THE CONTINUING NARRATIVE OF THE ECONOMIC EMANCIPATION OF FILIPINO WORKING WOMEN*

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The Working Women of Today

Almost 40 years after *Women and Labor: Is the Economic Emancipation of the Filipino Working Woman at Hand?* was written by the eminent Justice Flerida Ruth Romero, then a professor of the University of the Philippines College of Law, women have made their indelible presence in all aspects of the political, economic, and social life of Philippine society.

On the labor front, the Philippine labor force (15 years old and above) numbered 40,426,000 in 2012 (64.2% of the population), 61% of whom were males and 39% of whom were females.[1] The labor force participation rate ("LFPR") of females increased significantly from 30.6% in 1970 to 50% in 2012.[2] While the LFPR took a downward trend in 2013, from 64.2% to 63.9%, the decrease was more pronounced among the male labor workforce.[3]

In 1974, 36.6% of the women in the labor force were engaged in agriculture and related work.[4] Over the years, however, the number of workers employed in the service sector has overtaken the number of workers employed

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[1] BUREAU OF LABOR AND EMPLOYMENT STATISTICS [hereinafter "BLES"], 2013 GENDER STATISTICS ON LABOR AND EMPLOYMENT (2013), at tbl. 2.8, *available at* http://www.bles.dole.gov.ph/PUBLICATIONS/Gender%20Statistics/Statistical%20Tables/PDF/Chapter%202%20-%20Economically%20Active%20Population/Table%202.8.pdf.

[2] *Id.* at tbl. 2.12, *available at* http://www.bles.dole.gov.ph/PUBLICATIONS/Gender%20Statistics/Statistical%20Tables/PDF/Chapter%202%20-%20Economically%20Active%20Population/Table%202.12.pdf.

[3] Philippine Statistics Authority, *Labstat Updates*, Jan. 2014, at 1, 6, *available at* http://www.bles.dole.gov.ph/PUBLICATIONS/LABSTAT%20UPDATES/vol18_2.pdf.

[4] Flerida Ruth Romero, *Women and Labor: Is the Economic Emancipation of the Filipino Working Woman at Hand?*, 50 PHIL. L.J. 44, 44 n.2 (1975).

in the agricultural sector, such that employment has been driven by the service sector. In 2012, when the number of women employed stood at 14,751,000, 28% were in the service sector, particularly wholesale and retail trade; 20% in the agricultural sector; 10.3% in other service activities; and lastly, 9% in the industry sector, mainly in manufacturing industry.[5] Thus, women in the industry and services sectors combined to outnumber women in agricultural sector. Nevertheless, the agricultural sector continues to play an important role in employment and in job creation.

Statistics show that women's share in professional and managerial positions is steadily increasing, although the rate of progress is slow. In 2012, 14,751 of 37,600 or 39.2% of employed persons in major occupation groups were women. Of the 14,751 women employed, only 11.6% of these were employed as professionals, technicians, and associate professionals, while 18% were women employed as corporate executives, managers, and supervisors.[6] These data show that women are still markedly under-represented in managerial jobs compared to the overall share of their employment.

All the same, compared to past years, the working women of today are marching, in greater number, toward social and economic progress.

Equality in the Workplace: Substantive Equality, Not the Protectionist Approach

Addressing the question of gender equality is imperative if law and jurisprudence are to be responsive to gender issues in the workplace, especially in today's globalized world.

Gender equality demands that women and men should have equal rights, responsibilities and opportunities. Seen in this light, it is not just a "women's issue" since it concerns men as well.[7]

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[5] BLES, *supra* note 1, at tbl. 3.8, *available at* http://www.bles.dole.gov.ph/PUBLICATIONS/Gender%20Statistics/Statistical%20Tables/PDF/Chapter%203%20-%20Employed%20(Household%20Based)/Table%203.8.pdf.

[6] *Id.* at tbl. 3.9, *available at* http://www.bles.dole.gov.ph/PUBLICATIONS/Gender%20Statistics/Statistical%20Tables/PDF/Chapter%203%20-%20Employed%20(Household%20Based)/Table%203.9.pdf.

[7] International Labour Organization, *Promoting Gender Equality Within Unions*, *in* A RESOURCE KIT FOR TRADE UNIONS 32 (2002), *available at* http://www.il.workinfo.com/free/links/gender/cha_1.htm.

Gender equality, however, is not only concerned with formal equality, which demands that women and men should be treated the same, or the "same treatment approach," regardless of their biological and socially constructed differences.[8] More importantly, gender equality is concerned with promoting substantive equality to eliminate discrimination between women and men, which formal equality cannot fully address.

The substantive equality approach takes into account the differences of women and men, whether biological or socially constructed, to eliminate the disadvantages to women. Hence, women should be treated differently than men during a limited period when their needs may be greater than those of men to ensure equality with men as regards women's overall employment opportunities.[9]

> The substantive definition of equality takes into account and focuses on diversity, difference, disadvantage and discrimination. This approach recognizes difference between men and women—but instead of accepting this difference as given, it examines the assumptions behind the difference in trying to assess the disadvantage resulting from it and to develop a "different treatment" or a response that dismantles the disadvantage. It seeks to eliminate existing discrimination faced by disadvantaged groups at the individual, institutional and systemic levels through corrective and positive measures.[10]

The substantive equality approach may entail taking affirmative actions and comparable worth schemes as remedial measures to reverse the effects of past discrimination, such as where women have been historically excluded either by law or by gender role expectations from having certain jobs or earning wages comparable to those earned by men. Substantive equality may also focus on counteracting the disadvantages of biological differences between women and men by taking special accommodations. In case of pregnancy, therefore, a special accommodation is given, such as job security for women who leave the workplace to bear children.[11]

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[8] Katharine Bartlett, *Gender Law*, 1 DUKE J. GENDER L. & POL'Y 1, 3 (1994), *available at* http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1199&context=djglp (last visited July 18, 2014).

[9] Herma H. Kay, *Equality and Difference: The Case of Pregnancy, in* FEMINIST THEORY I: FOUNDATIONS AND OUTLOOKS 256 (Frances Olsen ed., 1995).

[10] UNITED NATIONS DEVELOPMENT FUND FOR WOMEN & PARTNERS FOR LAW IN DEVELOPMENT, CEDAW: RESTORING RIGHTS TO WOMEN 25-26 (2004), *available at* http://www.unwomensouthasia.org/assets/CEDAW.pdf.

[11] *See* Bartlett, *supra* note 8.

The substantive equality approach, however, does not exclude the use of the formal equality or the "same treatment approach" where circumstances warrant. Substantive equality also permeates the boundaries of the dominance or non-subordination theory, which posits that an equality question is a question of the distribution of power, and gender is also a question of power—that of male supremacy and female subordination.[12]

To be sure, the substantive approach accepts "protection" in cases where women are placed at a disadvantage, such as in cases of discrimination on the basis of sex or gender. The protective nature of provisions, however, should not result to further discrimination. In this sense, taking protective measures is not the same as adopting a protectionist approach in formulating policies, laws and programs where "protection for women" leads to further denial or restriction of their rights, such as the right to equality of opportunity and treatment in regard to employment and occupation. With this distinction, the substantive approach thus frowns on a "protectionist approach" as it runs counter to the principle of gender equality.

The Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), which the Philippines ratified in 1981, adopts the substantive equality approach. Under CEDAW, issues of gender violence, which victimizes mostly women, are considered discrimination.[13] In the substantive equality approach, the question of intersectionality, where gender discrimination interfaces with other social categories and forms of discrimination on the basis of class, ethnicity, sexual orientation, or other status, is also taken into account.

Labor Legislation Through the Years: How Well Do They Advance Gender Equality?

Over the years, the government has taken steps to promote equality in law between women and men, in keeping with the various United Nations' initiatives on women empowerment. Philippine labor laws, however, reflect the varied approaches to achieving equality, and sometimes bear the "protectionist approach," to the detriment of women's economic emancipation or the achievement of gender equality.

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[12] Catharine MacKinnon, *Difference and dominance: On sex discrimination*, *in* FEMINIST THEORY: READINGS IN LAW AND GENDER 81-94 (Katharine Bartlett & Rosanne Kennedy eds., 1991).

[13] UN Committee on the Elimination of Discrimination Against Women [hereinafter "UN CEDAW"], CEDAW General Recommendations Nos. 19 and 20 adopted at the Eleventh Session, ¶ 1, U.N. Doc. A/47/38 (1992) [hereinafter "UN CEDAW Recommendations Nos. 19 and 20"], *available at* http://www.refworld.org/docid/453882a422.html.

1. Under 1935 Constitution

Then and now, the Philippine Constitution has always regarded women as objects of special protection, particularly in the area of labor. When the 1935 Constitution mandated the State to "afford protection to labor, *especially working women and minors*,"[14] the intent was to liberate women from exploitation and abuse. Justice Romero, however, rightly pointed out that the 1935 constitutional protection, in lumping women in the same category as minors, betrays the patronizing attitude of our male legislators and national planners towards women. This patronizing attitude resonates in the early laws and well into the present day.

In this light, Act No. 3071 was enacted in March 1923 in order to regulate the employment of women and children and protect them from exploitative and abuse working conditions.[15] The same protective nature of Act No. 3071 is found in through Republic Act No. 679 of 1952, commonly known as the *Woman and Child Labor Law*. Although Act No. 3071 and Republic Act No. 679 sought to protect women from exploitation and abuse, some of its provisions adopted the "protectionist approach" that runs counter to the substantive equality approach. For instance, the latter law required such protectionist provisions as "seats proper for women when they are free from work and during working hours;"[16] and the duty to "establish an adequate nursery near the place of work where they may leave their children, said nursery to be under the supervision of either a registered or a qualified midwife."[17] These protectionist provisions, although meant to benefit women, were treated solely as women's issues when they could benefit men as well. In particular, the duty to provide a nursery suggests that it is a woman's role to provide childcare. In so doing, the law denied to male workers the opportunity to take on greater responsibility for childcare. The notion that it is a woman's role to provide childcare is a social construct that disadvantages women in terms of work productivity and efficiency.

Justice Romero noted that:

> Those companies which religiously put up nurseries all to soon found out that they were more decorative than functional. Married women were never wanting in surrogate mothers to babysit for them in the person of their own or their husband's kin. Besides, who cared

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[14] CONST. (1935) art. XIV, §6. (Emphasis supplied.)

[15] NATIONAL COMMISSION ON THE ROLE OF FILIPINO WOMEN, WOMEN WORKERS IN THE PHILIPPINES 3 (1985).

[16] Rep. Act No. 679 (1952), § 9(a)(1).

[17] § 8(c).

> to expose her infant to the risks of land and air pollution in going to and from the work place?[18]

The validity of these reasons is, at best, arguable. Nevertheless, a nursery or child care facility in the workplace remains a beneficial option for both workers, male or female, since there may not always be a surrogate parent who would be available to babysit the worker's infant or child. Incidentally, there are "surrogate fathers," too.

As to protection from work in any bar, nightclub, or dance hall, only women who were below 18 years of age were prohibited from such workplaces. [19] This provision suggested that only female minors needed protection, when all workers, both male and female, who worked in such establishments, needed protection as regards employment benefits and welfare.

The night-work prohibition for women was another protectionist provision under Republic Act No. 679.[20] Incidentally, this law predated the International Labor Organization (ILO) Convention No. 89, or the *Convention concerning Night Work of Women Employed in Industry*, which the Philippines ratified in 1953. The general exclusion of women marginalized their access to resources and benefits through unnecessary protections that impeded their choices and restricted their economic participation. Moreover, such protectionist provisions reinforced discriminatory gender stereotypes—that women were weak and vulnerable to dangers of night work, and that a woman's place was at home.

All in all, the protectionist provisions proved detrimental for they were unduly considered "women's issues" and were seen to cause higher costs to employers, resulting in discrimination against women in the hiring process. As Justice Romero noted, "what was initially designed for their protection was actually working against their interests."[21]

It is significant to note, however, that although the earlier laws were essentially protective in nature (and some were protectionist in approach), equality of treatment between women and men merited attention as well. For instance, the prohibition from discharge without just cause for women laborers who went on vacation leave due to pregnancy,[22] the prohibition against discrimination with respect to terms and conditions of employment on account

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[18] Romero, *supra* note 4, at 46.
[19] Rep. Act No. 679 (1952), § 3(a).
[20] § 7(a)(2), *amended by* Rep. Act No. 1131 (1954) & Rep. Act No. 6237 (1971).
[21] Romero, *supra* note 4, at 47.
[22] Act No. 3071 (1923), § 13.

of sex,[23] the equal remuneration for work of equal value for both men and women employees, [24] and the protection due to pregnancy provided the underpinnings for the equality of treatment provisions in succeeding legislation, notably the Labor Code.

2. Under the 1973 Constitution

The 1973 Constitution took an egalitarian posture, which Justice Romero aptly referred to as "unisex in outlook."[25] Section 9, Article II of the 1973 Constitution sought to ensure equality in treatment for all workers.

In 1974, Presidential Decree No. 442, otherwise known as the *Labor Code of the Philippines*, was promulgated. Section 4 of the Labor Code on the declaration of basic policy echoes the State policy under the 1973 Constitution, declaring that "[the] State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers."

To this day, the Labor Code is the principal source of working women's rights, welfare and protection. Reminiscent of the patronizing practice of lumping together women with minors in earlier legislations, however, the benefits and welfare of working women were pooled in Chapter 1 of Title III, Book IV under the general rubric, *Working Conditions for Special Group of Employees.* In this light, women are still seen as objects of special protection, like the other special group of employees—minors, house helpers (now referred to as domestic workers), and homeworkers. This calls to mind Justice Romero's insightful words: "The day woman shakes off this image that drags her down to the level of under-aged children in need of special attention and care, that day will she have come into her own."[26]

While the Labor Code incorporated the rights and benefits under Republic Act No. 679 and subsequently those under Presidential Decree No. 148, the amendments, as Justice Romero noted, brought "a reduction of protective measures hitherto granted to women workers in an effort to divest employers of excuses for denying equal employment opportunities to women."[27] Nevertheless, the protectionist provisions of the earlier laws were carried over to

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[23] Rep. Act No. 679 (1952), § 7(b).
[24] § 7(b).
[25] Romero, *supra* note 4, at 47.
[26] *Id.* at 45.
[27] *Id.* at 48.

the Labor Code, which regarded the provisions on the employment of women as solely women's issues.

The protectionist provision prohibiting night-work for women were retained, although the prohibition had been limited to certain hours depending on the nature of the establishment.[28] The setting up of facilities, such as seats for women, as well as the establishment of a nursery in the workplace were also no longer mandatory but merely subject to the discretion of the Secretary of Labor and Employment ("SOLE"), through appropriate regulations.[29] On this point, where the SOLE found it "appropriate" to require an employer to establish a nursery, the benefit only pertained to "women employees."[30] This approach of treating these facilities as women's issues gives reason, albeit unwarranted, to discriminate against women in the hiring process, and to discriminate against male workers in the use of such facilities when needed.

The prohibition on women below 18 from working in bars and similar establishments[31] had been omitted from the Labor Code. In lieu of such prohibition, any woman who is permitted or suffered to work, for a substantial period of time under the effective control or supervision of the employer, is considered an employee of such establishment for purposes of existing labor and social legislations.[32] While this is clearly beneficial to women who work in such establishments, it discriminates against men who are similarly situated.

Another protectionist provision was added to the Labor Code—the family planning provision formerly introduced by Presidential Decree No. 148. Employers were required to maintain a clinic or infirmary and provide free family planning services to their employees, including, but not limited to, the application or use of contraceptive and intra-uterine devices.[33] Note that the family planning provision specially mentioned the use of contraceptives or intra-uterine devices, which are both for the sole use of women. Moreover, the law mandated the Department of Labor and Employment (hereinafter "DOLE") to "develop and prescribe *incentive bonus schemes* to encourage family planning *among female workers* in establishment."[34] Although the incentive appeared to benefit women, the gender bias of the law unfairly put the burden of family planning primarily on women. In other words, the law suggested that since women have the sole capacity to bear children, so must they bear the sole responsibility of

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[28] LAB. CODE, art. 130.
[29] LAB. CODE, art. 132.
[30] LAB. CODE, art. 132(c).
[31] Pres. Dec. No. 148, § 3 (1973), *amending* Rep. Act. No. 679 (1952).
[32] LAB. CODE, art. 138.
[33] LAB. CODE, art. 134 (a).
[34] LAB. CODE, art. 134(b). (Emphasis supplied.)

family planning.

Maternity leave with pay is one benefit wherein women need limited protection. In 1977, Presidential Decree No. 1202 added a new provision on maternity leave benefits in Republic Act No. 1161, otherwise known as the Social Security Law, requiring employers to advance the payment of maternity leaves, subject to reimbursement from the Social Security System.[35] In effect, the amendment superseded the maternity leave benefits under the Labor Code, thereby relieving the employer from its duty to shoulder the cost of maternity leaves. The duty is passed on to the government. Notably, the maternity provision is gender-sensitive since the maternity benefits are for all women, married or not.

In furtherance of the 1973 Constitution mandate to guarantee equality between women and men, the Labor Code expanded the anti-discrimination provisions first laid down in Republic Act No. 679. It provided for the prohibition against discrimination with respect to terms and conditions of employment on account of the woman's sex, and the guarantee of equal remuneration for work of equal value.[36] Moreover, it declared unlawful the stipulation against marriage as a condition of employment or continuation of employment,[37] or the discharge of any female employee for the purpose of preventing her from enjoying any of the benefits under the Code, or her discharge on account of pregnancy or confinement due to pregnancy, or for fear that she may again be pregnant.[38]

In totality, a tension exists within the Labor Code with regard to provisions on the employment of women. On the one hand, it provides protection to working women against discrimination in hiring, benefits and promotion policies that is consistent with substantive equality, but on the other hand, it unduly takes a protectionist approach in other provisions. This kind of tension pervades in other legislation, such as the Family Code and Criminal Code, among others.

In spite of this, the Philippines has continued to respond to the call of promoting gender equality. In 1981, the Philippines took another step in its commitment to promote equality in treatment for all workers by ratifying the CEDAW. In effect, the Philippines committed to promote equality through the substantive equality approach.

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[35] Pres. Dec. No. 1202 (1978), §14-A.

[36] LAB. CODE, art. 135.

[37] LAB. CODE, art. 136.

[38] LAB. CODE, art. 137.

3. Under the 1987 Constitution

Under the CEDAW, it is the mandate of State Parties to "take in all fields, in particular in the political, economic and cultural fields, all appropriate measures to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."[39]

Consistent with this treaty obligation, Section 14 of Article II of the 1987 Constitution provides: "The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men."

Such recognition is a major policy that neither the 1935 Constitution nor the 1973 Constitution contemplated. Now, women are regarded as "subjects" who participate in nation-building. For this reason, they are entitled to equality of treatment and to equality of employment.

Nonetheless, under the 1987 Constitution, women still continue to be "objects of special protection" on account of their maternal functions, similar to the 1935 Constitution. Section 14 of Article XIII of the 1987 Constitution provides: "The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation."

The last 25 years may be considered a watershed for gender equality as more gender-related laws were passed to help women achieve equality with men, not only in the privacy of their homes, but, equally important, in the public sphere of work.

a. Recognizing Women's Role in Nation-Building

Republic Act No. 7192, enacted in 1992, affirms the indispensable role of women in all aspects of national development and ensures fundamental equality before the law of women and men.[40]

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[39] Convention Against All Forms of Discrimination Against Women [hereinafter "CEDAW"], art. 3, Dec. 18, 1979, 1249 U.N.T.S. 13.

[40] Rep. Act. No. 7192 (1992), § 2. Women in Development and Nation Building Act of 1992.

For the longest time, a married person who did full-time household management was not recognized in the country's development and nation-building. That was because household work does not figure in the computation of the gross domestic product, as it is not considered "work."

Under the law, married persons who manage the household and family affairs full-time, upon the spouse's consent, are now entitled to voluntary Home Development Mutual Fund ("Pag-IBIG"), Government Service Insurance System ("GSIS"), and Social Security System ("SSS") coverage to the extent of one-half of the salary and compensation of the working spouse, to be deducted from the salary of the working spouse.[41] Since most married persons who do full-time household management are women, the entitlement to social security is but a small positive step to rectify the grievous error of ignoring women's household work as compensable work.

b. Ensuring the Right to Decent Work

In 2009, Republic Act No. 9710, known as the *Magna Carta of Women*, was enacted. It affirms the role of women in nation-building and ensures the substantive equality of women and men. It lays down the rights of women, with a special section on the rights and empowerment of marginalized sectors, among which are the workers in the formal and informal economy. Women in marginalized sectors are considered a vulnerable group who are mostly living in poverty and have little or no access to land and other resources, and basic social and economic services.[42] Being so, working women are guaranteed, among others, the right to a decent work that involves opportunities for work that are productive and fairly remunerative as family living wage, security in the workplace, and social protection for families, and equality of opportunity and treatment for women and men.[43]

While the Magna Carta of Women certainly is a well-intentioned legislation, generalizing women workers, particularly those in the formal economy as marginalized, without distinction as to their particular work situations, unnecessarily results in the overprotection of workers where none is necessary.

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[41] Rep. Act. No. 7192 (1992), § 8.

[42] Rep. Act No. 9710 (2009), § 4. The Magna Carta of Women.

[43] § 22.

c. Repealing the Nightwork Prohibition
and Providing Night Work Benefits

In the past, the night work prohibition for women had been a major stumbling block in the promotion of gender equality in the workplace. Finally, the Philippines took the decisive step to repeal it when Republic Act No. 10151 was enacted in 2011. The law is practically a reproduction of the provision of the new ILO Night Work Convention.[44]

In view of the dangers of night work to the health and safety of both men and women, the law provides specific protective measures for night workers, including health assessment, mandatory facilities such as suitable first-aid facilities, reasonable facilities such as sleeping or resting quarters in the establishment and transportation from work premises to the nearest point of their residence, maternity protection, social services, opportunity for occupational advancement, and additional compensation.[45]

d. Improving Maternity Protection

Maternity protection is a limited area where pregnant women need protection. Republic Act No. 7322 increased the maternity leave with pay under the Social Security Law to 60 days, if by normal delivery, and 70 days, if by caesarian delivery.[46] Still, the maternity leave falls below international standard. The ILO Maternity Protection Convention prescribes a minimum "fourteen weeks of maternity leave."[47]

It is well to note, however, the reminder of Australia's Human Rights and Equality Opportunities Commission that the argument for a longer period of maternity leave should not mean that a period of maternity leave should be enforced even when "women can [...] return to work within the sixteen weeks

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[44] Int'l Labour Org., Convention concerning Night Work, ILO Convention No. 171 (June 26, 1990) [hereinafter "ILO Night Work Convention"], *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312316:NO.

[45] *Compare* Rep. Act No. 10151 (2011), *with* ILO Night Work Convention, art. 3-5.

[46] Rep. Act No. 7322, § 1 (1992). An Act Increasing Maternity Benefits in Favor of Women Workers in the Private Sector.

[47] Int'l Labour Org., Convention concerning the revision of the Maternity Protection Convention, art. 14(1), ILO Convention No. 183 (June 15, 2000) [hereinafter " ILO Maternity Protection Convention"], *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312328:NO.

following childbirth with no apparent detriment to their health," lest it become an undesirable restriction against women.[48]

Under the Magna Carta of Women, the State has also assumed the primary responsibility of ensuring access to maternal care, which includes pre- and post-natal services to address pregnancy and infant health and nutrition as part of women's right to health, as well as responsible, ethical, legal, safe, and effective methods of family planning.[49] The passage of the landmark law Republic Act No. 10354 or the *Responsible Parenthood and Reproductive Health Act of 2012* only serves to underscore the importance of family planning, especially as it affects women's effective participation in the workplace or their capacity for professional growth and development. It bears stressing, however, that family planning is not and should not be the sole burden of women.

To strengthen the protection on maternity protection, Republic Act No. 10151 was enacted, imposing a duty to employers to ensure alternatives to night work for women night workers, before and after childbirth for a certain period of time;[50] protection from dismissal and loss of benefits attached to her night work position during the period;[51] and transfer to day work where this is possible.[52] In any event, pregnant women and nursing mothers may be allowed to work at night only if a competent physician, other than the company physician, certifies their fitness to render night work, and specifies, in the case of pregnant employees, the period of the pregnancy that they can safely work.[53]

Moreover, in support of the basic physical, emotional, and psychological needs of mothers and infants, Republic Act No. 7600, as amended by Republic Act No. 10028 known as the *Expanded Breastfeeding Promotion Act*, mandates all health and non-health establishments or institutions to establish lactation stations in the workplace, adequately provided with the necessary equipment and facilities.[54] To promote breastfeeding, employers are also mandated to grant nursing employees compensable break intervals of not less than a total of 40 minutes for every eight-hour working period to breastfeed or express milk, in addition to regular time-off for meals.[55]

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[48] *Objectives of Paid Maternity Leave, in* Australian Human Rights Commission, *Valuing Parenthood,* Interim Paper at 46 (2002), *available at* https://www.humanrights.gov.au/publications/valuing-parenthood-part-c.

[49] Rep. Act No. 9710 (2009), § 17 (a)(1)-(3).

[50] Rep. Act No. 10151 (2011), art. 158 (a), (b)(1)-(2).

[51] Art. 158 (i)-(ii).

[52] Art. 158, ¶ 4.

[53] Art. 158, ¶ 3.

[54] Rep. Act No. 10028 (2010), § 6. Expanded Breastfeeding Promotion Act of 2009.

[55] § 7.

One other protective measure for pregnant and nursing women that has largely been overlooked, either in the Labor Code or present legislation, is the protection from harmful work. ILO Maternity Protection Recommendation,[56] in relation to the Maternity Protection Convention, [57] provides that where significant workplace risks have been identified, measures should be taken to provide an alternative to such work. Considered prejudicial to pregnant and nursing women include arduous work involving manual lifting, carrying pushing, or pulling of loads, work involving exposure to harmful substances, work requiring special balance, or work involving physical strain due to prolonged periods of sitting or standing, extreme temperatures, or vibration.[58]

The only provisions on "protection from harmful work" were provided for by earlier legislation, although the protection covered not just pregnant or nursing women but *all* women, thereby unduly restricting *other* working women of their right to equal work opportunities. Act No. 3071 made it unlawful for any person, firm or corporation to employ women in workplaces where the nature of the work required the woman employee to stand at all times.[59] On the other hand, Republic Act No. 679 prohibited the employment of women in establishments where women performed work that involved the lifting of heavy objects.[60] These have since been repealed.

In any case, the protection from harmful work is a legitimate concern of both women and men workers. Rather than unduly restricting other women from such workplaces, personal protective equipment should instead be provided to all workers working in hazardous workplaces.

e. Providing Social Support Services and
Leaves for Workers with Family Responsibilities

Even as greater protection has been legislated against discrimination and for equality in the work place, inequality persists in terms of promotion, training, and other work opportunities due to lack of support for workers with family responsibilities. In particular, working women face the demands of work, on the one hand, and responsibilities to their families, on the other. In a society that expects women to take care of the children and do household chores, working

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[56] Int'l Labour Org., Recommendation concerning the revision of the Maternity Protection Recommendation, ILO Recommendation No. 191 (June 15, 2000) [hereinafter "ILO Maternity Protection Recommendation"], *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R191.

[57] ILO Maternity Protection Convention, *supra* note 47.

[58] ILO Maternity Protection Recommendation, *supra* note 56, at ¶ 6.

[59] Act No. 3071 (1923), § 6.

[60] Rep. Act No. 679 (1952), § 7(b).

women confront the problem of a double-burden, or even multiple burdens in terms of longer hours of work and a wider breadth of responsibility.

Surveys show that the employers' adoption of "family-friendly" policies and establishment of facilities such as childcare have resulted in higher employee morale, lower absenteeism, favorable publicity, and improved community family relations.[61] Moreover, with sufficient childcare facilities, workers with family responsibilities can exercise their rights to free choice of employment.[62] However, since the establishment of nurseries in the workplace is no longer mandatory but merely subject to the discretion of the SOLE,[63] workers, mostly working women, give up work or are forced to absent themselves from work to attend to family responsibilities. In this light, Republic Act No. 6972, commonly known as the *Barangay Day Care Act*, was enacted to promote the development and protection of children and to address the pressing needs of women workers with family responsibilities.

The law's program for the development and protection of children includes the care for children up to six years of age of working mothers during the day and, where feasible, care for children when mothers are working at night. The day care center need not take care of the children at a particular place,; instead, a network of homes is to be developed, where women may take care of the children with adequate supervision from the supervising social welfare officer of the Department of Social Welfare and Development (DSWD).[64] Additionally, the program includes materials and a network of "surrogate mothers-teachers" who will provide intellectual and mental stimulation to the children, as well as supervised wholesome recreation, with a balanced program of supervised play, mental stimulation activities, and group activities with peers.[65]

The problem is the law is based upon the premise that women's share in family responsibility is greater than that of men, hence they deserve the special measure to cope with family and work responsibilities. Moreover, while it provides support for working women, it simply passes on the responsibility of childcare to other women and "surrogate mother-teachers." In other words, such arrangement basically accepts as given the socially-constructed difference

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[61] WORKERS WITH FAMILY RESPONSIBILITIES, Report of the Committee of Experts of the International Labour Conference, 80th Sess., at 26 (1993), *available at* http://www.ilo.org/public/libdoc/ilo/P/09661/09661(1993-80-4B).pdf.

[62] INTERNATIONAL LABOUR ORGANIZATION, ABC OF WOMEN WORKERS' RIGHTS AND GENDER EQUALITY 35 (2007) [hereinafter "ABC"];

[63] LAB. CODE, art. 132.

[64] Rep. Act No. 6972 (1990), § 3(c).

[65] § 3(d).

between men and women—that childcare is the sole function of women; that men cannot be "surrogate father-teachers" or "parent-teachers." This goes against the objectives of the CEDAW and the ILO Workers with Family Responsibilities Convention[66] to promote equality of opportunity and treatment in employment for women and men workers with family responsibilities, as well as between workers with family responsibilities and those without such responsibilities.[67]

Republic Act No. 8980 or the *Early Childhood Care and Development ("ECCD") Act* was also enacted in 2000 to push for the establishment of ECCD programs in the public and private sector. The ECCD programs include workplace-initiated childcare and education programs. ECCD programs that are supported by corporations or employers are given incentives by way of deduction from taxable income for recurrent operating costs, provided that the employer or corporation does not charge user fees[68]. Unlike the *Barangay* Day Care Act, the ECCD Act is consistent with the CEDAW's substantive equality approach and the ILO's objective of providing support to workers with family responsibilities without distinction.

As a correlative benefit to maternity leave, Republic Act No. 8187, also known as the *Paternity Leave Act of 1996*, was passed. It grants a seven-day paternity leave with full pay to a married male employee for the first four deliveries of the legitimate spouse with whom he is cohabiting[69] to enable him to support his spouse in her period of recovery and/or in the nursing of the newborn.[70] The law is a significant contribution to the promotion of shared responsibility in child caring. Still, it failed to consider certain realities obtaining among workers. The limited paternity leave of seven days does not take into account the possibility of childbirth complications that may require an extended leave of absence.

Moreover, an unmarried worker who cohabits with an unmarried woman under a common-law arrangement, not uncommon in this age, is deprived of the opportunity to exercise his paternal responsibility. It is well to

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[66] Int'l Labour Org., Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers, ILO Convention No. 156 (June 23, 1981), *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C156.

[67] E. (Leo) D. Battad, *The Labor Code Revisited: Prospects for Labor Law Reforms toward Women's Economic Empowerment, in* A GENDER REVIEW OF SELECTED ECONOMIC LAWS IN THE PHILIPPINES 45 (2006).

[68] Rep. Act No. 8980 (2000), § 9(b).

[69] Rep. Act No. 8187 (1996), §2.

[70] § 3.

recall that a woman, married or unmarried, may avail herself of maternity leave. For this reason, a woman has reason to expect support from her spouse or common-law spouse during childbirth. As to the fear of abuse or misuse if such entitlement were to be extended to unmarried male employees, this could readily be addressed by appropriate rules and regulations.

Family social support was also extended to solo-parents with the enactment of Republic Act No. 8972, also known as the *Solo Parents' Welfare Act of 2000*, which grants a seven-day parental leave to solo parents to enable them to perform parental duties and responsibilities where physical presence is required,[71] a flexible work schedule, provided that it does not affect individual and company productivity,[72] and protection from discrimination with respect to terms and conditions of employment on account of his/her status.[73]

Although the law is beneficial to solo-parents, it fails to take into account the similar needs of working couples, married or even in common-law relationships, for parental leave or flexible working hours. While working couples may not appear be as burdened as solo-parents, they equally face the demands of family responsibilities, such as childcare and other family chores. Oftentimes, the demands of family responsibilities fall on women, especially in times of emergency or urgent need requiring the presence of a parent. The lack of recognition for parental leave and flexible work schedules for working couples overlooks the opportunity to promote shared parental responsibilities among working couples, and to protect working couples from loss of income due to absenteeism, or loss of career opportunities.

f. Strengthening the Anti-Discrimination Provision

The equality of employment involves two aspects: equal opportunity and equal treatment. Equal opportunity means "having the equal chance to apply for a particular job, to be employed, to attend educational or training courses, to be eligible to attain certain qualifications, and to be considered as a worker or for a promotion in all occupations or positions, including those dominated by one sex or the other."[74] On the other hand, equal treatment refers to "the entitlements in pay, working conditions, security or employment, and so on."[75]

Along this line, Republic Act No. 6715 was passed in 1989 to amend

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[71] Rep. Act No. 8972 (2000), § 8.
[72] § 6.
[73] § 7.
[74] ABC, *supra* note 62, at 73.
[75] *Id.*

Article 135 of the Labor Code with the purpose of strengthening the prohibition on discrimination against women by identifying specific acts of discrimination and providing criminal liabilities for violations. Considered acts of discrimination are the paying of lesser compensation for work of equal value, and favoring a male employee over a female employee with regard to promotion, training, study and scholarship solely on account of their sexes.

In spite of the prohibitions on discrimination in the terms and conditions of work, however, one major area where visible equality deficits arise is wage differentials. The discriminatory practice of paying women less than men for work of equal value is widespread in the private and public sectors.[76]

Then there is also the pre-employment practice of sex-based preferences in the hiring phase. Women and men continue to experience discriminatory practices in advertisements through sex-based preferences, thereby reinforcing the traditional stereotypes of "women's work" and "men's work." This practice, in effect, limits the worker's choices and access to employment opportunities.

The lack of protection in the pre-employment phase contributes to the phenomenon of occupation segregation. The equality of pay between men and women is compromised due to existing practices of exclusion or preference for either worker for particular work or occupation. Also, there is an absence of affirmative actions to combat occupation segregation, such as introducing schemes that would encourage women and men to enter in nontraditional skills or occupation.

In this regard, the UN Committee on the Elimination of Discrimination Against Women ("CEDAW Committee") issued General Recommendation No. 13 with a view to overcome the gender-segregation in the labor market.[77] The CEDAW Committee recommended to the State parties to consider the study, development, and adoption of job evaluation systems based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate. The Philippines needs to establish specific guidelines on the adoption of gender-responsive job-evaluation systems. Towards this end, there is a need to require employers to make a full disclosure of job classification, job assignments, salary schemes, and other relevant

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[76] Gert A. Gust, *Equality at Work: Philippines*, ILO Working Paper No. 12, at 24 (2006), *available at* http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_126069.pdf.

[77] UN CEDAW, General Recommendation No. 13: Equal remuneration for work of equal value (1989), *available at* http://www.refworld.org/docid/52d925754.html.

information to be able to develop gender-neutral criteria.

The need to address all these problems is imperative if the principle of "equal pay for equal value of work" is to have a greater impact in improving the economic power of working women. Along this line, all other forms of direct and indirect discrimination have to be identified and addressed with equal urgency. Moreover, there is a need to come up with a definitive statutory definition of discrimination with regard to employment, apart from merely coming up with limited acts of discrimination as provided for under Article 135 of the Labor Code.

Under the Labor Code, it is also unlawful to require an employee not to get married as a condition of employment or continuation of employment, or to stipulate against marriage expressly or tacitly that upon getting married, a woman employee will be deemed separated, or actually terminate or prejudice her merely by reason of marriage.[78] In addition, it is unlawful to discharge any woman for the purpose of preventing her from enjoying any of the benefits under the Code.[79]

The provision on stipulations against marriage has been interpreted by the Supreme Court. In *Philippine Telegraph & Telephone Co. v. National Labor Relations Commission*,[80] the Court struck down the employer's defense that the employee was dismissed for dishonesty when she concealed her marital status during the hiring. In favoring the employee, the Court took the dishonesty charge as a mere pretext and found that the respondent employee was dismissed on account of her being married.

In *Star Paper v. Simbol*,[81] the Court upheld the constitutional and statutory rights of the employees, finding that the company policy of banning spouses from working in the same company (no-spouse employment policy) was not a valid exercise of management prerogative as the employer failed to discharge the burden of proving the existence of a reasonable business necessity.

The *Star Paper* case was significant in that, for the first time, the Court, speaking through then Chief Justice S. Reynato Puno, introduced in Philippine jurisprudence the American theories on discrimination—the disparate treatment and disparate impact theories, and the *bona-fide* occupational qualification as an exception. Although instructive, it failed to fully explain the history and

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[78] LAB. CODE, art. 136.

[79] LAB. CODE, art. 137.

[80] G.R. No. 118978, 272 SCRA 596, May 23, 1997.

[81] G.R. No. 164774, 487 SCRA 228, Apr. 12, 2006.

development of these theories, as well as the necessary proof needed, so as to provide guidelines for their future applicability in discrimination cases within the Philippine context.

g. Ensuring a Safer Work Environment

A safe and healthy work environment in the workplace was a major consideration in the enactment of gender-related laws. Violence in the workplace is a form of discrimination. It is so pernicious that if left unchecked, it affects the productivity and efficiency of workers. This menace disproportionately affects women because women are considered as the weaker sex.

Sexual harassment is one form of violence that workers are forced to face in the workplace. Sexual harassment is inextricably linked with the question of power.[82] For this reason, the CEDAW considered sexual harassment a gender specific-violence that is considered an act of discrimination.[83]

In the precedent-setting case of *Villarama v. National Labor Relations Commission*,[84] the Supreme Court stated "[s]exual harassment abounds in all sick societies. It is reprehensible enough but more so when inflicted by those with moral ascendancy over their victims."[85] Thus, the sexual harassment committed by the managerial employee against a subordinate amounted to "loss of trust and confidence," and was a valid cause for separation from service.

With the subsequent enactment of Republic Act No. 7877, otherwise known as the *Anti-Sexual Harassment Act of 1995*, sexual harassment was no longer merely dealt with as an administrative matter, punishable by dismissal. The law now considers it a criminal offense when committed in a work-related or employment environment.[86] An employer, employee, manager, supervisor, agent of the employer, or any other person having authority, influence or moral ascendancy commits sexual harassment when he or she demands, requests, or requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of the act.[87] Consistent with the "same treatment" or formal equality approach, a woman or man, therefore, may either be a victim or offender of the act of sexual harassment.

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[82] INTERNATIONAL LABOUR ORGANIZATION, GENDER ISSUES IN THE WORLD OF WORK: BRIEFING KIT (1995).

[83] UN CEDAW Recommendations Nos. 19 and 20, *supra* note 13, ¶ 6.

[84] G.R. No. 106341, 236 SCRA 280, Sept. 2, 1994.

[85] *Id.* at 281.

[86] Republic Act No. 7877 (1995), § 7.

[87] § 3.

Since its enactment, the law has been effective in deterring sexual harassment in the workplace and school environments. The law, however, has failed to recognize that sexual harassment and other gender violence involves the question of power. The power relations exist not only in a superior-subordinate relationship, but even in a peer-relationship, especially in a society where the distribution of power deeply reflects male supremacy and women's subordination in both the public and private sphere.

Moreover, the law limited the scope of the offense to the *quid pro quo* type of sexual harassment within the work-related or employment and education or training environment. In a work-related environment, it failed to explicitly include sexual advances, which commonly occur in the workplace. Thus, a common question is: suppose the offender stole a kiss, would that constitute sexual harassment? In any case, the Supreme Court in *Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission*[88] settled this question, ruling that where the woman was subjected to her manager's sexual advances, which included touching her arms and putting his arms around her, such acts fell within the definition of sexual harassment.

Apart form sexual harassment, domestic violence also affects the dignity of a person and is an affront to the principle of equality. It is a manifestation of inequality because it disproportionately affects women. Under Republic Act No. 9262, known as the *Anti-Violence Against Women and Their Children Act of 2004*, working women in private and public establishments who are victims of domestic violence are entitled to a paid leave of absence up to 10 days in addition to other paid leaves under the Labor Code and Civil Service Rules and Regulations.[89] Any employer who prejudices the right of the person to take a leave is penalized in accordance with the provisions of the Labor Code and Civil Service Rules and Regulations. An employer who prejudices any person for assisting a co-employee who is a victim of domestic violence is likewise liable for discrimination.[90]

h. Providing Greater Protection
to Vulnerable Workers

The working and living situation of domestic workers is generally precarious in nature. Since work is done within the private confines of a household, there is greater incidence of personal contact, more control over

[88] G.R. No. 124617, 331 SCRA 237, Apr. 28, 2000.
[89] Rep. Act No. 9262 (2004), § 43, ¶ 1.
[90] § 43, ¶ 2.

their movements and personal life, and limited contact or interaction with people outside the household. With practically no government monitoring possible under such circumstances, domestic workers face a greater likelihood of abuse or exploitation if no adequate special protection is in place.

Majority of domestic workers are women, thus making it a "woman's work." With this in mind, domestic workers have been the subject of legislation promoting and protecting their rights and welfare. In 1993, the pittance of a wage of house helpers provided under the Labor Code was increased by Republic Act No. 7655, which prescribed a minimum wage. More importantly, the law placed house helpers receiving at least one thousand pesos under the coverage of the SSS.

In 2011, the Domestic Workers Convention[91] was adopted during the International Labor Conference and was subsequently ratified by the Philippines. This, as well as the increasingly precarious situation of house helpers, served as impetus for the passage of Republic Act No. 10361, otherwise known as *Domestic Workers Act* or *Batas Kasambahay*, on January 18, 2013.

House helpers, also referred to as domestic workers, are now recognized as similar to those in the formal sector. The law expanded their rights and privileges,[92] basic necessities,[93] and increased the minimum wage[94] in addition to 13th month pay, SSS, Philippine Health Insurance Corporation ("Philhealth"), and Pag-IBIG benefits.[95] It also provided for a system of registration of domestic workers,[96] a system of licensing and regulation of private employment agencies, and a mechanism to settle disputes.[97]

There has also been an increase in female migrant workers abroad primarily for economic reasons. These female migrant workers account for more than half of the Overseas Filipino Workers ("OFWs"), majority of whom are service workers. Domestic workers account for more than half of the service workers.[98] A survey done a few years back showed that abuses were frequent

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[91] Int'l Labour Org., Convention concerning decent work for domestic workers, ILO Convention No. 189 (June 16, 2011), *available at* http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C189.

[92] Rep. Act No. 10361 (2013), § 5-10.

[93] § 6.

[94] § 24.

[95] § 30.

[96] § 17.

[97] § 37.

[98] BLES, *supra* note 1, at tbl. 8.1, *available at* http://www.bles.dole.gov.ph/PUBLICATIONS/Gender%20Statistics/Statistical%20Tables/PDF/Chapter%208%20-%20Overseas%20Filipino%20Workers/Table%208.1.pdf.

and prevalent, and that basic human and worker's rights were discarded in many ways.[99] The execution in 1995 of a Filipino worker, Flor Contemplacion, gave impetus to the enactment of Republic Act No. 8042 or the *Migrant Workers & Overseas Filipinos Act of 1995*. To give more teeth to the law, Republic Act No. 10022 further amended Republic Act No. 8042. Recognizing the contribution of migrant women workers, it became a declared policy to apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers.[100] However, the problem of discrimination of migrant workers has not gone away. In this light, the Philippines needs to seriously reconsider its labor migration policy, putting more emphasis on creating local employment opportunities rather than promoting overseas employment as a means to sustain economic growth and achieve national development.

One other major concern is the situation of workers in the informal sector where women are predominantly represented. The informal sector is an important source of employment and a potential "engine for growth."[101] These workers are exposed to various forms of discriminatory treatment, including precarious work conditions, very low wages, occupational health and safety hazards, and lack of social protection.[102] The legislative initiative to enact a *Magna Carta* for the informal sector would be a good start to give these workers a long overdue and much needed protection.

Gender Mainstreaming and the Gender Gaps

In the past decade, the Philippines has taken steps to strengthen existing institutions and relevant policies and programs to address persistent gender issues with the end of promoting gender equality. In compliance with its commitment to implement the Beijing Platform for Action which was first forged during the 1995 UN Fourth Conference on Women in Beijing, it has adopted gender mainstreaming as a strategy for making women's and men's concerns and experiences an integral dimension of the design, implementation, monitoring, and evaluation of policies and programs in all political, economic, and societal spheres so that women and men benefit equally and inequality is not perpetuated.[103]

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[99] Gert, *supra* note 76, at 36.

[100] Rep. Act No. 8042 (1995), § 2(d), *amended by* Rep. Act. No. 10022 (2010).

[101] Gert, *supra* note 76, at 46.

[102] Gert, *supra* note 76, at 47.

[103] Rep. Act No. 9710 (2009), § 4(i).

Under the Magna Carta of Women, the gender and development ("GAD") planning, budgeting, monitoring, and evaluation are the key institutional mechanisms in gender mainstreaming to promote gender equality and eliminate gender discrimination. A GAD program and budget of at least 5% for each agency and local government unit is subject to monitoring and evaluation through an annual audit by the Commission on Audit (COA).[104]

Through the efforts of the government to achieve gender equality, it has successfully narrowed the gender gap over the years, thereby earning the distinction of being one of the top ten countries in the Global Gender Gap Index 2013 ranking. It placed fifth overall, having narrowed the gender gap in four fundamental categories: economic participation and opportunity, educational attainment, health and survival, and political empowerment.[105]

Despite these efforts, gender inequality remains a serious concern. In a 2013 report by the Asian Development Bank on gender equality in the Philippine labor market, gender inequality in the labor market was still ascertained. The report identified seven gender gaps (or deficits for women): labor force, human capital, the unpaid domestic and care work burden, vulnerable employment, wage employment, decent work, and social protection. Despite a variety of gender-responsive legal and policy initiatives, an assessment of the labor market in the Philippines reveals that while some gender gaps have been reduced, women still suffer from persistent gender deficits.[106]

The Roadblocks Revisited

Indeed, advancing gender equality has not been an easy task. There are roadblocks, and the struggle to overcome them continues even to this day.

1. The Traditional and Cultural Constraints

The traditional and cultural constraints, which Justice Romero identified several decades ago,[107] remain a major obstacle. These traditional constraints are largely defined by the gender division of labor which operates inside, or the private sphere, and outside the home, or the public sphere. In the private sphere,

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[104] Rep. Act No. 9710 (2009), § 36(a).

[105] WORLD ECONOMIC FORUM, THE GLOBAL GENDER GAP REPORT 2013 (2013), at 8, *available at* http://www3.weforum.org/docs/WEF_GenderGap_Report_2013.pdf (last visited July 18, 2014).

[106] ASIAN DEVELOPMENT BANK, GENDER EQUALITY IN THE LABOR MARKET IN THE PHILIPPINES ix (2013).

[107] Romero, *supra* note 4, at 149.

an example of a constraint is reproductive work, which is widely considered as "woman's work." In the public sphere, an example is productive work, usually considered as "man's work."

Thus, in reproductive work, women give birth and are expected to take care of the children and to do the household chores. The tacit assumption is that housewives do not work, or that they are dependent on the incomes that their husbands earn. The reproductive work is unpaid and uncounted for, and thus is not reflected in the gross national product.[108]

If at all, women are considered merely as secondary or supplemental earners, complementary to their primary reproductive roles. The assumption extends to unmarried women or to female heads of households who are not dependent on male earnings. [109] Moreover, when women do engage in productive work, they are relegated to low-paid, low-skilled, repetitive and monotonous jobs akin to or compatible with their reproductive roles. Household work is a classic example.[110] Domestic work is another. If this were not enough, when women enter productive work, they experience double or multiple burdens as they continue to do the reproductive work expected of them.

In the formal sector, gender stereotyping is evident in the hiring practices of establishments, where hiring advertisements or criteria state sex preference or impose requirements which are irrelevant to the job in question and which typically only men (or women) can meet (e.g. particular height and weight levels). A study shows that while there was a general decline in the proportion of discriminatory advertisements both for males and females from 1975 to 1995, patterns of preference or discrimination are still evident in selected occupations.[111]

The occurrence of occupational segregation also reflects the gender division of "woman's work" and "man's work." Occupational segregation happens in two ways: (1) through horizontal segregation where men or women tend to be concentrated in different types and at different levels of activity and employment, with women being confined to a narrower range of occupations while men can work across the entire occupational structure, or (2) through

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[108] Rosalinda Pineda Ofreneo, *Women's Empowerment in the Light of Poverty and Continuing Crisis*, *in* BEYOND THE CRISIS: QUESTIONS OF SURVIVAL & EMPOWERMENT 2-3 (Jeanne Frances Illo and Rosalinda Pineda-Ofreneo eds., 2003).

[109] *Id.*

[110] *Id.*

[111] Hector Morada & Lani Santos, *Pre-employment Sex Discrimination: A Three-period comparison* (2001), Phil. Law Rev., Jan. – Dec. 2001, at 68.

vertical segregation, where women and men are concentrated in different positions within the same occupational group, with women being confined to the lower grades of work. [112] Such gender segregation finds women in occupations that are largely extensions of their work in the home.

The 2013 statistics reveal that, overall, in terms of female-male distribution by industry or by occupation, women outnumber men in areas that are primarily service-oriented and supportive in nature. For instance, the distribution by industry shows that women are mostly in wholesale and retail trade and commodity, accommodation and food service activities, education, health and social work, and other service activities, while men are in agriculture, manufacturing, construction, and public administration and defense.[113] In terms of distribution by major occupations, women work mostly as professionals, clerks and service and shop workers, while men work as executives, managers and supervisors, farmers and fishers, trades and related workers, plant and machine operators, and laborers and unskilled workers.[114]

This pattern of occupational or gender segregation is also reflected in skills training. Skills training for women involves food preservation, secretarial, hotel and restaurant management, and beauty culture. These trainings evidently conform to the traditional or gender stereotype of a "woman's work."[115]

The same pattern of gender stereotyping is reflected in education where in terms of university enrollment, women account for the vast majority of students in education and health but take a low share in law and engineering.

What these data point to is that gender stereotyping is so entrenched in society that it pervades practically all aspects of human activity, be it in the home, in the school, in the workplace, or even in bureaucracy. It limits women's and men's development of their natural talents and abilities, and their life choices, opportunities, and experiences. Gender stereotyping has been so "natural" or "normal" that most women and men have come to accept it as a given. For this reason, as Justice Romero said, "women themselves without

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[112] ABC, *supra* note 62; HELINA MELKAS AND RICHARD ANKER, GENDER EQUALITY AND OCCUPATIONAL SEGREGATION IN NORDIC LABOUR MARKETS 5 (1998).

[113] BLES, *supra* note 5.

[114] BLES, *supra* note 6.

[115] TESDA Women's Center (TWC)-Technical Education and Skills Development Authority (TESDA) and the Japanese International Cooperation Agency (JICA), Situation analysis and economic activities of women in urban low-income communities in Metro Manila: The Philippines, 1999.

rationalizing, limit their choices to those that tradition and customs dictate as open to them."[116] The same goes for men.

2. Economic Considerations

Economic considerations could also take a gender dimension. For instance, during the Asian financial crisis, female workers were fired so that "bread-winning" males could keep their jobs, but male workers, who were paid much more than female workers, became vulnerable as companies sought to cut costs and divested themselves of redundant" and "expensive workers. There were also cases of "gender opportunism" in the workplace, as employers kept their lower-paid female staff and let go their higher-paid male staff, as they broke unions by laying-off male leaders, thereby creating space for women to take on leadership positions. These opportunities, however, were generally oppressive for women as they entailed more responsibilities with very little remuneration.[117]

Moreover, at a time of globalization and a highly competitive environment, the ILO notes that employer organizations face particular challenges and responsibilities to contain and possible reverse inequalities arising from tight labor market conditions. The Employers' Confederation of the Philippines (ECOP) acknowledges that inequality of work continues to be widespread.[118]

3. Attitude of Social Partners;
Lack of Gender Awareness among the Social Partners

In the Philippines, there is no doubt that government attitude towards women's concerns has dramatically changed over the years. Nevertheless, attitudinal problems with regard to gender equality cannot be discounted altogether. In one study, for instance, it was noted that among government offices, gender mainstreaming in the workplace has been ongoing since the 1990s. Although the mechanisms are already in place, attitude change is a problem since even among female employees, GAD programs are considered not worth their while.[119]

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[116] Romero, *supra* note 4, at 50.

[117] Jeanne Frances Illo, *Surviving the Crisis: Women's Groups and "Safety Nets," in* BEYOND THE CRISIS: QUESTIONS OF SURVIVAL & EMPOWERMENT 28-29 (Jeanne Frances Illo and Rosalinda Pineda-Ofreneo eds., 2003).

[118] Gert, *supra* note 76, at 19.

[119] Marie Aganon, *Gender Mainstreaming in the Workplace in Times of Crisis, in* BEYOND THE CRISIS: QUESTIONS OF SURVIVAL & EMPOWERMENT 131 (Jeanne Frances Illo and Rosalinda Pineda-Ofreneo eds., 2003).

As for employers and unions, in a case study made in five establishments, it was found that many of the programs initiated by both the company and the union were gender-blind or gender-neutral. They did not recognize the socially-determined differences between women and men, and were hardly responsive to the issues and problems that emanate from gender needs. Moreover, the programs were fund driven so that when funds are not available, these programs were set aside in favor of seemingly more important issues.[120]

Thus, unless the social partners—the government, employers, unions, as well as civil society—fully understand what gender equality means, the climb to achieve equality remains steep. There are two complementary approaches to achieving gender equality: mainstreaming gender and promoting women's empowerment. Both are critical. The lack of awareness among the social partners about these important questions poses an obstacle to the goal of gender equality.

Women's empowerment towards gender equality, therefore, needs the collective effort of everyone. All social partners and members of civil society need to be able to "think gender." They need to be gender-sensitive and gender-aware to be able to come up with, propose or advocate gender-responsive policies and programs. In this way, the problem of gender inequalities in society that most especially burdens women can be adequately and effectively addressed. Lest it be forgotten, in "thinking gender," there is need to take into account the intersection of gender with race, ethnicity, sexual orientation, and other status.

On the other hand, gender mainstreaming represents a conscious effort on the part of the social partners to review their policies and programs to see if there are gender issues involved and whether any specific gender is prejudiced by certain policies and actions. Lack of gender-sensitivity and gender-awareness can constrain them from effectively mainstreaming gender issues in their organizations. For instance, if they do not recognize that there are gender issues in the workplace, they are not likely to believe that they should examine their policies and programs, and institute corrective actions.[121]

4. Weaknesses of the Administrative Machinery

Justice Romero pointed out the inadequate enforcement of the labor laws and suggested that "if the law enforcement machinery could discharge its

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[120] *Id.* at 145.

[121] *Id.* at 135.

duties more vigilantly, the flagrant violators, nationals and aliens alike, would be discouraged from committing such discriminatory practices."[122]

Under the Labor Code, the SOLE exercises visitorial and enforcement powers usually through his or her duly authorized representatives.[123] It has been noted, however, that such administrative and enforcement responsibility suffers severely from a shortage of labor inspectors.[124] To remedy the problem in part and to build a culture of compliance among employers based on voluntariness, the Department of Labor and Employment adopted a Labor Standards Enforcement Framework ("LSEF"). The LSEF comprises three approaches: (a) the voluntary compliance mode through self-assessment for big establishments or unionized firms with collective bargaining agreements; (b) the inspection mode for medium-sized establishments; and (c) advisory services for small establishments with less than 10 workers and registered barangay microbusiness enterprises.[125] The effectiveness of these approaches, however, needs to be carefully evaluated by undertaking a gender audit in order to strengthen its potentials for promoting gender equality.

Mechanisms are in placed for gender mainstreaming and for government agencies to implement the GAD program and budget. Under the Magna Carta of Women, each government agency and local government unit is subject to monitoring and evaluation of GAD programs through an annual audit by COA.[126] However, there is no law requiring private entities, such as employers and unions, to adopt gender mainstreaming. Nor is there a specific machinery to monitor or study if employers and unions actually mainstream gender programs in their organizations. At the very least, a law to encourage gender mainstreaming in the private sector through incentive schemes should be considered.

One important agency that played a central role in the promotion of gender equality is the National Commission on the Role of Filipino Women (NCRFW). On this score, the CEDAW Committee, in its concluding comments in 2006 on the Philippine reports on state compliance with CEDAW, expressed concern that "the national machinery for the advancement of women, i.e., the National Commission on the Role of Filipino Women, lacks the necessary institutional authority, capacity and resources to effectively promote

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[122] Romero, *supra* note 4, at 52.

[123] LAB. CODE, art. 128.

[124] CESARIO ALVERO AZUCENA, JR., THE LABOR CODE WITH COMMENTS AND CASES 378 (6th ed. 2007).

[125] Department of Labor and Employment Dep't Order No. 57-04 (2004). Guidelines on the Effective Implementation of Labor Standards Enforcement Framework.

[126] Rep. Act No. 9710, § 36 (a) (2009).

implementation of the Convention and support gender mainstreaming across all sectors and levels of Government to bring about equality for women and men in all fields."[127]

Responding to the call of the Committee to give urgent priority to the strengthening of the NCRFW in terms of decision-making power and human and financial resources, the Philippines renamed the NCRFW as the Presidential Commission on Women (PCW). As part of the strengthening process of PCW, it has been assigned under the Office of the President as the primary policy-making and coordinating body of women and gender equality concerns. The PCW now acts as the over-all monitoring body and oversight to ensure the implementation of the Magna Carta of Women, thereby having the authority to direct any government agency and instrumentality, as may be necessary, to report on the implementation of the Magna Carta and allowing them to immediately respond to the problems brought to their attention in relation to the said law.[128]

Today, with the revitalized powers and functions of the PCW, it is hoped that the government will take its effort to advance gender equality to a higher level.

Conclusion

In the title of her article, Justice Romero posed the all-important question: "*Is the economic emancipation of working women at hand?*"[129] Forty years later, the same question remains valid.

There can be no debate that the working women of the 21st century have achieved much even in the midst of continuing gender inequality. They are in every area of endeavor and are making their presence felt through their work accomplishments. In the middle of these developments, the Philippines has taken significant strides to address gender inequalities that impede women's economic empowerment and ultimate emancipation.

In line with its commitment to promote gender equality, in the last two decades, the Philippines has responded to its obligation by passing laws that

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[127] UN CEDAW, Report of the Committee on the Elimination of Discrimination against Women, United Nations General Assembly Official Records, 61st Sess., Supp. No. 38, at ¶ 521, U.N. Doc. A/61/38 (2006).

[128] Rep. Act No. 9710 (2009), § 38.

[129] Romero, *supra* note 4.

were meant to promote gender equality. But the task is not yet done. The Labor Code and other labor-related laws still bear vestiges of the protectionist approach of by-gone laws, including gender stereotyping. Such laws have to be amended, if not repealed, so that women may rightly find themselves on equal footing with men.

Thus, legislation plays an important role in achieving gender equality, although it is not enough to bring about the economic emancipation that women, more particularly working women, deserve. Then and now, there still remains "a yawning gap between the de *jure* and the *de facto*."[130] For working women, there can be no economic emancipation for as long as gender inequality still rears its ugly head in the workplace and in other areas of human endeavor.

The way forward is toward greater social awareness about the raging gender issues of today, what gives rise to them, and what more can be done to resolve these problems so that we may advance gender equality in both the private and public spheres. Justice Romero pointed the way when she said that "research, more than anything else, will open the eyes of the Filipino people to the inevitable plight of its working women."[131] Indeed, we need studies and surveys that will give us the solid facts about gender issues. Greater social awareness will inform us on the issues of how to help women become empowered, and how to effectively mainstream gender in all facets of political, economic, social and cultural endeavor.

In this light, what is essential is "a multi-faceted approach"[132] because inequality in the workplace is but a reflection of the unequal distribution of power between women and men in all spheres of life, political, economic, social, and cultural. If we are to approximate *de jure* and *de facto* equality, we need a concerted effort to dismantle long held beliefs, expectations, prejudices about women and men that pervade our society, be it within government bureaucracy, educational institutions, media, and the church. Gender equality, therefore, is the business of everyone.

Advancing gender equality requires more than law reform. We need social transformation. We may win the legal battles for women's rights and welfare, but without social transformation, we will not win the war against gender inequalities. And *this* is the bigger task.

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[130] *Id.* at 53.
[131] *Id.* at 54.
[132] *Id.* at 53.