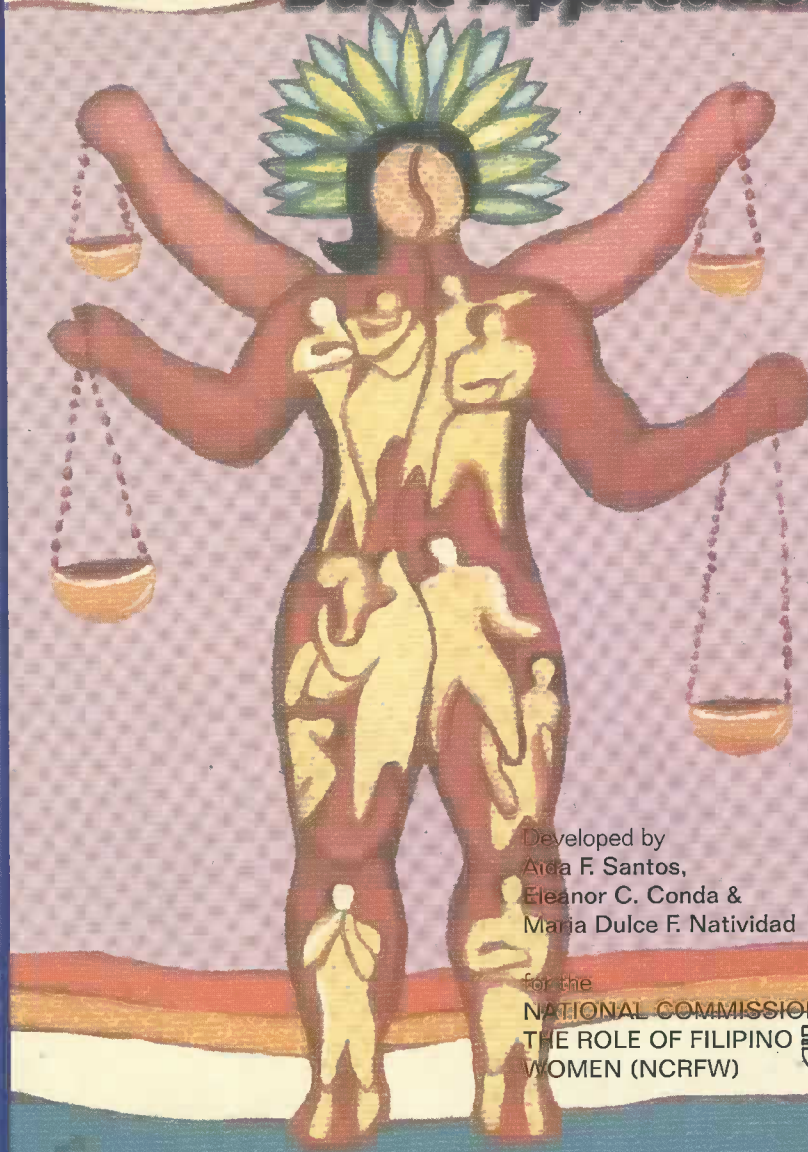


# TOWARD A GENDER-RESPONSIVE LEGISLATION

VOLUME 2 **Basic Application**



Developed by  
Aida F. Santos,  
Eleanor C. Conda &  
Marja Dulce F. Natividad

for the  
NATIONAL COMMISSION ON  
THE ROLE OF FILIPINO  
WOMEN (NCRFW)



## THE COVER

The cover symbolizes the quest for gender equality and justice. Transforming the traditional symbol of justice of a woman holding the scales, this publication acknowledges the existing inequalities that need to be addressed in both the public and private spheres. The head which depicts the man-woman dichotomy recognizes the need for partnership, and stresses that equality can only be achieved to its fullest degree when both women and men work hand in hand. The crown of leaves symbolizes the knowledge and energy that women and men must put together to attain their human potentials based on the principles of equality and justice. Figures drawn inside the body describe the multifaceted processes involved in legislation and emphasize that legislation should be contextualized within the vision of creating a gender-fair society.

The cover and inside illustrations are created by Sandra B. Torrijos, a multi-awarded visual artist who has received numerous national and international recognition.

Rolando F. Santos conceptualized and created the book design.

**Toward a Gender-responsive Legislation**

**Volume 2**

# **Basic Application**

*Developed By*

**Alda F. Santos, Eleanor C. Conda and Maria Dulce F. Natividad**

*for the*



**National Commission on the  
Role of Filipino Women (NCRFW)**

*in collaboration with the*

**Women's Education, Development, Productivity  
and Research Organization (WEDPRO), Inc.**

*with the support of*

**Former Representative Luz Cieta Bakunawa  
and Senator Teresa Aquino-Oreta  
and the**

**Canadian International Development Agency (CIDA)**

**Manila  
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The Project Team also would like to acknowledge the support of the Senate, the House of Representatives, especially to the Office of former Representatives Luz Clea Bakunawa and Teresa Aquino-Oreta. Likewise to Imelda M. Nicolas, past Chairperson of the NCRFW, Teresita S. Castillo, past Executive Director of NCRFW, and the WEDPRO Board of Trustees and the staff. The NCRFW is likewise indebted to the Facilitating Team, all participants in the Caylabne and Corregidor workshops. Special mention must be made of the invaluable support of Socorro M. Diaz and Grace N. Mallorca-Bernabe of the Policy Analysis Division, NCRFW, Myrna I. Jarillas of the Management Committee, NCRFW, and Pauline S. Hortelano.

## MESSAGE



Republic of the Philippines  
**Senate**  
Manila



I congratulate the National Commission on the Role of Filipino Women (NCRFW) for embarking on a pioneering and historic project "Enhancing Partners' Capability for Gender-responsive Legislation". A guidebook on this subject is a recognition of the urgent need to orient Congress and its staff on the issue of gender and national development and how to integrate these issues in crafting legislative measures.

Not only does it complement the pro-women laws previously passed but it also ensures the continued presence of gender concerns in every aspect of lawmaking.

Indeed, *Toward a Gender-responsive Legislation* (Volumes 1 & 2) serves as a vital instrument for us in Congress and those who are deeply committed to work for better laws.

Best wishes to the NCRFW and all those who participated in this worthy undertaking.

  
MARCELO B. FERNAN  
Senate President

## MESSAGE



Republic of the Philippines  
**House of Representatives**  
Quezon City



I extend my congratulations to the National Commission on the Role of Filipino Women for having the adroit foresight of coming up with a vital legislative guidebook, *Toward a Gender-responsive Legislation* (Volumes 1 & 2).

This document will certainly prove to be an indispensable source of insights and information for legislators and policy-makers, their staff, legal practitioners and students in this time of want for politically-correct, gender-responsive pieces of legislation. It is an outcome of a collective venture among select and dedicated group of personnel from the House of Representatives and the Senate as initiated by the Commission.

It brings to the fore the long-evaded issues of gender sensitivity, equity, and integration of gender and development at the government's seedbed of laws. It shall further fortify the partnership of the executive and legislative branches by providing concepts and perspectives from which both can commonly arrive at in formulating their respective agenda.

Ultimately, the noble aim of this publication is to induce social and political changes by eliminating the biases and disparities arising from the marginalization of women.

*Mabuhay ang sektor ng kababaihan at mabuhay po kayong lahat!*

  
**MANNY B. VILLAR JR.**  
House Speaker

## MESSAGE



National Commission on the Role of Filipino Women  
Office of the President  
Manila

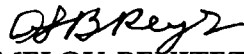
A country's legislation is a reflection of a people's sense of justice and, in many instances, the touchstone by which imbalances and inequalities in society are addressed and redressed. In the context of the advocacy for women's equality and empowerment, laws present many possibilities and potential pathways for women's alternative views and visions for themselves, their families and society. Laws need to be sensitive to the patriarchal forces at play and the nuances of women's life situations and stories in order to effectively facilitate social transformation.

The National Commission on the Role of Filipino Women (NCRFW) takes exceptional pride in this guidebook titled *Toward a Gender-responsive Legislation* because it is a pioneering effort and a product of years of advocacy and research. The guidebook is a concrete result of the creative partnership between the executive and legislative branches of government towards the formulation of more gender-responsive laws.

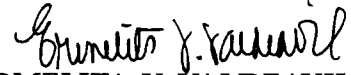
As in other pioneering efforts, this publication is a "work-in-process". It does not claim to provide all the answers the users might need in the course of doing their work nor does it address all the complexities of lawmaking. It is, however, an initial guide in ensuring that legislation responds to women's

gender needs and a first step towards the eventual transformation of a society where women and men enjoy equal dignity and worth as persons.

Here is a book that blazes our path toward a just and humane society founded on gender-responsive legislation. We wish to express our appreciation to the select group of legislative personnel from the Philippine Congress and women's groups for making this guidebook possible. Finally, our deepest appreciation and thanks to Senator Teresa Aquino Oreta and former Representative Luz Clea Bakunawa as well as the Canadian International Development Agency for providing financial support to this endeavor.



**DR. AMELOU BENITEZ REYES**  
Chairperson



**ERMELITA V. VALDEAVILLA**  
Executive Director



## FOREWORD



National Commission on the Role of Filipino Women  
Office of the President  
Manila

When the National Commission on the Role of Filipino Women embarked on the project “Enhancing Partners’ Capability for Gender-Responsive Legislation,” we recognized the importance and potential of laws and law reform for the achievement of gender equality. Instead of entrenching the marginal status of women, we needed our country’s laws to reflect women’s needs and situation, to promote their views and visions for themselves, their families and society.

This two-volume publication entitled *Toward a Gender-responsive Legislation* is a pioneering effort in helping introduce women’s perspectives in Philippine laws and the lawmaking process.

Developed with the participation of a select group of legislative personnel from both the Senate and the House of Representatives, it is intended as a handy tool for Congress and its staff in crafting gender-responsive laws. Volume 1 concentrates on the basic concepts on gender and development. Volume 2 translates these concepts for practical application in actual legislative work. Although packaged as self-contained materials, readers are encouraged to use both as companion guides in “genderizing” laws.

*Toward a Gender-responsive Legislation* is an initial step to enhance the transformative value of laws and facilitate the attainment of true equality between women and men. It does not attempt to simplify the complexities of legislation nor provide easy answers in the continually evolving discourses on gender rights and laws. As the writers of this work say, this is “the first stone laid down from which others can build on and pave the way to a legislative house that women can own, and live and breathe within.”

I wish to thank all those, who, in one way or another, had made this guidebook possible. Finally, my congratulations to the NCRFW staff for their invaluable contributions in the crafting of this document.



**TERESA S. CASTILLO**  
NCRFW Commissioner and  
former Executive Director

## ACRONYMS

**BPA** – Beijing Platform for Action

**CAPWINGS** – Career Advancement Program for Women

**CES** – Career Executive Service

**CHR** – Commission on Human Rights

**CPA** – Cairo Plan for Action

**DECS** – Department of Education, Culture and Sports

**DSWD** – Department of Social Welfare and Development

**DV** – Domestic Violence

**FT** – Facilitating Team

**FWCW** - Fourth World Conference on Women

**GAD** – Gender and Development

**GDI** – Gender Development Index

**GEM** – Gender Empowerment Measure

**ICPD** - International Conference on Population and Development

**IHRS** – International Human Rights Standards

**ILO** – International Labor Organization

**NGO** – Non-Governmental Organization

**PDPW** – Philippine Development Plan for Women

**PPGD** – Philippine Plan for Gender-responsive Development

**UNC** – United Nations Charter

**UN-CEDAW** – United Nations Convention on the Elimination of All Forms of Discrimination Against Women

**UNDP** – United Nations Development Program

**UNESCO** – United Nations Education, Scientific and Cultural Organization

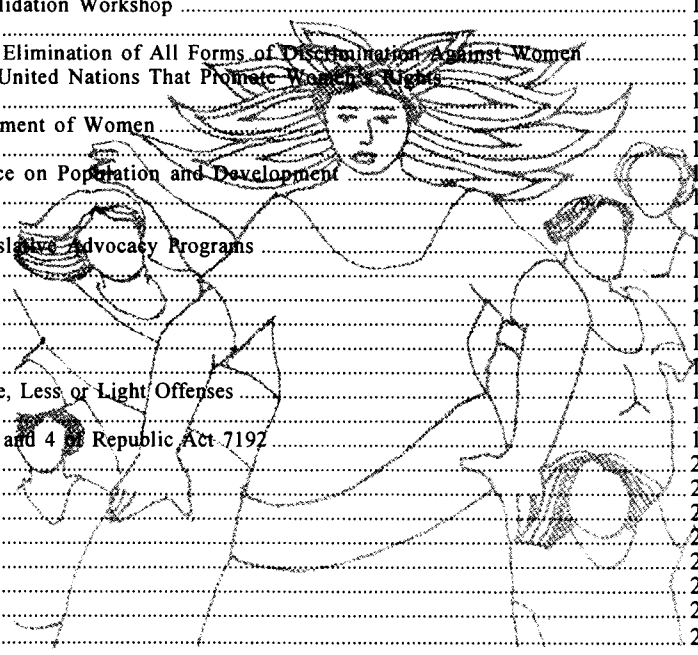
**UNIFEM** – United Nations Fund for Women

**VDPA** – Vienna Declaration and Programme of Action

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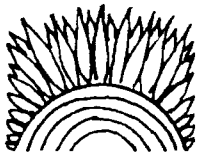
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*Toward a Gender-responsive Legislation*  
**VOLUME 2—BASIC APPLICATION**

## Introduction

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A country's quality of legislation is the hallmark of a people's sense of justice. In many instances, it has proven to be the touchstone by which inequalities in society are addressed and redressed. Since the United Nation's (UN) Decade of Women was declared in 1975, and fittingly commemorated and debated during the Fourth World Conference on Women (FWCW) in 1995 in Beijing, China, hallmark legislation, particularly affecting women and children, has been noted in some countries. In the Philippines, the UN Decade of Women and subsequent international meetings, including the International Conference on Population and Development (ICPD) in Cairo, and the Stockholm conference on the Social Reform Agenda, have propelled policy shifts and legislative reforms that address social, political and economic concerns.

In the Philippines, certain laws had been enacted which attempted to address women's marginal status. Legislation aimed at addressing gender inequalities, once alien in the halls of the Philippine Congress, has now gradually become part of the legislative agenda. It is being debated and discussed publicly, a sign of the impact of both internal and external advocacy and campaigns waged to address a broad spectrum of gender-related social issues. Prompted by the growing clamor by development NGOs, especially by the militancy and efforts of women's groups to address gender concerns, policy makers have begun to integrate gender concerns in program planning and legislative actions. This present Guidebook sprang from these developments.

One of the very first governmental bodies to recognize the need for gender-responsive legislation is the National Commission on the Role of Filipino Women (NCRFW). The NCRFW's efforts to mainstream a gender perspective at all levels of government helped boost the current interest in making the legislative arena as a forum for the struggle toward gender equality. This has led into a crucial partnership between the executive and legislative branches of government that would look after the interests of women.

The present publication is a pioneering effort of the NCRFW to assist the legislative processes and development in mainstreaming the gender perspective. Acknowledging the key role of legislation in promoting gender and development, the NCRFW embarked on a two-year project which now finds expression in the publication called *Toward a Gender-responsive Legislation* (Volumes 1 and 2).



## Project History

---

In 1997, a Project Team was formed by the NCRFW to implement a project on gender-responsive legislative analysis and development. Consultative meetings were undertaken by the NCRFW and the Project Team with a group of legislative personnel from the House of Representatives and the Senate (*Annex 1*). The participants were key legislative staff working in various capacity in important committees and selected according to the specific work they do in relation to legislative development.

From these initial meetings, the design was drawn up for a seminar workshop. It was held in April 1997 in Cavite. During this three-day workshop, key legislative personnel aimed to enhance and deepen their understanding on gender concerns. The workshop also familiarized the participants with a gender-responsive and rights framework that can be adopted in their legislative work.

From the pool of participants, five were selected to form a Facilitating Team (FT) (*Annex 2*). The role of the FT is to advise the Project Team in the development of the Guidebook, and to serve as the linking group to the rest of the participants. Based on their expertise and direct experience in the legislative machinery, the FT was directly involved in the development and finalization of the outline for the Guidebook as well as inputted significantly on some sections that are directly related to their legislative work. The draft of the Guidebook was completed in late 1997.



A year after, in April 1998, the Project commenced its second stage. The NCRFW, together with the Project Team, held another set of activities. A Pre-Test Workshop was conducted to examine the usability of the draft Guidebook. This time, the group which participated in the Cavite workshop, referred to as the Caylabne Group, was joined by others who represented other committees (*Annex 3*) and representatives of some line agencies of the government. The expansion of the participants pointed to how the NCRFW saw the necessity of bringing in other legislative players as important towards the finalization of the Guidebook. The Facilitating Team together with the new set of participants spent three days examining the draft Guidebook through various activities, which included a gender sensitivity orientation. This time, the expanded group was referred to as the Corregidor Group as the three-day activity was held in historic Corregidor Island.

A Validation Workshop was held some weeks after the results of the Corregidor workshop were collated and processed. The Validation Workshop aimed to share with the participants the results of the findings in the Corregidor workshop, for confirmation and validation. As the implementing organization, the NCRFW looked into the draft as well and put in its own editorial recommendations. What is now before us is the result of a long, complex process that brought the expertise of the legislative staff and the vision of the NCRFW.

While the processes that the Project undertook seem complex and long, it is to be noted that these ensure usability and practicability of the tool to legislative personnel in promoting and practicing gender-responsive legislation.

## Why A Guidebook

---

The Guidebook is primarily designed to assist legislative staff and technical staff of key government line agencies and agencies tasked with liaison work between the executive and legislative branches, who are directly involved in legislative development and analysis. They identify key issues that need policy solutions. The NCRFW recognizes the invaluable role of these particular groups in shaping laws, from data gathering to formulating bills, and ensuring that these go through the entire legislative process smoothly. They are found as technical staff in various committees, in the library and publication divisions, in the budget and the Secretary General's offices, to name a few, who are experts in their own right. And being experts, knowing how the legislative machinery works, the NCRFW acknowledges that they are most capable in integrating the gender perspective into the complex process of lawmaking. What the present publication does is to provide these groups with additional tools to enhance and sharpen their tasks, and make better legislative advocates for gender concerns in the process.

### Objectives

The project to develop a Guidebook for gender-responsive legislative analysis and development is a collaborative undertaking between the NCRFW and the legislative branch of government. Its objectives are:

- to develop a core of gender-sensitive key congressional and executive staff who will help ensure gender-responsive legislative analysis and development; and,
- to assist these staff in developing practical knowledge and skills in gender-sensitive lawmaking.

## Constraints and Challenges

Despite the historical political involvement of women since the mid-1900s, the legislative arena has remained a public space where women are generally marginalized if not altogether excluded. This state of affairs has left us with a legacy of lack: there has been no significant institutionalized models of gender-responsive legislative initiatives from which to pattern this mainstreaming effort. The most recent experience involved the five-year lobby work undertaken by women's groups and other sectors for the passage of a more progressive Anti-Rape Law. The consolidation and synthesis of several years of experience in national and international lobbying around gender-specific concerns, e.g., the lobbying at the UN, provides another spring of knowledge and skills. Experience, therefore, is the foundation of this Guidebook.

The publication has been crafted out of a need to contribute to the other ongoing efforts to improve the capability of Congress in responding to issues using a gender perspective and a human rights approach. From a gender perspective, all issues have a dimension of gender. Its concentration is on the drafting and formulation of gender-responsive legislative proposals and its related processes, e.g., data gathering. Thus, this Guidebook, while recognizing that government line agencies have a participation in formulating laws, has focused more on the role of legislative staff. Perhaps, subsequent publications could elaborate on the important role of implementing agencies in lawmaking. Another challenge provided by this project was the need for the NCRFW and the Project Team to not only have a sharp gender lens in critiquing laws, but as well knowledge of laws in general. The pioneering nature of this undertaking necessitated innovations and productive tensions from planning to implementation, and now, completion. New ideas, as they cropped up, were excitedly harvested, sifted through and, in not a few instances, brought into the re-planning stage.

The present publication lays no claim as the definitive guide and resource manual on gender-sensitive legislation. In fact, it is viewed as the initial step in transforming not just the laws but the entire consciousness, the politics of legislation. It is the first stone laid down from which others can build on and pave the way to a legislative house that women can own, and live and breathe within.

Ultimately, however, nothing substitutes direct interaction with women and other marginal sectors of our society as a step toward transforming not just the laws but social conditions that breed unjust, unfair laws.

## How the Guidebook Works

---

The Guidebook has two separate but integral volumes. Volume 1, *Toward a Gender-responsive Legislation: Basic Concepts* concentrates on ideas, concepts, and frameworks. Volume 2, titled *Toward a Gender-responsive Legislation: Basic Application* focuses on the application of the ideas, concepts and frameworks on the actual legislative process.

### Volume 1



Volume I is divided into two parts. The first part discusses key concepts on gender and development. It attempts to discuss these concepts in relation to development and social transformation. It outlines the gender differences in many aspects of social, political and economic spheres and the development context in which women's subordinate status is entrenched and perpetuated. The second part, meanwhile, takes several existing laws, and subjects them to analysis using the lens of gender and related concepts. In formulating proposed laws, the readers will find Volume 1 particularly useful as the discussion

of gender and related concepts expands the general social justice framework in analyzing issues, thus, providing an additional conceptual tool in approaching public policy. The data and figures give background information on potential areas for legislative action and can also be employed to illustrate why certain laws need to be proposed in the near future.



## Volume 2

Volume 2 also has two parts. The first part focuses on an integrated gender and rights approach to legislation. International human rights instruments are given new perspective as these interact with gender-related issues.

The last part provides practical “how-to’s” in gender-responsive legislation, examining actual bills and using some results of the Project workshop. It guides the readers through a step-by-step process of integrating gender and rights into lawmaking.

Volume 2 is particularly useful to those interested in applying the theories and making them work. The sample bills with their accompanying analyses and reformulations provide a “hands-on” training for the readers, making the Guidebook a sort of practice manual for the readers. All throughout the two volumes of the Guidebook, tips and reflection points are sprinkled to make the reading not only practical but also more engaging and provoking.

The present publication is a work-in-process. Users and readers are welcome to adapt, enhance, enrich and begin to modify the publication to make it a living product of a vision slowly taking shape in the legislative arena.

## Introduction

---

The imperative of using the human rights approach in the ways of the world and in viewing it, in the public and private spheres, in each institution that governs peoples' lives, needs no further argument. The fundamentals of our rights are basically enshrined in the Philippine Constitution. In spite of its flaws and constraints, a reality which has its roots in history and patriarchal ideology, it remains one of the basis of our nationhood that defines us as a people, our values and our vision.

Former Supreme Court Justice Isagani A. Cruz has this to say: "The Constitution is the root and not the blossom, the base and framework only of the edifice that is yet to rise. It is the core of the dream that must take shape, not only in the twinkling by the mandate of our delegates, but slowly in the crucible of Filipino minds and hearts, where it will in time develop its sinews and gradually gather its strength and finally achieve its substance." Legislation, the process by which our Constitution is made concrete and by which we order those values and vision, is, therefore, one of the touchstones of our collective will and communal dream of the future.

The present publication attempts to trace, albeit in a fashion that sweeps the vista, the rationale of why human rights is essential to lawmaking, and why in lawmaking a gender perspective is fundamental and visionary.

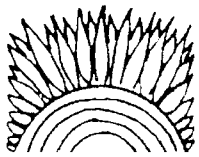
This section focuses on the implications of the human rights approach to gender and development (GAD). It likewise draws into center stage the responsibilities of the State in upholding this approach, and outlines the various human rights commitments, particularly in the international arena, to which it has signified agreement and enduring responsibility for implementation.

**"The Constitution  
is the root and not  
the blossom, the  
base and  
framework only of  
the edifice that is  
yet to rise."**

— Former Supreme  
Court Justice ISAGANI A.  
CRUZ

## CHAPTER ONE

# Mainstreaming a Gender Perspective and Human Rights Approach in Legislation



*A gender-responsive approach to legislation offers a relational analysis of women's situation that helps ensure that laws actually benefit women. This approach broadens the breadth of the area of analysis and intervention. It also addresses the criticism that human rights law is male-oriented and does not recognize women's experiences of injustice and inequality. A rights perspective, meanwhile, overlays the process of legislative intervention. Or at least enables discourses in legislation on possible configurations of the ideal situation—the what-should-be's—for women and society. The weaving of a gender and rights perspective in legislative intervention, therefore, helps optimize the potential gains from this strategy.*



## Introduction

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The imperative of using the human rights approach in the ways of the world and in viewing it, in the public and private spheres, in each institution that governs peoples' lives, needs no further argument. The fundamentals of our rights are basically enshrined in the Philippine Constitution. In spite of its flaws and constraints, a reality which has its roots in history and patriarchal ideology, it remains one of the basis of our nationhood that defines us as a people, our values and our vision.

Former Supreme Court Justice Isagani A. Cruz has this to say: "The Constitution is the root and not the blossom, the base and framework only of the edifice that is yet to rise. It is the core of the dream that must take shape, not only in the twinkling by the mandate of our delegates, but slowly in the crucible of Filipino minds and hearts, where it will in time develop its sinews and gradually gather its strength and finally achieve its substance." Legislation, the process by which our Constitution is made concrete and by which we order those values and vision, is, therefore, one of the touchstones of our collective will and communal dream of the future.

The present publication attempts to trace, albeit in a fashion that sweeps the vista, the rationale of why human rights is essential to lawmaking, and why in lawmaking a gender perspective is fundamental and visionary.

This section focuses on the implications of the human rights approach to gender and development (GAD). It likewise draws into center stage the responsibilities of the State in upholding this approach, and outlines the various human rights commitments, particularly in the international arena, to which it has signified agreement and enduring responsibility for implementation.

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— Former Supreme  
Court Justice ISAGANI A.  
CRUZ

This section continues from Volume 1, a project that is an important phase of the entire thrust of the NCRFW in mainstreaming the gender perspective in the legislative advocacy agenda. The following section appropriately goes into a discussion on how to step-by-step examine bills through 'gendered' lens. It also guides the reader through a process of acquiring skills and knowledge in gender mainstreaming in legislative advocacy.

# SECTION ONE

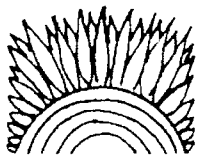
## Gender and Rights

### Approach to Philippine Legislation



#### Why Human Rights

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The conception and integration of human rights into the daily lives of people are one of the greatest achievements of humanity in modern times. Human rights are the hallmark of civilization, the great leap that provides the differentiation between our needs to merely survive and our dream to live better lives.

Human rights are inherent in us because we are human beings. These rights are fundamental by nature: they are necessary for our survival, for the realization of our full potentials, and for our participation in societal life. Examples of such rights are the right to life, to be free from hunger, to work, to have the highest attainable standard of physical health, and to take part in the conduct of public affairs. In this sense, human rights are “the ultimate norm” [B. Galli, 1993]. They are standards that define or direct State responsibility in relation to its citizens, and when considered, can immensely enrich our legislative intervention. On one level, they can be invoked to justify and mandate the adoption of a gender perspective in lawmaking.

## Principles of Human Rights

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The principles of human rights are three-fold: they are universal, inalienable, and indivisible.

The principles of human rights are three-fold: they are universal, inalienable, and indivisible. These are also called attributes of human rights.

The universality of human rights means that all human beings are entitled to them without any distinction. Human rights are inalienable in the sense that human beings cannot be deprived of them under any circumstance or condition. These principles derive from certain provisions in the UN Charter and the International Bill of Human Rights. These were reaffirmed during the 1993 Vienna World Conference on Human Rights in the following words: “(W)hile the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms” [Para. 6, *Vienna Declaration and Programme of Action*, 1993].

That human rights are inalienable and universal has far-reaching implications on advocacy for women's rights. For instance, discriminatory treatment of women in law or in practice is often rationalized on religious and ethnic grounds like religious and ethnic customs, or the particular political economic exigencies of a community or an area [see Annex 4 for excerpts of the United Nations Declaration of Human Rights]. Such views can be countered by and would not stand in the face of human rights principles. Furthermore, when one recognizes the universal and inalienable character of human rights, she or he also recognizes the need to be conscious of the diversities among women themselves, by reason of their ethnic background, class, status, education, age, physical abilities, or other factors. If these diversities are not recognized, it is difficult to ensure that women will equally enjoy, exercise and benefit from their rights.

Human rights, because of their nature, must necessarily be absolute, yet they are also a "historical synthesis" that "in their essence, are in constant movement." Their conception and substance are a product of history. This flux probably explains the ongoing struggles at different levels among competing conceptions of human rights. The legislative process can present an opening for women's articulation of what their fundamental rights should encompass and mean in their contexts and from their vantage points.

An advocate, however, must be ready to meet resistance against her or his insistence that human rights are universal and inalienable. Internationally, a number of governments, especially those with multiethnic and multicultural communities, have time and again challenged the universal application of human rights; nationally, there are also such objections put up by certain groups and which are founded on basically the same rationalization and justification.

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All rights, whether civil, political, economic, social, cultural or group or collective rights, should be equally enjoyed by individuals.

Another principle of human rights is their *indivisibility, interdependence, or interrelatedness* (emphasis supplied). "All human rights and fundamental freedoms are indivisible and interdependent; equal attention and consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights" [Art. 6, (2), *Declaration on the Right to Development, 1986*]. This was reiterated in the 1993 Vienna Declaration and Programme of Action which states that human rights must be treated "on the same footing, and with the same emphasis."



Under this imperative of human rights, individuals must be entitled to all their fundamental rights. No one set of rights, such as for example, civil and political rights, should be given greater import than the rest. All rights, whether civil, political, economic, social, cultural or the so-called group or collective rights (e.g., right to peace, and security and the right to development), should be equally enjoyed and realized by individuals.

There is an existing tension between civil and political rights, on the one hand, and economic, social and cultural rights, on the other. This situation is fueled by the identification of the first set of rights with western tradition according them primacy and for which reason they are also labeled as the "first-generation rights," and the position, especially of many third world or developing countries, that civil and political rights must have as foundation economic, social and cultural rights or the so-called "second-generation rights."

In the course of time, as social movements arose out of identified struggles for social change and as nations evolved, an appreciation of the same fundamental importance of civil and political rights emerged. The emergence of human rights movements across the globe, and the surge of women's movements alongside other social movements, pushed a rethinking that resulted from the experiences of peoples in the so-called third world. The peoples who composed the most number in the world and yet are the least benefited by the material gains that civilization and industrialization in an era brought by contradictions and consolidations.

## State Responsibilities and Human Rights Standards

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Ratification of or accession to human rights treaties creates legally binding obligations on the part of the States. These obligations under various human rights treaties can have the following dimensions: (a) the obligation to respect, that is, to refrain from action that will infringe those rights; or from intervention in those areas "where the individuals, or groups, can take care of their own needs;" (b) the obligation to protect, or to take measures to "counteract or prevent activities and processes which negatively affect (the enjoyment of the right)"; (c) the obligation to assist and fulfill, that is, to provide to those who do not have the resources to provide for themselves" and, (d) the obligation to promote, that is, to raise the awareness of citizens on their rights, and undertake other measures to ensure the realization and enjoyment of those rights [A. Byrnes and J. Connors, citing several authors, 1996].

These State obligations may be broadly seen also as positive obligations (or the obligation "to do"), that is, those requiring specific and concrete actions by States, and negative obligations (i.e., obligations "not-to-do"),

### OBLIGATIONS OF THE STATE ON HUMAN RIGHTS:

- respect
- protect
- assist & fulfill
- promote

The responsibility of the State with respect to human rights extends to the action or inaction of its agents or functionaries, and to its action, or inaction, in relation to “private” violations of women’s human rights.

implying State non-interference or non-intervention. Finally, the responsibility of the State with respect to human rights extends to the action or inaction of its agents or functionaries, and to its action, or inaction, in relation to “private” violations of women’s human rights. In the latter case, the State is deemed “an accomplice to the human rights violations and can be held responsible for them” under the principle of state complicity [*C. Romany, 1994*]. Complicity, however, requires that there must be a systematic deprivation of women’s human rights which is “designed, promoted and maintained by official state acts” (underscoring supplied) [*Ibid.*].

Examples of State acts that may be tantamount to complicity are:

failure to prevent crimes of violence against women, among others, by not enacting the appropriate legislation, by not providing for effective law enforcement, or by not undertaking gender sensitivity or public awareness programs;

failure to provide for effective relief or remedy to victims of violence (e.g., by State inaction in the face of an insensitive or anti-women judiciary);

a prohibitive legal system;

women’s lack of awareness of their rights and lack of available remedies when those rights are violated; and,

failure to provide for support services, e.g., counseling, shelter, to women victims.



## Some Sources of International Human Rights Standards

Sources include multilateral treaties such as the UN Charter which provides for general obligations of States to respect and promote human rights, and those that establish specific State obligations. In addition to these are treaties concluded under the auspices of the UN and its specialized bodies. These treaties create legally binding obligations on the States that have ratified or acceded to them.

Aside from these multilateral treaties, there are declarations, resolutions, and recommendations relevant to international human rights that are adopted by the UN or by other international organizations or conferences. They may be invoked in relation to human rights issues although they do not create direct legal obligations on States.

Other sources are the decisions and actions by UN organs or other international bodies like the International Court of Justice, the Security Council, the Commission on Human Rights, and the General Assembly. National constitutions, domestic laws, judicial decisions, or policy pronouncements pertinent to the implementation of international human rights standards within a country can also be referred to [*Guide to International Human Rights Practice, 1992*].

## Gender and Human Rights: The Inevitable Nexus

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The former UN Secretary General, Boutros Boutros-Ghali, once said: “At Rio, Vienna, Cairo and Copenhagen the importance of issues related to the improvement of the status of women was stressed. From each of these global conferences emerged a more powerful recognition of the crucial

If in fact human rights apply to both women and men, why is there a need to re-state the commitment? Is the universality of human rights in fact has gaps where there should not be?

role of women in sustainable development and protecting the environment; of the human rights of women as an inalienable, integral and indivisible part of universal human rights; of violence against women as an intolerable violation of these rights; of health, maternal care and family planning facilities, and of access to education and information, as essential to the exercise by women of their fundamental rights" [UN Department of Public Information, 1996]. The statement is one of the most significant uttered by a UN head, staunchly a male territory, and headed by the most powerful governments in the world. Such a development has been one of the major gains of the global women's movement, which from Rio de Janeiro and even earlier on, to Beijing, had marched the long road to make gender a concern at the international drawing board of policy makers.



It was in Vienna, Austria during the 1993 World Conference on Human Rights which provided the next stepping stone to women's struggle for women's rights. There, participants, women and men alike, saw the historical and political necessity to incorporate in the UN global agenda the rallying cry "women's rights are human rights!" The Vienna Declaration and Programme of Action stated in paragraph 9: "*the human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights*" (underscoring supplied).

While the Declaration was a milestone in the history of and discourse on human rights, it also raised a few questions which actually unearthed some sad realities about precisely that history and discourse. One obvious question is, if in fact human rights apply to both women and men, why is there a need to re-state the commitment? Is the universality of human rights in fact has gaps where there should not be?

The need to reconceptualize classical human rights, for example, the right to life and security in persons, should include specific as well as collective experiences of women, and to identify violations that happen based on sex or gender [E. Conda, in *CATW's Proceedings of the Human Rights Documentation Training for Asian Women's NGOs Concerned with Violence Against Women*, 1996]. Violence against women, a universal collective experience of women across cultures, is one area which in the classical human rights discourse and practice, is not articulated based on women's experiences. The right to life and security in persons assumes a much larger context and mirrors a reality that women and the female child, or children in general have a subordinate position in society. Rape, for example, is not simply a crime against women, it violates women's right to life and security based on sexual subordination.

States like the Philippines that have ratified human rights treaties are legally bound to respect, protect and promote the guaranteed human rights of women and men without any distinction. Moreover, as the Philippines was a signatory to various documents that emanated from women-specific international conferences such as the Beijing Platform for Action, it has the responsibility to ensure the implementation of specific provisions which address the fundamental problem of women's status in societies. It is morally bound to carry out policies and laws which substantiate those commitments.

However, for the States to be able to faithfully comply with those obligations require sensitivity to and consciousness about gender.

States like the Philippines that have ratified human rights treaties are legally bound to respect, protect and promote the guaranteed human rights of women and men without any distinction.

Law is a powerful resource for women as it can provide immediate relief for their needs based on a long-term social transformation that is nurtured in other spheres of society.

Blindness or insensitivity or simply lack of awareness to the ideological and material differences between women and men can be fatal to a nation's development efforts. Gender inequalities, institutionally spawned or nurtured, can negate or limit significantly the impact of State action on women's rights. When half of the population is unable to fully exercise their personal and political rights, the future of a nation is fundamentally sacrificed.

On the other hand, women have particular stake in governments' recognition of the indivisible character of human rights, especially since many of their concerns are systemic in nature, interlinked, and involve rights of both kinds. For example, "(I)n order to comply minimally with women's civil and political rights, in order to ensure the minimum rights of citizenship, the dichotomy that exists in the current human rights discourse needs to be transcended."

In ensuring women's civil and political rights, "the State must be held to an affirmative duty to ensure the eradication of those social and economic conditions that maintain and perpetuate subordination". [C. Romany, citing P. Williams, 1994]. As example, women are guaranteed their right to take part in public affairs, but they cannot realize this right unless their multiple burdens are eased, their educational and economic opportunities widened, their lack of experience and their lack of support system, among others, are addressed.

### **Legislative Advocacy: Setting a Balance of Power**

Legislative measures directed at specific concerns of women, given the latter's interrelatedness and interdependence, must accordingly consider solutions in the realm not only of the civil and political, but also of the economic, social and cultural. Law is a powerful resource for women. It can provide immediate relief for their needs based on a long-term social

transformation that is nurtured in other spheres of society. Legislative advocacy, in fact, can serve as a basis for achieving new grounds on which to deepen women's empowerment, as other strategies continue to evolve, be implemented and struggled for.

The inseparable ties between government and civil society are nowhere as direct and eloquent as in legislation and the law. The touchstone of good governance is measured by the way that civil society gives inputs as a genuine partner in the making of laws, and in the process, assumes both the role of a critic and the governed. They become both the makers and subjects of the law inasmuch as the State becomes those, too.

Human rights standards, along with commitments of government under other agreements or policy documents, can present a framework or provide directions for interventions through legislation to serve the interests of women.

International standards and references that may aid in developing beneficial legislation for women are increasingly becoming available. Also, largely because of the increasing intervention of women in international human rights forums and processes, there has been a perceptible infusion of women's perspectives and positions on crucial issues into the UN system. Moreover, there are steps now being taken to develop guidelines for the integration of gender perspectives into the UN's human rights activities and programs.

A coalition focusing on legislative advocacy aptly puts it: "Legislative advocacy for women can be a strategy for change. It must establish new levels of consciousness, knowledge and behavior regarding women, and must contribute to public awareness through discussion of issues. Most importantly, women's active involvement in legislative work is one answer to the inadequacy of women's participation in national processes.

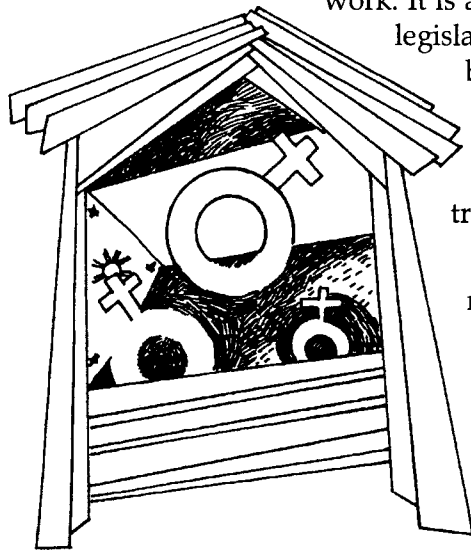
Most importantly, women's active involvement in legislative work is one answer to the inadequacy of women's participation in national processes.

“The empowerment of women is the empowerment of all humanity.”

— Former UN Sec. Gen.  
BOUTROS BOUTROS-  
GHALI

It is a means of ensuring that women’s analyses of and solutions to problems and issues affecting them become part of the legislative process. Finally, it must serve to maximize women’s individual potential and help unite women into a force for social transformation” [SIBOL *Statement of Unity*, July 1992].

Legislative advocacy is an indispensable strategy in development work. It is a process for educating the public, legislators and policy makers. This effort brings closer together the people and lawmakers towards crafting a future where human rights become a material reality that would transform society.



In sum, there are substantive reasons for governments to anchor human rights standards and commitments and integrate them in the development of gender-responsive legislation. It is a task of any civilized society because “the empowerment of women is the empowerment of all humanity”

[Former UN Secretary General Boutros Boutros-Ghali, *UN Department of Information*, 1995].

## *culture unbeatable?*

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### **Alternative Rite to Female Circumcision Spreading in Kenya**

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by **MALIK STAN REAVES**

NEW YORK—A growing number of rural Kenyan families are turning to an alternative to the rite of female circumcision for their daughters.

The new rite is known as 'Ntanira na Mugambo' or 'Circumcision Through Words'. It uses a week-long program of counseling, capped by community celebration and affirmation, in place of the widely criticized practice also known as female genital mutilation (FGM). Next month, residents of some 13 villages in central Kenya will celebrate the fourth installment of this increasingly popular alternative rite of passage for young females.

The first Circumcision Through Words occurred in August 1996, when 30 families in the tiny village of Gatunga, not far from Mount Kenya, ushered their daughters through the new program. Some 50 families participated in the program in December followed by 70 families this past August.

Circumcision Through Words grows out of collaborations between rural families and the Kenyan national women's group, Maendeleo ya Wanawake Organization (MYWO), which is committed to ending FGM in Kenya....

FGM is practiced in about half of the rural districts of Kenya, part of a larger international population of more than 100 million women who are believed to be subject to varying forms of FGM across Africa and parts of western and southern Asia. . . .

In rural areas, circumcision rites are usually carried out by traditional practitioners using crude instruments and little or no anesthetics. Urban dwellers and the more affluent are more likely to seek out professional health care providers.

While in some cultures the circumcised include infants a few days old, most of the affected girls are between the ages of 4 and 12, according to a statement announcing a UN joint plan of action against FGM.

The health consequences of FGM can range from serious to deadly. "Short-term complications include severe pain, shock, hemorrhage, urine retention, ulceration of the genital region and injury to adjacent tissue," according to the UN release. "Hemorrhage and infection can cause death. Long-term complications include cysts and abscesses, keloid scar formation, damage to the urethra resulting in urinary incontinence, dyspareunia (painful sexual intercourse), sexual dysfunction, urinary tract infection, infertility and childbirth complications."

Yet female circumcision encompasses more than the practice itself. It is often deeply entrenched in the culture, wrapped in a complex shroud of assumptions, taboos, and beliefs that impact a woman's social status and personal identity. . . .

"People think of the traditions as themselves," said Leah Muuya of MYWO. "They see themselves in their traditions. They see they are being themselves because they have been able to fulfill some of the initiations," said Muuya. . . . female circumcision has traditionally signaled when a young woman is ready for the responsibilities of adulthood.

In answer to that, Circumcision Through Words brings the young candidates together for a week of seclusion during which they learn traditional teachings about their coming roles as women, parents, and adults in the community, as well as more modern messages about personal health, reproductive issues, hygiene, communications skills, self-esteem, and dealing with peer pressure.

The week is capped by a community celebration of song, dancing, and feasting which affirms the girls and their new place in the community....



Accompanying this Kenyan initiative is an international effort to increase global pressure on the issue. In April of this year, the World Health Organization, UNICEF, and the UN Population Fund announced a joint plan to significantly curb female genital mutilation over the next decade and completely eliminate the practice within three generations.

Many governments have outlawed the practice in their own territories, including the United States in September of last year, while they seek strategies to manage the problem. The U.S. Department of Health and Human Services is working through the Centers for Disease Control and the Immigration and Naturalization Service with a host of non-governmental organizations to develop the means to help thousands of African females at risk within its borders. However, such efforts are complicated by criticism from some within the African community who see such actions as racist and intrusions upon African cultural practices.

Efforts like Circumcision Through Words offer a promising approach to resolving this controversial issue, at least within practicing communities. . .

"You cannot change Culture overnight," said Peter Kali, District Officer in the Gatunga area of Kenya, during the recent celebration.

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6. International Convention against Apartheid in Sports
7. Convention on the Prevention and Punishment of the Crime of Genocide
8. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity
9. Convention on the Rights of the Child
10. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
11. Slavery, Convention of 1926, as amended
12. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
13. Convention for the Traffic in Persons and the Exploitation of the Prostitution of Others
14. Convention Relating to the Status of Refugees
15. Protocol Relating to the Status of Refugees
16. Convention on the Rights of Migrant Workers and the Members of their Families (not yet in force and in effect)

**Women-specific treaties that the Philippine Government has ratified are the following:**

1. Convention on the Elimination of All Forms of Discrimination against Women (hereafter referred to as the Women's Convention);
2. Convention on the Political Rights of Women;
3. Convention on the Nationality of Married Women; and,
4. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

Instruments adopted by the Philippines as member of the United Nations, among others, are the UN Charter, the Universal Declaration on Human Rights, the Declaration on the Right to Development, and the Declaration on the Elimination of Violence against Women.

Moreover, the Philippines is also a State Party to various conventions adopted under the auspices of the International Labor Organization (ILO), Economic and Social Cooperation in Asia and the Pacific (ESCAP), and other UN specialized bodies. It has also adopted various conference documents like the:

- Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development (1995)
- Programme of Action of the Cairo International Conference on Population and Development (1994)
- Vienna Declaration and Programme of Action on Human Rights (1993)
- Rio Declaration on Environment and Development and Agenda 21: Programme of Action for Sustainable Development (1992)
- Mexico City Plan of Action on Population and Development (1984)
- Bucharest World Population Plan of Action (1974)
- Tehran Proclamation on Human Rights ((1968)

**Conference documents specific to women include *inter alia*:**

- Beijing Declaration and Platform for Action (1995)
- Nairobi Forward Looking Strategies for the Advancement of Women (1985)

- Report of the Mexico World Conference of the International Women's Year (1975)
- Declaration of Mexico on the Equality of Women (1975)

*(See Annex 6 for excerpts of selected texts of UN Conferences.)*

Aside from the foregoing, there are resolutions of UN bodies, particularly the Commission on the Status of Women and the Commission on Human Rights and regional policy documents like the Jakarta Plan of Action for the Advancement of Women in Asia and the Pacific (1994) and Bangkok Declaration (Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights, 1993) that could be referred to.

## SECTION TWO

# How to Use HR

# Standards in Gender-based Legislation



The preceding international conventions, treaties and other documents provide an expansive and rich sources of basis for gender-fair legislation in the Philippine context. They have been used by governments around the world. The Philippines, as part of the global community, can make itself a key player in the international forum on human and women's rights, and,

therefore, sets a record for itself. Moreover, as our policy makers and legislators begin to be much more aware of the various situations that women and children are particularly vulnerable to because of their status in society, they need legal parameters, tools and capability to make legislation a real arena for the empowerment of their constituents.

## Perspective Setting: Some Specific Uses

The above documents are significant because they reflect international consensus and language on issues that affect women. As such, they can serve as forceful bases for legislation that will address gender concerns and promote the human rights of women. In addition, conference documents lay down policies and outline actions and steps required of governments that adopted them to guide legislative development.

Examples are given below on some specific ways by which human rights treaties and other documents can be used in formulating or analyzing legislative proposals.

*They can set and enhance the perspective of issues or situations of women—* Using gender lens in legislation provides the legislative staff or anyone tasked with formulating or analyzing a legislative proposal to set the perspective of the issues or situations in question. This, therefore, enhances the legislative process. Several positive gains in doing so can be cited:



the staff will be conscious that the rights or benefits that a proposed law provides should accrue to both women and men since rights are universal;



on this basis, the staff can challenge any provision in the proposal that discriminate women on whatever ground; and,



the staff will keep in mind that a situation or concern of women can be addressed more effectively if a multipronged approach is taken, and that this is as it should be, given her or his acceptance of the indivisible nature of human rights.

In this regard, Art. II, secs. 2 and 11 of the Constitution can be cited to buttress the position that the Philippines is bound to adhere to the general principles of human rights.

*They provide basis for legal equality and equality in opportunity and treatment, or for de jure and de facto equality in the enjoyment of human rights—* There are several provisions that can be cited in support of equality laws. Some of these provisions have been mentioned already under the discussion on the principles of human rights. Other provisions that imply or expressly provide for equality can be found in the Women's Convention, as follows:

**1. Article 4 (1) on the adoption of special measures**

- (i) Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between women and men shall not be considered discrimination as defined in the present Convention;

xxxxxx; (T)hese (temporary special) measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

**2. Article 2 (a) on obligations of States Parties**

- (i) To embody the principle of equality of men and women in their national constitutions or other appropriate legislation xxx and to ensure, through law and other means, the practical realization of this principle;

Human rights treaties and other documents can be used in formulating or analyzing legislative proposals.



3. *Article 1 on the definition of discrimination*

x x x the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

4. *Pertinent constitutional provisions are Article II, sec. 14 providing for the “fundamental equality before the law of women and men” and the equal protection clause in Art. III, sec. 1 [see the discussion on this in “A Gender Analysis of Philippine Laws, Survey and Analysis”, by M. Feliciano and M. L. Anal-Sereno, 1989].*

*They provide an expansive definition for discrimination against women and a framework for analyzing and addressing it* Article 1 of the Women’s Convention defines “discrimination against women” as “any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and freedoms in the political, economic, social, cultural, civil or any other field.”

This definition allows for legislation that will prohibit not only intentional (“purpose”) but also incidental discrimination (“effect”) against women. The Convention, in this connection, broadens the scope of discrimination—it prohibits by including its own discriminatory acts and those of “public authorities and institutions” (Art. 2 (d)) as well as discrimination committed by “any person, organization or enterprise” (Art. 2 (e)).

*The Women’s Convention*—Under the Women’s Convention, one can also glean some analysis of causes of discrimination as well as barriers to women’s enjoyment of their rights.

**1** It acknowledges by implication that discrimination against women can take place not only in the “public sphere” but also in the “private sphere” (*Art. 2 (d) and (e)*).

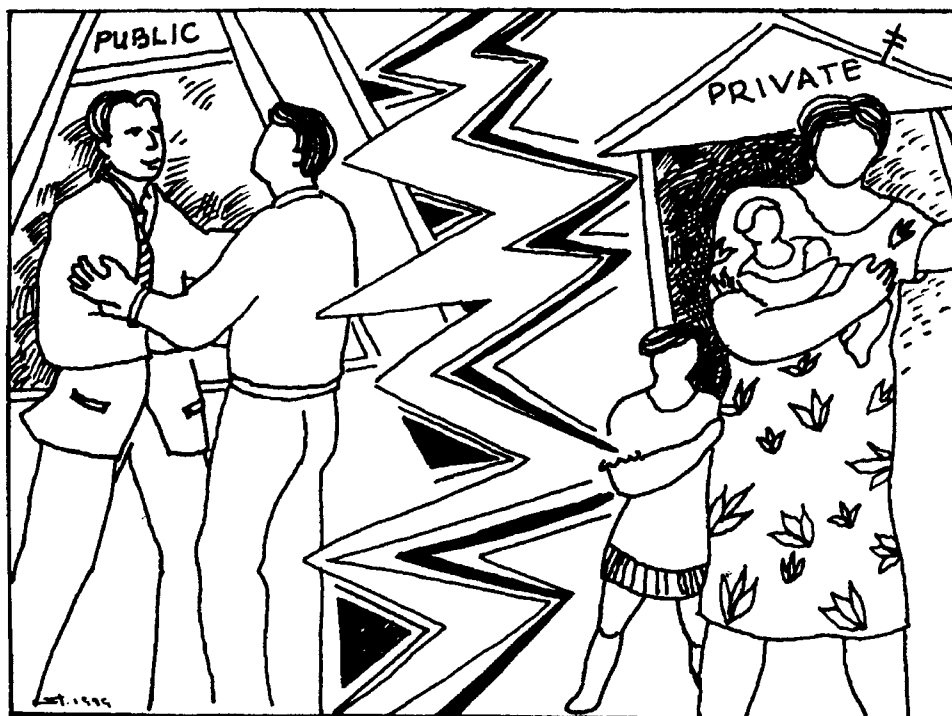
**2** It recognizes gender-based differences and inequalities: “prejudices, customary and other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for women and men” (*Art.5 (a)*),” and, “customs and practices that constitute discrimination against women” (*Art.2 (f)*). Examples of this include the female-child’s/women’s right to education. There are certain sociocultural beliefs where the female’s access to education is hindered because of the prevailing notion of women as reproducers, wives, mothers. In these traditional roles, education is less important for them than it is for the male, who is traditionally considered as the breadwinner, the head of the family, the one in the public arena such as politics. This discriminatory practice is admittedly culturally based and has to be addressed at all levels, including legislation.

**3** It acknowledges that laws and regulations and other acts and practices of the State can discriminate women. A good example of this is the nightwork prohibition in the labor code. On the one hand, the intent of the law is to “protect” women from violence, but it nevertheless creates a constraining impact on women’s ability to choose freely, without fear, jobs which may enhance their earning capacity and provide opportunities for learning other skills that may be available in those jobs occurring at night. The nightwork prohibition, for another, also does not address the root or source of the violence that confronts women *based on their sex*. Rape, for example, is committed mainly by men against women and children. Also, rape and other sexual violence against women occur anytime of the day or night. And finally, it promotes fear among women. While there may

Discrimination against women” is “any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and freedoms in the political, economic, social, cultural, civil or any other field.”

—Art. 1 of  
WOMEN’S CONVENTION

The State is mandated to undertake various measures toward eliminating discrimination against women through (a) constitutional and legislative provisions on equality; and, (b) legal or other means for the practical realization of equality, which include "temporary special measures"



be some tactical gain out of the implementation of the nightwork prohibition policy, strategic actions through various means, including legislation, must be pursued to end violence and discrimination against women.

**4** The Convention recognizes that legislating or mandating in the constitution the equality of women and men is only one step forward.

These actions should be complemented by laws and other measures to ensure that equality is realized in practice (*Art. 2(a)*).

States Parties (*in Arts. 2, 3, 4 and 5 thereof*) are mandated to undertake various measures toward eliminating discrimination against women through (a) constitutional and legislative provisions on equality; and, (b) legal or other means for the practical realization of equality, which include “temporary special measures” (*Art. 4(1)*), and appropriate measures in all fields and “to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and freedoms on a basis of equality with men” (*Art. 3*).

**Temporary special measures**—The provision on temporary special measures is often used to justify legislation on affirmative action programs. It is premised on women and men not being on equal footing from the start. This situation of disparity caused by the prejudices and inequalities suffered by women in the past, as well as existing ones, bar or hamper women’s enjoyment of their rights equally as men. Therefore, temporary special measures aim to offset this imbalance. A popular example of an affirmative action law is one providing for a quota system regarding representation of women in committees and other decision-making bodies.

It must be emphasized that the broad provision which prohibits discrimination through law or other measures, including sanctions encompassing all possible areas where women are discriminated against can be addressed by legislation. Legal protection of women and their effective protection against

Temporary special measures is premised on women and men not being on equal footing from the start.



The government does itself a favor in terms of conforming to its mandate of obligation by ensuring that public authorities and institutions refrain from engaging in any act or practice of discrimination against women.

acts of discrimination can also be advanced by effective tribunals and other public institutions. This argues for a legal system-wide approach to eliminate discrimination against women as it implies that providing legislation for the protection of women by itself does not ensure their effective protection. The courts and the law enforcement and prosecution agencies, among others (“effective tribunals and other public institutions”) must likewise be effective. A legislative proposal whose object is to address discrimination must consider this.

The government does itself a favor in terms of conforming to its mandate of obligation by ensuring that public authorities and institutions refrain from engaging in any act or practice of discrimination against women. It also adopts measures to eliminate discrimination against women by any person, organization or enterprise. Such measures include legislation to modify, abolish existing laws (penal laws), regulations, customs and practices which constitute discrimination against women and those that modify the social and cultural patterns of conduct of men and women.

The Women’s Convention itself provides many bases for approaching holistically and from a gender perspective the elimination of discrimination against women and the promotion of women’s equality.

# Gender and Legislative Development

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Human rights treaties and conference documents can also be referred to in legislating specific issues of women. How they can be used in legislative development and analysis is illustrated below.



They can provide bases for defining issues and concerns of women.

Violence against women, for example, is defined under the Declaration on Violence against Women formulated during the 1993 World Conference on Human Rights held in Vienna:

Violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life. (Art. 1). (It) shall be understood to encompass, but not be limited to, the following:

- (i) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (ii) physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.;
- (iii) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs (Art. 2).



Violence against women is also defined in General Recommendation No.19 of the Committee on the Elimination of Discrimination against Women. This General Recommendation categorically states that gender-based violence is a form of discrimination.

The definition immediately challenges notions about violence. It can be cited to support provisions in proposed laws such

as those recognizing marital rape, and acts of domestic violence other than physical, and sexual harassment in everyday life. The definition itself can be adopted in a legislative proposal.

General recommendations constitute interpretative comments of the Committee, which is the monitoring body of the Women's Convention.

Another example is reproductive health and rights. Reproductive health and rights are controversial areas that surface many opposing contentions such as the natural family planning methods vs. artificial family planning methods, or the "pro-choice" vs. the "pro-life" debates. The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence (Para. 96).



### **REPRODUCTIVE HEALTH—**

“... a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health, therefore, implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well

as other methods of their choice for regulation of fertility which are not against the law, and the right to access to appropriate health care services that will enable women to go safely through pregnancy and childbirth, and provide couples with the best chance of having a healthy infant” (*Beijing Platform for Action and the Cairo Document*).





They can present the global situation and analysis of a pertinent issue.

This particularly applies to conference documents since they often include a situationer on the issue at hand. Treaties and other agreements can also present the context of the issue that they are addressing. It is often noteworthy to include a concise and precise situationer on gender or women to establish the social context in which the bills are based.



They can cite specific actions required of States with respect to particular issues.

These actions, in the case of the Beijing Platform for Action, relate to poverty, education and training, health, violence against women, women and armed conflict, women and the economy, women in power and decision making, women and the media, women and the environment, human rights of women, and the girl-child.

The foregoing examples were intended to illustrate how those engaged in gender-responsive legislative work can find valuable inputs and bases in treaties and documents. Human rights standards and other commitments of government can be used in legislative development and analysis in invariable ways, depending on the interest, creativity, and commitment of the person involved.

Finally, it is always useful to remember that the internationally agreed-on definition and scope of reproductive health and rights can lend some force to and add weight on a bill drafter's or bill analyst's progressive positioning with regard to the issue.

# *You Have the Right...*

- 1. to self determination**
- 2. to nondiscrimination**
- 3. to the prohibition of apartheid**
- 4. to effective remedy for violation of your rights**
- 5. to the prohibition to the retroactivity for criminal offenses**
- 6. to the prohibition of imprisonment for indebtedness or contractual obligations**
- 7. to procedural guarantees in criminal trials**
- 8. to life**
- 9. to physical and moral integrity**
- 10. to the prohibition of torture and of cruel, inhuman or degrading treatment or punishment**
- 11. to the prohibition of slavery, forced labor and trafficking in persons**
- 12. to recognition of your legal personality**
- 13. to liberty and security**
- 14. to the prohibition of arbitrary arrest, detention and exile**
- 15. to freedom of movement and residence**
- 16. to seek asylum**
- 17. to privacy**
- 18. to freedom of thought, conscience and religion**
- 19. to freedom of expression**
- 20. to freedom of peaceful assembly**
- 21. to freedom of association**
- 22. to marry and found a family**
- 23. to protection as a mother and as a child**
- 24. to a nationality**
- 25. to work**
- 26. to food**
- 27. to social security**
- 28. to enjoy the highest standards of physical and mental health**
- 29. to education**
- 30. to participation in cultural life**

SOURCE: ISIS-International Manila, excerpted from Katarina Tomasevski, *Women and Human Rights*, 1993.

# *Quo vadis, Filipinas?*

## ***not by bread alone...***

The United Nations Development Program now uses two new gender-related indices to measure women's status in society.

The first is the Gender Development Index (GDI), which measures equality in terms of the following basic human capabilities: life expectancy, educational attainment, and real income.

The gaps in each area between women and men are computer- and country-ranked in terms of how narrow the gap is. While the developed countries of Sweden, Finland, Norway and Denmark scored the highest, several developing countries also registered respectable scores:

<b>Barbados (11<sup>th</sup>)</b>	<b>Hong Kong (17<sup>th</sup>)</b>
<b>Bahamas (25<sup>th</sup>)</b>	<b>Singapore (28<sup>th</sup>)</b>
<b>Uruguay (32<sup>nd</sup>)</b>	<b>Thailand (33<sup>rd</sup>)</b>

The other new index is the Gender Empowerment Measure (GEM), which assesses women's progress in the following areas: political decision-making, access to professional opportunities, and earning power.

Only nine countries in the world—Sweden, Norway, Finland, Denmark, Canada, New Zealand, the Netherlands, USA and Austria have GEM values above 6.0 out of the possible score of 10. Thirty-nine countries, among them the Philippines, have a GEM of below 0.3.

However, the GEM rankings show that some developing countries outperformed industrialized ones. The Barbados, Bahamas, Trinidad and Tobago, and Cuba ranked higher than Switzerland, Hungary, the United Kingdom or Great Britain, Spain and France.

Sources: Philippine News Agency; Link, March 1996;  
Fourth World Conference on Women, September 1995

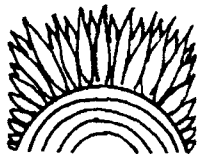
# CHAPTER TWO

## Integrating Gender and Rights Perspectives Into Legislation: Basic Application



### Introduction

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This section aims to provide congressional personnel and others involved in legislative work with some practical guidelines and parameters in using a gender and rights “lens” to analyze and develop legislative proposals. To the extent possible, the discussion will encompass and refer

to legislative proposals that are women-specific, those that are presumably “neutral” but in reality, directly affect women, as well as the so-called general ones.

Although the discussion focuses on legislative development and analysis, the “how-tos” are structured in a flexible way that can be used in whatever aspect of legislative work a person is immediately engaged in—whether in drafting a bill or resolution; examining it for committee consideration; or analyzing it for amendments at the committee level, on second reading or at the bicameral conference committee stage.

It is recognized that those involved in legislative analysis and development have their own styles, preferences, and years of experience to bank on in going about their work. The considerations presented here should be adopted as and when needed by the user of the guidebook. They are not exhaustive by any means and are basically meant to present initial ideas on how best to ensure that a gender and rights perspective permeates legislative work.

## The Legislative Process

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The legislative process is the way through which laws are enacted. Its process also defines its limitations. It is, therefore, important to understand the process itself, and subsequently define its limitations so that gaps in terms of the gender perspective or approach can be addressed [WLB 1997: 25]. Innovations can be developed, tested and implemented in the process, thereby providing a rich opportunity to make legislation more pro-people and, therefore, gender-fair.

The Philippine Constitution, together with the Local Government Code (RA No. 7160), are the defining parameters of the legislative process [Ibid.: 26]. Lawmaking, with its processes and mechanisms, may enrich or

The legislative process is a site of power that defines the present as well as the future of a country’s legal arena, and therefore, replicates a society’s cultural values.

constraint advocacy for women's rights. The parameters apply to both national and local legislative bodies. The legislative process is a site of power that defines the present as well as the future of a country's legal arena, and therefore, replicates a society's cultural values.

In the last five years or so, the legislative process has become a women's concern. Various women's nongovernmental organizations, along with peoples' organizations, have focused their efforts in legislative advocacy. It has become an arena for vigilance and militancy, as human rights discourse and dimension become much more politicized by grassroots politics, in response to the changing times. The law has become a source of hope for many, yet it is also an area where constituents often have the least access. This publication aims to contribute to the ongoing democratization of the legal processes. *(See Annex 8 for selected laws focusing on women and gender.)*

## From Legislative Proposal to Law

Legislative proposal refers to a bill, which is a proposed legislation filed in either the Senate and the House of Representatives, thus the reference to it as a bicameral body. Twenty-four (24) senators are elected at large, while no more than 250 members constitute the House of Representatives who are elected from legislative districts and as sectoral and national party representatives. The latter used to be appointed by the President but in the last election, the party list system was adopted for electing the sectoral representatives.



At the local level, the legislative process refers to proposed ordinances or resolutions that are filed with the *sanggunian* or the local legislative body. Legislative bodies at this level are found at the provincial (*sangguniang panlalawigan*), city (*sangguniang panlungsod*), municipal (*sangguniang bayan*), and barangay or village (*sangguniang barangay*). Ordinances are legislative actions of a general and permanent nature. Resolutions are of a temporary nature and often relate to what is called proprietary functions and private matters.

For the purposes of the present publication, however, what is discussed is legislation at the national level.

## **How Does a Bill Become a Law**

The Constitution provides that no bill becomes a law unless it has passed three readings in both the House of Representatives and the Senate. The following is a brief description of the sequence of the legislative process. There are nuances and variations in this process which have to be studied by legislative advocates.

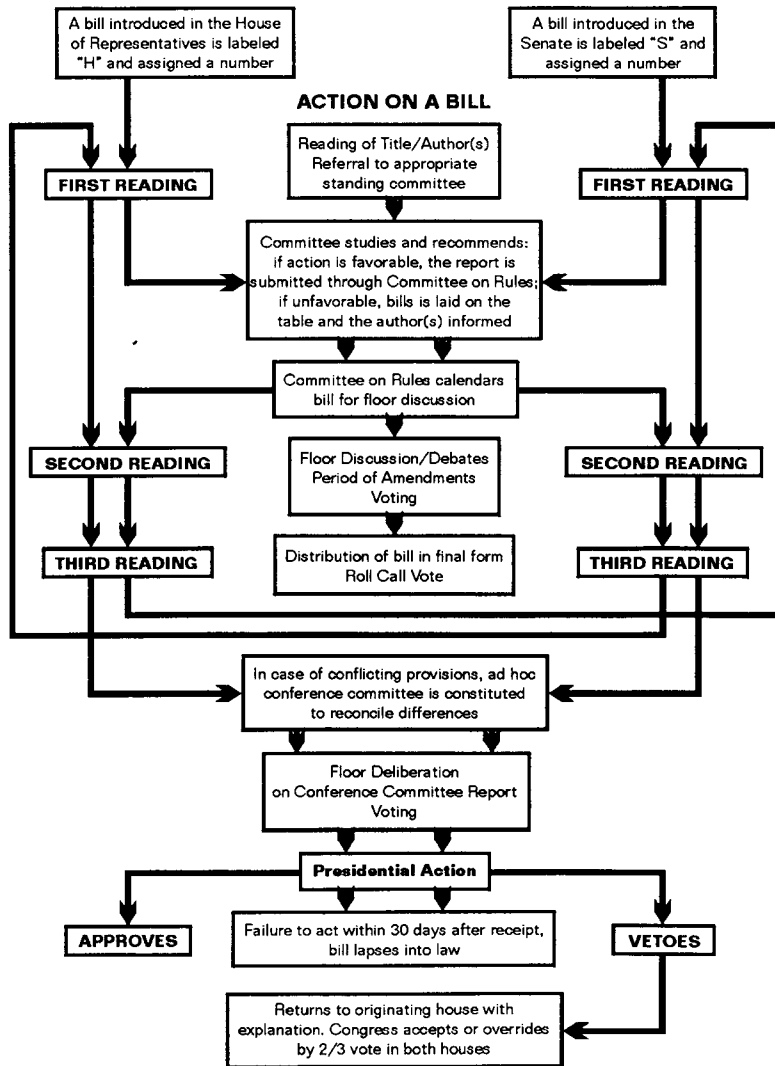
1. A bill is filed and assigned a number by the Secretariat of the legislature.
2. The bill is calendared for first reading. During the first reading, the bill is read by its number, title and author(s). It is then referred to the appropriate Standing Committee of the legislature for discussion and recommendations.
3. The Committee to which the bill has been referred schedules and conducts public hearings. It may approve a bill in its entirety, or introduce amendments, or substitute it with another version, or consolidate it with other bills of the same subject matter. It may also

decide not to approve the bill in which case it gives notice of its unfavorable action to the author of the bill.

4. The bill approved by the Committee is reported out in a Committee Report and submitted to the Committee on Rules. The Committee on Rules calendars the bill for second reading.
5. On second reading, sponsorship speeches are delivered about the bill, after which the bill goes through interpellation, debate and amendments. After amendments, a viva voce vote is called on the bill.
6. Printed copies of the bill are distributed to all members of the Chamber three days before third reading. No further amendments are allowed at this point. On third reading, a nominal vote is taken on the bill.
7. If there is no counterpart bill undergoing the same process in the other Chamber of the Congress, the bill approved on third reading is sent to the other Chamber for concurrence. The bill goes through the same process in the other Chamber. In cases of amendments, the bill is returned to the house of origin for vote on amendment recommended by the other Chamber. If the amendments are not accepted by the Chamber where the bill originated from, the bill is sent for consideration to a conference committee composed of members from both houses of the Congress. The primary responsibility of the bicameral committee is to reconcile the different versions of the bill.
8. After the differences in the two versions of the bill are reconciled, the agreed version is then sent back to both houses of Congress for approval.



## HOW A BILL BECOMES A LAW



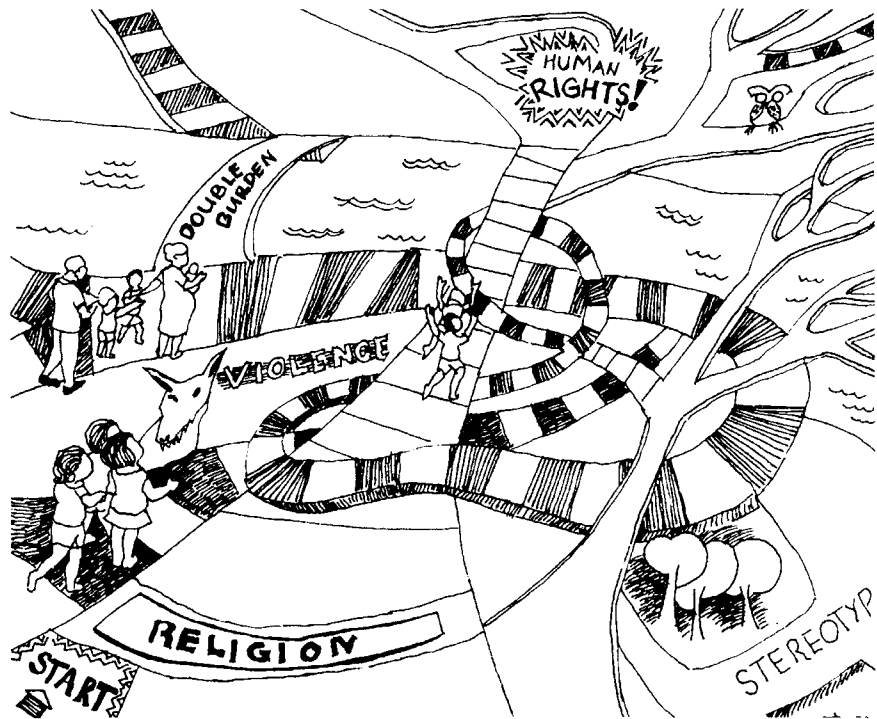
9. The approved bill is then submitted to the President for action. The bill becomes a law after it is signed by the President, or after 30 days had lapsed from the date of receipt without the President taking action on the bill. In the latter case, the bill is considered approved through inaction.
10. The President may decide to veto the bill. If she or he vetoes the bill, the Congress may override the veto by two-thirds (2/3) vote in each Chamber, after which the bill becomes a law.
11. The law is then published in at least two newspapers of general circulation. It becomes effective only after the lapse of a certain period of time after publication.

Source: WLB, 1998: 31-32

## Some Hurdles in Gender-responsive Lawmaking

While legislative advocacy and gender mainstreaming offer a new vista for some aspects of social transformation to happen, these also pose a host of constraining factors and challenges. Reality check brings out some of the factors that can hinder or limit the use of the legislative arena for gender equality.

One, both houses of Congress are dominated by men. While there are female and male legislators in both Chambers who may be open and sensitive to women's issues and aware of a gender-based perspective, the nature and processes in legislation, e.g., voting on a bill or legislative proposal, can impact on the passing of laws. Gender-fairness, it must be added, is not an automatic process that happens according to gender. Not all female legislators are open to gender concerns, but it is perhaps fair to state that being women can actually lessen or diminish the gap between advocates or activists, and legislators and policy makers. Committee heads are often men, and the powerful committees are lodged with powerful male legislators. Party politics also play a role in legislation or putting forward a gender-based legislative agenda.



**Two**, the legislative process is highly politicized, and often policy makers are influenced by their social values, individual biases and vested interests in legislation. The passage of the new Anti-Rape Law, for example, took all of five years. The debates and hostile challenges, if not outright negation, concerning the legislative proposal on rape, underscored the sexual politics and gender divide that operated between the legislators, especially the male law makers, on one hand, and the advocates on the other. The perspective held on the issue of rape, in particular, and violence against women, in general, were varied, and often, pegged at individual perceptions.

**Three**, legislative advocacy needs human and material resources. Most NGO advocates have limited resources to sustain advocacy. Advocacy also needs skills and knowledge of the law and the process itself. Following the steps in the making of a law, or filing of a legislative proposal requires not only knowledge of the bill but as well a degree of political savvy. Since women have been on the whole alienated from the legislative arena, they must find legislative advocacy work frustrating and confusing.

**Four**, there may be contradictions brought out by different documents that set the standards of human rights. To cite as an example: the Philippine Constitutional provision on the right of the mother and the unborn goes against the provisions on reproductive rights as enunciated in the Cairo Programme of Action. The Cairo document, to which the Philippine Government is a signatory, is explicit about the reproductive rights of women: their right to individual decisions and autonomous decision making.

**Five**, there is a need for women themselves to get into the political arena not only as advocates but as actual players and decision makers in the Congress. The potential for empowering the legislative process rests on two sites of action: as advocates and activists serving the mass base for women legislators. The same women legislators can be responsible for

engendering an enabling environment where the seeds of hope thrown into the legislative halls can be picked up by a growing number of female and male legislators, to be understood, nurtured and eventually made part of the laws of the land.

There are other constraints and challenges that the whole exercise of gender mainstreaming in legislation can pose. Suffice to say at this point that those five stated above are commonly felt and dominate the legislative landscape.

## Legislative Development: Women Specific Bills

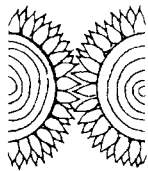
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This includes the steps necessary to formulate a bill, which will be categorized as research, formulation of the legislative proposal, and legislative analysis and amendments. This section is divided into:

<b>RESEARCH</b>	<b>FORMULATION OF THE LEGISLATIVE PROPOSAL</b>	<b>LEGISLATIVE ANALYSIS AND AMENDMENTS</b>
<ol style="list-style-type: none"><li>1. Identification of issues</li><li>2. Prioritizing of issues</li><li>3. Determining and gathering of needed data</li><li>4. Analyzing of data and the situation</li><li>5. Definition of the issue</li></ol>	<ol style="list-style-type: none"><li>1. Setting the objectives of the proposal</li><li>2. Identification of measures to achieve the objectives or the desired outcomes</li><li>3. Formulation of the proposal</li></ol>	<ol style="list-style-type: none"><li>1. Analyzing the definition of the issue or problem and its context</li><li>2. Analyzing the definition of objectives or desired outcomes</li><li>3. Analyzing the proposed measures to achieve the objectives or desired outcomes</li><li>4. Formulating amendments</li></ol>

These steps are not necessarily taken in the order of their enumeration. Some of them can be interchanged, simultaneously taken, or skipped, as borne by the experience of those engaged in legislative work.

## A Guide to Legislative Process: A Discussion



**RESEARCH**—The issue or problem that has to be addressed by a legislative proposal must be clear. A clear definition of the issue immediately places in perspective the frame of mind of the person involved and helps determine the parameters of the work to be done.

### 1. IDENTIFICATION OF ISSUES



Ideas on possible issues to address can come from studies or researches conducted by women's groups or women's research and resource institutions as well as recommendations from consultations with women. Data and references for the situation analysis can be available from women NGOs, especially those working on the specific issue. The numerous studies that the dynamic women's movement in the country have produced through the years can be rich sources of background information and insights. (*See Annex 7 for a list of women's groups involved in legislative advocacy*).

- Issues can be gleaned also from sex-disaggregated or general data and statistics collected by national agencies, such as the National Statistics Office, the National Commission on the Role of Filipino Women, the Department of Labor and Employment, etc.

- There might also be studies or researches undertaken by NGOs or institutions in other countries, which may be examined for the global dimension that they may add to the analysis. The Internet at this point is considered as one of the references in looking for research and data on women.
- They can also be sourced from international documents adopted by government where undertakings or specific commitments for action are made. These include the Vienna Declaration and Programme of Action, Agenda 21, Programme of Action of the ICPD, and the Beijing Platform for Action.
 

Of late, international agencies such as the ILO, United Nations Development Programs (UNDP), United Nations Fund for Women (UNIFEM) or other specialized bodies of the UN, have been producing references on different women's issues. One may also find use for the contextualizing or analysis of women's concerns contained in international conference documents mentioned above.
- Specific requests for legislation on a particular subject submitted to a legislator by her or his constituency or by some interest groups also determine the issue that will be subject of a proposal. Choices of issues can range from those related to the socio-economic and political situation of women, to legal discrimination of women in certain areas, to issues pertinent to the full realization by women of a specific right, among others.

An analysis of the situation that gives rise or relates to the issue in question helps the persons concerned to understand the issue or problem better and the interplay of factors causing, reinforcing or aggravating it. It refers to an inquiry into the root causes of the issue or problem, and the facilitating, reinforcing or aggravating factors, including formal and informal institutions, that support the root causes. It also surfaces the manifestations of the issue or problem that reveal its extent or incidence.

A thorough and careful analysis of the situation enables us to see the multifaceted and complex nature of the issue or problem and provides vital inputs for the generation of holistic and comprehensive solutions to it.

## 2. *PRIORITIZING OF ISSUES*



One approach is to go by what women's groups consider as urgent issues for women. But this may be difficult since many concerns of women qualify under such criterion. In the end, one still will make a judgment call, albeit on a more circumscribed area of choices.



Another track is to choose a women's issue that has caught public attention due to contemporaneous events, and which women and women's groups have taken a strong stance on. Not only does this assure some potential mass base of support for the proposal but it is also a tactical move. Legislators, because of the attention given the issue, may become more receptive to the proposal once it is presented for their consideration.

Or commitments of government made in international venues can be reviewed and the issue can be related to one of them.



The particular bias of the person or legislator also determines the issue that will be selected, as well as the objectives in doing it.

Commitments of government made in international venues can be reviewed and the issue can be related to the bias of a legislator. It is important to highlight in this instance the government commitments to international documents, conventions, treaties, etc. In the end a commitment to such standards redound to the benefit of the legislator(s) whose electoral mandate can be strengthened and noted in the legislative arena.

Who says that an issue is an issue? This must be asked even at this early stage. The definition or statement of the issue or problem will most likely be tinged with the bias or context of the persons or groups involved and will reflect their perspective on it. This should be constantly kept in mind. It appears then that there is no rule of thumb in going about prioritization. There are other ways of doing it as there are as many people doing the task.

### 3. *DETERMINING AND GATHERING OF NEEDED DATA*



The drafter will want information and data related to the issue, like the magnitude of the issue or problem; the women or groups of women affected or most affected; its manifestations; its root causes and



recommended responses; and human rights treaties or other documents pertinent to it and the obligations of the government under them.



Consultations with different stake holders are a necessary step in data gathering. Stake holders include communities, especially those with marginal status, so that their needs are brought into the legislative process; NGOs with grassroots links, interest and programs related to legislative advocacy; government agencies and institutions that determine the legislative gaps to be addressed; the private sector that support legislative advocacy and promote the goals of the drafters, among others. Their responses may be divergent and in fact contradictory but this exercise ensures that the widest possible support for the legislative proposal is generated. Moreover, they provide a kind of 'pulse' to the temper of the times. The drafter, therefore, will have to possess a keen ability to balance the different interests, bearing in mind that the law should serve the most numerous of the people, and in this specific instance that is, support the agenda of gender mainstreaming in the legislative halls.



The drafter will want to have a sense of the different analyses of and responses to an issue or problem and will try to secure studies and references from various sources. She or he will ensure though that she or he has data and information from women's groups, particularly those working on the issue concerned.

#### 4. ANALYZING OF DATA AND THE SITUATION

Among the aspects that the situation analysis should cover are the following:



What are the economic, political, social or other factors that cause the issue or problem? What are its root causes? What are its immediate causes? If the issue is the promotion of a certain right of women, e.g. right to participate in decision making, what are the barriers to its exercise or realization?



What is the magnitude of the problem? Where is it most prevalent? How many women are affected? Are all women similarly affected by it, or are there groups of women more affected? If yes, what accounts for this differential effect?



What are the problem's underlying gender-based assumptions or differences about women and men? How do these assumptions result in or contribute to women's inequalities or marginalization?



Are there laws or policies pertinent to the issue or problem? How do they address the issue? Do they reflect the above mentioned gender-based assumptions?



Do institutions such as the media, religion, the family, or the State contribute in aggravating or reinforcing the issue or problem? If yes, how?



What rights of women are involved? What rights of women are violated because of the issue or problem?



What specific human rights treaties or other documents covering the particular issue or problem has been ratified or adopted by the government? How do they view the issue or problem?

## 5. *DEFINITION OF THE ISSUE*

How an issue or problem is defined sets the objectives or the desired outcomes. The latter in turn, limits the parameters of the approaches that will be considered. Thus, defining or stating an issue or problem should be given careful thought.

The following are some parameters that might help ensure a gender-sensitive definition or statement of the issue or problem.



Given one's knowledge of the situation or context—the causes, the magnitude, the differential impact on women, etc.—how can the issue or problem be stated that will best reflect the situation, especially considering its gender dimensions? Consider here women's definitions or formulation of the issue or problem.



To refine the original formulation, the following can be checked: Does the definition take into account and accurately reflect the experiences of women? Does it reflect the male view of the issue or problem, and underpin gender-based assumptions?

Especially when there is an existing law or policy pertinent to the chosen issue or problem, the tendency is to define and state it in the often male-oriented terms of the law or policy. The result is the formulation of an issue or problem that underpins all the assumptions of the law or policy. This presumptively distorts women's

actual experiences and limits the scope of the subsequent identification of solutions.

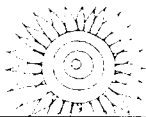
It may also happen that an issue affects women in different ways or that women under different circumstances may be affected in similar ways. This should be taken into account. Doing so can minimize the danger of providing general legislative prescriptions that may not really address the peculiar concerns of the affected group. Or the proposed law may apply only to certain women to the exclusion of others who may have different circumstances or conditions, but nevertheless are faced with the same issue or problem. If the answer is yes to the latter, how can the perspective of the original definition be sharpened?



What potential objections, on legal or other grounds, can be raised against a gender-sensitive definition of issues or problems? How can those objections be countered using human rights standards and citing other commitments of the government?

A gender-based definition of an issue or problem has a great probability of running smack against an established State policy, an existing legal doctrine, or a prevailing norm. Thus, it is best to anticipate this and stack up the arsenal of defense with rights-based arguments that support the definition.

The definition of the issue or problem as well as its situational context has most use to the drafter in the preparation of the explanatory note. Depending on the nature of the proposal, the definition of the issue or problem may also be integrated into the text.



## ILLUSTRATION

### ● *Issue or Problem Identification*

Your office receives a report from the Department of Social Welfare and Development (DSWD) on its statistics on battery of women. The comparative data show an alarming rise in the incidence of such cases which, according to the report, involved many forms of abuses, such as beatings, slapping, threats of violence, etc. You decide that some legislative intervention might be necessary to address the problem.

### ● *Data gathering and Situation Analysis*

Given your scanty knowledge of the problem, you decide to undertake some research. Your list of possible sources of information and data include the following: NGOs and government agencies providing services to battered women such as crisis centers, legal servicing groups, etc.; women's resource centers for possible researches and studies on battery, the Philippine National Police for reports on violence against women, and the NCRFW for policy issuances on violence against women and conference documents that might have addressed battery. Others in your list are the Commission on Human Rights and the Department of Foreign Affairs for pertinent human rights treaties that the Philippines has ratified.

Your research yields the following information: The abuses are not only physical in nature. They also constitute verbal abuses, intimidation, economic deprivation, etc. Some of the victims are married, while others are in live-in relationships. They do not come from a particular social class, profession, educational background, or age category. The batterers may be the legal spouses, the

common-law or former common-law spouses, or boyfriends of the women victims. The battering continues over a stretch of time. Many women refuse to report the violence to the police or the barangay. Those who decide to do so are more often than not asked by police officers or the barangay officials to reconcile with the batterers. Battered women refuse to file criminal action against the batterers for such reasons as their not wanting their battering partners to go to jail or the cost of litigation, etc. However, they want the battering to stop. Some opt to separate, while others, especially those with children continue to live with the batterers. There are very few crisis centers and service organizations compared with the many victims needing assistance.

Violence against women can be rooted in the patriarchal relations in society, where women are subordinated to men. This gender-based subordination of women is reinforced and perpetuated by religion with its woman-obey-thy-husband line, by the media who reinforce the stereotyping of women, or the community which, with its stereotyped notions about women's role in marriage and the family, condemns as "family breakers" women who decide to separate from the batterer or take action against him.

The Revised Penal Code contains provisions on physical injuries that are used in some violence cases. There are also a number of human rights instruments and other documents pertinent to the issue of violence such as the Declaration on the Elimination of Violence against Women, the Women's Convention, the Beijing Platform for Action, and the Vienna Declaration and Programme of Action on Human Rights.

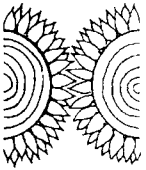
### ● *Definition of the Problem*

The issue or problem can be stated as one of physical injuries of women, following the law's definition of the more commonly recognized physical abuse of women. But to do so will be to play blind to the other forms of abuses and to the peculiar character of the relationship of the battered women and their batterers, and, therefore, the particular and specific needs of all the women who are vulnerable to the abuses.

On the other hand, framing the issue or problem as one of abuse of or violence against women by men with whom they have or had intimate relationships significantly broadens the area of inquiry and legislative intervention. It paves the way for defining the acts or the kinds of abuses that will define the violence based on what women experience. It includes in the coverage of the proposal not only married women but women in other intimate relationships such as in common-law or in boyfriend-girlfriend relationships. This broadened issue or problem identification also enables the integration into the proposal of provisions applicable to all women battered. It also allows the inclusion of provisions specific only to a group of women whose circumstances might require measures specific to their situation.

A common objection to this gender-responsive issue definition most likely will center on the consistency with the State policy on marriage and the family and on the inclusion of relationships other than marriage in the scope of the bill. Another may be with reference to the various acts that it will include.

*Counter-arguments can be anchored on the following: (a) the principle of universality of human rights under which the inter alia State guarantees the enjoyment of fundamental rights of individuals regardless of their status or other condition; (b) equal protection of the law guaranteed under the Constitution and human rights treaties; (c) the Declaration on the Elimination of Violence against Women which defines the acts considered as gender-based violence and requires of States specific actions to eliminate violence against women; and, (d) General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women.*



## **FORMULATION OF THE LEGISLATIVE PROPOSAL—**

Policy formulation refers to the identification or definition of the objectives or intended outcomes of a legislative proposal. The objectives or intended outcomes that will be identified should respond to the issue or problem earlier defined and will draw from the research and situation analysis conducted.

### **1. SETTING THE OBJECTIVES OF THE PROPOSAL**

Where appropriate, objectives must be “specific, measurable, appropriate, realistic, and time-framed” [NCRFW, 1997]. Although these qualities of good objectives are more within the context of program or project planning, those involved in legislative development could bear them in mind, or better yet, use them. Implementation of laws is the primary responsibility of the executive branch of government. However, Congress can share in the responsibility. After all, it has a stake in



ensuring that the objectives of the laws it passes are actualized. This may be done by integrating into the laws it enacts provisions on accountability and monitoring, or even time frames, particularly in the case of affirmative action programs which are temporary in nature.

Some guide questions that might help in integrating a gender perspective into the objectives or desired outcomes of legislative proposal include the following:



What are the different aspects of the issue or problem that should be addressed by the proposal?



What practical and immediate needs of women pertinent to the issue or problem should be met by the proposal? Are they true for all women? If no, what are the practical needs specific to certain women or groups of women that should be considered by it?



What strategic needs of women pertinent to the issue should be addressed? These can be the elimination of or minimizing of gender-based inequalities and disadvantages of women and the correction of gender-based assumptions.



What other strategic needs of women can be addressed by the proposal? These other strategic needs may be the empowerment of women or raising public awareness.

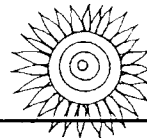


What other gender concerns should be addressed by the proposal?



What standards are set by treaties and other documents pertinent to the issue or problem?

Practical and strategic gender needs are not to be taken dogmatically as completely separate or distinct from each other. In many instances, both needs can be addressed in varying degrees as practical gender needs often are based on strategic lack. It is important to note that the advent of international human rights standards in legislative process in this country is relatively new. The human rights discourse as a matter of fact is still to be seriously challenged to integrate as part of its normal discourse on women's human rights concerns. Therefore, the advocate and legislative personnel need to be innovative and daring in using standards set in international documents.



#### ILLUSTRATION

Given that the problem has been defined as abuses of or violence against women in intimate relationships and given the findings of the situation analysis, the objectives of the proposal can be the following:

- To extend effective protection and support to women victims taking into account their particular circumstances and needs.
- To contribute in preventing and eliminating violence against women in the long term, taking into account the root causes of the problem and the factors reinforcing or aggravating them.
- To contribute in the empowerment of women.

## 2. IDENTIFICATION OF MEASURES TO ACHIEVE THE OBJECTIVES OR THE DESIRED OUTCOMES

The development of measures can be guided by the same considerations as those for defining the objectives of the proposal:



How can the various aspects of the issue or problem be addressed?



What measures can be integrated into the proposal that will respond to the pertinent practical needs of women? Will they be appropriate to all women? What specific measures may be necessary to meet the specific needs of certain women or groups of women?



What measures are necessary to respond to the pertinent strategic needs of women?



What measures should be provided to respond to other gender concerns related to the issue or problem?

Choosing from among many alternatives to achieve the same objective or intended outcome may be guided by asking, for example, the following:



Which of the alternatives will benefit the most number of women?



Which of the alternatives will best address the gender-based concerns pertinent to the issue?



Which of the alternatives will assure the greatest number of women of being empowered or enjoying their rights?

Concrete data to determine the above will not be available easily. But the drafter nonetheless might be able to make intelligent guesses based on familiarity with the problem and the relevant situation, or consultation with women.

### 3. *FORMULATION OF THE PROPOSAL*

This step integrates into a proposal the outputs from the previous steps taken and refers to its actual preparation. Thus, the concern will be in the form of the proposal since the gender-responsive content or substance of the bill have been taken care of in the previous steps.

Some questions that can be asked include:



Do the explanatory note and the text present the issue or problem, the situation, and the proposed measures in a manner reflective of their gender perspective?

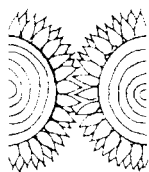


Is the language used gender-sensitive?



What practical measures should be integrated to ensure the implementation of the proposal once passed?

Examples of such measures can be the provision for monitoring mechanism, or designation of a lead implementing agency, among others.



**LEGISLATIVE ANALYSIS AND AMENDMENTS**—This means, for our purpose, the review of a proposal for amendments and decision, whether at the committee level, on second reading, or at the bicameral conference committee stage. The person analyzing a proposal should undertake the same situation analysis to be undertaken in legislative development.

**1. ANALYZING THE DEFINITION OF THE ISSUE OR PROBLEM AND ITS CONTEXT**

The issue or problem and an analysis of its causes might be found in the Explanatory Note. It may also be gleaned from the text. Questions that can be asked include the following:



What gender-based assumptions underlie the definition of the problem? Does it assume certain stereotypes about women and men with respect to capacities, roles, rights, etc.?



What are its assumptions about women's experience or situation? Are they valid for all women? Or are they true only for some women or groups of women? What are the other premises of the proposal? Are they valid?



Is the definition of the issue or problem reflective of the male view?



Does the analysis of the problem or issue include examination of its gender-based causes? Have the pertinent rights of women been violated or the human rights standards been taken into account?

## 2. ANALYZING THE DEFINITION OF OBJECTIVES OR DESIRED OUTCOMES

The considerations for analyzing the issue or problem can apply here.

## 3. ANALYZING THE PROPOSED MEASURES TO ACHIEVE THE OBJECTIVE OR DESIRED OUTCOMES

Some considerations include:



Do the proposed measures address the practical concerns of women pertinent to the issue?

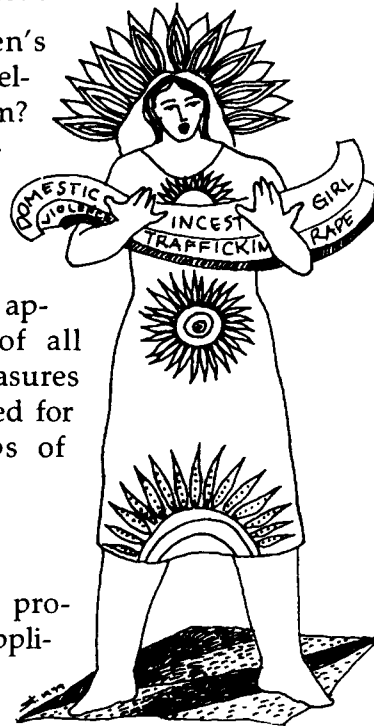


Do they respond to women's strategic concerns that are relevant to the issue or problem?

Or, do they reinforce gender-based biases against women or perpetuate inequalities against them?

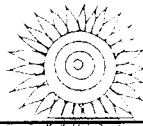


Are the measures proposed appropriate to the needs of all women? Or, are there measures that will have to be provided for certain women or groups of women?



## 4. FORMULATING AMENDMENTS

Considerations for formulating the proposal discussed earlier will also be applicable in drawing up amendments.



## ILLUSTRATION

Using the objectives identified previously, the following are some measures that could be included in the proposal:

1. To extend effective protection, relief, and support to women victims, taking into account their particular circumstances and needs. Measures to achieve this can be the following:
  - *including in the coverage of the proposal violence committed against women by men within marriage or in live-in arrangements, whether they are present or former spouses or partners*—In these relationships there is a factor of intimacy present, which does not warrant distinguishing between abuse within or without marriage.
  - *broadening the definition of domestic violence to encompass its various forms*—physical, psychological, emotional, economic, etc.—This would be consistent with the experiences of battered women.
  - *civil or penal features*—The research shows that battered women generally do not want the men imprisoned, which may argue for the proposal to be civil in nature. On the other hand, domestic violence violates fundamental rights of women, such as their right to life, security in person, freedom from torture or inhuman or degrading treatment, and their right to non-discrimination. Like other crimes against persons, the appropriate penalty to domestic violence is a message that DV is no trivial offense. The drafter, given this, may have to ask next: what alternative will be more empowering to women who are left to make the decision? The drafter may consider studying the possibility and implications of providing for both penal and civil provisions in the proposal, with the battered woman free to decide which provisions to avail of.

- *provisions for women to secure immediate protection, such as protection orders, or accompaniment, among others*
- *provisions specifically addressed to married women who are battered by their husbands; in their case, the fact of marriage implies rights and obligations that should be considered in the proposed measures*
- *budgetary provision for establishing crisis centers, counseling services, etc.*
- *provision mandating immediate action of law enforcers or other public officers, or persons in authority on any case of battering reported to them with sanctions for failure or refusal to act*
- *provision for mandatory gender sensitivity training programs and orientations on violence against women for law enforcers, prosecutors, etc.*

2. To contribute in the prevention of and elimination of violence against women in the long term

Measures to achieve this can include provision for public awareness raising programs, integration of gender sensitivity course in the school curricula, incentives for media for portrayal of positive images of women, etc.

3. To contribute to the empowerment of women

An example of a measure to achieve this is a women's rights component in human rights or related training programs conducted by the government.





ILLUSTRATION 1

Republic of the Philippines  
HOUSE OF REPRESENTATIVES  
Metro Manila

Eleventh Congress  
First Regular Session

**HOUSE BILL NO. 5140**

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Introduced by Honorables Irineo A. Maliksi, Napoleon B. Beration, Plaridel M. Abaya, Luwalhati R. Antonino, Heherson T. Alvarez, Patricia M. Sarenas, Gilberto B. Duavit, Vida V. Espinosa, Norma B. Imperial, Uliran Tee-Joaquin, Imee R. Marcos, Ranjit R. Shahani, Grace G. Singson, Ma. Angela E. Cua, Zenaida Cruz-Ducut, Josefina M. Josen, Ma. Amelita C. Villarosa, Cielo Krisel B. Lagman-Luistro, Nimfa Sta. Cruz-Garin, Emily R. Lopez, Edith Yotoko-Villanueva, Nancy Roa-Cuenco, Clavel A. Martinez, Ma. Catalina L. Loreto-Go, Ma. Victoria L. Locsin, Aurora E. Cerilles, Josephine De Castro-Dominguez, Rosenda Ann M. Ocampo, Benjamin B. Cappleman, Ma. Elena T. Palma-Gil, Hernani A. Braganza, Jaime D. Jacob, Loretta Ann P. Rosales, Ignacio R. Bunye, Juan Miguel F. Zubiri, Roilo Golez, J.R. Nereus O. Acosta and the Members of the Committee on Appropriations.

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**AN ACT TO INSTITUTE POLICIES TO ELIMINATE THE TRAFFICKING OF FILIPINO WOMEN AND MINORS, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION OF SUPPORT OF VICTIMS OF TRAFFICKING, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES**

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

**SECTION 1. TITLE.** This act shall be known as the "Anti-Trafficking in Filipino Women and Minors Act of 1998."

**SEC 2. DECLARATION OF STATE POLICIES.** It is hereby declared that the State values the dignity of every human person and guarantees the respect of human rights. Likewise, the State recognizes the equal rights of men and women. In pursuit of this, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity. Women and minors shall be afforded protection against violence and exploitation, and definite measures will be taken to eliminate the trafficking in Filipino women and minors.

It shall likewise be the policy of the State to promote an active and visible policy of mainstreaming gender perspective in all efforts aimed at addressing the attendant issues to migration and violence against women and minors.

The State shall afford protection to women and minors who are most vulnerable to exploitation and shall provide services to support the victims of exploitation, violence and trafficking, including those who are threatened or endangered by circumstances owing to their status and conditions in life.

Specific measures will be instituted, not only to support victims of trafficking, but more importantly, to mitigate pressures for involuntary migration and servitude by women and minors.

**SEC 3. DEFINITION OF TERMS.**

Trafficking in women and minors shall refer to acts involved in the recruitment, transfer, or deployment of women and minors through legal or illegal means with or without the victims consent, or knowledge within or across national borders often involving coercion, violence, threat of violence, abuse of authority, debt bondage, deception, and other forms of coercion for marriage or adoption as stipulated in RA 8043 but not to exclude any other similar arrangements, overseas settlement work or services characterized by forced labor and slavery-like practices or prostitution.

The following terms are hereby defined accordingly:

- (a) **Work or Services**—includes all domestic, sexual or other services rendered, regardless of whether these services are recognized as work covered by an employment contract or not, including those that take place as a result of marriage.
- (b) **Abuse of authority or dominant position**—this can range from confiscation of personal documents to the placing of another person in a dominant position, abusing one's dominant social position, abusing one's natural parental authority or abusing the vulnerable position of persons without legal status.
- (c) **Debt bondage**—is the pledging of personal services and labor for an indefinite period of length and nature of service, including marriage as a security for debt.
- (d) **Prostitution**—is the sale, purchase and exchange of persons for sexual exploitation, cash, profit or other economic considerations by an individual, including but not limited to, the pimp, procurer of the service, parents, owners of establishments such as disco bars, sauna baths, massage clinics, hotels and restaurants, and any other person who use various schemes to prostitute women or minors.
- (e) **Sex Tourism**—is a program organized by travel and tourism-related establishment and individuals which consists of tourism packages or activities, utilizing and offering escort and sexual services of women and minors as enticement for tourists. This includes such services and practices offered during rest and recreation periods for members of the military.
- (f) **Mail-Order Bride Scheme**—is the process of matching for a fee, profit, or any material and economic consideration, Filipino women for marriage to foreign nationals through the use of various recruitment and advertising activities or techniques, utilizing various platforms for communications such as tri-media facilities, information technology, and even personalized marketing or direct selling.

- (g) ***Forced Labor and Slave-Like Practices***—refer to the extraction of work or services from any woman and minor by means of enticement, violence or threat of violence, abuse of authority or dominant position, debt-bondage, deception or other forms of coercion.
- (h) ***Appropriation of the legal identity***—can range from confiscating one’s identity papers, supplying a person with a false identity to the loss of one’s legal personality under a marriage or work contract.
- (i) ***Trafficking by organized crime***—operations involving the trafficking in women and minors local and international networks of organized criminal groups which provide packages of facilitating services which include forged documentation for travel applications, transport, accommodation, during and after transit, marketing and matching of women and minors to local or foreign clients for a fee or material consideration.
- (j) ***Minors***—as defined in Article 1, Sec. 3 (a) of RA 7610, otherwise known as the Special Protection of Children Against Sexual Abuse, Exploitation and Discrimination Act.

**SEC. 4. ACTS OF TRAFFICKING IN WOMEN AND MINORS.** It shall be unlawful for any person, natural or juridical, club, association, civic movement, cult, religious group, organization, or other similar entities to commit any of the following acts:

- (a) To entice, encourage, persuade a person by fraud, coercion, or by deceit, intimidation, or by abuse of any position of confidence or authority or having legal charge, including use of parental, sibling, and other authority by family relationship, to soliciting for prostitution or forced labor;
- (b) To organize sex tours for the purpose of prostitution, and to maintain and hire women and minors to entice foreign nationals to travel to the Philippines for sex;

- (c) To attempt to recruit women and minors to provide the military forces with sexual services;
- (d) To organize travel plans for a foreigner to take a trip to the Philippines, and entice him with the sexual services of women and minors;
- (e) To procure a female or minor, or induce, persuade, or entice her to indulge in illicit sexual activities or who by promise, threats, violence or any device or scheme, shall cause, induce, persuade, encourage a female or minor to work in a club, place of entertainment or establishment having reasonable cause to believe that such club, place of entertainment is used for any such purpose;
- (f) To lease or sublease any dwelling house, knowing that the lessee/sub-lessee will use it for prostitution, bonded labor and slavery-like practices;
- (g) To recruit women and minors under the pretext of lawful employment, whether domestically or for foreign employment, but actually for purposes of prostitution;
- (h) To recruit women and minors under the pretext of lawful employment, but actually for or resulting in forced labor and slave-like practices;
- (i) To promote, advertise and recruit women and minors for purposes of overseas employment including but not limited to domestic workers, entertainers or performing artists in violation of recruitment laws;
- (j) To engage in trafficking of women, whether for purpose of employment, illegal settlement overseas, or marriage to foreign nationals;
- (k) To produce, print and issue or distribute unissued, tampered, or fake counseling certificates, registration stickers, and certificates of any government agency which issues these certificates and stickers as proof of compliance with government regulatory and pre-departure requirements;

- (l) To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing Filipinos;
- (m) To facilitate, assist and help in the exit of persons from the country at international and local airports, and seaports who are in possession of unissued, tampered or fake travel documents;
- (n) To take advantage of individuals applying for certification and other documentation from government agencies or accredited individuals or agencies by coercing or intimidating them into complying with requirements beyond those that are prescribed by government guidelines, including the charging of excessive fees, or requiring gifts or other material items, for services prescribed in this Act;
- (o) To promote trafficking in Filipino women and minors, through the use of any mode of advertisements, whether in print or broadcast, including through information technology for the purpose of marriage or other similar relationships with foreign nationals;
- (p) To attempt to offer or contract marriage with women and minors for purposes of offering, selling or trading them to engage in illicit sexual activities or prostitution, or to subject them to forced labor or slavery-like practices;
- (q) To introduce or match for a fee, profit, or any other material or economic consideration, any Filipino women to a foreign national for marriage under a mail-order bride scheme as defined under Republic Act 6955.

**SEC. 5 PROSECUTION OF CASES.** Commission of any of the illegal acts herein prohibited are considered crimes against persons as understood under the Revised Penal Code. A criminal complaint of trafficking maybe filed by any person with or without the consent of the offended party.

**SEC. 6. CONFIDENTIALITY.** At any stage of the investigation, prosecution and trial of a complaint against trafficking in women and minors, the police officer, prosecutor; the court, in order to ensure that the victim shall not be subjected to further trauma and humiliation, shall order a closed-door investigation, prosecution and trial and that the name and personal circumstances of the victim of trafficking or any other information that will establish her or his identity shall not be disclosed in public. Towards this end, it is unlawful for any editor, publisher or announcer or producer in the case of television, producer and director of a film in the case of the movie industry, to cause undue and sensationalized publicity of any case of trafficking in women and minors that shall result to the moral degradation, humiliation and defamation of the victim.

**SEC. 7. PENALTIES AND SANCTIONS.** The following penalties and sanctions are hereby established for the offences enumerated in Sections 4 and 6:

- (a) Any person found guilty of committing any of the acts enumerated in Section 4 hereof shall suffer the penalty of *reclusion perpetua* and a fine of not less than Two Million Pesos (₱2,000,000.00). Provided, that is the offender is a foreigner, he shall be immediately deported after serving his sentence and be barred permanently from entering the country again. Provided, further, that any foreign national found to have violated Section 4(o), shall be punished in accordance with this law, if a bilateral agreement for extradition is enforced.
- (b) If the offender is an agency, corporation, association, religious group, tour or travel agent, club or establishment, or any place of entertainment acting as front or cover for any of the acts enumerated in Section 4, the officials thereof and other persons responsible or involved in the illegal activities shall suffer the penalty of *reclusion perpetua* and a fine of not less than Two Million pesos (₱2,000,000.00). The registration with the Securities and Exchange

Commission and license to operate of the agency, corporation, association, religious group, tour or travel agent, club or establishment, or any place of entertainment shall be cancelled and revoked.

- (c) Those who profit or are advantaged therefrom, whether as manager, head, official, or owner of the agency, tour or travel agency, club or establishment, or place of entertainment, friendship or pen-pal club, advertising agency, or publishing company serving as front or cover, shall likewise be held severely liable and shall be imposed the penalty prescribed in the foregoing paragraph (b) of this section.
- (d) If the person who committed any of the illegal acts in Section 4 herein, is an ascendant, parent or guardian of the female person, the penalty to be imposed shall be reclusion temporal. Provided, that the ascendant, parent, or guardian of the female person does not fall under Sec. 3(j) of this Act.
- (e) If the offender is a licensed recruitment agency which hires and deploys women and minors under the pretext of gainful employment but actually for but not limited to prostitution, forced labor and slave-like practices, the penalty to be imposed against the owner, operator and officials who have direct control and management of such recruitment agency shall be *reclusion perpetua* and a fine of not less than Two Million Pesos (P2,000,000.00) and the registration with the Securities and Exchange Commission and license to operate shall be cancelled and revoked without prejudice to the penalties and sanctions to be imposed on said offender.
- (f) Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counseling certificates, marriage license, and other similar documents to persons, whether juridical or natural, recruitment agencies, establishments, or other individuals or groups, who fail to observe the prescribed procedures and the requirements as provided for by laws, rules, and regulations, shall be held administratively liable,



without prejudice to possible criminal liability should the evidences indicate that they have directly or indirectly committed any of the offences listed in Section 4 of this Act.

- (g) Any editor, publisher, announcer or producer in case of television, producer and director of a film in the case of the movie industry, tri-media facilities and information technology who violate Sec. 6 of this Act shall be held liable for damages.

**SEC. 8. PROGRAMS THAT ADDRESS TRAFFICKING IN WOMEN AND MINORS.** The Government shall establish and implement counseling programs for victims of trafficking, forced labor and prostitution. For this purpose, the following agencies are hereby mandated to implement the following programs:

*Department of Social Welfare and Development*—shall implement counseling programs for victims of trafficking. It shall provide temporary shelter to trafficked victims in need. It shall develop a system for accreditation among non-government organizations for purposes of establishing centers and programs for intervention in various levels of the community.

*Department of Foreign Affairs*—This agency shall make available its resources and facilities overseas for victims of trafficking regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas.

*Department of Labor and Employment*—This agency shall ensure the strict implementation of rules and guidelines relative to the employment of women locally and overseas. It shall likewise monitor, document and report cases of trafficking in women and minors involving labor recruiters and recommend appropriate sanctions to the Department of Justice.

*Commission on Filipinos Overseas*—This agency shall establish and implement a pre-marriage, on-site, and pre-departure counseling program for women in intermarriages, as authorized under its existing mandate and structure. For this purpose, it shall establish a network of service providers from the national government, local government units, civic and private organizations, and other community workers for purposes of providing accessible pre-marriage counseling services to the public, this network shall be developed and operationalized through a system of accreditation to be undertaken by the CFO. It shall establish the necessary guidelines, rules and regulations for this purpose.

CFO shall continue to conduct guidance and counseling services as pre-departure requirement, and as a pre-requisite to the issuance of passports to Filipino fiancées and spouses of foreign nationals. It shall develop and implement guidance and counseling services locally and abroad, through an expanded system of representation, in order to adequately prepare Filipino fiancées and spouses of foreign nationals for their settlement and integration overseas and extend necessary intervention to Filipinos in intermarriages in times of distress.

*Department of Tourism*—This agency shall formulate corrective and enforcement measures to stop sex tourism packages which contribute to the increase in the trafficking of women and minors.

*Department of Interior and Local Government*—The department shall monitor and document cases of trafficking in women and minors in their areas of jurisdiction and ensure effective prosecution of such cases. It shall institute a systematic information and prevention campaign on trafficking in women and minors.

*Department of Education, Culture and Sports and the Commission on Higher Education*—The DECS and CHED shall integrate in the subject on social studies core messages on migration and trafficking in elementary, secondary and tertiary levels with emphasis on their implication and social costs to Filipino women and minors.

*Department of Justice*—The department shall initiate the filing of complaints involving trafficking in women and minors as defined in this Act and shall ensure the prosecution of guilty parties.

*Bureau of Immigration and Deportation*—This department shall ensure compliance by the Filipino fiancées and spouses of foreign nationals proceeding abroad to assume permanent residency with the guidance and counseling requirement as provided for in this Act.

*National Bureau of Investigation*—The NBI shall conduct surveillance, monitor and investigate recruiters, travel agencies, hotels and other establishments suspected to be engaged in trafficking in women and minors in coordination with the Department of Social Welfare and Development (DSWD), the Bureau of Immigration and Deportation (BID), Local Government Units (LGUs), and non-governmental organizations; and take appropriate measures in the prosecution of violators.

*National Commission on the Role of Filipino Women*—The Commission shall actively participate and coordinate the formulation of policies addressing the issue of trafficking in women and minors in its policy documents as well as its special concerns.

*Commission on Human Rights*—The Commission shall conduct advocacy and training programs relating to women's rights; investigate, monitor and help the special prosecutor in the proceedings of cases involving women victims of human rights violations; grant financial assistance to victims of human rights violations in accordance with CHR Resolution No. 96-060.

*Philippine Overseas Employment Administration*—In addition to its original mandate, the POEA shall formulate and implement a system of providing legal and financial assistance to women and minor victims of trafficking who are undocumented.

*Local Government Units*—The Local Government Units (LGUs) shall monitor and document cases of trafficking in women and minors in their areas of jurisdiction, effect the cancellation of licenses of establishments

which violate the provisions of this Act, and ensure effective prosecution of such cases. It shall also undertake an information campaign against trafficking in women and minors through the establishment of the migrants advisory and information network (MAIN) desks in municipalities/provinces in coordination with DILG, Philippine Information Agency (PIA), the Commission on Filipino Overseas (CFO), and other concerned agencies and non-government organizations. They shall encourage and support community based initiatives which address the trafficking in women and minors.

*Department of Health*—This department shall make available its resources and facilities in providing confidential health care to trafficked victims.

**SEC. 9 LEGAL PROTECTION OF TRAFFICKED WOMEN.** Victims of trafficking and/or forced labor and slavery-like practices shall not be imprisoned or detained for facts relating to their predicament, nor for the use of false travel and other documents.

**SEC. 10. INTER-AGENCY COUNCIL AGAINST TRAFFICKING.** There is hereby established an Inter-Agency Council Against Trafficking. This Council shall be chaired by the Secretary of Foreign Affairs and co-chaired by the Secretary of the Department of Social Welfare and Development and shall have the following as members.

- (a) **Secretary of Interior and Local Government**
- (b) **Secretary of Tourism**
- (c) **Secretary of Labor and Employment**
- (d) **Secretary of Department of Education, Culture and Sports**
- (e) **Secretary of Justice**
- (f) **Chairperson, National Commission on the Role of Filipino Women**
- (g) **Chairperson, Commission on Human Rights**

- (h) Director-General, Technical Education and Skills Development Authority
- (i) Executive Director, Commission on Overseas Filipinos
- (j) Commissioner, Bureau of Immigration
- (k) Director, National Bureau of Investigation
- (l) Administrator, Philippine Overseas Employment Administration
- (m) Administrator, Overseas Worker's Welfare Administration
- (n) Secretary, Department of Health
- (o) Chief, Philippine National Police
- (p) Administrator, National Statistics Office
- (q) Executive Director, Philippine Information Agency
- (r) **Three (3) representatives from women's non-government organizations (NGOs) with a track record of involvement in the prevention of trafficking in women and minors. These representatives shall be nominated by the government agency representatives of the Council created herein, for appointment by the President for a term of three (3) years.**

Members of the Council may designate their representatives to meetings who shall have the rank of no lower than an Assistant Secretary or equivalent.

**SEC. 11. FUNCTIONS OF THE COUNCIL.** The Council shall have the following powers and functions:

- (a) Formulate a comprehensive program to suppress the trafficking in women and minors;
- (b) Promulgate rules and regulations as may be necessary for the effective implementation of this Act;
- (c) Monitor and oversee the strict implementation of this Act;

- (d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in women and minors;
- (e) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the Local Government Units, agencies concerned, and Non-Government Organizations.
- (f) Recommend or file cases against individuals, agencies, institutions, or establishments that violate the provisions of this Act;
- (g) Formulate a program for the re-integration of victims in cooperation with DOLE, TESDA, CHED, DSWD, and Local Government Units and NGOs;
- (h) Take steps through the Local Government Units to intensify the apprehension of local violations of Article 341 of the Revised Penal Code, and to receive the fines exacted from them;
- (i) Secure from any department, bureau, office, agency, or instrumentality of the government such assistance as may be needed;
- (j) Complement the shared government information system for migration established under Republic Act No. 8042 with the data on cases of trafficking in Filipino women and minors. Direct the proper agencies to undertake a continuing research and study on the patterns and scheme of trafficking in women and minors as basis for policy formulation and program direction and coordinate the conduct of such research efforts;
- (k) Develop the mechanism to ensure the timely, coordinated, and effective response to cases of trafficking and sexual exploitation in women and minors;
- (l) Recommend measures to eliminate international trafficking in Filipino women and minors through bilateral and/or multilateral arrangements; and,

- (m) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives for which the Council is organized.

**SEC. 12. SECRETARIAT TO THE COUNCIL.** The Department of Foreign Affairs shall establish the necessary secretariat for the Council.

**SEC. 13. OTHER SERVICES FOR TRAFFICKED VICTIMS.**

- (a) **Legal Assistance Fund**—The victims of trafficking shall be considered under the category “Overseas Filipinos in Distress” and may avail of the Legal Assistance Fund created by Republic Act No. 8042, subject to guidelines as provided by law.
- (b) **The Country Team Approach**—The country approach under Executive Order No. 74 of 1993, shall be the operational scheme under which Philippine embassies abroad shall provide protection of victims of trafficking insofar as the promotion of their welfare, dignity and fundamental rights are concerned.
- (c) **Overseas Filipino Resource Centers**—The services available to overseas Filipinos as provided for by Section 19 of Republic Act No. 8042 shall also be extended to trafficked victims regardless of their legal status in the receiving country.

**SEC. 14. REPATRIATION OF VICTIMS IN TRAFFICKING.** The Department of Foreign Affairs with the Overseas Workers and Welfare Administration shall have the primary responsibility for the repatriation of trafficked victims.

**SEC. 15. REPORTING REQUIREMENTS.** The Council created under this Act shall submit to the President of the Philippines and to Congress an annual report on the policies, programs and activities relative to the implementation of this Act.

**SEC. 16. FUNDING.** The amount needed to implement the provisions of this Act shall be charged against the current year's appropriations of the respective agencies concerned. Thereafter, such sums as may be necessary for the continuous implementation of this Act shall be included in the General Appropriations Act.

**SEC. 17. IMPLEMENTING RULES AND REGULATIONS.** The appropriate member agencies of the Inter-Agency Council Against Trafficking shall formulate the necessary implementing rules and regulations within sixty (60) days upon the effectivity of this Act.

**SEC. 18. NON-RESTRICTION OF FREEDOM OF SPEECH AND OF ASSOCIATION.** Nothing in this Act shall be interpreted as a restriction of the freedom of speech and of association for purposes not contrary to law as guaranteed by the Constitution.

**SEC. 19. REPEALING CLAUSE.** All laws, presidential decrees, executive orders, and rules and regulations, or parts thereof, inconsistent with the provisions of this Act, are hereby repealed or modified accordingly.

**SEC. 20. SEPARABILITY CLAUSE.** If, for any reason, any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby.

**SEC. 21. EFFECTIVITY.** This Act shall take effect immediately upon its approval.

When the bill was being commented on by the Technical Working Group, the participants brought out some points which eventually were incorporated in the preceding draft. The discussion revolved around the framework of gender fairness, women's human rights, and were framed by an analysis of existing laws. Some of those comments follow next page.



## COMMENTS FROM THE TECHNICAL WORKING GROUP MEETING ON THE ANTI-TRAFFICKING BILL

### ELEMENTS OF TRAFFICKING

- Use women and minors: women-above 18; minors-boys and girls below 18
- Consent or non-consent- inclusion agreed upon by the participants
- Include forced labor and slave-like practices—the group approved the overlap of RA 8042 and the provisions under acts penalized since one law reinforces the other, it will be the victim's choice whether to file a case under 8042 or under the Trafficking Law, the issues overlap anyway
- Legal or illegal means—inclusion agreed upon by the participants
- Include sex tourism and military prostitution in 3h

### ACTS PENALIZED

- Sec 4d do not limit the categories to domestic workers, entertainers or performing artists alone instead reword to "including but not limited to domestic workers, entertainers or performing artists"; also delete "rules and regulations"
- Sec 41 reword to "To attempt to or to offer or contract marriage, adoption to a woman and minor resulting in selling, trading to render sexual services or prostitution, or to subject the woman or the minor to slave-like practices.

**Sec 4m** reword to “To attempt to or to introduce or match for a fee, profit, or any other material or economic consideration, any woman or minor to a foreign national.. ... ”

**Sec 7** delete “nor the use of false travel and other documents”—  
against the Passport Act

*Add provisions from the SBN 881 (sponsored by Sen. Raul Roco)*

**Sec 4a** To lease or sublease any dwelling house, knowing that the lessee/sublessee intends to use it for purposes of prostitution;

**Sec 4b** To procure a female, or induce, persuade, encourage or entice her to render sexual services or who by promises, threats, violence or by any device or scheme, shall cause, induce persuade, encourage a female to work in a club, place of entertainment or establishment having reasonable cause to believe such club, place of entertainment or establishment is used for any such purpose;

**Sec 4i** To organize sex tours for the purpose of prostitution and to maintain and hire women to entice foreign nationals to travel to the Philippines for sex;

**Sec 4j** To recruit women to provide the military forces with sexual services;

**Sec 4k** To organize travel plans for a foreigner to take a trip to the Philippines and entice him with the sexual services of women.

### ACTORS TO BE PENALIZED

- Sec 6a** add civil liability to an individual trafficker
- 6b** include cancellation of SEC registration; include criminal liability here as in 6a
- 6d** if the person is an ascendant, parent, guardian—agreements:
- retain
  - lower the penalty
  - aggravating in the sense that even if the offenders are relatives of the victim they would still be penalized but mitigating in the sense that the penalty would be lower

### PENALTIES / SANCTIONS

- *no gradation of penalty to avoid finger-pointing*
  - Damages and fine will not be less than Php 2 million
  - Imprisonment will range from reclusion temporal to reclusion perpetua except in the case of Sec 6d
- Sec 4a** add “deceit”; “soliciting” for prostitution— 12 yrs to 1 day to 40 yrs
- Combine **Sec 4b** and **Sec 4c**—reword to “to attempt to recruit or to recruit women and minors for prostitution, forced labor and slave-like practices”
- Sec 4d** reword to “to promote and advertise”
- Sec 4e** penalty as is
- Sec 4h and 4i** punish “attempt”

**Sec 41** punish "attempt"

**Sec 4m** punish "attempt"

- Include "attempt" to the provisions that will be added coming from the Roco version of the Bill

**Sec 6d** parents, ascendants—penalty must be 12 yrs to 20 yrs; damages Php 500,000

- Include positive reinforcement in the bill: Reward to those who will report trafficking activities to authorities

#### **OTHER ISSUES**

- Make trafficking a priority case for litigation
- Provide for the creation of special courts for hearing trafficking cases—around 5 in a given municipality or city
- Witness Protection Program-add to Sec 7 but look into the contents of the existing Witness Protection Program first
- Push DFA to negotiate treaties
- Make DFA mandate clear in the Bill



## ILLUSTRATION 2

### A GENDER-BASED ANALYSIS OF H. B. NO. 1598

*An Act Making Mandatory  
the Employment of Women and for Other Purpose*

#### A. KEY POINTS IN THE EXPLANATORY NOTE

1. **Issue or Problem**—the general bias in favor of men when it comes to employment, notwithstanding the equal or better qualifications of women.
2. **Context of the Problem**—a society that puts premium on gender or sex.
3. **Objective of the Proposal**—to correct the unfairness and attempts to put in proper perspective the vast resource pool of women whose talent and skills must be equally tapped.

#### HIGHLIGHTS OF THE BILL

1. **Short Title.** “Mandatory Women Employment Act”
2. **Declaration of Policy**—To provide opportunities to enable women to realize their full potential in the service of the nation and to provide for measures and safeguards to enhance, strengthen and assure such work opportunities.
3. **Mandatory Employment**—Every private individual, or entity employing at least 10 regular employees, excluding clerical, janitorial, manual or unskilled workers or laborers of similar category, shall allocate at least 20% of the total employees to

women with comparable training, experience, skills and qualifications.

The mandatory employment shall apply to all establishments and undertakings except when the nature of work or the performance thereof or when a major element of the work shall entail continuous physical exertion or strenuous physical activity that may result in the impairment of the health or physical welfare of the woman employee.

4. **Rules and Regulations**—To be promulgated by the Secretary of Labor and Employment
5. **Penalties**—Penalties

## **B. AN ANALYSIS**

1. *the definition of the issue or problem and analysis of the situation or context*

From the Explanatory Note, the problem addressed by the bill is discrimination against women in employment, or a “general bias in favor of men” in employment despite women’s equal or better qualifications.

It would seem that this problem corresponds to reality, although there is no data to support the claim. That discrimination in hiring exists is indicated for one by the job advertisements that specify preference for male applicants. It would seem then that this assumption may be valid.

Another assumption made by the bill is that women are being discriminated against despite their having qualifications equal to or better than men's. Statistics show that women have relatively higher educational attainment than men. At least in terms of formal education, this assumption has some basis.

This situation of disparity according to the Explanatory Note is because of the "premium" that society places on gender or sex, referring to the gender bias for men and against women by reason of their sex, without regard to qualification. The bill has pinpointed only the bias on the part of employers. An examination of the situation of women will show, however, that they are saddled with other gender-based disadvantages which further limit their access to the workplace. Such disadvantages or barriers can start at the home where multiple burden of women is a reality. In fact, according to statistics, the most common reason for women not seeking employment is their housekeeping roles. Moreover, despite the statistics pointing to women's edge in terms of educational attainment, there is good reason to believe that many women for various reasons, such as gender tracking in education, may fall short of the required qualifications.

Other barriers could be at the work place, once women have been given entry. Therein, women will not find support in their multiple burdens, are vulnerable to violence, face discrimination in remuneration, etc. These are other gender-

based disadvantages that the situation analysis of the bill did not recognize, or at least mention.

A potential argument against the definition of the problem will be founded on the prerogative of management in hiring. Counter-arguments can cite the Women's Convention and other equality provisions in different treaties and conference documents which might also have reference to this problem.

**2. *the stated objective of the bill***

The bill, from its Explanatory Notes, aims to "remove economic and social inequities by creating equal opportunities for women and men." The equal access objective of the bill, since it relates to the material condition of women workers, can be considered a practical need. And as earlier stated, there are various bases for equal opportunity legislation.

**3. *the proposed measure/s***

The mandatory employment provision of the bill is an affirmative action, which is intended to "level the playing field." According to the premise of the bill, given women's gender-based disadvantage in access to employment, equalizing her opportunity requires giving her some "head start." Moreover, the bill provides for sanctions for violation of the law, presumably to encourage enforcement by employers of the affirmative action. Bases for this proposed measure are Art. 4 of the Women's Convention as well as other related provisions in other human rights treaties.



This bill from the foregoing clearly addresses a barrier to women's access to employment upon her entry. Other barriers or disadvantages of women such as those mentioned in the analysis of the situation were not considered. It gives the impression that providing for affirmative action will take care of the discrimination faced by women in employment, ignoring the fact that women's concerns like discrimination in hiring have gender-based causes which are interlinked with each other, and as such, call for interrelated responses as well.

Affirmative actions can be justified on the basis of state commitments under the Women's Convention.

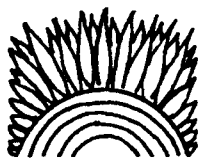
#### **4. *formulation of amendments***

Some amendments along the lines mentioned above can be proposed, the intention being that the bill should present a holistic approach to the issue of discrimination against women in hiring.



## General Bills

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General bills refer to those which do not specifically address gender issues or women's concerns. In these bills, it is generally assumed that there is no articulated gender concern, as it covers "everyone" in a generic sense. It will require a different approach to ensure the gender-responsiveness of general bills which apply to all citizens. In the case of these bills, some of the considerations can be as follows:



Does the bill have underlying assumptions about women and men in terms of their conditions, capacity, etc.? Are those assumptions valid or are they gender-based?



Will the proposed law potentially benefit the people? If yes, will women and men equally benefit from it? How and in what ways? If no, what provisions can be included to ensure that women benefit as men do from it?



Will it have negative impact on the people? If yes, what measures can be integrated into the proposed law to minimize the potential differential negative impact of the proposal on women?



What provisions can be integrated into the general bill that can promote the empowerment and enjoyment by women of their rights? What provisions can be integrated to move away from gender stereotyping, if any?



What provisions can be integrated to support the agenda for gender mainstreaming?

**General bills require a different approach to ensure gender-responsiveness applicable to all citizens.**

# Let's Practice!

*The following is a bill which was used during one of the workshops of the Project by the participants, to critique from a gender perspective.*

Republic of the Philippines  
HOUSE OF REPRESENTATIVES  
Quezon City  
TENTH CONGRESS  
First Regular Session  
**HOUSE BILL NO. 5494**

## **EXPLANATORY NOTE**

Despite our significant gains in transforming and institutionalizing human rights into a legal and enforceable right, cases of violations of human rights continue to be committed in the Philippines today. One has only to go through the daily newspapers to know that a large number of harassment, physical and mental torture, abduction and extra-judicial executions continue to occur in our country.

Article XIV, Section 3(2) of the Constitution provides that:

"They (all educational institutions) shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values..." (Underscoring supplied)

Likewise, by virtue of Executive Order No. 163, the Commission on Human Rights (CHR) was created to ensure the protection and promotion of the respect for human rights through continuous human rights education, prosecution of human rights violations and compliance of the government with the Universal Declaration of Human Rights and other international human rights covenants and agreements.

Executive Order No. 27 was also issued on July 4, 1986 which provides for, among others, the utilization of the system of formal and informal education to gain and inculcate greater respect for human rights and deter the commission of human rights violation.

However, nine (9) years have passed and we still have to hear from the Department of Education, Culture and Sports. Human rights education among our youth, the future of our country, has not yet been implemented.

Republic of the Philippines  
HOUSE OF REPRESENTATIVES  
Quezon City

TENTH CONGRESS  
First Regular Session

**HOUSE BILL NO. 5494**

**AN ACT INSTITUTIONALIZING RESPECT AND FOSTERING  
HUMAN RIGHTS IN THE SYSTEM OF FORMAL AND INFORMAL  
EDUCATION IN THE PHILIPPINES AND FOR OTHER PURPOSES**

*Be it enacted by the Senate and House of Representatives of the Philippines  
in Congress assembled:*

**SECTION I.** The Department of Education, Culture and Sports shall include the study and understanding of human rights in the curricula of all levels of education and training in all schools of the country, adapting the scope and treatment of the subject or courses on human rights to the respective educational levels. It shall likewise initiate and maintain regular programs and special projects to provide venues for information and discussion of human rights including the utilization of informal education and other means to stress the importance of respect therefor.

**SEC. 2.** In the formulation and creation of the courses or subjects on human rights to be included in the school curricula or other educational or training programs to implement and carry out the provisions of this Act, the writing, printing and publication of textbooks, manuals and other reading materials relative thereto, the Department of Education, Culture and Sports shall consult, coordinate and collaborate with the Commission on Human Rights, human rights nongovernmental organizations, and shall at all times emphasize the principles of human rights as they relate to practical conditions, and the laws and rules governing the same.

**SEC. 3.** The Department of Education, Culture and Sports, after considering the needs and capabilities of the students in the different educational levels, subjects or courses dealing with international conventions, agreements, declarations or covenants on human rights which were ratified by the Philippines or to which it is a signatory shall be included in the curricula.

**SEC. 4.** No textbook, manual or other reading materials shall be used in the above-mentioned courses on human rights without prior consultation, coordination and collaboration with the Commission on Human Rights and human rights non governmental organizations and people's organizations.

**SEC. 5.** The Department of Education, Culture and Sports, in consultation, coordination and collaboration with the Commission on Human Rights, Congress and human rights non governmental organizations and people's organizations, shall prepare the implementing rules and regulations necessary to carry out the provisions of this Act.

**SEC. 6.** This Act shall be initially implemented within the framework of the budget of the Department of Education, Culture and Sports for the year it is enacted into law. As far as practicable, the funds required therefor shall be drawn from its appropriation for policy formulation, program planning, standards development and instructional materials development.

Subsequently, such amounts as may be necessary for the implementation of this Act shall be included in the budget of the Department of Education, Culture and Sports in the General Appropriations Act of the year following its enactment into law and thereafter.

**SEC. 7.** All law or any part thereof inconsistent herewith are deemed repealed or modified accordingly.

**SEC. 8.** This Act shall take effect fifteen (15) days upon its publication in at least two (2) newspapers of national circulation.

## **CRITIQUE**

The bill, as it stands, is a positive attempt to redress the lack of human rights education and an acknowledgment of the need to adhere to universally accepted human rights norms, especially those which the Philippine Government is a signatory. As a “non-gender specific” bill, it tries in its language to be general and to address the issue without denoting any focus on any gender. However, non-specific bills in general can indirectly and unwittingly further marginalize the situation of those who are already in a more vulnerable position and have lesser access to the positive gains that such a bill may intend to address.

Some questions that can be asked are the following:

- What are the assumptions of the bill?
- In the universality of human rights, are there rights which have differential impact or effect on women on the one hand, and men on the other hand? What are these, if any?
- How will the bill as proposed create impact on women and men? Will it have the same implications? In what sense?
- How does one make the universality of human rights gender-sensitive?
- Are there violations of human rights which will have an impact differently on women? What is the situation of women in general?

The bill is explicit in its assumption of “sameness” of gender. It misses out on the fact that human rights violations are gender-based, and that even as there is the principle of universality and indivisibility, sociohistorical developments have shown that women and the female

child are most vulnerable to human rights violations by virtue of their sex. The assumption of "sameness" and of the equal footing of women and men and the generalizations implicitly made about the nature and impact of human rights violations may miss out the specific abuses that are commonly inflicted against women or the girl-child, e.g., domestic violence and incest. Gender inequality is either assumed, or worse, not recognized.

Since the gender blindness of the bill lies in this assumption, the other features of the bill are consequently skewed towards this flaw. To assign the DECS and the CHR as the main collaborators for implementation within government structure, with the former as the implementor, without a proper capability building in gender-responsiveness using a human rights perspective is to be inappropriately prohuman rights.

A generalized language, i.e., without direct or explicit mention of women or men, does not make a legislative document necessarily gender-sensitive. There are words or phrases which seem to be inclusive, e.g., people, human being, humanity, etc., but they do not necessarily make the benefits women-sensitive or gender-fair. Sometimes it is precisely in the "generalization" or in the use of "generic" terms which hides the differential aspects of gender relations or gender power.

In this particular example, there is a lack of specific understanding about women's rights situation. While in the formal documents of the land gender equality is ensured, it is also a well-known reality that women still occupy a subordinated status in all major aspects of society. This is where a solid understanding of women's situation or gender biases through research is called for. Legislative efforts should start from this understanding. Then there is a need to 'wear' a gender lens,

that is, to assume that a generalized bill or law will have differential impact on women and men. It is this perception or assumption of “sameness” between women and men which often characterize many legislation. But it is also the biggest myth about gender.

The key to sharpening understanding of gender and human rights is to assume that there are structurally generated differences between the sexes. Any legislative piece or effort is to be cognizant of this, and thus, has to be sensitive to the potential impact on the gender situation of women and men. In fact, the whole rationale of legislation is to make better laws, and a better society. To continue to generalize without gender awareness is to retard development and, therefore, to negate the validity and primary goal of legislation.

#### CHECKLIST FOR A GENDER-FAIR LEGISLATION

1. Is the language gender-sensitive? Does it subsume women under “men” and “people”? Is “men/man” used as a generic pronoun?
2. Does the legislation take into consideration the situation of women and children?
3. What assumptions are made about women and men, i.e., about their differential situations? Are the assumptions based on subjective beliefs and biases or are they grounded on data from reliable research or studies? What are the sources of the bill’s assumptions or premises?
4. For general or non-women specific bill: How will the bill affect women? Will it be positive for women? Why and how? What are the possible ways in which it will negatively or adversely affect women? Are the potential adverse effects addressed in the bill? How?



5. For women-specific bill: Does it contribute to the enhancement of women's rights? How? Does it promote women's status? How?
6. Does the bill address practical or strategic gender needs, or both? How?
7. Has the bill been consulted with the affected sector (if the bill is sector specific)? Who were consulted? Are their inputs taken into consideration? How or in what manner are their inputs integrated into the bill?
8. Does the bill promote gender equality? Gender equity? How?
9. Does the bill assist in transforming gender relations? How?
10. Does the bill take cognizance of and adhere to international instruments on human rights such as the Universal Declaration on Human Rights and CEDAW?
11. Are resources, material and otherwise, available for the implementation of the bill once passed?

## THE GENDER-RESPONSIVE LEGISLATIVE MATRIX

<b>RESEARCH</b>			
<b>COMPONENTS/ PROCESS OF LEGISLATION</b>	<b>ACTIVITIES</b>	<b>GENDER DIMENSION/S— Questions to ask</b>	<b>REMARKS</b>
<b>Identification of issues</b>	<ul style="list-style-type: none"> <li>• Conduct review of:               <ol style="list-style-type: none"> <li>a. studies or researches by women's groups research and resource institutions</li> <li>b. results of consultations held with women</li> <li>c. international documents for commitments made by the government</li> <li>d. statistics and other data collected by different government agencies</li> </ol> </li> </ul>		<p>When possible, refer to sex-disaggregated data.</p> <p>Studies undertaken in other countries may be examined for the global dimension of the analysis.</p>
<b>Prioritizing of issue(s)</b>	<ul style="list-style-type: none"> <li>• Identify the issue that women's groups consider as urgent for them.</li> <li>• Choose a women's issue that has caught public attention due to contemporary events and on which women and women's groups have taken a strong stance.</li> </ul>	<ul style="list-style-type: none"> <li>• Why are they urgent? Is this urgency shared by others? By the legislators? Why or why not?</li> <li>• Are the women equally represented in the consultations? Are they heard appropriately?</li> </ul>	<p>This provides an understanding why women's concerns or gender issues are often marginalized or treated with "tokenism."</p> <p>Determining urgent issues may be difficult; drafter will make a judgment call.</p>

## THE GENDER-RESPONSIVE LEGISLATIVE MATRIX

<b>RESEARCH</b>			
<b>COMPONENTS/ PROCESS OF LEGISLATION</b>	<b>ACTIVITIES</b>	<b>GENDER DIMENSION/S— Questions to ask</b>	<b>REMARKS</b>
<p><b>Determining and gathering the data needed</b></p>	<ul style="list-style-type: none"> <li>• Identify the following:                             <ol style="list-style-type: none"> <li>a) magnitude of the issue or problem; the women or groups of women affected or most affected;</li> <li>b) the manifestations of the issue or problem; root causes and immediate causes;</li> <li>c) relevant laws or policies on the issue; and</li> <li>d) recommended responses human rights treaties or other documents pertinent to it and the obligations of the government under them.</li> </ol> </li> <li>• Conduct consultations with different stake holders as part of the data gathering.</li> </ul>	<ul style="list-style-type: none"> <li>• Are your responses appropriate to the issue or problem presented by the data?</li> <li>• Are you ensuring that the gender-based information is utilized in the legislative proposal?</li> </ul>	<p>Stake holders include:</p> <ol style="list-style-type: none"> <li>a) marginal communities;</li> <li>b) NGOs, particularly those with grassroots links, interest and programs related to legislative advocacy;</li> <li>c) government; and</li> <li>d) private sector to assist in or support legislative advocacy.</li> </ol>

## THE GENDER-RESPONSIVE LEGISLATIVE MATRIX

<b>RESEARCH</b>			
<b>COMPONENTS/ PROCESS OF LEGISLATION</b>	<b>ACTIVITIES</b>	<b>GENDER DIMENSION/S— Questions to ask</b>	<b>REMARKS</b>
<b>Analysis of the data and the situation</b>	<p>Consider the following:</p> <ul style="list-style-type: none"> <li>• The economic, political, social or other factors that cause the issue or problem</li> <li>• Determine the magnitude of the problem: prevalence; effects or impact on women; differential impact on different groups of women</li> <li>• Identify underlying gender-based assumptions or differences about women and men, and their impact on women's inequalities or marginalization</li> <li>• Identify laws or policies pertinent to the issue or problem; examine their gender-based assumptions</li> </ul>	<ul style="list-style-type: none"> <li>• What are its (a) root causes? (b) immediate causes? (c) if the issue is the promotion of a certain right of women, what are the barriers to its exercise or realization?</li> <li>• What is the magnitude of the problem? Where is it most prevalent? How many women are affected? Are all women similarly affected by it, or are there groups of women more affected? If yes, what accounts for this differential effect?</li> <li>• What are the problems underlying gender-based assumptions or differences about women and men? How do these assumptions result in or contribute to women's inequalities or marginalization?</li> </ul>	

## THE GENDER-RESPONSIVE LEGISLATIVE MATRIX

<b>RESEARCH</b>			
<b>COMPONENTS/ PROCESS OF LEGISLATION</b>	<b>ACTIVITIES</b>	<b>GENDER DIMENSION/S— Questions to ask</b>	<b>REMARKS</b>
	<ul style="list-style-type: none"> <li>• Identify various social, political, economic and cultural institutions that reinforce and/or aggravate the issue or problem.</li> <li>• Identify the various sets of human or women's rights.</li> <li>• Identify specific human rights treaties or other documents covering the particular issue or problem that has been ratified or adopted by the government &gt;&gt; examine how they view the issue or problem.</li> </ul>	<ul style="list-style-type: none"> <li>• Are there laws or policies pertinent to the issue or problem? How do they address the issue? Do they reflect the above-mentioned gender-based assumptions?</li> <li>• Do institutions such as the media, religion, the family, or the State contribute in aggravating or reinforcing the issue or problem? If yes, how?</li> <li>• What rights of women are involved? What rights of women are violated because of the issue or problem?</li> <li>• What specific human rights treaties or other documents covering the particular issue or problem has been ratified or adopted by the government? How do they view the issue or problem?</li> </ul>	

## THE GENDER-RESPONSIVE LEGISLATIVE MATRIX

<b>RESEARCH</b>			
<b>COMPONENTS/ PROCESS OF LEGISLATION</b>	<b>ACTIVITIES</b>	<b>GENDER DIMENSION/S— Questions to ask</b>	<b>REMARKS</b>
<b>Definition of the issue</b>	<ul style="list-style-type: none"> <li>• State the issue or problem in a way that will best reflect the situation.</li> <li>• Take into account and accurately reflect the experiences of women.</li> <li>• Identify its male-based assumptions.</li> </ul>	<ul style="list-style-type: none"> <li>• Consider women's definitions of the issue or problem &gt;&gt; how can the perspective of the original definition be sharpened?</li> <li>• Does the issue affect women in different ways? Are women differently circumstanced affected in similar ways?</li> <li>• Does it reflect the male view of the issue or problem, and underpin gender-based assumptions?</li> </ul>	<p>Minimize the danger of providing general legislative prescriptions that may or may not really address the peculiar concerns of the affected group.</p> <p>The proposed law may apply only to certain women to the exclusion of others who may have different circumstances or conditions, but nevertheless are faced with the same issue or problem.</p>

## THE GENDER-RESPONSIVE LEGISLATIVE MATRIX

<b>FORMULATION OF THE LEGISLATIVE PROPOSAL</b>			
<b>COMPONENTS/ PROCESS OF LEGISLATION</b>	<b>ACTIVITIES</b>	<b>GENDER DIMENSION/S— Questions to ask</b>	<b>REMARKS</b>
<b>Setting the objectives of the proposal</b>	<ul style="list-style-type: none"> <li>• Consider the different aspects of the issue or problem that should be addressed by the proposal.</li> <li>• Identify the practical and strategic gender needs.</li> <li>• Identify particular groups being addressed by the proposal.</li> <li>• Identify standards set by treaties and other documents pertinent to the issue or problem.</li> </ul>	<ul style="list-style-type: none"> <li>• What practical and immediate needs of women pertinent to the issue or problem should be met by the proposal? Are they true for all women? If not, what are the practical needs specific to certain women or groups of women that should be considered by it?</li> <li>• What strategic needs of women pertinent to the issue should be addressed?</li> <li>• What other gender concerns should be addressed by the proposal?</li> <li>• What standards are set by treaties and other documents pertinent to the issue or problem?</li> </ul>	<p>Practical and strategic gender needs are not to be taken as completely separate or distinct from each other. In many instances, both needs can be addressed in varying degrees as practical gender needs often are based on strategic lack.</p> <p>Be innovative and daring in using standards set in international documents.</p>

## THE GENDER-RESPONSIVE LEGISLATIVE MATRIX

<b>FORMULATION OF THE LEGISLATIVE PROPOSAL</b>			
<b>COMPONENTS/ PROCESS OF LEGISLATION</b>	<b>ACTIVITIES</b>	<b>GENDER DIMENSION/S— Questions to ask</b>	<b>REMARKS</b>
<p><b>Identification of measures to achieve the objectives or the desired outcomes</b></p>	<ul style="list-style-type: none"> <li>• Identify pertinent strategic needs of women.</li> <li>• Identify measures that respond to the other gender concerns related to the issue or problem.</li> <li>• To achieve the same objective or intended outcome may be guided by the following:               <ul style="list-style-type: none"> <li>(a) which of the alternatives will benefit the most number of women?</li> <li>(b) which of the alternatives will best address the gender-based concerns pertinent to the issue?</li> <li>(c) which of the alternatives will assure the greatest number of women being empowered or enjoying their rights?</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• How can the various aspects of the issue or problem be addressed?</li> <li>• What measures can be integrated into the proposal to respond to the pertinent practical needs of women? Will they be appropriate to all women? What specific measures may be necessary to meet the specific needs of certain women or groups of women?</li> <li>• What measures are necessary to respond to the pertinent strategic needs of women?</li> <li>• What measures should be provided for in response to the other gender concerns related to the issue or problem?</li> </ul>	<p>Practical and strategic gender needs are not to be taken as completely separate or distinct from each other. In many instances, both needs can be addressed in varying degrees as practical gender needs often are based on strategic lack.</p>



## THE GENDER-RESPONSIVE LEGISLATIVE MATRIX

<b>FORMULATION OF THE LEGISLATIVE PROPOSAL</b>			
<b>COMPONENTS/ PROCESS OF LEGISLATION</b>	<b>ACTIVITIES</b>	<b>GENDER DIMENSION/S— Questions to ask</b>	<b>REMARKS</b>
<b>Formulation of the proposal</b>	<ul style="list-style-type: none"> <li>• Examine the Explanatory Note:               <ul style="list-style-type: none"> <li>a. in terms of its gender perspective</li> <li>b. language: is it gender fair and sensitive?</li> <li>c. measures to ensure the implementation once passed</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Does the explanatory note and text present the issue or problem, the situation, and the proposed measures reflective of their gender perspective?</li> <li>• Is the language gender-sensitive?</li> <li>• What practical measures should be integrated to ensure the implementation of the proposal once passed?</li> </ul>	

## THE GENDER-RESPONSIVE LEGISLATIVE MATRIX

<b>LEGISLATIVE ANALYSIS AND AMENDMENTS</b>			
<b>COMPONENTS/ PROCESS OF LEGISLATION</b>	<b>ACTIVITIES</b>	<b>GENDER DIMENSION/S— Questions to ask</b>	<b>REMARKS</b>
<p><b>Analyzing the definition of the issue or problem and its context</b></p>	<ul style="list-style-type: none"> <li>• Identify the gender-based assumptions underlying the definition of the problem</li> <li>• Identify the assumptions made about women's experience</li> <li>• Examine who defines the issue or problem?</li> <li>• Identify or examine the causes of the problem</li> </ul>	<ul style="list-style-type: none"> <li>• What are gender-based assumptions in the definition of the problem? Does it assume stereotypes about women and men with respect to capacities, roles, rights, etc.?</li> <li>• What are its assumptions about women's experience or situation? Are they valid for all women? Are they true only for some women? What are the other premises of the proposal? Are they valid?</li> <li>• Is the definition of the issue or problem reflective of the male view?</li> <li>• Does the analysis include examination of its gender-based causes? Have the pertinent rights of women violated or the human rights standards been taken into account?</li> </ul>	<p>Amending the legislative proposal can be done even prior to the actual filing and the actions at the committee levels; this opportunity to amend should be taken seriously as the gaps can still be addressed.</p> <p>Amendments should be done in consultation with the original constituencies which made inputs into the drafting of the proposal; this will be a crucial step to ensure popular support for the legislative proposal as it goes through the legislative system, and once passed.</p>

## THE GENDER-RESPONSIVE LEGISLATIVE MATRIX

<b>LEGISLATIVE ANALYSIS AND AMENDMENTS</b>			
<b>COMPONENTS/ PROCESS OF LEGISLATION</b>	<b>ACTIVITIES</b>	<b>GENDER DIMENSION/S— Questions to ask</b>	<b>REMARKS</b>
<b>Analyzing the definition of objectives or desired outcomes</b>	Review the desired outcomes or objectives.		
<b>Analyzing the proposed measures to achieve the objective or desired outcomes</b>	<ul style="list-style-type: none"> <li>• Identify the practical concerns pertinent to the issue.</li> <li>• Identify the strategic concerns pertinent to the issue.</li> <li>• Examine if there are gender biases in the measure.</li> <li>• Examine the appropriateness of the proposed measures to (a) all women; and, (b) certain women or groups of women.</li> </ul>	<ul style="list-style-type: none"> <li>• Do the proposed measures address the practical concerns of women pertinent to the issue?</li> <li>• Do they respond to women's strategic concerns that are relevant to the issue or problem?</li> <li>• Do they reinforce gender-biases against women or perpetuate inequalities against them?</li> <li>• Are the measures proposed appropriate to the needs of all women? Are there measures that will have to be provided for certain women or groups of women?</li> </ul>	

## THE GENDER-RESPONSIVE LEGISLATIVE MATRIX

<b>LEGISLATIVE ANALYSIS AND AMENDMENTS</b>			
<b>COMPONENTS/ PROCESS OF LEGISLATION</b>	<b>ACTIVITIES</b>	<b>GENDER DIMENSION/S— Questions to ask</b>	<b>REMARKS</b>
<b>Formulating amendments</b>	<ul style="list-style-type: none"> <li>• Ensure that all the principles of gender approach and practical guide in mainstreaming gender perspective in legislation are incorporated appropriately.</li> <li>• Monitor the implementation of the law, especially violations.</li> </ul>	<ul style="list-style-type: none"> <li>• Are the women involved in the drawing up of the implementing rules and regulations? How, or in what manner?</li> </ul>	Learn from the experience for the next legislative activity.



## Conclusion

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A gender and rights perspective may be said to be a mindset or a point of view that is founded, on the one hand, on an awareness of gender and the inequalities and subordination of women that it perpetuates. On the other hand, said perspective is premised on a recognition that women, like men, have fundamental rights, and that these rights of women may be negated or restricted when gender biases continue to animate society's and women's lives.

Being a mindset or a point of view, a gender and rights perspective may call for a critical examination of long-held views and assumptions, challenging and, if necessary, changing them. Since this is a process, so is the translation of this perspective into the different aspects of a person's life, including one's work. Guidelines can help systematize and ensure a certain degree of infusion of the perspective into legislative work. But a person must constantly check whether new ways of looking at things are beginning to manifest in her or his life, or whether the old ways every now and then still rear their patriarchal heads.

Given this sobering fact, this Guidebook aims only to present some basics or "tools" which can be used to enhance one's understanding of gender and rights issues and to help systematize the application of a gender and rights framework in legislative work. The rest will be up to the person.

Finally, there are realities in the legislative environment that this Guidebook chose not to dwell on, but which nevertheless should be reckoned with. These, among others, are the political interests of those in positions of power within the legislative structure, the prevalent insensitivity to gender issues within, and the very low priority that is

accorded women's issues. These are real barriers that stand in the way of pushing for legislation for women.

Some may find these barriers and difficulties too daunting to try to overcome. But to them, we want to point to some bright spots in the seemingly bleak horizon of women's advocacy within the Congress.

Strength can be a leverage. Those advocating for women's interests within the Congress can band as a network, reinforcing and propping up each other, emerging a stronger whole. Moreover, they can reach out to colleagues outside—the women's advocates, the NGOs, other allies in government—who are themselves in need of allies within. Those in Congress can link up with and complement the latter, and together forge on, fired up by the same ends. The possibilities for strategizing are many, as there is limitless room for creativity, commitment and vision.