

Training Manual on

Gender Sensitivity and CEDAW



A Publication by the
ATENEO HUMAN RIGHTS CENTER



Editorial Board

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Training Manual on Gender Sensitivity and CEDAW

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Foreword

The United Nations Development Fund for Women (UNIFEM) supports the effective implementation of the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW) in the Philippines. With funding from the Canadian International Development Agency, UNIFEM started its CEDAW South East Asia Program in 2004 in seven countries in the region, including the Philippines. It supported activities that facilitated the preparation and presentation of the Combined 5th and 6th Progress Report to the UN-CEDAW by the Philippine government delegation and the NGO Shadow Report by a panel of women NGO leaders during the 36th Session of CEDAW in New York on August 15, 2006.

When the CEDAW Committee handed down its Concluding Comments to the Philippine Report in August 25, 2006 it called on the Philippine government to harmonize the national legal system with the standards of CEDAW; widely disseminate and train all units of government on CEDAW provisions, general recommendations, and the Optional Protocol and Concluding Comments; and monitor compliance not just of '*de jure*' but also of '*de facto*' equality by having sex-disaggregated data and gender analysis of data trends, especially the enforcement of laws, such as the number of convictions for violence against women (VAW), trafficking, or the number of policies enacted and court decisions penned that used CEDAW.

UNIFEM took a strategic step to collaborate with the Ateneo Human Rights Center and the Philippine Judicial Academy in a series of trainings on CEDAW and Gender Sensitivity in the Philippine Court System. This training manual is a support component of this capacity development program. We hope that this serves as reference for judges, lawyers and court attorneys as well as for other members of the legal profession and law schools. We hope that this will make the CEDAW training module and materials integral to the curriculum of the Philippine Judicial Academy. Finally, we hope that this will contribute towards producing more gender-fair and rights-based court decisions that will make women's rights justiciable.

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INTRODUCTION

The Supreme Court of the Philippines, through the Committee on Gender Responsiveness in the Judiciary (CGRJ) has called the popularization of the Convention on the Elimination of All Forms of Discrimination (CEDAW) and the gender sensitization of courts, vital steps towards achieving gender equality within the judiciary. It also took note that there was a need for the country's treaty obligations under the CEDAW to be reflected in case law and other judicial issuances.

This training manual was drawn from a series of trainings entitled "Seminar-Workshop on CEDAW, Gender Sensitivity, and the Courts" conducted from October 2006 to June 2007. The series was a response to the CGRJ's call to promote gender equality. With the CGRJ's endorsement, and with the approval and support of the Philippine Judicial Academy (PHILJA), the trainings were conducted for court personnel of the Supreme Court, Court of Appeals, selected Executive Judges and Family Court Judges in Metro Manila and their respective Clerks of Court and Researchers. The trainings were done in partnership with the Ateneo Human Rights Center (AHRC) and the United Nations Development Fund for Women (UNIFEM), with the assistance of PHILJA staff.

In her opening remarks during one of these trainings, Justice Ameurfina A. Melencio-Herrera, Chancellor of PHILJA, stressed the importance of a gender-sensitive judiciary. She pointed to data showing the continued trend of female dominance in the work force of the courts including the Supreme Court, and questioned the appropriateness of continuing to refer in general to this data as "manpower" profiles. She stated that this terminology should now be changed especially with the issuance of Administrative Circular No. 82-2006 which directs the use of non-sexist language in court official documents and issuances.

These sentiments were echoed by CGRJ Chairperson Justice Ma. Alicia Austria-Martinez, who noted the lack of sensitivity and awareness on gender issues throughout the judicial system, and stated that removing sexist language was an important step towards a gender sensitive court. Justice Austria-Martinez also emphasized the importance of creating new gender-related knowledge bases, which could assist the judiciary in targeting interventions specifically towards women.

The ultimate goal of these types of trainings is to move towards a society that is truly equal. Dr. Purificacion V. Quisumbing, the Chairperson of the Commission on Human Rights, as well as the Chairperson of the Sub-Committee on Training and Capacity-Building of the CGRJ, stated that faced with historical discrimination, it is imperative that the status of women is lifted up to equal the rights of men. She pointed to CEDAW as a critical tool that provides standards for training participants to use in helping vulnerable women gain access to a justice system that is attuned to their particular needs.

It is sincerely hoped that with the publication of this Manual both in print and electronic form, more members of the judiciary can benefit from its contents and pave the way for a deeper understanding of women's human rights in CEDAW, and that such learnings may be applied and reflected in court decisions and issuances.

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UNIT ONE: GENDER SENSITIVITY TRAINING

Based on lectures given by Atty. Gilbert V. Sembrano on Gender Sensitivity at the workshop series: "Seminar-Workshop on CEDAW, Gender Sensitivity, and the Court", October 2006 – June 2007.¹

Objectives

At the end of this unit the participants are expected:

1. To develop sensitivity in perceiving existing gender issues and inequalities;
2. To recognize the differing situations and needs of women and men and consider them in every action or decision they make;
3. To deepen their understanding on how and why women's rights are human rights.

Content

Lecture, exercise, and case studies on gender sensitivity

Topic 1: Starting From Where We Are – An Assessment
Topic 2: Sex and Gender
Topic 3: Gender Stereotypes and Gender Ideology
Topic 4: Mechanisms and Institutions of Socialization
Topic 5: Case Studies

Topic 1: Starting From Where We Are – An Assessment

The following activities are intended to allow participants to assess their own assumptions, beliefs and stereotypes about the characteristics and capacities of men and women.

Activity #1

Flash on the screen the following excerpts from a number of Supreme Court decisions that evoke gender stereotyping:

"young barrio lass; naive and inexperienced"
"chaste Filipina"
"good reputation"
"young virgin barrio-girl"
"Filipina of rural breeding"

"decent Filipina"
"young and immature"
"innocent and guileless"
"inexperienced in the ways of the world"
"naiveté and limited intelligence"

Guide questions for introductory discussion:

1. Have you come across these phrases? Where? How?
2. What images did any of these phrases evoke in your mind?
3. What assumptions do they raise?

Activity #2

This activity will allow participants to have a deeper examination of their personally held assumptions and beliefs about the capacities and characteristics of men and women. This will serve as a good transition to the next topic on SEX and GENDER.

In advance, prepare 20 or so meta-cards and write on each a physical or an emotional characteristic, profession, or object that people usually associate with women or men. Distribute them randomly to the participants. It is not necessary that all participants receive meta-cards. Divide the blackboard in front or the wall into two columns. Label the first column as WOMEN, and the second column as MEN. Ask those who received meta-cards to classify the characteristic or profession or object they received and place it under the column in which they believe it belongs.

Some characteristics or professions that might be considered:

- | | | |
|-------------------|-----------------------|------------------|
| • Clerk of Court | • Firefighter | • Breast feeding |
| • Lawyer | • Child-rearing | • Gardening |
| • Nurturing | • Penis | • Secretary |
| • Vagina | • Menstruation | • Teacher |
| • Toy car | • Toy guns | • Child-Bearing |
| • Barbie doll | • Cook | • Toy tea set |
| • Domestic helper | • Construction worker | • Judge |

Guide questions:

1. Why did you classify the characteristic or profession under WOMEN/MEN?
2. What do classifications assume about the capacities of women and/or men?
3. Some participants may actually put some of the meta-cards in between the two columns. Ask them why they did so? What assumptions are implicit in your reasoning?

Synthesis:

Why do we classify certain professions, characteristics, or capacities as belonging to, or possessed by, only women, only men, or both? What are our bases for these classifications? Are these classifications valid? Where and how do we get these standards? Why is it important to assess ourselves and see where we stand on these issues? These are some of the questions that UNIT ONE tackles.

⇒ Return to this exercise later during the discussion on SEX and GENDER.

Topic 2: Sex and Gender

This section will begin by defining what gender sensitivity means and then examine how to differentiate sex from gender. Differentiating between gender and sex will put the way we should look at gender roles and gender stereotypes into the proper perspective.

1. **Gender Sensitivity** - Gender sensitivity is the ability to recognize gender issues, especially women's different perceptions and interests arising from their unique social location and gender roles. It calls for an understanding and consideration of the socio-

cultural factors underlying **discrimination** based on sex (**whether against women or men!**). ⇒ *Read through the definition and highlight important elements. Tell the participants that you will go back to this definition again at the end Unit One and compare how they understood it at the beginning and end of the unit.*

2. **Basic Premises on Gender Equality** – It is important to emphasize these premises at the outset in order for participants to appreciate and understand the context of the discussions from the outset. This is borne by the fact that normally “gender sensitivity” is perceived to be anti-male or to promise a “war between the sexes”. In order to destroy the mental wall that blocks some participants, it is worth immediately stating the following important points about gender sensitivity:
 - a) Not a war between sexes;
 - b) Not anti-male;
 - c) Both women and men are victims although there are more women victims than men;
 - d) Both men and women have a stake in the struggle.
3. **Sex and Gender** – This activity looks at definitions of “sex” and “gender”.

Activity #3

Go back to Activity 2 in Topic 1 and ask participants which terms pertain to SEX and which pertain to GENDER and WHY. This process will reveal their understanding of the terms.

SEX: identifies the biological difference between men and women.

Sex Identity is determined by reference to genetic and anatomical characteristics.

SEX is largely unchangeable.

GENDER: refers to the culturally or socially constructed roles ascribed to males and females. **GENDER** identifies the social relations between men and women. **GENDER** is an acquired identity. It refers to all differences except those that are strictly biological. Generally, there are two types of genders, the masculine and feminine. Since **GENDER** is cultural and social it can be changed, as culture itself is dynamic.

4. **SEX-GENDER System** – A lot of cultures tend to see gender as a natural phenomenon deriving from biological differences between women and men. This is what social scientists call a **sex-gender system**. However, understandings of masculine or feminine differ across culture or geographic locations. For instance, in some parts of India and Thailand construction work is considered to be a lowly job reserved only for women, as opposed to the Philippine society’s conception that it requires physical strength that only men can perform. Besides cultural or geographic differences, factors such as socio-economic class and race can also greatly influence how genders are treated. One area where we often see gender bias is with overseas female migrant workers. They may face discrimination because they are foreign (race/ethnic issue), women working in patriarchal societies (gender/sex issues), and coming from low socio-economic classes (economics/class). The basic element in any contemporary sex-

gender system across culture and geographic locations is the difference in **gender roles** that leads to a **sexual division of labor**.

Topic 3: Gender Roles, Stereotypes and Gender Ideology

This section will explore the relationship between and among gender roles, gender stereotypes and gender ideology and why they are problematic.

1. SEX ROLES versus GENDER ROLES-

SEX ROLES refer to an occupation or biological function for which a necessary qualification is to belong to one particular sex category. For example, pregnancy is a female sex role because only members of the female sex may bear children.

GENDER ROLES ARE LEARNED BEHAVIORS IN A GIVEN SOCIETY / COMMUNITY, OR OTHER SPECIAL GROUP that condition us to perceive certain activities, tasks and responsibilities as male or female. In most present day societies, this **sexual division of labor** is rooted in what is technically known as a **production-reproduction** distinction.

2. **Sexual Division of Labor and the Production-Reproduction Distinction** - This is first manifested at home then replicated in the work that men and women engage in outside the home.

Production refers to the production of goods and services for exchange rather than for personal or immediate consumption. These goods or services usually have a corresponding fee, salary or economic value. This is considered a male sphere, and generally known as the public sphere (e.g., construction work, factory work, office work, etc.)

Reproduction refers to both biological reproduction and tasks usually associated with it such as child rearing, housekeeping, etc. that are necessary for survival but given no economic value. This is usually the women's world, and often known simply as the private sphere. Even when women work outside the home, their jobs are frequently a replication of their tasks in the private sphere, such as domestic work and care giving. However the identical work in the private sphere is not given any economic value.

3. What is problematic about Gender Roles and Sexual Division of Labor?

Gender roles are roles that are usually classified by sex, where this classification is social, and not biological. For example, if child rearing is classified as a female role, it is a female gender role, not a female sex role, since men or women can do child rearing.

⇒ The problem arises when gender roles are defined in terms of biology or sex instead of using cultural or social terms. When roles are defined in terms of sex, they are unchangeable, whereas when defined in terms of gender as cultural or social constructs, roles can be changed and improved. It becomes a problem particularly

when these gender roles relate to, or lead to, **gender stereotypes**, which find justification in **gender ideology**.

4. **Gender Stereotypes** - An over-generalized belief in the characteristics of a person based simply on their gender. It is a rigidly held and oversimplified belief that all males and females possess distinct psychological and behavioral traits.

Activity #4

Post four sheets of flipchart papers on the board labeling each respectively “PHYSICAL”, “PSYCHOLOGICAL”, “SEXUAL” and “SOCIO-ECONOMIC”. Distribute meta-cards and ask participants to write on each card a common example of gender-stereotypes relating to:

- a) Physical (e.g., women are weak)
- b) Psychological (e.g., women are emotional and men are logical)
- c) Sexual (e.g., women are passive partners; men are virile);
- d) Socio-economic (e.g., men are the providers of the family; women take care of the home and child-rearing).

Ask participants to post the meta-card on the appropriate flipchart paper. Ask them what the stereotypes mean.

Synthesis: Gender roles and stereotypes are usually justified by what is called **gender ideology**.

5. **GENDER IDEOLOGY** – determines:
 - a) What is expected of us
 - b) What is allowed of us
 - c) What is valued in us

The most common basis of gender ideology is biological determinism, that is, that the biological differences between men and women automatically translate into differences in their social roles. As stated above, since women are the child-bearers, which is a biological function, they are automatically ascribed connected roles such as child-rearing and housekeeping, as if men were not capable of these activities.

6. **What is wrong with sex-gender systems, gender roles, gender stereotypes and gender ideologies?**

GENDER HAS IMPLICATIONS FOR EQUALITY BETWEEN MEN & WOMEN. GENDER limits the potential of both men and women, making them both victims. For example, boys and men are commonly told, “boys don’t cry”. This results in an expectation that men should keep their emotions to themselves; a stance that modern psychology tells us can psychologically unhealthy.

On the other hand, women are perceived to be weaker and more emotional than men. The types of work opportunities that are opened to women correspond to this particular perception of women’s capacities. This limits women’s opportunities, pushing them towards positions such as domestic or secretarial work, instead of managerial positions

where intellect is valued over emotion. This leads to **gender discrimination and subordination**.

Gender discrimination - Differential treatment of individuals on the basis of their gender. In many societies, this involves systemic and structural discrimination against women in the distribution of income, access to resources, and participation in decision-making (access to opportunities). It is the prejudicial treatment of a person on the basis of a gender stereotype.

Gender subordination – Describes the secondary position that women occupy in society in relation to men.

In sum, these sex-gender systems, gender ideology, and gender-stereotypes **can have a detrimental affect on the lives of men and women**. **Dignity**, or the self-worth or inner worth of the individual, is the foundation of **human rights**.

Again, if gender is defined in terms of sex, such as in gender roles and ideologies, then anything that is detrimental to either women or men (gender discrimination and subordination) can be justified as natural and unchangeable, thereby affirming the status quo. Whereas if gender is viewed from the proper perspective, as a social construct, there can be hope that gender subordination and discrimination, no matter how long-standing, can still be addressed and changed. In this way the dignity of each person can still be upheld.

7. **The myths of gender ideology** - None of the arguments that support fundamental/indispensable differences in women and men's consciousness, intelligence, make-up or psyches have been proven beyond doubt.
 - a) *Physical* – Except for strictly biological functions (e.g., breast feeding and child-bearing), men can be equally competent in child rearing activities. In fact, with the advent of the baby feeding bottle, sex becomes irrelevant in infant feeding. Some fathers may even be better parents to their children than the mothers.
 - b) *Psychological* – The biological connection between mother and child does not necessarily lead to emotional and psychological intimacy as evidenced by the number of children abandoned or abused by their natural mothers.
 - c) *Biochemical* – Although this cannot be easily dismissed, the extent to which hormones control differences in the personalities of men and women is difficult to determine because of the intrusion of other factors affecting human behavior (e.g., social learning, environment, taboos surrounding menstruation). At best, what can be said of hormones is that they **may indicate differential tendencies** between men and women, but are **not the sole or even main determinants** of behavioral differences.

Topic 4: Mechanisms and Institutions of Socialization

This section examines how gender constructs become part of our consciousness through different mechanisms, beginning at home to institutions of mass or widespread socialization.²

Why do so many men and women seem to conform to society's definitions of what is masculine and what is feminine?

The answer lies in the process called **gender socialization** or the socialization of persons into a given gender. This is also called **gendering**.

Gender Socialization

a) Child-rearing as a mechanism for socialization

- i. **Manipulation** - handling boys and girls differently even as infants (e.g., pink for baby girl, blue for baby boy);
- ii. **Canalization** - people direct children's attention to gender-appropriate objects (e.g., choice of toys: boys play with toy guns, cars, machines; girls play with tea sets, dolls and houses); **We are teaching children what their prescribed roles in life will be, and familiarizing them with the "appropriate" tools of the trade.**
- iii. **Verbal Appellation** - consists of telling children what they are (e.g., strong boy, prim and proper girl) and what expectations others have of them (e.g., "boys don't cry")
- iv. **Activity Exposure** – familiarization with gender-appropriate tasks (e.g., girls are encouraged to help their mothers with housework)

b) Institutions of Mass Gender Socialization

- i. **Formal education** -
 - Differences in disciplining boys and girls;
 - Difference in terms of the subjects offered, such as electives or practical arts (e.g., home economics, cooking and sewing for girls; carpentry or automotive repairs for boys);
 - Images in text books and visual aids (e.g., men are pictured with neckties, as engineers, lawyers, or sports enthusiasts; while women are pictured as housewives who cook, clean and raise children)
- ii. **Mass media** –
 - A study on the images of women in mass media found that the media consistently portrays women as housewives or worse: emotionally dependent martyrs, victims or scheming villainesses.
 - Advertising uses images to convey or reinforce gender stereotypes. In selling products they are not only asking people to buy the product, but also to buy into the imagery. For instance, females are shown as wives, daughters or mothers whose joy is to feed their families, keep their houses clean, and see sons and husbands off to work.

- Advertising often uses sexualized images to sell male-oriented products (e.g., White Castle whisky commercial or Anzhal car paint). Women are dehumanized, portrayed as commodities and sexual objects to be used and discarded (e.g., Kinse Anyos print ad), while men are shown “pursuing” women in a variety of professions or sports.
- iii. **Religion –**
Gendering process occurs through:
- Doctrines
 - Structure or hierarchy
 - Symbolism
 - And sometimes through unofficial religious interpretation
- iv. **Language -**
- The most subtle but most pervasive form of gender socialization. It is difficult to separate the way we speak from our thought process, so the use of sexist language, even if unwitting, will inevitably lead to changes in how we perceive gender.
 - THEREFORE SEXIST LANGUAGE IS A POWERFUL TOOL TO MAINTAIN GENDER IDEOLOGY
 - A detailed treatment of this pervasive form of gender socialization is presented in UNIT TWO on GENDER-FAIR LANGUAGE.

Topic 5: Case Studies

The case studies found in Appendix A should be used in conjunction with UNIT TWO – Gender Fair Language and UNIT THREE – CEDAW AND THE COURTS.

Unit One Endnotes:

¹ Reference Text: Dionisio, Eleanor R, *More Alike Than Different : Women, Men and Gender As Social Construction* (Occasional Paper No. 3, National Commission on the Role of Filipino, 1993). Specific citations have been omitted.

² *Id.*

UNIT TWO: GENDER-FAIR LANGUAGE

This unit is substantially based on the lecture given by Associate Justice Adolf S. Azcuna on “Gender-Fair Language” in the Seminar-Workshop on CEDAW, Gender Sensitivity and the Courts.¹

Objectives

At the end of this unit, the participants are expected:

- To know the importance of language in the formation of one's beliefs and behavior
- To be aware of the importance of gender-fair language in promoting gender sensitivity.

Content

Gender-Fair Language: Is there gender-biased language?

Yes. This occurs when language is sexist, devalues members of one sex, fosters gender inequality and discriminates women by rendering them invisible or by trivializing them, at the same time that it perpetuates notions of male supremacy.

Topic 1: Why use Gender-Fair Language?
Topic 2: Importance of Gender-Fair Language
Topic 3: Gender Polarization of Meanings
Topic 4: Hidden Assumptions in Language
Topic 5: Guidelines for use of Gender-Fair Language

Topic 1: Why Use Gender-Fair Language?

1. **Language articulates consciousness.** It is through words that we give utterance to our basic needs and feelings.

For example: If you say that women are “the weaker sex” then you, whether male or female, would feel that indeed WOMEN are WEAK and would act accordingly.

2. **Language reflects culture.** Language verbalizes cultural meanings and values in our society. This is where language may be used to stereotype women. It also reflects how society, through words, reflects cultures and perspectives.

For example: Maria Clara and Salome, the female characters of *Noli Me Tangere*. It is argued that Maria Clara, the poised and conservative female, is based on the Spanish culture and perspective of a woman, while Salome, on the other hand, symbolizes a passionate Filipino woman.

3. **Language affects socialization.** In this short script, the characters are Cecil, Joey, and their Mother.

Mother: Cecil, can you please wash the dishes?

Cecil: Inay, I am studying for my exams tomorrow. Can't Kuya Joey do it?

- Joey: How many times has Inay told you that boys don't do house work? It's a girl thing.
- Mother: That is right. Go, Cecille, please do what I ask of you because it is the responsibility of the female to take care of the house.

In the scenario, we are able to see how Joey has already absorbed the cultural assumptions and biases underlying language. As a young boy he sees them as an index to society's values and attitudes. This may have a powerful effect on Joey's later behavior and beliefs.

Topic 2: Importance of Gender-Fair Language

This discussion illustrates why sexism in language is considered a stumbling block to gender-sensitization, and why there should be real concern about the use of 'mere' words.

1. **Language that uses the generic masculine** - excludes women and renders them invisible.

Case 1:

Subsuming all humanity in terms such as *man, father, brother, master*.
The use of the singular masculine pronouns = *he, his, him*.

Example of sexist language:

An Employee should wear his ID at all times.

Example of gender-fair language:

Employees should wear their ID at all times.

Case 2:

Terms ending in "man" but referring to functions that may be performed by individuals of either sex.

Example:

In the Committee on Gender Responsiveness in the Judiciary, we practice gender fair language. Justice Austria-Martinez is the Chairperson, not Chairwoman, while Justice Azcuna is referred to as the Co-Chairperson and not the Co-Chairman.

Case 3:

Terms used as though they apply to adult males only, or are appropriated to a particular sex.

Example:

Settlers moved west, taking their wives and children with them.

Alternative:

Use "families" for "wives and children"

2. **Language that involves the use of suffixes (-ess, -ette, -trix, -enne)-** makes unnecessary reference to the person's sex, suggests triviality, unimportance, or inferiority of women occupying such a position. It trivializes women and diminishes their stature.

Current Usage:

Actress
 Authoress
 Usherette
 Heroine

Alternative:

Actor/Thespian
 Author
 Usher
 Heroes

3. **Use of sex-linked modifiers** - sounds gratuitous and patronizing, and suggests the norm for some occupations is for a particular sex.

Current Usage:

Lady Justices
 Lady Doctor
 Female Lawyer
 Male Nurse
 Male Secretary
 Working Mothers

Alternative:

Justices
 Doctor
 Lawyer
 Nurse
 Secretary
 Wage Earners

- ⇒ When it is necessary to point out the female aspect of a person occupying a given role or occupation, use the term "FEMALE" or "WOMAN" rather than "lady".

4. **The use of certain terminologies in designating occupations, positions and roles can call attention to a person's sex.**

Current Usage:

Delivery boys
 Delivery men

Alternative:

Deliverers

Motherhood / Fatherhood

parenthood

5. **The use of some terminologies can disparage and marginalize women or persons of another gender.**

Current Usage:

Chick
 Bachelorette, Spinster
 Old Maid

Alternative:

Girl, Woman
 Unmarried women

6. **Language as seen in the use of some phrases fosters unequal gender relations (e.g., lack of parallelism).**

Current Usage:

Man and Wife
 Men and girls

Alternative:

Husband & Wife
 Men and Women
 Boys and girls

Topic 3: Gender Polarization of Meanings

1. **Gender Terms as Adjectives** - In the use of adjectives, the terms womanly, manly, feminine and masculine depict each sex as solely associated with particular attributes. Use adjectives that specify every shade of meaning. For example: sensitive, determined, strong, and nurturing. They clarify as well as enrich one's use of language.
2. **Negative Associations** - In the history of the English language, negative or sexually derogatory meanings accrue to words referring to women but not to the equivalent for men.

Examples:

Mistress

Master

Hostess

Host

Hussy (*the derogatory term for a woman has the same root as "housewife" and used to mean the mistress of the house*)

3. **Lexical Gaps** - In the English Language, there is an absence or lack of words that refer to women's experiences.

Examples:

- We refer to men's virility but there is no equivalent word for women's experience
- There is "patronage" but no "matronage"

Topic 4: Hidden Assumptions in Language

Compare these two statements:

- 1) Men can care for children just as well as women.
- 2) Women can care for children just as well as men.

Which of the two statements is gender-fair?

The disparity in the reactions to these two statements reflects shared assumptions where women are locked into gender roles.

Metaphors can reflect a male-centered view of the world or portray women as objects. For instance, metaphors that refer to women as merchandise or edible: *sugar*, *honey* or *dish*.

Topic 5: Guidelines for Use of Gender-Fair Language²

1. **Eliminate the use of 'he':**

- Use plural nouns
- Delete 'he', 'his', and 'him' altogether
- Substitute articles ('the', 'a', 'an') for 'his'; and 'who' for 'he'
- Substitute 'one', 'we', or 'you'
- Minimize use of indefinite pronouns (e.g., 'everybody', 'someone')

- Use passive voice (use sparingly)
 - Substitute nouns for pronouns (use sparingly)
2. **Eliminate the generic use of 'man':**
 - For 'man', substitute 'person' or 'people', 'individual(s)', 'human(s)', 'human being(s)'
 - For 'mankind', substitute 'humankind', 'humanity' or 'the human race'
 - For 'manhood', substitute 'adulthood' or 'maturity'
 - Delete unnecessary references to generic 'man'
 3. **Eliminate sexism when addressing persons formally:**
 - Use 'Ms.' instead of 'Miss' or 'Mrs.', even when a woman's marital status is known
 - Use a married woman's first name instead of her husband's (e.g., "Ms. Annabelle Lee" not "Mrs. Herman Lee")
 - Use the corresponding title for females ('Ms.', 'Dr.', 'Prof.') whenever a title is appropriate for males
 - Use 'Dear Colleague' or 'Editor' or 'Professor', etc. in letters to unknown persons (instead of 'Dear Sir', 'Gentlemen')
 4. **Eliminate sexual stereotyping of roles:**
 - Use the same term (which avoids the generic 'man') for both females and males (e.g., 'department chair' or 'chairperson')
 - Do not call attention to irrelevancies (e.g., 'lady lawyer', 'male nurse')

Lessons Learned

Using gender-fair language will not only benefit women but men as well. It will help reshape our views about gender, and about women in particular. The advocacy for gender equality begins by using gender-fair language.

Activity #5

Give examples of sexist writings. Ask the participants to explain why the writings are sexist and then allow them to change the writings to gender-fair language.

Examples:³

- The customer is the best judge of the quality of the food he has eaten.
- The mission of the Starship Enterprise is to boldly go where no man has gone before.
- Ambitious men are more likely to achieve success in life; likewise, aggressive women are more likely to reach the top.
- Reason is what distinguishes man from other animals.
- As someone grows older, he grows more reflective.
- For Aristotle, man is by nature a political animal.

Activity #6

Choose any writing or instrument where the participants can have the opportunity of revising the same in order for it to be more gender-inclusive and non-sexist in language. For instance, you can ask them to work on the "*Whereas Clauses*" and the "*Preamble*" of the 1948 American Declaration of the Rights and Duties of Man (See Appendix B).

Unit Two Endnotes:

- ¹ *Main reference source for Unit Two:* Kintanar, Thelma B. (ed.), *Gender Fair Language A Primer*, University Center for Women's Studies (University of the Philippines, 1998).
- ² Warren, Virginia L., *Guidelines for Non-Sexist Use of Language* (Chapman College APA Committee on the Status of Women in the Profession). Online:
<http://www.apa.udel.edu/apa/publications/texts/nonsexist.html>.
- ³ Sampson, Robert, *Tips for Writing Research Papers* (University of Wisconsin). Online:
<http://www.uwec.edu/Sampsow/Resources/tips.htm>; Warren, *supra* note 2.

UNIT THREE: CEDAW AND THE COURTS

This module was developed by Professor Amparita Sta. Maria, and was used in the Seminar-Workshop on CEDAW, Gender Sensitivity and the Courts. Lecturers Atty. Rea A. Chiongson and Atty. Sarah Lou Y. Arriola of the Ateneo Human Rights Center, added their own inputs.¹

Objectives

At the end of this unit, the participants are expected:

- To be familiar with the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the State's obligation under it;
- To deepen their understanding of CEDAW's principles of substantive equality, non-discrimination and State obligation in creating progressive jurisprudence;
- To be able to apply CEDAW and its principles in Case Law.

Content

Topic 1: What are Human Rights?
Topic 2: Why a Separate Treaty for Women?
Topic 3: The Role of the Judiciary
Topic 4: CEDAW
Topic 5: CEDAW and VAW
Topic 6: CEDAW and Philippine Jurisprudence

Topic 1: What Are Human Rights?

1. What are Human Rights?

Human rights are rights inherent in our nature as human beings; therefore, necessary for possession and enjoyment of what it is to be fully human and possess human dignity.

2. What do Human Rights offer?

Human rights are both inspirational and practical. Human rights principles hold up the vision of a free, just and peaceful world and set minimum standards for how individuals and institutions everywhere should treat people.

- Human Rights also empower people with a framework for action when those minimum standards are not met.
- People still have human rights even if the laws or those in power do not recognize or protect them.

In claiming these human rights, everyone also accepts the responsibility **not to infringe on the rights of others** and to support those whose rights are abused or denied.

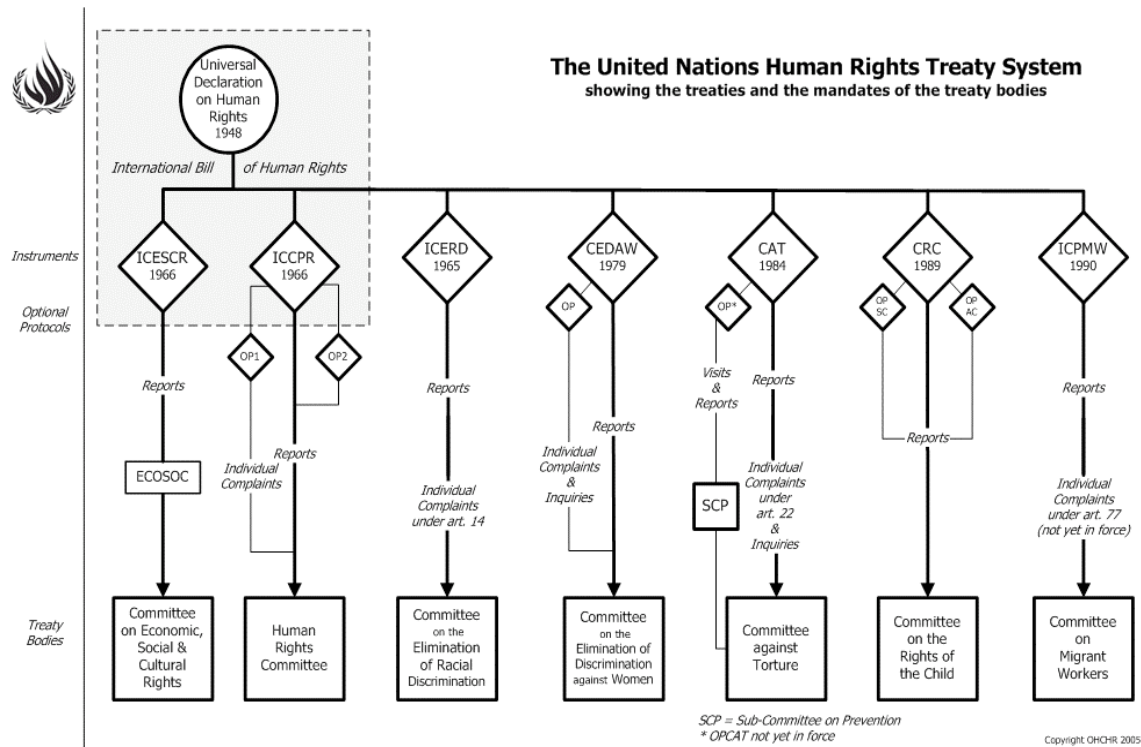
3. Where did the International Community codify Human Rights?

Under international law, human rights are codified in a series of instruments known as the **INTERNATIONAL BILL OF HUMAN RIGHTS**. These instruments are composed of the following:

- Universal Declaration of Human Rights (UDHR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Covenant on Civil and Political Rights (ICCPR)
- Optional Protocols to the Covenant on Civil and Political Rights

4. How does the UN human rights treaty system work?

Below is a chart of the UN human rights treaty system (for a full-page version please see Appendix B):²



- Note that there all of the treaties fall into one of two broad categories: “Civil and Political Rights” and “Social and Cultural Rights”.
- Indicators of compliance include: 1) Law Reform, 2) State Policies, 3) State Programs and 4) Case Law.

The Philippines ratified the United Nations Charter, is a signatory to the Universal Declaration of Human Rights and has ratified the seven (7) major human rights treaties.

The following are the **seven major human rights** instruments ratified by the Philippines:

- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- Convention on the Rights of the Child (CRC); and
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC)

- ⇒ Once a State ratifies a UN treaty it becomes legally bound to observe its provisions in good faith. This concept is articulated in Article 26 of the Vienna Convention on the Law of Treaties and known as “*pacta sunt servanda*”: Which means literally “pacts must be respected”, and stands for the rule that every treaty in force is binding upon the parties to it and must be performed by them in good faith.

5. What are the existing mechanisms and procedures under the various Human Rights treaties?

Treaties may provide for all or a combination of the following human rights mechanisms in dealing with human rights violations:

- Examination of Country Reports (all treaties)
- Inter-state complaints (ICCPR, CERD, CAT and MWC)
- Inquiry Procedure (CEDAW and CAT)
- Individual Complaints Procedure (CEDAW, ICCPR, CERD, CAT AND MWC)
 - Note that individual complaints require exhaustion of domestic remedies (mainly judicial in nature)

Topic 2: Why a Separate Human Rights Treaty for Women?

1. Why do we need a separate human rights treaty for women?

There is a need for a separate human rights treaty for women since the treaties found in the International Bill of Human Rights are **gender blind**. It is true that two Human Rights Treaties - the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural (ICESCR)* - preceded the CEDAW. However, **they did not reflect certain concerns that were specific to women.**

a) Nationality of women and children

Article 23 of the **ICCPR** guarantees the “right of men and women of marriageable age to marry and to found a family” and to be married only with “free and full consent of the intending spouses.” It did not deal, however, with the consequence of **women losing their nationality or citizenship upon their marriage to foreigners.**

Article 24 of the **ICCPR** guarantees the right of every child “to acquire a nationality” but is silent as to **whose nationality should be followed by the child.**

CEDAW, for its part enjoins States-Parties to “ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband;” and that they shall “grant women equal rights with men with respect to the nationality of their children.” (*Article 9*)

b) Fair Wages for Women

Similarly, **Article 7** of the **ICESCR** guarantees for women “fair wages and equal remuneration for work of equal value” and “conditions of work not inferior to those enjoyed by men, with equal pay for equal work.” It further provides for “Rest, leisure and reasonable limitation of working hours...”

CEDAW goes beyond these guarantees and mandates in **Article 11** that States Parties prohibit dismissals in work on grounds of being married or pregnant; and “to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.”

2. **What is the benefit of CEDAW?**

Under CEDAW, rights for women are based on three fundamental principles that provide a foundation for the Articles of the Convention:

- Substantive Equality
- Non-discrimination
- State Obligations

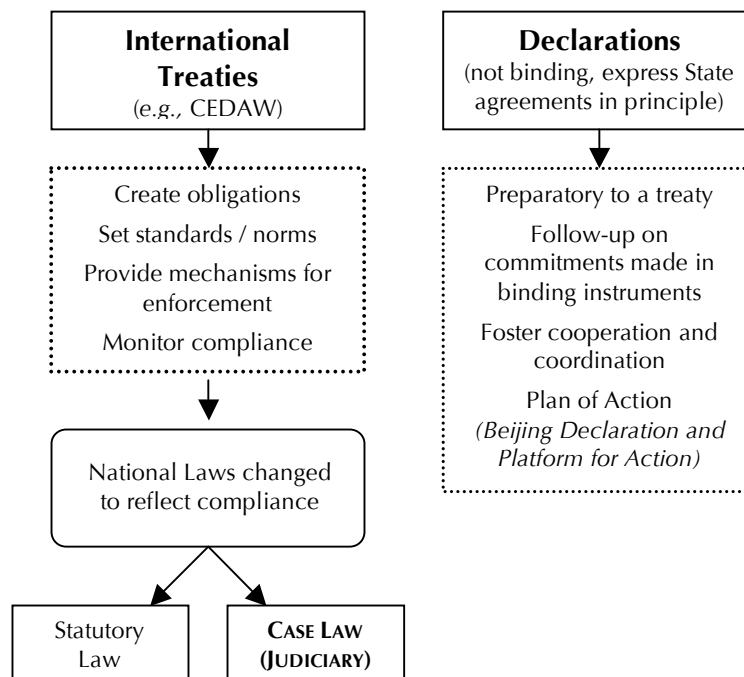
The existence of a positive legal framework for women’s rights cannot automatically confer rights on women. However, it does serve to legitimize women’s claims for rights; transforming women from passive beneficiaries to active claimants. In other words, it creates a space for women’s agency to assert their rights.³

Topic 3: The Role of the Judiciary

1. **What is the role of the judiciary in the promotion of women’s rights?**

The judiciary has a critical role in contributing to the achievement of substantive equality for women in the country. Through the development of case law on women’s rights, and through ensuring that the legal system is accessible to women, the judiciary helps to guarantee women’s rights to effective remedies for violations of their rights.

2. **Where does CEDAW include the judiciary?**



3. How can CEDAW be used by Courts in the absence of enabling legislation?

Treaties without enabling legislation may be used by the courts in the following manner:

- As an aid to constitutional or statutory interpretation generally, or where there is an ambiguity.
- In reviewing administrative discretion by a decision maker.
- As a factor that may be taken into account when identifying the demands of public policy.⁴

4. How was CEDAW used by Courts in other jurisdictions?

In Asia, women are beginning to draw on the obligation of the State in domestic litigation, particularly in interpreting constitutional guarantees.

In *Dhangana and another v Government of Nepal (2 August 1995)*, the validity of the inheritance law of Nepal was being challenged. The law discriminated against women on the grounds that it violated the guarantee to equality in the Constitution as well as the State obligation as stipulated in CEDAW to guarantee women equality before the law and to eliminate discrimination. Subsequently, the inheritance law of Nepal has been declared unconstitutional.⁵

In 1995, another Indian case used CEDAW. In *Vishaka and others v Rajasthan* the Supreme Court of India was compelled to draw out guidelines for the prevention of sexual harassment. This case arose from the gang rape of a woman who was a State employee. Here, the State was shown to have failed to investigate the complaint of rape. A writ was lodged with the Indian Supreme Court to frame guidelines to prevent sexual harassment in the work place. Much of the guidelines framed by the Indian government came from General Recommendation Number 19 of CEDAW pertaining to sexual harassment.⁶

Topic 4: CEDAW

1. What is CEDAW?

It is the acronym for the **Convention on the Elimination of All Forms of Discrimination Against Women**, a human rights treaty that entered into force for the Philippines on *September 04, 1981*.

2. What does CEDAW provide?

- Articles 1-5: General Substantive Framework of the Convention
- Articles 6-16: Specific Substantive Areas
- Articles 17-23: Committee and Procedures
- Articles 23-30: Administration, Interpretation

3. What are the guiding principles of CEDAW?

The CEDAW Convention establishes a framework that draws on three over-arching principles:

- Substantive Equality
- Non-discrimination
- State Obligation

4. **What is Substantive Equality?**

Substantive equality:

- Recognizes differences and affirms equality between men and women
- Encompasses *de jure* and *de facto* equality
- Creates an obligation to correct the environment that disadvantages women
- Makes the playing field even by requiring all initiatives to lead to:
 - ⇒ Equality in **OPPORTUNITY**
 - ⇒ Equality in **ACCESS**
 - ⇒ Equality in **RESULTS**

5. **How can Substantive Equality be differentiated from other forms of equality?**

There are generally three approaches of equality: Formal Equality, Protectionist Approach and Substantive Equality.

Formal equality:

- Regards women and men as the same and therefore treats them as the same (equal treatment)
- Does not take into account biological and socially constructed differences
- Uses male standards; disregards women's special needs
- Assumes that women may be able to access equal opportunities according to the same rules as men
- Puts the burden on women to perform according to male standards⁷

Protectionist Approach:

- Recognizes difference but considers women's weakness as the rationale for different treatment
- Women lose opportunities to obtain a varied range of opportunities due to exclusion
- Involves curtailment of women's rights
- Precludes women's choice
- Reinforces male and female stereotypes and does not lead to social transformation⁸

Substantive equality is the concept of achieving true equality, even if it is through differential treatment. This is the kind of equality contemplated by CEDAW.

6. **Is there substantive equality in Philippine jurisprudence?**

There is no substantive equality *per se* in Philippine jurisprudence but its legal equivalent in Philippine jurisprudence is the equal protection clause. Article III, Section 1 of the 1987 Constitution provides that, "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

The equal protection clause under the 1987 Constitution is a specific guarantee of the equality of the person: "legal equality or, the equality of all persons before the law." This ensures that every person is treated equally, regardless of their profession, wealth or other characteristics.⁹

In *Philippine Ports Authority (PPA) Employees Hired after July 1, 1989 v. Commission on Audit, et al.* G.R. No. 160396 (September 6, 2005) the court articulated a conception of equal protection: "The principle of equal protection is not a barren concept that may be casually

swept aside. While it does not demand absolute equality, it requires that all persons similarly situated be treated alike, both as to privileges conferred and liabilities enforced. Verily, equal protection and security shall be accorded every person under identical or analogous circumstances.”

To relate this to women’s rights, equal protection guarantees that women cannot be deprived of opportunities, access or privileges simply on the basis of sex.

7. Under equal protection, can there be valid classifications?

Yes, there can be valid classifications under the equal protection clause. However, the classification must be reasonable and must comply with the following conditions:

- Must rest on substantial distinctions;
- Must be germane to the purpose of the law;
- Must not be limited to existing conditions only; and
- Must apply equally to all members of the same class.¹⁰

8. What is non-discrimination?

CEDAW bases the concept of non-discrimination on the precept that inequality is socially constructed and discrimination should be actively eliminated. To achieve non-discrimination, there must be proactive measures to bring about equality.

9. How does CEDAW define discrimination?

CEDAW defines discrimination as:

Art. 1: For the purpose of the present Convention, the term “discrimination against women” shall 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 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.

10. What are the forms of discrimination?

Discrimination may come in different forms:

- a. Direct or Indirect
 - Intended or Unintended
 - Facially-Neutral law/provision/condition
 - Adverse Effect Discrimination
- b. In law (*de jure*) or in practice (*de facto*)
- c. Present, Past or Structural
- d. Cross-cutting and in all fields (civil, cultural, economic, social, political)
- e. Intersectional¹¹

11. What is State Obligation?

A State Obligation is a legally binding obligation on the State Party, meaning that all constituent units of the State Party are expected to comply with such obligations. Moreover, internal law may not be used as an excuse for non-compliance with the obligation. In cases of conflict between the treaty obligation and internal law, the State Party is obligated to change its internal laws to comply with its treaty obligations.

Because of a State Party's ratification of a treaty, it offers itself to scrutiny on the basis of standards set forth in the Convention. In the case of CEDAW, the Philippines is bound to report every four years to the CEDAW Committee regarding the status of its treaty compliance.¹²

Under CEDAW, State obligations are found in:

- General Undertakings (Articles 2-5)
- Specific Undertakings (Articles 6-16)

12. What are our core State obligations in CEDAW?

The core State obligation of the Philippines is found in Article 2 of CEDAW. Article 2 binds States Parties to **"pursue with all appropriate means and without delay a policy of eliminating discrimination against women"**. To this end, State Parties undertake to:

- Embody the principle of equality in their constitution and laws
- Ensure practical realization of the principle of equality
- Prohibit discrimination against women
- Refrain from discrimination
- Eliminate discrimination by any person, organization or enterprise
- Modify or abolish laws, regulations, customs and practices that constitute discrimination
- Repeal discriminatory penal provisions

13. How can a State Party achieve equality in its jurisdiction if discrimination is so well entrenched in its culture?

Article 4 of CEDAW allows a State Party to adopt special measures. Article 4 states:

[1.] Adoption by States Parties of **temporary special measures** aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when objectives of equality of opportunity and treatment have been achieved.

[2.] Adoption of States Parties of **special measures**, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

14. What are these temporary special measures?

According to CEDAW General Recommendation #25 (para. 17), temporary special measures are:

17. The travaux préparatoires of the Convention use different terms to describe the "temporary special measures" included in article 4, paragraph 1. The Committee itself, in its previous general recommendations, used various terms. **States parties often equate "special measures" in its corrective, compensatory and promotional sense with the terms "affirmative action", "positive action", "positive measures", "reverse discrimination", and "positive discrimination". These terms emerge from the discussions and varied practices found in different national contexts.** In the present general recommendation, and in accordance with its practice in the consideration of reports of States parties, the Committee uses solely the term "temporary special measures", as called for in article 4, paragraph 1.

15. How does General Recommendation #25 define the elements of temporary special measures?

20. Article 4, paragraph 1, explicitly states the “temporary” nature of such special measures. **Such measures should therefore not be deemed necessary forever, even though the meaning of “temporary” may, in fact, result in the application of such measures for a long period of time. The duration of a temporary special measure should be determined by its functional result in response to a concrete problem and not by a predetermined passage of time. Temporary special measures must be discontinued when their desired results have been achieved and sustained for a period of time.**

21. The term “special”, though being in conformity with human rights discourse, also needs to be carefully explained. Its use sometimes casts women and other groups who are subject to discrimination as weak, vulnerable and in need of extra or “special” measures in order to participate or compete in society.

16. Has the Philippines enacted any temporary special measures in the context of CEDAW?

Yes, the Philippines has enacted a variety of temporary special measures to address the needs of women. A good example of this is the Gender and Development (GAD) Budget:

When the General Appropriations Act was passed in 1995, Section 27 mandated that all government departments, bureaus and agencies **allocate five percent (5%) of their budget for gender and development.** This has been known as the GAD budget and the provision has been retained in subsequent appropriation acts. Through the GAD budget various **gender-sensitivity trainings** have been conducted in order **to develop awareness on gender-related issues and concerns.**

17. What are the other specific undertakings of the Philippines under CEDAW?

The other specific undertakings of the Philippines under CEDAW are found in the following provisions:

- Art. 6 Trafficking and Prostitution
- Art. 7 Political and Public Life
- Art. 8 Participation at the International Level
- Art. 9 Nationality
- Art. 10 Education
- Art. 11 Employment
- Art. 12 Healthcare
- Art. 13 Economic and Social Benefits
- Art. 14 Rural Women
- Art. 15 Equality before the Law
- Art. 16 Marriage and Family Life

18. What are the interpretive tools of CEDAW?

CEDAW has two interpretative tools: the General Recommendations and the Concluding Comments.

General Recommendations:

- Authoritative interpretation of the Convention.
- Means for the CEDAW Committee to address contemporary issues, develop standards and provide guidance to implementation.
- For example, GR 19 establishes that all forms of VAW are prohibited.
- To date, the Committee has adopted 25 General Recommendations.

Concluding Comments:

- The Summary of the positive and negative aspects of the Initial or Periodic Report of a Country given to the CEDAW Committee.
- It contains recommendations on how a country can improve its compliance with its obligation under CEDAW.
- It is used as a benchmark in judging a country's treaty compliance in its next periodic report.

Topic 5: CEDAW and VAW

1. Is Violence Against Women (VAW) a form of discrimination against women?

Yes. The CEDAW Committee in its General Recommendation 19 articulated that: "The Convention in Article 1 defines discrimination against women. The definition of discrimination includes gender-based violence: violence that is directed against a woman because she is a woman. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. **Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.**"

CEDAW acknowledges, "family violence is one of the most insidious forms of violence against women" and "is prevalent in all societies." Accordingly, women suffer violence of all kinds, which is perpetuated by traditional attitudes in society and continued economic dependence of women that force them to stay in violent relationships. "These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality."¹³

2. What is VAW under Philippine law?

Under RA 9262 or the Anti-Violence Against Women and their Children Act, Violence Against Women and their Children refers to:

[A]ny act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.

3. What are some problems when trying to implement laws against VAW?

I) Stereotypes and Misconceptions

- a) "Violence against women is a private matter"
 - Some see violence against women as a domain that does not concern the state. They subscribe to the idea that family should have a semblance of harmony at all costs, and that men have rights and authority over women, especially in the household. These views legitimate violence against women in the minds of many.
- b) "Women deserve to be beaten, it shows that the man is the master"
 - Some men will contend that beating is precipitated by the victim's failure to fulfill her domestic role; in this way wife beating is rationalized as a means of "discipline".
- c) "Women should be silent"
 - Filipino women have been conditioned to equate chastity with self-worth and are apt to remain silent on experiences that violate them.
- d) "Men have "biological urges" that make them naturally aggressive"
 - Women invite rape by being pretty, loose, aggressive. To a certain extent, rape is seen as a tribute to the woman who stirs up a man's "natural instincts", the argument follows that rape should be treated on a sexual level rather than as a crime of violence.

II) Economic Inequalities and Public Policy

- a) Ignorance of Public Officials
 - Lack of responsiveness of law enforcement officials, or lack of awareness among shelters and healthcare professions hamper reporting of battery cases.
- b) Economic Dependency
 - Because many wives depend economically on their husbands, they fear denouncing them and risk losing custody of the children. They also fear social reprobation.
 - Severe economic dislocations often leave women with no recourse but to stick to their jobs no matter what the price: meager wages, uncertain status, untenable working conditions, sexual favors. Limited options abet sexual harassment in the workplace. (NCRFW)

4. As a form of violence against women, how does the State address rape in its legal system?

In June 2004, the National Commission on the Role of Filipino Women (NCRFW) submitted the Combined Fifth and Sixth Philippine Progress Report on the Implementation of the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

In paragraph 205 of the Philippine report, the Philippines mentioned that: "In response to General Recommendation No. 19, the Philippines enacted two laws to address VAW, specifically, the twin laws on rape: RA 8353 (Anti-Rape Law of 1997) and RA 8505 (Rape-Victim Assistance and Protection Act). The IRR of RA 8505 has already been adopted. A study of these two laws by the Philippine Legislators' Committee on Population and Development Foundation found that a lack of familial, institutional or societal support for the rape victim is a major drawback for the reporting of rape (Santos, Llarinas-Angeles and Ador 2001). It asserts that early gains could be lost if existing judicial doctrines are allowed to apply and if court

procedures that force rape victims to re-live the crime when giving testimony are not changed.”

“Pursuant to RA 8505, the Department of Justice Memorandum No.9 series of 1998 on the Guidelines on the Handling of Rape Cases Involving Adult Victims was adopted. The policy ensures x x x the **fair and respectful treatment of the adult rape victim, assignment of a woman investigator** during preliminary inquest, **prevention of admission of evidence of the victim's past sexual conduct** or reputation unless such evidence is material and relevant to the case, [and] **banning of the public** during the conduct of the preliminary investigation, among others.”¹⁴

“Pursuant to RA 8369, the Supreme Court promulgated the **Rule on Examination of a Child Witness**, which took effect on 15 December 2000. The Rule aims to create an environment that will allow children to give reliable and complete evidence, minimize their trauma and promote maximum accommodation of child witnesses x x x.”¹⁵

It is worth noting that while the Supreme Court has promulgated **Rules on Children in Conflict with the Law** and **Rules on the Examination of Child Witnesses**, there are no new rules regarding the treatment of women in court, notwithstanding the enactment of the **Anti-Rape Law**.

Primarily, RA 8353's amendment to the crime of rape is marked by its reclassification to a crime against persons instead of chastity. This change is significant since it deconstructed a well-entrenched social construct that only chaste women can be raped. With the reclassification, any woman now can be raped notwithstanding her questionable morality or sexual conduct. Chastity no longer becomes an issue in the crime of rape.

Moreover, RA 8353 also created the offense of sexual assault, which may be committed against both men and women.

Lastly, whatever doubt there was prior to this law on whether a husband can be guilty of rape against his wife was clarified, leaving no doubt that even a husband could not force his sexual desires on his wife.

5. **Are there potential setbacks in the battle against VAWC?**

The Philippine report mentioned that early gains could be lost:

- a) **If existing judicial doctrines are allowed to stand; and**
- b) **If court procedures continue to force rape victims to re-live the crime when giving testimony are not changed.**

6. **Are there any laws protecting women who are raped from being further abused once they file cases against their perpetrators?**

Part of the **Rule on Examination of Child Witness**, particularly in Sec. 30, is the **Sexual Abuse Shield Rule**. This rule makes any evidence of other sexual behavior of a child inadmissible.

Also, in relation to RA 8505 in Section 6 is the **Rape Shield Law**. It provides that in prosecutions for rape, evidence of the complainant's past sexual conduct, opinion thereof or of

his/her reputation, shall not be admitted *unless, and only to the extent that the court finds, that such evidence is material and relevant to the case.*

Topic 6: CEDAW and Philippine Jurisprudence

1. What setbacks in the fight against VAW do women face in courts?

One major setback for women, as mentioned in the Philippine Report to the CEDAW Committee, refers to **procedures that force rape victims to re-live the crime** when giving testimony.

As acknowledged in the case of **People v. Manayan [G.R. Nos. 142741-43] October 25, 2001:**

[N]o woman would be willing to undergo a public trial and put up with the shame, the humiliation and the dishonor of exposing her own degradation were it not to condemn an injustice and to have the offender apprehended and punished.

The embarrassment and stigma she suffered in allowing an examination of her private parts and testifying in open court on the painfully intimate details of her ravishment effectively rule out the possibility of a false accusation of rape.

Another apparent setback refers to the application of past jurisdiction to future cases on rape. The case of **People v. Matrimonio, G.R. Nos. 82223-4, November 13, 1992**), demonstrates that gender stereotypes and gender insensitive language are still being used:

[S]he was also aware that by testifying, she made public a painful and humiliating secret, which others would have simply kept to themselves forever, *jeopardized her chances of marriage or foreclosed the possibility of a blissful married life* as her husband may not fully realize the excruciatingly painful experience which would haunt her.¹⁶

In view of the foregoing, it was even articulated in the **People v. Melivo, (G.R. No. 113029, Feb. 8, 1996)** that it is indeed an uphill climb for rape survivors to pursue their cases in Court:

With all the attendant social consequences such a classification brings, many rape cases go naturally unreported, and those which manage to reach the authorities are routinely treated in a manner so demeaning to the victim's dignity that the psychological ordeal and injury is repeated again and again in the hands of inexperienced, untrained and oftentimes callous investigators and courtroom participants.¹⁷

A number of Supreme Court cases before the enactment of RA 8353 or the Anti-Rape Law contained gender stereotyping; reinforcing the notion that only “virgins” or chaste women can be raped. Worse, credibility was often equated to chastity.

2. What is gender stereotyping?

As mentioned in Unit 2, gender stereotyping is an over-generalized belief about the characteristics of people based simply on their gender. It is a rigidly held, oversimplified belief that all males and females possess distinct psychological and behavioral traits.

In rape cases, these social constructs have unjustifiably created an incorrect perception that unchaste women cannot be raped. This concept is otherwise known as the **virgin versus vamp concept**. Thus, gender stereotyping has found its way into Philippine jurisprudence.

In the case of ***People v. Agbayani***, G.R. No. 122770, January 16, 1998, the Court articulated this, referring to the fate of the rape survivor:

[s]he thereby jeopardized her chances to marriage, as even a compassionate man may be reluctant to marry her because her traumatic experience may be a psychological and emotional impediment to a blissful union. Moreover, such a revelation divided her family and brought it shame and humiliation.

This 1998 case therefore emphasized the shame and humiliation of the crime of rape not on the perpetrator but on the victim. It bolstered gender stereotypes instead of destroying them.

Another illustrative Supreme Court case is ***People v. Flores***, G.R. No. L-60665, October 26, 1983:

[t]he contention that the complainant was only 14 years old at the time of commission of the offense (December 12, 1980) and therefore, not capable of making false statements against her abuser would have been true two generations ago but not anymore these days when teenagers are sex conscious, outgoing, frank and aggressive.

This case casts doubt on the credibility of teenagers simply because they are apparently sex conscious, outgoing, frank and aggressive. This thinking has already been debunked by RA 8353, which made rape a crime against persons. By making rape a crime against persons, it no longer considers chastity or sexual naiveté as important factors of the crime.

However, the Anti-Rape law did not immediately erase all gender bias. In a case decided after the enactment of the Anti-Rape law, ***People v. Lor***, G.R. No. 133190, July 19, 2001, the court presumed that if a woman is an adult or experienced, she will be able to report a rape at once because of her intelligence and maturity.

[A]ccused-appellant argued that there can be no rape committed considering that the complainant offered no resistance or vocal protestation against the sexual assault on her dignity. The evidence shows that accused-appellant had to pull and drag D, which are indication of her resistance under the circumstances. As correctly pointed out by the Solicitor General, **D is a thirteen-year old sexually inexperienced provincial lass, not a sophisticated grown woman whose inaction may properly be interpreted as consent.**

This is especially true in the case of D who obviously cannot be expected to act like an adult or a mature experienced woman who would have the courage and intelligence to disregard the threat to her life and complain immediately that she had been sexually assaulted.¹⁸ (emphasis added)

3. What changes does the new Anti-Rape law bring?

As articulated in *People v. Libo-on* G.R. No. 136737, May 23, 2001, under the new law, the crime of rape may now be prosecuted even without the initiative or even consent of the offended party.

The Supreme Court further added that even if an affidavit of desistance was executed voluntarily, the court still has the discretion to disregard the same and proceed with the trial of the accused.¹⁹

The change in the law should result in the promotion of the rights of women and girls. The woman and girl-child must be believed on the basis of an appreciation of their own testimony and other evidence, if available, but not on how chaste or innocent they have remained or how well they have taken care of their reputation.²⁰

Courts have the responsibility of reflecting this change, not only because they have the duty to interpret the law but also because those in charge of enforcing and implementing it often rely on jurisprudence for guidance.²¹

In the case of *People v. Dulay*, G.R. Nos. 144344-68, July 23, 2002, the Supreme Court articulated that:

[A]t the Bicameral Conference Committee Meeting on the disagreeing provisions of S.B. No. 950 and H.B. No. 6265, the forerunners of R.A. No. 8353, the legislators agreed that Article 266-D is intended to “soften the jurisprudence of the 1970’s” when **resistance to rape was required to be tenacious**. The lawmakers took note of the fact that rape victims cannot mount a physical struggle in cases where they were gripped by overpowering fear or subjugated by moral authority. Article 266-D tempered the case law requirement of physical struggle by the victim with the victim’s fear of the rapist or incapacity to give valid consent. Thus, the law now provides that resistance may be proved by any physical overt act in any degree from the offended party.

Thus, a gendered implementation of the Anti-Rape Law should mean that the entire process of prosecuting rape cases must be gender-sensitive, including the decisions rendered by the courts.

4. What is the meaning of Gender Sensitivity in jurisprudence?

Gender sensitivity refers to the ability and willingness to perceive existing gender issues, gaps and inequalities and be sensitive to the different situations and needs of women and men throughout the decision-making process.

It entails searching for, considering, and accommodating aspects of relations between women and men in their social and cultural contexts during the course of any policy, planning, or implementation activity.

A Gender Sensitive Perspective includes recognition of the following:

- Roles of women and men are socially constructed, not solely determined by biology: gender differs from sex.

- Women and men's daily work, access to resources, political participation, experiences of violence, ability to exercise their rights, differ because of their gender.
- Women, like men, are not a homogenous group: men and women's experiences of work, political and economic participation, and enjoyment of their rights differ according to race, class, ethnicity, religion, economic status, sexual orientation.
- Discrimination against, and oppression of, women is systematic and reflected not only in individual relationships but also in the structure and functioning of public institutions, *de jure* and *de facto*: **family relations, access to economic resources and legal systems.**

5. **What are the examples of Gender Sensitive Decisions that have been promulgated by the Supreme Court?**

Two examples considered to be gender sensitive decisions of the Supreme Court:

- **Vedaña v. Judge V. (Adm. Matter No. RTJ-96-1351, September 03, 1998)**
 - Canon 2 of the Code of Judicial conduct and Canons 3 and 22 of the Code of Judicial Ethics
 - This case involves grave misconduct, conduct unbecoming of an officer of the Judiciary and conduct prejudicial to the best interest of the service. **Mentions Anti Sexual Harassment (RA 7877)**

[I]t is also apropos to discuss the implications of the enactment of R.A. No. 7877 or the Anti-Sexual Harassment Law [see endnotes, RA 7877] to the Judiciary. x x x Thus, the Court, in instances such as these, may take judicial notice of the heightened sensitivity of the people to gender-related issues as manifested through legislative issuances. It would not be remiss to point out that no less than the Constitution itself has expressly recognized the invaluable contributions of the women's sector to national development. Thus, there is a need to provide women with a work environment conducive to productivity and befitting their dignity.

In the community of nations, there was a time when discrimination was institutionalized through the legalization of now prohibited practices.

But in humanity's march towards a more refined sense of civilization, the law has stepped in and seen it fit to condemn this type of conduct for, at bottom, history reveals that the moving force of civilization has been to realize and secure a more humane existence.

Thus, in our nation's very recent history, the people have spoken, through Congress, to deem conduct constitutive of sexual harassment, acts previously considered harmless by custom, as criminal. In disciplining erring judges and personnel of the Judiciary then, this Court can do no less.

- **PT&T v. NLRC (G.R. No. 118978, May 23, 1997)**
 - Case concerns policy against hiring married women was declared discrimination and against the Labor Code provision on Stipulations against Marriage (Art. 36)

[P]rivate respondent's act of concealing the true nature of her status from PT&T could not be properly characterized as willful or in bad faith as she did this mainly because she wanted to retain a permanent job in a stable company. In other words, she was practically forced by that very same illegal company policy into misrepresenting her civil status for fear of being disqualified from work.

Moreover, corrective labor and social laws on gender inequality have also emerged with more frequency in the years since the Labor Code was enacted on May 1, 1974 as Presidential Decree No. 442 [see endnotes on laws]. This is largely due to our country's commitment as a signatory to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

6. What can Courts do to be gender sensitive?

- I) Avoid gender stereotyping offended parties or "profiling" testimony based on the victim's gender.
 - For example, jurisprudence that accords credence to the victim's testimony principally because she is "inexperienced in sex" or for being a "provincial lass" and "not a sophisticated woman" must be abandoned.
 - Examples of terms include:
"young barrio lass; naive and inexperienced"; "chaste Filipina"; "good reputation"; "young virgin barrio-girl"; "Filipina of rural breeding"; "decent Filipina"; "young and immature"; "innocent and guileless" "inexperienced in the ways of the world"; "naiveté and limited intelligence".
- II) Emphasize that rape is an act of violence against the personhood of the victims rather than their chastity and honor.
 - This would require less emphasis on the "shame," "humiliation," "dishonor," "embarrassment" and "stigma" befalling the woman.
- III) Be more sensitive to the differences in actions and reactions of victims, depending on their contextual situation.

7. What are some progressive cases under the new rape law that espouse gender sensitivity?

- **People v. Jason Navarro, Solomon Navarro and Roberto Olila (acquitted) (G.R. 137597, October 24, 2003)**
 - The defense's attempt to depict the victim as a woman of loose morals deserves scant consideration. **The victim's character or reputation is immaterial in rape, there being absolutely no nexus between it and the odious deed committed. A woman of loose morals could still be the victim of rape, the essence thereof being carnal knowledge of a woman without her consent.**
 - The argument of appellants that the victim must have consented to the sexual act, if indeed there was, because she acquiesced to go with them and had the opportunity to leave their company at any time she wished, is a *non sequitur*. **Freely going with a group for a ride around is one thing; freely having sex with one of the members thereof is another.**
- **People v. Wilson Suarez, et al. (G.R. Nos. 153573-76 April 15, 2005)**
 - In a last ditch effort to discredit the 14-year-old complainant, the defense attempted to picture her as a girl of loose morals. *Suffice it to state that **such debasement of her***

character does not necessarily cast doubt on her credibility, nor does it negate the existence of rape. It is a well-established rule that in the prosecution and conviction of an accused for rape, the victim's moral character is immaterial, there being absolutely no nexus between it and the odious deed committed. Even a prostitute or a woman of loose morals can be the victim of rape, for she can still refuse a man's lustful advances.

- **People v. Ilao (G.R. Nos. 152683-84, December 11, 2003)**

- As borne by the records, we agree with the trial court that complainant's testimony that she was raped was straightforward, credible, and convincing, whereas the denial and alibi of the appellant, that he was in Batangas on the dates and hours of the rape incidents, were unworthy of belief and lacking in plausibility.
- Here, the victim categorically described the force and intimidation exerted with the use of lethal weaponry (knife and ice pick) when she was ravished. Mentally, she was revolted at the sexual assault. Indeed with a knife poked at her, physical resistance was not only futile but truly hazardous and might cost her life and, in the first incident, that also of her daughter.
- The fact that private complainant **did not resist or attempt to flee or shout for help does not negate force or intimidation. Different people react differently** when confronted by a shocking or a harrowing and unexpected incident, for the workings of the human mind when placed under emotional stress are unpredictable. Some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion. Moreover, in rape cases, physical resistance need not be established when intimidation is exercised upon the victim and the latter submits herself out of fear. Intimidation is addressed to the mind of the victim and is therefore subjective.
- While indeed the victim might have tarried in reporting her defilement, yet the **delay is explained by the fear generated by appellant in the mind of complainant.** The hiatus in reporting the crime does not extricate appellant from his predicament.
- As the trial court found, complainant did not divulge the first incident of rape out of fear for her life and that of her family. She could have kept her ordeal forever in silence were it not for the second incident which engendered her continuing fear of a repetition thereof, unless she could put a stop to it. This reaction appears typical of a woman who has been abused. **Rape is a harrowing experience and the shock concomitant to it may linger for a while.** It is upon this fear springing from the initial rape that the perpetrator hopes to build a climate of psychological terror, which could numb his victim to submissiveness.
- The assertion of appellant that the private complainant was a married woman, and was no longer a virgin, will not exculpate him from criminal liability for rape. **Well-settled is the rule that in rape cases, virginity of the victim is not an element of rape.**

- **People v Ilagan (G.R. No. 144595. August 6, 2003)**

- Appellant claims that the victim's failure to resist the assault and the delay in reporting the case to the authorities are sufficient to impair her credibility. We disagree. Physical resistance need not be established in rape when intimidation is exercised upon the victim herself. As held in *People v. Las Pinas, Jr.*, **the test is whether the intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. When resistance would be futile, offering none at all does not amount to consent to sexual assault. The law does not impose upon a rape victim the burden of proving resistance.**
- Anent the delay in reporting the case to the authorities, suffice it to state that delay and the initial reluctance of a rape victim to make public the assault on her virtue is neither unknown or uncommon. Rape is a traumatic experience, and the shock concomitant with it may linger for a while. **Often times, the victim would rather bear the ignominy and the pain in private, rather than reveal her shame to the world or risk the rapist's carrying out his threat to harm her.**

- **People v. Orlando Sonido (G.R. No. 148815) July 7, 2004**
 - Proof of external injuries is not indispensable in a prosecution for rape committed with force or violence. Proof of injury is not an element of rape. The resistance on the part of the victim need not be carried to the point of inviting death or sustaining physical injuries at the hand of the rapist. ***It suffices that the coitus takes place against her will, or that she yields because of genuine apprehension of great harm.***
 - We are also not persuaded by the appellant's allegation that J is a scorned woman. The spontaneity of all her acts after the rape, namely, running for help without any clothes; rushing to the *Barangay* chairman to report her ordeal; reporting the incident to the police authorities; and subjecting herself to a medico-legal examination, completely negates the appellant's scorned woman theory foisted on the Court.
- **People v. Agsaoay (G.R. Nos. 132125-26. June 3, 2004)**
 - Also, the defense endeavors to prove that J is an unchaste young woman who habitually goes out with different men. ***Suffice it to state that such debasement of her character does not necessarily cast doubt on her credibility***, nor does it negate the existence of rape. It is a well-established rule that in the prosecution and conviction of an accused for rape, ***the victim's moral character is immaterial, there being absolutely no nexus between it and the odious deed committed***. Even a prostitute or a woman of loose morals can be the victim of rape, for she can still refuse a man's lustful advances.

8. What should future Court decisions reflect?

Future court decisions and pronouncements should reflect:

- I) Constitution - that the State shall "ensure the fundamental equality before the law of men and women; (Art II, sec. 14)
- II) The country's commitment to Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to eliminate *de jure* and *de facto* discrimination.

Unit Three Endnotes:

¹ Key references Materials for Unit 3 include:

Dionisio, Eleanor R, *More Alike Than Different : Women, Men and Gender As Social Construction* (Occasional Paper No. 3, National Commission on the Role of Filipino, 1993).

IWRAW Asia Pacific, *Handout 1, Session 18 - Building Capacity for Change: A Training Manual on the Convention on the Elimination of All Forms of Discrimination Against Women* (IWRAW, 2001).

Oakley, Ann, *Sex Gender and Society* (Maurice Temple Smith Ltd.,1972).

Cases cited: Based partially on research and study of Prof. Amparita Sta. Maria, Director, Thesis Department, Ateneo Law School and Director, Women and Migrants Unit, Ateneo Human Rights Center, Ateneo de Manila University, Philippines.

Other references:

Code of Conduct for Law Enforcement Officials, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979). Online: <http://www1.umn.edu/humanrts/instree/i1ccleo.htm>

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Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969).

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Bernas S.J., Joaquin, *The 1987 Philippine Constitution Comprehensive Reviewer* (2006) 33-34.

Buerghenthal, Thomas, Dinah Shelton & David P. Stewart, *International Human Rights in a Nutshell* (West Publishing Co., 1988).

Byrnes, Andrew, "Human Rights Instruments Relating Specifically to Women, with particular emphasis on the Convention on the Elimination of All Forms of Discrimination Against Women" in Byk, Lum & Andrew Byrnes and Jane Connors (eds.) *Advancing the Human Rights of Women: Using International Human Rights Standards in Domestic Litigation* (London: Commonwealth Secretariat, 1997).

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Robinson, V. & Diane Richardson (eds), *Introducing Women's Studies: Feminist Theory and Practice* (New York University Press, 1997).

² UN Human Rights Treaty System. United Nations High Commissioner for Human Rights (2005). Online: <http://www.ohchr.org/english/bodies/docs/UNHRTS.gif>

³ IWRAW Asia Pacific, *Handout 1, Session 18 - Building Capacity for Change: A Training Manual on the Convention on the Elimination of All Forms of Discrimination Against Women* (IWRAW, 2001).

⁴ Byrnes, Andrew, *Human Rights Instruments Relating Specifically to Women with Particular Emphasis on the Convention on the Elimination of all Forms of Discrimination Against Women*. Paper presented at the Judicial Colloquium for senior judges on the promotion of the Human Rights of Women and the Girl Child through the Judiciary : Organized by the Commonwealth Secretariat, Guyana (1997).

⁵ *Building Capacity for Change*, IWRAW Asia Pacific Training Manual (2001).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Bernas S.J., Joaquin, *The 1987 Philippine Constitution Comprehensive Reviewer* (2006) 33-34.

¹⁰ *People v. Cayat*, 68 Phil. 12, 18 (1939).

¹¹ *Building Capacity for Change*, IWRAW Asia Pacific Training Manual (2001).

¹² Article 18 (1), CEDAW.

¹³ General Recommendation 19, CEDAW.

¹⁴ Paragraph 207, Philippine 4th and 5th Periodic Report.

¹⁵ Paragraph 210, Philippine Combined 4th and 5th Periodic Report.

¹⁶ *People vs. Matrimonio* (G.R. Nos. 82223-4, November 13, 1992).

¹⁷ *People vs. Melivo* (G.R. No. 113029, Feb. 8, 1996).

¹⁸ *People vs. Lor* (G.R. No. 133190, July 19, 2001).

¹⁹ *People vs. Libo-on* (G.R. No. 136737, May 23, 2001).

²⁰ Sta. Maria, Amparita S., "Images of Women in Impunity" in *Human Rights Treatise on the Legal and Judicial Aspects of Impunity* (2001).

²¹ *Id.*

APPENDIX A: CASE STUDIES

The following eight case studies should be used in conjunction with Units 1-3.

Case Study #1 – Female employees working at night

Petitioner, a female employee who works as a secretary in a factory filed a case before the Supreme Court challenging the constitutionality of Article 130 of the Labor Code of the Philippines on the ground that it is violative of the Equal Protection Clause of the Constitution. Because of the extraordinary workload in the company, encoding of documents had to be done until 3 o'clock in the morning for two weeks. All the encoders who were male were allowed to work the extra shift and were paid night shift differentials while all the women including the petitioner were disallowed to do any kind of night work due to Article 130 of the Labor Code. Assume that petitioner and all the women who were disallowed to do night work do not fall under any of the exceptions provided in Art. 131 of the Labor Code.

- a) Is there discrimination? Why?
- b) If there is discrimination, in what way(s) are the women discriminated?
- c) Are there right(s) of the petitioner violated under CEDAW?
- d) Are there State obligations under the CEDAW that are not complied with because of Articles 130 and 131?
- e) Do Articles 130 and 131 violate Article III, Section 1 of the 1987 Constitution?

Case Study #2 – Providing seats to cashiers only

The *packers* of Kain Supermarket are all male while the *salespersons* are all female. Pursuant to Article 132 of the Labor Code and citing the same, Management issued a Memo providing seats for *cashiers* during work hours. It so happens that all the *cashiers* are women. The *packers* are challenging the Memo and Article 132 of the Labor Code as violative of the Equal Protection Clause of the Constitution and as being discriminatory for not providing seats for them while they are working. The *salespersons*, on the other hand, are challenging the Memo for being discriminatory because they were not provided seats despite the fact that they are women.

- a) Is there discrimination? Against whom?
- b) If the Memo were issued without Article 132 as basis, would the special treatment of cashiers, nevertheless, be justified?
- c) Are there obligations under the CEDAW that are not complied with because of Article 132?
- d) Does Article 132 violate Article III, Section 1 of the 1987 Constitution?

Case Study #3 – Protection for women who are victims of violence

Under Republic Act 9262 (VAWC), a Temporary Protection Order may be issued *ex parte* in order for women who are victims of violence to be able to take possession of the car, regardless of ownership (Section 8 [c]); and in order to temporarily prohibit the spouse from entering the conjugal home, also regardless of ownership (Section 8 [e]).

Mr. H, the husband of Mrs. H challenged the constitutionality of these two provisions on the ground of deprivation of property without Due Process of Law. He also complains that there protection order under VAWC should apply to both men and women in order to prevent discrimination. You are tasked to answer the following:

- a) Is there discrimination?
- b) Is there a violation of due process? Explain. Cite CEDAW provisions.
- c) How can you explain the provision of the law that violence against pets is tantamount to violence against women and their children?
- d) Should a protection order under VAWC be issued also in favor of a man?

Case Study #4 – Privacy rights for victims

In the case of *People of the Philippines v. Melchor Cabalquinto*, (September 19, 2006, G.R. No. 167693) the Supreme Court explained why it has decided to withhold the real name of the victim-survivor on the Supreme Court Web Page in cases involving violence against women and children, and instead use fictitious initials to represent said victim; not to disclose the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well those of their immediate family or household members. Aside from citing the provisions of confidentiality under RA 7610, RA 9262 and its IRR, the Court also took note of the position submitted by the Office of the Solicitor-General, to wit:

According to the OSG, the fact that the aggrieved child may have consented, through a parent or guardian, to a public hearing of the case does not negate the expectation of privacy which the child may later invoke because child victims cannot be presumed to have intended their initial agreement to extend beyond the termination of their case to the posting of the decision reached by the Court on the Web Page. Moreover, such an expectation of privacy is reasonable considering the various statutes and rules which reveal the intention of the State to maintain the confidentiality of information pertaining to child abuse cases.

x x x

x x x

x x x

The OSG invites the Court's attention to a New Jersey statute which provides that all court documents which state the name, address and identity of a child victim in certain sexual assault, endangering the welfare and abuse and neglect cases should remain confidential. The name of the victim shall not appear in any public record; rather, initials or a fictitious name shall appear. x x x Thus, in Application of V Pub. Corp., 120 N.J. 508 (1990), and Div. of Youth & Fam. Serv. V. J.B., 120 N.J. 112 (1990), the New Jersey Supreme Court provided guidelines in the implementation of this statute.

In conclusion, the OSG suggests the adoption of a system of coding which could include the use of pseudonyms in cases of a similar nature. Short of withdrawing the full text of decisions in such cases from the Web Page, the OSG proposes that the Court instead replace the material information, such as the name of the child-victim, in its decisions.

- a) If you had the opportunity to add a gendered perspective to the above position and support the move to withhold names of offended parties on the Web, what could you offer as explanation and how would you say it? Write one or two paragraphs for this exercise. Can you cite CEDAW provisions?
- b) Do you think the Supreme Court should change the names of the offended party in its final decisions on paper as well? What about the trial courts, do you think they should follow the same procedure? Why?

Case Study #5 – Equal rules for girls sports team

A Memo was issued by DECS instructing the school officials to ensure that all the student sport competitors at the junior level are below the age of 13. The test suggested is examining the presence of pubic hair in the student's private parts. Pursuant to this memo, Mr. A, the Varsity Supervisor for girls in School X lined up the Junior Volleyball Team and ordered them to strip below the waist so that he can examine their genitalia for the presence of pubic hair. The girls who were all 12 years of age refused. As a result, they were excluded from the Sportsfest and all other sports activities of the school. The team consulted you for legal advice, claiming that they felt discriminated against.

- a) What arguments will you advance in questioning the DECS Memo?
- b) Using a gendered perspective, draft a revised and improved Memo.

Case Study #6 – Stereotypes in rape case

People v. Lagot

This is an appeal from the decision of the Regional Trial Court finding accused Kiko Lagot guilty of raping his daughter. The *ratio decidendi* reads:

It is enough to point out that, in rape cases, it is not necessary that the victim should have resisted unto death especially when the rapist is her father. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace and allow the latter to trifle with her inferior strength.

Unless she is motivated by truth, no woman, much less a 13-year old girl, would subject herself to the rigors of a public trial, describing her defloration before total strangers. No young and decent Filipina would publicly admit that she was ravished and her honor tainted unless the same was true. By testifying in court, she made public a painful and humiliating secret, which others may have simply kept to themselves for the rest of their lives. She thereby jeopardized her chances of marriage or foreclosed the possibility of a blissful married life, as even a compassionate man may be reluctant to marry her because her traumatic experience may be a psychological and emotional impediment to a blissful union. Moreover, such a revelation divided her family and brought it shame and humiliation.

- a) What gender stereotypes/misconceptions are perpetuated by this decision?
- b) Improve on the tenor of the decision by using gender-fair language.
- c) What provisions of CEDAW can be invoked or used in this case?

Case Study #7 – Harassment by factory manager

Mr. Aburido was the supervisor of Smiles Factory. Records disclose that he routinely yelled at his subordinate female employees even with little or no provocation. He did so frequently, profanely, and often in public. The shouting had no sexual content, and did not involve derogatory language about women.

The women employees filed cases for Sexual Harassment under RA 7877 and discrimination under Article 135 of the Labor Code. Strangely, no one alleged that Mr. Aburido's behavior was lewd, sexual (either explicitly or through undertones), or that the content of his shouting was gender-specific. Nor was there any evidence that he harbored any animus towards women - either generally or just at work - or had some specific motive to make their lives miserable.

The women, however, claimed that Mr. Aburido's behavior created a hostile work environment, each testifying that Aburido's conduct rendered the work environment physically and verbally threatening - so much so that one of them did not seek pay for overtime she had worked because she was too scared of Mr. Aburido to turn the records of her overtime hours in. According to the women, his shouting rants were often accompanied by aggressive physical gestures like lunging at the walls and throwing little things (often office supplies) on his table. Whether or not Aburido derided the women because they were women, he - according to the bulk of evidence in the record - only directed his brutish behavior at women, and never at men. Hence, they also alleged discrimination on the basis of sex.

- a) Did the women experience harassment on the basis of sex?
- b) Did the women experience discrimination under CEDAW?
- c) Was there Sexual Harassment under RA 7877?
- d) Was there discrimination under the Article 135 of the Labor Code?
- e) How will you decide on both actions?

Case Study #8 – Admission criteria for military academy

In a military academy, the following are the qualifications for admission for both male and female cadets:

- 1) Natural Born Filipino Citizen
- 2) Of good moral Character
- 3) Single and never been married
- 4) Have never sired (male) nor given birth (female) to a child
- 5) 5 feet 4 inches tall if male; 5 feet 2 inches tall if female
- 6) Not a day older than 22 years old and not a day younger than 17 years old on 1 April of the year following the date of the examination taken
- 7) At least high school graduate with a general average of 85% or higher; for 4th year High School students, 3rd year general average of 85% or higher
- 8) Able to perform the minimum requirements for Physical Fitness Test (PFT)

MINIMUM REQUIREMENTS FOR PHYSICAL FITNESS TEST (PFT)

	Male (M)	Female (F)
100 Meter Dash	16 secs	19 secs
Pull up (M)/Flexed hang (F)	3 reps	20 secs
Sit up	25 reps	20 reps
Push up (M)/Bench push up (F)	20 reps	20 reps
Sit and Reach	45 cm	40 cm
Standing Long Jump	5 feet	4 feet
1 Mile Run	9 mins 12 secs	10 mins 12 secs

Once admitted, both male and female cadets should remain unmarried and never have children.

After graduation from the academy, the female cadets were given an order not to get pregnant for at least two years to ensure that they will be able to efficiently perform their military functions. The male cadets were not given any prohibition in siring children.

Because of the military school's policy on admission and after-graduation pregnancy prohibition, two complaints were lodged on the basis of discrimination on the basis of sex. The first complaint was lodged by a male cadet alleging that there is a violation of equal protection in the admission requirements since women are given preferential treatment when it comes to the height and physical fitness requirements. The second complaint was lodged by a female cadet graduate on the ground that the prohibition on pregnancy is discrimination on the basis of sex.

- a) As a judge, how would you rule on the first complaint? Did the academy violate equal protection by giving preferential treatment to women when it comes to admission requirements?
- b) As a judge, how would you rule on the second complaint? Was there discrimination on the basis of sex?
- c) If there is, what provision/s of CEDAW is being violated?
- d) Should there be a violation of CEDAW, how can you cure the policy by making it non-discriminatory?

APPENDIX B – SECONDARY MATERIALS

American Declaration of the Rights and Duties of Man (1948)

WHEREAS:

The American peoples have acknowledged the dignity of the individual, and their national constitutions recognize that juridical and political institutions, which regulate life in human society, have as their principal aim the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness;

The American States have on repeated occasions recognized that the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality;

The international protection of the rights of man should be the principal guide of an evolving American law;

The affirmation of essential human rights by the American States together with the guarantees given by the internal regimes of the states establish the initial system of protection considered by the American States as being suited to the present social and juridical conditions, not without a recognition on their part that they should increasingly strengthen that system in the international field as conditions become more favorable,

The Ninth International Conference of American States

AGREES:

To adopt the following

AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

Preamble

All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.

The fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty.

Duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis.

Inasmuch as spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of man to serve that end with all his strength and resources.

Since culture is the highest social and historical expression of that spiritual development, it is the duty of man to preserve, practice and foster culture by every means within his power.

And, since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect.

Chart: UN Human Rights Treaty System

UN Human Rights Treaty System. United Nations High Commissioner for Human Rights (2005)
Online: <http://www.ohchr.org/english/bodies/docs/UNHRTS.gif>.

