



PERMANENT MISSION OF THE REPUBLIC OF THE PHILIPPINES
TO THE UNITED NATIONS AND OTHER INTERNATIONAL
ORGANIZATIONS, GENEVA

NV-EPG-25-2018

The Permanent Mission of the Republic of the Philippines to the United Nations and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and, further to the former's Note Verbale No. NV-EPG-305-2017 dated 24 November 2017 (copy attached), the Government of the Philippines provides the attached additional information in response to the concern raised by Ms. Alda Facio, Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice, concerning the criminalization of adultery in the Philippines under the Revised Penal Code.

The Government of the Philippines wishes to highlight its strong advocacy on women's rights. In the spirit of constructive engagement, the Mission of the Philippines conveys the commitment of the Philippines to promote, protect and fulfil human rights of its people, in particular on women's rights, as well as its commitment to uphold international human rights obligations. In this context, the Government of the Philippines calls on the Special Procedures mandate holders to be cognizant of cultural differences and to respect differences in national circumstances.

The Permanent Mission of the Republic of the Philippines to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 02 February 2018

Office of the United Nations High Commissioner for Human Rights

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Eliminating Discrimination against Women in the Revised Penal Code (RPC): Decriminalizing Adultery and Concubinage

The Government of the Philippines acknowledges, with appreciation, receipt of a letter dated 14 November 2017 from Ms. Alda Facio, Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice, concerning the criminalization of adultery in the Philippines under the Revised Penal Code. This information is in addition to the earlier response provided by the Permanent Mission of the Philippines to the UN and Other International Organizations in Geneva in Note Verbale No. NV-EPG-305-2017 dated 24 November 2017.

As state party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Philippine Government continues to uphold its commitments and obligations to promote the rights of women and protect them from all forms of discrimination.

The Philippine Government recognizes that existing provisions under the Revised Penal Code, specifically Articles 333 and 334, present discrimination against women as offenders and aggrieved parties in cases of adultery and concubinage. Women offenders are more likely to be prosecuted for adultery as the overt act required for the commission of the crime is simply sexual infidelity, whereas in concubinage, this act alone does not constitute the crime as defined under Article 334. Due to the disparity of elements in the penal provisions, offenders under the crime of adultery may be prosecuted for each extra-marital sexual act. In effect, the offender-wife and her paramour may be sued several times for adulterous acts committed during their affair, while in concubinage, the offender-husband is only liable for the entirety of the affair under the first and third grounds stated in the Revised Penal Code.

Furthermore, the evidence necessary to warrant conviction of concubinage charges is comparatively greater than in cases of adultery which only requires proof that the wife had extramarital sexual intercourse. Hence, proving the crime of concubinage in court is more difficult as opposed to the crime of adultery.

The Philippine Government recognizes the need to review and repeal discriminatory provisions such as Articles 333 and 334 of the Revised Penal Code in pursuit of the fundamental state policy: "The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men." (Sec. 14, Article II of the 1987 Constitution). Furthermore, the justification for gender bias in imposable penalties, as first laid down by the Supreme Court in 1911, may no longer be applicable today, considering the existence of recent legal mechanisms for establishing the paternity and filiation of children, namely: Articles 172, 173, and 175 of the Family Code and Section 9(c) of the Rule on DNA Evidence (A.M. No. 06-11-5-SC).

The Philippines ratified the CEDAW in 1981, making the Philippines the first ASEAN member state to incorporate the international human rights treaty as part of its own domestic law. As state party to the CEDAW, the Philippines undertakes to: repeal all penal provisions, which constitute discrimination against women (Article 2.g.); and adopt appropriate measures to eliminate discrimination against all matters relating to family relations and to ensure on the basis of equality of men and women...the same rights and responsibilities during marriage and its dissolution (Article 16.1.c).

It is important to note that the Philippines is also a state party to the International Covenant on Civil and Political Rights (ICCPR), which it ratified in 1986. The treaty commits states parties to respect the rights stated therein, which include the protection of privacy under Article 17 of the covenant, to wit, "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation; and 2. Everyone has the right to the protection of the law against such interference or attacks."

The ICCPR also established a Human Rights Committee, which decides complaints on violations of the covenant, and issue an authoritative interpretation of the treaty as well as recommendations to the State party. In one such case (*Toonen vs. Australia*, Communication No. 488/1992), the Committee opined: "Inasmuch as article 17 is concerned, it is undisputed that adult consensual sexual activity in private is covered by the concept of 'privacy'." This decision establishes that criminalizing sexual acts between consenting adults interferes with their right to privacy and violates Article 17 of the ICCPR.

Correlatively, penalizing acts of marital infidelity, even when the punitive law is gender-neutral, infringes upon the rights of consenting adults to privacy. To address this as well as guarantee the equality of women and men before the law, the review and repeal of the discriminatory provisions in the RPC by the Legislature is only proper.

In view of the foregoing and line with its commitments and obligations under the CEDAW and the ICCPR, the Philippine Government endeavors to address discrimination against women as offenders and aggrieved parties in cases of adultery and concubinage. There have been several legislative proposals to enact a gender-neutral marital infidelity law, which would in effect, equalize the penalties imposable upon the guilty spouse, regardless of whether the spouse is the husband or wife. Following are some of the Government's initiatives and measures that aim to address the discrimination of women:

- Republic Act 9710 or the Magna Carta for Women (MCW) was enacted in 2009, paving the way for the development of plans, policies, programs, measures and mechanisms to address discrimination and inequality in the economic, political, social, and cultural life of women and men. A salient feature of the MCW is the statutory fiat, which requires initiating steps to review, and when necessary, amend and/or repeal existing laws that are discriminatory to women.

As provided in the Implementing Rules and Regulations of the MCW, the Philippine Commission on Women (PCW) is mandated to initiate, in coordination with concerned agencies and women's groups the review of existing laws and policies, and recommend to Congress and other appropriate bodies the repeal and amendment of discriminatory laws. The executive-legislative body is also required to prioritize bills that will amend or repeal discriminatory provisions of existing laws as identified under the IRR, which include Articles 333 (Adultery) and 334 (Concubinage) of the Revised Penal Code.

Addressing the issue of inequality before the law manifests the Philippine Government's response to its international commitments, particularly the CEDAW Committee in its 36th Session in 2006 and to the UN Human Rights Council on its first Universal Periodic Review in 2009. Steps taken in this

context also reflect the Government's recognition of the human rights guaranteed under the ICCPR as well as the International Covenant on Economic, Social and Cultural Rights (ICESR).

- In 2016, the PCW, launched the Women's Priority Legislative Agenda (WPLA). The WPLA is a set of proposed topics of bills that seeks to amend or repeal the discriminatory provisions of existing laws and moves for the formulation and adoption of new legislations that promote women's empowerment and gender equality.

The WPLA for the 17th Congress, composed of 12 legislative agenda, is a result of a series of consultations with various local women's groups in three key cities in Luzon, Visayas and Mindanao and a careful deliberation based on specific criteria to strategically address women and gender equality issues and concerns across the country.

Under the WPLA, the PCW recommends the decriminalization of marital infidelity through the removal of the provisions on adultery and concubinage from the Revised Penal Code. Taking into consideration that marital infidelity results in the violation of marriage contract, the liability of the offending spouse and his or her paramour should only be civil in nature.

Regardless of the decriminalization of adultery and concubinage, such acts should still have the following legal effects:

1. Adultery and concubinage shall still be deemed as unlawful under the Family Code, and remain as a ground (sexual infidelity or perversion) for legal separation, and/or a possible manifestation of psychological incapacity as a ground for declaration of nullity of a marriage;
2. Marital infidelity (concubinage) shall continue to be treated as an act of psychological violence against women under RA 9262 (Anti-Violence Against Women and Their Children Act), a special law that: penalizes acts of physical, sexual, and psychological violence as well as economic abuse against women and their children; provides relief in the form of damages, protection orders, as well as mandatory services for victims;
3. Sexual infidelity (adultery or concubinage) shall continue to be one of the bases for an aggrieved/offended/victimized spouse to sue for damages under the Civil Code (i.e. psychological pain and suffering) against the offending/guilty spouse and the third party involved (alienation of affections under Article 26).

While it is recommended that adultery and concubinage be no longer considered as criminal offenses, these should still have legal implications in special laws such as Republic Act 9262 or the Anti-Violence Against Women and their Children Act of 2004, Family Code and the Civil Code.

- Along with the launch of WPLA in 2016, legislative proposals to repeal Revised Penal Code provisions on adultery and concubinage were filed in the bicameral Congress (both the Senate and House of Representatives). These bills are pending in the 17th Congress:

**House of Representatives Bills Referred to the
House Committee on Revision of Laws**

Number	Title	Status	Principal Author/s
HB101	An Act Decriminalizing Adultery And Concubinage, Amending For The Purpose Articles 333 And 334 Of The Revised Penal Code	Pending with the Committee on REVISION OF LAWS since 2016-07-26	De Jesus, Emmi A.; Brosas, Arlene D.
HB218	An Act Defining The Crime Of Sexual Infidelity And Providing Penalties Therefor, Amending For The Purpose Article 333 (Adultery), Article 334 (Concubinage) And Articles 344 And 345 Of Title Eleven, Book II Of Act No. 3815, As Amended, Otherwise Known As The Revised Penal Code	Pending with the Committee on REVISION OF LAWS since 2016-07-26	Villarica, Linabelle Ruth R.
HB759	An Act Defining The Crime Of Sexual Infidelity And Providing Penalties Therefor, Amending For The Purpose Article 333 (Adultery), Article 334 (Concubinage) And Articles 344 And 345 Of Title Eleven, Book II Of Act No. 3815, As Amended, Otherwise Known As The Revised Penal Code	Pending with the Committee on REVISION OF LAWS since 2016-07-27	Aglipay-Villar, Emmeline

**Senate Bill Referred to the
Committee on Women, Children, Family Relations, and Gender Equality**

Number	Title	Status	Author
SB409	An Act Changing The Crime Of Concubinage Into Marital Infidelity, Amending Articles 333 And 334 Of Act No. 3815, As Amended, Otherwise Known As The Revised Penal Code	Pending in the Committee on Women, Children, Family Relations, and Gender Equality 2016-08-08	Legarda, Loren B.

Ensuring the equality of women before the law remains of paramount importance to the Government as duty-bearer of rights. The Philippine Government continues to review and repeal laws that are discriminatory in nature. The Government also continues to work for the fulfillment of women's rights, gender equality and women empowerment, as can be gleaned from various proposed legislative measures filed in Congress, such as increasing and harmonizing the maternity leave of those working in the government and private sectors, eliminating discrimination against women in the Revised Penal Code: decriminalizing adultery and concubinage and enacting an anti-discrimination law based on sexual orientation and gender identity. The proposed legislations seek to repeal discriminatory provisions of existing laws, as well as formulate and adopt legislations that would promote women's empowerment and gender equality.

The Philippines reaffirms its commitment to implement its international human rights treaty obligations, including the Convention on the Elimination of All Forms of Discrimination Against Women and the International Covenant on Civil and Political Rights.



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NV-EPG-305-2017

The Permanent Mission of the Republic of the Philippines to the United Nations and Other International Organizations in Geneva presents its compliments to the Office of the UN High Commissioner for Human Rights (OHCHR) and, with reference to the letter dated 14 November 2017 from Mr. Karim Ghezraoui, Officer-in-Charge of the Special Procedures Branch of the OHCHR, transmitting the letter from the Working Group on the Issue of Discrimination Against Women in Law and in Practice on the criminalization of adultery in the Philippines (reference no. OL PHL 14/2017), has the honor to inform the OHCHR that the letter has been transmitted to the capital for consideration.

The Philippine Mission would like to cite that the Government of the Philippines has already addressed the concern of the Working Group in the National Report of the Philippines submitted to the OHCHR for the country's 3rd cycle UPR process in May 2017, wherein paragraph 69 stated as follows:

"The Philippine Commission on Women regularly formulates a Women's Priority Legislative Agenda (WPLA), a set of proposed bills that seek to amend or repeal the discriminatory provisions of existing laws and moves for new legislations that promote women's empowerment and gender equality. Included in the WPLA are bills amending the Anti-Rape Law, increasing maternity leave to 100 days, enacting the Anti-Prostitution Bill, and amending certain provisions of the Family Code and the Revised Penal Code."

Women's rights are a consistent key advocacy of the Philippines domestically, in bilateral and multilateral fora. The Philippine Government assures the Working Group on its unwavering commitment to promote, protect and fulfil the rights of women.

The Permanent Mission of the Republic of the Philippines to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to the United Nations Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 24 November 2017

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52 Rue des Paquis
CH-1201 Geneva

