



**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE
COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN IN
ADVANCE OF THE EXAMINATION OF THE PHILIPPINES' NINTH PERIODIC
REPORT UNDER THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN**

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I. Introduction

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the UN Committee on the Elimination of Discrimination against Women’s (CEDAW Committee) review of the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by the Philippines.
2. In the present submission, the ICJ wishes to draw the Committee’s attention to the following concerns affecting women’s enjoyment and exercise of their human rights guaranteed by CEDAW in the Philippines:
 - a. The retention of penal provisions that discriminate against women, including criminal provisions on “abortion” and “marital infidelity” (CEDAW, articles 1, 2, 12 and 16);
 - b. The lack of gender-specificity of operational standards in penal facilities with respect to women deprived of their liberty (CEDAW, articles 1, 12 and 12);
 - c. The significant barriers that impede the ability of women to effectively access justice and redress for acts of online gender-based violence (CEDAW, articles 1, 2, 5 and 15); and
 - d. The discrimination, violence and abuse faced by lesbian, bisexual and transgender (LBT) women, including members of LBT organizations and LBT human rights defenders, and the additional barriers they face when trying to access justice and effective remedies (CEDAW, articles 1, 2, 7 and 15).

II. Discriminatory Penal Laws (articles 1, 2, 12 and 16)

3. The Philippines retains penal provisions that are discriminatory against women, in contravention of article 2(g) of CEDAW. These include provisions in the Revised Penal Code (RPC) on “abortion” (article 256 – 259) and “marital infidelity” (articles 333 and 334). The failure to repeal these discriminatory provisions, criminally proscribing conduct that should not be criminalized under international human rights law,¹ has contributed, in particular, to the unnecessary prosecution and incarceration of women.
4. Articles 256 – 259 of the RPC criminalize abortion, encompassing various scenarios related to voluntary termination of pregnancy, including a woman practising an abortion on herself, physicians or midwives using their scientific knowledge or skills to cause an abortion, and pharmacists dispensing abortifacient drugs. Under article 258

¹ In recent years, the UN Secretary-General, the Office of the High Commissioner for Human Rights, and global and regional human rights mechanisms, bodies and experts, as well as national courts, legislatures and domestic human rights institutions, have expressed concern about the harmful human rights impact of criminal laws proscribing, among other things, conduct associated with: sexual and reproductive health and rights; consensual sexual activity; gender identity; gender expression; HIV non- disclosure, exposure and transmission; drug use and the possession of drugs for personal use; and homelessness and poverty. They have called for the removal of criminal and other punitive laws, policies and practices pertaining to some or all of the above-mentioned conduct as a critical step to protect the right to health and other human rights. In March 2023, the ICJ published “*The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty*”. The Principles are based on general principles of criminal law and international human rights law and standards. They seek to offer a clear, accessible and workable legal framework – as well as practical legal guidance – on applying the criminal law to conduct associated with: sexual and reproductive health and rights, including termination of pregnancy; consensual sexual activities, including in contexts such as sex outside marriage, same-sex sexual relations, adolescent sexual activity and sex work; gender identity and gender expression; HIV non-disclosure, exposure or transmission; drug use and the possession of drugs for personal use; and homelessness and poverty. ICJ, *The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty*, March 2023 (“ICJ, 8 March Principles”), available at: https://icj2.wpenenginepowered.com/wp-content/uploads/2023/03/8-March-Principles-Report_final_print-version.pdf.

of the RPC, “a woman who shall practice an abortion upon herself or shall consent that any other person should do so”,² risks being imprisoned for up to six years on conviction. Additionally, the Constitution includes a “prenatal protection clause” that mandates equal protection for both the life of the mother and “the life of the unborn from conception”. The Philippines’ continued criminalization of women who have an abortion, and those who assist them, including their parents, doctors or midwives,³ is a violation of the State’s international human rights obligations,⁴ including the protection of the right to life⁵ and the right to sexual and reproductive health.⁶

5. These provisions violate women’s human rights under CEDAW. The criminalization of abortion constitutes discrimination against women as defined in article 1 of CEDAW. The articles in the Philippines RPC criminalizing abortion, as in the voluntary termination of pregnancy, violate article 2(g) of CEDAW; they also constitute violations of women’s right to bodily autonomy, under article 12 of CEDAW, and of women’s right to decide freely and responsibly on the number and spacing of their children under article 16(e) of CEDAW. Further, they are clearly discriminatory as they criminalize “a medical procedure only needed by women.”⁷
6. Articles 333 and 334 of the RPC criminalize “adultery” and “concubinage”, respectively. “Adultery” is committed by “any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her knowing her to be married.”⁸ Meanwhile, “concubinage” is committed by “any husband who shall keep a mistress in the conjugal dwelling, or shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place.”⁹ The “crimes” require different levels of evidence to secure a conviction. In “adultery”, proof of a wife’s extramarital sexual relations is sufficient to convict her of the crime, while proving extra-marital sex alone is insufficient to convict a husband of “concubinage”, as the law requires evidence of any of the three following circumstances: (a) “keeping a mistress in the conjugal dwelling”; (b) “having sexual intercourse under scandalous circumstances with a woman who is not his wife”; or (c) “cohabitation”. Further, in “adultery”, the wife and “her paramour” may face criminal liability for each proven sexual act as the “crime” is based solely on engaging in extramarital sexual intercourse. In contrast, the definition of the “crime” of “concubinage” disregards the number of sexual acts. Furthermore, there is also a marked difference in severity of penalties. Upon conviction, “adultery” is punishable by imprisonment of up to six years for both the wife and her partner. Meanwhile, a

² Article 258, RPC: namely, when the woman concerned practised the abortion on herself.

³ Articles 256 – 257, RPC.

⁴ With respect to the criminalization of abortion, Principle 15 of the 8 March Principles affirms that: “No one may be held criminally liable for their pregnancy loss, including a pregnancy loss resulting from an obstetric emergency, such as a miscarriage or stillbirth, or for attempting or undergoing an abortion or for other decisions they make around their pregnancy or childbirth. Criminal law may not proscribe abortion. Abortion must be taken entirely out of the purview of the criminal law, including for having, aiding, assisting with, or providing an abortion, or abortion-related medication or services, or providing evidence- based abortion-related information. No other criminal offence, such as murder, manslaughter or any other form of unlawful homicide, may proscribe or be applied to having, aiding, assisting with, or providing an abortion, or abortion-related medication or services, or providing evidence-based abortion-related information.”

⁵ For example, the UN Human Rights Committee, in its Concluding Observations on the Philippines raised concern that “abortion remains criminalized in the [Philippines], which leads women to seek clandestine abortion services that endanger their lives and health. [The Committee] is concerned by reports of harassment of women and girls who have or seek abortions and of routine interrogation and recording by hospital staff of those who seek post-abortion health care”, UN Human Rights Committee, *Concluding observations on the fifth periodic report of the Philippines*, UN Doc. CCPR/C/PHL/CO/5, 30 November 2022, paras. 21 – 22; see also, Human Rights Committee, *General Comment No. 36, Article 6: right to life*, UN Doc. CCPR/C/GC/36, 3 September 2019, para. 8.

⁶ Committee on Economic, Social and Cultural Rights, *General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/22, 2 May 2016, paras. 34, 40.

⁷ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, UN Doc. A/54/38/Rev.1, chap. I, 1999, para. 14.

⁸ Article 333, RPC.

⁹ Article 334, RPC.

husband found guilty of concubinage may be imprisoned only for a maximum of four years and one day, while the concubine will be penalized only with *destierro* or “banishment”. Both articles 333 and 334 of the RPC disregard the right to equal protection of the law and the right to be free from gender discrimination as they introduce a sex-based classification that does not justify differentiated treatment of extramarital relations.

7. Consensual sexual conduct, even if extramarital, should never be criminalized,¹⁰ and these articles also perpetuate gender biases and use unnecessary sex-based classification in violation of article 5 of CEDAW. Moreover, penalizing “marital infidelity” in effect criminalize consensual sexual activities outside marriage – whether pre-marital or extramarital – and thus violate a broad range of human rights guaranteed under international human rights law, including under the ICCPR, such as the rights to: freedom from discrimination, equality before the law and equal protection of the law without discrimination; liberty and security of person; private and family life; and freedom of expression.¹¹
8. At most, “marital infidelity” should be treated as a breach of the marriage contract, which may be subject to civil actions to secure legal separation, declaration of nullity of marriage, and/or support claims in damages.

III. Women Deprived of Liberty (articles 1, 2 and 12)

9. Despite the Philippines’ Magna Carta of Women (MCW) enacted in 2009, which identifies women deprived of their liberty (WDLs) as “women in especially difficult circumstances”, the recognition of the unique and distinct circumstances and experiences of WDLs within the criminal justice system, and international obligations requiring States to provide gender-responsive services, the Philippines has inadequately integrated international human rights standards for the treatment of prisoners, notably the Bangkok Rules,¹² and operational standards in penal facilities do not adequately address gender-specific needs.
10. For instance, the operation manuals of both the Bureau of Corrections and Bureau of Jail Management and Penology (BJMP)¹³ fail to cater for the gender-specific needs of WDLs, including medical services, reproductive healthcare, security protocols, disciplinary measures, and rehabilitation programs. Many WDLs endure poor food quality, overcrowding, inadequate water, sanitation and hygiene (WASH) facilities, and limited access to sanitary products, in violation of article 12 of CEDAW concerning the health and well-being of women.¹⁴

¹⁰ ICJ, 8 March Principles, Principle 16.

¹¹ The 8 March Principles, among other things, emphasize that consensual sexual conduct, irrespective of the marital status of the people involved, may not be criminalized in any circumstances. See, Principle 16, which, among other things states “[c]onsensual sexual conduct, irrespective of the type of sexual activity, the sex/ gender, sexual orientation, gender identity or gender expression of the people involved or their marital status, may not be criminalized in any circumstances. Consensual same-sex, as well as consensual different-sex sexual relations, or consensual sexual relations with or between trans, non-binary and other gender-diverse people, or outside marriage – whether pre-marital or extramarital – may, therefore, never be criminalized.”

¹² UN General Assembly, *Resolution adopted by the General Assembly, 65/229. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, UN Doc. A/RES/65/229, 16 March 2011.

¹³ See, for instance, the operation manuals available at: <https://bucor.gov.ph/wp-content/uploads/2021/12/BUCOR-OPERATING-MANUAL-Part-2.pdf>; and <https://bjmp.gov.ph/index.php/manuals>.

¹⁴ Commission on Human Rights Center for Gender Equality and Women’s Human Rights, *Inside Stories: A Report on the Situation of Women Deprived of Liberty from Select Detention Facilities*, 2019, available at: <https://chr.gov.ph/wp-content/uploads/2022/01/Inside-Stories-A-Report-on-the-Situation-of-Women-Deprived-of-Liberty-from-Select-Detention-Facilities.pdf>.

11. Despite the heightened risk of gender-based violence (GBV), specific protective measures for WDLs are also sorely lacking. While the BJMP Manual introduces certain safeguards concerning searches, it does not include provisions for non-invasive alternatives to body searches. In fact, it exclusively recommends strip searches in certain circumstances. Alarming, some facilities permit male staff to enter female units during emergency situations or under "necessary" circumstances, risking potential abuse.¹⁵
12. The allocation of female national prisoners¹⁶ is also problematic, as there are only two national penitentiaries (in Metro Manila and Davao City), making it nearly impossible for WDLs outside these areas to be placed in facilities near their families as encouraged in the Bangkok Rules. Reintegration programs also lack gender sensitivity, with some facilities offering only a one-day seminar and transportation allowance upon release.¹⁷
13. Over a period of six years, the female prison population rate in the Philippines has surged by a staggering 63 per cent rising from 9.1 per cent in 2015 to 14.9 per cent in 2021.¹⁸ Regrettably, prison and detention facilities are struggling to cope with the increasing number of WDLs.¹⁹ As of December 2017, individuals detained or imprisoned on drug-related charges reached a staggering 97,820, with women making up 13 per cent of this figure.²⁰ By now, women in pre-trial detention constitute the majority of WDL in the Philippines.²¹
14. In its 2022 annual audit reports, the Commission on Audit (COA), a constitutional body responsible for State audits, reported that nationwide congestion rates in both male and female detention facilities supervised by the Bureau of Jail Management and Penology (BJMP) reached 310 per cent.²² Specifically concerning WDL, the COA identified the Dasmariñas City Jail Female Dormitory as the most overcrowded detention facility in the entire country, with an astonishing maximum congestion rate of 2,639 per cent.²³ Meanwhile, women's prisons under a separate government agency, the Bureau of Corrections (BuCor), have comparable congestion rates. The Correctional Institution for Women (CIW) in Mandaluyong City, the country's largest women's jail managed by the BuCor, contends with a congestion rate of 231 per cent, while the CIW in Mindanao faces a congestion rate of 168 per cent.²⁴

IV. Online Gender-Based Violence Against Women (Articles 1, 2, 5 and 15)

15. The Philippines has taken positive steps to address the increase in cases of online gender-based violence (OGBV) against women by passing and amending laws to ensure certain manifestations of OGBV are investigated, prosecuted and sanctioned.

¹⁵ Section 34(f), Bureau of Jail Management and Penology Comprehensive Operations Manual.

¹⁶ These apply to individuals convicted to imprisonment of three years or more.

¹⁷ Bureau of Corrections Manual (Book 1, Part VI, Section 10 – 12).

¹⁸ World Prison Brief, "Philippines", available at: <https://www.prisonstudies.org/country/philippines>.

¹⁹ The drastic increase in the number of WDLs began in 2016, when the Philippines' former President, Rodrigo Duterte, intensified his campaign against "illegal drugs". Under this campaign, drug-related offences were treated with extreme severity, with emphasis on arrests and prosecutions. The approach has been widely criticized, including because it became synonymous with many reported extra-judicial killings by law enforcement agencies. According to the Commission on Human Rights of the Philippines (CHRP), the fear of extrajudicial killings led many individuals to surrender to authorities, contributing to a surge in the number of women in detention and exacerbating the issue of prison overcrowding. See, CHRP, *Submission on Deprivation of Liberty of Women and Girls*, 26 October 2018.

²⁰ *Ibid.*

²¹ Bureau of Jail Management and Penology, BJMP Actual Jail Population Data, 30 September 2022, available at https://www.bjmp.gov.ph/images/data_and_stats/09-30-22/BJMP_Actual_PDL_Population_-_sep_2022.png.

²² Adrian Ayalin, "Two-thirds of Philippine jails congested, says COA", ABS-CBN News, 22 June 2023, available at: <https://news.abs-cbn.com/news/06/22/23/two-thirds-of-philippine-jails-congested-coa>.

²³ *Ibid.*

²⁴ BJMP Data and Statistics, Data at the Dasmariñas Female Dormitory where 28 WDL occupy a 4.7 square meter cell area, or a congestion rate of 2,720%, 30 September 2022, available at: https://www.bjmp.gov.ph/images/data_and_stats/09-30-22/Congestion_Rate_-_sep_2022.png.

However, there are still significant barriers preventing victims/survivors of OGBV from effectively accessing redress, including gaps in existing protective mechanisms to prevent or remove harmful content amounting to OGBV.

16. The Philippines does not have a stand-alone legislation to address acts of OGBV, choosing, instead, to criminalize forms of OGBV through separate laws, mainly the Anti-Photo and Video Voyeurism Act of 2009 (criminalizing non-consensual taking and dissemination of sexual photos/videos) and the Safe Spaces Act (criminalizing online sexual harassment, online threats of violence, digitally facilitated stalking, non-consensual taking or dissemination of sexual photos/videos, and online identity theft).²⁵ The Congress is also currently considering a bill to amend the Anti-Violence Against Women and Their Children Act of 2004 ("Anti-VAW Act"),²⁶ which would expand the act's definition of "violence against women and children" to include "electronic or ICT-related violence", such as "revenge-porn" and digitally facilitated stalking.²⁷
17. However, significant barriers preventing victims/survivors of OGBV from effectively accessing redress, in contravention of articles 2 and 5, read in conjunction with the CEDAW Committee's General Recommendations No. 33 and 35,²⁸ continue. These include the lack of knowledge of the relevant laws and protection mechanisms; gaps in the provision of crucial support services, such as psychosocial support and services for women with disabilities, when filing cases;²⁹ and the lack of resources and poor technical capacity of agencies tasked with managing cases of OGBV.³⁰
18. Harmful gender stereotypes and stigmatization of victims/survivors among justice sector actors, such as law enforcement officials and public prosecutors, are common, with reports that victims/survivors of OGBV have to confront victim-blaming and revictimization.³¹ Victims/survivors, who have filed GBV complaints against law enforcement law enforcement officers and government officials, have reported facing retaliation in the form of physical violence, and even murder, when filing their cases.³² Acts of GBV perpetrated by Philippines' State actors and the failure to hold them accountable contravene the country's obligation to respect women's human rights.³³
19. Existing legal procedures to prevent or remove the publication of harmful online content amounting to OGBV are inadequate.³⁴ Section 9(b) of the Anti-Online Sexual Abuse or Exploitation of Children (OSAEC) and Anti-Child Sexual Abuse or Exploitation Materials (CSAEM) Act mandate internet intermediaries to block access to or remove content featuring child sexual abuse or exploitation within 24 hours of receiving notice.

²⁵ This submission does not purport to provide a full list of the existing criminal provisions that may be used to address forms of OGBV.

²⁶ At the time of concluding this submission, the Bill has been approved by the House of Representatives. See: Philippine News Agency, "Bill protecting women, kids from online violence hurdles House", 22 May 2023, available at: <https://www.pna.gov.ph/articles/1202008>.

²⁷ House Bill No. 8009, s. 2, available at: https://hrep-website.s3.ap-southeast-1.amazonaws.com/legisdocs/third_19/HBT08009.pdf.

²⁸ CEDAW Committee, *General recommendation No. 33 on women's access to justice*, UN Doc. CEDAW/C/GC/33, 3 August 2015, para. 29; CEDAW Committee, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, UN Doc. CEDAW/C/GC/35, 26 July 2017 ("CEDAW/C/GC/35"), para. 32(b). See also, CEDAW/C/PHL/CO/7-8, para. 16.

²⁹ CHRP, "Making Data Work for Women: Report of the 2019 CHR Regional Mapping of Legal Referral Mechanisms on Gender Based Violence", 6 June 2022 ("CHRP Report"), pp. 18 – 19, available at: <https://chr-observatories.uwazi.io/api/files/16544875143568e6p7pdbv2u.pdf>.

³⁰ CHRP Report, p. 23.

³¹ CHRP Report, p. 19.

³² CHRP, "1st Semester 2021 Gender Ombud Report: January to June 2021", pp. 10 – 11, available at: <https://chr.gov.ph/wp-content/uploads/2022/06/2021.Gender-Ombud-1stQ-Sit-2021.pdf>.

³³ CEDAW/C/GC/35, paras. 22 – 23.

³⁴ These do not align with international standards on protection mechanisms for victims/survivors of OGBV; see, ICJ, *OGBV Law Checklist*, May 2023, available at: <https://icj2.wpeninepowered.com/wp-content/uploads/2023/05/ICJ-OGBV-Law-Checklist.pdf>.

However, this procedure only applies to victims/survivors below 18 years of age, excluding a vast proportion of OGBV victims/survivors. The upcoming amendment to the anti-VAW Act, if adopted, will expand the scope of protection orders to include orders to immediately block or remove “any upload, program, or application that causes or tends to cause violence against a woman and/or her children”.³⁵ Victims/survivors, as well as their families or lawyers, may file a request to the courts for a Temporary Protection Order, which may be issued based on an *ex parte* determination.³⁶ However, the anti-VAW Act is limited to victims/survivors who are or had been in “a romantic relationship” with the perpetrator.

V. Discrimination, Violence and Abuse Against Lesbian, Bisexual and Transgender Women (articles 1, 2, 7 and 15)

20. Discrimination against women based on sex and gender is “inextricably linked with other factors that affect women”, such as sexual orientation and gender identity.³⁷ It is therefore not surprising that LBT women in the Philippines continue to face a heightened risk of discrimination, violence and abuse both offline and online. They face additional discrimination when trying to access justice and effective remedies, in part, due to the absence of a comprehensive protective legislative framework.
21. Reports of human rights abuses against LBT women are commonplace in the Philippines. For instance, it was reported that at least 50 transgender or gender nonbinary individuals have been killed between 2010 and 2021.³⁸ LBT women have also reported experiencing online violence and abuse on the basis of their sexual orientation, gender identity and expression (SOGIE), including through online harassment, outing, incitement to violence, doxing and rape threats.³⁹
22. LBT human rights defenders are particularly at risk of harassment and threats in relation to their work, with such abuse sometimes being perpetrated by State-affiliated actors. For instance, LBT human rights activists may have their work linked, without substantial proof, to “communism” and “terrorism”, in a deadly practice known as “red-tagging”.⁴⁰ Examples of groups that have been targeted include the Iloilo Pride Team, Bahaghari and Mujer LGBTQ+.⁴¹ Such targeting of LBT human rights defenders and activists by State actors and their proxies amount to a violation of article 7(c) of CEDAW.⁴²
23. LBT women face additional substantive and procedural barriers when trying to access justice and effective remedies for violations and abuses of their human rights. Although there are laws that provide a patchwork of protection to LBT women, such as the Safe

³⁵ Section 6, House Bill No. 8009.

³⁶ Section 15, Anti-VAW Act.

³⁷ CEDAW Committee, *General recommendation No. 28 on the core obligations of State parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, 16 December 2010, para. 18.

³⁸ ICJ, *Silenced But Not Silent: Lesbian, Gay, Bisexual and Transgender Persons’ Freedom of Expression and Information Online in Southeast Asia*, July 2023, p. 24, (“ICJ, Silenced But Not Silent Report”) available at: <https://icj2.wpenginepowered.com/wp-content/uploads/2023/07/ICJ-Silenced-But-Not-Silent-Report.pdf>.

³⁹ ICJ, *Silenced But Not Silent Report*, p. 38, 45.

⁴⁰ ICJ, *Silenced But Not Silent Report*, p. 38; see also, ICJ, “Philippines: Cease dangerous practice of red-tagging human rights defenders”, 31 January 2022, available at: <https://www.icj.org/philippines-cease-dangerous-practice-of-red-tagging-human-rights-defenders/>.

⁴¹ ICJ, *Silenced But Not Silent Report*, p. 38; Anne Marxze Umil, “UN Human Rights Committee urges Philippine government to stop red-tagging”, *Bulatlat*, 9 November 2022, available at: <https://www.bulatlat.com/2022/11/09/unhrc-stop-red-tagging/>; Roel Pareño, “Philippine intelligence agency links gay-rights, youth groups in anti-communist campaigns”, *Benar News*, 24 August 2023, available at: <https://www.benarnews.org/english/news/philippine/communist-allegation-08242023130413.html>.

⁴² CEDAW Committee, *Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 134/2018*, UN Doc. CEDAW/C/81/D/134/2018, 23 March 2022, para. 9.5.

Spaces Act⁴³ and sub-national local ordinances prohibiting discrimination on the basis of SOGIE,⁴⁴ the Philippines still lacks a comprehensive legislative protective framework for LBT women. Notably, there is no legal gender recognition for transgender women and gender diverse persons in the Philippines,⁴⁵ and the SOGIE Equality Bill, which if enacted would seek to address discrimination and violence on the basis of SOGIE, has been stalled in Congress since its introduction in 2000.⁴⁶

24. Furthermore, the existing legal protections for LBT women are not effectively implemented by justice sector actors. The ICJ is not aware of any case of online queerphobic harassment being prosecuted under the Safe Spaces Act, which may in part be attributed to a lack of knowledge among victims and law enforcement officers of the law; evidentiary challenges when the abuse is perpetrated by anonymous accounts; and biases by law enforcement agencies against LGBT people.⁴⁷ This is likely to be exacerbated by reports of the police perpetrating human rights violations against LGBT people, contributing to a trust deficit in them, including through subjecting LGBT people to heavy-handed, degrading and humiliating treatment.⁴⁸

VI. Recommendations

25. In light of the above concerns, the ICJ calls on the CEDAW Committee to make the follow recommendations to the authorities of the Philippines:

a. In relation to discriminatory penal laws:

- Repeal articles 333 and 334 of the RPC and, instead, treat “marital infidelity” as a breach of the marriage contract that should be addressed through civil remedies rather than criminal liability;
- Decriminalize abortion, including aiding, assisting with, or providing an abortion, or abortion-related medication or services; or providing evidence-based abortion-related information; and
- Ensure access to safe, legal and effective abortion particularly when the life and well-being of the pregnant woman is endangered; when continuing the pregnancy would lead to significant pain, suffering or distress; in cases of pregnancy resulting from rape or incest; or non-viable pregnancies.

b. In relation to the treatment of WDLs:

- Institutionalize a standard of treatment of WDLs that is compliant with international standards, including the Bangkok Rules, ensuring that amendments to existing legal and procedural frameworks account for the gender-based needs of WDLs; and
- Make much greater use of non-custodial alternatives to pre-trial detention.

⁴³ The Safe Spaces Act contains provisions protecting LBT women, including, for instance, against “acts that use information and communications technology in terrorizing victims” through “unwanted sexual misogynistic, transphobic, homophobic and sexist remarks and comments online”, under section 13 of the Implementing Rules and Regulations of Republic Act No. 11313; see, ICJ, Silenced But Not Silent Report, p. 23.

⁴⁴ ICJ, Silenced But Not Silent Report, p. 23 – 24.

⁴⁵ ICJ, Silenced But Not Silent Report, p. 23.

⁴⁶ ICJ, Silenced But Not Silent Report, p. 23 – 24.

⁴⁷ ICJ, Silenced But Not Silent Report, p. 39.

⁴⁸ ICJ, Silenced But Not Silent Report, p. 39.

c. In relation to OGBV:

- Review and amend existing laws relevant to OGBV to ensure effective responsiveness to all forms of OGBV, and passing the bill amending the Anti-VAW Act;
- Strengthen the implementation of laws to address OGBV and take appropriate measures to ensure effective access to justice for OGBV survivors/victims;
- Establish a comprehensive legal procedure to address urgent requests to prevent and remove the publication of harmful online content amounting to OGBV; and
- Provide adequate and continuous capacity-building training to justice sector actors, including law enforcement officials, public prosecutors, judges, lawyers and government service officials, on the application of international human rights law and standards to the investigation, prosecution, adjudication and sentencing of OGBV-related criminal offences.

d. In relation to LBT women:

- Provide access to legal recognition of gender identity in a manner consistent with the right to freedom from discrimination, equal protection of the law, privacy, identity and freedom of expression;
- Enact comprehensive anti-discrimination laws recognizing SOGIE as protected characteristics and prohibit discrimination on such grounds;
- Adopt specific legislation to prohibit, investigate and prosecute violence against LBT women, in line with international human rights law, and ensure that homophobia, misogyny, biphobia and transphobia be considered as aggravating circumstances for sentencing purposes; and
- Guarantee the right to an effective remedy for LBT women who have suffered harm resulting from human rights violations and abuses, and take steps to eliminate barriers to access to justice for LBT women, including through adequate and continuous capacity-building training to justice sector actors to eliminate LGBT stereotyping and incorporating an LGBT perspective into all aspects of the justice system.