

## IV. Women, Law and Development

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journal or publication title	Modernization of Laws in the Philippines
volume	9
page range	60-79
year	2001
URL	<a href="http://hdl.handle.net/2344/00015161">http://hdl.handle.net/2344/00015161</a>

## IV. WOMEN, LAW AND DEVELOPMENT

### A. Historical Perspective

The status of Filipino women has been inextricably linked with historical unfoldings in both national and global settings. If we survey the data, it demonstrates that the Filipino woman's subordinate position in society has been associated with patriarchy and sexism which was a consequence of the country's colonial history. These patriarchal notions date back to ancient Rome which obliged women "to conform themselves entirely to the temper of their husbands and the husbands to rule their wives as necessary and inseparable possessions" (C.P. Edwins, *When Battered Women Kill* 164 (1987)). For many centuries, all dependent members of the family were under the absolute power of the head of the family (*paterfamilias*). He had the power of life and death over his descendants and there was no redress against the cruelty of the *paterfamilias* (C.P. Sherman, *Roman Law in The Modern World*, 109 (3d. ed., 1937)). Such a concept was transferred to the Philippines by virtue of Spanish colonization.

The early Spaniards noted that the native women of the islands enjoyed a relatively high degree of autonomy and economic importance based on their socio-economic roles in society along with a quasi-magical status conferred by their reproductive function (J.F.I. Illo, *Fair Skin and Sexy Body: Imprints of Colonialism and Capitalism on the Filipino*, In *Women and Gender Relations in the Philippines* 47 (1999) citing Reid, 1988). This status has sometimes been taken as a reflection of matriarchal elements in pre-Spanish society because a woman could name her child, retained her own name even when married, and could freely dispose her own property (Chapter I, *The Changing Status of Women*, in UNDP, *Philippine Human Development Report, 1997* 2-3 citing Mananzan, 1991). Gender relations were marked by parity. Women played an active role in courtship and lovemaking; divorce did not destroy a woman's livelihood; she had equal access to production resources; and women occupied leadership roles (M.J. Mananzan, *The Filipino Women: Before and After the Spanish Conquest in the Philippines* in *Essays on Women*, 7, 36 (1991)).

The arrival of the Spaniards in 1521 presaged a new era of Philippine law. It meant the introduction of a foreign system of laws, namely Roman law and Civil law influence which was accomplished by the extension of Spanish laws and Codes to the Philippines either expressly by royal decree, by implication or through the issuance of special laws for the islands. While debt peonage and share-cropping had their origins in the pre-conquest period, it was the colonization process that institutionalized these socio-economic

phenomena (*Ibid.*). It also meant the introduction of Spanish customs, religious beliefs, and laws that imposed numerous restraints and disabilities on the women's freedom. Within the context of these developments, the transformation of women from respected equals of man to objects of subjugation emerged.

With the rise of industrial capitalism in Europe in the 18<sup>th</sup> century, it also saw the ascendancy of the ideology of the housebound wife which was embraced enthusiastically by the Filipina native elite. Although many of the women of this class managed land and finances and engaged in business, the ideology completely by-passed the peasant women who remained active in subsistence farming and the emerging working class of young women who worked in the tobacco factories (L.L. Rodriguez, *Patriarchy and Women's Subordination in the Philippines*, 1 Rev. of Women's Studies 18 (1990)). Notwithstanding such contribution, the image of the Filipina was one of modesty, chastity and submissiveness.

The termination of the Spanish–American War in 1898 brought about U.S. dominion over the Islands. Spanish laws, customs and rights to property inconsistent with the American constitutional principles and institutions were superseded. Concepts of liberty and egalitarianism were introduced with education as a priority. Education raised the social and political awareness of women so much so that the right of suffrage was obtained in a plebiscite in 1937.

Economic activity among women during the American era expanded rapidly due to access to U.S. markets. At the same time, the social norms and cultural values began to take on new forms that brought about long-term contradictory and diverse effects on the role and status of women. Although their primary concern was the care and the maintenance of the family, women began to be assertive and expressive, thus veering away from the Spanish colonial image of passivity and inarticulateness (J.F.L. Illo, *op. cit.* note 3, p. 48 citing Dionisio, 1994).

The achievement of independence of the Philippines in 1946 brought about many social changes that resulted in the gradual restoration of women's rights. A new Civil Code enacted in 1949 brought into the realm of law certain Filipino customs together with the liberalization of women's rights.

Because of the increasing numbers of women joining the labor force, several laws were enacted namely, Republic Act No. 679 (1952) which regulated the employment of women and children; Republic Act No. 337 (1948) giving married women the right to make deposits in banks, receive dividends and interests in their own name; Republic Act No. 2714

(1960) which established a Women and Minors Bureau in the Department of Labor and a host of others.

With the imposition of martial law by President Ferdinand E. Marcos a spate of Presidential Decrees ensued, affecting the status of women. A new Constitution was promulgated in 1973 which stated in no uncertain terms that “The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of *sex*, race or creed and regulate the relations between workers and employers” (1973 Constitution, Art. II, sec. 9). As to the aspect of citizenship, the Constitution provided that children of those whose fathers or mothers were citizens of the Philippines were also Filipino citizens (*Ibid.*, Art. III, sec. 1[2]). A Filipina citizen who married an alien could retain her Philippine citizenship, unless by her act or omission she was deemed under the law to have renounced her citizenship ( Art. III, sec. 2).

The Labor Code which incorporated existing labor statutes prohibited discrimination with respect to terms and conditions of employment “on account of her sex”, upheld the principle of equal pay for men and women, and banned night work for women with certain exceptions (Pres. Decree No. 442 (1974), arts. 130, 132 & 135).

The proclamation of 1975 as International Women’s Year by the United Nations led to the creation of the National Commission on the Role of Filipino Women (Pres. Decree No. 633 [1975]). This decree stressed the need for “full integration of women for economic, social and cultural development at national, regional and international levels” in order to ensure further equality between men and women. The Commission was tasked with the duty to see that “the gains which Filipino women had achieved because of Philippine culture and tradition, would be preserved and enhanced in the process of modernization.” Thus, it aimed to foster a partnership between men and women in the development effort. In furtherance of this objective, a Philippine Targets and Strategies for Full Participation of Women in Socio-Economic Development, 1980-1985 was implemented by Letter of Instructions No. 1066 issued on September 18, 1980.

The NCRFW’s first decade witnessed the emergence of women’s concerns, around the world. A number of Filipinas were conversant with the latest development in global feminism and formed part of the leadership of international bodies (The Commission on the Status of Women with primary responsibility for women’s concerns in the U.N. system was chaired by Helena Z. Benitez (1966-67); Leticia Ramos-Shahani (1975); Rosario G. Manalo (1984-85); Patricia Licuanan (1995-96). Senator Shahani served as Secretary-General to the

World Conference to Review and Appraise the Achievements of the United Nations Decade for Women). But authors Honculada and Ofreneo, observed that:

“The concept of gender equality with all its ramifications was not fully understood or promoted within the country, for this world require a growth and maturation of the women’s movement and a cutting across classes and sectors. In the place of equality was a complementarism that assigned different roles to men and women. It sought to carve out spaces for women, but stopped short of challenging male dominance. This was the rationale for *Balikatan sa Kaunlaran* (BSK). At best, gender equality was interpreted in the liberal feminist sense of legal equality — in equal rights and opportunities” (J.A. Honculada & R. Pineda-Ofreneo, *Transforming the Mainstream; Building a Gender-Responsive Bureaucracy in the Philippines, 1975-1998*, 25 (2000)).

The BSK (translated as “working shoulder-to-shoulder” for progress) was established in 1977 as a nationwide network of local councils and organizations to address the problem of rural poverty through livelihood and health related projects. This approach of community mobilization worked within the “women in development” (WID) framework. Honculada and Ofreneo observed that the WID approach sought to integrate women into economic development through projects but overlooked the unequal gender relations and did not attack its roots so that it weakened the impact and effectiveness of these projects (*Ibid.* p. 28-29).

Although the BSK was having modest success in the countryside, some women’s groups became involved with the broad-based political and ideological opposition to martial rule. As a result, some of these groups distanced themselves from the NCRFW which was identified with martial law.

The changes in political leadership after the “People Power” Revolution in 1986 drew into public service, activists and advocates which led to a shift in approach by the NCRFW. From the BSK’s livelihood concerns, the WID thrust was transformed by the sweep of gender and development (GAD) mainstreaming which involved women NGOs, women in government, the NCRFW staff and international development agencies.

## **B. The International Dimension**

Over the last three decades of the twentieth century, the world focused its attention on the situation of women. It brought to the surface various problems and issues confronting women in countries at various stages of development, which gave rise to measures intended to remedy and improve the situation. In conferences at all levels, women and men in government agencies, NGOs and donor organizations recognized women's issues and concerns as central in any work for development.

Section 2, Article II, of the Philippine Constitution provides that the Philippines adopt the generally accepted principles of international law as part of the law of the land. Since such Law is internalized by its legal system, it follows that the Philippines is bound to observe the provisions of international conventions to which it is a signatory (*Mejoff v. Director of Prisons*, 90 Phil. 70 (1951); *Agustin v. Edu*, 83 SCRA 198 (1979); *Guerrero's Transport Services v. Blaylock Transportation Services Employees Assn. – KILUSAN*, 171 SCRA 287 (1993)). The Supreme Court has articulated that such **treaties** have the force and authority of legislative enactment (*Singh v. Collector of Customs*, 38 Phil. 867 (1918), *Abbas v. Commission on Elections*, 179 SCRA 287 (1989); *Philip Morris v. Court of Appeals*, 224 SCRA 576 (1993)).

A significant step toward the recognition of women's rights was achieved in 1979 when the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women and opened it for ratification by states on 1 March 1980 (Entered into force on 3 September 1981, 1249 UNTS 13 (1981); cited hereinafter as the Women's Convention). In order for the Convention to be effective, State Parties committed to take the complementary step of adopting its provisions in their domestic law, monitoring them, and seeing to it that violations of the provisions be dealt with not only in their domestic courts but also before regional and international tribunals.

The Philippines signed this Convention on 15 July 1980 and ratified it on 5 August 1981. It has been reporting to the U.N. Committee on the Elimination of All Forms of Discrimination Against Women, the most recent of which were its third and fourth reports in January, 1997 covering the highlights of developments in the country for each area of concern in the Convention.

The Convention set forth internationally accepted standards and principles of achieving equality for women. It went further by prescribing the measures to be taken to ensure that women everywhere enjoyed the rights to which they are entitled. It addressed a wide order of women's concerns in the private and public spheres and provided a mechanism

for assessing the status of women in the enjoyment and exercise of their fundamental rights. Topics covered by the Convention were: Appropriate and temporary special measures to combat discrimination (article 4); modifying social and cultural patterns (article 5); suppressing exploitation of women (article 6); equality in nationality laws (article 9); equality in education (article 10); equality in employment and labor rights (article 11); equality in access to health facilities (article 12); finance and social security (article 13); rural women (article 14); equality in legal and civil matters (article 15); and equality in family law (article 16).

It should be noted that the International Bill of Rights composed of the Universal Declaration of Human Rights (A/RES/217 A (II), 10 December 1948), the Covenant on Civil and Political Rights (999 UNTS 171) and the Covenant on Economic Social and Cultural Rights (993 UNTS 3) to all of which the Philippines is a signatory, reiterates the same principle of equality irrespective of sex.

On its part, consonant with Section 2, Article II of the Constitution, the Supreme Court, cited CEDAW which prohibits discrimination against women with respect to terms and conditions of employment, as the basis of corrective labor and social laws (*Philippine Telegraph and Telephone Co. v. NLRC*, G.R. No. 118978, May 23, 1997, 272 SCRA 596 (1997), where the services of a female employee were terminated because she contracted marriage during employment; Justice Florenz Regalado, *ponente*).

Two UN world conferences on women were held: the “Third World Conference on Women” held in Nairobi in 1985 and the “Fourth World Conference on Women” in Beijing in 1995. These conferences produced landmark international agreements: the Nairobi Forward-Looking Strategies for the Advancement of Women and the Beijing Declaration and Platform for Action.

The 1985 Nairobi Forward Looking Strategies, as adopted by the World Conference to Review and Appraise the Achievements of the UN Decade for Women: Equity, Development and Peace advanced the following reconceptualization of development, focusing on the role of women.

“The role of women in development is directly related to the goal of comprehensive social and economic development and is fundamental to the development of all societies. Development means 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. 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 her 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” (Para. 12 (A/CONF. 116/28/Rev. 1, 1986) in the United Nations and the Advancement of Women, 1945-1996, 310, 312 (1996)).

This definition departed from the old notions of development, which concentrated, merely on economic growth without considering social equity and environmental costs. It was not only women-friendly but also human centered, pro-poor, participatory, and sustainable (A.T. Torres, R.S. Del Rosario & R. Pineda-Ofreneo, *Gender and Development; Making the Bureaucracy Gender Responsive* 4 (1994)).

In 1987-1988, the NCRFW held a series of consultations with a broad spectrum of women coming from various sectors of Philippine society and representing both government and non-governmental organizations. The results of these consultations found their way into the Philippine Development Plan for Women (PDPW) which contained concrete and comprehensive guidelines for mainstreaming women in developments. Executive Order No. 348 formally approved and adopted the PDPW as a companion volume to the Medium-Term Philippine Development Plan (*Ibid.*, p. 5).

The PDPW provided the framework for the development of women in the personal, family, economic, political, socio-cultural, and other legal spheres. It discussed the various situations and concerns of women in the following sectors:

- 1) *Economic sector* - covering agriculture and agrarian reform; environment and natural resources; services; and industry, trade and industrial relations;
- 2) *Social sector* – education and training health, nutrition and family planning, social welfare and community development; and housing;

- 3) *Special concerns sector* – migration; prostitution; media; violence against women; and arts and culture;
- 4) *Infrastructure and technology sector* — science and technology; and infrastructure.

For all these sectors, the PDPW provided specific goals, objectives, strategies, targets, and programs for implementation by government agencies with the support of NGOs. Thus, it became the government's blueprint for action in comprehensively addressing women's concerns in the Philippines. Not only did the PDPW provide as a mandate for integrating the women's agenda in the mainstream plan but it served as a grounding for considering gender issues in discussing macro-economic policies as well as in assessing concrete programmes and projects. Thus, women's concerns acquired legitimacy in the national planning discourse among decision makers (Honculada & R. Ofreneo, *Transforming the Mainstream; Building a Gender-Responsive Bureaucracy in the Philippines, 1975-1998*, 80 (2000)).

The Canadian International Development Agency (CIDA) gave assistance by sending a Philippine mission to Canada headed by Karina C. David (Deputy Minister for Social Welfare and Development (1987) who led "in the birthing of the PDPW" (*See Honculada & R. Ofreneo, p. 73*), which resulted in formation of a Cabinet Assistance System Committee on Women. It also made possible a series of seminars for gender analysis in project development which helped build a technically equipped, gender-responsive "human infrastructure" within NEDA and other important government agencies involved in the Planning process (*Ibid.*). Other international development agencies such as GTZ (Deutsche Gesellschaft fuer Technische Zusammenarbeit) and UNIFEM played a key role in shaping and strengthening mainstreaming in the bureaucracy.

Since the PDPW would expire in 1995, the NCFRW conducted eleven consultations starting in 1987 for a successor plan that would provide the direction for mainstreaming gender concerns in development. These consultations drew women from a broad ideological spectrum as well as women from different government agencies. The result was the formulation of the *Philippine Plan for Gender-Responsive Development, 1995-2025* (PPGD) which was purposive and systemic as compared with the "hit and miss" process accompanying the fortuitous and unplanned birthing of the PDPW (*Ibid. p. 82*).

The structure of the PPGD includes the following parts:

- 1) Human Development Sectors – covering education and training; women’s health; urban development and housing; social welfare and development; media, arts and culture; justice and peace and order; and labor and employment.
- 2) Economic and Industrial Development Sectors – agriculture and fisheries; agrarian reform; environment and natural resources; industry, trade and tourism.
- 3) Infrastructure and Technology Support – covering infrastructure development; science and technology.
- 4) Special Concerns Sectors – women and migration; prostitution; violence against women; women and family; indigenous cultural communities and ancestral domain; peace; politics and governance.

Each chapter discusses the issues and concerns of women in the specific sectors, the goals and objectives that should be pursued, the policies and strategies for their realization and the programs for implementation.

The Plan starts with a macro-framework outlining future trends, including globalization, the rise of megacities, rapid development of the information highway, homogenization of culture, erosion of biodiversity, and strengthening of social movements. It rests on a vision of development that is equitable, sustainable, free from violence, respectful of human rights, as well as participatory and empowering. It places *people* at the center and aims to make development work for all groups. However, it recognizes that discrimination exists on the basis of gender, class, and ethnicity. In the light of historical gender inequalities and inequities, it puts greater emphasis on women as a disadvantaged group.

The Beijing Declaration and the Platform for Action (U.N. A/CONF. 177/20, 17 October 1995), adopted unanimously by 189 countries, consolidated five decades of legal advances aimed at securing the equality of women and men in law and in fact. It identified twelve (12) critical areas of concern deemed to represent the main obstacles to women’s advancement since the Nairobi Conference and which required definitive action by governments and civil society over the next five years. These included the burden of poverty on women, unequal access to education and training; unequal access to health care and related services; violence against women; the effects of armed and other kinds of conflict on women; inequality in economic structures and policies, in all forms of productive activities and in access to resources; inequality in the sharing of power and decision-making; insufficient mechanisms to promote the advancement of women; inadequate protection and promotion of women’s human rights; stereotyping of women; and inequality in access to and

participation in all communications systems, especially in the media; gender inequalities in the management of natural resources and in safeguarding the environment; and persistent discrimination against girls and violation of their rights (B. Boutros-Ghali, *Introduction*, in United Nations and the Advancement of Women, 1945-1946, 64-65 (1996).

On September 8, 1995, President Fidel V. Ramos finally signed Executive Order No. 273 approving the PPGD. The Plan made it in time for presentation in Beijing as proof of the Philippine government's commitment to the implementation of the Beijing Platform for Action.

A series of world conferences sponsored by the United Nations since 1990 also helped forge a consensus on actions to be taken in support of the advancement of women as part of comprehensive United Nation goals on development issues. These included the 1990 Summit for Children; the 1992 U.N. Conference on Environment and Development in Rio; the 1993 World Conference on Human Rights in Vienna; the 1994 Conference on Population and Development in Cairo; the 1995 World Summit for Social Development in Copenhagen, and the 1996 United Nations Conference on Human Settlements.

Pursuant to the country's international commitments, the formulation of the PDPW and PPGD provided the impetus for a more hospitable environment for the enactment of gender-responsive laws, social policies, programs and services.

### **C. Situation: the Filipina's situation today**

In economic activities, men still dominate the labor force. In 1999, only 49.9% of women were employed compared to 76% of the men. However, the labor and employment to population ratio for women is growing faster than that for the men. Men dominate in all industries except the wholesale and retail trade, and community, social and personal services sectors (P.L. Adversario, "Gender Statistics As a Tool for Women Empowerment," This Week, October 9-12, 2000 [http://bworld.com.ph/This\\_Week/Cover/coverstory.html](http://bworld.com.ph/This_Week/Cover/coverstory.html). 1-7). The government still needs to devise a system for measuring women's work. A 1990 study on the average number of hours rural folk in Bicol spent on economic and domestic activities showed that women worked longer hours than men – 78 hours per week against the men's 59 hours (*Ibid.*, p. 2). This did not factor in the 44.6 hours of domestic work per week spent by women as compared to 10.5 hours per week put in by the men.

In April 1999, unemployment was pegged at 11.2% for men and 12.8% women. The gender gap in terms of unemployment was narrowing due to women's greater readiness to enter low quality jobs and the tendency of employers to replace higher paid male workers

with cheaper female workers. However, with the decreasing gap in unemployment, there was also a rise in informal economic activities from July 1997-1998, with the self-employed increasing by 430,000 and unpaid family workers by 127,000 (“Beijing Platform for Action Strategies: How Far Realized By Now?,” Philippine NGO Beijing Scoreboard Bulletin 12 (August 1999) citing Illo, 1998).

To respond to unemployment at home, more and more Filipinos were working abroad mainly in vulnerable, unprotected, and unregulated occupations as domestics, care givers, entertainers, and in similar service. In 1998, women comprised 61% of deployed new hires (*Ibid.*, citing Asis, 1999), the highest percentage since 1992. In 1997, deaths among overseas workers were recorded at 451, 148 of whom were women; 251 returned home physically ill (124 of whom were women) and 122 returned mentally ill (84 were females) (*Ibid.*, citing Asis, 1999 and Alcid, 1999).

In migrant employment, the continued commodification of women and children has been facilitated by legal frameworks that condone prostitution — where, ostensibly, force is not utilized to coerce women into prostitution. Worldwide, the problem of trafficking of women and children for prostitution, pornography, marriage-matching arrangements, military prostitution and other practices of sexual exploitation have been perpetuated by organized criminal syndicates (“Charting Progress Five Years After Beijing,” 5 COALITION ASIA-PACIFIC REPORT 1 (Jan.-March 2000). Since 1997, some 143,611 Filipinas went abroad ostensibly to join their fiances but ended up in prostitution houses controlled by these syndicates (Beijing Platform for Action Strategies, *op. cit.*, note 36, p. 13 citing Yamsuan, 1999). This is why an Anti-Trafficking in Women and Minors Bill passed upon by the House of Representatives is presently being discussed in the Senate of the Philippines.

The share of women in the Philippine power structure is still very low. Women have low participation in decision-making processes at all levels. According to the Commission on Elections, women, last year, held 27 seats or 12.4% of the total 217 seats in the House of Representatives. In 1998, women occupied 15.4% of the executive and legislative levels in contrast to the 84.6% by men. At the local government level, only one woman was elected for every six men in 1998. At the national level, only one woman was elected for every nine men.

Women in poverty do not enjoy social security. Those in the informal sector, which includes home-based workers, domestics, micro-entrepreneurs, vendors, unpaid family workers and whose work is invisible, unrecognized, unregulated, unprotected, low-skilled and low-paid, find it hard to apply for membership in the social security system because of

the required documents like income tax returns; the tendency of employers not to comply for lack of sanctions, and in the case of subcontractors, they encounter difficulty in identifying their principal employers.

Rural women, who are in subsistence farming and who have a stake in food security as the family food provider, suffer from a lack of government support and competition from cheap foreign imports. Their poverty have worsened due to the impact of globalization and the prevailing economic crisis. Moreover, the liberalization of agriculture and mining, the introduction of monoculture and especially the economic zones, have resulted in the destruction of the environment and sustainable livelihood, the conversion of land to high-value crop at the expense of staple crops, the ruin of local business and the displacement of indigenous communities from their ancestral lands (*Ibid.*, p. 12). All these have a direct consequence on the woman labor force.

Very few women have benefited from land distribution. The most recent data reveals that only 5,145 women compared to 23,310 men received Certificates of Land Ownership Agreement as of 1992 (This is the latest data available; National Statistics Coordinating Board, 1999).

A current concern about women's health revolves around the right of women to have their health needs addressed beyond their role as mothers. This has forced the expansion of reproductive health concerns beyond maternal and child health to include fertility regulation, sexual health, infertility, safe motherhood and child survival (PLAN FRAMEWORK OF THE PHILIPPINE PLAN FOR GENDER-RESPONSIVE DEVELOPMENT, 1995-2025, 11 [1996]). However, the government's efficiency and effectiveness in making available to all women, married or not, protection against unwanted pregnancies and ensuring services for women's health, as well as necessary information to be given about sexual health and fertility regulation depend on factors such as a meager budget, the lack of qualified personnel, the politics of a nation entrenched with a religious *dictum* and by the circle of poverty and ill-health (*Id.*, at 10). Abortion is illegal and unconstitutional in the Philippines.

As for crimes against women, from 1991 to 1997, the Department of Social Work and Development reported a total of 41,667 cases especially of women in difficult circumstances. Incidents of woman battery constituted the biggest number at 59.8%. On the other hand, the Philippine National Police (PNP) reported that in 1998, there were 2,633 cases of physical injuries followed by 1,054 cases of rape and 426 cases of acts of lasciviousness (Philippine National Police, 1998 Report). For 1999, reported cases of physical injuries increased by 14% while those of rape and lascivious acts rose by 11.5% and

37.6%, respectively. (Reported by Deputy Director Rodolfo N. Caisip, Police Community Relations of the PNP). However, these statistics may not be entirely accurate considering that violence against women and children is usually shrouded in a culture of silence. Revelations of violence within the family bring shame and tremendous pressure on the victims to bear their pain, fear, and rape in silence.

#### **D. Constitutional Standards and Implementing Policies**

It is a truism that the Constitution is the fundamental law of the land and all legislative acts must conform to it. But inevitably, laws reflect special interests, along with conduct and norms that are founded on socially-shaped assumptions about women and men – their respective roles, capacities, needs and vulnerabilities. For the most part, they bestow upon women and men rights, privileges, and obligations indicative of socially constructed stereotyped roles. In this way, laws can legitimize and strengthen gender biases and a subordination in society.

Section 14, Article II of the Constitution provides that

The State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men.

Likewise,

The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation (Constitution, art. XIII, sec. 14).

Fairness and equity require that both have the same opportunities to achieve a better life, given their endowments and preferences. This sense of fair play and justice is a cornerstone of democracy. Although the Philippines has made impressive gains in emancipating the women's socio-economic status as compared to many Asian countries, the relatively liberalized position of Filipino women masks a number of gender issues related to human resource development, human rights, the labor market, participation in politics, and

decision-making (J.F.I. Illo, *Women in the Philippines*, xi (Asian Development Bank Country Briefing Paper, Dec. 1997)).

Pursuant to constitutional mandates, Republic Act No. 7192 (1992) was enacted. Otherwise known as the Women in Development and Nation-Building Act, it enjoined government agencies to set aside for the benefit of women a substantial portion of development assistance funds obtained from foreign governments and multilateral organizations (sec. 2). It installed a compliance requirement by which government agencies must review and revise their regulations to remove gender bias (sec. 10). It also mandated the National Economic and Development Authority (NEDA) with the assistance of the National Commission on the Role of Filipino Women (NCRFW) to ensure that the different departments, including their agencies and instrumentalities, which, directly or indirectly, affect the participation of women in national development and their integration therein to:

- a. formulate projects and provide income and employment for rural women;
- b. assess its programs;
- c. ensure active participation of women and women's organizations;
- d. collect sex-disaggregated data and include such in their project proposal/strategy;
- e. ensure that programs are designed so that the percentage of women who receive assistance is approximately proportionate to their traditional participation in the targeted activities or their proportion to the population; and
- f. assist women in activities that are of critical significance to their self-reliance and development.

Likewise, in the General Appropriations Acts (GAA) of 1995 to 1997, Sections 7 and 28 were added stating that "All departments, bureaus, offices and agencies shall set aside an amount out of their appropriations ... to be used for projects designed to address gender issued in accordance with RA 7192." To implement Section 27 of the 1996 GAA, the Department of Budget and Management and NEDA issued a joint circular stating that "agencies shall set aside a minimum of 5 percent of their total appropriation to implement Gender and Development (GAD) projects and activities. The 1998 GAA was an improvement in that Section 28 specified that agencies are required to formulate their GAD plans and submit them to the NCRFW (J. Honculada & R. Ofreneo, *op. cit.* note 15 at 122).

## 1. Family Law

Perhaps, the aspects of life most highly influenced by culture and tradition are family and marriage. In the Philippines, marriage and motherhood are seen as the destiny of women. These roles are further strengthened by other institutions such as media and religion.

The Family Code which was signed into law in 1987 (Executive Order No. 209) answered the clamor of women to remove the discriminatory provisions of the Civil Code. It provided more rights to women by equalizing the age requirement, to contract marriage, at 18 years old, giving joint authority to the husband and wife to choose the family residence, manage the conjugal property, and custody of the children; the wife's right to exercise her profession or career and the right to accept gifts without the need of her husband's consent; wife's right to remarry even before the expiration of 300 days after her husband's death and the right to retain parental authority over her children after remarriage.

The Family Code did not provide for absolute divorce but aligned the marriage termination mechanism with Canon Law by providing for a "declaration of nullity of marriage" on the ground of psychological incapacity to comply with essential marital obligations" (Art. 36). The Code further broadened the grounds for legal separation:

- a. repeated violence or grossly abusive conduct directed against the petitioner, a common child or a child of the petitioner;
- b. physical violence or moral pressure to compel the petitioner to change religion or political affiliation;
- c. attempt of respondent to corrupt or induce the petitioner, a common child or a child of the petitioner, to engage in prostitution or connivance in such corruption or inducement;
- d. drug addiction or habitual alcoholism of the respondent;
- e. final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
- f. lesbianism or homosexuality of the respondent; and
- g. abandonment of petitioner by respondent without justifiable cause for ore than one year (Art. 55).

Instead of *adultery* on the part of the wife and *concubinage* on the part of the husband, which is hard to prove, the Family Code provided for sexual infidelity as a ground

for legal separation (Art. 55.8). However, it does not require much cogitation to realize that there are social realities to the double standards in the law. Certain behavior and practices exist, which men can indulge in but which women are socio-culturally restrained from. A common example is that of men having extramarital affairs or engaging in multiple relationships. For women, the sanctions are primarily in the context of social ostracism even in cases of women in serial monogamous relationships.

The State's premium on marriage is seen most overtly in cases of conflict between husbands and wives where the law consistently leans heavily toward spousal reconciliation. In an action for legal separation, a "cooling off" period from the time of filing the petition (Family Code, art. 58.) is required, even in cases of domestic violence which may need immediate action or redress. Moreover, there is general resistance to the recognition of marital rape although this is not precluded by the Anti-Rape Law (Rep. Act No. 8353 (1997)).

There has yet to be a law enacted on domestic violence because the existing laws on physical injuries and other pertinent offenses are not effective alternatives. Prevalent among law enforcers, prosecutors, and the courts is the view that domestic violence is a private matter to be settled between the spouses.

## **2. Labor and Social Legislation**

The Labor Code acknowledges biological and social considerations when it deals with the situation of working women. It requires the employer to provide a nursery in the workplace for the benefit of women employees, maternity leave benefits, family planning services, separate toilet rooms and lavatories for men and women and at least a dressing room for women (Pres. Decree No. 442 (1974), arts. 132, 133 & 134).

Article 135 of the Labor Code, as amended by Republic Act No. 6725 (1989), enunciates what constitutes discrimination against employees:

“It shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex.”

The following are acts of discrimination:

- Payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value.

- Favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes.

Under the Implementing Rules dated January 16, 1990, work of equal value refers to “activities, jobs, tasks, duties or services, workers or employees are required or called upon to perform and which are identical or substantially identical. Payment of a lower compensation or lower benefits to a female employee does not constitute a failure to comply with this section, if the difference between the rates of pay is based on length of service or seniority, on location or geographical area of employment, or any factor *other than sex* and the factors on which the difference is based would normally justify such difference in rates of pay.

Despite these statutory provisions, discrimination in opportunity and treatment remains a reality for women workers. This unequal access to jobs, better remuneration, and wider occupation choice can be attributed to several factors, such as a lower level of literacy; unequal access to education and training; limited educational choices of women due to the influence of family, teachers, and employers; inadequate educational and training schemes to meet the special needs of women; and the stereotyped role, particularly as wife and mother, that women still carry in society.

### **3. Health**

Health is a basic human right. The Constitution specifically refers to it under Section 15 of Article II, which provides that

“the State shall promote the right to health of the people and instill health consciousness among them” and Section 11, Article XIII states that “the State shall adopt an integrated and comprehensive approach to health developments. There shall be priority for the needs of the underprivileged sick, elderly, disabled, **women** and children.”

Complementary legislation has been passed, namely: (a) Executive Order No. 51 (1986) known as the National Code of Marketing of Breastmilk Substitutes, Breastmilk Supplements and Other Related Products; (b) Republic Act No. 6972 (1990) which provides for the establishment of a day-care center in every *barangay*; (c) Republic Act No. 7600 (1992) providing incentives to all government and private health institutions with rooming-in

and breastfeeding practices; and (d) Republic Act No. 7883 or the Barangay Health Workers' Benefits and Incentives Act of 1995.

The passing of these laws, is but the first step. Their implementation requires political will and a lead role by local government units (LGUs) for the Local Government Code of 1991 devolved the administration of health centers from the Department of Health to local governments. Budget allocations, raising of revenues and the training of health workers are the urgent need.

As for the area of reproductive health, government policy has lacked consistency. As mentioned earlier, religious *dictum* is deeply entrenched and has proved a formidable hurdle in family planning concerns. Moreover, research findings state that there is a need for more accurate information regarding basic anatomical terms and concepts, the nature, signs, symptoms and possible consequences of reproductive health problems (“Beijing Platform for Action Strategies: How Far Realized By Now?,” *op. cit.*, note 36, p. 9 citing Tan (1997)).

#### **4. Economic Rights**

The Philippine Constitution subscribes to the developmental framework by advocating as state policies the promotion of a just and dynamic social order (Constitution, art. II, sec. 9), and the promotion of social justice in all phases of national development (*Id.*, sec. 10). It aspires to free the people from poverty by providing adequate social services, promoting full employment, a rising standard of living, and an improved quality of life for all (*Id.*, sec. 9), affirms labor as a primary social economic force (*Id.*, sec. 18); and promotes comprehensive rural development and agrarian reform (*Id.*, sec. 21).

Several laws were passed pursuant to these articles. Republic Act No. 6657 (1988) or the Comprehensive Agrarian Reform Law carries a provision that “all qualified *women members* of the agricultural labor force must be guaranteed and assured equal rights to ownership of land, equal share of the farm’s produce and representation in advisory or appropriate decision-making bodies.” The Department of Agrarian Reform continues to amend its administrative policies and guidelines; accordingly it issued Administrative Order No. 2, series of 1993. It also ensures that women benefit equally and participate fully in the development projects of the Comprehensive Agrarian Reform Program. Likewise, Memorandum Circular No. 18, series of 1996, provides clarificatory guidelines in the manner of generating and issuing emancipatory patents (EPs) and certificates of land ownership agreements (CLOAs) to qualified agrarian reform beneficiaries and *ensures gender equality* between spouses who are beneficiaries of CARP, particularly in the generation and issuance

of EPs and CLOAs. On the other hand, the Department of Environment and Natural Resources has issued certificates of stewardship contracts that granted land tenure of twenty-five years and access to training programs to both spouse beneficiaries.

To increase the participation of women in business, Republic Act No. 7882 (1995) provides assistance to women engaging in micro-level business enterprises and cottage industries.

## **5. Criminal Law and Violence Against Women**

Philippine laws pertaining to gender violence are inadequate. This necessitates the passage of major legislation to address domestic violence and the illegal trafficking of women. Although repeated physical violence and sexual infidelity are grounds for legal separation under the Family Code (Art. 55), the corresponding provisions have not been amended in the Revised Penal Code (Act No. 3815 (1932), arts. 333 & 334). For example, Article 333 on adultery states that to be guilty of adultery, a wife only needs to engage in a single act of sexual intercourse with another man. However, in Article 334, the married man commits concubinage only if he keeps a mistress, and has sexual intercourse under scandalous circumstances or cohabits with her which certainly is discriminatory.

Republic Act No. 8353 or the Anti-Rape Law was passed last September 30, 1997. Rape as defined in the Revised Penal Code was expanded and the present law now provides that rape is committed:

- “1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
  - a. through force, threat, or intimidation;
  - b. when the offended party is deprived of reason or otherwise unconscious;
  - c. by means of fraudulent machination or grave abuse of authority; and
  - d. when the offended party is under 12 years of age or is demented, even though none of the circumstances mentioned above be present.
2. By any person who, under any of the circumstances mentioned in paragraph 1 shall commit an act of sexual assault by inserting his penis

into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.”

The new law classifies rape as a crime against persons and can now be prosecuted by the State. It must be noted that the second paragraph of the law is gender-neutral. It also provides that any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence.

Other laws that have been passed include: (a) Republic Act No. 7877 (1995) makes sexual harassment unlawful in the employment, education and training environment; (b) Republic Act No. 7659 (1993) imposes the death penalty on certain heinous crimes such as rape when committed with certain attendant circumstances; (c) Republic Act No. 7610 (1992) punishes child abuse, pornography and pedophilia; (d) Republic Act No. 8505 (1998) provides rape victims assistance and protection and contains for a rape shield provision; and (e) Republic Act No. 7309 (1992) awards compensation not exceeding PhP10,000.00 to victims of unjust imprisonment or detention and victims of violent crimes including rape.

## **E. Conclusion**

Notwithstanding all these government initiatives, women still encounter *de facto* practices that give rise to hardships. Urgent attention is needed to learn the real causes of women's difficulties. A thorough examination of the inadequacy of some laws as well as the impact of the legislation on gender relations is in order. There is also a need to put in place monitoring mechanisms and indicators in order to measure the effects of government policies and programs.

There has been a growing consensus that sustainable development requires an understanding of the respective roles of women and men within the community and their relations to each other. With the gender and development approach, improving the status of women is no longer considered solely an issue for women but is a goal the attainment of which, requires active participation of both women and men.