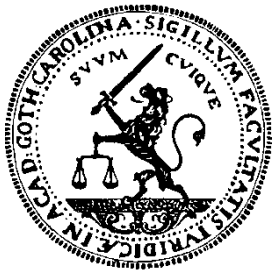

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Tackling Violence Against Women through Human Rights Law-Inspired Approaches (With Observations from the Philippines)

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…Mabuhay kayong lahat!

For my family – my parents, my sister and my son;
Thank you for you steadfast support and unwavering faith in me.

Summary

Violence against women ("VAW") is a global matter; and human rights law-inspired approaches, also universal in nature (it is argued), can be the missing link in tackling a global problem. In underlining the universal applicability of human rights standards, principles and norms; it is suggested that drawing inspiration from human rights-based approaches would contribute to implementation of holistic and wholesome methods through which victims of VAW can be better served and VAW in its entirety can be tackled, even preventatively. In emphasising the need to acquire a broader understanding of the nature of VAW, the far-reaching effects of such violence are discussed; as is discourse on 'VAW as torture'.

While the importance of the role of the criminal legal process is not disputed, the thesis takes as its point of departure from the inability of the criminal justice system to tackle VAW matters effectively. The critique is offered on two points - the inaccessibility of the criminal legal system, thereby restricting full or equal access to legal avenues; and victim stereotyping as an inhibiting factor to the legal process, whether before or during court proceedings.

Nonetheless, where the criminal law system and human rights law initiatives are combined and function in a complimentary manner, tackling VAW becomes a more fruitful affair. As such, the marrying of initiatives from the two sectors is proposed as a befitting method. The observations from the Philippines included herein are used to offer example of how such International Human Rights Law-inspired approaches would and could work in practice to serve, protect and prevent.

Abbreviations

CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CHR	Commission on Human Rights of the Philippines,
CHR3	Commission on Human Rights of the Philippines, Region 3
DSWD	Department of Social Welfare and Development of the Philippines
DVAW	Domestic violence against women
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FGM	Female genital mutilation
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTR	International Criminal Tribunal of Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
LACEM	League of Angeles City Entertainment Managers Inc.
MCW	Magna Carta of Women, Philippines Republic Act 9710
NGO	Non-governmental organisation
OHCHR	United Nations Office of the High Commissioner for Human Rights
PNP	Philippines National Police
RA 9262	Anti-Violence Against Women and Their Children Act, Philippines Republic Act 9262
SDGs	Sustainable Development Goals
SR	United Nations Special Rapporteur
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime
VAW	Violence against women
VAWC	Violence against women and their children

Chapter 1 - Introduction

The fight against violence against women ("VAW") is a continuing one. The multifaceted nature of VAW requires that all-encompassing methods be used to address it. Recognising that violence against women is a much more far-reaching issue than what legislation can encompass, this thesis seeks to offer ways of tackling the abuse. 'Tackling' this mammoth of an issue indeed requires that the victims are offered avenues of redress, but also that their well-being is taken into account – physical, psychological and otherwise. While doing so, the root of the problem needs to be addressed in order to curb the abuse altogether. As such, prevention is an important aspect of 'tackling'. It is the proposition of this thesis that drawing from inspiration from human rights law standards, principles and norms can aid in the effective tackling of matters relating to VAW.

Currently, the most common avenue of addressing violations that fall within the scope of VAW is through national criminal legal systems. The importance of the criminal law system in handling VAW related cases and providing redress is undisputed. However, this thesis takes as its point of departure, the impaired effectiveness of the criminal justice system in handling VAW matters. In doing so, it seeks to argue that there are issues pertaining to these abuses that the criminal law system cannot address as a stand-alone system.

It is as such proposed herein that what the criminal legal system cannot address can be navigated through methods inspired by human rights law. Not only that, but also, where the criminal law system and human rights law initiatives are combined and function in a complimentary manner, tackling VAW becomes a more fruitful affair. The merging of criminal law considerations and international human rights law discourse however, is not a common endeavour. The two, while having little to do with each other as separate bodies of law in the strict sense, intersect and crossover many a time due to the subject matters they often deal with. Nonetheless, this thesis attempts to marry the two so that perhaps then

instead of being treated as different and separate, they could be recognised as different yet complimentary.

When contemplating all the above, questions arise, such as: 'what is violence against women?', 'what needs to be addressed?', 'what is currently lacking?', 'what do international human rights law perspectives bring to the table?' and 'how would this work in practice?'. In seeking direction on the feasibility of pursuing this route, the strategies in place in the Philippines seem to have been following such all-encompassing course of action. The observations from the Philippines included herein are of corroborative value in demonstrating how such approaches inspired by international human rights law standards, principles and norms can be applied; and also in offering example of the edifying collaboration between law enforcement, the courts and human rights and social welfare actors.

a. Delimitations

The issue of VAW is presented herein as a global matter, and one that needs addressing across spaces and boundaries. It is in seeking to maintain global applicability that a range of international instruments, judicial precedent and other *voices* are engaged with before delving into the observations brought back from the Philippines.

The writer hereof will not attempt to navigate the extensive and multi-disciplinary [contra-]universality debate in its entirety as the particularities of the arguments, though carrying weight, go beyond the necessary scope of this paper. Chapter 2(c) seeks therefore to present the standpoint from which this thesis presupposes a common global understanding of International Human Rights Law ("IHRL") basic norms and standards through which issues pertaining to VAW can be effectively tackled.

It is important for the reader to note that this thesis will not be a full account of VAW in the Philippines. Findings from the Philippines are of corroborative value,

and will be presented after the reader has adequately been indulged in the conceptual background of the overall thesis topic. In so presenting, no legislative analysis producing recommendations for potential reform is offered.

b. Methodology

Chapter 2 begins with a discussion on ways to conceptualise violence, and violence against women. In order to do so I traced landmark decisions from international criminal tribunals that in acknowledging the existence of abuses targeted especially at women, set precedent. I also highlighted developments in the international scene, such as World Conferences, that helped propel focus on 'women's human rights'. This then leads into a discussion on 'VAW as torture', where with I relied on primary sources of international law, interpretations developed through the mandate of the United Nations Commission on Human Rights' Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and some contributions from both the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") Committee and the Committee against Torture.

The chapter continues with a discussion on IHRL, indulging the reader in the presupposed universal applicability of IHRL, 'humanity', and 'culture'. In capturing such a range of issues in limited space, relevant sources of law were used to form the foundation of such a topic – i.e. Conventions, Charters and Declarations. Thereafter I engaged notable scholarly work to consolidate the various aspects and thoughts that arose in the discussion.

Lastly in this chapter, on presenting the standpoint from which human rights law can be seen as holistic, I relied on approaches from the field of Development to the extent that they relate to the substance of human rights. The United Nations Declaration on the Right to Development[1] was used as a starting point for the

[1] 1986

discussion; where after relevant points and developments pertaining to the Sustainable Development Goals discourse were looked into.

Chapter 3 seeks to highlight two main points of "limitation" that exist in the criminal justice system in terms of effectively addressing VAW matters. In considering the elements that prevent women from gaining equal and full access to legal redress, the writer relied on her own prosecutorial knowledge of the criminal law process in identifying issues that commonly arise. Illustrations were availed through information from relevant Handbooks as well as case law.

Scholarly works and thoughts of feminist disposition were engaged in the discussion of victim stereotyping as a limitation of criminal law. Hilary Charlesworth has said that, "feminist methodologies challenge many accepted scholarly traditions." [2] Indeed no one particular (theoretical) approach is an entirely adequate tool; but in seeking to place emphasis on gender issues as being an important part of law and IHRL discourse, feminist epistemology – or feminist theories of knowledge if engaged, can unravel the layers of intersectionality within the topic herein. [3]

Additionally, precedent from the European Court of Human Rights and a Communication submitted to the CEDAW Committee were used to demonstrate the existence of elements of harmful stereotyping and 'myths' at play that affect

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[2] Hilary Charlesworth, "Feminist Methods in International Law", *The American Journal of International Law*, Vol. 93, No. 2 (April 1999): 379-394, at 380.

[3] Furthermore, Feminist theory provides several analytical methods (E.g. cultural, liberal, post-colonial theories; materialist, postmodernist approaches, African feminism, Black Feminist Thought; – e.g. Patricia Hill Collins, Matrix of Domination; Kimberlé Williams Crenshaw, Critical Race Theory, etc.) that can be applied to the legal discourse in order to rethink and broaden the understanding of discrimination of this nature. By allowing for the voices and experiences of women to be a part of a knowledge system, feminist methods, "emphasize conversations and dialogue … [challenge] the very categories of "law" and "non law" … seek to expose and question the limited bases of international law's claim to objectivity and impartiality and insist on the importance of gender relations as a category of analysis."
[Ref: Hilary Charlesworth, "Feminist Methods in International Law", 1999, at 379].
See also note 4 below for suggestion of further reading.

the victim-complainant. The use of human rights case-law to critique the criminal legal process seeks to accentuate the issue of victim stereotyping as inhibiting to the criminal legal process, thereby showing how one body of law can be of value to the other.

Finally, Chapter 4 containing the corroborative observations from the Philippines was compiled from immersion and interviews conducted in the Philippines for the purpose of this thesis. The chapter begins with summarised accounts of information gathered at each site-visit; and then continues with an account of the findings arranged thematically in order that the main points relevant for this thesis are easily identifiable. That is, the Mainstreaming of Human Rights; Holistic Approaches; and Law Enforcement and Criminal Justice. Before the round-up of the chapter, a narrative bringing to light the climate of Angeles City - which is anything but conducive to the flourishing of women's human rights, will be included herein as a result of independent (and unexpected) observations in the area. This 'Note', despite the satisfactory findings from the field research, is included because the researcher wishes to maintain criticality to the extent that it is possible[4].

Concluding remarks in Chapter 5 conclude the paper attempting to hone the range of considerations.

i. Empirical Methodology

It was through establishing a line of communication with the Commission on Human Rights of the Philippines' Regional Office Director that I discovered the significant impact human rights actors in the Philippines make locally through their work. It was also my understanding that in addition to having well-rounded

[4] For further reading on the feminist version of objectivity", "feminist critical empiricism", and the "objectivity problem", see: Donna Haraway, "The Science Question in Feminism and the Privilege of Partial Perspective", *Feminist Studies*, Vol. 14, No. 3 (Autumn1988): 575-599.

state initiated programs to protect and promote human rights, the population is aware of and in support of such initiatives.

The field research seeks to explore the work and perspectives of practitioners in relation to the overall research focus and was conducted mainly in the Pampanga province, in Region 3 on the island of Luzon, Central Luzon region. The Regional Office (Region 3, San Fernando) of the Commission on Human Rights of the Philippines ("CHR3") was the contact and host institution through which the following visits and interviews were facilitated during the month of March 2015:

- The Regional Office (Region 3) of the Commission on Human Rights of the Philippines ("CHR3"), San Fernando, Pampanga;
- The Department of Social Welfare and Development ("DSWD") Region 3, Regional Office, San Fernando, Pampanga;
- The Haven for Women, Malagang;
- Home for Girls, Tarlac City;
- Home for Girls, Palayan;
- The League of Angeles City Entertainers and Managers ("LACEM"), Angeles City[5];
- Barangay[6] Violence against Women and their Children's Desk ("VAWC"), Mabalacat;
- Philippine National Police ("PNP") Women's Desk, Mabalacat; and
- PNP Regional Head Quarters and the Head Quarters' Women's Desk, San Fernando, Pampanga.

In conducting a kind of thematic analysis[7], the study's *units of analysis*[8] were key practitioners of the abovementioned institutions. Such selection seeks to

[5] This was the only non-governmental agency that formed part of the observations.
[6] A "barangay" is one of the smallest units of local (governmental) administration in the Philippines. It is akin to a district and also exists in villages, i.e. "the village barangay".
[7] Jennifer Rowley, "Conducting Research Interviews" *Management Research Review*, Vol. 35 Issue 3/4 (2012): 260-271, at 268
[8] Rowley, "Using Case Studies in Research", at 19

adequately cater to the validity and reliability of findings. Interviews and discussions took place on-site at each location mentioned above, with the researcher travelling to the locale.

The interviews were not conducted in isolation; sufficient opportunity to observe first-hand the workings of the organisations and institutions also formed part of the research. Many of the visits included a tour of the property, facilities and the sharing of snacks and meals. Pleasant interaction with the residents of the Homes and the Haven; and sharing of information around the topic through good-natured conversation with officials from the Barangay and PNP authorities further contributed to a valuable research experience. Indeed the hosts and interviewees were hospitable and more than willing to share information and experiences.

For this qualitative analysis, both semi-structured and non-directive interview methods[9] were employed. An *aide-mémoire*[10] was used as a reminder of key focus areas and particular issues that needed probing, thereby leaving room for improvisation[11] and further in-depth inquiry. This open-ended approach suited the atmosphere and environments in which most interviews took place. Note taking was used as a way to record all the interviews, discussions and observations. Ethical considerations[12] such as ensuring informed consent; respect of privacy; confidentiality; and permission to conduct the research were considered and adhered to[13]. It was not deemed necessary to make use of a recording device.

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[9] David E. Gray, *Doing Research in the Real World*, 3rd Edition, (London, Thousand Oakes CA., New Delhi: Sage Publications, 2014), at 385-386

[10] *Ibid*, at 382

[11] *Ibid*, at 395

[12] For further ethical guidelines reference is made to Lund University's guidelines for ethics at:
http://www5.lu.se/upload/RULESandREGULATIONS/Ethical_issues_atLundUniversity_Notes_for_guidance.pdf (last accessed 2015- 05-06)
and see also the Swedish Research Council (ISBN: 91-7307-008-4). Selected translation of "Ethical Principles in Research in the Arts and Social Sciences" at:
http://www.liu.se/ikk/english/files/Course%20Webpages/english-2/1.206360/EthicalPrinciples.pdf (last accessed 2015- 05-06)

[13] Gray, Doing Research in the Real World, at 68-95

In order to fulfil the overall objectives of the thesis, the empirical research sought inquiry into, but not limited to, the following:

- Each institution's mandate and purpose;
- Demographics of the staff in terms of their training and human rights knowledge;
- To what extent each institutions' work is based on human rights-inspired approaches;
- In what manner and to what extent there is interaction with law enforcement and the courts;
- The involvement of other actors (and which actors);
- What and to what extent holistic[14] methods are employed in the daily work related to the victim-survivors of VAW;
- The challenges that exist (and where/if there are diverging opinions).

Such inquiry serves to provide insight into the different aspects to consider when seeking to implement mechanisms and strategies that would feasibly address matters to do with VAW, such as adequately catering to the needs of the victim-survivors. An account of different actors in the Philippines and the frameworks within which they are mandated to operate in relation to the present topic follows below.

c. The Philippines – Contextual Background

The Commission on Human Rights of the Philippines ("CHR") was constitutionally created as an independent office[15]. As stipulated in Section 18 of the Constitution of the Philippines, the Commission holds, with regard to its mandate on human rights promotion and protection, investigation,

[14] Holistic is used to relate to all areas and aspects of one's life, i.e. physical and mental health; personal security – both immediate and long-term; trauma and other psychological considerations. (See below Chapter 2(c)).

[15] Section 17, Article XIII, The 1987 Constitution of the Republic of the Philippines

recommendation, monitoring, educational and legal powers and functions.[16]The Philippines Constitution has seen three revisions – 1935, 1973 and 1986[17].It was only with the third revision that a human rights authority was created. This revision and creation came about in the aftermath of a two-decade long dictatorship regime in the country. As such, the need for such a body to give effect to the state policy concerning the respect for human dignity and human rights [18] was pressing. The CHR's special programs include a Right to Development Program, a Women's Rights Program Center, and a Barangay Human Rights Action Center[19].

The Philippines, a state party to the CEDAW Convention[20], has established its international law commitment to eliminate the discrimination of women through Republic Act 9710, i.e. the Magna Carta of Women ("MCW"). In addition to providing for equal opportunity and benefits in employment for women, and equal access to educational avenues; the legislation seeks to nurture public awareness on the dignity of women through the strategic engagement of mass media. On land and other contractual matters, the Act confers equal status to men and women. The MCW mandates the government to end discrimination against women through the review, amendment or repealing of discriminatory laws; and the adoption of gender mainstreaming strategies. The government's responsibilities extend to the setting up of necessary mechanisms through which to achieve its

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[16] *Ibid*, at Section 18

[17] Philippine Constitutions, The Official Gazette, The Republic of the Philippines, http://www.gov.ph/constitutions/ (last accessed 2015-06-17)

[18] Executive Order No. 163, 1987, "Declaring the Effectivity of the Creation of the Commission on Human Rights as Provided for in the 1987 Constitution, Providing Guidelines for the Operation thereof, and for other Purposes", http://www.chr.gov.ph/MAIN%20PAGES/about%20us/03exec_order.htm (last accessed 2015-05-17)

[19] Special Programs, Commission on Human Rights of the Philippines, http://www.chr.gov.ph/MAIN%20PAGES/services/special_progs1.htm (last accessed 2015-05-17)

[20] See: Convention on the Elimination of All Forms of Discrimination against Women, Chapter IV (8.), United Nations Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last accessed 2015-05-17)

mandate.[21] In upholding and protecting the rights of women, the MCW created a VAW Desk in every Barangay to serve women in abusive situations of VAW who are in need of assistance.[22]

Included in the Philippine legal framework is the Republic Act 9262 "Anti-Violence Against Women and their Children Act" of 2004. This piece of legislation seeks to eradicate violence against women and their children ("VAWC"), and is framed in such a way that it transcends the boundaries of the private and public divide. In doing so, it seeks to effectively tackle situations of domestic violence. The Act criminalises acts of physical, sexual and psychological violence, as well as economic abuse. Another noteworthy feature of the RA 9262 is its recognition of Battered Woman Syndrome. It also provides for the issuing of protection orders through various avenues.[23]

It is largely due to state and legal initiatives that the Philippines takes ownership of its commitment to safeguarding human rights. The progress that human rights actors have made in the country is quite remarkable. There are challenges (e.g. financial constraints, corruption, etc.) that do to a certain degree affect implementation, as is a common in many a place; but it is undeniable that 'human rights' resonates with the population and this alone is a peculiar accomplishment. Human rights, as it seems, is being mainstreamed successfully, largely due to the effective dissemination of information and the incorporation of human rights education across sectors. This I observed during the field research stay. For instance, the CHR3 regularly delivers human rights seminars and lectures to the residents of the Department of Social Welfare and Development ("DSWD") care facilities, the Philippine National Police ("PNP"), the National Air Force and so on. The League of Angeles City Entertainment Managers Inc. ("LACEM") also

[21] Republic Act 9710, Philippine Commission on Women, http://www.pcw.gov.ph/law/republic-act-9710 (last accessed 2015-05-21)
[22] See: Joint Memorandum Circular No. 2010-2, "Guidelines in the Establishment of a Violence Against Women (VAW) Desk in every Barangay", December 9, 2010, Republic of the Philippines.
[23] A Guide to Anti-Violence against Women and their Children (RA 9262), (Philippines, Philippine Information Agency: November 2004)

conducts lectures relevant to their client base and these include information on health and rights awareness.

In terms of social welfare, the DSWD is mandated, through Executive Order No. 221 to assist in "effectively implementing programs, projects, and services that will alleviate poverty and empower disadvantaged individuals, families and communities for an improved quality of life as well as implement statutory and specialized programs"[24]. The DSWD is the primary institution that provides for psychological-social interventions and case studies. Though it does not play an investigatory role, with regards to women, it provides community-based and residential care services for 'women in especially difficult circumstances',[25] among other services. Indeed the institution holds as one of its values the respect for human dignity[26].

The above forms a backdrop for the account included in Chapter 4.

[24] Executive Order No. 221, 2003, "Amending Executive Order No. 15 Series Of 1998, Entitled "Redirecting The Functions And Operations Of The Department Of Social Welfare And Development" ", The Official Gazette, The Republic of the Philippines, http://www.gov.ph/2003/06/30/executive-order-no-221-s-2003/ (last accessed 2015-05-17)

[25] Women, The Republic of the Philippines, Department of Social Welfare and Development, http://www.dswd.gov.ph/programs/community-based/for-women/ (last accessed 2015-05-17)

[26] Vision/Mission/Values, The Republic of the Philippines, Department of Social Welfare and Development, http://www.dswd.gov.ph/about-us/visionmissionvalues/ (last accessed 2015-05-17)

Chapter 2 – International Human Rights Law

Before entering into the discussion on International Human Rights Law ("IHRL") and holism, what is meant by violence against women ("VAW") for the present purposes will be looked into. This chapter will therefore begin by revealing the ways in which VAW can be perceived outside of any one definition, as it is necessary to expand upon the way of thinking about VAW in order that the true nature of the act/s are absorbed. The chapter will continue by tracing relevant developments in the international scene that lead to VAW becoming a human rights law issue, leaving developments within the realm of criminal law for later.

a. Understanding Violence Against Women

VAW is a term that is more often than not, misunderstood. It is often the case that is thought of in narrow terms, or solely in accordance with whatever law is in operation in a particular place, at a particular time. This section seeks to expand the meaning of violence in the context of VAW by exploring alternative ways of conceptualizing the violence. That is, through highlighting the effects that it would have on the person on the receiving end of the perpetrated act.

The judges in the European Court of Human Rights ("ECtHR") *Opuz vs. Turkey*[27] case, condensed it thusly:

> "However, before embarking upon these issues, the Court must stress that the issue of [domestic] violence, which can take various forms ranging from physical to psychological violence or verbal abuse, cannot be confined to the circumstances of the present case. It is a general problem which concerns all member States and which does not always surface since it often takes place within personal relationships or closed circuits and it is not only women who are affected. The Court acknowledges that

[27] *Opuz vs. Turkey*, Application No. 33401/02, final judgment 9 September 2009

> […] children, too, are often casualties of the phenomenon, whether directly or indirectly. Accordingly, the Court will bear in mind the gravity of the problem at issue when examining the present case."[28]

In engaging unconventional ways of perceiving what VAW is, a holistic standpoint will be taken - considering VAW for what it is in fullness, as opposed to restricting understanding of an/the act/s to a perpetrator/victim dichotomy (and indeed these acts being further restricted to an understanding that falls prey to the undue norms of a private/public space dichotomy).

i. Violence Against Women; A Matter for International Human Rights Law

In generally tracing the emergence of women's human rights in relation to VAW[29] at an international level, of great importance are the genocide and war crime Tribunals of the 1990s. The Tribunals contributed hugely to advancements in the international legal scene by setting precedents that provoked the then understanding of human rights related concepts, and indeed continue to challenge perceptions today. Of significance is the acknowledgement of, and the attention given to issues that particularly affected women. For instance, in judicial decisions from both the Rwanda (ICTR) and former Yugoslavia (ICTY) Tribunals, acts of sexual violence against women as serious war crimes were upheld. Take the *The Prosecutor vs. Jean-Paul Akayesu*[30] case as an illustration. The ICTR indeed went above and beyond by naming rape as torture, and in so doing set the scene for likening VAW to torture (further discussed below):

> "The Tribunal considers that rape is a form of aggression. … The United Nations Convention Against Torture and Other Cruel, Inhuman and

[28] *Ibid* at para. 132
[29] See: Alice Edwards, *Violence Against Women under International Human Rights Law,* (New York: Cambridge University Press, 2011), at 7-12.
[30] Case No. ICTR-96-4-T, 2 September 1998, International Criminal Tribunal for Rwanda.

> Degrading Treatment or Punishment does not catalogue specific acts in its definition of torture, focusing rather on the conceptual framework of state-sanctioned violence. … Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. […] The Tribunal defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive…"[31]

Whether the international community was ready or not for these interpretations, such decisions set precedent at a crucial time - even if criticisable. The ICC's Rome Statute kept running with the baton with regards to keeping the momentum of (sexual) VAW in genocide and war crime contexts, and the future will tell of its continued progress.

In non-conflict contexts, indeed those sitting at the discussion tables at the World Conferences [Mexico City 1975, Copenhagen 1980, Nairobi 1985, Beijing 1995 [32]] were valuable at putting relevant issues atop the agenda – the Beijing Conference being a major catalyst. The previously mentioned 1993 World Conference on human rights that produced the Vienna Declaration aided in elevating women's human rights matters at an international level. In an all-encompassing language the Vienna Declaration provides:

> "The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal

[31] *Ibid,* at para. 597, 598
[32] See generally: UN Women, "World Conferences on Women", http://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women (last accessed 2015-05-06)

> participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.
>
> Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support."[33]

In terms of practical advancements, the CEDAW Committee (the "Committee") that functions as the watchdog of the CEDAW Convention[34] is probably the most identifiable actor on the international scene [though the Convention is not always accepted in entirety, if at all it is[35]]. The Committee reviews national reports from State parties to the Convention; makes recommendations to State parties; and issues Concluding Observations[36]. In addition to this, the Committee has a complaints procedure that allows for individual complaints; inter-state complaints; and a procedure permitting inquiries into a situation in a state to be initiated by the Committee[37].

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[33] Report of the World Conference on Human Rights, at para. 18, page 25

[34] 1981; Optional Protocol to the Convention entered into force in 2000.

[35] For a country-by-country list of Reservations see: "Declarations, Reservations and Objections to CEDAW", UN Women, http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm (last accessed 2015-05-10)

[36] See: "Committee on the Elimination of Discrimination against Women", UN Women, http://www.un.org/womenwatch/daw/cedaw/committee.htm (last accessed 2015-05-10)

[37] See: "Human Rights Bodies Complaints Procedures", United Nations Office of the High Commissioner for Human Rights, http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#inquiries (last accessed 2015-05-10)
See also, the Optional Protocol to the CEDAW Convention.

There is indeed much more to be said about the range of different actors, scholars, practitioners and activists who strived to see the equality and empowerment of women realised. The above shall however suffice in so far as providing an overview of some key points for further consideration.

ii. Violence Against Women as torture

The purpose of including this section in the present paper is to give this still emerging interpretation due cognizance and show the place of such discussion in the overall discourse regarding the understanding of VAW. The growing acceptance of VAW being perceived as a form of torture, or akin to torture, or containing elements tantamount to torture, is largely due to the progressive contributions of legal scholars, feminist scholars and indeed international law practitioners. This section will focus more on the international law-based discourse in favour of such interpretation.

Traditionally, torture is understood to occur in detention settings and/or be carried out by public actors. However, from the definition of 'torture' set out in Article 1[38] of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT")[39], the United Nations Special Rapporteur (the "SR") on torture and other cruel, inhuman or degrading treatment or punishment identifies four elements that are required to meet the threshold that would constitute 'torture': "severe pain and suffering, physical or mental; intent;

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[38] Article 1(1):
"For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

[39] 1987

purpose; and state involvement.[40] The SR relates these elements to the suggested criterion of 'powerlessness', which when tested in the context of *private violence* (i.e. in the home/community), is fulfilled, "if it is found that a victim is unable to flee or otherwise coerced into staying by certain circumstances".[41]

The SR further explains that 'powerlessness' allows for aspects that constitute the victim's status in the particular situation to be taken into consideration, e.g. age, physical and mental health, religion, etc. In the Report the SR explains that in cases of VAW, the element of intent is implied and therefore fulfilled if the acts can be shown to be discriminatory, i.e. have a gender-specific element.[42] (It has been established in General Recommendation No. 19 by the CEDAW Committee that, "Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1[43] of the [CEDAW] Convention."[44])

Lastly, the SR further makes the following important observations regarding domestic violence, female genital mutilation and human trafficking and the connection thereof to 'torture':

a. "Domestic violence, as well as torture, tends to escalate over time, sometimes

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[40] "Promotion and Protection Of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment", Manfred Nowak, Human Rights Council, United Nations General Assembly, A/HRC/7/3, 15 January 2008, at 6

[41] *Ibid*, at 7

[42] Ibid

[43] Article 1:
"For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

[44] CEDAW General Recommendation No. 19, Violence Against Women, para. 7

resulting in death or leaving women's bodies mutilated or permanently disfigured. Women who experience such violence, whether in their homes or in a prison, suffer depression, anxiety, loss of self-esteem and a feeling of isolation. Indeed, battered women may suffer from the same intense symptoms that comprise the post-traumatic stress disorder identified in victims of official torture as well as by victims of rape"[45]

b. "Like torture, female genital mutilation ("FGM") involves the deliberate infliction of severe pain and suffering. The pain is usually exacerbated by the fact that the procedure is carried out with rudimentary tools and without anaesthetic. Many girls enter a state of shock induced by the extreme pain, psychological trauma and exhaustion from screaming. …some studies have found an increased likelihood of fear of sexual intercourse, post-traumatic stress disorder, anxiety, depression and memory loss, and that the cultural significance of the practice might not protect against psychological complications …The pain inflicted by FGM does not stop with the initial procedure, but often continues as ongoing torture throughout a woman's life. … Many special procedures have found that female genital mutilation may constitute torture"[46]

c. " …Victims of human trafficking are very often kept in forced confinement… During the exploitation phase victims are often forced to work up to 18-24 hours per day and subjected to severe forms of physical and mental violence, including beatings, sexual abuse, humiliations and threats that may amount to torture or at least cruel, inhuman and degrading treatment… Psychological problems observed in victims of trafficking include post-traumatic stress disorder, depression, overwhelming shame, loss of self-esteem, loss of sense of safety, dissociation, anxiety and phobias… "[47]

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[45] "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment", at 14
[46] *Ibid,* at 17, 18
[47] *Ibid,* at 19

The above account of the cause, pattern and immediate/extended effect of the violence takes the reader through the steps from the threat, existence of the 'powerlessness' element, the physical violence, to the prolonged or extended outcome that surfaces as [an] effect(s) of the violence. This is indeed an acceptable explanation and a holistic way of approaching the fullness of the egregious issues of VAW in relation to torture. Though limited to the context of the public/state space, the Committee Against Torture has recently begun shifting towards interpreting rape and other acts of VAW as torture.[48] It is nonetheless the overall guidance of the SR that, "…Effective legal, preventive and protective measures should be put in place to protect women against all kinds of violence, including violence and abuse in the domestic sphere and in employment."[49]

Albeit being aware of the complexities that attributing VAW to a torture interpretation may present on legal or other fronts, it is my opinion that the basic need is a mental shift. Idealistic perhaps, but there is no other boundary besides that of perception that prohibits human kind from accepting that VAW even when occurring outside of the public sphere is, or can be a form of torture. In essence what does it matter who commits the act; it is the perpetration of the acts themselves that should be put into question and subject to accountability measures. Recognition of this complex phenomenon is indeed the first step.

In a 1990 speech reproduced in one of Catharine A. MacKinnon's books, the matter is presented thusly:

> "When torture is sex-based, human rights standards should be recognized as violated, just as much as when torture is based on anything else […] The torturer has absolute power, which torture victims believe in absolutely and utterly. […] Verbal abuse and humiliation, making the

[48] See generally: Alice Edwards, Violence Against Women under International Human Rights Law, at 223-227

[49] General Recommendations of the Special Rapporteur on torture, United Nations Office of the High Commissioner for Human Rights, http://www.ohchr.org/Documents/Issues/SRTorture/recommendations.pdf (accessed 2015-04-28), para. c

> victim feel worthless and hopeless, are integral to the torturer having its intended effect. […] The generally recognized purpose of torture is to control, intimidate, or eliminate those who insult or challenge or are seen to undermine the powers that be …"[50]

It is certainly the case that within the ambit of VAW there are divisions of the *kind* of violence. In practice, it may be indeed the case (despite international legal instruments providing for the equal standing of all rights [and violations alike]) that the general perception of sexual vs. intimate relations violence vs. FGM vs. trafficking vs. forced sterilization and so on, is capable of arriving at different conclusions. Also with some being more likely to be perceived as akin to 'torture' than others.

This look into some of the discourse in support of VAW being perceived as torture merely scratches the surface of the entire exchange into this matter – it is certainly not without its critics. The writer again acknowledges that the legal consequences of such perception are largely unexplored and could be potentially vast. Nonetheless, for the extensive effects that acts of abuse has and can have on women, and the element of a power play, the writer hereof accepts and recognises that VAW is, and should be perceived as constituting acts of torture.

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If acts of violence that are perpetrated against women and girls are understood as able to affect every aspect of the lives and well-being beyond the physical, understanding the need to advocate for holistic responses to tackle VAW would be an uncontested expectation. The Canadian Supreme Court judges, in allowing an appeal to go forward in a sexual assault case, were of the disposition that, "…violence against women is as much a matter of equality as it is an offence

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[50] Catharine A. MacKinnon, *Are Women Human? And Other International Dialogues*, (Cambridge MA: The Belknap Press of Harvard University Press, 2007), at 17 and 18

against human dignity and a violation of human rights."[51] In concurring with the judges, the following two sections attempt to formulate the basis upon which such a statement is or can be built.

b. International Human Rights Law for All

The premise of the universality of human rights is difficult territory to navigate especially in today's globalised and increasingly multicultural world. Those arguing from relativist and universalist perspectives are among the strongest opponents to the concept of the universal applicability of human rights standards and norms. 'Westernalism', the defence of 'culture', and religion are often the reasons (or the excuses) relied upon for avoiding observance of international human rights standards, the expressions of Reservations in the context of international law, or outright non-compliance[52].

The Universal Declaration of Human Rights (the "UDHR")[53], as it sets a common standard of achievement[54], is widely accepted as a starting point for a discussion on the basis of IHRL standards and principles. The Preamble of the UDHR starts off by establishing the "inherent dignity" and "equal and inalienable rights of all members of the human family"; and highlighting the importance of a global common understanding of human rights. Emerging in the aftermath of the Second World War, the UDHR became the first international legal instrument that through its provisions expressed the equal entitlement of every human being to a common standard of rights. Instruments that were drafted and adopted later in

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[51] *R v. Ewanchuk* [1999] 1 S.C.R. at 362

[52] On this An-Na'im has written that, "the charge that [cultural relativism] may breed tolerance for injustice is a serious one…"
Ref: Abdullahi A. An-Na'im, "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: the Meaning of Cruel, Inhuman or Degrading Treatment or Punishment," in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, ed. Abdullahi An-Na'im, 25, (Philadelphia: University of Pennsylvania Press, 1992)

[53] Adopted 1948

[54] See Universal Declaration of Human Rights ("UDHR") Preamble

time brought more specific and in-depth issues to the forefront as the need arose - notably so the 1966 Covenants on Civil and Political Rights (ICCPR) and then, Economic, Social and Cultural Rights (ICESCR). Indeed "tailor-made" regional instruments have since been adopted as well, and have seen to the establishment of regional human rights courts and mechanisms – e. g. The 1950 European Convention on Human Rights; The 1969 American Convention on Human Rights; and the 1986 African ("Banjul") Charter on Human and Peoples' Rights.

The 1993 Vienna World Conference on Human Rights convened by the UN General Assembly, brought state officials together with solely human rights on the agenda. This high-level engagement occurred at time in history when women's human rights and gender equality was increasingly becoming a salient global issue. The World Conference saw the adoption of the Vienna Declaration and Programme of Action (the "Vienna Declaration")[55], which affirms that, "all human rights derive from the dignity and worth inherent in the human person …". Notwithstanding that the Vienna Declaration clearly provides that: "The universal nature of these rights and freedoms is beyond question.[56] […] All human rights are universal, indivisible and interdependent and interrelated. […]"[57]; the concept of the universal applicability of IHRL standards and norms is widely debated[58].

VAW is a universal concern and needs to be tackled by a universal language – 'humanity'. If human rights are grounded in 'humanity', human rights law-inspired approaches to tackling VAW can be embraced as being an appropriate and holistic solution. If understood purely as being built on basic and common principles of humanity (and arguably morality[59]); is what is contained in 'human

[55] Report of the World Conference on Human Rights, Report of the Secretary-General, Vienna 14-25 June1993, A/CONF.157/24, 13 October 1993
[56] See para. 1
[57] See para 5.
[58] The debates mostly center on the hurdles that are presented when navigating diverse cultures and rigid political dynamics.
[59] The relativist position challenges the existence of a common morality, often arguing that the lines of morality are drawn in different places in different cultural contexts.

rights' concepts not common to all, i.e. universal in nature? Admittedly an oversimplification - but perhaps a necessary one to make (the case against violence may be that simple).

Consider:

> "Many beliefs about what is good for every human being and, especially, many beliefs about what is bad for every human being are widely shared across cultures."[60][…]
>
> "Some needs are universal and not merely local in character. Some needs are human. …"[61]

Therefore, in leaning towards a natural law position, this paper relies on the fundamental of the existence of a common morality and humanity (- common good) among peoples[62].

> "…It cannot seriously be denied-or, perhaps it should be said that the denial should not be taken seriously-that human beings are all alike in at least some respects such that there are some things that are good and some things that are bad for every human being-some things that serve and some things that disserve the well-being of every human being. Some things are good and some things are bad, not merely for some human beings, but for every human being. If every human being is sacred, some things -some practices - ought not to be done to any human being, because the practice is bad for every human being; some practices ought to be done for every human being, at least in part because the practice is good for every human being. Human beings are all alike in some respects that support

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See generally as a starting point: Michael J. Perry, "Are Human Rights Universal? The Relativist Challenge and Related Matters", *Human Rights Quarterly*, Vol. 19, No. 3 (August 1997): 461-509

[60] Michael J. Perry, "Are Human Rights Universal? The Relativist Challenge and Related Matters", *Human Rights Quarterly*, Vol. 19, No. 3 (August 1997): 461-509, at 483

[61] *Ibid*, at 475

[62] In opposition to this is the "anti-essentialist" position that basically rejects the existence of any common need or good among humans.
See generally: Michael J. Perry, "Are Human Rights Universal?"; and scholarly works by Martha C. Nussbaum.

> generalizations both about what is good and about what is bad, not just for some human beings, but for every human being…"[63]

It must however be acknowledged that there is another level to the above, and that is when faced with "transcultural disagreement" regarding the specifics – "*what things* are bad and *what things* are good for every human being" [emphasis added][64]. It is here that the human rights practitioner must be artful and sensitive, and learn the skill of mediating culture[65].

In suggesting the [human-rights]-size-fits-all approach, it is not to say that different shades of the product are not available. The Human Rights regime being universal in nature does not mean that it is rigid or unable of embracing (or indeed, navigating) different landscapes, climates, identities and (cultural[66]) systems[67]. Professor Sally Engle Merry reasons thusly:

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[63] Michael J. Perry, "Are Human Rights Universal?", at 471
Perry goes on:
"It is one thing to insist that conceptions of human nature are irreducibly contingent, that they-like the languages, the vocabularies, in which the conceptions are expressed-bear the traces of particular times and places, of particular histories and cultures; it is another thing altogether to insist that there is no such thing as human nature." (*Ibid,* at pg 478)

[64] Michael J. Perry, "Are Human Rights Universal?", at 484

[65] The term 'mediation of culture' was used by Christian Reus-Smit in an essay in which deliberates on international law and culture. The aim of the essay is to present "international law as a mediating social institution, one that structures global cultural interaction and negotiation."
Ref: Christian Reus-Smit, "International Law and the Mediation of Culture", *Ethics and International Affairs,* 28, No. 1, (2014): 65-82
The term 'mediation of culture' in the present chapter should not be taken in reference to Reus-Smit's essay. The writer hereof wishes to point out that the mention of the term in whatever variation herein is not with the same intention or purpose as in Reus-Smit's essay.

[66] Sally Engle Merry rightly observes that, "there is a critical need for conceptual clarification of culture in human rights practice".
See: Sally Engle Merry, "Human Rights and Gender Violence", in *International Human Rights*, Philip Alston and Ryan Goodman, 540 (Oxford, United Kingdom: Oxford University Press, 2013)

[67] This is the point at which the need for tailor-made responses comes in.

> "Culture […] does not serve as a barrier to human rights mobilization but as a context that defines relationships and meanings and constructs the possibilities of action. … Human rights law is itself primarily a cultural system. Its limited enforcement mechanisms mean that the impact of human rights law is a matter of persuasion rather than force, of cultural transformation rather than coercive change. Its documents create new cultural frameworks for conceptualizing social justice." [68]

As an illustration, the language in international legal instruments is universal in tone – referring to "all" and "everyone". Then, although the human rights principles of equality and non-discrimination are in no way downplayed in the Banjul Charter for example, as there are several characteristics that set the Charter apart, it can be said that this regional instrument is an example of 'tailor-making'.

For instance, chapter II of the Banjul Charter begins with Article 27(1):

> "Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community."

Likewise, Article 29(1):

> "The individual shall also have the duty to […] respect his parents at all times, to maintain them in case of need".

To those not familiar with the African social context and the role of the family these provisions may seem out of place in an international legal instrument. Even so, one point of view in explaining the relevance of the wording therein is that, such inserts effectively brings responsibility to family to the forefront of the dialogue on human rights by serving as a reminder to the African peoples' that

[68] Sally Engle Merry, "Human Rights and Gender Violence", 539, 541

amongst other values of (cultural or human rights) that would resonate, 'charity begins at home'.[69]

Professor Federico Lenzerini offers a clear logic for diversified methods and that is basically (in referring to the provisions contained within the UNESCO Universal Declaration on Cultural Diversity and the UDHR) that the protection of cultural diversity relies on the safeguarding of cultural rights[70]. He goes on:

> "In fact, if we assume that, 1) cultural diversity is a value safeguarded by international law; and 2) proper safeguarding of cultural diversity necessarily presupposes the protection and realization of cultural rights, the inescapable consequence is that cultural rights must assume different shades – i.e. must be the object of a differentiated application – in the light of cultural differences."[71]

To acknowledge the need for states, nations and peoples to define their own methods[72], this paper will suggest that tailor-made approaches, based on common international human rights law principles, standards and norms be created where necessary. Not only is such innovation sustainable, but a society also needs to be able to mould solutions to respond to the specific needs, in that place and at that time – albeit without neglecting the essence of human rights. As Professors An-Na'im and Hammond put it: "The way to get a universal idea accepted locally is to present it in local terms, which can best be done by local people…"[73].

To clarify, 'tailor-made' methods presented "in local terms", or "differentiated application", is in no way to be understood as permitting the watering down of

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[69] Adapted from: Azaliah Mapombere, unpublished, Question 2 JAMR24 Final Exam, Advanced Human Rights Law course, Lund University, March 2014

[70] Federico Lenzerini, *The Culturalization of Human Rights Law* (Oxford, United Kingdom: Oxford University Press, 2014), 134

[71] Lenzerini, The Culturalization of Human Rights Law, 134

[72] This is important also in international law terms, when considering state sovereignty and the margin of appreciation.

[73] Abdullahi A. An-Na'im and Jeffrey Hammond, "Cultural Transformation and Human Rights in African Societies", in *Cultural Transformation and Human Rights in Africa*, ed. Abdullahi A. An-Na'iam, 13, (New York, USA: Zed Books Ltd. 2002)

human rights standards and norms; nor does it leave room for excusing discriminatory and harmful practices, non-compliance, non-observance or circumvention. Such proposition therefore does not encourage a pro cultural relativist partisan approach, but instead seeks to mobilise understanding through the mediation of culture (i.e. local culture and international human rights law culture) and the appropriate use of language in a know-your-audience manner. It is a matter of positive translation –perhaps of pluralism[74], if you will; but above all, of gaining acceptance and legitimization of norms.

The uphill exercise entailed in achieving this balance while trying to maintain effectiveness is certainly acknowledged. Sally Engle Merry captures the complexities of the exercise thusly:

> "…Human rights ideas… do not translate easily from one setting to another. If human rights ideas are to have an impact, they need to become part of the consciousness of ordinary people around the world. …
>
> Activists who use human rights for local social movements face a paradox. Rights need to be presented in local cultural terms in order to be persuasive, but they must challenge existing relations of power in order to be effective."[75]

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[74] On pluralism of human good Michael J. Perry writes:
"Undeniably, then, any plausible conception of human good must be pluralist. A conception of human good, however, can be, and should be, universalist as well as pluralist: it can acknowledge sameness as well as difference, commonality as well as variety. … Moreover, a healthy pluralism about human good is consistent with a realistic universalism about human good and does not support, and should not be confused with, the relativist challenge. … To reject the relativist challenge to the idea of human rights … not to deny that there can be, and are, deep differences about human good. Different people, different cultures, different traditions have different views about the way or ways of life that are good or fitting, not merely for themselves, but for any human being and for any human community. …"
Ref: Michael J. Perry, "Are Human Rights Universal? The Relativist Challenge and Related Matters", *Human Rights Quarterly*, Vol. 19, No. 3 (August 1997): 461-509, at 473, 481 and 482

[75] Sally Engle Merry, "Human Rights and Gender Violence", in *International Human Rights*, Philip Alston and Ryan Goodman, 538-539 (Oxford, United Kingdom: Oxford University Press, 2013)

It can already be concluded that in any one context the process of the mediation of culture, as I have chosen to label it, calls for public participation[76]; involves efforts to mainstream human rights; and going one step further to, as this thesis appreciates, tailor-make potent responses and methods. Is all of this a manageable pursuit? [- It depends. Define 'manageable'!]. Can it nonetheless be realised? [Yes! – At least, somewhat.]. As will later be shown, it is being done in the Philippines – progressively and holistically.

c. Of International Human Rights and Holism

The writer hereof, seeking to demonstrate that holistic approaches are better suited to cater to the needs of the women and girls affected by violence, has submitted that approaches inspired by IHRL are holistic in nature. The question is, what is the connection between 'holism' and human rights? And what can this do for women facing violence?

Holism expresses the interconnectedness of different parts of 'a whole'. The holistic approaches referred to in the context of this thesis suggests an encompassing of all aspects concerned with a human being, i.e. the physical, mental, spiritual, and social factors. It is indeed the assertion of this paper that human rights (law) approaches are holistic in nature – and certainly so if taken in comparison to purposefully coined albeit, rigid penal codes and laws.

The connection between holism and human rights has been increasingly discussed in the Development discourse, although ploddingly. Though shifting practice to the full acknowledgment of the link that has been drawn between human rights and development still relies upon engaging in a political tug of war, actors have come to accept that what is needed for development globally is more inclusive, holistic, sustainable and equitable processes. This shift begins with 'the right to development' and the contributions of Arjun Sengupta, Amartya Sen and like-

[76] Such basis can be traced back to, but not only, the abovementioned provisions contained in the UDHR and Vienna Declaration and Programme of Action.

minded scholars; to the mainstreaming of human rights and the rights-based approach to development; and in recent years, in relation to the upcoming Sustainable Development Goals ("SDGs").

Even though the acceptance of this movement is but emerging and tangible outcomes are still yet to be seen; largely due to the criticism of the lacking (though ground-breaking) Millennium Development Goals, the SDGs might promise a more central role to human rights.

The 1986 UN Declaration on the Right to Development (the "Declaration") - arguably powerful and arguably dormant[77], has sought from the beginning to employ an all-encompassing approach to development through the eradication of the inequalities that inhibit development. As such, the Declaration begins by identifying the "human being" as "the main participant and beneficiary of development".

In linking human rights fulfilment to development, the Declaration includes the following:

> "Concerned at the existence of serious obstacles to development, as well as to the complete fulfilment of human beings and of peoples, constituted, inter alia, by the denial of civil, political, economic, social and cultural rights, and considering that all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect

[77] The Declaration emerged at a time in history when self-determination, independence, and democracy concerns were on the table; and at a time when political tensions ran high between the global north and the global south, or the developed vs. the developing world, or rich vs. poor countries. Not being of binding effect, most actors were reluctant to engage in the who-owes-who-what discussion; likewise the reluctance to be bound by economic responsibility for another. And so it remains. A progressive document naming the gaps and problems in the development discourse, yet is strictly speaking, legally toothless and without any *real* force. Nevertheless, its aims are somewhat slowly being brought to realisation through other means and movements.

> for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms…"

The Declaration, progressive and holistic in nature, in a sense became the (silent but nonetheless legal) backdrop for the discourse combining human rights law and development discourse and practice. Though much was written and discussed before, during and after the coming into existence of the Declaration, it is now that the *human rights-based approach to development* broadly, is gaining momentum across disciplines and practices.

The rights-based approach to development basically refers to achieving progress through processes of human development that integrate the standards, principles and obligations[78] established in the IHRL system. Adopting the rights-based approach means that an obligation is or can be created for duty holders; while rights bearers (ideally) become armed with a claim. This approach, in pursuing the effective realisation of the universality of human rights, brings an element of human-centred holism to development issues and programmes. This is all the more crucial for those being effectively deprived of rights or otherwise marginalized. This approach puts emphasis on the participatory process as well, as it further seeks to guide the formulation of participatory legislation and national policy development planning. The rights approach works towards ensuring accountability, effective remedy and transparency in order that people at local and national levels have a way to hold those responsible for violations or omissions accountable. Monitoring is indeed a necessary part of the process of ensuring adherence from local levels to international levels.[79] It has been said that the rights-based approach "leads to better sustained results of development

[78] For further reference and generally, see:
"Mainstreaming Human Rights in Development Policies and Programming: UNDP Experiences", Issue Brief, (New York, USA: United Nations Development Programme, March 2012): at 5,6 and 8.

[79] "Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation", Office of the United Nations High Commissioner for Human Rights, (New York, Geneva: United Nations, 2006), at 15-18.

efforts…"[80], and can be used to influence and change power dynamics in development.[81]

The Vienna Declaration reaffirmed the right to development as, "a universal and inalienable right and an integral part of fundamental human rights".[82] As seen earlier in this chapter, the Vienna Declaration also recognises the human being as central to human rights and as the principal beneficiary of rights and freedoms.[83] Almost a decade later and following the UN Conference on Sustainable Development[84], the Outcome Document entitled "The future we want" was adopted and endorsed by the UN General Assembly. The document articulates the "need to further mainstream sustainable development at all levels" and achieve it "by promoting sustained, inclusive and equitable economic growth, creating greater opportunities for all, reducing inequalities, raising basic standards of living, fostering equitable social development and inclusion…"[85] The document employs a people-centred approach to sustainable development and recognises the three dimensions of sustainable development – environmental, economic and social, as being interlinked. The importance of "freedom, peace and security, respect for all human rights, including the right to development … gender equality, women's empowerment …", as well as the importance of the UDHR and other international and human rights instruments is highlighted.[86]

Though controversy still exists over the right to development, the current consensus reached is significant for the way forward. Arjun K. Sengupta writes:

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[80] *Ibid,* at page 18.
[81] This paragraph is adapted from: Azaliah Mapombere, unpublished, Question 1 JAMR31 Final Exam, Human Rights and the Right to Development course, Lund University, April 2014
[82] Report of the World Conference on Human Rights, at para. 10, page 23
[83] *Ibid*, at 20
[84] A/CONF.216/16, Rio de Janeiro, Brazil, 20-22 June 2012, Chapter I, Annex – A/66/L.56
[85] "The Future We Want", United Nations General Assembly Resolution, A/RES/66/288, 11 September 2012, Annex.
[86] Ibid

> "Recognizing the right to development as a human right raises the status of that right to one with universal applicability and inviolability. It also specifies a norm of action for the people, the institution, the State or the international community on which the claim for that right is made."[87]

If human rights and the pursuit of global development is understood as being holistic in the sense presented above, i.e. encompassing of rights, freedoms, socio-economic and other factors; what this means for efforts geared at tackling VAW therefore not only refers to rehabilitative responses, but certainly extends to preventative initiatives. That is, extending to prevent the creation of victims in the first place (perhaps the proper place for continuing with this discussion is elsewhere). The writer hereof wishes to make the link, nonetheless that prevention is an important part of *a holistic approach* to tackling a multifaceted and multi-layered issue such as VAW.

On the foregoing, this paper ventures to propose the continued mediation of the culture of human rights – or, in a less controversial tone, the mainstreaming of human rights[88], as a means to potently addressing the 'ailment of society'[89] that is VAW. In tackling VAW, the mainstreaming of human rights in all areas and at all levels of society is a necessary prerequisite to reaching a place where victims and survivors have access to holistic response mechanisms and solutions; but also where prevention is a recognised and treated as a priority.

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[87] Arjun K. Sengupta, "Conceptualizing the Right to Development in the Twenty-First Century", in Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development, OHCHR, Chapter 4, http://www.ohchr.org/EN/Issues/Development/Pages/RTDBook.aspx (accessed 2015-04-28), at 68

[88] See generally: "Mainstreaming Human Rights in Development Policies and Programming: UNDP Experiences", UNDP

[89] The term 'ailment of society' was coined and used to refer to sexual violence in a similar context in:
Azaliah Mapombere, "Sexual Violence against Women in South Africa: The Social Climate Surrounding Rape and the Position of the Internal Protection System", (master's thesis, Institut Européen, 2011), http://www.ie-ei.eu/IE-EI/Ressources/file/memoires/2011/AMAPOMBERE.pdf (accessed 2015-04-28), at 5, 49, 76

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The preceding sections have sough to expand upon the position of this paper with regard to the premise that IHRL standards and principles are universally applicable; and also that IHRL approaches are holistic, or ought to increasingly be relied upon as such in the pursuit of tackling (the effects of) VAW.

Chapter 3 - The Limitations of Criminal Law

Before VAW became a matter for IHRL, it became a matter for domestic criminal law. This achievement came out of the successes of women's movements over time. Prior to this, women were not ordinarily included in the law or its processes and were (and in many places, still are) not benefiting from the protection of the law.[90] It follows that once women are afforded citizenship rights, full legal capacity and equality, they are able to take part in the protective remedies that the law and state offer (at least in theory).[91]

Consider: if the role of criminal law in contemporary liberal democracies is to, according to what is considered fair and just before the law, the rule of law and the principle of equality, "arbitrate conflicts between the state and the citizen through 'due process' "[92]; can 'justice' be the outcome where a deeply rooted inequality (gender, race, class inequalities) existed from the outset?[93] Out of similar consideration perhaps, the need for a 'more equal' jurisprudence was identified. So where protection lacked, lobbying, advocacy and activism pushed for reform and conferment of due rights. Feminists and feminist jurisprudence largely contributed to paving the way for positive change to the historical situation/status of women; that is, from first-wave feminist movements[94], to those lobbying for substantial action against VAW in the late 20th century[95].

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[90] Lynne Harne and Jill Radford, *Tackling Domestic Violence, Theories, policies and practice,* (Berkshire: Open University Press, McGraw-Hill Companies, 2008), at 87
[91] Harne and Radford, Tackling Domestic Violence, Theories, policies and practice, at 20-21
[92] *Ibid,* at 86
[93] *Ibid*, at 85-86
[94] *Ibid*, at 88-92
[95] *Ibid*, at 92-93

It is however acknowledged that it is not accurate to apply this pattern of evolution to VAW in all its forms[96] and certainly, not all the world's women benefit from such movements or protections, yet. Nonetheless, the initial steps that paved the way for the criminalisation of VAW situations are noteworthy.

Though there was strong belief that the criminal justice system was the solution to ending [domestic] VAW, when such violence was first criminalised the reluctance of the police to carry out arrests resulted in few arrests and of course very few prosecutions. It was then that other concerns surfaced. Concerns that there was reluctance on the part of the women themselves to come forward with reports.[97] The existence of legislation therefore does not in itself guarantee that VAW will end. Indeed effectiveness of the law requires that the responsible authorities exercise the law effectively.

Procedurally speaking, low conviction rates might dissuade victims from engaging with the legal process. A lack of adequate legislation addressing the range of issues that fall within the ambit of VAW might mean that by default a complainant's claim is not justiciable. Then of course stemming from a range of underlying reasons, there is the concern about the reluctance of women to file reports to the relevant authorities; or similarly, delayed reporting of the violence and/or threat.

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[96] Domestic violence for instance bears its own challenges – often to do with the need to navigate the gendered dichotomy of the private and public divide. FGM is a lot to do with overcoming beliefs, customs and traditions than it is about legislative reform. And in an increasingly technological world where the internet is presenting a new kind of front, the struggle against human trafficking has just begun.

[97] Claire Houston, "How Feminist Theory Became (Criminal) Law: Tracing the Path to Mandatory Criminal Intervention in Domestic Violence Cases", *Michigan Journal of Gender & Law,* Vol. 21 (2014): 217-272, at 254 – 255

See also: "Handbook On Effective Prosecution Responses To Violence Against Women And Girls," Criminal Justice Handbook Series, UN Office on Drugs and Crime, (Vienna: United Nations, 2014), at 26

For the purpose of this paper, two areas of 'limitation' have been selected for further discussion:

i. the [in]accessibility of the criminal legal system; and
ii. victim stereotyping as an inhibiting factor to the legal process.

Such selection is based on the writer's inclination to feminist methods and methodologies. This approach is particularly useful in this discourse as feminist methods, through the asking of questions, can assist in challenging the commonly accepted, though, subjective boundaries of law; while also being able to manoeuvre the multifaceted boundaries within the proposed subject matter.[98] Additionally, the two areas are able to cross escape geographical/state restrictions and are therefore unresolvable by legal regulation. So the selection speaks to the writer's intention of allowing for the global applicability of the content of this paper.

a. [In]accessibility

To demonstrate what kind of factors may restrict equal/full access to the criminal legal system, examples on three aspects are presented briefly below[99].

Economic considerations: It is commonly known that pursuing legal avenues is an expensive affair. It is also not always an option readily available to those living in geographically remote locations, and/or under influences such as

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[98] See generally: Harne and Radford, Tackling Domestic Violence, Theories, policies and practice, at 93-97.
See also above Chapter 1(b) on Methodology

[99] Another criticism of access to the system is the lack of knowledge on its processes. Where information dissemination is not carried out regularly and comprehensively, the know-hows of the formal protection system would not otherwise be common knowledge, making it not readily accessible to all –which is often the case. There is definitely a need to develop legal awareness and literacy across the board, especially if it would result in increased and equal access to the protection avenues any one system offers.
[For further reading see: Henrik Alffram, "Equal Access to Justice", A Mapping of Experiences, The Swedish International Development Cooperation Agency (Sida), 2011, at 17-18].

customary law or norms – which are not in themselves harmful, but may pose a restricting factor/s. Legal avenues are also to some extent considered to be an option for the economically and educationally elite to pursue.

Should a victim of domestic violence for instance, be economically dependent on the perpetrator, such person might be dissuaded from filing a report or initiating proceedings for a range of reasons. Firstly, the abovementioned expense of accessing legal services might be a factor of exclusion. Secondly, should the perpetrator be the bread-winner of sorts between the two, the victim may choose to continue living in an abusive situation rather than becoming destitute, say, after a conviction. Thirdly, the fact that [she] is economically dependant on [him] may be something the perpetrator uses as a threat against [her].

Length of proceedings: Whether delayed or long proceedings occur because of a backlog of cases, lacking human resources, or misplaced priorities; no complainant awaiting justice enjoys re-living the trauma for years as the case drags on. The length of proceedings can be linked to the level of trust a complainant has in the process. The length and pace of a trial may also heavily contribute to the psychological well being of the complainant. Where the accused is not held in state custody during the proceedings, the complainant may very well live in a state of constant fear and threat, regardless of what restrictive sanctions might have been ordered upon the accused by the court. Where minors or children are involved or affected, the situation becomes all the more complex. All these factors are connected; have an effect on the individuals linked to the pending case; and may serve to deter future victims from pursuing legal redress.

Take *Fernandez vs. Brazil*[100] from the Inter-American Commission on Human Rights as an example. The case was brought to the Commission 15 years after the incidents of domestic violence occurred and while a second appeal in Brazil was still pending. This kind of delay in the court process was identified as common in Brazil when it came to the prosecution of DVAW cases. What was particularly problematic for this case was that the accused would no longer have

[100] Case No. 12.051, 16 April 2001

faced prosecution for the offences had the case dragged on past the 20-year time-bar set by the statute of limitations in Brazil. The Commission, in holding the state liable to the complainant, ruled on the negligence and failure of the Brazilian court on several procedural points and human rights violations.[101]

Fear of external factors: Pursuing justice through the criminal legal process is a public affair; and depending on the figures involved, may court the media's attention. The fear of a stigmatization, re-victimization or continued violence is therefore common. Victims also risk being blamed for the violence and ostracized by the community in which they live or indeed by their family.[102]

It is a possibility that untrained law enforcement officers may re-victimize the complainant during the reporting and investigation stages. Likewise, officers of the court that handle VAW cases. For instance, undocumented persons who live under abusive circumstances may not be confident enough to report a case, as this would risk their immigration status coming to light only to then be implicated for that instead. Similarly, individuals in the entertainment or sex-work industry may be interrogated because of their occupation when attempting report an assault.

On 'victim-centred prosecution strategy', the UNODC Handbook guides:

> "Prosecutors need to appreciate that any form of violence takes away the ability of the victim to control their own body and life space. Repeated violations undermine the self and trust in others. To be violated is to have power used against you; hence the importance of empowerment in all interventions. The importance of ensuring that victims' views and needs are respected should be at the center of all the prosecutors' consideration. All their dealings with victims should be rooted in empowerment. Prosecutors should avoid making assumptions about what is in the best

[101] Robyn Emerton, Kristine Adams, Andrew Byrnes, Jane Connors, eds., International Women's Rights Cases, (Routeledge-Cavendish, 2005), at 740-742

[102] "Handbook On Effective Prosecution Responses To Violence Against Women And Girls," Criminal Justice Handbook Series, UN Office on Drugs and Crime, (Vienna: United Nations, 2014), at 45

> interests of the victim and should not view the victim as a passive player in the justice system".[103]

Societal norms and expectations may be cause for further concern. The below sub-chapter carries this point further.

b. Victim Stereotyping

Though stereotypes are not necessarily negative in themselves they are limiting in nature. Stereotypes are used to categorise people for whatever reason and in so doing, assign to them norms allowing little room for individuality. For example, "women are/ought to be mothers" or "men are strong".[104] No one is free from thoughts of prejudice, stereotypes or expectation. However, when prejudicial or stereotypical expectations are being applied in and through a system whose key role is protection and adjudication, the effectiveness of such system becomes compromised. Stereotyping can be harmful if used in a negative way or when such characterisation conforms to harmful deeply embedded myths. Indeed, victim stereotyping[105] can be a hindrance to the complainant accessing justice and redress. It becomes a futile exercise when actors of the criminal law system subject themselves to the application of stereotypes and myths in the investigation, procedural and/or adjudication processes. The result is often that perpetrators avoid due sanction and victims/complainants are left defenceless[106]. Whether or not a victim is successful in accessing justice is largely due to the perceptions and constructs that may be put into play by the guardian of that justice at that time, in that particular situation.

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[103] *Ibid,* at 41

[104] Rebecca J. Cook and Simone Cusak, *Gender Stereotyping: Transnational Legal Perspectives,* (Philadelphia, PA: University of Pennsylvania Press, 2010), at 11-14.

[105] 'Victim stereotyping' is used to refer to any gender role or sexual or sex role stereotypes that are applied to a person in the position of a "victim" for the present purposes.

[106] For instance, as in *R v. Ewanchuk* [1999] 1 S.C.R. sexual assault case, where the Canadian Supreme Court upheld that the Court of Appeal had relied on wrongful myths and stereotypes - at 336.

Consider:

> "Men who are in prison for rape think it's the dumbest thing that ever happened... […] they were put in jail for something very little different from what most men do most of the time and call it sex. The only difference is they got caught. [..]It seems to me that we have here a convergence between the rapist's view of what he has done and the victim's perspective on what was done to her. […]that's exactly how judges and juries see it who refuse to convict men accused of rape. A rape victim has to prove that it was not intercourse. She has to show that there was force and that she resisted […] They ask, does this event look more like fucking or like rape? But what is their standard for sex, and is this question asked from the women's point of view? The level of force is not adjudicated at her point of violation; it is adjudicated at the standard for the normal level of force. Who sets this standard?" [107]

There is often or always more than one perspective of an act. When it comes to rape for instance, there is what may be referred to as the male perspective of rape, or the rapist's perspective – which I prefer to call the sexual perspective. It is basically one where rape is seen as a mere sexual, perhaps pleasurable, act. The alternative is often referred to as the female perspective or that of the victim; I will refer to it as the exploitation perspective. This views the act as one of domination, harm, trauma, bodily intrusion and a violation of bodily integrity.[108]

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[107] Catharine A. MacKinnon, Feminism Unmodified, Discourses on Life and Law, at 88

[108] See: Kathleen E. Mahoney, *Gender and the judiciary: Confronting Gender bias*, in "Gender Equality and the Judiciary – Using International Human Rights Standards to promote the Human Rights of Women and the Girl-Child at the National Level", Papers and Statements from the Caribbean Regional Judicial Colloquium, Georgetown, Guyana, 14-17 April 1997, ed. Kristine Adams and Andrew Byrnes, Commonwealth Secretariat, 1999, at pages 104-105.
Also see: Catharine A. MacKinnon, *Feminism Unmodified, Discourses on Life and Law*, (Cambridge, MA: Harvard University Press, 1988), at 85-92.

Rape, like other forms of violence, is a matter of power construct –and whether that construct results in power being given or power being taken away (i.e. "powerlessness", see Chapter 2(a)(ii) above) much depends on who is narrating the incident and how.

Power, though it can be hierarchical, is also relational[109]. Either way, it is an enabling force that requires the giving of legitimacy in order to be put into effect. Once it is in effect, dominance is established. The writer would like to link such manifestation of 'dominance' to Patriarchy. Sergiy Kryslytsya, the Chairperson of Gender Equality Commission of the Council of Europe, speaking at an UN side event said, "The patriarchal ideology continues to underlie gender relations […] the social construction of gender also influences the way institutions operate and contributes to the perpetuations of discrimination against women…"[110] This is also in line with Abdullahi Ahmed An-Na'im's thought on cultural universality and human rights: "powerful individuals and groups tend to monopolize the interpretation of cultural norms and manipulate them to their own advantage…"[111]. What this means is that once an individual becomes a perpetrator of rape/violence against another individual; [he] is an agent operating in response to a power dynamic. The action of the agent becomes legitimate because and when it is accepted as being right, justified or validated in one way or another.

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[109] See generally also: Michel Foucault, *Discipline and Punish, The Birth of the Prison*, (1977) trans. Alan Sheridan, 2nd ed. (New York: Vintage Books, 1995), Part 3: "Discipline"

[110] *Gender stereotypes and sexism – Root causes of discrimination and violence against women* - CSW59 Side Event, 9 March 2015, UN Web TV, http://webtv.un.org/watch/gender-stereotypes-and-sexism-–-root-causes-of-discrimination-and-violence-against-women-csw59-side-event/4102734269001#full-text (last accessed 2015-05-14)

[111] Abdullahi A. An-Na'im, "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: the Meaning of Cruel, Inhuman or Degrading Treatment or Punishment," in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, ed. Abdullahi An-Na'im, 25, (Philadelphia: University of Pennsylvania Press, 1992) at 27, 28.

In a given society, 'culture', constructed myths, expectations and (gender role) stereotypes can serve as tools of justification of suppression, of abusive action, or indeed violations of rights. These 'elements of society' if you will, can be used as a tool of justification. When invoked as a defence, it gives a kind of authority to the speaker over his or her subject; and in doing so may simultaneously compel onlookers to give allegiance to one party over the other. Therefore if used in this manner, such 'elements' can be taken to be legitimizing forces – giving legitimacy (even if misplaced, or momentary) to the wielder of power in that moment, at that place.

Though individuals in the society play a role in propelling myths and stereotypes, actors within the criminal law system can fall prey to the same perceptions. When they do, complainants are turned away and crucial cases are brought to a halt. The message that is sent (by the system) is one of condoning the violence. Whether this undermining and undercutting of a justiciable violation takes place at the reporting and investigation stage or during trial proceedings does not change the matter in point. Once an incident is undermined the only avenue left for the complainant to pursue may be one inaccessible to her (see above sub-section (i) [In]accessibility).

A pertinent case in demonstrating how sexual and gender-biased stereotypes i.e. victim stereotyping, can present an obstacle to a fair legal process is *M.C. v. Bulgaria*[112] from the European Court of Human Rights ("ECtHR")[113]:

M.C. the applicant, a Bulgarian national, alleged that on 31 July 1995 when she was 14 years old, she was raped by 2 male acquaintances. In August 1995 the applicant made a written statement that was futile. No charges were brought and no action was taken. In February and March 1997, investigators found insufficient evidence that the use of force or threats had been established beyond reasonable

[112] *M.C. v. Bulgaria,* Application no. 39272/98, final judgment 4 March 2004

[113] The case was admitted to the ECtHR not in order for the rape incident to be tried, as that is ordinarily done at national level, but as a way for the victim to seek remedy for the violations of her human rights during the investigation processes in Bulgaria.

doubt; and further, that the applicant had applied no resistance and did not attempt to seek help from others, nor did she show signs of distress after the first sexual encounter. Finally in June 1997 the prosecutors terminated the proceedings. It is a regrettable observation that factors such as the *frozen fright syndrome* which affects especially minor rape victims[114], were not given due weight in the initial investigations surrounding the rape of M.C.; nor was the credibility and conflicting testimonies of the accused men and their conflicting statements exhaustively or adequately assessed.[115]

The ECtHR observed that the assessment of facts and the meaning given to legal terms of words such as "force" is decisive in whether or not a sexual act is found to be non-consensual.[116] The Supreme Court interpreted Bulgarian rape law narrowly and this was problematic because emphasis was put on the use of coercion - meaning, direct violence. And non-consent was evaluated owing to the helpless state of the victim (i.e. disability, old age or illness), or based on whether or not the victim *physically resisted* the sexual activity.[117] International Criminal Law[118] commentators and *Interights*,[119] submitted to the ECtHR that the lack of consent is the defining element of rape and "coercion" is to be understood broadly. As such, physical resistance though evidence of non-consent, is not the crucial element in proving lack of consent; likewise, a victim's passivity cannot amount to consent.[120]

Following the two incidents of rape, the applicant recalls that she had felt ashamed that she had "failed to protect her virginity"; and marrying the rapist had at one point seemed a reasonable solution to "minimizing the damage". These perceptions stem from myths expressed in the context of the conservative small-

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[114] *Ibid,* at para. 70-71
[115] *Ibid,* at para. 177-183
[116] *Ibid,* at para. 171, 172
[117] *Ibid,* at para. 72-85
[118] *Ibid,* at para. 128,163 and 102-107
[119] *Ibid,* at para. 126-129, 147
[120] Adapted from: Azaliah Mapombere, Unpublished, Case-Memo 'B', prepared for JAMR24 Advanced Human Rights Law course, Lund University, February 2014.

town environment in which the applicant lived.[121] One can then evaluate the extent to which like social and moral perceptions not only existing in a social context, but operational in the criminal legal process can be damaging to the individuals concerned and an obstruction of sorts of the criminal legal process.[122]

Though the ECtHR did not point to stereotypes and myths as the driving force behind the outcome of the investigations by the local authorities in Bulgaria, the Court has however reasoned that, "rape" has undergone a reform to move away from the historical approach to one of effective equality; meaning that verbal dissent as well as a range of psychological factors ought to be considered in a context-sensitive manner in the prosecution of sexual offences.[123] So although M.C. was not able to have her case go to trial domestically, the dynamics involved at the investigation stage are attributable to gender and sexual stereotyping, in that, the investigators took on a sexual perspective of rape and undermined the harm, trauma and violation that the victim had undergone, because she did not live up to how a raped woman or girl 'should have reacted' in the circumstances.

In a journal article[124], Simone Cusack and Alexandra Timmer highlight the relevance of the *Karen Tayag Vertido v The Philippines*[125] rape case in which the CEDAW Committee focused on the harmful stereotyping by the judiciary during

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[121] *M.C. v. Bulgaria,* supra n 5, at para. 37-38
[122] Adapted from: Mapombere, Unpublished, Case-Memo 'B'.

NB: In the aftermath of the case, the government of Bulgaria took general measures including the drawing up of instructions for investigatory bodies to direct that, "evidence concerning the psychological state of victims of rape should be collected" particularly when dealing with minors. [See: Appendix to Resolution CM/ResDH (2011) 3*, Information about the measures to comply with the judgment in the case of M.C. against Bulgaria*, Adopted by the Committee of Ministers on 10 March 2011.]

[123] *Ibid,* at para. 102-107; 126-127; 163-165
Adapted from: Mapombere, Unpublished, Case-Memo 'B'.
[124] Simone Cusack and Alexandra S. H. Timmer, "Gender Stereotyping in Rape Cases: The CEDAWCommittee's Decision in *Vertido v The Philippines"*, *Human Rights Law Review*, 11:2 (2011): 329-342
[125] (18/08), CEDAW/C/46/D/18/2008 (2010)

the trial. The *Vertido* case was initially dismissed by the prosecution but was taken up again upon appeal. Though the accused was eventually arrested for rape, he was acquitted eight years later for lack of sufficient evidence *beyond all reasonable doubt* when the judgment was issued.[126]The complainant i.e. author, then submitted a Communication to the CEDAW Committee alleging that several violations had occurred and that, "the decision was grounded in gender-based myths and misconceptions about rape and rape victim […] without which the accused would have been convicted."[127]Some of the myths and stereotypes stemming from the trial in the Philippines that the author challenged are:

> 1. "a rape victim must try to escape at every opportunity" [according to the court - "such a demand requires the woman to actually succeed in defending herself, thereby eliminating even the possibility of the rape"][128];
> 2. "To be raped by means of intimidation, the victim must be timid or easily cowed" [according to the court - "women who are not timid or not easily cowed are less vulnerable to sexual attacks"][129];
> 3. "to conclude that a rape occurred by means of threat, there must be clear evidence of a direct threat" [according to the court - "the Court focused on the lack of the objective existence of a gun"][130]; and so on.

The author argued that her case "is one among many trial court decisions in rape cases that discriminate against women and perpetuate discriminatory beliefs about rape victims"[131]; and that, "those insidious judgments violate the rights and freedoms of women, deny them equal protection under the law, deprive them of a just and effective remedy for the harm they suffered and continue to force them into a position subordinate to men."[132] The CEDAW Committee remarkably

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[126] Cusack and Timmer, "Gender Stereotyping in Rape Cases", at 331
[127] Communication No. 18/2008, Committee on the Elimination of Discrimination against Women, CEDAW/C/46/D/18/2008, at para. 3.4 and 3.5
[128] *Ibid,* at para. 3.5
[129] *Ibid,* at para. 3.6
[130] *Ibid,* at para. 3.7
[131] *Ibid,* at para. 3.8
[132] Ibid

recognized that, "the author of the communication has suffered *moral and social damage and prejudices*, in particular by the *excessive duration of the trial proceedings* and by the *revictimization* through the *stereotypes and gender-based myths* relied upon in the judgment"[emphasis added].[133]

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Though some courts are willing and able to make it a point to identify and name wrongful stereotyping when it occurs[134], the frequency with which this ground is actually broken is a far cry from constituting 'enough'. This remains a flaw of any protection system, and one that the system itself cannot address through legislative reform or otherwise - the core issue stems from uncontrollable factors i.e. attitudes, behaviours, societal norms and expectations. Hence, a limitation in the 'system' exists. Nonetheless, as An-Na'im advises: "…it is vital for disadvantaged individuals and groups to challenge this monopoly and manipulation."[135] Perhaps there is room still for other actors, other approaches, and other solutions to bridge the 'gap'. And so the case for human rights-inspired approaches is continued.

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[133] *Ibid*, at para. 8.8

[134] Again in *R v. Ewanchuk* (see note 106 above) where the judges stated that: "This case is not about consent, since none was given. It is about myths and stereotypes" [at 335]; and that, "separate assumptions lie at the heart of what went wrong in this case" [at 379].

[135] An-Na'im, "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights", at 27, 28. [continuation of quote from note 111 above]

Chapter 4 - Observations from the Philippines

In moving into the area of practice, this chapter seeks to consolidate the above-discussed conceptual considerations by way of empirical illustration. Below is an account of the overall and relevant discussions held during the site visits and interviews in Region 3 in the Philippines.

a. Summary of Visits

The Department of Social Welfare and Development ("DSWD") Region 3, Regional Office, San Fernando, Pampanga:

The DSWD has as its key goals rehabilitation and reintegration. As such, a human rights based victim-centred approach is actively employed. Methods are preventative, seeking to prevent the creation of new victims; with a focus on community building, advocacy and the healing process. Even before the establishment of the current law (see above Chapter 1(c)), the mandate of the DSWD under its former names was similar. The introduction of the present law/s (mentioned also in above Chapter 1(c)) enhanced the operation capabilities of the Department's commitment to the support of victim-survivors – physically and psychologically.

The DSWD's national strategies (each with a 5-year lifespan) consist of an inter-agency council that assists in monitory functions. The inter-agency is made up of about nine national governmental agencies including the Philippine National Police ("PNP"), Department of Justice, the CHR, the Department of Education and of Vocational Skills, amongst others. Additionally, various NGOs work within each of theses sectors for a term of 3 years at a time.

Though laws and policies are in place in the Philippines, implementation, as previously indicated, remains a challenge generally. One of the identified needs is the tightening of coordination and teamwork. This is not only in relation to the implementation of policies, but more so in relation to man power and other resources – that is, in the conducting of rescue operations, provision of safety and security, investigations and so on. (An area that was mentioned to me as being an emerging threat and needing increased attention is cyber pornography.)

My visit to the DSWD Regional Office preceded my visits to the various home-based care centres. It was however explained to me that the women and girl *residents* are housed at the Centres for a period of six months to one year. During such time as the survivors take up residence under the DSWD's Centres, a social worker is assigned to the role of case manager and facilitates case conferences between different stakeholders including law enforcement, to ensure, among other things, that the perpetrator/s are being looked into.

The younger girls will not be reintegrated to their home areas until pending court cases have come to conclusion. Where circumstances prevent them from returning home, the girls may be put into the foster care system. Adult women however may be re-integrated into their societies even before the conclusion of any pending court cases, as the Centres serve only as temporary residences. Where a threat still exists, the women may be integrated into a different home area with relatives, or otherwise.

The Haven for Women, Malagang ("The Haven"):

Following my discussion with the Director of the Regional DSWD Office and her staff, I was able to visit one of the 'Centres'. The Haven was established over 38 years ago and was first called *Sa Op Logood*, meaning Help and Love Center. Its name was then changed to Women in Difficult Circumstances, before getting its name today. The Haven is run by about 17 staff – 2 social workers; a farmer; a driver; 4 security guards; 7 house parents; an administrator; and the officer in

charge who is also a trained social worker. The staff have job-specific training as well as training on the relevant laws, including awareness on human rights. The house parents are responsible for home management, which consists of daily routine care; lessons on sanitation; and skills and values training. Monthly social activities are organised as well.

With a housing capacity of 60-80, the residence had exceeded its capacity with 90 residents at the time of my visit (a good sign nonetheless). The usual age of the residents lies between 18-59, with minors being the children of the residents. Serving 6 regions and 7 case categories, of its 90 active cases the predominant 10 cases were situations of rape from the Bulacan province; followed by 9 incest cases from the Pampanga province. Cases from Pampanga totalled 38 across categories, and 32 from Bulacan. Referrals to the Home of women and girls at risk or in danger are often made from within the community, from law enforcement, family and acquaintances or from the Commission on Human Rights. Victims of trafficking are commonly referred to the DSWD by the police, the National Bureau of Investigation, organisations such as the International Justice Mission.

It takes new residents some time to adjust to the surroundings. It is common that some want to leave in the beginning (the remote location of The Haven indeed assists in ensuring that escape is not easily achieved). Notwithstanding this, there are no cases of escaped residents. There has however in the past two decades been one case of a resident being abducted by her father who, in order to do so, held the security guard at gunpoint – he was unharmed. The local officials thereafter assisted in addressing and resolving the situation accordingly. Stories like these demonstrate the importance of the local authorities' involvement and role. For instance, when the need arises to explain to parents and families with grievances the importance of the victim-survivor partaking in rehabilitative processes.

Barangay officials and local mayors also play a supportive role by assisting with the provision of additional security and transportation when necessary; and on the lighter side of things, organising seasonal and festive parties. The local mayor

and the governor currently sponsor resident students by covering the cost of their tuition fees. Otherwise, where available and present, parents and families also play a supportive role. Where there is no forthcoming family encouragement, the nearest willing relative can step in to offer moral support and to help prevent a situation of re-victimization.

While there are some residents that are students enrolled in the local schools or colleges, The Haven also hosts facilities for in-home educational training through the Department of Education's Alternative Learning System. Other residents are able to take up qualifications from the local housekeeping training school; or develop skills through in-house gardening, baking, cosmetology service training and accessories making. This range of training options are intended to enable the residents to have marketable skills that could contribute to their economic sustenance in the future. In line with holistic approaches, recreational and sporting activities are also a part of the residents' lives. The Haven boasts of an active volleyball team that participates in barangay activities and competitions.

Home for Girls, Tarlac City and Palayan:

The Tarlac City-based Home has a housing capacity of about 40. At the time of my visit in March 2015 they were above capacity with 60 residents coming from about 10 provinces. Current residents are between the ages of 8 and 35 (one of the residents is a 30-year-old cancer patient; and there is an infant resident, the child of one of the 16-year-old residents). Some of the residents are enrolled in the local schooling system - 5 in high school, 7 in elementary school, and 8 enrolled in alternative/specialised education. As of February 2015, the Tarlac Home recorded 56 active cases; 9 of which were newly initiated; 31 falling into the category of "children/women with special needs", and 30 in the category "able residents". Of those with disabilities, some have been so since birth, and for others such disabilities are acquired as a result of trauma suffered or otherwise. Across categories of VAW violations, 29 cases involved "able residents" (8 of which

were victims of human trafficking); and 32 cases that involve "special needs" residents. During the course of 2014, 10 residents were reintegrated into society.

Residents may reside at the Home for six months or more, pending court proceedings. There is no limitation on the duration of residence of residents belonging to their "special needs" category. Visitors are permitted on site, but because most residents from time to time at the Tarlac Home have been abandoned - some before taking up residence at the Home, i.e. "strandees", the support of external partnering organisations is welcomed. Generally, most residents are referred to the Tarlac Home by law enforcement authorities and the Municipal City Social Welfare, if not transferred from other home-based Centres.

The team of about 18 staff includes social workers, house parents, an administrator, driver and at least 2 security guards. The barangay authorities assist with the further provision of security. Though training and education in human rights is not a fixed requirement, the head social worker conducts human rights training for the staff during their monthly meetings. There are also posters outlining the relevant rights (rights of the child, etc.) posted around the property. The house parents and social workers are responsible for the running of daily activities, such as cooking and home life training; and 'Livelihood Projects', i.e. sewing, crafts, etc. In terms of spirituality, weekly in-house Bible studies are held and residents may attend Sunday services at the local church.

As both the Palayan and Tarlac City Homes operate under the DSWD, the Palayan home is managed in almost an identical manner. The main difference between the two is that the Tarlac Home has the capacity to cater to residents with particular health related situations. I was however informed during the interview at the Palayan Home of the possibility of the involvement of the Philippines Mental Health Association in conducting psychological evaluations where necessary (or by referral, or at the request of the court). Such evaluation when requested assists in tackling situations where a victim-survivor is suffering the consequences of trauma.

As at the time of my visit, the Palayan Home housed 75 residents, that is below its 95-100 person capacity. Most of the current residents are victim-survivors of (familial) sexual and physical abuse, abandonment and human trafficking. The age of the residents' range from 4 to 20 (though the age limit od residents is supposed to be 18). In addition to educational and livelihood activities, the girls participate in sporting and recreational activities like swimming, badminton, scrabble, etc.; and are also often taken on outings to the nearest shopping mall to dine out or catch a movie. In a lively discussion with 3 social workers during my visit to Palayan, it was encouraging to hear of the staff's dedication to their work with the girls.

The League of Angeles City Entertainers and Managers ("LACEM"), Angeles City:

My visit to LACEM, coinciding with the organisation's 20th Anniversary, was indeed timely. It was at first not an obvious interview stopover in my mind. However, I retracted my thoughts on this once I began talking to the organisation's managing staff and founder. As it was the only non-governmental organisation ("NGO") that I visited, I quickly realised its significance, especially being located in Angeles City (see further sub-chapter (c)).

LACEM, a financially self-sustaining, non-profit organisation; also an accredited member of the Development Council of Angeles City, was registered in early 1995. Its logo is made up of a 'bright star of the future'; hands joined in unity; and an equal sided triangle symbolising equality, transparency and good governance. A large number of LACEM's members come from typhoon-affected areas. The age bracket of members is 18+ in accordance with the law (where in doubt, age is confirmed through the screening of statistical data and where necessary dental examinations are carried out). Its member base has grown from 500 to over 10,000 over the past few decades of its existence. The organisation also enjoys partnership with an array of governmental, non-governmental, educational, local and international NGOs, embassies and other groups and individuals. The

founding organisational officer has a background in social hygiene and nursing as well as working with US Naval Medical Research; and the professional background of the staff in general spans from civil engineering, to expertise in information technology and vocational training.

LACEM is committed to protecting and promoting basic rights, health and welfare of all its registered entertainers and management members. LACEM's clientele and members benefit from the following services: medical; accident; death and burial assistance; education; livelihood; and other assistance (pertaining to unwed mothers; job placement; emergency purchase in the Social Hygeine Clinic; etc.). LACEM is also committed to the fight against drug and child abuse, and the reduction of HIV/AIDS. Through educational seminars, the organisation plays its part in disseminating information on, but not limited to, the National Law on HIV/AIDS, Republic Act RA 8504 for instance. This is in conjunction with being involved with comprehensive advancements on HIV/AIDS policy. One-on-one counselling appointments are available to its members. And with regards to reports of situations of violence, whether reported in counselling sessions or otherwise, LACEM collaborates with the national police Women's Desks to resolve such matters.

Barangay Violence against Women and their Children's ("VAWC") Desk, Mabalacat:

Cases pertaining to VAWC were formerly handled under the Barangay Human Rights Action Center's ("BHRAC") Human Rights Desk, but are now, at the Mabalacat barangay, referred to the VAWC Desk. Despite not yet being fully trained in human rights related issues, the officer appointed to the Desk has been afforded access to training material relevant to her role. One of these is the

Barangay VAW Desk Handbook[136]According to our discussion, it is often the case that couples bringing complaints under RA 9262 situations do not necessarily have the intention of initiating criminal proceedings against their partner or spouse. Indeed even petty disputes are brought to the Desk for the Officer to mediate; and some women who would have perhaps received some kind of threats, take their partners/spouses to the Desk for a consultation in order to "scare" them. Though this is not the primary purpose of the Desk, and RA 9262 violations are strictly speaking not to be mediated, these occurrences signify the trust and awareness that the general population has for the process.

According to the monthly case records, the settled matters range from cases of child abuse to physical injury and/or threats. There are also some cases of physical and economic abuse that have been formally settled, while others, at the time of my visit, were pending. This barangay-meets-human-rights set up is not yet the norm across the country, despite it being provisioned by law (see above Chapter 1(c)). It is my understanding that Mabalacat is the pilot municipality of such initiatives falling under the BHRAC. More information dissemination and advocacy is still needed to break through some barriers –political and otherwise, that are currently preventing this 'model' from spreading to other barangays.

The Philippine National Police ("PNP"):

-Regional Head Quarters, Region 3, San Fernando, Pampanga

The PNP Regional Head Quarter's violence against women and their children's ("VAWC") Desk oversees 140 police stations in 9 provinces that all have VAWC protection Desks. The VAWC Desk seeks to employ a gender sensitive approach

[136] "Barangay VAW Desk Handbook", Philippine Commission Women, 2012, http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/downloadable/VAWHandbook.pdf (last accessed 2015-05-26)

to the way in which VAWC cases are handled, and as such assigns female officers to the Desk that have undergone specific and relevant training.

The regional headquarters has an Anti-Trafficking Task Group that focuses on cases to do with trafficking, as well as providing interventions and manpower support to operations. The Task Group conducts regular raids of establishments mostly in the entertainment industry or otherwise, as and when the need arises; for instance, when information of potential trafficking victims or minors is availed to the police. During such operation it is only when clients/customers in an establishment are caught in the act of breaking domestic laws that they could be charged with violating the rights of the women. Otherwise, during an operation, the women and girls, customers and caretakers are separated for proper identification. Where situations involving trafficking and/or minors are discovered, the officers refer the victims to the DSWD for care. The cooperation between the DSWD and the PNP headquarters therefore also extends to coordination during raid operations. Indeed, other NGO partners such as the International Justice Mission assist where they can in the pursuit of tackling VAW cases.

-Women's and Children's Desk, Mabalacat

The Women's Desk in Mabalacat also takes a gender sensitive approach to its role and has been seeing to it that women Investigating Officers are assigned to the Desk and VAW cases. This approach has been gradually implemented over the past 10 years.

As of March 2015, of the 10 cases that had been brought to the Desk, 5 involved VAW related violations. The violations included concubinage, rape of a minor, gang rape, physical injury cases, infidelity and psychological abuse. It is the case that some complainants decide to pull out and cease pursuing a case along the way. Nonetheless, the role of the Investigating Officers is to aid the complainant from the time any such complaint is brought to the Desk and then throughout the

filing and court processes. This role does not extend to mediatory engagement, as VAW-related violations are not intended for mediation under the law.

b. Findings

i. Mainstreaming of Human Rights

During my time with my contact and host institution, i.e. the Region 3 Office of the Commission on Human Rights of the Philippines ("CHR3"), San Fernando, I was able to form observation of the way in which they work. Between January and December 2014, the CHR3 received a total of 186 cases – 14 of these fall under the RA 9262 and Magna Carta of Women ("MCW") violations. It was encouraging to notice that very rarely were the CHR3 offices void of clients. The constant flow of clients through the CHR3 doors signified the relationship and trust the population has in the Commission and human rights processes generally.

In terms of the external work of the CHR3, together with site visits and interviews I was able to sit in on or observe one of the CHR3 officers conduct lively seminars and lectures with the residents of the various DSWD Centres. Such seminars sought to offer support and motivation to the listeners; but also touched on topics about value, dignity, human rights and spirituality. As such, it is my observation that the methods and messages of the CHR3 are holistic, restorative and rehabilitative.

In addition to seminars conducted at the various home-based Centres, the CHR3 regularly arranges lectures with other institutions. For instance, during my stay there was a two-day lecture on Human Rights and Humanitarian Law delivered to the incoming 'class' of the National Air Force. The PNP, like the Air Force, has embraced a collaborative relationship with the CHR3 and a stronger respect for human rights. It was my further observation that the relationship between the CHR3 and PNP is one of unity towards a common goal. Indeed, it was not always the case. Such close cooperation is the result of unrelenting efforts on the part of

the Commission representatives from time to time over the past decade to foster a closer working relationship with law enforcement. Great efforts in terms of developing a wholesome understanding of human rights, together with effective information dissemination on as many levels as possible, and human rights education has brought up the level of collaboration to where it is today. As a result "human rights" resonate across sectors.

ii. Holistic Approaches

Rehabilitation to Reintegration:

Though avenues for justice and redress are availed to the victim-survivors, from the above summarised accounts one can denote that the priorities of the DSWD are much to do with healing and restoration in the broader sense. This wholesome approach is extended to the women and girls even after their residence at the Centres comes to an end. After such time as residents leave the Centres, they enter into the After-Care programme, where they work with social workers in their home locales for six further months or until further and satisfactory progress has been made. (A starting capital is made available as part of the After-Care programme for the re-integration of ex-residents into [their] society, as well as a job placement programme). The former victims of violence, now survivors, become part of the community support group, thereby also becoming partners of the overall mandate and initiatives, and fostering 'empowerment'.

Health:

In terms of health care, as I was informed at The Haven, referral to the National Services Mental Centre in Manila is possible where there are residents identified with psychological challenges or disabilities. They could then be hospitalized for approximately six months or as otherwise deemed necessary and put on medication which they would continue once transferred back to their respective residences. Residents that fall within the "special needs" category are usually transferred to the Home for Girls in Tarlac City as the Tarlac Home is more geared to focus on mental health care. At the time of my visit however, a building

intended for housing residents with psychological impairements was under construction at The Haven (it should be noted that this is not a matter of segregation, but rather stems from the need to expand capacity and facilities that can cater to more specialized needs). For the provision of maternal care, the district hospitals are engaged.

Education:

There is a keen emphasis put on the value of education. As such, the DSWD facilitates access to the Department of Education's Alternative Learning Programme for those under its care. Education is considered to be a vital tool to serving the future needs of the women and girls. With it they are better able to sustain themselves through the pursuit of employment, establishing self-employment routes or further studies. It is however not only about the financial benefit that education and skills bring about, but also the element of freedom, strength, independence and empowerment which are important to the personal restorative process. As has been mentioned already, options offering an array of training and skills building are incorporated in the daily lives of the residents. Those talented in agriculture or cosmetology for instance have gone on to start-up businesses of their own as I was informed. The emphasis on the importance of education is therefore in no way restricted to one kind/route of education. I had the pleasure to meet a 20-year-old Tarlac Home resident that was due to graduate in the same month of my visit from the local Bible College. Indeed she has already begun taking up a valuable role in the Home, assisting the house parents in the conducting of weekly devotional and prayer meetings.

LACEM has a partnership with the Department of Education and thus hosts facilities for running the Alternative Learning Programme on-site. Members are therefore able to pursue elementary, high school studies and vocational training through the organisation. Once a student succeeds, they are also guided through the process of searching for relevant employment. The first graduate of LACEM, a former entertainer, passed her nursing programme coming in in 17th place nationally. She is now abroad pursuing further study opportunities.

Spirituality:

Spirituality is seen as an important element of the healing and restorative process of rehabilitation. Though 'spirituality' does not point to any one particular religious path or creed, as an openly and predominantly Christian nation, the use of this word in the Philippines context refers generally to spirituality from the perspective of Christianity.

'Spirituality' is very much a part of the holistic approach of The Haven and both the Homes in Tarlac City and Palayan and forms part of the lives of the women and girls. As mentioned above, it is materialized in the form of Sunday church services, and daily or frequent in-house prayer and devotion sessions. The beliefs of non-Christians are duly respected and should residents of other faiths and creeds not wish to take part in these activities, they are not required to.

My visit to the Tarlac Home coincided with a visit from a Christian missionary group from Korea and a local church pastor. The group conducts visits and a 'feeding' program once a month, sometimes in collaboration with local churches and are responsible for donating and building one of the halls of residences on the property - "The House of Tabitha" (other buildings bear the names "Shalom" and "Agape"). This missionary group is but one of the partner organisations that have provided long-term support to the Home and its residents.

iii. Law Enforcement and Criminal Justice

It is the general experience of the practitioners I spoke to that women complainants experiencing economic abuse tend to be desirous of mediation and reconciliatory processes as opposed to opting for criminal law related methods. This is largely due to the delay in the process. For example, it is approximated to take about 2 years for prosecutors to produce the preliminary investigation of a case in the Philippines (or at least in Region 3 where this research is situated) – this is in spite of the law setting the timeline for preliminary investigations at 90 days. However, due to a lack of human resources and other uncontrollable

limitations experienced in the public prosecution and legal sectors, the length of time it takes to handle matters is often grossly extended.

Because such cases often drag on for an unpredictable number of years, it is often the case that not all complainants opt to wait out the criminal justice process. As the social workers and house parents explained, the Palayan and Tarlac Homes mostly cater to girls under the age of 18 and in terms of their collaboration with the courts, have much more positive feedback on the way in which cases involving minors are prioritised and often expedited. Thus, it is the minors that are more interested in pursuing 'justice', while residents more mature in age tend to be more interested in rebuilding their lives than in the legal process.

In terms of convictions however, it is the case that many matters while pending hearing are withdrawn or desisted by way of affidavit. Many factors contribute to this withdrawal; some of which have been previously discussed in Chapter 3(a) above and are applicable to the Philippines landscape as well. Notwithstanding this, there is an estimated 75% success rate in the filing of cases; and on violations of RA 9262 there are, at the time of writing, 4 docketed cases involving foreign nationals (2 American, 1 Swede and 1 Norwegian) according to information provided by the CHR3. Further to this, at the time of my visit to the PNP Regional headquarters in March 2015, there had already been a concluded court case that had been initiated as a result of raid operations conducted in February and March of the same year. So although a lot is being achieved, there is always room for the furtherance of effective results.

iv. A Note on Angeles City

The centre of the entertainment industry that this 'Note' refers to is that which is located at Field Avenue in Angeles City (Balibago barangay), not far from the former American ("US"), and current Philippine Air Force base area, i.e. Clarkfield.

The entertainment industry that flourished in the Clarkfield (pre-1991, former US Air Force Base) and nearby Subic Bay (pre-1991, former US Naval Base) areas continues to exist post-1991. According to the background information given to me by LACEM, most of the entertainers working in Fields Avenue are from poor and remote regions, villages and barangays. Such demographic make-up is indication that even those that are in the business voluntarily, may not have been in the position to make such choice utterly free from the duress brought about by circumstance. The Mount Pinatubo volcanic eruption in 1991 resulted in the withdrawal of the American bases in the Philippines that was subsequently made official by the termination of military agreements between the two governments. What remained however was devastation - devastation resulting from the volcanic eruption and socio-economic devastation caused by a combination of factors.
Having been based in Angeles City for most of my stay in the Philippines, it was my observation that the majority of clients are of foreign origin –whether tourists (consider potential jurisdictional issues here!) or residents, comparatively senior in age and exercise their financial superiority over the women openly. When this cycle becomes even more harmful in my opinion is when the 'industry' is taken to the streets and this *power play* between parties operates beyond the reach of the business regulation in Fields Avenue.

This power play and the exertion of *dominance* is visible and common; and perpetuates a climate for the prevalence of the objectification of women[137] and continued VAW under the radar. It can be argued that (at least some of) the women involved are continuously subjected to objectification through the buying of services, favours and/or affections whether directly or indirectly. It is well known that in Angeles City hotels charge for rooms by the hour – thereby aiding in propelling the cycle of objectification. What violations occur inside the reach of the entertainment business regulatory restrictions cannot as yet be tackled

[137] The *objectification of women* has not been previously discussed in this paper; but can be linked to the issues presented here, such as, stereotyping and myths. Objectification in this sense refers to a situation where the woman is perceived as not fully with rights, and with lesser value and dignity than the one exerting the dominance over his entity of pleasure and/or entertainment.

optimally; much less situations occurring outside of any ready regulatory restrictions, nonetheless sprouting from the same foundation.

Information provided from the PNP HQ about frequent raid operations conducted in the establishments and bars on Fields Avenue, and subsequent criminal prosecution is evidence of the peculiarities that take place in this part of the city; but also of the challenges faced in addressing the issues in such a climate, where also corruption is relatively widespread. In the interim, the role of organisations such as LACEM are certainly necessary in seeing to the well-being of the entertainers and managers in the business, through the raising of rights and health awareness and providing routes through which to pursue further education, if so desirable. Likewise, the continued efforts from human rights bodies and actors is crucial in fostering increased understanding of human dignity and the dignity of women.

c. Round-up

It is the overall observation that the approaches taken in the Philippines by the different actors both separately and collectively are 'well-rounded' and 'all-encompassing' in nature.

The strong community involvement in support of the efforts in place for the care of victim-survivors is noteworthy. Instead of ostracisation, different individuals and actors mobilise to provide care, protection and assistance to victim-survivors in need. This further points to the understanding that has been cultivated amongst the population over time of the benefit of such initiatives. It is however an added observation that the demographic make up of the residents under the care of DSWD programmes does not extend to all social sectors/classes of the society. The majority of the women and girls benefitting from these state initiatives are not from the *more* socially/economically-privileged sector of society. In stating this observation, I offer no explanation or conclusion on the matter except that having

these mechanisms and strategies in place better serves to cater to those that would otherwise have little or no access to formal avenues of justice and redress.

The added value that the acquisition of education brings is duly recognised and treated with priority. Likewise, the basic need and indeed right to health is duly recognised through the initiatives in the Philippines. Whatever the women and girls need in order to realise this need is availed to them without hesitation, be it with regard to physical or psychological health. Indeed this extends to spiritual well-being. The inclusion of 'spirituality' into the rehabilitative process is an example of the 'tailor-making' of responses that has been discussed earlier in this paper (see Chapter 2). Spirituality is considered to be important in the society and relevant to the restorative needs of the women and girls and as such has been incorporated into the regular structure. In doing so, nothing is subtracted from the principles and standards of human dignity that are otherwise upheld; in fact, such inclusion is used to instil a deeper sense of humanity and dignity-based values in the recipients of such faith.

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Chapter 5 - Concluding Remarks

Violence against women ("VAW") – a global problem requiring a universally applicable resolve.

In seeking to proffer means of tackling the issues at play, understanding has been sought on what VAW is; what is lacking and needs to be addressed, i.e. through critique of the criminal justice system; what of added value that human rights law brings to the table conceptually; and how what is put forward here could work in practice. The merging of considerations and concepts into practice is illustrated though the empirical observations of the way in which the responses to VAW have been structured and are carried out in the Philippines.

It has been a critique in this paper that criminal justice systems have fallen short of effectiveness and are unable to tackle the entirety of the situation from all necessary angles. The existence of elements that exclude some from access to legal avenues, and the discriminatory application of gender, sexual and victim stereotypes at any one stage of the legal process are dynamics that have been discussed. An approach that offers solutions for all regardless of socio-economic status and the circumstances of the abuse is what is needed in order to bridge the gaps that the criminal justice system leaves or cannot fill. This paper has contemplated that the needed resolve lies within the bounds of International Human Rights Law ("IHRL").

The crosscutting nature of the topic has required that an expanded conceptualisation of violence against women be courted. That is to say that the fullness of 'violence against women' is not confined to the acts of abuse themselves. Indeed there are more far-reaching effects that affect the victim (and those around her potentially) and ought to be borne in mind. Moving away from restricted understandings of VAW would serve to aid in the development of wholesome response mechanisms that cater to the full needs of the individual. The

contributions of the UN Special Rapporteur have been enlightening in this regard. The work of actors that have seen to it that women's human rights get put on the international agenda, as well as progressive precedent setting by judges has been integral to reaching the stage that we are at today.

It has been maintained that the substance of human rights speaks to humanity, dignity, human need and a common good. Though these notions have been debated and dissected by learned scholars and jurists either in support of them or to the contrary, in all good faith it cannot be reasonably refuted that violence and abuse constitute a 'common bad'. On that premise alone, the direction in which a 'common good' would go can be deduced. This thesis submits that human rights language is universal in tone and further argues that such tone speaks to a 'common good' – one of equality, non-discrimination and dignity. Be that as it may, there is still a need to make navigating the dynamics of a multicultural world practicable. As such, there need not be one best way of "doing human rights"; and attempting to suggest so would only meet with resistance.

'Human rights' resonate at different paces to different depths at different times. Allowing for the flexibility to 'tailor-make' human rights-based methods in response to violations and arising needs at different times in different places would make way for acceptance and understanding to foster. It is with this in mind that the flexibility of *mediating* culture is propounded herein.

The mediation of culture that is referred to in earlier chapters is done so in the support of *diversified methods* that, while in keeping with the intended spirit of human rights, would allow for the transcending of transcultural boundaries. Practically speaking, *what* this calls for is inclusive, participatory methods through which needs and gaps can be identified and responses moulded. Then, to take it one step further, the mainstreaming of human rights through conscious human rights education and the purposeful dissemination of information. It is the *how* that is left open for diversification – as what works best in context 'x', may not be applicable in context 'y'.

In proposing that holistic approaches are implemented, strategies that address the physical, psychological and spiritual well-being of the individual ought to be considered. Holism thus requires that the needs of the entire 'being' of the victim-survivor be taken into account when moulding strategies and responses. Ideally, both the immediate and long-term needs should be taken into consideration in order for strategies to be sustainable, i.e. restorative and preventative.

From the Philippines, an example of tailor-making responses is the establishment of Human Rights and Women's Desks at the police stations and barangays. Further, example of holistic diversification might be to some, the inclusion of spirituality-building activities in the daily routine of the residents at the Residences. Another example is the Department of Education's widely used Alternative Learning Programme that offers an avenue to those unable to pursue the mainstream means of education for whatever reason. Lastly, the entire existence of the League of Angeles City Entertainment Managers Inc. ("LACEM") speaks to the edification that diversified methods and tailor-made responses can bring to a place. LACEM caters to the wholesome needs of its client base through its initiatives.

The Philippine observations are intent on demonstrating the feasibility of combining IHRL-inspired approaches, holistic processes, sustainable strategies and productive collaboration with the justice system. No one method can work in isolation, at least not effectively. It has been the overall aspiration of this thesis to provide argument for the inclusion of methods inspired by human rights law to tackle VAW. IHRL allows for understandings that criminal law does not and often cannot. Drawing inspiration from the essence and substance of IHRL permits the individual to see situations of abuse in their fullness, looking to the 'human' and not merely the 'victim'. In doing so, the pursuit of legal redress becomes but one component of the necessary response. Women and girls have rights and are of dignity. Any strategy geared against violence against women and abuses ought to be the machinery through which these rights are realised and dignity upheld. Universally.

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