Martin’s classmates also wanted to study human rights law, despite a lack of professional opportunities in Argentina to develop a career in that particular field at that time. Like Martin, many of her classmates pursued their careers outside of Argentina.

In 1992, Martin was accepted into the LL.M program at the Washington College of Law (WCL). She applied to WCL because she wanted to study with Dean Claudio Grossman and Professor Robert Goldman, both of who have expertise in international human rights. Martin came to WCL at a time when the law school’s commitment to human rights was expanding. The year before Martin attended WCL, the Center for Human Rights and Humanitarian Law was formed. During her studies, she was part of a group of J.D. and LL.M students who collaborated to form the *Human Rights Brief* and the *Inter-American Moot Court Competition*. “In all the years I’ve attended and worked for WCL, it was one of the best collaborations between J.D. and LL.M students that I’ve seen,” Martin said. These two projects have now experienced over a decade of ongoing success.

Martin has devoted most of her career to the Inter-American system of human rights. After obtaining her LL.M, she worked for the Inter-American Commission on Human Rights. At the Commission, Martin interviewed victims who filed complaints. During her work there, many of the complaints came out of Peru

and Haiti. She recalls interviewing torture victims, women who had been raped, and victims with missing limbs. As a young attorney she was eager to seek redress for these individuals. “I had so much energy and passion to obtain justice for the victims, but I did not have the experience to see the grey areas,” Martin said. With maturity and experience, Martin is now better able to see the overall problems, including the various elements necessary to help victims. Unlike in her early years of practicing human rights law, Martin can now “appreciate the nuances of different strategies.”

One such strategy is to enlarge the community around the Inter-American system in an effort to strengthen it. This is exactly what her work as Co-Director of the *Academy on Human Rights and Humanitarian Law* entails. Programs, such as the *Inter-American Moot Court Competition* are life-changing experiences for many students who later choose a career in human rights because of their participation in the competition. “I often hear from people years after they participate, how the competition inspired them,” Martin said. In addition to the competition, Martin facilitates the Program of Advanced Studies on Human Rights and Humanitarian Law — a WCL specialized summer program. She also does consulting with the Academy, focusing primarily on training different legal actors on human rights and the Inter-American system. Furthermore, she works to expand the Inter American system community by editing the Inter-American System section of the Oxford International Law Reports and serving on the advisory board of Oxford’s International Law in Domestic Courts database. She has published extensively on the Inter-American system and on impunity in Latin America.

Even though Martin claims that she “saw the potential of the Inter-American system long ago,” she did not think it would have the impact that it has today to strike down laws or receive the high level of deference from Latin American countries. Yet, Martin hopes that the system will continue to improve. Increased funding is key to allowing the Commission and the Court to address more issues. The system has done well in addressing political and civil rights, and even serving vulnerable groups, such as women, children and indigenous populations. Nevertheless, Martin believes the system will eventually need to address more concerns on economic, social and cultural rights. This challenge is part of the ongoing international debate regarding the justiciability of these rights. Martin notes that the universal human rights system is beginning to address the same issues with the adoption of the *Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights (ICESCR)*. The protocol would create a complaint and inquiry mechanism for the ICESCR. Additionally, Martin has seen domestic courts in Latin America increasingly address economic rights that have either been written into their constitutions or through the ratification of international treaties.

Martin has also observed the debate about the justiciability of economic, social and cultural rights unfold in the Human Rights survey course she teaches at WCL. “WCL students are very interested in learning, and many are already educated about human rights, so it is a pleasure to work with them,” Martin said. Having been born and raised in Argentina, Martin brings a unique perspective to her primarily American students. She notes the hesitancy of many students to include economic,

social and cultural rights as part of the human rights framework. Many students believe that adequate maternity leave programs are not a right, but merely an extension of feminist thought. Martin asserts, “I tell them it *is* an economic right, because as far as I know, we all come from mothers and not from a *lechuga!* [lettuce]” Nonetheless, Martin has great respect for the human rights already embedded in U.S. domestic law. She believes, however, that international human rights law can refresh the domestic debate and push things forward because “you lose sight when you are entrenched in your own domestic debate.”

For students who want to work in international human rights law, Martin provides a few points of advice. To start, she suggests that students “learn broken English!” If students want to channel their interests in human rights law, they should keep an open mind, travel, and learn a foreign language. Moreover, she counsels students to start early in their careers so that they can make the right contacts in a field that is very competitive. “When you work internationally you’re not just competing against American law school graduates, but with lawyers the whole world over,” she said. While Martin advises students to become as knowledgeable as possible in human rights law, she warns that they should expect and be willing to make professional sacrifices, such as accepting unpaid internships in law school. Martin’s professional success is a testament to this advice.

Jessica Lynd, a JD candidate at the Washington College of Law, wrote this Alumni Profile for the Human Rights Brief.



In reflecting on the most rewarding aspect of her job, Washington College of Law (WCL) alumnus, **Meg Hobbins**, expressed how privileged she is to be in a position to help her clients: “I learn time and again from them what it means to be truly resilient and courageous.” Hobbins graduated *magna cum laude* from WCL, and she currently works at Maggio + Kattar, a leading boutique immigration law firm in Washington, DC. Before attending law school Hobbins obtained her undergraduate degree in Anthropology and Political Science *cum laude* at Rice University. She spent her junior year studying aboriginal law in Sydney, Australia, where she also worked with a small non-profit organization called Refugee Advice and Casework Services as a research assistant. Her work there focused on the representation of detained Iraqi, Afghan, and Kosovar asylees whose boats were intercepted off the coast of Australia. Through her interaction with the clients and working in a “frenzied atmosphere with passionate advocates,” Hobbins felt “instantly at home” and knew that she had found her “professional calling” in human rights law. Although Hobbins had initially planned to attend law school after completing her undergraduate degree, she first wanted to gain an understanding of daily life in developing countries and work on her language skills. Hobbins joined the Peace Corps and worked in Togo as a community health/AIDS prevention volunteer, teaching sex education in middle schools and working with at-risk teenagers.

During her first year at WCL, Hobbins was a member of the WCL Immigrant Rights Coalition (IRC). She also participated in an immigration experiential learning project, and she traveled to Juarez, Mexico to learn about femicide for an Alternative Spring Break trip. Over the summer, she interned at the Capital Area Immigrants’ Rights (CAIR) Coalition. In addition to her continued involvement with the CAIR Coalition and IRC during her second year, Hobbins joined the *Journal of Gender, Social Policy, and the Law*, and was a student attorney for the International Human Rights Law (IHRL) Clinic. She then interned at the Houston Immigration Court, and worked as a Dean’s Fellow for

Professor Muneer Ahmad. During her third year, Hobbins spent a semester abroad studying international human rights law at the University of Paris X.

Hobbins describes her participation in IHRL Clinic as the “most important academic experience of my life.” She benefitted from “incredible” mentors — including Rick Wilson, Muneer Ahmad, and Sarah Paoletti — and worked on behalf of very deserving clients. Through IHRL Clinic, Hobbins and her clinic partner represented two clients in removal proceedings at the Arlington Immigration Court. One of the clients was a Haitian domestic violence survivor seeking relief under the Violence Against Women Act, and the other was a detained Somali asylee applying for a refugee waiver for past criminal offenses. Both clients prevailed and became permanent residents of the United States. Hobbins regularly draws on her clinic experience in her current practice regarding ethics, client goal identification, and case presentation. In short, she states, “everything I learned about lawyering in law school, I learned in clinic.”

Following graduation from WCL, Hobbins was an Attorney General’s Honors Clerk at the Baltimore and York Immigration Courts, where she worked for judges drafting decisions and memoranda, and assisted with legal research. While at the Baltimore Immigration Court, she helped establish a system whereby the court would notify the CAIR Coalition of the location of unrepresented and detained respondents who had upcoming hearings. Because of her love for direct service work, Hobbins was initially reluctant to work as a law clerk. However, she enjoyed and valued her experience at the immigration courts because, in addition to learning about the substance of the law, she gained insight about how judges make decisions. Hobbins then worked as a staff attorney at the Pennsylvania Immigration Resource Center (PIRC), providing direct representation to detainees at the York County Prison who faced removal proceedings before the York Immigration Court. While at PIRC, Hobbins also educated recently arriving detainees about their rights, and the types of relief available to noncitizens.

Hobbins's current work at Maggio + Kattar includes removal defense, extreme hardship waivers for individuals who would qualify for permanent residency aside from immigration violations or criminal offenses, marriage-based adjustment of status, consular processing for immigrant and non-immigrant visas, naturalization, and appeals to the Board of Immigration Appeals and the Administrative Appeals Office. On an average day, Hobbins does "a little bit of everything," such as meeting with clients, researching and writing briefs, drafting declarations, and finalizing filings for submission to courts, agencies, and consulates. Hobbins is a member of the American Immigration Lawyers Association and the CAIR Coalition, which honored her for her volunteer service in 2009.

Hobbins says that she is fortunate to work at a firm that supports its attorneys in regularly taking complex *pro bono* cases. Three of her current *pro bono* cases concern egregious constitutional violations during immigration raids. She emphasizes the importance of due process in immigration proceedings, particularly given the increase in local enforcement mechanisms. Hobbins wrote an article about the application of due process for *Immigration Briefings* entitled, "A Practitioner's Guide to Motions to Suppress Evidence and Terminate Removal Proceedings Due to Constitutional and Regulatory Violations," to provide assistance to other attorneys as they challenge unlawful government conduct. This work supports Hobbins's desire to see a greater commitment among the immigration bar to outstanding representation and client education.

One of the most challenging aspects of Hobbins's job is the often "restrictive and unforgiving" nature of immigration law. She would like to see more discretion in various aspects of removal proceedings and more flexibility in granting relief, particularly for compelling cases that do not fit within the

narrow categories of the law. Hobbins strongly believes that everyone deserves an individualized custody determination to ascertain whether he or she is a danger to the community or a flight risk, rather than being subjected to mandatory detention as currently required for many respondents. She would also like to see improvements in collegiality between immigration attorneys and Immigration and Customs Enforcement (ICE) in support of a shared goal to faithfully apply U.S. immigration law. Most importantly, she would like to see progress towards creating legal status for the eleven million undocumented individuals in the United States who currently live in fear without the full protection of the law.

Hobbins encourages students who aspire to a career in human rights law to cultivate relationships with members of the human rights and immigration law communities. "Every relationship you form will yield positive results," she says, "whether it is inspiration, advice on a tough case, a recommendation for a new position, or an interesting case referral." She also recommends interning or working in various professional contexts because each experience offers opportunities to learn something new and become more informed advocates. Although Hobbins initially pictured herself working abroad in international human rights law, she realized in law school that there was so much to be accomplished in the area of human rights in the United States that she could have a fulfilling career wherever she lived. Hobbins's experience at WCL and her career clearly reflect her commitment to advocating, not only on behalf of individuals particularly vulnerable to human rights abuses, but also for improvements in United States immigration practices to ensure respect for human rights.

Lindsay Roberts, a JD candidate at the Washington College of Law, wrote this Alumni Profile for the Human Rights Brief.

ENDNOTES: United Nations Security Council Resolution 1325 on Women, Peace and Security — Is it Binding?

²⁷ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, Advisory Opinion, 1971 I.C.J. 16 (June 21) [*hereinafter Namibia Case*].

²⁸ These include Resolutions 264 (1969), 269 (1969) and 276 (1970).

²⁹ *Namibia Case*, *supra* note 27.

³⁰ *Id.* ¶ 113.

³¹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 39 (July 9).

³² *Id.* ¶ 34.

³³ Öberg, *supra* note 1 at 879-906.

³⁴ U.N. Charter art. 24.

³⁵ Repertory of Practice of United Nations Organs — Article 25, Supp. 1 (1954 – 1955), Vol. 1, ¶1, available at <http://www.un.org/law/repertory/>.

³⁶ Öberg, *supra* note 1, at 885.

³⁷ Higgins, *supra* note 26, at 279.

³⁸ *Namibia Case*, *supra* note 27, ¶115.

³⁹ This conclusion is supported, among other scholars, by Stephen Zunes, *International Law, the UN and Middle Eastern Conflicts*, 16 *Peace Rev.* 285, 86-92 (Sept. 2004). See also Higgins, *supra* note 29.

⁴⁰ Higgins, *supra* note 26 at 282.

⁴¹ *Namibia Case*, *supra* note 31, para. 113.

⁴² Öberg, *supra* note 2, at 14.

⁴³ *Id.* at 880-881; see also, Higgins, *supra* note 26 at 278.

⁴⁴ S.C. Res. 1325, *supra* note 2, ¶ 8.

⁴⁵ In particular, the Resolution points to “the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967.” See also *Id.* ¶¶10, 11.

⁴⁶ Higgins, *supra* note 26 at 278.

⁴⁷ Tryggestad *supra* note 8.

⁴⁸ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226 at 254–255.

⁴⁹ *Id.* ¶ 73.

⁵⁰ *Id.* ¶ 93.

⁵¹ S.C. Res. 1325, *supra* note 2, ¶ 1.

⁵² *Id.*

⁵³ Beijing Declaration, G.A. Res. 52/231, U.N. Doc. A/RES/52/231 (June 17, 1998).

⁵⁴ S.C. Res. 1325, *supra* note 2, ¶ 2.

⁵⁵ Michael W. Doyle, *A Global Constitution? The Struggle over the UN Charter*, NYU Symposium (September, 2010), available at <http://www.iilj.org/courses/documents/HC2010Sept22.Doyle.pdf>.

⁵⁶ *Ibid.*, 3.

⁵⁷ S.C. Res. 1325, *supra* note 2, ¶ 3.

⁵⁸ Wood, *supra* note 12 at 86. Though he issues the caveat that the Preamble could be used as “dumping ground” for proposals not acceptable in the operative paragraphs.

⁵⁹ See U.N. Secretary-General, *Improvement of the Status of Women in the Secretariat: Rep. of the Secretary-General*, U.N. Doc. A/49/587 (Nov. 1, 1994).

⁶⁰ *Namibia Case*, *supra* note 27, para. 113.

⁶¹ Öberg, *supra* note 1, at 880-81.

⁶² S.C. Res 1325, *supra* note 2, ¶ 6.

⁶³ *Id.* ¶ 7, which provides: “Recalling also United Nations Security Council’s Resolution 1325 (2000) on the role of women in promoting peace and security.” See also U.N. Charter arts. 10, 11 (pertaining to right to peace and protection of women in armed conflict respectively).

⁶⁴ These include S.C. Res. 1820, U.N. Doc. S/Res/1820 (2008) and S.C. Res. 1888, U.N. Doc. S/Res/1888 (2009) on sexual violence in armed conflict; and S.C. Res. 1889, U.N. Doc. S/Res/1889 (2009) on practical ways to accelerate the implementation of Res. 1325.

⁶⁵ C. Cora True-Frost, *The UN Security Council Marks Seventh Anniversary of Resolution 1325 on Women, Peace and Security with Open Debate*, *Am. Soc’y Int’l L.* (December 17, 2007), available at <http://www.asil.org/insights071217.cfm>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Tryggestad, *supra* note 8.

⁷⁰ These include Spain, Canada, The Netherlands, etc.

⁷¹ *Contra* Tryggestad, *supra* note 8.

Endnotes: De-democratisation in Israel: Repressions Against Human Rights Defenders and the Need for Implementation of the EU Guidelines on the Protection of Human Rights Defenders

¹⁶ For a detailed presentation of the anti-democratic bills see: NGO report to the UN Human Rights Committee: Palestinian citizens of Israel. Response to the list of issues to be taken into consideration of the third periodic report of Israel, p. 10. Submitted on 24 June 2010. Report submitted by Adalah, Al-Mezan Center for Human Rights and Physicians for Human Rights-Israel. http://www.adalah.org/newsletter/eng/jun10/docs/REPSONE_AAP.pdf

¹⁷ See Adalah, *The Legal Center for Arab Minority Rights in Israel: New Discriminatory Laws and Bills in Israel*, pp. 8-9, November 29, 2010.

¹⁸ See Jonathan Lis: *Knesset passes bill to make Israeli NGOs report foreign contributors*. Haaretz, February 22, 2011.

¹⁹ See Jonathan Lis: *Knesset passes bill to make Israeli NGOs report foreign contributors*. Haaretz, February 22, 2011

²⁰ See Coalition of Women for Peace in Israel: *All-out war. Israel against democracy*. Status report. November 2010, p.13

²¹ See statement by Arab NGOs in Israel in February 2011, available at http://www.old-adalah.org/eng/pressreleases/pr.php?file=24_02_11_1; See also *MKS push for further pressure on human rights groups as restrictive legislation progresses*, JNews, March, 10, 2011, available at <http://www.jnews.org.uk/news/>

mks-push-for-further-pressure-on-human-rights-groups-as-restrictive-legislation-progresses

²² See *MKS push for further pressure on human rights groups as restrictive legislation progresses*, JNews, March, 10, 2011, available at <http://www.jnews.org.uk/news/mks-push-for-further-pressure-on-human-rights-groups-as-restrictive-legislation-progresses>

²³ *Id.*

²⁴ Bill no. P/18/2456. The bill stipulates: “No association will be formed if the Registrar has been persuaded that the association will be involved with or will convey to foreign elements information on the subject of law suits proceeding in instances operating outside of the State of Israel, against senior persons in Israel or military officers, due to war crimes.”

²⁵ See Adalah, *The Legal Center for Arab Minority Rights in Israel: New Discriminatory Laws and Bills in Israel*, p. 9, November 29, 2010; See also Coalition of Women for Peace in Israel: *All-out war. Israel against democracy*. Status report. November 2010, p.13-15

²⁶ Article 22, ICCPR, available at <http://www2.ohchr.org/english/law/ccpr.htm>; article 22 stipulates:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the

protection of his interests. 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

²⁷ Press release on 29th of April 2010 by the Coalition of the General Directors of human rights organizations in Israel (Adalah – The Legal Center for Arab Minority Rights in Israel, The Association for Civil Rights in Israel, Bimkom – Planners for Planning Rights, B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, Gisha – Legal Center for Freedom of Movement, HaMoked – Center for the Defence of the Individual, Physicians for Human Rights – Israel, The Public Committee Against Torture in Israel, Rabbis for Human Rights, and Yesh Din – Volunteers for Human Rights) http://www.adalah.org/eng/pressreleases/pr.php?file=29_04_10

²⁸ The proposed bill states: “One must not initiate a boycott on the State of Israel, nor encourage participation in such a boycott, nor offer assistance or information in attempt to promote such a boycott”

²⁹ „Besieging Israel’s siege“. The Guardian. August 12, 2010, available at <http://www.guardian.co.uk/commentisfree/2010/aug/12/besieging-israel-siege-palestinian-boycott>

³⁰ See *MKs push for further pressure on human rights groups*, supra n. 22; See also Coalition of Women for Peace in Israel: All-out war. Israel against democracy. Status report. November 2010, p.16

³¹ See Coalition of Women for Peace in Israel: All-out war. Israel against democracy. Status report. November 2010, p.16

³² See *MKs push for further pressure on human rights groups*, supra n. 22.

³³ Statement of the European Union (22/02/2011) at the Tenth Meeting of the EU-Israel Association Council available at http://eeas.europa.eu/delegations/israel/press_corner/all_news/news/2011/20110222_01_en.htm

³⁴ For an analysis and summary of all current anti-democratic bills and new laws in Israel see The Association for Civil Rights in Israel: Knesset 2010-2011 Winter Session: Legislative Roundup. April 2011, available at <http://www.acri.org.il/en/?p=2033>

³⁵ See Harriet Sherwood: Israel proposes Jewish state loyalty oath for new citizens. Loyalty pledge criticised as ‘fascist’ and an affront to country’s Palestinian citizens, who make up 20% of population. The guardian, October 10, 2010, available at <http://www.guardian.co.uk/world/2010/oct/10/israel-jewish-oath-new-citizens>

³⁶ See gush shalom, available at <http://zope.gush-shalom.org/home/en/events/1286745470>

³⁷ Press release of October 10, 2010, <http://zope.gush-shalom.org/home/en/events/1286745470/>

³⁸ Jonathan Lis and Jack Khoury: “Knesset panel approves controversial bill allowing towns to reject residents”. Haaretz. October 27th, 2010. <http://www.haaretz.com/news/national/knesset-panel-approves-controversial-bill-allowing-towns-to-reject-residents-1.321433>

³⁹ See Association for Civil Rights in Israel: Final vote today on Nakba Law and Acceptance to Communities Bill, March 22, 2011, available <http://www.acri.org.il/en/?p=1805>; See also attorney Debbie Gild-Hayo: “Dark stains on the law books. The chilling effect of the Nakba Law will extend beyond the Arab citizens of Israel to public bodies of all types.” Haaretz. March 25, 2011

⁴⁰ Letter of ACRI’s attorneys Dan Yakir and Gil Gan-Mor to Reuven Rivlin, Speaker of the Knesset on November 23, 2010, available at <http://www.acri.org.il/en/?p=1805>

⁴¹ See Debbie Gild-Hayo: “Dark stains on the law books. The chilling effect of the Nakba Law will extend beyond the Arab citizens of Israel to public bodies of all types.” Haaretz. March 25, 2011. <http://www.haaretz.com/print-edition/opinion/dark-stains-on-the-law-books-1.351700>

⁴² Nakba in Arabic means catastrophe, referring to the expulsion of Palestinians from their homeland in 1948

⁴³ Debbie Gild-Hayo: “Dark stains on the law books. The chilling effect of the Nakba Law will extend beyond the Arab citizens of Israel to public bodies of all types.” Haaretz. March 25, 2011. <http://www.haaretz.com/print-edition/opinion/dark-stains-on-the-law-books-1.351700>

⁴⁴ See for example Coalition of Women for Peace in Israel: All-out war. Israel against democracy. Status report. November 2010, p.10

⁴⁵ See Jonathan Liz: “Knesset revokes Arab MK Zuabi’s privileges over Gaza flotilla.” Haaretz. July 13, October 2010. <http://www.haaretz.com/news/national/knesset-revokes-arab-mk-zuabi-s-privileges-over-gaza-flotilla-1.301750>

⁴⁶ Inter-Parliamentary Union, Committee on the Human Rights of Parliamentarians

Case No. IL/04 - HANEEN ZOABI - Israel

Confidential decision adopted by the Committee at its 130th session (Geneva, 12 - 15 July 2010), <http://www.adalah.org/newsletter/hebrew/110/docs/IPU.pdf>

⁴⁷ See “Israel’s democracy. Under siege too. Some liberals say that Israel’s vaunted democracy is under threat.” The Economist. June 17th, 2010. <http://www.economist.com/node/16381128/print>

⁴⁸ Uri Avnery: “A parliamentary mob. Inside the Israeli Knesset.” Counterpunch. July 20, 2010. <http://www.counterpunch.org/avnery07202010.html>

⁴⁹ See Amnesty International, *Palestinian Human Rights Activist Jailed*, available at <http://www.amnesty.org/en/news-and-updates/palestinian-human-rights-activist-jailed-israel-2011-01-30>

⁵⁰ <http://www.amnesty.org/en/news-and-updates/palestinian-human-rights-activist-jailed-israel-2011-01-30>

⁵¹ See <http://palsolidarity.org/2010/12/16034/> and <http://www.amnesty.org/en/news-and-updates/palestinian-activist-faces-prison-sentence-2010-06-11>

⁵² See <http://www.amnesty.org/en/news-and-updates/palestinian-anti-wall-protester-convicted-israeli-military-court-2010-08-27>

⁵³ Press release available at http://eeas.europa.eu/delegations/west-bank/documents/news/20102010_abdallahaburahma_en.pdf

⁵⁴ Answer Nr. 8 of the German government to a minor interpellation of Annette Groth, Bundestag printed paper Nr. 17/2553, July 9th, 2010

⁵⁵ See for example Amnesty International General Report 2010 (in German). Section on Israel and the Occupied Palestinian Territories, p. 218. Frankfurt am Main 2010.

⁵⁶ Answer Nr. 8 of the German government to a minor interpellation of Annette Groth, Bundestag printed paper Nr. 17/2553, July 9th, 2010

⁵⁷ Ninth report of the German government’s human rights politics (in German), covering the period March 1st 2008- February 28th 2010, pp. 106-107

⁵⁸ Answer Nr. 5 of the German government to a minor interpellation of Annette Groth, Bundestag printed paper Nr. 17/2553, July 9th, 2010

⁵⁹ Ninth report of the German government’s human rights politics (in German), covering the period March 1st 2008- February 28th 2010, pp. 111

⁶⁰ Answer of the German government to a minor interpellation of Annette Groth, Bundestag printed paper Nr. 17/2553, July 9th, 2010

⁶¹ Lecture of Sahar Francis from Addameer in the German Bundestag in November 2010.

⁶² See Robert Fisk: “Israel has crept into the EU without anyone noticing.” The independent. July 31st 2010. <http://www.independent.co.uk/opinion/commentators/fisk/robert-fisk-israel-has-crept-into-the-eu-without-anyone-noticing-2040066.html>

⁶³ See report by Tsafir Cohen (representative of medico international in Israel & Palestine): “ Israel: de-democratisation (in German)”. medico-Rundschreiben II 2010. July 1st, 2010. <http://www.medico.de/material/rundschreiben/2010/02/die-innere-entdemokratisierung/from> 1 July 2010.

⁶⁴ Article two of the agreements stipulates: “Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which

guides their internal and international policy and constitutes an essential element of this Agreement.” *available at* <http://www.worldtradelaw.net/fta/agreements/ecisrfta.pdf>

Endnotes: Liberté Religieuse en Europe: Discussing the French Concealment Act

- ¹⁸ *Id.*
- ¹⁹ Susanna Mancini, *The Power of Symbols and Symbols as Power: Secularism and Religion as Guarantors of Cultural Convergences*, 30 *CARDOZO L. REV.* 2629, 2642 (2009).
- ²⁰ *Id.*
- ²¹ Doreen Carvajal, *Sarkozy Backs Drive to Eliminate the Burqa*, *THE NEW YORK TIMES*, June 23, 2009, *available at* http://www.nytimes.com/2009/06/23/world/europe/23france.html?_r=1.
- ²² Law 2004-228 of March 15, 2004, *Journal Officiel de la République Française [J.O.] [OFFICIAL GAZETTE OF FRANCE]*, March 17, 2004, p. 5190, art. 1 (“Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit. Le règlement intérieur rappelle que la mise en oeuvre d’une procédure disciplinaire est précédée d’un dialogue avec l’élève.”) [In the schools and colleges and the public high schools, the wearing of signs by which students demonstrate ostensibly a religious affiliation is prohibited. The rules of procedure recalls that the implementation of a disciplinary procedure is preceded by a dialog with the student. (English translation)], *available at* http://www.legifrance.gouv.fr/affichTexte.do?sessionId=ECA0F3429901B56189933EE928388320.tpdjo13v_3?cidTexte=JORFTEXT000000417977&categorieLien=id.
- ²³ *President Sarkozy Says ‘No Place’ for Burqa*, *supra* note 2.
- ²⁴ *See e.g.*, Loi 2010-1192 p. 1834, art. 1 (“Nul ne peut, dans l’espace public, porter une tenue destinée à dissimuler son visage.”); Erlanger, *supra* note 6; Angela Doland, *France Burqa Ban: French Parliament Approves Bans on Face Veils*, *THE HUFFINGTON POST*, July 13, 2010, *available at* www.huffingtonpost.com/2010/07/13/france-burqa-ban-french-p_n_644433.html; Gauthiers-Villars & Forelle, *supra* note 3.
- ²⁵ Loi 2010-1192 p. 1834, art. 2.1. (“Pour l’application de l’article 1er, l’espace public est constitué des voies publiques ainsi que des lieux ouverts au public ou affectés à un service public.”)
- ²⁶ La République Française, Le Gouvernement, Act N° 2010-1192 of 11 October 2010: Prohibiting the Concealment of the Face in Public: Frequently Asked Questions, 3, *available at* http://www.diplomatie.gouv.fr/en/IMG/pdf/Q_A-ENG_2_.pdf
- ²⁷ *Id.* at 2.
- ²⁸ *Id.* at 4.
- ²⁹ France’s Burqa Ban in Effect Next Month, CNN Wire Staff (Mar. 4, 2011), *available at* http://articles.cnn.com/2011-03-04/world/france.burqa.ban_1_burqa-ban-full-face-veil?_s=PM:WORLD
- ³⁰ Loi 2010-1192 p. 1834, art. 3 (“La méconnaissance de l’interdiction édictée à l’article 1er est punie de l’amende prévue pour les contraventions de la deuxième classe. L’obligation d’accomplir le stage de citoyenneté mentionné au 8° de l’article 131-16 du code pénal peut être prononcée en même temps ou à la place de la peine d’amende.”) [Breach of the prohibition in article 1 shall be punishable by a fine laid down for the contraventions of the second class. The obligation to perform the traineeship in citizenship mentioned in 8° of article 131-16 of the penal code can be pronounced at the same time or in place of the penalty of a fine (English translation)]. *available at* <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00022911670&categorieLien=id> *see also* Doland, *supra* note 23; *Burqa ban passes French lower house overwhelmingly*, CNN, July 13, 2010, *available at* <http://www.cnn.com/2010/WORLD/europe/07/13/france.burqa.ban/index.html> [hereinafter *Burqa ban passes French lower house*]; Gauthiers-Villar & Forelle, *supra* note 3.
- ³¹ *Burqa ban passes French lower house*, *supra* note 29. If the person forced to wear the veil is a child, the perpetrator may receive a 30,000 euro fine. Doland, *supra* note 23; *see also* Gauthiers-Villar & Forelle, *supra* note 3.
- ³² Reports often conflate the burqa with the niqab and so exact numbers are unclear. For example, Fox News reports “at most 2,000 women in France wear the outlawed veils.” *France’s Ban on Face-Covering Islamic Veil Met with Defiance*, FOX NEWS, Apr. 11, 2011, *available at* <http://www.foxnews.com/world/2011/04/11/france-bans-face-covering-islamic-veil-1300456722/>. The Fox News report appears to include both the burqa and the niqab in its 2,000 estimate. CNN is nebulous in its identification. When referring to the 2,000 women affected by the legislation, CNN simply refers to the clothing as “the garment.” *2 arrested as France’s ban on burqa’s, niqabs takes effect*, *supra* note 7. However, at least two other sources indicate that the 2,000 estimate only refers to the niqab. Doland, *supra* note 23; Erlanger, *supra* note 6. Regardless of whether the number includes or excludes the burqa, the extremely limited number of women wearing the burqa should not cause the estimate to fluctuate that widely.
- ³³ Article 9 provides that: 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. Convention, *supra* note 8, at Art. 9.
- ³⁴ *Dahlab v. Switzerland*, *supra* note 9.
- ³⁵ *Sahin v. Turkey*, *supra* note 10.
- ³⁶ *Dogru v. France*, *supra* note 11.
- ³⁷ *Unveiling Distribution: Muslim Women With Headscarves in France and Germany*, in *MIGRATION, CITIZENSHIP, ETHNOS* 167, 168 (Y. Michal Bodemann & Gökçe Yurdakul eds., 2006).
- ³⁸ *Id.* at 169 (citing *Commission de réflexion sur l’application du principe de laïcité dans la République*, (Commission on the reflection of the application of the principle of secularism in the Republic) Report to the President of the Republic, France, (Dec. 11, 2003) (For the assembly of the school community, the wearing of the veil is too often the source of conflict, of division, and suffering. The visible character of a religious sign is felt by many as opposing the mission of the schooling system which should be a neutral space and a place of awakening of the critical conscience.”) [Unofficial English translation])
- ³⁹ *Id.*
- ⁴⁰ *Id.* at 172 (citing *BVerfGE, 2BvR*, at Par. II (5)a (Ger.)).
- ⁴¹ *Id.* at 169 (citing *BVerfGE, 2BvR*, at Par. I (6) (Ger.)).
- ⁴² *Id.* at 169, 173.
- ⁴³ *Id.* at 169 (citing *Commission de réflexion sur l’application du principe de laïcité dans la République*, (Commission on the reflection of the application of the principle of secularism in the Republic) Report to the President of the Republic, France, (Dec. 11, 2003) (“La question de la laïcité est réapparue en 1989 là où elle est née au XIXème siècle: à l’école. Sa mission est essentielle dans la République. Elle transmet les connaissances, forme à l’esprit critique, assure l’autonomie, l’ouverture à la diversité des cultures, et l’épanouissement de la personne, la formation des citoyens autant qu’un avenir professionnel. Elle prépare ainsi les citoyens de demain

amenés à vivre ensemble au sein de la République.”) [The question of secularism reappeared in 1989 in the same place of its inception in the 19th century: at school. Its mission is essential in the Republic. It transmits knowledge, form to the critical spirit, ensures autonomy, the opening to the diversity of cultures, and the development of the person, the training of citizens as well as a future professional. It thus prepares the citizens of tomorrow, who are led to live together within the Republic. (English translation)].

- ⁴⁴ *Sahin v. Turkey*, *supra* note 10, at ¶ 75; *Dahlab v. Switzerland*, *supra* note 9, at § “The Law” (1).
- ⁴⁵ Samuel Issacharoff, *Fragile Democracies*, 120 HARV. L. REV. 1405, 1411 (Apr. 2007).
- ⁴⁶ *Sahin v. Turkey*, *supra* note 10, at ¶ 107.
- ⁴⁷ *Id.* (citing *Serif v. Greece*, App. No. 38178/97, 1999-IX, § 53, ECHR 1999).
- ⁴⁸ “[A] balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position.” *Sahin v. Turkey*, *supra* note 10, at ¶ 108 (citing *Webster v. U.K.*, Ser. A no. 44, 25, § 63, ECHR 1982; *Chassagnou v. France*, nos. 25088/94, 28331/95 and 28443/95, § 112, ECHR 1981).
- ⁴⁹ *Sahin v. Turkey*, *supra* note 10, at ¶¶ 109-10.
- ⁵⁰ *Id.*
- ⁵¹ *Id.* at ¶ 110.
- ⁵² *Id.* at ¶ 75.
- ⁵³ *Id.*; *Dahlab v. Switzerland*, *supra* note 9, at § “The Law”(1); Tore Lindholm, *Comments on the Case of Leyla ahin v. Turkey: Political and Public Morality Aspects*, STRASBOURG CONSORTIUM, available at <http://www.strasbourgconsortium.org/document.php?DocumentID=3817>.
- ⁵⁴ *Dahlab v. Switzerland*, *supra* note 9, at § A.
- ⁵⁵ *Id.* at § “The Law” (1).
- ⁵⁶ *Id.*
- ⁵⁷ *Id.*
- ⁵⁸ *Id.*
- ⁵⁹ *Id.* at 14.
- ⁶⁰ *Sahin v. Turkey*, *supra* note 10, at ¶ 16.
- ⁶¹ *Id.* at ¶ 17.
- ⁶² *Id.* at ¶ 24.
- ⁶³ *Id.* at ¶ 28.
- ⁶⁴ *Id.* at ¶ 114.
- ⁶⁵ *Id.* at ¶ 115.
- ⁶⁶ *Id.* at ¶ 117.
- ⁶⁷ *Id.* at ¶ 119.
- ⁶⁸ *Id.* at ¶ 120.
- ⁶⁹ *Id.* at ¶ 122.
- ⁷⁰ *Dogru v. France*, *supra* note 11, at ¶ 60.
- ⁷¹ *Id.*
- ⁷² *Id.* at ¶ 60.
- ⁷³ *Id.* at ¶ 65.
- ⁷⁴ *Id.* at ¶ 66.
- ⁷⁵ *Id.* at ¶ 70.
- ⁷⁶ *Id.* at ¶ 71.
- ⁷⁷ *Id.* at ¶ 68.
- ⁷⁸ According to President Sarkozy, “[t]he burqa is not a religious sign,” but rather a “sign of subservience, a sign of debasement” of women. *The War of French Dressing*, *supra* note 5.
- ⁷⁹ Robert Marquand, *France moves toward burqa ban amid concern over Muslim integration*, THE CHRISTIAN SCIENCE MONITOR, Jan. 26, 2010, available at <http://www.csmonitor.com/World/Europe/2010/0126/France-moves-toward-burqa-ban-amid-concern-over-Muslim-integration>; see also Carlye Murphy, *Behind the Veil: Why Islam’s Most Visible Symbol is Spreading*, THE CHRISTIAN SCIENCE MONITOR, Dec. 12, 2009, available at [http://www.csmonitor.com/World/Middle-East/2009/1213/Behind-the-veil-Why-Islam-s-most-visible-symbol-is-spreading/\(page\)/4](http://www.csmonitor.com/World/Middle-East/2009/1213/Behind-the-veil-Why-Islam-s-most-visible-symbol-is-spreading/(page)/4).

⁸⁰ La Republique Franciase, Le Gouvernement, Act N° 2010-1192 of 11 October 2010: Prohibiting the Concealment of the Face in Public: Frequently Asked Questions, p. 3, available at http://www.diplomatique.gouv.fr/en/IMG/pdf/Q_A-ENG_2_.pdf

⁸¹ Whitman, *supra* note 14, at 99.

⁸² *Id.*

⁸³ Murphy, *supra* note 78, at 2.

⁸⁴ Fournier & Yurdakul, *supra* note 36, at 169 (citing *Commission de réflexion sur l’application du principe de laïcité dans la République*, (Commission on the reflection of the application of the principle of secularism in the Republic) Report to the President of the Republic, France, (Dec. 11, 2003) (“Les jeunes femmes se retrouvent victimes d’une résurgence du sexisme qui se traduit par diverses pressions et par des violences verbales, psychologiques ou physiques. Des jeunes gens leur imposent de porter des tenues couvrantes et asexuées, de baisser le regard à la vue d’un homme; à défaut de s’y conformer, elles sont stigmatisées comme ‘putes.’”) [Young women are victims of a resurgence of sexism which is reflected by various pressures and by verbal, psychological, or physical abuse. Young people require them to wear concealing garments, to bow their heads at the sight of a man; if these women fail to comply with these expectations, they are stigmatized as ‘whores’. (English translation)].

⁸⁵ Julie Kirtz, *Abuse of U.S. Muslim Women is Greater than Reported*, *Advocacy Group Says*, FOX NEWS, Jan. 31, 2008, available at <http://www.foxnews.com/story/0,2933,327187,00.html> (“Dating a non-Muslim or not wearing a traditional head scarf can trigger a beating. ‘This can be interpreted as being extremely rebellious or be an excuse for abuse,’ Majeed says. . . The most recent case came in December when a Canadian teenager died after an alleged attack by her father over a dispute about whether she should wear a traditional Muslim head scarf.”).

⁸⁶ See Fournier & Yurdakul, *supra* note 36, at 169.

⁸⁷ Murphy, *supra* note 78, at 2.

⁸⁸ *Id.*

⁸⁹ See Doland, *supra* note 23 (“Socialist Senator Bariza Khiari, one of France’s few Muslim politicians, fears some women targeted ‘will withdraw into themselves, stay in the house, and instead of doing education projects, we’re doing a ban, which I regret.’”)

⁹⁰ See Fournier & Yurdakul, *supra* note 36, at 171.

⁹¹ Jean-Francois Cope, *Tearing Away the Veil*, THE NEW YORK TIMES, May 4, 2010, available at <http://www.nytimes.com/2010/05/05/opinion/05cope.html?bl=&pagewanted=all>.

⁹² See Anwarullah Khan, *Burqa-clad suicide bomber kills 45 in Pakistan*, THE INDEPENDENT, Dec. 25, 2010, available at <http://www.independent.co.uk/news/world/asia/burqaclad-suicide-bomber-kills-45-in-pakistan-2169050.html>; see also Kim Sengupta, *The Burqa-clad bombers who terrorise Afghanistan*, THE INDEPENDENT, July 22, 2009, available at <http://www.independent.co.uk/news/world/asia/the-burqa-clad-bombers-who-terrorise-afghanistan-1755887.html>.

⁹³ *Muslims in Europe: Country Guide*, BBC NEWS, Dec. 23, 2005, available at <http://news.bbc.co.uk/2/hi/europe/4385768.stm>.

⁹⁴ Carvajal, *supra* note 20.

⁹⁵ Peter Berkowitz, *Can Sarkozy Justify Banning the Veil?*, THE WALL STREET JOURNAL, Apr. 6, 2010; Mancini, *supra* note 17, at 2646.

⁹⁶ *Id.*

⁹⁷ Murphy, *supra* note 78, at 4.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Fournier & Yurdakul, *supra* note 36, at 176.

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¹⁰³ For an in-depth discussion see *supra* note 33.

¹⁰⁴ Brian J. Grim, *Religious Freedom: Good for What Ails Us?*, 6 FAITH & INT’L AFFAIRS 2, 5 (2010), available at <http://www.rfiaonline.org/archives/issues/6-2/208-religious-freedom>.

¹⁰⁵ *The War of French Dressing*, *supra* note 5.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Karam Dana, Press Release, National Survey of American Muslims Finds Mosques Help Muslims Integrate into American Political Life, Belfer Center for Science and International Affairs,

John F. Kennedy School of Government: Harvard University (Mar. 8, 2011), available at http://belfercenter.ksg.harvard.edu/publication/20890/national_survey_of_american_muslims_finds_mosques_help_muslims_integrate_into_american_political_life.html?breadcrumbb=%2Fpress%2Freleases

ENDNOTES: Protecting Women's Human Rights: A Case Study in the Philippines

⁶¹ *Id.* at 382. The Supreme Court further noted that international human rights conventions recognize discrimination as “the very antithesis of fairness and justice” and “[t]he Philippines, through its Constitution, has incorporated this principle as part of its national laws.” *Id.* at 385.

⁶² Yasin vs. The Hon. Judge Shari’a, Dist. Ct., G.R. No. 94986, 241 SCRA 606, 615 (Feb. 23, 1995) (Romero, separate opinion) (upholding a divorced woman’s ability to resume using her maiden name without filing a court petition).

⁶³ *Id.* at 616 (Romero, separate opinion). The Court further emphasized that “the trend towards greater and greater recognition of equal rights for both sexes under the shelter of the equal protection.” *Villegas v. Subido*, G.R. No. L-27714, 109 SCRA 1, 6. (Nov. 5, 1981) (recognizing Filipino women’s ability to work as city sweepers).

⁶⁴ Magna Carta of Women, Republic Act No. 9710, Section 19, Equal Rights in All Matters Relating to Marriage and Family Relations (2009).

⁶⁵ CEDAW urges states to “eliminate discrimination against women in all matters relating to marriage and family relations.” CEDAW, Art. 16(1). The ICCPR requires “equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.” ICCPR, Art. 23(4). Note that the guarantee of equality extends to every stage of marriage, including at its inception. Thus, to ensure equality “as to marriage,” the Philippines must enable citizens to enter a nondiscriminatory matrimonial regime. *See also* HRC Gen. Comm. 18, para. 5, (“States parties shall take appropriate steps to ensure equality of rights as well as responsibilities of spouses as to marriage, during marriage and at its dissolution.”); UDHR, Art. 16(1), (“Men and women . . . have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution,”) demonstrating how these concepts are inextricably linked. The right to marry in the UDHR is immediately followed by a stipulation that this marriage be equal.

⁶⁶ Human Rights Committee, General Comment 28, Equality of rights between men and women (article 3), (Sixty-eighth session, 2000), para. 25, U.N. Doc. CCPR/C/21/Rev.1/Add.10, (2000), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 179 (2003) [hereinafter HRC Gen. Comm. 28].

⁶⁷ FAMILY CODE, Art. 211; MUSLIM CODE, Art. 71(1).

⁶⁸ MUSLIM CODE, Art. 77(2) (“The widowed mother who contracts a subsequent marriage shall lose parental authority and custody over all children by the deceased husband, unless the second husband is related to them within the prohibited degrees of consanguinity.”).

⁶⁹ This condition placed on a widow, but not a widower’s choice of marriage violates CEDAW which guarantees “on a basis of equality of men and women: The same right to enter into marriage.” CEDAW, Art. 16(1)(a).

⁷⁰ For a discussion of “marriage guardianship,” please see http://globalwebpost.com/farooqm/study_res/islam/gender/marriage_wali.html. The “marriage guardianship” provision as a whole is questionable. If it refers to a ceremonial or spiritual function, state enforcement is inappropriate. However, if it negates a women’s capacity to enter into

marriage herself, it is in direct violation of Philippine and international law. *See e.g.*, CEDAW, Art. 15(2) (“States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity.”).

⁷¹ MUSLIM CODE, Art. 79.

⁷² CEDAW, Art. 5, sets out “the common responsibility of men and women in the upbringing and development of their children.” In almost identical language, the CRC requires states “to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.” CRC, Art. 18(1). *See also* CEDAW, Art. 16(1)(d).

⁷³ CRC, Art. 3(1). Art. 3(1) of the CRC requires that “in all actions concerning children . . . the best interests of the child shall be a primary consideration.” *See also* CEDAW Art. 16(1)(d), providing that “in all cases the interests of the children shall be paramount.”

⁷⁴ CRC, Art. 29(1).

⁷⁵ FAMILY CODE, Art. 96, 124, 225.

⁷⁶ MUSLIM CODE, Art. 36(2) (“The wife cannot, without the husband’s consent, acquire any property by gratuitous title, except from her relatives who are within the prohibited degrees in marriage.”).

⁷⁷ MUSLIM CODE, Art. 75(1).

⁷⁸ MUSLIM CODE, Art. 80.

⁷⁹ CEDAW, Art. 16(1)(h); Magna Carta of Women, Republic Act No. 9710, Section 19(e), Equal Rights in All Matters Relating to Marriage and Family Relations (2009). Please note that the Magna Carta also recognizes spouses’ equal rights in the “management” of property. *See also* CEDAW, Art. 15(2) (“States Parties . . . shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.”); HRC Gen. Comm. 28, para. 19 (“States must take measures to eradicate laws or practices that prevent women from being treated as full legal persons, such as discriminatory laws regarding property and contracts”); *id.* at para. 25 (“States must ensure that men and women in marriage have equal rights in regard to the ownership and administration of property”).

⁸⁰ Committee on the Elimination of Discrimination against Women, General Recommendation 21, Equality in marriage and family relations, (Thirteenth session, 1994), para. 26, U.N. Doc. A/49/38 at 1 (1994), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 250 (2003) [hereinafter CEDAW Gen. Rec. 21].

⁸¹ Philippines CEDAW Report, para. 538.

⁸² *Id.* at para. 114. The Philippines made an equally candid statement to the CESCRC when it said that “[a]s wage-earners, women continuously struggle to gain equal access to economic and social resources and opportunities.” Philippines CESCRC Report, para. 123.

⁸³ CONST. (1987), Art XII, 1.

⁸⁴ *Id.* Art. XIII, 1.

⁸⁵ FAMILY CODE, Art. 96, 124.

⁸⁶ FAMILY CODE, Art. 211. Please note that the parental authority provision in MUSLIM CODE, Art. 71(1) contains this identical clause.

⁸⁷ The United States Supreme Court, which old and well-developed equal protection jurisprudence, found a Louisiana statute that gave husbands, but not wives, the unilateral right to dispose of property in violation of equal protection. *Kirchberg v. Feenstra*, 450 U.S. 455

(1981). Although an administrative process existed whereby the wife could safeguard against her husband's unilateral action, the Court held that the "absence of an insurmountable barrier" "will not redeem an otherwise unconstitutionally discriminatory law." *Id.* at 461.

⁸⁸ HRC Gen. Comm. 28, para. 30.

⁸⁹ Concluding Observations of the Committee on the Rights of the Child, Philippines, para. 335, U.N. Doc. CRC/C/15/Add.29 (1995).

⁹⁰ The Constitution guarantees equal treatment under the law for all people, regardless of their religious beliefs. CONST. (1987), Art. III, 1.

⁹¹ Under the Organic Act, Art. 3(5), "no person in the Autonomous Region shall, on the basis of . . . religion, be subjected to any form of discrimination."

⁹² The ICCPR "guarantee[s] to all persons equal and effective protection against discrimination on any ground such as . . . religion." ICCPR, Art. 26. *See also* UDHR, Art. 2, "Each State Party . . . undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind such as . . . religion . . . national or social origin . . . or other status.;" ICESCR, Art. 2(2), "The States Parties . . . undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to . . . religion."

⁹³ MUSLIM CODE, Art. 36(1).

⁹⁴ CEDAW, Art. 5(a).

⁹⁵ Philippines CEDAW Report at para. 157. This was a general comment regarding sex stereotyping in the Philippines.

⁹⁶ The Constitution pledges to defend "the right of spouses to found a family in accordance with . . . the demands of responsible parenthood." CONST. (1987), Art. XV, (3)1.

⁹⁷ Under ICCPR, Art. 17(1-2), "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, [or] home" . . . [and] [e]veryone has the right to the protection of the law against such interference." *See also* UDHR, Art. 12 (identical language).

⁹⁸ MUSLIM CODE, Art. 36(3).

⁹⁹ *Id.* This provision is not only discriminatory but too vague to be consistently applied. *See* *Sacil v. Philippines*, Regional Trial Court, 11th Judicial Region Branch 11, Davao City, Spl. Civil Case No. 20,500-2004 at 7 (Aug. 3, 2005), holding that a vague anti-vagrancy law "runs afoul of the equal protection clause of the constitution." *See also* *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972), striking down a vagrancy law as "void for vagueness . . . in the sense that it 'fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute.'"

¹⁰⁰ Magna Carta of Women, Republic Act No. 9710, Section 19(d), Equal Rights in All Matters Relating to Marriage and Family Relations (2009). The Organic Act recognizes "labor as a primary social economic force for development" and pledges to "ensure equal work opportunities regardless of sex." Organic Act, Art. 16(9).

¹⁰¹ CEDAW, Art. 16(1)(g). *See also* CEDAW Gen. Rec. 21, para. 24: "A stable family is one which is based on principles of equity, justice and individual fulfillment for each member. Each partner must therefore have the right to choose a profession or employment that is best suited to his or her abilities, qualifications and aspirations, as provided in article 11 (a) and (c) of the Convention." The ICESCR, Art. 6(1) guarantees "the right of everyone to the opportunity to gain [a] living by work."

¹⁰² MUSLIM CODE, Art. 35.

¹⁰³ CEDAW, Art 15(4).

¹⁰⁴ CEDAW Gen. Rec. 21, para. 9. The Philippine government, in fact, conceded to the CEDAW Committee that laws making a "wife's mobility . . . subordinate to her husband's choice of residence" are discriminatory. CEDAW, Concluding Observations: Philippines, U.N. Doc. A/39/45, paras. 69-124, at 109 (1984) (*quoting* the Third Secretary of the Permanent Mission of the Philippines to the UN).

¹⁰⁵ *Romualdez-Marcos v. Comm'n on Elections*, G.R. No. 119976,

248 SCRA 300, 332 (Sept. 18, 1995): "A survey of jurisprudence relating to . . . the concepts of domicile or residence as they affect the female spouse upon marriage yields nothing which would suggest that the female spouse automatically loses her domicile of origin in favor of the husband's choice of residence upon marriage."

¹⁰⁶ *Id.* at 348 (Romero, separate opinion).

¹⁰⁷ *See* MUSLIM CODE, Art. 44.

¹⁰⁸ ICCPR, Art. 26, "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."

¹⁰⁹ *Id.* at Art. 14(1), "All persons shall be equal before the courts and tribunals"; *see also id.* at Art. 16, "Everyone shall have the right to recognition everywhere as a person before the law." The Human Rights Committee addressed women's right to sue independently in *Ato del Avellanal v. Peru*, Communication No. 202/1986 (28 October 1988), U.N. Doc. Supp. No. 40 (A/44/40) (1988), in which Mrs. Ato del Avellanal challenged a Peruvian law stating that only husbands could sue to recover matrimonial property. "According to article 168 of the Peruvian Civil Code, when a woman is married only the husband is entitled to represent matrimonial property before the Courts." *Id.* at 196, para. 2.1 The Committee determined that the application of this Peruvian law "resulted in denying [the petitioner] equality before the courts and constituted discrimination on the ground of sex" in violation of the ICCPR. *Id.* at para. 12.

¹¹⁰ CEDAW, Art. 15(2). *See also* HRC Gen. Comm. 28, para. 19, "The right of everyone under article 16 [of the ICCPR] to be recognized everywhere as a person before the law is particularly pertinent for women, who often see it curtailed by reason of sex or marital status."

¹¹¹ Philippines CEDAW Report, para. 538.

¹¹² *Asjari v. Ermita*, SP Civil Case No. 2006-084, at 11 (Phil., Regional Trial Court of Misamis Oriental, 2010).

¹¹³ *Id.* at 8.

¹¹⁴ *Id.* at 10.

¹¹⁵ *Id.* at 11.

¹¹⁶ ALICIA V. SEMPIO-DIY, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES, 141 (1988).

¹¹⁷ CEDAW Gen. Rec. 21, para. 24. To this end, children should be raised, as the CRC directs, "in the spirit of . . . equality of sexes." CRC, Art. 29(1).

¹¹⁸ FAMILY CODE, Art. 96, 124.

¹¹⁹ FAMILY CODE, Art. 211; MUSLIM CODE, Art. 71(1).

¹²⁰ *Asjari v. Ermita*, SP Civil Case No. 2006-084, at 11 (Phil., Regional Trial Court of Misamis Oriental, 2010).

¹²¹ *Romualdez-Marcos v. Comm'n on Elections*, G.R. No. 119976, 248 SCRA 300, 358. (Sept. 18, 1995) (Puno, concurring). The United States Supreme Court faced a similar gender-based legislative choice in *Reed v. Reed*, 404 U.S. 71 (1971), and held unconstitutional an Idaho law that mandated that the father, and not the mother, would be the preferred administrator of a deceased child's estate. The Court explained, "To give a mandatory preference to members of either sex over members of the other . . . is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause." *Id.* at 76-77.

¹²² *Asjari v. Ermita*, SP Civil Case No. 2006-084, at 14 (Phil., Regional Trial Court of Misamis Oriental, 2010).

¹²³ *Asjari v. Ermita*, SP Civil Case No. 2006-084, at 8 (Phil., Regional Trial Court of Misamis Oriental, 2010) (*quoting* Sta. MARIA, PERSONS AND FAMILY RELATIONS LAW, 2004, Fourth Edition, p. 44).

¹²⁴ Organic Act, Art. 3(5).

¹²⁵ FAMILY CODE, Art. 149 ("[F]amily relations are governed by law and no custom, practice, or agreement destructive of the family shall be recognized or given effect."); MUSLIM CODE, Art. 5 ("No 'ada which is contrary to the Constitution of the Philippines, this Code, Muslim law, public order, public policy or public interest shall be given any legal effect.')

¹²⁶ CEDAW, Art. 2(f).

¹²⁷ *Id.* at Art. 5(a).

¹²⁸ Philippines CEDAW Report, para. 140.

¹²⁹ Under the ICCPR freedom of religion is protected but can be limited by law when it is “necessary to protect . . . the fundamental rights and freedoms of others.” ICCPR, Art. 18(3). *See also* CRC, Art. 14(3), “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.”

¹³⁰ HRC Gen. Comm. 28, para. 5.

¹³¹ *German v. Barangan*, G.R. No. L-68828, 135 SCRA 514, 525. (Mar. 27, 1985) (“[P]etitioners are not denied or restrained of their freedom of belief or choice of their religion, but only in the manner by which they had attempted to translate the same into action.”); *Ebralinag v. Div. Superintendent of Sch. of Cebu*, G.R. No. 95770, 251 SCRA 569, 581. (Dec. 29, 1995) (“The essence of the free exercise clause is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma.”).

¹³² *Ebralinag v. Div. Superintendent of Sch. of Cebu*, G.R. No. 95770, 251 SCRA 569, 581. (Dec. 29, 1995).

¹³³ *Romualdez-Marcos v. Comm’n on Elections*, G.R. No. 119976, 248 SCRA 300, 344. (Sept. 18, 1995). Provisions relating to parental authority (CIVIL CODE, Art. 311; MUSLIM CODE, Art. 71(1)), impact of a subsequent marriage (CIVIL CODE, Art. 328; MUSLIM CODE, Art. 77(2)), acquisition of property (CIVIL CODE, Art. 114; MUSLIM CODE, Art. 36(2)), administration of children’s property (CIVIL CODE, Art. 320; MUSLIM CODE, Art. 75(1)), management of the household (CIVIL CODE, Art. 115; MUSLIM CODE, Art. 36(1)), exercise of a profession (CIVIL CODE, Art. 117; MUSLIM CODE, Art. 36(3)), the family’s domicile (CIVIL CODE, Art. 110; MUSLIM CODE, Art. 35), and ability to sue and be sued (CIVIL CODE, Art. 113; MUSLIM CODE, Art. 44) are almost identical in the two codes.

¹³⁴ U.S. Library of Congress Country Studies: Philippines, Muslim Filipinos, *available at* <http://lcweb2.loc.gov/frd/cs/phtoc.html> (last visited Nov. 14, 2005). As one of the petitioners in the case explained, “[W]ithin the Muslim community not all beliefs are the same and thus the Code is not representative of the views of all Filipino Muslims.”

¹³⁵ Azizah al-Hibri, *Islam, Law and Custom: Redefining Muslim Women’s Rights*, 12 AM. U.J. INT’L L. & POL’Y 1, 8 (1997).

¹³⁶ JAINAL D. RASUL, *COMPARATIVE LAWS: THE FAMILY CODE OF THE PHILIPPINES AND THE MUSLIM CODE*, 284 (1994).

¹³⁷ *Second Reports of States Parties: Algeria*, Committee on the Elimination of Discrimination against Women, para. 9, U.N. Doc. CEDAW/C/DZA/2 (Feb. 5, 2003); Government of Morocco, Ministry of Communication, *Women In Morocco*, *at* <http://www.mincom.gov.ma/english/generalities/mwoman/women.htm>; TUNISIAN CODE OF PERSONAL STATUS, *as summarized in Women and Civil Rights*, *at* <http://www.tunisiaonline.com/women>; Office of the Prime Minister, Directorate General of Press and Information, *Report on Amendments to the Turkish Civil Code*, *at* <http://www.byegm.gov.tr/on-sayfa/new-civil-code.htm>.

¹³⁸ They point out that “[t]he Prophet himself mended his own clothes, cut meat, and performed other household chores.” Azizah al-Hibri, *Islam, Law and Custom: Redefining Muslim Women’s Rights*, 12 AM. U.J. INT’L L. & POL’Y 1, 20 (1997) (*citing* ABI HAMID AL-GHAZALI, *IHYA ‘ULUM AL-DIN* (4 vols.) 33 (11th Century, reprint, Egypt, Mustafa al-Babi al-Halabi Press, 1939).

¹³⁹ *Ebralinag v. Div. Superintendent of Sch. of Cebu*, G.R. No. 95770, 251 SCRA 569, 581. (Dec. 29, 1995).

¹⁴⁰ CEDAW Gen. Rec. 19, para. 11. The CEDAW Committee also highlighted “the close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms.” CEDAW Gen. Rec. 19, para. 4.

¹⁴¹ Declaration on the Elimination of Violence against Women G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/RES/48/104 (1994) [hereinafter UN Declaration on the Elimination of Violence], Preamble, *available at* <http://www.un.org/documents/ga/res/48/a48r104.htm>. *See also* Preliminary Report Submitted by the Special Rapporteur on Violence against Women, Its Causes and Consequences, U.N. Doc. E/CN.4/1995/42 (1994) [hereinafter Special Rapporteur] para. 119, *available at* <http://www.ohchr.org/english/issues/women/rapporteur> (“The general structures of society and the family which accept male dominance and female submissiveness as the norm may help legitimate violence against women.”). Unequal power structures lead to violence which, in turn, further perpetuates inequality. Husbands use “gender-based violence . . . to maintain women in subordinate roles,” exercising violence “as a form of protection or control of women.” Rapporteur, para. 119. *See also* Declaration on the Elimination of Violence against Women, Preamble (“[V]iolence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”).

¹⁴² CEDAW Gen. Rec. 19, para. 23.

¹⁴³ Michelle J. Hindin & Linda S. Adair, *Who’s at risk? Factors associated with intimate partner violence in the Philippines*, *Social Science & Medicine* 55, 1387 (2002), *at* <http://paulofreireinstitute.org/Documents/philippines-2.pdf>.

¹⁴⁴ *Id.* at 1396.

¹⁴⁵ *Id.* at 1396.

¹⁴⁶ *Id.* at 1394.

¹⁴⁷ CEDAW Gen. Rec. 19, para. 4.

¹⁴⁸ A woman’s physical integrity is protected under the rights to “security of person,” (ICCPR, Art. 9; UDHR, Art. 3), “freedom from cruel, inhuman or degrading treatment or punishment,” (ICCPR, Art. 7; UDHR, Art. 5), and privacy (ICCPR, Art. 17; UDHR, Art. 12.).

¹⁴⁹ It “deprive[s] [women] of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.” CEDAW Gen. Rec. 19, para. 11.

¹⁵⁰ *Id.* at para. 23.

¹⁵¹ National Safe Motherhood Survey, xix.

¹⁵² The Constitution places the “highest priority” on enhancing “the right of all the people to human dignity.” CONST. (1987), Art. XIII, 1.

¹⁵³ The UDHR, the foundational human rights document, establishes the “inherent dignity” of every person as “the foundation of freedom, justice and peace in the world.” Preamble to the UDHR. Similarly, the preambles of all the international instruments recognize dignity as the basis for other human rights. *E.g.*, Preamble to the ICCPR (“recognition of the inherent dignity and of the equal and inalienable rights of all the members of the human family is the foundation of freedom, justice and peace in the world . . . these rights derive from the inherent dignity of the human person.”); Preamble to the ICESCR (same).

¹⁵⁴ Preamble to CEDAW.

¹⁵⁵ *Romualdez-Marcos*, 248 SCRA at 345 (Romero, separate opinion). Justice Puno considered this inequality “the root of the many degradations of Filipino women.” *Id.* at 353 (Puno, concurring).

¹⁵⁶ *Romualdez-Marcos*, 248 SCRA at. at 344 (Romero, separate opinion).