

MUSAWAH: A GLOBAL MOVEMENT FOR EQUALITY AND JUSTICE IN THE MUSLIM FAMILY

THE PHILIPPINE (MINDANAO) REPORT

Part A. Introduction

This report is written by *Nisa Ul-Haqq fi Bangsamoro*, a group of Muslim women advocating for women's rights in the context of Islam and culture. The *Nisa* members are women from the following non-government organizations: Alternative Legal Assistance Center (SALIGAN), Bangsamoro Lawyers' Network (BLN), Neighbors PopDev, Almujaadalah Development Foundation, Inc. (AMDF), Tarbilang Foundation, Inc., and Basilan Muslim Women's Association.

Part B. Equality And Justice Are Necessary

Comprising about 13 Islamized indigenous peoples, the "Moros" in the Philippines are a minority. Once proud peoples with at least 2 sultanates in Mindanao, Sulu and Palawan, the Moros are now concentrated in only five (5) provinces and one (1) city, all of them comprising the Autonomous Region of Muslim Mindanao (ARMM) in Mindanao, the southern part of the Philippines. The long history of conflict with the Spanish and the Americans, as well as the Philippine regime, has taken its toll on these peoples. Displaced from their ancestral domains, discriminated against, and suffering from the effects of long-standing armed conflict, the Moros are in the bottom of the human development index. They comprise about 10% of the population.

While there is marked disparity between the status and condition of women and men in the Philippines as a whole, Moro women specifically suffer from multiple layers of discrimination and marginalization, in view of the social, political, cultural and historical injustices that they are subjected to as women, as minority peoples, and as Muslims.

This portion of the report shall look at the burdens carried by the Moro woman. The context of gender inequality and injustice shall first be discussed. Thereafter, the report focuses on the inequality in the area of family law and practice.

1. Context

In order to understand the context of equality and justice issues in Muslim families in the Philippines, there is a need to first look into the situation of Muslim women in Mindanao in general, and in the ARMM in particular. The following will give a picture of the over-all situation in this area:

- **Poverty incidence.** Provinces of the ARMM are found in the bottom 10 provinces in the entire Philippines, with poverty incidence at a range of 65.6 to a high 88.8. The ARMM also posted the lowest Human Development Index, with provinces such as Maguindanao, Sulu, Tawi-Tawi, and Basilan having the lowest HDI values ranging from 0.498 to 0.540.
- **Population and poverty.** Mindanao's population is growing fast at 2.42 percent, higher than the national average of 2.36 percent. With a 75 percent dependency ratio,

Mindanao is reeling under the impact of having young dependents who need extensive investments in health and education and an elderly population needing income, health and housing.

- **Armed conflict, and volatile peace and order situation.** Banditry, clan feuds (*rido*), kidnapping, the unresolved Moro claim for its right to self-determination, and the continuing decline of agriculture and homegrown industries have forced many Moro families to leave their hometowns and look for other means of sustenance in peaceful towns and cities.

At high risk in the ritual of revenge within clan wars are the female members and children of the family involved who may be kidnapped or taken hostage as a way to dishonor or get back at the opponent's family.

The ongoing military operations [in] against “rogue” commanders of the Moro Islamic Liberation Front (MILF) and the all-out operation against the Abu Sayyaf Group (ASG), have left a considerable number of internally displaced persons (IDPs) in the ARMM, where much of the military operations are conducted. Most IDPs in the ARMM are Muslim women and children who suffer the most from the lack of food aid, food blockades, insensitive or inadequate service delivery, diseases, lack of potable water and medical relief. In this context, it is the women in the family who are burdened with caring for the rest of the members thereof, making their reproductive role even more burdensome, as it is performed in extremely difficult circumstances.

- **Education and literacy.** Extreme poverty, aggravated by the lack of peace and security, has deprived many Moro women of basic education. ARMM showed the most disturbing performance— lowest in simple literacy, functional literacy, secondary participation, elementary cohort survival, and highest in dropouts, in addition to having the lowest number of passers in the Licensure Exams for Teachers.
- **Madrasah system.** With the recognition and accreditation of Islamic education via the *madrasah* system, Moro women have been given greater freedom to exercise their religion as a way of life. However, the emphasis on Islamic doctrine and the use of the Arabic language have failed to improve Muslim women (and men's) chances in the mainstream Philippine economy.
- **Labor and employment.** Women are at a disadvantaged position compared with men, as evidenced by a greater number of males than females in the labor force and more males (64.27 percent) than females (35.73 percent) employed. More females (43.38 percent) than males (32.17 percent) work as laborers and unskilled workers; and more females (56.43 percent) than males (43.57 percent) work as unpaid family labor.

Discrimination cuts down the chances of Moro women in the labor market. Their skills are too limited for them to be employable. Islamophobia also shuts down opportunities for them, especially in areas of mixed population or predominantly non-Muslims.

- **Rural women.** Women's contribution to agriculture is invisible. As pointed out earlier, female participation in agriculture is largely as laborers and unskilled farm workers or unpaid family labor. This signifies women's lack of recognition as

agricultural workers and their limited absorption into the paid sector. And when they do get into the paid sector, their daily nominal wages are still lower than men's, implying continuing invisibility and undervaluation of female labor and lack of institutionalization of equal pay in agriculture.

- **Overseas Filipino Workers (OFWs).** Women form the majority of OFWs from Mindanao. Of the 135,000 Mindanaoans who joined the international labor market in 2002, majority or 88,000 were women (88,000). The Middle East and Asia were top destinations of OFWs from Mindanao. In recent years, there has been an increasing reliance on the export of young female migrant labor. Due to lack of choices and opportunities within the country, many girls choose to engage in high-risk occupations abroad, including being trafficked in prostitution.

The Islamic norm of a husband providing *nafaqa* to the family is no longer the case for these women OFWs, who brave the serious risks of working as domestic helpers abroad in order to provide for the economic needs of their husbands and children left behind.

- **Child labor.** Despite laws against child labor, and in view of difficulties and the inability of parents to provide for the family, many children to join the labor force in Mindanao. In rice and cornfields, banana and sugarcane plantations, quarries, bus stations, and the port area, child labor is visible. Girls work as dishwashers, waitresses, GROs, vendors and domestic help. Some end up in entertainment clubs and get trafficked into prostitution, domestically or internationally.
- **Women and public leadership.** Political office continues to be the domain of men in the ARMM. The few women who have gained political positions have largely ridden on their family's coattails. With very few exceptions, these women have been trained and seasoned in the ways of traditional politics, and are not able to influence policies and systems for the betterment of women's lives.
- **Health and reproductive rights.** The shortest life expectancy in the country is in Mindanao, notably in the ARMM provinces. The ratio of hospital beds to population in the region is at 1:5,429, a far cry from the ideal 1:500. The ratio of doctors and nurses to population is the worst in the ARMM, way behind the ideal 1:20,000. In the year 2002, ARMM suffered increases in maternal deaths (associated with pregnancy, labor and sepsis) and infant mortality rates.
- **Gender Development Index (GDI).** The GDI, which is a measure of human development adjusted for inequality in the achievement of men and women, is lowest in the ARMM provinces such as Sulu, Maguindanao, Tawi-Tawi and Basilan. Women in these areas have been considerably disadvantaged compared to men in terms of life expectancy at birth, educational attainment and standard of living. As to the Female Economic Activity Rate, areas where Moros reside posted have the lowest ratings, with Sulu as lowest of all provinces.

2. Equality and Justice Issues in Muslim Families

The Code of Muslim Personal Laws (CMPL) is a special law for Muslims in the Philippines enacted through a Presidential Decree at the height of the Moro rebellion in

the 1970's. For the rest of the population, the applicable law on family relations is the Family Code. Outside of family relations, however, all the other laws of the Philippines, including criminal law, apply to Muslim Filipinos.

This report shall use the CMPL as a tool for looking at the equality and justice issues among Muslim women in the area of family law and practice. The juxtaposition of repressive and regressive traditional beliefs and legal norms has caused marginalization, gender discrimination and violation of human rights of Muslim women.

a. Child marriage

The CMPL sets the minimum age for marriage of the males at 15, and “the age of puberty” for the females, which is presumed to be at 15 years too. In fact, a female who has attained puberty but is less than 15 and not less than 12 years of age can be married off by her guardian in marriage (*wali*) upon approval by the *Shari'a* District Court. A marriage of a girl below 12 is considered a betrothal and is voidable.

An on-going research being conducted by *Nisa* shows that majority of girls in the ARMM get married before they reach 18. Without much educational or economic options, young girls marry early without understanding all the burdens of marital life, and with distorted hopes of a new life with their grooms, but eventually being confronted with negative social, economic, psychological, and physical/biological effects on their well-being.

b. Consent of parties to a marriage

The CMPL specifically articulates consent as one of the essential requisites of marriage. However, the other requirement of offer (*ijab*) and acceptance (*qabul*) being made by the groom and the *wali*, respectively, seems to overshadow the requirement of consent of the parties. The *wali* is the guardian in marriage of the bride, who is not even a party to the offer and acceptance.

Arranged marriages, while not as common as in earlier years, still happen, especially among political families who want to make alliances with each other. Under the scheme, even the groom would have little to say about choosing his bride, but because only the woman is required to have a *wali*, it is the women who are more vulnerable to be arranged in marriage.

In some areas, particularly in Sulu, Basilan and Tawi-Tawi, there are cases of abduction, where the woman is forcibly taken by a man and then forced to marry the latter, under threat of danger to life and limb to herself or her family. Should the family of the woman be able to run after the man after he has taken her, they are justified in killing the man. However, should the family of the abducted woman be able to take her back before a *nikah* is performed between herself and her abductor, a clan war could start between the families. In many cases, the family of the woman and the woman herself would no longer want to thwart the abduction for fear of starting a clan war. The woman is thus held “hostage” in exchange for peace and tranquility of the families and the community in general.

The abduction of women for the purpose of marrying them, despite their lack of consent, is seen as an unfortunate, but culturally accepted, practice. In one province, a local ordinance was passed that regulated “buying the peace” to settle abduction cases. While the local ordinance gives importance to local, indigenous norms and strengthens the claim for the Moros’ right to self-determination even as a minority, such measure has trivialized human rights violations against women.

c. Guardian in Marriage (*Wali*)

A woman is required to have a *wali* when she gets married. This is not required for the groom. There is no distinction as to the age or the status of the bride in requiring the *wali*. The *wali* is limited to male relatives of the woman or to her paternal relatives, save for the (*Shari’a*) Court, which can also act as *wali*. This bias towards male relatives and the paternal line is a manifestation of the patriarchal structures enveloping the family.

d. Dower (*Mahr*)

Although not articulated in any provision of the CMPL, the *mahr* pertains to the bride, and not to anyone else. It is not a “bride price” that is given to the parents or guardians of the bride. It should also not be used for the payment of expenses incurred in the celebration of the marriage. Yet, these erroneous beliefs are observed in many instances, to the detriment of the bride.

e. Religion as a factor to validity of marriage

Mixed marriages between Muslims and non-Muslims are considered either void (*batil*) or irregular (*fasid*) marriages, depending on who between the bride and the groom is Muslim and who is the non-Muslim. If it is the groom who is Muslim, authorities seem to agree that the marriage is valid, or at worst, irregular.

But when the marriage is between a Muslim woman and a non-Muslim man, the marriage is outright void. The argument cited for this is the notion of the husband being the head of the family. Since the non-Muslim man is considered the head of the family, he can influence his Muslim wife to change religion. And this should not be sanctioned, according to the Muslim religious leaders.

f. Rights and obligations of husband and wife

Aside from the mutual rights and obligations of husband and wife, the CMPL also enumerates the exclusive rights and obligations of the wife, to wit:

- management of the household;
- not acquiring any property by gratuitous title, without the husband’s consent, subject to certain exceptions;
- exercise of any profession or occupation or engagement in business, with the husband’s consent. Should the husband object to such exercise or engagement because his income is sufficient for the family, the matter shall be referred to the *Agama* Arbitration Council;
- demand the satisfaction of her dower or *mahr*;

- retention of ownership and administration of her exclusive property, unless stated otherwise in a marriage settlement;
- enjoyment of equal and just treatment, should the husband exercise polygyny.

This delineation of the rights and obligations springs from the notion that the husband is the head and provider of the family, and the wife is primarily responsible for reproductive functions. This stereotyping puts unnecessary burden and restrictions on both women and men, and should be reviewed. It is also not in keeping with the reality on the ground, where more and more Muslim women are taking on productive work and/or heading the family.

g. Polygyny

The CMPL provision on polygyny has been taken to mean that a Muslim male may take as many as four (4) wives, provided he can deal with them with equal companionship and just treatment and only in exceptional cases.

This provision is justified by Muslim religious leaders and scholars as having legal basis in the *Qur'an*. The discussion of the *Qur'anic* verse, An-nisa 4:3 should, however, be read together with another verse, An-Nisa 4:129. These, and considering the context in which the *Qur'an* was revealed, could be interpreted as discouraging, if not forbidding, polygyny. Yet, the legal provision chose to use the other view, i.e., allowing men to practice this pre-Islamic tradition.

The law requires the husband to give prior notice to the Clerk of the *Shari'a* Circuit Court, who shall, in turn, notify the wife or wives. Should any of them object, an *Agama* Arbitration Council shall be constituted. And if the *Agama* Arbitration Council fails to get the consent of the wife/ves, then the Court shall decide whether or not to sustain her/their objection.

Even if it is admitted, purely for the sake of argument, that the CMPL provision allowing polygyny is legal and is based on Islamic teachings in the *Qur'an*, it should also be pointed out that there are conditions set down by the Divine law, as well as the human law. These conditions are the following: (1) if the husband can deal with the wives with equal companionship and just treatment, as enjoined by Islamic law, and (2) only in exceptional cases.

Even with the above conditions, some questions still arise, such as: Who decides if the husband can deal with the wives with equal companionship and just treatment? What factors are considered in getting just treatment? Is economic capacity a factor? Whatever the factor/s, is/are the wife/ves empowered enough to negotiate for assurances of these conditions? What are "exceptional" cases? How does the husband prove these and to whom does he show proof?

In the present practice of polygyny in the Philippines, these conditions are, in general, not observed. In fact, many men do not even bother to inform the clerk of court about their subsequent marriage. Some wives just realize that their husbands had married again without their knowledge. Note that the procedure on giving notice is not an essential requirement for the validity of the subsequent marriage. Even when there is no compliance therewith, the subsequent marriage is still considered valid.

There are a lot of arguments against the practice of polygyny, both in the religious and the practical realms. Many Muslim women have voiced their objections to the practice but are silenced when the Muslim religious leaders chide them for going against the *Qur'an* (as interpreted by them). At best, many of these women could only demand that conditions set down by the *Qur'an* and the CMPL should be faithfully and fully complied with.

h. Divorce

There are seven (7) forms of divorce under CMPL. Four of these are available to the husband, while three are available to the wife.

The husband can more easily divorce his wife. In fact, under *talaq*, the husband need not go to court, need not present any ground, need not even explain his decision to his wife, needs no lawyer or incur any cost, in order to divorce his wife. This unilateral act of divorcing the wife goes against the principles of justice and fairness.

Notwithstanding the provision giving the same right to the wife, if and when it is delegated to her by her husband, the Code still gives the premier right to the husband. He has the discretion of delegating *talaq* to his wife or not. Most Muslim women, in fact, do not know that that *tafwid* is available to them, if and when the husband makes the delegation.

Comparing the unilateral right to divorce by the husband, the wife, by law, may take legal steps to have a declaration of divorce. *Faskh*, in fact, is more popular to Muslim women than *tafwid*. But even if there is this remedy to the wife, only a few actually use it. And for those who had the courage to file their cases, it has been observed that court procedures and personnel are not always women-friendly, including in *faskh*. This fact discourages the women, in addition to the costs of litigation which they also have to bear, and the difficulties of getting and preserving evidence for a judicial proceeding.

Khul as a remedy for women is not readily available to all Muslim women, but can only be afforded by those who have the financial means to redeem their freedom.

With respect to domestic violence, a Muslim woman may opt to divorce the husband using *faskh*, and invoking the ground of unusual cruelty. Simultaneously, she may use the Philippines' Anti-VAWC Law in order to get a protection order and/or to put her husband in jail. In a 2007 research, cases of VAWC have been admittedly occurring in the said areas, although largely unreported. Barangay officials, Muslim religious leaders and Moro women all agree that there is an imperative need to address the VAWC cases in their areas and that VAWC is against both the laws of the country and Islamic teachings. There is a general perception that the ARMM regional government has not sufficiently addressed the issue of VAWC in their area. When asked whether VAWC programs and services have been provided by the ARMM government, most of the provinces covered by the study responded that programs and services on VAWC were nil.

Part C. Equality and Justice in the Family are Possible

A draft amendment of the CMPL has been drawn by Muslim women who participated in a series of round-table discussions. Although the draft was submitted to the Lower House of Congress, this has not been a successful endeavor. One of the proposed amendments is the requirement of pre-marriage counseling that emphasize not on the rights of husbands and the responsibilities of wives, but likewise the rights of women and the obligations of husbands. Having ante-nuptial agreements is another proposed amendment, so that parties may include therein the declared option for monogamy (thereby foreclosing polygyny as an option), as well as other measures that protect the rights of women over their properties and other rights. Another important provision is raising the minimum age for marriage to 18, for both women and men.

A more compact group of Muslim women from the original proponents of the amendment have banded together to take up the advocacy, and is now working on the formulation of strong argumentations using different disciplines and approaches—religious, rights-based, scientific, and even evidence-based researches. A research on early marriage is part of the building up of evidence-based advocacy, using lived realities of women in the ARMM.

Building a stronger and bigger constituency to push for the amendments is also given adequate attention. A short course on gender and Islam was conducted for the second-liners, and a series of study sessions among the core group members has started and will continue for the next two years.

The Concluding Comments of the CEDAW Committee to the Philippines' 5th and 6th Country Report is a good take-off for advocacy for gender equality among Muslim women. In the Concluding Comments, Muslim women were among the identified sub-section of women who need intensified initiatives, including in the area of discriminatory provisions of the CMPL. This has made the issue of Muslim women visible to the Philippine government. However, there is a need to sensitize interventions that are only concerned with obligation compliance, without giving due regard to the peculiarities and nuances of the Muslim communities' context.

Some programs in the ARMM have tapped Muslim religious leaders (MRLs) as a sector for advocacy, including that of women's rights. There is still a lot of resistance in this area, but some progressive interpretations of Islamic teachings have gained some headway, with the help of women's rights advocates.

Culturally, there are practices that are more progressive than the standards laid down by the CMPL. For example, while the Code provides for sisters getting half of what their brothers' acquire in the inheritance, the actual practice has been to give equal share to all the siblings, regardless of sex, or getting around the provision by giving ante-mortem gifts to the daughters.

A few Muslim women have also taken advantage of other national laws that equally apply to them as citizens of the Philippines. One example is the use of the Anti-VAWC Law that covers domestic violence. While the CMPL is limited in its view of domestic violence, the national law expands the definition to include economic and psychological violence, and provides remedies therefore.

