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

by Tamar Ezer, Arwen Joyce, Priscila McCalley, and Neil Pacamalan
Edited by Tamar Ezer*

INTRODUCTION

The Republic of the Philippines (Philippines) became independent in 1946, throwing off over 300 years of Spanish rule and another 50 years of American rule. However, the legacy of colonialism lives on in Philippine laws. As with all former colonies, the Philippine legal system reflects its multi-layered history. For women, this has meant the continuation of oppressive patriarchal laws, legitimizing their husband's rule over them. This dynamic stands in stark contrast to the equality of rights for men and women codified in the Philippine Constitution and international human rights treaties the country has ratified.

The Spanish Civil Code of 1889 continues to shape family relations and curtail women's capacities. Although the Philippine Family Code (Family Code) eliminated some of the Civil Code's most egregious legacies, women are still deprived of equal parental authority and property rights. Muslim women further do not benefit from the Family Code's advancements because they are subject to a separate Code of Muslim Personal Laws (Muslim Code), which closely mirrors the pre-revision Civil Code. Additionally, Muslim women are denied the ability to choose their profession, domestic role, and residence, and receive limited access to courts.

In May 2006, the Xavier University Center for Legal Assistance, with support from the Georgetown University Law Center's International Women's Human Rights Clinic, filed a lawsuit on behalf of twelve petitioners challenging discriminatory provisions of the Family and Muslim Codes.¹ Although the petitioners come from different parts of the Philippines, have different religions, and speak various dialects, they express com-

mon outrage at laws that deny women equality and treat them as minors. In January 2010, almost four years after the initiation of *Asjari v. Ermita*, the trial court dismissed the case, declaring its "hope that petitioners' quixotic search for their desired equality end soonest."² Petitioners are now bringing this case before the Philippine Commission on Human Rights, recently empowered by the Magna Carta of Women to act as the Gender and Development Ombud.³

This case has international significance because it aims to set a precedent for enforcement of women's human rights in country constitutions and ratified treaties. Only if cases are brought challenging older, non-conforming statutes, will these

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provisions have meaning. Domestic courts play a vital role in the interpretation and enforcement of international treaty provisions because they have greater capacity to take cases and come with established enforcement mechanisms. International treaty bodies are, in fact, set up as a forum of last resort, requiring exhaustion of domestic remedies.⁴ This case further confronts the pitting of culture and religion against women's human rights. Culture is a

fluid concept subject to manipulation by those in power and should never be used to deny a population basic rights.⁵ Here, what the Philippine government calls Muslim religion and culture is actually a product of Spanish colonialism.

This paper is divided into four main parts. The first part presents a historical overview of the relevant laws, which reflect the interplay between colonialism, nationalism, minority protection, and patriarchy. The second part provides a constitutional and international law analysis of the challenged provisions. The third part responds to counterarguments that the challenged provisions further government interest in protecting family harmony, culture, and Muslim religion. The last part describes the harms to women's physical integrity and dignity caused by the current regime.

HISTORICAL OVERVIEW OF RELEVANT LAW

THE CIVIL CODE, FAMILY CODE, AND MUSLIM CODE

The Civil Code of the Philippines, promulgated in 1949, borrowed heavily from the Spanish Civil Code of 1889. According

* This article grew out of a collaboration between the Xavier University Center for Legal Assistance (XUCLA) and the Georgetown University Law Center's International Women's Human Rights Clinic, directed by Professor Susan Deller Ross. At the start of this project, Arwen Joyce and Priscila McCalley were Clinic students who worked under the supervision of Clinic attorney-fellow, Tamar Ezer, and XUCLA attorney, Neil Pacamalan.

[U]nder both Codes, a woman may not share domestic roles equally with her husband, choose her residence, or keep parental authority over her children if her husband dies and she remarries.

to Justice Romero of the Philippine Supreme Court, “Spain, a conservative, Catholic country . . . transplanted to our shores the Old World culture, mores, attitudes and values.”⁶ The Civil Code enshrined these mores, attitudes, and values in law, including “such concepts as the husband’s being the head of the family and the wife’s subordination to his authority.”⁷ In the 1980s, however, Spain “completely revised” its family law to make it compatible with “the equality of all persons before the law.”⁸

The Philippines also took steps to reform the Civil Code and adopt a new Family Code.⁹ A Civil Code Revision Committee worked to address “the unsuitability of certain provisions . . . , implanted from foreign sources . . . the unfairness, unjustness, and gaps or inadequacies of others; and the need to attune them to contemporary developments and trends.”¹⁰ The reform further aimed to ensure compliance with the new Constitution¹¹ and to “emancipate the wife from the exclusive control of the husband and to place her at parity with him insofar as the family is concerned.”¹² President Corazon Aquino accepted the Committees’ recommendations and signed the Family Code into law in July 1987.¹³

Many hailed the Family Code as a victory for women’s rights. Justice Puno commented: “Taking the lead in Asia, our government exerted efforts . . . to eliminate inequality between men and women in our land. The watershed came . . . when our Family Code took effect which . . . terminated the unequal treatment of husband and wife as to their rights and responsibilities.”¹⁴ For the first time, a woman could exercise “any legitimate profession”¹⁵ without her husband’s consent and help select the family’s residence.¹⁶ The Family Code also removed restrictions on a woman’s ability to sue independently of her husband,¹⁷ acquire property without his consent,¹⁸ and remarry without losing parental authority over children.¹⁹

Despite these advances, a number of discriminatory provisions remain in the Family Code. As the Philippine Government acknowledged in a report to the Committee for the Elimination of Discrimination Against Women (CEDAW Committee), “[although] the Family Code removed many of the discriminatory provisions under the Civil Code . . . it did not address anti-women bias in the area of marriage and family These keep Filipino women, regardless of ethnicity or religion, on an unequal status to men in marriage and family relations.”²⁰ Specifically, the Family Code continues to limit a woman’s parental authority over her children and her control over family property.²¹ In June 2004, Philippine Senator Manuel B. Villar, Jr. proposed to amend these article by removing “in case of

disagreement, the husband’s decision shall prevail,” and substituting “in case of disagreement, either party shall go to court for proper remedy.”²² In August 2004, the legislative proposal was referred to two Senate committees,²³ but neither has taken action.

The Muslim Code, promulgated by Presidential Decree in 1977,²⁴ operates as a parallel set of family law provisions for the Muslim population of the Philippines.²⁵ The Muslim Code contains many provisions mirroring those in the pre-revision Civil Code. For instance, under both Codes, a woman may not share domestic roles equally with her husband,²⁶ choose her residence,²⁷ or keep parental authority over her children if her husband dies and she remarries.²⁸ Additionally, both Codes restrict women’s economic power by limiting their access to the court system,²⁹ their ability to seek employment outside the home,³⁰ and their right to inherit property.³¹

THE CONSTITUTION AND ORGANIC ACT

In 1987, the Philippines adopted a new constitution with provisions protecting human rights and providing equal rights for women. In addition to an equal protection clause,³² the 1987 Constitution “recognizes the role of women in nation-building” and “the fundamental equality before the law of women and men.”³³ It also pledges to “give highest priority” to enacting measures protecting “the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities.”³⁴

The updated Constitution additionally differs in its approach to the Muslim minority. The 1973 Constitution required the state to “consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies.”³⁵ Instead, the new Constitution set up an autonomous region in Mindanao and called for an Organic Act³⁶ “consistent with the . . . Constitution and national laws” to govern Muslims.³⁷

The Organic Act for the Autonomous Region of Muslim Mindanao (Organic Act) was passed in 1989. The Organic Act echoes the equal rights and non-discrimination guarantees of the Constitution, committing the Regional Government to “uphold and protect the fundamental rights of women”³⁸ Specifically, it requires that, “In no case shall women . . . be exploited, abused or discriminated against.”³⁹ It also expresses the legislature’s intention to revise the Muslim Code within one year.⁴⁰ As of yet, this revision has not been carried out.⁴¹

INTERNATIONAL CONVENTIONS

The Philippines has espoused human rights, founded upon the Universal Declaration of Human Rights (UDHR).⁴² The Constitution accepts “principles of international law as part of the law of the land”⁴³ and binds the Philippines “to implement [the] spirit and letter” of treaties it has ratified.⁴⁴ The core international human rights treaties to which the Philippines is a party include: the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1974,⁴⁵ the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1981,⁴⁶ the International Covenant on Civil and Political Rights (ICCPR) in 1986,⁴⁷ and the Convention on the Rights of the Child (CRC) in 1990.⁴⁸ The government submits periodic reports to the committees that monitor compliance with these treaties⁴⁹ and has made changes to domestic law and policy in light of committee recommendations.⁵⁰

THE MAGNA CARTA OF WOMEN

Most recently, in September 2009, the Philippines passed the Magna Carta of Women, a comprehensive women's human rights law. The law was enacted to “promote empowerment of women” and commits the government to “intensify efforts” to ensure women's human rights “especially in the marginalized sectors of society.”⁵¹ It recognizes that “equality of men and women entails abolition of unequal structures and practices”⁵² and includes a specific section on equality of women in families entitled, “Equal Rights in All Matters Relating to Marriage and Family Relations.”⁵³

CONSTITUTIONAL AND INTERNATIONAL LAW ANALYSIS

THE FAMILY AND MUSLIM CODES DISCRIMINATE AGAINST WOMEN

The Family and Muslim Codes violate equal protection guarantees in the Philippine Constitution and under international law, as well as specific equality protections related to raising children and management of property.⁵⁴ The situation is worse for Muslim women, who are unable to share equal domestic roles with their husbands, decide their profession and residence, and freely access the court system.⁵⁵ The government itself acknowledged that, although “the Family Code removed many of the discriminatory provisions under the Civil Code . . . it did not address anti-women bias in the area of marriage and the family;” these laws “keep Filipino women, regardless of ethnicity or religion, on an unequal status to men in marriage and family relations.”⁵⁶

The Constitution,⁵⁷ Organic Act,⁵⁸ and international human rights treaties⁵⁹ require the Philippines to honor women's equality. The Supreme Court characterized equality as “an ideal which

cries out for bold attention and action in the Constitution”⁶⁰ and the equal protection clause “as a major cutting edge to eliminate every conceivable irrational discrimination in our society.”⁶¹ Justice Romero noted that the Constitution “signifies that women, no less than men, shall enjoy the same rights accorded by law.”⁶² Thus, “[w]hatever rights or opportunities used to be denied . . . are now clearly granted to them . . . [D]oors hitherto closed to them have been flung open.”⁶³

The principle of equal protection specifically applies to marriage and family laws, as recognized the Magna Carta of Women⁶⁴ and international law.⁶⁵ The Human Rights Committee explained: “The matrimonial regime [must contain] equal rights and obligations for both spouses, with regard to the custody and care of children . . . and the ownership or administration of property . . . Equality during marriage implies that husband and wife should participate equally in responsibility and authority within the family.”⁶⁶

However, neither the Family nor Muslim Codes recognize women's equal responsibility and authority in the upbringing of their children. Under both Codes, “in case of disagreement, the father's decision shall prevail.”⁶⁷ This effectively gives sole parental authority to the father because it only honors the mother's wishes if they coincide with the father's.

Moreover, the Muslim Code strips a widow of all parental authority if she remarries and her second husband is not related to her children.⁶⁸ This not only deprives women of their parental role, but manipulates a woman's attachment to her children and seeks to influence her choice of a second husband.⁶⁹ The Muslim Code further denies women the opportunity to serve as marriage guardian,⁷⁰ proscribing preference for the father, paternal grandfather, brother, paternal relatives, or even a court.⁷¹ This discriminatory treatment of mothers violates both CEDAW and the CRC.⁷²

Provisions favoring the father additionally ignore “the best interests of the child,” a paramount consideration under international law.⁷³ Inculcating gender discriminatory stereotypes also violates the CRC's injunction that a child's education should prepare him or her “for responsible life in a free society, in the spirit of . . . equality of sexes.”⁷⁴

The Family and Muslim Codes similarly deny women equal property rights. The Family Code provides that in the administration of marital or children's property “[i]n case of disagreement,” the husband or father's “decision shall prevail.”⁷⁵ The Muslim Code goes even further, conditioning the wife's acquisition of property from non-relatives on her husband's consent.⁷⁶ It further denies mothers the ability to administer children's property unless the father is absent⁷⁷ and grants guardianship of a minor's property to the father, paternal grandfather, their representatives, or the court.⁷⁸ Once again, not just the father, but other men and even the court take precedence over the mother.

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However, the Magna Carta of Women and CEDAW recognize the equal rights of both spouses in the “ownership, acquisition, administration, enjoyment, and disposition of property.”⁷⁹

Women’s property rights are critical since they are closely linked to economic power. The CEDAW Committee considers them “central to a woman’s right to enjoy financial independence” and “her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.”⁸⁰ When men have final authority over property, they have ultimate access to wealth, and women are disempowered and dependent. The Philippines acknowledged “inequality in the legal capacity of women . . . within marriage and family relations which affect their rights over . . . land ownership,”⁸¹ and that Filipino women suffer from “massive poverty and inequality in the ownership of economic resources.”⁸² The Constitution calls for “a more equitable distribution of opportunities, income, and wealth”⁸³ and reduction of “social, economic, and political inequalities.”⁸⁴ These goals require reform of the Family and Muslim codes.

Although the discriminatory parental authority and property provisions in the Family Code allow a woman to contest her husband’s decision through “recourse to the court”⁸⁵ or “a judicial order to the contrary,”⁸⁶ such a remedy is illusory and does not alleviate discrimination. Court procedure requires resources and time. Additionally, bringing suit against her husband would lead to marital conflict and is not necessarily a realistic option for a woman who wants to maintain her marriage. Moreover, provisions that require women to overcome extra hurdles to uphold their decision-making authority violate the basic premise of equal protection.⁸⁷

MUSLIM WOMEN ARE DENIED ADDITIONAL RIGHTS BASED ON THEIR RELIGION

Muslim women are doubly marginalized and subject to additional discriminatory provisions under the Muslim Code on the basis of their religion. The Human Rights Committee noted that “[d]iscrimination against women is often intertwined with discrimination on other grounds such as . . . religion.”⁸⁸ This is the case here, and the Committee on the Rights of the Child urged a “more active approach” to eliminate discrimination against women and girls “belonging to minorities (or ‘cultural communities’).”⁸⁹ Discriminatory treatment based on religion violates the Constitution,⁹⁰ Organic Act,⁹¹ and international human rights law.⁹²

The Muslim Code’s assignment of gender roles within the family reinforces gender inequality and violates basic rights. The Code mandates, “The wife shall dutifully manage the affairs of the household. She may purchase things necessary for the maintenance of the family, and her husband shall . . . reimburse the expenses.”⁹³ However, CEDAW requires the elimination of discrimination based on “stereotyped roles for men and women.”⁹⁴ The Philippine government itself acknowledged that “[s]ex stereotyping remains a stumbling block to women’s full development.”⁹⁵ This provision additionally violates the right of married couples to be free from state intervention in private family affairs under the Constitution⁹⁶ and ICCPR.⁹⁷

The Muslim Code also violates a woman’s right to engage in the profession of her choice. A wife is required to obtain her husband’s consent to “exercise any profession or occupation or

engage in lawful business.”⁹⁸ Moreover, a woman’s profession must comply with “Islamic modesty and virtue.”⁹⁹ The Magna Carta of Women requires “the same personal rights between spouses,” including “the right to choose freely a profession and an occupation.”¹⁰⁰ Likewise, CEDAW calls on states to “ensure, on a basis of equality of men and women . . . the right to choose . . . a profession and an occupation.”¹⁰¹

The Muslim Code further provides that “[t]he husband shall fix the residence of the family,”¹⁰² disregarding the wife’s opinion or consent. CEDAW explicitly accords “to men and women the same rights with regard . . . to the movement of persons and the freedom to choose their residence and domicile.”¹⁰³ The CEDAW Committee further elaborated that residence, “like nationality, should be capable of change at will by an adult woman regardless of her marital status.”¹⁰⁴ The Supreme Court also recognized the importance of a woman’s right to choose a residence when it ruled that a widow is not bound to her last marital home.¹⁰⁵ In his opinion, Justice Romero instructed, “All obstacles to women’s full participation in decision-making at all levels, including the family’ should be removed.”¹⁰⁶

The Muslim Code additionally limits the right of Muslim women to be recognized by courts. It specifies when a wife may sue or be sued and, in most instances, requires her husband to be joined to the suit.¹⁰⁷ This prevents women’s full enforcement of their rights and violates the ICCPR’s mandate of equality “before the law”¹⁰⁸ and “before the courts and tribunals.”¹⁰⁹ Furthermore, CEDAW requires that states “accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity.”¹¹⁰ The Philippine government admitted that “inequality in the legal capacity of women” affects “their rights over concluding contracts, land ownership and property administration.”¹¹¹ Women are thus treated as minors and forced into dependence on men.

THE DISCRIMINATORY PROVISIONS CANNOT BE JUSTIFIED BY PROTECTION OF FAMILY HARMONY, CULTURE, OR RELIGION

Although the trial court maintains that the discriminatory provisions of the Family and Muslim Code are justified by protection of family harmony, culture, and religion, this argument has no basis and violates human rights law. The challenged provisions are, in fact, contrary to family harmony, culture, and religion.

FAMILY HARMONY

In *Asjari v. Ermita*, the trial court upheld the discriminatory provisions of the Family and Muslim Codes in order to maintain “family solidarity” and “harmony”¹¹² and prevent a “constant impasse”¹¹³ in family decision-making. It considered provisions that grant the husband ultimate authority “laudable,”¹¹⁴ “necessary and practical”¹¹⁵ in avoiding conflict. The drafters of these provisions of the Family Code were similarly motivated. They determined, “as a solution to the conflict[s] between the spouses and following the tradition of the husband being the head of the family, he should be allowed to decide.”¹¹⁶

However, mandating a husband’s authority does not advance and is, in fact, detrimental to family harmony. It sets family relations which are not based on equality and mutual respect. As the

CEDAW Committee explained, "A stable family is one which is based on principles of equity, justice and individual fulfillment for each member."¹¹⁷ Furthermore, under the Family and Muslim Codes, a husband's decision has legal force, and to contest it, the wife must seek "recourse [from] the court"¹¹⁸ and obtain "a judicial order to the contrary."¹¹⁹ This encouragement of litigation is not in the best interests of family harmony. Rather, a husband and wife should persuade, negotiate, and compromise, using court guidance only as a last resort. Countries where laws do not enforce a discriminatory preference for patriarchy do not suffer from the feared "vacuum in family decision-making."¹²⁰ As Justice Puno recognized, "gender-based discrimination. . . . is not rationally related to the objective of promoting family solidarity."¹²¹

CULTURE AND RELIGION

In *Asjari v. Ermita*, the trial court held that "the preference for men over women may be religion or culture-based, not sexual discrimination."¹²² Such an exception to women's equality would be wide enough to swallow the right entirely and is prohibited by Philippine and international law.

Relying on custom, the trial court explained that the husband should have ultimate authority over property "because tradition and experience show that, in very serious matters concerning the family, it is usually the husband who makes ultimate choices."¹²³ However, discriminatory cultural practices cannot be justified as traditions of a patriarchal society under either Philippine or international law. The Organic Act provides for "respect and protection of . . . customs and traditions . . . [p]rovided, [t]hat no person . . . shall, on the basis of . . . sex, be subjected to any form of discrimination."¹²⁴ The Family and Muslim Codes themselves recognize the subordination of custom to law and the preeminence of the Constitution.¹²⁵ CEDAW requires states to "abolish . . . customs and practices which constitute discrimination against women"¹²⁶ and to "modify the social and cultural patterns of conduct of men and women" "based on the idea of the inferiority or the superiority of either of the sexes."¹²⁷ The Philippine government has, in fact, expressed its commitment to put a "high priority on the transformation of society's attitudes and values towards the recognition of the equal roles, rights and responsibilities of women."¹²⁸

Similarly, freedom of religion is not absolute and cannot infringe on the fundamental rights and freedoms of women.¹²⁹ As the Human Rights Committee explained, "traditional, historical, religious, or cultural attitudes" can never "justify violations of women's rights to equality before the law."¹³⁰ The Supreme Court recognized that freedom of religion protects beliefs but does not excuse illegal actions.¹³¹ It further defined the "essence" of religious freedom as "freedom from confor-

mity to religious dogma,"¹³² the opposite of the Muslim Code's approach.

Moreover, the court failed to recognize that culture is non-uniform and dynamic and did not question whether the Muslim Code provisions accurately reflect the beliefs of Filipino Muslims. As discussed, the discriminatory provisions in the Muslim Code are "a virtual restatement of . . . the Spanish Civil Code of 1889," manifesting this period's Spanish Catholic traditions.¹³³ Furthermore, Filipino Muslims "traditionally have not been a closely knit or even allied group . . . [and differ] in their degree of Islamic orthodoxy."¹³⁴ Islamic laws also "change

with the passage of time and with the change of place or circumstance."¹³⁵ According to Justice Rasul, Chairman of the Philippine Shari'a Department, "the reliance on male in guardianship is stressed due perhaps to social traditions . . . and conservatism. Circumstances may, however, give rise to reliance on women."¹³⁶ Many Muslim nations, including Algeria, Morocco, Tunisia, and Turkey, provide for equal treatment for women while remaining faithful to Islamic traditions.¹³⁷ In fact, some scholars maintain that Islam has a gender equal view of domestic roles.¹³⁸ Thus, by enforcing a particular view of Islam, the state

actually goes against freedom of religion and violates people's "freedom from conformity to religious dogma."¹³⁹

HARMS BY THE CURRENT REGIME

HARMS TO PHYSICAL INTEGRITY: DOMESTIC VIOLENCE

By encouraging husbands to dominate decision-making and wives to submissively follow, the Family and Muslim Codes perpetuate power structures that facilitate domestic violence. The CEDAW Committee identified "[t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles" as "perpetuat[ing] . . . family violence and abuse."¹⁴⁰ The Declaration on the Elimination of Violence against Women likewise characterizes "violence against women" as "a manifestation of historically unequal power relations between men and women."¹⁴¹ Moreover, by economically disempowering women, the Family and Muslim Codes increase women's vulnerability to violence. As the CEDAW Committee recognized, "Lack of economic independence forces many women to stay in violent relationships."¹⁴²

A Philippine study found that a husband's domination of decision-making establishes a pattern of his control and the wife's subordination.¹⁴³ Thus, "the more domains of decision-making men dominate, the more likely they are to dominate their wives in terms of physical abuse."¹⁴⁴ By contrast, "when couples make decisions together (both major and minor decisions), fewer

The antiquated provisions in the Family and Muslim Codes violate women's rights to equality, dignity, property, choice of residence and profession, and access to justice.

women experience [domestic violence].”¹⁴⁵ Domestic violence is, moreover, specifically correlated with a husband’s control of parental authority and property. Domestic violence was found to be “significantly more common if husbands have the final say over decisions in . . . buying the children clothes, choosing the children’s school, taking the child to the doctor . . . buying or selling land.”¹⁴⁶

Under international law, states must “take positive measures to eliminate all forms of violence against women.”¹⁴⁷ Domestic violence is a violation in itself¹⁴⁸ and perpetuates further violations of women’s rights.¹⁴⁹ It places “women’s health at risk and impair[s] their ability to participate in family life and public life.”¹⁵⁰ One out of ten Filipino women experiences domestic abuse.¹⁵¹ It is time to take action to stop this abuse.

HARMS TO DIGNITY: TREATMENT AS MINORS

The discriminatory provisions in the Family and Muslim Codes treat Filipino women as less than full adults capable of controlling their lives in violation of their dignity. Under these Codes, women must defer to their husband in raising their children, managing property, litigating their affairs, and choosing their profession and residence. This treatment as minors violates

women’s right to dignity, enshrined in the Constitution¹⁵² and international law.¹⁵³ CEDAW highlights the close connection between equality and dignity: Since “all human beings are born free and equal in dignity and rights . . . discrimination against women violates . . . human dignity.”¹⁵⁴ Justice Romero echoed this connection and explained, “Demeaning to the wife’s dignity are certain strictures on her personal freedoms, practically relegating her to the position of minors and disabled persons.”¹⁵⁵

CONCLUSION

The antiquated provisions in the Family and Muslim Codes violate women’s rights to equality, dignity, property, choice of residence and profession, and access to justice. They are also contrary to the best interests of children and cannot be justified by protection of family harmony, culture, or religion. The Spanish law on which they are based has been long revised, and they are particularly outdated with passage of the Magna Carta of Women, dedicated to promoting women’s equality. Justice Romero referred to an “enlightened global trend to recognize and protect the human rights of women, no less than men.”¹⁵⁶ It is time to heed his words and finally give human rights guarantees meaning for Filipino women.

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

¹ Asjari v. Ermita, SP Civil Case No. 2006-084.

² Asjari v. Ermita, SP Civil Case No. 2006-084, at 1 (Branch 41, Phil., Regional Trial Court of Misamis Oriental, 2010).

³ The Magna Carta of Women, enacted in 2009, provides for the Commission on Human Rights to act as the Gender and Development Ombud responsible for implementing this Act, “including the investigations and complaints of discrimination and violations” of women’s human rights. The Magna Carta of Women, Republic Act No. 9710, Section 39, Commission on Human Rights (CHR) (2009). Given the broad nature of the issues at stake in this case, it made more sense to pursue further action through the Commission on Human Rights, rather than to continue the suit in civil court.

⁴ For a discussion of the importance of applying international human rights law in domestic courts, please see Anne F. Bayefsky, *General Approaches to Domestic Application of Women’s International Human Rights* in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 351-369 (Rebecca J. Cook ed., 1994).

⁵ Examples of arbitrary state interpretations and the manipulation of culture and religion abound. For instance, when the British ruled in India, they defined the “customs” of the population, and Indian women, “once able to inherit property, found themselves excluded by the British determination to uphold Hindu law.” BARBRA METCALF AND THOMAS METCALF, A CONCISE HISTORY OF MODERN INDIA 91. After British departure, the Mehru government in the 1950s reformed and codified Hindu law, restoring rights to Indian women. However, the old Muslim code remained intact and a Parliament directive prohibited Muslim women from benefiting from progressive maintenance provision upon divorce. Meanwhile, in nearby Pakistan, Muslim personal law was updated and substantially reformed in the 1960s. *Id.* at 262. Another example is that in India, Hindus, Christians, and Parsis are subject to a penalty of up to seven years imprisonment for engaging in polygamy. Muslim men, however, are exempted from this provision and permitted to marry up to four wives. In the Indian state of Goa though, the laws are paradoxically reversed, prohibiting polygamy by Muslim

men and exempting Hindu men. Susan Deller Ross, *Polygyny as a Violation of Women’s Right to Equality in Marriage: An Historical, Comparative and International Human Rights Overview*, 25 DELHI L. REV. 36 (2002). In all of these cases, religion is not defined by the individual, but rather interpreted and enforced by the state.

⁶ Romualdez-Marcos v. Comm’n on Elections, G.R. No. 119976, 248 SCRA 300, 344. (Sept. 18, 1995).

⁷ *Id.*

⁸ CIVIL CODE OF SPAIN, i (Julio Romañach, Jr. trans., Lawrence Pub. Co., 1994). “Thus, under the new [Spanish] family law, husband and wife are given equal rights in regard to the administration of the household, the custody of the children of the marriage, and other matters pertaining to marriage . . . Thus, the husband is no longer the sole head of the family.” *Id.* Similarly, other countries whose family laws are based on the Old Spanish Civil Code have since revised their laws to remove discriminatory provisions. For example, Guatemala revised its Civil Code in 1998 “in the recognition of women’s rights.” CENTER FOR REPRODUCTIVE LAW AND POLICY, WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES, LATIN AMERICA AND THE CARIBBEAN, PROGRESS REPORT 2000, 51 (2000).

⁹ FAMILY CODE, E.O. 209, as amended (1987) [hereinafter FAMILY CODE].

¹⁰ ALICIA V. SEMPIO-DIY, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES, xxix (1988).

¹¹ The Revision Committee’s co-chairs explained that “the long-standing clamor for equality between men and women [is] now mandated as a policy to be implemented under the New Constitution.” SEMPIO-DIY at xxix-xxx. The Philippine government echoed this in its UN report, “The Family Code revises the provisions of the Civil Code of the Philippines on marriage and family relations [and] implements the relevant provisions of the 1987 Constitution which are designed to . . . ensure fundamental equality of women and men.” *Initial Report: Philippines*, Economic and Social Council, para. 48, U.N. Doc. E/1986/3/Add.17 (Oct. 15, 1994) [hereinafter Philippines CESCR report].

- ¹² Romualdez-Marcos v. Comm'n on Elections, G.R. No. 119976, 248 SCRA 300, 357. (Sept. 18, 1995) (Puno, concurring, quoting the late Justice J.B.L. Reyes).
- ¹³ SEMPIO-DIY at xxviii-xxix. In accordance with Article 257 of the Family Code, it did not take effect until August 3, 1988, one year after it was first published in the Manila Chronicle. SEMPIO-DIY at xxix.
- ¹⁴ *Romualdez-Marcos* at 344. (Sept. 18, 1995) (Puno, concurring).
- ¹⁵ Compare CIVIL CODE, Art. 117 and FAMILY CODE, Art. 73.
- ¹⁶ Compare CIVIL CODE, Art. 110, R.A. 386, as amended (1949) [hereinafter CIVIL CODE], and FAMILY CODE, Art. 69.
- ¹⁷ CIVIL CODE, Art. 113.
- ¹⁸ CIVIL CODE, Art. 114.
- ¹⁹ CIVIL CODE, Art. 328.
- ²⁰ *Fifth and Sixth Reports of States Parties: The Philippines*, Committee on the Elimination of Discrimination Against Women, para. 121, U.N. Doc. CEDAW/C/PHI/5-6 (Aug. 2, 2004), [hereinafter Philippines CEDAW Report].
- ²¹ FAMILY CODE, Articles 96, 124, 211 and 225.
- ²² (Proposed) An Act Amending Articles 96, 124, 211, and 225 of the New Family Code to Provide for Judicial Intervention in Cases of Disagreement between Husband and Wife Over the Administration and Enjoyment of Community Property, the Administration and Enjoyment of Conjugal Partnership Property, and the Exercise of Parental Authority and Legal Guardianship Over the Person and Property of Unemancipated Common Child, S. No. 712, (Jun. 30, 2004) available at <http://www.senate.gov.ph/bills/sbn-712.pdf>.
- ²³ Legislative Status, S. No. 712, available at <http://www.senate.gov.ph/bills/status/SBN-712.htm> (last visited Nov. 30, 2005).
- ²⁴ CODE OF MUSLIM PERSONAL LAWS, P.D. No. 1083 (1977) [hereinafter MUSLIM CODE].
- ²⁵ "The provisions of the Muslim Code and the Tribal Code shall be applicable only to Muslims and other members of indigenous cultural communities." An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao, Rep. Act No. 6734, Art. 9(17)(1) (1989) [hereinafter Organic Act].
- ²⁶ Compare CIVIL CODE, Art. 115 and MUSLIM CODE, Art. 36.
- ²⁷ Compare CIVIL CODE, Art. 110 and MUSLIM CODE, Art. 35.
- ²⁸ Compare CIVIL CODE, Art. 328 and MUSLIM CODE, Art. 77(2).
- ²⁹ Compare CIVIL CODE, Art. 113 and MUSLIM CODE, Art. 44.
- ³⁰ Compare CIVIL CODE, Art. 117 and MUSLIM CODE, Art. 36(3).
- ³¹ Compare CIVIL CODE, Art. 114 and MUSLIM CODE, Art. 36(2).
- ³² "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." CONST. (1987), Art. III, 1.
- ³³ *Id.* Art. II, 14.
- ³⁴ *Id.* Art. XIII, 1.
- ³⁵ MUSLIM CODE, Art. 2.
- ³⁶ An Organic Act establishes a territory and its governance structure.
- ³⁷ *Id.* Art. X, 18. See also *id.* Art. X, 15, which provides for the creation of autonomous regions "within the framework of [the] Constitution."
- ³⁸ Organic Act, Art. 3(5).
- ³⁹ *Id.* Art. (10).
- ⁴⁰ *Id.* Art. 19(8).
- ⁴¹ The tension between the Muslim Code and the Organic Act can be seen in the choice of law provisions of the two documents. The Muslim Code specifies that: "In case of conflict between any provision of this Code and laws of general application, the former shall prevail." MUSLIM CODE, Art. 3(1). The Organic Act, on the other hand, provides: "In case of conflict between the Muslim Code or the Tribal Code on the one hand, and the national law on the other hand, the latter shall prevail." Organic Act, Art. 9(17)(3).
- ⁴² Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc. A/810 at 71 (1948), available at <http://www.unhcr.ch/udhr/lang/eng.htm> [hereinafter UDHR].
- ⁴³ CONST. (1987), Art. II, 2.
- ⁴⁴ Romualdez-Marcos v. Comm'n on Elections, G.R. No. 119976, 248 SCRA 300, 346. (Sept. 18, 1995) (Romero, separate opinion).
- ⁴⁵ International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976, ratified by the Philippines Jun. 7, 1974, available at http://www.unhcr.ch/html/menu3/b/a_cesocr.htm [hereinafter ICESCR].
- ⁴⁶ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981, ratified by the Philippines Aug. 5, 1981, available at <http://www.unhcr.ch/html/menu3/b/e1cedaw.htm> [hereinafter CEDAW].
- ⁴⁷ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, ratified by the Philippines Oct. 23, 1986, available at http://www.unhcr.ch/html/menu3/b/a_ccpr.htm [hereinafter ICCPR].
- ⁴⁸ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990, ratified by The Philippines Aug. 21, 1990, available at <http://www.unhcr.ch/html/menu3/b/k2crc.htm>. [hereinafter CRC].
- ⁴⁹ See Reporting History: Philippines at <http://www.bayefsky.com/docs.php/area/rephistory/state/136>.
- ⁵⁰ E.g., Philippines CEDAW Report at 14, ("Major Policy and Program Developments in Response to the Concluding Comments of the CEDAW Committee on the Philippine Fourth Report.")
- ⁵¹ Magna Carta of Women, Republic Act No. 9710, Section 2, Declaration of Policy (2009).
- ⁵² Magna Carta of Women, Republic Act No. 9710, Section 2, Declaration of Policy (2009).
- ⁵³ Magna Carta of Women, Republic Act No. 9710, Section 19, Equal Rights in All Matters Relating to Marriage and Family Relations (2009).
- ⁵⁴ Please see the discussion below regarding inequality in parental authority and property management.
- ⁵⁵ Please see below for a detailed discussion of the various discriminatory provisions.
- ⁵⁶ Philippines CEDAW Report, para. 121.
- ⁵⁷ The Constitution guarantees women's "equal protection" (CONST. (1987), Art. III, 1) and "fundamental equality before the law" (*Id.* Art. II, 14.).
- ⁵⁸ The Organic Act, governing the Muslim autonomous region, prohibits discrimination against women (Organic Act, Arts. 3(5), 3(10)) and provides for women's "fundamental rights and equality" (*Id.* Art. 16(6)). The Organic Act pledges, "The Regional Government shall uphold and protect the fundamental rights of women and children. In no case shall [they] be . . . discriminated against." *Id.* at Art. 3(10).
- ⁵⁹ Under the ICCPR, "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law." ICCPR, Art. 26. This almost precisely echoes the UDHR: "All are equal before the law and are entitled without any discrimination to equal protection against any discrimination." UDHR, Art. 7. Under CEDAW, "State parties shall accord to women equality with men before the law [and] . . . a legal capacity identical to that of men." CEDAW, Art. 15(1).
- ⁶⁰ Central Bank Employees Ass'n, Inc. v. Bangko Sentral ng Pilipinas, G.R. No. 148208, 446 SCRA 299, 388. (Dec. 15, 2004) (quoting JOAQUIN G. BERNAS, S.J., THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, 160 (2003)).