INROADS
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Tuning in to Women's Voices on Justice

(An Initial Review of Literature on Philippine Publications on Women and Justice)

Women's Legal Education, Advocacy and Defense Foundation, Inc.

THE ALTERNATIVE LAW GROUPS, INC. (ALG)

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The Alternative Law Groups (ALG), Inc. is a coalition of seventeen non-governmental organizations that are engaged in alternative or developmental legal practice. Each member organization has its own priority programs and concerns, and operates within selected areas of operation. Despite the differences in the ALG members' programs, activities and strategies, their work covers the following major components: Education, Policy Reform Work, Direct Legal Services, Research and Publication, and Test Case Litigation.

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INROADS

The word "inroads" can mean two things. First, it may refer to an invasion or encroachment into enemy territory. Second, it may refer to small pathways the mainstream, or a movement from the margins to the middle-of-the-road. In both meanings, the term "inroads" signifies a major impact, a significant change. Thus, "making inroads," in turn, means starting to have a direct and noticeable effect on something.

As a coalition of legal resource organizations that are engaged in developmental lawyering with the poor and marginalized, the Alternative Law Groups, Inc. (ALG) seeks to make inroads. In its dual work of empowering the poor and marginalized groups and effecting access to justice reforms, the coalition wants to make an impact on the lives of the people and communities it works with. The coalition also wants to achieve significant changes in public policy.

As part of its advocacy, the ALG presents this publication as a venue for various studies on justice issues affecting the poor and marginalized. Since genuine policy reform must indispensably be rooted in realities on the ground, this publication attempts to put forward issues of the poor and marginalized into the policy arena.

This study series serves as paths that enable views from the margins to make their way into discussions and debates about policies. In a sense, it is also an invasion, albeit neither forcible nor destructive, an encroachment of sorts where ideas and voices from the grassroots penetrate unfriendly territory.

May this publication serve as one of the many inroads that will ultimately give the poor and marginalized greater access to justice.

MARLON J. MANUEL
Project Director
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INTRODUCTION

ONE WELCOME DEVELOPMENT in the NGO community is the focus being given to questions related to access to justice and justice reform. Many project activities, programs, and researches, to name a few, are being undertaken to explore ways of increasing the access of marginalized sectors to justice. Other actors getting into the scene include government agencies, donor institutions, the academe, and other international formations.

But whether or not access to justice and legal and judicial reform work take center stage, responsible and concerned members of society – especially those who work for genuine social change – do need to look more closely at issues of the law and justice along with other macro problems like poverty, sovereignty, development, equality, and peace. People in a developing (read: *underdeveloped*) country such as the Philippines need to see that their rights are not mere entitlements on paper, but that they have good, solid, functional, and reachable safeguards in place. And should these guarantees and standards be transgressed in any way, people need to see that they have recourse in seeking redress. When people can see this – more so experience it for real – then faith in the system may be restored and bolstered. They may even be motivated to do their share in the struggle for progress, equality, and peace, among other aspirations.

Indeed, it is good to see a convergence of concerns, pronouncements, and action among civil society actors, opinion makers, government, and the moneyed, or those who have the resources and are in a position to "call the shots," in the concerted effort to access and reform justice.

More specifically, feminist-activists and women's advocates working the field of women's human rights – particularly those engaging the legal and judicial system for service relevant to women everywhere and serve as one of the emerging flag-carriers for women's causes – are buoyed up by the growing interest in women's voices. Indeed, women are eager to share their experiences on how the system has failed them and where it has reneged on them. They are also keen on recommending what they deem to be necessary steps toward rectifying the injustices in the present legal and justice systems. They raise their voices not for media mileage or projection, but in the belief that their presence must be registered and their collective voices heard in order to bring about real and thoroughgoing changes.

The UNDP Human Development Report of 1995 states that "if development is meant to widen opportunities for all people, then (the) continuing exclusion of women from many opportunities of life totally warps the process of development…There is no rationale for such continuing exclusion. Women are essential agents of political and economic change…Investing in women's capabilities and empowering them to exercise their choices is (sic) not only valuable in itself but is also the surest way to contribute to economic growth and over-all development (UNDP 1995, iii)." This is true for economics, and holds true as well for justice.

The subject of justice has been much talked and written about. A cursory look at law libraries reveals an ever-continuing growth in the collection of writings on the subject matter. Unfortunately, the same cannot be said on the matter of women and justice, especially where the plight of grassroots women and those done by women for women need to be chronicled. Despite the dearth of literature on the subject, the Women's Legal Education, Advocacy and Defense Foundation, Inc. (WomenLEAD) thought it good to start with the written published works of recent history, see what has been written and said about women and justice, their on-the-ground dealings with the legal and justice systems, and their frustrations, initiatives, breakthroughs, and proposals for a more accessible, receptive, and sensitive justice system.

A Brief Description of the Review

The Review is basically a look at selected written and mostly published materials related to women, women's rights, gender, and

justice. It hopes to get a general glimpse of what has been said publicly about issues and concerns of justice and women's perspectives, experiences, assessments, and recommendations in relation to the Philippine justice system (though largely pertaining to court processes and systems).

The type of materials for this Review includes books (materials with 50 pages or more), journals, and academic papers such as theses and dissertation papers (the only ones not published in the collection reviewed in this study), and pamphlets published by NGOs and government agencies. Most of the NGOs and alternative law groups' publications on the subject matter were published from the 1990s to the present, and the few years preceding that may already cover what one may loosely identify as relevant to the current concept of and engagement with the justice system.

The following are the special areas of interest in the document review:

GENDER JUSTICE: construction of gender justice

WOMEN'S EXPERIENCES: experiences of Filipino women in their contact and engagement with the justice system

FEMINIST CRITIQUE: criticisms and counter-proposals by feminists and women's advocacy groups on the Philippine justice system

COOPERATION for GENDER JUSTICE: dialogues and breakthroughs for gender justice

ASSESSMENT/DEVELOPMENTS and RECOMMENDATIONS: by feminists and women's groups on the justice system in the Philippines

Significance of the Review

The Philippine women's movement has been around for some decades now,[1] tracing its roots to the turn-of-the-20th-century murmurs, clamors, and protest actions of this generation's

[1]This, even though groups openly identifying themselves and defining their politics as feminists started only in the early 80's.

foremothers. Energies and frameworks were largely trained toward organizing, basic consciousness-raising, provision of direct services, and information dissemination. It was only in 1992 that the need for, as well as potentials and viability of, legislative advocacy in both executive and legislative fora were explored and invested in.

A rewarding development of the movement has been the use, testing, and reshaping of the legal and justice systems and landscape. These were brought forth by the various groups' painstaking organizing work with grassroots and "middle-class" women and the often-wearisome engagement with societal systems and processes that impinge on women's lives and growth. These are fast becoming an important arena for deconstruction/ reconstruction by women's groups and advocates in their bid to bring about genuine women's empowerment and development.

Still, only a small number of legal formations address or focus on women's issues such as violations of women's rights, even as the need for such responses is increasing. Fortunately, there is a growing interest among mixed organizations and even among government and donor agencies in doing gender-related activities and programs. WomenLEAD sees the Review as timely and necessary for grounding and baseline defining of what has been said and done as far as women's experiences with justice are concerned. It is hoped that this Review will inform all concerned about the gaps that need to be filled, the challenges to take on, and other steps to undertake in the near future on an individual or collective basis, and on a local or international level.

Objectives of the Study

The Review seeks to:

1. Examine the concepts, issues, and processes being chronicled in these writings;

2. See the reflections, criticisms, and recommendations being forwarded by Filipino women in their engagement with the justice system in the country; and

3. Establish an assessment of the women's movement (if there has been such an assessment) on how the justice system in the country has advanced or deterred the over-all struggle

for gender equality, peace, and development of Filipino women.

Limitations of the Study

Due to constraints in time and resources, only materials on the Philippine justice system that have been published in the country are considered for the Review – mainly those coming from selected NGOs (women-focused and mixed organizations doing gender-related work), some government agencies, and the academe.

Note also that all researchers or document reviewers involved in this review are non-lawyers. WomenLEAD does not see this as a limitation, and recognizes that this fact has influenced the type of materials reviewed – materials which are not legal-technical in language and form, but those which tackle legal and judicial topics written for both lawyers and non-lawyers.

Methodologies Used

The Review process went through a document scanning phase and participation in the Luzon Alternative Law Groups, Inc. (ALG) regional consultation, where workshops on women's access to justice were conducted. The latter was done to get fresh and direct information on how the women participants view justice as well as hear their experiences and recommendations. Results of the regional consultation are integrated in the Review.

For the document review, the following processes were done: selection of documents, distribution of documents according to publisher type (NGO, government organization [GO], or academe) to research program staff, document reading and note-taking using a particular software, sharing of initial and tentative findings, draft writing, distribution of drafts for discussion and critique, and finalizing the paper to include all comments and suggestions from the discussions.

Profile of the Documents in the Review

As mentioned above, time constraints dictate that the number of written works to be included in the Review be limited. Many of the materials come from the collections or libraries of women's groups and law colleges in the NCR, and the Supreme Court library. It is

hoped that this Review will be updated periodically, thus expanding its coverage. At this point, the actual profile of documents reviewed includes: ten (10) books, 24 articles, three (3) unpublished theses, and the results of one (1) unpublished focus group discussion (FGD). Of these materials, fifteen (15) were sourced from NGOs, four (4) from GOs, and another four (4) from the academe.

Review of Literature on Gender and Justice

Following this brief introduction is a presentation of the highlights of what the reviewed materials say about women and justice, or gender and justice. After the reviewers had divided among themselves the publications to read and take notes from, the team sat down to discuss the manner by which to narrow down the scope of the study. In consultation with other WomenLEAD staff, they decided that for a preliminary review, they would be interested in the following areas:

1. What do the materials say about justice in general, or as defined in mainstream avenues? Since discourses on women have to be a critique of conventions – women having been relegated to the margins for so long – it is important to look at the considered norm.

2. What is gender justice? How is this constructed, explained, and understood? Are people, especially women's groups, levelled-off in their understanding of gender justice? To date, what has been written on this subject matter by Filipinos?

3. What are Filipino women's direct and indirect engagements, if not entanglements, with the legal and justice systems? What are some facts and figures written so far? How recent or dated are these? Are the experiences empowering or not? Have the frustrated women given up?

4. What are some of the criticisms and counter-proposals by feminists and women's advocacy groups on the Philippine justice system? Although this will most likely overlap with numbers 2 and 3, the team still thought it best to have a section on feminist critique.

5. What are the immediate past and current dialogues and breakthroughs on gender justice? What collaborations are entered into between various stakeholders of the legal and justice systems?

6. What are the recommendations being put forward by feminists and women's groups on the gender and justice concerns in the Philippines? What activities or projects are worth pursuing further based on those suggestions? To whom are the suggestions being addressed?

JUSTICE AS USUALLY DEFINED

IN CONVENTIONAL AND mainstream definitions, justice is primarily seen as the exercise in being just, impartial, or fair. It usually refers to the administration of the law, as well as the act of determining one's rights over an issue or property. Justice concerns also pertain to assigning rewards or punishments, as well as resolving the question of who won and who lost, as determined by a public official whose mandate is to decide questions brought before a court of justice.

Justice, according to some writers, is a way of life of all civilized people. It is supposed to be blind, since it is as much a basic right of ordinary people as it is of the rich and powerful. Justice likewise denotes the vindication of rights and freedoms via the judicial system that is essential to government (Buendia [n.d.], 7). However, there is also a recognition that "people who know the laws of the country can easily have access to justice (Quisumbing 1987, 38)" and that educated people can have easier access to justice (Quisumbing 1987, 47).

An article by Conda states that the rights discourse can be considered one of the salient principles of justice. It particularly says that a woman's knowledge that she is a holder of her rights could, by itself, effect some transformation or change in her life. The article also clearly pinpoints state accountabilities in ensuring that justice is served through the different human rights (HR) instruments that guarantee the people's basic rights. Knowing that governments who are signatories to HR instruments are obliged to perform their undertakings and obligations under these instruments is a clear position of strength for women's rights advocates (Conda 1995, 139).

This is well and good, if all that people need of justice is to read it in books or watch legal drama unfold on television or in the movies. But even the judges and the government recognize the big gap between what is real and what borders on the surreal. The daily dose of news accounts attests to a different reality no one can afford to close his or her eyes to anymore. Justice as largely practiced is not fair or balanced. Expensive costs of litigation make it the privilege of the wealthy few. It is generally deemed to be exasperating, and some see it as a dead-end. A slow process of investigation, clogged dockets, and lengthy court proceedings characterize the criminal justice system (Sta. Maria 2001,111). Apparently, these are enough reasons for many to lose faith in such a system.

This alienation of justice from the people is evident in some of the research findings discussed in an article entitled *Body Politics: How Grassroots Women Decide on Abortion, Male Violence and Sexuality Issues* (Ofreneo 2001) published in the Reproductive Health, Rights and Ethics Center for Studies and Training (Reprocen) journal. The women who participated in the study do not see the legal system, particularly the courts and the lawyers, as a means to seek redress in cases where violence against women (VAW) occurs or in other difficult situations such as in cases of abortion. The article says that medical and legal practitioners have hardly played a positive role in the women's process of decision-making. These actors are mentioned very sparsely. As for lawyers, they are not mentioned at all in two focus group discussions (FGDs) that are presented (Ofreneo 2001, 81).

In the recently concluded *Alternative Law Groups (ALG) Northern Luzon Cluster Regional Consultation on Access to Justice of Marginalized Sectors*, participants noted the difference between the conceptual and operational definitions of justice. When asked what comes to their minds when they hear the word "justice," the participants responded largely in terms of negative images. For them, justice is "biased, meaningless, unequal, always delayed, an eye for an eye, slow, unjust, more for the rich and moneyed, a commodity that can be bought, and frustrating". This, according to them, explains "why we cannot blame those who make drastic extralegal moves."

As to their own respective definitions of justice, participants came up with ideal and positive concepts of justice, as follows:

- Justice includes the right to be heard;
- Justice is when the truth surfaces;
- Justice is when there is recognition and actualization of basic human rights (economic, political, and cultural rights that embrace the right to food, freedom of expression, and the right to voice out grievances) including the rights of women and indigenous peoples (IPs);
- Justice is not biased;
- Justice promotes equality and due process;
- Justice means punishment for the one who violates other people's rights, and redress for the ones violated;
- There is justice when everyone has food to eat, and is healthy and satisfied;
- Justice is when there are impartial hearings and handling of cases;
- Justice is giving a person what is due her; and
- Justice cannot be attained only through the courts.

Women, especially poor women, do not know justice as described in textbooks. Their day-to-day lives attest to the fact that justice is beyond their reach. In dire straits, they keep hoping that the law and the judicial system will deliver. Unfortunately, justice is gender-blind – that is, blind to the plight of women.

JUSTICE AS WOMEN EXPERIENCE IT

On Prostitution and Women in Prostitution

IN PROSTITUTION, FOCUS is immediately on the women and children who provide the services. It is hardly seen as a system in which individuals are caught up in an intricate web of crisscrossing relationships. Indeed, prostitution is not seen in the context of capitalist economic relations or the prevalence of a patriarchal ideology (Women's Legal Bureau, Inc. 1995, 16).

The state has always taken an ambivalent attitude toward prostitution and the women caught up in it. On the one hand, it outlaws prostitution in its legal statutes while on the other, it allows and even licenses, through local city and municipal ordinances, the operations of beer joints, massage parlors, and other establishments known to be prostitution fronts. It requires 'hospitality girls" and massage attendants, again through local ordinances, to submit themselves regularly to medical examinations for the detection of STDs, in exchange for which they get colored cards as "guarantees" that they are safe for their customers' "use." In the case of women wishing to work as "entertainers" abroad, government functions as a screening mechanism for accrediting them (Ofreneo and Ofreneo 1993, 32).

Article 340 of the Revised Penal Code (RPC) penalizes acts of promotion and facilitation of prostitution or corruption of a minor. Yet, "policy" and "reality" are hardly ever the same. In the case of prostitution, these are worlds apart. It is not uncommon for local government to have ordinances which actually regulate prostitution rather than prohibit it.

There is ambiguity in the interpretation and enforcement of laws pertinent to prostitution. In her paper, Ruiz states that "they are patently discriminatory and unevenly implemented (Ruiz 1994, 17)." Another study by Ofreneo and Ofreneo likewise adds that:

- Article 202, Section 5 of the 1965 Revised Penal Code (RPC) states that "(f)or the purpose of this article, women who, for money or for profit, habitually indulge in sexual intercourse or lascivious conduct are deemed to be prostitutes." Such definition is not only discriminatory towards women; it also subjects the law to arbitrary interpretations and implementation. And since parameters are absent in determining what 'profit and lascivious conduct' mean, the criminalization of prostitutes is largely dependent on who judges the case (Philippine Development Plan for Women 1989, 138)."

- Implementation of such laws (Art 340 and 341 of RPC) results in some kind of a double standard as women are oftentimes the ones punished while the male actors in the industry – clients, club operators, pimps, etc. – remain free (Ofreneo and Ofreneo 1993, 35).

Philippine policy on prostitution, mainly on women in prostitution, is one of absolute prohibition. The policy is punitive of prostitutes. Although the law also provides for the punishment of persons who profit and persons who recruit the services of another for the purpose of prostitution (Art. 341 of the RPC), there are very few reports of establishment owners charged under the White Slave Trade Law or the law on Corruption of Minors, despite the fact that a large number of prostitutes are minors. There are also no data to show how many of those charged with vagrancy are actually prostitutes, and neither is there any Supreme Court (SC) decision which can aid in the interpretation of the law on vagrancy and prostitution (Ruiz 1994,19).

"*Gimik! Sa Quezon Avenue at Cubao,*" a book published by an organization of "free-lancing" prostitutes in Quezon City, chronicles the experiences of streetwalkers who spend long, seemingly endless nights along the shadowy stretch of Quezon Avenue and the dingy corners of Cubao. It recounts the stories of about a dozen women, their experiences, and most importantly, their insights into their precarious life in the streets. Their pained words describe how the wheels of justice have "run over" their lives.

Women report police abuse and brutality. These happen regardless of whether they are the ones apprehended (for vagrancy) or the ones filing complaints (against male customers who maltreat them). Most of the cases where the women file charges against pimps, policemen, and the like, do not reach the courts. When it is the women being charged, the women are fined, detained and, in more dreadful situations, subjected to extortion and/or sexual abuse. They are later released, only to be rounded up again at the whim of these scalawags in police uniform. When they are the complainants, the women are typically disbelieved by law enforcers, insulted, and exploited all over again.

Another study points to the prevailing corruption in the police force, and how a significant number of these corrupt elements prey on women in the flesh trade. Some masseuse or massage attendants claim the police demand a fifty-percent discount for sexual services from them. During raids, women are usually the only ones apprehended, while the male actors in prostitution – bar owners, operators, pimps, and customers – are allowed to go scot-free. There are occasions when police bring in the media during these raid operations, making heroes out of the raiding team in exchange for sensational exclusive footages of naked women caught *in flagrante delicto* – never mind if the women are exposed and stigmatized (Ofreneo and Ofreneo 1993, 32).

And then, there is "the practice of using women's sexual services in entrapment." During an entrapment operation, a law enforcement agent or the informer poses as a customer seeking sexual services from women. This method supposedly exposes the secrets of the "trade," revealing the identities of bar owners, pimps, and all the other hooligans who reap large profits from the business, and their modus operandi. The problem is that the "undercover agents" carry on the entrapment until the consummation of the sexual act, which many prostitutes say is unnecessary if the only objective is entrapment. Women say that what the policemen want is a "freebie" under the guise of entrapment. But it is precisely in using the women's services, even in the name of law enforcement, that law enforcers also become violators of women's rights.

Thus even in the name of law enforcement, the 'use' of women is unjustifiable. Law enforcers must resort to other means of investigation and ensure that women's rights are not violated during

raids. This includes ensuring that the women are not needlessly exposed to the media (Women's Legal Bureau 1999, 9).

More Double Standards in Law

Aguiling-Pangalangan's article provides a discussion and a critique on various provisions of relevant laws on women. The author also discusses some policy issues and ethical concerns vis-à-vis the content and context of the law (or the lack of law for that matter) that, in one way or another, further reinforce and perpetuate the double standards of morality against women, as follows:

- Article 202 of the RPC on Vagrancy and Prostitution, which labels the offender as a woman and disregards the culpability of male "patrons," bar owners, and pimps;

- The huge discrepancy between the requirements and bases of penalties that constitute the crimes of adultery and concubinage, as stated in Articles 333 and 334 of the RPC. "Adultery is committed 'by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married, even if the marriage is subsequently declared void.' Concubinage is defined as a crime committed by "any husband who shall keep a mistress in a conjugal dwelling, or shall have sexual intercourse under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place" (Aquiling-Pangalangan 2000, 29). "A married woman is guilty of every sexual act and suffers a penalty of *prision correccional* in its medium and maximum periods[2] for each sexual act. On the contrary, a married man is guilty only if his sexual relations with another woman fall under the three specified situations. Hence, a husband who cohabits with a woman for five years is guilty of only one count of concubinage, which is punishable with the penalty of *prision correccional* (Aquiling-Pangalangan 2000, 29);"

- The law prohibiting abortion that does not provide any exceptions particularly in situations where the life of the mother is at risk;

[2]Imprisonment for a period ranging from 2 years, 4 months, 1 day to 6 years

- The Magna Carta of Public Health Workers of 1992 or Republic Act 7305, where maternity benefits are not extended in cases of "induced" abortions, as the law so defines it. Inequitable provisions as this cannot be found in other legally mandated maternity benefit programs whether for the government or private sector (Ruiz-Austria 2001, 95).

- The lack of law on domestic violence. Cases related to domestic violence are considered and lumped with the violations that are covered by the penal laws on assault and physical injuries. But in reality this violence – which also includes psychological and financial violence, among others – is very much different, the perpetrator being someone whom the woman knows, loves, and trusts;

- Article 96, which, while providing that the administration and enjoyment of the community property shall belong to both spouses jointly, also provides that in case of disagreement, the husband's decision shall prevail (Aguiling-Pangalangan 2000, 37);

- Article 45, which states that "obtaining the consent of either party in a marriage by fraud is a ground for annulment." Of the precise situations constituting fraud, as determined in Article 46, the law includes 'concealment of the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband.' On the other hand, there is no such provision in cases where, at the time of the celebration of the marriage, another woman is pregnant by one's husband;

- Gender-biased labor laws, which are rooted in the belief that women require special protection in employment. In Chapter 1, Title 3 of the Labor Code, night work is prohibited for women regardless of age. "It decrees that an employer cannot require a female employee to work in industrial establishments from 10 PM to 6 AM, in commercial establishments from 12 PM to 6 AM, and in agricultural undertakings, from sunrise to sunset, unless with a rest period of not less than 9 consecutive hours." (Aguiling-Pangalangan 2000, 39). The law likewise provides some exceptions.

Further, Padilla and Vargas's article on Lesbians and Philippine Law cites Article 135 of the Labor Code that supposedly makes it unlawful to discriminate against women employees. However,

characterization of work, or the notion that there are only certain types of jobs that women can manage, undermines the efficacy of the law (Padilla and Vargas 2001, 61).

The Civil Service Law cites allegations of immorality as a ground for disciplinary action. Lesbians in government service may find this arbitrary with the highly common view that their alternative lifestyle impinges upon society's norms. Even private corporations have certain regulations, which may or may not be official and written (Padilla and Vargas 2001, 62).

In the article *Discrimination Against Women in Philippine Civil and Criminal Laws* by Flores published in the Ateneo Human Rights Journal, the author asserts that although the "twentieth-century Filipina has come along way, her fight for equality has not been won and (is) certainly not over yet." The author likewise discusses similar provisions from the RPC particularly Articles 202, (Vagrants and Prostitutes), 333 (Adultery), and 334 (Concubinage). She adds relevant laws that further reinforce discrimination against women, as follows:

- Article 351 states that premature marriage happens when a "widow shall marry within three hundred and one days from the date of the death of her husband, or before having delivered if she shall have been pregnant at the time of his death, shall be punished by *arresto mayor* and a fine not exceeding P500 pesos. The same penalties shall be imposed upon any woman whose marriage shall have been annulled or dissolved, if she shall marry before her delivery or before the expiration of the period of three hundred and one days after the legal separation" (Flores 1992, 209). The author supposes that this law is considered discriminatory to women, "not because such provision is not extended to men but because it places an undue burden on them. That there are biological differences between men and women and that these differences are valid grounds for classification is conceded. But while child-bearing is exclusively a function of women, penalizing them for marrying within the 'prohibited' period is grossly disproportionate to the purpose of the law (Flores 1992, 210)."

- In the New Civil Code, Article 372 states that even when

legal separation has been granted, a wife shall continue using her name and surname employed before the legal separation.

The Country Report on Women (1986-1995) prepared by the National Commission on the Role of the Filipino Woman (NCRFW), the National Coordinating Committee for Beijing, and the Coalition of Government Organizations and Non-Government Organizations (GOs and NGOs) for the Beijing Conference on Women presents and at some point summarizes the various discriminatory aspects of existing laws as cited in the book *Gender Sensitivity in the Courts*. Highlights of said report include the following:

- Article 39 of the Civil Code, which denies the adult married woman some legal rights. It also adds that in most laws the term "wife" instead of spouse is still used. This leads to the limited perception of judges and lawyers based on stereotypical gender roles and characteristics;

- Relevant provisions on the Family Code that favor men rather than women. The report notes two provisions in the 1988 Family Code (Executive Order No.209);

- Four articles from the Code of Muslim Personal Law, namely: (1) restriction on subsequent marriage of a widow or divorcee; (2) the right of a man to take back his wife without the need of a new marriage if they are reconciled during her *idda*[3]; (3) the right of a man to have more than one wife; and (4) the restriction on the wife to acquire property by "gratuitous title."
- The Labor Code, which prohibits night work for women;

- The Civil Service Code that requires marriage as a pre-condition to maternity leave benefits; and

- The RPC, which contains criminal laws that are rife with gender bias, either perpetuating the image of the woman as the weaker sex or including females in the category of minors in kidnapping and serious illegal detention cases, or making adultery by the wife a graver offense than a husband's infidelity.

[3]A three-month grace period is given by the court to a couple who are filing for divorce. It gives the couple time, if still possible, for reconciliation. Usually, the court grants the divorce after this period expires.

The report states that "one of the biggest obstacles to the equalization of women's rights is the difficulty of breaking down the patriarchal traditional power structures in the family. These remaining vestiges of gender bias cut across economic and cultural systems, which are deeply rooted in the society's psyche" (Feliciano et al. 2002, 26-27).

In the *Journal of Reproductive Health, Rights and Ethics* published by the Reprocen, several articles take up various legal, ethical, and gender perspectives on the issues of abortion, violence against women, adolescent sexuality, and family planning. One of these is the *Legal Perspectives on Abortion* by Agabin. In this article, Agabin tries to provide a deeper understanding of the legal issues involving abortion in this country. He tackles the prevailing law on abortion and its implications, including the issue of social justice and the balancing of interests of the rights of the unborn and the mother. He concludes by proposing several recommendations that include the amendment of our present law on abortion to allow for certain exceptions such as those in situations that threaten the life of the mother (ReproCen 1995, 3).

In an article entitled *The Legal Aspects of Violence Against Women* (also from the same journal), author Kapunan defines rape as presented in the current laws and proceeds to show that certain provisions in the penal statutes preserve inequality between men and women. She suggests that the solution lies not in reforming legislation alone but also in reforming attitudes, behaviors, and values (ReproCen 1995, 46).

Indeed, discrimination and double standards in the law have always been to the disadvantage of women, whether these are in the actual provisions of the law, in the assumptions that form the basis for such laws, or the context within which laws are formulated.

Gender Bias in the Courts

A groundbreaking publication came out in 2002, entitled "*Gender Sensitivity in the Court System* (author, date)."It looks into the systems and processes within the courts, which are deemed sexist – if not downright misogynist – and insensitive to women and children. It offers specific areas for assessment on the extent of gender bias as well as recommendations for improvement.

A working definition of gender bias is stated as "the stereotyped thinking about the nature and roles of women and men." It also refers to society's perception of the 'worth' of women and men by distinguishing, for example, 'women's work' from 'men's work' (Schafran 1987). Zooming in on the judicial system, gender bias in the courts is defined as the "behavior or decision-making of participants in the justice system that is based on or reveals the following:

1. Stereotypical attitudes about the nature and roles of women and men;

2. Cultural perceptions of their relative worth; and/or

3. Myths and misconceptions about the social and economic realities encountered by both sexes (Atchison 1998)."

The book then presents the forms and manifestations of gender bias across the various phases of judicial action based on the various literatures (both local and foreign) reviewed in this study. Related issues include:

- The invisibility of gender bias and non-recognition of its reality. In the US courts, the first problem they had to deal with was the strong denial from various quarters that inequality exists (Feliciano et al. 2002, 14);

- Double victimization, particularly in cases of sexual and physical violence. This is a phenomenon where a female victim of sexual harassment or rape, for example, is twice victimized – "first by the abuse and then by the blame that accompanies it (Rhodes 1999);"

- The negative attitude toward female victims as well as offenders being perpetuated by law enforcers, court personnel, prosecution lawyers, and even judges. These instances are pinpointed as reasons for the dismissal of rape and other similar cases either due to insufficiency of evidence or reluctance on the part of the victim to go through the grueling and intimidating process of pre- and actual court trial (Feliciano et al. 2002, 22);

- The gender-insensitive court procedures that discourage women from pursuing their case. Among the examples are "(a) requiring the plaintiff to prove that the alleged sexual

conduct was unwelcome; (b) allowing a defendant to introduce evidence of the victim's 'promiscuous' appearance and behavior or past sexual experiences; and (c) giving lawyers, both during pre-trial proceedings and court hearings, the license to grill victims about irrelevant details of the crime and their previous sex lives (Rhodes 1999);"

- Trivialization of gender crimes, which refers to the tendency to treat crimes involving violations against women, such as sexual harassment, as less important and thus less deserving of judicial attention;

- The gender stereotypes affecting court actions, which refer to ideas and beliefs that are often misleading and without factual basis, about the profile of perpetrators as well as the victims;

- Legal discrimination against women as found in specific provisions of the following laws: the Civil Code, the Family Code, the Code of Muslim Personal Laws, the Labor Code, the Civil Service law, the Revised Penal Code, and Customary Law; and

- The under-representation and sexist treatment of women in courts, referring to the overall low participation of women as lawyers and judges. "Because they are few and work within a generally male-centered judicial culture, women lawyers and judges may also have become victims of the same gender biases suffered by the women clients (Feliciano et. al. 2002, 27)."

On the evidence of gender bias in the unwritten rules of court

A cursory analysis of Philippine procedural law will not reveal any bias in favor of any party. In theory, these rules and technicalities are designed to ensure a fair trial. The application of these rules, however, can create bias based on gender (Feliciano et. al. 2002, 121).

Feliciano et. al. states that "the most blatant forms of gender bias in Philippine laws are manifested in rape cases. Instead of simply applying the law, courts have had to fashion other rules to complement those already existing (Feliciano et. al. 2002, 124)."

Unfortunately, these additional rules have proved to be more of a disadvantage to the women who want justice delivered.

The publication further states that in the process of applying the law, the Supreme Court has created a set of contradictory rules. For instance, courts acknowledge the "heavy psychological toll" a Filipino woman faces in filing charges, but claim that the delay in reporting rape to the authorities "seriously affects the truthfulness of her charge (Feliciano et. al. 2002, 124)."

Also cited are other unwritten rules that are consistently being applied by the courts. These rules somehow help certain "types of women" achieve victory in court while at the same time proving to be barriers for the "others" who do not fall under the stereotyped images of women. The courts somehow assume there is a "typical Filipina" (demure, unsophisticated, very young, virgin, innocent, etc.) and an "atypical one." The former is deemed to be more credible and thus easily gets her day in court, while the latter would have great difficulty convincing the court that she was raped or violated because she does not conform to the female stereotype.

Such unwritten rules include the following:

(a) That on judicial sympathy, which presupposes that given the difficulties and problems in admitting one has been raped – her job, reputation, and friends being at stake, not to mention the shame and embarassment it entails not only to the individual but also to her family – "no decent Filipina would make a public disclosure of her seeming disgrace and allow interrogation and revelation of the prurient details of her debasing ordeal unless her charges are true, this being especially true of young, unsophisticated and artless lasses in rural communities (Feliciano et. al. 2002, 128);"

(b) That on credibility, which refers to the court's judgment of the complainant's character and personality that subsequently serves as basis for determining whether the complainant is telling the truth. Indeed, despite pronouncements contending that rape is a criminal offense whether inflicted upon a public woman or upon the chastest of virgins, court decisions suggest that the complainant's character constitutes a defense in rape cases (Feliciano et. al. 2002, 135); and

(c) That on response to trauma. This, despite the fact that the Supreme Court has actually declared in one of its decisions that "rape should not be judged by any norm of conduct or behavioral response for people react differently to emotional stress (Feliciano et. al. 2002, 130)." Several decisions are cited to show that the Supreme Court does judge the complainant based on her response to the alleged offense. Further, decisions are also made based on the victim's composure in court.

In a rape case, these unwritten rules render a woman – who does not fit the mold of a submissive and weak victim – powerless and more vulnerable to settlements (even against her will) and place the case at greater risk of getting dismissed under the present state of the criminal justice system. Add to this the slow grind in investigative and prosecutorial work and the long intervals between court hearings owing to repeated postponements and other technicalities. Women who, in the first place, do not have the luxury, privilege, nor the time and resources to go to court, are more likely to drop the case altogether.

An assessment of gender bias in the courts (the philippine context)

A very serious gap in government efforts to promote the welfare and status of Filipino women and children, particularly those who belong to the poorest of the poor, is in the eradication of gender bias in the court system. Women's groups here and abroad have repeatedly decried the difficulty of getting justice for female victims of sexual and related crimes. All stages of criminal action – from preliminary investigation, to trial and judgment – are replete with practices that discourage women victims from filing complaints and pursuing their cases in court (Feliciano et. al. 2002, 4). However, amidst all these, efforts to move the justice system have been lagging. The lack of political will, inadequate resources, and cultural and socio-economic factors are among the persistent obstacles to the effective implementation of actions designed to further advance women's human rights (Feliciano et. al. 2002, 9)."

Indeed, gender bias permeates the entire fabric of the court systems in many countries, including the Philippines. Gender bias is embedded in the judicial culture – in stereotype beliefs about

femininity and masculinity and in attitudes about male and female roles, abilities and entitlements (Feliciano et. al. 2002, 169)."

An assessment of gender bias in the courts (an international context)

Kathleen E. Mahoney, one of the authors of a book reviewed for *Gender Sensitivity in the Court System,* says that although the judicial and quasi-judicial bodies are not entirely to blame for the low status of women, numerous studies show that one of the most formidable barriers to women's equality is gender bias in the courts. In nearly all countries, both the judicial process and decisions are often discriminatory and harmful to women and children. Mahoney adds that extensive research over the past twenty years shows that court decisions are influenced by biased attitudes, sex stereotypes, and myths and misconceptions about male and female traits, roles, and capacities. (Feliciano et. al. 2002, 10-11).

Gender bias in the shari'a courts

The Shari'a Courts are part of the Philippine judicial system. As provided for in the Code of Muslim Personal Laws or CMPL, there are two classes of Shari'a Courts: the Shari'a District Courts and the Shari'a Circuit Courts. Both courts have original jurisdiction while the District Courts also have appellate jurisdiction. Original jurisdiction means having sole authority to adjudicate a case over all other judicial bodies at the same level. For instance, a case filed at the district court may not simultaneously be filed at the circuit court or vice versa. Appellate jurisdiction, on the other hand, is the authority to review, sustain, or reverse decisions, resolutions, or judgments of judicial bodies lower than itself.

All decisions of the District Courts are final except on questions of law, in which case appeals are made to the Supreme Court of the Philippines (Antonio 2003, 1). In this regard, they are similar to the regional trial courts, municipal trial courts, and metropolitan trial courts which non-Muslim communities are more familiar with. Recognized in the country is the CMPL, which is enforced only in specific Muslim communities – all of which can be found in Mindanao (Antonio 2003, 13).

Many of the cases filed in the Shari'a Courts are for divorce and support. Specifically, these are petitions to resume marital relationship, mutual agreements to dissolve marriage, petitions to contract subsequent marriages, abandonment, lack or failure of support by the husband to his wife and children, and the like. A greater number of those who file these cases are women.

Of the cases filed, the number of dismissed cases outnumbers those that have been resolved. Again, the dismissed cases were those filed by women. This is unfortunate, as the book notes how most women lack the financial means to go through the whole court process. Court and lawyers' fees are much too expensive. Furthermore, free legal assistance services cannot match the demand (Antonio 2003, 28).

In a study published by the De La Salle University in 2003, the author notes that the Code of Muslim Personal Laws, "...does not have explicit provisions that would protect (the woman) from being capriciously divorced by the husband....the Code does not adequately protect women from the abuse of certain rights by their husbands, particularly those pertaining to divorce and polygamy (Nandu 2003, 22)." She further states that "given the patriarchal nature of Filipino Muslim society, it is not surprising to observe that a husband may divorce the wife without any reason (Nandu 2003, 5, quoting from Busran-lao 2000)."

The CMPL is also known as Presidential Decree 1083, signed into law in the 1970s, pursuant to Article XV Section II of the 1973 Constitution. It states that "The State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies…(Nandu 2003, 22)." Hence, it is basically a codification of Muslim practices pertaining to marriage, polygamy, divorce, property relations, financial provisions, custody, guardianship, and child maintenance.

Some cases in two Shari'a Circuit Courts on the restoration of conjugal rights were filed by husbands for the courts to command the return of their wives to the conjugal home and perform their obligations and duties as wives. Nandu says that, "from a feminist perspective, a court order to physically return the woman to the conjugal home is against freedom and difficult to enforce (Nandu 2003, 36)."

Sexism in other court practices

This phenomenon is apparent in various situations. There is the difficulty of getting justice for female victims of sexual and related crimes. All stages of criminal action – from preliminary investigation to trial and judgment – are replete with practices that discourage women victims from filing complaints and pursuing their cases in court (Feliciano et. al. 2002, 4). Some court decisions are influenced by biased attitudes, sex stereotypes, myths, and misconceptions about male and female traits, roles, and capacities. Lastly, one of the articles reviewed says that "the State is not sensitive to women, from the barangay, police, up to the courts. Their perception of violence against women, including rape, is one of amusement (*nakakatuwa)*. If it's wife battery, the police or barangay officials will say "it is normal because you're the wife." (Daguno [n.d.]).

Participants of the *ALG Northern Luzon Cluster Regional Consultation,* particularly those from women's groups in the sub-region, discussed their positive and negative experiences in engaging the justice system. They recalled the times they won an administrative case of sexual harassment, as well pending cases of which they still felt hopeful. Trials in the lower courts are relatively faster, they said; difficulty sets in when the case reaches the Court of Appeals.

On the negative side, the participants spoke of a year-long case where witnesses were afraid to come forward because the respondent was the priest in their community. Another case is the trial of an abused girl-child, which they had to request the court that the trial be held behind closed doors. To their dismay, the court said they had to consult with the accused regarding that request before it would be granted.

These women respondents, who are direct service providers, had difficulty in filing a case, especially where the complainant was a lesbian who had been sexually harassed. They recalled her apprehension that the judge and the prosecutor would not believe her because of her sexual orientation.

Generally, there is gender-insensitivity and gender bias in handling cases involving these concerns. The participants also underscored the fact that even women judges and lawyers are somehow guilty of perpetuating the gender bias. The fact that they are women does not

automatically mean these practitioners are pro-women, the participants said, and that there are even some male judges who are actually more gender-sensitive.

Traditional and anachronistic biases in the legal and justice systems

Dominant social institutions like the media and the church, particularly the church hierarchy, perpetuate and reinforce traditional and outdated values and views regarding women. Unfortunately for women, these institutions exert a strong influence over many of the country's opinion makers and norm crafters. Philippine laws carry many erroneous and misleading assumptions about women and the lives they ought to be living.

In the annulment case Ching Ming Tsoi v. CA,[4] "the senseless and protracted refusal of one of the parties to fulfill the marital obligation to procreate children is equivalent to psychological incapacity. Furthermore, this factors into the concept of marital rape (Ruiz-Austria 2001, 34)."

A woman, a wife in particular, who refuses to get pregnant may be taken to court by the husband and declared to be psychologically incapacitated. For this, her marriage may likely be declared null and void by the trial courts (Ursua 1994, 35). This is based on the archaic notion that all women want to be married and be with child, and that no woman in her right mind would refuse this special role given by God to all women.

Another maddening idea on women that continues to influence many court decisions is that of virginity, purity, and innocence. "The court generally presumes 'chastity' in women who are young, rural, conservative or uneducated. A favorite reference is to the complainant's being a decent Filipina. In some cases where the complainant's social status was well above that of the accused, the courts foreclosed the possibility of a sexual relationship and convicted

[4]This is an annulment case (decided in 1997) covered specifically by Article 36 of the Family Code of the Philippines which states that "A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization (As amended by E.O. No. 227, dated July 17, 1987).

the latter. At this point, it must be said that 'chastity' is not even an element in the crime of rape. (Yet), why does it seem like a very important factor in prosecuting rape (Women's Legal Bureau 1995, 11-12)?" Studies have consistently shown that rape has nothing to do with whether one is young, old, rich, poor, chaste, or unchaste. Members of the bar and bench need to seriously rethink the values that inform and shape their decisions.

In *Making Sense of Rape,* the Women's Legal Bureau (WLB) writes that selections from some court decisions "will occasionally describe the victim as young and pretty...representing instances when the judge was moved by the victim's charm." This may be good, if the rape survivor is young and pretty, but "it has a flipside danger to all victims who do not fit the stereotype of the 'young, innocent girl.' Given the reality that not only young, pretty and desirable women are raped, there is a very real need to abandon a woman's age and attractiveness as factors in determining the strength of her story, and thus the guilt of the accused (Women's Legal Bureau 1995, 4-5).

Courts are benevolent when the complainant fits the bill of being young, innocent, naïve, and helpless, but this generosity is not for prostitutes and women from other lands. According to WLB, "It is not surprising that no avowed prostitute's rape case has ever reached the Supreme Court. Urban, highly educated or progressive women, and those old enough to have had minimal sexual experience but not so aged as to be rejected as undesirable by common culture, must also meet a tacitly higher standard of proof. Married women have a hard time proving rape unless unmistakable evidence is available (Women's Legal Bureau 1995, 21)."

There are many more values and perceptions about women that are outdated. But a still prevalent one, arrogantly mouthed by media commentators whenever they cover heinous crimes such as rape in radio or TV programs, is the false notion that what a woman is or is not wearing determines whether she will be raped, harassed, or molested. And it is sad to note that, although this notion borders on the absurd, some judges and lawyers allow this thinking to muddle up a case.

Note that "no judicial precedents have been constructed upon the myth that a sexy outfit means 'yes,'" but one cannot discount the role it plays at the level of the trial court, prosecutor's office, or police

station, where most of the acquittals or dismissals, wolf-whistles, and snide remarks take place. How many police officers or prosecutors, upon learning that the complainant was wearing shorts or miniskirts shortly before the rape, dismissed the complaint outright (Women's Legal Bureau 1995, 21)?

On the tedious, protracted and frustrating (as well as Expensive) legal process[5]

To decide to go through the legal course is no mean feat. For many women, especially poor women, the legal system offers no real protection for their rights or their personhood. If they want a speedy and effective remedy, many would rather opt for extrajudicial remedies, if they can.

For a battered woman, the options before her are a toss "between the devil and the deep blue sea," so to speak. Ursua says that a woman either "goes through the very tedious and protracted process of litigation to get support from the batterer – thereby giving the batterer extreme satisfaction of knowing that the woman cannot survive without his money – or negotiate, from a disadvantaged position, with her partner for extrajudicial statement on support. Even a woman who gets a court order for support may still end up holding an empty bag. The husband or partner may just disappear, change residence, or delay the monthly support (Ursua 1994, 34).

Not only is the wheel of justice slow in turning. Besides this, there are also public servants mandated by law, and salaried by the taxes citizens pay the government, who victimize women many times over. In a book on the twin rape bill published in 2001, Santos says that "even before the crucial preliminary investigation stage of rape cases, there is the usually prior and equally crucial stage of police assistance and protection. This matter is accentuated in one case wherein the complainant's rapist was a police officer assigned at a unit, which handled women and children sexual abuse complaints, a classic case of *bantay-salakay.* The complainant recalled accounts told her by her rapist: 'that at the unit where he is assigned, they convince the rape

[5]According to Feliciano et. al. (2000), desistance accounts for many of the discontinued cases initially filed by women. Discriminatory actions, lack of external support, and costly processes, when combined with months or even years of litigation, truly bar women from getting the full protection of justice.

victims, especially the poor ones, not to pursue their cases anymore for after all, the damage has been done and that they could no longer retrieve the lost *'puri,'* honor or reputation and, therefore, it was better for them to just accept any payment to settle everything' (Santos 2001, 27)."

Getting justice is hoped to be therapeutic for someone who experienced abuse or any form of violation. That is why taking the crucial step of deciding to pursue a case is seen by many as a step in the direction of healing, toward wholeness. Sadly, however, many experiences of going through the whole legal process to attain justice have proved to be traumatizing rather than therapeutic. Santos says "it usually turns out to be 'more traumatic because of the myths which the system perpetuates by attacking the credibility of the victim.' A court process … characterized by 'complications, ridicule and the adversarial method cannot be therapeutic'…there is also its 'anxiety provoking' character, 'a process so traumatic - like rape all over again.' Protection from retraumatization or second victimization is the kind of rape shield that rape victim litigants need (Santos 2001, 32)."

Then there is the usual understaffed and ill-equipped police force. It is a sad commentary on the state of law enforcement in the country when the police are unable to run after crime suspects because there is no gas money for police cars. Santos says there was even an instance where the police had to ask the suspects they had apprehended to push their stalled vehicles in order to get the motor running again. The author says that when they did their study in 2001, almost all the Women and Children Protection Units (WCPUs) had no staff who could accompany the victim to the medico-legal officer or to the police. Rape victims were asked to go to Camp Crame and the National Bureau of Investigation (NBI)[6], but no WCPU staff would accompany the woman. Many times, the patients did not go on their own or return to those offices. The police had no mechanism for following up clients. The WCPUs in the National Capital Region (NCR) also had no staff that could assist the victims in filing their cases. No WCPU in NCR was able to gather evidence, though some mentioned that a rape kit could be useful. They, however, did not have space in which to store it. None of them mentioned going to the

[6]These are two of the official agencies mandated to perform medico-legal examinations.

courts to testify, since they did not even know if most of their clients filed cases (Santos 2001, 65).

The article *Images of Women in Impunity* by Sta.Maria clearly describes similar issues and experiences. She says that, "taking into consideration the present state of the criminal justice system gives one more reason to believe that a woman will be rendered powerless and vulnerable to settlements and/or dismissals. Slow investigative work and delay brought about by several postponements and other technicalities are guaranteed to discourage her from pursuing the case (Santos 2001, 27)."

In its research, the Ateneo Human Rights Center, says it is evident that women whose spouses have "left" either by reason of forced disappearance, murder or homicide, have found themselves in a very difficult situation, since traditionally, their primary role has been to take care of the children and the household. With their spouses gone, they suffer the added burden of having to attend to the financial needs of the family. The tendency is to prioritize this over their quest for justice as regards the fate of their spouses. "This was especially true in those cases where the investigation and/or trial were saddled with undue delays and technicalities. In situations such as these, there is a great probability that women will opt to settle the cases or abandon them altogether. Consequently, there is also a greater probability that the accused will get away with impunity (Santos 2001, 27)."

Respondents in the *ALG Northern Luzon Cluster Regional Consultation on Access to Justice of Marginalized Sectors* cite the following as reasons for not filing cases:

- Many law enforcers consider domestic violence a private matter, and are thus convinced there is no need to file a complaint;
- The culture of shame and *machismo* undermines the validity of VAW cases;
- Financial constraints and the lengthy legal process are fundamental factors that women take into consideration;
- There is a lack of faith and trust in the key players of the justice system;

- The various cultural beliefs and traditions of indigenous communities discourage it; and

- There is a lack of support groups for the complainant.

Thus, in the long run, the tedious, protracted, frustrating, and expensive legal process will somehow only put the women – particularly those who are poor – in more vulnerable and difficult circumstances than those they have come from.

Women in prison

Women in prison have their own particular issues and concerns, a majority of these affirming and consistent with the basic premise of this Review on gender and the justice system. But not much has been written about these women or their issues.

In a Human Rights Advisory CHR-A10-2001 on the Sexual Abuse and Torture of Women in Custody it issued in October 2001, the Philippine Commission on Human Rights (CHR) notes that there have been "[c] ases of rape, sexual abuse and torture committed against women detainees by the police, military and prison officials/ personnel," and that most of the women belong to the "socially disadvantaged groups." The advisory cites one report, which revealed that of the 100 detained women interviewed at the Correctional Institute for Women (CIW), ten percent (10%) had sexual contact with the guards at the provincial, city or municipal jail prior to their transfer to CIW (Sta.Maria 2001, 112).

It is hoped, thus, that research studies will soon focus on this "neglected" sector among women. Their current realities and woes, and the transgressions committed against them, deserve attention so that, in consultation with them, proposals may be drawn-up to address their welfare and interests.

Discrimination against women legal practitioners

It is not only women who access the law and the judicial system who experience disempowerment. Even the women who attempt to enter the field, to serve and address the need for lawyers and judges, face the same unfair and biased views and treatment.

Senator Miriam Defensor-Santiago, then a Judge in Manila, wrote an article for the proceedings of an ASEAN conference of women judges. The article provides an overview of the kind of discrimination a woman must contend with when she enters the world of lawyering and moves on to become a judge. From the time she applies for a slot in a college of law, to being a student of law, to practicing it, and helping to interpret it, a woman's competence and confidence are continuously deemed suspect simply because she is a woman (Defensor-Santiago 1987, 65-66).

Defensor-Santiago recounts that during the interview for the Law School Aptitude Test (LSAT), the "female applicant (is) treated with kid's gloves or (the interviewers) bear down on her like a ton of bricks," the logic of the latter being (that) "the earlier the female applicant learns this lesson, the better (it is) for her." Discrimination is even passed off as concern for the interviewee. Should the woman be competent enough to pass the LSAT interview, "(s)he is exposed to the hazards of female existence in a predominantly male population." She is sometimes made the butt of classroom jokes by professors, whose sexist sense of humor think it amusing to call on a female student to recite a case involving a crime against chastity or an offense against decency and good customs. All this is allegedly meant to steel the female student for the harsh facts of life in the courtroom (Defensor-Santiago 1987, 65-66).

The article says that women do clerical work. Not that there is anything wrong with it, but the fact that there are more women than men often assigned to do just that tends to affirm the critique that the prevailing legal culture is biased against women. It seems to say that clerical work IS a woman's job.

There are other forms of resistance faced by a woman in a legal set-up. Once in the judiciary, the paper says there are "no ladies rooms" around because the unspoken yet powerful assumption is that only men can be judges, so there is no need to construct lavatories and toilets for women.

In terms of assignments, female judges are usually tasked to preside over juvenile and domestic relations courts. The "SC thinks female judges are better at family laws (Defensor-Santiago 1987, 69). But the author says there is no "ostensible empirical basis for this assumption, except that female judges appeared late into the scene.

Hence, as a rule, male judges have wider experience in the trial of criminal cases. There is, however, no pragmatic basis for this sex-based discrimination in the assignment of cases."

The author also scores the "ambivalent attitude of the public toward female judges (Defensor-Santiago 1987, 70)." When a judge is good at her job, people say that she acts like a man. When she performs poorly, they say, "what can you expect, she's only a woman." Indeed, it is a catch-22 situation.

Such discrimination comes with the territory. The author states in the introduction of her article that, "on the one hand, women judges definitely constitute a minority in the judicial profession, and hence receive treatment reserved for minorities everywhere, including unfair discrimination. On the other hand, they are considered a special class, a gifted minority, and hence receive treatment reserved for the elite, and are associated with higher standards of honesty, competence and efficiency."

To further probe into this particular matter, some data vis-à-vis the status of women in the judiciary have been culled from some of the articles reviewed. The statistics gathered cover the period from 1993 to 2001.

In an article written by Jimenez-David, she quotes a report from the NCRFW which states that women in 1993 comprised no more than 13.9 percent of the total of 1,666 incumbent judges in Philippine courts and, in 1995, almost 15 percent of the country's 1,646 judges. When the study was conducted, women's representation in the 15-member Supreme Court declined from three in 1990 to one in 1993 after the posts vacated by two retiring women justices were filled up by male appointees. There were two women SC justices at that time – Justices Minerva Gonzaga-Reyes and Consuelo Ynares-Santiago. The same study using data culled in 1995 found that women occupied only 28.3 percent and 30.0 percent of the seats in the Court of Appeals and the Metropolitan Trial Courts, respectively, and less than 20 percent in the Municipal Trial Courts.

As of 1995, a woman judge had yet to be appointed to the Court of Appeals and the Shari'a District Courts. Only 29 percent of the country's 121 state prosecutors were women, again as of 1995 (Jimenez-David 2000, 24). More recent data are provided in an article

by Javate-De Dios, who notes the tremendous imbalance in the appointments of male and female justices, with 117 male justices and only eight (8) female justices in the Supreme Court. Twenty-two (22) justices have presided, all of them men (Javate-De Dios 2001, 331).

An article presented at the "First Alternative Law Conference: Lawyering for the Public Interest[7]," talks about certain dynamics in the legal profession pertinent to upholding the rights of women, all the while examining how players in the legal profession affect the lot of women who engage the justice system. Author Ursua notes that women's issues and concerns, particularly in the legal system, are often considered unimportant or are not given priority. Addressing fellow lawyers, the author expounds on the marginalization of women's issues and concerns in the legal system.

The author criticizes this force she calls the "othering process,"[8] which situates women at the losing end in relation to power and resources in the legal system. "Othering" in our legal system is evident in several ways, and can be seen in the following: (1) in the construction or definition of legal rules according to the generic male standard; (2) in women being considered as the deviation from the norm and thus having subordinate rights or status; (3) in the construction of women and their sexuality from the male point of view; and (4) in the trivialization in law of women's concerns, issues, and activities (Ursua 1999, 3).

The article slams the legal system, where men's values and ideas govern legal discourse, court decisions, legal theories, and all else (Ursua 1999, 6). Members of the legal profession continually participate in various ways of reinforcing sexist standards, norms, and systems, perpetuating women's oppression even within the bounds of law and justice (Ursua 1999, 9).

The reviewed articles above consciously highlight the negligible participation of women in the judiciary, and the legal profession in general. Although there have been significant developments, the

[7]This article was presented by Atty. Evalyn G. Ursua during a panel discussion for the "First Alternative Law Conference: Lawyering for the Public Interest," held in November 1999, sponsored by the Women 's Legal Bureau, Inc. and the Legal Advocates for Women Network.

[8]For further discussion, see De Beauvoir, Simone. The Second Sex (1952).

articles presuppose that this reality continues to contribute to the perpetuation of gender bias in the justice system.

Getting a handle on gender justice: understanding gender differentials in moral development

What exactly is gender justice? Although there are only a few Philippine materials touching on the issue of women and justice, many of the writings are more of a critique of the laws, the insensitivity of processes, and the gender biases in the legal and judicial system. So far, none of these materials have discussed gender justice, how it is constructed, and whether it is simply justice as experienced by women – as if justice is fine as it is. Owing to this, the Reviewers have had to make an exception to the set profile of materials for review by including a chapter article from the 1988 book of Hilary M. Lips, "*Sex and Gender: An Introduction.*"

Lips says that "women and men have different perspectives towards distributive justice in particular situations (Lips 1988, 375)." She notes, in particular, that different psychosocial theorists have varying takes on gender differentials in justice.

The author examines Freud's psychoanalytic theory, which proposes that males and females differ in their resolution of the Oedipal conflict. For Freud, this complex starts at about ages 3 to 5 or 6 years – where a child begins to be interested in the opposite sex parent. Boys identify with their father in order to "have" their mother and not be "castrated" by their father, while girls identify with their mothers to maintain closeness with their fathers. In Freud's world, males develop a superego that is "more internalized, more rigid and more demanding" than that of females, because of this fear of "castration" from their fathers. And being such, men are supposed to have a stronger sense of what is right and what is wrong, what is fair and what is unfair. This is why men, according to Freud, have a more developed or a more strongly defined moral character than women.

Piaget, whose contribution to psychology was his cognitive-developmental theory, also follows a line of thinking similar to that of Freud, but he is viewed as having a more evolved sense of morals. According to Lips, Piaget argues that equity – the preference of males as against equality for females – is a more useful and advanced form of justice (Lips 1988, 376). Men, in Piaget's view, see equity as dividing

the "pie" according to how much each pie recipient put in to earn a share, while women will count how many recipients there are and divide the "pie" equally so each one gets the same size.

Lips moves on to Kohlberg, who posits that moral development proceeds through several phases – more specifically, through three levels in six stages. Kohlberg says the highest stage is reached only in adulthood, and even then, many do not reach the final stage. He believes that most women reach only as far as the third stage, while men can still go on to the fourth or fifth. He acknowledges, though, that some women are able to reach what most men do, provided they take on "occupational positions" similar to those of men. "Stage 3 morality is a functional morality for housewives and mothers. It is not for businessmen and professionals (Lips 1988, 378)."

At this point, Lips notes that "Kohlberg's theory reflects some strong biases, not only about males and females and the moral requirements of their respective roles, but also about the superiority of certain kinds of moral reasoning to other kinds. The possibility that different forms of moral reasoning might be equally useful and valid is not acknowledged in his theory (Lips 1988, 378)."

The last psychosocial theory examined by Lips is that of Carol Gilligan, who found that aside from the concept of rights as the basis of moral reasoning in Kohlberg's theory, "another principle was frequently invoked by her respondents as they struggled to explain why a particular decision was right or wrong." This was the principle of caring and responsibility. According to Gilligan, "(m)oral judgments based on the principle of caring stressed the necessity to be responsible in one's relationships, to be sensitive to the needs of others, and to avoid getting hurt." Individuals are said to move from an initial stage of caring for the self, to trying to be good by caring for others, till the final more mature stage of caring for truth, which involves a balance between caring for the self and others (Lips 1988, 378)."

Gilligan's view, according to Lips, is that the menfolk have a tendency to put more weight on rights while women lend more importance to care. What accounts for this difference in emphasis or valuing is the difference in goal setting in the socialization process of men and women – that is, attachment and relationship for women, separation and achievement for men. "The goals are different because

the problems and challenges faced by females are different than those faced by men, partly because society expects different things from them, and partly because their biological differences make them vulnerable to different experiences in the area of reproduction (Lips 1988, 379)."

Indeed, it is important to acknowledge that men and women have different goals because society has socially conditioned them in that manner. This being the case, men should not delude themselves into thinking they develop differently from women because they are better and that all this is because the goals of separation and achievement are intrinsic to men.

So what do all these psychosocial theories on moral development have to do with justice issues? It is hoped that the above discussion, especially the one on Gilligan's theory, would explain why women's sense of justice is different from that of men. Women determine whether or not something is fair, not simply on the basis of whether it is right or whether it is a right. Rather, women measure fairness or the lack of it in terms of how the issue, processing the issue, and resolving it affect the parties concerned. Women value relationships and relating, as much as they value what is due them. If getting what they are entitled to means getting less for or hurting the ones they love, women may rethink the situation, perhaps even be immobilized by the rethinking, or just decide to explore the prospects for a more win-win situation. If this is not viable, women may simply opt to let their share go to others.

Indeed, there are numerous stories where a woman, though hungry and tired, would give her share of the meal to her children and her spouse, even if she thinks her spouse does not really deserve a morsel; or stories of women forgiving their fathers who raped them because they do not want to see the latter jailed, even though they know such an abominable act warrants that kind of punishment.

If members of the bar and bench, and all other players working for legal and justice issues, would note this socialized behavior and valuing of women, then perhaps there would be a better understanding and less judgment of women who decide to go back to their batterer, forgive their harasser priest, or marry their rapist of a cousin. This would also hopefully inform concerned parties, especially government agencies, that intervention for women to access justice

should be done much earlier than when they are already seeking redress, for at that point, it could mean that they have been compelled to take that path of action because they are fed up with the situation, or the crisis in their lives is almost irreversible, or their very own children are already endangered. Otherwise women, when left to their own devices, would behave according to how they have been socialized: that is, they would endure, forgive, and take the plight of others into account before they even consider themselves.

Gender justice and the justice system

Lips states that "social notions of justice are formalized into a legal system of laws and courts that reflects and even perpetuates the prevalent stereotypes and prejudices about gender," as reflected in the induction of lawyers and judges into the system. Notions of women being more emotional than men, and of men being more rational in their orientation toward justice, may explain why women are still a minority among lawyers and judges. This may also be seen in laws concerning the rights of women and men, in the treatment of male and female criminals, and in the treatment of victims who come into contact with the legal system (Lips 1988, 381-382)."

These gender-biased notions likewise seep into society's justice concern with preventing and punishing criminal behavior. Women and men differ even in their criminal behavior, as seen in the following:

(a) In behaviors considered criminal: men commit more crimes than women. Men's crimes tend to be more serious and violent than those of women. Women are charged with crimes that are violations of social norms, like promiscuity, running away from home, or being unladylike. Women offenders are treated with more leniency than male counterparts. Men are usually charged with crimes like statutory rape and homosexuality, while women are charged with prostitution. In some cases, murder is a justifiable reaction for a man who found his wife to be in bed with another man, but not vice-versa;

(b) In the way their crimes are punished; and

(c) In their experiences as victims of crime: Across countries, time, and age groups, men are more often victimized by crimes than are women. Women express greater fear of

> being victimized than men do. Women's greater fear may stem from their socialization which trains them to think that they are incapable of protecting themselves, but it also relates to the type of crimes to which women are most vulnerable. Women are most likely to be killed by people whom they know intimately, and more likely to be murdered in their own homes than anywhere else. Women who have been raped or have been beaten by their husbands are often assumed to have done something to encourage or provoke their attacker.

In conclusion, Lips says that the "power differences between women and men often mean that women have fewer resources than men, and the very prevalence of this situation may lead people to accept that it is normal. As a result, women may come to believe that they deserve less, and men to believe that they deserve more. This difference in feelings of personal entitlement may cause what appears to be a gender difference in selfishness: women stress equality, take less for themselves and give more to others, while men stress equity and are ready to reward themselves at the expense of others (Lips 1988, 385-386)."

RETHINKING THE BATTERED WIFE SYNDROME, A FEMINIST CRITIQUE

MANY OF THE earlier discussions qualify as part of the critical assessment of women's engagement with the legal and justice system from a feminist standpoint. But the subsequent portion focuses on one issue that merits an entire section for itself: a discussion on the Battered Wife Syndrome (BWS) and a long-standing proposal in the form of a thesis. The proposal is for the Supreme Court to modify its interpretation of the self-defense doctrine, so as to expand the available limited legal recourse for women who injure or kill their batterer partner, especially in a "non-confrontational" situation.

In her 1994 feminist thesis written "in partial fulfillment of the requirements for the degree of Juris Doctor," Mary Jane Real begins her treatise by focusing on the oppression of women owing to their being devalued, subordinated, and exploited simply because they are women in a time and society where anything male still reigns supreme. The author says that in such a set-up, institutions, structures, and processes that include the law and jurisprudence are stacked against women, and these further violate them. She goes on to suggest one area in which to train one's feminist scope – the abuse that women endure in their intimate relationships – and draws up a proposition for concerned parties to discourse upon.

Real's thesis is a lengthy and substantive review and assessment on the present legal system which has failed to provide just defenses for women who kill or injure their batterers. Hence the proposal, trained specifically at the Supreme Court (SC), to modify its interpretation of the self-defense doctrine in order to include consideration of the Battered Wife Syndrome (BWS) is given. Such recommendation, once considered and adopted, would not only help correct misconceptions

and discrimination against women, but more importantly, would also correct the "legal inequity" injurious to women due to the male-based interpretation of the self-defense doctrine.

Normally, when someone is wounded or killed, it is assumed that a crime has been committed, except when the wounding or killing is done in self-defense. For the courts to consider such an act as self-defense, there are elements or conditions to be satisfied that, namely:

- There should be unlawful or unwarranted aggression against the person claiming self-defense;
- There should be reasonable necessity both for the defendant's action and the means she/he employed to repel the aggression; and
- There should be a lack of sufficient provocation on the part of the person defending himself/herself.

Real cites several Supreme Court cases where the battered wives were not able to invoke self-defense because one or all of the three above-mentioned elements were not complied with in the presentation of their defense. There are many cases where the woman killed her husband while he was sleeping or wasted from too much drinking, and the long interval it took for a woman to fight back her abusive husband made her act appear pre-meditated and made it difficult for her to use it as an on-the-spot defense against the danger posed by the husband. Courts declare that these situations cannot be self-defense because of the absence of direct unwarranted aggression toward the woman.

The thesis asserts that to interpret the situation of battered women in this manner is to do injustice to them. According to Real, the self-defense doctrine developed by the Court evolved from a male model (Real 1995, 68). She notes that most of the cases on which the doctrine is based dealt with clashes or altercations between or among men, in situations "when a male defendant is trapped and facing imminent death, struck out at the last moment and killed the attacker." Real hastens to add that "…the cases only pertained to one-time attacks from a person/s not related to the defendant (Real 1995, 68)."

The author is not saying this is not self-defense, but that the situation where battered women fight back is also a form of self-defense, and should be considered as such. This is not to say, though, that all women who claim to be battered can automatically claim self-defense. Part of Real's proposal is for an "expert's opinion" to be admitted as proof that the women indeed suffer from the Battered Wife Syndrome (BWS), defined as "a post-traumatic stress disorder that develops after the experiencing of a distressing event not within the range of common experiences (Schroeder 1991, 566)."

Real argues that "(t)he rulings reflect prevailing misconceptions about battered women. The Court did not address (the) marked difference between a person's response to a singular attack by a stranger and the response of a battered woman repeatedly abused over time by a single perpetrator intimately related to her. The Court failed to contemplate the fact that a battered woman is immobilized from leaving her abusive partner by psychological, social and economic factors. Unlawful aggression continues as long as she remains trapped in the relationship. And that her attack on her batterer during a non-confrontational situation, such as when the beatings have ceased temporarily, is a desperate attempt to try to defend herself successfully."

It is important, according to Real, that the Court take into consideration the particular situation of women who are deemed "weaker" than men, smaller in build, and who largely lack the know-how in physical combat. Based on the cases, the Court expects any defendant invoking self-defense, whether male or female, to respond in the same manner to the aggression. Real says "(t)his denies the battered women their constitutional right to a fair trial."

This tilted interpretation of self-defense and the situation of battered women require a modification of the existing concept of self-defense to take into account the predicament of battered women. Such modification is a necessary step to make in addressing the misconceptions reflected in the Court rulings and "eradicate the effects of a history of discrimination against them (Real 1995, 69)."

DEVELOPMENTS AND COOPERATION FOR GENDER JUSTICE

CONSIDERING THAT WORK focusing on legislative and judicial advocacy is relatively "new" ground for many NGOs, especially women's groups, with only a handful of them integrating such advocacy in their organizational thrusts, the initiatives and breakthroughs in these fields are therefore notable.

Legislative Developments

Relevant developments in laws and policies vis-à-vis eliminating sexual discrimination and recognizing the significant role of women can be seen in the Constitution, the Family Code, and other legislative initiatives.

An article by Flores notes that Philippine law has been amended accordingly. Most significant of these amendments are the following:

- The present Constitution, ratified on 2 February 1987, which is a major step toward the elimination of discrimination against women. For the first time, the fundamental equality of women and men was recognized, as opposed to former constitutions where women were only classified with minors, the handicapped, and other minority sectors (although such classification still exists) (Flores 1992, 216);

- RA 6725, amending the Labor Code to strengthen the prohibition of discrimination against women with respect to terms and conditions of employment;

- RA 6949, declaring March 8 of every year as National Women's Day;

- RA 6955, which declares as unlawful the advertising of Filipino women on a mail-order basis; and

- RA 7192, which recognizes the role of women in nation building and provides for equal opportunities to women with respect to participation in development programs and economic endeavors (Flores 1992, 197);

- Articles 55, 69, and 73 of the Family Code. Article 55 increases the number of grounds for legal separation; and also removes adultery or concubinage as a ground, replacing it with sexual infidelity. Article 69 has changed the stereotype of the man as provider and the woman as his subordinate by declaring that fixing of the family domicile is now a joint decision between husband and wife. The new rule in Article 73 eliminates the bias favoring the husband by making the right to object to the spouse's profession mutual. Also, it eliminates objection to a wife's pursuit of a profession on the ground that the husband's income is sufficient for the family.

The article likewise enumerates bills on women pending in Congress at the time of its writing. These include Senate Bill (SB) 253 – removing the limitation on the number of childbirth for the enjoyment of maternity leave benefits; and SB 111 – exempting a battered wife from criminal liability in case she kills her husband while in the act of battery against her; among other measures (Flores 1992, 216-219).

Aguiling-Pangalangan's article underscores some significant changes in the rights and obligations of husbands and wives, brought forth by the approval of the new Family Code on August 3, 1988 and the passage of the new Anti-Rape Law (RA 8353) in 1997. These include the following:

- Article 68 of the Family Code, which obligates a husband and a wife to "live together." This likewise refers to the right of both spouses to fix the family domicile, a significant departure from the Civil Code that gave this right only to the husband;

- The new anti-rape law that explicitly recognizes marital rape;

- Marital infidelity as a ground for legal separation, instead of adultery or concubinage. It is said that this "answers the demands of Filipino women for the elimination of the double

standards between men and women since concubinage on the part of the husband is very hard to prove.. (Sempio-Diy [n.d.]);

- Articles 68 and 70 (Family Code), which mandate spouses to give each other mutual help and support. This includes financial support that is now a duty imposed on both husband and wife;

- Article 71 (Family Code), which provides that both spouses shall jointly manage the household, amending the Civil Code where the wife alone was responsible;

- Article 73 (Family Code), which gives both spouses the right to exercise a legitimate profession, occupation, business, or activity without the consent of the other. In the Civil Code, only the husband could object to the wife exercising a profession or occupation; and

- A provision which mandates that "(t)he sale or encumbrance of a community or conjugal property requires the consent of both husband and wife (Aguiling-Pangalangan 2000, 37). If there is a disagreement, the couple would have to obtain judicial approval.

Further, the author mentions some relevant changes or developments in the Labor Law. Aguiling-Pangalangan observes that "(t)he Labor Code has categorically made it 'unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex.' Article 132 gives lavatories for women or establishes a nursery in the workplace to benefit the women employees. Likewise, Article 136 makes it unlawful for an employer to require a condition of employment or continuation of such that a woman employee shall not get married or upon getting married, shall be deemed resigned or separated. The Revised Implementing Rules and Regulations (IRR) for RA 8187 for the private sector, dated July 1996, directs the payment of paternity leave benefits. Whereas previous laws gave maternity benefits to cover female employees, the Revised IRR allows a married male employee compensation for seven days while he is on leave, when his spouse has delivered a child or suffered a miscarriage. Its aim is to give the husband an opportunity to lend his wife support and/or to nurse his newborn baby (Aguiling-Pangalangan 2000, 39)."

In legislation, the passage of Republic Act 8353 or the Anti-Rape Law on September 30, 1997 and Republic Act 8505 or the Rape Victim Protection and Assistance Act of February 13, 1998 are steps in the right direction (Feliciano et al. 2002, 140). The former, RA 8353, is a welcome development from the old rape law, Article 335 of the Revised Penal Code. The new law recognizes rape as a human rights violation, and no longer a sexual crime. It expands the definition of rape from mere penile penetration, implicitly recognizes marital rape, and provides for significant evidentiary presumptions in favor of the woman raped.

Republic Act 8505 provisions point to intra-government agency coordination and between government and non-government organizations as well. The law practically creates a support infrastructure or system to assist and protect raped women (Santos 2001, 1-4).

However, many women's advocates are saying there is still a need for monitoring and periodic evaluation because "effective and just implementation continue to be hampered by factors such as rape myths entrenched in judicial doctrines and the court ordeal experienced by rape complainants." ReproCen hastens to add that the "strengthened vigilance of women's rights advocates is one of the recommendations to these gaps (ReproCen 2001, 85)." Rape myths, especially those ingrained in jurisprudence, would undermine whatever gains are made in the new anti-rape law.

In 1995, Congress enacted Republic Act No.7877, or the Anti-Sexual Harassment Act. The law articulates the determination of Congress to outlaw "all forms of sexual harassment" in the workplace and in education or training environments (Bautista 1998, 122). The author asserts that sexual harassment is a relatively new term, both here and in other parts of the globe. In fact, the Philippines is the first Asian country to enact a law prohibiting sexual harassment. However, the author opines that even though Section 3 of Republic Act. No. 7877 defines and characterizes sexual harassment at great length, it still proves to be vague and inadequate.

Another new legislation worth mentioning is the Anti-Trafficking in Persons Act or Republic Act 9208, passed into law on May 26, 2003. This law finally recognizes trafficking in women and children as a reality and a punishable offense.

Judicial Reform Initiatives and Actions

Judicial initiatives are lauded in the book "*Gender Sensitivity in the Court System,*" which notes the Supreme Court's demonstration of its willingness to accommodate new views on the issues confronting women. One example is the openness of the Supreme Court to consider the Battered Wife Syndrome as self-defense (although this does not mean the Supreme Court has decided positively on the viability of the syndrome in the interpretation of the self-defense doctrine, as urged in the 1994 thesis of Real).

In the article of Merci Llarinas-Angeles entitled "*The Twin Laws on Rape - Three Years After Passage,*" she states that even though there were no actual R.A.8353 (Anti-Rape Law) cases filed during the assessment period of October 1997 to September 2000 – or three years after its enactment – there were several SC decisions that touched on Post-Traumatic Stress Disorder (PTSD) in relation to sexual offenses. This must be noted because they signify an increasingly important psychological input into rape jurisprudence (Llarinas-Angeles 2001, 96).

Also, during the period covered, the only significant Supreme Court decision applying to RA 8353 involves the important evidentiary presumptions bearing on resistance or consent. The first marital rape conviction under this law was handed down by a Regional Trial Court, while the Department of Justice (DOJ) came out with its official interpretation of sexual assault rape under RA 8353 as excluding finger insertion, though this has been elevated to the SC for definitive interpretation. Generally, opinion is divided on whether RA 8353 has made prosecution easier and defense harder, or vice-versa (Llarinas-Angeles 2001, 96).

The adoption of the Child Witness Rule may also be considered part of the judicial and administrative reforms. Professor Feliciano et. al. describe this as referring to rules on the examination of child witnesses recently issued by the Supreme Court. "They are designed to create and maintain an environment that will allow children to testify in legal proceedings, and facilitate the ascertainment of truth (Section 2) (Feliciano et. al. 2002, 144)."

The "child witness" is further defined as "any person who at the time of giving testimony is below the age of eighteen." In child abuse

cases, this may include one who is over eighteen but who is unable to fully take care of herself or himself from abuse, neglect, and cruelty, among others, due to a physical or mental disability or condition. Under Section 10, the court may also appoint a facilitator (a child psychologist, psychiatrist, social worker, or parent, etc.) if it sees that the child cannot understand or answer questions being asked her or him.

The child also has a right to be accompanied by one or two persons when testifying in court. Section 13 likewise provides that the court "may, in its discretion, direct and supervise the location, movement and deportment of all persons in the courtroom including the parties, their counsel, witnesses, etc." More importantly, it states that the child may be allowed to testify from a place other than the witness chair and that these accommodations need not be supported by finding of a trauma on the part of the child. Section 6 provides that the court should permit the child to use dolls, puppets, drawings, etc. to assist him/her in testifying (Feliciano et. al. 2002, 146)."

The above example shows that the Supreme Court is open to amending its own rules. But while amendments were made in the Rules of Civil Procedure in 1997 and in the Rules of Criminal Procedure in 2000, neither of these changes accommodated issues on gender bias (Feliciano et. al. 2002, 146).

In the Supreme Court-published document *The Blueprint of Action for the Judiciary,* there is actually a basic recognition of the problem of gender bias and discrimination against women in the Judiciary. This is particularly taken from the section on the Challenges to the Judiciary which states that gender insensitivity is a basic problem in the Judiciary. Despite the legal mandates in many jurisdictions recognizing the role of women in nation-building and ensuring equality before the law, discrimination against women and violations of their rights continue (Supreme Court 1998, 32). Hence, these preliminary efforts are indeed welcome initiatives toward judicial reforms that, it is hoped, would translate into concrete plans and actions for the women themselves.

Proposing Changes in the Code of Muslim Personal Laws (CMPL)

The Pilipina Legal Resources Center (PLRC) is working with the National Network for Muslim Women's Rights to propose legal

reforms to the current Code of Muslim Personal Laws (Antonio 2003, 63). This collaboration is aimed at popularizing alternative Muslim Personal legislations and Shari'a jurisprudence, as well as a local advocacy program on women's rights and social justice, in partnership with various agencies at the local level – in the Autonomous Region for Muslim Mindanao – and at the national level (Antonio 2003, 79-80).

The network involves organizing advocates for the passage of a "Revised Code of Muslim Personal Laws." Areas in the existing Code where changes are proposed are as follows: (1) The provision on hereditary rights which is different for both sexes; (2) The provision on unilateral oral divorce which is the prerogative of Muslim men; (3) The provision on domicile; (4) The provision on the right to work or practice one's profession; (5) The provision on the management of the household; (6) The provision on child marriage which violates the rights of a child; and (7) The operational definition of just treatment in subsequent marriage/s (Antonio 2003, 63 & 68).

The process of proposing reforms in the Muslim Personal Law will be popularized. The CMPL is dramatically different for women than for men. This body of rules mediates an individual's ability to participate in every level of social life from decision-making within the home and family, to education, employment, and public office. It calibrates and measures a woman's value as a human being in her home and her society (Antonio 2003, 81).

Changing Positions of Women in the Judiciary

The good news is that the positive developments for women in the Judiciary are being felt at the highest courts. These are shared in the Supreme Court lecture series on Women in the Judiciary.

In her presentation, Justice Reyes notes that the choice of "Women in the Judiciary" as a theme of the lecture series is the result of an increasing presence of women in law. This is validated by the high ratio of females now enrolled in law schools, those working in law offices, the high percentage of women passing and topping the bar where "we had 7 on the top ten in the last exams, and (those) occupying high and sensitive positions in and out of the government (Reyes 2001, 326)."

She adds that the Judiciary had its first woman Justice of the Supreme Court (SC) twenty-seven years ago, and seven other women have since been named to the highest court. This is a poor fraction of the total of 147 justices who have been appointed to the Supreme Court but it is heartwarming to note that of the last four justices appointed to the SC, three are women, and among the last six justices appointed to the Court of Appeals, four are women. As of December 31, 2000, there were at least nineteen (19) woman justices: three (3) in the Supreme Court, thirteen (13) in the Court of Appeals, and three (3) in the *Sandiganbayan*, and there are 280 women trial judges (Reyes 2001, 327)."

This is considered a giant leap relative to the fact that "in 1875, the Supreme Court of Wisconsin denied the first application of a female for admission to the bar of that court on the theory that the law of nature destines and qualifies the female sex for the bearing of the children and for custody of the homes (Reyes 2001, 327)."

Justice Reyes also declares that the increasing representation of women in the courts (with women constituting more or less 20 per cent of the aggregate membership of the Judiciary today) is a welcome, if slow, development. It should also be deemed impressive, she says, considering the sexist remark that "a woman has to be twice as good as a man to go half as far (Reyes 2001, 327)."

Likewise, there are other positive signs of women's presence in the legal system. The results of the recent Bar Exams indicate that there are 415 or 42 percent women lawyers who passed as against 564 or 58 percent male lawyers. Women are exhibiting a sharp competitiveness by occupying seven (7) out of the eleven (11) Bar topnotcher slots (Javate-De Dios 2001, 331).

It is certainly hoped that these changes and developments in terms of the increasing presence of women in the courts – either as judges or lawyers, which are two of the most male-dominated occupations – would redound to a more woman-friendly judiciary.

RECOMMENDATIONS

SURELY, THE FOLLOWING discussion on recommendations in addressing issues and concerns of gender justice represents only a sampling – based on the reading list considered in this review of literature – that stems from the short engagement of feminist-legal and women's groups in the province of legislative and judicial advocacy toward a more woman-sensitive and woman-responsive system. This type of advocacy is a young but growing line of work, and it is quite fair to expect that there will be more proposals for all actors in the field to address individually and collectively.

To the Judiciary, specifically the Supreme Court, the following are proposed:

1. Admission of expert testimony on the battered woman syndrome[9] to support the critical elements in the battered woman's plea of self-defense and to modify the Supreme Court's interpretation of the elements of self-defense to include the case of battered women. This expert testimony may be admitted after satisfying two requisites: when the defendant has proved she has been battered by her partner and has gone through the cycle of violence; and she does not

[9]While the "Battered Wife Syndrome or BWS" is the technical term employed in the literature reviewed and recognized in Philippine courts, WomenLEAD Foundation, Inc. prefers to use the term Battered Woman Syndrome to refer to this condition suffered not only by married women but also by women who, although unmarried, must contend with repeated physical abuse – among other forms of abuse such as verbal, emotional, psychological, etc. – at the hands of their partners or boyfriends. WomenLEAD believes the term Battered Woman Syndrome is more encompassing as it takes into consideration all women, regardless of their civil status, who suffer from similar oppressive circumstances in their intimate relationships.

deny the act (Real 1995, 102). It will not entail an amendment of the elements of this defense but will only require an expansion of the SC's interpretation of the self-defense requisites to include the particular circumstances of battered women (Real 1995, 92). This will make this type of defense available not only to a battered woman, but also to any woman who does not fit the mold;

2. Creating enabling mechanisms to eliminate gender bias in the court systems, including renewing and developing policy that poses difficulty for women to obtain a fair and speedy trial, as well as increasing oversight functions and accountability, as in the serious enforcement of arrest policies and protective orders for sexual crimes like incest and gang rape;

3. Stirring up court processes and strengthening ethical guidelines for the practice of law and law enforcement positions (Feliciano et. al. 2002, 57-63);

4. Enhancing knowledge-based adjudication by upgrading competencies and capabilities of members of the Judiciary on new laws through continuing dialogue between the Judiciary, on the one hand, and the basic sectors and the alternative law groups, on the other;

5. Developing a training module on social reform laws including gender-related laws;

6. Undertaking an empirical study on gender bias in the courts (Supreme Court 1998, 67);

7. Enhancing the computerized case-tracking system such that cases may be classified or sorted according to type of sector, groupings, gender, and ethnicity (Supreme Court 1998, 68);

8. Making the composition of the courts more gender-balanced;

9. Supporting the call for a gender profiling of the Judiciary at various levels and policy issues that hinder women's participation and their career movement in the judiciary (Jimenez-David 2000, 24); and

10. Urging the Supreme Court to take a pro-active stand or

formulate a policy to increase gender balance in the Judiciary as a form of affirmative action (Jimenez-David 2000, 24).

To the Legislators:

1. The crafting of a special law acknowledging that a battered woman proven to be suffering from the Battered Wife Syndrome is justified in injuring or killing her batterer. Considering the peculiar circumstances of battered women, such proposed legislation will not violate the constitutional provision on equal protection;

2. Legislating a law criminalizing wife battery;[10]

3. Legislating other legal remedies – including one that allows battered women to file civil suits for damages against their batterers, and one that orders the arrest of batterers upon report of the incident as well as the mandatory prosecution of the case – may serve as an effective deterrent to the abuses. The issuance of protection orders by the court, such as a demand for the partner to vacate the conjugal home during the pendency of the case, will momentarily prevent further abuses on a woman (Real 1995, 103-105);

4. Decriminalizing prostitution through the repeal of Article 202 of the RPC – as recommended by participants to the policy workshop jointly conducted by the Project Group on Prostitution of the NCRFW and the GO-NGO Network on VAW and prostitution (Feb. 16, 1993). This suggestion is likewise echoed in the Philippine Development Plan for Women (PDPW) signed by President Corazon Aquino in 1989 (Ofreneo and Ofreneo 1993, 36-38), where it is pointed out that decriminalization is "the removal of the criminal onus or penalty from women who are seen as victims bought by the business and buyer." The same call is also carried in the WEDPRO petition to Congress on the existing sanctions against prostituted women (Ofreneo and Ofreneo 1993, 36-38); and

[10](Note that a Senate Bill on Anti-Abuse of Women in Intimate Relationships or the Anti-AWIR Bill has gone through the Technical Working Group of the Committee on Women and is awaiting the Committee Report, while a bill on Domestic Violence has also been filed at the Senate.)

5. Revising laws with sexist language and content as well as enacting women- and children-sensitive laws.

To the NGOs:

1. Studying prostitution laws, as well as lobbying for stiffer penalties for White Slavery;

2. Defining gender-neutral court language, and drawing-up a proposal on how to integrate this in court processes and procedures;

3. Conducting consciousness-raising seminars for all actors in the legal and judicial system;

4. Popularizing, implementing, and using the 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of Others, and the 1979 UN Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW)[11], of which the Philippines was a signatory in 1952 and 1981, respectively (Philippine Development Plan for Women 1989, 146-147); and

5. Studying and revising laws with sexist language and content.

Specific Suggestions for Research:

1. Conduct an inter-disciplinary survey of gender-related attitudes, beliefs, and behaviors of court officials and personnel, direct observation of court hearings, and a more comprehensive gender assessment of court transcripts, rules, and procedures;

2. Conduct a more in-depth study of Transcripts of Stenographic Notes or TSNs to be complimented by interviews of judges, lawyers, court personnel, and the litigants so as to determine the pervasiveness of gender bias in court proceedings (Feliciano et. al. 2002,116); and
3. Study the inconsistencies in SC decisions, particularly in rape cases, toward clarification and resolution (Feliciano et. al. 2002,170).

From the Women Themselves:

[11]And, if we may add, the Optional Protocol to the CEDAW, signed in 2000

Based on their prior responses, participants to the *Regional Consultation on Access to Justice of Marginalized Sectors* have very little faith in the justice system. They cited customary laws and a strong support system, particularly from the family, as other forms and sources of justice. For them, a gender-responsive and gender-sensitive justice system does not degrade women and children, and takes note of the disparity between the rich and the poor.

Their other recommendations are:

- education and training of key players in the justice system and the communities;
- continuous development and training of paralegals;
- a serious campaign against graft and corruption in the judiciary; and
- a more systematic and comprehensive documentation of human rights violations, particularly against women.

CONCLUSION

THERE IS STILL a long way to go in bridging the gap between justice as defined by those in the social mainstream and as it is lived on a day-to-day basis by marginalized groups, especially women and children. The lofty ideal of justice as the sense of being just, impartial or fair, and as being for everyone regardless of gender, economic and social status, and age, among other factors, is sadly just that – an ideal. The stories, statistics, and anecdotes pertaining to Filipino women as well as their predicament here and abroad, over time and across age groups, belie all the pronouncements made by authorities. Government, the academe, and practitioners of the legal and judicial system know these things quite well.

Thus it is hoped that those concerned do recognize the urgent need to fill the chasm between theory and practice as well as between intentions and actualities, and that they will act in good faith –in consultation with the affected sectors – to address the age-old injustice and discrimination against women under the law and in the justice system. To them all, the following summed-up points from the materials reviewed are being presented:

On Gender Justice: Gender justice needs defining from the context and perspective of Filipino women. To date, there is a scarcity of local materials defining gender justice. While there are numerous local materials dealing with the actual experiences and frustrations of women with the legal and justice systems – mostly in the area of miscarriages of justice and government's gender insensitivity – and even as there are many publications critiquing and analyzing the country's legal and justice system, none have taken up the task of

describing, studying, documenting, and offering a theoretical discourse on how Filipino women conceptualize and practice justice.

The lone article – unfortunately a foreign material – reviewed in this paper fails to offer an explicit definition of gender justice either, but it does present the idea that women and men experience and deal with justice issues differently. It shows that the sense of fairness among men is largely dictated by their sense of rights and equity, while women – though not oblivious of what is right and what is equitably due someone – are motivated to a larger extent by a sense of caring, one that intervenes with their sense and execution of what is therefore fair or just. Women's decision on fairness or justice is informed and influenced by their relations with others, primarily their children and spouses. And should their practice of justice diminish whatever is due these relations, women normally adjust and opt for equality, even if it means getting less than what is rightfully due them.

Filipino feminists and women-advocates need to test and validate this theory. Is this the governing principle of what Filipino women consider as just and fair as well? How are women offenders or criminals treated differently from men? Do female and male offenders or criminals behave differently? Are men more violent in the crimes they commit? Who between women and men under such circumstances are more remorseful? Are punishments meted out differently for the sexes? Does this difference play a role among judges? How are injustices against women further aggravated when the bar and bench are "blind" to such differences? There are many more questions to be asked, and this requires courage and a clear mind on the part of those who will venture into the crafting of a Filipino and southern perspective of gender justice.

Filipino Women's Experiences with Justice: Generally, what has been written about are the negative experiences. Disappointment and frustration run high, especially among grassroots women who know that going to court is expensive and exasperatingly long, that practitioners are insensitive, that many law enforcers are inept, and that corrupt practices are widespread. It is disheartening to know that these are not new anymore. Newspaper accounts on an almost daily basis expose stories of this nature, and the effect is numbing. These are too commonly known that people feel hopeless and helpless in the face of these problems, more so in engaging the system to correct the wrong.

Poor women do not see justice as real. They are convinced that justice is for the rich. Indeed, state mechanisms are stacked against prostitutes, women criminals, those in prison and detention centers, victims of domestic violence, trafficked women, and illegally recruited women, among others. For them, the law is punitive and fails to offer them any protection.

Double standards in Philippine law abound. The many legal codes of the country have been weighed and are found wanting in terms of being fair to women and girl-children, especially the poor. The Family Code, Civil Code, Revised Penal Code, the Code for Muslim Personal Laws, labor laws, and the Civil Service Law are among those tainted with provisions that have proved disadvantageous and even detrimental to women and girl-children.

Across the various phases of judicial action, the imprint of gender bias – founded largely on antiquated views of women and their realities – is palpable. The processes, the procedures, and the language, among other things, all manifest prejudice against women. Many are not conscious of this so they claim innocence, but women say this is no excuse. Women feel trivialized, typecast, and "othered." Difficult as it is for women to own up to having been abused, to come forward, and to file a complaint on the violation they have suffered, court insensitivity and bias make the situation even more daunting for them as these atittudes undermine whatever shaky courage women may have been able to muster in going to court. What is already difficult to do in the first place is made doubly hard to pursue even further.

It is not only the women who access the law and the judicial system who experience disempowerment. Even the women who attempt to enter the field to serve through the legal system – from applying to enter law school to studying, graduation, practicing, and becoming a judge – face the same unfair, biased views and treatment. As it is, there are few of these women (even as the present number of women practicing law is on the upswing) and, regrettably, the "trade" has yet to become encouraging enough for these few to stay, flourish, and multiply.

Modifying the Self-Defense Doctrine or a Plea for the Battered Wife Syndrome: The Review has presented a lengthy discussion on why there is an urgent need for the Supreme Court to modify its

understanding and analysis of the self-defense elements. Such modification would expand the limited legal recourse for women who injure or kill their batterer partner, especially in a "non-confrontational" situation (under which a majority of women who experience abuse in intimate relations fall). Should the court consider and adopt this proposal, it would "not only help correct misconceptions and discrimination against women" but, more importantly, would also correct the "legal inequity injurious to women due to the male-based interpretation of the self-defense doctrine." Indeed, it has been eight years since Real wrote her thesis. It is high time that there be a debate on the issue, at the very least.[12]

Welcome Developments: Not everything that women have written about justice and law is discouraging. Though rather belatedly, there is a growing interest in improving access to justice and reforming the system and its processes, and this has yielded many initial results. A handful of policies aimed at eliminating sexual discrimination and recognizing the significant role of women can be seen in the Constitution, the Family Code, and other legislative initiatives.

Judicial initiatives, especially from the higher courts, are laudable. A quick look at an annex of recent Supreme Court decisions on rape would show openness and an emergent sensitivity to women's realities. The adoption of the Child Witness Rule is also a good example of recent judicial developments that show the court to be responsive to the possibility of enhancing its rules to better and more sensitively serve the people. Perhaps the day would come when the High Court would also adopt a similar rule that would protect and promote the rights of women who experience violence and abuse. Likewise, there are ongoing efforts between NGOs and GOs to craft an alternative code for Muslim laws. Quite notable, too, is the rise in the number of women entering law colleges, topping the bar examinations, practicing law, and becoming judges or even high court justices.

[12]A recent development on this is the case of People vs. Genosa (G.R. No. 135981. September 29, 2000) whereby the Supreme Court remanded the case to the concerned Regional Trial Court Branch 35 of Ormoc City for the reception of evidence from qualified psychologists or psychiatrists whom the parties may present to establish the appellant 's state of mind at the time of the killing, as an argument for Battered Wife Syndrome as self-defense. After receiving the testimony, the Ormoc Court submitted the same to the Supreme Court. On January 15, 2004, the Supreme Court ruled for the reduction of the appellant's sentence and ordered her release for having served time.

Of course, these developments are still inadequate. The problem of women's subordination and marginalization in Philippine society – mirrored in all the structures and system of culture, including the law and the justice system – is age-old and pervasive, seeping through every fiber of the personal and the political.

Discrimination against women abounds in all aspects of society. This is bad for women, but it is prejudicial to men as well. Indeed, the national and global communities appear to have gained enough wisdom to realize and accept culpability for the millennia-long harm and hurt done to women all over.

Professor Aguiling-Pangalangan states that a "legal as well as moral analysis requires keen attention to gender. Writing laws that are facially gender-neutral is definitely a step in the right direction. However, where the male perspective is taken as neutral and universal, women will always be put to task for conduct and thinking that the analytical tools and the criteria by which legal and moral norms are measured are themselves not inherently discriminatory. Otherwise, laws and rules of conduct that determine what is good or bad, right or wrong, will serve only to perpetuate centuries-old gender inequalities (Aguiling-Pangalangan 2000, 41)."

Gender analysis in every nook and cranny of the systems that people are in is necessary. The gaps between law, interpretation, and enforcement must be examined and filled. Sensitivity in language, discourse, handling, decisions, policies, procedures, and speech is imperative.

There is an opening, and women welcome that opening and will use it. Likewise, keenness and resolve are crucial in reshaping systems – including legal and judicial systems – to make them more relevant and responsive to the clamor for genuine change. The road toward that end is long and paved with difficulty, but it is hoped that women will get there and, with any luck, in partnership with caring and respectful men.

Indeed, positive developments have been slow and belated, but hopefully steady. Few as they are now, it is important to know, document, and draw lessons and inspiration from, them. These, in a resolute effort to carry out a more complete overhauling of the systems and processes for women and all other sectors that have been relegated to the margins.

ANNOTATED BIBLIOGRAPHY

BOOKS

Action Program for Judicial Reform (2001-2006) with Supplement

Supreme Court of the Philippines
Manila 2001

The Action Program for Judicial Reform (APJR) embodies the six-year judicial reform program of the Philippine Judiciary. It is a result of concrete steps taken to establish a strong foundation for the long-term development of the judicial branch of government. It consists of a wide-ranging yet comprehensive set of reform projects and activities aimed toward enhancing judicial conditions and performance for improved delivery of judicial services.

It has a six-pronged program of reforms on: (1) judicial systems and procedures; (2) institutions development; (3) human resource development; (4) reform support systems; (5) institutional integrity development; and (6) access to justice by the poor.

The document also identifies nine (9) critical issues that the projects will address. Specifically, these are: (1) case congestion and delay; (2) budget deficiencies; (3) politicized system for judicial appointments; (4) lack of judicial autonomy; (5) human resource development system; (6) dysfunctional administrative structure and operating systems accompanied by deficient court technologies and facilities; (7) insufficient public information and collaboration with civil society; (8) corruption in the judiciary; and (9) limited access to justice by the poor.

The book gives a brief overview of the Philippine Judiciary. First, it describes the four levels of the judiciary. The first level includes 82 Metropolitan Trial Courts (MTCs), 141 Municipal Trial Courts in Cities

(MTCCs), 425 Municipal Trial Courts (MTCs), 426 Municipal Circuit Trial Courts (MCTCs), and Shari'a Circuit Courts. At the second level are 950 Regional Trial Courts (RTCs) distributed among the 13 judicial regions, as well as the 56 Shari'a District Courts. At the third level is the Court of Appeals (CA), and at the fourth level is the Supreme Court (SC). Additionally, the Judiciary includes two special courts: the Sandiganbayan which hears cases involving graft and corruption charges against government officials and their accomplices; and the Court of Tax Appeals which has jurisdiction over cases involving violations of tax, tariff, and custom laws.

It further adds that the Philippine Judiciary "does not exist *in vacuo* but operates within a much larger system. This much-expanded system includes the *barangay* justice system; the quasi-judicial bodies that are empowered by law to exercise adjudicatory functions; and the law enforcement, investigative, prosecutorial, and correction systems of the Department of Justice and the Department of Interior and Local Government. Thus, the judiciary's performance is significantly affected by the performance of systems external to the judicial organization" (pp.18-19).

This part also gives an assessment of performance and current conditions on the various levels of the Philippine court systems vis-à-vis the continuously increasing caseloads. Lastly, the challenges, issues, and constraints that need to be addressed are also tackled. The publication gives an over-all assessment that, indeed, there is a need for a more comprehensive approach to strengthening capacities of the courts for better efficiency, flexibility, and effectiveness. Efforts for an improved performance should target the court management systems, procedural rules, jurisdictional structure of the courts, and alternative dispute resolution mechanisms (p.26).

Ang Batas Laban sa Panggagahasa

Women's Legal Bureau, Inc.
Quezon City 1998

The publication is a primer designed to give information on the crime of rape and the laws relative to it. This includes inputs on the legal process and steps to avail of protection under these laws. Expectedly, this should aid women in making decision about filing rape charges or contemplating such. Even service providers could benefit from the publication.

It focuses on two legislations: The Anti-Rape Law of 1997 and The Rape Victim Assistance and Protection Act of 1998. The Anti-Rape Law or Republic Act 8353 modified the law on rape as provided in the

Revised Penal Code. It expanded the definition of rape and re-classified it as a crime against persons. Previously, it was a crime against chastity. This means rape is no longer a sexual crime but a human rights violation. The Rape Victim Assistance and Protection Act or Republic Act 8505 mandates the establishment of rape crisis centers for the protection and support of women and children who have been raped.

The publication tackles the promotion of justice and its enforcement particularly with regard to said laws. RA 8505 specifies the duties and obligations of an investigating officer and a medico-legal officer when handling rape cases (p.24). At the same time, the publication also enumerates the rights of a complainant while undergoing such processes (p.25).

The authors discuss that the root cause of rape is largely the wrong perception of women as inferior and mere sex objects created to satisfy the lust of men (p.4). Therefore, even a slightest change in this outlook would be welcome.

Blueprint of Action for the Judiciary

Supreme Court of the Philippines
Manila 1998

The Blueprint of Action for the Judiciary is a document developed by the Supreme Court with assistance from the United Nations Development Programme (UNDP) and the National Economic Development Authority (NEDA). It is a result of an 18-month consultative and collaborative process with different sectors and stakeholders. It outlines the strategic courses of action to be implemented over the next five years to strengthen the quality of justice and enhance the efficiency and effectiveness of the Philippine Judiciary (p.i).

The Blueprint tackles the following:

- the genesis and development of how the Blueprint came to be;
- the strategic directions of the Supreme Court which articulate the vision, mission, goals, and principles of the Judiciary;
- the Judiciary and the Public Sector Reform that further discusses the Blueprint in connection with the Medium-Term Philippine Development Plan;
- challenges to the Judiciary that provide a comprehensive review of its internal and external environment. This chapter presents a review of the major challenges being faced and to be faced by the courts within the next five years. These were culled from the different components of the Project, and identified and raised in

the various multi-sectoral consultations, discussions, researches, and country visits;
- the parameters and strategic courses of actions of the Blueprint that include: (a) capacity-building; (b) synergy-building and networking; (c) establishing a research agenda; (d) multi-sectoral dialogues and consultations; (e) resource generation, sourcing, and mobilization; and (f) review, monitoring, evaluation, and adjustment;
- recommendations by focus areas that involve: (a) independence, integrity,
and accountability; (b) enhance knowledge-based adjudication; (c) fairness and efficiency; (d) accessibility; (e) some support programs by stakeholders; and (f) proposed external communication plan; and
- some relevant points for the implementation of the Blueprint.

Particular to gender and justice, the basic recognition of the problem of gender bias and discrimination against women in the society was discussed in the section on the Challenges to the Judiciary. Gender insensitivity was cited as one of the major challenges to the judiciary arising from the external environment. Despite the legal mandates in many jurisdictions recognizing the role of women in nation-building and ensuring equality before the law, discrimination against women and violations of their rights continue (p.32).

The inclusion of the following women-related issues and concerns in the recommendations part of the Blueprint is indeed a welcome development. Hereunder are the specific focus areas that integrated women's issues and concerns:

- Under *Enhanced Knowledge-based Adjudication* is stated the need to upgrade competencies and capabilities of members of the judiciary on new laws. This can be achieved through continuing dialogues between the Judiciary on the one hand and the basic sectors and alternative law groups on the other; and the development of a training module on social reform laws including gender-related laws; among others. The proposed initiating office is the Philippine Judicial Academy (PhilJA) (p.57).
- Two items are gender-related under *Accessibility*. *First*, the conduct of an empirical study on gender bias manifestations in the courts. The timeframe to implement this is immediate and the proposed initiating offices are the Office of the Court Administrator (OCA) and PhilJA (p.67). *Second*, the enhancement of a computerized case-tracking system so that cases may be classified or sorted according to type of sector, groupings, gender, and ethnicity (p.68).

- In *Some Support Programs by Stakeholders*, priority will be given to the enactment of critical social reform bills that include women-related legislative measures such as the bills on domestic violence and anti-trafficking of women.

Indeed, the Blueprint of Action for the Judiciary is a welcome development for various stakeholders. Relevant comments and feedbacks on this document, particularly speeches delivered by concerned sectors during its launching in 2000, will be tackled on the subsequent materials to be reviewed.

Challenging and Subverting the System of Prostitution: A Policy Paper

Women's Legal Bureau, Inc.
Quezon City 1999

The book examines prostitution and Philippine laws governing the subject matter. It provides the realities in prostitution as seen through the experiences of women in prostitution with the judicial system, specifically their engagement with the people and structures of law enforcement. Proposals on how to address prostitution were also put forth in this policy paper.

In prostitution, focus is immediately on the women and children who provide the services. It is hardly seen as a system where individuals are caught up in. Prostitution is neither seen in the context of capitalist economic relations nor amidst the prevalence of a patriarchal ideology (p.16).

The publication criticizes the use of women themselves in entrapment operations (p.9). In the process, rights are violated, a media feast ensues, and all that is left are women lying face down as they were first found and hoping the rights they were not sure they had would be upheld.

In entrapment, a law enforcement agent or their informer poses as a customer seeking sexual services from women. This method supposedly exposes the secrets of the "trade." It allegedly reveals the identities of the bar owners, the pimps, the other hooligans who reap large profits from the business, and their modus operandi. But posing as a customer also means availing of the service. The authors believe that this can be done without subjecting women to this "process." The use of women's services, even in the name of law enforcement, still violates their rights.

For women to have a fair hold on justice, their rights and dignity must be upheld. Existing State policies have yet to prove their efficacy

(p.7). The recognition of women having rights has become a cliché. Concrete actions seldom follow recognition. Equal protection of the law must be afforded the women in prostitution. Or has the sickening and snooty hand of discrimination broken them away again, setting them apart from "other women?"

It is only when their rights are finally acknowledged and upheld that the playing field in the justice system can be leveled thus allowing them better access to legal processes.

Experiences and Views of Divorced Muslim Women in Jolo, Sulu

Nandu, Jennifer S.
De La Salle University
Manila 2003

The study explores the experiences and views of fifteen (15) Muslim women from Jolo, Sulu who have been divorced within the last three years. It also describes the characteristics of the women's former husbands as articulated by the women themselves. It employed key infomant (KI) interview as a method. While the study findings covered pre-, during, and post-divorce experiences, the relevant points on gender and justice came out mainly on the actual divorce stage, particularly that of the women's experiences during their respective court proceedings.

Before going into the women's actual experiences, the book also has interesting discussions on some relevant provisions of the Code of Muslim Personal and Family Laws. Also known as Presidential Decree 1083, this was promulgated not only in recognition of the culture and tradition of Muslim Filipinos but also to ensure that Islamic institutions, such as divorce and polygamy, are properly regulated. It was noted that the Code has been under attack both from the religious sector and the women sector; the former due to the Code's apparent deviation from Islam's teachings while the latter has continuously critiqued the Code as inadequately protecting women from the abuse of certain rights by their husbands, particularly those pertaining to divorce and polygamy (p.22).

The book, likewise, provides a brief discussion on divorce proceedings as stipulated in the Code of Muslim Personal Laws of the Philippines. It states that "a woman who wants to divorce her husband must file a petition in court. The court usually gives the couple a three-month grace period called *idda* to give them room for reconciliation. Usually, the court would grant the divorce after this period has elapsed. If the couple are residents of the same *barangay,* the divorce may also be filed with the *barangay* council" (p.54).

The author describes the experiences of women who want divorce and seek justice as generally difficult. Women who bring their cases of abuse and discrimination to the courts are faced with the burden of seeking legal assistance. "Although the special rules of procedure under the Muslim Code mandates that a Clerk of Court and the Public Attorney's Office (PAO) provide the needed legal assistance to indigent litigants who are usually women, the PAO is accessible only to the husbands who already possess money and influence. In this situation, the wives have to look for private counsels who are [often] expensive. Moreover, they cannot fight for their rights if they cannot afford such services" (Cited from Busran-Lao, 2000, p.5).

Based on the actual experiences of the women who were interviewed, most of them cannot remember the exact duration of their divorce proceedings particularly those who had a lengthy battle. Concretely, "less than half (7 out of 15 KIs) of the women were granted a divorce by the Shari'a Court right after the 3-month *idda*. Five KIs got their divorce papers less than a year after filing for divorce, while three women said that the court reached a decision after more than one year." (p.54) One of the reasons cited to explain why the divorce proceedings lasted longer was the husbands' non-attendance in the divorce hearing. This caused further delay of the case in light of the husbands' objection to the divorce. One of the women whose divorce proceedings lasted for almost two years claimed to have experienced difficulties during the hearing because the judge had a bias against her. She refused to give details. She also considered her former husband's refusal to sign the divorce paper as the main reason for the delay (p.55).

The book posits that at some point the Muslim Code safeguards a woman's reproductive right by providing her the right to terminate the marriage when the relationship becomes harmful to her and the children. The entitlement of support during the period of *idda* also ensures the women's economic security. However, said Code does not have explicit provisions that would protect the women from being capriciously divorced by the husband. Hence, this may be subject to abuse.

Given the patriarchal nature of Filipino Muslim society, it is not surprising to observe that a husband may divorce the wife without any reason (Cited from Busran-Lao, 2000, p.5). Another reality for a divorced Muslim woman is the nonpayment or non-provision of support by the husband, as provided for in the Muslim Code. Given these difficulties, indeed, there have been moves made to study the Code toward making the necessary changes and strengthening its implementation (p.5).

Gender Sensitivity in the Court System

Feliciano, Myrna S., et al.
UP Center for Women's Studies and Ford Foundation
Quezon City 2002

Recognizing the existence of gender bias in the judicial system, the book aims to fill the gap in knowledge about the current nature and extent of gender bias in the Philippine judicial system. Specifically, it aims to: (1) identify forms of gender bias at different levels of the court system and at different stages of criminal and civil actions; (2) determine the extent of gender bias in the court system and its effects in the resolution / outcome of cases; and (3) formulate recommendations in aid of judicial reforms (p.6). A review of literature (both local and foreign), assessment of court procedures, as well as selected court decisions were mainly used for the initial stage of the study. It is hoped that a more in-depth and comprehensive empirical research on gender bias in the court system will follow in the near future.

The publication presents mainly foreign definitions of relevant concepts such as gender bias and gender bias in the courts, the former being 'the stereotyped thinking about the nature and roles of women and men.' It also refers to society's perception of what is the 'worth' of women and men by distinguishing, for example, 'women's work' from 'men's work' (Cited from Schafran, 1987, p.11). The latter, as defined by the Judicial Council of California Advisory Committee on Gender Bias in the Court, refers to "behavior or decision-making patterns of participants in the Justice System that is based on or reveals (1) stereotypical attitudes about the nature and roles of women and men; (2) cultural perceptions of their relative worth; or (3) myths and misconceptions about the social and economic realities encountered by both sexes" (Cited from Atchison, 1998, p.12).

The book presents the forms and manifestations of gender bias across the various phases of judicial action based on various literatures (both local and foreign) that were reviewed. Related issues here include:

- ***the invisibility of gender bias and non-recognition of its reality*** - In the US courts, the first problem that they had to deal with was the strong denial from various quarters that inequality exists (p.14);
- ***the double victimization or jeopardy particularly in cases of sexual and physical violence*** - It is a phenomenon where a female victim of sexual harassment or rape, for example, is twice victimized – "first by the abuse and then by the blame that

accompanies it" (Cited from Rhode, 1999, p.15);

- ***the negative attitude towards female victims as well as offenders being perpetuated by law enforcers, court personnel, prosecution lawyers, and even judges*** - These instances are pinpointed as reasons why rape and other similar cases are dismissed either due to insufficiency of evidence or reluctance on the part of the victim to go through the grueling and intimidating process of pre- and actual court trial (p.22);
- ***trivializing gender crimes*** - This refers to the tendency to treat crimes that involve violations against women, *e.g.,* sexual harassment, as less important and thus less deserving of judicial attention (p.24);
- ***the gender insensitive court procedures that discourage women from pursuing their case*** - Among its examples are "(a) requiring the plaintiff to prove that the alleged sexual conduct was unwelcome; (b) allowing a defendant to introduce evidence of the victim's "promiscuous" appearance and behavior or past sexual experiences; and (c) giving lawyers, both during pre-trial proceedings and court hearings, the license to grill victims about irrelevant details of the crime and their previous sex lives" (Cited from Rhodes, 1999, pp.22-23);
- ***the gender stereotypes affecting court actions*** - These are the ideas and beliefs about the profile of perpetrators as well as the victims;
- ***the legal discrimination*** - This pertains to specific provisions of the following laws that are discriminatory and biased against women: Civil Code, Family Code, Code of Muslim - Personal Laws, Labor Code, Civil Service, and Revised Penal Code;.
- lastly, ***under representation and sexist treatment of women in courts*** - This refers to the over-all low participation of women as lawyers and judges. "Because they are few and work within a generally male-centered judicial culture, women lawyers and judges may also have become victims of the same gender biases suffered by the women clients" (p.27).

Gender bias is not only evident in the written and actual rules of court. It is also blatant in the unwritten rules and the overall culture on which interpretation and subsequent implementation of the laws are based. In fact, according to the author, "a cursory analysis of Philippine procedural law will not reveal any bias in favor of any party. In theory, these rules and technicalities are designed to ensure a fair trial. The application, however, of these rules can create bias based on gender" (p.121). Concrete examples are unwritten rules in rape cases applied by

courts / judges in deciding said cases, (p.124) to the detriment of the woman-victim/survivor. Some of these are the unwritten rules on (1) judicial sympathy (p.128); (2) credibility (p.129); (3) response to trauma (p.130).

The results of the initial study revealed that the stereotype images of the Filipino woman not only permeate the law as written in the statute books. They are also pervasive in day-to-day court proceedings. "Gender bias is evident in the questions posed by the lawyers and in the questions asked by the judge" (p.116).

This particular finding was evident in the review of the transcript of stenographic notes (TSNs) of the following cases:

(1) on rape cases - basically showed how the proceedings reinforce/manifest the wrong notions about rape cases that are particularly biased against women; (pp.79-89)
(2) on acts of lasciviousness and sexual harassment cases (pp.90-101);
(3) analysis of declaration of absolute nullity of marriage cases (pp.101-115).

The study, likewise, underscores the serious gap in the efforts of the government to promote the welfare and status of the poor women and children particularly in terms of eradicating gender bias in the court system. "Women's groups, here and abroad, have repeatedly decried the difficulty of getting justice for female victims of sexual and related crimes. All stages of criminal action - from preliminary investigation, to trial and judgment are replete with practices that discourage women-victims from filing complaints and pursuing their cases in court" (p.4). Amidst all these, efforts to engender the justice system is seemingly far behind. "The lack of political will, inadequate resources, and cultural and socio-economic factors are among the persistent obstacles to the effective implementation of actions designed to further advance women's human rights" (p.9).

In the Philippines, the failure to pursue and successfully resolve gender-related crimes is partly caused by sexist attitudes and beliefs of local government officials, law enforcers, and even prosecution lawyers. Data from the Department of Justice Task Force on the Protection of Women Against Abuse, Exploitation and Discrimination show that of the 76 cases handled from January to September 2000 nearly half (46 percent) were dismissed, either due to insufficiency of evidence or reluctance on the part of the victim to go through the grueling and intimidating process of pre- and actual court trial" (p.21).

As an assessment, the book states "gender bias permeates the entire fabric of the court systems in many countries, including the

Philippines. Gender bias is embedded in the judicial culture - in stereotype beliefs about femininity and masculinity and in attitudes about male and female roles, abilities, and entitlements" (p.169).

Kathleen E. Mahoney – one of the authors of the book reviewed for the "Gender Sensitivity in the Court System"study – states that "although the judicial and quasi-judicial bodies are not entirely to blame for the low status of women, numerous studies show that one of the most formidable barriers to women's equality is gender bias in the courts. In nearly all countries, both the judicial process and decisions are often discriminatory and harmful to women and children." Mahoney adds that extensive research over the past 20 years shows that court decisions have been influenced by biased attitudes, sex stereotypes, myths and misconceptions about male and female traits, roles, and capacities (pp.10-11).

Moreover, the study presents an overview of the means by which gender equality principles have been integrated and woven into the reform of judicial policies and actions. In particular, this refers to the gender norm-based approach to sexual harassment; synthetic approach to domestic violence; redefining rape; women and family law; maternal preference doctrine; women in custody cases, and presenting the elements of a friendlier criminal and juvenile justice system" (pp.38-55).

Judicial and policy reforms are also evident in terms of legislation (*i.e.,* passing of the 1997 Anti-Rape Law and the Rape Victim Protection and Assistance Act of 1998) (p.140); judicial initiative (*i.e.,* openness / willingness of the Supreme Court to accommodate the Battered Woman Syndrome as a possible defense that led to a partial reopening of the case in *People v. Genosa*[1] (pp.141-144); and administrative reforms through the Child Witness Rule (p.144).

Through the review of foreign and local studies, the authors came out with the following assessment and recommendation points:

- Gender sensitizing judges and other court personnel involved in the handling of domestic violence;
- Using gender-neutral and women-friendly court language;
- creating enabling mechanisms;
- Engendering court processes;
- Renewing and developing policy (*i.e.,* policy on sentencing);
- Increasing oversight functions and accountability; and
- Strengthening ethical guidelines for the practice of the law and law enforcement positions.

From the review of TSNs, the study proposes the following:

- Proceed with the second phase of the study to include an interdisciplinary survey of gender-related attitudes, beliefs and behaviors of court officials and personnel, direct observation of court hearings, and a more comprehensive gender assessment of court transcripts, rules and procedures;
- Revise laws that have strong sexist language and contents;
- Pass new laws that can enhance women's welfare and rights;
- Review and revise policies which address difficulties that female complain ants face in obtaining prosecution;
- Use gender-neutral and women-friendly court language;
- Conduct gender-sensitivity training seminars for judges and other court personnel;
- Strengthen the policies on oversight, as well as accountability of law enforcers, court personnel, lawyers, and judges;
- Strengthen the ethical guidelines for the practice of law and the law enforcement professions; and
- Creation of enabling mechanisms to facilitate the passage and implementation of gender-responsive measures (p.170).

The following are the specific observations and recommendations addressed to the Supreme Court:

- The need to take note of inconsistencies in Supreme Court decisions, particularly in rape cases. Such inconsistencies must be clarified and resolved. To cite some examples, the character of the complainant (*i.e.,* chastity, virginity, morality, among others) should not be considered as a factor in determining the guilt of the accused; the delay in filing a case is not an indicator that the rape charge is fabricated, etc.
- Re-examination of the implications of the decision in *People v. Genosa* (G.R. No.135981, September 29, 2000) insofar as it suggests that battered wife syndrome is synonymous with insanity.
- Promulgation of rules for the proper implementation of the rape shield provision of Republic Act No.8505 to prevent the use of this provision to introduce character of the complainant as evidence in rape cases;
- Promulgation of implementing rules and regulations of the Family Courts Act of 1997 to promote gender sensitive procedures in these courts; and
- As a long-term solution, the Supreme Court should consider mandating courses on gender issues in the law in every school in

the country so that students may be exposed to these forms of bias at the earliest time possible (pp.171-172).

Gimik! Sa Quezon Avenue at Cubao

Bukal, Inc.
Quezon City 1999

This publication chronicles the experiences of streetwalkers who spend endless nights along the stretch of Quezon Avenue and the shadowy corners of Cubao. It contains stories of about a dozen women, their experiences, and most importantly, their insights. Included are assessment points of the author on prostitution in the eyes of the justice system. Painted are countless portraits of the women and how the wheels of justice have affected their lives.

Their experiences in the book point to a specific problem with one of the pillars of justice — law enforcement. In many situations, the laws are being enforced against them and their rights are being violated (p.100). Many of the women have reported police abuse and brutality. These happen regardless of whether they were the ones apprehended (for vagrancy) or the ones filing complaints (usually against the men who hire them). Most of the cases where the women file charges against pimps, policemen, etc., do not reach the courts. In instances when the women are charged, they are either momentarily detained, fined, and in more dreadful incidents, subjected to extortion, and then abused, before being released only to be rounded up again when caprice strikes these scalawags in police uniform. When they are the complainants, they are typically disbelieved, insulted, and exploited by law enforcers.

The book bears no direct recommendations. It merely presents what the women have gone through, giving a glimpse of what others in the same plight are possibly undergoing now.

Certain points are made clear enough, e.g., how strongly they feel against the vagrancy law, its manner of enforcement, the abuses they succumb to in the course of its implementation, and the way society treats and views them (p.97). Almost certainly, the women who have disclosed their stories want some changes in the situations that have just been mentioned in the book.

[1]Incidentally, in an *en banc* decision dated 15 January 2004 the Supreme Court affirmed Genosa's conviction for parricide. Her original sentence, however, was reduced from 14 to six years after ponente Associate Justice Artemio Panganiban and nine other associate justices considered her defense of "battered wife syndrome." Associate Justice Consuelo Yñares-Santiago dissented and voted to acquit Genosa. She was joined in her dissent by the Chief Justice and two women-associate justices. The decision laid a precedent as to when a battered wife syndrome may be applied and defined a battered woman as "one who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without concern for her rights."

Justice and Healing: Twin Imperatives For The Twin Laws Against Rape

Santos, Soliman Jr. et al
Quezon City 2001

The book presents an estimation of the implementation and impact of The Anti-Rape Law of 1997 and The Rape Victim Assistance and Protection Act of 1998, four and three years after their respective enactment.

It contains information and analysis of rape, its prosecution, and victim assistance. Also included are alternative solutions in so far as justice and healing of women are concerned.

The publication points out that justice is the vindication of having proof to validate a woman's experience and story (p.32). It is through this that healing begins to take place. The authors include insights from an interview with a rape complainant's psychiatrist-therapist. For example, the doctor commented on rape proceedings in the court, labeling them as antithetically "traumatic and therapeutic" (p.32). Court processes expectedly lead to justice, the latter being a condition for healing. But court proceedings are also traumatic with the pervasive occurrence of gender biases in the courtroom.

Dwelling on how rape cases are handled by key players in every level of the justice system, incidents of *machismo,* gender bias, gender insensitivity, gender discrimination, and victim blaming are brought to the fore, considering how litigation is already a lengthy and taxing process by itself.

Key players in the justice system are apparently ill-equipped to handle rape cases. Even government agencies tasked with managing rape cases are understaffed and lacking in resources.

All these factor into the phenomenon we call re-traumatization or second victimization (p.32). Legal and judicial processes characterized by complications, ridicule, and lengthy and adversarial proceedings is like rape all over again. This is re-traumatization. This is not helpful and positive to any victim.

As part of their recommendations, the authors encourage reporting of rape incidents and filing of charges, notwithstanding anecdotes and documented cases of re-traumatization (p.90). Reporting, they say, is a cry for help while filing charges connotes a genuine effort to reprove the perpetrator. The authors seem to be working on an assumption that a woman's dignity can only be preserved through an intact hymen. Hence, the pursuit of justice supposedly brings back the women's lost dignity brought about by rape.

Considering that implementation of the twin laws have practically just begun, they give confidence to learning from both the efforts and letdowns of government and non-government institutions that engage in rape victim assistance and protection (p.91).

Programs that prevent, manage, and address violence against women are looked upon with optimism. They have described the twin laws as women-sensitive (p.52). What remains to be done is to reform the system which interprets these laws.

Women's legal groups and feminist lawyers may also revolutionize judicial doctrines through the institution of test cases. A more speedy approach would be to systematically engage the key players of the justice system in talks mainly on rape myths integrated into judicial doctrines (p.92).

A more extensive implementation of the laws is also needed. This includes victim-sensitive strategies in the examination of complainants and the gathering of evidence as far as RA 8505 or The Rape Victim Assistance and Protection Act of 1998 is concerned (p.94). Extensive implementation, though, would require effective monitoring. And this is one point where the women should really come in and cover all the bases (p.95).

Finally, the authors warn that they have no illusions of completely solving the problem of rape with the suggestions they have proffered. They acknowledge the fact that it would really take long term socio-cultural preventive strategies for change and liken the endeavor to changing the world (p.92).

Making Sense of Rape

Women's Legal Bureau, Inc.
Quezon City 1995

"Making Sense of Rape" looks at how rape cases are decided in courts. Analyzing these decisions, the authors use a list of very common rape myths. These myths assume a profile of victims and perpetrators and reasons for occurrence of rape. The book closely examines and discusses each of the myths, debunks them, and proffers alternative ways of viewing rape cases.

Often, when the complainants are depicted in court decisions as youthful, pretty, morally upright or something to that effect, convictions are almost always in the offing. While this is a plus factor as far as winning cases is concerned, the danger lies in the tendency of robed adjudicators to build for themselves a portrait of rape victims as: young,

pretty, desirable. Thus, obtaining a conviction becomes more difficult if a complainant happens *not* to fit this set standard (p.5).

According to the book, courts are usually more interested on the complainant's profile, perhaps in an attempt to comprehend why she was raped. Little is inquired of the perpetrator, much less of his biographical or psychological profile or why he committed the crime (p.19). A postulation always looms: he committed the crime because she was young, pretty, desirable, morally upright, and whatever else have you.

A case in point is the "sexy outfit" myth. We have yet to hear of a judicial precedent built upon it. However, we cannot write off its effect on rape complainants in every stage of prosecution nor can we help but conjecture as to its correlation to acquittals or dismissals (p.21).

Consent is a primary issue in rape cases. When resistance to the perpetrator is not marked by violence or when there were no attempts to escape or cry for help, belief that there was refusal on the part of the complainant to the sexual assault is diluted (p.22). The doctrine of "recent or fresh complaint" is also assailable, yet this is still adhered to in the handling and adjudication of rape cases (p.23). Even graver are notions reflected in court decisions that fabrication of rape charges transpires (p.26). While it is not an impossibility, it is still unjust to automatically assume a charge of rape as just a trumped-up story.

Reliability of presumptions, as the myths discussed in the book, should be made clear considering their influence on the decisions given by courts on rape cases (p.28). Rape myths abound and perforate every inch of the justice system's skin. It is risky not to keep these in check.

The challenge is posed to the judiciary to crush typecasting and boxed notions (p.27). It is a snare which they themselves should get out of and be careful not to fall right back in everytime a woman comes to court averring rape.

The Shari'a Courts In The Philippines: Women, Men & Muslim Personal Laws

Antonio, Isabelita S.
Pilipina Legal Resources Center, Inc.
Davao City 2003

The book is a study on the engagement of Muslim women and men in Shari'a courts. Examined were their rights as provided in the Code of Muslim Personal Laws (CMPL). The CMPL is also known as Presidential Decree 1083. In the 70s, it was signed into law pursuant to Article XV Section II of the 1973 Constitution which says *"[t]he State shall consider the customs, traditions, beliefs and interests of national cultural*

communities in the formulation and implementation of state policies…" Hence, it is basically a codification of Muslim practices pertaining to marriage, polygamy, divorce, property relations, financial provisions, custody, guardianship, and child maintenance. A focal point of the study is how these rights are enjoyed and enforced, if they are at all (p.1).

The Shari'a Courts is part of the Philippine judicial system. As provided for also in the CMPL, there are two classes of Shari'a Courts: the Shari'a District Courts and the Shari'a Circuit Courts. Both courts have original jurisdiction although the District Courts have appellate jurisdiction. All decisions of the District Courts are final except on questions of law which can be elevated on appeal to the Supreme Court of Philippines (p.13). In this regard, they are similar to the regional trial courts, municipal trial courts, and metropolitan trial courts which non-Muslim communities are more familiar with. Recognized here is the CMPL which is enforceable only in specific Muslim communities, all of which can be found in Mindanao (p.13).

Loads of cases filed in the Shari'a Courts are for divorce and support. Specifically, these are petitions to resume marital relationship, mutual agreements to dissolve marriage, petitions to contract subsequent marriages, abandonment, lack or failure of the husband to support his wife and children, and the like. A greater number of those who file are women.

Among the cases filed, unfortunately, the number of dismissed cases outnumbers those that have been resolved. Again, these dismissed cases were the ones filed by women. This is unfortunate for women for, as the book notes, most of them financially lack resources to go through the whole court process. Court and lawyers' fees are too expensive. Furthermore, free legal assistance services cannot match the demand (p.28).

There are efforts between the Pilipina Legal Resources Center (PLRC) and the National Network For Muslim Women's Rights to remedy the situation through legal reforms, particularly through amendments to CMPL. They also have developed a project which aims to popularize legislations, jurisprudence, and a local advocacy program on women's rights and social justice. Not one of the endeavors is geared towards judicial reform, though (p.63).

The author recognizes that improving women's access to justice entails an examination of the kind of courts and the kind of judges' orientation desired (p.79). Even more important is reflecting progressive changes in the legal and justice systems (p.81).

The author is hopeful that judicial reform, possibly through the Supreme Court's Action Program for Judicial Reform, would include the enhancement of judicial conditions and performance for better delivery

of services. It is the identification of positive practices and gaps in the justice system which will factor into judicial reform, thereby improving women's access to justice (p.79).

ARTICLES

Speeches and Reactions During the Launching of the Blueprint of Action for the Judiciary

Basic Sectors Speech/Reaction
Nemenzo, Ana Maria
Supreme Court of the Philippines
Manila 2000

This part was taken from Ms. Nemenzo's speech / reaction during the launching of the Blueprint of Action for the Judiciary document. Ms. Nemenzo's reaction was given on behalf of the basic sectors in her capacity as the then-Vice-Chairperson of the National Anti-Poverty Commission (NAPC).

Nemenzo declares, "… we most welcome recommendation number 4 which is to 'conduct an empirical study of gender bias in the courts' and this is given immediate attention. This is an issue that we have long cited as a delimiting and constraint factor in women's empowerment" (p.19).

The Journal of Reproductive Health, Rights and Ethics Volume 7

Body Politics: How Grassroots Women Decide on Abortion, Male Violence and Sexuality Issues
Pineda-Ofreneo, Rosalinda
University of the Philippines
Manila 2001

This research paper discusses the experiences of grassroots women in cases of abortion and sex-related wife-beating. Majority of these women are community leaders who were gathered in a focus group discussion. The study explores the decision-making processes among the women and their spouses in terms of the ethical and gender issues involved and the roles of medical and legal professionals (p.71).

One relevant point that the article made is that medical and legal practitioners hardly played a positive role in the process of decision-making done by the women. They were mentioned very sparsely, or not at all. As for lawyers, they were not mentioned at all in the two focus group discussions presented (p.81). Evidently, women who participated

in the studies do not see the legal system, particularly the courts and the lawyers, as a means to seek redress in cases of VAW or in other difficult situations such as in cases of abortions.

Philippine Law Journal

Bridging the Gender Divide
Chrysilla Carissa Bautista
College of Law, University of the Philippines
Quezon City 1998

The first part of the article discusses the origins of sexual harassment as a concept and as a prohibited act. It also discusses the definition of sexual harassment and attempts to clarify it. The second part identifies where sexual harassment takes place and explains the two kinds of sexual harassment: the *quid pro quo* harassment and the hostile work environment harassment. The third and last part deals with suggested paradigm shifts and, in the process, overturns presumptions on the subject matter.

The author asserts that sexual harassment is a relatively new term, both here and in other parts of the globe. In fact, the Philippines is the first Asian country to enact a law prohibiting sexual harassment. However, the author opines that Section 3 of Republic Act No. 7877 defines and characterizes sexual harassment at great length but it still proves to be vague and inadequate.

The article presents the following common presumptions on sexual harassment (pp.139-147):

- the offender is always male and the victim is always female;
- sexual harassment is an isolated act of discriminating women;
- sexual harassment is a manifestation of male supremacy; and
- it may only be committed by an employer against an employee in the workplace.

The above-stated presumptions are countered by the author through a discussion of the following arguments vis-à-vis their relevance to the existing anti-sexual harassment law.

- "The gender-based theory that provides a dynamic framework in understanding the politics behind discrimination based on sex. It expands the male harasser-female victim notion of sexual harassment" (p.140). Thus, it states that all persons, regardless of

sex and sexual preferences, may be parties to a sexual harassment claim.[2]

- Competence-centered paradigm that deals with "harassment as a means to reclaim favored lines of work and work-competence as masculine-identified turf – in the face of a threat posed by the presence of women who seek to claim these prerogatives as their own" (p.144). This approach is said to be connected with the creation of a hostile environment form of sexual harassment.
- Sexual harassment that happens among co-workers is definitely a possibility yet unrecognized in RA 7877. "In the statutory definition of sexual harassment, the offender is one 'having authority, influence or moral ascendancy.' In the same breath, Section 3, par (a) (3) and (b) (4) punishes hostile work environment harassment" (p.147). The author argues that these are somehow conflicting. The former explicitly requires an inequality in the positions of the offender and the victim, yet the latter implicitly recognizes co-worker harassment as a form of hostile work environment harassment; and
- Sexual harassment that happens beyond the workplace is recognized by the law by allowing training or educational environments as possible settings of incidences of sexual harassment.

The author gives some conclusions by saying that the Anti-Sexual Harassment Law is a grand example of progressive and dynamic legislation. It covers all forms of harassment. It is broad enough to cover same-sex and different-sex cases of sexual harassment. It may also be argued to cover co-worker[3] (same level) harassment and it also extends the prohibition of sexual harassment to educational environments (p.148).

[2]Indeed, it is possible that sexual harassment happens to anyone (regardless of sex, age, and class) but still studies show that majority of its victims are women. This gender-based theory — at least for many women's groups in the Philippines — refers to the unfortunate reality that women are vulnerable to different forms of harassment owing to their inferior status in the society.

[3]Peer sexual harassment does not occur only among same-level workers. A co-worker occupying a position lower than that of a victim can place the latter in a hostile working environment. This is consistent with the analysis that cases of sexual harassment primarily happen to women because they are women regardless of their position in their respective jobs.

Ateneo Human Rights Law Journal Volume 1

Discrimination Against Women in Philippine Civil and Criminal Laws
Flores, Dawn Aimee
Ateneo Human Rights Center
Makati City 1992

The article discusses discrimination against women existing in Philippine laws particularly those contained in the Revised Penal Code and the New Civil Code.

In the Revised Penal Code, the author discusses the specific gender-biased provisions :

(1) Art. 202 - Vagrants and Prostitutes;
(2) Art.351 - on penalizing premature marriages "to prevent confusion with filiation and paternity";
(3) Art. 333 - Adultery and Concubinage.

In the New Civil Code, the author specifically cites Art. 372 which states that even when legal separation has been granted, a wife shall continue using her name and surname employed before the legal separation.

Relevant developments on laws and policies are likewise presented with particular focus on their thrusts toward eliminating sexual discrimination that can be seen in the Constitution, the Family Code, and other legislative initiatives. On February 2, 1987, the present Constitution was ratified and a major step was taken towards the elimination of discrimination against women. For the first time, the fundamental equality of women and men was recognized as opposed to former constitutions where women were only classified with minors, the handicapped, and other minority sectors. This goes without saying, however, that such classification still exists (p.216).

There are also the following laws: "RA 6725 which amends certain provisions of the Labor Code and strengthens the prohibition of discrimination against women with respect to terms and conditions of employment; RA 6949 that declares March 8 of every year as National Women's Day; RA 6955 which declares as unlawful the advertising of Filipino women on a mail-order basis; and RA 7192 which recognizes the role of women in nation building and provides for equal opportunities to women with respect to participation in development programs and economic endeavors" (p.197).

Eighteen months after the ratification of the Constitution, the Family Code took effect. It amended[4] the New Civil Code provisions on marriage and family relations which contained the most number of laws discriminatory to women. Relevant provisions that were amended include Articles 55, 69, and 73. Article 55 increased the number of grounds for legal separation. It also removed adultery or concubinage as a ground, and instead, replaced it with sexual infidelity. Sexual infidelity is a more equitable ground because it is not based on any bias for or against any sex (pp. 216-217). Article 69 has changed the stereotype of the man as provider and the woman as his subordinate by declaring that setting up of the family domicile is now a joint decision between husband and wife.

Under the New Civil Code, the husband is given the right to object to the wife's exercise of a profession if his income is sufficient to support the family and for serious and valid moral grounds. By this provision, the wife may be compelled to stay at home. She may be forced to leave her job or refrain from taking a job notwithstanding her educational attainment, competence, skill, and ability. The new rule on Art. 73, however, eliminates the bias in favor of the husband by making the right to object to a spouse's profession mutual (Cited from Sempio-Diy, 1988, p.218). Also, it eliminated the provision that the husband may object to the wife's exercise of her profession on the ground that his income is sufficient for the family. Such objection, today, is only allowed on valid, serious, and moral grounds - that is, the profession, occupation or business activity in which one spouse is engaged in is either unlawful, dishonest, or immoral (p.218).

There were also attempts in the Family Code to make decision-making between wife and husband mutual. Under the New Civil Code, the administration of conjugal property and legal guardianship over the property of minor children were exercised solely by the father. This has been repealed by Articles 96 and 124 of the Family Code which provide that the administration of common property shall now be exercised jointly. Art. 225 of the Family Code also provides for joint legal guardianship over a minor's property. In all of these, however, the husband's decision still prevails in case of disagreement between the spouses. Evidently, equality between husband and wife vis-à-vis decision-making is quite far from being realized.

[4]The Family Code of the Philippines superceded the provisions on marriage and family relations of the New Civil Code. While this is a welcome development, the Family Code still has a long way to go in terms of addressing discrimination against women and ensuring the enforcement of the equality clause enshrined under the Philippine Constitution.

The article also enumerates pending bills on women in the Philippine Congress at the time of its writing. These are Senate Bill 253 (or SB 253) – removing the limitation on the number of childbirth for the enjoyment of maternity leave benefits; SB 111 – exempting a battered wife from criminal liability in case she kills her husband while in the act of battery against her, among others (pp.216-219).

The article firmly recommends that there is indeed a need for more legislative initiatives with respect to the elimination of discrimination against women, particularly the amendment of discriminatory provisions against women in the Revised Penal Code and the New Civil Code. These amendments are imperative towards fulfilling the constitutional mandate of equality between men and women and the obligations under the international instruments which the Philippines bound itself to uphold (pp. 220-221).

The Journal of Reproductive Health, Rights and Ethics Volume 6

Engendering Ethical and Equality Norms:
The Relevance of Bioethics and Gender in Law Education
Aguiling-Pangalangan, Elizabeth
University of the Philippines, Manila
Manila 2000

Prof. Pangalangan's article includes discussion of the following laws and issues:

- the Article 202 of the RPC on Vagrancy and Prostitution that labels the offender as a woman. Under the law, there are no male prostitutes. Furthermore, the law disregards the culpability of the "patron," usually a male;
- huge discrepancy between the definitions of Adultery and Concubinage stated in Articles 333 and 334 of the RPC;
- the expanded definition of rape in RA 8353 or the Anti-Rape Act of 1997 and the issue of pardon to the husband charged with the offense of marital rape;
- the law prohibiting abortion that does not provide any exceptions particularly in situations where the life of the mother is at risk;
- the lack of law on domestic violence;
- related Family Code provisions on legal separation, annulment, rules on properties, etc.; and
- labor laws pertaining to women specifically on: (a) benefits that are due them (sometimes resulting to a backlash on women since it is used by employers to justify lesser pay); (b) laws excluding women from certain jobs that are traditionally seen as men's work

(*i.e.,* mining and bartending); (c) laws restricting women's employment under certain conditions (pp.29-38).

According to the article, the present legal structure excludes women from certain legal rights, benefits, and obligations. This results in a double standard of rights and morality wherein the entitlements and conduct of one group is governed by rules distinct from those of the other group. This is rooted in traditional notions of the nature of women and our place in society (p.27). Moreover, gender bias exists in written as well as applied law. Indeed, "gender bias is manifested both in the language and in the constructs of the law (p.40).

For its overall assessment and recommendations, it states that "legal, as well as moral, analysis requires keen attention to gender. Writing laws that are facially gender-neutral is definitely a step in the right direction. However, where the male perspective is taken as neutral and universal, women will always be put to task for conduct and thinking that the analytical tools and the criteria by which legal and moral norms are measured are themselves not inherently discriminatory. Otherwise, laws and rules of conduct that determine what is good or bad, right or wrong will serve only to perpetuate centuries-old gender inequalities"(p.41).

The Journal of Reproductive Health, Rights and Ethics Vol.1 No.2

Family Planning as a Human Right: An Ethical and Women's Perspective
Conda, Eleanor C.
Reproductive Health, Rights and Ethics Center for Studies and Training (ReproCen) College of Law, UP Diliman
Quezon City 1995

In her paper, Conda discusses the international declarations that support the right to family planning and reproductive choice and the declarations adopted in the 1993 World Conference on Human Rights (p.135).

The article points out that the rights discourse can be considered as one of the salient principles of justice. It particularly states that a woman's knowledge that she is a holder of her rights could, by itself, effect some transformation or change in her life. In addition, the article clearly identifies governments' accountabilities in ensuring that justice will be served through the different human rights (HR) instruments that guarantee basic rights. The author adds that the knowledge that governments can be signatories or state parties, and are thus obliged to perform their undertakings and responsibilities under these HR

instruments, is a clear position of strength for women's rights advocates (p.139).

The Supreme Court Centenary Lecture Series

Feminine Grace, Justice and the Rule of Law
Justice Melencio-Herrera , Ameurfina A.
Supreme Court
Manila 2001

The articles gives a brief biographical account of retired and incumbent women justices. Additionally, it presents content analysis of their decisions, separate opinions or resolutions during their respective terms in the Bench. The women-Justices are: Justices Cecilia Munoz-Palma, Ameurfina A. Melencio-Herrera, Irene R. Cortes, Carolina C. Griño-Aquino, Flerida Ruth P. Romero, and the incumbent Justices – Minerva Gonzaga-Reyes, Consuelo Yñares-Santiago, and Angelina Sandoval Gutierrez.

The author asserts that "quite significantly, none of the lady justices of the High Court ever had to deal with discrimination against them, or unfavorable bias. None of them had ever to prove her worth and to measure up to standards imposed on them (p.368). Justice Melencio-Herrera believes that the fact that a magistrate is a woman is more than mere fortuity or a chance event. "One appreciates the evidence and renders a verdict as a woman, although it is, concededly, exceedingly more difficult to isolate the femininity that goes into appreciation of evidence and arriving at a decision. As regards gender being an issue, it should be a non-issue when one deals with eligibility for membership in the judiciary – and particularly a seat on the High Court" (p.367).

Women's Journal on Law & Culture

From Mortal Sin to Human Rights:
Redefining the Philippine Policy on Abortion
Vargas, Flordeliza C., editor
Ruiz-Austria, Carolina S. et al, authors
Women's Legal Education, Advocacy, and Defense Foundation, Inc.
Quezon City 2001

The authors studied certain provisions of the Philippine Constitution, the Revised Penal Code, the New Civil Code, and other special laws that pertain to the issue of abortion. Reference to international agreements was made, too.

In an attempt to present a clear picture of the court's viewing and handling of abortion, the article cited a 1961 decision of the Supreme Court where abortion was declared justified only when there is a "medical necessity to warrant it." However, the authors opined that to limit access to abortion is an infringement of women's human rights which include the exercise of full sexual and reproductive rights, the right to self-determination, the right to life and health, liberty, and privacy (p.91).

The article also examines the country's policies on abortion and their effects on advocacy work, particularly with regard to women's reproductive health. In RA 7305 or the Magna Carta of Public Health Workers of 1992, maternity benefits are not extended in cases of "induced" abortions, as the law so defines it. Discriminatory provision as this cannot be found in other legally mandated maternity benefit programs whether for the government or the private sector (p.95). The Population Act of 1971 or RA 6365 likewise leaves out abortion from what is acceptable contraception. The Medical Act of 1959 or RA 2382 allows for the reprimand, suspension, and revocation of a medical practitioner's license upon performance of an illegal abortion or aiding in the performance thereof. The Barangay-Level Total Development and Protection of Children Act of 1990 or RA 6972, forewarns daycare centers against illegal abortions (p.95).

The article then presented the multifarious and conflicting views of various camps and authorities on abortion and laws relative to it. But the authors believe there should be no argument that the woman is a person. One must be given the right to decide over matters that concern her life and her body. They also find a dearth in laws that address the needs of women and even children who get impregnated as a result of rape (p.98).

The article culminated with recommendations for advocacy. It underscores how a reversal in the unfair treatment of women in the eyes of the policy environment can benefit women's reproductive health advocacy in the country. As such, the authors call for a clear definition of State policy on public health – one that will represent a fair concept of women's health. This can only be possible if women's issues as reproductive health care and violence against women are not trivialized but are looked at with utmost priority (p.104).

Human Rights Treatise on the Legal and Judicial Aspects of Impunity Conference Proceedings and Related Articles

Images of Women in Impunity
Sta.Maria, Amparita S.
Ateneo Human Rights Center
PIMakati City 2001

The article takes a look at some experiences of women in impunity[5] whether they are direct or indirect parties in the case. Women experience gender-based discrimination and violation as direct parties to these cases. Indirectly, they suffer when a husband or a family member is charged and these women are left to solely deal with the difficult situation of taking care of the family and the family's needs .

The article clearly describes the criminal justice system as being characterized by a slow process of investigation, clogged dockets, and lengthy court proceedings (p.111). The author writes that, "taking into consideration the present state of the criminal justice system, gives one more reason to believe that a woman will be rendered powerless and vulnerable to settlements and / or dismissals. Slow investigative work and delay brought about by several postponements and other technicalities are guaranteed to discourage her from pursuing the case" (p.111).

According to the Center's research, it was evident that women whose spouses have "left" either by reason of forced disappearances, murder, or homicide have found themselves in a very difficult situation. Traditionally, their primary role has been to take care of the children and the household. With their spouses gone, they suffered the added burden of having to tend to the financial needs of the family. The tendency is to prioritize this over their quest for justice as regards the fate of their spouses. "This was especially true in those cases where the investigation and / or trial were saddled with undue delays and technicalities. In situations such as these, there is a great probability that women will opt to settle the cases or abandon them altogether. Consequently, there is also a greater probability that the accused will get away with impunity" (p.111).

With women as direct victims of impunity, the Commission on Human Rights issued Human Rights Advisory CHR-A10-2001 on the *Sexual Abuse and Torture of Women in Custody* in October 2001. In the

[5]Impunity, as the term is used throughout the publication, means the absence of punishment, liability and /or accountability by the State and its agents for their violation of human rights, particularly the right to life. (p.16) The article above adheres to the said definition and extends further the concept of impunity to people, particularly women, who are the victims or the ones being violated by those persons who have impunity such as the State and its agents.

said advisory, it stated that there had been "[c]ases of rape, sexual abuse and torture committed against women-detainees by the police, military, and prison officials / personnel," and that most of the women belonged to the "socially disadvantaged groups." The advisory cited one report disclosed by the Correctional Institute for Women (CIW). The report revealed that of the 100 detained women interviewed, ten percent had sexual contact with guards at the provincial, city, or municipal jail prior to their transfer to CIW (p.112).

The Center's research has shown that the Philippines indeed has a serious problem with impunity. Taking into consideration the unique and specific experiences of women as women makes it a more serious problem that urgently needs to be addressed. As seen above, women's experiences have been more difficult, painful, and oppressive primarily because they happened to women. Thus, it is quite obvious that gender is an indispensable factor that must be considered in arriving at a genuine assessment of and an effective solution to the problem of impunity. This is the only way to guarantee that gender-based violence, especially within the context of impunity, will not go unnoticed, unreported, and unpunished (p.114).

Sex and Gender: An Introduction

Justice, Equity and Social Change
Lips, Hilary M.
Mayfield Publishing Company
California, USA 1988

What is gender justice? How is it constructed? Is gender justice simply justice as experienced by women, as if justice is fine as it is, except that data on women's realities need to be added on? These are some of the questions discussed in a chapter from the 1988 book of Hilary M. Lips entitled "*Sex and Gender: An Introduction.*"

Hilary Lips says "women and men have different perspectives towards distributive justice in particular situations" (p.375). Different psychosocial theorists have a different take on gender differentials in justice.

Freud's psychoanalytic theory proposes such because males and females differ in their resolution of the Oedipal conflict. This complex starts at about ages three to five or six — where a childboy begins to be interested in the opposite sex parent. Boys have to identify with their father in order to "have" their mother and not be "castrated" by their father, while girls identify with their mothers to maintain closeness with their fathers. "Males develop a superego that is "more internalized, more rigid, and more demanding than females because of this fear of

"castration" from their fathers. And having such, men have a stronger sense of what is right and wrong, what is fair and not. Thus, men have a more developed or more strongly defined moral character than women, said Freud.

On the other hand, Piaget –, whose contribution to psychology was his cognitive-developmental theory – also follows a similar line of thinking as that of Freud's: that man has a more evolved sense of morals. He argued that equity, which was the preference of males as against equality for females, was a more useful and advanced form of justice (p.376). Men will divide the "pie" according to how much each recipient put in to earn a share. That's equity. While women will count how many recipients there are and divide the "pie" equally, so each one gets the same size.

Kohlberg, posits that moral development proceeds through several stages – three levels in six stages. He says that the highest stage is reached only in adulthood, and even then, many do not reach the final stage. He also stated that most women reach only the third stage, while men reach the fourth or fifth. He acknowledges, though, that some women are able to reach what most men do reach, provided they take on "occupational positions" similar to men. "Stage 3 morality is a functional morality for housewives and mothers. It is not for businessmen and professionals" (p.378).

Lips states "Kohlberg's theory reflects some strong biases, not only about males and females and the moral requirements of their respective roles, but also about the superiority of certain kinds of moral reasoning to other kinds. The possibility that different forms of moral reasoning might be equally useful and valid is not acknowledged in his theory" (p.378).

The last psychosocial theory looked at by Lips is that of Carol Gilligan's, a psychologist. Gilligan theorized that aside from the concept of rights as the basis of moral reasoning in Kohlberg's hypothesis, the principle of caring and responsibility is also relevant. This is the principle frequently invoked by her respondents as they struggled to explain why a particular decision was right or wrong. "Moral judgments based on the principle of caring stressed the necessity to be responsible in one's relationships, to be sensitive to the needs of others, and to avoid getting hurt." Individuals are said to move from an initial stage of caring for the self, to trying to be good by caring for others, until the final, more mature stage of caring for truth, which involves a balance between caring for the self and others (p.378).

Lips says that according to Gilligan, the menfolk have a tendency to place weight on rights while women put more emphasis on care. What accounts for this difference in emphasis or valuing is the difference in goal-setting in the socialization process of men and women —

attachment and relationship for women, separation and achievement for men. "The goals are different because the problems and challenges faced by females are different than those faced by men, partly because society expects different things from them, and partly because their biological differences make them vulnerable to different experiences in the area of reproduction" (p.379).

They have different goals because society has socialized them to have different goal developments. So men should not delude themselves into thinking that their developments is different because they are better and that all this is because such goals are intrinsic to men.

Lips went on to show how the "social notions of justice are formalized into a legal system of laws and courts that reflects and even perpetuates the prevalent stereotypes and prejudices about gender," as reflected in the following:

a. In the induction of lawyers and judges into the system. Other manifestations
include the impression of women being more emotional than men, while men are more rational in their orientation toward justice. She says that this may account for why women are still a minority among lawyers and judges;
b. In laws concerning the rights of women and men;
c. In the treatment of male and female criminals; and
d. In the treatment of victims who come into contact with the legal system." (pp.381-382)

These gender-biased beliefs seep into society's concern with preventing and punishing criminal behavior. Women and men differ even in their criminal behavior as seen in the following:

a. In behavior considered criminal: Men commit more crimes than women. Men's crimes tend to be more serious and violent than women's. Women are charged with crimes that are violations of social norms - *e.g.,* promiscuity, running away from home, or being unladylike. Women offenders are treated with more leniency than their male counterparts. Men are frequently charged with crimes as statutory rape and homosexuality, while women are charged with prostitution. And in some cases, murder is a justifiable reaction for a man who found his wife to be in bed with another man, but not vice-versa;
b. In the way their crimes are punished;
c. In their experiences as victims of crime: Across countries, time, and age

groups, men are more often victimized by crimes than women. The women express greater fear of being victimized than men do. Women's greater fear may stem from their socialization that they are incapable of protecting themselves, but it also relates to the type of crimes to which women are most vulnerable. Women are most likely to be killed by people whom they know intimately, and more likely to be murdered in their own homes than anywhere else. Women who have been raped or who have been beaten by their husbands are often assumed to have done something to encourage or provoke their attacker.

In conclusion, Lips says that the "power differences between women and men often mean that women have fewer resources than men, and the very prevalence of this situation may lead people to accept that it is normal. As a result, women may come to believe that they deserve less, and men to believe that they deserve more. This difference in feelings of personal entitlement may cause what appears to be a gender difference in selfishness: women stress equality, take less for themselves and give more to others, while men stress equity and are ready to reward themselves at the expense of others."

Women's Journal on Law & Culture

Lesbians and Philippine Law
Vargas, Flordeliza C., *editor*
Padilla, Clara Rita A. & Vargas, Flordeliza C., *authors*
Women's Legal Education, Advocacy, and Defense Foundation, Inc.
Quezon City 2001

The article studies the situation of lesbians under Philippine laws on labor and family relations. By way of a prelude, the authors scaled society's landscape on how it views same-sex relationships and the treatment of lesbians and homosexuals, both here and in certain countries and cultures.

Article 135 of the Labor Code of the Philippines supposedly makes it unlawful to discriminate against women employees. However, characterization of work, or the notion that there are only certain types of jobs that women can manage, undermines the efficacy of the law (p.61). The Civil Service Law cites allegations of immorality as a ground for disciplinary action. Lesbians in government service may find this arbitrary with the highly common view that such an alternative lifestyle impinges upon society's norms. Even private corporations have certain regulations which may or may not be official and written.

Terminated from their jobs, a hapless lesbian couple found themselves going to court against the company they both worked for after their relationship became known to co-workers. Had this been a heterosexual relationship, reactions to their relationship may have been downplayed or downright ignored or tolerated (p.62).

Marriage laws obviously are highly discriminatory as they are favorable to heterosexual couples alone. Same-sex unions are not covered by legal benefits. These include, and are not limited to, taxation, property relations, and family relations (pp.62-63).

The authors have a two-pronged suggestion. One is the passage of laws that would recognize, respect, and uphold the rights of lesbians. The other acknowledges the need to alter society's traditional viewing of homosexuality, even if pro-lesbian laws do get promulgated. The first step, they say, is to study how notions of gender and compulsory heterosexuality interplay in the discrimination of women, including lesbians (p.67).

Speeches and Reactions during the Launching of the Blueprint of Action for the Judiciary

Media/Non-governmental Organizations Speech/Reaction
Jimenez-David, Rina
Supreme Court of the Philippines
Manila 2000

This part was taken from Ms. Rina Jimenez-David's speech / reaction during the launching of the Blueprint of Action for the Judiciary document. Ms. David's reaction was done on behalf of the media and some non-governmental organizations in her capacity as a columnist for the Philippine Daily Inquirer and as the President of *Abanse!Pinay*, a partylist group for women.

Part of the effort to eliminate gender bias in the courts is to make the composition of the courts more gender-balanced. Thus, the reactor strongly supports the call for gender-profiling of the Judiciary at various levels and policy issues that hinder women's participation and their career movement in the Judiciary (p.24). In connection with this, she gave some data on women in the judiciary, to wit:

- the National Commission on the Role of Filipino Women (NCRFW) found that in 1993 women comprised no more than 13.9 percent of the total 1,666 incumbent judges in Philippine courts and almost 15 percent of the 1,646 judges in 1995;
- when the NCRFW study was conducted, women's representation in the 15-member Supreme Court declined from three in 1990 to

one in 1993 after the posts vacated by two retiring women justices were filled up by male appointees;
- there are two women SC justices today; Justices Minerva Gonzaga-Reyes and Consuelo Ynares-Santiago;
- using data culled as of 1995, the NCRFW study found that women occupied 28.3 percent and 30.0 percent in the Court of Appeals and the Metropolitan Trial Courts respectively, but less than 20 percent in the Municipal Trial Courts;
- as of the study's writing in 1995, a woman judge had yet to be appointed to the Court of Appeals and the Shari'a District Courts; and
- in 1995, only 29 percent of the country's 121 state prosecutors were women (p.24).

As an assessment, she concurs "the situation has vastly improved, but there are still some lapses" (p.24). To expound her point, the reactor briefly recounted a Davao City judge's decision on a rape case filed by a 13-year-old girl against a policeman, the dismissal of which was based on the personality and sexual experience of the complainant and not on the veracity of the accused's alibi. In line with this, part of her recommendation was to personally support the efforts to conduct "massive information campaigns at all levels on newly-enacted laws and executive issuances. She adds, "we cannot overestimate the need to keep judges well informed and up-to-date with laws and directives. For instance, many judges are not even aware of the existence of an anti-sexual harassment law (p.24).

She cited the study's conclusion that "although women have been appointed as justices to the Supreme Court - but not yet Chief Justice - they remain scarce in the various courts of the Philippine Judiciary." Then she commented, "perhaps it is really high time the Supreme Court itself took a pro-active stand or formulate a policy to increase gender balance in the judiciary, to take some form of affirmative action" (p.24).

The Supreme Court Centenary Lecture Series

Opening Remarks for the Feminine Grace, Justice and the Rule of Law Lecture
Justice Gonzaga-Reyes, Minerva
Supreme Court of the Philippines
Manila 2001

This is the documentation of Justice Minerva Gonzaga-Reyes' opening remarks during the *Feminine Grace, Justice and the Rule of Law Lecture*

Series convened and sponsored by the Supreme Court of the Philippines.

Justice Gonzaga-Reyes noted that the choice of "Women in the Judiciary" as a theme of the lecture series is the result of an increasing presence of women in the legal arena. This is validated by the high ratio of females currently enrolled in law schools and working in law offices, and the high percentage of women passing and topping the bar. "We had seven on the top ten in the last exams, and occupying high and sensitive positions in and out of the government" (p.326).

She adds, "the judiciary had its first lady justice in the Supreme Court 27 years ago and seven (7) other women have since been appointed to the highest court. This is a poor fraction of the total of 147 justices who have been appointed to the Supreme Court. But it is heartwarming to note that of the last four justices appointed to the Supreme Court, three were women, and among the last six (6) justices appointed to the Court of Appeals, four (4) were women. There are today, at least as of December 31, 2000, a total of 19 lady justices: three (3) in the Supreme Court, 13 in the Court of Appeals, and three (3) in the Sandiganbayan. And there are 280 women trial judges" (p.327).

This is considered a giant leap relative to the fact that "in 1875, the Supreme Court of Wisconsin denied the first application of a female for admission to the bar of that court, on the theory that the law of nature destines and qualifies the female sex for the bearing of the children and for custody of the homes" (p.327).

She also opined that the increasing representation of women in the courts - with women constituting more or less 20 per cent of the aggregate membership of the judiciary today- is a welcome, if slow, development. It should also be impressive considering the sexist remark "a woman has to be twice as good as a man to go half as far (p.327).

The Supreme Court Centenary Lecture Series

Remarks during the Feminine Grace, Justice and the Rule of Law Lecture
Javate-De Dios, Aurora
Supreme Court of the Philippines
Manila 2001

This is a documentation of Dean Aurora Javate-De Dios' remarks during the *Feminine Grace, Justice and the Rule of Law Lecture Series* convened and sponsored by the Supreme Court of the Philippines.

She began by referring to the tremendous imbalance in the appointments of male and female justices, with 117 male justices and

only eight (8) women in the Supreme Court. 22 chief justices have presided, all of them men. However, there are positive signs that this, in fact, may be changing. The results of the recent bar exams indicate that there are 415 or 42 percent women lawyers who have passed as against 564 or 58 percent male lawyers. Women are exhibiting a sharp competitiveness by occupying seven (7) out of the 11 bar topnotchers" (p.331).

Dean Javate-De Dios states that "more than the inequality in numbers, however, one of the critical areas that still needs improvement is the promotion of gender fairness and equality in the interpretation and implementation of laws. This requires a systematic, proactive effort on the part of the judiciary to deepen its understanding and appreciation of the complexities, problems and issues in cases involving women, especially in the areas of family, violence against women, and women in the workplace, among others" (p.331).

Muslim Laws, Culture and Reproductive Rights

"Reproductive Health Issues of Muslim Women in the Philippines"
Sarenas, Lyca Therese M., editor
Anayatin, Zuraida M. et al, authors
Pilipina Legal Resources Center, Inc.
Davao City 2002

The article underscores the observation that Muslim law and jurisprudence, as far as cases relative to women's issues are concerned, is a reflection of how society, in general, regards women (p.1). Protecting one's human rights, particularly in Mindanao, is usually pitted against religious impositions of fundamentalist agenda that encroach upon sexuality and bodily autonomy (p.1).

Muslim girls and women go through different traditional practices that threaten their reproductive health (p.65). As an example, female circumcision is performed during childhood. As they get older, they are introduced to feminine roles and attributes as well as to the supposed social and sexual differences between the sexes. Upon reaching reproductive age, issues on marital rape, childbirth, childrearing, domestic violence, and poor access to health services plague Muslim women. Observance of this practice is now declining, though (p.66).

The article speaks about issues on reproductive health and rights as they are viewed in Islamic law. It shows how the reproductive rights of women are ignored and unprotected(p.78). Liberated though they believe they are in the way they think about women, signs of oppression and inequality still remain in the way the Islamic society holds its views.

However, the authors also cited differing views from the members of the Islamic community. Apparently, female genital mutilation or circumcision is no longer too popular in many communities. Some even opine that it is not an Islamic obligation (p.72). As regards early or arranged marriages, *hadiths* or formal tradition requires the bride-to-be's consent, thus, refuting the notion that there is oppression and inequality in the eyes of Islamic law. Issues on sexuality, family planning, domestic violence, prostitution, and gender equality were likewise touched on to prove the same point, using *hadiths* and Qur'anic verses (pp.73-77).

Among the suggestions put forth in the article is legal reform. Amendments to the Code of Muslim Personal Laws (CMPL) may bring about changes in the status of Muslim women. Amendments should include increasing the minimum legal age for marriage and strengthening provisions on marriage and divorce (p.79).

Another suggestion is on judicial reforms. Despite the mandate under the CMPL, not all Shari'a Courts have been established owing to lack of resources though most of those that have been set up do not have presiding judges. Furthermore, there is low legal literacy rate in the Muslim population. The situation is aggravated by the lack of gender sensitivity on the part of the judges. The authors are hopeful that judicial reforms can be part of the solution that could shape up the situation.

Lastly, a more egalitarian and development-oriented re-interpretation of Islamic laws needs to be done, bringing to light a more progressive view of women (p.79). As earlier stated, a society's opinion and treatment of its women can be seen through its laws and jurisprudence.

Women's Journal on Law & Culture

"*Sex, Sexuality and the Law:*
The Construction of the Filipino Woman's Sexuality and Gender Roles in the Philippine Legal System
Vargas, Flordeliza C., *editor*
Ruiz-Austria, Carolina S., *author*
Women's Legal Education, Advocacy, and Defense Foundation, Inc.
Quezon City 2001

The article examines how the law affects women's sexuality and gender roles in connection to how they are viewed in the legal system. Religion, another societal factor, was also looked into inasmuch as it influences the law to a very high degree.

Spanish colonization heralded the transformation of patriarchal customs into State-enforced and Church-imposed norms. This also led

to the control of women's sexuality by the imposition of a virginal standard and by punishing and controlling the seductress (p.26).

The *Siete Partidas,* a codification of various Roman Law and Canon Law traditions, later on became the source of most of the laws to be enforced in the country during Spanish times (p.30). Little will change over the decades. To this day, Philippine laws still exercise control over women's sexuality.

Filipinos, not excluding women's rights advocates themselves, still see the law with the lens of idealism (p.26). Women's experiences are still defined by the law (p.27). To illustrate, if the law on sexual harassment does not cover the act committed against the woman, then sexual harassment may not have taken place or at the least, that is what women are still made to believe, considering how gender is a non-issue in the process of making our laws.

If a woman's experience does not fit into any of the punishable acts described by legislation, regardless of whether or not she herself felt there was a violation of her rights, then it is merely on to the next best thing for her - to file a case which closely resembles her experience, as the law minimally permits.[6]

Supposedly, the law is gender-neutral. The author argued against this by citing common legal terminologies used in laws such as *"the rational man"* and *"the good father of a family"* (p.26). The article dug deep into the recesses of history to see how the Spanish era's subordination of women has seeped through Philippine legislation and into law enforcement.

A case in point is the handling of prostitution cases. Article 341 of the Revised Penal Code (RPC) penalizes engagement in prostitution and profiting by the same. But in reality, round-ups usually yield only the prostituted women, minus the pimps and, with hardly any surprise, the customers who largely belong to the male population (p.45).

The law is replete with wrong notions of women. A quick rundown will expose our policies on pornography, abortion, marriages, crimes against chastity and against persons, among others.

Laws and jurisprudence on pornography as well as rimes against chastity and against persons reveal the categorization of women into sex objects and women who are likely or not likely to be raped because of certain characteristics. Abortion laws and marriage laws usually undermine the right of women over their own bodies and decisions, reducing them to mere, mindless, and submissive entities.

[6]As an example, before the passage of the Anti-Trafficking in Persons Act (RA 9208), trafficked women could only file cases of illegal recruitment or violation of the white slave trade law.

The author proposes to feminists in particular that there should be efforts to strip down the law of its sexist constructions and innuendos, after having evaluated their impact on women (p.54). No mere amendment of laws, though, is implied but rather a revision of how framers of the law view women. Of what use is change if the context upon which it was made remains the same?

Finally, the article is not remiss in mentioning one other important element in the matter of engaging the law. This is to include the women themselves in the process (p.54). Our laws have always been framed, defined, and even interpreted on male's terms. Even that has to change, especially when these laws have a direct impact on women.

Muslim Laws, Culture and Reproductive Rights

Sexuality and Social Justice
Sarenas, Lyca Therese M., *editor*
Quintillan, Emelina, *author*
Pilipina Legal Resources Center, Inc.
Davao City 2002

The article outlines the basic concepts of sexuality as presented from the perspective of women's human rights. It examines sexuality as a social justice issue, that is, the right to have control over one's sexuality. Referring to a workshop organized by the PILIPINA Legal Resources Center on "Sexuality and Social Justice," the author sees it fit to first clarify the concepts of sexuality and social justice as confusion over their meanings became apparent during said activity.

It also includes in its discussion the international development scene and its implications on sexuality and social justice in the Philippine context. Evolving views on sexuality were briefly presented from the Teheran Human Rights Conference in 1968 to the 1994 International Conference on Population and Development to the 1995 Fourth World Conference on Women in Beijing.

The article discusses a woman's control over her sexuality as a social justice issue (p.15). Women are expected to be passive in their sexual relations. They are not allowed or even encouraged to make decisions regarding their choice of sexual partners, the timing and nature of their sexual activity, or when to have children. Men are encouraged to concern themselves with sexual performance whereas women are forced to deny their sexuality. Gender roles in society characteristically reflect inequality between men and women. A glaring example is the situation of decision-making politics in terms of sexual and reproductive health.

The author is quick to note that the Philippine government is signatory to numerous international documents that supposedly advance women's rights. However, how much of these documents are actually complied with by the signatories is a different story. She cites a case wherein the Department of Health denied women their access to information, and consequently, to justice when an emergency contraceptive pill was delisted under questionable circumstances, regardless of the fact that the pill has undergone extensive study and has been declared safe and effective by no less than the World Health Organization (p.23).

Since health is an important issue for women, discussion on the understanding of sexuality as a human right, a health, and a social justice issue is necessary (p.15). This is crucial in the development of strategies and formulation of action for change to improve the health and quality of life of women in particular. The author suggests a framework for understanding sexuality can be included in training programs. The circulation of information on sexual health and rights is also helpful (p.25).

Furthermore, changing a political, economic, and cultural system that brings about inequity, discrimination, and violence is a step towards social justice (p.21). Needless to say, when all these changes have been had, the justice system, itself dependent on societal movements, will be more accessible and reliable for women.

Proceedings of the ASEAN Women Judges Conference

Special Problems of the Legal Culture Pertaining to Women in the Judiciary - Philippines
Feliciano, Myrna S., *editor*
Defensor-Santiago, Miriam (then-RTC Judge, NCR), *author*
ASEAN Law Association and the Legal Resources Center,
UP Law Complex
Quezon City, Philippines 1987

The article is a walk-through on the road of discrimination a woman treads from the time she enters the world of lawyering to becoming a judge. From the time she applies for a slot in a college of law, to being a student of law, to practicing it, and helping to interpret it, a woman's competence is continuously subject to skepticism, simply because she is a woman.

The author recounts that during the interview for Law School Aptitude Test (LSAT), "[f]emale applicants are treated with kid's gloves or bear down on her like a ton of bricks." The logic of the latter is that "[t]he earlier the female applicant learns this lesson, the better (it is) for

her." Discrimination is even passed up to be a concern for the interviewee. Should the woman be competent enough to pass the LSAT interview, "[s]he is exposed to the hazards of female existence in a predominantly male population." She is sometimes made the butt of classroom jokes by professors whose "[s]exist sense of humor think it amazing to call on a female student to recite a case involving a crime against chastity or an offense against decency and good customs. All this allegedly meant to steel the female student for the harsh facts of life in the courtroom" (pp.65-66).

The article says that women do clerical work. Not that there is anything wrong with doing that, but the fact that there are more women than men often assigned to do just that, seem to point to the critique that the prevailing legal culture is biased against women. That clerical work IS a woman's job [is the norm].

There are other forms of resistance faced by a woman in a legal set-up. Once in the judiciary, the paper says that there are "no ladies room" around because the unspoken yet powerful assumption is that only men can be judges, so why construct a lavatory and toilet for women?

In terms of assignments, female judges are usually given juvenile and domestic relations court assignments. The "SC thinks female judges are better at family laws (p.69). But Defensor-Santiago says, "there is no ostensible empirical basis for this assumption, except that female judges appeared late into the scene. Hence, as a rule, male judges have wider experience in the trial of criminal cases. There is, however, no pragmatic basis for this sex-based discrimination in the assignment of cases."

The author also underscores the "ambivalent attitude of the public to female judges (p.70). When a judge is good at her job, people say that she acts like a man. When she performs poorly, they say, "what can you expect, she's only a woman." It is really a catch-22 situation.

Such discrimination comes with the territory. The author states in the introduction of the article that, "[o]n the one hand, women judges definitely constitute a minority in the judicial profession, and hence receive treatment reserved for minorities everywhere, including unfair discrimination. On the other hand, they are considered a special class, a gifted minority, and hence receive treatment reserved for the elite, and are associated with higher standards of honesty, competence, and efficiency."

HERsay Magazine

The Family Code and Its Implications on Women and Children
Conda, Eleanor C. et al, editors
Ursua, Evalyn G., author
Quezon City 1994

The author's article deals with the Family Code and how its implementation and interpretation affects women and children. In particular, provisions on custody, support, and the dissolution of marriage as they are marred by violence and abuse, are examined.

The author laments how the legal system cannot afford protection or any speedy and effective remedy for women and children who are abused in the home. They are usually left with no option but to resort to extrajudicial solutions (p.34).

The Family Code provides for legal separation. But the process of obtaining such a decree takes too long. Besides, the author believes it has no practical value particularly when there are no properties involved. Added to this is the fact that the parties cannot re-marry anyway (p.34).

She also notes that the Family Code does not provide for protective or restraining orders which can be effectively used against batterers and abusers (p.33). It is a similar ballgame in cases for support. The legal action is characterized by a lengthy and mind-numbing process. This can also be disempowering for the woman and her children, being exposed to the naked truth that they are financially dependent on their abusers, and feeling every ounce of its effect (p.34).

Short of sounding despondent, the author maintains how the Family Code is full of limitations and how these further restrict women's access to justice. No concrete recommendations are given. The article closes with a statement on how women's organizations will have to continue to work within the bounds of the legal system, recognizing, at the same time, that not even laws can bring about changes in beliefs and in culture necessary for improving the woman's place in the justice system (p.36).

The Journal of Reproductive Health, Rights and Ethics Vol.1 No.2
The Legal Aspects of Violence Against Women
Kapunan, Lorna P.
Reproductive Health, Rights and Ethics Center for Studies and Training (ReproCen), College of Law, UP Diliman
Quezon City 1995

In this article, Atty. Kapunan defines rape as presented in the current laws and proceeds to show that certain provisions in the penal statutes preserve inequality between men and women. She suggests that the solution lies not in reforming legislation alone but also in a reform of attitudes, behaviors, and values (p.46).

The Journal of Reproductive Health, Rights and Ethics Vol.1 No.2
The Legal Perspectives on Abortion
Agabin, Pacifico
Reproductive Health, Rights and Ethics Center for Studies and Training (ReproCen), College of Law, UP Diliman
Quezon City 1995

In this article, Prof. Agabin tries to provide a deeper understanding of the legal issues surrounding abortion in this country. He tackles the law on abortion and its implications. He also discusses the issue of social justice and the balancing of interests of the rights of the unborn and the mother. He concludes with several recommendations that include a call for an amendment of our present law on abortion to allow for certain exceptions such as those in life-threatening situations to the mother (p.3).

The Journal of Reproductive Health, Rights and Ethics Volume 7
The Twin Laws on Rape - Three Years After Passage
Llarinas-Angeles, Merci
University of the Philippines
Manila 2001

This article discusses the salient features of the new anti-rape-related laws: RA 8353 or the Anti-Rape Law of 1997 and RA 8505 or the Rape Victim Assistance and Protection Act of 1998. It also evaluates the implementation of the anti-rape law since its passage in 1997. However,

the author asserts that despite the gains, effective and just implementation is hampered by factors such as rape myths entrenched in judicial doctrines and the court ordeal experienced by rape complainants. Strengthened vigilance by women's rights advocates is one of the recommendations to address such gaps in the implementation of these laws (p.85).

Further, the article notes how the new anti-rape law's features reflect some positive changes for the women. "The expanded definition of rape and its reclassification as a crime against persons can only be appreciated as measures to make the law on rape more reflective, responsive, and sensitive to women's experiences, realities, and needs as victims of rape" (p.86).

According to the author, the most significant provision of RA 8505 is on the rape shield (Sec.6): *"In prosecutions for rape, evidence of the complainant's past sexual conduct, opinion thereof or of his / her reputation shall not be admitted unless, and only to the extent that the court finds, such evidence is material and relevant to the case."* This is similar to the provision on presumptions in RA 8353, which pertains to a rule on evidence in rape cases. Ruling out the sexual history of the offended party as an issue or consideration in rape cases is among the basic features of a women-sensitive anti-rape law. This is seen as a protective measure against putting the rape victim on trial, particularly for her past sexual conduct which, in any case, neither negates nor justifies rape (p.88).

The article pinpoints the patriarchal state, which is unsympathetic and hostile to the victim, as one of the reasons why victims would not dare come out easily and file cases. "The State - from the *barangay*, police, up to the courts - is not sensitive to women. The perception of State actors of violence against women, including rape, is one of amusement. "N*akakatuwa."* "If it's wife battery, the police or *barangay* officials will say that this is normal because you're the wife." (Cited from Daguno, 2001, p.91) This may also be the reason why the DOJ prosecutors prefer to dismiss complaints of spouse battery. They cannot appreciate where the woman is coming from.

Further, the article presents the possible experiences of women rape survivors who choose to seek justice and later find out that the experience leads to their second victimization. *"The victim cannot sleep, she fears what the fiscal will say, the tone of his voice. The preliminary investigation alone can last from six months to one year. She needs to follow-up on her case. Those are six months of sleepless nights. She has to deal with the family, community, and state. She struggles at those three levels. The woman is fortunate if her family is immediately supportive; it lessens her suffering" (id, p.92).* Indeed, some of these

realities of women-survivors of rape should be addressed by the provisions of the new anti-rape laws.

Even though there were no actual R.A.8353 cases filed during the time frame of the assessment – from October 1997 to September 2000 or three years after its approval – there were several SC decisions that touched on Post-Traumatic Stress Disorder (PTSD) in relation to sexual offenses. This must be noted because they portend an increasingly important psychological input into rape jurisprudence (*id,* p.92*).*

Also during the period covered, there has been only one significant SC decision applying RA 8353, particularly the important evidentiary presumptions bearing on resistance or consent. There was also the first marital rape conviction under this law by a regional trial court. Then, the DOJ came out with its official interpretation of rape by sexual assault under RA 8353 as excluding finger insertion, though this has been elevated to the SC for definitive interpretation.[7] Generally, opinion is divided whether RA 8353 has made prosecution easier and defense harder, or vice-versa (p.96).

The article poses an overall assessment and subsequent recommendation that "rape myths, especially those entrenched in jurisprudence, would undermine whatever the gains are in the new anti-rape law. It is therefore important to be conscious of these myths that persist, lest they taint the application and interpretation of the law. There have been studies by women to disprove these myths, but these continue to be entrenched in our legal doctrines and in the minds of the members of judicial system in spite of RA 8353" (p.94).

A reform in the justice system is also being called for through the following: *First*, the more conventional and incremental changing of judicial doctrines through purposive efforts by women's legal groups or feminist lawyers in appropriate rape cases before the Supreme Court. *Second*, possibly a faster track would be the holding of symposia and dialogues with members of the Supreme Court, and for that matter, other pillars of the criminal justice system, to purposively thresh out the issue of rape myths as reflected in judicial doctrines. More than fora and symposia, what is ultimately needed is a new rule on the examination of rape complainants, following the model of the recent Rule on the Examination of a Child Witness (p.97).

[7]In *People vs. David Silvano* [29 June 1999], the SC *en banc* came out with the following opinion '[a]ppelant could have been held liable for "instrument or object rape" under R.A. 8353 when he inserted his tongue and finger into her daughter's vaginal orifice. Luckily for him, at the time he committed such act, "instrument or object rape" was not yet punishable.'

The "Othering Processes" In The Legal Profession: Implications On Women's Rights Advocacy

Ursua, Evalyn G.
unpublished (1999)

This article was read during a panel discussion for the "First Alternative Law Conference: Lawyering for the Public Interest," held in November 1999 and sponsored by the Women's Legal Bureau, Inc. with the Legal Advocates for Women Network.

It talks about certain dynamics in the legal profession pertinent to upholding the rights of women while examining how players in this profession affect the lot of women who engage the justice system. Particularly in the legal system, women's issues and concerns are often considered as unimportant or are not prioritized. Addressing fellow lawyers in the paper, the author seeks to educate them on the reality of marginalization of women's issues and concerns in the legal system.

The author criticizes this force she calls the "othering process"[8] which situates women at the loosing end in relation to power and resources in the legal system. "Othering" in our legal system is evident in several ways. This can be seen in: a) the construction or definition of legal rules according to the generic male standard; 2) women being considered as the deviation from the norm and thus have subordinate rights or status; 3) the construction of women and their sexuality from the male point of view; and 4) the trivialization in law of women's concerns, issues, and activities (p.3).

For example, a woman trafficked found herself with an acquitted perpetrator owing to the Court of Appeals' belief that her conduct was "glaringly immoral" and that she warranted her own downfall into international white slave trade (p.5). But what about morally upright women? Are they the only ones the courts should protect? The author sees this as "othering." Men, regardless of their character and reputation, are the legitimate subjects of law and its protection, while no such presumptions can be enjoyed by women (p.5).

The article slams the legal system as it is where men's values and ideas govern legal discourse, court decisions, legal theories, and all else (p.6).

Members of the legal profession continually participate in various ways of reinforcing sexist standards, norms, and systems, perpetuating women's oppression even within the bounds of law and justice (p.9).

The author's recommendations are pertinent to fellow lawyers and how they should conduct themselves when handling cases involving violations of women's human rights.

[8]For further discussion, see De Beauvoir, Simone. *The Second Sex* (1952).

Since lawyering is a male-dominated sphere, she posits that women may not be getting adequate and competent representation in the cases they file. Neither is having a woman for a lawyer a guarantee.

In conclusion, the author writes "[w]omen must lead in the endeavor to promote women's rights. And women lawyers must join other women in that leadership" (p.13).

Criminal Justice Journal

VAW and the Family Courts
Feliciano, Myrna S.
National Police Commission Vol. XVIII
Quezon City 1999-2000

The article gives a brief situationer on VAW, a backgrounder on the United Nations Policy on VAW, and the rationale behind addressing VAW. Also, it discusses the following related laws with some case samples: the Anti-Sexual Harassment Act (RA 7877), the Anti-Rape Law of 1997 (RA 8353), the Rape Victim Assistance and Protection Act of 1998 (RA 8505), the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (RA 7610), the Anti-Mail-Order Bride Law (RA 6955), the Family Courts Act (RA 8369), and other related laws on trafficking in women and domestic violence (pp.45-75).

The author poses the following recommendations:

- [the] "need for judges and court personnel working in the juvenile justice system to be provided with adequate training on international standards formulated for children. So far, training programs for the pillars of justice focused primarily on the domestic law of the child...Efforts have been undertaken to sensitize the judges and court personnel.
- Handling child and women cases through seminars sponsored by the Philippine Judicial Academy... (p.74)
- The hiatus between law and practice has to be examined and remedied in accordance with the present social and economic realities. Although it has been observed that Philippine laws pertaining to women and children are adequate, the implementation of these laws leaves much to be desired.
- Since a lot of women are not aware of their rights, lawyers should embark on programs designed to bring about functional literacy. After all, the law is for all people and everyone must have a working knowledge of the law so that they can use this to assert their rights and have access to the justice system (p.75).

THESES

A Comparative Study of Legal Systems Dealing with Prostitution: Recommendations for the Philippine Context

Ruiz, Carolina S.
University of the Philippines – College of Law
1994

The paper compares and contrasts several different legal systems and policies addressing prostitution, as well as the dominant legal theories influencing these systems. The comparison is done for the purpose of drawing up possible proposals for a viable Philippine legal model.

Prostitution is viewed in its historical context, from the "advent of 'Christianity' during the Spanish colonial period," as there is no record of prostitution in pre-colonial Philippines, according to the article. Present-day facts and figures on the flesh trade, within the Philippine context, were likewise scanned for this study.

The first legal model discussed was the "prohibitionist model." Under this, women in prostitution are criminals and "associated with all forms of lawlessness and criminality" (p.11). According to the author, such viewing of prostitutes as dregs of society "stem from the model of procreational sexual love." St. Augustine was quoted saying that, "the only proper genital commotion is that consciously aimed at reproduction of the species in marriage" (Cited from Richards, 2001, p.12). Anything outside of that is to be prohibited, and when committed, is criminal. But it is so only for "unchaste" women, like the prostitutes, but not so for "unchaste" men. In fact, it is in societies where prostitution is most condemned, that it is also tolerated to be able to service and keep in check the "wayward appetites of men" (*id,* p.13).

Clearly, the Philippine policy on prostitution is modeled after the prohibitionist mold. The Philippine policy on (female) prostitution is one of absolute prohibition. Although, besides punishing the prostitute, it is noteworthy that Philippine law provides for the punishment of persons who profit and persons who enlist the services of another for the purpose of prostitution (Citing Art. 341 of the RPC). But the paper hastens to add that what is written in the law is far from how this is implemented. There is ambiguity in the interpretation and enforcement of laws pertinent to prostitution. Ruiz states, " [W]orse, they are patently discriminatory and unevenly implemented" (p.17).

The author says that even the US federal laws on prostitution follow the prohibitionist pattern. The specific laws dealing with prostitution are the White Slave Trade Act or Mann Act and the Travel Act. The former penalizes anyone who transports a woman or girl for purposes of prostitution. The Travel Act, on the other hand, penalizes the "acts of

'traveling' or using facilities interstate commerce" for prostitution. What are criminalized are the acts of persons deriving profit from prostitution. The women in it are not criminalized *per se,* the writer adds.

The West German law on prostitution is the German Penal Code of 1871. This Code does not criminalize prostitution, but sets "controls in procuring and pandering" (cited from Mankoff, 2001, p.27). Houses of prostitution are generally allowed as long as they comply with the controls, like registering with the local police and women having periodic health check-ups. Thus, Germany has the famous Eros Center, established since 1967. Eros is a four-story-drive-in motel that houses around 130 prostitutes. There are many such centers around Germany.

Feminists say that the "problem with licensing and regulation is that it does not question …the assumption of 'differences' between the sexual needs of the genders." This assumes that "there will always be a demand for female prostitutes to satisfy the insatiable male sexual needs". The author declares, "decriminalization, accompanied by licensing and regulation, at most, reinforces the double-standard of morality, but 'frees' the women of any criminal liability" (p.31).

Other systems looked at is the *laissez-faire* decriminalization, which will not require any licensing or regulation, except the application of existing criminal laws on force and fraud. Here, the focus shifts from the prostitutes to the ones who profit from exploiting the women.

The Swedish program of decriminalization comes closest to this set-up. The Program includes economic and social reform components, since they see that addressing prostitution requires a multi-pronged approach. Although liberal in its views on sex, Sweden has tightened its policies against procuring for sexual exploitation.

For the author, the Swedish model is the most viable model for the Philippine context. It is holistic in its approach and does not see itself as the end-all and be-all in addressing prostitution, which is basically or essentially female prostitution. Such a model of decriminalization is seen as just the first step in a series of other steps.

Self-Defense for Battered Women: Focus on the Admissibility of the Battered Woman Syndrome in Philippine Law and Jurisprudence

Real, Mary Jane Nolasco
Ateneo de Manila University School of Law
1994

Real wrote this thesis in 1994, "in partial fulfillment of the requirements for the degree of Juris Doctor." It is a feminist thesis in the sense that the starting point is the oppression, the devaluing, the subordination

and the exploitation of women simply because they happen to be women at a time and in a society where anything male still reigns supreme. In such a set up, institutions, structures, and processes that include the law and jurisprudence are stacked against women, which further violate them. One area worth training one's feminist capacity is in the understanding of a common plight of many women: the abuse they endure within their intimate relationships, and drawing up a proposition for concerned parties to discourse on.

Real's thesis is a lengthy and substantive review and assessment on the present legal system that does not provide just defenses for women who kill or injure their batterers. Hence, the proposal for the court - specifically the Supreme Court (SC) - is to modify its interpretation of the self-defense doctrine so as to include consideration of the Battered Wife Syndrome (BWS). The proposal hopes to expand the limited legal recourse available for women who injure or kill their batterer-partner, especially in a "non-confrontational" situation. Such recommendation, when considered and hopefully adopted, would not only help correct misconceptions and discrimination against women. More importantly, it would correct the "legal inequity" injurious to women due to the male-based interpretation of the self-defense doctrine.

Normally, when someone is wounded or killed it is assumed that a crime has been committed. An exception would be when the wounding or killing was done in self-defense. For a court to consider such act as self-defense, the following elements or conditions must be present:

- There should be unlawful or unwarranted aggression against the person claiming self-defense;
- There should be reasonable necessity both of the defendant's action and the means she / he employed to repel the aggression; and
- There should be a lack of sufficient provocation on the part of the person defending himself / herself.

Real pores through and cites several SC cases where the battered wives were not able to invoke self-defense. One or all of the three above-mentioned elements were not complied with in the presentation of their defense, thus self-defense could not be invoked. There were many cases where the woman killed her husband while he was sleeping or wasted from too much drinking. Or there was a long interval before the woman fought back her abusive husband thereby making it seem premeditated and not an on-the-spot defense against danger posed by the husband. Courts declare that these situations cannot be self-

defense because of the absence of unwarranted aggression directed towards the woman.

The thesis asserts that to interpret a battered woman's situation as such is to do injustice to women. It states that the self-defense doctrine developed through a long line of SC decisions evolved from a male model (p.68). Most of the cases where the doctrine is based on dealt with clashes or altercations between or among men - in situations "when a male defendant is trapped and facing imminent death, struck out at the last moment, and killed the attacker." Real hastens to add, "…the cases only pertained to one-time attacks from a person/s not related to the defendant" (p.68). The author is not saying that this is not self-defense. Rather, the author maintains that the situation of battered women is also a form of self-defense and should be considered as such.

The thesis does not say that all women who claim to be battered can automatically claim self-defense; rather, Real hastens to clarify the following points, to avoid being misconstrued as part of the papers' advocacy:

- That the BWS defense is not to ask for special treatment for women;
- That it does not suggest the right to kill for battered women;
- That it is not to mean automatic justification of the act of the battered woman-defendant; and
- That it only asserts that a woman is entitled to the same self-defense claim available to other persons trapped in a similar situation (pp.93-94)

Part of Real's proposal is for an "expert's opinion" to be admitted as proof that the women indeed suffer from BWS, defined as "a post-traumatic stress disorder that develops after experiencing a distressing event not within the range of common experiences (cited from Schroeder, 1991 and American Psychiatric Association Diagnostic and Statistical Manual of Mental Health Disorders III, R247,1987, p.70).

She says, "[t]he admission of testimony on the battered woman syndrome is not a novel defense. It will not entail an amendment of the elements of this defense but will only require an expansion of the SC's interpretation of the self-defense requisites to include the particular circumstances of battered women" (p.92).

Real argues, "[t]he rulings reflect prevailing misconceptions about battered women. The Court did not address marked difference between a person's response to a singular attack by a stranger and the response of a battered woman repeatedly abused over time by a single perpetrator intimately related to her. The Court failed to contemplate the fact that a battered woman is immobilized from leaving her abusive

partner by psychological, social, and economic factors. Unlawful aggression continues as long as she remains trapped in the relationship. And that the attack at her batterer during a non-confrontational situation, such as when the beatings have ceased temporarily, is a desperate attempt to try to defend herself successfully."

It is important that courts take into consideration the particular situation of women who are deemed "weaker" than men, smaller in build, and who largely lack the know-how in physical combat. Based on the cases, the Court expects any defendant invoking self-defense, whether male or female, to respond in the same manner to the aggression. "This denies the battered women their constitutional right to a fair trial."

This distorted interpretation of self-defense and the situation of battered women demands a modification of the existing concept of self-defense by taking into consideration the predicament of battered women. Such modification is a necessary step to take in the direction of addressing the misconceptions reflected in the Court rulings and "eradicate the effects of a history of discrimination against them" (p.69).

The Sex Sector: Prostitution and Development in the Philippines

Ofreneo, Rene E. and Ofreneo, Rosalinda
August 1993

This paper is a very comprehensive and detailed account of the many facets of the complex issue of prostitution. The paper highlights not just the movement of the flesh trade from the Spanish colonial times up to present-day Philippines. It also elaborates on the relationship of many factors that contribute to taking the trade to a level where it is today – globalized and glamorized, a multi-billion-dollar business, with victims getting younger and younger and continuously increasing in number, leaving law enforcers in a quandary on how to effectively address it. It also discusses the impact of macro-economic policies and programs of the Philippine government on the issue. Finally, there is a chapter on the various responses of different sectors of society addressing the needs and welfare of the women through the education programs, advocacy, STD and HIV-AIDS control, among others.

If one is interested to write a paper on prostitution in the Philippine context for a Filipino audience, this paper is a very good piece to start on especially in the review of literature. It puts together the findings from the writings of Filipino researcher-writers, many of whom are directly involved in the work for the plight of the women in prostitution. It is rich in data, although quite dated. This is understandable, given the difficulty

of generating data from a "sector" that is no more than a curiosity item for many, and given its "illegal" and underground nature.

Aside from a lengthy recount of the development of prostitution across time, the paper also touches on the organizational structure and the relationship of the various players in the trade. These are the three B's which women's NGOs describe as: 1) the "bought" ¯ the women and children, 2) the "buyers" ¯ the male customers, and 3) the "business" ¯ everyone else, usually males who profit from the blood, sweat, and tears of the women.

The paper also discusses the legislative and judicial aspects related to prostitution. It points out that, "[t]he State has always taken an ambivalent attitude towards the sector." It criminalizes prostitution in its legal statutes yet allows and even licenses beer gardens, massage parlors, and other businesses known to be fronts of prostitution. This is made possible through local government ordinances.

The State actually regulates prostitution. The women are required to go for regular medical check-ups. For this, they get a "pink" card guaranteeing they are safe. Safe for customer use, that is. "In the case of women wishing to work as "entertainers" abroad, government even serves as a screening mechanism for accrediting them" (p.32).

Not only is the State policy on prostitution ambivalent, "[t]he laws … lend themselves to ambiguities with regard to their interpretation and enforcement," the authors say. "Worse, they are patently discriminatory and unevenly implemented." Article 202, Section 5 of the RPC states *"[f]or the purpose of this article, women who, for money or for profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes."* This discriminates against women and it leaves the law open to arbitrary interpretations and implementation. The paper says, "[s]ince parameters are absent in determining what 'profit and lascivious conduct' mean, the criminalization of prostitutes is largely dependent on who judges the case" (Citing the Philippine Development Plan for Women, 1989, p.138).

In 1993, decriminalization of prostitution through the repeal of Article 202 of the RPC was one of the recommendations of the participants to the policy workshop organized by the Project Group on Prostitution of the NCRFW and the GO-NGO Network on VAW and Prostitution. In 1989, this same recommendation had already been put forth in the Philippine Development Plan for Women (PDPW) signed by then-President Corazon C. Aquino (pp.36-28). Decriminalization was defined as the "removal of the criminal onus or penalty from women', who are seen as victims bought by the business and the buyer.

UNPUBLISHED RESULTS
OF THE ALTERNATIVE LAW GROUPS (ALG)
Northern Luzon Cluster Regional Consultation

FGD Outputs of the Women's Groups during the Alternative Law Groups (ALG) Northern Luzon Cluster Regional Consultation on Access to Justice of Marginalized Sectors (Unpublished)

On 29-30 September 2003 in Baguio City, the Women's Legal Education, Advocacy and Defense (WomenLEAD) Foundation, together with two other ALG members, the Legal Rights and Natural Resources Center, Inc. – Kasama sa Kalikasan (LRC-KSK) and the Tanggol Kalikasan (TK) convened and co-sponsored a regional consultation on access to justice of the marginalized sectors among their respective partners within Northern Luzon. This consultation, simultaneously conducted in other parts of the country, is part of the Justice Reform Initiatives Support (JURIS) Project of the ALG network. The consultations are initial steps toward consolidating the various views, insights and experiences of the poor and marginalized groups and communities vis-à-vis access to justice and justice reform.

During the NL consultation, simultaneous FGDs were done. The FGD aimed to elicit the following from the participants: (a) their concept of "justice;" (b) when and how is justice achieved; (c) positive and negative experience in accessing justice (in general cases); (d) positive and negative experience in accessing justice (in cases of VAW or other gender-based issues and concerns); and (e) recommendations to self, to the government, to the justice system, and to other ALG members toward further strengthening and making the justice system more effective, gender-responsive / women-friendly and meaningful to everyone, particularly the marginalized sectors of society.

The following women's groups and their representatives were present during the consultation:

- Alice Camiwet – Member, Batal Women's Organization
- Jill K. Cariño – Executive Director, Cordillera Women's Education and Resource Center (CWERC)
- Maria Madiguid - Organizer, Kanlungan Center Foundation, La Union
- Lety E. Miana – Secretary/Treasurer, The Ebgan, Inc.
- Julie Palaganas – Lesbond-Innabuyog
- Carol M. Salvino – President, Lagba Theater Group
- Shirley M. Socalo – Social Worker, Pumat-a Association, Inc.

- Aida Cadiogan[9] - Staff Gender Unit, TEBTEBBA
- Elita Herrero[10] – Director for Programs, Child and Family Services Phils. Inc.

The following were the responses given by the participants in the course of the discussion.

On their concept of justice

When participants were asked what comes to their minds when they hear the word "justice," negative images and ideas generally came to their minds. These are: biased, meaningless, inequality, always delayed, an eye for an eye, slow, unjust, for the rich and moneyed, that is why we cannot blame those who make drastic extralegal moves, frustrating. Other responses include: blindfolded, lawyers, victims demanding justice, legal system, and people are happy when they obtain it.

On their respective definitions of justice, ideal and positive concepts emerged. These include: justice being the right to be heard; when the truth surfaces; recognition and actualization of basic human rights (economic, political and cultural rights that include the right to food, right to freedom of expression, and to voice out grievances) including women's rights and IP rights; should not be biased; promotes equality and due process; punishment for the one who violated; redress for violation of rights; there is justice when everyone has food to eat, is healthy, and satisfied; impartial hearings and handling of cases; giving a person what is due her. There were also other responses that justice cannot be achieved in the courts and that it is a commodity that can be bought.

The participants noted the difference between the conceptual and operational definitions of justice. The availability of financial and human (lawyers) resources spells the difference, they said. When you don't have money, the case seems so slow. But when you have the resources, the case seems to prosper, they added. They also said that sometimes it depends on the lawyer's ability and tactics. Generally, the systems and policies were made to be for the good of everyone. Some people may have good intentions but the situation could still be very frustrating at times.

[9]This participant was invited by WomenLEAD but opted to sit in the Indigenous Peoples group.
[10]This participant actually arrived on the second day thus she was not able to participate in the FGD.

There was also a pronounced difference between the **"need to access justice"** and **"actually accessing it."** Women think they need to access justice when there is injustice; when there is a case; and as a last resort to for redress of violation of rights but without necessarily pinning hopes to it. Women actually access it when they think a case needs to be filed.

The effects of this discrepancy or of not filing include: adverse effects on the victim's future (*i.e.,* abused girl-child will be confused); continuous distrust of the justice system; deters cohesion and unity of the State; possibility of the cycle of violence for the victim; and rise of criminality rate.

The reasons cited for not filing are: cases such as domestic violence is considered a private matter; the culture of shame and *machismo*; financially incapable; lengthy process; lack of faith and trust in the key players of the justice system; various cultural beliefs and traditions of indigenous communities; and the lack of support groups.

When asked what they think of a culture that allows violence against women,[11] participants responded that this should not be the case. Others reasoned that sometimes this is also due to economic reasons when the woman / child is economically dependent on the husband / father.

On women's experiences

The participants discussed their positive and negative experiences in their engagement with the justice system. They recalled the times when they won an administrative case on sexual harassment and their pending cases that they still feel hopeful for. The trials in the lower courts are relatively faster, they said. The difficult stage is upon reaching the Court of Appeals. On the negative side of it, they recalled one case that has been pending for almost a year now and with uncooperative witnesses are not cooperating because the respondent is a priest. There was also one case of an abused girl-child where they requested that trial be done in closed-door manner. To their dismay, the court said that they still have to consult the accused.

On the differential treatment of men and women in the justice system, the culture of shame is still evident particularly in VAW cases such as rape, incest, and domestic violence. There are also difficulties in filing cases particularly when the complainant is a lesbian. In general, the entire process in case handling is typified by gender-insensitivity and gender bias. The participants also underscored the fact that even

[11]This question came about when some of the participants shared that in several indigenous communities some forms of VAW (*e.g.*, incest) are either tolerated or not addressed.

women judges and lawyers are somehow guilty of perpetuating gender bias. The fact that they are women does not automatically mean they are pro-women. On the other hand, there are some male judges who are actually more gender-sensitive.

On recommendations

Based on their prior responses, the participants have very low level of confidence on the justice system. They cited customary laws and strong family support system as other forms and sources of justice.

For them, a gender-responsive and gender-sensitive justice system should not degrade women and children and should take note of the great disparity between the rich and the poor.

Other recommendations include the following:

- Education and training of key players in the justice system and the communities as well;
- Continuous development and training of paralegals;
- A serious campaign against graft and corruption in the judiciary; and
- More systematic and comprehensive documentations of human rights violations particularly on women.

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