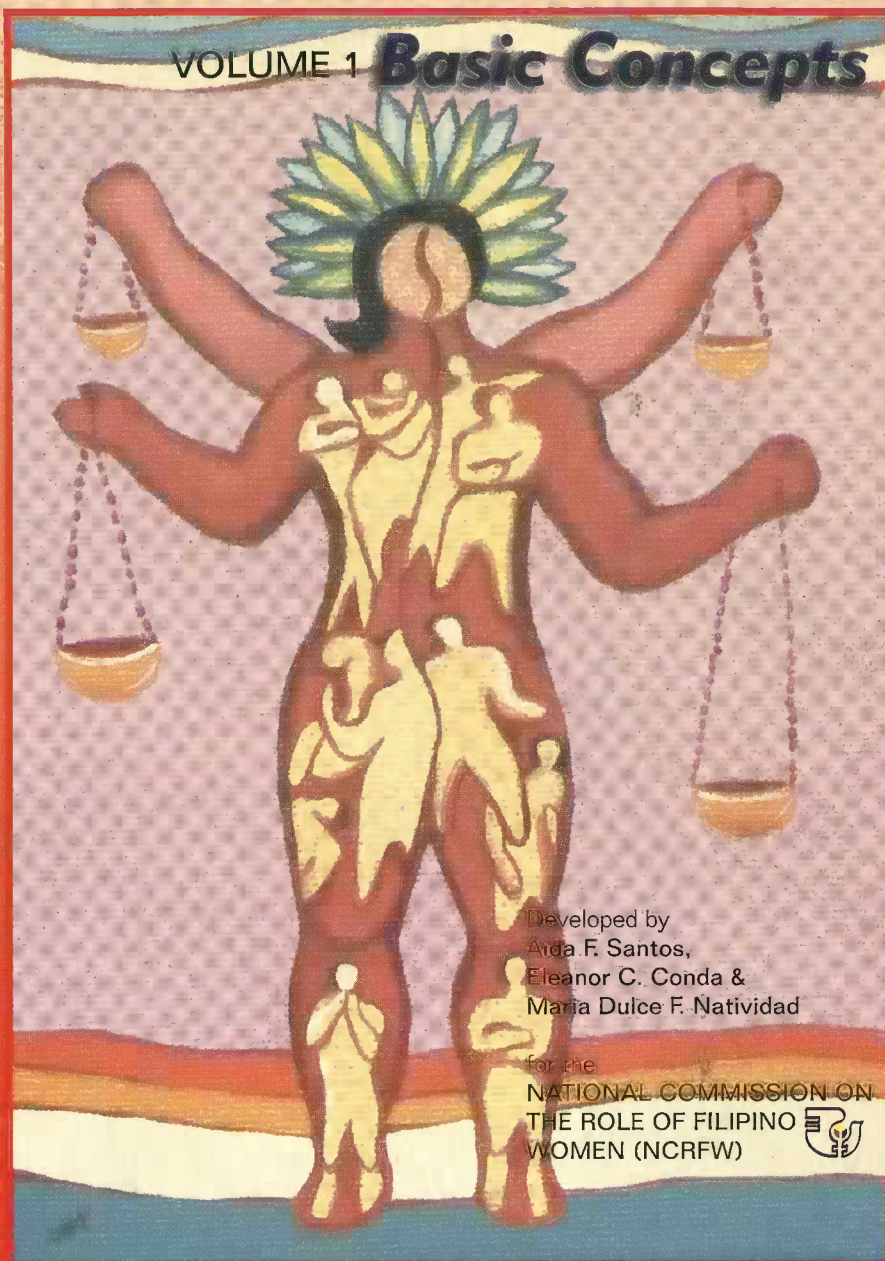


# TOWARD A GENDER-RESPONSIVE LEGISLATION



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## 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 1

## Basic Concepts

*Developed By*

**Aida 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 Cleta Bakunawa  
and Senator Teresa Aquino-Oreta  
and the**

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## 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.

A handwritten signature in black ink, appearing to read "Marcelo B. Fernan".

**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

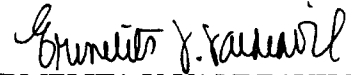


gender needs and a first step towards the eventual transformation of a society where women and men enjoy equal dignity and worth as persons.

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, NCRFW



**ERMELITA V. VALDEAVILLA**  
Executive Director, NCRFW



## 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.”

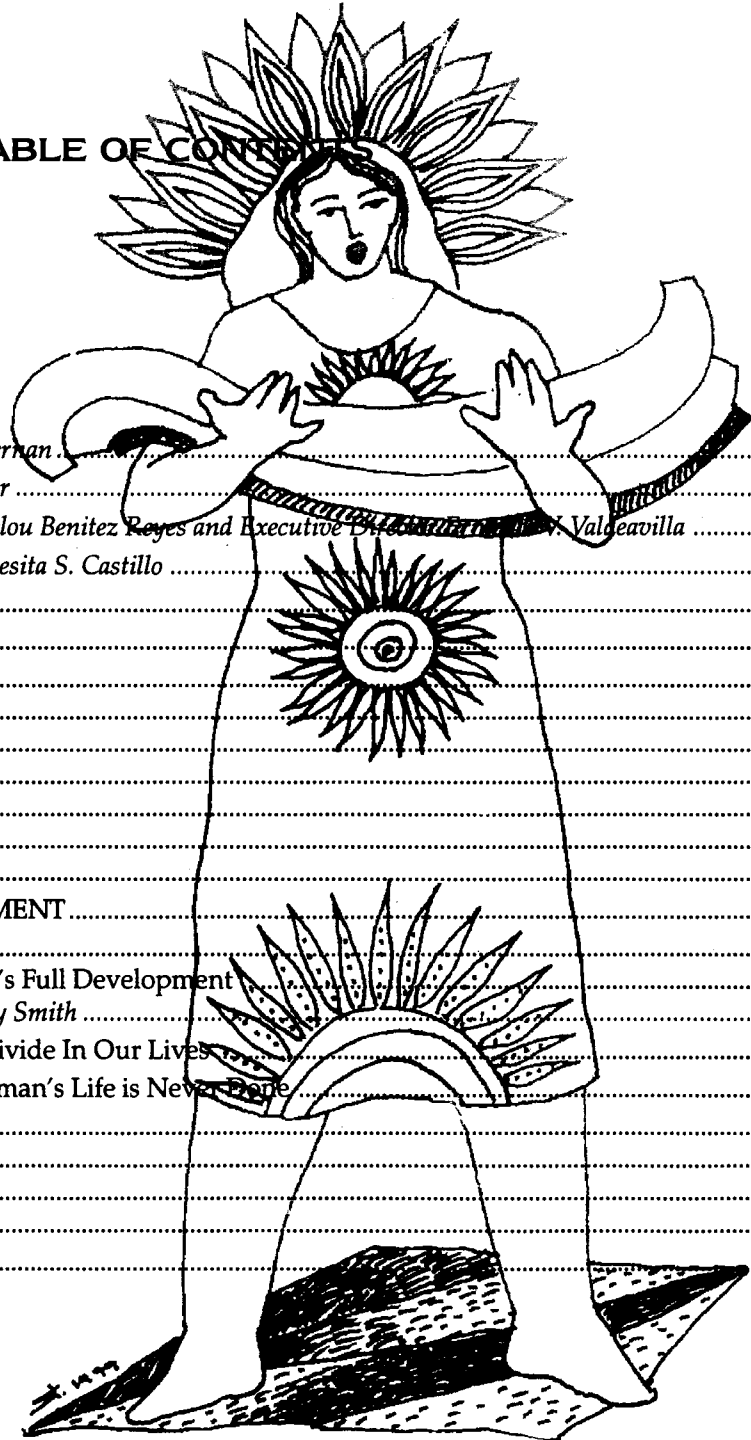
I wish to thank all those, who, in one way or another, had made this guidebook possible. Finally, my congratulations to the NCRFW staff for their invaluable contributions in the crafting of this document.



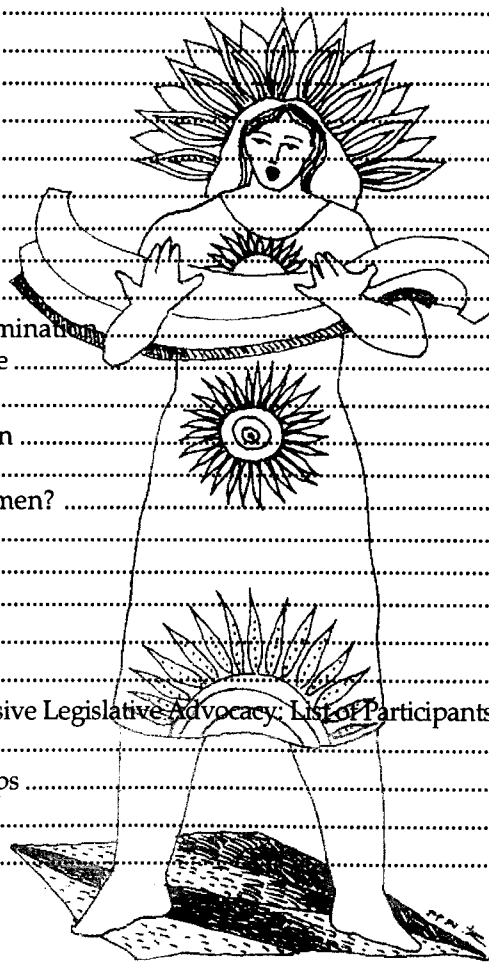
**TERESITA S. CASTILLO**  
NCRFW Commissioner and  
former Executive Director

# TABLE OF CONTENTS

	PAGE
MESSAGE by Senate President Marcelo B. Ferran .....	iii
MESSAGE by House Speaker Manny B. Villar .....	iv
MESSAGE by NCRFW Chairperson Dr. Amelou Benitez Reyes and Executive Director Dr. Valdeavilla .....	v
FOREWORD by NCRFW Commissioner Teresita S. Castillo .....	vii
ACRONYMS .....	xii
INTRODUCTION .....	1
Project History .....	3
Why A Guidebook .....	5
Objectives .....	5
Constraints and Challenges .....	6
How the Guidebook Works .....	7
Volume 1 .....	7
Volume 2 .....	8
CHAPTER ONE: GENDER & DEVELOPMENT .....	9
Introduction .....	9
Gender: When it is a Barrier to Women's Full Development .....	11
Poetry: "For Every Woman" by Nancy Smith .....	16
Dichotomies and Dilemmas: Gender Divide In Our Lives .....	17
Multiple Burden/Double Day: A Woman's Life is Never Done .....	20
Public vs. Private .....	22
Surviving a Gendered Culture .....	26
The Role of Government .....	26
Gender Analysis and Mainstreaming .....	31
Tools for Gender Analysis .....	34



CHAPTER TWO: LAWS, GENDER & WOMEN'S SITUATION .....	37
Introduction .....	37
Law and Marriage: A Male Terrain .....	39
The Family: A Unique Expression of Gender Power .....	40
Preservation of Marriage vs. Rights of Women .....	42
Of Names and Identities .....	42
Partnership Between Unequals .....	43
Morality: Double Standard in the Law .....	44
Infidelity on Different Grounds .....	44
Crimes of Passion: In Defense of Whose Honor? .....	47
Chastity, Sexuality & Violence: The 'Good and Bad Women' .....	50
Labor Laws: Value, Restrict or Protect Women? .....	52
Domestic Labor: An Issue of Value and Status .....	52
Protection vs. Restriction .....	54
Working Mothers: Pluses and Minuses .....	57
Gendered Laws: Two Steps Forward, One Backward .....	61
Negotiating Women's Sexual and Reproductive Self-Determination .....	61
Ethnicity, Religion and Rights: Walking the Legal Tightrope .....	63
Equality and Nondiscrimination: Legal or Real? .....	66
Women in Nation Building: A Challenge in Implementation .....	66
Sexual Harassment: Limitations in Definition .....	68
Prohibition Against Discrimination: Do They Work for Women? .....	68
Anti-Rape Law: A Not So Chaste Decision .....	70
Equality Now! Or Never? .....	71
Potential Areas for Legislation .....	74
Gender: An Essential Dimension to Lawmaking .....	74
Conclusion .....	77
ANNEX 1: Seminar-workshop Towards Enhancing Gender-responsive Legislative Advocacy: List of Participants ....	81
ANNEX 2: The Facilitating Team (FT) Members .....	82
ANNEX 3: List Of Participants: Pre-test and Validation Workshops .....	83
GLOSSARY OF TERMS .....	83
BIBLIOGRAPHY .....	87



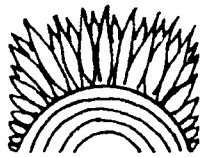
*Toward a Gender-responsive Legislation*  
VOLUME 1—BASIC CONCEPTS

## 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

## Introduction

---



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 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-participants and the vision of the NCRFW.

While the processes that the Project undertook seem complex and long, it is nevertheless to be noted that the process ensures 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 has also 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.



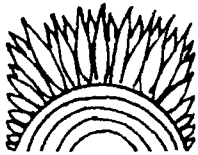
## CHAPTER ONE

# Gender & Development



### Introduction

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We grow up with certain notions of ourselves and of other people. We have conceptions of how our mothers and fathers should be, of what and how “girls” and “boys,” and eventually, how “women” and “men,” are to be. We also have a notion of how life should be, how we want to live it and how we can achieve that kind of life. The first conception refers to gender, the latter to development.

Social structures, such as the family, educational system, religion, and the media, among others, either reinforce or frustrate social expectations. Laws and economic institutions continually shape and reshape our identities and our expectations of the world around us and in us. Cultural processes serve as the touchstone of society's capacity to transform these notions and expectations.

Let us tackle first the familiar concept of development before proceeding with the often-misunderstood idea of gender. Development essentially means "change" and connotes movement. This change is often framed in the way we conceive change within a person and in the outside world.



Development, in recent times, has taken on new meanings, undergoing its own transformation. From the old notion of mere economic growth without due consideration to social equity and environmental costs, it now refers broadly to "total development, including development in the political, economic, social, cultural and other dimensions of human life, as well as the development of the economic and other material resources and the physical, moral, intellectual and cultural growth of human beings" [Torres, del Rosario, and Pineda-Ofreneo, 1994].

Development has also been defined as “the sustained capacity to achieve a better life” [Herrin, A., 1995]. Better life is associated with how long and how well that life is lived, an envisioned wholeness that combines quantity and quality. A better quality of life may also be viewed in terms of a society’s or an individual’s capacity to do and capacity to be. The capacity to do implies a wide range of human activities and situations in which a person can participate in the pursuit of a better life. These activities include doing productive and satisfying work, having control over one’s income, enjoying nature and the natural environment, caring for others and traveling in search of other opportunities.

The capacity to be is premised on a person’s personal and environmental resources to attain her or his objectives for a better life, and would be dependent on knowledge and skill, health, and self-esteem. Freedom of choice underlines this capacity and, therefore, requires that any development agenda enables an individual and the collective of people to expand available choices [NCRFW citing Herrin, A., 1997].

## **Gender: When it is a Barrier to Women’s Full Development**

---

Development is for all, despite class, age, race and sex differences. Before the law, everyone is equal and in this equality, social equity is embedded. Fairness and equity demand that everyone in society, whether male or female, has the same opportunities to achieve a better life, given their initial endowments and preferences. This sense of fair play and fairness is one of the cornerstones of any democracy.

This equity principle is further elaborated in the foregoing definition. Development is aimed at rationally allocating scarce resources for the productive needs of society through a rational and systematic step

toward a general and sustained improvement in the quality of life for all, *with an emphasis on benefiting the disadvantaged in society (emphasis provided) [Heyzer, 1985].*

The quest for social justice is at the heart of the vision of making society better for everyone and not only for a few. Everyone is equal in our ideal and abstract conceptions of the world. But social reality has other-wise created layer upon layer of inequalities between different groups of people. Hierarchies define our social relations. Class, race, ethnicity, age, and ability are systems of ideology that divide people into the privileged and the discriminated, the powerful and the powerless. Women's and men's position in society are shaped by these forces.

However, the difference in the opportunities available to women and men for achieving a better life may arise also from factors directly relating to their being "female/women" and "male/men." This is where sex and gender enter the social picture and shape the specific contours of women's and men's lives.

Women's biological functions such as reproduction have the effect of constraining them in pursuing opportunities that may be substantial and significant for their development.



*Sex* refers to the biological characteristics and aspects of being a woman and being a man. For the woman, it specifically refers to the female hormones that she possesses, her reproductive organs and capacity to conceive and give birth, and other related biological attributes like the ability to menstruate. For the man, it means his male hormones, his reproductive system and capacity to aid in the reproductive process. Sex differences between women and men are natural.

Sex-based differences result in differences in needs and conditions for women and men.

Specific health concerns of women, for example, include pregnancy and breastfeeding. Menstruation and menopause are also physiological processes that affect women's mental and emotional wellbeing. Ovarian and breast cancers regularly challenge women's health. Men, on the other hand, deal with health problems like prostate cancer. For women, however, their biological functions such as reproduction have the effect of constraining them in pursuing opportunities that may be substantial and significant for their development.

Sex, however, has been used to confine women to their reproductive function and to confer on men superior physical attributes. Sex, when used as an argument for restricting women's and men's capacities and legitimizing the domination of one sex over the other, becomes *biological determinism*. This foregrounds the question of *gender*.

*Gender* is the culturally specific set of characteristics that identifies the social behavior of women and men and the relationship between them. It refers to the socially differentiated roles, characteristics and expectations attributed by culture to women and men. Gender is a social construction—it is created, produced, reproduced and maintained by social institutions. Contrary, therefore, to prevailing belief, gender roles and attributes are not natural nor biological givens.

The general emphasis on men's physical superiority is often pointed out as the ultimate defining difference between the genders. This emphasis on physical strength is historical, more than biological. Sheer physical strength was a fundamental need in premodern societies so humankind can endure the physical rigors of living in nomadic and post-nomadic stages of civilization. When subsistence was a dominant concern, social and economic institutions were focused on collective living rather than individual powers. Through time, this cultural superstructure of male domination had by then anchored and burrowed itself into the crevices of daily living and human existence.

Gender expectations may limit the choices of women and men with respect to their capacities “to do” and “to be.” They may also impose high psychic costs when women and men do something contrary to expectations. Gender roles limit opportunities for women and men to perform varied roles as their endowments and preference dictate and in response to changing times. This is so because preparations for these predetermined roles occur early in life and reinforced by society at every opportunity [Herrin, A., 1995]. For women, in particular, gender expectations within a male-dominated society often bare constraints on the expansion of possibilities for their development.

One of the most enduring gender construction is the attribution of weakness/being emotional to women, and strength / rationality to men. This is called *gender stereotyping* which, in turn, generates gender biases. Gender stereotyping ascribes *particular* traits, characteristics and roles *distinctly* and *strictly* to women and men [AusAID and NCRFW, 1996]. Individuals are boxed into defined roles and judged according to how faithfully that role is performed. Anyone transgressing these identities and traits is considered abnormal or deviant. The concept of deviant behavior is premised on a collective norm of identity and crosses into areas of concern such as discrimination, which is a form of human rights violation.

Women, in accordance with the feminine traits expected of them, are constructed as good homemakers and natural nurturers of the home. Men, as supposedly masculine beings, are expected to be the sole economic providers responsible for the survival of the family. Male children are discouraged to show any “feminine” emotional outbursts or they will grow up less manly. Female children are encouraged to play with dolls and cooking toys to prepare them for their expected roles as wives and mothers. For girls, the socialization for marriage and motherhood is presumed not to require much formal education.

Oftentimes parents are not even keenly aware of this socialization pattern that happens in the family.

*Gender subordination* is the basis of gender bias, and refers to the secondary position of women in society. Social structures and institutions have entrenched women's subordination to men, and our laws reflect this. Despite the changing profile of women-headed households in recent years in the Philippines, men continue to be perceived as and expected to assume the role of the *padre de familia*, the head of the family. This, even as the role of Filipino women in the paid productive sphere has been dramatically changing, such as in overseas migration and contract work which have been feminized in the last decades.

*Gender relations, therefore, are relations of power.* In examining gender relations, recognition of women's subordinate social status and the transformation of this status is necessary. Gender, however, is not solely a women's issue. *It is a social issue that calls for public action.*



## For Every Woman

*Nancy Smith*

For every woman who is tired of acting weak when she knows she is strong, there is a man who is tired of appearing strong when he feels vulnerable.

For every woman who is tired of acting dumb, there is a man who is burdened with the constant expectation of knowing everything...

For every woman who is tired of being called an emotional female, there is a man who is denied the full right to weep and be gentle.

For every woman who feels tied down by her children, there is a man who is denied the full pleasure of shared parenthood.

For every woman who is denied meaningful employment and equal pay, there is a man who must bear full financial responsibility for another human being.

For every woman who was not taught the intricacies of an automobile, there is a man who was not taught the satisfaction of cooking.

For every woman who takes a step towards her own liberation, there is a man who finds that the way to freedom has been made a little easier.

## Dichotomies and Dilemmas: Gender Divide In Our Lives

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The pervasive belief that there is but only one place for women and only one other place for men has taken root in our consciousness and in the organization of our lives. So entrenched is our gender-based thinking that we do not examine or challenge the inequalities that continue to be reproduced in seeming perpetuity. A discussion of gender-based social dichotomies and conflicts is necessary to equip us with conceptual tools in analyzing gender issues and concerns.

### Production vs. Reproduction: Drawing a Line

Our lives consist of the productive and reproductive spheres. *Production* refers to the creation of goods and services exchanged for cash or noncash material equivalent and oftentimes done outside the household. *Reproduction* refers to work done inside the home—the care and maintenance of the household and its members including pregnancy, childbearing and caring for children, food preparation, housekeeping, and general family health care. Both are important social tasks for our survival. Women and men contribute to and have an interest in both production and reproduction, these spheres being two worlds that relate symbiotically to support, regenerate and enhance life.

Gender-biased thinking in the form of biological determinism, however, has drawn a division between the two spheres, assigning women to reproduction and men to production. Women's biology—their capacity



Women and men contribute to and have an interest in both production and reproduction...

to get pregnant and give birth—forms the strongest basis for this Darwinian logic of natural selection. Men, because they have no capacity to bear offspring, have no assigned role in biological reproduction. Production, therefore, must be their natural territory. While women get trapped in their bodies, men seem to have no connection to theirs. This obviously wastes the potentials of both women and men to be more than what convention tells them to be, and whose otherwise harnessed energies could benefit society.

The valuation of production and reproduction may vary in each culture. Yet, in most instances, production is regarded as the primary sphere. In the Philippines, production is much more valued than reproduction, despite the cultural saying, “*ang babae ang ilaw ng tahanan*” (woman is the light of the home), and the mystified notion of putting women on a pedestal. By assigning privileges to men’s productive work, women’s reproductive work has been rendered marginal, making its social and personal value and importance invisible.

Reproductive work, more often than not carried out by women, is crucial to human survival and yet it is seldom considered *real* work. Ironically, while the family is seen as the basic foundation of society, work done inside the home or domestic labor is undervalued. In national statistics, domestic work does not figure in computations of growth and development, yet without the reproductive labor replicated every minute of our lives, this planet will simply cease to exist. From women’s experiences, the undervaluing of their domestic work is a significant diminution of their status as daughters, mothers, and wives in a society that puts premium on the family in its traditional form.

Because women’s work is invisible and is not real work, it is, therefore, unpaid or unremunerated. Yet, women’s work contributes to the economy in terms of labor time and reproduction and maintenance of labor. Women, especially in subsistence economies, create goods and

services within the confines of their households that oftentimes remain unrecognized. This kind of work may include weaving, vegetable gardening for household consumption, and other activities done to provide for family needs. These tasks are perceived as mere extensions of women's reproductive role, and therefore, require no compensation. Men, on the other hand, are generally expected to work for pay, and their contribution to the domestic sphere is seen as "special" and is, therefore, not a "natural" part of their being or social construction. This *sexual division of labor* rests on the alienation of reproduction and production from each other, and is sustained by the nonvaluation of reproduction and the privileging of production.

Through the years, intense economic pressures brought about by globalization as well as changes in women's expectations of themselves have pushed more and more women to go out of their homes and join the formal workforce. But despite their changing social roles, women still find their economic situations predetermined by their traditional reproductive roles. Their wages are still considered as *supplementary* even as the economic crisis has pushed women to become primary breadwinners. Women's productive work is too often less visible and less valued than men's. They are the last to be hired but the first to be fired, despite the laws that prohibit discrimination based on sex. The casualization of work has victimized married and pregnant women. Many local and foreign-owned companies, especially those in the manufacturing and service sectors, prefer young and unmarried women, a practice that is discriminatory and a violation of fundamental women's human rights.

## Multiple Burden/Double Day: A Woman's Life is Never Done

Changing times bring changing roles. For women, this translates to an expanded role to cope with family needs. The increased responsibilities imposed on women by marriage, motherhood and *employment* account for what is now recognized as the multiple burden of women and which is a manifestation of gender inequality in the home and in society in general (emphasis provided) [NCRFW, 1995].

*Multiple burden and double day* refer to the numerous tasks, e.g., childcare and household responsibilities, that are continually assumed mainly by women on top of tasks in paid work outside of their homes. Even as women have increasingly entered the productive sphere, men have not correspondingly made the transition to actively participate in the reproductive arena [David, 1997].



The increased responsibilities imposed on women by marriage, motherhood and employment account for what is now recognized as the multiple burden of women

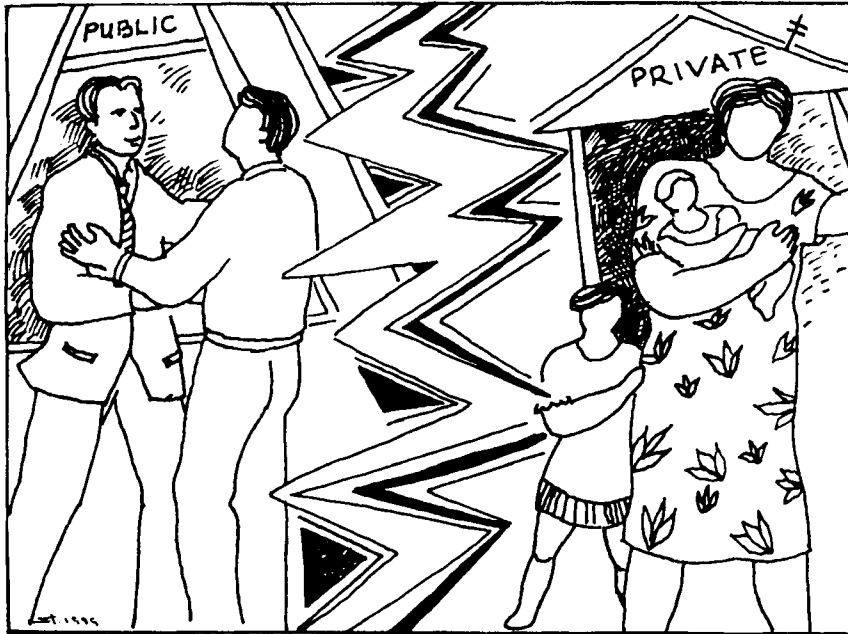
Many women employ numerous devices to precariously balance the concerns and responsibilities demanded of them at home and at work. There is an unwritten rule, for example, that working women or mothers are supposed to take a leave from work to care for a sick child. In effect, women bear the burden of paid work in the formal labor force and unpaid domestic work—making it even more difficult for them to get better jobs, better training, and, ultimately, to move up professionally.

Women perform numerous and overlapping tasks commonly ignored and undervalued by the whole of society. Apart from reproductive and productive work, women are also concerned with community management. This refers to responsibilities that maintain, sustain and protect the community life. It may include ensuring that there is a healthy and steady supply of water in the community, sanitation, safety and disaster preparation, school activities as well as church duties. Multiple burden is the result of women's juggling of these many tasks. In gender sensitivity workshops, the pattern of multiple burden emerges when women share how an ordinary day unfolds for them, describing that it starts at four in the morning and ends at midnight, their 20-hour labor done in the services of husband, children and the community. The burden is made heavier from the general lack of support for and valuation of these various roles, forcing women to take on more than what is necessary at the cost of their health, well-being and personal development.

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*Multiple burden* and *double day* refer to the numerous tasks, e.g., childcare and household responsibilities, that are continually assumed mainly by women....

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## Public vs. Private

A logical extension of the production-reproduction divide is the splitting of the public and private realms of people's lives into separate non-intersecting worlds. Public is where the men are. Private is where the women are. Public is often meant to be the political arena, the bureaucracy, even the hierarchy in the institutionalized religions. Home and family are the sites of that which is private. The consequence is the rendering of issues circumscribed within the bounds of family and home as private and, therefore, must not be the

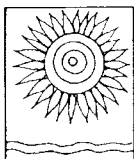
It is in the electoral arena where the marginalization of women continues and the production-reproduction dichotomy is most visible.

subject of public engagement. This cultivates and entrenches a culture of silence surrounding controversial issues such as sexuality, marital relationships, parenting and family violence. In addition, women and men lose what could have been their meaningful places in the equally important private and public domains of life.

It is in the electoral arena where the marginalization of women continues and the production/reproduction dichotomy is most visible. Positions of leadership in the community are generally male-dominated. Status and prestige are assumed to be the domain of males, with women playing supportive and submissive roles [David in VSO, 1997; Eviota, 1992]. Fewer women are found in elective and appointive positions in the bureaucracy, and even fewer make it to the policy-making level.

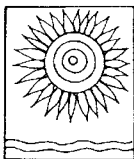
Consider these:

### *In the LEGISLATURE*



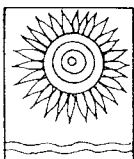
- in the 1992, 1995 and 1998 elections, women won four out of 24, three out of 12 and two out of 12 contested positions in the Senate, respectively
- in the 1992 and 1998 elections, women won 22 out of 200 and 25 out of 207, respectively, of the posts in Congress; in 1995, 17% elected to the Senate were women and around 10% in the House of Representatives

### *In the EXECUTIVE DEPARTMENT*



- only four departments of government had women as head, from the administration of Marcos to Ramos

### *In the BUREAUCRACY*



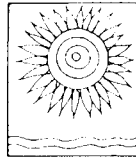
- there are more women (53.81%) than men out of the total 1.38 million government personnel in 1997, 0.51% lower from the 1996 figure of 54.32%
- in the professional/technical positions in government, women's share rose to 72.26% in 1997 from 68.5% in 1991 and 59.2% in 1990, but



men continue to hold 62.5% of upper managerial positions, although there are more males in the lowest clerical category

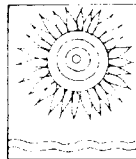
- only 26.5% of the total number of Career Executive Service (CES) were women in 1990 and 1994; female career executives outnumbered male in the social service sector (54.2%) , but men were dominant in the following areas: public order, safety and justice (12%); infrastructure and technology (18.2%); government-owned or controlled corporations (22.6%); economic sector (23.6%); finance and constitutional commissions (both 37%)

### *In the JUDICIARY*



- only 17.8% of the total 1,694 judges in the Philippine courts were women (1997); in the Supreme Court, three out of 15 judges were women in 1990, declining to one in 1993 up to the present; only 29% were women of the 121 state prosecutors in 1995

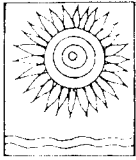
### *In the DIPLOMATIC SERVICE*



- only 138 or 41.6% were women of the total personnel in the home office and in foreign posts of the diplomatic service in 1995
- out of the 138 diplomatic service personnel employed in 1995, only 37 were women Chief of

Mission with the rank of ambassador, 21 were Minister-Counselors and 80 holders of Foreign Service Officer positions

*In the MILITARY and the POLICE*



- in 1993 the first batch of 15 female cadets were admitted to the elite Philippine Military Academy; in 1997, another 17 women were graduated from the Academy, with one of them topping the 1994 admission test taken by 7,000 applicants, mostly men; there is one woman with the rank of brigadier general in the police force; there are 3,101 women in the police force, of whom 130 were commissioned.

Source: NCRFW 1997.

Philippine electoral history attests to the active participation of women in the electoral process. Electoral accounts in the period 1947 to 1992 showed that more women exercised their right to vote than men [NCRFW and ADB, 1996]. Effectively harnessed, women's vote can wield great influence on our legislators and consequently impact on women's status in society. A step toward this direction is the election of women sectoral representatives to the Lower House, where three seats are reserved for them. The women's party Abanse!Pinay was able to get 45 percent of the women's vote, and now has one seat in Congress.



The tendency of women excelling in certain endeavors is both a bane and a boon: women compete in a culture that takes male standards as the norm of excellence.

## Surviving a Gendered Culture

Some insights into the roles and status of women and men in Philippine society need to be noted down. Women exhibit a certain capacity for resiliency which men tend to gloss over in their daily lives. For example, it is interesting to note that while the access to education at the elementary level is equal to both gender, women/girls tend to be able to pursue high school and even college education than men/boys. Yet this marked ability is diminished or de-emphasized eventually by the cultural tradition that gives more privilege to men and boys. As they grow and develop into adults, women begin to exhibit lesser access to employment opportunities and decision-making positions. One would think that by virtue of their ability to get higher education, women would then be able to rationally have access to better economic and social mobility. This tendency of women excelling in certain endeavors is both a bane and a boon: women compete in a culture that takes male standards as the norm of excellence.

When given the opportunities and support, some women are able to go beyond the culturally defined confinement that entraps them. Despite women's general poor situation and secondary status, they are able, for example, to save from their earnings and own homelots more than men do. It is perhaps this secondary status of women which creates the psychosocial environment for them to create and nurture coping mechanisms which enable them to build their own forms of creative resistance against male domination in nearly all aspects of both the private and public spheres.

## The Role of Government

The inequality in opportunities arising from gender-related problems cannot always be overcome by individual action. Because certain conditions in society make it difficult for women to gain access to and control of resources and decision-making, government has a responsibility to make the situation more equitable.

Development, in this regard, must follow a path that leads to the growth and expansion not only of the economy but also of the space for human dignity and rights. Fairness and equity should be the guiding principles of government to attain a people-centered development. Development for all means that both women and men have the same opportunities to achieve a better life, given their initial endowments and preferences. Beyond this principle of equality, however, is the value of equity which ensures space for the disadvantaged and marginalized.

Concretely, in gender equity terms, "it should be conducive to providing women, particularly those who are poor or destitute, with the necessary means for increasingly claiming, achieving, enjoying and utilizing equality of opportunity. More directly, the increasing successful participation of each woman in societal activities as a legally independent agent will contribute to further recognition in practice of right to equality. Development also requires a moral dimension to ensure that it is just and responsive to the needs and rights of the individual and that science and technology are applied within a social and economic framework that assures environmental safety for all life on our planet" [Torres, del Rosario, and Pineda-Ofreneo, 1994].

The Philippines first gave its commitment to the development and improvement of women's situation in the mid-1970s. It holds the distinction of being one of the countries actively pursuing the advancement of women's status. The country's response to the United Nations' Declaration of International Women's Year (1975) and the Decade for Women (1976-1985) was the timely creation and maintenance of the National Commission on the Role of Filipino Women (NCRFW). As the primary state mechanism responsible in overseeing plans and policies concerning women, the NCRFW is mandated to:

- a. institute the gender responsiveness of national development plans and coordinate the preparation, assessment and updating of the National Plan for Women, ensure its implementation and monitor the performance of government agencies in the implementation of the Plan at all levels;



Development for all means that both women and men have the same opportunities to achieve a better life, given their initial endowments and preferences. Beyond this principle of equality, however, is the value of equity which ensures space for the disadvantaged and marginalized.

- b. undertake continuing advocacy to promote economic, social and political empowerment of women and provide technical assistance in the setting-up and strengthening of mechanisms on gender mainstreaming; and
- c. ensure that the gains achieved by Filipino women due to Philippine culture and tradition shall be preserved and enhanced in the process of modernization.

Article II, Section 14 of the 1987 Philippine Constitution states that: “The State recognizes the role of women in nation building and shall ensure the fundamental equality before the law of women and men.” Assisted by this commitment, government has enacted several laws designed to promote gender equality and women’s full participation in society. These laws are positive and welcome outcomes of processes that had their seeds long ago. This illustrates the extent to which the legislature could play a proactive role in addressing gender concerns.

In addressing gender equity concerns, the government may undertake interventions in the form of:

- a. alleviating the current manifestations of gender-related problems; and,
- b. addressing the underlying cause of gender-related problems.

Underlying these strategies for government intervention is the recognition that the gender system has spawned different sets of conditions and needs for women and men. These conditions and needs determine the appropriate actions for equalizing the status of women and men in society. Gender and development experts have recognized that women have two kinds of gender needs—*practical needs* and *strategic needs*. Generally, policies, programs and projects for the alleviation of current manifestations of discrimination and marginalization based on gender address women’s practical needs. Those

that address the underlying causes of gender-related problems are designed to provide solutions to women's strategic needs.

*Practical gender needs* relate to the immediate situation and realities of women in society. They are concerned with women's "material state," and their "immediate sphere of experience" [CCIC, 1991]. These are the needs women identify in their socially accepted roles in society. Practical gender needs do not challenge the gender divisions of labor or women's subordinate position in society, even if these needs arose from them. These needs are a response to immediate perceived necessities identified within a specific context. They are practical in nature and often are concerned with inadequacies in living conditions such as water provision, health care and employment [Moser, C., 1993].

Other examples of practical needs are the need to ease women's multiple burdens and to support them in their maternal functions. Measures in response to such needs include providing support services, establishing structures both at the barangay (village) and in the workplace, and providing women maternity leave benefits, pre and postnatal health services.

*Strategic gender needs*, on the other hand, are those linked to societal status of women and their relational standing vis-à-vis the men. These are the needs women identify because of their subordinate position to men in

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Strategic gender needs are those linked to societal status of women and their relational standing vis-à-vis the men. These are the needs women identify because of their subordinate position to men in their society.

their society. Strategic gender needs vary according to particular contexts. They relate to gender divisions of labor, power and control and may include such issues as legal rights, domestic violence, equal wages and women's control over their bodies. Meeting strategic gender needs helps women to achieve equality. It also changes existing roles and, therefore, challenges women's subordinate position [Moser, C., 1993]. Because they arise from a recognition of women's marginalized and oppressed position, these needs are based on a transformative and alternative vision of society.

Other examples of strategic gender needs include "reduced vulnerability to violence and exploitation; more economic security, independence, options and opportunities; shared responsibility for reproductive work with men and the state; organizing with other women for strength, solidarity and action; increased ability to improve the lives and futures of their children; and more humanistic and just development processes" [CCIC, 1991].

The state is central in mediating the relationship between policies, on one hand, and women's practical and strategic gender needs, on the other hand. It controls women's lives to an extent that it has the power to shape laws determining women's position in marriage and family, in the labor market, and in the political arena. It is in the sphere of marriage and family, however, where the state is challenged to initiate the most critical changes. In marriage and family lie the delicate boundary between what constitutes private and public, which is at the core of the tension and dilemma articulated in women's constant negotiation of their roles and position in society. On the other side of the spectrum are the macroeconomic policies which have traditionally been gender-blind, relegating issues such as women's reproductive work or unpaid labor to the margins of broad development concerns, and therefore, have to be made more gender-responsive.

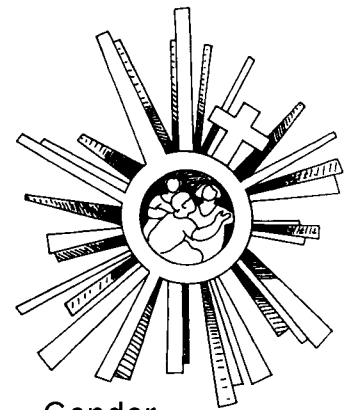
Hence, the vast resources and expertise of government in covering all possible areas of gender concern must be mustered toward the goal of gender-fair development. More importantly, commitment of the entire government bureaucracy and machinery is a decisive factor in this process of social transformation. The legislature, in its capacity to lay down the ground for the principles and standards on which a nation stands, has in its hands a huge potential to propel these changes. Reforms in the law can institute affirmative actions to raise the status of women. Introduction of landmark rights-based laws can overturn those that are explicitly discriminatory to and biased against women.

**Legislative reforms should assist the government in achieving one of the fundamental responsibilities in nation building, i.e., to reduce class and gender inequities so that all members of society shall have the capacity to do and to be. The integration of gender concerns in the development process is one of the mechanisms through which government can achieve a better life for all.**

## Gender Analysis and Mainstreaming

A specific track in the government effort to achieve gender equity and equality in development programs is gender mainstreaming. *Gender mainstreaming* is “an organized effort of the government and its partners to integrate gender and development (GAD) in all aspects of its work”. Specifically, it refers to strategies and processes that weave or integrate gender-responsive goals in the directions, policies, projects and services of line agencies.

Gender mainstreaming also means the cohesion of gender concerns in the development agenda and planning to address gender inequalities. It is an endeavor to embody a gender framework in the design and imple-



Gender mainstreaming also means the cohesion of gender concerns in the development agenda and planning to address gender inequalities.



mentation of plans and programs that carry out the mandates of line agencies. The tasks of gender mainstreaming are two-fold: addressing the internal capability of the organization for gender responsiveness and re-orienting its development processes, plans, programs and budget toward this end.

The philosophy behind gender mainstreaming is the acknowledgment of the existence of a *mainstream* where major ideas, decisions, and the distribution of resources are made toward the attainment of development. Its gist is to integrate gender issues into the mainstream in addition to transforming the mainstream into a more receptive and conducive forum for gender and development goals.

The NCRFW, in its capacity as the lead government agency geared toward the advancement of women, has started implementation of a program aimed at making gender concerns part of the planning process of national and local government agencies. This program started in 1989 and has been going full steam with the adoption of the Philippine Development Plan for Women (PDPW) and the Philippine Plan for Gender-responsive Development (PPGD). These two important documents contain government's plan of action for achieving the twin goals of gender equality and women's development.

In the course of implementing this program, the NCRFW has gone through the whole gamut of identifying the right mechanisms, structures and processes for gender mainstreaming. After having tested several approaches with national level agencies, NCRFW eventually focused on four gender and development (GAD) mainstreaming components:

- a. gender-responsive planning;
- b. advocacy and training;
- c. development of a gender-responsive statistical system; and,
- d. setting up of Focal Points.

Gender mainstreaming has been carried out with significant impact in the areas of advocacy and training, institutional mechanisms, and a gender-responsive data system. The Focal Point is a mechanism created by then Pres. Corazon C. Aquino through Executive Order 348. It established focal points in every department, bureau, office or instrumentality of the government, including the government-owned or controlled corporations, to ensure the implementation, monitoring, review and updating of the PDPW. It is generally perceived to be the catalyst for gender-responsive planning and programming for gender mainstreaming. After testing these components at the national level, the NCRFW implemented them also among local government units.

In a nutshell, NCRFW's gender mainstreaming initiatives have, among others:

- strengthened the government's capabilities for GAD advocacy and training;
- introduced gender concerns in the Philippine statistical system;
- facilitated the organization of GAD Focal Points in national and subnational agencies; and.
- seen the adoption of the Career Advancement Program for Women in Government Service.

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The philosophy behind gender-mainstreaming is the acknowledgment of the existence of a mainstream where major ideas, decisions, and the distribution of resources are made toward the attainment of development.

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Since the goal of gender mainstreaming is institutionalization of GAD structures, mechanisms and processes, the NCRFW as the main executive arm, only has an interim role in this political project. Government institutions and agencies are tasked to "engender" their policies and programs. The goal of this is to develop within every nook and cranny of the bureaucracy a gender-sensitive consciousness and skills, as well as, to firmly lay the foundation for gender-responsive

actions. The NCRFW further acknowledged that the legislative arena is one vital link in any development process because of the strategic role that legislation plays in the lives of women and men, and the entire society.

Indeed, the legislative branch made headway in formulating laws that advance women's rights and other gender-related concerns. In passing the Anti-Rape Law and the law establishing rape crisis centers all over the country, for example, the judiciary's participation in gender mainstreaming becomes even more prominent and has to be accelerated for the effective execution of the law. The synergistic action of the three branches—the executive, legislative and judiciary—is the key stone in organizing government for the mission of advancing the interests of equality and equity for women and men.

### **Tools for Gender Analysis**

In recognition of the need to provide a guidebook or source book for advocates, planners and implementers on why and how the GAD perspective is crucial in any development process, the NCRFW, in 1994, in cooperation with the United Nations Fund for Women (UNIFEM) published "Gender and development making the bureaucracy gender-responsive". Its focus was mostly on how to integrate the GAD perspective in the policy-making process and activities at the executive level. Taking its cue from this document, the NCRFW is now publishing this legislative Guidebook, a fruit of the partnership between the executive and legislative branches of government.

In approaching legislative work, this Guidebook stands on a gender-based analysis of issues, acknowledging that gender is an analytical category in much the same way as class, race, ethnicity and age. Beyond "adding on and stirring in " gender in examining and providing policy

solutions to social issues, gender -based analysis starts with gender roles identification and gender needs assessment and is concerned with identifying the particular implications of contextually specific problems of development for men and women, and the relationship between them [Moser, C., 1993]. In this particular instance, legislative work will have to expand its task beyond law making and integrate into it a *consciousness* that there are structurally generated gender-based inequalities between women and men. As in the development process, such a consciousness will have to acknowledge the cycle that starts with problem analysis and onward to successful completion. (See Volume 2 which discusses the particular cyclical process in legislative work.) Gender-based analysis, therefore, is structural in nature and proceeds from a “more comprehensive situation or social relations analysis to see the interweaving of various forms of subordination” [Torres, del Rosario and Pineda-Ofreneo, 1994:62-63].

For instance, the Mail-Order Bride Law or Republic Act 6955 proceeded from an analysis that there is an ongoing business that makes Filipino women susceptible to the exploitation of recruiters and agents of marriage bureaus, and that huge profits are being generated by this business. The law also considered the numerous accounts of the exploitative and often violent elements found in such marriages from documentation of cases to actual crimes lodged by survivors or their families. Moreover, the law recognizes that due to many factors, including poverty, Filipino women have been a target of such marriage recruitment.

Gender-based analysis is vital in addressing the differential impact of laws and policies on the life of women and men. *Gender-responsive legislation*, therefore, frames its assumptions and premises on gender inequality and inequities and proposes policy actions to address specific gender concerns toward creating a more just society for all.

## CHAPTER TWO

# Laws, Gender & Women's Situation



### Introduction

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Laws, as a product of a structure vested with authority, can present themselves as “objective” and without a point of view. But laws inevitably reflect the interests, conduct and norms that are founded on socially-shaped assumptions about women and men—their roles, capacities, needs and vulnerabilities. In the same way, they can arrogate upon women and men rights, privileges, and obligations that are

resonant of those socially constructed stereotypes and roles. Laws can legitimize and strengthen gender biases and subordination in society.

A complex web of sociocultural, economic and political factors account and provide sustenance for the marginalized situation of women, as previous sections have shown. Laws, in overt and subtle ways, constitute a vital component of these factors. Given the characteristic patina of 'truth' that laws are imbued with, they and their silence can present or create reality far detached from what the truth really is. As example, laws that do not address a particular form of violence against women or limit their definition of such violence create a "reality" that such violence does not exist or that women suffer only the violence as legally defined, even if women's experiences may far belie the laws' claim.

In this section, we will be looking at existing laws that have an effect on gender relations and on development, and examine how these impact negatively on or may potentially harm the rights of women and men. Laws on marriage and family, labor, sexual violence, women and development are discussed and analyzed from a gender perspective. In our study of these laws, we have categorized them according to (a) how they have been defined in terms of the male viewpoint; (b) how they operate in a double-standard manner; (c) how they can be restrictive or protective; (d) how they present dilemmas and contradictions; and (e) how they promise to equalize gender relations in society.

The present publication, however, does not discuss fully legal parameters and legislation and its impact on gender relations in indigenous communities and the Muslim societies. This interesting but complex area of legislative advocacy can be a subject of another publication.

## Law and Marriage: A Male Terrain

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In the Philippines, as in most societies, marriage and motherhood are seen as the destiny of a woman. The valuation of women as wives and mothers is further strengthened by other institutions such as media and religion. The premium placed on these roles reinforces gender divide and gender subordination. It is in the area of family and marriage where some of the most glaring and contradictory gender relations are often seen. In general, cultures tend to regard the family and marriage as the basic unit of society and the basis of most civilizations. The situation of women in these institutions has not marched along with the progress of civil society. Gender inequalities still predominate family and marital relations. For one, while women-headed households continue to grow, the sociocultural notion of the male as head of the family persists.

**Family is an area often subject to women's examination and analysis, an undertaking that evolved concepts like 'familial ideology.' According to two writers, for instance, "(Family) ...does not simply describe the empirical reality of kinship or household structures, but has an ideological dimension: it is a discourse through which certain relationships are given meaning; through which this meaning is naturalized and universalized, and through which unequal power relations are obscured and legitimated. .... Through this ideology, women are constructed as wives and mothers, responsible for child rearing and domestic labor, whereas men are constructed as husbands and fathers, responsible for the financial welfare of the family.... (It) has shaped and reinforced the public/private distinction, and the construction of the family as private. This understanding of the family as private, and beyond**

state intervention, has operated both to immunize the oppression of women within this domestic sphere, as well as to obscure the extent to which this private sphere is itself created to and protected by state regulation" [Ratna Kapur and Brenda Cossman, 1996].

## The Family: A Unique Expression of Gender Power

The strong stance of the State for strengthening the family and protecting marriage has rendered common-law relationships almost legally invisible.

Blood or marriage exclusively defines family under Philippine law. Constitutionally, family is considered as the foundation of the nation, and marriage the foundation of the family (*Art. XV, secs. 1 and 2*). As an inviolable social contract, marriage is for the *establishment of conjugal and family life* and shall be protected by the State (*Art. XV, sec. 2, id.*). Laws specifically assign rights and obligations only to members of the family. Rights and obligations to support, to carry another person's surname, to share in the properties, and to exercise parental authority over a child are all based on a person being a family member, by blood or marriage. Family arrangements outside of marriage are legally discouraged and not recognized. An exception to the general silence of the law with regard to unions without the benefit of marriage is the reference in Articles 147 and 148 of the Family Code to the *property relations of couples in unions without the benefit of marriage* (emphasis supplied).

The official stance on marriage likewise explains the law's distinction between legitimate and illegitimate children, with the designation of lesser rights to the latter, for example, in the right to legitime. An illegitimate child is entitled only to one-half of the legitime of the legitimate child. Support for illegitimate children is the mutual obligation of parents (*Art. 195, Family Code*). However, parental authority over them is granted exclusively to the mother and the right to the use of her surname (*Art. 176, id.*).



The legal ordering of these relationships, particularly with respect to the offspring, may coincide with many women's assertion of and desire to have those exclusive rights and obligations over their out-of-wedlock children. However, this should not downplay a need to critically examine the implications or the practical consequences of such legal assignation of crucial parental roles to mothers and not to fathers.

The strong stance of the State for strengthening the family and protecting marriage has rendered common-law relationships almost legally invisible. As a result, the rights and violations of those rights of women and men in these relationships are not extended the corresponding legal protection and relief. Moreover, the law does not



cover relationships between the same sex, perpetuating their invisibility and, therefore, rights, privileges and benefits are not accorded them.

Family and marriage are legally constructed as to be the sites of rights and obligations of men and women. This construction is manifestly gendered and is sustained not only by society, but also by law. As will be exemplified below, many laws pertinent to marriage and family reinforce and legitimize society's biases against and stereotypes of women. They also sanction the subordination of women.

Many laws pertinent to marriage and family reinforce and legitimize society's biases against and stereotypes of women. They also sanction the subordination of women.

## Preservation of Marriage vs. Rights of Women

The State's premium on marriage is seen most obviously in cases of conflict between husbands and wives where the law consistently leans heavily toward spousal reconciliation. For example, no action for legal separation will be tried until after a period of six months from the time of the filing of the petition (*Art. 58, Family Code*). This "cooling-off period" applies regardless of the ground for the petition for legal separation, even in the case of domestic violence which may need immediate action or redress. The primordial concern is to preserve family unity and solidarity, and apparently at all cost. The general resistance in recognizing marital rape, although it is not precluded in the current legal rape law, is rooted largely to this obvious inclination of society and the State.

There has yet to be a specific law that addresses violence committed against women in marriage and other intimate relationships. Existing laws on physical injuries and other pertinent offenses are no real alternatives. Prevalent among law enforcers and the courts is the view that domestic violence is a private matter to be settled between the parties.

## Of Names and Identities

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Right upon marriage, a woman may be already at risk of losing her independent identity. Under the law, the wife may adopt the husband's surname after marriage (*Art. 370, Civil Code*). Although directory in nature, this law has become *de facto* mandatory. That such provision exists is in itself a constant reminder and reinforcement of the norm: men are the primary and dominant, and women the secondary, figures in marriage.

Women in general are not aware of their right to retain their maiden name after marriage nor that they have other options. And even if they were, the environment is such that women would not be allowed or

would find it extremely difficult and impractical to insist on their right to choose their maiden name. Notably, men upon marriage are spared from this situation. The law in this instance abets the virtual effacement of the distinct and autonomous identities of many women upon marriage.

## Partnership Between Unequals

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Male authority and dominance in the family are affirmed by law. This is evident especially in decision making with respect to the exercise of parental authority, the legal guardianship over the property of unemancipated children, and the administration and enjoyment of community and conjugal partnership properties. The Family Code specifically provides that the decision of the husband shall prevail over the wife's should there be conflict in views and resolve on those matters (*see Arts. 96, 124, 211, and 225 of the Code*).

The urgency and exigencies of the situations of conflict, following a common rationalization, call for immediate decision by one of the spouses. The same rationalization will not enlighten, however, on the reasons for the preference for the husband's decision, and it cannot. Evident is the spirit of the law's subscription to the dated dominant family law doctrine of *patria potestas*: the decision of the paterfamilias or the patriarch is the most judicious because of his exclusive responsibility over life and property. Further, assuming that there is merit to the "argument of the urgent and exigent situation," this should not outweigh considerations of the reinforcing impact of these pro-men laws on the family and society.

The law of course offers the wife the right to resort to the courts to question the husband's decision. But women's general economic

Women's general economic disempowerment and fear of or lack of trust in the justice system, among others, will effectively bar their exercise of this right.

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## Morality: Double Standard in the Law

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This morality presupposes that there are certain behaviors and practices which men can do or indulge in, and which women are socioculturally constrained from doing. The basis of such notion emerges from the fact that men have certain privileges in a society where his gender is dominant. A common example of this would be having extramarital affairs or engaging in multiple relationships. For women, the sanctions are strongly and primarily in the context of social ostracism, even in cases of women in serial monogamous relationships. The fact that women are expected to be loyal and nonsexual beings predetermined these formal and informal social sanctions.

The laws' contribution here includes the imposition of differential standards of sexual conduct within and without marriage, perpetuation of the "good and bad woman" dichotomy, and leniency akin to condonation in cases ostensibly in "defense of honor."

### Infidelity on Different Grounds

Sexual infidelity in marriage is a ground for legal separation (*Art. 55 (8), Family Code*). It is translated in the penal code as adultery and concubinage and is criminalized under Arts. 333 and 334, respectively, of the Revised Penal Code. These penal provisions mirror only too obviously the two-tiered 'morality' yardstick by which sexual infidelity in marriage is viewed by a predominantly macho society.

It does not require a stretch of one's logic to realize that the true intent of this law on adultery is primarily to protect the economic interests of the husband.

For the wife, sexual infidelity means one act of sexual intercourse. For the man, it is sexual intercourse under scandalous circumstances, keeping another woman in the conjugal abode, or cohabitation with her in another dwelling. The strict definition of adultery for the wife, as the official reasoning goes, is intended to prevent the introduction into the family of spurious heirs, or children not of the husband. It does not require a stretch of one's logic to realize that the true intent of this law on adultery is primarily to protect the economic interests of the husband. On the other hand, the law on concubinage appears intended to allow flagrant but prudent playing around by the husband. With the stringent requisites for concubinage, the husband's infidelity most likely will go unpunished, essentially defeating the supposed purpose of the law.



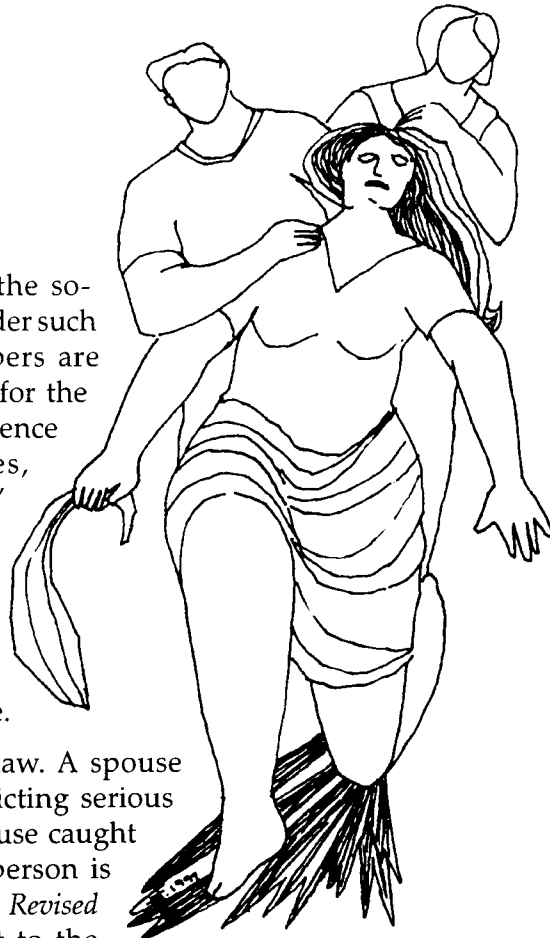
## Think About This...

**F**idelity is an express marital obligation (*Art. 68, Family Code*) and marriage a special contract between the wife and husband. Sexual infidelity could be considered a breach of the marital agreement. Since its definition discriminates against the wife, the easy line of attack of the adultery and concubinage laws will be that they discriminate against women. There is emergent thinking in this connection that sexual infidelity should not be penalized, and instead should be subjected only to civil remedies. The spouses' right to privacy can provide a legal anchor for this positioning. But there should be careful consideration of the implications of the use of the right to privacy argument here on the advocacy for laws on marital rape and domestic violence. In the advocacy on those issues, the State is being asked to intervene in the "private sphere" 'to protect women.

## Crimes of Passion: In Defense of Whose Honor?

In some jurisdictions, there are the so-called laws in defense of honor. Under such laws, husbands or family members are exculpated from criminal liability for the murders or for other forms of violence committed against their wives, daughters or sisters. The laws' rationale: women's unacceptable sexual behavior besmirches family honor; it, therefore, excuses acts of violence of the men in the family whose duty is to protect such family honor in the first place.

We have a somewhat similar law. A spouse adjudged guilty of killing or inflicting serious physical injuries on the other spouse caught in *flagrante delicto* with another person is penalized with *destierro* (Art. 247, Revised Penal Code). *Destierro*, in contrast to the penalties for parricide or serious physical injuries, entails only the prohibition of the convicted spouse from entering court-designated places or a specified radius of those places. It is not so much a penalty as a means of protecting the convicted spouse from avenging family members of the deceased or injured one. If physical injuries other than serious are inflicted on the other, the convicted spouse is not liable.



The same article provides for similar treatment for parents under the same circumstances with respect to their daughters who are below 18 years old and are living with them.

The law has been rationalized as follows: “(The) law, when the circumstances provided by this article are present, considers the spouse... as acting in a justified burst of passion” (*People vs. Gonzales*, 69 *Phil.* 65). While passion is a mitigating circumstance whose existence under other circumstances might lower the penalty by one degree, passion that rationalizes Art. 247 results in the practical absolution of the guilty spouse. The particular contextual distinctiveness of the latter (the *in flagrante delicto* situation and the marriage of the guilty spouse to the victim/the authority of the parent over the daughter) appears to have legally justified the different appreciation of the passion under Art. 247.

There are gender-based assumptions underlying this that should be exposed, and some of these are:

- that women should keep a particular sexual conduct or should maintain certain moral standards;
- that they are the wards or property of the men or the parents; and,
- that their deviation from the sexual or “moral” norm (the “good-bad woman” dichotomy), excuses the parents, particularly the fathers’ and husbands’ killing or injuring them.

Again, the *patria potestas* doctrine is in operation.



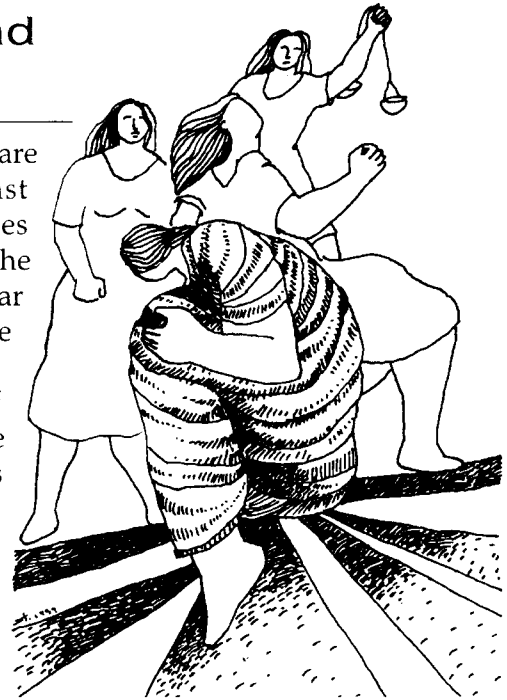


An examination of this law can focus on:

- the law's concept of justice and the rights and interests of the defendant and victim-spouse that it considers;
- the possible discriminatory effect on women of the application of the said law, given the predominantly 'macho' culture of our society and men's tendency to be proprietary toward their wives, and parents, especially fathers, toward daughters; and,
- the law's reinforcing effect on societal perceptions and attitudes about women's and men's roles, rights, and conduct in marriage.

## Chastity, Sexuality & Violence: The 'Good and Bad Women'

Sexual offenses in the penal code are either classified as crimes against chastity or denominated as "abuses against chastity," like in Art. 245 of the Revised Penal Code. It is very clear from this that the law has the following perspective: when offenses like rape, acts of lasciviousness, or seduction are committed against women, what is violated is the women's chastity or her purity. The law determines the value of the woman and her 'right' to be legally victimized and protected with her chastity, virginity, or good reputation.



As clear also is the law's point-of-view, which is the male conception of what these offenses are and what they constitute. But women survivors of violence, on the other hand, attest that what is violated is not their chastity or virginity; it is their person and dignity, their other fundamental rights as human beings. Women realize also, especially during trial, that the legal definitions of sexual offenses like rape hardly correspond to the violations that they experience. Rape survivors, for instance, might find out in the end that legally, they have not been raped. They did not struggle. They had previous sexual history. They

were prostitutes. They had intimate relations with the defendant. They wore alluring clothes. And so on. Whatever the legal apologia is, the common theme is the same—the woman is responsible for or is to be blamed for her rape. The marked dissociation of the law from women’s realities and experiences cannot be highlighted more than in these kinds of offenses.

Under the law, women can either be “good” or “bad.” If they are perceived to be “good”, they would be pronounced to have been victimized and, therefore, to be accorded justice and protection. On the other hand, if they are perceived as “bad” women, the law would find their violation difficult to believe; the law might deem even that they should be criminalized. Such is the situation of the prostitutes, or women who habitually indulge in sexual intercourse or lascivious conduct for money or profit [*Art. 202, Revised Penal Code*]. The male-dictated myopia of the law does not recognize that prostitution is an organized business enterprise: that it thrives on the objectification and commodification of women and their bodies; that it is sustained by clients, pimps, middlemen, bar operators and owners; that women are its victims.

These perspectives have yet to be reflected in our laws, as assumptions and misconceptions about women, their sexuality and the violence committed against them continue to hold sway in our society. The recently approved Anti-Rape Law which reclassified rape from a crime against chastity to a crime against persons, and which accepts that rape can take place without necessarily having penile penetration, is a step toward justice for women and all rape victims and survivors.

## Labor Laws: Value, Restrict or Protect Women?

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Laws that aim to protect and promote the welfare of women often stop short in offering legislative response to women's immediate situation or condition, and unquestioningly premise their prescriptions on gender-based assumptions about women and their experiences. So much so that although their protection and welfare are central to laws and programs for women, they also reinforce gender biases and stereotypes. It surfaces questions over clashing rights and interests of women and the State, and brings to the fore dilemmas over what is doable versus what should be done.

### **Domestic Labor: An Issue of Value and Status**

The non-recognition by law of their reproductive work compounds the predominantly inferior position of women in marriage. Under the Family Code, spouses have joint responsibility to support the family (*Art. 70*) and the equal right and obligation to the management of the household (*Art. 71*).

In many marriages, wives put in nonmaterial contributions into the household in the form of housework, health care, and family nurturance, while the husbands contribute financially. The law does not at all expressly acknowledge this nonmaterial contribution in marriage, further devaluing this kind of work, and further undermining the inferior status of the wife. Note that in common-law relationships, a spouse's "*efforts in the care and maintenance of the family and household*" shall be deemed to be that spouse's joint contribution in the acquisition of common property (*Art. 147, Family Code*).

On the other hand, the exodus of the general population, and especially women, from the rural to the urban areas has created problems for society in general and for women in particular. Continuing streams of unplanned urban migration in a massive scale exact its toll on the urban environment as local migrants add to the demands on the environment's limited resources. Furthermore, the abundance of cheap labor, particularly women's labor, in cities and urbanizing areas creates the environment for abuse and exploitation. Women workers are subjected to greater vulnerabilities as their abuse and exploitation assume two dimensions, as cheap labor and as women. Further demands on urban-based social services exacerbate many aspects of an already under-served urban constituent, on the one hand, and foster an even greater neglect on rural constituents on the other.

The same two-dimensional situation of potential abuse and exploitation faces the thousands of women seeking overseas employment, particularly since significant numbers of them work as domestic helpers and as "entertainers." Policy implications in the area of migration are urgently needed as abuses, including sexual exploitation, continue to haunt the lives of Filipino migrant women workers. Trafficking for sexual exploitation and cheap labor has become a global concern.

To date, we have a number of laws intended to protect and promote the welfare of women in the formal domestic labor sector, and recently, those in overseas employment. As shown earlier, the increasing availability of sex-disaggregated data makes it possible to capture the changing scenarios in the workplace as well as sharpen knowledge on women's situation. Those laws have to be studied to find out the following, among others:

- their consistency with and cognizance of emerging trends;
- their responsiveness to the particular situation and conditions of women in labor and employment as increasingly revealed by concrete data; and,
- their contributory role in challenging and addressing the inequalities and disadvantages faced by women workers, in particular, and by women, in general.



### Protection vs. Restriction

Labor law provides for night work prohibition for women (*Art. 130, Labor Code as amended*). The provision seeks to protect women from the risks of working at night, such as the danger of violence. Aimed at protecting women, the prohibition only restricts the mobility of women. It does not address the dangers that threaten women nor ensure safe workplaces and streets for them so women will have the freedom of movement at any time of the day. The nighttime ban does not acknowledge women's

economic burdens—when dire straits compel them to work even at nighttime, or when available work for them is only at night. And in the exceptional cases where women are enjoined to work at night (*Art. 131, id.*), it is not an acknowledgment of women's needs but is more a response to capitalist interests.

Measures like the night work prohibition exemplify the so-called “*protectionist approach*.” Characteristic of this approach is an unquestioning acceptance of and focus on the immediate dangers faced by women, ignoring or glossing over the analysis of why there are such dangers in the first place and why women are especially vulnerable to them. The almost knee-jerk response of measures adopting this approach is to rein in women and limit their movement. Consistent with their logic, it then minimizes women’s exposure to the risk or danger. As a result, they impair or limit women’s mobility and the enjoyment or exercise by women of this right.

By expanding the scope of inquiry and analysis, legislators and congressional personnel can broaden the solutions or responses that they will integrate into their proposals, addressing both the practical need of women to be protected from violence and their strategic need to have the causes of such violence addressed.

Measures like the night work prohibition exemplify the so-called “protectionist approach.” Characteristic of this approach is an unquestioning acceptance of and focus on the immediate dangers faced by women, ignoring or glossing over the analysis of why there are such dangers in the first place and why women are especially vulnerable to them.



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- The protective measures that will be proposed should ensure that the rights of women workers are not restricted or limited compared with their male counterparts; and depending on the specific measures, women workers should participate in or be consulted in making decisions affecting them and their situation.
- Gender-responsive measures that might be considered by employers can include the following: mandatory provision of safe transportation for women workers assigned to the night shift; provision of free lodging at the workplace; and free self-defense programs for women workers.
- A consultative mechanism can be installed in the workplace to channel the sentiments and ideas of women and men. Gender sensitivity training and awareness-raising programs on violence against women in the workplace and for the general public are enhancing activities that should be promoted.





## Working Mothers: Pluses and Minuses

The protective attitude of the State toward women's maternal function is easily revealed when the Constitution no less avers that "(the) State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions" (*Art. XIII, sec. 14*). An example of this is the provision by law for maternity leave benefits which are required from employers in the public and private sectors. Another is the law's prohibition of discrimination founded on a woman's marriage, which has been inextricably linked to her childbearing responsibilities.



## Think About This...

- What is the impact of the legal provision for maternity leave benefits on the marked productive and reproductive divide in the allocation of tasks and roles in the family? Women unarguably need the maternity leave period for her delivery, recovery, and care of the newborn. Does it not reinforce her reproductive role?
- Due to the financial burden that the provision of maternity leave benefits impose on employers and the likely disruption in work schedule resulting from women going into maternity leave, are women in the workplace, especially those in the private sector, not discriminated against by reason of their child-bearing capacity?

The Labor Code prohibits any employer to require as a condition for employment or for continuation of employment that a woman employee shall not get married, or to stipulate that upon getting married, the employee shall be deemed separated from service, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman by reason of her marriage (*Art. 136, Labor Code*). The Code further provides that it shall be unlawful for employers “to discharge (a) woman on account of her pregnancy, or while on leave or in confinement due to her pregnancy; or, to discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant” (*Art. 137, id.*). These laws no doubt tacitly acknowledge that women are exposed to discrimination especially on account of their maternal function.

This situation of discrimination is described as follows in the Philippine Plan for Gender-responsive Development: “It has been noted that most employers when faced with a male and female applicant would readily accept the former even if both are equally qualified in terms of education, training and skills. Furthermore, single women are preferred to married women and some factories require a virginity test to confirm this status. Married women find themselves at a disadvantage because most employers balk at having to pay maternity benefits. Thus, it is common for many women to forego marriage just to keep their job.”

The concept of paternity leave potentially offers a means to address the concerns relating to maternity leave benefits. It could help in changing the productive/reproductive stereotypes of women and men, promoting the idea of “joint parental responsibility.” It might also help minimize discrimination against women as paternity leave benefits have concomitant financial implications on employers.

It has been noted that most employers when faced with a male and female applicant would readily accept the former even if both are equally qualified in terms of education, training and skills.



## Think About This...

The present Paternity Leave Law (RA 8187) with all its meritorious intent, however, raises concerns on its effectiveness.

- it provides only for a much shorter period of seven days, thereby hardly denting the entrenched stereotype of woman as the child bearer and nurturer
- with the limited duration of the paternity leave and its corresponding limited financial toll on employers, the law hardly equalizes women's disadvantaged and discriminated situation in the workplace.
- the law applies only to "legal husbands" with respect to their "legitimate spouses" with whom they are cohabiting. By making marriage an unwarranted basis for distinction in its coverage, it undermines further its potential contribution in challenging gender concerns like stereotyping and discrimination against women. At the same time, the law discriminates against the "nonlegal" husbands and their partners on whom the concerns mentioned likewise apply.

## Gendered Laws: Two Steps Forward, One Backward

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Dilemmas and contradictions in the law have resulted in reconciling various interests in society and reflecting these in legal instruments. Because reality is much more complex and less concerned with consistency, a clear perspective on how the law should assign and allocate rights, and social justice, in general, is imperative.

Contradictions and dilemmas structure women's lives as expressed in the dichotomous relationship between their reproductive and productive worlds, their private and public spaces, their individuality and social roles. All this is understandably mirrored in the language and intent of the law.

An area which presents potential contradictions in the law is the merging of autonomous ethnic or religious customs in legal instruments. Dominant cultures may have traditions that clash against the culture of the minority. Respect for the rights of cultural or ethnic groups must, therefore, guide our laws.

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## Negotiating Women's Sexual and Reproductive Self-Determination

A most controversial debate surrounds the issue of women's right to control their bodies and matters relating to their sexuality and fertility. The right to sexual and reproductive self-determination refers to the right to decide how many, when, with whom and under what circumstances, if any, to have children, regardless of class, race, ethnicity, religion and age. Implied in this is the freedom to use contraception and express one's sexuality. The Constitution states that

“...there should be equal protection of the mother and unborn child from the moment of conception” which is interpreted as a deterrent to abortion. The legal balancing act between the interests of religious ethics and of women’s realities is clear in this provision.

The vulnerability of women to sexual violence has not been considered, in this legal interpretation of society’s values. Incest and rape in some cases result in unwanted pregnancies which women are forced to carry to full term because of moral and legal impediments. This merely creates more injustice and violence as respect for the physical and moral integrity of women is disregarded in favor of conventional social expectations. In cases of children who get pregnant because of incest, the issue of whether they could terminate their pregnancies or not raises the ante for social justice for women survivors of violence.

On another dimension, the issue of abortion is implicated in maternal mortality. Despite the significant decline in the country’s maternal mortality rates, the figures on maternal mortality and morbidity pose grave concern, with women in the age brackets 15 years and below and 45 years and over being the most vulnerable. It is important to note that the second leading cause of maternal mortality is other pregnancy-related hemorrhages and those with abortive outcomes, accounting for 16 percent of maternal deaths [*NCRFW and ADB, 1995*].

Despite societal and policy-ingrained institutional taboos, abortion is a reality among Filipino women. A study conducted by the University of the Philippines Population Institute among 1,169 women in Metro Manila reveals a 16.6 abortion prevalence rate. Reasons given by women include: economic difficulties, problems with the husband or partner, the youngest child being so young still, having too many children, not being ready to have a child and having a planned or scheduled trip abroad. Findings in other studies reveal that all kinds of women resort to abortion—married, single, partner in a live-in arrangement, separated,

widowed, of any childbearing age. The highest number of women who opted for abortion were those in the 20 to 24 age bracket and married, who had previous pregnancies and children. With abortion being illegal, women are driven to seek the service of untrained practitioners under unsafe conditions. This is what makes it dangerous and fatal for hundreds of thousands of women. Thus, abortion has ceased to be just an issue debated by the Church and State. It has become a public health concern [UPPI, 1996], as it is integral to the whole discussion of women's health and reproductive rights.

### **Ethnicity, Religion and Rights: Walking the Legal Tightrope**

The growing activism of the international women's rights movement has effectively opened to external scrutiny the many struggles of women that hitherto have been fought only within national confines. Serious concerns of women have taken on new dimensions as they are juxtaposed against standards that have gained relative global acceptance. The framing of many of these concerns in terms of women's human rights has lent force to the advocacy that the State take responsibility over those concerns.

Potential dilemmas and difficulties face the advocates when those issues find strong customary or religious moorings. Entry into the territory of tradition, culture and religion inevitably involved having to contend with a need to balance, on the one hand, respect for and preservation of cultural identity and integrity, and on the other, respect for and observance of human rights standards for women. There may be instances when the rights involved might parallel some cultural and religious principles and values and, therefore, can be assimilated into the domestic context. There may be situations, however, when rights and



Entry into the territory of tradition, culture and religion inevitably involved having to contend with a need to balance on the one hand, respect for and preservation of cultural identity and integrity, and on the other, respect for and observance of human rights

of women who are in polygamous marriages.

The UN Special Rapporteur on Violence Against Women tries to explain the complexity of the situation of advocating for women's rights: "Human rights which had beginnings in and are identified with the north (or west), to be effective must "go beyond the normative, textual essence and become part of the legal culture of a given society. They must strike a responsive chord in the general public consciousness with regard to political and civil issues" [R. Coomaraswamy, 1994]. It is in the area of women's rights as human rights, she adds, that there is the "least amount of such resonance... and that this lack of resonance has prevented the effective implementation of rights." Barriers to the implementation of human rights, according to her, are two-fold: "the lack of a proper effective implementation machinery to make rights real in the lives of women as well as women's lack of awareness of the rights machinery that would empower them. The second and more formidable barrier is the refusal to accept the values in and of themselves as an

their assertion are commonly held or presented in direct counterpoint to certain cultural or religious norms and beliefs, or as undermining community solidarity and interests. For example, there are cultural communities, which uphold the tradition of polygamy. One of the concerns of an advocate for women's rights is to examine the possible or potential areas of marginalization or exploitation



ideological resistance to the human rights of women" [*Ibid.*].

A concrete manifestation of these issues is presented by the recent congressional consideration of the indigenous people's rights bill advocated by indigenous people's organizations and supportive NGOs.

Under our Constitution (*Art. 11, sec. 22*), "the State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development." Consistent with this policy and in recognition and respect for cultural integrity and diversity, the Family Code exempts marriages among Muslims or among members of the ethnic cultural communities from the requisite of a marriage license, provided that they are solemnized in accordance with their customs, rites or practices (*Art. 33, Family Code*). In addition, Congress enacted in the 1970s the Code of Muslim Personal Laws, which is the governing law for Muslims with respect to personal status, marriage and divorce, rights and obligations and property relations between husband and wife, paternity and filiation, parental authority, support and maintenance, and successions and inheritance. These laws and constitutional provision leave no doubt about the stance of government with respect to the cultural integrity and diversity of Muslim and indigenous communities.

The domestic legal situation in this instance is not different from other multi-ethnic and cultural countries in which there is an emerging advocacy to examine customary and religious precepts and norms against a human rights framework. The conflicting positions of legislators, indigenous people's groups and other advocates on the inclusion of provision on women's rights in the indigenous people's bill might be a signal that the silence over these matters may soon be broken.

## Equality and Nondiscrimination: Legal or Real?

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Disparities in the status and situations of women and men have been shown to exist within marriage and family and in labor and employment. As shown in the previous discussions, these disparities are encoded as well in our laws, so that these inequalities are invested with legal foundation. However, advances in the law regarding women's rights have been made in recent years. These laws are examined in the foregoing sections.

### **Women in Nation Building: A Challenge in Implementation**

A much-heralded stride in women's rights advocacy is the constitutional guarantee for the "fundamental equality before the law of women and men" (*Art II, sec. 1, Const.*), which appears to have added momentum to the enactment of equality legislation in the country. RA 7192 or the "Women in Development and Nation Building Act," affirms this policy, adding that, "the State shall provide women rights and opportunities equal to that of men." This law provides for:

- equality in the capacity to act, among others, in securing loans and executing security and credit arrangements; in acting as incorporators and in entering into insurance contracts; and, in applying for passports, visas and other travel documents without need of consent of the spouse;
- equal access to membership in all social, civic and other similar organizations; equal rights and privileges as their spouses if they belong to the same organization; and,
- equal opportunities for appointment, admission, and training in the military.

Moreover, RA 7192 mandates the allocation of a substantial portion of funds for official development assistance for programs and activities for women. It likewise directs all government agencies to ensure that women benefit from and participate directly in development programs.

This law no doubt has gained mileage in promoting awareness on equal rights and opportunities for women, especially within government. Requiring agencies to submit to Congress regular compliance reports may be creating pressure for those agencies to implement the law. These are gains that definitely should not be downplayed.

In the end, the gauge of the effectiveness of the laws is the positive changes they have made possible for women. The present law provides the legal guarantee for equal rights and opportunities in the specified areas. These legally guaranteed equal rights, however, need to be translated into actual results for women. Women actually accessing and benefiting from government credit programs, or women increasingly joining and participating in community associations who enjoy support mechanisms from local government agencies can be taken as a gauge of how responsive policies are.

This translation might be guided or facilitated by some gender-based considerations that point to areas that might be factored into future equality or other legislation. For instance, by its guarantee of equal rights and opportunity, does not the law implicitly assume that the relevant situations or starting points of women and men are the same, that is, that women are faced with no peculiar needs that should be addressed? Is this assumption valid? Are there gender-based inequalities or biases that might obstruct women from actually taking advantage of her equal rights and opportunities under this law? Finally, what can be done to eliminate those barriers, such as women's multiple burdens?

The implementation of RA 7192 rests with the various agencies of government, and they have been allocated the financial resources to do so. The agencies are, thus, strategically positioned to address the gender-based concerns mentioned and to institute the mechanisms or programs that might be required to ensure that indeed women enjoy those rights.

### **Sexual Harassment: Limitations in Definition**

Another example of protective legislation is RA 7877 or the Anti-Sexual Harassment Law. The law provides for penalties for acts of sexual harassment in work-related, educational and training environments. However, the law is limited in its coverage and incidences. The moral ascendancy required by the law as a defining factor in sexual harassment cases effectively exclude those committed by peers and by individuals of lower rank or position than that of the victim and survivor. It recognizes only sexual harassment committed in work and in educational and training environments, precluding all acts of sexual harassment which women are subjected to in the community and in other places. The limited legal definition of sexual harassment has, thus, narrowly circumscribed women's experiences with this violence.

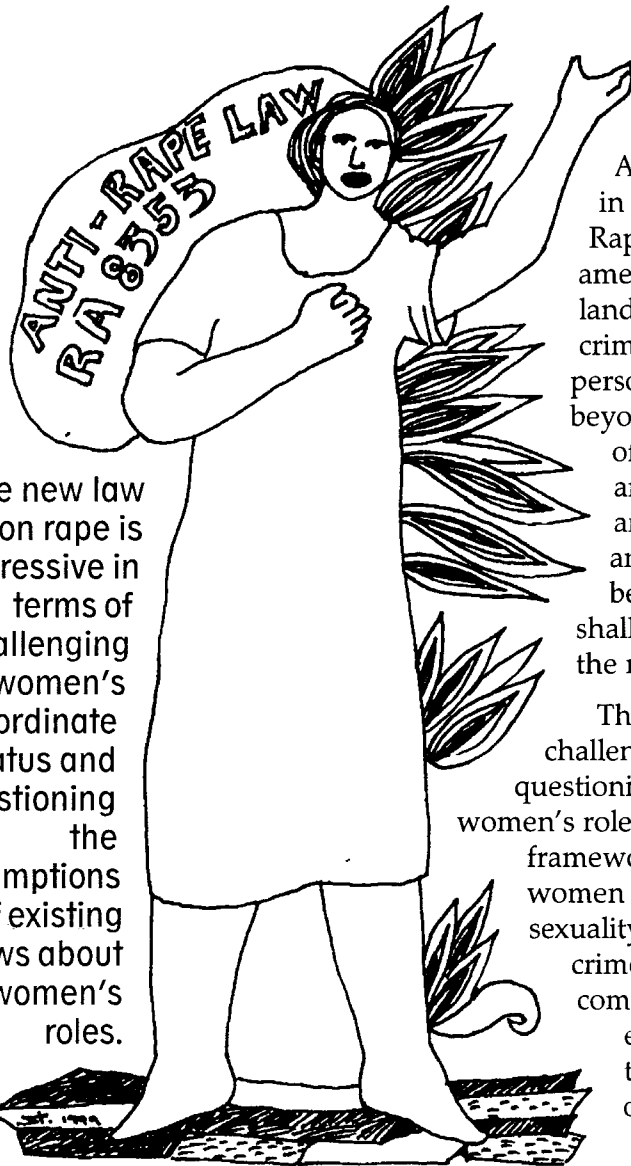
### **Prohibition Against Discrimination: Do They Work for Women?**

Another significant law, this time addressing discrimination in the workplace, is RA 6725, an amendatory law to Art. 135 of the Labor Code. This law aims to strengthen the prohibition against discrimination in employment. It renders unlawful discrimination against women employees with respect to terms and conditions of employment solely on account of sex. Considered acts of discrimination under this law are: the

payment of lesser compensation to a woman employee as against a male employee for work of equal value; and, favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes. In addition to this amendatory law, the Code also contains anti-discriminatory provisions relating to marriage and pregnancy previously mentioned in the section on maternity leave benefits.

Since there are no available reports on whether women are availing of the remedies afforded by this prohibitory law, there is no way of determining the impact of this law on women employees in the private sector. But examining at this point the said law from a gender perspective might yield useful insights for future actions that would eliminate or minimize discrimination against women employees.

This examination may include a study on other areas where women employees may suffer sex-based discrimination to determine the adequacy of this law and a possible need to amend it or introduce complementary legislative proposals. One possible area is discrimination against women in hiring which is patently manifested in advertisements that prefer male to female applicants. Another is discrimination that results from the vertical job segregation of women. Possible obstacles or difficulties particular to women that may negate the law's intent of equalizing women's opportunities for skills development and career mobility is also worth looking into. Such an examination can extend to possible factors that might deter women from taking action for discriminatory acts committed against them.



The new law on rape is progressive in terms of challenging women's subordinate status and questioning the assumptions of existing laws about women's roles.

## Anti-Rape Law: A Not So Chaste Decision

A significant leap in the history of lawmaking in the Philippines is the passage of the Anti-Rape Law of 1997 or RA 8353, which was amendatory to the Revised Penal Code. It is a landmark legislation as it reclassifies rape from a crime against chastity to a crime against persons. It also expands the definition of rape beyond carnal knowledge to include "... an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genitalia or anal orifice of another person." Marriage between the offender and the offended party shall not extinguish the crime of rape, so that the new law implicitly recognizes marital rape.

The new law on rape is progressive in terms of challenging women's subordinate status and questioning the assumptions of existing laws about women's roles. By veering away from the chastity framework, the law in effect finally recognizes women as persons whose worth lies beyond their sexuality. It also renders the crime of rape as a crime against public morals rather than a crime committed against private individuals. By expanding the definition of rape, the law takes into account the experience and reality of millions of women who may not have

been subjected to penile penetration but have been forced to endure other acts which have the same traumatic and destructive effect. Women's reality has begun to be reflected in the law.

Marriage, which is considered to be in the private domain, ceases to be a ground where any form of sexual conduct is allowed. This is how the law challenges that delicate private-public divide. The Anti-Rape Law, however, still vacillates between the two realms. While making rape a public crime, it also recognizes that "...the subsequent forgiveness by the wife ...shall extinguish the criminal action or the penalty imposed." This allows a public crime to be extinguished by a private individual.

The law on rape, while still constrained by interests other than those of the women, has entered into the purview of women's sexuality as defined and accessed by men through the institution of marriage and the law itself. The main theme running throughout is the right of women to control their sexuality whether in public or in the very private world of marriage.

The Anti-Rape Law, however—while making rape a public crime—also recognizes that '...the subsequent forgiveness by the wife ...shall extinguish the criminal action or the penalty imposed.'

## Equality Now! Or Never?

Equality for women, a cornerstone in women's advocacy for rights, is an area that has become a subject of many debates. And the central point of contention in many of these exchanges is how to view sameness and difference between women and men. The following discussion only briefly outlines the broad contours of the discourses on equality. It does not attempt to or cannot encompass the richness, the divergences, and refinements of current discussions on the subject.

Equality as commonly understood means "being the same as," or "being equivalent to." Men and women, as the starting point, is not the same, however. They have differences which have been labeled

as: the so-called “biological difference,” i.e. women’s child-bearing capacity; and “gender-based differences,” or those socially-constructed assumptions about roles, capacities, privileges, vulnerabilities, etc., and the inequalities against women that these assumptions give rise to.

According to a dominant line of thinking, for women to be equal with men means that women should be treated the same as men, on the assumption that they are the same. Measures following this approach provide for a single (“neutral”) standard for women and men, i.e., “give to women what men have.” An example of this approach is equal opportunity or equal access legislation.

A variant of the former position is one that is premised on women being different from men. This position holds that women and men, because of their differences, should be accorded differential treatment. This is the “special benefit rule or special protection rule” [MacKinnon C., 1987], or the “protectionist” approach as some would have it, depending on what difference is being addressed. Illustrating this are laws providing for protective measures for women (e.g. curfew or nightwork prohibition for women, ostensibly to protect them from violence) and affirmative action intended to equalize women’s opportunity or access in particular fields, i.e. “to level the playing field.”

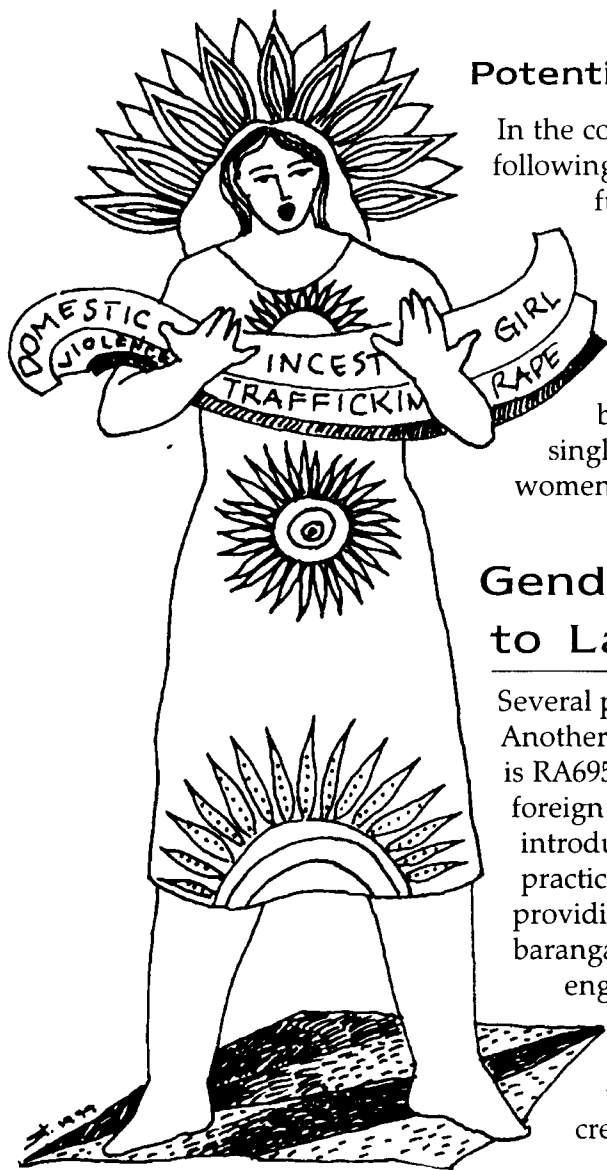
The foregoing, commonly referred to as the formal approach to equality, is lauded by many for the minimum legal or formal equality that it assures women. However, it is also criticized on various grounds. It has no transformative value, since it accepts as immutable truths assumptions about women and men, does not recognize and address gender-based inequalities or disadvantages,



and in fact, strengthen and perpetuate them. At the same time, it may come up with token females who have broken the male glass ceiling. Women, in general, will have to cope and meet the "single" (male) standard. This they have to do in the face of their multiple burdens and their other gender-based handicaps and vulnerabilities.

Given the limitations of the formal approach, many alternatives have been put forward. One is what is interestingly called the "inequality approach." Under this approach, the test of whether equality is promoted or not is "...whether the policy or practice in question integrally contributes to the maintenance of an underclass or a deprived position because of gender status" [C. MacKinnon, 1979]. Subscribing to this approach, Ann C. Scales (1986) adds: "(T)he issue is not freedom to be treated without regard to sex; the issue is freedom from systematic subordination because of sex." Another option proposes the following elements in addressing equality: the challenge of gender-based assumptions, differences, and biases; a corrective approach to the resulting historical and present burdens, inequalities and oppression of women; and, a commitment to the promotion of women's full enjoyment and realization of their rights. There are many variants as mentioned in these approaches, coming under different names. It would appear, however, that common to the alternative approaches is the premise and recognition of the systematic subordination of women.

With the advances in women's rights advocacy, the issue of equality has ceased to be a mere fare for academic debates. Legislation of late is increasingly looked upon as a means to promote equality for women, thereby calling for serious and continuing consideration of the implications and refinements of different approaches to equality.



## Potential Areas for Legislation

In the consultations held with the legislative staff, the following issues were identified by the project participants for future legislative consideration: domestic violence, incest, trafficking in women and girls, abortion services for survivors of incest and rape, expansion of the sexual harassment law to include harassment by peers, review of the law on adultery, support services for solo parents, domestic partnership between same-sex relationships, tax exemptions on single women-headed households, and representation of women in political leadership positions

## Gender: An Essential Dimension to Lawmaking

Several progressive laws have been enacted in recent years. Another protective legislation in addition to those earlier cited is RA6955, which bans the matching of Filipino women to foreign nationals as mail order brides or through personal introduction for a fee. There are also laws that address some practical needs and concerns of women, e.g., a law providing for the establishment of daycare centers in barangays (RA 6972) and one extending assistance to women engaged in micro and cottage enterprises (RA 7882).

Added to these are laws not specific to women but are aimed to benefit citizens in general. Despite their good intent and progressive text, laws may not create their desired impact on women, as they may not

even be implemented at all. Contextualizing laws within a legal system might help in a better understanding of the factor that may account for this.

By legal system, one refers to “the rules that constitute the formal body of law; the discourses in which those laws are situated, and through which they are articulated and elaborated; the institutions by means of which they are constantly subverted and modified in their implementation and administration; .educational institutions through which legal culture is transmitted from generation to generation, and the various actors whose participation as lawyers, law enforcement officials, judges, legislators, bureaucrats sustain the enterprise” [Dalton, 1987]. This entire system, unfortunately, partakes of the responsibility of keeping gender discrimination alive, reinforced and sustained.

The progressive intent and content of laws, therefore, should be complemented by provisions or laws directed at the critical components of the legal system. For example, laws should be conscious of the barriers that might impede women’s access to the benefits or programs provided under them. Some of these barriers can be women’s lack of confidence to deal with financial and similar institutions, distance from the institutions concerned, and the insensitive attitudes of the people involved in implementing the laws. Laws should consider that institutions and actors involved in its actual operation could “subvert” the lofty purposes of the law, and thus, accordingly plug the loopholes.



## Think About This...

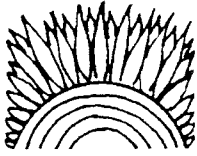
Laws might not redound to the benefit of all women (and may even cause harm to some of them) because all women are not similarly situated. Women's conditions and situations may differ according to class, ethnicity, religion or other factors. The so-called general laws or those that do not specifically address women's needs might have differential impact on women and men primarily because of gender-based differences, disadvantages and inequalities. These laws should, therefore, ensure that the gender dimension is taken into account.

Laws can help facilitate social transformation. They can serve as impetus to or support changes that should take place. They can also provide the legal framework that can enable those changes to take place. As Kathryn L. Powers (1979) writes: "(The) intrusive, intersubjective qualities of modern law continually interact with social practices and relationships, making legal change an integral necessary component of social change, even though changes in law are not solely determinative of the nature and direction of social change." In the context of the advocacy for women's equality and empowerment, laws present many possibilities. They can be potential avenues or channels for women's alternative ideologies and visions for themselves, their families, and society. They can also be a battleground for women's definitions of their hurts and violations, as well as their versions of what -should-be. Laws can provide women with responses to their day-to-day practical needs, and contribute to meeting their strategic ones. Nuanced to women's life situations and sensitive to the interactive patriarchal forces at play, laws can make a difference in women and men's lives.



## Conclusion

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Gender mainstreaming is critical in the legislature, the arena that can put in place laws that address both the practical and strategic needs of the Filipino people, alleviate the status of women in their daily lives as well as ensure that their daily needs are framed in the vision of the future. This vision, more than anything else, is the reason why legislative actors, particularly the lawmakers, are there in the first place. This sacred task placed upon the elected representatives of the people is equally shared and extends substantially to the legislative staff. This is the challenge facing them: to recognize that gender mainstreaming is not simply a policy, but a vision of a fair and equitable future where women and men are true and equal agents of change.

There are constraints and limitations in culture—social, political and economic—which hinder the full flowering of gender equality. Legislation may be a way out of the seemingly tight situation of female subordination. There are already milestone legislations that address some of women’s concerns and the inherent inequality between the sexes, but these are replete with dilemmas and contradictions. Implementation sometimes poses problems. It is therefore society’s responsibility to guard and protect the few gains made in the area of gender-sensitive legislation. This is both a challenge as well as a vision.

# ANNEXES

# **ANNEX 1**

## **Seminar-workshop Towards Enhancing Gender-responsive Legislative Advocacy**

CAYLABNE GROUP  
April 21-24, 1997, Caylabne Bay Resort, Cavite

### **LIST OF PARTICIPANTS**

1. MA. LOURDES JUAN-ALZATE  
Committee on Youth, Women & Family Relations  
Senate
2. MARTA BAUTISTA  
Committee on Health  
House of Representatives
3. LOIDA BERBANO  
Committee on Social Services  
House of Representatives
4. MARJORIE CUENCO  
Bill Drafting Division  
House of Representatives
5. EDILBERTO DARANTINO  
Committee on Revision of Laws  
House of Representatives
6. REBECCA DICHOSO  
Committee on Cultural Communities  
House of Representatives
7. EVELYN DE JESUS  
Human Resource and Management Division  
House of Representatives
8. ORESTES ORANTE  
Special Committee on Overseas Contract Workers  
House of Representatives
9. TERESA ORLINO  
Congressional Planning and Budget Office  
House of Representatives
10. RUFINO MANALIGOD  
Committee on Civil, Political and Human Rights  
House of Representatives
11. JOVEN MARCELANG  
Committee on Labor and Employment  
House of Representatives
12. LULU REYES  
Office of Sen. Leticia Ramos-Shahani  
Senate
13. CESAR RODRIGUEZ  
Office of Cong. Allen Quimpo  
House of Representatives
14. ELOISA ROGADO  
Office of Cong. Minerva Laudico  
Sectoral Representative for Women  
House of Representatives

## **ANNEX 2**

### **The Facilitating Team (FT) Members**

#### **HOUSE OF REPRESENTATIVES**

**LOIDA BERBANO**  
Committee on Social Services

**JOVEN MARCELANG**  
Committee on Labor and Employment

**RUFINO MANALIGOD**  
Committee on Civil, Political and Human Rights

**TERESA ORLINO**  
Congressional Planning and Budget Office

#### **SENATE OF THE PHILIPPINES**

**LULU REYES**  
Office of Sen. Leticia Shahani



# ANNEX 3

## List Of Participants

PRE-TEST WORKSHOP  
(April 2-4, 1998, Corregidor Island)  
and  
VALIDATION WORKSHOP  
(April 27, 1998, Quezon City)

LETICIA ABEJO\*  
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CORAZON ALANO\*\*  
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\*\*attended the Pre-Test Workshop

\*\*\*attended the Validation Workshop

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JOY ELENA PICCIO\*  
Committee on Women  
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ERLINDA TINIO\*  
Committee on Health  
House of Representatives

MA. PAZ FILOMENA  
VILLAFUERTE\*  
Publication and Editorial Division  
House of Representatives

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\*attended the Pre-Test and Validation Workshops

\*\*attended the Pre-Test Workshop

\*\*\*attended the Validation Workshop

## GLOSSARY OF TERMS

*destierro*—a form of penalty that prohibits a person from entering court-designated areas or prevents him/her from getting close to the aggrieved party; in other countries, this usually imposed on wife batterers or stalkers

*double day*—refers to the heavy, overlapping workload of women, whether earning or otherwise, which if computed in terms of hours would come up to more than 24 hours a day; see also multiple burden

*gender*—set of characteristics, roles, expectations attributed to women and men by society

*gender mainstreaming*—strategy of integrating gender and development concerns and issues at all levels of government undertaking

*gender perspective*—way of viewing issues and problems that take into consideration the different realities of women's and men's lives, and recognizing that there is an unequal relationship between the two

*gender-responsive legislation*—the process of lawmaking that addresses gender inequality and inequities with the aim of creating a more fair and just society for all

*gender-sensitive*—having an understanding of the marginalized position of women and consciously challenging the attitudes and behavior that reinforce women's subordinate status

*gender subordination*—refers to the secondary position of women in society

*in flagrante delicto*—caught in the act

*multiple burden*—refers to the many and various, overlapping, heavy tasks of women that include: reproductive work, productive work, community management and all other work necessary for the survival of family; see also double day

*patria potestas*—traditional doctrine that believes that the decision of the father or patriarch is the law by virtue of his exclusive responsibility over life and property

*practical gender needs*—women’s immediate needs and concerns, e.g. health care, livelihood

*production/productive work*—work that has economic value and compensation

*reproduction/reproductive work*—work that revolves around the home or domestic life like childrearing and is usually not paid

*sex*—biological characteristics of male and female

*sexual division of labor*—allocation of tasks and responsibilities according to the gender roles assigned to men and women by society, and has the effect of keeping men in the public sphere and women in the private/domestic sphere

*strategic gender needs*—refer to those needs of women that are linked to and challenge their subordinate societal status, e.g. women’s right to make decisions over all aspects of their life

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**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.



**Manny B. Villar Jr.**  
Speaker  
Congress

**T**his document will certainly prove to be an indispensable source of insights and information for legislators and policymakers, their staffs, legal practitioners and students in this time of want for politically-correct, gender-responsive pieces of legislation.

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.

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.