



the court system may also pose a hindrance to the application of CEDAW in domestic courts. Gender bias and sexism, as reflected in stereotype beliefs concerning femininity and masculinity and in attitudes to female roles, are deeply embedded in judicial culture. Such attitudes and perception will hinder our judges' appreciation of the objective of achieving substantive equality of women through the use of CEDAW<sup>94</sup> and will result in injustice to countless women.

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## *Emerging Issues*

The gender sensitivity of judges in the Philippines will be further tested in the application of the Anti-Violence Against Women and Their Children Act of 2004 (R.A. No. 9262), which provides for the remedies of temporary and permanent protection orders, what Justice Reynato S. Puno called in his speech during the launching of the Rule on Violence Against Women and Their Children (A.M. No. 04-10-11 SC) as the “principal weapon” of a victim of domestic violence. Aside from these remedies, the woman, for herself and in behalf of her children, has the choice of filing a criminal action for violation of R.A. No. 9262 and/or an independent civil action for damages. R.A. No. 9262, which took effect on March 27, 2004, widened the scope of a woman's cause of action because it protects her and her children from verbal, physical, psychological, emotional, sexual, and economic abuses.

Justice Reynato S. Puno spoke of the issues that are expected to arise in the courts as a result of R.A. No. 9262 and the various legal actions that a woman and her children can take, and we quote:

As I stressed earlier, the filing of a petition for protective order is just one of the remedies of the offended party. She has also the remedy of filing a criminal case or a civil case for damages against the offender. The availability of these three remedies raises a host of difficult procedural problems. Among others, they involve the conflict of jurisdiction of the regular courts and the Family Courts; the separateness of the petition for protection order and its independence from the criminal and civil actions; the treatment of the application for protection orders when it is filed after the criminal or civil action for damages has already been instituted; the different



quantum of evidence necessary in these actions and the rule of procedure to govern them. All these are treated in the Rules and for lack of time cannot be discussed on this occasion.

The most urgent issue for abused women who have to flee their homes to avoid further violence aside from a stay away order is support for themselves and their children. What makes R.A. No. 9262 the appropriate remedy is the availability of the immediate relief of an *ex parte* temporary protection order (TPO), which includes a stay-away order, removal of the respondent from the conjugal home regardless of ownership, custody of minor children, and support. This *ex parte* TPO shall be issued by the judge within twenty-four hours from the filing of the petition or application. Notwithstanding the issuance of the Rule on Anti-Violence Against Women and Their Children, lawyers for women bewail the lack of urgency among many judges in resolving these cases and their reluctance to issue temporary protection orders that include sufficient support and a bond to keep the peace. The reluctance of some judges to enforce R.A. No. 9262 is compounded by their belief that the new law is too harsh. This reluctance is even more pronounced when the issue is psychological and emotional violence due to marital infidelity, and economic abuse such as depriving the woman of the equal right to her share in the conjugal income and the use of conjugal assets. Recently, two women have filed for protection orders in the Regional Trial Courts (RTC) of Quezon City and Biñan because their husbands kicked them out of their conjugal homes without any court order. Men can easily deprive women of their share of the income from and use of conjugal or community funds and other assets because while the administration of the conjugal partnership of gains or community property is supposed to be jointly held by the spouses under the Family Code, in reality, it is often the husbands who control conjugal businesses, income, and assets.

Because there are novel issues in the implementation of R.A. No. 9262, there is an opportunity for judges to develop legal theory and jurisprudence on this new law. Now that economic abuse is recognized as a form of violence, the courts may someday appreciate a husband's failure to provide sufficient support or his act of solely controlling the conjugal partnership assets and businesses without reporting and delivering its income to his wife as a ground for legal separation, specifically as "grossly abusive conduct." This is a common problem for women who have separated from their husbands, or those who fled their conjugal homes due to domestic violence. By interpreting acts of violence especially economic abuse under R.A. No. 9262 as "grossly abusive



conduct,” the courts can provide a remedy to thousands of women who have separated from their husbands because of domestic violence or marital infidelity but are unable to file for legal separation because the cause of action has prescribed.

Alarming issues are emerging in the judicial implementation of R.A. No. 9262. Some judges lack the conviction or understanding that this law was passed to protect women and their children and as such it cannot be used against women. The clear intent of Congress was to provide this special law with remedies that are available to women and their children only, and not to men. While it is understandable that some respondents have raised the issue of unconstitutionality of R.A. No. 9262 on the ground that it is a class legislation that violates the equal protection clause, what shocks women’s rights lawyers and advocates is that there are judges who rule that the remedies of a TPO and a permanent protection order under R.A. No. 9262 and the Rule on Violence Against Women and Their Children may be granted in favor of a man when he sues in behalf of his minor children who are in his custody. In the RTC of Antipolo, a husband sued his wife in behalf of his minor children using R.A. No. 9262 and got an *ex parte* TPO from a female judge. As a result, it took more than one year for the woman to see her three minor children, which was made possible only when the judge who issued the TPO inhibited herself and Judge Bayani Ilano took over and granted visitation rights to the mother.

In a highly publicized case for custody, the judge of the RTC of Bago City granted an *ex parte* TPO which included custody *pendente lite* using A.M. No. 04-10-11 SC to a man who has a 22-month-old illegitimate child with celebrity Marie Roxanne “Plinky” Recto. She had earlier filed a petition for a TPO and a permanent protection order under R.A. No. 9262 in the RTC of Mandaluyong City, but her former boyfriend sued in his hometown in behalf of the child alleging child abuse. In another case, the Court of Appeals in Cebu City, in an unprecedented ruling (CA GR CEB SP No. 01698) issued a Temporary Restraining Order (TRO) against Hon. Ray Alan T. Drilon of the RTC of Bacolod City Branch 41 and private respondents Rosalie Jaype Garcia and her three minor children who sued under R.A. No. 9262. The TRO suspended the TPO for sixty days, leaving the woman and her three minor children with no financial support, vehicles, and stay away order. As soon as a TRO was issued by the Court of Appeals in Cebu City, the corporation being controlled by the husband got a Writ of Replevin and took the vehicle which was being used by the woman and the children as part of their relief in the



TPO. The conflict of jurisdiction of regular courts with the Family Courts will arise in cases when a TPO includes an order that the woman can have the use of vehicles regardless of ownership pursuant to R.A. 9262 but the vehicles are registered under the name of corporations and not in the name of the spouses, even if they are in truth, conjugal assets.

Violence changes the paradigm of many provisions in the Family Code, and it takes gender sensitivity and analyses to apply R.A. No. 9262 to ensure the safety and protection of the woman and her child and to give the woman the opportunity to regain control over her life. The rule on the issuance of an *ex parte* TPO must be understood from the perspective of the disempowered woman, such that there is a need to level the playing field while the case is being heard. We also submit that when the woman and her children apply for a protection order, visitation of the children by the father is not a matter of right.

In addition, ordering the husband to leave the conjugal dwelling through a TPO will be one of the most heated issues in the application of this new law, one which can be done only by putting aside the husband's right to the property as co-owner as inferior to the woman's right to protection while the hearings on the merits are ongoing. This is so since the issue in the application for a protection order is possession of the conjugal dwelling and not ownership. He who caused the violence in the home must be removed from the home. This provision of law is sound in view of the reality that many women have no gainful employment and have nowhere else to go, so that they bear the abuse for the sake of their children. Judges also need to appreciate the psychological effects on the woman who is battered, threatened, or deprived of the custody of her minor children. This perspective is necessary if judges are to be convinced that abused women need urgent protection, support, and all other means to enable them to regain control over their lives. Unfortunately, some judges and lawyers still consider domestic violence as a private matter or a mere marital spat which is, to their mind, "normal" and can be settled if the parties talk, forgetting that under R.A. No. 9262, mediation or conciliation is prohibited. This is so because the woman, who is not in a position of power, will be intimidated or pressured to return to the husband or partner or withdraw her complaint.

Another new concept under R.A. No. 9262 that will meet challenges in court is the provision on battered woman syndrome as a justifying circumstance<sup>95</sup> notwithstanding the lack of any of the elements of self-defense. Judges need to understand the situation and the psychological make up of battered women and to appreciate evidence of history of



cumulative abuse. Psychiatrists, psychologists, and counselors can give their expert opinions, but if the judge's mind is fixed on the rule of self-defense, this can be an obstacle to his or her appreciation of the evidence of history of cumulative abuse, together with expert testimony, as sufficient cause for the woman to have believed that the threat to her life and that of her children was imminent.

Another new law that will require gender sensitivity and a human rights perspective of judges is Republic Act No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003. Judge Jesus Carbon, Jr. of the RTC of Zamboanga City was the first to render a judgment of conviction for trafficking under this law in 2005 in the case of *People of the Philippines vs. Ronnie Aringoy et al.* One of the provisions that is highlighted in R.A. No. 9208 is the irrelevance of the victim's consent. Under R.A. No. 9208, it is irrelevant whether or not the complainant agreed to take the job or knew that she would be working abroad in what could be a place of prostitution. No one can consent to being trafficked into prostitution, in the same manner that no one can consent to slavery. This concept has to be fully grasped by judges in the context of the poverty and powerlessness of victims, who are mostly women and children. Judge Jesus Carbon, Jr. fully understood the vulnerability of victims when he wrote that, "consent of a trafficked person to the intended exploitation is irrelevant and not a material fact that can be raised in a criminal prosecution. It will not exempt or mitigate the offender's criminal liability" (Sec. 3(a) and Section 17, R.A. No. 9208). Traffickers in human beings and illegal recruiters prey on the vulnerability and gullibility of the weak and the underprivileged, "of poor laborers, seamen, domestics and other workers who use employment abroad as the only way out of their grinding poverty."

Perhaps the most controversial issue in the future is the issue of reproductive rights of women or their sexual rights, which is described as referring "generally to a woman's control over her sexuality and her access to primary and secondary health care and reproductive technologies." It concerns the international recognition of the rights of women over their bodies and their sexuality, applying the human rights framework to reproductive health as an important innovation. The Declaration and Programme of Action of the International Conference on Population and Development states that "Reproductive health ... implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and freedom to decide, if, when and how often to do so." Paragraph 96 of the *Beijing Platform for Action*



also states that “The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.”<sup>96</sup> With a growing demand for reproductive health rights by women’s rights organizations, this issue may come to Congress and to the courts sooner than later.

## *Recommendations*

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Judges, as consumers of scientific knowledge, will be aided in making just decisions in VAW cases if they use gender analysis, especially in sexual harassment, rape, and cases falling under R.A. No. 9262, R.A. No. 7610, and R.A. No. 9208. The continuing study of R.A. No. 9262, R.A. No. 9208, R.A. No. 8353 (Anti-Rape Act of 1997), R.A. No. 7877 (Anti-Sexual Harassment Act of 1995), and other laws protecting women’s human rights should be done not only by judges and lawyers but also in law schools, while ensuring that these are taught with a gender perspective. Furthermore, women’s rights lawyers and judges should be encouraged to contribute to the development of jurisprudence on VAW by putting forward legal theories and arguments using CEDAW and other human rights treaties. Judicial decisions contribute not only to judicial reform but also to legal reform, as we can see in the decision in *People vs. Ritter*,<sup>97</sup> which partly led to the enactment of R.A. No. 7610.

The Supreme Court may also take on a more proactive role in ridding our jurisprudence of gender bias by reviewing past decisions on VAW and overturning these, and finally eradicating gender stereotyping of the roles of women and men and the myths about rape and other acts of violence against women in our legal system. Judges and justices would also benefit from continuing discussions on gender and the law, including those sponsored by non-governmental organizations that are involved in the protection of human rights.

Although there are ongoing reforms in the rules, women’s rights advocates recommend that the Supreme Court promulgate a specific rule on rape cases where, among others, the rape shield rule for adult and child complainants alike will be strictly enforced by judges and post-traumatic stress disorder will be admissible as proof of fact of trauma or rape.



The judiciary can likewise benefit from the consistent and persistent watch of women's rights advocates and should be more open to critique and reform. One critical area for reform is the appointment of judges and justices by the President, a highly political process that could result in the deterioration in the quality of judges. There is also a need for more women judges so that female perspectives and women's diverse knowledge and experiences can contribute to the judiciary. The Supreme Court can also add gender sensitivity to the qualifications of all judges, especially those assigned to the Family Courts, where cases of VAW and those involving children are heard.

To instill adherence to the highest principles of propriety, integrity, and non-discrimination, the Supreme Court may also specify the prohibition on gender discrimination in the Code of Judicial Conduct and for lawyers, in the Code of Professional Responsibility. A review of the uneven application of penalties against judges who are charged with sexual harassment, use of foul or sexist language, and other forms of gender violence may also lead to a reform in the disciplinary rules in the Supreme Court.

Lawyers' organizations, for their part, can give more attention to gender in the legal profession, aside from strengthening their free legal aid programs for women and children who are victims of abuse. They should also set standards on the use of gender-fair language by attorneys. Law schools can also include gender and the law in their curricula and ensure that the subject on family law and other subjects are taught with a gender perspective.

Not the least of these recommendations is the education of judges on CEDAW and its uses in judicial practice in our jurisdiction as well as in other countries.

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## *Conclusion*

The human rights of women and girl-children are an inalienable, integral, and indivisible part of universal human rights. We look upon our courts to protect these rights. Hence, the importance of having judges who are well-versed in human rights norms and a gender-responsive judiciary cannot be overemphasized. The judiciary's role in guaranteeing full respect for the human rights of women and girl-children is



indispensable, and our trial judges, as well as justices, could further enrich legal theory and jurisprudence on women's rights by using CEDAW, DEVAW, General Recommendations 19, and other international human rights instruments towards the goal of eliminating violence against women and girl-children. It is because of the strategic position of trial judges in the administration of gender justice that The Gender Justice Awards focuses on their performance and decisions.

It is hoped that the network of human rights organizations and women's rights and children's rights advocates in the Philippines will expand and strengthen their coalition-building strategies for judicial reform. The forthcoming Gender Justice Awards, it is hoped, will be joined by more partner organizations, including those engaged in other human rights advocacies. Gender, after all, is a cross-cutting issue for all. The value of The Awards lies not only in finding outstanding judges who can enrich the human rights discourse, but also in the ability of human rights advocates and organizations to collaborate as well as critique the judiciary, recommend areas for reform, and contribute to the development of legal theory and jurisprudence on gender and the rights of women and girl-children.

In the near future, the Supreme Court will hopefully grant expanded standing to women's rights and human rights organizations to sue in behalf of victims. This will enable women's rights lawyers and advocates to more fully participate in the development of legal theory and jurisprudence.

The Awards benefited from the positive environment made possible by having a chief justice who appreciates the role of women's rights and human rights organizations in judicial reform. The "Davide Watch" of the Supreme Court has started programs on gender-responsiveness, but the fruits of Chief Justice Hilario G. Davide, Jr.'s initiatives in the area of gender and women's rights will be known only in the years to come. The challenge for the succeeding chief justices is to take a closer look at their and the Supreme Court's past decisions on human rights of women and children, eliminate gender discrimination in their decisions, in the courts, and in the legal profession. It is hoped that the Supreme Court and Chief Justice Artemio V. Panganiban as well as the succeeding chief justices after him will also take bolder steps to improve the gender sensitivity of judges and mainstream gender in the judiciary.