

ISSUES AND PROBLEMS IN THE ENFORCEMENT OF THE ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004

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I. INTRODUCTION

Since 1995, violence against women (VAW) has captured the attention of the government and legislators in the Philippines as a result of the demand of a growing women's human rights movement and the State Obligation of the Philippine Government under the Convention on the Elimination of All Forms of Discrimination Against Women, its Optional Protocol as well as other international conventions. The Beijing Conference on Women in 1995 heightened the demand of women's rights advocates for laws protecting women from violence all over the world.

Progressive reforms in laws protecting women were brought about by several factors beginning with the democratization process that started in the 1986 People Power Revolution after the fall of the Marcos dictatorship, the 1987 Constitution¹ that has specific provisions on the rights of women and fundamental equality before the law of men and women, the increasing number of women's organizations in the provinces with links to Metro Manila based women's human rights organizations, and the participation of women legislations who are becoming increasingly aware of the need for gender equality and the elimination of VAW. This period marks the

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¹ CONST. (1987), art. II §14.

contribution of women legislators who were elected in the 1992 elections and thereafter².

A. LAWS ON VIOLENCE AGAINST WOMEN BEFORE THE 1987 CONSTITUTION

1. In Criminal Law

Before special laws addressing VAW or domestic violence were passed, women could only resort to the Revised Penal Code³ for offenses committed against them by their husbands such as physical injuries or attempted or frustrated parricide. If committed by their intimate partners, the charge could be physical injuries, attempted or frustrated homicide, or rape. There was no offense of marital rape before Republic Act No. 8353.⁴

Other forms of violence, e.g., verbal, emotional, psychological, or economic abuse (such as deprivation of support) were not punishable under the Revised Penal Code or any special law before Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004 was passed.

There was no recognition of crimes against women as gender-based violence. Rape was classified as a “crime against chastity,” until it was amended as a “crime against persons” in the Anti-Rape Act of 1997. Its classification as a crime against chastity reflected the gender bias against women and stereotyping about rape, which required women to prove in court that they were chaste or “virgins” before judges could believe that they were indeed raped, even though “chastity” is not an element of the crime.

2. In Civil Law

The remedy of a protection order, which began in the United States in the 1970s, was not available as a relief in civil or criminal actions until Republic Act No. 9262 was passed. Battered women had no easy recourse in the law and in the courts, and their situation was made more difficult by the fact that before the Family Code of the Philippines (August 1988), the

² Women legislators comprise only about 10% of total members of the House of Representatives and at present (2008), there are only four women senators out of twelve (12).

³ Enacted on January 1, 1932.

⁴ Otherwise known as the Anti-Rape Act of 1997.

husband was the sole administrator of the conjugal partnership under the New Civil Code.

When the wife and minor children were deprived of support by the husband who had control of the conjugal assets, the wife could only file a civil action for support, which is lengthy and costly, thus leaving her no choice but to immediately settle for what the husband is willing to give. Many women stayed in the marriage and did not flee the home or seek redress in the court despite repeated violence for lack of financial support especially when they have minor children. As will be discussed, Republic Act No. 9262 now gives the abused woman the relief of both civil and criminal action, and deprivation of adequate support is now a crime.⁵

The lack of a divorce law in the Philippines⁶ also leaves battered women with no easy way out of their marriage. Instead, the Family Code provides for “psychological incapacity” as the only ground for nullity of marriage.⁷ It provides for legal separation on the grounds of *repeated* physical abuse, grossly abusive conduct, abandonment for at least one year and attempt on the life of the spouse. A woman has to prove physical abuse committed at least two times before she can be granted legal separation and forfeit the share in the conjugal or community property of the guilty husband in favor of common children.

B. LAWS ON VIOLENCE AGAINST WOMEN (VAW)

Since 1995 there are six (6) laws on VAW⁸ in the Philippines, and a Family Courts Act⁹ that provides for the jurisdiction of Family Courts in cases involving domestic violence, violence against women, and cases wherein the complainant or defendant is a child.

⁵ See Rep. Act No. 9262, §5(e)(1) or deprivation of custody or access to her minor children; Rep. Act No. 9262, §3(c) or all forms of abuse, including verbal or emotional abuse and marital infidelity as psychological violence; Rep. Act No. 9262, §3(d)(2) or deprivation or threat or deprivation of financial resources and the right to the use or enjoyment of conjugal or community asset.

⁶ The Philippines is the only country in Asia that has no divorce law, and the only other country aside from Malta that has no divorce law all over the world.

⁷ Art. 36 of the Family Code of the Philippines was patterned after Art. 39 of the Canon Law.

⁸ See Rep. Act No. 7877, The Anti-Sexual Harassment Act of 1995 (1995); Rep. Act No. 8353, The New Anti-Rape Act of 1997 (1997); Rep. Act No. 8505, The Rape Victims Assistance Act (1998); Rep. Act No. 6955, An Act Declaring Unlawful the Matching of Filipino Mail Order Brides to Foreigners (1990); Rep. Act No. 9208, The Anti-Trafficking in Persons Act of 2003 (2003); Rep. Act No. 9262, The Anti-Violence Against Women and Their Children Act of 2004 (2004); and Rep. Act No. 7610, Child Protection Act, (1991).

⁹ Rep. Act No. 8369 (1997).

II. ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 OR REPUBLIC ACT NO. 9262¹⁰

Of all the laws on VAW, Republic Act No. 9262, otherwise known as the Anti- Violence Against Women and Their Children Act of 2004 (hereinafter referred to as the “Anti-VAWC Act”) is the first to address the problem of domestic violence, has the widest range of reliefs for women who are victims of violence, and the most controversial. The purposes of this article are a) to help inform the reader, especially lawyers, judges and women about the law, its spirit and intent, b) to show the liberal use of protection orders in other countries in order to ensure the protection of women’s right to equality and right to security, c) answer the constitutional issues or questions often raised by respondents, d) present the issues and problems in the enforcement of Republic Act No. 9262, e) give the policy recommendations of an expert group on legislations on VAW which was organized by the United Nations, and f) provide recommendations for legal and judicial reform and for government agency implementers.

The Anti-VAWC Act is the result of a decade of advocacy of victim-survivors, women’s human rights advocates and women’s organizations, women legislators, and government agencies¹¹. The passage of this law marks the state’s compliance with its obligations under the Convention on the Elimination of Discrimination Against Women (CEDAW)¹² which the Philippines ratified in 1981, and the Optional Protocol on the CEDAW, which was ratified by the Philippine Senate¹³ in 2003. The law includes in its Declaration of Policy¹⁴ that:

...the State values the dignity of women and children and guarantees full respect for human rights, and its obligation to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child and other

¹⁰ The law took effect on March 27, 2004.

¹¹ Notably the National Commission on the Role of Filipino Women (NCRFW) and the Department of Social Welfare and Development. The Chairperson of the NCRFW was Aurora Javate - De Dios, former member of the CEDAW Committee. Among the women’s rights organizations that worked for the passage of the law were: Sama-samang Inisyatiba ng Kababaihan sa Pagbabago ng Batas at Lipunan (SIBOL), Women’s Crisis Center, Inc., Democratic Socialist Women of the Philippines, and Womanhealth, Inc.. Among the women legislators who sponsored the law were Representative Josefina Jison, Representative Bellaflor Angara-Castillo, Senator Eloisa Ejercito, and Senator Loren Legarda. Senate President Franklin M. Drilon gave priority to RA No. 9262 and RA No. 9208.

¹² As of 2007, 186 states have ratified the CEDAW.

¹³ Senate President Franklin M. Drilon spearheaded the ratification of the Optional Protocol.

¹⁴ CONST. (1987), art. II, §11.

international human rights instruments of which the Philippines is a party.

The Optional Protocol to the CEDAW is an inquiry procedure through which the CEDAW Committee can review complaints filed by individual women for grave and systematic violation of their rights guaranteed by the Convention. As of November 27, 2007, ninety countries have ratified the Optional Protocol. Among the cases that the CEDAW Committee has favorably acted upon was the case of Sahide Goekce (deceased) versus Austria, submitted by The Vienna Intervention Centre Against Domestic Violence and the Association for Women's Access to Justice in July 2004. The CEDAW Committee wrote that in the light of the long record of battering, by not responding to the victim's call immediately, the police are accountable for failing to exercise diligence to protect Sahide Goekce. Among the Committee's Recommendations to the State party was to: "ensure enhanced coordination among law enforcement and judicial officers and also ensure that all levels of the criminal justice system (police, public prosecutors, judges) routinely cooperate with non-governmental organizations that work to protect and support women victims of gender-based violence." The CEDAW Committee required the State party to give due consideration to the views of the Committee and submit within six months, a written response and action taken on the recommendations.

In 1992, the CEDAW Committee issued General Recommendation No. 19, which provides that gender-based violence is an issue of gender discrimination. On December 20, 1993, the UN General Assembly adopted the Declaration of Elimination of Violence Against Women (DEVAW), which defined violence against women for the first time and enjoined governments to take specific measures to eliminate VAW.¹⁵

The broad definition of VAW in Republic Act No. 9262 was patterned after the DEVAW. It refers to:

...any act or 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

¹⁵ Rowena Guanzon, et. al., *Engendering the Philippine Judiciary*, 48 (2006).

economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.¹⁶

The Anti-VAWC Act covers all forms of violence, such as physical, sexual, psychological, and economic. Economic abuse includes deprivation of support to the wife and minor children, which is a common problem in the Philippines. Marital infidelity constitutes psychological violence, a legal development which gives women the relief of a criminal action for violation of the Anti-VAWC Act aside from the criminal complaint for Concubinage, which is difficult to prove because the law requires cohabitation or sexual intercourse under scandalous circumstances.

A. FEATURES OF THE ANTI-VAWC ACT¹⁷

The law is gender-specific, protecting the rights of women and their children. Only women may file actions under the Anti-VAWC Act, while the offenders may either be men or women with whom the victims are or were in lesbian relationships.¹⁸ The definition includes past or present marital, live-in, sexual or dating relationships. The inclusion of men with whom the victim-survivor has a common child was included in the Bicameral Committee upon the request of the Department of Social Welfare and Development to protect the rights of women who are not married to the fathers of their children, including children of rape victims.

Notwithstanding the clarity of the intent of the law in its title, Anti-Violence Against *Women* and Their Children Act of 2004, which means that the law gives relief to women only and not men, at least four family court judges have issued a Temporary Protection Order (TPO) against women using The Anti-VAWC Act, the most recent of which is one issued in December 2008 in favor of a male petitioner who is a foreigner. This problem will be discussed at length in subsequent paragraphs.

The Anti-VAWC Act provides for the remedy of a protection order in a civil action or in criminal action, aside from the criminal action for violation of Republic Act No. 9262. An *ex parte* Temporary Protection Order shall be issued by the Judge within twenty-four hours from the filing

¹⁶ Rep. Act No. 9262, §3.

¹⁷ This was taken from the expert paper written by Attorney Guanzon for the Expert Group Meeting on Good Practices in Legislation on Violence Against Women held at the United Nations Office in Vienna, Austria last 26th to 28th of May 2008. This can be accessed at un.org.

¹⁸ The first known case of a criminal action filed by a woman against her lesbian partner under Rep. Act No. 9262 was filed in Metro Manila.

of the verified application upon a finding that there is reasonable ground to believe that an imminent danger of violence to the woman and her children exists or is about to recur. After hearing on the merits, a Permanent Protection Order (PPO) may be granted.

The relief of Temporary and Permanent Protection Order may be filed as an independent action, or together with an action for damages, support, custody, legal separation, dissolution of the community property or nullity of marriage. If the offended party chooses to file a criminal action, the petition for protection order is deemed instituted with the criminal action¹⁹ so that a Temporary Protection Order may be issued during the trial. In case of conviction, the permanent protection order shall issue as a matter of course. If it results to an acquittal, where the judgment declares that the quantum of evidence is not enough to sustain a conviction beyond reasonable doubt, the court shall determine whether or not to issue a permanent protection order.²⁰

Following the Framework for model legislation on domestic violence by the UN Special Rapporteur on VAW, the Anti-VAWC Act has:

1. Complaints Mechanism and Duties of Police Officers

Sec. 29. Duties of prosecutors and court personnel to inform the woman of her rights, remedies, procedure, and privileges for indigent litigants.

Sec. 30. Duties of *Barangay* (village) Officials and Law Enforcers: They must respond immediately to a call for help by entering the dwelling if necessary whether or not a protection order has been issued and ensure the safety of the victim; confiscate deadly weapon; transport the victim to a safe place of their choice or to a clinic or hospital; assist the victim in taking personal belongings from the house; ensure enforcement of protection orders issued by the village official or by the courts.

Sec. 31. Duties of health care providers.

Sec. 32. Duties of other government agencies and local government units, such as education and information campaign on VAW and the law.

¹⁹ A.M. No. 04-10-11 SC, § 33(b) (2004).

²⁰ A.M. No. 04-10-11 SC, § 33(b) (2004).

2. *Ex Parte* Protection Order

An *ex parte* Temporary Protection Order (“TPO”) shall be issued by the Judge within twenty-four (24) hours from the filing of the verified application upon a finding that there is reasonable ground to believe that an imminent danger to the woman exists or is about to recur. A Permanent Protection Order may be issued after hearing on the merits, following Summary Procedure to expedite the proceeding. Note that a protection order includes an order granting the woman and her children support, so as to enable the woman to regain control of her life. Thus, imminent danger to the woman does not mean only physical danger or threat thereof, but includes the entirety of violence committed against her, including deprivation of support or deprivation of custody of minor children, which must be addressed with dispatch in the TPO. It is not sufficient that the abuser stays away from the woman and her children. He must also deliver support, which as manager of the conjugal or community assets or as the spouse who has an income, he is required to do under the Family Code.

i. Who May File for Protection Orders

A petition for protection order may be filed by any of the following²¹ :

- 1) offended party
- 2) parents or guardians
- 3) ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity
- 4) officers or social workers of the Department of Social Welfare and Development or social workers of local government units (provinces, cities, municipalities)
- 5) police officers, preferably those in women and children’s desks
- 6) *Punong Barangay* (chairperson of the village council) or *kagawad* (council member)
- 7) lawyer, counselor, therapist or healthcare provider of the petitioner

At least two (2) concerned responsible citizens of the city or municipality where the violence occurred and who has personal knowledge of the offense.

²¹ Rep. Act No. 9262, §9 (2004).

If the petitioner is not the offended party, the petition must be accompanied with an affidavit of the petitioner attesting to the fact that he or she has authority to file the petition, the circumstances of the abuse, and the circumstances of consent given or refusal to consent of the offended party to file the petition.²²

ii. Contents of a Protection Order

A TPO can include: a) removal of the offender from the home regardless of ownership; b) delivery of financial support to the woman and minor children; c) automatic remittance of a percentage of the offender's salary or income as support for the woman and children; d) stay away order; 4) granting of temporary custody of minor children to the woman; 5) possession of a vehicle or automobile regardless of ownership; 6) the posting of a Bond to Keep the Peace to ensure compliance with the protection order. A TPO is valid for thirty (30) days and shall be extended until judgment. Many Family Court Judges include an automatic renewal clause in the TPO to ensure that there is no gap or opportunity for respondents to abuse the complainants pending litigation.

A Permanent Protection Order shall be issued after hearing on the merits following the Summary Procedure. It can include the reliefs in the TPO and permanent removal of the offender from the house and other reliefs. A Bond to Keep the Peace may be included in the Temporary or Permanent Protection Order to ensure compliance. Violation of a protection order is a criminal offense, and the Judge may also use her or his power of contempt.

iii. Barangay Protection Order

A *Barangay* Protection Order ("BPO") shall be issued by any *barangay* official, ordering the offender to desist from committing further acts of physical abuse or threats of physical abuse. Mediation or conciliation of VAW and their children cases in the *barangay* is prohibited by The Anti-VAW Act.²³ The features of a BPO are:

- a) it is granted *ex parte* within twenty-four (24) hours from application

²² A.M. No. 04-10-11 SC, §10 (2004).

²³ Rep. Act No. 9262, §33 (2004).

- b) it may be issued by the Chairperson of the *barangay* council, or in her or his absence, by any *barangay* official
- c) it is granted on grounds of physical abuse or threats of physical abuse only
- d) it is valid for fifteen (15) days only
- e) its violation is a criminal offense punishable with thirty (30) days imprisonment
- f) it may be availed of whether or not the woman seeks relief in court by applying for a protection order

A BPO may not include an award of support, or any relief other than an order for the respondent to stay away from the woman and her children for fifteen days. An order of support may be issued by a judge in an application for protection order.

3. Addresses Both Criminal and Civil Proceedings

The law gives the woman the remedy of protection order which she can file as an independent civil action or together with other civil actions such as legal separation or nullity of marriage, or dissolution of community property, custody, support or damages.

A woman may also file a criminal action for violation of The Anti-VAWC Act and an application for a protection order is deemed included in the criminal action unless reserved or filed separately.

4. Provides for Support Services for Victims

Sec. 40. Programs and services for victims such as free legal assistance, counseling, psycho-social services, rehabilitation programs and livelihood assistance.

5. Programs for Perpetrators

Sec. 41. Counseling and treatment of offenders; the Court can order the offender to submit to psychiatric treatment or confinement.

6. Training for Police and Judicial Officials²⁴

The law provides that all agencies involved in responding to VAW and their children cases shall be required to undergo education and training on a) the nature and causes of VAW and their children, b) legal rights and remedies of victims, c) services available, d) legal duties of police officers to make arrests and offer protection and assistance, and f) techniques for handling incidents of VAW. The Police in coordination with local governments shall establish an education and training program on how to handle VAW cases properly.

The Judiciary has its own training on gender equality and gender-sensitivity for judges conducted by the Philippine Judicial Academy. The Supreme Court has a Committee on Gender-Responsiveness of the Judiciary (CGRJ) with Justices as chairpersons.²⁵

7. In addition, The Anti-VAWC Act has Provisions:

a) Prohibiting the mediation or conciliation of VAWC cases in the *barangay*.

b) The Anti-VAWC Act repeals the provisions in the Local Government Code²⁶ which require mediation by *barangay* officials when cases are punishable with imprisonment of less than one year or fine of Five Thousand Pesos. It also provides for a prohibition against judges and *barangay* officials from influencing the woman to compromise or abandon any of the reliefs under The Anti-VAWC Act.²⁷ Violation of this provision by a judge or *barangay* official shall render her or him administratively liable under section 33 of Republic Act No. 9262. Section 27 of the Rule on Violence Against Women and Their Children²⁸ as the rule for trial of cases under the Anti-VAWC Act, also provides for administratively liability of judges who violate Section 33 of the law.

c) *Providing for an Inter-Agency Council on Violence Against Women*²⁹, composed of national government agencies tasked to have programs to eliminate VAW and to monitor the implementation of the law. The Inter-

²⁴ Rep. Act No. 9262, §42 (2004).

²⁵ Rowena Guanzon, et. al., *The Davide Court: Its Contributions to Gender and Women's Rights*, 53-76 (2006). Justic Adolfo S. Azcuna and Justice Conchita Carpio Morales are the current chairpersons of the CGRJ.

²⁶ Rep. Act No. 7160, §410-413 (1992).

²⁷ Rep. Act No. 9262, §33 (2004).

²⁸ A.M. No. 04-10-11 SC (2004).

²⁹ Rep. Act No. 9262, §39 (2004).

Agency Committee on VAWC³⁰ formulated the Implementing Rules and Regulations on Republic Act No. 9262, which provides for duties of and guidelines and training programs for implementers.

d) *Providing for Battered Woman Syndrome as a justifying circumstance*, where the woman does not incur any criminal or civil liability.³¹ In no case shall custody of minor children of a woman suffering from battered woman syndrome shall be granted to the batterer.³²

Before Republic Act No. 9262 was passed, the Supreme Court defined Battered Woman Syndrome (BWS) in *People vs. Marivic Cenosa* (2004), but held that it was only a mitigating circumstance. With Republic Act No. 9262, BWS is now a justifying circumstance, and the courts will be assisted by expert witnesses such as psychologists and psychiatrists in determining whether the accused woman is suffering from BWS or not.

e) *Providing for exemption of persons intervening from liability*. Any person, private individual or police authority or *barangay* official who responds or intervenes without using restraint greater than necessary to ensure the safety of the victim shall not incur any criminal, civil or administrative liability.³³

This provision was included upon the persistent request of non-government organizations engaged in helping battered women, whose members are vulnerable to retaliation suits filed by the husbands or partners of their clients. A similar provision granting immunity from suit to social workers can be found in Republic Act No. 7610, also known as the Anti-Child Abuse Act, and its Implementing Rules and Regulations.

f) *Providing for a bold departure order against the respondent*³⁴.

g) *Providing for the rights of victims* to be treated with dignity, avail of legal assistance, support services from the local governments and Department of Social Welfare and Development, to be entitled to all legal remedies and support under the Family Code, and to be informed of their rights and services available, including the right to apply for a protection

³⁰ Composed of, among others, the Department of Social Work and Development, the National Commission on the Role of Filipino Women, the Philippine National Police and the Department of Justice, with three non-government organizations including the Women's Crisis Center, Inc.

³¹ Rep. Act No. 9262, §26 (2004).

³² Rep. Act No. 9262, §28 (2004).

³³ Rep. Act No. 9262, §34 (2004).

³⁴ Rep. Act No. 9262, §37 (2004).

order,³⁵ the right to confidentiality of all records and their name, address, telephone number, school, business address, employer or other identifying information of a victim or an immediate family member³⁶ and exemption from payment of docket fee and other court expenses if she is an indigent or there is an immediate necessity due to imminent danger or threat of danger.³⁷

*b) Providing for additional paid leave of absence from work up to ten (10) days in addition to other paid leaves under the Labor Code and Civil Service Rules and Regulations, extendible when necessary.*³⁸

Of all the reliefs under Republic Act No. 9262, the “most potent weapon” of battered women, as Chief Justice Reynato S. Puno calls it, is the protection order.

The succeeding paragraphs will provide a survey and comparative analysis of different laws on violence against women from different legal systems. This will provide a holistic perspective on the very idea of protection order and to illustrate that it is not only the international community but also the municipal laws of other jurisdictions which recognize the importance of urgency in providing adequate relief for victims of domestic violence.

III. THE RELIEF OF PROTECTION ORDER

The Anti-VAWC Act provides an immediate relief to victim-survivors of domestic violence in the Philippines. Chief Justice Reynato S. Puno, in his speech, described the protection order as the “principal weapon” of the victim of domestic violence.³⁹ He said that in including such TPO in the law, “we have joined the more advanced countries of the world in trusting our criminal justice system to give relief to victims of domestic violence.”⁴⁰

The U.S. courts, which have been issuing emergency Temporary Restraining Orders (TROs) to protect battered women since the 1970s, are ahead of our jurisdiction in addressing the need for swift action on domestic

³⁵ Rep. Act No. 9262, §34 (2004).

³⁶ Rep. Act No. 9262, § 44 (2004).

³⁷ Rep. Act No. 9262, §38 (2004).

³⁸ Rep. Act No. 9262, §43 (2004). The Civil Service Commission has a circular enforcing the 15-day paid leave for VAW survivors who are government employees, but the private sector has not followed suit.

³⁹ Speech by Chief Justice R. Puno, *Launching of the Rule on Violence Against Women and their Children* (2004).

⁴⁰ *Id*

violence. Using the criteria in the case of *Blazel v. Bradley*⁴¹ which will be discussed in the later sections, the *ex parte* TPO under the Anti-VAWC Act does not violate the due process clause. It allows only a judge to determine the issuance of an *ex parte* TPO. It provides for a post-deprivation hearing (filing of an Opposition, preliminary conference and hearing on the merits) within a given period. It requires a verified petition based on personal knowledge and containing specific allegations of what happened, where, when and who did what to whom.

The United States enacted the Violence Against Women Act in 1994,⁴² a Federal law. It was referred to as the US' first attempt at a multi-pronged legal response to the epidemic of violence against women.⁴³ This lengthy and wide-ranging legislation has subsequently been amended, reauthorized, and expanded.⁴⁴ It remains both a practical tool for dealing with violence against women and a symbol of national commitment to eradicate the problem.⁴⁵

Rutgers University School of Law Professor Sally F. Goldfarb wrote:

The statute authorized the appropriation of 1.62 billion dollars in federal funds to support a broad range of programs, including *training of police, prosecutors, and judges; support of battered women's shelters, community domestic violence projects, and rape prevention programs; creation of a national toll-free domestic violence telephone hotline; and research and data collection.* The requirements imposed on grant recipients were devised to serve a variety of goals, such as improving outreach to victims in underserved minority populations and encouraging government agencies to collaborate with non-governmental organizations. The outpouring of federal funds triggered by VAWA has had enormous positive impact.⁴⁶ (Emphasis supplied)

Under this law, a protection order is also provided for victims of domestic violence. It includes:

(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or

⁴¹ *Blazel v. Bradley*, 698 F.Supp. 756, 57 USLW 2359, (1988) [hereinafter referred to as *Blazel v. Bradley*].

⁴² U.S. Violence Against Women Act, Public Law 103-322 (1994).

⁴³ Sally F. Goldfarb, *The Legal Response to Violence Against Women in the United States of America: Recent Reforms and Continuing Challenges* (2008), available at [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20\(Sally%20Goldfarb\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20(Sally%20Goldfarb).pdf).

⁴⁴ *Id.* at 1.

⁴⁵ *Id.*

⁴⁶ *Id.* at 3.

threatening acts or harassment against, sexual violence or contact or communication with or physical proximity to, another person, including any temporary or final orders issued by civil or criminal courts whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(B) any support, child custody or visitation provisions, orders, remedies, or relief issued as part of a protection order, restraining order, or stay away injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, dating violence, sexual assault, or stalking.⁴⁷

Goldfarb also enumerates the contents of a TPO and wrote:

A number of features make these orders particularly useful. A protection order can be obtained in a self-contained legal proceeding, without initiating any other legal action such as a divorce or criminal prosecution. A temporary order can be granted on an ex parte, expedited basis, after which a final order may be granted following notice to the respondent and a hearing. In some jurisdictions, emergency orders are available all day and night, seven days a week. The procedure for obtaining an order is usually designed to be simple enough for a victim to proceed without an attorney, but legal representation improves a victim's chances of obtaining a favorable outcome.⁴⁸

Enacting laws prohibiting domestic violence and giving survivors remedies and punishing perpetrators is an important step towards eliminating violence against women. As of 2006, eighty-nine States have some legislative provisions that specifically address domestic violence. Of these, sixty (60) States have specific domestic violence laws; seven have violence against women laws; fourteen (14) have specific provisions on domestic violence in their penal codes; five have civil procedures for the removal of perpetrators; and one State addresses domestic violence through its family law. There are 102 States that have no known specific legal provisions on domestic violence.⁴⁹

⁴⁷ U.S. Violence Against Women Act, Public Law 103-322, §20 (1994).

⁴⁸ Goldfarb, *supra* note 38.

⁴⁹ Study of the United Nations Secretary General: *Ending Violence Against Women: From Words to Action* at 113 (2006).

A. PROTECTION ORDERS IN OTHER JURISDICTIONS

Section 8(k) of The Anti-VAWC Act states that courts may provide “other forms of relief as it [the court] deems necessary to protect and provide for the safety of the petitioner and any designated family or household member.” To help the courts determine what other reliefs may be included in the protection order, the following is an enumeration of domestic violence laws of several countries and the salient features of their protection order. These may be useful for judges especially that Section 4 of The Anti-VAWC Act provides that the Act shall be “liberally construed to promote the protection and safety of victims of violence against women and their children, and Section 8 which provides that protection orders “should serve the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim’s daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life.” It is worthy to note that some Family Court Judges have issued TPOs which grant battered women relief outside of the list in The Anti-VAWC Act, such as an order to the banks not to allow the withdrawal of funds in the name of the petitioner and respondent or the respondent alone, so as to answer for the award of support *pendente lite*, and an order addressed to the Register of Deeds not to allow the transfer of title of conjugal or community property of the spouses if the woman does not personally appear before the Registrar to affix her signature, to avoid forgery and dissipation of the property pending litigation. In a recent case, the Supreme Court held that a protection order may be issued against the respondent husband and other persons because they conspired to commit violence against the woman.⁵⁰

1. Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 (South Africa)⁵¹

The Parliament of the Republic of South Africa enacted this law, which was accordingly signed by the President Nelson Mandela so as to “prevent and prohibit unfair discrimination and harassment; to promote equality and eliminate unfair discrimination; to prevent and prohibit hate speech; and to provide for matters connected therewith.”⁵²

⁵⁰ A Motion for Reconsideration is pending.

⁵¹ South Africa Promotion of Equality and Prevention of Unfair Discrimination Act, Act No. 4 (2000).

⁵² South Africa Promotion of Equality and Prevention of Unfair Discrimination Act, Act No. 4 (2000).

The law expressly prohibits unfair discrimination on ground of gender. It states:

Subject to section 6, no person may unfairly discriminate against any person on the ground of gender, including—

- (a) *gender-based violence;*
- (b) *female genital mutilation;*
- (c) the system of preventing women from inheriting family property;
- (d) any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child;
- (e) *any policy or conduct that unfairly limits access of women to land rights, finance, and other resources;*
- (f) discrimination on the ground of pregnancy;
- (g) limiting women's access to social services or benefits, such as health, education and social security;
- (h) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to the steps to reasonably accommodate the needs of such persons;
- (i) systemic inequality of access to opportunities by women as a result of the sexual division of labour.⁵³ (Emphasis supplied)

Complaints for violations of this Act may be brought in the equality court. It is mandated that “the equality court before which proceedings are instituted in terms of or under this Act must hold an inquiry in the prescribed manner and determine whether unfair discrimination, hate speech or harassment, as the case may be, has taken place, as alleged.”⁵⁴

The reliefs provided in the Act are more plentiful as compared to the reliefs provided in Republic Act No. 9262. The South African legislation provides that:

⁵³ South Africa Promotion of Equality and Prevention of Unfair Discrimination Act, Act No. 4, §8 (2000).

⁵⁴ South Africa Promotion of Equality and Prevention of Unfair Discrimination Act, Act No. 4, §21(1) (2000).

21. (2) After holding an inquiry, the court may make an appropriate order in the circumstances, including—

- (a) an interim order;
- (b) a declaratory order;
- (c) an order making a settlement between the parties to the proceedings an order of court;
- ...
- (e) after hearing the views of the parties or, in the absence of the respondent, the views of the complainant in the matter, an order for the payment of damages in the form of an award to an appropriate body or organization;
- ...
- (g) an order to make specific opportunities and privileges unfairly denied in the circumstances, available to the complainant in question;
- (h) an order for the implementation of special measures to address the unfair discrimination, hate speech or harassment in question;
- (i) an order directing the reasonable accommodation of a group or class of persons by the respondent;
- (j) an order that an unconditional apology be made;
- (k) an order requiring the respondent to undergo an audit of specific policies or practices as determined by the court;
- (l) an appropriate order of a deterrent nature, including the recommendation to the appropriate authority, to suspend or revoke the license of a person;
- (m) a directive requiring the respondent to make regular progress reports to the court or to the relevant constitutional institution regarding the implementation of the court's order;
- (n) an order directing the clerk of the equality court to submit the matter to the Director of Public Prosecutions having jurisdiction for the possible institution of criminal proceedings in terms of the common law or relevant legislation;

The prohibition against unfair discrimination on ground of gender in this Act was rooted in the provisions of the Constitution of the Republic of South Africa Act 200 of 1993 which expressly prohibit discrimination.

The concept of unfair discrimination does not mean that to guarantee equality, the law must have the same treatment for all, men and

women alike. The Supreme Court of South Africa had the occasion to rule on the meaning of equality in *Hugo v. President of the Republic of South Africa*.⁵⁵ The petitioner was a prisoner serving an effective sentence of 15 years and six months, who had a son who was born in December 1982 and whose wife had died in 1987. In June 1994, the President of South Africa signed Presidential Act 17 of 1994 where a special remission of the remainder of their sentences was granted to certain categories of prisoners, including persons described as "all mothers in prison on May 10, 1994 with minor children under the age of 12 years."

Since petitioner Hugo did not fall within any of the categories, he launched an application against President Nelson Mandela and the Minister of Correctional Services for an order of his immediate release from prison. Hugo reasoned that the mentioned portion of the Presidential Act was unconstitutional for being discriminatory on the ground of gender, favoring mothers only.

The reason of the President for issuing the Presidential Act was that it would serve the interests of the children, stating that mothers are, generally speaking, primarily responsible for the care of small children. The Court acknowledged that rationale of the President as a fact, which is one of the root causes of women's inequality in society.

The Court dismissed the petition, stating that:

It is not enough for appellants to say that the impact of the discrimination in the case under consideration affected members of a group that were not historically disadvantaged. They must still show in the context of this particular case that the impact of the discrimination on the people who were discriminated against was not unfair. ... *We need, therefore, to develop a concept of unfair discrimination which recognizes that although a society which affords each human being equal treatment on the basis of equal worth and freedom is our goal, we cannot achieve that goal by insisting upon identical treatment in all circumstances before that goal is achieved. Each case, therefore, will require a careful and thorough understanding of the impact of the discriminatory action upon the particular people concerned to determine whether its overall impact is one which furthers the constitutional goal of equality or not.*⁵⁶

The test used by the Court to determine if the impact was unfair was two fold: a) to look not only at the group who has been disadvantaged but at

⁵⁵ *Hugo v. President of the Republic of South Africa*, Case CCT 11/96, (1997) [hereinafter referred to as *Hugo v. President of the Republic of South Africa*].

⁵⁶ *Hugo v. President of the Republic of South Africa*.

the nature of the power in terms of which the discrimination was effected and, b) the nature of the interests which have been affected by the discrimination.⁵⁷

Using its scrutiny test, the Court found that it would have been impossible for the President to release all the fathers in prison as well as the mothers. Male prisoners outnumber female prisoners almost fifty fold, and the release of male prisoners would have caused a public outcry. It stated that, "As many fathers play only a secondary role in child rearing, the release of male prisoners would not have contributed as significantly to the achievement of the President's purpose as the release of mothers... In the circumstances it must be accepted that it would have been very difficult, if not impossible, for the President to have released fathers on the same basis as mothers. Were he obliged to release fathers on the same terms as mothers, the result may have been that no parents would have been released at all."⁵⁸ The Court said that fathers could apply for remission of sentence on an individual basis and concluded that: "the Presidential Act may have denied them an opportunity it afforded women, but it cannot be said that it fundamentally impaired their rights of dignity or sense of equal worth. The impact upon the relevant fathers was therefore...not unfair."⁵⁹

2. Protection Against Domestic Violence Act (Bulgaria)⁶⁰

This law governs the rights of individuals having suffered from domestic violence, the protection measures, and the procedure applicable to the imposition of such measures.⁶¹

The protection measures that may be granted under this law shall include any of the following:

...placing the respondent under an obligation to attend specialised programmes; advising the victims to attend recovery programmes.⁶²

⁵⁷ *Hugo v. President of the Republic of South Africa*.

⁵⁸ *Hugo v. President of the Republic of South Africa*, at 48.

⁵⁹ *Hugo v. President of the Republic of South Africa*, at 49.

⁶⁰ Bulgaria Protection Against Domestic Violence Act, State Gazette Issue No. 27, (2005).

⁶¹ Bulgaria Protection Against Domestic Violence Act, State Gazette Issue No. 27, §1(1) (2005).

⁶² Bulgaria Protection Against Domestic Violence Act, State Gazette Issue No. 27, § 5(1) (2005).

Under this law, the regional courts in Bulgaria, sitting *ex parte* and *in camera*, shall issue an emergency protection order within 24 hours from receipt of the application or request if the application or request contains data concerning a direct and impending threat to the life or health of the victim.⁶³ The police authorities shall see to it that the protection order is properly executed.⁶⁴

In cases where data exists showing a direct and imminent threat to the life or health of the victim, the latter may file an application with the police authorities for the imposition of emergency measures and the bodies of the Ministry of Interior shall forward to the court the application together with the explanations of the respondent, if such explanations have been provided, and the record drawn of any measures imposed, while depicting the circumstances that call for emergency court protection.⁶⁵

The law of Bulgaria *allows the police to take emergency measures by removing the batterer from the survivor's home*. The Austrian Federal Law on Protection against Family Violence⁶⁶ also provides for power of the police to immediately evict and bar the batterer from the victim's home for 10 to 20 days. If there is a need to extend the period, the victim can go to court to get a protective temporary injunction against her batterer.

Germany has a similar legal provision authorizing the police to evict the batterer in its Act to Improve Civil Court Protection Against Acts of Violence and Unwelcome Advances as well as to Facilitate the Allocation of the Marital Dwelling in the event of Separation.⁶⁷

3. Integrated Protection Against Gender-Based Violence (Spain)⁶⁸

Spain's Ley Integral introduces new measures for the protection, prevention, support and recuperation of the victims of gender-based violence.⁶⁹ It covers education, social issues, care and assistance for victims and children, civil regulations concerning the family and cohabitation, and punishment and education through the penal system.

⁶³ Bulgaria Protection Against Domestic Violence Act, State Gazette Issue No. 27, § 18(1) (2005).

⁶⁴ Bulgaria Protection Against Domestic Violence Act, State Gazette Issue No. 27, § 21 (2005).

⁶⁵ Bulgaria Protection Against Domestic Violence Act, State Gazette Issue No. 27, § 4(2) (2005).

⁶⁶ Austrian Federal Law on Protection against Family Violence (1996).

⁶⁷ Germany Act to Improve Civil Court Protection Against Acts of Violence and Unwelcome Advances as well as to Facilitate the Allocation of the Marital Dwelling in the event of Separation (2002).

⁶⁸ Spain Integrated Protection Against Gender-Based Violence, Organic Law 1/2004,(2004).

⁶⁹ Daniel Albarracin, *New gender-based violence law has workplace implications* (2008) available at <http://www.eurofound.europa.eu/eiro/2005/01/feature/es0501105f.htm>.

Although The Anti-VAWC Act provides that the survivor shall have a ten-day paid leave in addition to other paid leave,⁷⁰ the domestic violence law of Spain includes a number of measures related to employment which the Anti-VAWC Act does not have. These measures include:

...victims of gender-based violence will have rights in terms of absence from work, geographical mobility within their job and suspension of the employment contract with a right to return;

...victims may join a specific programme for integration in employment (specially created if necessary), with financial assistance, in order to protect both the victims and children who are indirect victims of the violence;

...the social security rights and benefits of workers who are victims of gender-based violence will be preserved, whether they are wage-earners or self-employed. In the case of the former, if they stop working in order to protect themselves or use their right to integrated social care, *their obligation to pay contributions will be suspended for a period of six months, which will be considered as a period during which contributions have been paid for the purposes of social security benefits*, and they will continue to be considered as contributors to the system. In the case of the latter, the period of suspension of employment with a right to return will be considered as a period in which contributions have been paid for the purposes of retirement, permanent disability, death or survival, maternity and unemployment benefits; and

...where employers use 'internship' contracts to replace workers who have suspended their employment contract or exercised their right to a change of location or workplace because they are victims of gender-based violence, they will receive a 100% subsidy of their general social security contributions in respect of the replacement worker. The contributions will be subsidised during the full period of suspension of the replaced worker's contract, or six months in cases of geographic mobility or change of workplace.⁷¹

4. Law on Access of Women to a Life Free of Violence (Mexico)⁷²

This law aims to guarantee women's "access to a life free of violence that favors their development and well-being according to the principles of equality and nondiscrimination."⁷³

⁷⁰ Rep. Act No. 9262, §43 (2004).

⁷¹ Rep. Act No. 9262, §43 (2004).

⁷² E. Eduardo Castillo, 'Mexico Enacts Law on Domestic Violence' (2008), available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/01/AR2007020101658.html>.

The law also spells out the authorities' obligations to issue "emergency protection orders" to help victims of violence, including removing aggressors from homes in domestic violence cases, suspending attackers' visits to children and freezing assets to guarantee alimony payments.⁷⁴

5. The Summary Jurisdiction (Domestic Violence) Law (Cayman Islands)⁷⁵

This Law provides domestic orders and interim domestic orders akin to a protection order. The Law provides:

3) If on an application for an order under this section a magistrate is satisfied -- that --

...the respondent has used violence against the applicant or a child of the family; or

...the respondent has threatened to use violence against the applicant or a child of the family and has used violence against some other person; or

...the respondent has in contravention of an order made under subsection (2) threatened to use violence against the applicant or a child of the family; and

...that the applicant or a child of the family is in danger of being physically injured by the respondent (or would be in such danger if the applicant or child were to enter the matrimonial home),

...the magistrate may make one or both of the following orders, that is to say an order requiring the respondent to leave the matrimonial home; or an order prohibiting the respondent from entering the matrimonial home.

The expiry of an interim domestic order does not prejudice the making of another interim domestic order.⁷⁶ A magistrate may include in an order a provision that the respondent must not incite or assist any other person to use, or threaten to use, violence against the applicant or, as the case may be, a child of the family.⁷⁷

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Cayman Islands The Summary Jurisdiction (Domestic Violence) Law, Law No. 20 of 1992 (1992).

⁷⁶ Cayman Islands The Summary Jurisdiction (Domestic Violence) Law, Law No. 20 of 1992, § 4(4) (1992).

⁷⁷ Cayman Islands The Summary Jurisdiction (Domestic Violence) Law, Law No. 20 of 1992, § 5(2) (1992).

The law also provides that:

8. (1) If an order contains a provision that the respondent must not –

- (a) use violence against the applicant; or
- (b) use violence against a child of the family; or
- (c) enter the matrimonial home,

a police officer may arrest the respondent without warrant if he has reasonable cause for suspecting that the respondent is in breach of any such provision.

(2) Whether or not an order contains any of the provisions referred to in subsection (1), a police officer may arrest the respondent without warrant if the police officer has reasonable grounds for believing that arrest is necessary–

(a) to prevent the respondent, in furtherance of his domestic dispute with the applicant from –

- (i) causing physical injury to himself or any other person; or
- (ii) suffering physical injury; or
- (iii) causing loss or damage to property; or
- (iv) committing an offence against public decency; or
- (v) causing an unlawful obstruction of the highway; or

(b) to protect a child or other vulnerable person from the respondent when continuing his domestic dispute with the applicant.⁷⁸
(Emphasis supplied)

The second paragraph of the abovementioned section allows the warrantless arrest of the respondent on certain situations that are not found in R.A. No. 9262.

6. The Domestic Violence Act of 1994 (Malaysia)

Under this law, the court may issue an interim protection order during the pendency of investigations relating to the commission of an

⁷⁸ Cayman Islands The Summary Jurisdiction (Domestic Violence) Law, Law No. 20 of 1992, §§8(1)-(2) (1992).

offense involving domestic violence, which prohibits the person against whom the order is made from using domestic violence against his or her spouse or former spouse or a child or an incapacitated adult or any member of the family, as the case may be, as specified in the order.⁷⁹

The court may, in proceedings involving a complaint of domestic violence, issue any one or more of the following protection orders:

- (a) A protection order restraining the person against whom the order is made from using domestic violence against the complainant;
- (b) A protection order restraining the person against whom the order is made from using domestic violence against the child;
- (c) A protection order restraining the person against whom the order is made from using the domestic violence against the incapacitated adult.⁸⁰

The following may be included in the protection orders:

...

- (e) requiring the person against whom the order is made to permit any protected person to have the continued use of a vehicle which has previously been ordinarily used by the protected person or persons;
- (f) the giving of any such direction as is necessary and incidental for the proper carrying into the effect of any order made under any of the above mentioned paragraphs,
- (g) to have effect for such period, not exceeding twelve months from the date of the commencement of such orders, as may be specified in the protection order.⁸¹

In contravention of the protection order:

- (1) Any person who willfully contravenes a protection order or any provision thereof shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.
- (2) Any person who willfully contravenes a protection order by using violence on a protected person shall, on conviction, be liable to a fine not exceeding four thousand ringgit or to imprisonment for a term not exceeding one year or both.

⁷⁹ Malaysia Domestic Violence Act of 1994, part 2 §4 (1994).

⁸⁰ Malaysia Domestic Violence Act of 1994, part 2 §5 (1994).

⁸¹ Malaysia Domestic Violence Act of 1994, part 2 §6(f) (1994).

(3) Any person who is convicted for a second or subsequent violation of a protection order under subsection (2) shall be punished with imprisonment for a period of not less than seventy-two months and not more than two years, and shall also be liable to a fine not exceeding five thousand ringgit.

(4) For the purposes of this section a "protection order" includes an interim protection order.⁸²

In contrast, *The Anti-VAWC Act does not provide a punishment for a second or subsequent violation of a protection order.*

7. Protection from Domestic Violence Act 1997 (Mauritius)

Under this Act, a protection order means an interim or permanent protection order restraining a spouse from engaging on conduct which may constitute an act of domestic violence.⁸³

On an application being made for a protection order, the court shall cause notice thereof to be served on the respondent spouse who shall further be summoned to appear before Court on such day as may be fixed by the Court (not later than 7 days of the date of the application) to show cause why the order applied for should not be made.⁸⁴

The Law further provides that:

(3) An application for a protection order shall be heard as a civil case between the parties who shall be free to call witnesses in support of their respective case.

(4) In determining an application for a protection order, the court shall have regard to the following:

(a) the need to ensure that the aggrieved spouse is protected from domestic violence;

(b) the welfare of any child affected or likely to be affected, by the respondent spouse's conduct;

(c) the accommodation needs of the aggrieved spouse, his children as well as those of the respondent and his children;

⁸² Malaysia Domestic Violence Act of 1994, part 2 §8(4) (1994).

⁸³ Mauritius Protection from Domestic Violence Act of 1997, §2 (1997).

⁸⁴ Mauritius Protection from Domestic Violence Act of 1997, §3(2) (1997).

(d) any hardship that may be caused to the respondent spouse or to any of his children as a result of the making of the order;

(e) any other matter which the Court may consider relevant.⁸⁵

Where a protection order is issued, the court may further:

(e) prohibit the respondent spouse from damaging property of the aggrieved spouse;

(f) prohibit the respondent spouse from causing or attempting to cause another person to engage in conduct referred to in paragraphs (d) and (e);

(g) specify the conditions on which the respondent spouse may:

(i) be on premises on which the aggrieved spouse resides, works or which he frequents; or

(ii) approach or contact the aggrieved spouse or a child of the aggrieved spouse;

(h) *proprio motu*, make a provisional occupation or tenancy order for such time as it thinks fit, where it is satisfied that such an order, although not applied for, is essential for the effective protection of the aggrieved person.⁸⁶

8. Domestic Violence Act of 1991 (Trinidad and Tobago)⁸⁷

Subject to this Act, a protection order may:

(f) where the order contains a prohibition of the kind referred to in paragraph (d) relating to conduct of an offensive or harassing nature that amounts to willful or reckless neglect of a child or dependent person – direct the respondent to ensure that reasonable care is provided in respect of that child or dependent person;

...

(i) prohibit the respondent from causing another person to engage in the conduct referred to in paragraph (d), (e) or (g);

(j) specify conditions subject to which the respondent may be on premises or in a locality specified in the order;

⁸⁵ Mauritius Protection from Domestic Violence Act of 1997, §3(4) (1997).

⁸⁶ Mauritius Protection from Domestic Violence Act of 1997, §3(5) (1997).

⁸⁷ Trinidad and Tobago Domestic Violence Act, Act No. 10 of 1991 (1991).

(k) direct that the applicant or respondent, or both, seek appropriate counseling or therapy from a person or agency approved by the Minister in writing.⁸⁸

Where the Court proposes to make a protection order or an interim protection order and the respondent is before the Court, the Court shall before making the order explain to the respondent:

- (a) the purpose, terms and effect of the proposed order;
- (b) the consequences that may follow if the respondent fails to comply with the terms of the proposed order; and
- (c) the means by which the proposed order may be varied or revoked.⁸⁹

Where a police officer believes on reasonable grounds that a person has committed or is committing an offense under this Act, he shall make an arrest without warrant.⁹⁰

9. Domestic Violence Act of 1995 (New Zealand)

Under this Act, the standard conditions of a protection order are:

- (1) It is a condition of every protection order that the respondent must not--
 - (a) Physically or sexually abuse the protected person; or
 - (b) Threaten to physically or sexually abuse the protected person; or
 - (c) Damage, or threaten to damage, property of the protected person; or
 - (d) Engage, or threaten to engage, in other behaviour, including, intimidation or harassment, which amounts to psychological abuse of the protected person; or
 - (e) Encourage any person to engage in behaviour against a protected person, where the behaviour, if engaged in by the respondent, would be prohibited by the order.

⁸⁸ Trinidad and Tobago Domestic Violence Act, Act No. 10 of 1991, part II §5 (1991).

⁸⁹ Trinidad and Tobago Domestic Violence Act, Act No. 10 of 1991, part II §15 (1991).

⁹⁰ Trinidad and Tobago Domestic Violence Act, Act No. 10 of 1991, part IV §22 (1991).

(2) Without limiting subsection (1) of this section, but subject to section 20 of this Act, it is a condition of every protection order that at any time other than when the protected person and the respondent are, with the express consent of the protected person, living in the same dwelling house, the respondent must not —

...

(e) Make any other contact with the protected person (whether by telephone, correspondence, or otherwise), except such contact—

(i) As is reasonably necessary in any emergency; or

(ii) As is permitted under any order or written agreement relating to custody of, or access to, any minor; or

(iii) As is permitted under any special condition of the protection order; or

(iv) As is necessary for the purposes of attending a family group conference within the meaning of section 2 of the Children, Young Persons, and Their Families Act 1989.

(3) Where, pursuant to a direction made under section 17 of this Act, a protection order applies against an associated respondent, the provisions of this section apply, with all necessary modifications, in respect of the associated respondent.⁹¹

Where the Court makes a protection order, that order applies for the benefit of any child of the applicant's family.⁹² And when the Court makes a protection order against the respondent, the Court may also direct that the order apply against a person whom the respondent is encouraging, or has encouraged to engage in a behavior against a protected person, where that behavior, if engaged in by the respondent, would amount to domestic violence.⁹³

Under this law, a Court must not decline to make a protection order merely because of the existence of other proceedings (including, but not limited to, proceedings relating to custody of, or access to, a minor) between or relating to the parties, whether or not those proceedings also relate to any other person.⁹⁴

⁹¹ New Zealand Domestic Violence Act, part II §19 (1995).

⁹² New Zealand Domestic Violence Act, part II §16 (1995).

⁹³ New Zealand Domestic Violence Act, part II §17 (1995).

⁹⁴ New Zealand Domestic Violence Act, part II §15 (1995).

10. Law on Development and Protection of Women (Lao PDR)⁹⁵

Under this Law, women and children who are victims of domestic violence have the right to “to seek assistance from other family members, neighbors, relatives or report to village authorities aiming at educating the violators, stopping the violence and changing bad behavior for the family to be the one of concord and happiness. In case of domestic violence resulting in serious impact constituting a criminal offense, the victim has the right to report to police officials for remedies in accordance with regulations and laws.”⁹⁶ Women and children also have the right to access to counseling, legal consultation, physical and mental treatment, and other services.⁹⁷

If the violence is not serious, mediation⁹⁸ and education of the abuser by the family, neighbors, consultation units, and village mediation units can be done to settle domestic violence disputes.⁹⁹ If mediation is unsuccessful or if the violence is extremely serious, the police authorities shall institute legal proceedings and if there is strong evidence regarding the violence and that it amounts to an offense, the police shall investigate the case and send relevant data to a prosecutor to initiate the case in court.¹⁰⁰

In Asia, *only Lao PDR, India and the Philippines have a gender-specific anti-domestic violence law*, which is recognition of the fact that domestic violence is gender-based violence, committed against women because they are subordinated as women. This is notwithstanding the CEDAW Committee’s Recommendation No. 19 which defines domestic violence as gender-based violence and gender discrimination.

11. Domestic Violence, Crime and Victims Act (United Kingdom)¹⁰¹

This Act criminalizes the breach of non-molestation orders under the United Kingdom’s Family Law Act of 1996 and makes common assault an offense which can cause the arrest of the aggressor.

⁹⁵ Law on Development and Protection of Women (Lao PDR), No. 08/NA (2004), available at <http://www.mfa.gov.sg/vientiane/Laws/Women%20and%20Children%20Law%20&%20Decree%20FINAL.pdf>.

⁹⁶ Law on Development and Protection of Women (Lao PDR), No. 08/NA, art. 33 (2004).

⁹⁷ Law on Development and Protection of Women (Lao PDR), No. 08/NA, art. 38 (2004).

⁹⁸ Mediation is not an option in the Philippine legal system. It is precisely the situation that *ANTI-VAWC ACT* seeks to avoid i.e. when the woman is forced by either a technicality or an “appeal” to her “sense of family” to forgo her right to litigate and ultimately her right to a violence-free life.

⁹⁹ Law on Development and Protection of Women (Lao PDR), No. 08/NA, art. 35 (2004).

¹⁰⁰ Law on Development and Protection of Women (Lao PDR), No. 08/NA, art. 36 (2004).

¹⁰¹ United Kingdom Domestic Violence, Crime and Victims Act (2004).

The Act also extends the availability of restraining orders under the Protection from Harassment Act 1997. In this law, courts can consider making a restraining order even when a person has been acquitted of an offense, where the court believes a restraining order is necessary to protect a person from harassment.¹⁰²

IV. CONSTITUTIONAL CHALLENGES

Since The Anti-VAWC Act is gender-specific, its far-reaching implications are bound to precipitate reactions and criticism as it gains widespread application. It will inevitably be pitted against the fundamental laws that bind the Philippine legal framework. The availability of *ex parte* TPOs alone incites objections by lawyers, even judges, who lack the understanding that violence against women is a public crime, not a private matter, and a hearing on the TPO will only delay the relief and give an opportunity for the respondent to retaliate. Long conditioned by a patriarchal culture and the lack of a law on domestic violence, judges need a paradigm shift and seminars on gender in order to be able to fully enforce the law.

Not surprisingly, it was not long before a petition for review was filed in August 2007 by a husband against whom a TPO was issued challenging the very validity of the law itself even as it tries to carve out a niche as a breakthrough mechanism for the protection of rights of women and children.

The constitutionality of Republic Act No. 9262 which took effect on 27 March 2004, is a novel and transcendental issue which is of great importance not only to Filipino women and children but also to advocates of women's human rights all over the world. Several arguments have been posed against its constitutionality most especially with regard to the issue of due process and equal protection, and undue delegation of judicial power to *barangay* officials. One of the main purposes of this article is precisely to address these constitutional issues and to explain that the framework of The Anti-VAWC Act was in fact pursuant to a constitutional mandate which is the protection of women and their children, guarantee fundamental equality of women and men before the law, and in compliance with the Republic of the Philippines' State Obligation under the CEDAW to prevent VAW, ensure women's rights to substantive equality and eliminate gender discrimination.

¹⁰² United Kingdom Domestic Violence, Crime and Victims Act, §§12-13 (2004).

A. THE ANTI-VAWC ACT HAS IN ITS FAVOR THE PRESUMPTION OF CONSTITUTIONALITY

It must be stressed that The Anti-VAWC Act has in its favor the presumption of constitutionality.

Every law is presumed to be valid and constitutional until the contrary is shown. All doubts are resolved in favor of the validity of the act.¹⁰³ This presumption is rooted in the doctrine of separation of powers which enjoins upon the three coordinate departments of the Government a becoming courtesy for each other's acts. The theory is that every law, being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law [*Cawaling vs. Commission on Elections, et al.*,¹⁰⁴ *Garcia vs. Executive Secretary*,¹⁰⁵ *Philippine Judges Association vs. Prado*¹⁰⁶]. Because of this presumption of validity of laws, the principle laid down in *Tan vs. Bausch & Lomb, Inc.*¹⁰⁷ is that, "unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands."

Legislators, as well as judges, are bound to obey and support the Constitution, and it is to be understood that lawmakers have weighed the constitutional validity of every act they pass. Hence, the presumption is always in favor of the constitutionality of a statute; every reasonable doubt must be resolved in favor of the statute, not against it; and the courts will not adjudge it invalid unless its violation of the Constitution is, in their judgment, clear, complete and unmistakable.¹⁰⁸

If the law is fairly and reasonably open to more than one construction, what must be adopted is the construction which will reconcile the statute with the Constitution and avoid the consequence of unconstitutionality.¹⁰⁹ The Supreme Court quoted Black on Interpretation of Laws:

In construing a doubtful or ambiguous statute, the courts will presume that it was the intention of the legislature to enact a valid,

¹⁰³ See *Alvarez v. Guingona*, G.R. No. 118303, 252 SCRA 706, Jan. 31, 1996, and *Basco v. PAGCOR*, G.R. No. 91649, 197 SCRA 68, May 14, 1991.

¹⁰⁴ *Cawaling v. COMELEC, et al.*, G.R. No. 146319, 368 SCRA 456-457, Oct. 26, 2001.

¹⁰⁵ *Garcia v. Executive Secretary*, G.R. No. 100883, 204 SCRA 523, Dec. 2, 1991.

¹⁰⁶ *Philippine Judges Association v. Prado*, G.R. No. 105371, 227 SCRA 705, Nov. 11, 1993.

¹⁰⁷ *Tan v. Bausch & Lomb, Inc.*, G.R. No. 148420, 478 SCRA 123-124, Dec. 15, 2005.

¹⁰⁸ *Francisco, V. J.*, *Statutory Construction*, 244 (1968), citing *Black on Interpretation of Laws* 110 (2nd Ed.).

¹⁰⁹ *Id.*, at 246.

sensible, and just law, and one which should change the prior law no further than may be necessary to effectuate the specific purpose of the act in question. The construction should be in harmony with this assumption whenever possible.¹¹⁰

Hence it follows that the courts will not so construe the law as to make it conflict with the constitution, but will rather put such an interpretation upon it as will avoid conflict with the constitution and give it full force and effect, if this can be done without extravagance. If there is doubt or uncertainty as to the meaning of the legislature, if the words of provisions of the statute are obscure, or if the enactment is fairly susceptible of two or more constructions, that interpretation will be adopted which will avoid the effect of unconstitutionality, even though it may be necessary, for this purpose, to disregard the more usual or apparent import of the language employed.¹¹¹

The Supreme Court reiterated this in the case of *People vs. Zeta*,¹¹² wherein the constitutionality of R.A. No. 145 was put into question when a penal provision in the said law was alleged to be an infringement of the constitutional prohibition against *ex post facto laws*. The intent of the legislature on whether the law would have a retroactive or prospective effect was not clear. The Supreme Court upheld the constitutionality of R.A. No. 145 and ruled that:

(The law) should not be interpreted in a manner that would render its application violative of a constitutional inhibition.

Strict construction to prevent retroactive operation has often been applied in order that the statute would not violate contract obligations or interfere with vested rights. The principal explanation offered by the courts, however, is that the statute must be construed so as to sustain its constitutionality and thus prospective operation will be presumed where a retroactive operation would produce invalidity (Sutherland Statutory Construction, Vol. 2, p. 135).¹¹³

B. R.A. No. 9262 DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION

An argument against the statute's constitutionality is that it violates the equal protection clause of the Constitution. Since oppositors of the law

¹¹⁰ *Id* at 78.

¹¹¹ *Id* at 93.

¹¹² *People v. Zeta*, G.R. No. L-7140, 98 Ph. 145, Dec. 22, 1955.

¹¹³ *People v. Zeta*, G.R. No. L-7140, 98 Ph. 147, Dec. 22, 1955.

are invoking a fundamental right as basis for their dissent, such will be addressed if only to put matters to rest once and for all.

The Anti-VAWC Act does not violate the Equal Protection clause. The main consideration in achieving full equality before the law is not sameness in treatment but the impact of the law on the individual or group concerned. The concept of equality does not mean the same treatment, but an equality in outcome or results, which is called “substantive equality” by the CEDAW Committee. In the Constitution, this is evident in the provision on *fundamental* equality before the law of women and men.¹¹⁴

Substantive equality is defined by the CEDAW Committee as that which:

[R]equires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken in to account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences.¹¹⁵

The Committee further explains –

Equality of results is the logical corollary of de facto or substantive equality. These results may be quantitative and/or qualitative in nature, that is, women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision-making and political influence, and women enjoying freedom from violence.¹¹⁶

To further elucidate the concept of substantive equality, it is important to discuss the distinction between the different equality models or approaches and their implication to women’s human rights, in general, and women’s human right to equality with men and human right to freedom from violence, in particular.

¹¹⁴ CONST. (1987), art. II §14.

¹¹⁵ General Recommendation No.25, CEDAW/par. 8 (2004).

¹¹⁶ *Id* at par. 9.

1. Approaches to Equality

Women's fight for equality throughout the years has evolved under different models/ approaches to equality: (a) formal model of equality; (b) the protectionist approach; and (c) the substantive model of equality.¹¹⁷

The formal equality model regards men and women as being the same, thus, advocates of this model argue that men and women should, therefore, be treated in like manner. The problem with this position is that it ignores the biological and gender (social) differences between women and men; and by failing to take into account these differences, a formal equality approach may in fact perpetuate discrimination and disadvantage.¹¹⁸

The case of *Bradwell vs. Illinois* (1873) is an illustration of how a formal model in equality could perpetuate discrimination and disadvantage. In the said case, the US Supreme Court upheld a U.S. law that prevented women from entering the legal profession by rejecting the claim of Bradwell, a female attorney, that the law was a violation of her right to equality and discriminatory on the basis of her sex. According to the Supreme Court –

(M)an is or should be woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life...The paramount destiny and mission of women are to fulfill the noble and benign office of wife and mother.¹¹⁹

The formal equality model, thus, is (1) either blind to the differences between men and women, and therefore, treats them in the same manner; or (2) justifies differential treatment between the two that results to further discrimination. Either way, formal equality merely perpetuates prior disadvantage and vulnerabilities, leading to further inequality.

The protectionist approach, on the other hand, recognizes differences between men and women but it regards these differences as weaknesses or inferiority of women, thus the need to protect women. An example of this approach is illustrated by legislations prohibiting night work for women, in order to protect women from the unsafe environment at

¹¹⁷ Savitri W.E. Goonesekere, *The Concept of Substantive Equality and Gender Justice in South Asia* 8 (2008), available at <http://www.unifem.org.in/PDF/The%20Concept%20of%20Substantive%20Equality%20-final%20-%2031-12-07.pdf>

¹¹⁸ Fredman, S. and Spencer, S., "Beyond Discrimination: It's Time for Enforceable Duties on Public Bodies to Promote Equality of Outcomes", E.H.R.L.R. Issue 6, 601 (2006).

¹¹⁹ Savitri W.E. Goonesekere, *The Concept of Substantive Equality and Gender Justice in South Asia* 8 (2008), available at <http://www.unifem.org.in/PDF/The%20Concept%20of%20Substantive%20Equality%20-final%20-%2031-12-07.pdf>, citing *Bradwell v. Illinois*, 83 U.S. 446 (1873).

night. This approach reinforces the inferior status of women and does not address the issue of discrimination of women on account of their gender. Instead of addressing the problem of unsafe environment for women, the protectionist approach in effect controls women.

The substantive equality model goes beyond the formal equality and protectionist model. It proceeds from the assumption that women are “not vulnerable by nature, but suffered from imposed disadvantage” and that “if these imposed disadvantages were eliminated, there was no further need for protection.”¹²⁰ Thus, the substantive equality model gives prime importance to women’s contexts, realities and experiences and the outcomes or results of acts and measures directed, at or affecting them, with a view to eliminating the disadvantages they experience as women.

A substantive equality model is a multi-dimensional approach to equality, consisting of what Sandra Fredman¹²¹ termed as the “four equality goals,”¹²² namely:

First, it should aim *to break the cycle of disadvantage resulting from ongoing discrimination against a group*. Central to this is the need to facilitate genuine choice by providing the resources necessary to give everyone the possibility of making their own life choices. This is in effect a deepened and more detailed concept of equality of opportunity. Evidence of lack of equality in this sense is frequently provided by differential outcomes, such as under-representation in a workforce or under-achievement at school. Thus in many cases, correcting the outcome will be a conclusive demonstration that opportunities have been equalised. However, there may be other ways of taking steps to *break the cycle of disadvantage associated with groups which have traditionally been the victims of discrimination*. Measures addressing the division of labour within the family would fall into this category.

A second aim of substantive equality is *to promote respect for the equal dignity and worth of all*, redressing stigma, stereotyping, humiliation and violence because of membership of a status group. Harassment, homophobic bullying, *domestic violence*, degrading treatment of the elderly, and hate crimes are all examples of breaches of this aspect of equality.

Thirdly, equality duties should go beyond identical treatment in meeting needs, *to accommodate and affirm different identities, aspirations and*

¹²⁰ Goonesekere, *supra* note 111.

¹²¹ Sandra Fredman is a Professor of Law at Oxford University and Fellow of Exeter College, Oxford.

¹²² Goonesekere, *supra* note 111, at 603.

needs. Instead of expecting all to conform to the standard of the majority or dominant group, equality duties should recognise and uphold differing identities. This requires duties of accommodation, which expressly require changes in apparently neutral criteria or institutions in order to permit different identities to flourish. Thus, while the concept of equality disallows detrimental treatment on status-based grounds, it should affirm status-based difference where this is part of an individual's positive identity.

The final aim of equality is *to facilitate full participation in society.* Procedurally, this refers to equality in decision-making. Measures need to be taken to be sure that those whose voice has not been heard because of previous discrimination and disadvantage have equal rights to participate in decision-making, whether it be welfare, socio-economic rights, employment rights or equality legislation. Active participation of the groups in question is crucial if intervention is to avoid being patronising, erroneous and unlikely to succeed. (Emphasis supplied)

2. R.A. No. 9262 was Legislated Using the Substantive Equality Framework

First, it was enacted pursuant to the state obligation of the Republic of the Philippines under the CEDAW and other international instruments. It was passed because of the state's compelling interest to prevent and address the serious problem of violence committed against women in the context of intimate relationships – recognized all over the world as one of the most insidious forms of gender discrimination which violate the rights of women protected by the Constitution and international law such as the Universal Declaration of Human Rights.¹²³ Although not a treaty, the Declaration, as an authoritative listing of human rights, has become a basic component of international customary law, binding all states.¹²⁴ R.A. No. 9262, therefore, falls under the State Policy in the Constitution which states that the Philippines adopts the generally accepted principles of international law as part of the law of the land.¹²⁵

Second, The Anti-VAWC Act was legislated to impart the message, once and for all, that *violence against women in the context of intimate relations is a serious human rights violation; it is not a private matter, it is a crime.* The law aims to

¹²³ *Universal Declaration of Human Rights*, U.N. GAOR, 3rd Sess., U.N. Doc. A/810 (1946).

¹²⁴ Sohn, L., "The New International Law: Protection of the Rights of Individuals rather Than States," 32 Am. U. L. Rev. 1, 17 (1982), cited in Mackinnon, C., *Sex Equality*, 40 (2007).

¹²⁵ CONST. (1987), art. II §2.

promote the equality, dignity and human rights of women and children by breaking the silence that surrounds this form of violence.

Third, The Anti-VAWC Act is grounded on the experiences of women who are victims of spousal or partner-abuse. For instance, the acts enumerated which the law considers as violence are based on actual stories of women who have been abused by their intimate partners. The reliefs made available to the women by the law are likewise consistent with the rights of women as human beings under the Constitution, the CEDAW and General Recommendations, the non-discrimination clause in the U.N. Charter and the Universal Declaration of Human Rights.

Fourth, the Anti-VAWC Act was legislated in order to facilitate women's full participation in society. Violence against women had been held to be insidious, because it violates a myriad of other rights simultaneously, which in turn prevents women's right to full participation in society. *Women who are victims of domestic violence are unable to fulfill their rights as equal human beings, such as their "right to life, liberty and security of person" under Section 3 of the Universal Declaration of Human Rights.* Hence, the law grants them reliefs to ensure their right to equality, protection and personal safety. The Anti-VAWC Act is *a means* by which women can fulfill and enjoy their rights in all fields – civil, political, social, economic rights. The provision on protection orders, for instance, was aimed precisely at "safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life."¹²⁶

Furthermore, the State has a compelling interest in enacting RA No. 9262. The compelling interest of the state in enacting the law, which is to protect the *rights* of women and children to be free from abuse, and to promote the right of fundamental equality of women and their right to personal safety is based on the reality that domestic violence victimizes women as a group, and when women are abused, their children are victims also. In her sponsorship speech, Senator Eloisa Estrada¹²⁷ acknowledged that R.A. No. 9262 is an "offshoot of several initiatives in other countries and the government's commitment to put an end to domestic abuse, as enshrined in various U.N. declarations, of which the Philippines is a signatory." She cited the statistics on battering of women. There is no statistics to show that men as a group are also victims of domestic violence.

¹²⁶ Rep. Act No. 9262, §8 (2004).

¹²⁷ Chairperson of the Senate Committee on Women and Family in 2004.

The Senator cited the alarming statistics on domestic violence:

In fact, based on the reports of the Philippine National Police, current official statistics on violence against women and children show that physical injuries had the highest number of cases at 5,058 in 2002 representing 55.63% of total cases reported (9,903). For the first semester of 2003, there were 2,381 reported cases out of 4,354 cases which represent 54.31%. If we examine the total number of women in especially difficult circumstances served by the Department of Social Welfare and Development (DSWD) for the year 2002, there are 1,417 physically abused/maltreated cases out of the total 5,608 cases. Likewise, there are 1,091 DSWD cases out of a total number of 3,471 cases for the first semester of 2003. Female violence comprises (sic) more than 90% of all forms of abuse and violence and more than 90% of these reported cases were committed by the women's intimate partners such as their husbands and live-in partners.

Supreme Court rulings on equal protection support the equality approach that recognizes substantial distinctions and reasonable classification as not class legislation, by upholding the constitutionality of laws based on substantial distinctions and reasonable classification between groups. In *Lao Ichong vs. Hernandez*,¹²⁸ the Supreme Court sustained the constitutionality of the Retail Trade Law prohibiting aliens from engaging in retail trade in the Philippines. The Supreme Court held that:

The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislations, which is limited either in the object to which it is directed or by territory within which it is to operate. *It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions* both as to privileges conferred and liabilities enforced. *The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not* (2 Cooley, Constitutional Limitations, 824-825). (Emphasis Supplied)

Government action in favor of protecting the rights of women has been sustained by the Supreme Court in *Philippine Association of Service Exporters, Inc. vs. Hon. Franklin M. Drilon and Tomas D. Achacoso*,¹²⁹ where the Supreme Court upheld the Secretary of Labor's Department Order No. 1,

¹²⁸ *Lao Ichong v. Hernandez*, G.R. No. L-7995, 101 Ph. 1164, May 31, 1957.

¹²⁹ *Philippine Association of Service Exporters, Inc. v. Drilon and Achacoso*, G.R. No. L-81958, 163 SCRA 392-393, June 30, 1988.

Series of 1988 entitled, "Guidelines Governing the Temporary Suspension of Deployment of Filipino Domestic and Household Workers." The Supreme Court was satisfied that the classification made—the preference for female workers—rests on substantial distinctions. Penned by Justice Abraham Sarmiento, the Supreme Court decision states that:

As a matter of judicial notice, the Court is well aware of the unhappy plight that has befallen our female labor force abroad, especially domestic servants, amid exploitative working conditions marked by, in not a few cases, *physical and personal abuse. The sordid tales of maltreatment suffered by migrant Filipina workers, even rape and various forms of torture, confirmed by testimonies of returning workers, are compelling motives for urgent Government action...*

The same, however, cannot be said of our male workers. In the first place, there is no evidence that, except perhaps for isolated instances, our men abroad have been afflicted with an identical predicament. The petitioner has proffered no argument that the Government should act similarly with respect to male workers. *The Court, of course, is not impressing some male chauvinistic notion that men are superior to women.* What the Court is saying is that it was largely a matter of evidence (that women domestic workers are being ill-treated abroad in massive instances) and not upon some fanciful or arbitrary yardstick that the Government acted in this case. It is evidence capable indeed of unquestionable demonstration and evidence this Court accepts. The Court cannot, however, say the same thing as far as men are concerned. (Emphasis supplied)

The above decision shows the protectionist inclination of the Supreme Court, although it justified the government's suspension of deployment of women for work abroad by citing the data on the abuse suffered by Filipino women abroad. Although the government's action was temporary in nature, many women lost the opportunity to work abroad without the government providing for an alternative job for them in the country. The Supreme Court also fell short of instructing the government to ensure the safety of Filipino women working abroad and the prosecution of offenders.

In 1996, in what is now known as the Virginia Military Institute (VMI) Case, in *United States v. Virginia, VMI*,¹³⁰ the U.S. Supreme Court took up the for the first time, the constitutionality of an all-male public school. The question before the Supreme Court was whether Virginia's creation of a

¹³⁰ 518 U.S. 515 (1996)

women's-only academy, as a comparable program to the male-only Virginia Military Institute, was enough to satisfy of the Fourteenth Amendment's Equal Protection Clause. Having had their male-only admissions policy found unconstitutional by the Fourth Circuit Court, Virginia proposed to create the Virginia Women's Institute for Leadership (VWIL) as a parallel program for women.

Justice Ginsburg reversed the lower court's findings on the remedy proposed by Virginia, and moves the Court closer to adopting strict scrutiny. First, she relied heavily on the "exceedingly persuasive justification" for maintaining a gender-based classification. Specifically, the government action must show "at least that the classification serves 'important governmental objectives and that the discriminatory means employed' are 'substantially related to the achievement of those objectives.'" [United States v. Virginia,¹³¹ quoting *Mississippi University for Women v. Hogan*,¹³² quoting *Wengler v. Druggists Mut. Ins.*¹³³] Second, that the Court required that the justification offered for the sex classification be the real reason for it, not imagined or invented later, and not relying on overbroad generalizations about the different talents, capacities, or preferences of males and females.¹³⁴

It is an established principle of constitutional law that the guarantee of equal protection of the laws is not violated by a legislation based on reasonable classification. A classification is considered reasonable as long as (1) it rests on substantial distinctions which make real differences; (2) must be germane to the purpose of the law; (3) must not be limited to existing conditions only but applies to future conditions which are identical to those of the present; and (4) must apply equally to all members of the same class.¹³⁵

In the words of Justice Frankfurter: "The equality at which the 'equal protection' clause aims is not a disembodied equality. The Fourteenth Amendment enjoins the 'equal protection of the laws' and laws are not abstract propositions. They do not related to abstract unites A, B and C, but are expressions of policy arising out of specific difficulties, addressed to the attainment of specific ends by the use of specific remedies. The Constitution

¹³¹ 518 U.S. 515, 533 (1996).

¹³² 458 U.S. at 724 (1982).

¹³³ 446 U.S. 142, 150 (1980).

¹³⁴ Mackinnon, C., *Sex Equality* (2007), p. 360.

¹³⁵ See *People v. Cayat*, G.R. No. L-45889, 68 Phil. 18, May 5, 1939; *See also Peralta v. Comelec*, G.R. No. L-47771, 82 SCRA 30, March 11, 1978; *Felwa v. Salas*, G.R. No. L-26511, 18 SCRA 606, Oct. 29, 1966; *Philippine Judges Association v. Prado*, G.R. No. 105371, 227 SCRA 703, Nov. 11, 1993; *Lim v. Pacquing*, G.R. No. 115044, 240 SCRA 649, Jan. 27, 1995.

does not require things which are different in fact or opinion to be treated in law as though they were the same.”¹³⁶

3. RA No. 9262 Does Not Violate the Due Process Clause of the Constitution

Another argument against the constitutionality of RA No. 9262 is that it violates the due process clause of the Constitution. This argument is particularly postulated against the provision regarding the issuance of an *ex parte* TPO, especially the removal of the batterer from the house.

The constitutionality of this *ex parte* TPO has been the subject of many attacks, in the media and in the courts, including pending a petition for review in the Supreme Court wherein the husband questions the constitutionality of The Anti-VAWC Act after a TPO was issued against him. It is often posited that it violates the man’s right to due process and the equal protection clause. However, the constitutionality of the TPO is buttressed by the fact that it is issued by courts not arbitrarily but based on guidelines set in the law and the *Rule on Violence Against Women and Their Children*.¹³⁷ TPOs are issued *ex parte* by the trial court based on a verified application of the woman and her children. It is issued by the judge because of the urgency and necessity of immediate protection from imminent harm when the court is satisfied that there is reasonable ground to believe that an imminent danger of violence against the woman and her children exists or is about to recur.¹³⁸

In the United States, the District Court of the State of Wisconsin held in *Blazel v. Bradley* that in cases of domestic abuse, Temporary Restraining Orders (“TROs”) issued *ex parte* or without notice, that orders the respondent to avoid the petitioner’s home and stay away from her is not a violation of the right to due process.

The *Blazel*¹³⁹ decision laid down three criteria in determining whether or not there is a violation of due process. The Court said:

Circumstances justifying the postponing of notice and hearing ‘must be truly unusual,’ *Fuentes*, 407 U.S. at 90, 92 S.Ct. at 1999, and must be shown to have met three criteria:

¹³⁶ *Sison v. Ancheta*, G.R. No. L- 61969, 130 SCRA 663, July 25, 1984, citing *Tigner v. Texas*, 310 U.S. 141, 147 (1940).

¹³⁷ A.M. No. 04-10-11 (2004).

¹³⁸ A.M. No. 04-10-11-SC, §15, 26(b) (2004).

¹³⁹ *Blazel v. Bradley*, at 762.

First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance.

As well as permitting deprivation without prior notice and hearing when extraordinary circumstances exist, the Supreme Court has found such action to be constitutional when appropriate safeguards are provided.¹⁴⁰

The *Blazel*¹⁴¹ decision also enumerates the three factors that must be considered in determining the appropriate safeguards in a given situation. The District Court said:

To determine what safeguards must be provided in a particular factual situation, a court must consider three factors: the private interest that will be affected; the risk of an erroneous deprivation under existing procedures and the probable value of additional procedures; and the government's interests, including the burdens imposed by additional procedural requirements.¹⁴²

Moreover, the District Court also effectively explained why TROs can be issued without prior notice to the respondent. The Court said:

Weighing the *Mathews* factors, it is apparent that substantial procedural protections are mandated by the strength of the respondent's interest in his home and family and the evident risk of erroneous deprivation when mere allegations in a verified petition may be the basis for an *ex parte* temporary restraining order. However, the strength of the petitioner's countervailing interest in her home and family, the government's interest in preventing abuse, and the possibility that prior notice may incite domestic violence suggest that those protections should not extend to prior notice.¹⁴³ (Emphasis supplied)

To summarize, TPOs are issued by courts not arbitrarily but based on guidelines in the law and the Rule on Violence Against Women and Their Children (A.M. No. 04-10-11-SC). TPOs are issued *ex parte* by the trial court based not merely on a conclusory claim but on a *verified* application of the woman and her children. It is issued by the judge because of the *urgency and*

¹⁴⁰ *Blazel v. Bradley*, at 763.

¹⁴¹ *Blazel v. Bradley*, at 763.

¹⁴² *Mathews vs. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976); *See also* *Perry vs. Federal Bureau of Investigation*, 781 F.2d 1294 (7th Cir.) (en banc), cert. denied, 479 U.S. 814, 107 S.Ct. 67, 93 L.Ed.2d 25 (1986) (*Mathews* factors applied to deprivations of liberty interests).

¹⁴³ *Blazel v. Bradley*, at 763.

*necessity of immediate protection from imminent harm when the court is satisfied that there is reasonable ground to believe that an imminent danger of violence against the woman and her children exists or is about to recur.*¹⁴⁴

After the TPO is issued, the respondent is given the opportunity to be heard (Section 16, R.A. No. 9262), starting with his right to file an Opposition within five (5) days from notice and hearings are conducted thereafter,¹⁴⁵ which is the essence of the right to due process of law as reiterated in *Levi Strauss & Co., et al. vs. Clinton Apparelle, Inc.*¹⁴⁶

The TPO grants shelter to the woman and her children regardless of ownership of the property, cognizant of the fact that the family could have been living in a rented property or the property is titled in the name of other persons or corporations. The latter is common among upper class couples whose houses are assets of corporations for tax or other purposes. It is a temporary expulsion from the home and hence, the respondent's right to ownership is not impaired. The objective of the law is to ensure that the woman can regain control over her life, and pending litigation she and her children have a roof over their heads, as well as maintenance or support. It could also happen that it would be impossible or dangerous for the woman to stay in the former conjugal home, so that the TPO may include support and rent for a dwelling.

What the law seeks to prevent through this provision is the dislocation of the woman and her children while they seek relief from the courts. This is the reason why the law also provides that the TPO can include the removal of the respondent from the house, regardless of ownership. In the Permanent Protection Order, the court may grant the use of the house to the woman if there is no issue of ownership, or if it is conjugal or community property. It is only fair and reasonable that, *pendente lite*, he who caused the violence must leave the home.

There is therefore no deprivation of property without due process of law. Neither is there a termination of rights as to custody because the custody of minors may be granted to the woman in the TPO *pendente lite*.¹⁴⁷ In the TPO, the respondent is ordered to submit his Opposition within five (5) days from notice, and the date of preliminary conference is stated in the

¹⁴⁴ A.M. No. 04-10-11 §§ 15, 26(b) (2004).

¹⁴⁵ A.M. No. 04-10-11 § 16 (2004).

¹⁴⁶ *Levi Strauss & Co., et al. v. Clinton Apparelle, Inc.*, G.R. No. 138900, 470 SCRA 258, Sept. 20, 2005.

¹⁴⁷ Rep. Act No. 9262, §11(g) (2004).

notice. The Rule on Summary Procedure applies so as to expedite the proceedings, which is also for the benefit of the respondent.

4. R.A. No. 9262 Does Not Violate State Policy

RA No. 9262 does not violate the State policy on the state's recognition of the sanctity of family life and protection and strengthening of the family as a basic autonomous social institution.

The above-stated state policy is precisely the rationale of the passage of R.A. No. 9262, to protect the family especially women and children from violence. Section 12 Article II of the Constitution is not meant to grant immunity to batterers and philanderers in the guise of protecting and strengthening the family, using as it as a sword to force the abused woman and her children to live in the same dwelling with their abuser. It was certainly not the intent of the framers of the Constitution to insist on "family unity" at the expense of the rights of the woman to her personal security, equality, and to be free from violence so that she may fully enjoy her human rights, which encompass civil, political, social and economic rights.

The above argument is supported by provisions in the Constitution. The Declaration of State Principles and State Policies¹⁴⁸ provides that:

Section 11. The State values the dignity of every human person and *guarantees full respect for human rights.* (Emphasis supplied)

Section 14. The State recognizes the role of women in nation-building, and shall ensure the *fundamental equality before the law of women and men.* (Emphasis supplied)

Moreover, R.A. No. 9262 in its Declaration of Policy states that:

It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members, particularly women and children, from violence and threats to their personal safety and security. (Emphasis supplied)

Towards this end, the State shall exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the provisions of the Universal Declaration of Human Rights, the

¹⁴⁸ CONST. (1987), art. II.

Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child and other international human rights instruments of which the Philippines is a party.

The UN Declaration on the Elimination of Violence Against Women¹⁴⁹ laid down the steps that States and the international community should take to ensure the elimination of all forms of violence against women, whether occurring in public or private life.

Section 12, Article II of the 1987 Constitution, which provides that “the State recognizes the family as a basic autonomous social institution,” was taken from the first part of Section 4 of Article II of the 1973 Constitution, and the present Constitution merely adopted Article 26 of the Civil Code (1950) which states, “The family is basic social institution which public policy cherishes and protects.”¹⁵⁰ This provision enjoins the State to strengthen the family, but this has to be reconciled with Article 116 of the Civil Code which provides that “when one of the spouses neglects his or her duties to the conjugal union or brings danger, dishonor or material injury upon the other, the injured party may apply to the court for relief. The court may counsel the offender to comply with his or her duties, and to take such measures, as may be proper.” This is exactly what R.A. No. 9262 does. It addresses violence against women and children committed in the family. In fact, the eminent Arturo M. Tolentino observes:

There are cases when one spouse may justifiably live separate from the other. This is recognized because what the law prohibits is separation by mutual agreement. Thus, a wife may live separate from the husband when the latter maltreats her, or brings a concubine into the conjugal abode, or forces her to live with persons whose habits, characters and language are offensive to her dignity, or compels her to be a mere subordinate of his mother. This justified separation obligates the husband to pay separate maintenance to the wife.¹⁵¹

Domestic violence is a widespread societal problem which has devastating effects on women, the children and the community. Although domestic violence focuses on relationships between adults, the silent victims of violence within the home too often are the children who are not only physically and emotionally injured but who watch, listen and learn that

¹⁴⁹ UN Declaration on the Elimination of Violence Against Women, UNGA/Res/48/104 (1993).

¹⁵⁰ Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 83 (2003).

¹⁵¹ Tolentino, A., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, 494-495, citing Planio and Ripert, 273-274.

violence is an acceptable way to cope with stress or problems or to gain control over another person. Research shows that boys who witness violence between their parents are almost three times more likely to become abusers themselves than sons of non-violent parents. In addition, there is increasing evidence that domestic violence becomes the breeding ground for other social problems such as violent crimes, substance abuse and juvenile delinquency.¹⁵²

The family is the first socialization of children, who must be protected from violence. Susan Moller Okin¹⁵³ wrote, "Rather than being one among many co-equal institutions of a just society, a just family is its essential foundation."¹⁵⁴ Olkin further wrote:

The family is the linchpin of gender, reproducing it from one generation to the next. As we have seen, family as typically practiced in our society is not just, either to women or to children. Moreover, it is not conducive to the rearing of citizens with a strong sense of justice... Women are made vulnerable by constructing their lives around the expectation that they will be primary parents, they become more vulnerable within marriages in which they fulfill this expectation... and they are most vulnerable in the event of separation or divorce, when they usually take over responsibility for children without adequate support from their ex-husbands... I have suggested that... the family needs to be a just institution, and have shown that contemporary theories of justice neglect women and ignore gender. How can we address this injustice?¹⁵⁵

In fact, aside from The Anti-VAWC Act there are other existing laws that protect children and women from members of their family. Among these are: a) marital rape under R.A. No. 8353 or the Anti-Rape Act of 1997; 2) R.A. No. 7610, known as the anti-child abuse law, which punishes parents or ascendants of abused or exploited children; 3) R.A. No. 9208 or the Anti-Trafficking in Persons Act of 2003, which punishes parents or ascendants of victims. R.A. No. 8369 (1995), called The Family Courts Act, provides for the jurisdiction of Family Courts in cases of domestic violence and violence against women and children, where the respondents are husbands of battered women or fathers of abused children.

¹⁵² See Guerrero, S. et al., *The Many Faces of Violence, Abuses and Abusive Relationships in Filipino Families*, 11 (1999); Strauss, M., et al., *Behind Closed Doors: Violence in the American Family*, 16 (1980).

¹⁵³ Professor of Political Science at Stanford University; Co-winner of the American Political Science Association's 1990 Victoria Schuck Award for the best book published in 1989 on women and politics.

¹⁵⁴ *Justice, Gender and the Family*, 17 (1989).

¹⁵⁵ *Id.* at 170-171.

In the Rules of Court there is a recognition that husbands and wives may be adversaries in court, hence the exception in the marital disqualification rule of Section 22, Rule 130, which presumes that there is an identity of interest between husband and wife. In *Alvarez vs. Ramirez*,¹⁵⁶ the Supreme Court held that:

The marital disqualification rule has its own exceptions, both in civil actions between the spouses in criminal cases for offenses committed by one against the other. For instance, *where the marital and domestic relations are so strained that there is no more harmony to be preserved nor peace and tranquility which may be disturbed, the reason based upon such harmony and tranquility fails.* In such a case, identity of interests disappears and the consequent danger of perjury based on that identity is non-existent. (Emphasis supplied)

Even the Supreme Court recognized that dissolving a marriage that does not anymore promote the very foundation of family life of love, trust, support and respect may be the only way of protecting and promoting the family as a social institution. The Supreme Court in *Antonio vs. Reyes*¹⁵⁷ dissolved a marriage on the ground of psychological incapacity and in so doing declared that:

Indeed, Article 36 of the Family Code, in classifying marriages contracted by a psychologically incapacitated person as a nullity, *should be deemed as an implement of this constitutional protection of marriage.* Given the avowed State interest in promoting marriage as the foundation of the family, which in turn serves as the foundation of the nation, *there is a corresponding interest for the State to defend against marriages ill-equipped to promote family life.* Void *ab initio* marriages under Article 36 do not further the initiatives of the State concerning marriage and family, as they promote wedlock among persons who, for reasons independent of their will, are not capacitated to understand or comply with the essential obligations of marriage. (Emphasis supplied)

5. The Anti-VAWC Act is not an Undue Delegation of Judicial power to Barangay Officials

Under Section 14 of The Anti-VAWC Act, the *punong barangay*, or in his or her absence, a *barangay kagawad*, may issue a Barangay Protection Order (hereafter referred to as “BPO”) that directs the perpetrator to desist

¹⁵⁶ *Alvarez v. Ramirez*, G.R. No. 143439, 473 SCRA 76-77, Oct. 14, 2005.

¹⁵⁷ *Antonio v. Reyes*, G.R. No. 155800, 484 SCRA 372-373, Mar. 10, 2006.

from committing or threatening to commit physical violence against the applicant. This duty to issue a BPO is an executive function; it is not judicial in nature.

It is argued that the provision conferring the power to issue BPOs to the *punong barangay* is an undue delegation of judicial power. This argument is erroneous for the reason that a *barangay official's* duty to issue a BPO is pursuant to his/her duty to ensure peace and order in the community and to prevent violence against women and their children. *Barangay* officials, who are elected officials, do not perform judicial functions nor conduct hearings when they issue BPOs. The law prescribes limitations and guidelines. The BPO is limited to stopping physical harm or threat of physical harm [Sections 5 (a) and 5 (b), R.A. No. 9262], a duty which a *barangay* official can do even without a BPO. When the *barangay* official receives an application for a BPO and determines the existence of facts such as intimate or marital relationship of the woman with the person complained of and the allegations of physical or threat of physical abuse, he or she is not performing a judicial function.

Judicial power has been defined in jurisprudence as "the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction."¹⁵⁸ It is the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violation of such rights."¹⁵⁹ Thus, there can be no occasion for the exercise of judicial power unless real parties in interest come to court for the settlement of an actual controversy and unless the controversy is such that it can be settled in a manner that binds the parties by the application of existing laws.¹⁶⁰

In the case of the issuance of BPOs, the *punong barangay* does not settle actual controversies between parties but instead *merely enjoins the perpetrator from committing or threatening to commit physical violence against the applicant*. While the issuance of the BPO involves the determination of some questions of fact, such as the existence of the basis for the application i.e., the residence of the woman and her relationship to her abuser, this function is merely incidental to the exercise of the duty of *barangay* officials to maintain peace and harmony in the community and to give the woman

¹⁵⁸ Bernas, J., The 1987 Constitution of the Republic of the Philippines, A Commentary, 287 (1996), *citing* *Muskrat v. United States*, 219 U.S. 346 [1911].

¹⁵⁹ Bernas, J., The 1987 Constitution of the Republic of the Philippines, A Commentary, 827-828 (1996), *citing* *Lopez v. Roxas*, 17 SCRA 756, 761 [1966].

¹⁶⁰ *Id.* at p. 828.

and/or her children immediate protection from further violence. The *barangay* official, based on his or her determination of facts stated in the application for a BPO, may or may not issue a BPO, although they are enjoined to apply the law in a liberal manner to ensure protection of the woman for a limited period pursuant to Section 4 of The Anti-VAWC Act. It is valid only for a period of fifteen (15) days. Within this period, the woman and her children have legal protection and time to seek the help of the courts, law enforcement agencies, and avail of support services from social workers and local governments.

In a case where the power of the Secretary of Public Works and Communications to cause the removal of dams and dikes in navigable streams was objected to as an undue delegation of judicial power, the Supreme Court ruled that:

The mere fact that an officer is required by law to inquire the existence of certain facts and to apply the law thereto in order to determine what his official conduct shall be and the fact that these acts may affect private, rights do not constitute an exercise of judicial powers. Accordingly, a statute may give to non-judicial officers the power to declare the existence of facts which call into operation its provisions, and similarly may grant to commissioners and other subordinate officer, power to ascertain and determine appropriate facts as a basis for procedure in the enforcement of particular laws.¹⁶¹

The *barangay* official does not conduct a hearing, cannot grant an award of custody or order the perpetrator to deliver support. Neither does he or she rule on who is at fault, or mete out any punishment for the violation of R.A. No. 9262 or violation of the BPO. In fact, the following statement is printed on the BPO: "Violation of this order is punishable by law." Under Section 36 of Rule on VAWC, "(a)n act of violence covered by R.A. No. 9262 constituting a criminal offense shall subject the offender to criminal proceedings, which shall be governed by the Revised Rules of Criminal Procedure. Violation of the BPO is punishable with imprisonment of thirty (30) days, and is within the jurisdiction of the municipal trial courts, not the *barangay*."

Moreover, the issuance of a BPO is a valid and reasonable exercise of police power, a power delegated to the local government through the general welfare clause, Section 16 of R.A. No. 7160, otherwise known as "The Local Government Code of 1991," which reads:

¹⁶¹ *Lovina, et. al. v. Moreno, et. al.*, GR No. L-17821, 118 Ph. 1406, Nov. 29, 1963, *citing* 11 Am. Jur., Const. Law, p. 950, sec. 235.

Section 16. *General Welfare.* - Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. *Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.* (Emphasis supplied)

Police power is a governmental function, an inherent attribute of sovereignty. The fundamental purpose of police power, as held in *Binay vs. Domingo*,¹⁶² is to secure the general welfare, comfort and convenience of the people.

The *punong barangay* has the duty to maintain peace and order in the community and the general welfare of his or her inhabitants. Under Section 389 of R.A. No. 7160, the powers, duties and functions of a *punong barangay* as chief executive include:

Section 389. Chief Executive: Powers, Duties, and Functions—

...

(b) For efficient, effective and economical governance, the purpose of which is the general welfare of the barangay and its inhabitants pursuant to Section 16 of this Code, the *punong barangay* shall:

(1) *Enforce all laws and ordinances which are applicable within the barangay;*

...

(3) *Maintain public order in the barangay* and, in pursuance thereof, assist the city or municipal mayor and the sanggunian members in the performance of their duties and functions;

...

(14) Promote the general welfare of the barangay; and

...

(15) *Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance...* (Emphasis supplied)

In cases of violence against women and their children, the *barangay* officials are the most logical choice for entrusting the duty to immediately provide assistance and protection to abused women, especially women who are poor, who have no access to lawyers, and who reside far from the courts.

¹⁶² *Binay v. Domingo*, G.R. No. 92389, 201 SCRA 513, Sept. 11, 1991.

Since the *barangay* is the basic administrative unit of the country, the *barangay* officials are the most accessible authority and representative of the government which has a State Obligation to prevent and address VAW under the CEDAW. They are also readily available and acquainted with their constituents. Even in remote towns where police stations are kilometers away, the *barangay* hall is always nearby.

However important the *barangay* officials' executive functions under R.A. No. 9262 are, they are not boundless. They are in fact supervised by the Department of Interior and Local Government (DILG). Under the Implementing Rules and Regulations of R.A. No. 9262, the *barangay* officials must submit to the DILG a quarterly report of all the BPOs issued within that period.¹⁶³ Also, after the passage of the law, a memorandum to all the DILG officers nationwide on the implementation of RA No. 9262 and the issuance of the BPO was issued by the former Secretary of DILG, Angelo T. Reyes.

Section 39 of The Anti-VAWC Act provides for an Inter-Agency Committee on Violence Against Women and Children. This is composed of government agencies headed by the Department of Social Welfare and Development and with three non-government women's organizations as members, who are tasked with formulating Implementing Rules and Regulation (IRR) that serve as guidelines for monitoring government agencies in the implementation of RA No. 9262. Section 61 of the IRR gives the guidelines for government agencies, including the DILG, which monitors the implementation of the law by local government units, including the issuance of a *Barangay* Protection Order. The IRR, which has the force of law, is documentary evidence which proves that the issuance of a BPO is an executive function and not a judicial one.

With the above-mentioned counter-arguments to the claims against the constitutionality of RA No. 9262, its validity becomes apparent and firmly established. Being a legislation of utmost importance due to the urgent call to prevent and eliminate domestic violence, which is a compelling interest and State Obligation of the Republic of the Philippines, and given the historical data that it is women, not men, who suffer abuse, the application of RA No. 9262 should never be in doubt. Judges, prosecutors, law enforcers, *barangay* officials and social welfare and development officers have all the tools they need under the law to protect the rights of women

¹⁶³ Rep. Act No. 9262, §14(c) (2004).

and their children fully, without hesitation, and with the strongest of political will.

V. PROBLEMS IN THE ENFORCEMENT OF R.A. No. 9262

Notwithstanding that RA No. 9262 provides for sufficient reliefs and is the most punitive domestic violence law in Asia and the Pacific, the enforcement of the law is facing many problems.

Lack of gender-responsiveness of Judges

Perhaps the most difficult problem being faced by women litigants and women's rights advocates is the lack of gender-responsiveness of many judges, especially those who continue to believe that the Anti-VAWC Act is unfair to men, or that it is unconstitutional. There are judges who base their decisions on their belief that the Anti-VAWC Act destroys the unity of the family, that they must keep the marriage inviolable despite the violence of the husband. In an administrative case¹⁶⁴ against a pairing Judge of a Family Court, the transcript of stenographic notes reveal that the Judge wanted the petitioner wife to reconcile with her husband, stating that "*may pinagsamahan naman sila*"¹⁶⁵ and the lawyers were "fuelling" the disunity of the marriage. The Honorable Judge derived his legal principle from a movie.¹⁶⁶ The Judge eventually dismissed the petition for protection order as well as the Motion for Writ of Execution of the order granting support in the TPO which the husband refused to pay for more than a year. The woman filed a Notice of Appeal in the Court of Appeals, where the case is pending. More than a year after she filed a Notice of Appeal, the appellate court has not acted on her appeal and to date, she has no support even if the husband controls millions of pesos in conjugal property.

Reluctance of judges to use power of contempt

As discussed in the preceding paragraphs, many judges do not strictly apply the summary procedure, thus lengthening the litigation, to the prejudice of the woman and her children. At the same time, *judges do not use their contempt powers to strictly compel respondents and their lawyers to comply with the*

¹⁶⁴ This is a pending case in one of the appellate courts.

¹⁶⁵ Translated as: "*(They) have years of being together as husband and wife.*"

¹⁶⁶ The judge was quoted in the TSN saying that: "Instead of helping these parties to settle their differences, we are fuelling their ... alright. Have you seen that movie, Mission Impossible III? Have you seen that motive? Tom Cruise there, married his girlfriend. They were married before a judge and what the judge said was very simple. The vows you are going to take should not be taken without careful thoughts and prayer. This love should never be diminished by any difficult circumstances. It could only be dissolved by death. If we only follow that, there's no need for the parties to quarrel."

order of support in the TPO. Without support and unable to afford the cost of litigation, women are pressured to give up their cases or settle for an inadequate sum as support, or agree to visitation rights of respondents even if there is an allegation of child abuse.

Delay

Notwithstanding the provision in Section 4 of RA No. 9262 that the law must be liberally construed to ensure the protection of women and their children, *some judges do not issue ex parte TPOs and instead require a hearing.* They are concerned that the respondent may complain that they did not have an opportunity to be heard (issue of due process), so that the Summary Procedure is not strictly followed, with some Judges requiring a memorandum when it is expressly prohibited by the Rule on VAWC because it will unduly delay the case. Hence the delay in the proceedings in petitions for protection order even if the Rule on Violence Against Women and Their Children¹⁶⁷ provides that the Summary Procedure must be followed, and as far as practicable, hearings should be completed in one day. Many judges do not consider violence against women and their children as an urgent matter, and there are cases¹⁶⁸ where the Judge did not issue a TPO *ex parte* and instead, held hearings and finally issued a TPO only after more than one year. In one case, it was only after two years from the filing of the petition that the Permanent Protection Order was finally issued.

This is in contrast to the admirable conduct of Judge Rebecca Mariano (Regional Trial Court of Makati Branch 136) who in May 2004, in a case where a husband shot his wife in the stomach, was the first judge to ever issue an *ex parte* TPO. The lawyers for the woman argued that the violence was continuing, and the refusal of the husband to give support was an act of violence under R.A. No. 9262. The intent of the law is to protect the woman, and since the TPO is only for thirty days and renewable, judges should best issue *ex parte* TPOs to ensure the safety of the woman and to ensure support pending litigation. Another judge, the Honorable Philip Aguinaldo (Regional Trial Court of Muntinlupa Branch 207) issued an *ex parte* TPO with an order addressed to the presidents of banks, commanding them not to allow the withdrawal of funds from any type of deposit or investment in the name of the respondent or that of the respondent and the petitioner until further order from the court, to ensure the delivery of support. Judge Ray Alan T. Drilon (Regional Trial Court of Bacolod City

¹⁶⁷ A.M. No. 04-10-11 (2004).

¹⁶⁸ These were based on the accounts of some members of the UP Women Lawyers Circle.

Branch 41) issued a TPO with an order to the Register of Deeds not to register any transfer, encumbrance or annotation without the presence of the wife so as to prevent forgery and dissipation of property.

*Gross Ignorance of the Law*¹⁶⁹

Almost five years after the effectivity of the law, there are still Judges who issue TPOs against women after their husbands or former partners filed for custody with application for protection order under The Anti-VAWC Act, or an independent action for protection order. There are at least four (4) instances where a judge issued a TPO against a woman, the most recent of which was issued against a Brazilian woman and served on a holiday, December 24, 2008. In 2007 she got a protection order in Spain against her German husband. However, they reconciled and moved to the Philippines, where he later filed a petition for protection order under The Anti-VAWC Act. Because of the TPO the woman was locked out of the house and deprived of the custody of her four-year old daughter. In this case, the tender-age presumption of custody in favor of the mother¹⁷⁰ was not even followed by the judge.

Lack of Appreciation of Economic Abuse

The area of violation of economic rights of women and their children is a form of violence which is least appreciated by many judges. In one case in Biñan, the Judge dismissed a petition for protection order filed by a woman who was thrown out of the house and prevented from returning, stating that the solution is to dissolve the conjugal partnership. With due respect, the judge failed to appreciate Section 5 of R.A. No. 9262 which provides that deprivation of the use or enjoyment of conjugal or community property is an act of violence against women. The criminal action for deprivation of the use of the conjugal house was also dismissed by the city prosecutor, who gave the reasoning that the action should be civil, not criminal in nature, even if RA No. 9262 very clearly gives the woman the relief of both civil and criminal actions.

Unethical Conduct of Lawyers

The TPO against the Brazilian woman is not the first, which shows that this legal tactic is repeatedly being used by the lawyers of men because there are judges who can be bribed or erroneously believe that under The

¹⁶⁹ See *Conducto v. Monzon* MTJ-98-1147, Jul. 2, 1998 for the definition of the term "gross ignorance of the law."

¹⁷⁰ FAMILY CODE, §213.

Anti-VAWC Act they can grant the same relief of a TPO to a man where he alleges child abuse. The lawyers of men who apply for a protection order under The Anti-VAWC Act should also be liable for gross ignorance of the law. The first issuance of a TPO under RA No. 9262 against a woman was issued by a female judge of the Family Court in Antipolo City, against a woman who had previously won a custody suit in another city. Her husband abducted the children, then he got a TPO and filed a criminal action for violation of the anti-child abuse law, using a psychologist's report affirming his allegation that his wife was cavorting with her boyfriend in the presence of her young children. The criminal action was dismissed by the investigating State Prosecutor of the Department of Justice.

Police and Court Personnel Misconduct

The most talked about case of a TPO¹⁷¹ issued against a woman involved a television personality who was not married to the father of her child.¹⁷² While her petition for protection order was pending in a court in Mandaluyong City, her former partner sued for custody with an application for protection order in Bago City. Using a TPO against the woman, her former partner, with the aid of police officers and the court sheriff took her one-year old son from her residence. The Court of Appeals issued a TRO against the Judge, and after a hearing and memorandum filed by the appellant, dismissed the petition for custody and granted custody pendente lite to the woman. The Supreme Court affirmed the decision of the Court of Appeals.¹⁷³

TRO Against a TPO

In another case, after the Family Court issued a TPO against the husband, his lawyer filed for Injunction and Prohibition even if these are prohibited under Section 22 of the Rule on VAWC. Before the woman could file her opposition to the application for a TRO, the Court of Appeals issued a Temporary Restraining Order against the Judge who issued the TPO, leaving the woman and her three minor children vulnerable to lack of support and retaliation attacks during the 60-day period of the TRO, including an attempt to abduct her youngest son and daughter. After the TRO lapsed, even when hearings in the Family Court continued, the

¹⁷¹ Based on the cases researched and brought to the attention of the authors through cases handled, this was the second TPO to be issued against a woman.

¹⁷² See FAMILY CODE, §176. It provides that mothers of illegitimate children shall have sole parental authority over them.

¹⁷³ The man filed for a Motion for Reconsideration so the case is still pending in the Supreme Court.

husband refused to deliver support to the woman and her three minor children. When the woman went to the conjugal home with police officers to get her belongings, the house helpers of her husband jumped over the fence. Thereafter, a complaint for Kidnapping/Serious Illegal Detention was filed against the wife and a police officer in the Department of Justice in Manila. The retaliation did not end there. The husband filed a disbarment complaint against the lawyer of the woman and her children, and an administrative complaint against the Family Court Judge. The Court of Appeals eventually dismissed the petition for injunction and prohibition, but the damage has been done.

With due respect, Judges who issue TPOs against women or Justices of the Court of Appeals who issue a TRO against Judges of Family Court who issued a TPO should be administratively liable for gross ignorance of the law, and the same for Judges who influence or pressure the woman or her lawyers to settle the case or reconcile with her husband or partner. It cannot be said that the issuance of a TPO against a woman or a TRO against a judge who issued a TPO is a mere judicial error because the law is very clear, and the intent of the law, which is to protect the woman and her children, should be upheld. The Supreme Court must enforce Section 27 of the Rule on VAWC strictly, to send a clear signal to Judges that they cannot feign excusable ignorance of the intent and spirit of the law. Fortunately, there are instances where the Supreme Court, if and when brought to its attention, put its full weight to ensure that the TPO and its powerful implications are used within the constitutional limits and most importantly, only for those whom the law considers as entitled. *Last May, 2007, Chief Justice Reynato S. Puno had ordered the preventive suspension of a female Family Court judge of the Makati City Regional Trial Court. Her court was padlocked pending an investigation and judicial audit regarding her alleged sale of TPOs and PPOs. In one case, she issued a TPO and ordered the woman to turn over their minor child to her husband on May 7, 2007.¹⁷⁴ The following day, the Judge issued another order "authorizing the sheriff to enter the open premises where subject minor may be found for the purpose of turning over custody to petitioner." Former Court Administrator Christopher O. Lock, in his report, said that the Judge displayed gross ignorance of the law in issuing the order and that the TPO cannot be justified under The Anti-VAWC Act since "the applicant is a man seeking to enforce an order against a woman."*

This wrongful conduct is also a form of gender discrimination committed by a Judge which is attributable to the Judiciary as an organ of

¹⁷⁴ See Supreme Court News Flash (2007), available at <http://sc.judiciary.gov.ph/news/courtnews%20flash/2007/05/05160703.php>.

the State. The Supreme Court has the duty to comply with the State Obligations under the CEDAW and in the United Nations Charter which provides that states must have impartial tribunals that do not discriminate on the basis of sex.¹⁷⁵

Judges who issued TPOs against a woman justified their unlawful order by citing child abuse as alleged by the husband. But it is grossly incorrect to issue a TPO against a woman. If the father of the child is the petitioner in a custody case, the proper Rule that applies is the Rule on Habeas Corpus and Custody of Minors if the husband petitions for custody.¹⁷⁶ Under this Rule, a protective order may only be issued to protect the child after the respondent has filed an Answer, and a pre-trial has been held. There is no *ex parte* TPO under the Rule on Habeas Corpus and Custody of Minors.

Conflicting Decisions

Yet another problem in the law was encountered by a survivor of violence who was assisted by the Women's Crisis Center, Inc. Maria¹⁷⁷ sued her husband, a public school teacher, for support with an application for protection order. The Judge issued an order to the Department of Education (DepEd) to automatically deduct from her husband's salary¹⁷⁸ the amount of Four Thousand Pesos, which is the amount of support granted to his child with Maria. The Anti-VAWC Act provides that **notwithstanding** other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer for the same to be automatically remitted directly to the woman. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child without justifiable cause shall render the respondent or his employer liable for indirect contempt of court."¹⁷⁹ However, DepEd refused to deduct from his salary such amount, citing several decisions of the Supreme Court such as *Tiro v. Hontanosas*,¹⁸⁰ which states that payment of salary to persons other than the employee concerned is prohibited because "the salary check of a government officer or employee such as a teacher does not belong to him before it is physically

¹⁷⁵ Convention on the Elimination of All Forms of Discrimination Against Women, U.N., art. 2.

¹⁷⁶ A.M. No. 03-03-04 SC.

¹⁷⁷ Not her real name.

¹⁷⁸ Rep. Act No. 9262 (2004) provides "*directing the respondent to provide support to the woman and/or her child if entitled to legal support*."

¹⁷⁹ Rep. Act No. 9262, §8(g) (2004).

¹⁸⁰ *Tiro v. Hontanosas*, G.R. No. L-32312, 125 SCRA 697, Nov. 25, 1983.

delivered to him. Until that time the check belongs to the Government. Accordingly, before there is actual delivery of the check, the payee has no power over it; he cannot assign it without the consent of the Government.”¹⁸¹

Corruption in the Judiciary continues to be a problem

Corruption prejudices the poor most especially women and children and in effect denies them of their right to an impartial tribunal. In a Social Weather Stations study of the Judiciary and the Legal Profession released in 2005, results revealed that corruption in the Judiciary remains to be a major problem. As in 1995, one-fourth of respondent lawyers say Many/Very Many judges are corrupt. However, although half (49%) say they know a case their own city or province where a judge took a bribe, only 8% of such lawyers said they reported the bribery, the main excuse of those keeping silent being that they could not prove it.

Inadequate legal aid services; costly and lengthy litigation

Although the Rule on VAWC allows the indigent woman and those who are in immediate danger to file a petition for protection order without paying filing fees, litigation is still costly for the woman. Without a national free legal aid program for women, they must hire lawyers on their own and pay for expenses. Although non-governmental organizations and lawyers' groups such as the Integrated Bar of the Philippines, Child Justice League, Womenlead Foundation, Inc. and Gender Justice Network give free legal aid to battered women and their children, their services are limited and funding for non-governmental organizations is scarce. The lack of free or affordable legal aid services is a problem which must be immediately addressed by the government because this is one of the rights of VAW survivors enumerated in The Anti-VAWC Act.

There is a proposal to require all lawyers to give free legal aid, but what is more important is the quality of the service for women and their children. It is not enough that the lawyers give legal aid, they should also be trained on gender sensitivity and the laws on VAWC in order for them to have the correct perspective and motivate them to defend their clients' rights with commitment and care.

¹⁸¹ Tiro v. Hontanosas, G.R. No. L-32312, 125 SCRA 697, Nov. 25, 1983.

No Relief Pending Appeal

The Rule on VAWC is silent on the issuance of TPOs by the Court of Appeals pending appeal. A woman who was granted support in a TPO which was later dismissed by a Family Court will be unable to afford to go on appeal. The power of a stay away order and support in the TPO is such that it enables the woman to regain control of her life and continue litigation to have full recourse under the law such as proceeding with a suit for dissolution of conjugal partnership of gains and/or a petition for legal separation or nullity of marriage.

A liberal construction of the law under section 4 of the Rule on VAWC should help judges to interpret this lacuna when providing for a TPO pending appeal. Without this relief, very few women will pursue their appeal, and many more will be discouraged in filing cases in the first place.

Retaliation Suits by Respondent's Lawyers

There is a serious problem of ethics for lawyers for respondents who treat VAW cases like any other case, uninformed about gender inequality, VAW, and The Anti-VAWC Act and the Rule on VAWC. They aid or tolerate their clients' refusal to deliver support, although they should know that an order must be complied with and as officers of the court they have a duty to ensure compliance by their clients, including the filing of a Bond to Keep the Peace required in many TPOs and Permanent Protection Orders. Worse, they engage in retaliation suits including the filing of disbarment suits against the lawyer of the woman in order to gain an advantage for their client even if this will surely make them liable under the Code of Professional Responsibility. In a case which was previously discussed, the husband financed the filing of a complaint for Kidnapping/Serious Illegal Detention against his wife and a policewoman in the Department of Justice in Manila and not in the province where the alleged offense was committed. The husband's lawyer is the also the lawyer of his house helpers. After he has gained an advantage, he was emboldened to refuse to deliver support, and dropped the negotiation for settlement or division of the conjugal partnership of gains. The investigating State Prosecutors dismissed the complaint and the husband instructed his lawyer to appeal to the Secretary of Justice. Mediation meetings were conducted by the Secretary of Justice (not upon the request of the woman). When the woman refused to return to the conjugal home, the husband pursued his appeal. The Secretary of Justice reversed the prosecutors and found probable cause. Upon Motion for Reconsideration of the woman, the Acting

Secretary of Justice dismissed the complaint. The lawyer of the complainants filed a second Motion for Reconsideration, even if this is prohibited under the 2000 National Prosecution Service Rule on Appeal. The second Motion for Reconsideration is pending.

Retaliations suits against battered women who sue under RA No. 9262 will continue to be a problem until the Integrated Bar of the Philippines emphasizes the Code of Professional Responsibility in cases under RA No. 9262 and require its members to attend gender sensitivity seminars through the Mandatory Continuing Legal Education, and the Commission on Bar Discipline strictly enforce the Code of Professional Responsibility.

No Budget in the Law

There is no budget for the implementation of RA No. 9262 in the law. This is the main reason why to date, there is no systematic and nationwide training on gender and RA No. 9262 for prosecutors, law enforcers and barangay officials. The national agencies have to rely on their 5% Gender and Development Budget which is included yearly in the General Appropriations Act. The Department of the Interior and Local Government does not have a specific budget for seminars and leaves it to the local governments to fund their own seminars on RA No. 9262.

Inadequate Funds for Shelter and other Support Services

The Department of Social Welfare and Development does not have sufficient funds for the maintenance of adequate shelters, livelihood and sustenance and education of children pending litigation. Without a full support system, a mechanism with funds that will give them an opportunity to have financial independence from their batterers, full government support, with free legal aid included, women will never have full access to justice.

No Divorce Law

Lastly, as mentioned earlier, there is the problem of the lack of a divorce law in the Philippines, which makes it doubly difficult for abused women to get out of their marriage and get their lawful share of the community or conjugal property.

VI. POLICY RECOMMENDATIONS ON LEGISLATING VIOLENCE AGAINST WOMEN

According to the United Nations Secretary-General's in-depth study on all forms of violence against women,¹⁸² only about half of United Nations Member States had in place legislative provisions that specifically addressed domestic violence. Fewer than half had legislation on sexual harassment, or on trafficking.

Moreover, according to a report of an Expert Group Meeting on Good Practices in Legislations on Violence Against Women organized by the United Nations Division for the Advancement of Women and the United Nations Office on Drugs and Crime at Vienna, Austria last May 26 to 28, 2008,¹⁸³ the legislations that exist were often limited in scope and coverage. The report provides:

Even where legislation existed, it was often limited in scope and coverage, such as definitions of rape by use of force; definitions of domestic violence limited to physical violence; treatment of sexual violence as a crime against the honour of the family or against decency, rather than a crime against a woman's right to bodily integrity; reduction of sentences in rape cases where the perpetrator marries the survivor and/or immunity in cases of spousal/marital rape; laws that allow early or forced marriage; inadequate penalties for crimes of violence against women, including reduction and/or elimination of sentences for so-called crimes of honour.¹⁸⁴

The members of the expert group meeting thus defined a clear legislative goal on violence against women, which is to prevent violence against women, to ensure investigation, prosecution and punishment of perpetrators, and to provide protection and support for complainants and survivors of violence.¹⁸⁵ The expert group meeting also emphasized the need to develop legislation on violence against women from a human rights perspective. "Existing legislation addressing violence against women should be assessed in light of international standards, particularly human rights and criminal justice, in order to enact amendments or new legislation in accordance with such standards," the report provided.

¹⁸² *Study of the Secretary-General: Ending Violence against Women: from words to action*, A/61/122/Add.1 and Corr.1 (2006).

¹⁸³ Report of the Expert Group Meeting, *Good Practices in Legislation on Violence Against Women*, 3 (2008), available at [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGFLVAW%20\(final%2011.11.08\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGFLVAW%20(final%2011.11.08).pdf).

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*, at 5.

The expert group meeting underscored the importance of adhering to principles in the development and implementation of legislation such as those outlined in the Secretary-General's in-depth study on all forms of violence against women.¹⁸⁶ According to these principles, laws on violence against women should:

- ☐ address violence against women as a form of gender-based discrimination, and a violation of women's human rights;
- ☐ make clear that violence against women is unacceptable and that eliminating it is a public responsibility;
- ☐ ensure that complainants/survivors of violence are not "revictimized" through the legal process;
- ☐ promote women's agency and empower individual women who are complainants/survivors of violence;
- ☐ promote women's safety in public spaces; and
- ☐ take into account the differential impact of measures on women according to their race, class, ethnicity, religion, disability, culture, indigenous or migrant status, legal status, age or sexual orientation.

Laws on violence against women should also create mechanisms to:

- ☐ monitor implementation of legal reforms to assess how well they are working in practice; and
- ☐ keep legislation under constant review and continue to reform it in the light of new information and understanding.¹⁸⁷

VII. RECOMMENDATIONS FROM EXPERTS

With regard to protection orders, which are among the most efficient remedies available to a victim of violence, the expert group meeting recommended that legislation should make protection orders available to survivors of all forms of violence against women. Presently, Chapter 6 of the Mexican *Law on Access of Women to a Life Free of Violence* (2007) makes protection orders available to survivors of any form of violence defined in

¹⁸⁶ See note 170, *supra*.

¹⁸⁷ Report of the Expert Group Meeting, at 6-7.

the Act, including violence in the family, violence in the workplace or educational settings, violence in the community, institutional violence, and femicide. The *Forced Marriage (Civil Protection) Act of 2007* in the United Kingdom allows courts to issue an order for the purposes of protecting (a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or (b) a person who has been forced into a marriage.

And in addressing child custody in protection order proceedings, it was recommended that legislation should include the following provisions:

- ☐ presumption against award of custody to the perpetrator;
- ☐ presumption against unsupervised visitation by the perpetrator;
- ☐ requirement that, prior to supervised visitation being granted, the perpetrator must show that at least three months has passed since the most recent act of violence, that he has stopped using any form of violence, and that he is participating in a treatment programme for perpetrators; and
- ☐ no visitation rights are to be granted against the will of the child.¹⁸⁸

Civil lawsuits are a valuable supplement or alternative to criminal prosecution, civil protection orders, and other available legal remedies.¹⁸⁹ Depending on the facts of the case and the law of the jurisdiction, the forms of relief available to successful plaintiffs in civil lawsuits may include compensatory damages, punitive damages, declaratory and injunctive relief, and a court order requiring the defendant to pay the prevailing plaintiff's attorney fees.¹⁹⁰ As such, *legislation should allow survivors of violence against women to bring lawsuits against the perpetrators as well as governmental or non-governmental individuals and entities that have not exercised due diligence to prevent, investigate or punish the violence.*

These lawsuits provide an additional opportunity to hold government agencies and other entities liable for violence against women, and may also present a source of monetary compensation for the survivor.

¹⁸⁸ Report of the Expert Group Meeting, at 56.

¹⁸⁹ Report of the Expert Group Meeting, at 64.

¹⁹⁰ *Id.*

In the case of *Chairman Railway Board v. Chandrima Das*,¹⁹¹ the Indian Supreme Court affirmed the unprecedented award of 10,000,000 rupees to a Bangladeshi survivor of rape by railway officials in West Bengal as compensation for the violation of the woman's fundamental right to life and equality under the Indian Constitution, irrespective of her foreign citizenship.¹⁹² In the case of *Thurman v. City of Torrington*,¹⁹³ a plaintiff sued the city of Torrington, Connecticut, in the United States of America, alleging that police officers repeatedly ignored her complaints about the violence being committed by her estranged husband and even stood by and watched as the latter brutally attacked her. The complainant was awarded US \$2.3 million in damages by the jury.¹⁹⁴

A. FAMILY LAW PROVISIONS

On the other hand, in family law cases involving violence against women, the experts recommended that legislation should guarantee the following and amend all relevant provisions in family law to reflect:

- ☐ divorce from a violent husband and adequate alimony to women and children;
- ☐ the survivor's right to stay in the family dwelling after divorce;
- ☐ social insurance and pension rights of survivors who divorce the perpetrator;
- ☐ expedited distribution of property, and other relevant procedures;
- ☐ careful screening of all custody and visitation cases so as to determine whether there is a history of violence;
- ☐ a statutory presumption against awarding child custody to a perpetrator;
- ☐ availability, in appropriate cases, of professionally run supervised visitation centers;

¹⁹¹ *Chairman Railway Board v. Chandrima Das*, 2 SCC 465 (India, 2000): <http://72.14.235.132/search?q=cache:6n-SrzXRCqej:delhicourts.nic.in/jan08/Dharanpal%2520Vs.%2520DTC.pdf+Chairman+Railway+Board+v.+Chandrima+Das&hl=en&ect=clnk&ecd=4>

¹⁹² *Chairman Railway Board v. Chandrima Das*, 2 SCC 465 (India, 2000).

¹⁹³ *Thurman v. City of Torrington*, 595 F. Supp. 1521 D. Conn. (1984).

¹⁹⁴ *Thurman v. City of Torrington*, 595 F. Supp. 1521 D. Conn. (1984).

- a survivor of violence who has acted in self-defense, or fled in order to avoid further violence, should not be classified as a perpetrator, or have a negative inference drawn against her, in custody and visitation decisions; and
- child abuse and neglect proceedings should target the perpetrators of violence and recognize that the protection of children is often best achieved by protecting their mothers. (Emphasis supplied)¹⁹⁵

B. SPECIALIZED COURTS

The creation of specialized courts was also seen as a good policy recommendation in order to guarantee timely and efficient handling of cases involving violence against women.¹⁹⁶ Legislation should also ensure that officers assigned to specialized courts receive specialized training and that measures are in place to minimize stress and fatigue of such officers.¹⁹⁷ The expert group meeting report stated:

Experiences of complainants/survivors with court personnel in regular courts suggests that *such personnel frequently do not have the necessary gender-sensitivity or comprehensive understanding of the various laws that apply to violence against women cases*; may not be sensitive to women's human rights; and may be overburdened with other cases, resulting in delays and increased costs to the complainant/survivor. Specialized courts exist in a number of countries, including Brazil, Spain, Uruguay, Venezuela, the United Kingdom, and a number of states in the United States of America. *Such courts have been effective in many instances as they provide a stronger possibility that court and judicial officials will be specialized and gender-sensitive regarding violence against women, and often include procedures to expedite cases of violence against women.*

The specialized integrated courts established by Title V of the *Organic Act on Integrated Protection Measures against Gender Violence* (2004) in Spain and article 14 of the *Maria da Penha Law* (2006) in Brazil deal with all legal aspects of cases regarding domestic violence, including divorce and child custody proceedings and criminal proceedings. *By streamlining and centralizing court processes, such integrated courts eliminate contradictory orders, improve complainant/survivor safety, and reduce the need for complainants/survivors to testify repeatedly.* However, it is important to ensure that the complainant/survivor

¹⁹⁵ Report of the Expert Group Meeting, at 62.

¹⁹⁶ Report of the Expert Group Meeting, at 21.

¹⁹⁷ *Id.*

retains control over the proceedings and does not feel forced to take actions, such as divorce or separation, when she is not ready. The Spanish experience suggests that proceedings in specialized courts sometimes progress too rapidly for complainants/survivors and, as a result, some complainants/survivors withdraw from the process. It is also important to ensure that all relevant professionals are available in specialized courts. Sexual Offences Courts established as part of the anti-rape strategy in South Africa are staffed by a cadre of prosecutors, social workers, investigating officers, magistrates, health professionals and police. (Emphasis supplied)¹⁹⁸

C. PUBLIC AWARENESS

To effectively implement violence against women legislation, public awareness should likewise be intensified. Aside from public awareness-raising campaigns on violence against women, legislation should also provide for compulsory education at all levels of schooling, from kindergarten to the tertiary level, on the human rights of women and girls, the promotion of gender equality, and in particular, the right of women and girls to be free from violence.¹⁹⁹

The sensitization of the media was also suggested in the expert group meeting, positing that legislation should encourage the sensitization of journalists and other media personnel regarding violence against women. The report said:

Media representations significantly influence societal perceptions of acceptable behavior and attitudes. Training journalists and other media personnel on women's human rights and the root causes of violence against women may influence the way in which the issue is reported and thereby influence societal attitudes. The Spanish *Organic Act on Integrated Protection Measures against Gender Violence* (2004) provides in article 14 that "[t]he communications media shall work for the protection and safeguarding of sexual equality, avoiding any discrimination between men and women" and that "[r]eports concerning violence against women, within the requirements of journalistic objectivity, shall do the utmost to defend human rights and the freedom and dignity of the female victims of gender violence and their children." Article 8 of the Brazilian *Maria da Penha Law* (2006) calls for the communications media to avoid stereotyped roles that legitimize or encourage domestic and family violence.²⁰⁰

¹⁹⁸ Report of the Expert Group Meeting, at 21-22.

¹⁹⁹ Report of the Expert Group Meeting, at 32.

²⁰⁰ Report of the Expert Group Meeting, at 33-34.

D. SUPPORT AND ASSISTANCE

Despite all the aforementioned recommended provisions, however, violence against women legislation will not be fully effective when there is a lack of protection, support, and assistance to complainants of violence against women amply provided by the State. The expert group meeting enumerated their recommendations:

Legislation should:

- ☐ oblige the State to provide funding for, and/or contribute to establishing comprehensive and integrated support services to assist survivors of violence;
- ☐ state that all services for women survivors of violence should also provide adequate support to the women's children;
- ☐ state that the location of such services should allow equitable access to the services, in particular by urban and rural populations; and
- ☐ where possible, establish at least the following minimum standards of availability of support services for complainants/survivors:
 - ☐ one national women's phone hotline where all complainants/survivors of violence may get assistance by phone around the clock and free of cost and from where they may be referred to other service providers;
 - ☐ one shelter/refuge place for every 10, 000 inhabitants, providing safe emergency accommodation, qualified counseling and assistance in finding long-term accommodation;
 - ☐ one women's advocacy and counseling centre for every 50, 000 women, which provides proactive support and crisis intervention for complainants/survivors, including legal advice and support, as well as long-term support for complainants/survivors, and specialized services for particular groups of women (such as specialized services for immigrant survivors of violence, for survivors of trafficking in women or for women who have suffered sexual harassment at the work place), where appropriate;

- one rape crisis centre for every 200,000 women; and
- access to health care, including reproductive health care and HIV prophylaxis.²⁰¹

Presently, several states are increasingly providing legislative mandates for the establishment of services.²⁰² In the Guatemalan *Law Against Femicide and other Forms of Violence Against Women* (2008), the Government is required to guarantee survivors of violence access to integrated service centers, including providing financial resources. In Mexico, the *Law on Access of Women to a Life Free of Violence* (2007) requires the State to support the installation and maintenance of shelters. The *Local Administration Law* of Turkey requires the creation of shelters in municipalities with more than 50,000 inhabitants. And in Austria, the *Violence Protection Act* (1997) mandates that all provinces must establish intervention centers where survivors of domestic violence are proactively offered assistance after interventions by the police. The intervention centers are run by women's non-governmental organizations and financed by the Ministry of the Interior and the Ministry of Women on the basis of five-year contracts.

It was also recommended that legislation should provide for efficient and timely provision of financial assistance to survivors in order to meet their needs.²⁰³ The expert group meeting report discussed how this recommendation is being enforced in some countries as follows:

Under sections 1061JA and 1061 JH of Australia's *Social Security Act*, as amended in 2006, survivors of domestic violence may qualify for a "crisis payment" from the federal welfare agency "Centrelink", where they have left the home because of violence, and/or where they remain in the home following the departure of the perpetrator and are in severe financial hardship. Depending on the legal context, such assistance could be made available through a trust fund for survivors of violence to which both the State and other actors may contribute. Section 29 of the Ghanaian *Domestic Violence Act* (2007) establishes a Victims of Domestic Violence Support Fund. The fund receives voluntary contributions from individuals, organizations and the private sector; money approved by Parliament; and money from any other source approved by the Minister of Finance. The money from the Fund is used for a variety of purposes, including the basic material support of victims of domestic violence; any matter

²⁰¹ Report of the Expert Group Meeting, at 34.

²⁰² Report of the Expert Group Meeting, at 35.

²⁰³ Report of the Expert Group Meeting, at 37.

connected with the rescue, rehabilitation and reintegration of victims of domestic violence; the construction of shelters for survivors of domestic violence; and training and capacity building for persons connected with the provision of shelter, rehabilitation and reintegration.²⁰⁴

Reverting to the Philippine experience, it is evident that after more than *four years since the effectivity of the Anti-VAWC Act, women continue to face many obstacles in the courts, in the barangay, in the police system, and in the prosecution service.* Though the law provides adequate remedies that are certainly tailor-fitted to address violence within the context of intimate relationships, and most certainly there are already cases to signify the success of victims availing such remedies, however, the problems in the enforcement of the law must be put in constant review, having in mind the changing needs of the survivors of the *violence and to enable the implementers to enforce the law fully so as to ensure access to justice for women.*

VIII. CONCLUSION AND RECOMMENDATIONS

The Anti-VAWC Act is the most punitive domestic violence law in Asia. It carries high penalties of imprisonment, but this alone does not serve as a deterrent against domestic violence. Since many poor women do not report violence for fear of their abuser aside from their lack of independent means of income, we cannot conclude from the number of reported cases that there is a decrease in the incidence of domestic violence. What may be indications of effectiveness of government implementers are the number of arrests, cases prosecuted and BPOs, TPOs and PPOs issued, inasmuch as the prevention of VAW rests on changing a patriarchal culture, enforcement of the law and punishment of perpetrators.

The Anti-VAWC Act is weak in prevention mechanism even if there are Implementing Rules and Regulations mainly because there is no specific budget for its implementation under the law and the lack of political will of some government agencies. Programs on prevention of VAW and services for survivors have to compete with all other programs of the national agencies using their 5% Gender and Development Budget in the General Appropriations Act. It is important that the government makes a determined effort to prevent VAW and improve women's access to justice by providing them with full support in terms of services, including shelter, means of

livelihood free legal aid, as well as training seminars for judges, the police, prosecutors, *barangay* officials, and social workers. Since the government does not have a nationwide legal aid program yet, the national government agencies and local government units can contract the services of non-government organizations and lawyers groups especially in the provinces who are giving free legal aid to women. As a matter of fact, the Supreme Court has already issued a resolution²⁰⁵ approving the proposed rule of Mandatory Legal Aid Service for Practicing Lawyers.

Although the Anti-VAWC Act does not have some of the provisions on more liberal protection orders in the laws of other countries such as Spain, or the power to remove the offender from the house by the police in Bulgaria, there is a wide scope of opportunity for our judges to create orders under the TPO to ensure full protection to the woman and her children, using Section 4 of The Anti-VAWC Act and the Rule on VAWC, and good practices in other countries with expanded relief in their protection orders. *The enumeration of the contents of the TPO under the Anti-VAWC Act is not meant to be exclusive.* Judges must act on cases of VAWC with a sense of urgency, recognizing that women's human rights are being violated.

The Rule on VAWC may be reformed to include TPOs pending appeal, and no filing fee for petition for protection order and appeal regardless of the income of the woman and even if it involves dissolution of the conjugal partnership of gains or the community property. It may also include a provision giving the judges a specific period within which to decide whether a TPO which is *not ex parte* may be issued or not, and a specific period to determine whether a permanent protection order may be issued or not. A maximum period for finishing the hearings and with administrative sanctions for delay and a specific period for deciding on an appeal in the Court of Appeals may also be added. Other provisions to ensure speedy administration of justice and discourage delay in the courts should be included.

The Rules of Court and the Family Code should be reformed to ensure the speedy dissolution of the conjugal partnership of gains or the community property in cases of violence against women, without requiring filing fees on the part of the battered woman. These should also include a specific provision on forfeiture of the share of the respondent in favor of

²⁰⁵ Supreme Court Resolution, BM No. 2012, February 10, 2009. The rule shall become effective on July 1, 2009.

the common children in cases of violence against women and children, in an action for dissolution of the CPG or community property even without the relief of legal separation or nullity of marriage.

Many judges attempt to insinuate reconciliation, and some actually pressure the women to reconcile with their husbands despite the prohibition on mediation and conciliation under Section 33 and Section 27 of the Rule on VAWC. This is a problem for the Supreme Court, for without enforcement of Section 27 which makes the judges liable for attempting to influence the woman to give up any of the reliefs under the law, many judges will continue to impose their gender bias against women and continue to subordinate them to their husbands. If a violation of Section 27 would merit a dismissal, all judges will surely feel that the Supreme Court is sending a clear signal for them to enforce the law, whatever their personal beliefs are. This problem may also be solved by continuous seminars of judges on gender equality and the Anti-VAWC Act, especially Family Court judges and their pairing judges.²⁰⁶

Another critical area for reform is the appointment of judges and justices by the President, a highly political process that may result in the deterioration of the quality of judges.²⁰⁷ The Judicial and Bar Council should recommend applicants who are gender-responsive, versed in the laws on rights of women and children, have studied the CEDAW and other international conventions, and know which universally accepted principles of international law form part of the law of the land. We need judges who not only know what the law is, but also how it should be interpreted in the light of state obligations under international conventions, aware of the problem of VAW and the importance of giving women access to justice.

The Judicial and Bar Council may recommend more women in the Judiciary, to add to the present ratio of one female to three male judges in the Regional Trial Courts. While it is true that it does not necessarily mean that all female judges are gender-responsive, having more of them in the Judiciary will reflect women's experiences, and more women in decision making positions can enrich the Judiciary and the government.

To instill adherence to the highest principles of integrity, propriety and non-discrimination, the Supreme Court may also specify a prohibition on gender discrimination in the New Philippine Code of Judicial Conduct.

²⁰⁶ Pairing judges are those who take over the cases when the Family Court judge inhibit or are on leave.

²⁰⁷ *Id* at 15 p70.

Law schools can be required to include the subject of Gender and Law in their curricula and ensure that the Family Code and other laws are taught with a gender perspective. The ethical duty of lawyers to act with gender-sensitivity and without discrimination on account of gender should also be included in the Code of Professional Responsibility,²⁰⁸ and lawyers who engage in retaliation suits after TPOs are issued against their clients may be found guilty of unethical conduct by the Commission on Bar Discipline.

The Department of Justice needs to conduct a nationwide and systematic training on gender, The Anti-VAWC Act, the Anti-Trafficking of Persons Act and other laws on VAW. The DOJ also needs to create task forces on women and children in the provinces. It should also have a monitoring system to ensure speedy resolution of cases brought under the Anti-VAWC Act and the Anti-Trafficking of Persons Act.²⁰⁹ At present only the DOJ in Manila has a Task Force on Women and Children, where many of the prosecutors are trained on gender sensitivity and violence against women and children.

The Inter-Agency Council on VAWC should have its own budget, and do more than monitor and set standards and among others, ensure the systematic and nationwide training of implementers especially the police and prosecutors. It should have its own budget, police its own ranks and make its members accountable for failing marks and non-compliance. It should find ways to ensure full enforcement of the law, including a regular review of the Implementing Rules and Regulations, government services, and request inputs from women's organizations and women's rights lawyers. Government collaboration with non-government organizations and community response to VAW should be enhanced.

The remedies under The Anti-VAWC Act and in the Family Code are not sufficient for women to be free from abuse. Although the acts of violence in the Anti-VAWC Act can now add to the definition of "grossly abusive conduct"²¹⁰ as a ground for legal separation and although there is Article 36 of the Family Code which allows nullity of marriage on the ground of psychological incapacity, these laws do not give women a speedy and less costly way to litigating her way out of her violent husband's sphere of power and control through marriage. Thus, Congress must pass a law on

²⁰⁸ *Id.*

²⁰⁹ The IRR of Rep. Act No. 9262 provides that prosecutors have to resolve the cases within 45 days, but this is hardly honored in practice. In one case, Secretary of Justice Raul Gonzalez, upon request of the woman, wrote a memorandum to the City Prosecutor of Quezon City asking him to explain his action or lack thereof on a complaint which has been pending for a year.

²¹⁰ See *Ong v. Ong*, G.R. No. 153206, October 23, 2006 for the definition of the term "grossly abusive conduct".

divorce. *The Philippines is the only country in Asia that has no divorce law. Countries all over the world, including those which are pre-dominantly Catholic like Spain and Italy have divorce laws except for the Philippines and Malta.* It cannot be stressed enough that the lack of a divorce law continues to militate against the right and ability of women to exert their own independence and be free from a life of violence. In the Philippines, where psychological incapacity is the only ground for nullity of marriage and repeated physical abuse, abandonment for more than one year or grossly abusive conduct are only grounds for legal separation that do not sever the marriage, a battered woman may find herself strong enough to leave but *the law does not allow her to do so.* The immense psychological impact on the woman that the law is on her side is recognized by the United Nations Human Rights Council. In a report²¹¹ by Special Rapporteur Manfred Nowak, he has gone so far as to emphasize State accountability for laws that inhibit women's rights to be free from abusive conduct:

State acquiescence in domestic violence can take many forms, some of which may be subtly disguised. For instance, Civil laws that appear to have little to do with violence also have an impact on women's ability to protect themselves and assert their rights. *Laws that restrict women's right to divorce or inheritance, or that prevent them from gaining custody of their children, receiving financial compensation or owning property, all serve to make women dependent upon men and limit their ability to leave a violent situation....States should be held accountable for complicity in violence against women, whenever they create and implement discriminatory laws that may trap women in abusive circumstances.* State responsibility may also be engaged if domestic laws fail to provide adequate protection against any form of torture and ill-treatment in the home. (Emphasis supplied)

It is also pertinent to add that the Special Rapporteur made this declaration for a report on torture and other cruel and inhuman treatment or punishment. This is an indication that the international community has long elevated domestic violence as an issue involving the State, and in Nowak's report he refers to domestic violence as a form of torture. Nowak reported that:

International law has developed considerably over the years to become more gender-inclusive. In 1996, the Special Rapporteur on violence against women stated that: "the argument that domestic violence should be understood and treated as a form of torture and,

²¹¹Nowak, Manfred, Special Rapporteur, *Report on Torture and Other Cruel, Inhuman or Degrading Treatment Or Punishment* for Item 3 of the Provisional Agenda: Promotion and Protection of All Human Rights, Civil, Including The Right To Development during the Seventh Session of the United Nations Human Rights Council last January 15, 2008.

when less severe, ill-treatment, is one that deserves consideration by the rapporteurs and treaty bodies that investigate these violations together perhaps with appropriate NGO experts and jurists". *In 2000, the Human Rights Committee indicated that domestic violence can give rise to violations of the right not to be subjected to torture or ill-treatment under article 7 of the ICCPR.* In line with this statement the Committee has mentioned the need for States to adopt specific legislation combating domestic violence, including legislation criminalizing marital rape. More specifically, it has called upon States to ensure that their justice systems incorporate restraining orders to protect women from violent family members, provide shelters and other support to victims, establish measures to encourage women to report domestic violence to the authorities, and offer "material and psychological relief to the victims."²¹² (Emphasis supplied)

Now more than ever, there is already a deep and insistent need for Congress to synchronize all other laws with laws on VAW, repeal laws that discriminate against women including the provisions in the Revised Penal Code on Concubinage²¹³ and Adultery,²¹⁴ to ensure substantive equality of women. Immigration law and rules must be reformed to protect abused women who are foreigners and who are married to Filipinos, so that they can stay in the country with their children without the signature or consent of their abusive husbands. The Department of Labor and Employment should compel the private sector to comply with the additional 15-day paid leave for battered women, whether they go to court or not. The Anti-Child Abuse Law²¹⁵ should also be amended to synchronize it with the Anti-VAWC Act and the Anti-Trafficking in Persons Act.

Congress must add a specific budget for eliminating violence against women and their children in the budget of the Philippine National Police, the Department of Social Welfare and Development, the Department of Justice and the National Commission on the Role of Filipino Women. The budget is significant proof of the government's commitment to end VAW. Congress should also have a yearly review of the implementers' performance before approving the budget of national agencies.

The Corporation Code and the Rules of Court should also be reviewed in the light of violence against women cases, to enable women to easily find conjugal assets hidden by their husbands in corporations so that these can answer for support and other reliefs under the Anti-VAWC Act.

²¹² *Id.*

²¹³ Revised Penal Code of the Philippines, art. 334.

²¹⁴ Revised Penal Code of the Philippines, art. 333.

²¹⁵ RA No. 7610: Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for other Purposes.

Philippine laws on violence against women, especially the Anti-VAWC Act of 2004, have been praised in the international community for being progressive because it includes, among others, a broad definition of VAW in the context of women's human rights, a recognition that the law is a compliance with State Obligation under the CEDAW and other international conventions, and for being a product of decade's worth of collaboration between women's rights groups and women legislators. Thus it reflects women's experiences and the reliefs provided in the law are a response to their legal needs. However, there is an immense gap between the ideal printed in black-letter law and the gritty reality of hard and subjective litigation. Simply put, laws may look good on paper and yet if advocates of anti-violence against women cannot even pinpoint to a single efficient 24-hour hotline number of law-enforcers or if lawyers who represent women cannot convince some judges that reconciliation is simply not plausible in cases of domestic violence, then there must be something radically wrong in the legal and justice system. It is not enough to have a law protecting women against domestic violence. The law must work for women. This is a call to prevent this particularly progressive and incredibly important statute from becoming just another institutional mechanism concerned merely with formal compliance in order to appease the international community. At the end of the day, it is the government and especially the Judiciary which has the duty to ensure that women's access to justice becomes a reality.