Advocacy and Litigation on Women's ESC Rights

CLAIMING WOMEN'S ECONOMIC, SOCIAL AND CULTURAL RIGHTS

6. Advocacy and Litigation on Women's ESC Rights

Women globally have witnessed a strong resistance to their activism in the recognition and realisation of their universal human rights to equality and non-discrimination. There is still a long way to go for women to be acknowledged and accepted as full and equal participants in shaping and implementing international as well as national norms and standards guaranteeing basic rights and fundamental freedoms.

Advocacy on economic, social and cultural rights has increasingly been integrated into the work of mainstream human rights groups and organisations, but women's realities in relation to violations of economic, social and cultural rights are rarely given specific attention in terms of the nature and scope of violations as well as the relevance for the realisation of economic, social and cultural rights for all. Moreover, women's rights groups have not integrated a focus on ESC rights in their work to this same degree, rther entrenching the silence around women's ESC rights in human rights debates. Within NGOs and women's rights organisations there has been a high reliance on using CEDAW to understand, interpret and analyse the realities of women in the context of ESC rights and a strategic focus on the effectiveness of using ICESCR to advance women's ESC rights has not been considered as a priority. The significance of looking at the intersections of CEDAW based discourse on women's equality rights together with the the meaning, scope and impact of specific rights recognised and articulated in the ICESCR, and vice versa, is critical for addressing the gaps and challenges faced by NGOs and groups advocating on women's ESC rights. This section aims to provide interested NGOs and women's rights groups with information on the range of mechanisms and strategies/tools available for building evidence-based advocacy and litigation on women's ESC rights.

Both NGOs advocating on ESC rights and women's rights groups advocating women's ESC rights have successfully utilised the multiple opportunities to advocate for ESC rights at the international and national levels. Analysis of and engagement by international organisations (such as IWRAW Asia Pacific and ESCR-Net) with the mechanisms available to advocate on human rights at international and national level indicates that it is important for women's groups and human rights organizations to expand their approaches to integrate their advocacy on women's rights and their advocacy on economic, social and cultural rights.

6.1 International Advocacy

NGOs working on ESC rights and women's rights groups have to be strategic in identifying and engaging with the mechanisms at international level. There is a wide range of mechanisms available for ESC rights NGOs and women's organisations to pursue their advocacy on recognition and implementation of women's ESC rights. The nature of a human rights mechanism at international level usually determines the scope and impact of advocacy by activists and organisations, as well as its relevance for national level activism and lobbying.

6.1.1 Human Rights Council

The special procedures of the Human Rights Council, for example, the Special Rapporteur on Education, the Right to Health, etc., do not have an elaborate process to monitor human rights implementation nationally, but these procedures are of immense value and importance for NGOs and human rights groups when urgent attention is required to be brought to an urgent or ongoing violation of women's ESC rights. These procedures are strategic for "naming and shaming" of the government and key actors and initiating a public debate on fulfilment by the State of its international obligations.

The Human Rights Council itself, along with its mechanism of Universal Periodic Review, provides another opportunity for NGOs to advocate for women's ESC rights as does the Commission on the Status of Women which meets annually in New York and various ad hoc international conferences, platforms and NGO events such as World Conferences and follow-up activities to the Beijing Platform of Action, followup to the Earth Summit such as Rio +20 and annual NGO events such as the AWID Conference. Further venues for



international advocacy exist at the regional level in various regions such as through the European human rights system including the European Court of Human Rights, the African Union and the African Court of Human and People's Rights, the Inter-American human rights system and the Inter-American Court of Human Rights, and the newly developing Association of South East Asian Nations regional system.

6.1.2 UN Human Rights Treaty Monitoring Bodies

Each of the nine core international human rights treaties, is supported by a Committee of independent experts.

Each of these Committees carries out a variety of functions, including the examination of complaints under the Optional Protocols and the development of General Commendations. Through the development of General Comments/Recommendations, the Committees elaborate on the interpretation of the normative standards contained in the treaties and clarify State obligation with regard to specific rights or issues. The General Comments by the CESCR and General Recommendations by the CEDAW Committee can be extremely useful advocacy tools for NGOs as they set out in detail the extent to which States are obliged to respect, protect and fulfill women's ESC rights. Some particularly useful General Recommendations/General Comments for advocacy on women's ESC rights are GC 16 and 20 of the CESCR and GR 24, 26 and 28 of the CEDAW Committee.¹

The reporting procedure under each treaty, including CEDAW and the ICESCR, mandates State Parties to submit periodically a detailed report on the status of implementation of the rights recognised under these human rights treaties. The Committees constituted under these treaties have obligated the State to undertake a consultative process towards the compilation of the State report, and at the same time these Committees have encouraged civil society groups

and organisations to provide alternative information on the extent to which the State has undertaken measures or steps towards the realisation of rights under CEDAW and ICE-SCR. The result of this reporting process at the international level will greatly contribute towards shaping the agenda and development of strategies for women's organisations and ESC rights NGOs in their advocacy on women's ESC rights.

Using the Reporting Process as a platform to advocate for Women's ESC Rights

At the international level, the human rights treaty reporting process is a key mechanism through which NGOs can

advocate for the recognition of women's ESC rights and for the redress of violations of these rights. It is an important means by which NGOs can advocate for States to be held accountable to their obligations under a treaty. The main way that NGOs can contribute to the treaty reporting process is through producing shadow reports or alternative reports to be considered as part of the regular review of State Parties who have ratified a treaty.

NGOs have successfully raised women's narratives and specific case studies that illustrate systemic problems or patterns of human rights violations of women's ESC rights in shadow reports. Shadow/ alternative reports can be produced for both

the CEDAW Committee and the CESCR, on women's ESC rights that are recognised under their respective treaties.

The reporting guidelines² developed by IWRAW Asia Pacific on CEDAW and on women's ESC rights jointly with ESCR-Net (see page 63) provide assistance to individuals and organisations who are working within the shadow reporting processes of CEDAW and ICESCR on how to incorporate information on the women's rights related dimensions of economic, social and cultural rights in parallel reports for both processes. The guidelines provide clarity on how NGOs should package information to ensure a more effective impact on the review process in a way that is useful for the CEDAW and CESCR Committees. They also contain information about how to most effectively use the review process and the outcomes of the review (the recommendations contained in the Concluding Observations) to effect change.

Although the two treaties relate to specific and distinct areas of human rights both the CEDAW and ESCR Committees have recognized the need for a greater integration of women's rights and economic social and cultural rights in their respective processes. Thus in reporting on women's ESC rights there can be substantial value in not limiting reporting to one of these treaties, but rather reporting under both CEDAW and ICESCR.

In addition to producing reports for the CEDAW and CESCR Committees, women's ESC rights can also be addressed

Using litigation as a strategy or as a tool in national level advocacy is critical for the domestication of standards and of the legal framework adopted under the international human rights treaties. through shadow/alternative reports to human rights treaty bodies under other Conventions including the ICCPR, CAT, CERD, CRC CPRD and the CMW. Particularly where States may not have ratified CEDAW or ICESCR, or have reservations to CEDAW and ICESCR, it can be useful to advocate for women's ESC rights through other treaties that have been ratified. For example, the CRPD is an important means for advocating for the economic, social and cultural rights of women with disabilities. Further, building on the indivisible and inter-related nature of rights, some NGOs have been successful in advocating for economic, social and cultural rights such as the right

to housing, by reporting on the impact of violations of economic, social and cultural rights on other rights such as the right to life under the ICCPR.

NGO shadow reporting can be strategically utilized to increase awareness of the rights and obligations contained in the treaties, promote integration of all women's human rights and improve State accountability for fulfilling its obligations under the treaties.

6.2. National Level Advocacy

Bringing International Human Rights Law Home

Often the international advocacy advancing women's ESC rights using human rights monitoring mechanisms provides

support to national level advocacy. The specific recommendations given by the Committees through concluding observations in their review of State reports can provide a platform for NGOs and women's rights groups to raise issues of women's ESCR.

To maximise the transformative potential of human rights treaty processes, NGOs can hold States accountable to their obligations under both CEDAW and ICESCR through a range of advocacy strategies at the national level, including monitoring, policy and law reform, litigation, and community education. It is important that capacity building of NGOs and activists on strategic use of international human rights mechanisms is undertaken to enhance the impact of international level advocacy, and make a shift in the understanding of NGOs and local level women's rights organisations on the potential and scope of international advocacy on women's ESC rights. NGOs can also advocate for policy and law reform initiatives to be consistent with the human rights standards and obligations expressed in CEDAW and ICESCR. For example, advocating for national development plans or framework legislations to incorporate specific policies and programs for the implementation of women's rights to housing, food, education and health care.

6.3. Using Strategic Litigation as a strategy in national level advocacy on Women's ESC Rights

Litigation can be used as a strategy both at international and national levels to advance women's ESC rights. NGOs can use litigation as a source of remedy, and ensure that the CEDAW and ICESCR standards and obligations are reflected in their litigation strategy. Using litigation as a strategy or as a tool in national level advocacy is critical for the domestication of standards and of the legal framework adopted under the international human rights treaties. In legal systems, for example the common law system, where the decisions by an appellate level or apex court become law with equal stature as that of a law enacted by a national legislature or parliament, litigation is a critical tool for local NGOs and women's rights organisations in raising discrimination experienced by women in the context of their ESC rights, as well as towards setting standards for national level implementation of international human rights.

Strategic litigation is a useful strategy when the change desired is of broader application, such as seeking the enforcement of an existing law, remedy a widespread violation of State's obligations, change or establish a national/ provincial policy, reform public institutions, or inspire social/ political change. Also, strategic litigation is very useful in cases where an issue may be unpopular, is not in line with the current power structure in the country, there are strong opposing interests, or represents the rights of marginalized groups, and would therefore have little traction in the formal legislative process. Strategic litigation at the international level has the added importance of helping to flesh out the scope and obligations of women's ESC rights, which can be used in other international fora as well as for domestic litigation and advocacy.

Strategic litigation at the international level can also be a useful strategy for civil law States. For example, although decisions made in cases at the national level in civil law jurisdictions will not generally apply beyond the specifics of that case, a pronouncement by an international legal body on the content and obligations related to women's ESCR could potentially be used quite broadly in national level advocacy and future national level cases on the issue.

Primary Elements to Consider

- **1.**Is there a clear violation of an economic, social or cultural right?
- **2.**Can the issue be adjudicated in court? Do adequate and effective remedies exist at the national level?
- **3.**Will it be possible to sustain support (both human and financial) for the duration of the case?
- **4.** If successful, will the outcome of the case have wide-spread effects on the right at issue?

Critical Factors in Determining a Strong Case for Strategic Litigation

- **1.**Will successful litigation of the case encourage social change and legal reform?
- 2. Can you link the individual or group case to a more systemic/collective remedy?
- **3.** How political is the particular issue in the case in both the domestic and international context?
- **4.** Is there internal capacity to litigate the case or will you need external support?



- **5.**Can you link with allies and other stakeholders to strengthen support for the case?
- **6.**Can a positive decision in the case be effectively monitored and implemented?

Integrating Substantive Equality and ESCR in your Case

- **1.**Ensure intersectional experience of rights violation (if present) is highlighted in the complaint.
- 2.Look for opportunities to build capacity of the court to understand the unique nature of women's ESCR violations—could be through *amicus curiae* submissions.
- **3.**Use the case to build capacity of service providers, local lawyers and government agencies to recognize human rights violations and address them through policy change.
- **4.**Be aware of when to use an integrated approach to issues and when it might not be successful.

6.3.1 Developing a Case Strategy

It is important to keep in mind in developing a case selection criteria and identifying cases which have the potential of being used for strategic litigation that most often these cases will emerge on an *ad hoc* basis. It will be infrequent that you will have an array of strong potential cases to choose from. However, because litigation is often a long and expensive process, it remains important to have an understanding of what some of the key factors are to be able to identify a potentially successful case. Below some of these key factors are explored.

Is litigation the right strategy?

Before beginning to identify a case for strategic litigation, the most important question to consider is whether litigation is in fact the best strategy for that issue. In many cases, traditional legislative processes and popular social reform can be equally or more effective in changing law and policy. This will depend on many factors, but particularly, the political/ social climate surrounding the issue. If there is an opportunity to gain support for the issue from a majority of the public, if you have support of the media, or key allies within the legislative or executive branch, the traditional legislative process may be the faster, less expensive and more effective means of making change on the particular law or policy in question. Also, if the main goal is to raise public awareness and support for an issue, a media campaign will likely be more effective.

It is also important to assess whether the relevant group of women implicated in the litigation will be supportive of the case and if they are aware of the violation of their rights by the practice or policy. If not, perhaps awareness-raising needs to happen first to ensure that future litigation not only changes law or policy, but is also inclusive and empowering for the women affected. You also must consider whether there could be retaliation or further marginalization for the women involved in the case. If so, it might be safer and/or more effective to engage in public education prior to litigation. Finally, practical considerations like availability of evidence or available funds will also be highly relevant to the strategy chosen.

The ultimate consideration in deciding whether to engage on strategic litigation in a particular case, however, is whether litigation as part of a larger advocacy strategy or indeed litigation at all is the best option for the particular woman or women involved. If there are more effective ways for the victim to obtain redress or to obtain more appropriate redress, she must be fully informed of these options and facilitated in making the decision that is right for her.

Assessment of impact of potential case

One important consideration on whether a case is potentially good for strategic litigation is the expected impact it may have on the affected group represented by the facts in the case.

There are a variety of reasons that it is important to develop clear criteria for selecting cases for strategic litigation. First, it will benefit your organization to have an equitable and transparent process for choosing cases to help dispel potential conflict if a case needs to be rejected or to ensure compliance with the mission and focus of your organization. Further, if additional funding will need to be acquired to pursue the case, the likelihood of finding support for a particular issue or group will also be relevant.

The "representative victim" and the seriousness of the violations involved in the case should also be considered. Also, support for the individual or group in the case will likely be critical to her willingness to pursue it over the long-term. If an individual is represented, does she have a family and/or

Case Selection Criteria

The Importance Of The Issue For Women's ESC rights

- How widespread is the issue/practice in the country?
- Does it reflect a systemic problem?
- Does it affect an individual or group of individuals?
- How serious is the violation complained of?

Anticipated Impact Of Case On Women's ESC rights Standards

- What is the likelihood of "success'?
- What is the potential impact on women's access to ESC rights likely to be?
- Does the anticipated scope of impact reach beyond the individual woman or group of women in the case?
- What other possible impact might the case have (e.g. on public opinion)?
- Is there some other objective, notably capacity building or relationship building that might, exceptionally, justify case selection?
- What are the potential consequences/negative impacts on women or other rights?
- Is the case politically sensitive?
- Is there a risk that success in this case might negatively impact on standards of human rights protection elsewhere?

community that are supportive of the case? If the clients are a group of individuals, do they have support from the community or class in which they are a part?

In relation to strategic litigation at the international level through use of Optional Protocols, the communications to CEDAW and CESCR must be on behalf of an individual or group of individuals. To be a good candidate for strategic litigation it should be representative of a wider pattern of violations or the impact of a law or policy on different groups of women, such as women with disabilities, poor women, indigenous women, etc.

Furthermore, potential impact should be assessed beyond

What is the likelihood of a successful judgment being enforced/implemented?

• What would your organization's role be in enforcement? Who could you work with?

Your Organization's Contribution

- Could your involvement bring real added value to the case?
- Do you/your organization have sufficient expertise on the subject matter?
- Is there relevant experience from other lawyers/ organizations with whom you work?
- Are there other organizations better placed to do this or with whom you could usefully collaborate e.g. through partnerships.

Resources

- How much time is likely to be taken on this case?
- Do you have the time to do it in view of other commitments?
- Are there cost implications?
- Is this the most appropriate and best use of limited resources?

Source: adapted from International Centre for the Legal Protection of Human Rights (INTERIGHTS), Background Note on Case Selection (2010).

the impacts actual implementation of the judgement may have. In case of international communication/litigation, it is clear that getting complete implementation of the views and recommendations of the Committee may be very difficult. However, sometimes there can be positive impacts for the affected groups in the case even where implementation is lacking. For example, if a large amount of national and international attention is brought to the issue, the State may refrain from moving forward with a policy which violated women's human rights, or it may better educate the public and advance domestic discourse on the issue making legislative change more likely in the future.

Important Strategies to Increase the Likelihood of Implementation:

- The enforcement strategy should be developed and integrated into the overall litigation strategy from the start of the case;
- Be specific in the communication about the desired remedy and be aware of the current institutional capacity of the relevant national agencies which will be responsible for implementing the recommendations—consider working with the relevant government agency to better implement a decision;
- Ask the Committee to appoint a special rapporteur to oversee follow up and require the State to specifically report on progress in implementation of the case in its periodic review;
- Develop a large cross-section of allies for the case, including social movements and grassroots groups, academics, the media and a broad crosssection of national civil society groups and international NGOs;
- Build national and international awareness around the case through a concerted media strategy and relationships with international groups;
- Use human rights budgeting, gender budgeting and tax information to oppose State arguments on lack of resources for implementation;
- Present the views and recommendations made by the Committee to domestic level courts to support enforcement; and
- Widely disseminate the recommendations of the Committee so all stakeholders are aware if there is a lack of implementation.

Source: ESCR-Net, Analytical Report—Enforcement of Judgments on Economic, Social and Cultural Rights (2010).

✓ Non-legal strategies and ensuring strong coalitions of strategic actors

In strategic litigation, the involvement of various stakeholders and particularly affected groups and social movements is critical to ensuring the broader impacts of the case and that the claim advanced is truly representative of a widespread violation that needs to be addressed. It is always important to also engage in non-legal strategies and to reach out to social movements or other civil society groups. Strategic litigation on a particular case is greatly strengthened when linked with domestic and international advocacy and a media awareness campaign. Linking with a variety of stakeholders, and particularly social movements, will increase awareness of human rights within society and build popular pressure and support during the litigation itself, but often more importantly afterward, to ensure the State implements the recommendations of the Committee.

✓ Financing the case / finding litigation support

Issues of financing or legal costs will primarily arise at the domestic level, for example whether the court requires the losing party to cover both parties legal fees, in addition to the actual costs of the litigation itself. In most countries, legal aid organizations exist which can help cover some costs of the litigation, however, most often it is necessary to undertake fundraising work to locate funds to cover impact litigation at the national level. It may also be possible to link with regional/international groups that may be interested in potentially working collaboratively to take the case through the appeal process and to the regional/international level to also help cover some of the national level litigation costs. On page 119, you can find a list of potential sources of litigation support or funding for national level litigation on women's ESC rights

Once the case is ready for presentation before OP-CEDAW or OP-ICESCR, financial resources may present less of a barrier. There are no filing fees for communications, evidence, etc., in international treaty bodies. In addition, international NGO's are often available to support the development of a communication and may also be willing to submit amicus curiae briefs in support of the case on certain issues. On page 119 of this Guide, you can find a list of international organizations available to assist in presenting communications or potentially calling for an inquiry under OP-CEDAW or OP-ICESCR.

Litigation at international and regional level:

There are many potential venues for any complaint and it is

Comparison of Regional Human Rights Mechanisms

Feature	Inter-American system (Commission and Court)	European Ct HR	ECSR	African System (Commission and Court)	
Actio Popularis	V	Х	Collective complaints from registered NGOs only	V	
Time limits	Within 6 months of exhaustion of domestic remedies	Within 6 months of exhaustion of domestic remedies	Not specified	within a "reasonable" period of time after exhaustion of remedies	
Admissible if Examined by other systems/bodies	Х	Х	Not specified	Not specified	
Evidence	Written Communications / Public Oral hearings	Written Communications / Public and Oral hearings/on-site investigations/ witnesses/experts	Written Communications /Oral hearings and third parties intervention	Written Communication (Commission) / Written Communications, Oral hearing, witnesses and experts (Court)	
Remedies	Individual remedies (monetary and symbolic reparation, restitution, rehabilitation; investigation and punishment of those in charge of the violation)/ Structural or General measures (Non-repetition; legislative amendments; and policy changes)	Individual measures (just satisfaction and restoration of the injured party) / General measures— policy and legislative amendments	Decides on whether the Charter's provisions have been violated and provides recommendations, but does not provide specific remedies	Individual measures; limited remedies (Commission)/ General measures /Commission)	
Follow-up procedure	An interpretation of the judgment /Hearings for monitoring compliance of the judgments	Committee of Ministers of the CoE	Committee of Ministers of the CoE/ States submit reports on the implementation of the decision	The Executive Council on behalf of the Assembly (Court)	
Legally binding	✔ (Court)	v	Х	X (Commission) ✔(Court- stipulated only in its Rules of Procedure)	
Enforcement Mechanism	Х	 ✓ (Committee of Ministers— a political body) 	Х	Х	
Filing Costs	Х	Х	х	Х	



important that you are aware of all relevant possibilities to make an informed decision in the best interests of the victim. (See table on page 97).

✓ Forum Selection: When is the OP-ICESCR /OP-CEDAW the most strategic venue for a complaint?

Deciding whether to bring your case to OP-CEDAW or OP-ICESCR or another international or regional mechanism will depend on many factors:

- The first question should be what is the primary right at issue in the claim? If it relates to women and issues of economic, social or cultural rights, OP-CEDAW or OP-ICESCR may not be the only relevant forum, however, given their greater expertise on these issues respectively they are likely to be the best choice.
- Once you establish the main issue of the case relates to a violation of women's ESC Rights, then you will need to choose between OP-CEDAW and OP-ICESCR.

1) First, is your State a party to both instruments? If not, then you will be limited to the mechanism your country has ratified. If yes, then there are several more factors to consider:

2) It might be important to analyze any reservations made by your country to Articles of both Conventions. If there was a reservation made on a relevant Article in one of the Conventions to your claim, you should use the other mechanism instead.

3) Another important factor to consider is the facts underlying your case. Is the focus of the claim on the substantive aspects of economic, social and cultural rights, i.e. fulfilment and access; or is the focus of the claim on inequality / discrimination against women and girls in relation to the right?

4) Another factor to consider is the political position of your State. For example, some States are more likely to

work constructively with the UN on issues of economic and social rights than issues around discrimination against women and vice versa. Having an awareness of your State's position both domestically and internationally on these issues is important in the assessment.

5) If the issue in your case has already been the subject of communication before either body and, the result was positive, this would be a good indication that a favourable decision might also be made on your submission. If the Committee's finding was negative, are there significant differences between your case and the one previously considered? If so, you might still choose to submit to this body.

6) Has more than one year passed since a final decision was made in the case at the domestic level? If so, the case is ineligible for review under OP-ICESCR, and will have to be submitted to OP-CEDAW.

7) The OP-ICESCR allows for the possibility of a friendly settlement, whereas this is not possible under OP-CEDAW. This can be useful for its flexibility in the type of remedies available and it may allow the process to resolve much quicker than proceeding through to a Committee decision, however, it is critical to remember that friendly settlements do not establish law.

8) Once you have chosen between OP-CEDAW and OP-ICESCR, you will also need to decide whether to file a communication or request an inquiry. Both ICESCR and CEDAW prohibit the Committees to review a case which has previously been reviewed by it or another UN body, so this choice should be carefully made. There are also significant differences in the two procedures, i.e. the severity and widespread nature of the violation. In addition, there is not a formal mechanism for requesting an inquiry—it is the will of Committee which is the sole determinant for the initiation of an inquiry procedure—although compelling evidence may support such a decision.

Reservations to OP-CEDAW or OP-ICESCR

A reservation to a treaty is a statement by a State claiming to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State. A reservation is allowed unless the treaty itself prohibits it, or the treaty permits only certain reservations not including the one in question, or the reservation is incompatible with the object and purpose of the treaty. If the right at issue in your complaint is subject to a reservation by your State, you will need to argue this reservation violates one of the three exceptions above. Legal argumentation around the interpretation of State reservations can be quite technical. The Human Rights Committee decisions and the International Law Commission provide the most authoritative interpretations on this issue, however, it would be advisable to reach out to experts with specific expertise to help develop your argument on this issue.

Effect of OP-ICESCR /OP-CEDAW decision on domestic legal system

Treaty monitoring bodies are the definitive source of interpretation of rights and obligations under their treaty of competence. State Parties have the obligation to implement the views and recommendations made under OP-CEDAW and OP-ICESCR.³ This arises from the obligation to fulfill treaties in good faith (1969 Vienna Convention on the Law of Treaties, Article 26). The failure to implement the views and recommendations made under OP-CEDAW or OP-ICESCR should be considered violations of the States duty to work with the Committee and the duty to act in good faith in compliance with the treaty itself.⁴

Implementation of OP-CEDAW/OP-ICESCR Decisions

It is important to keep in mind that the UN treaty bodies have no enforcement mechanisms. As mentioned above, States are obligated to work with CEDAW and CESCR and implement their views and recommendations, however, this process will almost always require advocates to be involved in pressing for implementation.

There are several important factors influencing likelihood of enforcement such as:

- involvement of social movements or other affected groups in the case to ensure there is broad-based pressure on the government to enforce the decision once finalized;
- social, economic and political costs of compliance, i.e. the internal/external pressure to comply or not to comply;
- breadth of the remedy sought—potentially the broader or more resource-intensive the remedy the less likely it will be implemented; and

Comparison of UN Human Rights Treaty Complaint Mechanisms

Mechanism	CERD	CESCR	HRC	CEDAW	CAT	CRC	CRPD
Competency to consider indi- vidual communications	v	v	v	v	v	Х	v
Competency to consider com- munications from groups of individuals	<i>٧</i>	<i>٧</i>	v	v	<i>٧</i>	X	~
Time Limits after the exhaus- tion of domestic remedies	6 months	1 year	5 years	Not specified, but not unreasonably prolonged	Not specified, but not unreasonably prolonged	Х	Not specified
Admissible if Examined by other systems/bodies	~	X	Inadmissible if the case is being examined under another procedure of international investigation or settlement	X	Х	Х	X
Evidence / Victim can Testify	- Written communications—Oral hearings	- Written communications Statement	Written communications	Written communications	Oral hearings	X	Written communications Complaints may be submitted in alternative formats, including Braille, large print, accessible multimedia as well as written, audio, plain-language, human- reader and augmentative and alternative modes, means and formats of communication
Remedies Structural/ Specific	Individual but not specific remedies / Occasionally structural	?	Individual but few specific remedies / Occasionally structural	Individual and relatively specific / prescriptive / Structural	Individual but not specific remedies / Occasionally structural	Х	Х
Friendly Settlement	X	V	Х	Х	X	X	X
Conduct inquiries through country visits	Х	V	Х	v	v	Х	~
Competency to consider Inter- State complaints	v	<i>v</i>	<i>٧</i>	X	v	Х	Х
Follow-up procedure	٢	V	<i>٧</i>	<i>٧</i>	٧	Х	~
Early-warning or urgent action procedure	V	Х	Х	Х	Х	Х	Х
Interim Measures	٢	V	<i>٧</i>	<i>٧</i>	٢	Х	~
Enforcement Mechanism	X	X	Х	Х	Х	X	Х
Filing Costs	Х	Х	Х	Х	Х	Х	Х

✔ Yes, or has competence X No, or does not have competence ? Not yet sure approach Committee will take

 resource and knowledge capacity of national level agencies to implement the remedy.⁵

Advocates who are interested in using these mechanisms should develop a plan to create pressure for effective enforcement within the litigation and advocacy strategy from the beginning of the case.

6.3.2 Need for Strengthening Advocacy on Women's ESC Rights

Consideration should also be given to how NGOs can combine their international and national level advocacy strategies for women's ESC rights. This can be important in ensuring that international and national level advocacy are mutually reinforcing and States Parties are held accountable at both levels. For example, in the Philippines, NGOs built into a campaign for the protection of women's right to access reproductive health care, the following range of national and international strategies:

- International—producing shadow reports for the CEDAW and ICESCR Committee; reporting to specific UN Special Rapporteurs; submitting a request for an inquiry under OP-CEDAW.
- National—education campaigns on women's right to health recognised under both CEDAW and ICESCR and the ways this is being violated in the Philippines; law reform campaigns to challenge existing laws that limited women's right to reproductive health care; national level litigation; and working with both women's groups and economic, social and cultural rights groups to monitor the ways in which women's right to health care was being addressed in the Philippines.

Advocacy on women's ESC rights is not without any challenges. There is still a widespread lack of understanding of CEDAW and ICESCR in most countries, across government agencies, the private sector, in the community and the media. Community education on the standards and obligations in CEDAW and ICESCR and, specifically, what these are in relation to women's ESC rights, is an important aspect of ensuring there is widespread awareness and understanding of women's ESC rights, the obligation of States to respect, protect and fulfil these rights, and how women's ESC rights can be implemented at the local and national level. There is no set of perfect strategies for advancing women's ESC rights nationally and internationally, but in a given national context and in relation to the discrimination or violation of women's ESC rights, the respective NGO or coalition of NGOs need to work out best possible strategies for pushing its advocacy agenda towards realisation of women's ESC rights.

The impact of advocacy nationally and internationally is determined by:

- identification of the violation/discrimination,
- framing of the issue based on existing national and international legal & human rights normative standards,
- identification of key actors and stakeholders involved,
- mapping and assessment of opportunities, resources, challenges and strategies,
- ability to mobilise a critical mass to support the advocacy—within the NGO or civil society sector as well as within the bodies capable and mandated to make a decision in regards to the violation/discrimination, and finally
- capacity and ability of the NGO or its coalition to consolidate its gains and positive outcomes from the advocacy and to build a consensus amongst the key stakeholders on recognition, protection and implementation of women's ESC rights towards necessary policy change or law reform.

6.4 Case Studies

> Alyne Da Silva Pimentel v. Brazil (CEDAW, 2011)

1. Facts and Issues in the Case

Alyne da Silva Pimentel, an Afro-Brazilian woman who resided in one of Rio de Janerio's poorest districts died as a result of repeated delays in receiving access to emergency obstetric care when she was six months pregnant.⁶ Timely access to induced delivery and post-delivery care would have prevented life-threatening complications and ultimately saved Alyne's life.

Alyne first sought medical attention at her local health center when she experienced vomiting and severe abdominal pain. Although these signs indicated a high-risk pregnancy, doctors performed no tests and Alyne was sent home with

vitamins, vaginal cream, and anti-nausea medication. She continued to experience severe pain and returned to the health center two days later. At this time, doctors discovered that there was no fetal heartbeat. Alyne was left unattended, and a few hours later, she delivered a stillborn fetus. Despite medical standards dictating that Alyne should have undergone an immediate curettage surgery to remove placental parts and to prevent hemorrhage and infection, she did not undergo surgery until approximately 14 hours later.

Following surgery, Alyne experienced severe hemorrhaging, low blood pressure, and disorientation. Despite these serious symptoms, doctors once again neglected to perform any tests. As her condition worsened, it was determined that she needed to be transferred to a hospital with adequate equipment to treat her condition (General Hospital of Nova Iguaçu). However, the health center refused to use their only ambulance to transport Alyne. Alyne's mother and husband attempted to secure a private ambulance, to no avail. Eventually, the General hospital authorized the use of their ambulance to transport Alyne. However, the health center failed to transfer Alyne's medical records to the hospital where doctors were only given a brief oral account of Alyne's medical condition and, according to subsequent medical records, they treated Alyne without knowledge that she had just delivered a stillborn fetus.

After arriving at the hospital, Alyne's

blood pressure plummeted to zero, but she was resuscitated. She was then placed in an emergency room hallway where she was largely left unattended. She was found there by her mother with blood on her mouth and clothes. Alyne died on November 16, 2002, 21 hours after her arrival at the hospital, of an entirely preventable condition. Alyne is survived by her family and young daughter.

A few months after Alyne's death, her family sought civil redress within the Brazilian court system by filing a petition for civil indemnification for material and moral damages against the state-sponsored healthcare system. To date, the Brazilian judiciary has failed to provide any effective or timely remedy. Unable to obtain any effective state relief for over four and a half years, Alyne's family, in conjunction with the Center for Reproductive Rights (CRR) and ADVOCACI, a Brazilian nongovernmental organization, filed an individual complaint before the Committee on the Elimination of Discrimination against Women (CEDAW Committee) on November 30, 2007.⁷ The petition alleges that Brazil's state-sponsored healthcare system was responsible for Alyne's death and as such, the government violated her rights to life, health, nondiscrimination, and redress. These rights are grounded in

Alyne's case highlights Brazil's systemic failure to reduce maternal mortality and provide access to quality maternal healthcare. Furthermore, this case highlights the barriers in accessing justice for violations of women's economic and social rights. both Brazil's constitution and international human rights treaties, including Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

2. Context in Country and Legal Framework

Article 196 of the constitution of Brazil explicitly guarantees the right to health "by means of social and economic policies aimed at reducing the risk of illness and other hazards and at universal and equal access to all actions and services for the promotion, protection and recovery of health."⁸ Maternal health is also protected under Article 6, which concerns social rights, whereby the State is further required to allocate a percentage of public funds for the protection of maternal health.⁹ The right to be free from discrim-

ination on the basis of sex and race is enshrined in Brazil's constitution as well. $^{\mbox{\tiny 10}}$

Notwithstanding these constitutional-level protections for the right to health generally and maternal health specifically, the Brazilian state has failed systematically to guarantee these rights and to provide an effective remedy and redress.

Despite making significant strides in other areas of public health, Brazil has failed to prioritize the reduction of maternal mortality. With approximately 1,800 women dying every year, Brazil's maternal deaths account for 20% of all maternal deaths in Latin America and the Caribbean.¹¹ Racial, gender and socio-economic factors play an important role in

Argentina—Campaign against compulsory religious education in public schools

In 2008 the Province of Salta, Argentina,¹² adopted law 7.456/09 which imposed compulsory religious education in public schools.¹³

Although in practice religion already existed as part of the curricula of public schools and was taught in class before the enactment of the law, the enactment of the law came to provide legal support for the incorporation of religion in schools, thus violating rights and freedoms established under the Argentinean National Constitution, Salta's Constitution, as well as under international human rights instruments.

Law 7.456/09 proclaims religious plurality but the lack of governmental policies, through the Ministry of Education and other State agencies, make the law unconstitutional in its implementation and practical application because the only religion that has presence in the classroom is the Roman Catholic Church.

The role of education is essential since through education children are able to build their autonomy, freedom of personality and critical thinking. Privileging one religion over others through religious education creates the impression that the State professes a particular religious belief. States must assure religious neutrality in the context of public education and guaranteeing access to education regardless of the individual religion. States should

maternal mortality rates, as Afro-descendant, indigenous and low-income women are disproportionately affected by maternal mortality.

Brazil identified seven health priorities in its Multi-Year Plan for 2004-2007; however, not one of those priorities was reducing maternal mortality. Brazil's failure to even reference maternal mortality indicates the country's failure to treat it as a pressing problem. Generally, maternal mortality is easily preventable and at a low cost. In fact, the Federal Parliamentary Commission of Inquiry on Maternal Mortality in Brazil recently reported that 90% of maternal death cases in Brazil are preventable.¹⁴ Nevertheless, according to the Commission, "maternal mortality rates [in Brazil] have inculcate in students a neutral belief guaranteeing all citizens freedom of consciousness.

The Catholic Church's statements in public education prevent children from access to qualified and reliable sex education. The absence of comprehensive sexuality education and reproductive health services increases the risk of unwanted pregnancy and STIs including HIV; which has direct impact in girls' access to education since pregnancy and motherhood in teenage girls are also common motives for discrimination in education.

In reaction to the enactment of the law, some non-Catholic students' parents decided to make public their dissatisfaction in various local media. This group of parents, with the support of the National Institute against Discrimination, Xenophobia and Racism (INADI), and the Association for Civil Rights (ADC) decided to fight the law in courts. The litigation strategy was accompanied by mobilization and street demonstrations, broadcast journalism and testimony gathering of children and parents.

The campaign and litigation strategies seek to eliminate the provision that in applying this standard, imposes the compulsory teaching of Catholic religion in public schools in the province, violating the constitutional rights of freedom of religion, religion and beliefs, right to equality, right to education free from discrimination, privacy and the principle of freedom of conscience, and respect for ethnic and religious minorities.

not decreased in the past fifteen years, despite subsequent economic improvements."¹⁵

Alyne's case highlights Brazil's systemic failure to reduce maternal mortality and provide access to quality maternal healthcare. Furthermore, this case highlights the barriers in accessing justice for violations of women's economic and social rights. As the report of the Special Rapporteur on the independence of judges and lawyers indicated, Brazil has problems with "access to justice...slowness and notorious delays," and the people who are most affected by this denial of access to justice are, among others, women and people of low-income.¹⁶

3. Legal Framework

As a party to CEDAW, Brazil has a duty to ensure women's equal enjoyment of the rights to life and health.¹⁷ The State is obliged to eliminate discrimination in the field of health care, ensure access to guality medical treatment in conditions of equality and ensure appropriate services to women in connection with pregnancy and childbirth including pre-natal services and timely emergency obstetric care. The government "cannot, under any circumstances whatsoever, justify its non-compliance with core obligations," particularly the right to health¹⁸ and should devote the maximum available resources to guarantee that women can go safely through pregnancy and childbirth.¹⁹ In addition, the State has an obligation to protect women's right to equality and non-discrimination through competent national tribunals and other public institutions.²⁰ Article 2(c) of CEDAW not only requires States to establish legal and other remedies to combat discrimination against women, but to also strengthen implementation of and monitoring of relevant laws.²¹ The Brazilian government has a duty to put into place a system that ensures effective judicial action and protection in the context of reproductive health violations.

These obligations to provide quality healthcare services in the context of pregnancy and childbirth are also enshrined in the ICESCR, which Brazil is a party. The ICESCR guarantees the right to the highest attainable standard of health, including sexual and reproductive health (Article 12); the right to non discrimination (Article 3); the special rights of pregnant women (Article 10); the right to an effective remedy (Article 4), and the right to benefit from scientific progress (Article 15).²² In General Comment No. 14 on the right to the highest attainable standard of the health, the Committee on Economic, Social, and Cultural Rights made specific reference to the application of Article 12 to reproductive health: "[r]eproductive health means that women and men have...the right to...have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as the right of access to appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth."23

In the Alyne case the State clearly violated its obligations under the CEDAW and ICESCR by not providing appropriate and quality maternal health care serviced and by failing to provide an effective remedy and redress to Alynes' family.

4. Impact of the case

Around the world, pregnancy poses profound risks for women: one woman dies every minute from causes related to pregnancy and childbirth, with over half a million women dying each year.²⁴ Men between the ages of 15 and 44 face no single threat to their health and lives that is comparable to maternal death and disability. Complications from pregnancy and childbirth are the leading cause of death for young women and girls between the ages of 15-19 in developing countries.²⁵ Rural and low-income women are at greatest risk of suffering maternal death and disability.

The Alyne case is aimed at bringing to light and remedying the stark injustices surrounding maternal mortality, particularly in the context of Brazil. It is the first individual case filed before a UN human rights body, the CEDAW Committee, to frame maternal mortality as a human rights violation and to seek government accountability for the systematic failure to prevent maternal deaths. The claims set forth in the complaint build upon international reproductive rights standards, which have gained increasing recognition over the last 15 years.

The CEDAW Committee, in deciding this case, has the potential to issue a landmark precedent that would impact interpretation and application of women's human rights worldwide. It also has the opportunity to clarify the extent of governments' obligations to reduce maternal mortality, particularly in countries with social, economic, and political conditions that are similar to Brazil's.

5. Factors affecting the result in this case/ Strategies used to advance the case

The case is still pending before the CEDAW Committee. As part of the strategy to gain support for the case at the national level and prepare for the implementation once a decision comes out, the Center has engaged with civil society organizations, academics, health professionals and other key stakeholders. In addition, it has organized various advocacy activities to raise the public profile of the case. In 2008, on the Maternal Health Day, the Center together with various Brazilian networks and organizations held a vigil outside the Congress in Rio de Janeiro. The Center developed a media strategy and the case appeared in the most important newspapers in the country and a long article about the case appeared in one of the most prestigious magazines. In 2009, the Center

and the national NGO Center for Citizenship and Democracy organized a seminar on maternal mortality and human rights in Brazil. The seminar brought together academics, health professionals, and civil society representatives to discuss the obstacles and challenges in improving maternal health in the country. The Alyne case was discussed in depth and some of the strategies that can be used to push for the implementation of the decision of the case were discussed. These activities have been very important to consolidate a strong informal coalition of supporters for the case, to raise its profile and to shape an implementation strategy.

Inquiry in the Republic of Philippines²⁶

(CEDAW, requested June 4, 2008)

1. Facts and issues in the inquiry

In 2000, former Manila City Mayor Jose "Lito" Atienza, Jr. introduced Executive Order No. 003: Declaring Total Commitment and Support to the Responsible Parenthood Movement in the City of Manila and Enunciating Policy Declarations in Pursuit Thereof (the Executive Order) in the City of Manila, the Philippines.

The implementation of this Executive Order resulted in a ban in all Manila public health facilities on the provision of modern contraceptives, on information about contraceptives, and in referrals for family planning services.²⁷

The implementation of the Executive Order has harmed women by causing unwanted pregnancies, which in turn, have contributed to the high incidence of unsafe abortion and maternal mortality and morbidity. The Center for Reproductive Rights has also documented many cases where the Executive Order has resulted in increased hunger and poverty for women and their families.²⁸ Approximately 30% of Filipinos live under the poverty line,²⁹ and the lack of access to modern contraception has particularly impacted on lowincome women in Manila, most of whom simply cannot afford to purchase their own contraceptive supplies.

In 2008 the Centre for Reproductive Rights, IWRAW Asia Pacific and Taskforce CEDAW Inquiry (Philippines) submitted a request to the CEDAW Committee to undertake an inquiry under article 8 of the OP CEDAW on systematic and grave violations of women's rights in the City of Manila, Philippines.

The initial submission claimed violation of rights under

CEDAW pertaining to the restriction of access to modern contraception in Manila City and the harassment of providers of contraception. The submission claimed violation of CEDAW Articles 2, 3, 5, 10, 11, 12, and 16 (i.e. rights to life, health, non-discrimination, self-determination and bodily integrity, education, an adequate standard of living, freedom from violence, freedom of religion and belief).

Four submissions have been made in total including:

- Initial Request for Inquiry—June 4, 2008
- 2nd Supplemental Request for Inquiry— October 27, 2008
- 3rd Supplemental Request for Inquiry—April 23, 2009
- 4th Supplemental Request for Inquiry—July 13, 2010

The NGOs also submitted to the CEDAW Committee a Petition and signatures in January 2010.

In addition the NGOs made a submission for urgent action to the following UN Special Rapporteurs in 2009:

- Mr. Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
- Ms. Yakin Erturk, Special Rapporteur on violence against women, its causes and consequences
- Mr. Vernor Munoz Villalobos, Special Rapporteur on the right to education
- Ms. Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders
- Ms. Asma Jahangir, Special Rapporteur on freedom of religion or belief
- Ms. Maria Magdalena Sepulveda Carmona, Independent Expert on the question of human rights and extreme poverty

2. Context in the Philippines

The Philippines has a population of about 90 million people, the 12th largest in the world. Of the estimated 11.2 million people living in Metro Manila, 5.7 million are women. In the Metro Manila area, more than 1.1 million people (10.4% of the population) live below the official poverty threshold and of these, 17, 214 are classified as extremely poor.³⁰ Women from the poorest households have six children on

average, while the national average is 3.5 children, according to the Manila-based University of the Philippines Population Institute.³¹

Nearly half of all Filipino women have an unmet need for contraception. According to the 2003 National Demographic and Health Survey, the total contraceptive prevalence rate among all women was 31.6% (any method), but only 21.6% used modern methods.³² Notably, the contraceptive prevalence rate in the Philippines is far lower than that in neighbouring countries in the region.³³

Women die from pregnancy-related causes in significant numbers in the Philippines. The maternal mortality rate in 2005 was 230 maternal deaths per 100,000 live births, one of the highest rates in East and South East Asia. Nationwide, approximately one-third of women who experience an unintended pregnancy have an abortion. An estimated 800 women die due to unsafe abortion each year, as a result of unplanned and/or unwanted pregnancy and lack of access to safe abortion services. In 2000, it is estimated that more than 473,000 Filipino women unsafely terminated their pregnancy, a statistic that reflects the reality that a substantial proportion of women in the Philippines are forced to rely on pregnancy termination to control their fertility.³⁴

Contraceptive use in the Philippines is strongly correlated to wealth. In the richest quintile, 35.2% used modern methods of contraception, while in the poorest quintile the rate of use was less than 24%.

In 2004, there were a total of 2,719,781 Catholics in the Archdiocese of Manila out of an estimated total population of 2,993,000. Although the Philippines is a constitutionally secular state the Catholic Church has involved itself with various political issues, such as pending legislation on reproductive health and rights, and the abolition of capital punishment. The Catholic Bishops Conference of the Philippines' (CBCP) has opposed the introduction of any bills on sexual and reproductive health, through prayer rallies, petitions, sermons and adverts in the media.

Legal context

The Philippines ratified CEDAW in 1981 and ratified the OP CEDAW in 2004. At the time of ratifying the OP CEDAW, Philippines did not opt-out of the inquiry procedure (Article 8).

The Philippines does not have a national sexual and

reproductive health law. Under the Local Government Code of 1991, the Philippines has decentralized responsibility for "people's health and safety" to the local level. Section 17 of the Code provides that the local government units are responsible for the provision of basic services and facilities, among which are health services, family planning services, and population development services. For most Filipinos, the government is the major source of family planning services, with about 70% of people relying on the public sector for services, including female sterilization, oral pills, intrauterine devices (IUDs) and injectables.³⁵

The Executive Order introduced in 2000, has continued to be implemented since the change in administration from Mayor Lito Atienza to Mayor Alfredo Lim in 2007.³⁶

There is national legislation pending before the Philippine Congress, the Reproductive Health and Population Development Bill, which would require all levels of government to provide free or low-cost reproductive health services, including condoms, birth control pills, tubal ligations and vasectomies. Should the reproductive health bill be adopted it would nullify the EO.³⁷

3. The Decision

The CEDAW Committee asked the Philippines Government and the UN Country Team to submit a response to the CEDAW Committee by February 2009. The Government of Philippines.

The UN Country Team submitted their confidential report to the CEDAW Committee during the first quarter of 2009. Subsequently, the Philippine Department of Foreign Affairs submitted two responses to the CEDAW Committee: 1) the response from the Philippine Commission on Women confirming the importance of the conduct of the inquiry and consenting to the visit; and 2) the response from the Manila City Office alleging that the EO is no longer being implemented.³⁸

Currently, the CEDAW Committee is awaiting permission to conduct a Country Visit. Should the Philippines Government not consent to a country visit, the CEDAW Committee can still proceed with the inquiry based on the information provided to the Committee and information provided by Filipino women affected by the contraception ban in Manila City provided in meetings with the CEDAW Committee conducted outside of the Philippines.

4. Strategies

The NGOs involved in this submission have used a combination of strategies in the course of the Inquiry.

The NGOs have developed a small coalition of international and national NGOs to work together on the Inquiry. This has enabled the demands of the inquiry to be shared amongst several organisations, and has maximised the benefits of drawing on the different areas of expertise of different organisations. The national NGOs have used a number of data gathering methods to collect information directly from women in Manila affected by the Executive Order—including surveys, interviews, meetings etc. It has been beneficial to link this work of national NGOs with the work of international NGOs on this issue.

One of the factors of this inquiry has been the long timeframe for the inquiry which has currently been running for three years. The NGOs have countered this by providing updated information through supplementary submissions. In addition the NGOs have collaborated on taking supplementary action including making submissions to Special Rapporteurs and creating a petition. Such actions have also assisted in raising awareness within Manila and internationally of the issues as well as of the Inquiry.

5. Importance of OP-CEDAW

During its 45th session (1—19 November 2010), the Committee on Economic, Social and Cultural rights held a Day of General Discussion on the right to sexual and reproductive health in accordance with articles 12 and 10 (2) of ICE-SCR. The Day of General Discussion is part of the preparatory work leading to the formulation of a general comment on the right to sexual and reproductive health. A General Comment on right to sexual and reproductive health will positively inform any future consideration of these issues under either CEDAW or ICESCR or their relative Optional Protocols.

〉 Maria Mamerita Mestanza v. Peru

(IACHR, 2008)

1. Facts and issues in the case

In 1996, officials from the Encañada District Health Center in Peru continually threatened to report Ms. María Mamérita Mestanza and her partner to the police if she did not agree to undergo surgical sterilization, claiming that having more than five children was a crime.³⁹ Under coercion, Ms. Mestanza a rural woman about 32 years old and mother of seven children, agreed to have tubal ligation surgery. The procedure was performed on March 27, 1998 at the Cajamarca Regional Hospital, without any pre-surgery medical examination. Ms. Mestanza was released few hours later, although she had serious symptoms including nausea and sharp headaches. In the following days her husband reported to personnel of La Encañada Health Center on Ms. Mestanza's condition, which worsened daily, and was told by them that this was due to post-operative effects of the anesthesia. Ms. Mestanza died at home on April 5, 1998 due to a post-operative general infection as the direct cause of death.⁴⁰

A few days later a doctor from the Health Center offered a sum of money to Mr. Jacinto Salazar to cover funeral costs and to sign a document (an "agreement") in an effort to put an end to the matter. Despite this, on April 15, 1998 Mr. Jacinto Salazar filed charges with the Provisional Combined Prosecutor of Baños del Inca against Martín Ormeño Gutiérrez, Chief of La Encañada Health Center, in connection with the death of Ms. Mestanza, for crimes against life, body, and health, and premeditated homicide (first degree murder). On May 15, 1998, the Provincial Prosecutor indicted Mr. Ormeño Gutiérrez and others before the local provincial judge, who on June 4, 1998 ruled that there were insufficient grounds to prosecute. This decision was confirmed on July 1, 1998 by the Circuit Criminal Court; on December 16, 1998 the Provincial Prosecutor ordered the case dismissed.

The Mestanza case is one among a large number of cases of women affected by a massive, compulsory, and systematic government policy to stress sterilization as a means for rapidly altering the reproductive behavior of the population, especially poor, Indigenous, and rural women. The Ombudsman had received several complaints on this matter and between November 1996 and November 1998 CLADEM documented 243 cases of human rights violations through the performance of birth control surgery in Peru.

Having exhausted domestic remedies, on June 19th, 1999 petitioners⁴¹ brought a case against the Peruvian Government before the Inter-American Commission on Human Rights (IACHR). The petitioners alleged that the facts constituted violation of the rights to life (article 4), personal integrity (article 5), and equality before the law (articles 1 and 24),

of the American Convention on Human Rights; and violation of Articles 3, 4, 7, 8, and 9 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (hereinafter the "Convention of Belém do Pará"), Articles 3 and 10 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (hereinafter the "Protocol of San Salvador.") and Articles 12 and 14(2) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

On October 3, 2000 the Inter-American Commission on Human Rights approved the Report on Admissibility Nº 66/00. The Report opened the scenario for the exploration of a possible friendly settlement procedure.⁴² On March 2, 2001, during the 110th session of the Inter-American Commission on Human Rights, the Peruvian State and the victims' representatives signed the Preliminary Agreement for Friendly Settlement with intervention and approval by the IACHR. The Peruvian State recognized its responsibility for the violation of article 1.1, 4, 5 and 24 of the American Convention and article 7 of the Convention of Belem do Para. The final friendly settlement was agreed upon on August 26, 2003, when the act setting out the friendly settlement reached by the parties was signed in Lima.43

To date, Peru has partially complied with

the provisions established in the friendly settlement. Peru has not complied with the portion of the agreement in which they had pledged to "conduct a judicial review of all criminal cases on violations of human rights committed in the execution of the National Program of Reproductive Health and Family Planning, to break out and duly punish the perpetrators." There has been no investigation or prosecution of those responsible for Maria Mamérita Mestanza's death, wand her case has been archived.

2. Context in Peru

Health is recognized as a fundamental right under the Peruvian Constitution (Article 7 and 11) according to which the State must guarantee free access to public health care. This constitutional recognition is complemented by domestic laws that define Peruvian public health policy and makes it a justiciable right.⁴⁴ Reproductive and sexual policy is defined by Peru's National Population Policy, Legislative-Decree N° 346, of July 5, 1995—article 1.2 promotes and ensures free and informed decision and responsibility of individuals and couples about the number of births (family planning);⁴⁵ and by the National Health General Act, law 26.842 of July 15, 1997—article 6 establishes the right of women to choose a contraceptive method, including

natural ones.

The Mestanza case is among a large number of cases of women affected by a massive, compulsory, and systematic government policy to stress sterilization as a means for rapidly altering the reproductive behavior of the population.

However, during the regime of former President Alberto Fujimori the government developed a "birth control policy" as a way to bring equal access to contraception for the nation's poor. In 1992, the Government approved the Family Planning Manual -RM N° 0738-92-SA/DM, to permit sterilization as a family planning method in cases of "reproductive risk"; which was the antecedent for sterilizations in public clinics in urban and rural areas of Peru.

At the same time, Fujimori attended the Fourth International World Conference on Women (Beijing, 1995) where his statements made clear that the sterilization law was approved to reduce the birth rate and combat poverty rather than as an expression of women's reproduc-

tive health or rights. At the convening he argued that Peru had to implement rational policies to reduce family size in order to eliminate poverty and to "democratized" family planning services in order to guarantee the poorest people access to these methods.⁴⁶

In September 1995, to support Fujimori's regime, the Congress modified the National Family Planning Program, (law No. 26,530) and implemented sterilization as a family planning method. Pursuant to this law, the Ministry of Health began an intensive campaign to raise awareness, through health fairs, to induce women to make use of irreversible contraceptive methods to control the birth rate, especially in peasant women. This was followed, in 1996, by

Government's approval of the National Program of Reproductive Rights and Family Planning (Programa Nacional de Salud Reproductiva y Planificación Familiar 1996-2000 (PNSRPF 1996-2000) -RM No. 0738-92-SA/DM- through which it was legalized the Voluntary Contraceptive Surgery (VCS) - (AQV: Anticoncepción Quirúrgica Voluntaria).

The government's aggressive Family Planning Program focused on increasing the number of sterilizations performed on Peruvian women, specifically targeting low-income and indigenous women, through "tubal ligation festivals," fairs and campaigns. According to a CLADEM report "Nothing Personal" reports released by the Peruvian Ombudsman⁴⁷ on health care provider practices, measures that did not include informed consent such as subjecting women to aggression, intimidation, and humiliation were allowed. For example, health care providers stated that sterilization was the only free method of contraception available, deliberately gave inaccurate information about the risks and consequences of surgical sterilization procedures, and did not give women time between the decision and the surgery.

There were at least 18 documented cases of women that died after forced sterilization procedures⁴⁸ due to conditions of health services and lack of pre and post-surgery monitoring. This coercive policy of sterilization increased the number of surgeries from 81.762 in 1996 to 109.689 in 1997.⁴⁹

3. The Decision

On October 10th, 2003, the IACHR approved and published the Friendly Settlement, signed by the representatives of the victims and the State. One of the main outcomes of the settlement was Peru's recognition of its international responsibility for violating the victim's human rights. The rights violated included, among others, the right to life, to physical integrity and humane treatment, to equal protection before the law, and to be free from genderbased violence.

In the settlement agreement signed, the Peruvian government agreed to pay moral damages to Mestanza's husband and seven children, as well as significant compensation for their health care, education and housing. The government also agreed to conduct an in-depth investigation and to punish those responsible for the violations of Peruvian and international legal standards. The Peruvian State pledged to carry out administrative and criminal investigations to the attacks on the personal liberty, life, body, and health of the victim.⁵⁰

The government agreed to modify discriminatory legislation and implement policies that included: improving preoperative evaluations of women being sterilized; requiring better training of health personnel; creating a procedure to ensure timely handling of patient complaints within the health care system; and implementing measures to ensure that women give genuine informed consent, including enforcing a 72-hour waiting period for sterilization. This agreement represents an important precedent, not only for Peruvian women but also for international human rights law and for future cases where reproductive rights and women's access to family planning violations occur in Latin America and around the world.

4. Impact of Case on Women's ESC Rights

The agreement had broad implications for Peru's reproductive health policies, as well as improved access of women to family planning and reproductive healthcare. Through this landmark settlement Peru agreed to modify discriminatory legislation and policies including those that fail to ensure women's right to be autonomous decisionmakers in the context of their exercise of thee right to health.

Through settlement negotiations the Minister of Health committed to evaluate practices and modify legislation accordingly. Consequently, in 2004, the National Health Care Strategy on Sexual and Reproductive Health (Estrategia Sanitaria Nacional de Salud Sexual y Reproductiva) was implemented. This Program included national guidelines, which incorporated the friendly settlement's recommendations. Most of these recommendations, concerning public policies on reproductive health and family planning, were made by the Peruvian Ombudsman.

One of the main concerns raised during the litigation was the lack of (or inaccurate) information provided to women subject to surgical sterilization and the deficient pre-surgery evaluation of women who underwent sterilization, which speaks to international human rights standards of the quality of the service. Therefore, the State was urged to adopt the necessary administrative measures ensuring that the respect for the right to informed consent is scrupulously

followed by health personnel; to take strict measures to ensure that the compulsory reflection period of 72 hours is faithfully and universally honored; to guarantee "drastic measures against those responsible for the deficient pre-surgery evaluation of women who undergo sterilization, including health professionals in some of the country's health centers. Although the rules of the Family Planning Program required this evaluation in practice those were not followed. In addition, the government was committed to implement a mechanism for efficient and expeditious receipt and processing of complaints for the violation of human rights in the health establishments, in order to prevent or redress injury caused.

Despite these important changes to national policy and practices, Mestanza's family has encountered many obstacles in accessing education and health services, despite the commitment of the State to "to give the victim's children free primary and secondary education in public schools" and "tuition-free university education for a single degree at state schools"; as well as psychological rehabilitation treatment" and "permanent health insurance" for her husband and the children. Because the family lives in a rural area, secondary education is not available nearby and the distance to the nearest school prevents their attendance, therefore the children are currently not receiving secondary education. Further, living in a rural area also limits their access to healthcare services.

5. Factors affecting the result in this case

There are internal and external factors that affected the outcome of the particular case. The internal factors relate to the methodology used in its development and the alliances to file it. The external factors relate to the political context after the Fujimori regime and the collective desire for accountability, as well as the instrumental changes on the view of reproductive rights in the international human rights standards.

The methodology used by the petitioners through research, documentation of cases nationwide and systematization of information (interviews, archive news, testimonials, etc..) allowed the identification of an emblematic case, as well as substantial support of the case through the documentation of systemic impact of the policy. Another important factor was the intervention of the Ombudsman who received numerous complaints about cases of forced sterilization, as researched and published in CLADEM's report with findings and recommendations on the issue. Another important factor was the alliance between organizations as petitioners in the case. It brought together the feminist organizations of CLADEM and DEMUS, with APRODEH, a leading human rights NGO in Peru, and international human rights organizations, CEJIL and CRR. The political context of transition after the Fujimori government was also favorable, as it gave priority attention to cases of human rights violations striving for accountability of the regime.

In addition, since 1990, a new paradigm has emerged from two UN World Conferences held in Cairo and Beijing which place women's reproductive rights within the human rights framework, and recognize them as part of the right to health and core human rights. This profound shift stemmed from the emerging international consensus that "reproductive rights embrace certain human rights that are already recognized in national law, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health."⁵¹ Since Cairo, an increasing framework of norms and jurisprudence has advanced interpretation of the right to access reproductive healthcare.

6. Strategies

Litigation of Mamerita Mestanza case was complemented with a communication strategy aimed at denouncing the Peruvian program of massive sterilization of mainly poor women in Peru. The media strategy was also useful to create pressure on the government to sign and implement the settlement in the case; the dissemination and publication of the agreements signed before the Commission were key to this end.⁵²

In addition, given the difficulties in the execution of the obligations related to access to health care and education for victim's children, the petitioners held several meetings with state representatives of the agencies involved in the implementation of those measures.

To assist in the judicial investigation and prosecution of those responsible for Mestanza's death, the petitioners prepared a report in which the organization presented arguments based in international human rights law for the

judiciary to take into consideration. The goal was to encourage courts to apply human rights standards in the investigation, however, the report was rejected and the case was finally archived by the public prosecutor. The petitiOners have communicated this decision to the IACHR arguing that the archive of the investigation is in breach of the friendly settlement.

Therefore, if litigants are able to combine litigation with movement building and a media strategy, it increases success in achieving the legal remedies by broadening the knowledge of the case as a systematic problem, pressuring the government through a shaming strategy, and generating a grassroots movement that can hold the government accountable for its actions. Likewise, such strategy broadens and deepens the understanding of each right to include the international human rights legal framework on women and ESC rights within the larger public.

The case in itself constitutes a strategy towards the building of what has been addressed as an external factor in the previous section in relation to the advances of the international human rights framework around the recognition and protection of reproductive rights. The decision to make an emblematic case accountable in the international human rights fora builds regional precedents that, as this case, nurture the international legal standards and understanding of reproductive rights, as a framework applicable in the region, and possible worldwide.

7. Lessons Learned

When strategizing for the presentation of future cases, careful attention should be given to the development of convincing gender-sensitive legal arguments. It remains key to take the time to frame the violation of the rights at issue in light of international human rights standards on ESC rights and women discrimination under the Belem do Para and CEDAW Conventions.

Initiatives should include broader and more targeted allegations to further expand human rights interpretations and recognition of women's rights. Arguments presented should seek to enhance a global understanding that access to healthcare is in fact a human right and one which is necessary to ensure the protection and exercise of other rights such as the rights to life, equality and non-discrimination. In Mamérita Mestanza case, although organizations introduced this perspective that links the traditional understanding of human rights with ESC rights through a gender perspective, the arguments could have been developed more thoroughly. Such fact has to take into consideration the lack of international human rights standards at such point, and possibly a strategy to incorporate such understandings in an increasing fashion. Organizations need to elaborate on the interrelationship between women human rights violations and the economic and social rights at issue and use the standards that today have been created, not only in the regional human rights systems but also in the universal human rights systems.

In addition, organizations should insist on including ESC rights with a gender perspective in their work. In this case, while the initial petition framed the violations in terms of ESC rights -particularly violations of article 3 and 8 of San Salvador Protocol- during the negotiations of the friendly settlement that strategy was abandoned. This was a strategic decision due to the progressive nature of ESC rights and if they are judicially enforceable. In spite of this the IACHR, it has stated that both the Commission and the Court can consider the Protocol of San Salvador in the interpretation of other applicable provisions, in light of the content of Articles 26 and 29 of the American Convention.53 With this in mind, and the few precedents issued by IAHR system regarding ESC rights, women rights advocates should relate and reinforce their arguments on ESC rights violations of the Protocol of San Salvador in harmony with the provisions of the ACHR.

Finally, despite the fact that international law is sometimes challenging to enforce, settlements such as that in the Mestanza case prove that the threat of international admonishment can be an effective motivator in securing redress.

8. What new possibilities could exist for realization of the rights at issue in the case if it was brought before OP-CEDAW / OP-ICESCR?

Under OP-CEDAW the petitioners could have used Article 12 of CEDAW, relating to equality in health services, especially family planning in combination with Article 14.2(a) to clearly show how Mestanza's experience of intersectional discrimination as a rural woman was central in her experience of the rights violation. The CEDAW Committee has also developed specific legal interpretation on this issue including General Recommendation 21, which stresses the importance of access to information, specifically in the context of sterilization, noting the need for women to access information about sexual and reproductive health in order to make informed decisions, according to paragraph h) of Article 10 of the Convention. Additionally, in its General Recommendation 24, the CEDAW Committee explains that services that are acceptable are those that are delivered in a way that ensures that a woman delivering their full informed consent, respect for their dignity, guarantees her confidentiality and is sensitive to their needs and perspectives. The Committee urges States parties not to permit forms of coercion, such as non-consensual sterilization ... that violate women's rights to dignity and informed consent." OP-CEDAW has also established important precedents on this issue under the case of A. S. v. Hungary, involving lack of informed consent in the sterilization of a Roma woman, in which the CEDAW Committee found Hungary in violation of the rights set out in paragraph h) of Article 10, Article 12 and paragraph e) of paragraph 1 of Article 16 of CEDAW.

Under OP-ICESCR, the right to highest attainable degree of physical and mental health becomes justiciable as a substantive right defined under international law, which can also include references to interpretations by CEDAW, CRC and ICCPR, among others. According to CESCR, the right to health must be understood as "a right to enjoy a range of facilities, goods, services and conditions necessary to achieve the highest level of health" both physically and mentally. In General Comment 14, the CESCR has also emphasized the close relationship the right to health and other fundamental rights such as the right to education, which could enhance claims on the relationship between violations of these rights, particularly in relation to access to information and family planning. Finally, the ESCR Committee is currently elaborating a General Comment on the content and scope of state's obligations related to sexual and reproductive health. This will be an important source of law for the Committee to draw upon once it begins receiving cases under the OP-ICESCR on these issues.

🔰 Lourdes Osil et. al. v. Mayor Of Manila

(Court of Appeals, 2008)

1. Facts and issues in the case

In February 2000, the mayor of Manila issued Executive Order 003 (EO 003) to "promote" natural family planning and "discourage" so-called "artificial methods of contraception." Since then, EO 003 has operated as a de facto ban on modern contraceptives in public health centers in Manila City. In addition to preventing women in Manila City from being able to obtain modern contraceptives from public health facilities, EO 003 has had a "chilling effect" on private and non-city health service providers who, as a result of the order, are afraid of reprisals for giving information to women about modern methods of family planning.

Thus, for 9 years, women, especially low-income women, have been arbitrarily denied access to a full range of modern contraceptives in blatant violation of their right to access the full range of family planning methods and services as recognized in international law. The withdrawal of modern contraceptives from clinics funded by the local government in Manila City has left low-income women of childbearing age residing in Manila City without access to their main source of family planning methods, information and services, thereby significantly increasing the risk of unplanned and unwanted pregnancy among these women. Examples of the devastating impact of EO 003 and its implementation on women have been documented in CRR's, Likhaan and REPROCEN report Imposing Misery: The Impact of Manila's Contraception Ban on Women and Families.54 The report found that already poor families are driven deeper into poverty; that women's life and physical and mental health are jeopardized by too-frequent deliveries; and that more women resort to unsafe abortions, causing injuries, disabilities and numerous deaths.

In January 2008, a group of 20 men and women filed a lawsuit against the Office of the Mayor of Manila in the Court of Appeals, asking the court to declare EO 003 unconstitutional and to call for its revocation. The petitioner relied on their individual experiences of being denied access to modern contraception and evidence from Imposing Misery, to claim that EO 003 had severely and irreparably damaged their lives and health, as well as that of many low-income women and families in Manila City. Unfortunately, the case was dismissed by the Court of Appeals in May 2008, on arguably flawed procedural grounds.

The petitioners next filed an appeal with the Philippine

Supreme Court in September 2008, but it was dismissed the following month on the ground that one of the petitioners failed to sign the petition. Notably, the past practice of the Supreme Court in these circumstances has been to simply drop the non-signing petitioner from the case and to proceed with rendering a decision on the merits. A Motion for Reconsideration was filed with the Supreme Court, but it was subsequently denied in February 2009.

In April 2009, the petitioners re-filed the case with the Regional Trial Court in a final attempt to obtain redress through the Philippine judicial system. The Manila City Mayor's Office then filed a motion asking the Regional Trial Court to dismiss the suit. Soon thereafter, in December 2009,

the Petitioners filed a response opposing the potential dismissal of their suit. The Regional Trial Court has yet to issue a decision on this matter. The failed trajectory of the Osil case confirms the Philippine judiciary's general unwillingness to engage with the issue of modern contraception and refusal to enforce Filipino women's sexual and reproductive health and rights.

2. Context in Philippines

Article 15 of the Constitution of the Philippines protects the "right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood."⁵⁵ Article 15

guarantees that spouses' right to use whatever form of contraception they choose must be ensured by the state.⁵⁶ Furthermore, the Philippines' National Population Act, Act No. 6365, states that "family planning will be made part of a broad educational program; safe and effective means will be provided to couples desiring to space or limit family size."⁵⁷ Article 2 of the Constitution protects the right to health, and further specifies that the state must "make essential goods, health and other social services available to all the people at an affordable cost. There should be priority for the needs of the underprivileged ...women, and children. The State shall endeavor to provide free medical care to paupers."⁵⁸ The right to privacy is also constitutionally protected, under Article 3.⁵⁹

With a population of almost 90 million people, the

Philippines is the world's 12th most populous country.⁶⁰ Nearly half of all Filipino women have an unmet need for contraception. Approximately 48.8% of women in the Philippines use contraception, but only 35.1% use modern methods. Notably, the Metro Manila region has experienced a decline in modern contraceptive use in recent years, while other in other regions, use of modern methods is on the increase.⁶¹ In 2000, it was estimated that more than 473,000 unsafe abortions took place in the Philippines.⁶² An estimated 100,000 women are hospitalized and treated each year for complications due to induced abortion.⁶³

In effect, the EO 003 has forcibly required women and families, particularly from low-income backgrounds, to use

natural family planning to the exclusion

ing. Moreover, the EO 003 exceeds the

of any other method. Through depriva-In effect, the tion of access to contraception, the City EO 003 has forcibly of Manila has dictated petitioners' reproductive choices for them. The implemenrequired women and tation of EO 003 has led to higher rates of families, particularly unwanted pregnancies and unsafe abortions, increased maternal mortality and from low-income morbidity, undermined women's and girls' education and employment opportunibackgrounds, to use ties, and driven women and their families natural family planning deeper into poverty. The EO 003 violates the petitioners' rights to family planning, to the exclusion of any health, privacy, gender equality, including other method. as it relates to access to healthcare services, and to autonomy and decision mak-

> executive's scope of authority, as the State has a legal duty to provide access to reproductive healthcare, and that the City of Manila abused its discretion by passing and continuing to enforce EO 003 in an unconstitutional manner. Finally, under Article 2 of the Constitution, Petitioners make two arguments relating to the constitutional protection concerning equality in access to health and equality in autonomy and decision-making.

> In addition, the Philippines is a party to several international treaties, including CEDAW, ICESCR, and the International Covenant on Civil and Political Rights (ICCPR), which protect women's rights to life, health, and non-discrimination. These treaties and several other international policy documents support the right to contraception and to information

on family planning. Under Article 23 (2) of the ICCPR, men and women have the equal right "to found a family."64 This article has been interpreted by the Human Rights Committee (HRC) to mean that "women should be given access to family planning methods."65 In addition, under Article 16(1)(e) of CEDAW, women have the right "to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."66 Accordingly, CEDAW General Recommendation No. 21 states that "women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services."67 Moreover, Article 12 of the ICESCR, provides for the right to "the highest attainable standard of health."68 The Committee on Economic, Social and Cultural Rights has noted that the right to health includes "access to healthrelated...information, including on sexual and reproductive health."69

3. Impact of the case

The EO 003 constitutes a violation of a number of women's human rights. By allowing the EO 003--a de facto contraception ban--to continue, the government of the Philippines is failing to uphold its international treaty obligations and is violating Philippine constitutional law. This case is being followed by activists around the world, as it has implications for the recognition of women's right to control their fertility and for the application of international human rights norms in the face of religious-based laws and policies.

4. Factors affecting the result in this case

The State has inappropriately attempted to evade its duty to respect and enforce the rights guaranteed in international treaties by citing its government structure as justification for non-compliance, in part, through decentralization of health care services to local government units (LGUs). As a matter of international law, devolution of functions to lower level government authorities does not reduce the scope of a government's obligations and, in any event, as noted above, the acts and omissions of local government authorities are attributable to the Philippine government.

Since the Philippines lacks a national reproductive health policy which ensures women's access to sexual and reproductive health information and services in the Philippines, LGUs are left to pass laws and develop policies and programs with little to no oversight by the national government. Unfortunately, LGUs often lack institutional capacity, thus exacerbating inequities in access to health services, and are subject to the caprice and individual biases of local politicians such as former Mayor Atienza and current Mayor Lim, in Manila City.

LGUs are also heavily influenced by conservative religious forces when addressing issues of contraception and family planning. In a nation where 90 million people are predominantly Catholic, the Church has immense influence over the public and government policy making. In fact, the Catholic Church has been known to spread misinformation about modern methods of contraception, creating a hostile environment preventing women from making informed choices about their sexual and reproductive health and family planning.

5. Strategies

Since the issuance of the EO 003 a decade ago, national and international non-governmental organizations have developed a variety of advocacy strategies to get the EO 003 revoked and to restore access to family planning information and services in Manila City. These efforts have been important to unveil at the national and international level, the devastating impact of the EO 003. However, they have proven unsuccessful in getting the EO 003 revoked.

Nonetheless, advocacy efforts have been instrumental in generating an international outcry against the contraception ban in Manila City. Due to the Philippine government's overall unwillingness to address women's lack of access to comprehensive sexual and reproductive health information and services, advocates have attempted to seek recourse within the UN human rights system. Notably, a number of UN human rights bodies and Special Procedures have spoken out against the dire state of Filipino women's sexual and reproductive health and rights. For example, the CEDAW Committee has articulated its apprehension about the availability of family planning services and information in the Philippines. As recently as 2006, the CEDAW Committee "request[ed]" that the Philippines "strengthen measures aimed at the prevention of unwanted pregnancies, including by making a comprehensive range of contraceptives more widely available and without any restriction and by increasing knowledge

and awareness about family planning."⁷⁰ Despite the concrete concerns and recommendations voiced by these treaty monitoring bodies and other UN representatives, the Philippine government has failed to heed the principled recommendations, particularly as they relate to promoting women's access to contraception and family planning information and services.

In light of the limited success of these non-adversarial advocacy strategies, the Osil case represents an appeal to the judicial branch of the Philippine government to recognize that the continued implementation of EO 003 perpetuates the violation of a spectrum of rights guaranteed by both domestic and international law.

6. Importance of OP-CEDAW

The Manila City EO 003 and the highly discriminatory policy that it embodies has caused, and will continue to cause, systematic and grave violations of women's human rights as guaranteed by the CEDAW Convention in Articles 1, 2, 3, 5, 10, 11, 12 and 16, the ICESCR in articles 2, 3, 10 and 12, and the ICCPR in articles 2, 3, 17, 23 and 26, as well as article 14 of the Declaration on Human Rights Defenders. The adjudication of this case before an international treaty monitoring body would serve as a critical recognition of these violations.

Women's Inheritance Rights — South African cases

1. Introduction

The following "case study" includes a series of cases litigated by the Women's Legal Centre challenging the constitutionality of domestic legal provisions related to women's inheritance rights under customary law in South Africa. Although cases were litigated separately, they are all part the Women's Legal Centre strategy for claiming women's ESC rights.

2. Context in South Africa

Prior to 1994 very few mechanisms existed in South Africa for public interest litigation. There was no Bill of Rights, almost complete parliamentary sovereignty, very strict prescriptive laws that favoured the state and a judiciary that followed the strict letter of the law and was not responsive to injustice. The post 1994 era saw the enactment of a new Constitution which guaranteed fundamental rights for the first time through the Bill of Rights, as well as the creation of a liberal Constitutional Court. The 1997 Constitution provided a wide array of opportunities for effective public interest litigation. These included extensive fundamental rights –including justiciable socioeconomic rights– as well as generous standing provisions and wide remedial powers.

In addition, the period since 2000 has seen a major shift in the nature of public interest litigation. The litigation in question has tended to focus to a far greater degree on socio-economic rights and has, in many ways, been groundbreaking. Nevertheless, this has been insufficient and there remains an inadequate focus on socio-economic rights litigation given how critical these are to addressing the persistent concerns of poor and marginalized South African people.

3. The Inheritance Cases

The cases under study challenge the constitutionality of domestic legal provisions related to women's inheritance rights under customary law. WLC has dealt with many cases over the past few years involving the rights of women married under Muslim personal law, including those in polygamous marriages.

a) The Amod case

The Amod case was one of the first articulations that women married under Islamic law in South Africa, whose marriages did not constitute valid legal marriages due to the historical lack of recognition under apartheid, were nevertheless entitled to claim loss of support on the death of their spouses. Given that the Islamic marriage was not registered as a civil marriage in terms of the provisions of the South African Marriage Act of 1961, these marriages are not recognized as a legal under South African law.

This case was one of the first in a line of cases which have created limited protections for widows and orphans whose rights of inheritance had not enjoyed protection under the prevailing statutory and common law regimes. The case firmly established that the arbitrary, intolerant and unequal treatment of certain cultures could not be tolerated under the new legal structure which established the protection of fundamental human rights for all.

b) Case Nontupheko Maretha Bhe (Ms Bhe)

The case was brought by Nonkululeko Bhe, whose fatherin-law had planned to sell the house she and her daughters were living in when her husband died.⁷¹ At the time, black South African women were denied inheritance rights under the customary law of primogeniture which gives the entire estate to the eldest male child of the deceased. Under the system of intestate succession flowing from section 23 of the Black Administration Act 38 of 1927 and its regulations, the female children did not qualify to be the heirs in the intestate estate of their deceased father. In 2004 the Constitutional Court struck down the African customary law rule of primogeniture and affirmed the rights of women and girls to inherit and to claim maintenance from deceased estates.

c) Mrs Daniels

This case established that surviving partners in a monogamous Muslim marriage can claim maintenance from their deceased partner's estate and inherit as an intestate heir if their deceased partner dies without a will. The case was brought at a time when the effects of non-recognition of Muslim marriages had been highlighted in a number of cases. The WLC realized that the attitudes of society had changed to such an extent that there was broad support for equitable treatment of widows who had been disadvantaged due to legal regimes established under apartheid. The case builds on the decision in Amod and further establishes that Muslim women must be treated equally in society.

d) Ms Gumede⁷²

The judgment in this case abolished the customary law which vested the ownership of property in a marriage in the husband for customary marriages which commenced following the establishment of the Customary Marriages Act 120 of 1998. After Gumede, all customary marriages are in community of property, providing women with fair access to resources acquired during the course of their customary marriages.

f) Gasa vs Road Accident Fund⁷³

Mrs Gasa had been a partner in a polygamous marriage. After her husband was killed in a road accident, Mrs Gasa and her husband's first wife both applied for compensation. Mrs Gasa was refused on the grounds that although the law now recognises polygamous marriages, her customary marriage was nullified because her husband had previously married another woman in terms of the Marriage Act. The ruling relied on the Black Laws Amendment Act, an apartheid-era law which remains on the statute books. On November 21 the Supreme Court of Appeal, by agreement between the parties, awarded Mrs Gasa her damages claim.

The case was another in the growing line of cases which recognized the rights of widows in customary and/or religious unions to claim loss of support on the death of their spouses where such claims had been denied in the past. This is an important case not only for Ms Gasa but for all women in her position with claims for loss of support. It also lays the groundwork for future challenges to the discrimination against women inherent in a dual system where civil law enjoys primacy over customary law.

g) Robinson and Another v. Volks NO and Others

This case is significant in that it limits the protections offered by the law to women in vulnerable economic situations. However, the significance of the case lies in the two dissenting opinions which highlight the gendered nature of marital relationships and the limited bargaining power of women to force the issue of marriage, and on the inequalities faced by women on dissolution of marriage in particular in respect of the economic and other patrimonial consequences of marriage where no legal protection is offered.

4. Factors Impacting the Results in these cases

As mentioned above, despite some important gains, there has been an inadequate focus on socio-economic rights litigation as it specifically relates to poor and marginalized South African women. These inadequacies in the socio-economic rights litigation include

1. A focus on certain socio-economic rights—for example housing, health care and land—to the exclusion of others which have not yet been addressed;

2. Inadequate attention being given to considering new issues that could have been the subject of public interest litigation; and

3. Insufficient monitoring, awareness-raising and related lobbying and advocacy initiatives.

4. Limited integration of a fulsome gender analysis in the highest profile ESCR cases, even where a woman was the lead applicant.

The limited attention on women's socio-economic rights is often due to the inability of women and communities that were the victims of such violations to bring their concerns to a legal forum.

Another obstacle to effective public interest litigation is the attitude of the government. In addition to the difficulty of getting the government to comply with court orders, the apparent strategy of certain government departments is to settle matters at the last moment, thereby avoiding legal precedents being set that would inform future public interest litigation and that would allow proper jurisprudence to be built. This is of particular concern as it should not be taken for granted that South Africa will necessarily have judges sympathetic to public interest positions beyond the next few years.

5. Strategies

The Women's Legal Centre primary goal is to further women's equality in South Africa, with particular attention to the rights of socially and economically disadvantaged women. The involvement of the Centre in the litigation strategy is conducted through the submission of amicus curiae which has allowed it to place arguments regarding the broader social and economic context before the court without being restricted to the facts of a particular case.

On some occasions, the Centre partner with another organization –for instance the Human Rights Commission- for direct access the Court in the public interest - to advance arguments to strike down legislation due to its pervasively discriminatory nature.⁷⁴ This strategy has allowed the Centre to ensure individual claimant's interests while granting it the opportunity of advancing arguments in the public interest which went beyond the relief sought the individual. Similarly, the Centre also join with allies as amicus curiae to place more risky arguments before the Court while still ensuring that client's rights were safeguarded through the litigation.

In the cases discussed above, the WLC harnessed the excitement and uncertainty surrounding the new Constitution to make incremental but significant gains for women's ESC rights. In addition, the support of the public and influential public figures proved to be key to the success of the case.⁷⁵ Similarly, the cooperation of various religious and cultural groups that supported the case in the media ensured wide spread public backing for the case (especially in cases of polygamous marriages, such as the Gasa case).

Interestingly, in the Gasa case, WCL was invited to intervene as amicus curiae by the Court which allowed WLC an opportunity to fully canvas the issues in the case. It submitted a brief in which they analyzed the relevant statutory and customary law provisions which were used by the High Court and offered an alternative interpretation of these provisions in line with the Constitution's provisions on dignity and equality; in so doing thay were able to highlight the inherent inequality in the High Court's reasoning as well as offering the Court an opportunity to reinterpret the common law in a manner which did not violate the Constitution.

6. Legal framework

South Africa has committed itself to some international and regional African human rights instruments. Women's right to equality must be protected even where communities are governed by customary laws. This principle is enshrined in the South African Constitution.

While customary law has place in the Constitution, like other law it is still subject to the Bill of Rights and international law. Article 18(3) of the African Charter places an obligation upon states to "ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions." Article 6 of the Protocol on the Rights of Women in Africa (entitled "Marriage") obliges state parties to enact "appropriate national legislative measures to guarantee that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected."

Article 16 of CEDAW requires States to "... take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations" and that that States parties should "take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights" (Article 13). It also states that States should ensure "on a basis of equality of men and women ... [t]he same rights for both spouses in respect of ownership, acquisition, management,

administration, enjoyment and disposition of property, whether free of charge or for valuable consideration" (Article 16).

The ICESCR also requires "the equal right of men and women to the enjoyment of all economic, social, and cultural rights." Through General Comment 16 the CESCR makes clear that States have to "ensure that women have equal rights to marital property and inheritance upon their husband's death."⁷⁶

6.5 Organizations Supporting Strategic Litigation on Women's ESCR

- ESCR-Net, www.escr-net.org / info@escr-net.org
- IWRAW Asia Pacific, www.iwraw-ap.org / iwraw-ap@iwraw-ap.org
- Center for Reproductive Rights, www.reprorights.org / info@reprorights.org
- Interights (Europe and Africa focus), www.interights.org / http://www.interights.org/contact-us/index.html
- Global Initiative for ESCR, http://globalinitiative-escr.org / globalinitiative@globalinitiative-escr.org
- CLADEM (Latin America focus), http://www.cladem.org / http://www.cladem.org/index.php?option=com_contact& view=contact&id=1&Itemid=223
- Humanas (Latin America focus), http://www.humanas.cl / http://www.humanas.cl/?page_id=290
- Women's Legal Centre (South Africa focus), http:// www.wlce.co.za / http://www.wlce.co.za/index. php?option=com_contact&view=contact&id=1
- FIDA Kenya (Kenya focus), www.fidakenya.org / info@fidakenya.org,
- Equis: Justicia para Mujeres (Mexico focus), http://equis.org.mx/ and contacto@equis.org.mx

Notes

- ¹Respectively relating to women and health, women migrant workers and the core obligations of State Parties under Article 2.
- ² Reporting Guidelines on Shadow Report Writing on CEDAW (IWRAW Asia Pacific), and on Shadow Report Writing on Women's ESC Rights (IWRAW Asia Pacific and ESCR-Net)

- ³ Human Rights Committee, General Comment 33, para. 15.
- ⁴ International NGO Coalition for an OP-ICESCR, Considerations, (2009) at p. 31, available at: http://www.escr-net.org/usr_doc/NGO_Coalition_submission_to_ the_CESCR_on_OP-ICESCR.pdf.
- ⁵ See, ESCR-Net, Analytical Report from an Enforcement of Judgments Workshop, held in Bogota, Colombia (May 6-7, 2010) available at: http://www.escr-net.org/ usr_doc/Analytical_Report_-_Enforcement_of_Judgments_workshop,_May_6-7,_2010.pdf
- ⁶ See CENTER FOR REPRODUCTIVE RIGHTS, LITIGATION BRIEFING SERIES: ALYNE DA SILVA PIMENTEL (2009).
- ⁷ See Alyne da Silva Pimentel v. Brazil, United Nations Committee on the Elimination of Discrimination against Women (filed 30 November 2007)
- ⁸ Braz. Const. 2 ART. 196 (1988).

- ¹⁰ Id. at ART. 5.
- ¹¹ WHO, UNFPA, UNICEF, WORLD BANK: MATERNAL MORTALITY IN 2010, annex 1 (2008), [*hereinafter* MATERNAL MORTALITY REPORT 2010] available at http://whqlibdoc.who.int/publications/2010/9789241500265_eng.pdf
- ¹² The province of Salta is located in the north west of Argentina. According to official information, 44 creeds are registered with the Ministry of Religious Affairs of the Nation. Like the rest of Argentina's northwestern, Salta, has a conservative society with old elites who hold power in a context of great social and ethnic inequality.
- ¹³ Published in Boletín Oficial of Salta, January 6, 2009 and enacted by Decree 5.986 on December 22nd, 2008.
- ¹⁴ See Implementation of the International Covenant on Economic, Social and Cultural Rights: Second periodic reports submitted by States parties under articles 16 and 17 of the Covenant, Brazil, para. 418, UN Doc. No. E/C.12/ BRA/2 (Jan. 28, 2008), available at http://daccess-dds-ny.un.org/doc/UNDOC/ GEN/G08/403/04/PDF/G0840304.pdf?OpenElement
- ¹⁵ See LATIN AMERICAN AND CARIBBEAN COMMITTEE FOR THE DEFENSE OF WOMEN'S RIGHTS (CLADEM), Monitoring Alternative Report on the Situation of Maternal Mortality in Brazil to the International Covenant on Economic, Social and Cultural Rights, available at http://www. cladem.org/english/regional/monitoreo_convenios/descMMbrasili.asp
- ¹⁶ See Economic and Social Council, Report of the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Leandro Despuoy: Mission to Brazil, 2005, U.N. Doc. E/CN.4/2005/60/Add. 3.
- ¹⁷ Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, art. 2,12, G.A. Res. 34/189, UN GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, U.N.T.S. 13 (*entered into force* Sept. 3, 1981) [hereinafter CEDAW].
- ¹⁸ Committee on Economic, Social and Cultural Rights, *General Comment 14: The right to the highest attainable standard of health*, (22nd Sess., 2000), para. 47, U.N. Doc. E/C.12/2000/4 (2000) [hereinafter CESCR, General Comment 14].
- ¹⁹ Committee on the Elimination of Discrimination Against Women, General Recommendation 24: Women and health, (20th Sess., para 27, U.N. Doc. A/54/38 (1999) [hereinafter CEDAW Committee, General Recommendation 24].
- ²⁰ CEDAW, supra note 10, at art. 2.
- ²¹ See Sahide Goekce (deceased) v. Austria, CEDAW Comm. No. 5/2005, para. 12.1.2, U.N. Doc. CEDAW/C/39/D/5/2005 (2007); Fatma Yildrim (deceased)

⁹ Id. at ART. 6.



v. Austria, CEDAW Comm. No. 6/2005, para. 12.1.2, U.N. Doc. CEDAW/ C/39/D/6/2005 (2007).

- ²² International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, art. 3, 4, 10, 12, 15, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966) (*entered into force* Jan. 3, 1976), [hereinafter ICESCR].
- ²³ CESCR, General Comment 14, supra note 11, at para. 12.
- ²⁴ MATERNAL MORTALITY REPORT 2005, supra note 6.
- ²⁵ WHO, Women and Health: Today's Evidence, Tomorrow's Agenda (Geneva, 2009), p. 31.
- ²⁶ Submissions 1-5 by CRR, IWRAW-AP and EnGENDER to the Committee on the Elimination of Discrimination Against Women (2008-2010); "Philippine Context—Strategic Litigation at National, Regional, and International Level', Presentation by Clara Rita A. Padilla, JD of EnGendeRights, Inc. at *Claiming Women's Economic, Social and Cultural Rights - Pilot-testing and Capacity Building Workshop on Bringing Women's ESCR Claims before CEDAW/ OP-CEDAW and ICESCR/OP-ICESCR, by IWRAW Asia Pacific and International Network for Economic, Social and Cultural Rights (Dec 2010); Advancing Reproductive Rights Using the Inquiry Procedure of the OP CEDAW and the UN special Procedures: The Philippines Experience, EnGendeRights Inc, Clara Rita A. Padilla and Anita B Visbal (2009/10)*
- ²⁷ See discussion of the even higher rates of unmet need for contraception amongst uneducated Filipino women *in* Population Action International, Family Planning in the Philippines: A Global Wake-Up Call for Policymakers (Apr. 24, 2008) available at http://www.populationaction.org/Press_Room/Viewpoints_and_ Statements/2008/04_24_Philippines.shtml.
- ²⁸ Centre for Reproductive Rights, Linangan Ng Kababihan Inc (Likkhan) and Reproductive Health, Rights and Ethics Centre for Studies and Training (ReproCen), *Imposing Misery: The Impact of Manila's Contraception Ban on Women and Families* (2007).
- ²⁹ See Index Mundi, Philippines Population below Poverty Line (2008), available at http://indexmundi.com/philippines/population_below_poverty_line.html (based on information from the Central Intelligence Agency: World Fact Book).
- ³⁰ CRR cited in "Handout 3, Women's Reproductive Rights in the Philippines -Case Study', in A Training on Optional Protocol to CEDAW for Lawyers 22-27 February 2010 Kathmandu, Nepal, IWRAW Asia Pacific.
- ³¹ IPPF cited in "Handout 3, Women's Reproductive Rights in the Philippines -Case Study', in A Training on Optional Protocol to CEDAW for Lawyers 22-27 February 2010 Kathmandu, Nepal, IWRAW Asia Pacific.
- ³² NHDS 2003, *supra* note 2, at Ch. 5, tbl. 5.4, *available* at http://www.census.gov. ph/hhld/Ch5_tab5.4.htm (Among married women, the rates rise to 49% - any method, and 33% - modern methods.).
- ³³ According to the United Nations Development Program, the Philippines contraceptive prevalence rate (1997-2005) among married women is 49%. In Thailand, the rate is 79%; China 87%; Vietnam 77%; Indonesia 57%; Malaysia 55%; Korea 81%; Singapore 62%. See UNDP, Human Development Report 2007/2008, available at http://hdrstats.undp.org.
- ³⁴ CRR cited in "Handout 3, Women's Reproductive Rights in the Philippines -Case Study', in A Training on Optional Protocol to CEDAW for Lawyers 22-27 February 2010 Kathmandu, Nepal, IWRAW Asia Pacific.
- ³⁵ CRR cited in "Handout 3, Women's Reproductive Rights in the Philippines -Case Study', in A Training on Optional Protocol to CEDAW for Lawyers 22-27 February 2010 Kathmandu, Nepal, IWRAW Asia Pacific.
- ³⁶ Former Mayor Atienza has expressed his intent to run for Manila City Mayor

once again. Should he be re-elected into office, women's reproductive health rights will undoubtedly remain in jeopardy, as Atienza was the original author of the destructive EO.

- ³⁷ "Handout 3, Women's Reproductive Rights in the Philippines Case Study', in *A Training on Optional Protocol to CEDAW for Lawyers 22-27 February 2010 Kathmandu, Nepal, IWRAW Asia Pacific.*
- ³⁸ Advancing Reproductive Rights Using the Inquiry Procedure of the OP CEDAW and the UN special Procedures: The Philippines Experience, EnGendeRights Inc, Clara Rita A. Padilla and Anita B Visbal (2009/10)
- ³⁹ IACHR, María Mamérita Mestanza Chávez v. Perú, Report 71/03. Petition 12.191. Friendly Settlement, October 10th, 2003, par. 10. Available at http:// www.cidh.org/annualrep/2003eng/peru.12191.htm
- ⁴⁰ For more details about the case please visit PORTAL FARFAN Diana. Esterilización Forzada de Mamèrita Mestanza: un largo camino por justicia y reparación, in: CLADEM. Sistematización de experiencias en litigio internacional. Lima: CLADEM, 2008, p 122 y ss. http://www.cladem.org/index. php?option=com_content&view=article&id=411&Itemid=91 (30/09/10 - in spanish)
- ⁴¹ CRR, CLADEM, CEJIL, DEMUS, APRODEH
- ⁴² On February 22, 2001, the Peruvian State signed a joint press release with the Inter-American Commission on Human Rights, in which it was agreed to pursue friendly settlement of some cases before the Commission, including this one, in accordance with Articles 48(1)(f) and 49 of the American Convention on Human Rights.
- ⁴³ See IACHR, Maria Mamerita Mestanza v. Peru, Report 71/03. Friendly Settlement, supra.(MISSING THE SUPRA NO HERE)
- ⁴⁴ Tribunal Constitucional del Perú. Exp. 1417-2005PA/TC, párrafo 14, en: http:// www.tc.gob.pe/jurisprudencia/2005/01417-2005-AA.html (15/10/10)
- ⁴⁵ Ley de Política Nacional de Población Decreto Legislativo Nro. 346, del 5 de julio de 1985, cuyo artículo 1 inciso 2) promueve y asegura la decisión libre e informada y responsable de las personas y las parejas sobre el número y espaciamiento de los nacimientos,
- ⁴⁶ See, UN IV International World Conference on Women (Beijing, 1995) Fujimori's intervention, available at: http://www.un.org/popin/ unpopcom/32ndsess/gass/state/peru.pdf (30/09/10 - in Spanish)
- ⁴⁷ See id.; Villanueva, R. Anticoncepción quirúrgica voluntaria I: casos investigados por la Defensoría del Pueblo. Serie Informes Defensiorales No. Lima: Defensoria del Pueblo, 1998.
- ⁴⁸ Casos identificados en el proceso legal iniciado en el año 2002, que incluye a 2, 072 víctimas y que en diciembre de 2009 fue archivado por el Fiscal Superior Penal, señalando que los delitos habrían prescrito, que fueron hechos aislados de negligencia médica, desconociendo el marco internacional de derechos que lo identifica como graves violaciones de derechos humanos y de lesa humanidad. Sobre este aspecto revisar *Esterilizaciones forzadas en el Perú: delito de lesa humanidad en*: http://www.demus.org.pe/publicaciones.php?tema=estirilizacion_forzada (15/10/10).
- 49 PORTAL FARFAN Diana. Ob. Cit. p 124.
- ⁵⁰ The Peruvian government pledged to conduct investigation of the facts and prosecution of those determined to have participated in the procedure, as either planner, perpetrator, accessory, or in other capacity, even if they be civilian or military officials or employees of the government. And to punish those responsible for the acts of pressuring the consent of Ms. María Mamérita Mestanza Chávez to submit to tubal ligation; health personnel who ignored the need for urgent care for Ms. Mestanza after her surgery; those responsible

for the death of Ms. María Mamérita Mestanza Chávez; the doctors who gave money to the spouse of the deceased woman in an attempt to cover up the circumstances of her demise; the Investigative Commission, named by Cajamara Sub-Region IV of the Health Ministry, which questionably exonerated the health personal from responsibility for Ms. Mestanza's death. Apart from the administrative and criminal penalties, the Peruvian state pledges to report any ethical violations to the appropriate professional association so that it can apply sanctions to the medical personnel involved in these acts, as provided in its statutes. In addition, the State pledges to conduct administrative and criminal investigations into the conduct of agents of the Office of Public Prosecution and the judicial branch who failed to take action to clarify the facts alleged by Ms. Mamérita Mestanza's widower. See, IACHR, *María Mamérita Mestanza Chávez* (Peru), Report No. 71/03, Petition 12.191, Friendly Settlement, October 3, 2003.

- ⁵¹ Programme of Action of the International Conference on Population and Development, Cairo, Egypt, 5–13 September 1994, U. N. Doc. A/CONF.171/13/ Rev.1, at para. 7.3.
- ⁵² See, for instance, CLADEM media articles and news: http://www.cladem. org/index.php?option=com_content&view=article&id=401:caso-mameritamestanza-peru-esterilizacion-forzada&catid=46&Itemid=132 (in spanish
- ⁵³ IACHR, Jorge Odir Miranda Cortez, Report N° 29/01, March 7, 2001, par 36: "The IACHR is not competent *ratione materiae* to determine independently, violations of Article 10 of the Protocol of San Salvador through the system of individual petitions. However, the Inter-American Commission can consider this Protocol in the interpretation of other applicable provisions, in light of the

provisions of Articles 26 and 29 of the American Convention".

- ⁵⁴ See CENTER FOR REPRODUCTIVE RIGHTS, IMPOSING MISERY THE IMPACT OF MANILA'S BAN ON CONTRACEPTION (2010), available at http://reproductiverights.org/sites/crr.civicactions.net/files/documents/ Philippines%20report.pdf
- 55 1987 Constitution, art. 15 (Phil.)
- ⁵⁶ Id.
- ⁵⁷ REPUBLIC ACT NO. 6365, An Act Establishing a National Policy on Populations, Creating the Commission Populations and for Other Purposes, at Section (2) (August 16, 1971).
- ⁵⁸ 1987 Constitution, *supra* note 19, *at* art. 2 (Phil.).

⁵⁹ Id. at art. 3.

- ⁶⁰ The Philippines' total population was 88.57 million in 2007. National Statistics Office, Press Release, April 16, 2008, *at* http://www.census.gov.ph/data/ pressrelease/2008/pr0830tx.html.
- ⁶¹ 48.8% any method (nationally); 35.1% modern method (nationally). National Statistics Office, Press Release, May 8, 2003, *Use of Modern Methods Up in Most Regions*, at http://www.census.gov.ph/data/pressrelease/2003/pr0345tx. html. While use of modern methods increased in most of the Philippines from 2001 to 2002, "the National Capital Region had a significant decline in modern contraceptive use."
- ⁶² Fatima Juarez et al., The Incidence of Induced Abortion in the Philippines: Current Level and Recent Trends, 31 INT'L FAM. PLANNING PERSPECTIVES 3 (Sept. 2005), summary available at http://www.guttmacher. org/pubs/journals/3114005.html
- ⁶³ Singh S et al., *Estimating the level of abortion in the Philippines and Bangladesh*, Invernational Family Planning Perspectives 23 (1997).
- ⁶⁴ International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, art. 23 (2), G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16,

U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter ICCPR].

- ⁶⁵ Human Rights Committee, *General Comment 19, Article 23* (Thirtyninth session, 1990), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at para. 4,U.N. Doc. HRI/GEN/1/Rev.1(1994).
- 66 CEDAW, supra note 10, at art. 16 (1)(e).
- ⁶⁷ Committee on the Elimination of Discrimination Against Women, *General Recommendation 21: Equality in marriage and family relations*, (13th Sess., 1994), para. 22, U.N. Doc A/47/38. (1994).
- ⁶⁸ ICESCR, supra note 15, at art. 12.
- 69 CESCR, General Comment 14, supra note 11, at para. 11.
- ⁷⁰ Concluding Observations of the Committee on the Elimination of Discrimination against Women:Philippines, 36th Sess., para. 28, U.N. Doc. 52

CEDAW/C/PHI/CO/6 (2006).

- ⁷¹ The challenge was to ensure the effective implementation of the judgment, so that our clients would actually have a house to live in. Since then the Centre has, through various donations, ensured that a home was built and our clients moved in. An attorney transferred the property into the children's names on a pro-bono basis and the City of Cape Town agreed to waive all costs and wrote off the outstanding debt. The property was transferred into our clients' names in March 2007 and we received the title deed in October 2007. See WLC Annual Report, 2007; supra.
- ⁷² High Court (Durban and Coastal Division) 6 December 2007 and handed down in 2008.
- 73 SA Supreme Court of Appeal, November 21 2007
- ⁷⁴ That was the case of Case Nontupheko Maretha Bhe (Ms Bhe).
- ⁷⁵ See, for instance, Daniels case. (They do not explain more than this).
- ⁷⁶ UN, CESCR, General Comment 16, supra, par. 27.