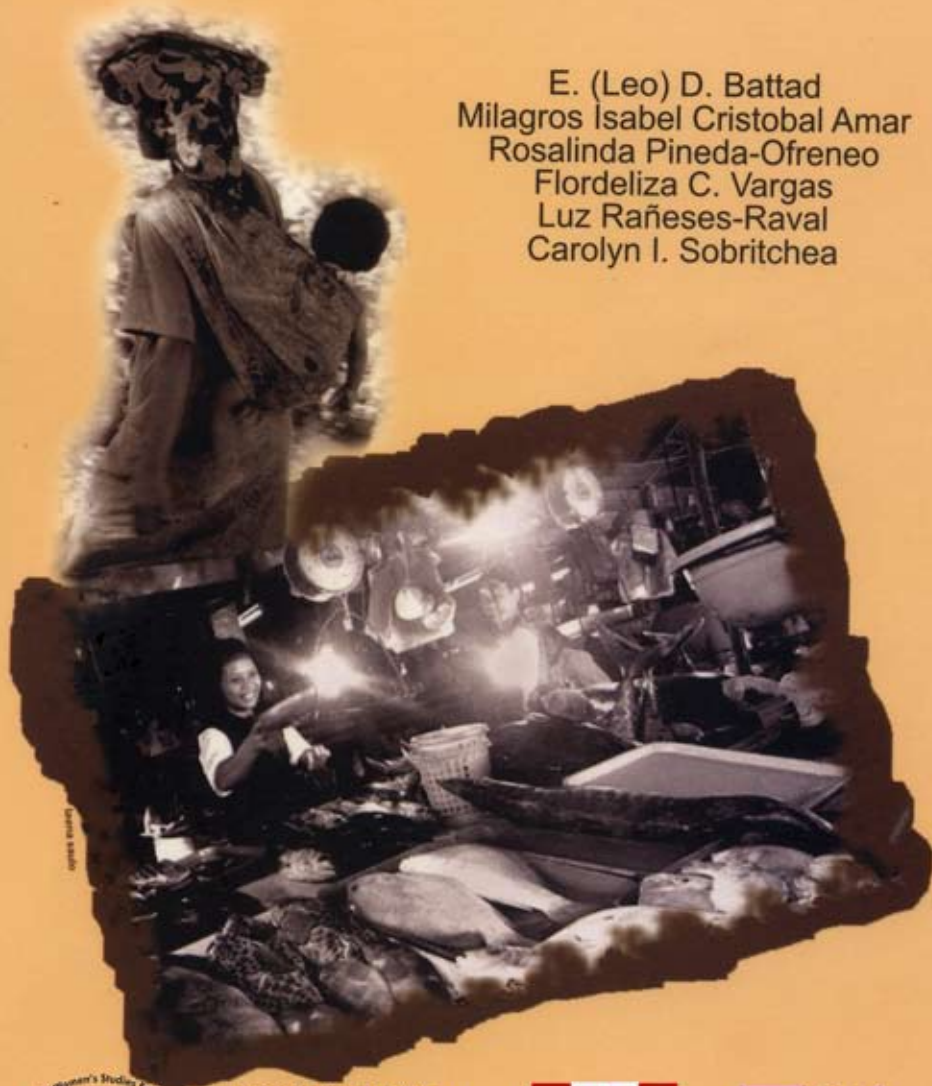


A Gender Review of Selected Economic Laws in the Philippines

CEDAW

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Preface

The United Nations Development Fund for Women (UNIFEM) in partnership with the Canadian International Development Agency (CIDA) launched in 2004 a four-year (2005-2008) regional program named “Facilitating CEDAW Implementation towards the Realization of Women’s Human Rights in South East Asia” or CEDAW South East Asia Programme (SEAP). The program is being implemented in Cambodia, Indonesia, Lao PDR, Philippines, Thailand, Timor-Leste, and Vietnam.

The goal of the program is to contribute to the fulfillment of women’s human rights through the effective implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The program strategies for implementing CEDAW SEAP in the Philippines include research and advocacy, organizing forums across the country to popularize CEDAW, and building the expertise of selected representatives from government, non-governmental organizations (NGOs), and other civil society partners to use the treaty and its optional protocol as a tool to review and monitor laws and programs.

The studies presented in this book are among the significant results of the CEDAW SEAP country program on research and advocacy. They contain a legal review of economic laws in the Philippines aimed to assess the extent to which such laws comply with the standards of CEDAW. A research team composed of legal and social science researchers was convened to conduct the legal review and, subsequently, to organize advocacy forums to popularize the findings of the study. E. (Leo) D. Battad, a law educator and researcher of the University of the Philippines (UP), conducted a gender analysis of the Labor Code and all the laws related to the social protection of workers. Rosalinda Pineda-Ofreneo, professor and chair of the UP Department of Women and Development Studies, College of Social Work and Community Development, analyzed three laws on credit and enterprise development. Lawyer and human rights advocate Milagros Isabel Cristobal-Amar examined the Cooperative Code of the Philippines and the law creating the Cooperative Development Authority. Two other law researchers, Ma. Luz Rañeses-Raval and Flordeliza C. Vargas, reviewed the Comprehensive Agrarian Reform Law (CARL) and its implementing rules and regulations.

The research process involved a review of related literature, interviews with key informants, and meetings of the team with the research consultants—Atty. Myrna Feliciano and Dr. Sylvia H. Guerrero—to analyze the data and discuss the thrusts and contents of the individual reports. The initial draft of the research report was subsequently presented for validation to different groups. A total of five validation workshops were organized and attended by legislators, law researchers, and representatives from key government agencies, academic institutions, and NGOs. This was followed by three advocacy workshops involving the CEDAW SEAP partners, the forty-two members of the Committee on Women of the House of Representatives, and members of groups advocating for women's economic empowerment through a comprehensive program on rural development.

We hope that the research findings and the legislative reforms recommended by the research team shall be adopted as soon as possible by concerned government agencies to achieve the country's goal, as embodied in the 1987 Constitution, of promoting substantive gender equality.

I congratulate the research team and the external reviewers for their dedication and hard work.

The book would not have been possible without the generous cooperation of those who participated in the validation and advocacy workshops. Needless to say, we are all grateful to Luz Rodriguez and Geraldine Baltazar, national coordinator and finance administrative assistant, respectively, of UNIFEM-SEAP, for their expert guidance and friendly persuasion for us to complete the research on time.

Carolyn I. Sobritchea, Ph.D.
Project Leader



Chapter 1

INTRODUCTION

Advancing Women's Economic Rights through CEDAW

Carolyn I. Sobritchea, Ph.D.

What is CEDAW?

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted in 1979 by the UN General Assembly and ratified by the Philippine government in 1981. To date, 182 countries have signed the Convention, making it among the most significant human rights instrument to promote gender equality and women's empowerment all over the world. CEDAW consists of a preamble and thirty articles. By ratifying the Treaty, governments are committed to undertake measures to eliminate all forms of discrimination against women. Such measures include (a) the incorporation of gender equality principles in the legal system, (b) the repeal of all discriminatory laws and the passage of those that prohibit discrimination against women, and (c) the establishment of mechanisms like tribunals and other public institutions to ensure the protection of women against discrimination (<http://www.un.org/womenwatch/daw/cedaw>). State parties are committed to submit national reports, at least every four years, about the status of women

in their respective countries and the measures they have adopted in response to the treaty obligations.

To ensure the compliance of State parties, the United Nations created the CEDAW Committee, and this twenty-three-member body meets twice a year in New York to review country reports and formulate appropriate recommendations to address problems related to women's economic, sociocultural, and political rights.

Why was there a need for a special treaty on women? The United Nations Development Fund for Women (UNIFEM) underscores the importance of using the norms and standards set by CEDAW since these are meant to protect, respect, and fulfill the human rights of women all over the world. There is a need for more decisive measures to promote women's human rights because:

- women's human rights were not automatically recognized in the mainstream human rights discourse and in human rights proclamations and practice;
- in the traditional tensions between civil and political rights on one hand, and social and economic rights on the other, the international community had largely focused on the former, while violations against women often occur in the social and economic spheres;
- of the need to go beyond the focus on retribution for individuals, toward addressing systems, ideologies, and institutions that violate women's rights; and
- of the need to transcend the focus in other treaties on state actors who violate women's rights, toward also ensuring state accountability for rights violations by nonstate actors, including the family (UNIFEM 2005, 6).

CEDAW is framed by three overarching principles: (a) substantive equality, (b) nondiscrimination, and (c) state obligation. The substantive equality approach upholds the need to promote equality between women and men in opportunity, access and results as well as benefits. It recognizes *de jure* (in law) and *de facto* (in fact) equality between the sexes by "(a)

catalyzing policy and legislation that provide equal opportunities, (b) creating enabling institutional and social environments that include affirmative-action measures to ensure real equality of access and benefits, and (c) empowering individuals, especially women ... to claim their rights" (UNIFEM 2005, 8). Substantive equality means that "governments are tasked to bring in actual results in women's lives" (NCRFW 2006) by continuously challenging cultural beliefs, customs, and norms that are inimical to women's interests.

The second principle of CEDAW deals with the pursuit of gender equality through the elimination of all forms and manifestations of discrimination and injustice. Article 1 of the treaty defines discrimination as

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

Gender discrimination is expressed in various insidious and subtle ways—through the different treatment of the sexes that results in nonrecognition of women's human rights and prevents them from exercising their human rights. Gender discrimination also occurs when the same treatment of women and men prevents the former from exercising their human rights in both the public and private spheres. It can be done directly or indirectly (intended or unintended), and in law or in everyday practices and social interactions.

The third principle that CEDAW upholds has to do with the obligation of the State to prevent the violation of women's political, economic, and cultural rights by its officials and constituent agencies. It also puts the responsibility on State parties to protect women from injustices committed by private individuals and groups.

Women's Human Rights in CEDAW

Articles 11, 12, 13, and 14 of CEDAW define the economic entitlements of women and the obligation of State parties to ensure that these are respected, protected, and promoted through enabling laws, policies, and programs. Article 11 calls on State parties to eliminate discrimination against women in the field of employment, for them to be accorded the same rights that men enjoy, which include the right to work and the same employment opportunities. The convention also underscores women's equal rights to free choice of profession and employment, to work, promotion in rank and occupation, job security, remuneration, and all benefits and conditions of service such as social, economic, and health benefits. Article 14 accounts for the particular problems of rural women and their significant roles in ensuring the economic survival of their families. It calls on State parties to promote women's participation and access to the benefits of rural development through involvement in all aspects of development planning, and access to health information and services, social security, education, and other community resources.

State parties must prevent discrimination against women on the ground of marriage or maternity, through such measures as maternity leave and related services so that parents are able to combine family and work responsibilities, and there is special protection to women during pregnancy in types of work that may be detrimental to them.

CEDAW guarantees women's access to comprehensive health services, including family planning (article 12) and other programs that can enable them to decide and make informed choices about pregnancy, number of children, and birth spacing (article 16). Additionally, the treaty ensures women's rights to decision making and equal participation in public leadership and governance, both at the national and international levels of engagement (articles 7 and 8).

Laws and Programs to Promote Gender Equality

Since the ratification of the treaty, several laws have been enacted to promote gender equality and women's empowerment in the country. These

include, among others, the laws that protect women in the workplace: the Day Care Act (RA 6972), the Paternity Leave Act (RA 8187), and the law against discrimination of women with respect to the terms and conditions of employment (RA 6725). For women in the informal sector, there are now laws that provide credit for those engaged in micro and cottage industries (RA 7882, RA 8289, and RA 8425). To ensure the integration of gender-equality principles in policies, structures, and programs, the Philippine government passed an act in 1997 (RA 8250) requiring all public offices to allocate 5 percent of their budget appropriation for projects designed to promote the active participation of women in nation building. The other laws that presently help protect women from discrimination and abuse include those that expand the definition of rape (RA 8353), declare abuse of women in intimate relations as a crime (RA 9262), and define the actions needed to eliminate trafficking in persons, especially women and minors (RA 9208). There is also the legislation establishing the family courts (RA 8369) and creating women's desks in all police stations (RA 8551). The passage of these laws was undertaken through the active and critical participation of women's groups in civil society, the academe, and the government.

Since 1986, the Philippine government, through the National Commission on the Role of Filipino Women (NCRFW), has actively pursued various programs to ensure the effective implementation of the aforementioned laws. The *Philippine Plan for Gender Responsive Development, 1995-2025* (PPGD), formulated in 1995, has served as the blueprint for the review and development of gender responsive programs by the different government agencies. These include, among others, training in the use of the gender and development (GAD) approach for project development, creation of services to deal with problems of physical and sexual abuses as well as other reproductive health issues, and the provision of credit, livelihood skills, and information to enhance women's economic productivity. In 2001, the NCRFW crafted the *Philippine Framework Plan for Women* (FPW), incorporating the innovative proposals of the PPGD. The FPW envisions development as "equitable, sustainable, free from violence, respectful of human rights, supportive of self-determination and the actualization of human potentials..." to achieve the economic empowerment of women, the protection of their human

rights, and the promotion of gender responsive governance (NCRFW 2004, 1). The objectives for enhancing women's economic status and rights are as follows:

- To enhance the sustainable access of women to capital, market, information, technology, and technical assistance
- To enhance employment and livelihood skills of women, particularly in high-value-adding industries and agricultural activities
- To establish an enabling environment that will ensure the effective implementation of policies for the protection of women workers, overseas Filipino workers (OFWs), and other specific women workers' groups
- To increase awareness of women of their rights and opportunities
- To strengthen women's representation in economic decision-making bodies (NCRFW 2004, 2)

Gender Issues and the Philippine Economy

Despite these achievements, many Filipino women continue to experience discrimination at home, in school, in the workplace and the community. In 2000, for instance, the incidence of poverty was up to 28.4 percent compared to the 28.1 percent in 1997 (NSCB 2003). This easily translates into some 4.5 million families living in poverty. The impacts of a weak economy on households are manifested through increases in prices of prime consumer commodities, reduced labor demand, reduced access to capital, and ultimately, through poor peace-and-order situation, the rise of prostitution, and other pressures on social capital. There are higher rates of school dropout and illiteracy in communities that have large segments of poor households. Poverty affects populations, communities, and individuals differently. Global statistics, for instance, have shown the disproportionately high percentage of women (70 percent in the mid-'90s) among the world's poorest (UNDP 1995). Although the 70/30 sex distribution of poverty incidence has been challenged by a number of scholars and development experts (e.g., Quisumbing, Haddad and Peña

1995 in Marcoux 1997; Lipton and Ravallion 1995 in Marcoux 1997), there is robust evidence to show that women, especially in developing countries, bear an unequal share of the burden of poverty (Marcoux 1997).

In the Philippines, recent studies (e.g., Pineda-Ofreneo 1998; Illo and Pineda-Ofreneo 1999) also point to the increasing feminization of poverty, particularly as an aftermath of the trade liberalization and structural adjustment measures that occurred in the last decade. The Human Development Report of 2002 (UNDP 2003) notes that women comprise 64.4 percent of the poor working population in 2001. More recent data, however, show a more complex picture of how gender intersects with the economic processes that cause the growth or decline of household incomes. Current developments, like the dramatic rise in the number of female overseas workers and the differential impacts of the financial crisis on industries like the construction versus the service sectors, affected the employment status of both females and males in different ways.

The number of women working and accepting nontraditional roles in society has increased over the years partly as a result of the steady improvements in their educational status and exposure to new cultural and social influences. The level of literacy has remained high at 94 percent for females and 93.7 for males (NCRFW 2004), although there is still the persistence of gender tracking in the choice of education and occupation.

The Philippines continues to be in the top-fifteen countries that have a fast-growing population; it has an annual growth rate of 2.36 percent and a fertility rate of 3.5 births per woman, compared to 1.9 in Thailand, 2.6 in Indonesia, and 3.0 in Malaysia (ADB 2001). The average household size is 5, and this ties many married women to domestic and childcaring chores for many years, even as they increasingly have to participate in paid work.

Female labor participation rates (FLPR) have also steadily increased in the last decade, from 49.3 percent in 1998 to 51 percent in 2002, but the figures continue to be lower than the participation rates of males, which were 82.9 percent in 1998 and 80.9 percent in 2002 (table 1). This indicates that the cyclical contraction of the economy, particularly the more recent Asian financial crisis, has not eased out female labor as much as it did for the males. What can explain this phenomenon?

Table 1. Labor Force Participation Rates by Sex (in Percentage)

Item	1998		2000		2001		2002	
	Female	Male	Female	Male	Female	Male	Female	Male
Total	49.3	82.9	48.4	80.3	52.8	82.3	51.7	80.8
Urban	50.1	78.8	48.8	76.6	52.8	78.6	51.7	77.4
Rural	48.5	86.6	47.9	84.0	52.8	85.8	51.7	84.0

Source: Labor Force Surveys, National Statistics Office (various years).

Table 2 provides comparative data on unemployment rates of females and males from 1989 to 2002. The Philippine government vigorously implemented the policies of trade liberalization and attracting foreign investments in the mid-'80s. The figures in this table already indicate how the restructuring of the local economy had affected the access of the sexes to employment opportunities. Female unemployment rates were consistently lower than the male rates. And much lower rates were registered in the years immediately following the 1997 financial crisis.

A gender analysis of the industry groups and occupational sectors (tables 3 and 4), on the other hand, provides a good explanation for the higher rates of male unemployment across the short periods of growth spurts and decline. In 2003, the men dominated the construction, mining, quarrying, agriculture, and transport industries. The women, on the other hand, dominated the health and social work, education, and other service sectors. This has always been the pattern of work distribution in the formal sector between men and women, which can be traced to the persistence of traditional beliefs and practices about appropriate masculine and feminine roles.

With a highly sex-stereotyped distribution of employment and occupations, it is easy to understand how women and men had been affected by the trade liberalization and export-oriented policies of the government. Their immediate and direct effect, for example, on the agricultural economy had been the entry into the country of farm products sold at much lower prices than the locally produced ones. Being a

Table 2. Unemployed Persons by Sex (in Thousands)

Year	Both Sexes	Male	Female	% Female
1989	2,009	1,101	908	45
1990	1,993	1,099	893	45
1991	2,267	1,290	977	43
1992	2,262	1,303	959	42
1993	2,379	1,384	995	42
1994	2,317	1,362	955	43
1995	2,342	1,354	988	42
1996	2,195	1,293	902	41
1997	2,377	1,411	966	41
1998	3,016	1,857	1,159	38
1999	2,997	1,876	1,121	37
2000	3,133	1,978	1,156	37
2001	3,271	1,913	1,357	41
2002	3,423	2,076	1,346	39

Source: National Statistical Coordination Board 2003.

traditionally agricultural country, around two-thirds of exports and one-fifth of imports used to come from the agricultural sector. In recent years, however, local farmers lost their competitive edge over imported products, thereby causing the movement of farm labor, especially female labor, to nonfarming occupations in the urban centers. The other factor that increasingly might have driven women away from farming was the promotion of thirteen major export crops in the '90s, which provided more work opportunities to men than women (TESDA Women's Center 1999). This push factor was complemented by the availability, on the other hand, of service jobs in urban centers tied to the growth of the food, entertainment, and tourism industries.

The shift from industrial protection to more liberal or "open door" foreign investment policies also altered the level and composition of the

Table 3. Employed Persons by Major Industry Group and Sex, 2003
(In Thousands)

Major Industry Group	Both Sexes	Male	Female	% Female
Agriculture, hunting and forestry	9,970	7,132	2,838	28
Fishing	1,185	1,106	78	7
Mining and quarrying	105	96	8	8
Manufacturing	2,892	1,519	1,373	47
Electricity, gas, and water	116	97	19	16
Construction	1,747	1,710	37	2
Wholesale and retail, repair of motor vehicles, motorcycles, and personal household goods	5,636	2,117	3,519	62
Hotel and restaurants	709	320	388	55
Transport, storage, and communication	2,287	2,163	123	5
Financial intermediation	286	126	161	56
Real estate, renting, and business activities	563	378	185	33
Public administration and defense, compulsory social security	1,466	894	572	39
Education	934	231	703	75
Health and social work	371	98	273	74
Other community, social and personal service activities	901	463	439	49
Private household with employed persons	1,251	191	1,060	85

Source: National Statistical Coordination Board 2003.

manufacturing sector. Reacting to global market opportunities, foreign investments that flowed into the country throughout the '90s shifted from extractive industries like mining and forestry to the chemicals, electronics, and food-processing industries. To this day, food processing remains to be the most vibrant industry, accounting for 44 percent of all the revenues of the manufacturing sector.

The decline of the agricultural and manufacturing sectors has coincided with the growth of the service industry, providing job opportunities to both sexes, especially to women. In general, the men have been absorbed by the transportation, storage, and communication sectors, and to some extent, the wholesale and retail trade. More women, on the other hand, have entered the community, social, and personal services as well as the wholesale and retail trade.

The foregoing discussions underscore the need to examine the gender implications of economic policies and programs. While previous economic policies have not seriously displaced female labor or eased women out of traditional and new occupations, they created new obstacles for better and sustainable employment. The weakening of the manufacturing and

Table 4. Employed Persons by Major Occupation Group, 2002
(in Thousands)

Major Industry Group	Both Sexes	Male	Female	% Female
Officials of government and special-interest organization, corporate executives, managers, managing proprietors and supervisors	3,287	1,355	1,932	59
Professionals	1,368	420	948	69
Technicians and associate professionals	910	441	469	52
Clerks	1,337	459	878	66
Service workers and shop and market sales workers	2,547	1,224	1,324	52
Farmers, forestry workers, and fishermen	6,199	5,202	997	16
Traders and related workers	3,012	2,188	824	27
Plant machine operators and assemblers	2,343	2,178	165	7
Laborers and unskilled workers	9,275	5,052	4,223	46
Special occupations	140	124	16	11

Source: National Statistical Coordination Board 2003.

agricultural sectors, in particular, reduced the employment opportunities of both sexes in these sectors, but pushed them, especially the women, to move to trade- and service-related employment in urban centers and abroad. But since service and semiskilled jobs generally provide the lowest incomes, these did not generally improve the economic status of many working women.

Over the years, women in the formal sector have to contend with labor arrangements that do not improve their economic condition. With inadequate incomes derived from regular work, many have to take extra jobs or go abroad to work as domestic helpers, caregivers, and entertainers. Using data from the International Labor Organization, Illo (1999) examined the effects of the 1997 economic crisis on women workers. She noted that many small- and medium-scale industries employed various cost-cutting measures to stay afloat and remain profitable. These include the noncompliance with labor laws and work standards (e.g., nonpayment of medical and social security benefits, employing of children), and resorting to the hiring of workers on contractual basis and to multiple tasking. The other problems faced especially by women workers were as follows:

- The flexibilization of labor has lessened the power of labor unions to organize and protect the rights of workers (Pineda-Ofreneo 1997).
- The inability of small businesses to follow working standards and their demand for higher production quotas from female workers have caused many health problems like miscarriage, respiratory ailments, and allergies (Arao 1997).
- Women forced into prostitution suffer from the most horrific forms of abuses. They are prone to sexually transmitted infections, including HIV/AIDS, and sexual abuse. A study noted the high incidence of abortion among them, the excessive use of drugs and alcohol to overcome embarrassment over their work and to forget their problems, and the nonpayment or shortchanging of their income by their bar managers and pimps (Sobritchea 2000).

- The low income of many women workers and their lack of access to credit often force them to borrow money at usurious rates from loan sharks.
- Because of the persistence of traditional beliefs about ideal male and female domestic roles, women continue to do the bulk of domestic chores and child rearing before and after going to their paid work. They, therefore, work for longer hours.

The Feminization of Overseas Work

The Philippines has become one of the leading providers of overseas workers in Asia as well as in other regions of the world. There are about eight million Filipinos (10 percent of the total population) currently living and working abroad. The majority (76 percent) of them are land-based while the rest are seafarers. Filipino workers are located in 140 countries—45 percent in West Asia, 35 percent in East Asia, 7 percent in Southeast Asia, and the rest in Europe, the Americas, Africa, and Trust Territories.

Although the males used to outnumber the females, the trend has been reversed in recent years, with more women now being deployed abroad for work. When the Philippines began to send workers overseas in the early '70s, women constituted only 12 percent of the total flow. In 1987, the proportion of female overseas workers, in relation to all departing workers, reached 47 percent. In 2002, women already constituted nearly two-thirds (69 percent) of those newly deployed (NCRFW 2003; TESDA Women's Center 2005). One-third (73,477) of the Filipino women who left for abroad in 2002 were deployed as entertainers, 13 percent were sent to Saudi Arabia as domestic helpers and nurses, 12 percent to Taiwan as production workers and building caretakers, and 11 percent to Hong Kong as domestic helpers. The other major destinations of female overseas workers were Kuwait (7 percent), United Arab Emirates (7 percent), and countries like the United Kingdom, Israel, and Canada (3 percent) (Kanlungan Center Foundation Inc. 2002).

The phenomenal rise in the number of female Filipino migrant workers is attributed to two major factors. These are the continuous high demand of countries all over the world for their skills—particularly those related to domestic work, club entertainment, and caregiving—and the inability of the local economy to generate enough jobs and adequate income. While many women overseas workers have helped improve the economic and social status of their families, they have done so at the expense of their personal welfare and security. There is increasing evidence of discrimination and human rights violations, particularly against Filipino women who work as caregivers, domestic workers, and entertainers.

Challenges

Indeed, while Filipino women have increasingly participated in production work over the last two decades, they continue to suffer from many forms of gender-based discrimination and biases. This is brought about by many factors, such as the failure of economic policies to address the structural causes of high rates of unemployment, underemployment, and the persistence of gender stereotyping of occupations and industries. Economic laws and their implementing rules and regulations purport to be “gender neutral” and are not, therefore, sensitive to the differing capacities and needs of women and men.

Although the current effort of government to provide poor women better access to skills and resources, particularly credit, is laudable, it is not sufficient to address the serious issue of the increasing feminization of poverty. Reforms at the macrostructural level are needed and should include a rethinking of the country’s economic policies, particularly those related to trade liberalization. There is an urgent need to generate local jobs through the revitalization of the agricultural and manufacturing/industrial sectors. Most importantly, there is a need to review existing laws to determine the extent to which they conform to the norms and standards of CEDAW and other international human rights instruments.

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Chapter 2

The Labor Code Revisited: Prospects for Labor Law Reforms toward Women's Economic Empowerment¹

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Introduction

Women more than men are vulnerable to poverty. This vulnerability to poverty arises from barriers—structural and cultural—that impede their effective access to and control of productive resources relative to men. Men, in general, have greater access to productive resources than women do. Access to capital, market, training, information, technology and technical assistance, and just wages and benefits are predisposed to benefit men more than women. Women's vulnerability, therefore, is merely a consequence of gender inequality (WAGI-Miriam College, n.d.).

Without sustained and concerted effort to address gender inequality, the feminization of poverty will only worsen. One important means to address gender inequality is to expand the scope of women's economic participation and the range of their economic empowerment. Key to

attaining economic empowerment, however, is improving their access to productive resources by expanding their economic opportunities, i.e., widening access to income-earning activities. Transforming productive resources to income, however, presents a wide range of challenges that continue to define women's capacities: employment opportunities, unequal terms and conditions of work, wage differentials, lack of welfare facilities, among others (WAGI-Miriam College, 2002).

In terms of employment opportunities, available data reveal that women's labor force participation rate (LFPR) is consistently lower than that of men, even as women's LFPR has remarkably increased from 30.6 percent in 1970 to a significantly high rate of 50.2 percent in April 2005. Women's lower participation rate in the labor market is attributed to women's biological and socially ascribed burden of social care and reproduction, which includes maintaining the household and ensuring the well-being of household members (WAGI-Miriam College, n.d.).

With regard to occupation, studies on the occupations or positions held by women and men reflect the traditional gender roles. The difference in pattern of labor-force participation and employment of women and men partly explains wage differentials between them. First, traditional gender roles limit women's choices to fewer occupations relative to men. This tends to cause excess supply in "female" occupations (e.g., nursing, teaching, and sales work) relative to demand, thereby depressing wages in these occupations. Second, traditional gender roles limit women's role to that of secondary earners. As such, women are likely to move in and out of the labor force much more than men; hence, they are predisposed not to gain enough skills and experience in the workplace necessary to allow them to move up in the earnings scale in any given occupation (NEDA, NCRFW, and CIDA 2002).

In the face of the gender inequalities that impede women's economic empowerment, the Philippines has taken steps to address the situation and fulfill women's right to gender equality. In 1981, it ratified the Convention on the Elimination of Discrimination Against Women (CEDAW), which guarantees women's rights in almost every field of human endeavor. Equality is likewise enshrined in the 1987 Constitution.

In the legislative arena, it is undeniable that the last fifteen years was a watershed for women's rights. The Philippines has enacted gender-responsive laws that address the major issues confronting working women. In particular, the government has passed the following laws:

1. RA 6725 (Strengthening the Prohibition on Discrimination against Women) and RA 7877 (The Anti-Sexual Harassment Act of 1995), to provide a safe, gender-fair, and gender-friendly environment in the workplace
2. RA 7322 (Maternity Benefits in the Private Sector Act);² RA 8187 (The Paternity Leave Act); RA 8972 (Solo Parents Welfare Act of 2000); RA 6972 (Barangay Level Total Development and Protection of Children Act), and RA 8980 (ECCD Act), to recognize the particular needs of workers and provide family support services to those with family responsibilities

All the gains, notwithstanding, there is an urgent need to assess the gender-responsiveness of government's policies, laws, and programs. Hence, this review of the Labor Code, arguably the single most important piece of legislation to define workers' rights from pre-employment to termination of employment.

Since its inception, the Labor Code has undergone numerous amendments, and supplemented by other labor-related laws. But twenty-four years after the ratification of CEDAW, it was yet to be reviewed in terms of how well it has come up to the goal of CEDAW—that of ensuring gender equality of women with men. Due to limited time and resources, this review is limited to a gender analysis of the content of the law, the other related laws and the relevant implementing rules and regulations. This paper, therefore, shall identify the gender issues confronting women, and analyze the laws that seek to address these issues, including their gender gaps and biases. At the end of the discussion, possible amendments to the laws shall be proposed to address these inequities. No attempt shall be made on the extent of the laws' actual implementation or on their actual impact and consequences on the work and home life of workers, more particularly working women.

The Labor Code: Birth Pains Toward Codification

The Labor Code saw its birth during the early years of Martial Law. But the birth pains toward its codification were long and arduous. It began in 1968 when, under the leadership of the then minister of labor and employment, Blas P. Ople, a project was started to draft a labor code. The objective was not only to consolidate about sixty existing pieces of labor legislation, some of which were passed before the Commonwealth, but more importantly to respond to the economic imperatives of the times (Azucena 1999).

At the time of the drafting of the Labor Code, the Philippine economy was perennially beset with a balance of payments deficit and spiraling external debt, principally owed to the International Monetary Fund and the World Bank. The servicing of debts was draining the international reserves of the Philippine government. In the late '60s, the government technocrats advertised the policy that the way out of the Philippine debt trap was to expand the country's exports. Thus the Philippine economy was honed toward the production of traditional agricultural products (e.g., sugar, copra, etc.) and nontraditional products (e.g., electronic chips, garments, etc.). In spite of the export orientation, however, imports continued to outpace its export as average annual trade deficit from 1960 to 1970. This economic crisis was fodder to social unrest among the Filipino masses, especially in the urban center. The social ferment of this period in the form of rallies, strikes, people's marches was beginning to cause widespread apprehension among foreign investors that Marcos had to control the situation (Villegas 1998). Thus, as history has it, martial law was declared on September 21, 1972.

Against this backdrop, the Labor Code was drafted along the objectives of development as prescribed in the Comprehensive Employment Strategy Mission of the International Labor Organization (ILO) (Ranis Report), which pushed for an export-oriented-industrialization (EOI) and liberalization of imports in the Philippines, advising against trade protectionism and import-substitution. EOI was justified along the argument that it can create more jobs to absorb the large labor supply.

Wage restraint was also seen as an effective policy to enable employers to expand operations, thus easing the unemployment problem. In line with its open-door policy, the Ranis Mission strongly endorsed more foreign aid through new investments and loans and the expansion of infrastructure projects to support EOI (Villegas 1998).

The first draft of the Labor Code was submitted to Malacañang in January 1973. On April 28, 1973, it was ratified by a National Tripartite Congress and submitted to the president on May 1, 1973. After another year of further revisions, Presidential Decree (PD) 442, otherwise known as the Labor Code of the Philippines, was finally signed into law on May 1, 1974. It was not to be the last revision for the Labor Code, however. Before the law could take effect on November 1, 1974, it again underwent extensive amendment through PD 570-A (Azucena 1999).

While the Labor Code was seen to be, in the words of Ople, “a grand strategy for social justice and development” (Ople 1979), it was not without its critics. According to Amado Inciong, the then undersecretary of labor who was elected overall chair of the Tripartite Conference, the whole affair was a “pro-forma” meant to project a democratic basis for the Code. Even Democrito Mendoza, one of the workers’ representatives in the conference and who later became president of the Trade Union Congress of the Philippines (TCUP), complained that the Inciong working committee that drafted the Labor Code had been biased all along toward the capitalist class (Villegas 1988).

On October 23, 1975, almost a year after its implementation, a National Tripartite Conference was again convened to review the Labor Code after its first year of implementation. In Ople’s speech at the opening session, he identified seven major trends that, according to him, correspond to “the major innovative principles that permeate the entire composition of the Labor Code” (Ople 1979):

- Labor relations must be made both responsive and responsible to development.
- Labor laws or labor relations during a period of national emergency must substitute rationality for confrontation. Therefore, strikes and lockouts give way to rational process—which is arbitration.

- Laggard justice in the labor field is injurious to the workers, the employers, and the public. Labor justice can be made expeditious without sacrificing due process.
- Manpower development and employment must be regarded as a major dimension of labor policy. There can be no real equality of bargaining power under conditions of severe mass unemployment.
- There is a global market available to qualified Filipinos, especially those who are unemployed or whose employment is tantamount to unemployment because of their very little earnings.
- Labor laws must command adequate resources and the acquisition of capable machinery for effective and sustained implementation.
- Popular participation in national policymaking through tripartite structure.

In a sense, the Labor Code was the product of the turbulent '60s and the dark days of the early Martial Law period, when the labor movement was at its ebb.

To date, the Labor Code has been expressly amended by twenty presidential decrees, nine executive orders, four Batas Pambansa, and thirteen republic acts. Other labor-related laws have since been enacted to supplement the provisions of the law. A number of these laws reflect the legislative gains of the women's rights movement, such as the Paternity Leave Act, the Anti-Sexual Harassment Act, and the Solo-Parent Act.

While legislative measures have been undertaken to respond to women's quest for gender equality, these have proven not enough to advance women's economic empowerment. Many more pressing gender issues still need to be addressed to this date.

Gender Issues Affecting Women's Economic Empowerment

1. Discrimination in Hiring, Training, and Promotion

It is well to note that discrimination, whether direct or indirect, happens in the workplace. Incidence of discrimination is very evident at the pre-employment state where advertisements tacitly express sex-based preferences, or preferences for particular age groups and physical attributes. It is also not uncommon for establishments to impose requirements which are irrelevant to the job in question and which typically only men (or women) can meet, such as certain height and weight levels. A study by Morada and Santos (2001) shows that while there was a general decline in the proportion of discriminatory ads both for males and females from 1975 to 1995, patterns of increasing preference or discrimination are still evident in selected occupations.

In the workplace setting, the phenomenon of occupational segregation is common. Men or women tend to be concentrated in different types and at different levels of activity and employment, with women being confined to a narrower range of occupations than men across the entire occupational structure (horizontal segregation), or for women and men to be concentrated in different positions within the same occupation or occupational group, with women being confined to the lower grades of work (vertical segregation) (ILO 2000). What this leads to is that women workers tend to be segregated into very few occupations that are largely extensions of their work in the home, and are among the lowest paid.

A study by Chant and McIlwaine (1995) on women's participation in the manufacturing sector in the Mactan Export Processing Zone and in Cebu city reveals that while women largely comprised the workforce in these firms, occupational stereotyping exists. Women tend to be heavily concentrated in labor-intensive sections—e.g., assembly, post-assembly or finishing, and administration—while men are engaged in more skilled jobs. These labor-intensive jobs are perceived to be suitable for women because these are relatively light tasks. There is also the perception that women, compared to men, are more patient

and possess a high level of concentration that enable them to carry out monotonous and repetitive tasks.

Similarly, studies on the occupations or positions held by women and men, either by industry or occupation sector, show that women outnumber men in areas that are primarily service-oriented and supportive in nature. The 2003 National Statistics Office (NSO) figures reveal that, overall, in terms of male-female distribution by industry, women outnumber the men in wholesale and retail trade and commodity, hotels and restaurants, education, health and social work, and private households with employed persons (NSO 2003). By major occupation, overall, women comprise the majority in these major occupation groups, regardless of class of workers: corporate executives, managers, managing proprietors and supervisors; professionals; technicians and associate professionals; clerks; service workers and shop and market sales workers (NSO 2003).

This pattern of occupational segregation or sex-role stereotyping is also reflected in skills training. In a study conducted between 1998 and 1999 in five urban low-income families in Metro Manila, for instance, of the 64.2 percent of the respondents who underwent various kinds of training, 62.3 percent said they can apply their training to their current main job. The most applicable skills training are food preservation, secretarial, hotel and restaurant management, and beauty culture. These occupations evidently conform to the traditional gender stereotypes of women's work (TESDA & JICA 1999).

The discriminatory practices also extend to promotion or filling up of job vacancies. Women who have taken on management positions are confronted with the "glass ceiling" phenomenon. This phenomenon describes the invisible artificial barriers, created by attitudinal and organizational prejudices, that block women from senior-executive positions (Wirth 2001). Hence, there are cases where employers tend to employ men for high positions because men can devote much time to work since they are not expected to perform work at home. This only points to a case where women's opportunity for hiring and promotion is hampered by the fact that they do have to perform household chores even after work (Santiago 2000).

Moreover, study shows that pay gap exists between men and women workers from unskilled to managerial and supervisory levels. The National Commission on the Role of Filipino Women (NCRFW, 1998) reports that based on NSO statistics of October 1993, women, in general, earn less than their male counterparts.

A related issue is the discrimination in employment of people with different sexual orientations, such as the lesbians, gays, bisexuals, and transgenders (LGBT). For instance, a study done by the Lesbian Advocates Philippines (LeAP) Inc. (2004) on the experiences of violence and discrimination against Filipino lesbians shows that apart from the gender violence they experience in their homes and communities, lesbians in the workplace go through social ostracism once their sexual orientation is revealed, or they receive snide or spiteful remarks from co-workers or their superiors. Incidences of termination or nonrenewal of work and denial of scholarship benefits and promotion were likewise documented.

2. Lack of Welfare Facilities and Benefits for Workers with Family Responsibilities³

In the face of a globalizing economy, more and more women seek paid employment or else engage in other forms of economic activities for their families' economic survival. This partly explains the phenomenon of "female-headed households" that have steadily increased over the last decades. This increasingly challenges the traditional image of the man as the sole breadwinner and the woman as a housewife caring for the children and managing the home. The International Labor Organization (ILO) notes that female-headed households make up over 20 percent of all households in Africa, the industrialized countries, and in Latin America and the Caribbean; and this phenomenon is increasing worldwide (ILO 1993). In the Philippines, the number of female-headed households increased from 1,568,928 in October 1988 to 2,239,273 in 1997 of the same month (Morada et al. 2001).

Yet, even as women in paid employment put in essentially the same amount of working hours, at the end of the day they still retain the responsibility of housework and childcare. Thus women carry a double

burden in terms of longer hours of work and a wider breadth of responsibility. Their participation in sociocultural and political activities in community affairs, church-related functions, civic activities, and political involvement further leads to multiple burden because they almost single-handedly have to carry the burden of housework and childcare. What all these lead to is that the women's capacity to develop themselves is severely limited, while affording the men the luxury of concentrating on concerns of their own in the public sphere (NCRFW 1998).

Women in the informal sector, however, also experience the same multiple burden of work, family responsibilities, and other community involvement. In the same study conducted among women in five urban low-income communities of Metro Manila, interviewees who were mostly unemployed (57.3 percent) and self-employed (26.2 percent) have to deal with the multiple burden of childcaring, problematic and unemployed spouses, housework, and community problems such as land and housing insecurities (TESDA and JICA 1999).

When working women are also expected to take primary responsibility for the family and household, they are forced to adjust their work lives around their other obligations. Thus they have unequal job opportunities, career prospects and job status and, consequently, reduced income and job security. Where benefits such as maternity leave and child care are not available or are inadequate, women are forced to interrupt their paid employment, thereby affecting negatively their possibilities for advancement, or else couples decide against having children (ILO 1993).

3. Lack of Social Protection for Workers in Special Forms of Work

As women face the burden of multiple responsibilities, it has been advanced that a suitable solution for women with family responsibility is to get part-time work, enter into short-term contractual relations, or engage in homework to meet the demands of both family and work responsibility. While this may partly explain the phenomenon of these atypical forms of employment, the reality is that with the onslaught of globalization, women are increasingly forced to face the misfortune of

flexible work arrangements, informalization of work, and domestic and overseas migration to keep afloat.

While these arrangements may appear to be beneficial to women, the net effect is that the “flexibility” of part-time and other atypical working arrangements only serves to preserve unequal opportunities. These forms of working arrangements limit access to paid leave, training, welfare benefits, and other social-security entitlements. Moreover, they do not provide long-term job and income security.

In an assessment undertaken by Edralin, for instance, on the situation of women working in export processing zones (EPZs) of Cavite, Laguna, Batangas, Rizal, and Quezon (CALABARZON), it is shown that the effects of globalization are evident in the hiring of more women, longer hours, low wages, minimal benefits, more labor flexibilization, and discouragement of unionism. The “revolving door tactics” are also common among EPZ employers (Edralin 2001).

The informalization of workers has also increased through the years. Both in urban and rural areas, informal workers are a variety of people engaged in different types of work—homeworkers, microentrepreneurs, street vendors and peddlers, drivers, among others. Based on estimates, there are 22.5 million people in the informal sector, representing 75 percent of the total employed population. Of this estimate, almost half or 49 percent are women (Parilla and Cabanilla 2005). Women workers in the informal sector suffer from the following:

- Irregular and unstable employment due to fluctuations in labor demand
- Exposure to occupational and environmental health hazards due to the lack of government monitoring of their working and living conditions
- Vulnerability to exploitation and abuse, such as below-minimum wages and nonpayment of work
- Low awareness of their rights as workers and as women
- Lack of social protection—e.g., medical and maternity benefits, retirement pension—due to the absence of clear employer-employee relationships (Pineda-Ofreneo 1999)

Among the homeworkers, women dominate, particularly in labor-intensive and export-oriented industries, notably in garment, footwear, and handicraft. Pineda-Ofreneo and Ofreneo (1995) note that the homeworkers are mostly married women. They describe their working arrangement as "the worst off in the subcontracting scheme" in that the "wages are far below the minimum. Their employment is irregular, working conditions leave much to be desired and result in occupation-related illnesses. They have no benefits and social security protection, and because they are scattered and isolated from each other, it is difficult to unionize them." (23)

The case of house helpers is also a highly gender-based labor issue, noting that these workers are predominantly women. Seven out of ten household helpers in the Philippines are women (Honculada 1989). House helpers endure the indignity of having to serve others, often at the expense of their own family, for hours beyond the normal hours of work, with only less than the minimum wage and no benefits. They also render service with very limited vacation leaves and often without the benefit of social protection such as social security or maternity benefits. In many instances, they suffer from physical or sexual assault or are falsely accused of offenses or misconduct.

4. Discriminatory Prohibition against Night Work

For paid employment, it is not enough that workers face the rising incidence of job insecurity with globalization. They also have to contend with the night-work prohibition. While this measure was adopted for the benefit of women, not a few would argue that this measure, in fact, merely reflects the societal attitude that, unlike men who have sturdier physique, women's physical makeup is delicate. With this gender consideration, there is a need to protect women from the dangers of night work. Still, others advance the view that the prohibition of night work was perhaps inspired "by what was thought to be the proper role of women." Hence, this prohibition has been criticized as discriminatory to women because it restricts employment opportunities open to them, as well as between women themselves (ILO 1995). To date, however, women workers are

still hampered by such prohibition, thereby curtailing their freedom of choice and economic opportunities under the guise of protecting their health and safety.

5. Limited Women's Participation in Decision Making

Because the productive work is regarded as men's main responsibility and considered the major function, this situation gives men greater power, prestige, status, and societal position than women. On the other hand, as women's reproductive work is regarded to be secondary—whether in the home, the community, the workplace, or society at large—women are therefore generally expected to play the supportive roles to men and to accept subordinate status in all spheres of social life (NCRFW 1998).

Studies show that in spite of the increased visibility of women as decision makers and leaders in various sectors in society, women's participation in leadership is not proportional to their numbers. For instance, women have limited participation in politics and governance. As of 2005, while the country's president is a woman, there are only 4 women out of 23 senators and 37 out of 236 representatives of congress. Of the twenty-four cabinet positions, only two are held by women in the present administration of Macapagal Arroyo. Except for the DOLE, which is currently headed by a woman secretary, the rest of the more significant portfolios such as defense, foreign affairs, trade and finance are held by men appointees. While women are a majority in the government bureaucracy, accounting for 53 percent of the total 1.45 million government personnel in 1999, they dominated only the second-level positions with 71.9 percent. The second level is composed of the technical positions up to the division chief-level positions. Women account for only 34.8 percent of the third level, which is composed of assistant secretaries, undersecretaries, regional directors, and bureau directors (NCRFW 2004).

In the judiciary, as of 2005, there are only five women members out of the fifteen Supreme Court justices. There are also more male justices in the Court of Appeals, the Sandiganbayan, and the regional and local courts (Supreme Court 2005).

On the management level, women outnumber men in administrative, management, and executive positions in private establishments and government offices, but compared to men, women tend to occupy lower-management or supervisory levels. The trade union situation shows the same pattern. Most trade unions in the Philippines are dominated by men. In September 2003, trade unions have grown to 11,796 (BLES-DOLE 2003). Meanwhile, union membership rose from 3.92 million in 2002 to 3.96 million in September 2003. Women accounted for no more than a third of the members. The DOLE estimated that women made up about 26 percent of the trade union leaders (NCRFW 2003).

The disproportionate participation of women in the leadership position explains to a great extent their lack of voice and influence in decision making. This situation severely affects their capacity to institute the changes necessary to introduce gender-responsive policies and programs, and to benefit in the fruits of national development to a significant extent.

6. Prevalent Incidence of Sexual Harassment and Other Forms of Gender-based Violence in the Workplace and Home

As if the economic marginalization, political subordination, multiple burden, and stereotyping that working women have to endure were not enough, they also have to face incidence of violence in their workplaces and homes. Their subordinate status in society makes them actual and potential victims of a web of verbal, psychological, and physical abuses that violate women's dignity (NCRFW 1998).

In a 1998 survey covering more than thirty countries worldwide—including India, Indonesia, and the Philippines in Asia—it was revealed that the highest percentages of victimization at the workplace were observed for sexual incidents against women (rape, attempted rape, indecent assault, or offensive behavior) (Haspels et al. 2000). On the other hand, the 2001 data from the National Statistical Coordination Board (NSCB) revealed that most reported cases of violence against women were physical injuries/wife battering (57 percent), followed by rape (10 percent) and acts of lasciviousness (7 percent) (WAGI-Miriam). It is evident then that sexual

harassment and other cases of violence against women continue to threaten the health and safety of women and create hostile work and home environments.

As for the LGBT, the same study done by LeAP Inc. shows that lesbians suffer various forms of gender-based violence in the hands of their family members, school superiors, church leaders, and co-workers or superiors (LeAP 2004).

7. Inadequate Maternity Protection

Maternity protection is of prime importance to women, considering their childbearing capacity. Without doubt, pregnant women need time off to avoid complications to their health or the dangers of miscarriage or premature birth, as well as to recover from the rigors of childbirth, to breast-feed and bond with the child (ILO 1995). This, however, is only part of the entitlement to reproductive health and services that they deserve.

Health services for women, however, are largely limited to maternal concerns, with little emphasis on other ailments like urinary tract infections, psychological health, and sexually transmissible infections (NCRFW 1998). Moreover, for women who undergo induced abortion, medical attention is hard to come by, besides the social stigma that they have to suffer as a consequence of such act. Yet, with the significant number of women who undergo induced abortion, there is a serious need to look into the problem. Alvarez-Castillo, Jimenez, and Arcenal (2002) note that, based on a study, between 300,000 and 500,000 Filipino women undergo induced abortion every year. Every three hundredth pregnancy ends up in the induced abortions or 16 percent of unplanned pregnancies, which is about 37 percent of births. Further, eighty thousand women are hospitalized each year for complications of unsafe abortion.

At any rate, although health services are largely limited to maternal concerns, maternity protection is still inadequate. The length of maternity leave and the length of the period during which employment is protected are also issues that pregnant and nursing women confront. The availability of maternal care and other benefits is also wanting.

Breast-feeding still faces numerous challenges in the workplace. Ideally, exclusive breast-feeding of infants should be initiated from birth up to six months and should continue, with the addition of solid foods, for at least twelve months or as long as desired. But studies show that maternal employment is significantly associated with early cessation of breast-feeding. Lack of break time, inadequate facilities for pumping and storing milk, lack of resources that promote breast-feeding, and lack of support from employers and colleagues are among the challenges faced by employed mothers who want to breast-feed in the workplace (Philippine Pediatric Society Inc. 2005).

Finally, concerns have been raised with regard to pregnancy as a source of discrimination. The reality that pregnancies do upset the day-to-day running of the business, to some extent, brings about the temptation on the part of employers to avoid employing women of childbearing age, or to dismiss newly married or pregnant women (Philippine Pediatric Society Inc. 2005).

The Equality Question: CEDAW's Substantive Equality Approach

Given the gender issues that women workers face, the importance of legislation to women's empowerment cannot be overemphasized. While legislation alone will not suffice to promote gender equality, it can provide the impetus for the necessary attention and response to the pressing gender issues and concerns of workers, specially the women workers. By providing a gender-responsive and gender-sensitive legal and policy environment, legislation would contribute greatly in achieving a desirable and acceptable level of economic empowerment of women.

A starting point to creating a gender-responsive legal and policy environment is to ensure that the laws promote gender equality. But what does equality mean? That there is no one way to define it has sparked intense debate and extensive analysis among feminists.

A formal equality approach demands that women and men should be treated the same, regardless of their biological and socially constructed

differences. Special accommodations or treatment for pregnant women, therefore, are frowned upon as undesirable "protections" or limitations on women (Bartlett 1994). Wendy Williams argues that special treatment model is a double-edged sword—while special treatment (protection) will permit favorable treatment for pregnancy, the employer who wants to avoid the inconveniences and costs of special protective measures will find reasons not to hire women of childbearing age (Williams 1991).

On the other hand, the substantive equality approach takes into account the differences of women and men, whether biological or socially constructed, to eliminate the disadvantages to women. Kay (1995), for instance, insists that during pregnancy, a woman's body functions in a unique way. She argues that women should be treated differently than men during a limited period when their needs may be greater than those of men so as to ensure equality with men as regards their overall employment opportunities. Substantive equality ensures *de jure* (in law) and *de facto* (in fact) equality between women and men such that it leads to equality of opportunity, equality of access, and equality of results and benefits. Ensuring *de jure* and *de facto* equality necessarily includes taking affirmative action to address "women's legacy of cumulative disadvantage and existing gender biases in institutional and social environments" that preempt real access to resources and benefits.

To be sure, Mackinnon (1991) criticized both approaches. She argues:

Under the sameness standard, women are measured according to our correspondence with man, our equality judged by our proximity to his measure. Under the difference standard, we are measured according to our lack of correspondence with him, our womanhood judged by our distance from his measure. Gender neutrality is thus simply the male standard, and the special protection rule is simply the female standard, but do not be deceived: masculinity, or maleness, is the referent for both. (82)

Noting her critique on both the equality approaches, Mackinnon presents an alternative approach—the dominance approach or

nonsubordination theory. She asserts that “an equality question is a question of the distribution of power. Gender is also a question of power, specifically of male supremacy and female subordination” (Mackinnon 1991). Under the nonsubordination theory, therefore, the relevant inquiry is not whether women are like or unlike men, but whether a rule or practice furthers the subordination of women. In Mackinnon’s work on sexual harassment, for example, it is argued that sexually predatory conduct long accepted as the normal give and take between men and women in the workplace constitutes sex discrimination. Such conduct systematically demeans women as sexual objects, thereby reinforcing male control and power over women. Through the nonsubordination theory lens, women’s situations are regarded as part of the overall institutional oppression of women, facilitated by the private/public dichotomy (Bartlett 1994).

Postmodern feminism, however, presents a set of critiques of the common assumptions shared by the above theories thus far described. One of these is directed against feminist theory itself—the charge of “essentialism” in its three forms: (1) the generalizations or universalities, where feminists often presuppose a particular privileged norm, such as that of the white, middle-class, heterosexual women, thereby denying or ignoring differences based on race, class, sexual identity, and other characteristics that inform a women’s identity; (2) the “naturalist” error, where legal principles are falsely assumed to be inherent, transcendent, universal, or natural, instead of socially constructed; and (3) gender imperialism (Bartlett 1994). Angela Harris (1991) refers to this as “gender essentialism,” the notion that “there is a monolithic ‘women’s experience’ that can be described independent of other facets of experience like race, class, and sexual orientation” (240).

CEDAW adopts a substantive or corrective approach to equality. This approach is not simply concerned with equal (same) treatment in law. Rather, it is concerned with equality in terms of actual impact of the law. It takes, therefore, a paradigm shift from “equal treatment” to “equality of outcomes” (Partners for Law in Development 2005).

**The substantive definition of equality takes into account
and focuses on diversity, difference, disadvantage and**

discrimination. This approach recognizes difference between men and women—but instead of accepting this difference as given, it examines the assumptions behind the difference in trying to assess the disadvantage resulting from it and to develop a “different treatment” or a response that dismantles the disadvantage. It seeks to eliminate existing discrimination faced by disadvantaged groups at the individual, institutional and systemic levels through corrective and positive measure. (Partners for Law in Development 2005, 23-24)

The substantive equality approach ensures *de jure* and *de facto* equality between women and men such that it leads to equality of opportunity, equality of access and equality of results and benefits. Ensuring *de jure* and *de facto* equality necessarily includes taking affirmative action to address “women’s legacy of cumulative disadvantage and existing gender biases in institutional and social environments” that pre-empt real access to resources and benefits (D’Cunha 2005, 10).

As it developed, however, the substantive equality approach of CEDAW permeates the boundaries of the “formal equality approach.” Thus, depending on the circumstances, equality sometimes require equal treatment yet acknowledging the need for special measures to counteract the disadvantages women experience as a result of women and men’s biological and socially constructed differences. In line with the nonsubordination of Mackinnon, CEDAW acknowledges the existence of practices that further male dominance and female subordination, such as gender violence that victimizes mostly women. And responding to the postmodern critique against gender essentialism, its definition of discrimination include intersectionality, where gender discrimination interfaces with other social categories and forms of discrimination such as class, ethnicity, sexual orientation—e.g., discrimination against “poor, lesbian, and ethnic women from a developing country” (Battad 2006).

A necessary condition for the achievement of substantive equality is the absence of discrimination, the second substantive principle of CEDAW. Under CEDAW, discrimination against women is defined to mean “any distinction, exclusion or restriction made on the basis of sex which has the

effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”³

Gender Gaps and Biases in the Labor Legislation

The government’s responses to gender issues in the workplace have been largely defined by the substantive equality that resonates in the ILO conventions and recommendations,⁴ and more particularly in CEDAW where it is considered as one of its three substantive principles. Substantive equality finds expression in the 1987 Constitution when it mandates that “the State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.”⁵

A review of the Labor Code, however, shows that it fails the mark of a gender-sensitive, gender-responsive legislation. Although it contains provisions for women workers, particularly articles 130 to 138 of chapter 1 on Employment of Women (found in Book III, Title III), which refer to Working Conditions for Special Groups of Employees, these provisions only reinforce the gender bias of stereotyping women’s qualities and capabilities. Thus, while these provisions are seemingly beneficial to women, they actually retard women’s economic opportunities. Moreover, the women’s provisions are set apart from the rest of the law, as though the concerns of women bear no relations with the rest of the provisions of the law. In effect, there is actually no gender mainstreaming in the law to the extent that gender-specific issues are recognized and integrated in the enactment and implementation of the law.

Reinforcing the “male-centered” standard of the legislation is the use of non-gender fair language in the Labor Code. As in other laws, the law uses a language that assumes that anything female is included in

the male. Hence, references to “he,” “his,” and “him” in the law assume that the “she” and “her” are necessarily subsumed in these terms. Similarly, non-gender-fair terms such as “chairman” and “manpower” are still in common use. The references to workers or employees as “he,” “his,” “him,” and “chairman” render women invisible, in spite of their significant number and visible participation in all spheres of productive work. Put simply: the Labor Code perpetuates the notion of male supremacy.

In the following discussion, gender gaps and manifestations of gender biases in a number of its provisions will be identified in relation to the gender-specific issues earlier identified, especially in the area of conditions of work and welfare facilities.

1. Discrimination in Hiring, Training, and Promotion

Consistent with the country's treaty obligations, the 1987 Constitution laid down the policy that the State shall “promote full employment and equality of employment opportunities for all”⁶ and that it “recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men.”⁷

The equality in employment involves two aspects: equal opportunity and equal treatment. Equal opportunity means

having the equal chance to apply for a particular job, to be employed, to attend educational or training courses, to be eligible to attain certain qualifications, and to be considered as a worker or for a promotion in all occupations or positions, including those dominated by one sex or the other (ILO 2000).

On the other hand, equal treatment refers to the entitlements in pay, working conditions, security or employment, and so on (ILO 2000).

It bears stressing, however, that “equal opportunities of employment” and “equal treatment” do not mean sameness of treatment. To give effect

to substantive equality of women and men, the biological and socially constructed differences between women and men should be taken into account.

In line with the constitutional mandate of “equality of employment opportunities for all,” article 3 of the Labor Code enunciates the basic policy that the State shall ensure equal work opportunities regardless of sex, race, or creed.

1.1, Pre-employment Practice

Article 11 (1) (b) of CEDAW enjoins all State parties to take appropriate measures to eliminate discrimination against women in the field of employment, in particular, the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment.

The above protective provision, notwithstanding, women (and men) continue to experience discrimination, such as where advertisements tacitly express sex-based preferences or preferences for particular age groups and physical attributes. These existing discriminatory practices in advertisements serve to reinforce the traditional gender stereotypes of “women’s work” and “men’s work,” thereby limiting the workers’ choices and access to employment opportunities.

A review of the of the Labor Code shows that no legal protection is in place to prohibit the outright sex discrimination in pre-employment, such as stating sex preference, or imposing requirements which are irrelevant to the job in question and which typically only men (or women) can meet (e.g., particular height and weight levels). Considering that women are generally perceived to consider work as “secondary” work, domestic work being their primary concern, women are far more disadvantaged than men in these highly discriminatory practices.

1.2 Equal Pay/Job Evaluation

Article 11 (1) (d) of CEDAW requires State parties to eliminate discrimination to ensure the right to remuneration, including benefits, and

to equal treatment with respect to work of equal values, as well as equality of treatment in the evaluation of the quality of work. This is consistent with earlier treaty obligations of the international labor conventions and recommendations. In 1951, article 1 (b) of the Equal Remuneration Convention (100) and the Equal Remuneration Recommendation (90) laid down the principle of equal pay for men and women workers for work of equal value. This simply means that rates and types of remuneration should be based not on an employee's sex but on an objective evaluation of the work performed (ILO 2000).

The enactment of RA 6725—An Act Strengthening the Prohibition on Discrimination Against Women with Respect to Terms and Conditions of Employment—which amended Article 135 of the Labor Code, was a positive measure to strengthen the prohibition concerning “equal pay for work of equal value.” Thus article 135 of the Labor Code, as amended, declares it unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of sex. The following are considered acts of discrimination: (a) payment of a lesser compensation, including wage, salary, or other forms of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value; and (b) favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes.

In spite of the fact that the principle of “equal pay for work of equal value” has been incorporated in the laws of many countries, gender gap in pay continues to be one of the most persistent forms of gender inequality (Wirth 1994). It thus remains an aspect of gender-based discrimination in employment.

1.3 Occupation Segregation

Relevant to the question of “equal pay for equal value of work” is the phenomenon of occupation segregation. The equality of pay of men and women is compromised due to existing practices of exclusion or preference for either worker for particular work or occupation.

Again, the absence in the Labor Code of affirmative measures to combat occupation-segregation, such as introducing schemes that would encourage women to enter in nontraditional skills for women, is very evident, and this needs to be addressed if the principle of "equal pay for equal value of work" would have greater impact in improving the economic power of women workers.

It stands to reason that the protective measures of the Labor Code against discrimination have not been sufficient to arrest other forms of direct or indirect discrimination that happen at the workplace. A major obstacle to piercing the shroud of indirect discrimination is the management's prerogative with regard to hiring, transfer, and termination of employees. All too often, the management prerogative of the employer has been a well-guarded right that has not been easily a subject of scrutiny, especially on matters involving job qualifications, job classification, salary schemes, and job evaluation. It is in these areas where discrimination may manifest in insidious ways.

In this regard, the CEDAW Committee General Recommendation 13 (1989) was issued with a view to overcoming the gender-segregation in the labor market. The CEDAW Committee recommended to State parties to consider the study, development, and adoption of job evaluation systems based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate.

While there is clear intent to eliminate gender-based discrimination, the Philippines has not come up with specific guidelines on the adoption of gender-responsive job-evaluation systems, or measures to require employers to undertake steps to ensure the law's full implementation, such as the full disclosure of job classification and salary schemes, as well as their standards for job evaluation. Moreover, there is the absence of a government-monitoring scheme to ensure strict observance of the law.

Furthermore, while the clear intent of the Labor Code, as amended by RA 6725, is to penalize violations of the antidiscriminatory provisions of the law, the penalty of a fine of not less than Php 1,000 nor more than

Php 10, 000, or imprisonment of not less than three months nor more than three years, or both such fine and imprisonment, is too lenient to deter violators from the practice of discrimination.

1.4 • LGBT Discrimination

The discrimination against LGBTs in employment presents another problem. There is ample international legal protection in their favor. For instance, the International Convention on Civil and Political Rights (ICCPR) imposes upon the State to respect the rights of a person without discrimination on the basis of “other status” (article 2 (1), ensures the equal right of men and women to the enjoyment of all civil and political rights (article 3), guarantees the equality of all persons before the law and prohibits discrimination on any ground, such as “other status” (article 26). The term “other status” has been interpreted by the Human Rights Committee (HRC) to include “sexual orientation.” Thus in the case of *Toonen v. Australia*⁸ the HRC held the Tasmanian criminal provisions penalizing private sexual contact between consenting adult homosexual men as violations of the ICCPR’s provisions under article 17 on the right to privacy. It also noted that, in its view, the reference to “sex” in articles 2, paragraph 1, and 26 includes sexual orientation.

The discrimination against LGBTs, however, goes unabated, there being no existing law prohibiting discrimination against them. While the “equal protection” clause of the Constitution and the “equal work opportunity for all” provision of article 3 of the Labor Code may provide legal protection against discrimination, the absence of an authoritative judicial interpretation of these provisions may still leave the LGBTs with the uncertainty of a legal protection.

The discriminatory practices against the LGBTs clearly show where the Philippines has failed to address the question of intersectionality of discrimination with regard to “lesbian working woman” (or gay working man), consistent with the substantive equality principle.

On this point, it is important to mention the 2003 concluding observation of the Human Rights Committee on the Philippines with regard to “sexual orientation,” in which it urged the Philippine government

“to take the necessary steps to adopt legislation explicitly prohibiting discrimination.” Noting that legislation related to sexual orientation was being discussed in Congress,⁹ it urged the Philippine government to “pursue its efforts to counter all forms of discrimination” and “strengthen human rights education to forestall manifestations of intolerance and *de facto* discrimination” (HRC 2003).

2. Lack of Welfare Facilities and Benefits for Workers with Family Responsibilities¹⁰

Family responsibilities cover the care of and support for dependent children and other members of the immediate family who need help. Having ratified CEDAW, the Philippines is under legal obligation to undertake appropriate measures, pursuant to article 11 (2) (c), to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life. In line with the CEDAW mandate, the ILO Workers with Family Responsibilities Convention (156) of 1981, supplemented by Recommendation (165) of 1981, was issued with the dual objective of creating equality of opportunity and treatment in working life (a) between men and women with family responsibilities, and (b) between men and women with such responsibilities and workers without such responsibilities. As the ILO says:

full equality of opportunity and treatment for men and women could not be achieved without broader social changes, including a more equitable sharing of family responsibilities, and that the excessive burden of family and household tasks still borne by women workers constituted one of the most important reasons for the continuing inequality in employment and occupation. (ILO 1993, 10).

2.1 Childcare facilities

Of central importance to workers with family responsibilities is the establishment and development of a network of childcare facilities. Surveys

have shown that the employers' adoption of "family-friendly" policies and establishment of facilities such as childcare have resulted in higher employee morale, lower absenteeism, favorable publicity, and improved community family relations (ILO 1993). Moreover, with sufficient childcare facilities, workers with family responsibilities can exercise their rights to free choice of employment (ILO 2000).

In compliance with the Philippine's obligation under article 11 (2) (c) of CEDAW, a number of interventions have been undertaken to address the need for childcare facilities. The earliest law that recognized the need to establish nurseries in the workplace is the Woman and Child Labor Law of 1952 (RA 697).¹¹ The law imposed the duty on every employer "having at least fifteen married women in his employ to establish adequate nursery near the place of work where they may leave their children."

With the effectivity of the present Labor Code, however, doubts were raised whether employers employing fifteen married women are still duty bound to establish nurseries. Under article 132 (c) of the Labor Code, the secretary of labor shall, by regulation, require any employer to establish a nursery in a workplace only "in appropriate cases." Considering that there is no inconsistency with RA 679 and article 132 (c), they could be read together and harmonized with a view to giving effect to both (Feliciano 1989).¹² Hence, a liberal interpretation of article 132 (c) of the Labor Code makes it mandatory for employers who have fifteen married employees to establish a nursery, limiting the secretary of labor to determine the "appropriate cases" only in situations in which employers have less than fifteen married employees. Whether the nursery provision under RA 679 is still practical at this time is, however, another matter altogether.

In any case, left to the sole determination of the secretary of labor, the implementation of the nursery provision is now at the mercy of only one person, who may not even have the gender-awareness to ensure the implementation of the provision. Such power invites undue influence from powerful entities, if not graft and corruption. To this day, however, there are no known guidelines to determine what are "appropriate cases," or official data that would show the actual number of employers that *any* secretary of labor has so far required to establish nurseries in their

workplace. To all intents and purposes, the nursery provision of the Labor Code is practically a dead-letter provision, and smacks of "tokenism."

Of graver concern, however, is that where the secretary of labor finds it "appropriate" to require an employer to establish a nursery, the benefit only pertains to *women* workers of an establishment. From a substantive equality approach, the provision only serves to reinforce discriminatory gender stereotypes, emphasizing women as the sole or primary provider of childcare. In so doing, it also deprives men workers the opportunity to avail themselves of the benefit to take on greater responsibility for childcare. More important, were this to be enforced, it could limit employment opportunities for women. As the provision for nursery or such similar arrangement, identified as "women's issue," would mean additional costs or inconvenience for employers, such entitlement would give employers the reason, albeit unjustifiable, to avoid the employment of women.

This gender stereotype of childcare being identified as "women's issue" resonates in the special legislation of the last decade that addresses the issue on childcare.

Under the Barangay Level Total Development and Protection of Children Act (RA 6972; hereinafter, Barangay Day Care Act), the Philippines has undertaken positive measures to develop community services for workers with family responsibilities.

Section 2 of the Barangay Day Care Act provides for the establishment of a day-care center (DCC) in every barangay with the total development and protection of children program instituted in every barangay day care center. The DCC is intended for the care and attention, as well as protection from all forms of abuse and exploitation, of children up to six years of age. One of the components of the program is the care for children of *working mothers* during the day and, where feasible, care for children up to six years of age when mothers are working at night. Under section 3 of the law, the DCC need not take care of the children in a particular place, but a network of homes is to be developed where *women* may take care of the children up to six years of age during work hours. Moreover, the law provides for the development of "networks of homes where *women* may take care of children of working women," as well as the training of "surrogate *mothers-teachers*."

While not doubting the good intention of the law, such arrangements again reinforce the notion that the responsibility of childcare is solely a woman's function, whether or not she is employed. It is based upon the premise that because women's share in family responsibility is greater than that of men, they deserve the special measures to help them cope with these responsibilities, as well as those arising out of their work. Moreover, while seeming to provide support for working women, it however passes on the responsibility of child care to *other* women through the "network of homes" and "surrogate mothers-teachers." The inevitable result of this arrangement leaves the traditional role of women and men intact. Again, this goes against the grain of article 11 (2) (c) of CEDAW and the ILO Convention 156 and Recommendation 165, which were intended to promote equality of opportunity and treatment in employment for men and women workers with family responsibilities, as well as between workers with family responsibilities and those without such responsibilities.

Still and all, the DCCs provide an important support for working parents, particularly working mothers. The increasing participation of women in the labor market, however, simply means that with more and more working parents or working couples, the situation would put a strain on the already-limited resources of the barangay DCCs, not to mention the resources to put up additional DCCs. Given this consideration, the establishment of childcare facilities in the workplace, therefore, becomes an important option to help workers with family responsibilities.

Considering the lack of force in the implementation of the Labor Code provision on establishing nursery in private establishments, as well as the strain on the limited resources available for the total expansion and implementation of the DCCs, the need to adopt effective measures to encourage employers to establish childcare facilities is imperative. In 2000, the Early Childhood Care and Development (ECCD) Act (RA 8980) was passed to give impetus to the establishment of ECCD programs in the public and private sectors.

The ECCD programs include center-based programs such as the day-care services established and expanded under the Barangay Day Care Center Act; community or church-based early-education/kindergarten programs or workplace-initiated childcare and education program; and

home-based programs such as neighborhood-based playgrounds, family day-care programs, and parent-education and home-visiting programs (Quimpo 2000).

Under section 2 of the ECCD Act, one of the declared state policies is to support parents in their roles as primary caregivers and as their children's first teachers. Among the objectives of the law are: (a) to achieve improved infant and child survival rates by ensuring that adequate health and nutrition programs are accessible to young children and their mothers from the prenatal period throughout the early-childhood years; (b) to enhance the physical, social, emotional, cognitive, psychological, spiritual, and language development of young children; and (c) to enhance the role of parents and other caregivers as the primary caregivers and educators of their children from birth onward.¹³

While the evident intent of the Act is to provide essential services to children, the support it provides to workers with family responsibilities in terms of responding to their family responsibilities is undeniable. Kamerman (2002), however, notes that where ECCD programs exist, the supply is limited and quality is poor. For instance, two Department of Social Welfare and Development (DSWD) programs—a two- to three-hour childcare program for four to six years old, and a parent-effectiveness program found in about 43 percent of villages—lack resources, e.g., supplies, equipment, and qualified staff, to adequately cover all the children of this age, or their parents.

Given the limited resources of public-initiated ECCD programs, an ECCD program for children within the workplace becomes vital. Under section 9b of the Act, corporations and employees are given incentives to set up ECCD programs within the workplace. ECCD programs that are supported by corporations or employers in the form of physical facilities and recurrent operating costs can be deducted from taxable income, provided that the employer or corporation will not charge user fees. In interpreting the above provision, the Bureau of Internal Revenue (BIR) Ruling, dated July 28, 2005, reiterates such condition set by the law, i.e., that before deducting the operating costs, the employer or corporation must not charge user fees or those payments, whether monetary or nonmonetary, for the participation of a child in a private ECCD program.

To date, however, there are no available official data on the number of corporations or employers who have extended support for the ECCD programs in terms of providing physical facilities and recurrent operating costs. Suffice it to say that the incentive for private establishments to support ECCD programs could be made more attractive through other creative arrangements and schemes.

2.2 Paternity Leave

A correlative provision to maternity leave is paternity leave. As commonly understood, paternity leave is given to the father at the time of confinement of the spouse (ILO 2000). By ILO definition, however, this is still different from parental leave, which is granted to either parent in order to care for a child and generally follows a period of maternity leave. All the same, the purpose of paternity leave is similar to parental leave.

Under section 2 of the Paternity Leave Act of 1995 (RA 8187), every married male employee in the private and public sectors are entitled to a paternity leave of seven days with full pay for the first four deliveries of the legitimate spouse with whom he is cohabiting. An important condition to the entitlement of paternity leave, however, is that he is employed and is cohabiting with his spouse at the time his spouse gives birth or suffers a miscarriage. The benefit may be enjoyed during or after delivery of the spouse, provided that the total number of days must not exceed seven working days for each delivery.¹⁴

In itself, the law is a significant contribution to the promotion of shared parental responsibility. Even so, it failed to consider certain realities obtaining among workers. The law does not allow for extension of paternity leave in case of extended confinement of the spouse. The seven-day paternity leave excludes the possibility of complications of childbirth that may require an extended leave of absence.

Moreover, the law excludes from its benefit an unmarried male employee who cohabits with an unmarried woman under a common-law arrangement. This arrangement, however, is a reality not uncommon in this age. Statistics show that as of the first quarter of 2005, persons who

are in a common law or live-in arrangement stand at 3,061,166, with men accounting for 50.3 percent or one-half of the total number of people in common-law relationship (NSO 2005).

Such exclusion of an unmarried male employee effectively deprives him of the opportunity to exercise his paternal responsibility toward the common-law spouse and the newly born child, as well as forecloses the choice of the woman to seek the necessary support from the father of the newborn child. It is well to recall that an unmarried female employee may avail herself of maternity leave. Since paternity leave is correlative to maternity leave, it is only reasonable for a woman, married or unmarried, to expect support from her spouse or common-law spouse during childbirth. While the fear that extending such entitlement to unmarried male employees could lead to abuse or misuse may be valid, such concern is not something that could not be readily addressed by appropriate rules and regulations.

Finally, paternity leave cannot be availed in case the spouse suffers an abortion. Although initially included in the implementing rules and regulations, it has since been de-listed from the coverage of the paternity law,¹⁵ consistent with the legislative intent to exclude the word “abortion” from the law. The effect of exclusion is an indirect punishment for both spouses.

The unfairness of the situation is best illustrated in two criminal cases of unintentional abortion where neither spouse is at fault. In the case of *US v. Jeffrey*,¹⁶ the defendant, who is not the spouse, was held liable not only for the maltreatment but also for the consequence of such act—abortion—when he struck a three-month-pregnant woman on the hip with a bottle, without knowing her condition. Similarly, in the case of *People v. Jose*,¹⁷ the truck driver was declared guilty of unintentional abortion through reckless imprudence when he was found to have bumped a horse-drawn cart (*calesa*) from behind, causing a six-month-pregnant woman to be thrown off her seat and consequently suffer abortion.

Proceeding from the above in which abortion is committed by a third party, a strict reading of the Paternity Act and its implementing guidelines means that male employee will be deprived of paternity leave, even when neither spouse is at fault. A few, however, would argue that unintentional

abortion is like "miscarriage." While this may be a fair interpretation, the exclusion of abortion from the coverage of the law *without* qualification, nonetheless, opens the door to unnecessary controversy between employers and workers.

In any case, regardless of whether abortion is unintentional or not, a woman would still need emotional and other support from his spouse while she is recovering from her medical condition. The effect of exclusion is an indirect punishment for both spouses. The man is deprived of the role to provide support and assistance to the woman in the critical stage of her health and recovery. The woman suffers consequently. The absurdity of the situation becomes even more apparent for a working woman since under the law, she is, after all, entitled to maternity leave even when she has undergone abortion.

What this means is that for as long as the government does not take appropriate measures to address the health needs of women who undergo induced abortion, it puts women at a serious disadvantage than men and further contribute to the gender inequality that it is mandated to eradicate. The gravity of the situation for women who undergo induced abortion, therefore, calls for a reexamination of the exclusion of abortion from the coverage of the paternity leave. At the very least, unintentional abortion should be included as one of the cases where a male spouse could benefit from paternity leave.

The unmarried man's non-entitlement to paternity leave is only one form of discrimination. The discrimination extends to partners in same-sex relationships. In a lesbian partnership, should one of the partners were to give birth, her partner would be unable to avail herself of the equivalent leave to give support and assistance to her partner. This is borne out of a discriminatory law that fails to consider that the concept of family relationship has expanded through the years. There are also workers with different sexual orientations who enter into partnership, such as a same-sex relationship. Under this situation, it would also be discriminatory to deprive the other partner, particularly in a lesbian relationship, of a parental leave where the other partner is in maternity leave, or else needs social support to attend to family responsibilities.

It is well to recall that the HRC, in its 2003 Concluding Observations of the Human Rights Committee on the Philippines, urged the Philippine government to pursue efforts to counter all forms of discrimination pertaining to sexual orientation (HRC 2003). In General Comment 19 (1992), the HRC recognized that the right to marry and found a family may be based on diverse definitions of families and relationships. Legislative reforms should therefore consider extending equivalent leave entitlements to working couples in common-law arrangements and to those who are in same-sex partnerships to enable them to attend to their family responsibilities without fear of discrimination.

2.3 Parental Leave

As discussed earlier, parental leave affords either parent the opportunity to obtain a leave of absence within a period immediately following maternity for the purpose of attending to the illness of a dependent child or for reasons connected with the upbringing of a child.

Paragraph 22 (1) of Recommendation 165, in relation to Convention 156, provides that either parent should have the possibility, within a period immediately following maternity leave, of obtaining leave of absence (parental leave), without relinquishing employment and with rights resulting from employment being safeguarded. Parental leave affords either parent the opportunity to obtain leave of absence for childcare purposes:

- within a period immediately following maternity leave
- in case of illness of a dependent child
- for other reasons connected with the upbringing of a child (ILO 2000)

The Solo Parents' Welfare Act of 2000 (RA 8972) grants parental leave to one who is left alone to assume the responsibilities of parenthood. Under article 8 of the law, a solo parent is entitled to a leave of "not more than seven working days every year," provided she or he has rendered at least one-year service. The solo parent, however, should comply with the requirements of notification within a reasonable time and the presentation of a Solo Parent Identification Card issued by the Municipal/City Social Welfare and Development Office.¹⁸

Republic Act 8972 was passed to help workers who are solo parents to cope with their family responsibilities, without reneging on the demands of their employment. While this is a positive step toward helping workers with family responsibilities, the “not more than seven days” provision, however, creates problem as to the actual number of days that an employee is entitled to. The law is not clear as to who determines the extent of entitlement. A determination by the employer might render the entitlement almost useless as the employer may opt to give parental leave of *only* one or two days as token compliance with the law. A query from the Department of Social Welfare and Development, the lead agency in the implementation of the law, and the Department of Labor and Employment confirms this concern.¹⁹

Moreover, the law falls short of the need to help all workers with family responsibilities as it excludes working couples, married or living together as common-law spouses, from availing themselves of the entitlement. Although working couples, whether married or not, are not as burdened as solo parents, they equally face the demands of family responsibilities. In times of emergency or urgent need, and no parental leave is available, the demands to take on the family responsibilities would most likely fall on the woman's shoulder. The lack of recognition for parental leave for working couples overlooks the importance of shared responsibilities of parents, especially where both are working. Its nonrecognition has caused employees loss of income and career opportunities, if not unnecessary absences in the workplace.

As with the paternity leave, the law on parental leave discriminates against couples in a same-sex partnership. Thus it effectively deprives a gay or lesbian partner of a parental leave to attend to family responsibilities.

Again, recalling the 2003 Concluding Observations of the Human Rights Committee on the Philippines, the HRC urged the Philippine government to pursue efforts to counter all forms of discrimination pertaining to sexual orientation. Furthermore, in its General Comment 19 (1992), the HRC notes that the concept of the family may differ in some respect from State to State, and “where diverse concepts of the family, ‘nuclear’ or ‘extended,’ exist within a State, this should be

indicated with an explanation of the degree of protection afforded to each.” In the Philippines, however, in spite of the existence of couples in same-sex partnerships, no protection or entitlements have been afforded to them in law.

Finally, for all the merits of the law, it failed to provide a penalty for noncompliance with the law. It is axiomatic—the law is as good as its observance. Without penalty for violation, it is a toothless measure.

2.4 Flexible Working Hours/Shift-work Arrangement

Taking note of special needs of workers with family responsibilities, paragraph 18 of the Workers with Family Responsibilities Recommendation of 1981 prescribes more flexible arrangements as regards working schedules as one measure to improve the general condition and the quality of life of the workers.

Under the Labor Code, no such special measures have been introduced. Section 6 of the Solo Parent Act, however, mandates that solo parents are entitled to a flexible work schedule. Like the paternity leave, however, the flexible work schedule is also not granted to working couples—whether married, in common-law relationships, or in same-sex partnerships—even if they too are burdened with family responsibilities. The non-entitlement of working couples to parental leave disadvantages them, particularly the working women since they end up taking most of family responsibilities when necessity dictates.

Moreover, solo parents may avail themselves of flexible work schedule subject to two limitations: (1) the leave would not affect individual and company productivity, and (2) the employer may request exemptions on “certain meritorious cases.” Noting the overriding concern of most employers to maximize productivity and efficiency, the two limitations would only be open to abuse for employers who wish to escape the workers’ entitlement to parental leave.

2.5 Family Planning Services

An essential protective health measure for workers is the reproductive health care. The constellation of methods, techniques, and services that aims to restore and promote reproductive well-being is called Reproductive Health Care, and it encompasses not just patient treatment but, just as important, patient education and counselling (Melgar 2005).

Health being a basic right, article 11 (1) (f) of CEDAW requires States to take all appropriate measures to eliminate discrimination against women in the field of employment to ensure, among others, the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction. State parties are also enjoined under article 12 (1) to eliminate discrimination against women in the field of health care to ensure access to health-care services, including those related to family planning.

Although reproductive health care is the concern of all workers, this service has great importance to workers with family responsibilities. The Labor Code addresses the reproductive health needs of the workers, albeit on a limited extent. Thus the law mandates establishments to maintain a clinic or infirmary,²⁰ as well as to provide free family-planning services to their employees, which shall include but not limited to the application or use of contraceptive pills and intrauterine devices.²¹

More important to the question of gender equality is the evident gender bias in the law with regard to the dispensation of incentive bonus scheme for family planning. Thus, article 134 of the Labor Code mandates the DOLE, in coordination with other agencies of the government engaged in the promotion of family planning, to develop and prescribe incentive bonus schemes to encourage family planning among *female* workers in any establishment or enterprise. Although the incentive bonus scheme appears to benefit women, it actually unfairly places the burden and the responsibility of family planning solely on them. The law, therefore, practically suggests that since women have the sole capacity to bear children, so must they bear the responsibility of family planning, leaving men entirely out of the equation.

3. Lack of Social Protection for Workers in Special Forms of Work

3.1 Part-Time Work

The increasing number of part-time workers creates issue on working conditions, benefits, job security, and social protection as part-time work and other temporary work are generally precarious in nature. Recognizing these workers' difficult working circumstances, Convention 156 and Recommendation 165 were adopted with a view to ensuring that the rights of part-time workers, temporary workers, and homeworkers are also protected. Paragraph 21 of Recommendation 165 provides that: (1) the terms and conditions of employment should be adequately regulated and supervised; (2) these terms, including social security coverage, should be equivalent to those of full-time and permanent workers; in appropriate cases, the entitlements of the workers concerned should be calculated on a *pro rata* basis; (3) part-time workers should be given the option to obtain or return to full-time employment when a vacancy exists and when the circumstances that determined assignment to part-time employment no longer exist.

Moreover, article 4 of Part-time Work Convention (175) of 1994 states that measures shall be taken to ensure that part-time workers receive the same protection as that given to comparable full-time workers with respect to the following:

- right to organize, the right to bargain collectively, and the right to act as workers' representatives
- occupational safety and health
- discrimination in employment and occupation

Article 7 of the convention also states that measures appropriate to national law and practice shall be taken to ensure that part-time workers receive treatment equivalent to comparable full-time workers with respect to the following:

- basic wage
- statutory social security
- maternity protection
- termination of employment

- paid annual leave and paid public holidays
- sick leave
- all forms of leave in particular, paid educational leave, parental leave, and leave in cases of illness of a child or another member of a worker's immediate family

In spite of the said ILO labor standards with respect to part-time work, the Labor Code does not explicitly provide measures to ensure that part-time workers receive the same protection as and receive treatment equivalent to comparable full-time workers. Considering that women dominate part-time work, they are again economically disadvantaged.

3.2 Homeworkers and Other Workers in Special Work

The fate of the casuals, contractuels, homeworkers, and seasonal workers many of whom are women workers is no better.

Article 4 of the ILO Convention on Home Work (177) of 1996, supplemented by Recommendation 183, enjoins State parties to adopt national policies that will promote as far as possible, equal treatment between homeworkers and other wage earners, taking into consideration their special characteristics. In this regard, equal treatment is to be promoted in relation to the following:

- (a) homeworkers' right to establish or form organizations of their own choosing and to participate in the activities of such organizations
- (b) protection against discrimination in employment and occupation
- (c) protection in the field of occupation safety and health
- (d) remuneration
- (e) State social security protection
- (f) access to training
- (g) minimum age for admission to employment or work
- (h) maternity protection

The convention further provides that State parties should adopt a system of inspection to ensure compliance with law and regulation, and

to provide adequate remedies, including penalties in case of violation of the laws and regulations.

A review of the Labor Code shows that there are only three provisions devoted to homeworkers. Articles 153 and 154 of the law leave the regulation of the industrial homeworkers under the responsibility of the labor secretary.. Rule 14 of the Omnibus Rules and Regulations of the Labor Code sets in detail the terms and conditions in the payment of work of homeworkers, the conditions for payment deductions, and the joint and sole liability of the employer in case the contractor fails to payment the homeworkers,

As regards the payment of work of homeworkers, section 3 of the Rules gives the labor secretary the power to establish, from time to time, the standard minimum piece or output rate in appropriate orders for a particular work or processing to be performed by homeworkers.

Besides these few regulations that define the terms and conditions of payment to homeworkers, no other law or regulation is provided for to address the other protective measures identified by ILO Convention 177 to ensure the general welfare and protection of homeworkers and field personnel.

With the onslaught of globalization, women more than men face the consequences of flexibilization and informalization of work. The failure of the Labor Code and its regulations to respond to this phenomenon leaves women at a disadvantage as they are left with less or no social protection compared to other workers in regular employment. The gender blindness of the law thus amounts to gender inequality. In effect, faced with the current economic realities of globalization, the Labor Code provisions on homework have become outmoded and unresponsive to the needs and concerns of homeworkers, most of whom are women.

3.3 House Helpers

As regards the plight of house helpers, suffice it to say that the protection against discrimination in employment under article 11 of CEDAW applies to house helpers. The Labor Code, however, provides inadequate protection and benefits to house helpers. Except for the

amendments provided under RA 7655, increasing their minimum wage and providing Social Security System (SSS) entitlement to those receiving wages of at least Php 1,000, the situation of house helpers did not improve much. Like other workers in special forms of work, majority of house helpers continue to be deprived of decent pay and most benefits guaranteed under CEDAW, such as entitlement to normal working hours, leaves, social security, and other benefits. Considering that most house helpers are women, the net effect of the law leads to inequality of results and benefits that disadvantaged women.

4. Discriminatory Prohibition against Night Work

Working hours necessarily relates to the requirement of a weekly rest period, outside of holiday pays, and the regulation of overtime under certain circumstances.

Under the Forty-Hour Week Convention of 1935, the forty-hour normal work hours is the social standard to be reached by stages if necessary. The Hours of Work (Industry) Convention of 1919, however, sets a maximum limit to normal hours of work at forty-eight hours a week, except under authorized circumstances, with a weekly rest of at least twenty-four consecutive hours granted to workers in industry and commerce. Further, the Weekly Rest (Industry) Convention (14) of 1921 and the Weekly Rest (Commerce) Recommendation (18) of 1921 require the States to provide, in every period of seven days, a period of rest comprising at least twenty-four consecutive hours.

Consistent with the requirements of the above conventions, the Labor Code provides that the normal hours of any employee shall not exceed eight hours a day,²² with a rest period of not less than twenty-four consecutive hours after every six consecutive normal work days.²³

Although the above regulation is beneficial to workers in general, experience shows that this does not suffice for workers with family responsibilities. Special measures on hours of work and arrangement of working time, which are central concerns for workers with family responsibilities, need to be addressed “to enable such workers... to

reconcile their work and family responsibilities and encourage men to become more involved in family matters” (ILO 1993).

One of the conventions ratified by the Philippines is the Night Work (Women) (Revised) Convention (89) of 1934. The night-work prohibition was intended to protect women from the harmful effects of night work to their health. Article 3 of the convention provides that women, regardless of age, should not work during the night for at least eleven consecutive hours, of which seven shall be between 10 p.m. and 7 a.m. The night work, however, admits of exceptions.

Through the years, however, the prohibition against night work for women has increasingly been seen as discriminatory to women since the general exclusion of women from night work has a negative effect on their chances in the labor market. Hence, some governments denounced Convention 89, asserting that its provisions could compromise the principle of equality and opportunity between men and women (ILO 2000). If indeed night work is harmful to health, the protection should therefore extend to men as well. In 1991, noting that Convention 89 directly discriminated against women, the European Court of Justice declared the convention as incompatible with European standards.

Recognizing the discriminatory effect of Convention 89, a new Night Work Convention (171) was adopted in 1990 to revise the discriminatory aspect of Convention 89. Article 2 of Convention 171, therefore, applies to all employed persons except those employed in agriculture, stock raising, maritime transport, and inland navigation. The convention provides that all workers, regardless of sex, working during the night should be protected by specific measures, including the following:

- health protection (first aid facilities, health checks)
- maternity protection
- social services
- opportunities for occupational advancement
- additional compensation (working time, pay or similar benefits)

The “night” is now defined as at least seven consecutive hours, which include the hours between midnight and 5 a.m.

In line with the convention, paragraph 19 of Recommendation 165 provides that the special needs of workers, including those arising out of family responsibilities, should be taken into account in shift-work arrangements and assignment to night work.

More than a decade since the adoption of Convention 171, however, the Philippines still adhered to the prohibition of night work for women laid down by Convention 89, which had been considered discriminatory by many governments. Consistent with Convention 89, therefore, article 130 of the Labor Code prohibits women, regardless of age, to be employed or permitted to work with or without compensation

- (a) In any industrial undertaking or branch, between ten o'clock at night [and] six o'clock in the morning of the following day;
- (b) In any commercial or non-industrial undertaking or branch, other than agricultural, between midnight and six o'clock in the morning of the following day; and
- (c) In agricultural undertaking at nighttime, unless the worker is given a period of rest of not less than nine consecutive hours.²⁴

In continuing to adhere to the night-work prohibition for women, the Philippine government takes a protectionist approach, i.e., it recognizes the differences between men and women on grounds of biological and hence immutable differences between them, thereby justifying its different treatment. In so doing, it reinforces discriminatory gender stereotypes—that women are weak and vulnerable to the dangers of night work, that “women’s place is the home.” Consequently, this protectionist approach in the night-work issue marginalizes women’s access to resources and benefits through unnecessary protections that impede their choices and restricts their economic participation. The current secretary of labor and employment, Patricia A. Sto. Tomas (1989), then-chair of the Civil Service Commission (CSC), puts it succinctly: “such well-intentioned laws eventually become tools of discrimination against women and sometimes become counterproductive to all efforts to grant them the freedom to decide their own careers and life patterns” (21).

5. Limited Women's Participation in Decision Making

The preamble of CEDAW lays down the condition *sine qua non* for full and complete development. In no uncertain terms, it states that "the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields." Article 7 (b) of CEDAW imposes upon State parties to take all appropriate measures to ensure to women, on equal terms with men, the right, among others, to participate in the formulation of government policy and its implementation and to hold public office and perform public functions at all levels of government.

To be sure, article 2, section 14, of the Constitution declares, "The State recognizes the role of women in nation building, and shall ensure the fundamental equality before the law of women and men." Moreover, it recognizes "the right of the people and their organization to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged ..."

The above notwithstanding, figures have shown that women continue to be disproportionately underrepresented in leadership and decision-making bodies, whether in the public or private sector. Given this reality, substantive equality requires that institutional and social environments, including affirmative action, should be introduced to address this imbalance.

A review of the composition of the leadership and decision-making bodies provided for in the Labor Code, however, reveals that the law is so gender neutral that it fails to consider the women's legacy of cumulative disadvantage and existing gender biases in leadership structures that tend to favor men.

The qualifications of members of government bodies do not in themselves indicate sex preference. Even so, the law fails to consider that **men**, not women, take the leadership position in most instances. The law has no affirmative measures in place to address the issue of disproportionate underrepresentation of women in leadership position, i.e., in terms of holding public office and performing public functions in all levels of the labor bureaucracy, particularly in the NLRC, BLR, Regional Wage Board,

and in the other positions of leadership within the DOLE. It comes as no surprise, therefore, that just as in other branches and level of national governance, the labor bureaucracy is a bastion of male dominance, in spite of the fact that the present labor secretary is a woman.

Similarly, no affirmative measures are in place in the Labor Code to give expression to article 7 (c) of CEDAW on the right of women to participate in non-governmental organizations and associations concerned with the public and political life of the country. Without the necessary affirmative measures to increase women's participation in trade union activities, it also comes as no surprise that, to this day, trade unionism is equally a bastion of male dominance.

6. Prevalence of Sexual Harassment and Other Forms of Gender-Based Violence in the Workplace and Home²⁵

6.1. Sexual Harassment

Sexual harassment is inextricably linked to power (ILO 1995). At the core of sexual harassment and other violence against women is the social attitude and deep prejudice against women, who are viewed as the "weaker sex." They do not share the same power and prestige, status and societal position as men. They are inferior and subordinate to men. Ultimately, besides the many gender inequalities in the workplace that women experience, women are forced to face the reality of sexual harassment and other forms of violence in the workplace.

Articles 2, 5, 11, and 12 of CEDAW require State parties to act to protect women against violence of any kind occurring within the family, at the workplace or in any area of social life. Specifically, the CEDAW Committee on the Elimination of Discrimination Against Women (CEDAW Committee), the treaty-monitoring body of CEDAW, considers sexual harassment in the workplace as a form of gender-specific violence that seriously impairs women's equality in employment under article 11 of CEDAW. The act is considered discriminatory when a woman has reasonable grounds to believe that her objection would disadvantage her employment opportunities, including recruitment or promotion, or when it creates a hostile work environment.²⁶

In 1994, therefore, the CEDAW Committee issued General Recommendation 12 (1989), recommending to the State parties to include in their periodic reports about the legislation in force to protect women against the incidence of all kinds of violence in everyday life and other measures adopted to eradicate the violence. To complement the above recommendation, Recommendation 19 (1992) was subsequently issued, making it abundantly clear that the definition of discrimination includes gender-based violence—that is, violence directed against a woman because she is a woman or that affects women disproportionately. It is evident in the Recommendations that the Committee fully recognized the gender issues particular to women, having regard for the traditional attitudes by which women are regarded as subordinate to men, thus vulnerable to violence or coercion.

Congruent with the development in the CEDAW Committee, in 1994, in the precedent case of *Villarama v. NLRC*,²⁷ the Supreme Court held that the sexual harassment committed by the managerial employee against a subordinate constitutes substantial evidence amounting to “loss of trust and confidence,” which is a valid reason for dismissal.

The following year, in compliance with its treaty obligation, the Anti-Sexual Harassment Act of 1995 (RA 7877) was enacted to prevent and deter the commission of such act, to provide the victim redress under the law (Lina 1994), and “to raise the level of consciousness between men and women by revolutionizing their patterns of behavior through the removal of gender bias and other irritants that hinder greater productivity” (Roco 1994). In sum, the law seeks to provide a free and safe working environment for both women and men.

Under section 3 of the Act, sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, or any other person who, having authority, influence or moral ascendancy demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said act.

Undoubtedly, the law has made significant inroads in helping create a healthy and safe working environment for workers, and in increasing the

level of awareness of employers and workers on the negative effects of sexual harassment on work productivity and efficiency. Even so, it suffers from major inadequacies. For one, the definition of sexual harassment adopts the traditional, narrow definition of sexual harassment at work, which refers to a demand, request, or requirement by the superior to the subordinate for sexual favors to obtain or keep a job or certain job-related benefits. This type of sexual harassment is termed as the *quid pro quo* sexual harassment, which involves an abuse of authority. As the Supreme Court held in *Philippine Aeolus Automotive United Corporation v. NLRC*,²⁸ "the gravamen of the offense in sexual harassment is not the violation of the employee's sexuality but the abuse of power by the employer."

In adopting a narrow view of sexual harassment, the law presupposed that people in a superior position are the only ones capable of harassment. It failed to recognize that sexual harassment and other gender violence involves the question of power. And power relations do exist not only in a superior-subordinate relationship, but in a peer-relationship as well.²⁹ This, given the relatively lower status accorded to women in society because they are generally regarded as the "weaker sex," and the fact that women are viewed to merely play a supportive role to men or to have a subordinate status in all spheres of life. Under this situation, women are thus the most vulnerable to harassment, regardless of the nature of their relationship with men.

Also, unlike in an education or training environment, sexual harassment in a work-related environment leaves out entirely from its coverage the commission of "sexual advances," such as when the sexual harasser simply goes out to get what he wants (e.g., stealing a kiss) from the victim without warning. This entails no "demand," "request," or "requirement" for any sexual favor.

In the *Philippine Aeolus*³⁰ case, the Supreme Court did take into account the fact that the complainant was a victim of the manager's "sexual advances," such as touching her hands and putting his arms around her shoulders. Even so, it also took note of the fact that the complainant also endured the manager's invitations "for a date." Toward the end, she was

made to understand that if she would not give in to the manager's "sexual advances" he would cause her termination from the service. Proceeding from the court's discourse, while there is sound argument that "sexual advances" are thus deemed considered sexual harassment, the lack of clarity in the law makes such argument vulnerable to legal challenge.

Moreover, the law failed to provide safeguards for complainants against retaliatory acts from their sexual harassers, resulting from the filing of sexual harassment charge. The need for safeguards against reprisal is crucial in cases involving vulnerable groups, such as workers with no security of tenure (e.g., temporary workers, casuals, and part-time workers) (Ursua 2002).

Furthermore, section 4 of the Act imposes on the employer the duty to promulgate appropriate rules and regulations and create a committee on decorum and investigation (CODI) of sexual-harassment cases. In a 2000 survey conducted among 334 unionized and non-unionized establishments located in Manila, Bulacan, General Santos City, Davao, Cebu City, and Zamboanga, it was shown that only a small portion (21 percent or 70) has implementing guidelines on sexual harassment (FES 2006). The absence of a strict enforcement mechanism and an explicit penalty for noncompliance with the employer's duty under section 4 of the law has blunted the law's effectiveness in preventing incidents of sexual harassment in the workplace.

A graver concern, however, is the absence of a provision that requires members of the CODI to undergo a supervised training to adequately prepare the members to undertake the serious tasks of investigating sexual harassment and promoting awareness at the workplace. It bears to stress that proper knowledge, attitude, and skills are necessary ingredients to a successful investigation of sexual-harassment cases and other gender-related offences.

6.2 Gender-based Violence upon Persons with Different Orientation

Violence against the LGBTs presents another facet of violence. The violence committed against them is illustrative of the intersectionality of gender discrimination, i.e., it interfaces with other social categories and

forms of discrimination. For instance, the interface of a poor, indigenous lesbian in a developing country. The seriousness of gender-based violence committed against LGBT, in fact, has come to the attention of the Commission on Human Rights (CHR) of the United Nations. In a recent report of the then Special Rapporteur on Violence against Women to the CHR, it was observed:

Gender-based violence is also related to the social construct of what it means to be either male or female. When a person deviates from what is considered normal behavior they are targeted for violence. This is particularly acute when combined with discrimination on the basis of sexual orientation or change of gender identity. Violence against sexual minorities is on the increase and it is important that we take up the challenge of what may be called the last frontier of human rights. (Coomaraswamy 2002)

To this day, however, no protective measure or law is available to the LGBTs. Noting the reports and documented incidence of discrimination and violence against the LGBTs, legislative reforms on this concern are long overdue.

7. Inadequate Maternity Protection³¹

Maternity protection serves to provide proscriptions against discrimination in employment on account of marital status or pregnancy, protect the health of the pregnant or nursing mother from the dangers or complications of childbirth, and ensure the health of the mother and child. It is an accepted reality that any danger posed on the health of the mother affects not only the health of the child but also her opportunity to access economic power.

Article 11 (2) (b) of CEDAW mandates that State parties take all appropriate measures to introduce maternity leave with pay. The Maternity Protection Convention (183) of 2000, supplemented by the Maternity Protection Recommendation (191) of 2000, provides the principal elements of protection, to wit: (a) maternity leave, (b) maternity benefits, and (c)

cash benefits. It also provides protection from discrimination on account of marital status, pregnancy, or nursing a child.

As a State party to CEDAW, the Philippines is under legal obligation to provide for maternity protection, even if it has not yet ratified the ILO Convention on maternity protection.

7.1 Protection against Discrimination

Central to the issue of equal work opportunity is the question of protection against discrimination during pregnancy, or while nursing or due to pregnancy. Article 11 (2) (a) of CEDAW makes it abundantly clear that appropriate measures must be undertaken to prevent discrimination on the grounds of marriage and maternity, such as to prohibit the dismissal on the grounds of pregnancy and maternity leave and discrimination in dismissal on the basis of marital status.

Consistent with the injunction of CEDAW, article 8 of the Maternity Protection Convention of 2000 lays down the employment protection for pregnant and nursing women. It declares as unlawful the termination of employment of a woman during her pregnancy or absence on leave (maternity leave before or after) or during a period following her return to work, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. A supplementary measure is that provided for under paragraph 5 of the Maternity Protection Recommendation of 2000, which states that the period of maternity leave should be considered as a period of service for the determination of the woman's rights. Additionally, article 9 provides that a woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

To a great extent, this maternity protection against discrimination has been incorporated in the Labor Code under article 136 on the Stipulation against marriage and article 137 on the Prohibited Acts. Such protective measures implicitly recognize the gender biases that women had to face as a consequence of their childbearing capacities, and as such provide the means for them to counter these gender biases that impede their access to employment opportunities. While these measures prove beneficial to

women, they, however, suffer from vagueness and omission in terms of protecting married women.

Article 136 declares unlawful three instances of discrimination: where an employer (a) requires as a condition of employment or continuation of employment that a woman shall not be married, (b) stipulates expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated, or c) actually dismisses, discharges, discriminates, or otherwise prejudices a woman employee merely by reason of her marriage. The above formulation, however, provides protection only to single women workers who are: (a) being considered for employment or (b) already employed. It failed to provide protection against discrimination for married women who are being considered for employment. In conjunction with the ILO Convention 183, CEDAW clearly proscribes discrimination on the basis of marital status, either as a condition of employment or during employment.

On the other hand, article 137 does not make it explicit that the protection for pregnant women covers the period of nursing her child even way beyond the period of pregnancy. This gap, therefore, makes nursing women vulnerable to discrimination in employment.

7.2 Maternity Leave/Cash Benefit

With regard to maternity leave, article 11 (2) (b) of CEDAW, in conduction with article 4 of the Maternity Protection Convention of 2000, provides maternity leave of at least fourteen weeks, which includes a period of compulsory leave after confinement of at least six weeks and additional leave before or after confinement in case of complications arising out of pregnancy or childbirth.

With the entry of more women in the labor market, women workers face the increasingly difficult situation of struggling to balance home and work responsibilities. This situation becomes even more acute for working women who face the prospect of pregnancy and childbirth, and the subsequent demands of breast-feeding. Given the demands of balancing home and work responsibilities, not least of all is the concern for the mothers' need for full recovery after childbirth, section 14a of the Social Security

Law (RA 1161) appropriately amended article 133 of the Labor Code by expanding the paid maternity leave from the previous forty-five days to sixty days for normal delivery, and seventy-eight days for caesarean delivery.

Correspondingly, under the Maternity Leave in Private Sector Act (RA 7322), the cash benefit has been increased from the previous 100 percent of the women worker's average salary credit to the present 100 percent of their present basic salary, allowances, and other benefits. This is consistent with article 4 of the Maternity Protection Convention (183) of 2000, which provides that the amount shall be not less than two-thirds of the woman's previous earnings.

The maternity leave, however, remains below international standard. While the exact period for maternal recovery varies according to a woman's individual experience, the World Health Organization (WHO), taking note of international standards for the health care of new mothers, considers that at least sixteen weeks of leave from work after childbirth is necessary to recover from childbirth and accommodate breast-feeding (WHO 2000). Although the Maternity Protection Convention (103) of 1952 required twelve weeks of maternity leave, the minimum "fourteen weeks of maternity leave" under article 4 of the Maternity Protection Convention 183 has since come closer to the WHO's recommendation. Subparagraph 1 (1) of the Maternity Protection Recommendation (191) of 2000 further enjoins members to endeavor extending the period of maternity leave to at least eighteen weeks.

It needs stressing, however, that the argument for a longer period of maternity leave should not mean that a period of maternity leave should be enforced even when "women can and do return to work within the sixteen weeks following childbirth with no apparent detriment to their health" (Sex Discrimination Unit [SDU]-Human Rights and Equal Opportunities Commission [HREOC] 2002, 46), lest it becomes an undesirable restriction against women.

7.3 Maternity Benefits

One other area that needs legislation is the provision of medical benefits and other protective measures for pregnant and nursing mothers.

Medical benefits include prenatal, confinement, and postnatal care by qualified midwives or medical practitioners, as well as hospitalization if necessary; freedom of choice of doctor and of public or private hospital. Article 12 (2) of CEDAW enjoins State parties to ensure to women appropriate services in connection with pregnancy, confinement, and the postnatal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation. This is parallel to ILO Conventions 103 and 183 and their corresponding Recommendations, which require medical benefits that include prenatal and postnatal care by qualified midwives or medical practitioners.

The above benefits and protective measures prescribed by CEDAW and ILO resonate in article 13, section 14, which mandates the State to protect working women by providing safe and healthy working conditions, taking into account their maternal functions. The Labor Code, however, provides no sufficient medical benefits in conformity with CEDAW and ILO conventions.

Tangentially, however, the Early Childhood Care and Development (ECCD) Act (RA 8980) provides accessible and adequate health and nutrition programs for children and *expectant* mothers to ensure the early identification and referral of disorders (Quimpo 2000). Other than the benefits that may be accessed through the ECCD Act, however, there are no other benefits and protective measures in the Labor Code that comply with the requirements of the CEDAW and the ILO conventions and recommendations.

7.4 Breast-feeding Breaks / Reduction of Work

Additional rights are provided for breast-feeding mother. In particular, article 10 of Convention 183 requires that women be provided the right to one or more daily breaks or a daily reduction of work hours to breast-feed their children. The period during which the break or reduction of work hours is allowed, the number of times and duration of nursing breaks, and the procedures for the reduction of daily work hours are to be determined by national law and practice. This special accommodation for nursing women is consistent with the substantive equality approach of

taking into account women's difference by virtue of their unique childbearing capacity.

The Philippines has enacted the Rooming-In and Breast-feeding Act of 1992 (RA 7600), which adopts the practice of rooming-in as a national policy to encourage, protect, and support the practice of breast-feeding. This requires the placing of the newborn in the same room as the mother right after delivery up to discharge to facilitate infant bonding and initiate breast-feeding. In spite of the law's laudable intention, however, studies have shown that breast-feeding of infants becomes an everyday challenge once employed lactating women report back to work, especially at a time when exclusive breast-feeding (from birth to six months) is the ideal.

It is interesting to note that, prior to the Labor Code, the same Woman and Child Labor Law of 1952 imposes on employers the duty to allow their nursing women employees to nurse their children for two half-hour periods during their work hours. Such provision is in accord with the early ILO Conventions on Maternity Protection,³² which, regrettably, the Philippines has not ratified. With the entry into force of the Labor Code, the beneficial provision has been put to oblivion. Considering, however, that the Labor Code is silent on the breast-feeding entitlement, the provision on the breast-feeding entitlement under the Woman and Child Labor Law remains valid and effective. As Feliciano (1989) correctly argues:

[A] general law (Labor Code) and a special law (Woman and Child Labor Law of 1952) in the same subject are statutes in *pari materia* and should, accordingly, be read together and harmonized if possible, with a view to giving effect to both. It is an established rule in statutory construction that a subsequent act, treating a subject in general terms and not expressly contradicting the provisions of a prior special statute, is not to be considered as intended to affect the more particular and specific provisions of the earlier act. This rule is expressed in the Latin maxim, *generalia specialibus non derogant* or "a special law does not nullify a special law." This is because implied repeals are not favored and as much as possible, effect must be given to all the enactments of the legislature. (65)

7.5 Protection from Harmful Work

Finally, Recommendation 191, in relation to Convention 183, provides that where significant workplace risks related to the health and safety of pregnant or nursing woman have been identified, measures should be taken to provide an alternative to such work. In particular, works that are considered prejudicial to pregnant and nursing women include the following:

- arduous work involving the manual lifting, carrying, pushing, or pulling of loads
- work involving exposure to biological, chemical, or physical agents that are hazardous to reproductive health
- work requiring special balance
- work involving physical strain due to prolonged periods of sitting or standing, extreme temperatures, or vibration

The recommended protection of pregnant women from unsafe types of work is congruent with article 11 (2) (d) of CEDAW, which requires State parties to undertake appropriate measures to provide special protection to women during pregnancy in types of work proved to be harmful to them. With respect to this, however, measures are yet to be introduced to ensure the protection of pregnant women from unsafe work conditions.

No doubt, the maternal benefits and protective measures mandated under CEDAW are necessary and beneficial for pregnant and nursing women as these give proper recognition of the maternal function of women. It is apropos to mention, however, that in ensuring greater maternity protection for pregnant and lactating women, the possible unintended consequences—such as women's further discrimination in employment—should likewise be considered. Employers, for instance, might opt to hire male workers to avoid additional costs for these social benefits and protect the profitability of their businesses. As this is not a remote possibility, any legislated maternity protection should, therefore, include measures against employment discrimination.

There is, however, no impetus to legislate protective measures for pregnant and nursing women in spite of the 1987 Constitutional commitment to provide working women safe and healthy working conditions. This is partly due to lack of recognition that “safe motherhood is a vital, compelling and cost-effective economic and social investment” (World Health Day Safe Motherhood 1998). It matters, of course, that the Philippines has not ratified the ILO Conventions and Recommendations on maternity protection.

Summary, Conclusion and Recommendations

No doubt, great strides have been made to improve women’s situation in the Philippines. Yet, women more than men continue to be vulnerable to poverty arising from structural and cultural barriers that impede their effective access and control of productive resources relative to men. Access to capital, market, training, information, technology and technical assistance, and just wages and benefits are predisposed to benefit men more than women. Women’s continuing vulnerability to poverty is thus a mere consequence of gender inequality, which limits the scope of their economic participation and the range of their economic empowerment.

In the face of these gender inequalities that impede women’s economic empowerment, the Philippines has taken steps to address the situation and fulfill women’s right to gender equality. It has ratified major international human rights instruments, notably CEDAW, wherein the equality between women and men is enshrined. Gender equality is likewise enshrined in the 1987 Constitution.

Since the ratification of CEDAW in 1981, women’s rights movement has slowly made its mark and made significant accomplishments in the last two decades. In terms of legislative reforms, the last decade was a watershed for women’s rights. For instance, several laws have been passed that, by their intent or content, have contributed to the promotion of women’s rights.

All the significant gains, notwithstanding, women continue to face various forms of discrimination. In terms of employment and conditions of work, they continue to be economically disadvantaged as they confront gender issues pertaining to hiring, training, promotion, wage, and conditions of work; welfare facilities and social support to cope with work and home responsibilities; economic decision making, sexual violence, and maternal protection.

In the increasingly globalizing economy, the government is faced with greater challenges. The phenomenon of flexibilization of work arrangements, the informalization of workers, and the increasing feminization of migration, demands serious attention. Greater protection is urgently needed for informal sectors, such as the homeworkers and seasonal workers. Generating more work opportunities in the domestic front should take top priority, not overseas employment. Even so, noting the increasing feminization of migration, protective measures for migrant workers should be explored, without curtailing workers' rights to work and to travel.

In light of the pressing gender issues and present challenges, a review of the Labor Code shows that its provisions no longer respond adequately to the gender issues and demands of the times. The nine provisions of the Labor Code under book 3, title 3, chapter 1, on Employment of Women contain gender gaps and biases that are repugnant to the substantive equality principle espoused in CEDAW. The chapter contains provisions (e.g., night-work prohibitions, facilities for women, and family planning services and incentives for family planning) that tend to reinforce the gender bias of stereotyping women's qualities and capabilities. Consequently, while these provisions are seemingly beneficial to women, they actually retard women's economic opportunities.

Moreover, the provisions are set apart from the rest of the law, as though the concerns of women bear to relations with the rest of the provisions of the law. In effect, there is actually no gender mainstreaming in the law to the extent that gender-specific issues are recognized and integrated in the enactment and implementation of the law.

The Labor Code does not also have a mechanism in place to discourage the phenomenon of occupation segregation, or a system to monitor strict

implementation of the “equal pay for equal value of work” in the establishments. There are no affirmative measures to ensure greater participation of women in the decision- or policymaking bodies, particularly the government bodies, and no explicit policy or objective to promote gender equality in the workplace and in the government bureaucracy. In other words, the law is gender blind; that is, most provisions are formulated to apply to all workers, regardless of sex, without taking into consideration the biological and socially constructed differences between women and men. In effect, it treats men and women the same, disregarding the women’s legacy of cumulative disadvantage and existing gender biases in institutional and social environments.

Reinforcing this “male” focus in legislation is the use of non-gender fair language in the Labor Code. The language of the law has a male reference. The use of the male reference renders women invisible, in spite of their significant number and visible participation in all spheres of productive work. Put simply: it perpetuates the notion of male supremacy.

An analysis of the other labor-related laws leads to the same result—they also fall short of promoting real equality of access and benefits. They bear strong evidence of gender biases and gaps that impede women’s economic participation and empowerment.

In light of the above, the Labor Code and related laws urgently need to be amended to address the gender biases and gaps therein, with a view to promoting *de jure* and *de facto* equality between women and men, particularly in terms of access to resources and economic decision making. Anything short of that would run afoul with the principle of gender equality that is enshrined in CEDAW and other international human rights instruments.

Toward a gender-responsive approach to government interventions, the following recommendations are submitted for consideration:

For the Policymakers and Legislators

1. *Amend the Labor Code.* Law reform has its constraints. Even so, it still has its valuable contribution in the promotion of gender equality. In this light, notwithstanding Labor Code and other related laws

under review, there is an urgent need just the same to amend the law, along the following points:

1.1 Observe the use of gender-fair language in the formulation of provisions to address the social inequity reflected in the language of the law.

1.2 Include or revise provisions to

- reflect a clear commitment to the principle of gender equality in state policies, objectives and programs;
- increase access to productive resources (e.g., training and capacity-building activities, information, benefits, social protection, state funds, and welfare facilities;
- remove gender stereotypes that reinforce the traditional roles of women and men and limit women's economic opportunities;
- introduce affirmative action to boost women's presence in leadership positions, or in decision-making or policymaking bodies within the government labor offices and agencies;
- introduce incentive schemes and other measures to encourage private institutions and trade unions to promote gender equality;
- undertake gender-awareness building among officials, officers, and personnel within the government labor institutions; and
- institute monitoring and evaluation mechanisms for proper enforcement and implementation of gender equality plans, programs, and activities.

Details of the proposed amendments are attached as annex A.

2. *Ratify relevant international human rights instruments.* Ratifying relevant international human rights instruments is equally important not only in sending a strong message that the government is serious in its commitment to promote gender equality in all aspects of political, economic, social, and cultural endeavors but also in showing its willingness

to be held accountable for noncompliance with its treaty obligations. Ratification of the following instruments should be considered:

- 2.1 Workers with Family Responsibilities Convention (156) of 1981 and Workers with Family Responsibilities Recommendation (165) of 1981
- 2.2 Night Work Convention (171) of 1990 and Night Work Recommendation (178) of 1990, and necessarily, denounce Convention 89 under article 5 (1) of the same convention
- 2.3 Part-Time Work Convention (175) of 1994 and Part-Time Work Recommendation (182) of 1994
- 2.4 The Home Work Convention (177) of 1996 and the Home Work Recommendation (184) of 1996
- 2.5 Maternity Convention (183) of 2000 and Maternity Protection Recommendation (191) of 2000.

For Public and Private Institutions

- 3. *Undertake policy review of other existing legislation and bills, and launch advocacy work with policymakers, with a view to addressing the gender gaps and biases of the law* and complying with the State's responsibility to promote, respect, protect, and fulfill women's rights guaranteed under CEDAW. Related to this, support bills that recognize gender equality or support women empowerment (e.g., rights and welfare of informal sectors, maternity leave for unmarried women in the government sector, anti-discrimination measures against LBGTs).
- 4. *Collect and maintain sex-disaggregated data in aid of policy formulation, planning of program, and other activities that are gender-responsive.* It is critical to address the need for sex-disaggregated data. Unless there is a determined and sustained effort to come up with sex-disaggregated data, it would be difficult to undertake studies and review of policies, programs, initiatives, and recommendations from a gender perspective.

5. *Conduct a sustained educational campaign on gender equality.* An indispensable component in the promotion of gender equality is gender-awareness building. Legislation is good, but it will not suffice. Toward this end, all public and private institutions should undertake a sustained educational campaign on gender equality, a view to creating an enabling institutional and social environment that ensures *de jure* and *de facto* equality between women and men.

Notes

- 1 This paper was prepared based partially on the initial output of the research, "Promoting Gender Equality at the Workplace: A Study of CBAs of Select Manufacturing and Service Establishments," under a faculty research grant from the Office of Vice Chancellor for Research and Development (OVCRD), UP Diliman.
- 2 The full title is "An Act Increasing Maternity Benefits in Favor of Women Workers in the Private Sector, Amending for the Purpose Sec. 14-A of Republic Act No. 1161, as Amended, and for Other Purposes.
- 3 CEDAW, art. 1.
- 4 The Philippines ratified two of the four International Labor Organizations (ILO) equality core conventions: Equal Remuneration Convention (100) of 1951, on December 29, 1953; and Discrimination (Employment and Occupation) Convention (111) of 1958, on November 17, 1960.
- 5 1987 Constitution, art. 13, sec. 14.
- 6 1987 Constitution, art. 13, sec. 3 (1).
- 7 1987 Constitution, art. 2, sec. 14.
- 8 Communication No. 488/1992: Australia. 04/04/94. CCPR/C/50/D/488/1992. (Jurisprudence). CCPR/C/50/D/488/1992. <http://www.unhchr.ch/tbs/doc.nsf/0/d22a00bcd1320c9c80256724005e60d5?OpenDocument> (accessed February 9, 2006).
- 9 House Bill 634, "An Act Prohibiting Discrimination on the Basis of Sexual Orientation and Gender Identity and Providing Penalties Thereafter," introduced by Representative Loretta Ann Rosales, is pending before the Thirteenth Congress.
- 10 Except for additional arguments and points raised, the discussion in this section is similar to those discussed in the author's article titled "Gender Equality Legislation: Addressing the Gender Issues of Conditions of Work and Welfare Facilities," published by the University of the Philippines' *Kasarinlan: Philippine Journal of Third World Studies* 21 (1): 92-123.

- 11 The full title is "An Act to Regulate the Employment of Women and Children, to Provide Penalties for Violation Hereof, and For Other Purposes.
- 12 Prof. Myrna S. Feliciano asserts that "although PD 442 (1974), otherwise known as the Labor Code, has a specific chapter dealing with the employment of women, some of the provisions embodied in RA 679 are not consistent with it and, thus, the older law remains unrepealed in certain parts. Furthermore, a general law and a special law on the same subject are statutes *in pari materia* and should, accordingly, be read together and harmonized if possible, with a view to giving effect to both." Prior to PD 442, PD 148 (1973) amended RA 679, providing that "the secretary of labor *may* by regulation require an employer to establish a nursery in the workplace for the benefit of ... women employees" (emphasis supplied). Subsequently, PD 442, before and after its amendment, contains a similar provision, except that it used the mandatory word "*shall*, by regulation, require any employer to establish a nursery in the workplace" (emphasis supplied).
- 13 Rep. Act No. 8980 (2000), sec. 3.
- 14 Implementing Rules and Regulations of Rep. Act No. 8187 (1996) for the Private Sector, sec. 5.
- 15 Revised Implementing Rules of DOLE and the Department of Health dated March 13, 1997, replacing the Implementing Rules dated August 5, 1996.
- 16 15 Phil. 391 (1910).
- 17 50 O.G. 9010-R (1953).
- 18 Rules and Regulations in the Implementation of Rep. Act No. 8972 (2000), sec. 19.
- 19 An interview with Juliet Alegarme, social welfare officer III, of the Women & Family Committee of the DSWD, on January 11, 2006 reveals that based on scattered information gathered through queries received from private firms, some firms grant three to four days of parental leave and considered the same as compliance with the law. According to Alegarme, in a lecture given to them by Atty. Sheila Uy of the Supreme Court, the speaker opines that parental leave of less than seven days is substantial compliance with the law. On the other hand, in BWC-WHSD Opinion No. 435 S. 2003 issued by Ms. Teresita Manansala, director IV of the Bureau of Working Conditions (BWC) of the DOLE, dated October 13, 2003, in reply to a query from Mr. Alex Ramos, assistant vice president of the University of Batangas, the phrase "not more than seven days" was interpreted to mean that the employee is entitled to a parental leave of up to seven days. It would all depend on the grantee if she or he would utilize or maximize the seven-day parental leave. Hence, it is the considered view of the BWC that the employer is required by law to grant up to seven working days when a solo parent demands or needs to leave for the purpose of enabling him or her to perform parental duties. This is in line with the Civil Service Commission (CSC) grant of seven-day parental leave under part 4 (1) of CSC Resolution 040284, dated March 22, 2004. The CSC Resolution, however, presents some problems in that the parental leave of seven days prevails over an existing or similar benefit under a government body or Collective Negotiation Agreement. By upholding the primacy of the law, it leads to an impairment of a contract validly entered into by the parties.

- 20 Labor Code, art. 157.
- 21 Labor Code, art. 134.
- 22 Labor Code, art. 83.
- 23 Labor Code, art. 91.
- 24 Labor Code, art. 130.
- 25 Except for additional arguments and points raised, the discussion in this section is similar to those discussed in the author's article titled "Gender Equality Legislation: Addressing the Gender Issues of Conditions of Work and Welfare Facilities," published by the University of the Philippines' *Kasarinlan: Philippine Journal of Third World Studies* 21 (1): 92-123.
- 26 CEDAW General Recommendation 19, par. 6.
- 27 G.R. No. 106341, September 2, 1994, 236 SCRA 280 (1994).
- 28 G.R. No. 124617, April 28, 2000, 331 SCRA 237 (2000).
- 29 Note that under section 3 (c) sexual harassment can also be committed by an officer against a fellow officer, or an employee against another employee. The original intent, therefore, is to include sexual harassment in a peer relationship. Consequently, under section 6 of SB 1632, persons liable for sexual harassment include employees, labor union leaders or members, customers, clients, and other persons transacting business within the employment environment. See *Record of the Senate* 4 (60): 320, March 8, 1994, Ninth Congress, 2nd regular session (1993-1994).
- 30 G.R. No. 124617, April 28, 2000, 331 SCRA 237 (2000).
- 31 Except for additional points raised, the discussion in this section is similar to those discussed in the author's article titled "Gender Equality Legislation: Addressing the Gender Issues of Conditions of Work and Welfare Facilities," published by the University of the Philippines' *Kasarinlan: Philippine Journal of Third World Studies* 21 (1): 92-123.
- 32 Maternity Protection Convention (3) of 1919 and Maternity Protection Convention (103) of 1952.

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Chapter 3

Gender Analysis of Philippine Laws on Microenterprise and Microfinance from the Perspective of CEDAW and Other International Instruments*

Rosalinda Pineda-Ofreneo, Ph.D.

Background

Concern for the economic rights and empowerment of women has been a main feature of international conventions and documents ratified by majority of the member-countries of the United Nations. Of particular relevance here are the UN Convention on the Elimination of Discrimination Against Women (CEDAW, approved in 1979) and the Beijing Platform for Action (BPA) issued by the Fourth World Conference on Women in 1995. The content and spirit of these international instruments have found their way into various Philippine laws and documents with specific focus on gender and women's concerns, particularly

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the *Philippine Plan for Gender-Responsive Development 1995-2025* and the *Framework Plan for Women*.

Aside from CEDAW, the Beijing Platform for Action, has very strong sections on "Women and Poverty" and "Women and the Economy." The strategic objectives under "Women and Poverty" are as follows:

- A1. Review, adopt and maintain macroeconomic policies and development strategies that address the needs and efforts of women in poverty.
- A2. Review laws and administrative practices to ensure women's equal rights and access to economic resource.
- A3. *Provide women with access to savings and credit mechanisms and institutions.*
- A4. *Develop gender-based methodologies and conduct research to address the feminization of Poverty.*

The strategic objectives under "Women and the Economy" include the following:

- F1. *Promote women's economic rights and independence, including access to employment, appropriate working conditions and control over economic resources.*
- F2. *Facilitate women's equal access to resources, employment, markets and trade.*
- F3. *Provide business services, training and access to markets, information and technology, particularly to low-income women.*
- F4. *Strengthen women's economic capacity and commercial networks.*
- F5. Eliminate occupational segregation and all forms of employment discrimination.
- F6. Promote harmonization of work and family responsibilities for women and men.

Although these provisions concentrate on economic rights and entitlements, they should be seen in relation to other provisions in the documents (specifically those pertaining to women's rights within the family and toward political participation), which reinforce and facilitate their realization.

During the Fourth World Conference on Women held in Beijing, the *Philippine Plan for Gender-Responsive Development 1995-2025* (PPGD) was launched by the National Commission on the Role of Filipino Women (NCRFW). PPGD is a thirty-year strategic plan that rests on the understanding that gender concerns, including women's increasing burden and marginalization, cannot be separated from the broader issues of development. The plan recognizes that discrimination is based not only on gender but also on class and ethnicity, and incorporates gender equity, women's empowerment, sustainable development, peace and social justice, democratic participation, self-determination, and respect for human rights in its vision (NCRFW 1995, 18).

The more recent *Framework Plan for Women* has a three-pronged agenda: economic empowerment, human rights, and gender-responsive governance, with basically the same vision as the PPGD. Under economic empowerment, the following are the objectives:

- To enhance sustainable access of women to capital, market, information, technology and technical assistance
- To enhance employment and livelihood skills of women, particularly in high-value-adding industries and agricultural activities
- To establish an enabling environment that will ensure effective implementation of policies for protection of women workers
- To increase awareness of women of their economic rights and opportunities
- To strengthen women's representation in economic decision-making bodies

Among the strategies mentioned to attain the first objective mentioned above is the improvement of credit-policy environment for women. The interventions listed are as follows:

1. Implementation of the Self-Employment Assistance-Kaunlaran (SEA-K) integrated program
2. Establishment of rural finance facilities
3. Opening up of lending windows for women in government financial institutions (GFIs)

4. Development of IEC programs on credit and enterprise development for women (NCRFW 2002, 24-25)

Since 1995, the Philippine Congress has passed several laws that have implications on women's situation in microenterprise and microfinance, two inextricably intertwined tracks. Among these laws are Republic Act (RA) 7882, An Act Providing Assistance to Women Engaging in Micro and Cottage Business Enterprises, and for Other Purposes (February 20, 1995); RA 8289, An Act to Strengthen the Promotion and Development of, and Assistance to Small and Medium Scale Enterprises, Amending for That Purpose Republic Act No. 6977, Otherwise Known as the "Magna Carta for Small Enterprises" and for Other Purposes (May 1997); RA 8425, An Act Institutionalizing the Social Reform and Poverty Alleviation Program, Creating for the Purpose the National Anti-Poverty Commission, Defining Its Powers and Functions, and for Other Purposes (December 11, 1997); and RA 9178, An Act to Promote the Establishment of Barangay Micro Business Enterprises (BMBEs), Providing Incentives and Benefits Therefore, and for Other Purposes (November 13, 2002).

Do these laws affirm the content and spirit of CEDAW, the BPA, and other international instruments? Moreover, do they fulfill the provisions of the PPGD and the Framework Plan for Women? What amendments could be proposed? And what additional policies could be advocated in the context of the current national and global economic and political environment? This paper seeks to answer these questions, even tentatively, based mainly on the CEDAW framework.

The CEDAW framework follows the *substantive equality approach*, which

is not simply concerned with equal treatment in law, but rather, with equality in terms of the actual impact of the law. A substantive definition of equality takes into account and focuses on diversity, difference, disadvantage, and discrimination. This approach recognizes difference between men and women but instead of accepting this difference as given, it examines the assumptions behind the difference in trying to assess the disadvantage resulting from it and to develop a "different

treatment” or a response that dismantles the disadvantage. It seeks to eliminate existing discrimination faced by disadvantaged groups at the individual, institutional, and systemic levels through corrective and positive measures. Its principle (sic) concern is to ensure that the law corrects the imbalance and impacts on the outcome by assuring equal opportunities, access and benefits for women. It doing so, it seeks a paradigm shift from “equal treatment” to “equality of outcomes.” (Partners for Law in Development 2004, 23-24)

Background and Context of This Review

An adequate and nuanced gender analysis of the said laws can only be conducted in the light of specific women’s issues and concerns arising from broader economic trends associated with globalization. These trends include the increasing recognition of the role of small and medium enterprises (SMEs) in the economy (coupled with the upward redefinition of microenterprises), the growth of the informal sector and the consequent informalization of female labor, and the commercialization of microfinance whose primary clients have always been women.

Increasing Recognition of SMEs, Upward Redefinition of Microenterprises

The strategic importance of SMEs in generating employment and economic growth, as well as in helping provide “a self-sufficient industrial foundation for the country” was first underscored in RA 6977, known as the Magna Carta for Small Enterprises, passed in January 1991. The law declared it to be “the policy of the State to promote, support, strengthen and encourage the growth and development of small and medium enterprises in all productive sectors of the economy, particularly rural/agri-based enterprises.” The law sought to develop the SME sector, primarily by requiring banks to set aside a fixed portion of their lending funds to SMEs for a period of seven years. It also created the Small and

Medium Enterprise Development (SMED) Council to coordinate efforts to enhance viability and growth of SMEs. The Small Business Guarantee and Finance Corporation (SBGFC) was similarly created “to source and adopt development initiatives for globally competitive SMEs in terms of finance, technology, production, management, and business linkages; and provide, promote, develop in scope and service various alternative modes of financing for SMEs” (HB 180, introduced by the Hon. Wilhelmino M. Sy-Alvarado, July 1, 2004).

The categories of SMEs under section 3 of RA 6977 were the following:

Micro	Less Than	Php 50,000
Cottage	Php 50,001 to	Php 500,000
Small	Php 500,001 to	Php 5,000,000
Medium	Php 5,000,001 to	Php 20,000,000

Republic Act 6977 was amended by RA 8289 in 1997. This new law added representatives from government and the private sector to the membership of the SMED Council. Banks were required to set aside their loan portfolio for SMEs for another ten years: 6 percent for small enterprises and 2 percent for medium enterprises.

SMEs under RA 8289 were classified as follows:

Micro	Less Than	Php 1,500,001
Small	Php 1,500,001 to	Php 15,000,000
Medium	Php 15,000,001 to	Php 100,000,000

Under the Social Reform and Poverty Alleviation Act (RA 8425), a microenterprise is categorized as having an asset size of Php 150,000 and below. This law was the outcome of one of the flagship bills of the Social Reform Agenda (SRA), adopted in 1994 under the Ramos administration. The SRA came out of the consultations conducted by the National Unification Commission (NUC) at various levels to push for the peace process. In these consultations, it was often repeated that war and conflict were inextricably linked to poverty, and to achieve peace, poverty must be addressed. The SRA was meant to uplift the country's poor and

marginalized sectors, and ensure their participation in this effort (Bennagen, n.d., 3). Thus RA 8425 mirrored this concern, and the definition of microenterprise, consequently, was consistent with the concern to address the needs of microentrepreneurs, many of whom, especially the women, were assumed to be in poverty.

Republic Act 9178 or the Barangay Micro-Business Enterprises Act of 2002 has a grand objective: “to hasten the country’s economic development by encouraging the formation and growth of barangay micro business enterprises, which effectively serve as seedbeds of Filipino entrepreneurial talents, and integrating those in the informal sector with the mainstream economy, through the rationalization of bureaucratic restrictions, the active intervention of the government especially in the local level, and the granting of incentives and benefits to generate much-needed employment and alleviate poverty.” The BMBE law, however, defined microbusiness as any entity with asset size of up to Php 3 million, a very controversial figure, which opens the possibility for millionaires to benefit from incentives at the expense of smaller microentrepreneurs.

Growth of the Informal Sector

The growth of the informal sector since the 1980s has been associated with economic downturns, the loss of formal jobs, and the growth of the service sector. Comparing 1999 and 2003 labor force data, the informal sector was estimated to have grown by 1.94 million during the period, while the formal sector lost 307,228 jobs (Leogardo 2004). Providing a broader context to this trend is the disturbing phenomenon of structural unemployment. The industrial sector—particularly manufacturing, which is supposed to produce the most number of jobs as the country progresses—has been stagnant at 14-17 percent since the 1960s; in 2003 this was at 15.7 percent (NCRFW 2004, chap. 2, 6). Agriculture showed a declining trend in employment (from 51.7 percent in 1980 to 37.0 percent in 2003), and services demonstrated increasing strength (from 32.9 percent in 1980 to 47.3 percent in 2003). As is well known, women are concentrated in the service sector, primarily small-scale retail trade, and community, social, and personal services. Industrial

stagnation, agricultural decline, and the growth of services (where low-quality, unprotected employment is concentrated) have been widely attributed to the impact of structural adjustment and trade liberalization programs on the Philippine economy and working people, with women and other vulnerable sectors of the population taking more of the brunt (Ofreneo 2004, 71-81).¹

If not for the informal sector, the Philippine economy would have gone under a long time ago. No matter how its magnitude and contribution are estimated, it is still predominant. Based on 2000 statistics from the Department of Labor and Employment (DOLE), there were 22.5 million people belonging to the sector, representing 75 percent of the total employed population of some 30.1 million, and 49 percent (11.03 million) of whom are female. They accounted for about half of the gross national product (GNP). A more conservative estimate, applying the residual methodology to the Labor Force Survey of the National Statistics Office (NSO), placed informal-sector workers at 20 million, 65 percent of total employed, compared to formal sector workers who numbered only 5.7 million, comprising 17 percent of total employed in 2003 (Leogardo 2004). Applying a gender perspective to data culled from the NSO, with the assumption that all own-account (self-employed) and unpaid family workers belong to the informal economy, the figure was reckoned at 15.631 million or 51.7 percent of total employed in 2002. Of this, 6.2 million or 39.7 percent were women. This 6.2 million comprised almost 53 percent of all employed women (NCRFW 2004, chap. 2, 18).

The International Labor Organization (ILO) describes the informal sector as having the following characteristics:

Very small scale units producing and distributing goods and services, and consisting largely of independent self-employed producers in urban and rural areas of developing countries, some of whom also employ family labor and/or a few hired workers or apprentices, which operate with very little capital or none at all; which utilize a low level of technology and skills; which therefore operate at a low level of productivity; and which generally provide very low and irregular incomes and

highly unstable employment to those who work in it. They are informal in the sense that they are for the most part unregistered and unrecorded in official statistics; they tend to have little or no access to organized markets, to credit institutions, or to many public services and amenities; they are not recognized, supported or regulated by the government; they are often compelled by circumstances to operate outside the framework of the law and even where they are registered and respect certain aspects of the law they are almost invariably beyond the pale of social protection, labor legislation and protective measures of the workplace. (1993)

Women in the Informal Sector

Why is there an informal sector in the first place and why are many women part of it?

The informal sector has existed since colonial times, providing livelihood in agriculture, crafts, commerce, and other services. Even with the emergence and growth of the formal sector in manufacturing, a section of this has always been tied up with the informal sector, mainly through the subcontracting chain. This link is marked particularly in the garment and handicraft industries. It serves the purpose mainly of formal-sector exporters and employers (both foreign and local) that are able to tap a vast reservoir of cheap and unprotected labor to work on the whole or parts of their products through their connections with the lower end of the subcontracting chain. The informal sector expands considerably during times of crises, when formal-sector employment declines and workers who are either displaced or who can no longer be absorbed turn to other means of livelihood in order to survive.

On November 8, 2002, through the lobbying efforts of informal workers' representatives, the National Census and Statistical Board adopted the following definition of the informal sector in the Philippine context:

Units engaged in the production of goods and services with the primary objective of generating employment and incomes

to the persons concerned. It consists of household unincorporated enterprises that are market and nonmarket producers of goods as well as market producers of services.

These enterprises are operated by own-account workers, which may employ unpaid family workers as well as occasional, seasonally hired workers.

These enterprises may also be owned and operated by employers, which may employ less than ten employees on a continuous basis.

This definition includes homeworkers; microentrepreneurs; street vendors and peddlers; drivers and operators of taxicabs, jeepneys, tricycles, and other public conveyance; petty retailers; barter traders; small-scale noncorporate construction workers; entertainers; beauticians; and massage therapists.

For women, lack of remunerative employment in the formal sector is a consequence of both gender discrimination and broader economic trends. May of them are own-account or self-employed workers operating small *sari-sari* or variety stores and other microenterprises. Women predominate among unpaid workers—mostly in agriculture, in wholesale/retail trade, and in community social and personal services. Not to be forgotten are the working children estimated at four million in 2001, of whom 1 million or 37.5 percent are girls (NCRFW 2004, chap. 2, 19). Both women and girls in the informal economy combine domestic tasks with income-generating work to sustain their families. They have very irregular incomes, which are usually meager, and generally have no access to resources and to social protection.

The 1995 Urban Informal Sector Survey conducted in Metro Manila by the NSO as part of the ILO Interdepartmental Project found 292,581 households as part of the sector, 37 percent headed by women. Over 600,000 women were informal-sector operators, most of them engaged in “women’s work”: “sewing garments, laundry washing, sewing products from *retaso* (surplus rugs from the garment industry), and selling food or small merchandise on the street or in the markets.” About 57 percent of

all female informal-sector operators were in trade. Another ILO-supported NSO survey conducted in 1993 showed that there were 287,391 homeworkers in Metro Manila (out of 6.437 million nationwide), 63.5 percent of them women in the garment, food, footwear, and other industries (Joshi 1996, 4). A small survey of 182 urban poor women conducted by the Social Development Index in 1995 showed greater incidence of poverty (92 percent) among them because they were single parents or because of meager income. They were responsible for family survival, forcing them to seek whatever odd jobs were available. Due to the pressures of childrearing, they preferred to work at home or nearby; failing in this, they had to make informal arrangements with neighbors or relatives (Joshi 1996, 4-5).

Women in Microenterprises: Problems of Inclusion and Identification

Many women in the informal sector are engaged in microenterprises as operators or as workers. One of the major problems in contextualizing women involved in this area is if and how they are covered by the varying delimitations of microenterprise, small (including micro and cottage) business enterprise, and microbusiness, which differ under the laws in question since each law has its own intentions for providing a specific delimitation. Under RA 7882, a micro or cottage enterprise is one with a daily inventory of goods with a value of not more than Php 25,000, or with any business equipment with *a book value of not more than Php 50,000*.² The Magna Carta for Small and Medium Enterprises (RA 8289, 1997) under section 3 originally provided for three SME categories based on total assets: *micro – less than or equal to Php 1.5 million*; *small – above Php 1.5 million to Php 15 million*; and *medium – above Php 15 million to Php 60 million*.³ The BMBE Act of 2002, the most recent of these laws, declares that enterprises with total assets of *Php 3 million and below* can qualify as microbusiness.

The history of the said legislation may have a bearing on the problem. In 1995, the year of the Fourth World Conference on Women, which culminated in the issuance of the Beijing Platform for Action, the Ramos

administration was primed to come out with women-specific legislation, one of which is RA 7882. This law, though meant for women, has many infirmities (which will be pointed out later). One of the limitations is that its ceilings for borrower eligibility (Php 50,000 book value of equipment)⁴ and loanable amount (Php 50,000) are too low, effectively screening out women entrepreneurs who would like to upscale. According to one source, “deliberations on the act were limited to the potentials of women engaged in microenterprises” thus defined, and did not go into the reasons why women were disadvantaged, compared to men, when it comes to access to credit. As Cecile Iguiron Fantastico said, “This could have been a good opportunity to make senators aware that, even among those who could afford to set up their own businesses and be entrepreneurs, women and men have different concerns/needs” (2002).

The very low ceilings assigned by RA 7882 can be contrasted by prevailing definitions (laid down by the Small and Medium Enterprise Development [SMED] Council) of micro, cottage, small, and medium at the time (as cited in Pineda-Ofreneo et al. 1996):

Type of Enterprise	Capitalization	No. of Employees
Micro	< Php 150,000	1-4
Cottage	Php 150,000 - Php 1.5 M	5-10
Small	> Php 1.5 M - Php 15 M	11-99
Medium	> Php 15 M - Php 60 M	100-199

Even then, women’s advocates were already saying that the concentration of women as entrepreneurs and as workers is at the microenterprise level. Capitalization at this level is less than Php 150,000; employment usually ranges from one to four, mostly family members; and technology is simple, not formally learned, labor-intensive, hand-operated, often homemade, and relying on indigenous or local resources (Pineda-Ofreneo et al. 1996). According to Illo, women numbered about 70 percent of microentrepreneurs: “Working with very little capital, they run small retail stores from their homes or stalls in public markets; hawk fresh food produce or operate sidewalk *carinderia*; buy and sell agricultural produce; accept laundry and cleaning jobs; trim, curl, or dye hair; offer facials,

manicure and pedicure services; and sew and repair clothes. They also include those who run small pig-raising or poultry business, and those who accept subcontracted jobs as homeworkers” (1998).

The next level where women entrepreneurs are most likely congregated is the cottage industry, which has a capitalization of Php 150,000 to Php 1.5 million, and employment size of five to ten workers. The ranks of women entrepreneurs thin out progressively at the higher levels: small enterprises, with capitalization ranging from Php 1,500,001 to Php 15 million, and with workers numbering from eleven to ninety-nine; and medium enterprises, with capitalization from Php 15,000,001 to Php 60 million, and 100-199 workers. A comparative phenomenon can also be observed in cooperatives, where women’s participation, leadership, and control are strong only at the smallest units and tend to weaken at the bigger ones.

When the Magna Carta for Small Enterprises (RA 8289) amending RA 6977 was passed in 1997, the categories were amended thus:

Type of Enterprise	Capitalization	No. of Employees
Micro	< Php 1.5 M	1-9
Small	> Php 1.5 M - Php 15 M	10-99
Medium	> Php 15 M - Php 60 M	100-199

What are the implications of this change in categorization? Entitlements to mandatory credit availment under section 13 of the law were specifically for *small and medium enterprises*; *microenterprises* were not clearly identified as beneficiaries, even if the category was already upscaled to all enterprises below Php 1.5 million in assets. Women entrepreneurs concentrated at the microlevel would therefore be effectively excluded. Aggravating the situation was the financial crisis that hit the country in 1997, when cheap credit for women fast disappeared (Illo 1998). This negative development was reinforced by the stereotyping of women as recipients of microcredit and not of bigger loans that men are entitled to. “Apart from higher interest rates, the financial crisis has also dried up the already limited lending windows for microentrepreneurs.”

The BMBE law defined microbusiness as anything up to Php 3 million. At this level, the benefits to be derived can easily be cornered by millionaires, to the detriment of those who are truly poor, women first of all. The process of passing the law seemed to be problematic too since many sectors, especially labor, claimed to have not been consulted.

On January 16, 2003, the SMED Council passed a resolution classifying micro, small, and medium enterprises thus:

Type of Enterprise	By Asset Size	By Employment
Micro	up to Php 3 M	1-9
Small	> Php 3 M - Php 15 M	10-99
Medium	> Php 15 M - Php 100 M	100-199

The problem in this new categorization is how to locate the women-led enterprises so that they can be partners in interventions meant to empower them. Government has a very general "National SME Agenda" to be implemented through SME Centers, with the following components: financing, human resource development or entrepreneurship training, market development, product development, and advocacy for an enabling environment. As one critic observed, "Government policies and programs, however, have conflated the informal enterprises of the poor (microenterprises) with the formalized 'micro' businesses, and small and medium enterprises of the non-poor, viewing all of them as a seamless continuum. This has created problems as, with the possible exception of microfinance programs, the policies have disadvantaged the poor, at the same time that these have failed to address the issues of the SME sector" (Ilo 2005, 7).

The 2003 census on business establishments showed that micro, small, and medium enterprises "account for 99.6% of the total establishments [numbering 810,362], of which 91.75% were microenterprises, 7.5% were small enterprises and .35% were medium enterprises" (BSMED 2005).

The assumption is that microenterprises here, comprising 91.75 percent of all enterprises, have assets of up to Php 3 million. Which among these enterprises are women-led? And how can they be identified for assistance, which could put them at par with those of men, given gender-specific constraints?

Women in Microenterprises: Issues and Concerns

The ILO identified gender-specific constraints that women microentrepreneurs experience, largely originating from their sociocultural environment. Among these constraints, the following are true in the Philippine context:

- behavioral barriers, e.g., women have little self-confidence
- role barriers, e.g., conflicting role demands and time constraints
- social and cultural barriers, e.g., the fact that women are supposed to fulfill other roles; restrictions as to the choice of sector; lack of family support; lack of mobility
- educational barriers, e.g., women have ... received a biased education and usually have limited access to vocational training opportunities
- occupational barriers, e.g., women have fewer opportunities in the formal sector of the economy for skill development
- infrastructural barriers, e.g., access to credit, technology, support services, land, and information is systematically difficult for women
- legal barriers, e.g., independent legal action is limited for women (ILO, n.d., 4, 5)

Most women's microenterprises are in the informal sector and are therefore unlicensed, unregulated, and untaxed. These conditions, however, also make them vulnerable to police and other forms of harassment. Urban-poor women engaged in hawking and other commercial activities, for example, are often victims of authorities who displace them not only from their sites of livelihood but also from their habitat.

Women realize additional income and much-needed employment for family members, who may be paid or unpaid, from microenterprises. Production often is done at home, where women are able to combine reproductive and productive works because of flexible time and

involvement. This advantage, however, is also a disadvantage. An ILO document explains:

As the economic activity is most often undertaken in addition to household chores and, in rural areas, to agriculture, women are not able to dedicate continuous attention to it. There is a lack of clear-cut division between household and business, both in terms of allocation and financial flows (re-investment is often subject to prior fulfillment of the family's basic needs). The total workload is heavy.

The owner-operator performs all the functions herself. The marketing and managerial functions are embryonic. (ILO, n.d., 5-6)

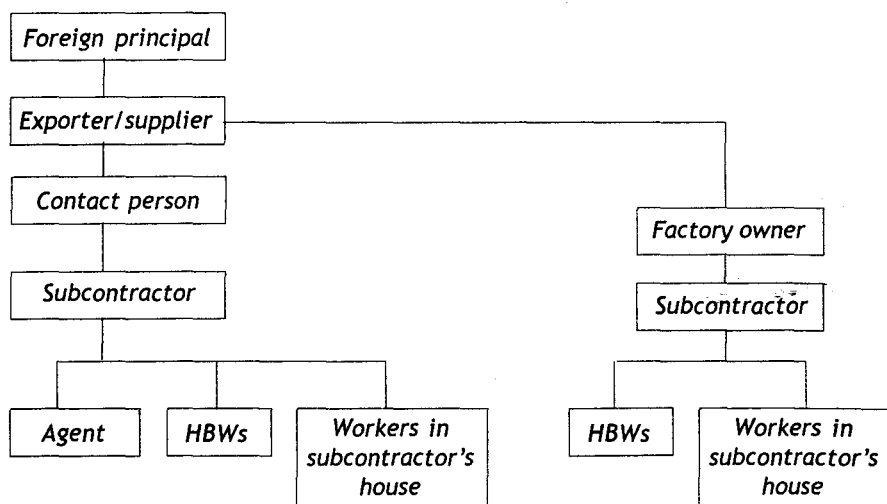
Through their enterprises, women provide essential goods and services to low-income groups in the local market as well as to other industries (tourism, handicrafts, and other goods for domestic and export markets). Their problems, however, include: lack of capital and victimization by usurers; lack of management skills; lack of access to/control of technology (production, design, equipment, etc.); limited supply of raw materials and other needs due to inability to purchase in bulk; lack of control over their revenues, especially when they cannot market their own produce; no formal recognition and support, which leaves them open to harassment; and competition for and limited access to profitable markets. As regards the latter, they suffer from vulnerability to fluctuations in domestic and world market, competition with foreign products, and nonpayment of goods delivered/non-acceptance of goods due to real or fabricated quality-control issues. In addition, government and industry organizations are often blind to gender issues and neglectful of women's concerns, so often plainly manifested by the dearth of sex-disaggregated data on microenterprises.

Such problems lead to low capability for upscaling and upgrading to higher stages of business development. Microenterprises are often "nongrowing" ones, dependent on unpaid family labor. Data show that only one percent of microenterprises launched in 1990 became small enterprises after five years (Ofreneo et al. 2002, 36).

Microenterprises can also be exploited by larger firms, which can just order from them at low prices or subcontract to them certain stages of the

production process to save on labor costs or to weaken the bargaining leverage of regular and/or unionized workers. At this point it should be emphasized that the formal and informal sectors are often linked through the subcontracting chain earlier mentioned, and the distinctions between them can often be blurred particularly toward the bottom of the chain. This chain is also affected, often negatively, by the vagaries of international trade. In the garment industry, for example, a foreign principal based abroad (a large enterprise) could order from a Manila-based exporter (a medium enterprise), which in turn could subcontract to a province-based factory (a small enterprise). This factory could order from outlying barangays, where agents could tap the productive capacity of microenterprises and/or home-based workers (HBWs). If orders from abroad cease to come, many would be displaced, especially those at the bottom who are usually the first to go.

FIGURE 1.
The Subcontracting Chain



Microenterprises, therefore, are of different categories. There are the relatively “free-standing forms,” which are not dependent on other entities for capital or for markets. Then there are those that are at the bottom of the subcontracting ladder, supplying larger firms with raw materials, components, or finished products at very low cost and often at the expense

of unprotected labor: women, homeworkers, child laborers, indigenous craftspersons, etc. A special category of microenterprise is the social enterprise, which could be a group enterprise and/or a cooperative, community-based, and anchored on solidarity, mutual assistance, and social service rather than merely profit-oriented.

The other side of the story of microenterprises is that of the workers. Adjustments to increasing competition under globalization have forced microbusinesses to adopt labor-cost-cutting flexibilization measures, which have a profound impact on women workers in both the formal and informal sectors. Among these measures that intensify the workload and imperil the security of workers are as follows:

- reducing the core of permanent workers
- increasing temporary and casual employees
- increasing use of cheap labor: apprentices, migrants
- subcontracting production and services outside formal workplaces
- increasing number of shifts per day, and overtime
- increasing use of piece rates
- deunionization or controlling unions

More women have been shunted to the informal sector due to layoffs in vulnerable industries, such as garment, and to a general lack of remunerative employment opportunities for women in the formal sector because of gender discrimination. Women workers in the informal sector suffer from the following:

- lack of social protection due to absence of clear employer-employee relations (no medical, maternity, and other benefits; no retirement pension)
- irregular and unstable employment dependent on fluctuations in labor demand
- exposure to occupational and environmental health hazards, since their working and living conditions can hardly be monitored
- vulnerability to super-exploitation and abuse, such as below-minimum wages, nonpayment of work done by runaway subcontractors, etc.

- low awareness of their rights as workers and as women
- low levels of organization

It must be stressed, however, that in the same way that microentrepreneurs are not of one type, workers in microenterprises are also not homogeneous. There are wage workers in formal or registered microenterprises who could be organized or unorganized, and who may or may not enjoy their basic legal entitlements. Such workers would under the BMBE Law be negatively affected by the provision exempting microbusinesses from the Minimum Wage Law. There are the unorganized wage workers in informal microenterprises who earn below the minimum wage, have no social protection, and are subjected to occupational hazards. By far, one of the largest categories, if statistics are to be the basis,⁵ is composed of unpaid family workers who work for family-based microenterprises. Such workers can be considered disadvantaged because they are unpaid (and in the case of women and girls, this contributes to the lack of valuation of female labor as well as to the persistence of child labor), but in another sense can be considered better positioned than other workers who are not related to their employers because family relations provide a positive and affective context to work. Still another large category is that of the self-employed or own-account workers—microentrepreneurs who are also workers themselves.

Ensuring the rights under CEDAW of these various categories of workers is not a simple matter. Specific interventions for particular categories are needed to be crafted.

Commercialization of Microfinance: Impact on Women

The Social Reform and Poverty Alleviation Act (RA 8425) defines microfinance thus:

A credit and savings mobilization program exclusively for the poor to improve the asset base of households and expand the access to savings of the poor. It involves the use of viable alternative credit schemes and savings programs, including the extension of small loans, simplified loan application procedures,

group character loans, collateral-free arrangements, alternative loan repayments, minimum requirements for savings, and small denominated savers' instruments.

The way microfinance has evolved in the country and the way the primary apex institution in charge of its delivery under RA 8425—the People's Credit and Finance Corporation (PCFC)—is carrying out its mandate, however, put its antipoverty orientation into question. The silence on gender in its definition and purpose is also portentous of the insensitivity to women's needs and interests in microfinance practice, despite the fact that the overwhelming majority of microfinance clients are women.

Microfinance in the Philippines began "as a social development initiative to alleviate poverty, and ten years after, has moved from the marginal to the mainstream, towards commercialization and microbanking, focused primarily on the delivery of credit to the poor" (Miranda 2003, 2). This has given rise to a contradictory phenomenon wherein the initial focus on poverty alleviation "has slowly shifted to a strong focus on institutional financial viability and the pronouncement by private practitioners that their operations do not, and cannot, as of yet, serve the ultra-poor" (ibid, 36).

The 2002 International Fund for Agricultural Development (IFAD) evaluation of the PCFC stressed that "the most fundamental innovation of the project lies in its commercial approach and the mainstreaming of microfinance." Here, the role of rural banks and NGO-turned rural banks is considered to be decisive. John Owens, country director of the MABS project, said that the commercialization of microfinance, as evidenced by the predominance of private, profit-oriented institutions involved in the sector, makes the Philippine experience vastly different from that of countries in Latin America and South Asia where nonprofit institutions were more the rule.

The commercialization of microfinance has opened the doors to prohibitive and uncontrolled interest rates (averaging 30-40 percent), which comprise a heavy burden on women microentrepreneurs still in poverty. Under PCFC's present institutional strategy, loans for the poor shall be

provided only through their qualified conduits (rural banks, cooperative rural banks, thrift banks, NGOs, coops) called MFIs (microfinance institutions), at a wholesale mode of lending with a pass-on rate of at least 12 percent. This means that women in poverty will need to access their loans from such qualified conduits at a higher interest rate that is not subject to any regulation, even if the rate falls above the market rate (could be as high as 40 percent).

The commercialization of microfinance has also led to the predominance of banks whose primary interest lies in earning profits and, only incidentally, in poverty alleviation, much less women's empowerment. It has led to the neglect of the ultra poor since only the enterprising poor are generally considered to be bankable. With the prodding of external forces such as the United States Agency for International Development (USAID) and other influential foreign institutions, it seeks to place the private sector in a leading role, and the government to a secondary, facilitative role, in a situation where government must still serve the needs of the ultra poor. The thrust toward privatization is contained in RA 8425, in which reference is made to the eventuality of the PCFC being privatized.

Microfinance as practiced also does not ensure graduation or exit of clients from the poverty cycle, given the very low average size of loans provided. Republic Act 7882, which pegs loan ceilings at Php 50,000, exemplifies this tendency.

Gender Issues in Microfinance

Many of the negative gender effects of microfinance have been documented by internationally circulated studies mainly on South Asian and African experiences. Among these are husbands' appropriation of their wives' loans, with the latter reduced to ensuring repayments; husbands' taking control of enterprises financed by their wives' loans; husbands' withdrawal of household support on the assumption that their wives now have money; wives cutting down expenditures for food and health for themselves and their children to repay their loans at all costs, etc. (Mayoux and Sabharwal, n.d.).

In the Philippines, during the First National Workshop Conference on Promoting Gender-Responsive Microfinancing Programs held in 1999, it was pointed out that microfinance is still not sufficient and responsive enough to address women's needs, due partly to budgetary constraints on the part of the state and to gender discrimination. Women, unlike men, have to prove themselves creditworthy before they are able to receive amounts large enough to ensure sustainability of their livelihood initiatives. The transaction and other costs in terms of time and effort are very high for women, considering their minuscule financial gain. The obligation to repay the loans at any cost (to meet the lending agency's repayment target of almost 100 percent) has forced women with failed livelihood projects to work harder and longer, sometimes in jobs that they never had to do before; e.g., doing their neighbors' laundry. Emphasis on efficiency goals such as high repayment rates is based on the assumption that women are good payers; there is no or little concern for women as independent persons who can empower themselves through awareness-raising and capacity-building programs, which ideally should accompany micro-lending activities.

Furthermore, the emphasis on increased productivity through income-generating projects financed by microcredit, without taking into account women's domestic and nonmarket work, can merely lead to increasing women's work burden. And they do not necessarily enjoy the benefits of their added labor. The income-generating or livelihood projects made possible by microfinance oftentimes merely perpetuate the gender division of labor, with women doing work akin to or compatible with what they already do at home (Pineda-Ofreneo 1999).

A study on gender and microfinance business choice validates this observation, with women borrowers choosing low-risk and low-return sari-sari store and piggery projects because these "can be incorporated in daily family life." Thus, "while microfinance projects offer borrowers additional streams of income that contribute to household consumption, they are not true entrepreneurial projects with the ability to transform communities' and borrowers' lives" (Coke 2001). A subsequent survey of microfinance client respondents commissioned by the NCRFW in 2003 again showed that majority used their loans for marginal, low-growth projects such as

consumer trading (sari-sari stores, market stalls, buy and sell), animal raising, and vegetable farming (Punla/NCRFW 2004).

Provision of microfinance without social preparation, capability building, and gender-awareness programs may also do more harm than good in terms of adding to women's work burden, increasing violence against women as men seek to reassert their power with the perceived threat of their wives' economic ascendancy, and eroding social capital as women who fail to repay their loans for one reason or another feel they are no longer welcome to participate in community-based groups (Pineda-Ofreneo 1999).

Because of the small size of available microfinance resources for organized women's groups, there is tension between the goals of equity and sustainability because the amounts that tend to be distributed equally to all members of the group often turn out to be too small to make a livelihood initiative viable. Many of the microfinancing programs are donor-driven and donor-dictated, reducing women to being passive beneficiaries rather than enabling them to be active agents of development (Pineda-Ofreneo 1999). As another source elaborates:

- More males occupy managerial positions, most of whom have no gender perspective.
- Women's roles are limited to loan collection while very few occupy managerial positions.
- Most finance projects do not have the capacity and resources to develop, implement, or monitor women's projects.
- Most financing projects do not recognize the multiple roles of women, which limit their participation for leadership roles (NCRFW 2000).

Gender Analysis of Specific Laws and Their Implementation

The following discussion covers the provisions of the specific laws; points out the gender gaps, biases, and related issues in each law; and proposes corresponding amendments.

Republic Act 7882

An Act Providing Assistance to Women Engaging in Micro and Cottage Business Enterprises, and for Other Purposes (February 20, 1995)

According to RA 7882, the government financial institutions (Land Bank of the Philippines [LBP], Development Bank of the Philippines [DBP], SBGFC, etc.) are mandated to set aside at least 5 percent of their loan portfolios to women with existing micro and cottage business, with loan ceilings not to exceed Php 50,000. Good track record is emphasized as a precondition of the loan. Likewise, any woman who does not have the track record but who has been certified by TESDA or any government-accredited training institutions as eligible to operate a micro and cottage business with a maximum capitalization of Php 25,000 is covered under this Act.

Gender and Other Issues Re Provisions of RA 7882*Section 1. Objective of the Act*

This is simply stated as “to provide all possible assistance to Filipino women in their pursuit of owning, operating, and managing business enterprises.” This is a very straightforward statement that does not link the assistance to any gender equality or women-empowerment goal.

Section 3. Women with Existing Micro and Cottage Business

The requirement in this section that borrower’s daily inventory should not be more than Php 25,000 and that the book value of her equipment should not exceed Php 50,000 disqualifies (theoretically, at least) women entrepreneurs who may have assets of more than Php 50,000 but not more than Php 150,000 (the latter amount is mentioned as the limit in RA 8289, the Social Reform and Poverty Alleviation Act).⁶ The ceiling for loanable amount (Php 50,000) is likewise too small. Recent studies on the impact of microfinance show that borrowers can break out of the poverty cycle only after borrowing at least Php 54,000. The ceiling should be raised to at least Php 300,000 (some say Php 500,000) to enable

women entrepreneurs to upgrade, upscale, and create more paid employment (consultation with homeworkers and other informal workers' NGOs, January 14, 2006).

Section 7. Assurance of Loan Availability

Mandatory and measurable assistance to women under the law is limited only to credit (through this provision allocating 5 percent of total loanable funds of GFIs). But studies show that multiple interventions are required so that women's enterprises can become sustainable and truly empowering. Providing credit is usually insufficient. There is need for microinsurance, capability building (entrepreneurship development), marketing and promotion, gender awareness, leadership, and community-networking seminars.

Implementation Issues

The target women entrepreneurs (women in poverty) find it difficult to access; loan ceilings applied inconsistent with law

The Development Bank of the Philippines established the DBP Financing Program for Women Entrepreneurs as mandated by RA 7882, but the accreditation and loan eligibility criteria are quite stringent. Application procedures and requirements are also formidable. For example, the checklist includes biodata of applicants/major stockholders, certificate of registration of business, audited financial states and income tax returns (for last three years), projected financial statement, assumptions used in the projection, etc.

Data from the DBP as acquired for an official NCRFW report provide contradictory figures, showing that actual loan ceilings are inconsistent with the law, which limits loans to Php 50,000 and below: "From 1998 to 2001, an increasing number of women acquired DBP loans (9,692 by 2001). Average loans amounted to more than P125,000 in 1998 and 1999, more than the limits for the priority groups, but were scaled down to P14,000 to P15,000 in the next two years. Land Bank loans, in turn, are retailed through conduits of 'women accounts,' which average no less than P900,000 per account" (NCRFW 2004, chap. 2, 33).

Information on compliance is difficult to obtain

Information on the compliance of GFIs as regards the 5 percent minimum allocation is not readily available from the Bureau of Small and Medium Business Development of the Department of Trade and Industry (DTI), the implementing bureau for this law. Data provided are sourced only from the DBP. There are other GFIs that should be monitored. When the NCRFW asked for an update on the implementation of the Land Bank's microfinance program, the vice president of the program management department said, "We regret, however, that we cannot disaggregate from the Bank's existing data the information on women clients in the last three years, by geographical location, by purpose/specific use of the money and the success rate of women who availed [themselves] of microfinance from the Bank" (letter dated August 8, 2005).

Proposed Amendments and Other Recommendations

- For section 1, reword objective to read thus: It is hereby declared to be the objective of this Act to provide all possible assistance to Filipino women in their pursuit of owning, operating, and managing small business enterprises *toward the promotion of their economic rights and independence*.
- For section 3, place capitalization ceiling for borrowers at Php 150,000.⁷ Place loanable amount ceiling at least at Php 300,000.⁸
- Add a section providing other forms of assistance and support systems, besides credit.
- Add a section making reporting mandatory for GFIs.

To improve implementation, the following are recommended:

- Ensure monitoring of compliance
- Microfinance institutions engaged in affirmative action for their women borrowers should be prioritized as conduits of GFIs for loans provided for under RA 7882.
- Make access requirements less stringent and more friendly to women-led enterprises in the informal sector.

Republic Act 8289

An Act to Strengthen the Promotion and Development of, and Assistance to Small and Medium Scale Enterprises, Amending for that Purpose Republic Act No. 6977, Otherwise Known as the “Magna Carta for Small Enterprises” and for Other Purposes, 1997

Republic Act 8289 originally provided for three SME categories based on total assets: *micro – below or equal to Php 1.5 million*; *small – above Php 1.5 million to Php 15 million*; *medium – above Php 15 million to Php 60 million*.⁹ The main feature of the law provides that all lending institutions, public or private, “shall set aside at least 6 percent and at least 2 percent for small and medium enterprises, respectively of their total loan portfolio.” In addition, credit accommodations to these SMEs are to be given by the SBGFC, a government financial institution.

Gender and Other Issues Re Provisions of RA 8289

Section 4 (under Section 2) on Eligibility for Government Assistance

There is no cross-reference to RA 7882, which makes women borrowers with equipment book value Php 50,000 and below eligible for government assistance.

Section 5 (under Section 3) on Guiding Principles

There is no mention of gender equity, encouraging and assisting women-led enterprises.

Section 6 (under Section 4) on the Creation of the Small and Medium Enterprise Development Council

Gender-based concerns are not part of the mandate of the SMED Council.

Section 7 on Composition (of the Council)

There is no mention of gender balance in its composition, or assuring representation from women-led enterprises, informal sector, etc.

*Section 11 (under Section 8) on the Creation of the Small Business
Guarantee and Finance Corporation*

Again, gender-based concerns are not part of the mandate of the SBGFC. There is no mention of women's participation in the board.

Section 13 (under Section 9) on Mandatory Allocation of Credit Resources..

This requires lending institutions to provide specific percentages of their lending portfolios (6 percent to small, and 2 percent to medium). There is no mention at all of microenterprises as beneficiaries of this mandatory allocation, thereby effectively excluding them. This exclusion is confirmed by the July 2005 *Small and Medium Enterprises Statistical Report* issued by the Bureau of Small and Medium Enterprise Development, which has compliance figures only for loans to small and medium enterprises (1991-2004).

Again, provision of credit, which has a measurable index of compliance (specific percentages of lending portfolio), seems to be the only form of mandatory assistance to SMEs.

Proposed Amendments to RA 8289 and Its IRR

- Reiterate relevant provisions of RA 7882 in section 4.
- In section 13, provide for specific credit entitlements of microenterprises—with asset size of Php 150,000 and below, above Php 150,000 to Php 1.5 million, and above Php 1.5 million to Php 3 million—in the 6 percent mandatory credit allocation of all credit institutions. Prioritize (give bigger share) to the smaller enterprises and to women-led ones so that the latter can overcome their disadvantages vis-à-vis the bigger, men-led enterprises.
- In section 5, add as guiding principle gender equity and support for women-led enterprises. Include gender-based concerns in the mandates of the SMED Council and the SBGFC.
- In section 7, ensure that a specific percentage (at least 30 percent) of SMED council membership comprise women, and assure representation of women-led and

informal-sector enterprises; provide for women's participation in the SBGFC board.

- Add a section providing other forms of assistance—microinsurance, capability building (entrepreneurship development, technology transfer), gender awareness, leadership, community networking, marketing, promotion, and business matching—to SMEs in general, and to women-led enterprises in particular; include these in the SMED Council and SBGFC mandate.

Republic Act 9178

An Act to Promote the Establishment of Barangay Micro Business Enterprises (BMBEs), Providing Incentives and Benefits Therefore, and for Other Purposes (November 13, 2002)

Republic Act 9178, known as the Barangay Micro Business Enterprises Act of 2002, is based on “the policy of the State to hasten the country's economic development by encouraging the formation and growth of barangay micro business enterprises which effectively serve as seedbeds of Filipino entrepreneurial talents, and integrating those in the informal sector with the mainstream economy, through the rationalization of bureaucratic restrictions, the active intervention of the government especially in the local level, and the granting of incentives and benefits to generate much-needed employment to alleviate poverty.”

Any business enterprise with capitalization of up to Php 3 million, engaged in the production, processing, or manufacturing of products or commodities, including agro-processing, trading, and services, can avail itself of the credit facility under the BMBE program. The loans can be secured from any of the authorized GFIs (LBP, DBP, SBGFC, PCFC, GSIS [Government Service and Insurance System], SSS [Social Security System]).

Section 2 on Declaration of Policy

There is no mention of gender equality and promotion of women's economic rights as part of the policy goal. Likewise, there is no mention of need to assist or upgrade informal-sector enterprises (majority of which are women-led).

Section 3 on Definition of Terms

The BMBE may be owned by an individual, partnership, cooperative, corporation, association, or other entity with legal personality, or registered under Philippine laws with assets up to Php 3 million. Although it is implied that women-led enterprises are covered by this definition, in actual reality, it is not assured that they would benefit equally. The principal beneficiaries could well be the more highly capitalized male-led enterprises that would thereby be able to avail themselves of tax exemptions, government guarantees, and exemptions from the minimum-wage law. The Php 3 million capitalization ceiling could then actually divert benefits meant for the poor by broadening the category of beneficiaries to include those in higher income/asset brackets.

This provision assumes that all BMBEs with assets up to Php 3 million have the same needs and interests. It does not give particular consideration to women-led enterprises, family-based enterprises, and informal-sector enterprises, predominantly with asset size of Php 150,000 and below. It does not contain any "independence clause" to make sure that the BMBE is not affiliated with larger concerns. It exempts many taxable enterprises from paying taxes, which could result in Php 200 billion loss per year, according to the Department of Finance (*Manila Times*, March 8, 2004).

Section 5 on Who Are Eligible

There is no mention of "women and men," to ensure specific attention to and inclusion of women.

Section 6 on Transfer of Ownership

There is no mention of the need to track changes of ownership by sex, asset size, etc.

Section 7 on Exemption from Taxes

The level of tax exemption is not graduated based on asset size. This will result in big revenue losses for both national and local governments, which explains why many of the latter are not very enthusiastic about the

law's implementation. Such revenue losses will have implications on the capacity of government units to provide social and other services to women and the poor.

Section 8 on Exemption from Minimum Wage Law

This withdraws protection from women workers, therefore violating article 11 of CEDAW and legitimizing massive exploitation. Women, trade union, and informal-worker sectors claim not to have been consulted in the formulation of this provision.

Section 9 on Credit Delivery

There is no mention of the special credit window for women with existing micro and cottage business (with daily inventory of goods of not more than Php 25,000 or with any business equipment with a book value of not more than Php 50,000) as provided for in RA 7882, which states under section 7 on "Assurance of Loan Availability" that "[t]here shall be earmarked from the loan portfolio of all government financial institutions such amount of money equivalent to five percent (5%) thereof for purposes of implementing the provisions of this Act."

Section 10 on Technology Transfer...

There is no mention of women-led enterprises, especially those with asset size of Php 150,000 and below, as subjects of technology transfer, production and management training, and marketing assistance.

Section 11 on Trade and Investment Promotion

There is no mention of women-specific data to be utilized for promotion and matching.

Section 12 on Information Dissemination

There is no mention that most of the intended beneficiaries should be women-led enterprises in the informal sector.

Proposed Amendments

- In section 2, add in the declaration of policy the goal of assisting and upgrading informal-sector enterprises, especially the women-led ones, toward promoting gender equity and women's economic rights.
- In section 5, use gender-specific and -inclusive language; e.g., "Any person, 'man or woman,' natural or juridical.... should be eligible..."
- In section 6, require information of transfer by sex and asset size.
- In section 7, tax exemption and tax cuts should be based on asset size.
- Delete section 8 on exemption from minimum-wage law and instead place provisions to ensure adherence to article 11 of CEDAW; make sure that all workers have some form of access to social protection, and that all formal employees are covered by SSS and PhilHealth as registration requirement.
- In section 9, reiterate relevant provisions of RA 7882 providing assistance to women in micro and cottage enterprises.
- In section 10, provide for technology transfer, production and management training, and marketing assistance to women-led enterprises, especially those with asset size of Php 150,000 and below. Ensure that they receive services (such as labeling) necessary for product development and marketing at discounted rates.
- In section 11, have a specific provision to ensure that data on women-led enterprises are disseminated and utilized for business matching, trade and investment promotion.
- In section 12, provide that special information packages and campaigns be directed to women-led enterprises in the informal sector.
- Add a section to provide specific benefits for specific categories of BMBEs, prioritizing and giving a bigger share to the smaller ones. Such categories should include

those with assets up to Php 150,000, those with more than Php 150,000 up to Php 1.5 million, and those with more than Php 1.5 million up to Php 3 million. The law should also distinguish between women-led and men-led BMBEs in each category, ensuring that the former have equal access (or even greater access to overcome their gender-based disadvantages).

- Add a section stating that local government units (LGUs) should be required to have an inventory of women-led enterprises and their products so as to assist in their marketing. Moreover, government projects should be encouraged if not required to utilize these products.
- Add a provision requiring that registration papers include sex-disaggregated information, specifically on women-led enterprises.

Republic Act No. 8425

An Act Institutionalizing the Social Reform and Poverty Alleviation Program, Creating for the Purpose the National Anti-Poverty Commission, Defining Its Powers and Functions, and for Other Purposes (December 11, 1997)

This law provides that it is the policy of the state to:

- (1) Adopt an area-based, sectoral, and focused intervention to poverty alleviation wherein every poor Filipino family shall be empowered to meet its minimum basic needs of health, food and nutrition, water and environmental sanitation, income security, shelter and decent housing, peace and order, education and functional literacy, participation in governance, and family care and psychosocial integrity;
- (2) Actively pursue asset reform or redistribution of productive economic resources to the basic sectors, including the adoption of a system of public spending which is targeted toward the poor;
- (3) Institutionalize and enhance the Social Reform Agenda, hereinafter known as the SRA, which embodies the results of the series of consultations and summits on poverty alleviation;

- (4) Adopt and operationalize the following principles and strategies as constituting the national framework integrating various structural reforms and antipoverty initiatives:
- (a) Social reform shall be a continuing process that addresses the basic inequities in Philippine society through a systematic package of social interventions.
 - (b) The SRA shall be enhanced by government in equal partnership with the different basic sectors through appropriate and meaningful consultations and participation in governance.
 - (c) Policy, programs, and resource commitments from both government and the basic sectors shall be clearly defined to ensure accountability and transparency in the implementation of the Social Reform Agenda.
 - (d) A policy environment conducive to sustainable social reform shall be pursued.
 - (e) The SRA shall address the fight against poverty through a multidimensional and cross-sectoral approach which recognizes and respects the core values, cultural integrity, and spiritual diversity of target sectors and communities.
 - (f) The SRA shall pursue a gender-responsive approach to fight poverty.
 - (g) The SRA shall promote ecological balance in the different ecosystems, in a way that gives the basic sectors a major stake in the use, management, conservation, and protection of productive resources.
 - (h) The SRA shall take into account the principle and interrelationship of population and development in the planning and implementation of social-reform programs, thereby promoting self-help and self-reliance.
 - (i) The SRA implementation shall be focused on specific target areas and basic sectors.

Gender and Other Issues in the Law's Provisions

Section 2, Declaration on Policy

The provision on the family assumes it is unitary, homogeneous, and harmonious; it does not consider gender-based needs and interests of women and girls within a family setting, and why their rights should be protected and enhanced in relation to those of men. Although it is stated that "The SRA shall pursue a gender-responsive approach to fight poverty," the section does not mention that "basic inequities" are rooted not only in poverty but also in gender and other social hierarchies. It does not explicitly say that social interventions need to be both gender-sensitive and culturally appropriate. It does not directly state that governance should also be gender-responsive, not merely participatory. It does not specify that basic sectors are composed of women and men.

Section 3 on Definition of Terms

There is no recognition that women are not just a sector but half of all the other sectors (farmer-peasant, artisanal fisherfolk, etc.); "capability building" does not include skills in gender mainstreaming; the definition of "basic needs" again assumes a unitary family, when there are gender-based differences within it; there is no mention of gender-based indicators such as the Gender Development Index [GDI] but HDI or Human Development Index is mentioned; when defining "social reform," there is no mention that basic inequities are based on class, gender, race, ethnicity, sexual orientation, and other differentiating factors; definitions of sectors such as workers, farmers, etc. do not mention that they are composed of women and men.

Section 4 on Social Reform Agenda

There is no mention of the gender dimension of poverty, nor of gender concerns in the cross-sectoral flagship programs.

Section 5 on the National Anti-Poverty Commission

Guiding principles do not include women's representation and participation, gender balance, etc.; *this is also true for section 6 on NAPC composition.*

Section 7 on Powers and Functions of NAPC

There is no assurance of women's participation, and no mention of the need for gender-based monitoring, evaluation, reporting.

Section 11 on Purposes of the People's Development Trust Fund (PDTF)

There is no mention of the need to assist MFIs seeking to strengthen women's economic capacity and networks; no mention too of the need for gender-based training and capacity building in PDTF.

Section 12 on the Role of LGUs

There is no mention of gathering sex-disaggregated data and using gender-based indicators in identifying the poor.

Section 13 on Microfinance Programs

There is no mention of the need to promote integrated or credit plus, gender-responsive, and empowering microfinance services for women in poverty.

Section 14 on the Creation of the PCFC

Section 14 specifies the creation of the PCFC [People's Credit and Finance Corporation] to serve as the vehicle for the delivery of microfinance services for the poor. Here the clientele is defined in general terms as "poor," but the PCFC's actual lending program covers mainly those with existing microbusiness, or the entrepreneurial poor.

Section 16 on Special Credit Windows in Existing GFIs

There is no cross-reference to RA 7882 entitling women microentrepreneurs to access at least 5 percent of total GFI loanable funds.

Proposed Amendments (*new language in italics*)*On Section 2. Declaration of Policy*

- (1) Adopt an area-based, sectoral, and focused intervention to poverty alleviation wherein every poor

Filipino family shall be empowered to meet its minimum basic needs of health, food and nutrition, water and environmental sanitation, income security, shelter and decent housing, peace and order, education and functional literacy, participation in governance, and family care and psychosocial integrity, *making sure that in the process women and men, girls and boys enjoy equal rights.*

- (2) Actively pursue asset reform or redistribution of productive economic resources to the basic sectors, *both women and men*, including the adoption of a system of public spending which is targeted toward the poor.
- (a) Social reform shall be a continuing process that addresses the basic inequities in Philippine society, *whether based on class, gender, race, ethnicity, or sexual orientation*, through a systematic package of social interventions.
- (b) The SRA shall be enhanced by government in equal partnership with the different basic sectors through appropriate and meaningful consultations and participation in governance, *ensuring representation of both women and men.*

On Section 3. Definition of Terms

- Explain that women comprise half of the population and therefore of all economic and other sectors.
- Provide for training in gender mainstreaming in capability building.
- Provide that for poverty-reduction purposes, “micro-enterprise” means mainly those with assets up to Php 150,000, but other categories with assets beyond Php 150,000 could still be assisted through, for example, the provisions of RA 8289 and the BMBE law.
- k) “Minimum basic needs” refers to the needs of a Filipino family pertaining to survival (food and nutrition, health, water and sanitation, clothing), security (shelter, peace and order, public safety, income and livelihood), and enabling (basic

education and literacy, participation in community development, family and psychosocial care), *based on the assumption that women and men, girls and boys, shall have equal access.*

- In monitoring poverty, the “sample indicator set for monitoring overall human poverty outcomes” developed by Balisacan et al. could prove useful (1998, 39). Aside from including survival deprivation, knowledge deprivation, deprivation in economic provisioning in the major dimensions of poverty, it also focuses on “gender imbalance” and proposes the use of the sex-disaggregated Human Development Indices (HDI), Human Poverty Indices (HPIs), and Gender Empowerment Measures (GEMs) developed by the UNDP in tracking long-term and short-term human poverty incomes at the national, regional, provincial, municipal, and city levels.
 - (u) “Urban poor” refers to individuals, *women and men*, or families residing in urban centers and urbanizing areas whose income or combined household income falls below the poverty threshold as defined by the National Economic and Development Authority and/or cannot afford in a sustained manner to provide their minimum basic needs of food, health, education, housing, and other essential amenities of life.
 - (v) “Workers in the formal sector” refers to workers, *women and men*, in registered business enterprises who sell their services in exchange for wages and other forms of compensation.
 - (w) “Workers in the informal sector” refers to poor individuals, *women and men*, who operate businesses that are very small in scale and are not registered with any national government agency, and to the workers in such enterprises who sell their services in exchange for subsistence-level wages or other forms of compensation.

- (x) "Youth" refers to persons, *women and men*, fifteen (15) to thirty (30) years old.
- There is need to strengthen the inclusion of gender in the multidimensional approach to poverty alleviation, by mentioning it as a cross-cutting factor that permeates not only the sociocultural but also the economic, ecological, and governance dimensions, among others. The multidimensional framework and definition of poverty must emphasize the gender-specific dimensions of deprivation.
 - Social dimension access to quality basic services. These are reforms which refer to equitable control and access to social services and facilities such as education, health, housing, and other basic services which enable the citizens, *both women and men*, to meet their basic human needs and to live decent lives.
 - (2) Economic dimension asset reform and access to economic opportunities. Use *resources emanating from nature and from human effort* instead of "natural and man-made resources," which is not gender-sensitive language.
 - There is need to mention the following in connection with cross-sectoral flagship programs:
 - Women's representation in order to achieve a gender balance in all decision-making levels in NAPC
 - Entrepreneurship development, not micro-mini income-generating projects for women, which perpetually consign them to the role of secondary or supplemental earners who cannot support even themselves, much less their families
 - Breakthrough credit (enough to break out of the poverty cycle) with an empowerment paradigm, rather than microcredit, which merely targets maximum loan repayment
 - Employment of women in nontraditional occupations such as road-building, construction

work, and other job-creating schemes created by government

On Sections 5, 6, and 7 regarding NAPC

- Provide for gender equity and promotion of women's economic and other rights as guiding principles of NAPC.
- Provide for gender balance (at least 30 percent) in the composition of NAPC.
- Provide that NAPC should ensure women's representation and participation in all levels of decision making—sectoral, cross-sectoral, etc.
- Require the use of sex-disaggregated data, gender analysis and gender planning tools in NAPC planning, monitoring, and evaluation.

On Section 11 regarding PDTF

Provide that PDTF support capability building for MFIs seeking to strengthen women's economic capacity and networks; ensure that gender-based training is included in the menu of services that can be supported by PDTF.

On Section 12 regarding Role of LGUs

Provide for use of sex-disaggregated data and gender-based indicators in identifying the poor and reporting about them by LGUs.

On Section 13 regarding Microfinance Programs

Provide for the promotion of microfinance services that are integrated, gender-responsive, and empowering for women and women's networks.

*On Section 16 regarding Special Credit Windows
in Existing GFIs*

Reiterate relevant provisions of RA 7882 to strengthen mandate for credit access by women-led microenterprises.

Summary, Conclusion and Recommendations

CEDAW's goal is the elimination of discrimination, which it defines as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Discrimination can be direct or indirect, intended or unintended. It can be found in law (*de jure*) or in practice (*de facto*). It can be economic, political, or social. It can be based on gender but it can also be based on class, race, ethnicity, and/or nationality—separately or in combination.

Discrimination can result not only from treating women and men differently but also from treating women and men the same way as if they were located on a level playing field, when in fact the field is far from level and is in fact more advantageous for men. Thus laws that are considered gender-neutral are actually better described as gender-blind, impervious to women's existing disadvantage, and assuming homogeneity based on only one standard, frequently male and ultimately advantageous mostly to men. This is the case in most of the laws reviewed in this paper, except for one which is specifically addressed to women (RA 7882) but which ironically affirms a gender stereotype confining women entrepreneurs to the lowest level and limiting their credit access to amounts that are hardly enough to sustain and upscale a microenterprise beyond poverty levels.

Several themes and observations recur in the above gender analysis of specific laws, which contradict the content and spirit of the provisions of CEDAW, other international instruments such as the BPA, and national documents such as the PPGD:

- The Magna Carta on SMEs, the BMBE Law and, to a large extent, the Social Reform and Poverty Alleviation Act (RA 8425) are gender-blind. Women are not at all mentioned in the first two laws as specific targets of assistance. Basic sectors covered by RA 8425 are not described as comprising of women and men. Women's

particular needs and interests as regards microfinance and microenterprise development, which are different from those of men, are not at all considered. Women's issues and concerns as articulated in the earlier part of the paper are not at all addressed. The laws (including RA 7882 specifically addressed to women) do not include gender equality, women's empowerment, and women's representation and participation in the statements of objectives and guiding principles. The gender dimension of poverty reduction, microfinance, and microenterprise development is largely unarticulated. The gender-differentiated roles of women and men, boys and girls, within the family and in business, as well as the problems and issues associated with these are not mentioned and therefore not addressed; the need to promote equal rights for women and men and to strengthen women's economic independence and empowerment is, therefore, not recognized. The laws do not specify the necessity of including women in decision-making bodies such as the SMED Council, SBGFC Board, and NAPC. The laws do not require sex-disaggregated data and other components of gender-based methodologies in research, planning, monitoring, and evaluation. There seems to be no systematic monitoring of the implementation and impact of these laws on women, a consequence of the lack of sex-disaggregated data.

- Gender discrimination intersects with class-based discrimination in the way microenterprise has been defined and redefined. The "sliding definition" of microenterprise/microbusiness (from up to Php 150,000 to up to Php 3 million) has led to the increased invisibility and lack of clear access of women in poverty who are in the lower rungs of the capitalization ladder. The laws open more possibilities for bigger business concerns (mostly owned and run by men) to have more advantages and benefits at the expense of the smaller

(micro) ones (mostly run by women) and the workers, mostly women in the informal sector (who need not be paid a minimum wage, for example): In consonance with the trend toward commercialization benefiting profit-oriented institutions, most of the laws have a strong bias for the credit-alone or minimalist model of microfinance and microenterprise development, which is primarily concerned with the financial sustainability of the providing institutions, not really with poverty reduction and/or women's empowerment. Women clients are therefore heavily disadvantaged by high interest rates and transaction costs, low loanable ceilings insufficient to lift them out of poverty, etc. Only credit assistance is made mandatory; other forms of assistance (e.g., technology transfer, marketing, microinsurance, etc.) are not required in measurable terms and are barely elaborated. The laws do not include gender training and mainstreaming as components of capacity building.¹⁰

- Except for the Social Reform and Poverty Alleviation Act, which clearly identifies workers in the formal and informal sectors as basic sectors with clear representation and participatory mechanisms in the work of the National Anti-Poverty Commission, the laws are silent on the rights and entitlements of workers in microenterprises. Such workers are of various categories—self-employed, unpaid family labor, subcontracted workers, informal workers, formal workers. Each category needs different approaches and interventions toward fulfillment of the provisions of CEDAW, and these have to be crafted with their participation. On the BMBE law, however, which exempts microbusiness from complying with the minimum-wage law, there seems to be a consensus among trade unions and informal-sector groups that this exemption should be withdrawn.

- Except for the BMBE Law, which says in one line in its declaration of policy that the informal sector should be integrated into the mainstream economy, and in the SRA law, which specifies workers in the informal sector as one of the basic sectors, there is hardly any articulation of the needs and interests of the informal sector, much less of the women who comprise much of this sector.

General Recommendations

All State parties that have ratified or acceded to the CEDAW Convention actually affirm that

- They recognize discrimination and inequality.
- They recognize the need for state action.
- They commit themselves to legally binding obligations of the convention.
- They are willing to be held accountable at state and international levels for compliance with standards defined by the convention.

Their obligations thus include:

- Guaranteeing all socio, economic, civil, and political rights based on the principle of nondiscrimination in the public and private spheres...
- Embodying the principle of equality in the constitution and legislation
- Ensuring practical realization of the principle of equality
- Preventing and prohibiting discrimination against women
- Providing legal protection for women
- Refraining from discrimination
- Eliminating discrimination by any person, organization, or enterprise
- Imposing sanctions against discriminating acts and providing redress
- Modifying or abolishing laws, regulations, customs and practices that constitute discrimination
- Repealing discriminatory penal provisions

Accelerating *de facto* equality by introducing temporary special measures (PowerPoint presentation on the CEDAW Framework, UCWS meeting, January 21, 2005)

Given the above obligations, and the previous discussions analyzing the various laws on microenterprise and microfinance, the following general recommendations are offered:

First, there is a need to amend the aforementioned laws, and to advocate for this course of action among NGOs, government organizations, and members of Congress. Amendments should cover the inclusion of gender concerns in guiding principles, mandates, goals, and objectives of the laws as well as implementing mechanisms. They should ensure women's participation in decision-making bodies assigned to carry out the laws. They should specify women's groups and enterprises as ultimate beneficiaries of the laws and the resources they provide. They should address women's issues and concerns in the areas of microenterprise and microfinance. They should recognize the intersection of gender, class, and other inequalities and seek to redress discrimination based on all these inequalities. They should prescribe the use of sex-disaggregated data and gender-based methodologies in research, planning, monitoring, and evaluation. They should make reporting on compliance by the concerned agencies mandatory. And they should use gender-fair and gender-inclusive language, mentioning the phrase "women and men" as actors and beneficiaries whenever possible.

Second, given the growth of the informal sector and the specific needs and interests of women among them, there is need to support efforts of informal-sector groups in alliance with particular members of Congress to push for a Magna Carta for Informal Workers,¹¹ and to make sure that such a law, if it comes to pass, is gender-sensitive.

Third, there should be a stronger initiative for gender mainstreaming in microfinance and microenterprise development at all levels of governance in accordance with the state obligation to "pursue by all appropriate means and without delay a policy of eliminating discrimination against women..." (CEDAW, art. 2).

It was earlier mentioned that during the Fourth World Conference on Women held in Beijing, the *Philippine Plan for Gender-Responsive Development 1995-2025* was launched by the National Commission on the Role of Filipino Women. PPGD is a thirty-year strategic plan that rests on the understanding that gender concerns, including women's increasing burden and marginalization, cannot be separated from the broader issues of development. The plan recognizes that discrimination is based not only on gender but also on class and ethnicity, and incorporates gender equity, women's empowerment, sustainable development, peace and social justice, democratic participation, self-determination, and respect for human rights in its vision (NCRFW 1995, 18).

The PPGD provides mechanisms for gender mainstreaming—defined as an effort to include a gender framework in the design and implementation of plans and programs in government units concerned, a process by which as many members of the government unit as possible are trained to think gender—and allocation of adequate logistics for the conduct of gender-responsive activities in the regular programs of government (Torres et al. 1994, 82).

It is in the context of the general thrust toward gender mainstreaming and women's empowerment that the following concrete suggestions are tentatively offered for consideration. These suggestions have been the result of previous researches and consultations with various stakeholders.

Integration in Vision, Mission, Goals, and Objectives

1. Clear expression of gender equality and women's empowerment as goals in microfinance and microenterprise policies and programs, considering the universal acknowledgement that women comprise the overwhelming majority of microfinance clientele and of microentrepreneurs (at the lower levels of the capitalization ladder).
2. Pursuit of the NAPC's "Credit Plus Five" services approach, with an explicit qualification that such an approach will serve the ends not only of poverty alleviation but also of gender equality and women's empowerment.

Awareness Raising and Capability Building

3. Gender-awareness raising and skills training in gender-responsive planning for all GFI, DTI, SMED Council, SBGFC, and NAPC officials and personnel.
4. Inclusion of gender issues in capability building for clients in the programs of the said agencies.
5. Mainstreaming of gender concerns in all capability-building programs to be financed by the Peoples Development Trust Fund.

Ensuring Access and Participation

6. Gender balance, if not affirmative action for hiring and promotion of women, in GFIs, especially in units handling microfinance programs, as well as in all other government agencies handling micro and SME programs.
7. Encouragement toward institutionalization of women's participation and representation, whether at the client or at the staff/management level in decision-making bodies and in regulatory and oversight bodies (SMED Council, SBGFC Board, NAPC, etc.).
8. Support to women NGOs and POs striving to acquire and strengthen their capability in microfinance and microentrepreneurship and to facilitate their actual access to GFI funds.
9. Enhancement of women's participation in the budgetary process at national and local levels to ensure allocation of funds for gender and development in general, and microfinance and microenterprise development for women, in particular.

Monitoring and Evaluation

10. Ensure the collection of sex-disaggregated data by all government agencies involved.
11. Monitoring of GFI compliance with RA 7882 regarding assistance to women in micro and cottage enterprises, making sure that women in poverty are included rather

than excluded through proper targeting and less stringent requirements.

12. Monitoring of other GO lending programs, e.g., Quedancor GMA CARES, to ensure that women in poverty are also targeted and benefited.
13. Besides the standard performance indicators—outreach, repayment rate, portfolio at risk, operating cost ratio, operational self-sufficiency, financial self-sufficiency, equity to asset ratio and current ratio—there should be items that can gauge the extent of poverty alleviation and women's empowerment on the clients' side. Such standards, when developed, should then serve as the bases for the provision of wholesale funds by GFIs to MFIs.

Notes

- 1 Data on the composition even of formal service sector show the predominance of women-associated trading activities (64 percent of the total registered establishments in 2000, and 61 percent of all registered microenterprises). "Most of these are small retailers, principally the small neighborhood stores or *sari-sari* stores, which can be found not only in all cities and towns but virtually in every village street" (Ofreneo et al., 2001, 28).
- 2 The Implementing Rules and Regulations (IRR) of RA 7882 as contained in Department Administrative 12, Series of 1995, issued by the Department of Industry defined micro and cottage enterprise in accordance with that approved by the SMED Council: micro, Php 150,000 and below; and cottage, above Php 150,000 to Php 1.5 million.
- 3 These categories were upscaled in 2003 by the SMED Council (presumably to be in harmony with the BMBE Law) to the following ranges: *micro* – up to Php 3 million, with 1-9 employees; *small* – more than Php 3 million up to Php 15 million; and *medium* – more than Php 15 million to Php 100 million.
- 4 Later upscaled to up to Php 1.5 million by the IRR of RA 7882.
- 5 See Table 6. Distribution of working-age population, by type of economy, October 2001, in Illo (2005).
- 6 As mentioned earlier, the IRR of RA 7882 as contained in Department Administrative 12, series of 1995, issued by the Department of Industry, defined micro and cottage enterprise in accordance with that approved by the SMED Council: micro – Php 150,000 and below; and cottage, above Php 150,000 to Php 1.5 million.
- 7 The Php 1.5 million ceiling provided for by the IRR mentioned above is too high and could lead to women in the higher asset bracket getting the lion's share of available funds, thus defeating the implied intent of the law to attend to the needs of the most disadvantaged women microentrepreneurs or potential microentrepreneurs. The low interest rate of 12 percent is obviously tailored to the latter.

- 8 This is based on the assumption that the loanable amount should be about twice the capitalization ceiling. Participants in the January 14 consultation workshop also floated the idea of bringing up the loanable ceiling to Php 500,000 to allow for higher levels of upscaling for women microentrepreneurs.
- 9 These categories were upscaled in 2003 by the Small and Medium Enterprise Development (SMED) Council (presumably to be in harmony with the BMBE Law) to the following ranges: *micro – up to Php 3 million, with one to nine employees*; *small – above Php 3 million up to Php 15 million*; *medium – above Php 15 million to Php 100 million*.
- 10 NAPC has promoted an approach called “Credit Plus Five” services (training, product development, market access, new technologies, and social insurance), which seems to be a departure from the dominant minimalist trend. However, this approach still does not include a definite gender component.
- 11 See, for example, House Bill (HB)1359 introduced by Rep. Roseller L. Barinaga, and HB 000085 introduced by Hon. Juan Edgardo “Sonny” M. Angara.

Consultations

Consultation on the four laws was conducted with organizations of homeworkers and other informal workers under HOMENET PHILIPPINES on January 14, 2006, College of Social Work and Community Development, University of the Philippines, Diliman, Quezon City. Among the participating organizations are PATAMABA (National Network of Informal Workers), Democratic Socialist Women of the Philippines (DSWP), MAKALAYA, WISEACT, Kababaihang Kaagapay sa Hanapbuhay (KAKASAH), Sikap-Unlad Livelihood Association (SULA), Katipunan ng Bagong Pilipina (KaBaPa), Samahang Pangkabuhayan sa Kamaynilaan (SANGKAMAY), Kaisahan ng mga Kababaihang Gumagawa sa Bahay (KASAMBAHAY), Ilaw ng Tahanan, Damayan San Francisco, SKPK-UP, MAGISI, BATIS-AWARE, Rizal Informal Sector Coalition (RISC), Manila Area Sectoral Alliance (MASA), Nagkakaisang Kababaihan ng SAMAKABA Inc. (NAKASA), Alyansa ng Mamamayang Naghihirap (ALMANA), Aksyon ng Kilusang Kababaihan sa Informal Sector, Inc. (AKSYON KABABAIHAN), and GADAP-ROSARIO.

Validation with the same group was undertaken on February 9, 2006, at the DSWP Office, 4-A Maalindog, UP Village, Diliman, Quezon City.

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Chapter 4

A Gender Review of the Cooperative Code and the Cooperative Development Authority Law

Atty. Milagros Isabel Cristobal Amar

I. Introduction

This study analyzed the extent to which the Cooperative Code (Republic Act [RA] 6938) and the Cooperative Development Authority Law (RA 6939) comply with standards of the Convention on the Elimination of Discrimination Against Women (CEDAW) and other international human rights instruments. As a member of the United Nations, the Philippines has unequivocally affirmed its commitment to the principles of nondiscrimination and equality, through the adoption of the Universal Declaration of Human Rights¹ and the ratification of its two implementing covenants: the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Civil and Political Rights (ICCPR).² These two international human rights treaties state that all persons are entitled to human rights regardless of race, color, gender, language, age, religion, political or other opinion, national or social origin, property, birth or other status.

The review involved the identification of gender gaps and biases in the two aforementioned laws and the formulation of proposed revisions or amendments to strengthen the role of the cooperative movement in the Philippines in promoting gender equality and women's economic empowerment. Gender equality comes from a perspective that all people, men and women, are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles and prejudices (International Labor Organization 2000). However, gender equality does not mean "same" treatment since women and men's rights, opportunities, and responsibilities will not depend on their being male or female (ILO 2002).

The strategy framework adopted by the National Commission on the Role of Filipino Women (NCRFW) to promote gender equality and women's empowerment calls for a comprehensive action at five levels or areas of discrimination or gender bias: welfare, access, conscientization, participation, and control. This means that the individual and structural causes of gender discrimination must be eliminated through actions that will address inequality in material well-being of women and men, gender barriers in access to resources and benefits, the lack of awareness of gender issues and their negative impacts on society, the poor representation of women in various areas of decision making and organizing, and women's inability to direct or influence events to protect their interests (ILO 2002).

This study hopes to contribute to the ongoing efforts of various sectors to ensure that the government fulfills its obligations and responsibilities to its constituencies, particularly to poor women and other disadvantaged sectors of Philippine society.

II. History and Development of Cooperatives and Laws Related to Cooperatives

The Cooperative Code and the Code of the Cooperative Development Authority (CDA) are post-EDSA³ legislations. These laws recognize cooperatives not only as economic or business enterprises, but also as practical expressions of "people power" and a powerful vehicle for achieving economic development and attaining social justice.⁴ The

forerunners of these two laws, however, did not deal with cooperatives in general, but with specific types of cooperatives. The years, however, brought about an appreciation of the power of the cooperative to harness economic initiatives and self-reliance, and this eventually found expression in the formulation of new laws. But since this enterprise is not indigenous in origin and concept, it is necessary to review its history and background.

The cooperative as a modern business structure originated in nineteenth century Britain, during England's Industrial Revolution, in a place called Rochdale, England, a small town of about twenty-five thousand people. For years its economy had been dominated by the textile industry (with coal mining and farming as the next most common industries), and Rochdale was famous for its flannels. But as the Industrial Revolution progressed and textile production became mechanized, workers struggled to maintain the standard of living they had known in the past. Many weavers lived in poverty; "from all around came reports of weavers clothed in rags, who had sold all their furniture, who worked 16 hours a day yet lived on a diet of oatmeal, potatoes, onion porridge and treacle" (Thompson quoted in Birchall 1994).

To survive the economic depression brought about by industrialization, some people began to form cooperatives to meet their needs. Most of the initiatives were unsuccessful until a group of twenty-eight workers who were dissatisfied with the merchants in their community formed in 1844 a consumer cooperative known as the Rochdale Society of Equitable Pioneers. They began by opening a cooperative store that sold items such as flour, butter, oatmeal, sugar, and candies to members, with a promise that these were "purest provisions, giving full weight and measure."

As the society grew and later established other member-owned enterprises, it drew lessons from prior unsuccessful experiences. The founders of the Rochdale Society developed a set of principles—a unique combination of written policies that governed the affairs of the cooperative. Among these rules were: democratic control of members, payment of limited interest on capital, and net margins distributed to members according to level of patronage. Based on its success, the Rochdale Society set of policies soon became a model for other cooperative endeavors, and became known as the general principles that make a cooperative unique

from other business structures (ACDI VOCA Resources for Cooperative and Association 2004). These are the same principles that guide cooperatives today.

Cooperatives are compatible with the Filipino concept and practice of *bayanihan* (cooperativation), which preceded the coming of the Spaniards. After the Spanish colonization of the country and the transformation of the economy from subsistence agriculture to a feudal and commercialized economy, middle-class *ilustrados* (professionals, merchants, and artisans) emerged. These *ilustrados* were the organizers of the *gremios* (local crafts unions and guilds), the forerunners of cooperatives (Sibal 2004).

The cooperative movement in the Philippines found its beginnings before the end of the nineteenth century. Sibal (2004) noted that the cooperative movement underwent three phases.

The first stage, from 1895 to 1941, is characterized by the aborted germination of cooperatives by some revolutionary *ilustrados* (or the pre-formation period); the introduction and endogenization of the Raiffeisen-type agri-based cooperatives by American missionaries and teachers and western-educated Filipinos, which featured the principles of self-help and self-reliance (or the formation period); and the introduction of state-initiated farmers cooperatives by the American colonial administrators (Sibal 2004).

The Rural Credit Act (2508) filed by Zambales legislator Rafael Corpuz was the first law concerning cooperatives enacted on February 5, 1915. It was patterned after German cooperatives based on the Raiffeisen experience, and promoted the setting up of rural cooperatives (CDA 2004).

By 1939, Commonwealth Act 565 (Cooperative Act or National Cooperative Law) was passed. The law provided for the organization of all types of cooperatives, and the setting up of the National Trading Corporation (NTC) to promote and supervise cooperatives. The NTC established the National Cooperative Fund (NCF), gave permission for the organization of cooperatives with no less than fifteen members, and granted cooperatives exemption from government taxes and fees for the first five years of their operation. The National Cooperative Administration (NCA) was established a year later, taking the functions of the NTC and

the management of the NCF. It was at this time when the number of cooperatives multiplied (CDA 2004).

The second stage of the historical development of cooperatives covers the period between 1941 and 1986. This stage can be subdivided into four phases. The first phase is the period of Japanese occupation, which featured a rapid increase in the number of cooperatives as a result of food shortages (Sibal 2004).⁵

The second phase is the rehabilitation period after the Second World War. In 1945, Commonwealth Act 713 was passed, amending its precursor, Commonwealth Act 565. This law revived the NCA, with an appropriation of Php 5 million for its operations. By January 2, 1946, an estimated 1,500 cooperatives had been organized for the purposes of relief and rehabilitation programs, even without cooperative education (Sibal 2004).

By 1947, the NCA was abolished and its merchandising function was assumed by the Philippine Relief and Trade Rehabilitation Administration (PRATRA). By 1950, RA 364 was passed, creating the Cooperative Administration Office (CAO) under the Department of Commerce and Industry (CDA 2004).

The third phase in the development of Philippine cooperatives is the period of the resurgence of state-initiated cooperatives. In 1952, RA 821 (called the Agricultural Cooperative Law) created the Agricultural Credit Financing Administration (ACCFA). Through ACCFA, the government organized and financed Farmer's Cooperative Marketing Associations (called FACOMAs) by providing collateral-free loans funded by the United States Agency for International Development (USAID). These cooperatives could be found in the Central Luzon provinces of Nueva Ecija, Pampanga, Bulacan, Tarlac, and Pangasinan—the areas most affected by the peasant-based insurgency led by the Communist Huk Movement. The government-initiated and -supported FACOMAs failed, as in the past, due to corruption and incompetent management. Non-agricultural cooperatives continued to be under the supervision of CDA (CDA 2004).

Then came the fourth phase characterized by the organization of non-agricultural cooperatives (Sibal 2004). By 1957, RA 2023, or the Philippine Non-Agricultural Credit Act, was passed, allowing non-

agricultural cooperatives to register with the government. Then by 1957, the Philippine National Cooperative Bank (PNCB) was established for non-agricultural cooperatives. By 1960, the Agricultural Credit Cooperative Institute (ACCI) was established at the University of the Philippines, Los Baños. By the 1960s, this new breed of cooperatives proliferated with the church initiating the formation of credit cooperatives in parishes all over the country as part of their social-action projects. In urban areas, the cooperatives were set up by lay leaders who were mostly middle class and professionals (Sibal 2004).

The further growth of cooperatives was again given impetus with the enactment of the Agrarian Reform Code (RA 3844) in 1963. However, it was the amendment by RA 6839—which mandated that cooperatives be utilized as primary conduits for credit, supply, and marketing services to agrarian reform beneficiaries—that signaled government support for the development of cooperatives (CDA 2004).

The development of the cooperative movement was further enhanced when the Polytechnic University of the Philippines (PUP) developed a complete set of cooperative-education materials that could be used by students from kindergarten to college. By this time, PUP had been designated as a training center for non-agricultural cooperatives. Later, PUP set up its own Institute of Cooperatives, which offered the degree of Bachelor in Cooperatives (CDA 2004).

The increasing state intervention in cooperatives was already perceived as a threat to the independence of cooperatives, thus efforts were also initiated to set up measures that would block or oppose the retention of government control over the development of cooperatives.

The Martial Law period saw the politicization of the cooperative movement. When martial law was declared and imposed upon the unsuspecting Filipinos, Presidential Decree (PD) 1, which reorganized the executive branch of government, saw the *abolition* of the Cooperative Administration Office (CAO) and the setting up of the Bureau of Cooperative Development (BCOD) under the Department of Local Government and Community Development (DLGCD) through Letter of Instruction 7. BCOD was later transferred to the Ministry of Agriculture.

Soon thereafter, PD 27 (Agrarian Reform Decree) was issued, and the entire country was declared as agrarian-reform area. The following year, PD 175 was issued to “strengthen the cooperative movement.” It recognized *cooperatives* as a “means of attaining a more equitable distribution of income and wealth and providing the common man a dignified level of existence.” It also recognized the *bayanihan spirit* as a trait inborn to the people, which could serve as a strong foundation for the cooperatives. Presidential Decree 175 expressly repealed all past legislations dealing with cooperatives (CDA 2004).

Other types of cooperatives proliferated during this period. Transport cooperatives, insurance cooperatives, and electric cooperatives were set up. Also, a tertiary-level cooperative, the National Confederation of Cooperatives (NATTCO), was organized to provide services such as training and education, research and publication, auditing, and other programs such as cooperative financing for small-scale industries, extension work, women in development, cooperative insurance promotion, and the intercooperative trading.

The latest stage of the evolution of the Philippine cooperative movement covers the period from 1986 to the present. From an economic vehicle, the cooperative movement has evolved and transformed into a political force, as it merged with the trade union movement and the civil society in pursuing the goals of social justice and economic empowerment (Sibal 2004). With the 1987 Constitution, the State now recognizes the potential of cooperatives as instruments for social justice and economic development.⁶ Cooperatives then were among the private enterprises that were directly encouraged to broaden the base of their ownership, in order to attain the national economic goals of a more equitable distribution of opportunities, income, and wealth, with the purpose of raising the quality of life for all.⁷

To give impetus to the growth of cooperatives, among the priority legislations passed by the restored Congress after the ratification of the 1987 Constitution were the Cooperative Code of the Philippines and the Cooperative Development Authority Law, both of which were signed into law by President Corazon C. Aquino on March 10, 1990.

The Cooperative Development Authority is the government regulatory agency tasked to formulating, adopting, and implementing integrated and comprehensive plans and programs on cooperative development, consistent with the national policy on cooperatives and the overall socioeconomic development plans of the government. It has the duty to promote the viability and growth of cooperatives as instruments of equity, social justice, and economic development and to create an agency, in fulfillment of the mandate in article 12, section 15, of the Constitution.⁸ It is also the agency that is now responsible for the registration and regulation of cooperatives.

The Cooperative Code of the Philippines defines and sets down the concepts and principles of cooperatives, and lays down the rules for its organization and registration, membership, and administration. It also lays down the responsibilities, rights, and privileges of cooperatives, and provides the rules to be observed in the event of the cooperative's dissolution.

And with the passage of RA 7491, known as the Party-List System Act, which allows sectoral representation in Congress by political parties, non-governmental organizations (NGOs), and people's organizations, the cooperative movement was able to elect two party-list groups⁹ to sit in the House of Representatives and be the voice of the marginalized and underrepresented sectors of Philippine society.

III. Overview of the Cooperative Movement in the Philippines

Cooperatives are not mere economic enterprises; they are venues or means through which a growing number of people are increasingly able to assume the role of taking control of their economic lives, creating employment, assuring themselves of the constant supply of goods and services, which in the end will bring some economic benefits back to their fold. It has thus become an effective vehicle for fighting poverty, uplifting social status and quality of life in the process, and ensuring the empowerment and development of people.

Today's popularly articulated objective by both the government and the private sector is "people-centered sustainable development." This has been the goal of the cooperative movement, and its regular activities and operations—whether as labor force, clients or customers, or business owners/entrepreneurs—are built around this. This is because cooperatives are business enterprises whose objectives, operations, and concerns are decided upon and controlled by the members themselves. This is economic empowerment in its simplest and most basic form. And when economic empowerment grows, the empowered group or sector becomes socially and politically empowered as well.

It can be said that economic empowerment is achieved through cooperatives sans taking unfair advantage of others or being exploitative, unlike the business practices of other enterprises set up within the capitalist mode or framework. This feature can be traced to the value system that is so ingrained in the cooperative movement, which must be understood, accepted, and practiced by those who seek to become members of a cooperative. These are the values of self-help, self-responsibility, democracy, equality, equity, and solidarity. And in the tradition of the founders of the cooperative movement, cooperative members must believe in and practice the ethical values of honesty, openness, social responsibility, and caring for others. These features are summed up in what is now referred as the Cooperative Principles. Thus it is safe to say that cooperatives promote an economic environment in which human beings are at the center of the concerns for sustainable development.

Since the cooperative as an organization is both economic and social in character, its potential in contributing to the advancement of women's rights and status cannot be ignored. Through their participation in cooperatives, women have been able to contribute to, if not manage, the financial concerns of the household. Correspondingly, it has also improved their social situation within their communities.

A cursory look into the profile of the cooperative movement in the Philippines indeed shows that it is one of the major engines of economic growth and popular democracy in the country. The 2003 record of the Cooperative Development Authority in table 1 indicates a large number of registered cooperatives in the country with a total membership (direct

Table 1: 2003 Data on the Cooperatives in the Philippines

Number of Registered Coops	64,998
Number of Operating Coops	31,191
Product Volume Sales	1,187,535,452,054
Coops Contribution to GDP	12%
Total Employment Generated	1,525,922
Direct Employment	383,225
Indirect Employment	1,142,697
Salaries and Wages in Total Employment generated	610,570,632,113
Salaries and Wages in Direct Employment	153,619,586,076
Salaries and Wages in Indirect Employment	456,951,046,037
Total Membership	4,313,025
Total Household Members	25,878,150
Total Assets	2,914,696,120,223

Source: <http://www.cda.gov.ph/statistics.asp>.

and indirect) of almost 30 million people, more than one-third of the entire population of the country. They generate millions of jobs and contribute 12 percent to the gross national product.

Cooperatives vary in the sex composition of their members. While some are female- or male-dominated, the majority has mixed membership. Out of the 4,622 cooperatives reporting to the Cooperative Development Authority (CDA), 2.8 percent or 132 are composed fully of women. This means that nearly all the cooperatives in the country have mixed membership. The ones that manage local public utilities and farming facilities—like electricity, water, or irrigation systems—are usually dominated by men while those involved in multipurpose services, credit, microindustries, and health services have sizable female membership. What this implies is that their organizational structure, functions, and programs must be sensitive to the different perspectives, capacities, and needs of male and female leaders and members. For instance, where women are lagging behind in leadership or decision-

making roles, the cooperatives, through their enabling laws, must effectively respond to this gender issue.

IV. Gender Issues Related to Women's Participation in Cooperatives

Anecdotal reports from organizations involved in the development of cooperatives like the National Confederation of Cooperatives (NATCCO) show that beyond the economic and business side of it, women's participation in cooperatives has helped many improve their self-esteem, enhance self-respect, and increase their sense of independence. It has provided better access to education and training and helped develop their leadership skills. Some women-led cooperatives have also helped reduce the incidence of violence against women and children in their respective communities.

But despite all the good news, there are gender issues that need to be identified and addressed to achieve gender equality in the cooperative movement and to maximize the cooperative as a vehicle for women's empowerment. Anecdotal reports also mention the insensitivity of programs and policies of cooperatives to the special needs of women in relation to their multiple roles in the domestic and public spheres.

A. Level and quality of women's participation

One such issue is the level and quality of women's participation both in leadership and activities of cooperatives. Indicative data from the 4,622 cooperatives that submitted their 2002 annual reports to the Cooperative Development Authority show that while women slightly outnumber men in the lists of employees and members, there are fewer of them in the board of directors.

The pattern of membership according to sex in cooperatives has remained fairly the same over the years as indicated in the 1997 survey of NATCCO, with the males slightly outnumbering the females in 1986 and the females gradually increasing in rate of participation in the following years. While this trend may be interpreted positively as an indication of the gender-responsiveness of cooperatives, it also indicates the need to

Table 2: Profile of Membership by Sex of Cooperatives with Annual Reports Submitted to CDA in 2002

	Male		Female	
	Frequency	%	Frequency	%
Board of Directors	17,413	59.1	11,746	40.3
Full-Time	9,864	45.2	11,932	54.7
Part-Time	2,818	47.6	3,107	52.4
Volunteer	1,382	34.5	2,627	65.5
Regular Member	460,135	40.0	634,777	58.0
Associate Member	165,690	40.0	178,369	45.3

Source: Cooperative Development Authority
List of Cooperatives with Annual Reports 2002

further strengthen the participation of more women in activities led by cooperatives inasmuch as they still lag behind men in access to jobs, credit, and other economic resources. More women are in the informal sector and in irregular and intermittent forms of gainful employment.

Table 3: Membership by Sex of NATCCO Affiliates

	1986	1991	1992	1993	1994
	(n=46,741)	(n=391,599)	(n=253,109)	(n=190,531)	(n=282,644)
	%	%	%	%	%
Male	55.0	46.3	45.8	41.0	40.4
Female	45.0	53.7	54.2	59.0	59.6
Sub-total	100	81.8	73.3	89.7	86.8
Sex Not Indicated	0.0	18.2	26.7	10.3	13.2
Total*	100	100	100	100	100

* There were 127 co-op respondents in 1986, 826 in 1991, 446 in 1992, 228 in 1993, and 350 in 1994.

Source: National Confederation of Cooperatives 1997, 17.

A research project commissioned by NATCCO to the Institute of Philippine Culture of the Ateneo de Manila University, which sought to locate where women are in the cooperatives, showed that there were more women than male members in the primary cooperatives, particularly in community or open co-ops. The predominantly female membership at that time was due to the requirement that anyone who wishes to become a member of a cooperative had to undergo a premembership seminar. The men who were unable to attend the seminar usually sent their wives instead; as a result, the women who attended the seminar were then listed and became the co-op member (Illo and Uy 1992).

The records of NATCCO also provide a good indication of the pattern of women's participation in decision making and management over the years. The data in tables 4 and 5 indicate that while women slightly outnumbered men in management roles in the functional areas of audit, elections, credit and education, they consistently lagged behind in number as the chair and member of board of directors.

Now the question to be asked is how the Cooperative Code and the CDA law address the need to increase women's participation in the cooperatives, especially in decision-making processes. Sadly, the existing cooperative laws either totally ignore this situation or are blind to it. It is indubitable, however, that the objective of increasing women's participation can be given the appropriate push when laws, regulations, and policies are in place, which can give the necessary support to propel efforts, activities, and programs designed to address this problem. A review of the laws and regulations, however, reveals that no such support exists, as the laws and policies are themselves gender blind, thus perpetuating the situation of men's superiority in terms of access to the benefits of the cooperative, its resources, education and training.

The problem of gender stereotyping is also evident where women take on responsible positions in the cooperative. Oftentimes, women find themselves elected or confined to positions "for women." Thus women leaders tended to serve as treasurers or as board or committee secretaries (Illo and Uy 1992). Most times, this gender stereotyping is taken for granted by the members of the cooperative, with women at times even grateful for being entrusted with such a responsibility, until such a time they realize

that they are “trapped” in this position or office. This should then be identified as an issue of gender stereotyping, which should be addressed without fail.

Table 4: Participation in Decision Making and Management by Sex of NATCCO Affiliates (1992-1999)*

Board		Audit		Credit		Education		Election	
1993		1993		1993		1993		1993	
Male	66	Male	-	Male	-	Male	-	Male	-
Female	34	Female	-	Female	-	Female	-	Female	-
1995		1995		1995		1995		1995	
Male	62	Male	36	Male	34	Male	52	Male	40
Female	38	Female	64	Female	66	Female	48	Female	60
1997		1997		1997		1997		1997	
Male	62	Male	34	Male	34	Male	45	Male	48
Female	38	Female	66	Female	66	Female	55	Female	52
1999		1999		1999		1999		1999	
Male	58	Male	32	Male	35	Male	47	Male	41
Female	42	Female	68	Female	65	Female	53	Female	59

* Figures are in %

Source: Gender Program of NATCCO.

Table 5: Number of Chairpersons by Sex (1994-1999)

1994 (n=166)		1996 (n=142)		1997 (n=298)		1999 (n=152)	
	%		%		%		%
Male	73	Male	80	Male	77	Male	77
Female	27	Female	20	Female	23	Female	23

Source: Gender Program of NATCCO, 1999.

B. Access to education and training needs

Another issue that must be addressed is women's lack of access to and control over resources. This refers to training and education, and access to production inputs and marketing outlets, among others. While women are well represented as members and project implementers, their underrepresentation in decision making may be a serious obstacle in ensuring that the policies and programs of cooperatives are gender-responsive.

Problems with education and training needs usually refer both to the lack of education and training programs for women and the inability or failure of existing programs to deal with the issues of women's participation and involvement in cooperatives, and the need for gender sensitivity on the part of the family and the community. Without these, a lot of projects that are intended to help empower women often backfire on women, for these usually result in just adding another load or burden in the women, who already shoulder household and parenting responsibilities (Clamor 1995). For instance, some women in San Vicente, Cebu, ventured into livestock raising as an income-generating project, which eventually failed since they lacked the necessary technical skills (Gutierrez, Chato, and Clamor 1995).

Where women are able to access proper information and education on the benefits of being part of a cooperative, they realize that cooperatives will improve not only their family's economic status and quality of life but also their social standing. Further, since women tend to have a different view and perspective vis-à-vis the men in practically all matters—whether social, economic, and political issues—they can bring in a fresh perspective that can lead the cooperative to more pioneering and ground-breaking directions, which can boost and increase the chances of development and success of the cooperative.

With this kind of understanding and appreciation for cooperative work, women can be encouraged to join and be active in cooperatives, as they realize that they too have a stake in the success of their enterprises, since the success of a cooperative is really anchored in the increased participation and patronage of its own members. In this way, women are empowered to take charge of their lives, steering the

cooperative toward success that can mean nothing less than their own personal successes as well.

All these, however, rely heavily on increasing the awareness of women regarding the benefits of being part of a cooperative. Availability of appropriate information, education and training is, therefore, a must if the advocacy and objective are for a higher level and quality of women's participation in cooperatives, which in turn leads to an increase of their stake in the success of the cooperative. But it is not just any information, education, or training that is necessary. It must be appropriate and gender responsive, if it is to really fulfill the objective of economically empowering women.

On this point, it is necessary to subject the existing education and training modules of the cooperative movement to a thorough evaluation to determine the areas for improvement and changes. These should consciously integrate gender issues, to make them gender responsive as well. This should be carried especially in cooperative unions and federations, as they are in the position to spearhead and implement these efforts.

C. Accountability for family responsibilities

The limited level of women's participation in cooperative decision making is somehow exacerbated by the impositions and restrictions brought about by other compelling considerations. Women are at most times still held solely accountable for family responsibilities, although both men and women should jointly assume these responsibilities. Women are expected by both young and old to take on these tasks and be wholly answerable for them. These impositions and corresponding restrictions on women's participation are usually brought about by women's family responsibilities. Concrete examples of these are the following:

- a. Family responsibilities affected the participation of many women in the Cordova Multi-Purpose Cooperative. Because of home concerns, they would be late for meetings, distracted from work, and lacked concentration (Gutierrez, Chato, and Clamor 1995).
- b. Based on a survey conducted among the women in Palompon Community Multi-Purpose Cooperative in

Palompon, Leyte, it was discovered that women worried over who will attend to and care for their children once they started with their income-generating activities (Torres 1995).

- c. Some husbands of the women-members of the Valencia Women Workers Multi-Purpose Cooperative have learned to accept their wives' activities because these contribute to the family income, but only for as long as family responsibilities are not substantially disrupted (Clamor 1995).

D. Availability of sex-disaggregated data / information

There can be no proper study, analysis, and proposal for the correction or amendment of laws, rules, policies, or other situations if there are no available data that can be the basis for such study. And any proposal for change, adjustment, amendment, or program can be appropriately responsive only if the same is based on empirical data.

This is the same in the cooperative movement. Although data are available, there are no gender-specific data, despite the fact that coming up with the same is among the responsibilities of the Cooperative Development Authority. This should be immediately addressed by the government agency concerned, and the NCRFW should ensure CDA's compliance with this mandate.

V. Gender Gaps and Biases in the Laws on Cooperatives

Given the gender issues in the cooperative movement, the importance of legislation to women's empowerment cannot be overemphasized. Legislation can provide the impetus for these issues and concerns to be addressed and reckoned with, or be given the appropriate attention. Creating a favorable legal and policy environment wherein the participation of women can truly develop, and the desired and acceptable level of economic empowerment can be assured, is one of the purposes of legislation.

As a State party to CEDAW, the Philippines has the obligation to take appropriate measures to eliminate discrimination. Article 2 of CEDAW states:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women ...

The implementation of this obligation is further defined in article 13 of CEDAW, as it obliges the government to adopt appropriate measures to eliminate discrimination against women in other areas of economic and social life;¹⁰ to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;¹¹ and to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices that constitute discrimination against women,¹² among others.

CEDAW also obliges parties to address and modify existing social and cultural patterns of conduct of men and women, to eliminate prejudices, customs and all other practices that perpetuate the thoughts and practices on the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.¹³

On the other hand, ILO Recommendation (193) on the Promotion of Cooperatives, adopted on March 6, 2002, shows that the ILO has finally recognized cooperatives' role in employment, and has addressed it directly. The Recommendation states that special consideration should be given to increasing women's participation in the cooperative movement at all levels, particularly at management and leadership levels, and that national policies should promote gender equality in cooperatives and in their work. Thus it becomes the responsibility of member-states to adopt specific laws and regulations on cooperatives that are guided by the cooperative values and principles, and if necessary, cause the revision of such laws and regulations.¹⁴

Existing Philippine laws on cooperatives, as a general rule, can be considered progressive in the sense that they embody principles and

provisions that encourage democratic participation and are generally empowering. They also contain clear provisions that provide for incentives and preferential treatment for cooperatives, to spur and support the continued growth of the cooperative movement in the Philippines.

Thus, it is a declared policy of the Cooperative Code “to foster the creation and growth of cooperatives as a practical vehicle for promoting self-reliance and harnessing people power toward the attainment of economic development and social justice. The State shall encourage the private sector to undertake the actual formation of cooperatives and shall create an atmosphere that is conducive to the growth and development of these cooperatives.”¹⁵

A closer review of the existing cooperative laws, however, reveals that they do not come up to international standards when scrutinized through the eyes and standards of CEDAW. The reason for this is simple: the laws are either gender neutral or gender blind, which does not at all contribute to gender equality. The framers had been silent on giving any preference or incentives that are gender-based, opting to treat men and women “equally.” Consequently, the laws are a source of subtle oppression and inequality since they totally ignore the substantive status or position of women and their participation vis-à-vis that of their male counterparts. Further, the lack of gender sensitivity in the use of language further perpetuates the inequality.

In view of all the above, there is need for amendments that would introduce measures giving support and incentives for better participation by women in areas where they are less represented.

A. Greater women's participation in leadership positions

Under article 7 of CEDAW, State parties have the duty to ensure women's participation in the political and public life of the country; they should ensure to women the right to participate in the formulation of government policy and the implementation thereof, to hold public office, and to perform all public functions at all levels of government.¹⁶ This provision obviously refers to women's participation in leadership.

In the cooperative movement, it is the CDA that participates in the formulation of government policy and has the responsibility of implementing the same. Thus, if women are to participate in the formulation and implementation of government policies, then their membership and participation in this body must be ensured. A look at the provision¹⁷ shows that the lawmakers saw and recognized the need to assure participation from different parts of the country. Thus it provides that that commissioners must come from the different regions of the country, and that their numbers are evenly distributed. However, even as the lawmakers have been carefully aware of the need for regional representation, they were not conscious or aware of the need to ensure gender representation. If the objective is to get more people from the different regions to participate in cooperatives, then isn't it more important to ensure that women who comprise more or less half of the population be assured of seats in the CDA Board of Administrators, which is a way of hastening and assuring women's equality vis-à-vis the men.

In addition to assuring seats for women in the governing board, there is need to ensure that members of the board are gender sensitive. Hence, the law should provide for an additional qualification for those who will sit as a member of the CDA governing board. That is, the nominees for appointment as a member of the CDA governing board should be gender sensitive, and should exhibit an awareness of the gender issues in the cooperative movement.

As for cooperatives, there is need to ensure women's greater participation in cooperative activities, consistent with the State's obligation under article 4, i.e., providing temporary measures aimed at accelerating *de facto* equality between men and women. For this purpose, it is necessary to adopt measures that will guarantee that a minimum number of positions in the cooperative's governing body are reserved for women. Thus, providing incentives or preferential treatment to cooperatives to make sure that there will be more women in leadership position is viewed as necessary if the goal of achieving equality is to be realized.

Along with decision-making functions, the board of directors of cooperatives has the powers to direct and supervise the cooperative,

manage its properties, and exercise other powers that are not reserved for the general assembly. Section 38 of the Cooperative Code provides for board membership of not less than five nor more than fifteen, who are elected by the General Assembly of the cooperative. Again, as a means of ensuring increased women's participation in this decision-making body, there is need to take temporary measures to ensure women's greater presence in the board. A portion of the seats in the board should be reserved for women based on a 60:40 ratio, or that at the very least, three seats in the board should be reserved for women at any one time, as far as practicable. These are measures that can be adopted to hasten *de facto* equality between women and men.

Another issue regarding women in leadership positions is gender stereotyping. Article 5 of CEDAW makes it obligatory for the State party to take steps "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." As can be gleaned from the data on leadership, it is evident that stereotyped roles for men and women are still very much evident. One only has to look into situations where women sit in the governing boards or take on leadership roles—women end up occupying positions or offices that are considered "for women," which are usually the positions of secretary or treasurer of the cooperative.

To address this issue, it is proposed to develop action programs that will raise the awareness level of cooperative members and officers, for them to realize that both women and men are equally capable of occupying and discharging the functions of the different offices, with background, skill, and appropriate training as the only other valid aspect that may be considered.

B. Appropriate and gender-responsive education and training

Among the universally accepted cooperative principles enunciated in the Coop Code is the one on cooperative education (section 4 [5]), mandating that cooperatives shall make provision for the education of

their members, officers and employees, and the general public based on the principles of cooperatives. This finds support in article 10 of CEDAW, which obliges State parties to adopt courses of action intended to guarantee equal rights in the field of education and equal access to programs of continuing education, all aimed at reducing the gap in education existing between men and women.

However, the cooperative laws are silent on what the cooperative education and training seeks to achieve, besides popularizing the principles of cooperative. There is no mention of or reference to education programs on gender sensitivity, equality, and awareness, all of which are needed to advance women's empowerment and increase their participation in the cooperatives. Neither does coop education stress the importance of strictly adhering to, observing, and implementing the principles of nondiscrimination. It is silent on whether these education and training would address or be responsive to women's needs and issues, and whether women will be the target beneficiaries of these programs.

But the gap does not end there. Both the Cooperative Code and the CDA Law are silent on the need for leadership training for women to encourage them to assume more vital tasks and responsibilities in the cooperative. This is therefore an area where appropriate and gender responsive education can be prescribed and mandated, to provide the much-needed "push" to put gender concerns in the forefront.

There are several other provisions in the Cooperative Code that give cooperatives the mandate to give education for members, officers, and employees. Among these are section 4 on cooperative principles, and sections 6 (8) and 24 (1) b [i]. However, the education and training mentioned here all pertain to cooperative work, and none on gender issues and concerns. To address this situation, there is need to make it mandatory to include gender issues and concerns when preparing education and training programs, including the conduct of studies and the gathering of disaggregated data, so that appropriate responses and affirmative action plans can be formulated and carried out.

C. Attention to members with family responsibilities

If one were to increase women's participation in cooperatives as members and decision makers, it is unavoidable that concerns over members with family responsibilities be given proper attention. On this point, article 11 (2) (c) of CEDAW is relevant as it requires State parties to take appropriate measures to encourage the provision of the necessary supporting social services, in particular through promoting the establishment and development of a network of childcare facilities. Related to this is article 13 (a), which enjoins State parties to take appropriate measures to eliminate discrimination against women in other areas of economic and social life, in particular the right to family benefits.

There are laws that seek to address the concerns of workers with family responsibilities, such as the Barangay Level Total Development and Protection of Children Act (Barangay Day Care Act) (RA 6972) and the Early Childhood Care and Development (ECCD) Act (RA 8980), but these have proven to be insufficient.

The Barangay Day Care Act¹⁸ (section 2) provides for the establishment of a daycare center in every barangay, with the total development and protection of children program in every barangay day care center (DCC). These efforts are intended for the care of children and provision of special protective measures against all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development. As more women enter the labor market, there are not enough resources to accommodate the needs of children of workers with family responsibilities. In fact, there is lack of resources for the expansion of barangay DCCs, making it difficult to fulfill the target of one DCC per barangay. Available data show that as of 2000, there were only 32,787 DCCs spread over 41,924 barangays nationwide; 11,577 barangays still did not have DCCs (UNESCO 2005). And even if the target of one DCC per barangay is established, this will not be sufficient unless DCCs are set up closer to the workplace. There is also the ECCD Act that is "anchored on complementary strategies for ECCD that include service delivery for children from conception to age six (6), educating parents and caregivers, encouraging the active involvement

of parents and communities in ECCD programs, raising awareness about the importance of ECCD, and promoting community development efforts that improve the quality of life for young children and families.”¹⁹ But even with the combined mandates of these two laws, solutions to problems faced by workers, especially by women with family responsibilities, are still sorely lacking.

Insofar as the cooperatives are concerned, neither the Cooperative Code nor the CDA Law addresses concerns on family responsibilities. Neither do both cooperative laws even mention or acknowledge its existence. What it does is to turn a blind eye to this state and totally ignore it. It is high time that family responsibilities of cooperative members be recognized, in order that a system of shared responsibility be put in place for the betterment of all, both men and women, young and old alike.

The need to popularize the idea or concept of cooperatives as business enterprises must be undertaken, most especially at the grassroots or the barangay level. It is also at this very basic level that the issue of increasing the participation of women will get entangled with family responsibilities, so it is at this level where this concern will be very evident. Ensuring support services to workers with family responsibilities would benefit women as it is mostly women who are faced with the problem of “multiple burden.” It would help promote and encourage women to join and participate more as members of cooperatives, and motivate them to take leading roles in their cooperatives.

D. Lack of sex-disaggregated data/information

Among the state obligations under CEDAW is the pursuance of all means to eliminate discrimination against women, through different efforts directed at amending the laws, regulations, customs, and practices and coming up with policies, strategies, and frameworks that will mainstream gender concerns. But to come up with appropriate proposals for amendments, and in order to direct policy formulations to areas of urgent concern, there is need for empirical and disaggregated data, which at this point are not readily available.

This problem is universal in all spheres of public and private concerns, and the situation is no less different in the cooperative movement. There are available data, but these cannot be considered complete or comprehensive, much less gender specific. Even the Cooperative Development Authority—which requires all cooperatives, federations, and unions to submit financial statements, information sheets, and other information so that it can effectively carry out its responsibility to submit an annual report to the president and Congress on the state of the cooperative movement—does have statistics that sorely lack in sex-disaggregated data. As it is said, the silence is deafening. One then wonders how the agency can comply with its obligation to make a report, and to ensure that the report gives a real picture of the concerns of the women who are part of the cooperative movement.

Without these data and statistics, there can be no effective gauge of how the law is being observed and implemented. Sadly, it is still necessary to call the attention of people in responsible offices and positions that it is urgent to comply with the requirement of gathering, submitting, and compiling sex-disaggregated data. For any study into compliance with legal obligations, and any proposals for amendments or change, must have empirical basis so that the true impact of the laws and compliance with the obligations can be truthfully assessed. The lack of disaggregated data shows what gender blindness is, and the consequent discrimination that arises out of this. For then, women's issues and concerns are hidden in the mass of other data and information, so that their real needs and concerns are not brought to the fore to be properly addressed. Then, the aim to help women achieve economic empowerment will remain in the realm of targets and objectives, unless real and concrete steps are taken to address this problem.

VI. Summary, Conclusions, Recommendations and Proposed Amendments

The continuing advocacy and struggle of the last two decades to promote women's empowerment and gender equality have led to what can be considered major successes, such as the formulation of the *Philippine Plan for Gender-Responsive Development 1995-2025* (PPGD), the passage of gender-responsive legislation,²⁰ the allocation of a minimum of 5 percent in the budget of all agencies and local government units for gender and development (GAD) programs,²¹ projects, and activities; the implementation of various programs and services for women; and the establishment of GAD resource centers in regions, which can provide technical assistance to local governments in the implementation of gender programs, projects, and services. Despite these noteworthy accomplishments, violation of women's rights and dignity continue to hound the society, made more acute by the impact of poverty and the burdens of globalization. Discrimination against women still exists, even where women's faces are absent and their issues ignored.

In the cooperative movement, several issues have been observed and identified, principal of which pertains to the issue regarding the quality and level of participation of women in cooperative activities and in its leadership. Other issues pertain to the lack of access to appropriate education and training opportunities for women, the failure to address women's problems regarding family responsibilities, and the lack of sex-disaggregated data that can be the basis for proposals for amendments to properly acknowledge and address women's issues in the cooperative.

In the face of these issues confronting women, the cooperative laws have not been responsive. They have, in fact, even failed to recognize and address them. While the laws have their progressive features—since they have acknowledged and harnessed the role of cooperatives as a vehicle for a more equitable distribution of opportunities, income, and wealth, and in achieving economic development and attaining social justice—they have failed to advance women's empowerment consistent with the State's treaty obligations under CEDAW.

Thus, there remains a great urgency to undertake major steps to advance women's rights and agenda, and achieve the goals and vision laid down in the *Framework Plan for Women 2001-2004* and the *Philippine Plan for Gender-Responsive Development 1995-2025*.

So what must be done to address the gender issues in the cooperative movement? How can women be encouraged to take a more active and decisive role in these organizations to really make these effective vehicles for the economic empowerment of women? How can the gaps in the law be addressed, along with the women's issues in cooperatives? Since all sectors of society stand to gain in empowering women to effectively use the cooperative as a vehicle for economic, social, and political advancement, and the cooperation of all is necessary to improve the economic status of women, the following recommendations are submitted for the consideration of all concerned:

I. Role of the executive and policymaking officers and legislators

A. Undertake a systematic review and assessment of the existing laws for the purpose of amending it

Although there are quite a number of beneficial provisions noted in the cooperative laws reviewed, still there is a need to subject these laws to a more rigid study, such as this one, for the purpose of introducing amendments that address the issues and gaps previously discussed. This is in accord with the obligation of the State to adopt appropriate legislative and other measures to eliminate discrimination against women.²² There are recommendations, however, that should be applied to all laws, among which are the following:

1. The use of gender-fair language.
2. Inclusion of provisions that articulate the particular needs and interests of women, to ensure that women are placed in substantially equal role vis-à-vis men and to break the gender neutrality or gender blindness of the law. Gender neutrality or blindness of the law can lead to, or result in, discrimination, despite the fact that it appears at first glance that men and women are treated the same, which does not at all mean equally. The amendments

to be proposed must focus on the areas of concern with regard to women's empowerment—increased economic empowerment, protection and fulfillment of women's human rights, and gender-responsive governance—to achieve the goals and vision that aim to correct situations of discrimination.

The laws should be measured against the standards set by international treaties and conform to the obligations assumed by the state under international human rights principles and standards, so that the gender gaps and biases are minimized, if not totally eliminated.

B. Adhere to existing international human rights conventions, treaties, and instruments

Beyond merely conducting a review of the existing legislation, and proposing amendments thereafter, it is also necessary to accede to other international human rights instruments to show that the government is willing to stand before the international human rights community and be held accountable for the obligations it has assumed under these treaties and conventions. It will also show that the state is committed to advance the cause of women's human rights and is willing to take the steps necessary to ensure gender equality in all aspects of its political, economic, social, and cultural endeavors.

C. Integrate gender in the legislative agenda and policy formulations

Gender should be made an integral part of all government frameworks, policies, strategies, and plans. Gender issues should always be considered, to mainstream gender concerns. Hence, it is imperative that women be consulted and, more importantly, represented in the different offices, agencies, bureaus, and other similar bodies to guarantee that their concerns are not passed over or excluded.

With regard to this, the need to systematize and institutionalize the collection of sex-disaggregated data from all branches, offices, and agencies of government must be emphasized, in order to help the executive and legislative branches of government in identifying areas where affirmative

action can be directed to, and in identifying priority areas for legislation and policy formulation.

II. For the private sector, particularly offices, institutions, and NGOs, to advocate gender issues and concerns

A. Embark on a policy review of relevant legislation and launch advocacy work with a view to addressing gender issues and concerns, and mainstreaming gender equality issue

All public and private offices and institutions must consciously undertake policy review of other related legislation and proposals for amendments to ensure that gender concerns are included and addressed, and that women participate in decision-making bodies.

B. Collect and maintain sex-disaggregated data in aid of policy formulation, program planning, and other activities that are gender-responsive

The importance of the availability of sex-disaggregated data must be underscored, since it is indispensable in carrying out productive and effective studies and review of policies, programs, and initiatives, as well as in putting together recommendations from a gender perspective. Ensuring and monitoring the regular reporting, collation, and availability of sex-disaggregated data are thus crucial to this endeavor.

C. Conduct a sustained educational campaign on gender issues and mainstream gender concerns in the private sector

The educational campaign should be immediately undertaken by all offices, groups, associations, and NGOs, including all types and categories of cooperatives, federations, and cooperative unions. This is a fundamental step toward capacitating the private sector in understanding and appreciating gender issues and concerns, as a preparatory step toward undertaking activities and programs that address the issue of equality and nondiscrimination in their respective communities, associations, and organizations. Awareness building is a

basic and indispensable component in the promotion of gender equality, and the elimination of gender stereotypes, bringing with it a change in values, attitudes, and behaviors, eventually leading to the creation of a gender-friendly environment.

These educational campaigns should integrate an advocacy for the ratification of relevant international human rights treaties and the amendment of other relevant economic legislations. Discussions on the discriminatory attitudes, stereotypical behaviors and practices, and the necessary corrective measures should be held. Popularizing the cooperative—how it could be used as a vehicle not only for women's economic empowerment but also for raising their awareness on gender issues and concerns—should be undertaken vigorously. Bringing the education campaign to the grassroots level will help women identify and deal with their problems and issues, thus strengthening their capabilities and bringing about their increased self-confidence. This will in turn encourage them to participate more actively in cooperatives, prepare and capacitate them in taking on more active roles in its operations, and in assuming decision-making and leadership positions.

D. Institutionalize the process of consulting and involving the women in the decision-making process

Women are the best articulators of their concerns, issues, and interests. Their empowerment starts with encouraging them to speak out, which will lead to them taking on more active and responsible roles in the activities and programs that push for their own concerns. Thus it is vital to involve women when making decisions, particularly on matters concerning them. Review of policies and plans should be directed toward ensuring that they are gender-sensitive, and the corresponding action plans should make gender a point of action.

E. Set up oversight or gender committees or groups to ensure gender-related issues and problems are recognized and addressed

An effective way to mainstream gender and its issues and concerns, to make sure that these problems are recognized and addressed and that

plans of actions are clear, is through the setting up of groups or committees that are engaged in gender analysis in program development and policy planning, etc. These committees can assume the task of identifying gender-related issues and problems, and ensuring that gender-awareness training programs are carried out.

Notes

- 1 Adopted in 1948.
- 2 Ratified on June 7, 1974, and October 23, 1996, respectively.
- 3 See also International Labor Office, *Promoting Gender Equality through Collective Bargaining*, Booklet 1 (2002), annex, 32.
- 4 Ibid, 5-7.
- 3 These are laws enacted after the ouster of President Ferdinand E. Marcos in the 1986 EDSA People Power Revolution.
- 4 Sec. 2, RA 6938, otherwise known as the Cooperative Code of the Philippines.
- 5 This is the version of Prof. Jose Sibala. However, a contrary assertion has been made by the Cooperative Development Authority in its "Chronology of Developments in the Cooperative Movement," in which it states that during the period 1942-1945 (World War II), cooperatives ceased to function.
- 6 Constitution, art. 12, sec. 15.
- 7 Constitution, art. 12, sec. 1.
- 8 Constitution, art. 12, sec. 15. "The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development."
- 9 The Alliance of Electric Cooperatives (APEC) has three representatives while COOP NATCCO has one.
- 10 CEDAW, art. 13
- 11 CEDAW, art. 2 (e)
- 12 CEDAW, art. 2 (f)
- 13 CEDAW, art. 5
- 14 ILO Recommendation 193, paragraph 10.
- 15 RA 6939, sec. 1.
- 16 CEDAW, art. 7.
- 17 RA 6939, sec. 4.
- 18 RA 6872, sec. 2.

19 RA 8080, sec. 2.

20 RA 9208 or the Anti Trafficking in Persons Act and RA 9262 or the Anti Violence against Women and Children Act are but some of the gender-responsive laws passed in recent years.

21 This in is compliance with RA 7192 or the Women in Nation Building Act or WIN Law.

22 CEDAW, art. 2

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Chapter 5

Women's Economic Empowerment and the Comprehensive Agrarian Reform Program (CARP)

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I. Introduction

The Philippine economy is to a great extent dependent on agriculture. The sector not only provides sustenance and employment but also contributes to foreign exchange.¹ In moving toward rural development and industrialization, agrarian reform or redistribution of productive assets is a vital component.

Since 1903, several legislations had been passed in an effort to arrive at an effective agrarian reform program and bring to end years of agrarian unrest. Alongside the years of struggle for a just and effective agrarian reform program are years of women's struggle to gain equal access to land and livelihood. Needless to say, the path to women's economic empowerment had not been without adversity.

Recognizing that women encounter discriminatory practices that impede their participation in societal development, the Philippines ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The treaty defined discrimination against women as any

distinction, exclusion, or restriction made on the basis of sex that affects women's enjoyment of political, economic, social, cultural, civil, or any other rights, irrespective of marital status, on an equal basis with men.

In promoting the principle of equality, States parties to CEDAW, such as the Philippines, are mandated to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men."²

In compliance with the convention, the Philippines incorporated as a state principle in the 1987 Constitution that "the State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men" (article 2, section 14).

In the area of agrarian reform, section 40, paragraph 5, of the Comprehensive Agrarian Reform Program (CARP), which was enacted on June 10, 1988, provides that "all qualified women members of the agricultural labor force must be guaranteed and assured [of] equal rights to ownership of the land, equal shares of the farm's produce, and representation in advisory or appropriate decision-making bodies."

Eighteen years since the enactment of the CARP, there have been gains in advancing women's entitlement to land through the program. This paper will, however, attempt to identify gender gaps and biases that may be found in the law and in its implementation.

II. The Comprehensive Agrarian Reform Program of 1988

Several laws had been enacted by the Philippine government in an effort to end centuries of agrarian unrest. These laws proved unsuccessful.

In September 26, 1972, shortly after martial law was declared, Presidential Decree (PD) 02 (1972) was passed. To accelerate the Agrarian Reform Program embodied in Republic Act (RA) 3844, as amended,³ PD 02 declared the entire country as a land reform area. This was followed by PD 27 (1972), which decreed the "emancipation of tenants from the bondage of the soil, transferring to them the ownership of the land they till and providing the instruments and mechanism therefore."

Presidential Decree 27 applied only to tenant-farmers of private agricultural lands primarily devoted to rice and corn under a system of sharecropping or lease tenancy. Because of its limited scope, it failed to reach the majority of farmers.

In 1987, the Filipino people ratified the 1987 Constitution, which espoused the policy that the "State shall promote comprehensive rural development and agrarian reform" (article 2, section 21).

In consonance with the above declaration of principle and state policy, Proclamation 131 (Instituting a Comprehensive Agrarian Reform Program) and Executive Order (EO) 229 (Providing the Mechanism for the Implementation of the Comprehensive Agrarian Reform Program) were signed into law on July 22, 1987.

Land reform issues such as retention limit and priority areas were defined later on by Congress when it enacted RA 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988. It provides for both agrarian reform and land redistribution.

The CARP used variable retention limits: seven hectares for rice and corn lands, five hectares for non-rice and non-corn lands, and three hectares for each of the heirs of the landowner who are fifteen years old and above and are actually tilling or directly managing the land (section 6).

Unlike PD 27, the CARP covers all private and public agricultural lands regardless of commodity produced and tenurial arrangement, including other lands of public domain suitable for agriculture (section 4).

The qualified beneficiaries of the CARP include not only farmers but also agricultural lessees and share tenants, seasonal and other farmworkers, actual tillers or occupants of public lands, collectives or cooperatives of said beneficiaries, and others directly working on the land (section 22).

The CARP, besides providing for the acquisition and distribution of land, also provides for the delivery of support services such as irrigation facilities, infrastructure development, credit facilities or financial assistance, research and cooperative management training (section 35).

The CARP also created Agrarian Reform Communities (ARCs) to effectively channel support services to agrarian reform beneficiaries (ARBs). ARCs are barangays or cluster of barangays primarily composed of and managed by ARBs willing to be organized and undertake the integrated development of an area and/or their organizations/cooperatives (section 36).

According to the Department of Agrarian Reform (DAR) Situationer Report on ARCs, as of March 2000, about 1,060 ARCs had been established all over the country. Of these, there were 2,596 organizations with 223,273 members assisted by DAR.⁴ Through ARCs, resources such as foreign donations are channelled to specific communities.

Based on DAR's assessment in 1997, only 5 percent of the ARCs were highly developed; most were underdeveloped. The developed ones were farming communities with full ownership of the land and with established organization and infrastructure.

III. Gender Issues and Concerns in the CARP

It has been eighteen years since the CARP took effect. There have been gains for ARBs but several concerns are yet to be addressed before the end of the implementation of CARP in 2008. The first and most pressing issue is the delay in the distribution of land.

The CARP targets agrarian reform in about 10.3 million hectares of farmland.⁵ This is to be redistributed to "four million landless and land-poor households, which is close to 80 percent of the peasant population."⁶ Studies show that agrarian reform has had a positive impact on poverty alleviation. There has been a decline in the incidence of poverty among agrarian reform households from 47.6 percent in 1990 to 45.2 percent in 2000.⁷

From 1972 to 1999, DAR redistributed 3,041,634 hectares of land. As of the year 2000, DAR had distributed around 4.84 million hectares of public and private lands or 47 percent of the total farmland, representing 60 percent of the total scope of the CARP. It has benefited 41 percent of the beneficiaries.

Originally, the CARP was to be completed within ten years from its effectivity or until 1998 (section 5). However, the period was extended until 2008 by virtue of RA 8532,⁸ which took effect on February 23, 1998. The said law earmarked Php 50 billion for land distribution. This is Php 115 billion short for land distribution for the period 2001-2008.

However, the present administration has promised to distribute around 100,000 hectares of land annually (2000-2008). This is the lowest rate in terms of private agricultural land distribution. This means that by 2008 only 600,000 hectares would have been distributed of the 1.09 million hectares undistributed land.

Evidently, there is insufficient budget for land distribution, which results in further delay in awarding land to farmer beneficiaries. Also contributing to the delay are cases against DAR personnel and CARP beneficiaries, cases for land conversion and land reclassification filed by landowners, and cancellations of emancipation patents (EPs) and certificates of land ownership agreement (CLOAs).

Another setback is the reversal of previous decisions that granted coverage of properties under the CARP. According to DAR, in the beginning of 2000, there were about 1,500 cases pending in courts and around 4,680 cases pending before quasi-judicial bodies.

There is also a need to look at the financial aspect of agrarian reform. By provision of law, agrarian reform has in effect restricted the trade of agricultural lands. Section 27 of the CARP prohibits lands acquired by beneficiaries from being "sold, transferred or conveyed except through hereditary succession or to the government, or to the LBP [Land Bank of the Philippines], or to qualified beneficiaries for a period of ten years...." If an agrarian reform beneficiary is unable to pay off his or her bank loan, the bank has to turn over the EP or CLOA to the government, which should dispose of the property to another beneficiary. Because of this, banks refuse to grant loans to beneficiaries. This is aggravated by the fact that EPs and CLOAs are not in the same standing as transfer certificates of title (TCTs) and may not be used as collateral for bank loans.

The financial problem in agrarian reform is also due to the mode of compensation to landowners and the payment of beneficiaries.

Landowners receive cash payment equivalent to 25-35 percent of the total value of land; the balance is paid in government bonds with a maturity of ten years. The beneficiaries amortize the loan for a period of thirty years. The government's fiscal position is at high risk especially due to the fact that repayment performance by beneficiaries has been poor.⁹

With the above concerns in mind, there are specific issues affecting women beneficiaries that need to be addressed as well.

Unequal Access to and Control of the Land

One of these issues is the unequal access to and control of the land. As of 1992, a total of 363,276 EPs had been granted. Of these, 327,461 were awarded to men while only 35,815 were awarded to women.

The same is true in the case of CLOAs. As of 1992, a total of 89,137 CLOAs had been granted, but of this only 12,841 were granted to women while 76,296 were granted to men. In terms of average land size of EPs, men were given 1.36 hectares while women were given 1.19 hectares. The average land size of CLOAs granted to men was 3.27 hectares while that granted to women was 2.49 hectares.

In 1996, DAR issued Memorandum Circular 18, series of 1996, in which it provided that in the issuance of titles, *actual participation* shall be the guide. So if both the husband and wife participate in farming, title should be under both their names but it should not exceed three hectares.

However, in the year 2001, DAR issued Administrative Order 01, clarifying the rule on the issuance of EPs/CLOAs to legally married or common-law spouses.

It provides that to protect the rights of both spouses to ownership of the land, EPs and CLOAs shall be issued in the name of both of them. For married spouses, the phrase "married to" shall be inserted between their names to indicate not merely their civil status but also conjugal ownership of the awarded land.

If they are common-law spouses, the EP/CLOA shall be issued in the name of both spouses, with the conjunctive "and" placed between their names. The rule shall apply even in the case of collective CLOAs.¹⁰

Furthermore, Administrative Order 01 provides that in cases where the wife actually farms the land or when she has established a vested right to receive land separately from her partner, she is entitled to a separate title apart from the three hectares awarded to her husband/partner.¹¹

Regardless of whether the EP/CLOA was registered in the name of both spouses or awarded to only one of them, as long as the award was made during their marriage or cohabitation, the consent of both spouses shall be required for the following transactions:

- (a) The sale, transfer, or conveyance of lands under section 27 of RA 6657, where the consenting spouses are the vendors or transferors
- (b) Application for land use conversion pursuant to RA 6657, as implemented by Administrative Order 01, series of 1999, where the consenting spouses are the applicants
- (c) Contract of mortgage where the awarded land is used as collateral to secure a loan, where the consenting spouses are the mortgagors
- (d) All other transactions involving waiver of rights and relinquishment of ownership or possession over lands awarded to ARBs¹²

The number of women beneficiaries improved in 2003, although there were still more men than women who are holders of emancipation patents and certificates of land ownership agreement. Only 50,720 women were given EPs while there were 329,789 men with EPs. There were 16,616 women holders of CLOAs as compared to 33,711 men.¹³

Women comprise only 22 percent of the number of agrarian reform beneficiaries despite a DAR memorandum mandating gender equality in land titling.¹⁴

Lack of Sex-Disaggregated Data

Vital to gender mainstreaming approach is the development of a GAD [gender and development] Indicator System, which would (a) measure changes in the lives of women and the extent at which they enjoy their

rights, (b) monitor progress in the implementation of the gender mainstreaming policy, and (c) track specific gender issues like violence against women and women's unremunerated work.

With the passage on February 12, 1992, of RA 7192 or the Women in Nation Building Act¹⁵ all government agencies were directed to work toward mainstreaming women and gender concerns.

The DAR issued Administrative Order 01, series of 2001, entitled Guidelines Governing the Non-Gender Biased Implementation of Agrarian Laws¹⁶ to ensure that men and women shall have equal access to the benefits of the CARP and equal shares in the burden and responsibility of attaining its goals.

Administrative Order 01 institutionalized a reporting system for land acquisition and distribution with an integrated GAD perspective.

Generating gender-specific data to find out the situation of women in agrarian reform was only initiated by DAR upon the passage of said Administrative Order 01.

Representation and Participation of Women in Decision-making Bodies

Another area of concern is the lack of representation of women in the Presidential Agrarian Reform Council (PARC), Provincial Agrarian Reform Coordinating Committee (PARCCOM), and the Barangay Agrarian Reform Council (BARC).

The PARC is composed of the president of the Philippines as chairperson, the agrarian reform secretary as vice-chairperson, and the following as members: secretaries of the departments of agriculture, environment and natural resources, budget and management, local government, public works and highways, trade and industry, finance, and labor and employment; director-general of the National Economic and Development Authority; president of the Land Bank of the Philippines; administrator of the National Irrigation Administration; three representatives of affected landowners to represent Luzon, Visayas, and Mindanao; and six representatives of agrarian reform beneficiaries, two each from Luzon, Visayas, and Mindanao, provided that one of them shall be from the cultural communities (section 41).

The PARCCOM, which is responsible for coordinating and monitoring the implementation of the CARP in the province, is composed of a chairperson, who shall be appointed by the president upon the recommendation of the EXCOM, the provincial agrarian reform officer as executive officer, and the following as members: one representative each from the Department of Agriculture (DA), the Department of Environment and Natural Resources (DENR), and the Land Bank of the Philippines; one representative each from existing farmers' organizations, agricultural cooperatives, and non-governmental organizations (NGOs) in the province; two representatives from landowners, at least one of whom shall be a producer representing the principal crop of the province; and two representatives from farmer and farmworker-beneficiaries, at least one of whom shall be a farmer or farmworker representing the principal crop of the province. In areas where there are cultural communities, the latter shall also have one representative (section 44).

The BARC shall be composed of the following:

- a. Representative/s of farmer and farmworker beneficiaries
- b. Representative/s of farmer and farmworker nonbeneficiaries
- c. Representative/s of agricultural cooperatives
- d. Representative/s of other farmer organizations
- e. Representative/s of Barangay Council
- f. Representative/s of NGOs
- g. Representative/s of landowners
- h. DA official assigned to the barangay
- i. DENR official assigned to the area
- j. DAR Agrarian Reform Technologist assigned to the area who shall act as the secretary
- k. Representative of the Land Bank of the Philippines

Besides the function of the BARC under EO 229, it shall have the following functions:

- (a) Mediate and conciliate between parties involved in an agrarian dispute, including matters related to tenurial and financial arrangements

- (b) Assist in the identification of qualified beneficiaries and landowners within the barangay
- (c) Attest to the accuracy of the initial parcellary mapping of the beneficiary's tillage
- (d) Assist qualified beneficiaries in obtaining credit from lending institutions
- (e) Assist in the initial determination of the value of the land
- (f) Assist the DAR representatives in the preparation of periodic reports on the CARP implementation for submission to the DAR
- (g) Coordinate the delivery of support services to beneficiaries
- (h) Perform such other functions as may be assigned by the DAR (sections 46-47)

According to the 1993 study conducted by the Policy Strategic Research Service (PSRS) of DAR, women beneficiaries had minimal participation and representation in the implementation of the CARP. Out of twenty-three PARC members, there were only two women. Of 225 members of thirty-one operational PARCCOMS, there were only 14 women. Out of 19,337 members of 1,445 operational BARCs in thirteen provinces, there were only 3,552 women.¹⁷

From 1993 to December 2003, DAR launched 1,587 ARCs nationwide. There were a total of 3,391 farmers' organizations or cooperatives, of which 35 percent are women's organizations. Women also comprised 41 percent of the committee members, but only 28 percent are leaders.¹⁸

Access to Loans

Projects funded by NGOs geared toward granting financial assistance to women generally involved food processing, hog raising, vending, and other small-scale enterprises. Substantial loans were generally granted to male beneficiaries.

The Quedan and Rural Credit Guarantee Corporation (QUEDANCOR) has released Php 4.78 million in loans. Women comprised 64 percent of the borrowers but they received only 36 percent of the amount released. In 2003, it released Php 779 million, benefiting 18,677 women borrowers, with an average loan of Php 42,000. However, this amount represents only 28 percent of the total amount released in 2003.¹⁹

Language of the Law

Law in general claims to be gender neutral. As in the case of the CARP, its provisions are said to be applicable to both males and females. Section 40, paragraph 5, however, made a specific mention of rural women who shall be entitled to equal rights as men in the agricultural labor force.

It must be noted that the language used by the CARP reflects the predominant use of the male perspective. This is reflective of the reality that there are more male legislators than female legislators. But it must be pointed out that using the pronoun “he” to apply to both male and female, in effect, perpetuates the idea that men’s experiences are the norm, rendering women’s experiences invisible.

IV. Conclusion/Recommendations

The fact that women comprise only 22 percent of the agrarian reform beneficiaries by the year 2003—fifteen years after the implementation of the CARP and several years after the DAR administrative order requiring gender equality in the issuance of land titles—is an indication that the struggle for women’s economic empowerment in agrarian reform is far from over.

The problem on access to land ownership, credit facility, and representation in decision-making bodies is aggravated by problems in land title confiscations, cancellations of title, and land use conversion. Also contributing to these problems is the limited budget allocated for land acquisition and distribution.

Government also needs to secure the gains that have already been acquired. There should be a prescriptive period within which landowners may question agrarian reform coverage. In the case of regular land titles, inquiries on its validity should only be allowed within a year after the title is transferred. This should also apply in the case of EPs and CLOAs.

DAR should also be very strict in granting applications for conversion, exemption, and exclusion of lands where EPs and CLOAs have already been distributed. It is claimed by the Philippine Peasant Institute (PPI) that in May 2000, there were 1,892 cancelled EPs and CLOAs, covering 374,266.05 hectares based on DAR-MIS data.²⁰ This was denied by DAR, but it affirmed that 32,598 CLOAs covering 77,094.46 hectares (January 1994-December 1999) were cancelled while only 1,031 EPs affecting 3,714.48 hectares were cancelled due to "erroneous coverage, retention exemption, reissuance of owner's title, and correction of farmer-beneficiaries. The bulk of the EPs/CLOAs were supposedly just replaced, not cancelled, due to transfer actions, subdividing of mother CLOAs, and erroneous entries."²¹

There are more men who are beneficiaries of the CARP. This means that men continue to have greater access to collateralized loans and women continue to have access only to smaller loans. It goes without saying that the limited access to land and other resources affects the capacity of women to a decent living.

Considering that top-level positions in the CARP decision-making and policy-setting bodies are usually occupied by men, women's concerns are not usually included in development planning and in the program implementation.

Even at the barangay level, leaders are predominantly male. This is also the case in the barangay council, cooperatives, and farmers' groups. The majority of the members of the community cooperatives are women, but leadership positions are still held by men.

In the implementation of GAD programs, government agencies should focus not only on organizational concerns but also on the beneficiaries themselves. There is need to conduct information and education campaigns at the agency and local government levels regarding women's rights,

situation, and contributions to development. This will help ensure gender sensitivity in the implementation of the CARP—from identification of beneficiaries to development.

In pushing for reforms in the implementation of the CARP, the aforementioned needs and concerns of women should be addressed. Only then can women's economic empowerment in agrarian reform be truly realized.

Notes

- 1 Aurora Regalado, "Food Security, Agrarian Reform and Rural Development: Opportunities and Challenges for Action," paper commissioned by the Project Development Institute (PDI) for FAO SARC-TSARRD.
- 2 CEDAW, art. 3.
- 3 Code of Agrarian Reforms of the Philippines.
- 4 C.M. Reyes, "Impact of Agrarian Reform on Poverty," PIDS Discussion Paper Series No. 2002-02 (Makati City, Philippines, 2002).
- 5 Presidential Agrarian Reform Council, *Comprehensive Agrarian Reform Program of the Philippines*, vols. 1 and 2 (Manila, 1988).
- 6 Saturnino M. Borras Jr., "CARP in Its 12th Year: A Closer Examination of the Agrarian Reform Performance," June 2000. <http://philsol.nl/A00b/CARP-Borras-jun00.htm>.
- 7 C.M. Reyes, "Impact of Agrarian Reform on Poverty."
- 8 An Act Strengthening Further the Comprehensive Agrarian Reform Program (CARP), By Providing Augmentation Fund Therefor, Amending for the Purpose Section 63 of RA 6657, Otherwise Known as "The CARP Law of 1988."
- 9 G.M. Lanto and M.M. Ballesteros, *Land Issues in Poverty Reduction Strategies and the Development Agenda: The Philippines* (Philippine Institute for Development Studies).
- 10 DAR Administrative Order 01, sec. 2, par. d.
- 11 Sec. 2, par. e.
- 12 Sec. 4.
- 13 <http://www.nscb.gov.ph>. (accessed January 24, 2006).
- 14 Daryl Leyesa, *Common Agenda for Rural Women: Uniting for a Better Future* (Philippine Peasant Institute).
- 15 February 12, 1992.
- 16 Adopted on January 09, 2001.
- 17 National Commission for the Role of Filipino Women (NCRFW), *Philippine Plan for Gender-Responsive Development 1995-2025* (Manila: NCRWF, 1998), 205.

- 18 Fifth and Sixth Periodic Reports of the Philippines to the Committee on the Elimination of Discrimination Against Women, August 02, 2004, 139.
- 19 Ibid, 52.
- 20 Aurora Regalado, "Food Security, Agrarian Reform and Rural Development: Opportunities and Challenges for Action."
- 21 "Agrarian Reform under Estrada: Cancelled CLOAs, Cancelled Lives," *Philippine Daily Inquirer*, June 6, 2000; "Setting the Agrarian Record Straight," *Philippine Daily Inquirer*, June 28, 2000.



Chapter 6

Conclusion and Recommendations

An overview of the Philippine economy clearly indicates that the Philippines, like most developing countries, faces difficulty in promoting economic growth. In spite of the reported economic growth of the early '90s, poverty continues to be the single most pressing problem of the country today. The economic decline in 1997 as a result of the Asian financial crisis only exacerbated the poverty situation. As studies point out, the poverty incidence in the early '20s increased compared to the '90s. Such increase in poverty incidence translates to the increasing feminization of poverty, particularly in the aftermath of the trade liberalization and structural adjustment measures that occurred in the last decade.

Despite the difficulties in promoting sustainable economic growth, however, the Philippines has done better than most Asian countries in improving the overall status and welfare of women. In less than two decades since the Philippines ratified CEDAW, it has accomplished much in fulfilling its obligations under the treaty and in meeting its commitments to implement the action plans of the women's world conferences in Nairobi (1985) and Beijing (1989). It has succeeded to pass and amend laws to make them gender responsive, develop programs and install 'enabling mechanisms to promote gender equality, and promote the welfare of poor women and communities. The vigorous participation of the women's movement (with members from civil society, academia, and government)

through ceaseless organizing, capacity building, and lobbying efforts provided the necessary impetus for these accomplishments.

While these accomplishments are significant and have far-reaching effect, they have not been sufficient enough to eliminate the barriers faced by women, particularly the poor women, to promote their economic condition and realize their economic rights toward economic empowerment.

In the area of legislation, for instance, a lot still needs to be accomplished. This study confirms two things:

First, in spite of the increasing female labor participation in the labor market and their robust contribution to the Philippine economy, women still lag behind men in access to economic opportunities. As they seek employment to ensure their families' economic viability in a globalizing market, they are confronted with gender issues in their place of work, in their homes and communities, such as the following:

- Inadequate support services for workers with family responsibilities
- Lack of women's voice and participation in decision-making bodies
- Difficulty in the access to credit, technology, support services, land and information
- Occupational segregation that leads to pay gap and fewer opportunities for skill development
- Discrimination in hiring, training, and promotion
- Lack of social protection for workers in atypical work arrangements, e.g. part-time, homeworkers, seasonal and casual workers, and workers in the informal sector

These gender issues are brought about by structural and cultural barriers that impede women's effective access to and control of capital, market, training, information, technology and technical assistance, and just wages and benefits. These productive resources are predisposed to benefit men more than women. Women's continuing vulnerability to poverty is thus a mere consequence of gender

inequality in the access of these productive resources, thereby limiting their scope of economic participation and the range of their economic empowerment.

Second, the Philippines has taken steps to address the situation and fulfill women's right to gender equality, such as the enactment of economic laws to provide greater access to productive resources for women. But a review of the economic laws—the Labor Code, the Micro Finance Laws, Cooperative Code, and the Agrarian Reform Code—shows that the laws contain provisions that are not gender sensitive and responsive to the issues faced by women in the labor force. For instance, childcare facilities, family planning, and other social welfare are generally stereotyped as women's issues and concerns; women entrepreneurs are confined to the lowest level and their credit access are limited to amounts that are hardly enough to sustain and upscale a microenterprise beyond poverty levels. Moreover, the laws contain gender biases that only reinforce the traditional assumptions about women's and men's roles. The laws also have gender gaps such that the provisions are either gender blind or gender neutral. For instance, the laws fail to address the gender imbalance in leadership and decision-making bodies, which impedes women's voice and effective participation in governance.

Furthermore, the laws also lack the enabling policies, programs, and measures for women, especially for poor women, to ensure gender equality between women and men. Concretely, they do not include gender training and mainstreaming as components of capacity building, or provide affirmative action to address gender imbalance in leadership and in hiring and promotion, or institute monitoring and evaluation of programs to ensure that gender equality is enforced and mainstreamed in all economic activities.

Third, the laws are couched in a non-gender fair language, i.e., they use the male as the reference point, thereby reinforcing the male-centered bias of the legislation. This lack of gender sensitivity in the use of language contributes to making women's voice and presence invisible, in spite of their visible presence in the labor market and contribution to the development of the Philippine economy.

In light of the above gender inequalities in the economic legislation, the following recommendations are offered for both public and private institutions:

Policy Advocacy

1. Amend the economic laws to conform to CEDAW's goal of eliminating all forms of discrimination, whether direct or indirect, intended or unintended, and to advocate for this course of action among non-governmental organizations (NGOs) and government organizations (GOs). Amendments should include the following points:
 - 1.1. In general, introduce provisions to address the three areas of concern with regard to women's empowerment—increased access to resources, more social protection and provision for welfare facilities, and increased representation in economic decision-making or policymaking bodies. In particular, include provisions that:
 - Integrate in the policies, goals, and objectives a clear commitment to gender equality, considering the reality that women comprise almost half of the country's population and their significant number in the labor force.
 - Introduce gender equality concerns, such as gender monitoring schemes, requirement of or incentives for gender seminars and training, gender research and documentation, collection of sex-disaggregated data, among other provisions.
 - Institute affirmative action in public institutions to address gender imbalance in leadership and decision-making bodies, regulatory and oversight bodies, as well as provide incentives to increase women's participation in private institutions' leadership and activities.

- Provide social services and facilities in recognition of workers needs and concerns (e.g., childcare facilities, flexible work schedules, and protective measures for workers in atypical work arrangements).

1.2. Observe gender-fair language in the formulation of provisions to address the social inequity reflected in the language of the law.

2. Support efforts of groups in other sectors, in alliance with particular members of Congress, to push for gender-sensitive and gender-responsive legislative bills (e.g. rights and welfare of informal sectors, maternity leave for unmarried women in the government sector, anti-discrimination measures against LBGTs, among others).
3. Undertake policy review of other existing legislation with a view to complying with the State's responsibility to promote, respect, protect, and fulfill women's rights guaranteed under CEDAW.
4. Undertake stronger initiative for gender mainstreaming in plans, policies, programs, and activities in all government and private institutions.
5. Ratify other international human rights instruments that give substance to women's economic empowerment, and recognize workers' specific needs and concerns, such as the Workers with Family Responsibilities Convention (No. 156) of 1981 and Workers with Family Responsibilities Recommendation (165) of 1981; Night Work Convention (171) of 1990 and Night Work Recommendation (178) of 1990, and necessarily, denounce Convention 89 under Article 5 (1) of the same Convention; Part-Time Work Convention (175) of 1994 and Part-Time Work Recommendation (182) of 1994; The Home Work Convention (177) of 1996 and The Home Work Recommendation (184) of 1996; and Maternity Convention (183) of 2000 and Maternity Protection Recommendation (191) of 2000.

Research and Documentation

6. Require, as matter of policy, the collection and maintenance of sex-disaggregated data in aid of policy formulation, planning of program, and other activities that are gender responsive.

Educational Activities

7. Undertake a sustained gender awareness raising and skills training for all government officials and personnel.
8. Undertake capacity building for informal sectors, rural workers, and other disadvantaged groups.
9. Include gender issues in capacity building and mainstream gender concerns in capacity-building activities for disadvantaged groups.

Leadership and Participation

10. Institutionalize women's participation and representation in all government decision-making bodies, regulatory and oversight bodies, with a view to addressing the gender imbalance in these offices.
12. Include women's participation in the budgetary process at the national and local levels to ensure allocation of fund for gender and development in general, and other gender activities and initiatives in particular.

Organizational Support

13. Provide institutional support to NGOs and people's organizations (POs) that support women's economic empowerment (e.g., women's NGOs or POs striving to acquire and strengthen their capacity in microfinance and microenterprise).

Monitoring and Evaluation

14. Institute monitoring and evaluation mechanism, set standards and performance indicators to ensure strict implementation of and compliance with gender equality programs and activities in public and private institutions.

Annexes

Annex A

Proposed Amendments to the Labor Code

(Sample Analytical Tool)

LABOR CODE / LABOR-RELATED LAWS [designated with (*)]	CEDAW / INTERNATIONAL TREATIES / AGREEMENTS	GENDER GAPS / BIASES IN LEGISLATION	PROPOSED AMENDMENTS	RATIONALE
Preliminary Title, Chapter I - General Provisions				
Art. 3. Declaration of basic policy.	<p>CEDAW, art. 11, Concluding Observations of the Human Rights Committee (HRC): Philippines, 01/12/ 2003 (CCPR/CO/ 79/PHL, Dec. 1, 2003)</p> <p>CEDAW, art. 2 International Covenant on Civil and Political Rights (ICCPR), art. 2 (1) ICCPR, art. 3 International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 2 (2) ICESCR, art. 3</p>	<p>No mention that equal opportunities and EQUAL TREATMENT to ALL employees shall be ensured. There is no clear protection for other employees belonging to other status.</p>	<ul style="list-style-type: none"> • REVISE provision as follows: The State shall afford protection to labor, promote full employment, ensure EQUAL OPPORTUNITIES and EQUAL TREATMENT regardless of race, creed, AGE, GENDER, SEXUAL ORIENTATION, or OTHER STATUS, and regulate the relations between workers and employers. • ADD another basic policy: THE STATE AFFIRMS THE FUNDAMENTAL EQUALITY OF WOMEN WITH MEN AND THE SIGNIFICANT ROLE OF WOMEN IN NATION- BUILDING. RECOGNIZING THE CONTRIBUTION 	<ul style="list-style-type: none"> • To comply with CEDAW 11, ILO Conventions on labor standards, including the Concluding Observations of the HRC on the Philippines report dated Dec. 1, 2001. • Equality in employment has two aspects: equal opportunity and equal treatment. • Gender equality also includes equality regardless of sexual orientation and other status (e.g., ethnicity). • To comply with CEDAW, art. 2; ICCPR, arts. 2 (1) & 3; and ICESCR, arts. 2 (2) & 3. Adopted sec. 2 of RA 8042 with revision.

LABOR CODE / LABOR-RELATED LAWS [designated with (*)]	CEDAW / INTERNATIONAL TREATIES / AGREEMENTS	GENDER GAPS / BIASES IN LEGISLATION	PROPOSED AMENDMENTS	RATIONALE
	CEDAW, art. 7 (b)		OF WOMEN WORKERS, THE STATE SHALL ADOPT GENDER-RESPONSIVE POLICIES AND PROGRAMS.	<ul style="list-style-type: none"> • To comply with CEDAW, art. 7(b). Women have always been disadvantaged in that, through the years, they have always been underrepresented in all decision-making processes of the State, in spite of the fact that they comprise almost half of the total Philippine population. This is to show the State's strong commitment to ensure that it shall take all appropriate actions to women's participation in decision making.
Art. __. Nondiscrimination and equality.	CEDAW, art. 11 (b)	No prohibition against discrimination on the basis of sex, race, creed, age, sexual orientation.	<ul style="list-style-type: none"> • FORMERLY art. 135 on discrimination prohibited. • REVISE the provision: It shall be unlawful for any employer to discriminate ANY employee with respect to HIRING AND in terms and conditions of employment on account of SEX, RACE, CREED, 	<ul style="list-style-type: none"> • To comply with art. 11 (b) of CEDAW. • The nondiscrimination should not only cover the terms and conditions of employment, but also include hiring practices.

LABOR CODE / LABOR-RELATED LAWS [designated with (*)]	CEDAW / INTERNATIONAL TREATIES / AGREEMENTS	GENDER GAPS / BIASES IN LEGISLATION	PROPOSED AMENDMENTS	RATIONALE
		No prohibition against discrimination with regard to hiring, job evaluation and classification to ensure no discrimination in hiring & promotion.	AGE, SEXUAL ORIENTATION. • ADD another prohibited act: THE ADVERTISEMENTS OR NOTICES OF VACANCIES SHOWING PREFERENCE FOR EITHER SEX, AS WELL AS QUALIFICATIONS NOT RELEVANT TO THE POSITION OR WORK.	• Direct discrimination is very evident at the pre-employment state where advertisements tacitly express sex-based preferences, as well as preferences for certain age groups, physical attributes that have no relevance to the position or work.
Art. ____. Exercise of management prerogative.		No regulation on the exercise of management prerogative to ensure that no discriminatory practices are committed with regard to hiring discrimination, job evaluation and classification, and promotion on the basis of gender.	• ADD a new provision: IN THE EXERCISE OF MANAGEMENT PREROGATIVE, MANAGEMENT SHALL, AT ALL TIMES, ENSURE THAT NO DISCRIMINATION IS COMMITTED, ESPECIALLY IN AREAS OF HIRING, JOB CLASSIFICATION AND SALARY SCHEMES, JOB EVALUATION AND COMPLETE LIST OF EMPLOYEES, AND THEIR RESPECTIVE	• To comply with CEDAW, art. 11. • There is need to obligate management to exercise its management rights such that no discrimination shall be committed in hiring, training and promotion, e.g., advertising or posting notices of vacancies while showing preference for either sex. There is need to require them to disclose information in relation to hiring

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			<p>EMPLOYMENT STATUS CONSISTENT WITH ART. ____.</p> <p>• TRANSPARENCY IN THE EXERCISE OF MANAGEMENT PREROGATIVE SHALL LIKEWISE BE OBSERVED. TOWARD THIS END, MANAGEMENT SHALL FURNISH THE WORKERS' REPRESENTATIVE AND THE DOLE A COPY OF THE ABOVE DOCUMENTS, EXCEPT THOSE CONSIDERED CONFIDENTIAL, DOLE SHALL ISSUE REGULATION IN COORDINATION WITH NCRFW.</p>	<p>and promotion for easier tracking of patterns or trends of discrimination, particularly indirect discrimination.</p> <p>• The principle of transparency needs to be instituted for easier monitoring of violations with regard to discrimination, particularly indirect discrimination that is not easily detected.</p>
Book I - Pre-Employment				
Art. 12. Statement of objectives.	CEDAW, art. 11 (b)	No explicit state policy to ensure respect for equal work opportunities.	<p>• ADD a new provision: IN THE EXERCISE OF MANAGEMENT PREROGATIVE, ADD AS A POLICY OF THE STATE:</p>	<p>• To comply with CEDAW, art. 11 (b).</p> <p>• To ensure equal work opportunities consistent with art. 3 of Labor Code, as revised.</p>

LABOR CODE / LABOR-RELATED LAWS [designated with (*)]	CEDAW / INTERNATIONAL TREATIES / AGREEMENTS	GENDER GAPS / BIASES IN LEGISLATION	PROPOSED AMENDMENTS	RATIONALE
			TO ENSURE NONDISCRIMINATION IN PRE- EMPLOYMENT, ESPECIALLY IN CLASSIFIED ADVERTISEMENT FOR VACANT POSITIONS	
(Book II, Title II, Chapter I - HRD Program) superseded by RA 7796, TESDA*				
(Art. 57. Statement of objectives.) Sec. 2. Declaration of policy.	CEDAW, art. 4 CEDAW, art. 10	No explicit state policy to ensure that women get equal learning opportunities and enjoy equal treatment in the course of training.	<ul style="list-style-type: none"> • REVISE the provision: It is hereby declared the policy of the State to provide relevant, accessible, high-quality, GENDER-RESPONSIVE, and efficient technical education and skills development in support of development of high-quality Filipino middle-level PERSONNEL responsive to and in accordance with Philippine development goals and priorities. TOWARD THIS END, THE STATE SHALL TAKE ALL APPROPRIATE MEASURES TO ENSURE THAT 	<ul style="list-style-type: none"> • To comply with CEDAW, arts. 4 & 10. • To ensure that the State does not renege on its obligation to take affirmative action so that women get equal learning opportunities and enjoy equal treatment in the course of training.

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			WOMEN HAVE EQUAL LEARNING OPPORTUNITIES AND ENJOY EQUAL TREATMENT AS MEN.	
Sec. 3. Statement of goals and objectives.	CEDAW, art. 4 CEDAW, art. 10 (c)	No measure to address stereotyping in training for an occupation or women's underrepresentation in nontraditional occupations for women.	<ul style="list-style-type: none"> • ADD another goal: PROMOTE EQUAL OPPORTUNITIES AND EQUAL TREATMENT OF WOMEN AND MEN IN TRAINING, SCHOLARSHIP GRANTS AND OTHER BENEFITS. 	<ul style="list-style-type: none"> • To comply with CEDAW, arts. 4 & 10 (c). • This is an affirmative action to combat stereotyping in training for an occupation and encourage women to venture in occupations normally with men. Women are underrepresented in these nontraditional occupations for women, thereby contributing to the gender gap in pay because the traditional occupation of women tends to command lower pay.
Sec. 7. Composition of the TESDA Board.	CEDAW, art. 2 (e) & (f) CEDAW, art. 4	No measure to address women's underrepresentation in government policymaking bodies.	<ul style="list-style-type: none"> • INCREASE the number of representatives from the labor sector to four (4) representatives, 	<ul style="list-style-type: none"> • To comply with CEDAW, arts. 2 (e) & (f), and 4. • This is an affirmative action intended to increase women's participation in

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			two of whom shall be women. • REVISE: The president xxx may, however, revise the membership of the TESDA Board, EXCEPT THE REPRESENTATIVES OF THE PRIVATE SECTORS AND THEIR RESPECTIVE NUMBERS, whenever the president deems it necessary xxx	decision-making processes of the State, especially in matters that affect them.
Sec. 8. Powers and functions of the Board.	CEDAW, art. 2 CEDAW, art. 5 (a)	No function to ensure gender-equality mainstreaming in the policies and programs of government policymaking bodies.	• REVISE the provision: promulgate, after due consultation xxx GENDER-RESPONSIVE policies, plans, programs, and guidelines as may be necessary xxx	• To comply with CEDAW, arts. 2 and 5 (a). • To ensure that policies, plans, programs and guidelines are gender-sensitive and gender-responsive that would modify discriminatory regulations, customs, conducts, and practices.
Sec. 21. Formulation of a comprehensive development plan for middle-level manpower.	CEDAW, art. 11 (1) (b) & (c)	No measure to address women's underrepresentation in nontraditional skills for women. No regulation or measure to ensure training of women	• RENAME: Formulation of xxx Plan for Middle-Level PERSONNEL • ADD another item as Letter (e) in the second paragraph:	• To comply with CEDAW, art. 11 (1) (b) & (c). • Women's underrepresentation in nontraditional skills for women (highly technical

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		in nontraditional work	EXPAND THE RANGE OF WOMEN'S ECONOMIC OPPORTUNITIES BEYOND THE TRADITIONAL SKILLS TRAINING FOR WOMEN.	skills) oftentimes is the reason for occupation segregation and lower pay for women.
Sec. 27. Incentive schemes.	CEDAW, art. 11 (1) (b) & (c)	No measure to encourage the government and private industries to provide high- quality technical education, and skills development opportunities for women.	• ADD another sentence: ADDITIONAL INCENTIVES SHALL BE GRANTED TO GOVERNMENT AND PRIVATE INDUSTRIES AND INSTITUTIONS WHO PROVIDE HIGH-QUALITY TECHNICAL EDUCATION, AND SKILLS DEVELOPMENT OPPORTUNITIES FOR WOMEN	• To comply with art. 11 (1) (b) & (c). • This is to encourage the government and private industries to provide high- quality technical education, and skills development opportunities for women
Sec. 32. Scholarship grants.	CEDAW, art. 10 (d) CEDAW, art. 11 (1) (c)	No measure to ensure that no discrimination occurs in the allocation and funding of scholarship grants for women and men with regard to vocational training and retraining, including apprenticeships, advanced	• ADD a provision at the end of the paragraph: The Authority shall adopt a system of allocation and funding of scholarship grants which shall be responsive to the technical education and skills development needs of the	• To comply with CEDAW, arts. 10 (d) and 11 (1) (c). • To ensure that scholarship grants benefit women as much as men, a system of allocation should be adopted in view of addressing gender imbalance in the awarding of scholarship grants

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		vocational training, and recurrent training.	different regions in the country; PROVIDED, IN ALL EVENT, THAT THE SYSTEM OF ALLOCATION SHALL GUARANTEE EQUAL ACCESS TO WOMEN AND MEN AT ALL TIMES.	to either women or men. Thus, in the allocation of scholarship grant, women and men workers should have equal access and opportunity to benefit from the scholarship grant.
Art. 74. When learners may be hired.	CEDAW, art. 11 (1) (d)	No clear guidelines on what are learnable occupations so as to avoid abuse in the employment of workers under learnable agreements.	<ul style="list-style-type: none"> • ADD a new provision: LEARNERS SHALL BE EMPLOYED ONLY IN "LEARNABLE" OCCUPATIONS AS DETERMINED AND APPROVED BY THE DOLE. • N.B. Adopted from the Special Report on Proposed Changes in the Labor Code, prepared by E. (Leo) D. Battad, Cecilia Laquian- Basa, and Leian Marasigan, presented during the roundtable discussion, Expanding Labor Rights under Globalization, April 26, 2005, at the UP School of Labor and Industrial Relations (UP SOLAIR). The 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1) (d). • There is need to regulate the hiring of learners to ensure that they are employed only in "learnable" occupations. This would avoid the exploitative practices of management of giving benefits below the minimum work standards in jobs that are otherwise considered regular, or hiring experienced worker/employee as learner.

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			authors are members of the Center for Labor Justice, UP SOLAIR, headed by Rene E. Ofreneo, Ph.D.	
Book III, Title I, Chapter I				
Art. 82. Coverage.	ILO Conventions 175 & 177	No sufficient protection for workers in atypical work arrangements (e.g., part-time, homeworkers, casuals, or temporary workers)	<ul style="list-style-type: none"> • REVISE the provision: The provisions of this title shall apply to employees, WHETHER FULL-TIME OR PART-TIME, in all establishments and undertakings xxx • DEFINE Part-time: PART-TIME MEANS AN EMPLOYED PERSON WHOSE NORMAL HOURS OF WORK ARE LESS THAN THOSE OF COMPARABLE FULL-TIME WORKERS. • DEFINE Full-Time: COMPARABLE FULL-TIME WORKER REFERS TO A FULL-TIME WORKER WHO: (1) HAS THE SAME TYPE OF EMPLOYMENT RELATIONSHIP; (2) IS ENGAGED 	<ul style="list-style-type: none"> • To comply with ILO Conventions 175 and 177 with regard to part-time and homeworkers. There is need to expressly provide protection to part-time workers and homeworkers and those in atypical work arrangements. Women are mostly found in atypical work arrangements. Lack of protection for these types of work, therefore, leads to inequality of results and benefits to their disadvantage.

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			IN THE SAME OR A SIMILAR TYPE OF WORK OR OCCUPATION; AND 3) IS EMPLOYED IN THE SAME ESTABLISHMENT OR, WHEN THERE IS NO COMPARABLE FULL-TIME WORKER IN THAT ESTABLISHMENT, IN THE SAME ENTERPRISE OR, WHEN THERE IS NO COMPARABLE FULL-TIME WORKER IN THAT ENTERPRISE, IN THE SAME BRANCH OF ACTIVITY.	
Art. ____ Night work. Art. 131. Exceptions.	ILO Convention 171	Absolute prohibition of night work discriminates against women. Since night work is prohibited except in certain circumstances, no protective measure provided for night work for women and men, or provision for alternative to night work for pregnant and nursing mother before and after childbirth.	<ul style="list-style-type: none"> • DELETE art. 131 altogether. • REPLACE entirely art. 130 with the following: ALL EMPLOYEES MAY RENDER NIGHT WORK: PROVIDED, THAT ALL EMPLOYEES PERFORMING NIGHT WORK SHALL BE ENTITLED TO THE FOLLOWING: (A) RIGHT TO UNDERGO HEALTH ASSESSMENT; 	<ul style="list-style-type: none"> • To comply with ILO Convention 171, allowing night work. • Night-work prohibition is discriminatory to women as it restricts their employment opportunities. It is a protectionist approach that reinforces gender stereotyping that women are weak, etc., thereby compromises the principle of equality

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			(B) SUITABLE FIRST-AID FACILITIES DURING NIGHT WORK; (C) IF UNFIT FOR NIGHT WORK, RIGHT TO BE TRANSFERRED TO A SIMILAR JOB FOR WHICH THEY ARE FIT; (D) PROTECTION FROM DISMISSAL IF TEMPORARILY UNFIT FOR NIGHT WORK; (E) ALTERNATIVE TO NIGHT WORK FOR WOMEN WORKERS BEFORE AND AFTER CHILDBIRTH FOR A PERIOD OF SIXTEEN (16) WEEKS, AT LEAST EIGHT WEEKS OF WHICH SHOULD BE BEFORE EXPECTED DATE OF DELIVERY AND ADDITIONAL PERIODS IF WITH MEDICAL CERTIFICATE, AND DURING PREGNANCY. • INCORPORATE the protective provisions of ILO 171. PROTECTIVE	and opportunity between women and men. • The Philippines may denounce Convention 89 under the terms provided for in same convention.

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			<p>MEASURES FOR ALL WORKERS (NOT ONLY WOMEN WORKERS) PERFORMING NIGHT WORK SHALL BE UNDERTAKEN, AS FOLLOWS: (A) RIGHT TO UNDERGO HEALTH ASSESSMENT; (B) SUITABLE FIRST-AID FACILITIES DURING NIGHT WORK; (C) IF UNFIT FOR NIGHT WORK, RIGHT TO BE TRANSFERRED TO A SIMILAR JOB FOR WHICH THEY ARE FIT; (D) PROTECTION FROM DISMISSAL IF TEMPORARILY UNFIT FOR NIGHT WORK; (E) ALTERNATIVE TO NIGHT WORK FOR WOMEN WORKERS BEFORE AND AFTER CHILDBIRTH AND ADDITIONAL PERIODS IF WITH MEDICAL CERTIFICATE, AND DURING PREGNANCY.</p>	

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Book III, Title I, Chapter II				
Art. 92. When employer may require work on a rest day.	CEDAW, art. 11 (2) (d)	No measure for pregnant and nursing women workers with regard to rest period.	<ul style="list-style-type: none"> • ADD another paragraph: PREGNANT OR NURSING WOMEN SHALL NOT BE REQUIRED TO WORK ON A REST DAY. IN ANY CASE, WHERE THEY RENDER WORK DURING REST DAY, THEY SHALL NOT BE ASSIGNED TO ANY WORK THAT WILL PUT THEIR HEALTH AT RISK. 	<ul style="list-style-type: none"> • To comply with art. 11 (2) (d) • To strengthen the protective measures for pregnant and nursing women workers. This recognizes the gender-specific needs of women in recognition of their maternal functions.
Book III, Title II, Chapter III				
Art. 105. Direct payment of wages.		No protective measures against economic violence.	<ul style="list-style-type: none"> • ADD another exception: C) WHERE A WRITTEN COMPLAINT IS FILED AGAINST A WORKER BY HIS/ HER SPOUSE OR PARTNER OF THE WORKER FOR FAMILY OR CHILD SUPPORT AND IF IN THE DETERMINATION OF THE EMPLOYER, IN COORDINATION WITH THE UNION OR WORKERS' 	

LABOR CODE / LABOR-RELATED LAWS [designated with (*)]	CEDAW / INTERNATIONAL TREATIES / AGREEMENTS	GENDER GAPS / BIASES IN LEGISLATION	PROPOSED AMENDMENTS	RATIONALE
			REPRESENTATIVES, THE COMPLAINT IS SHOWN TO BE MERITORIOUS.	
Art. 106. Contractor or subcontractor.	CEDAW, art. 11 (1) (c) ILO Convention 177	No absolute prohibition against labor-only contracting.	<ul style="list-style-type: none"> • DELETE paragraph 3. • 4th paragraph becomes 3rd paragraph and REVISE: LABOR- ONLY CONTRACTING IS PROHIBITED. There is "labor- only" contracting where the person supplying workers to an employer does not have substantial capital to investment in the form of tools, xxx. • N.B. Adopted from the Special Report on Proposed Changes in the Labor Code, prepared by E. (Leo) D. Battad, Cecilia Laquian- Basa, and Leian Marasigan, presented during the roundtable discussion, Expanding Labor Rights under Globalization, April 26, 2005, at the UP School of Labor and 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11(1) (c), particularly on job security, and ILO Convention 177. • Labor-only contracting leaves workers open to exploitative terms of employment, and with little work and social protection. • In addition to prohibiting "labor- only" contracting, there is need to strengthen the provision on job contracting. Most homeworkers are found in subcontracting jobs and are mostly women. • "Labor-only" contracting arrangement, the distinction between job contracting (which is lawful) and "labor-only" contracting, the differentiations within these types of contracting, and other issues

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			Industrial Relations (UP SOLAIR). The authors are members of the Center for Labor Justice, UP SOLAIR, headed by Rene E. Ofreneo, Ph.D.	related to it should be prohibited by law, not by the secretary of labor. This is imperative because (1) the issues are very important; (2) the exercise of such power (restriction or prohibition, as well as distinction and differentiations within the types of contracting) may unduly curtail the worker's constitutional right to security of tenure and other rights, hence it is dangerous to leave such issues to the sole determination of only one person—the secretary of labor/ president; and 3) there is need to provide a definitive guideline and list of permissible activities, hence not subject to undue revision by only one person.
Book III, Title III, Chapter IV				
Art. 118. Retaliatory measures.	CEDAW, art. 11 CEDAW General Recommendation 19	No protective measures against retaliatory acts taken against	• REVISE the provision: It shall be unlawful for an employer to refuse	• General Recommendation 19 relating to

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		women victims of violence.	to pay or reduce the wages xxx against any employee who has filed a complaint or instituted any proceeding under this CODE OR UNDER ANY LAWS or has testified or is about to testify in such proceeding.	gender-specific violence. <ul style="list-style-type: none"> • Very narrow application. The protection against retaliatory measures should not only be limited to filing a complaint under the Title on Prohibitions regarding wages since retaliatory measures may also happen when an employee files a case or complaint under other laws such as RA 7877 on anti-sexual harassment practices. Such protective measure is not present in RA 7877. • This will also encourage victims to come out in the open, thereby contributing to a more gender-friendly environment in the workplace.
Book III, Title III, Chapter V				
Art. 121. Powers and functions.	CEDAW, art. 2 (e) & (f)	No explicit function to ensure the generation of gender-related studies.	• REVISE Letter (e) to include as one of the functions of the National Wages and Productivity	<ul style="list-style-type: none"> • To comply with CEDAW, art. 2 (e) & (f). • There is need to come out with sex disaggregated data

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	CEDAW, art. 2 (e) & (f) CEDAW, art. 4 CEDAW, art. 7 (b)	No affirmative action to increase women's participation in the formulation of government policy.	Commission: To undertake studies... to collect and compile SEX- DISAGGREGATED data and disseminate information on wages and productivity, GENDER GAP IN WAGES and other related information including, but not limited to, employment. • The commission shall be composed of the secretary..., the director general of NEDA, and two members each from workers and employers sectors; PROVIDED THAT ONE OF THE TWO MEMBERS OF EACH SECTOR SHALL BE A WOMAN.	on wages and productivity, gender gap in wages, to aid in the determination of gender gap in wages and other benefit. • To comply with CEDAW, arts. 2 (e) & (f), 4, & 7 (b). This is an affirmative action to increase the participation of women in the formulation of government policy, thereby giving them the chance to

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				articulate their issues that bear on their economic opportunities. This will help them achieve greater economic empowerment.
Art. 122. Creation of Regional Tripartite Wages and Productivity Boards.	CEDAW, art. 2 (e) & (f) CEDAW, art. 4 CEDAW, art. 7 (b)	No explicit function to ensure the generation of gender-related studies. No affirmative action to increase women's participation in public governance.	<ul style="list-style-type: none"> • REVISE Letter (c) to include as one of the powers and functions: To undertake studies... to COLLECT GENDER DISAGGREGATED data on wages, incomes, GENDER GAPS IN PAY, productivity, etc. • Each Regional Board shall be composed of the regional director xxx the regional director of NEDA xxx and two (2) members each from workers and employers sectors: PROVIDED, THAT ONE OF THE TWO (2) MEMBERS OF EACH SECTOR SHALL BE A WOMAN. 	<ul style="list-style-type: none"> • To comply with CEDAW, arts. 2 (e) & (f), 4 & 7 (b). • This is an affirmative action to increase the participation of women in decision making, thereby giving them the chance to articulate their issues that bear on their economic opportunities. This will help them achieve greater economic empowerment.

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Book III, Title III, Chapter I				
Art. 130. Night work.			• TRANSFERRED to Book III, Title I, Chapter I, on Hours of Work.	
Art. ____ Nursing break or reduction of hours of work.	ILO Convention 183, art. 10 (1) & (2) Recommendation 191	No nursing break or reduction of hours of work to respond to maternal functions of nursing women workers.	• ADD a provision: Every nursing woman worker shall be at least entitled to one-hour nursing break or reduction of daily hours of work up to one year. The one-hour nursing break or reduction of daily work hours shall be counted as hours worked.	<ul style="list-style-type: none"> • To comply with ILO Convention 183, art. 10 (1) & (2), and related ILO Recommendation 191. • There is a need to ensure the good health of nursing mothers and their newly born children through the provision of nursing break or reduction of daily work hours, which should be considered as hours worked.
Art. 132. Facilities for women.			• TRANSFERRED as another Title under Book III and shall be titled as Facilities for Workers.	
Art. 133. Maternity leave benefits	CEDAW, art. 11 (2) (b) ILO Convention 183, art. 4 ILO Recommendation 191.	Maternity leave is below international standard laid down under ILO Convention 183, which is at least 14 weeks.	<ul style="list-style-type: none"> • RENAME as Maternity leave and cash benefits. • REVISE the provision: Maternity leave shall be NINETY (90) DAYS, and may be extended 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (2) (b); ILO Convention 183, art. 4; and its Recommendation 191. • The World Health Organization (WHO) considers

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			<p>longer for caesarian: Provided, that, it is supported by medical certificate; limited to two births; includes miscarriage and unintentional abortion (where neither spouse is at fault); Provided, further, that the woman has the option to return to work before the expiration of the maternity leave. Should she return to work before the expiration of leave, she shall receive the benefits granted under the law and the salary for actual services rendered effective the day she reports for work.</p>	<p>that approximately 16 weeks absence from work after childbirth is necessary as a minimum to recover from childbirth and to accommodate breast-feeding. On the other hand, ILO Convention 183, art. 4, provides for a 14-week maternity leave entitlement. Other ASEAN countries like Indonesia and Thailand provide for a 90-day maternity leave.</p> <ul style="list-style-type: none"> • Women should not be forced to exhaust the maternity leave if their health does not require it. Some women can and do return to work within the leave allowed by law with no apparent detriment to their health. <p>The option given to women is similar to the modified maternity leave stipulated in Civil Service Memorandum Circular 17, series of 1991.</p>

LABOR CODE / LABOR-RELATED LAWS [designated with (*)]	CEDAW / INTERNATIONAL TREATIES / AGREEMENTS	GENDER GAPS / BIASES IN LEGISLATION	PROPOSED AMENDMENTS	RATIONALE
Art. 134. Family planning services; incentives for family planning.			• TRANSFERRED to a new Title IV: Facilities and Services for Workers.	
Art. ____ Medical benefits.	CEDAW, art. 12 (2) ILO Conventions 103 & 183	Lack of measures for maternal care.	• ADD a provision on medical benefits: PRENATAL, POSTNATAL CARE AND HOSPITALIZATION CARE SHALL BE PROVIDED IN APPROPRIATE CASES, AS DETERMINED BY REGULATIONS, TO BE ISSUED BY THE SECRETARY OF LABOR, IN COORDINATION WITH NCRFW, DSWD AND DOH, SHALLESTABLISH REGULATIONS NECESSARY TO IMPLEMENT THIS PROVISION.	<ul style="list-style-type: none"> • To comply with CEDAW, art. 12 (2), and ILO Conventions 103 & 183. • The maternal care is inadequate. Other than the health and nutrition programs for children and expectant mothers get under the ECCD Act (RA 8980), no other measures respond to the maternal health needs of women workers. As it is, a study shows that the ECCD program suffers from limited resources. It is not adequate to respond to the needs of working women, taking note of their increasing participation in the labor force.
Art. ____ Protection from harmful work.	CEDAW, art. 11 (2) (d) ILO Convention 183 Recommendation 191	No protective measure against types of work that may be harmful for pregnant and nursing women.	• ADD a provision: PREGNANT AND NURSING MOTHER SHALL NOT BE OBLIGED TO PERFORM WORK THAT IS DETERMINED TO	

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			<p>BE PREJUDICIAL TO THE HEALTH OF THE MOTHER OR CHILD, OR IS ESTABLISHED TO HAVE A SIGNIFICANT RISK TO THE MOTHER'S HEALTH OR THAT OF HER CHILD. ALTERNATIVE TO SUCH WORK SHALL BE AVAILABLE SUCH AS ELIMINATION OF RISK, ADAPTATION OF HER CONDITIONS OF WORK, TRANSFER TO ANOTHER POST WITHOUT LOSS OF PAY, AND PAID LEAVE WHEN TRANSFER IS NOT FEASIBLE.</p> <ul style="list-style-type: none"> • THE FOLLOWING WORK SHALL BE CONSIDERED PREJUDICIAL TO THE PREGNANT OR NURSING MOTHER AND CHILD: • ARDUOUS WORK INVOLVING THE MANUAL LIFTING, CARRYING, PUSHING, OR PULLING OF LOADS 	

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			<ul style="list-style-type: none"> • WORK INVOLVING EXPOSURE TO BIOLOGICAL, CHEMICAL, OR PHYSICAL AGENTS THAT REPRESENT A REPRODUCTIVE HEALTH HAZARD • WORK REQUIRING SPECIAL EQUILIBRIUM • WORK INVOLVING PHYSICAL STRAIN DUE TO PROLONGED PERIODS OF SITTING OR STANDING, TO EXTREME TEMPERATURES, OR TO VIBRATION 	
Art. _____. Breaks or reduction of work hours for breast-feeding.	ILO Conventions 103 and 183, art. 10 Recommendation 191	No measure recognizing the maternal needs of nursing women.	<ul style="list-style-type: none"> • ADD a provision: RIGHT TO AT LEAST ONE DAILY BREAK OR AT LEAST ONE-HOUR REDUCTION IN WORK HOURS FOR BREAST-FEEDING/ LACTATION. THE BREAK OR BREAKS OR REDUCTION IN HOURS SHALL BE COUNTED AS WORKING TIME AND THEREFORE PAID. 	<ul style="list-style-type: none"> • To comply with ILO Conventions 103 and 183, art. 10, and Recommendation 191. • Prior to the Labor Code, the Woman and Child Law (RA 679) imposes on the employer the duty to allow any nursing woman employed to nurse a child at least one-half hour twice a day during her work hours to nurse her child.

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				With the effectivity of the Labor Code, this was put to oblivion. There is, however, no express repeal of the law, or it is inconsistent with any provision of the Labor Code. There is need to explicitly provide for this entitlement as it has been established that breast-feeding has a tremendous benefit on the health of both mother and child.
Art. 135. Discriminations prohibited.			• TRANSFER to Preliminary Title, Chapter I on General Provisions.	• Must be included in the Preliminary Title to emphasize the importance of the principle of nondiscrimination.
Art. 136. Stipulation against marriage. Art. 137. Prohibited acts.	CEDAW, art. 11 (2) (a) & (b) CEDAW, art. 2 (b) & (e) ILO Convention 183, art. 8	No explicit prohibition against dismissal on the ground of marital status.	• MERGE the two articles. Prohibit the following acts: (a) to discriminate in hiring on account of marital status, pregnancy, or nursing condition; (b) to require pregnancy testing at recruitment; (c) to require as a condition of employment or	• To comply with CEDAW, art. 11 (2) (a) & (b) and art. 2 (b) & (e), and ILO Convention 183, art. 8. • The prohibition protects single employees only, but leaves out applicant for employment. There is need to include "marital status."

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			continuation of employment that a woman shall not get married, or to stipulate expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated; (d) to discharge the employee DURING her pregnancy, or while on leave or NURSING OR in confinement due to pregnancy, UNLESS THE REASONS ARE UNRELATED TO PREGNANCY, AND THE BURDEN OF PROOF RESTS WITH THE EMPLOYER; e) To discharge or refuse the return of such woman TO THE SAME POSITION OR AN EQUIVALENT POSITION WITH EQUAL PAY; f) To deny any woman employee the benefits provided for in this chapter or to discharge any woman employed for the purpose of	

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			preventing her from enjoying any of the benefits provided under this Code.	
Book III, Title III, Chapter III - Employment of Househelpers				
Art. 143. Minimum wage.	CEDAW, art. 11 (1) (d)	The minimum at present is way below a decent wage. Considering that househelpers are mostly women, this disadvantages them economically.	REVISE the provision: Minimum wage should be P3,000 FOR NCR; P1,500 FOR OTHER CHARTERED CITIES AND FIRST CLASS MUNICIPALITIES; AND P1,2 00 FOR THOSE IN OTHER MUNICIPALITIES	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1) (d). • In the age of globalization, the present compensation level is way below a decent wage. The low compensation level places women, who comprise most of househelpers, at economic disadvantage.
Art. ____ Payment of wages; deductions.	CEDAW, art. 11 (1) (d)	No protection from unlawful deduction and assurance of payment of wages; this causes economic disadvantage to them.	<ul style="list-style-type: none"> • ADD a provision: PAYMENT OF WAGES SHALL BE MADE DIRECTLY TO THE HOUSEHELPER IN CASH, AT LEAST TWICE A MONTH; NO DEDUCTIONS SHALL BE MADE, EXCEPT THOSE PROVIDED BY LAW. OTHER DEDUCTIONS 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1) (d). • There is need to ensure that househelpers are paid on time, and no unlawful deduction shall be made as their wages are important to answer for personal

LABOR CODE / LABOR-RELATED LAWS [designated with (*)]	CEDAW/ INTERNATIONAL TREATIES / AGREEMENTS	GENDER GAPS / BIASES IN LEGISLATION	PROPOSED AMENDMENTS	RATIONALE
			NOT PROVIDED BY LAW SHALL HAVE WRITTEN CONSENT OF THE HOUSEHELPER.	necessities and family support.
Art. ____ Thirteenth (13th) month pay.	CEDAW, art. 11 (1) (d)	No mandated 13th month pay unlike other workers. Considering that househelpers are mostly women.	• ADD a provision: HOUSEHELPERS SHALL BE ENTITLED TO THIRTEENTH (13th) MONTH PAY.	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1) (d). • Househelpers should have the same treatment as that of other workers with regard to benefits.
Art. ____ Membership in the SSS, MEDICARE, ECC and PAG-IBIG.	CEDAW, art. 11 (1) (e) International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 9	No mandated SSS, MEDICARE, ECC and PAG-IBIG, unlike other workers. Considering that househelpers are mostly women.	• ADD a provision: HOUSEHELPERS, REGARDLESS OF AGE AND COMPENSATION LEVELS, SHALL BE COVERED BY THE SSS, PHILHEALTH, ECC, AND PAG- IBIG. THE EMPLOYER'S SHARE OF THE CONTRIBUTION SHALL NOT BE DEDUCTIBLE FROM THE MONTHLY COMPENSATION OF HOUSEHELPERS.	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1) (e), and ICESCR, art. 9. • All househelpers, regardless of compensation level, should be entitled to all social security benefits. It is usually those who have less pay that are deprived of any benefits and thus are greatly abused and exploited. To further deprive them of social security protection would further aggravate their already difficult situation. Considering that they are mostly women, it will

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				<p>further economically disadvantage them.</p> <ul style="list-style-type: none"> • The ICESCR, art. 9, recognizes the right to social security benefits to everyone without distinction. • They should be afforded equal treatment in benefits just like other workers.
<p>Art. ____ Normal hours of work; regular working days.</p>	<p>ICESCR, art. 7 (d)</p>	<p>No protection for househelpers from long hours of work, thereby comprising their personal growth and development.</p>	<ul style="list-style-type: none"> • ADD a provision: THE NORMAL HOURS OF WORK OF HOUSEHELPERS SHALL BE EIGHT (8) HOURS PER DAY, EXCLUSIVE OF ONE-HOUR BREAKS EACH FOR BREAKFAST, LUNCH AND DINNER. ANY WORK DONE BEYOND EIGHT (8) HOURS PER DAY SHALL BE COMPENSATED BY THE EMPLOYER. • HOUSEHELPERS SHALL BE ENTITLED TO AT LEAST EIGHT (8) HOURS OF CONTINUOUS 	<ul style="list-style-type: none"> • To comply with ICESCR, art. 7 (d). • House work is just as demanding as other work. In any case, househelpers, just like other workers, are entitled to be compensated for work rendered beyond eight hours just like other workers, despite the peculiarities of their relationship with their employer. • Work rendered beyond eight hours, unduly disadvantage women economically.

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			REST PERIOD PER DAY. • NO HOUSEHELPER SHALL RENDER WORK FOR MORE THAN SIX (6) DAYS A WEEK. THE REST DAY MAY BE SUBJECT TO CHANGE UPON THE MUTUAL AGREEMENT OF THE HOUSEHELPER AND THE EMPLOYER.	
Art. ____ Right to weekly rest day.	ICESCR, art. 7 (d)	No protection from the dangers of continuous work.	• ADD a provision: IT SHALL BE THE DUTY OF THE EMPLOYER TO PROVIDE THE HOUSEHELPER A REST PERIOD OF NOT LESS THAN TWENTY-FOUR (24) CONSECUTIVE HOURS AFTER EVERY SIX (6) CONSECUTIVE NORMAL WORK DAYS. THE REST DAY WITHIN A WEEK MAY BE SUBJECT TO CHANGE UPON THE MUTUAL AGREEMENT OF THE HOUSEHELPER AND EMPLOYER.	

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Art. ____ Leaves.	ICESCR, art. 7 (d)	No recognition of the right to leaves, as provided for by law.	<ul style="list-style-type: none"> • ADD a provision: IN ADDITION TO AT LEAST ONE WEEKLY REST, THEY ARE ENTITLED TO FIFTEEN (15) DAYS OF LEAVE WITH PAY, TO BE USED AS VACATION OR SICK LEAVE. • THEY SHALL ALSO BE ENTITLED TO MATERNITY/ PATERNITY AND PARENTAL LEAVES AND OTHER LEAVES PROVIDED BY OR SHALL BE PROVIDED BY LAW FOR WORKERS. • THEY SHALL ALSO BE ENTITLED TO ALL THE LEGAL HOLIDAYS PROVIDED UNDER THE LAW. 	<ul style="list-style-type: none"> • To comply with ICESCR, art. 7 (d).
Art. ____ Minimum employable age for househelper; opportunity for education.	Convention on the Right of the Child (CRC), art. 28	No protective measure against child labor; no recognition of the right to education.	<ul style="list-style-type: none"> • ADD a provision: NO PERSON UNDER FIFTEEN (15) YEARS OF AGE SHALL BE EMPLOYED AS HOUSEHELPER. IT SHALL BE THE DUTY OF THE EMPLOYER TO 	<ul style="list-style-type: none"> • To comply with CRC, art. 28. • Under CRC, the Philippines is under legal obligation to make primary education compulsory and available to all. The State has the

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			ENSURE THAT THE HOUSEHELPER UNDER EIGHTEEN (18) YEARS SHALL RECEIVE AT LEAST A PUBLIC ELEMENTARY EDUCATION. THE COST OF THE EDUCATION SHALL BE PART OF THE HOUSEHELPER'S COMPENSATION, UNLESS THERE IS A STIPULATION TO THE CONTRARY.	obligation to ensure that this is not rendered meaningless by employers by imposing a legal duty for them to respect and fulfill the right of education of every child.
Art. 147. Treatment of househelpers.	CEDAW, art. 2 CEDAW, art. 5 CEDAW, art. 11 CEDAW, art. 12 CEDAW, art. 16	Limited protection from gender-based violence.	• REVISE the provision: The employer shall treat the housekeeper in a just and human manner. In no case shall PHYSICAL NEGLECT OR ANY PHYSICAL, EMOTIONAL, ECONOMIC, OR SEXUAL VIOLENCE BE USED OR INFLICTED upon the househelper.	<ul style="list-style-type: none"> • To comply with CEDAW, arts. 2, 5, 11, 12, & 16. • Physical violence is only one form of violence. No househelper should be inflicted with any form of violence, be it emotional, economic, physical, or sexual violence.

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Book III, Title III, Chapter IV - Employment of Homeworkers				
Sec. ____ Right to organization.	ILO Convention 177, art. 4 Recommendation 183	No provision in the Labor Code recognizing the homeworkers' right to organization.	<ul style="list-style-type: none"> • ADOPT DO 5, secs. 3 & 4, but REVISE as follows: Homeworkers shall have the right to form, join, or assist organizations of their own choosing, in accordance with law. They may join labor unions in establishments where they render work. The provisions under Book V, Title IV, shall be applicable. 	<ul style="list-style-type: none"> • To comply with ILO Convention 177, art. 4, and Recommendation 183. • DOLE DO 5, secs. 3 & 4, should be incorporated in the Labor Code to give importance to the right to self-organization and to ensure that it will not be changed from time to time. • Women are particularly vulnerable as statistics show that most workers are women. Studies show that work conditions of homeworkers are below standards. To afford them the venue to articulate their demands for greater protection, they should have the right to join unions in establishments where they render service.

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Sec. _____. Payment for Homework; SSS, MEDICARE and ECC membership.	ILO Convention 177, art. 4 Recommendations 183 & 165	No provision in the Labor Code recognizing the homeworkers' right to organization.	• ADOPT the provision of DO 5, secs. 6 & 7.	<ul style="list-style-type: none"> • To comply with ILO Convention 177, art. 4, and Recommendations 165 (21) & 183. • DOLE DO 5, secs. 6 & 7, should be incorporated in the Labor Code to give importance to the right to remuneration and to ensure that it will not be changed from time to time. • To ensure that there will be no undue delay in the payment of homeworkers.
Sec. _____. Deductions.	ILO Convention 177, art. 4 Recommendations 165 (21) & 183	No protective provision in the Labor Code on unlawful deduction of payment of services.	• ADOPT the provision of DO 5, sec. 8.	<ul style="list-style-type: none"> • To comply with ILO Convention 177, art. 4, and Recommendations 165 (21) & 183. • DOLE DO 5, sec. 8, should be incorporated in the Labor Code to give importance to the right to remuneration and unauthorized deduction, and to ensure that it will not be changed from time to time. • To ensure ample protection against unauthorized deductions.

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Sec. ____. Conditions for payment of work.	ILO Convention 177, art. 4 Recommendations 165 (21) 183	No protective provision in the Labor Code on conditions of payment.	• ADOPT the provision of DO 5, sec. 9.	<ul style="list-style-type: none"> • To comply with ILO Convention 177, art. 4, and Recommendations 165 (21) & 183. • DOLE DO 5, sec. 9, should be incorporated in the Labor Code to give importance to the right to self-organization and to ensure that it will not be changed from time to time. • To provide the necessary safeguards against arbitrary demands of employers and undue delay in the payment of work.
Sec. _____. Duties of employer; contractor and subcontractor.	CEDAW, art. 11 (1) ILO Convention 177 Recommendation 191	No protection against nonpayment for work rendered.	• ADOPT the provision of DO 5, sec. 11.	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1), and ILO Convention 177. • DOLE DO 5, sec. 11, should be incorporated in the Labor Code to give importance to the right to remuneration, and to ensure that it will not be changed from time to time.
Sec. ____. Prohibitions for homework.	CEDAW, art. 11 (1) (f) ILO Convention 177, art. 4	No protection to health and safety in work conditions, including	• ADOPT the provision of DO 5, sec. 13.	<ul style="list-style-type: none"> • To comply with article 11 (1) (f) of CEDAW, and ILO Convention 177,

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	Recommendation 183	safeguards to reproductive function.		<p>art. 4, and Recommendation 183.</p> <ul style="list-style-type: none"> • DOLE DO 5, sec. 13, should be incorporated in the Labor Code to give importance to the right to health and safety in work conditions and to ensure that it will not be changed from time to time. • To ensure a safe and healthy work environment for homeworkers.
Art. _____. Maternity protection.	CEDAW, art. 11 (1) (f) ILO Convention 177, art. 4 Recommendation 183	No maternity protection provided.	<ul style="list-style-type: none"> • ADD a provision: PREGNANT OR NURSING HOMEWORKERS SHALL BE ENTITLED TO MATERNITY PROTECTION, THE EXTENT OF WHICH SHALL BE DETERMINED BY THE DOLE, IN COORDINATION WITH DOH AND NCRFW. 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1) (f); ILO Convention 177, art. 4; and Recommendation 183. • The proposed provision should be incorporated in the Labor Code to give importance to the right to maternity protection and to ensure that it will not be changed from time to time.
Art. _____. Access to training.	CEDAW, art. 11 (1) (f) ILO Convention 177, art. 4 Recommendation 183	No recognition of homeworkers' right to access training.	<ul style="list-style-type: none"> • ADD a provision: THE HOMEWORKERS SHALL BE GIVEN ACCESS TO TRAINING 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1) (f); ILO Convention 177, art. 4; and Recommendation 183.

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			<p>PROGRAMS OF TESDA AT MINIMAL RATES.</p> <ul style="list-style-type: none"> • TRAINING PROGRAMS THAT ARE SUPPORTED BY EMPLOYERS, CONTRACTORS, AND SUBCONTRACTORS IN THE FORM OF PHYSICAL FACILITIES AND TRAINING COSTS CAN BE DEDUCTED FROM TAXABLE INCOME PROVIDED THAT THE EMPLOYER, CONTRACTOR, OR SUBCONTRACTOR WILL NOT CHARGE TRAINING FEES. 	<ul style="list-style-type: none"> • There is need to provide training to homeworkers to improve and/or acquire skills in order to give them better employment opportunities. The proposed provision should be incorporated in the Labor Code to give importance to the right to self-organization and to ensure that it will not be changed from time to time.
Sec. ____. Assistance to registered homeworkers' organizations, employer, etc.	CEDAW, art. 11 (1) (c) ILO Convention 177, art. 4 Recommendation 183	No measure to support homeworkers' organization in order to strengthen organization.	<ul style="list-style-type: none"> • ADOPT the provision of DO 5, sec. 14, but REVISE the provisions: • Information on wages and other benefits, INCLUDING GENDER GAPS ON WAGES AND OTHER GENDER-RESPONSIVE INFORMATION. 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1) (c); ILO Convention 177, art. 4; and Recommendation 183. • DOLE DO 5, sec. 8, should be incorporated in the Labor Code to give importance to the right to remuneration and unauthorized deduction, and to

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			<ul style="list-style-type: none"> • GENDER-RESPONSIVE skills training • Maintenance of safe and healthful conditions at the workplace, <p>TAKING INTO CONSIDERATION THE REPRODUCTIVE HEALTH OF THE WORKERS.</p>	<p>ensure that it will not be changed from time to time.</p> <p>To provide access to capital, information, and other skills training for their growth and development.</p>
Art. ____. Registration of employer, contractor, and subcontractor.	ILO Convention 177 Recommendation 183	No monitoring system to regulate the employment of homeworkers and ensure protection; no mechanism for data-gathering.	<ul style="list-style-type: none"> • ADOPT DO 5, sec. 5, but REVISE as follows: • The registration form shall provide sex-disaggregated data. 	<ul style="list-style-type: none"> • To comply with ILO Convention 177 and Recommendation 183. • There is need to monitor the employment of homeworkers and institute protective measures, gather sex-disaggregated data needed by agencies.
Art. ____ Duties registration of employer; contractor.	CEDAW, art. 11 ILO Convention 177, art. 4 Recommendation 191	No protective measures to guarantee payment of work.	<ul style="list-style-type: none"> • ADOPT DO 5, sec. 11. 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11; ILO Convention 177, art. 4; and Recommendation 191. • Homeworkers should have protection against nonpayment of wages. There is need to make the employer jointly

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				and severally liable with the contractor or subcontractor.
Art. ____ Minimum employable age for homeworker; opportunity for education.	Convention on the Right of the Child (CRC), art. 28	No protective measure against child labor; no recognition of the right to education.	<ul style="list-style-type: none"> No person under fifteen (15) years of age shall be employed as a homeworker. It shall be the duty of the contractor or subcontractor to ensure that the homeworker under eighteen (18) years shall receive at least a public elementary education. The cost of the education shall be part of the homeworker's compensation, unless there is a stipulation to the contrary. 	<ul style="list-style-type: none"> To comply with Convention on the Right of the Child (CRC), art. 28. Under CRC, the Philippines is under legal obligation to make primary education compulsory and available to all. The State has the obligation to ensure that this is not rendered meaningless by employers by imposing a legal duty for them to respect and fulfill the right of education of every child.
Title IV – Facilities and Services for Workers				
Art. ____ Facilities for workers.			<ul style="list-style-type: none"> FORMERLY art. 132, Facilities for Women. RENAME as Facilities for Workers, instead of Women. REVISE the provision: (a) Employers shall 	<ul style="list-style-type: none"> To comply with CEDAW, arts. 2 (e) & (f) and 11 (1) (f). The provision on facilities is necessary to the well-being of all workers: (a) workers deserve

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			<p>PROVIDE SEATS FOR WORKERS AND PERMIT THEM TO USE SUCH SEATS WHEN THEY ARE FREE FROM WORK. IN APPROPRIATE CASES, TO BE DETERMINED BY REGULATIONS, women should be permitted to use seats during work hours provided they can perform their duties in this position without detriment to efficiency; (b) Employers shall establish separate toilet rooms and lavatories for men and women, WHERE THE NUMBER OF EMPLOYEES EXCEEDS FIFTY (50). EMPLOYEES. IN APPROPRIATE CASES, TO BE DETERMINED BY REGULATIONS, women shall be provided a dressing room; (c) EMPLOYERS SHALLESTABLISH DRINKING FOUNTAINS IN THE</p>	<p>a good rest from work and the provision of seats when they are free from work is part of a healthy and safe work environment for workers. The provision for seats for women even during work hours, provided they can perform their duties without detriment to their efficiency, is in consonance with CEDAW, art. 11 (1) (f) on the protection of a healthy and safe work condition; (b) separate toilets would provide privacy for both women and men workers and is a safeguard against gender violence in the workplace; (c) The provision of safe drinking water and food through the establishment of drinking fountains or its equivalent and canteen will increase the general well-being of workers that would have an overall effect on</p>

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			<p>WORKPLACE; (d) EMPLOYERS SHALL ESTABLISH CANTEENS, EITHER COMPANY-MANAGED OR MANAGED BY CONCESSIONAIRES OR COOPERATIVES, WHERE THE NUMBER OF EMPLOYEES EXCEEDS FIFTY (50) EMPLOYEES OR WHERE THERE ARE NO DINING ESTABLISHMENT WITHIN REASONABLE DISTANCE, TO BE DETERMINED BY REGULATIONS.</p> <ul style="list-style-type: none"> • THE REGULATIONS REQUIRED TO IMPLEMENT THE ABOVE PROVISIONS SHALL BE ISSUED BY THE SECRETARY OF LABOR, IN COORDINATION WITH THE NCRFW, DSWD, AND DOH. S/HE SHALL ESTABLISH OTHER STANDARDS AND 	<p>their efficiency and productivity.</p>

LABOR CODE / LABOR-RELATED LAWS [designated with (*)]	CEDAW / INTERNATIONAL TREATIES / AGREEMENTS	GENDER GAPS / BIASES IN LEGISLATION	PROPOSED AMENDMENTS	RATIONALE
			REGULATIONS THAT WILL ENSURE THE SAFETY AND HEALTH OF WORKERS.	
Art. 134 Family management services; incentives for family planning.	CEDAW, arts. 11 (1) (f) & 12 (1)	No reproductive health services, which includes family management services. Bonus scheme for family management service reflects a strong gender bias against women as it places the burden only on women.	<ul style="list-style-type: none"> • FORMERLY art. 134. • RENAME as Reproductive Health Services. • REVISE the provision: (a) Establishments that employ more than 100 employees shall provide free REPRODUCTIVE HEALTH services, which shall include but not limited to, the application or use of CONDOMS, contraceptive pills, and intrauterine devices: Provided, That establishments with employees below 100 that provide reproductive health services shall be entitled to deduction of their taxable income; (b) The DOLE, in coordination with DSWD, DOH, and NCRFW shall develop and prescribe tax 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1) (f) and 12 (1). • Family planning is not and should not be the sole burden of women workers, but men as well. In any case, family planning is only one aspect of reproductive health. There is need to provide a wider health package through the provision of reproductive health services as workers have the right to protection of health and to safety of work environment, including safeguarding the function of reproduction. • The tax incentive or bonus schemes should be limited not only to women workers but to all workers.

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			incentive or bonus schemes to encourage ESTABLISHMENTS WITH LESS THAN 100 EMPLOYEES TO PROVIDE FREE REPRODUCTIVE HEALTH SERVICES.	
Title V – Workers with Family Responsibilities				
Art. ____ Nursery or day care.	CEDAW, art. 11 (2) (c)	No mandatory provision on nursery or day care as a support service for workers with family responsibilities to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of childcare facilities.	<ul style="list-style-type: none"> • FORMERLY art. 132 (c). • REVISE the provision: Where there are at least forty (40) dependents, four (4) years and below, of employees in an establishment employing 100 employees or more, employers shall establish nursery rooms or day-care services, or pay for the costs of childcare for their employees, up to two children, or make other equivalent arrangements with a public or private day care center. In any event, 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (2) (c). • Notwithstanding the presence of barangay day care centers and ECCD programs of the government, these are not enough to address the needs of workers with family responsibilities. Given the limited resources of the government, there is need to require establishments to share in the responsibility of providing family support services, such as childcare facilities.

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			<p>recurrent operating costs in maintaining a nursery room or day care center can be deducted from taxable income: Provided, That the employer does not charge the employees for the services or costs of childcare; Provided, Further, That where employers employing less than 100 employers with at least forty (40) dependents, four (4) years or below, made provisions for nursery or day care, they shall also be entitled to tax deduction.</p>	
<p>Art. ____ Paternity leave. RA 8187*</p>	<p>CEDAW, art. 11 (2) (c) International Covenant on Civil and Political Rights (ICCPR), arts. 2 (1), 3, and 26 and General Comment 19 2003 Concluding Observations of Human Rights Committee (HRC), the treaty</p>	<p>Benefit for paternity leave is only for married men and only in cases of childbirth and miscarriage, thereby causing unnecessary hindrance on the ability of parents to combine family obligations with work responsibilities and</p>	<p>• RENAME the provision: Paternity or partnership leave. • INCORPORATE provisions RA 8187, but REVISE as follows: (a) WORKERS, WHETHER MARRIED OR IN COMMON-LAW RELATIONSHIP OR IN SAME-SEX</p>	<p>• To comply with CEDAW, art. 11 (2) (c); ICCPR, arts. 2 (1), 3, and 26; General Comment 19; and the 2003 Concluding Observations of HRC, the treaty monitoring body of ICCPR, of Dec. 1, 2003. • Include unmarried employees, but</p>

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	monitoring body of ICCP, of Dec. 1, 2003	participation in public life.	<p>PARTNERSHIP FOR AT LEAST ONE YEAR shall be entitled to a paternity or PARTNERSHIP leave of seven (7) days with full pay for the first TWO (2) DELIVERIES of the LEGITIMATE SPOUSE OR PARTNER OF AT LEAST ONE YEAR: PROVIDED, THAT, ESTABLISHMENTS THAT PROVIDE MORE THAN SEVEN (7) DAYS OF LEAVE SHALL BE ENTITLED TO DEDUCTION OF THEIR TAXABLE INCOME. The EMPLOYEE SHALL NOTIFY THE EMPLOYER OF THE PREGNANCY OF THE SPOUSE OR PARTNER xxx.</p> <p>• REVISE the provision: xxx on condition that THE SPOUSE OR PARTNER has delivered a child or suffered a miscarriage OR UNINTENTIONAL ABORTION.</p>	<p>who are in partnership with another as this arrangement is a reality not uncommon at this age. Statistics show that as of the first quarter of 2005, persons who are in a common-law relationships or live-in arrangements stand at 3,061,166, with men accounting for 50.3 percent or one-half of the total number of people in partnership relationship. Those in same-sex relationship should be entitled with a parallel leave where one of the partners gives birth to a child.</p> <p>• Unintended abortion should be included where it can be shown that such act is committed by a third party, and without the fault or collusion of either spouse or partner. The spouses or partners should not be unduly</p>

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			<ul style="list-style-type: none"> • THE SECRETARY OF LABOR, IN COORDINATION WITH NCRFW, DSWD AND DOH, SHALL ISSUE REGULATIONS NECESSARY FOR THE PROPER IMPLEMENTATION OF THE PROVISION. • THE PENALTY FOR VIOLATION SHALL BE THAT PROVIDED FOR IN RA 8187. 	<p>punished and deprived of such benefit for an act not of their making.</p> <ul style="list-style-type: none"> • The extended period of paternity leave is only reasonable as seven days amount to tokenism. The mother should be given sufficient support from the father, at least in the first month of child rearing while the mother is also given some time to recuperate from childbirth. • The issuance of rules and regulations should not only be left to the secretary of DOLE. The NCRFW, being the government body tasked to promote rights of women, should participate in the formulation of the rules and regulations. The DOH and DSWD should necessarily be part of the team to draft such rules and regulations. • Denying the benefit to persons with

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				different orientation (in same-sex relationship) amounts to discrimination and inconsistent with the ICCPR, arts. 2 (1), 3, and 26; General Comment 19; and the 2003 Concluding Observations of the Human Rights Committee.
Art. ____ Parental leave. RA 8972*	CEDAW, art. 11 (2) (c) ICCPR, arts. 2 (1), 3, and 26 General Comment 19 2003 Concluding Observations of HRC of Dec. 1, 2003	Parental leave benefit is only for solo parent, thereby causing unnecessary hindrance on the ability of married parents or parents in common-law or domestic-partnership relationships to combine family obligations with work responsibilities and participation in public life.	<ul style="list-style-type: none"> • REVISE the provision: It is the policy of the State xxx. Toward this end, it shall develop a comprehensive program of services for workers with family responsibilities. Workers with family responsibilities shall refer to ANY MARRIED, SINGLE WORKER WHO IS IN a COMMON-LAW RELATIONSHIP OR IN A SAME-SEX PARTNERSHIP FOR AT LEAST ONE YEAR, AND SOLO PARENTS. • THE SECRETARY OF LABOR, IN 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (2) (c); ICCPR, arts. 2 (1), 3, and 26; General Comment 19; and the 2003 Concluding Observations of HRC of Dec. 1, 2003. • There is need to provide workers with family responsibilities of this benefit to enable them to combine work with family responsibilities. The benefit of flexible work schedule, however, should be extended to married employees, as well as to those in common-law relationship or

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			<p>COORDINATION WITH NCRFW, DSWD AND DOH, SHALL ISSUE REGULATIONS FOR PURPOSES OF IMPLEMENTING THE PROVISION.</p> <ul style="list-style-type: none"> • SOLO –PARENT SHALL BE UNDERSTOOD TO BE THOSE DEFINED UNDER SEC. 3 (A) RA 8972. • REVISE the provision: Parental leave—shall mean xxx to perform parental duties and responsibilities where physical presence is NEEDED, WHICH INCLUDE BUT NOT LIMITED TO CHILD REARING, SERIOUS ILLNESS OF THE CHILD, SCHOOL ENROLLMENT, PTA MEETINGS, DISCIPLINARY PROCEEDINGS, OR SCHOOL FIELD TRIPS. • REVISE the provision: Workers with family responsibilities shall be provided with leave of TEN 	<p>same-sex partnership, as working couples are equally faced with the demands of parenthood. To deny this benefit to married couples or those in partnership again overlooks the importance of shared responsibilities of parents. It could lead to women taking on most of the family responsibilities, noting the general expectation that it is a woman's primary "work" to take care of family needs.</p> <ul style="list-style-type: none"> • Denying the benefit to persons with different orientation (in same-sex relationship) amounts to discrimination and inconsistent with the ICCPR, arts. 2 (1), 3, and 26; General Comment 19; and the 2003 Concluding Observations of the Human Rights Committee.

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			(10) days, REGARDLESS OF THE EMPLOYEES' YEARS OF SERVICE. • THE SECRETARY OF LABOR, IN COORDINATION WITH NCRFW, DSWD AND DOH, SHALL ISSUE REGULATIONS FOR PURPOSES OF IMPLEMENTING THE PROVISION.	
Art. _____. Leave for victims of violence. RA 9262*	CEDAW, art. 11General Recommendations 12 and 19 (24)	No measure to assist workers who are victims of gender-related violence.	• INCORPORATE the provisions of RA 9262, but REVISE as follows: A worker victim of violence defined under RA 9262 shall be entitled to a leave of seven (7) days WITHIN A YEAR, REGARDLESS OF THE NUMBER OF INCIDENCE OF VIOLENCE. • THE SECRETARY OF LABOR, IN COORDINATION WITH NCRFW, DSWD AND DOH, SHALL ISSUE REGULATIONS FOR PURPOSES OF IMPLEMENTING THE PROVISION.	• To comply with CEDAW, art. 11, and General Recommendations 12 and 19 (24). • The CEDAW Committee, the treaty-monitoring body, considers gender-based violence as a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

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Art. ____ Flexible work schedule. RA 8972*	CEDAW, art. 11 (2) (c) ICCPR, arts. 2 (1), 3, and 26, General Comment 19 & 2003 Concluding Observations of HRC of Dec. 1, 2003	Flexible work schedule only for solo parent, thereby causing unnecessary hindrance on the ability of parents to combine family obligations with work responsibilities and participation in public life.	<ul style="list-style-type: none"> • INCORPORATE RA 8972, but REVISE as follows: Employees with family responsibilities, whether married or in common-law relations or in same-sex partnership, shall be entitled to flexible work schedule, subject to the exemptions, as to be determined by regulations to be issued by the secretary of labor, in coordination with NCRFW and DSWD. 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (2) (c); ICCPR, arts. 2 (1), 3, and 26; General Comment 19; and the 2003 Concluding Observations of HRC of Dec. 1, 2003. • To enable workers with family responsibilities to combine work with family responsibilities. The benefit of flexible work schedule, however, should be extended to married employees, as well as to those in common-law relationship or same-sex partnership, as working couples are equally faced with the demands of parenthood. To deny this benefit to married couples or those in common-law relationship or same-sex partnership again overlooks the importance of shared responsibilities of parents. It could

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				<p>lead to women taking on most of the family responsibilities, noting the general expectation that it is a woman's primary "work" to take care of family needs.</p> <ul style="list-style-type: none"> Denying the benefit to persons with different orientation (in same-sex relationship) amounts to discrimination and inconsistent with the ICCPR, arts. 2 (1), 3, and 26; General Comment 19; and the 2003 Concluding Observations of the Human Rights Committee.
Art. _____. Shift-work arrangement or night-work arrangement.	CEDAW, art. 11 (2) (c)a	No shift-work or night-work arrangement, thereby causing unnecessary hindrance on the ability of parents to combine family obligations with work responsibilities and participate in public life.	<ul style="list-style-type: none"> ADD a provision: Special needs of workers, including those arising out of family responsibilities, shall be taken into account in shift-work arrangements and assignment to night work, subject to the regulations to be issued by the secretary of labor, in 	<ul style="list-style-type: none"> To comply with CEDAW, art. 11 (2) (c). The same rationale as that provided for in parental and flexible work hours.

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			coordination with NCRFW and DSWD.	
Book IV, Title I, Chapter I				
Art. 159. Health program.	CEDAW, art. 11 (1) (f)	No occupational health program that ensures the right to protection of health and to safety in work conditions, including the safeguarding of the function of reproduction.	<ul style="list-style-type: none"> • ADD another sentence: THE OCCUPATIONAL HEALTH PROGRAM SHALL INCLUDE, BUT NOT LIMITED TO: (A) CONDUCT OF PRE-EMPLOYMENT MEDICAL AND DENTAL EXAMINATIONS, FREE OF CHARGE; (B) CONDUCT OF ANNUAL PHYSICAL AND DENTAL EXAMINATIONS, FREE OF CHARGE; (C) PROVISION OF PERSONAL PROTECTIVE EQUIPMENT, INCLUDING SAFEGUARDS FOR THE FUNCTION OF REPRODUCTION; AND (D) DESIGN AND IMPLEMENT A PHYSICAL FITNESS PROGRAM. 	<ul style="list-style-type: none"> • To comply with art. 11 (1) (f) of CEDAW. • The right to protection of health and safety in work conditions, including the safeguarding of the function of reproduction.

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		No explicitly mandate for the secretary of labor and employment to prepare and adopt an Occupational Health and Safety Code.	<ul style="list-style-type: none"> • REVISE the first sentence: The secretary of labor shall, IN COORDINATION WITH DOH, PREPARE AND ADOPT AN OCCUPATIONAL HEALTH AND SAFETY CODE. 	<ul style="list-style-type: none"> • This is to provide a clear and definite mandate for DOLE to prepare and adopt an Occupational Health and Safety Code. The DOLE has already prepared and adopted one under the existing art. 165, even as it is not explicit in said article.
Book V, Title I, Chapter II				
Art. 211. Declaration of policy.	CEDAW, art. 2 (b) (e) (f) CEDAW, art. 4 CEDAW, art. 5	No declared policy to undertake affirmative actions to address the underrepresentation in decision-making bodies in DOLE and affiliate bodies, and private establishments.	<ul style="list-style-type: none"> • REVISE art. 211 (g) as follows: To ensure the participation of workers, REGARDLESS OF EMPLOYMENT STATUS, in decision-making and policymaking processes affecting their 	<ul style="list-style-type: none"> • To comply with CEDAW, arts. 2 (b), (e) & (f), 4, & 5. • This is an affirmative measure to address the underrepresentation of women in policymaking bodies in private

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			<p>rights, duties, and welfare.</p> <ul style="list-style-type: none"> • ADD another policy: To increase the participation of women in policymaking and decision-making processes in DOLE and ATTACHED AGENCIES and in private establishments. 	enterprises or establishments.
Art. 212. Definition.	ILO Conventions 89 and 98	No explicitly inclusion of part-time, probationary, contractual, seasonal and other nonregular employees in the coverage of Book V, particularly with regard to the right to join unions.	<ul style="list-style-type: none"> • In letter (f), definition of "employee": CHANGE the phrase "Employee includes" to "Employee means" • ADD another sentence: IT INCLUDES CONTRACTUAL (DIRECT OR INDIRECT), SEASONAL, PROBATIONARY, AND PART-TIME. 	<ul style="list-style-type: none"> • To comply with ILO Conventions 89 and 98. • This is to make it categorical that these employees are qualified and may join unions in establishments.
Art. ____. Reclassification of positions.	CEDAW, art. 11 (1) (c) ILO Conventions 89 and 98	No protection on job security during collective bargaining or certification election.	<ul style="list-style-type: none"> • ADD provision: THE RECLASSIFICATION OF POSITIONS COVERED BY THE COLLECTIVE BARGAINING UNIT DURING 	<ul style="list-style-type: none"> • To comply with ILO Convention 161 and Recommendation 171 • The prohibition on reclassification is for the purpose of

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			THE LIFETIME OF THE COLLECTIVE BARGAINING AGREEMENT OR DURING CERTIFICATION ELECTION IS PROHIBITED, EXCEPT WHERE THERE IS PROPER CONSULTATION WITH THE UNION.	preventing the pervasive practice of management to reduce the coverage of the bargaining unit, thereby resulting to union busting. Also, there is a need to ensure the job security of workers. The requirement of proper consultation is necessary to give the union the opportunity to study the relevance of such action.
Book V, Title II, Chapter I				
Art. 213. National Labor Relations Commissions.	CEDAW, art. 2 (e) & (f) CEDAW, art. 4 CEDAW, art. 5 (a) CEDAW, art. 7 (b)	No affirmative measure to ensure that women, on equal terms with men, have the right to participate in the formulation of government policy and the implementation thereof and to hold public office and perform public functions.	<ul style="list-style-type: none"> • ADD a sentence in the first paragraph: IT SHALL BE COMPOSED OF A CHAIR AND FOURTEEN (14) MEMBERS, AT LEAST FIVE (5) OF WHOM ARE WOMEN COMMISSIONERS. • ADD another paragraph on qualification: APPOINTEES SHALL PREFERABLY HAVE GENDER AWARENESS 	<ul style="list-style-type: none"> • To comply with CEDAW, arts. 2 (e) & (f), 4, 5 (a), and 7 (b). • This is an affirmative action to increase the participation of women in decision-making bodies, as well as in the formulation of government policy. • To address gender-imbalance in leadership/ decision-making bodies.

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			AND/OR HAVE UNDERGONE GENDER- SENSITIVITY TRAINING.	
Book V, Title III				
Art. 230. Appointment of bureau personnel.	CEDAW, art. 2 (e) & (f) CEDAW, art. 4 CEDAW, art. 5 (a) CEDAW, art. 7 (b)	No affirmative measure to ensure that women, on equal terms with men, have the right to hold public office and perform public functions.	<ul style="list-style-type: none"> • ADD a sentence: IN THE APPOINTMENT OF BUREAU DIRECTORS, EXAMINERS, AND OTHER ASSISTANTS, MEASURES SHOULD BE TAKEN TO ENSURE THAT WOMEN ARE EQUALLY CONSIDERED FOR THE POSITION. 	<ul style="list-style-type: none"> • To comply with CEDAW, arts. 2 (e) & (f), 4, 5 (a), and art. 7 (b). • This is an affirmative action to increase the participation of women in governance, such as holding public office and performing public functions at all levels of government. • To address gender-imbalance in leadership/ decision-making bodies.
Book V, Title IV, Chapter I				
Art. 234. Requirements of registration.	CEDAW, art. 11 (1) (c) ILO Conventions 89 & 98	No explicit recognition of the right of part-time, probationary, contractual, seasonal and other nonregular employees to job security and all benefits and	<ul style="list-style-type: none"> • In letter (c), ADD a sentence: The establishment-hired contractuals, casuals, fixed- term, seasonal, and probationary workers/ employees are deemed included 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1) (c), and ILO Conventions 89 & 98. • All workers have the right to self- organization regardless of employment

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		conditions of work, including the right to join unions.	as members for purposes of registration of labor organizations. • N.B. Adopted from the Special Report on Proposed Changes in the Labor Code, prepared by E. (Leo) D. Battad, Cecilia Laquian- Basa, and Leian Marasigan, presented during the roundtable discussion, <i>Expanding Labor Rights under Globalization</i> , April 26, 2005, at the UP School of Labor and Industrial Relations (UP SOLAIR). The authors are members of the Center for Labor Justice, UP SOLAIR, headed by Rene E. Ofreneo, Ph.D.	status. And all workers have the right to form unions regardless of the number of membership. It is the task of the unions to gather <i>more support</i> during the certification election.
Book V, Title IV, Chapter II				
Art. 241. Rights and conditions of membership in a labor organization.	CEDAW, art. 11 General Recommendation 19 (24) ILO Conventions 89 & 98	No measure adopted to impose a duty on unions to promote gender equality and take measures to stop the pernicious practice of sexual harassment and	• ADD another sentence to art. 241 (f): THE CRIME OF MORAL TURPITUDE SHALL INCLUDE THE OFFENSE OF SEXUAL	• To comply with CEDAW, art. 11 • and General Recommendation 19 (24); and ILO Conventions 89 & 98. • The Union should have the power to

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		other gender-based violence in the union and workplace.	<p>HARASSMENT AND OTHER SEXUAL OFFENSES.</p> <p>• REVISE art. 241 (p): It shall be the duty of any labor organization ... to inform its members about its constitution and by-laws, ... and their rights and obligations under existing labor laws and labor-related laws, ESPECIALLY THOSE INVOLVING GENDER ISSUES AND CONCERNS.</p>	<p>elect their officers in the manner they see fit, provided that their terms do not exceed five years to ensure that officers get a fresh mandate and that none of the officers were convicted of moral turpitude.</p> <p>• Labor organizations should also share in the responsibility to promote gender equality with their ranks and investigate sexual harassment or gender-based violence within their organization.</p>

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			<ul style="list-style-type: none"> • ADD other provisions: - IT SHALL BE THE DUTY OF ANY LABOR ORGANIZATION AND ITS OFFICERS TO INVESTIGATE REPORTED CASES OR INCIDENTS OF SEXUAL HARASSMENT AND OTHER GENDER VIOLENCE AMONG ITS MEMBERS. TOWARD THIS END, IT SHALL ESTABLISH A COMMITTEE OF DECORUM AND INVESTIGATION. THE LABOR ORGANIZATIONS SHALL HAVE A COMMITTEE THAT SHALL ALSO UNDERTAKE TO DEVELOP A CODE OF DECORUM. - IT SHALL BE THE DUTY OF ANY LABOR ORGANIZATION TO SET UP A GENDER COMMITTEE TO SERVE AS MONITORING 	

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			COMPLIANCE OF GENDER- RELATED PROVISIONS.	
Book V, Title IV, Chapter III				
Art. _____. Bonus incentive schemes for a gender-fair composition.	CEDAW, art. 2 (e) & (f) CEDAW, art. 4 CEDAW, art. 5 (a)	No measure taken to encourage labor organizations to take affirmative action to increase women's participation in leadership and organizational activities.	<ul style="list-style-type: none"> • ADD a provision: A LEGITIMATE LABOR ORGANIZATION, CERTIFIED AS THE EXCLUSIVE REPRESENTATIVE OF THE EMPLOYEES, SHALL BE ENTITLED TO A BONUS INCENTIVE SCHEMES: PROVIDED THAT AT LEAST 50 PERCENT OF THE ELECTED UNION OFFICERS ARE WOMEN. THE EMPLOYER SHALL PAY FOR THE BONUS INCENTIVE, WHICH CAN BE DEDUCTED FROM THE EMPLOYER'S TAXABLE INCOME. THE SECRETARY OF DOLE, IN COORDINATION WITH NCRFW 	<ul style="list-style-type: none"> • To comply with CEDAW, arts. 2 (e) & (f), 4, and 5 (a). • There is need to address the gender imbalance in trade unionism, the bastion of male dominance.

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			AND THE DOF, SHALL ISSUE THE REGULATION TO IMPLEMENT THIS PROVISION.	
Book V, Title V				
Art. 243. Coverage of workers/ employees' right to self-organization.	CEDAW, art. 11 (1) (c) ILO Conventions 89 and 98	No explicit recognition of the right of part-time, probationary, contractual, seasonal, and other nonregular employees to job security and all benefits and conditions of work, including the right to join unions.	<ul style="list-style-type: none"> • ADD another sentence: DIRECT ESTABLISHMENT-HIRED CONTRACTUAL, CASUAL, FIXED-TERM, PROJECT, SEASONAL, PROBATIONARY EMPLOYEES ARE DEEMED ELIGIBLE FOR MEMBERSHIP IN A LABOR ORGANIZATION IN AN ESTABLISHMENT ON THE FIRST DAY OF HIS/HER SERVICE WITH AN EMPLOYER. • N.B. Adopted from the Special Report on Proposed Changes in the Labor Code, prepared by E. (Leo) D. Battad, Cecilia Laquian-Basa, and Leian Marasigan, presented during the roundtable discussion, 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1) (c), and ILO Conventions 89 and 98 • All workers have the right to self-organization regardless of employment status. • A great number of women are in the contractual and seasonal type or work. In order to protect their employment and provide them the venue to articulate their issues and bargain effectively, their right to join the union within the establishment should be assured.

LABOR CODE / LABOR-RELATED LAWS [designated with (*)]	CEDAW / INTERNATIONAL TREATIES / AGREEMENTS	GENDER GAPS / BIASES IN LEGISLATION	PROPOSED AMENDMENTS	RATIONALE
			Expanding Labor Rights under Globalization, April 26, 2005, at UP School of Labor and Industrial Relations (UP SOLAIR). The authors are members of the Center for Labor Justice, UP SOLAIR, headed by Rene E. Ofreno, Ph.D.	
Book V, Title VII				
Art. 255. Exclusive bargaining representation and workers participation in policymaking and decision making.	CEDAW, arts. 2 (e) & (f), 4 & 5 (a)	No measure to eliminate discrimination by enterprise, particularly with regard to the underrepresentation of women in policymaking bodies in enterprises or establishments.	<ul style="list-style-type: none"> • In 2nd paragraph to provide bonus incentive to the employer where, in the formation of a labor-management council, at least 50 percent of the combined representatives of workers and employers are women: Provided that the bonus incentive shall be divided equally between the establishment and union or workers' representatives: Provided, further, that bonus incentive in the form of cash shall be used for the promotion of 	<ul style="list-style-type: none"> • To comply with CEDAW, arts. 2 (e) & (f), 4, & 5 (a). • This is an affirmative action to increase women's participation in the formulation of policy and the implementation thereof. This will address the imbalance in the representation of women in corporate and union activities. • The measure would modify the social and cultural patterns of conduct of men and women, where women are usually relegated to minor functions

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			gender equality programs and activities. The secretary of labor, in coordination with DOF and NCRFW, shall issue regulations to implement this provision.	or roles in the workplace.
Book V, Title VIII, Chapter II, Assistance to Labor Organizations			• RENAME as: Assistance to Labor AND EMPLOYEES.	
Art. ____. Assistance by the National Commission for the Role of Filipino Women (NCRFW) and accredited entities, including nongovernment organizations (NGOs).	CEDAW, arts. 2 (e) & (f), and 5 (a)	No measures to extend assistance or services to employers and employers for the promotion of gender equality in the workplace in the form of seminars or orientation, among others, with the view of eliminating or modifying practices that constitute discrimination against women.	• ADD a new provision. THE NCRFW SHALL PROVIDE ASSISTANCE TO LABOR ORGANIZATIONS AND EMPLOYERS, INCLUDING, BUT NOT LIMITED TO, CONDUCTING GENDER EDUCATION, ESPECIALLY PERTAINING TO GENDER ISSUES, GENDER- RELATED LEGISLATION, GENDER- RESPONSIVE COLLECTIVE BARGAINING, AMONG OTHERS.	<ul style="list-style-type: none"> • To comply with CEDAW, arts. 2 (e) & (f), and 5 (a). • Considering that there may not be enough trainers sufficiently knowledgeable on gender equality-related course in DOLE or in NCRFW, and there are NGOs with demonstrated capacity to provide gender-related training, these NGOs should be tapped for such purposes, to hasten the promotion of gender equality.

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			<ul style="list-style-type: none"> NGOs AND OTHER ENTITIES WITH DEMONSTRATED CAPACITY TO PROVIDE GENDER-RELATED ASSISTANCE MAY PROVIDE SERVICES. THE SECRETARY OF LABOR, IN COORDINATION WITH NCRFW, SHALL ISSUE REGULATIONS ON THE SYSTEM OF ACCREDITATION OF ENTITIES AND NGOs. 	
Book V, Title __ – Gender Equality Promotion				
Art. ____ Gender orientation.	CEDAW, arts. 2 (e) & (a)	No requirement for government personnel to undergo gender orientation, with a view to eliminating discrimination against women, modifying social and cultural patterns of conduct of men and women, and eliminating prejudices and customary and all other practices that are based on the	<ul style="list-style-type: none"> ADD a new provision: ALL APPOINTED OFFICIALS, OFFICERS, AND STAFF OF DOLE, NLRC, BLR, NCMB, POEA, OWWA AND OTHER ATTACHED AGENCIES OF DOLE SHALL UNDERGO A GENDER ORIENTATION ON GENDER- 	<ul style="list-style-type: none"> To comply with CEDAW, arts. 2 (e) & (f), and 5 (a). To modify the social and cultural patterns, behaviors, customs, and practices that are discriminatory to women. To strengthen the promotion and observance of gender equality among officials and officers of DOLE

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		ideas of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.	<p>SENSITIVITY TRAINING AND OTHER GENDER-RELATED TOPICS.</p> <ul style="list-style-type: none"> • AS A CONDITION FOR PROMOTION, THE OFFICER OR EMPLOYEE MUST UNDERGO MANDATORY TRAINING ON HUMAN RIGHTS, WHICH SHALL INCLUDE WOMEN'S RIGHTS, GENDER AWARENESS, GENDER-SENSITIVITY TRAINING, AND OTHER GENDER-RELATED COURSES. • NGOs AND OTHER ENTITIES WITH DEMONSTRATED CAPACITY TO PROVIDE GENDER-RELATED ASSISTANCE MAY PROVIDE ASSISTANCE. THE SECRETARY OF LABOR, IN COORDINATION WITH NCRFW, SHALL ISSUE REGULATIONS ON THE SYSTEM 	<p>and affiliated offices, it should be mandatory for all such officers to undergo a gender orientation.</p> <ul style="list-style-type: none"> • Considering that there may not be enough trainers sufficiently knowledgeable on gender-equality-related course in DOLE or in NCRFW, and there are NGOs with demonstrated capacity to provide gender-related training, these NGOs should be tapped for such purposes, to hasten the promotion of gender equality.

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			OF ACCREDITATION OF ENTITIES AND NGOs.	
Art. ____ Gender equality research.	CEDAW, arts. 2 (e) & 5 (a)	No requirement to do research on all forms of discrimination with a view to eliminating discrimination against women by organizations or enterprises and in the process eliminating prejudices and other practices that are based on stereotyped roles for men and women.	<ul style="list-style-type: none"> • ADD a new provision: The DOLE shall undertake research on all forms of direct and indirect discrimination with a view to formulating policies, regulations, and guidelines to curb such practices in the workplace. 	<ul style="list-style-type: none"> • To comply with CEDAW, arts. 2 (e) and (f), & 5 (a). • To aid State to adopt appropriate legislative and other measures to prohibiting all discrimination against women, it is imperative that research on all forms of direct and indirect discrimination be undertaken to enable the government to formulate policies, etc. to curb such practices in the workplace.
Art. ____ Gender equality seminar and other educational activities.	CEDAW, art. 2 (e) & (f) CEDAW, art. 5 (a)	No measure to ensure that enterprises/ establishments provide gender equality seminars with a view to modifying practices that constitute discrimination against women, thereby eliminating discrimination against women in the workplace.	<ul style="list-style-type: none"> • ADD a new provision: Establishments shall provide free gender equality seminars and other educational activities that would help promote gender equality in the workplace and ensure a gender-friendly environment. 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 2 (e) & (f), and 5 (a). • This is an educational measure to contribute to the elimination of discrimination against women by any person, organization or enterprise.

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Art. ____ Gender equality focal person in the workplace.	CEDAW, art. 2 (b), (d), (e) & (f) CEDAW, art. 5 (a)		<ul style="list-style-type: none"> • ADD a new provision: To ensure the observance of gender equality in the workplace, a gender equality focal person shall be designated for purposes of monitoring the enforcement and implementation of gender responsive policies, rules, and programs in the workplace. 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 2 (b), (d), (e) & (f), & art. 5 (a). This is another measure to assist the establishments in monitoring the observance of gender equality in the workplace. • It also provides the government some mechanism by which to assess organizations' and establishments' extent of compliance with gender equality at the local level.
Book V, Title IX – General Provisions				
Art. 275. Tripartism and tripartite conference.	CEDAW, art. 2 (e) & (f) CEDAW, art. 4 CEDAW, art. 5 (a) CEDAW, art. 7 (b)	No measure to ensure that women, on equal terms with men, have the right to participate in the formulation of government policy and the implementation thereof.	<ul style="list-style-type: none"> • In letter (b) of the provision, REVISE as follows: In calling for a national, regional, or industrial tripartite conference of representatives of government, workers, and employers, the consideration and adoption of voluntary codes of principles should also INCLUDE THE PROMOTION OF GENDER 	<ul style="list-style-type: none"> • To comply with CEDAW, arts. 2 (e) & (f), 4, 5 (a), and 7 (b). An important consideration in achieving social justice is the attainment of gender equality. Hence, in the consideration and adoption of voluntary codes of principles, gender equality should necessarily be included in any discourse. This is an

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			<p>EQUALITY, in addition to the promotion of industrial peace based on social justice.</p> <ul style="list-style-type: none"> • In calling for such conference, the secretary of labor shall consult WITH ACCREDITED REPRESENTATIVES OF WORKERS AND EMPLOYERS. IN ALL CASES, PRIORITY SHALL BE GIVEN TO ACCREDITED REPRESENTATIVES WHERE AT LEAST 50 PERCENT OF ITS OFFICERS ARE WOMEN. • IN APPOINTING PARTICIPANTS TO THE TRIPARTITE CONFERENCE, WOMEN PARTICIPANTS SHALL BE AT LEAST 30 PERCENT OF THE TOTAL PARTICIPANTS. • THE SECRETARY OF LABOR, IN COORDINATION WITH THE NCRFW, SHALL 	<p>affirmative action to increase women's participation in decision-making and policymaking bodies to address the imbalance in representation of women and men in such bodies.</p>

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			ISSUE REGULATIONS ON THE SYSTEM OF ACCREDITATION OF ENTITIES AND NGOs.	
Book VI, Title I - Termination of Employment				
Art. 279. Security of tenure.	CEDAW, art. 11 (1) (c) ILO Convention 175 Recommendations 165 (21) & 182	No explicit protection on the job security, benefits, and conditions of service for part-time workers.	<ul style="list-style-type: none"> • REVISE as follows: In cases of regular employment, WHETHER FULL-TIME OR PART-TIME, the employer shall not terminate... 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1) (c); ILO Conventions 156 & 175; and Recommendations 165 & 182. • To ensure that part-time workers receive the same protection as that given to comparable full-time workers.
Art. __. Contractual employees.	CEDAW, art. 11 (1) (c) ILO Recommendation 165 (21)	No explicit protection on the job security, benefits, and conditions of service for contractual workers.	<ul style="list-style-type: none"> • ADD a new provision: THERE SHALL BE NO DIRECT ESTABLISHMENT-HIRED CONTRACTUALS (BILATERAL ARRANGEMENT), SEASONAL OR FIXED-TERM WORKERS/ EMPLOYEES IN JOBS THAT ARE NECESSARY OR DESIRABLE IN THE REGULAR 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1) (c), and ILO Recommendation 165 (21). Women are most vulnerable, considering their significant number in contractual work. There is need to prohibit the pernicious practice of hiring contractual, seasonal, or fixed-term workers/

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			<p>OPERATION AND TRADE OF THE EMPLOYER.</p> <ul style="list-style-type: none"> • POSITIONS VACATED BY REGULAR WORKERS/ EMPLOYEES SHALL BE CONSIDERED AS JOBS NECESSARY OR DESIRABLE AND SHALL BE FILLED UP BY WORKERS/ EMPLOYEES FOR REGULAR EMPLOYMENT. • DIRECT ESTABLISHMENT-HIRED CONTRACTUALS (BILATERAL) MAY BE HIRED ONLY IN CONTRACTABLE JOBS AS DETERMINED AND APPROVED BY THE DOLE. ALL OTHER JOBS NOT DETERMINED AS CONTRACTABLE SHALL BE CONSIDERED AS NECESSARY OR DESIRABLE. • THE NUMBER OF CASUAL AND CONTRACTUAL (BILATERAL) 	

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			<p>WORKERS/ EMPLOYEES THAT SHALL BE EMPLOYED BY A CORPORATION SHALL NOT EXCEED 10 PERCENT OF THE TOTAL NUMBER OF REGULAR RANK- AND-FILE WORKERS/ EMPLOYEES IN THE CORPORATION.</p> <p>• FOR PURPOSES OF MONITORING, MANAGEMENT SHALL PROVIDE THE WORKERS' REPRESENTATIVE AND THE DOLE A COPY OF THE COMPLETE LIST OF EMPLOYEES AND THEIR RESPECTIVE EMPLOYMENT STATUS. FOR PURPOSES OF THIS PROVISION, EMPLOYEES INCLUDE CONTRACTUALS (DIRECT-HIRED OR UNDER JOB- CONTRACTING ARRANGEMENT), CASUALS, SEASONAL, REGULAR, AND PROBATIONARY).</p>	<p>employees in jobs that are necessary or desirable in the regular operation and trade of the employer; otherwise, the number of the regular workforce would be reduced, thus threatening the existence of the bargaining unit. · There is need to restrict manage- ment practice of hiring nonregular workers/ employees to ensure that the existence of the total regular workforce is not threatened, and to provide security of tenure for casual and contractual workers/ employees.</p>

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			<ul style="list-style-type: none"> • N.B. Adopted from the Special Report on Proposed Changes in the Labor Code, prepared by E. (Leo) D. Battad, Cecilia Laquian-Basa, and Leian Marasigan, presented during the roundtable discussion, Expanding Labor Rights under Globalization, April 26, 2005, at the UP School of Labor and Industrial Relations (UP SOLAIR). The authors are members of the Center for Labor Justice, UP SOLAIR, headed by Rene E. Ofreneo, Ph.D. 	
Art. ____ Seasonal workers/ employees.	CEDAW, art. 11 (1) (c) ILO Recommendation 165 (21)	No protection for the job security, benefits, and conditions of service of seasonal workers.	<ul style="list-style-type: none"> • ADD a new provision: SEASONAL WORKERS/ EMPLOYEES SHALL HAVE THE RIGHT TO SECURITY OF TENURE, AND ARE ENTITLED TO RESUME THEIR EMPLOYMENT IN THE SAME OR SIMILAR POSITION UPON THE START OF 	<ul style="list-style-type: none"> • To comply with CEDAW, art. 11 (1) (c), and ILO Recommendation 165 (21). • Women are very vulnerable to seasonal work. • There is need to protect the seasonal workers/ employees by providing security of tenure on the duration of the

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			<p>THE NEXT SEASON, PROVIDED THAT DURING THE TIME THEIR SERVICES ARE NOT ACTUALLY AVAILIED OF BY THE ESTABLISHMENT, THEY SHALL BE CONSIDERED TO BE ON AUTHORIZED LEAVE WITHOUT PAY.</p> <p>• N.B. Adopted from the Special Report on Proposed Changes in the Labor Code, prepared by E. (Leo) D. Battad, Cecilia Laquian-Basa, and Leian Marasigan, presented during the roundtable discussion, Expanding Labor Rights under Globalization, April 26, 2005, at the UP School of Labor and Industrial Relations (UP SOLAIR). The authors are members of the Center for Labor Justice, UP SOLAIR, headed by Rene E. Ofreneo, Ph.D.</p>	<p>season. This will ensure regular seasonal employment.</p>

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Art. 282. Termination by employer.	CEDAW, art. 11 General Recommendation 19 (24)		<ul style="list-style-type: none">• In letter (a), ADD a sentence: Serious misconduct would include any act of sexual violence, including sexual harassment or sexual assault of any nature.• In letter (d), add at the end of the clause the following: "or against his co-employees."	<ul style="list-style-type: none">• To comply with CEDAW, art. 11 and General Recommendation 19 (24). Considering that gender-based violence is an affront to human dignity, it is only appropriate that it should be considered a serious misconduct.• Termination should also include the commission of a crime or offense by the employee against his/her co-employee as such offense or crime poses a serious threat to a safe and healthy work environment. It unduly exposes the victim and other employees to unnecessary danger to life and limb.

Annex B

List of Participants in FGDs

Atty. Rosalio A. Aragon, Jr.
Marj Ardivilla
Rhoda Avila
Dina Baltazar
Anamarie Basay
Sedfrey Candelaria
Pearl Conde
Michael Correa
Odine de Guzman
Dwan Mei Dumas
Celestine Eviota
Atty. Myrna Feliciano
Ma. Yvonne Feria
Lorna Ferrer
Anna Lee Fos
Jing Francisco
Gladys Franco
Marilyn Grafane
Dr. Sylvia Guerrero
Lourdes Gula
Pebe Herrera
Gemma Ifurun
Hon. Josefina Josen
Nhartz Lucas
Hon. Ma. Milagros Magsaysay
Evelyn Manangan
Florence Manikan
Tyna Mendoza
Ma. Theresa Molino
Remedios Mondiguing
Zone Narito
Hon. Reyline Nicolas

Dr. Rosalinda Ofreneo
Jelen Padawin
Cherry Padilla
Josephine Parilla
Remedios Petilla
Joy Elena Piccio
Atty. Mary Janeth P. Poot
Rosemarie Quibal
Luningning Quirante
Aurora Regalado
Mel Reyes
Atty. Lorenzo Reyes
Estefanie Ripalda
Luz Rodriguez
Hon. Loretta Ann Rosales
Irene Rosanes
Emily Sanchez
Aida Santos
Melly Santos
Annie Serrano
Jennifer Sexon
Ligaya Solomon
Ampy Sta. Maria
Susanita Tesiorra
Olive Tripon
Angie Umbac
Atty. Flordeliza Vargas
Malou Vera
Emmeline Verzosa
Priscilla Villacorta
Elizabeth Yang

Organization

Pambansang Tagapag-ugnay ng
mga Manggagawa sa Bahay
(PATAMABA)
Democratic Socialist Women of
the Philippines (DSWP)
Manggagawang Kababaihang
Mithi ay Paglaya
(MAKALAYA)
Women's Institute for
Sustainable Economic Action
(WISEACT)
Kababaihang Kaagapay sa
Hanapbuhay (KAKASAH)
Sikap-Unlad Livelihood
Association (SULA)
Katipunan ng Bagong Pilipina
(KABAPA)
Samahang Pangkabuhayan sa
Kamaynilaan
(SANGKAMAY)
Kaisahan ng mga Kababaihang
Gumagawa sa Bahay
(KASAMBAHAY)

Ilaw ng Tahanan
Damayan San Francisco
SKPK-UP
MAGISI
BATIS-Association of Women in
Action for Rights and
Empowerment (BATIS-
AWARE)
Rizal Informal Sector Coalition
(RISC)
Manila Area Sectoral Alliance
(MASA)
Nagkakaisang Kababaihan ng
SAMAKABA, Inc. (NAKASA)
Alyansa ng Mamamayang
Naghihirap (ALMANA)
Aksyon ng Kilusang Kababaihan
sa Informal Sector, Inc.
(AKSYON KABABAIHAN)
GADAF-ROSARIO

About the Authors

Atty. E. (Leo) D. Battad is former university general counsel of the University of the Philippines (UP) Office of Legal Services and assistant professor 4 of the UP School of Labor and Industrial Relations. She obtained her law degree from the University of the Philippines (Class 1981) and her master's in law from Yale University (Class 1998). She is a human rights advocate and member of the Free Legal Assistance Group (FLAG) and chair of the Streetchildren Development Center (SDC) Inc.

Atty. Milagros Isabel Cristobal Amar obtained her Bachelor of Arts (Philosophy) and Bachelor of Laws from UP. She is a human rights advocate first and foremost, both in her law practice and in her chosen fields of focus, which are women's human rights, children, and migration. She started human rights advocacy from law school until her professional practice, devoting the first years of her professional life working full time as a human rights lawyer and advocate, fighting for and defending human rights, and helping victims seek justice through the legal and judicial system. She got involved with several non-governmental organizations (NGOs) working for human rights, later focusing on women, children, and then migration. While practicing law professionally, Atty. Cristobal Amar has maintained her involvement with different human rights organizations, doing volunteer work and managing offices in different organizations.

Dr. Rosalinda Pineda-Ofreneo is professor and chair of the Department of Women and Development Studies, College of Social Work and Community Development, UP Diliman. She has been doing research and advocacy work with homeworkers and other informal workers for more than a quarter of a century. Dr. Pineda-Ofreneo is currently the regional coordinator of Homenet Southeast Asia.

Atty. Ma. Luz Rañeses-Raval took up BS Community Development (1976) and Bachelor of Laws (1987) at UP Diliman. She now pursues MA in Public Administration (major in Regional/Local Administration) at the UP Open University. She is a senior lecturer on constitutional law and administrative law at the New Era University College of Law and the UP National College of Public Administration and Governance, and holds the position of deputy general counsel for corporate affairs at the UP System Office of Legal Services.

Dr. Carolyn I. Sobritchea is a professor of Philippine studies at the UP Asian Center and concurrently the director of the UP Center for Women's Studies. She has written several books and articles on topics like feminist theorizing and methodology, domestic violence, gender and governance, reproductive rights, and gender and development. She has served as gender trainer and research consultant of government and nongovernment organizations in the Philippines and countries in Asia and Europe.

Atty. Flordeliza C. Vargas is a graduate of the UP College of Law. She worked with the Women's Legal Bureau and the Womenlead Foundation, NGOs that are advocating for women's rights and providing legal assistance to women victims of violence. At present she is the law reform specialist of the UP Law Center Institute of Judicial Administration, an office mandated to provide continuing legal education to members of the bar. She is co-author of the books *Gender Sensitivity in Philippine Courts* and *Gender Sensitivity in the Family Courts*.

