

## *Women in the Eyes of Justice*

### Gender Bias in the Justice Process Framework

By

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## Introduction

More than two decades of studies and evaluations have been conducted around the world to determine the extent and effects of gender bias in the Judiciary. Efforts, programs, and projects to address this gender bias are being developed and pursued.

It appears gender bias in courts will take more than several decades to eliminate since prejudice against women is entrenched in the values and individual perspective of various cultures. Nevertheless, identifying gender bias as a hindrance to global equality and progress ensures the non-marginalization of women issues.

Indeed it is important that people have access to their basic rights including access to quality and impartial justice. Women in the eyes of justice should be considered as individuals with full freedom to access judicial remedies. However, in the courts they may be undermined by a jurist's unconscious gender bias.

The advocacy of women and the efforts towards judicial reform called attention to women's issues in relation to the justice process. "Women in the Eyes of Justice" is an exploratory paper on the existence of gender bias in the justice process. The study is aimed at

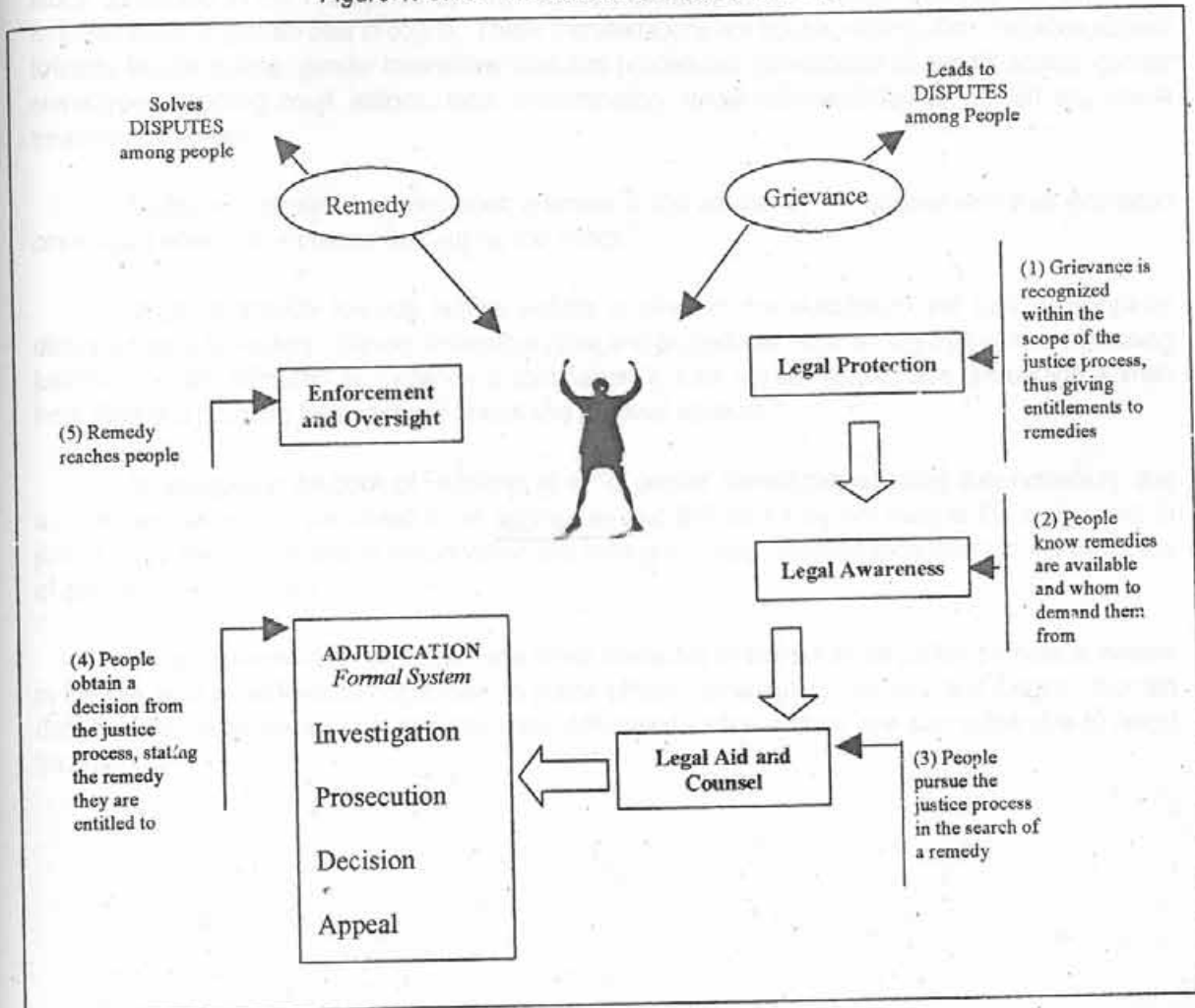
- (1) developing a framework on gender bias in the justice process;
- (2) identifying the effects of gender bias in the justice process;
- (3) reviewing efforts on curbing gender bias in judiciaries around the world, including the Philippines; and
- (4) developing a global effort for curbing gender bias in courts.

The paper provides a framework on gender bias in the justice process. It reviews existing documents on interventions developed by judiciaries around the world and community-based efforts to curb gender bias and improve access to justice. In the Philippine context, the framework on gender bias in the justice process is used for the study and analysis of the cases and experiences of women and duty-holders in the justice process.

## Basis of the Gender Bias in the Justice Process: Theoretical Framework

The United Nations Development Programme developed a framework of the justice process to illustrate the process of accessing remedy for grievance through formal and informal systems. The figure below shows the UNDP framework on justice process<sup>1</sup>.

Figure 1. UNDP Framework on Justice Process



<sup>1</sup> The justice process is based on the framework developed by the United Nations Development Programme. Programming for Justice: Access for All: A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, 2005

In the justice process framework, the justice process includes five phases: legal protection, legal awareness, legal counsel, adjudication, and enforcement and oversight. The justice process begins when an individual suffers gross injury as a consequence of an action of another individual and ends with an acquisition of a remedy through formal and informal systems.

Another basis for the development of the Gender Bias in the Justice Process framework is the study conducted in the Philippines by Atty. Myrna Feliciano, *et al.*,<sup>2</sup> which identifies the forms and manifestations of gender bias in courts. These manifestations are double victimization, negative attitude towards female victims, gender insensitive rules and procedures, trivialization of gender crimes, gender stereotypes affecting court actions, legal discrimination, under-representation of women and sexist treatment of women.

Double victimization happens when a female is first abused by the attacker and then victimized once again when she is blamed for causing the attack.<sup>3</sup>

Negative attitude towards female victims is seen in the skepticism and lack of sympathy displayed by duty holders. Gender insensitive rules and procedures, such as the high cost of accessing justice in courts, admitting as evidence a complainant's past sexual history, also discourage women from filing and pursuing their cases of sexual and physical violence.<sup>4</sup>

An example in the book of Feliciano, *et al.*<sup>5</sup> of gender stereotypes affecting duty-holders is that a raped woman who is perceived to be aggressive and flirtatious may not receive the same level of justice compared to one who is conservative and innocent. Legal discrimination refers to the existence of gender bias in the laws.

Under-representation of women and sexist treatment of women in the justice process is evident in the low level of participation of women as police officers, prosecutors, lawyers, and judges. Women duty-holders, being few in number in the male dominated justice system, are also vulnerable to sexist treatment.

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2. Feliciano, Myrna S., *et al.*, *Gender Sensitivity in the Court System*, University Center for Women's Studies: University of the Philippines Press: 2002

3. *Id.*

4. *Id.*

5. *Id.*

## The Gender Bias in the Justice Process: Conceptual Framework

Using the studies of both the United Nations Development Programme (UNDP) Justice Process Framework and the Gender Sensitivity in the Court System,<sup>6</sup> the Gender Bias in the Justice Framework was developed.

In the development of the Gender Bias in the Justice Process Framework, the principles of grievance and remedy, together with the adjudication process, were adopted. The Gender Bias in the Justice Process framework highlights the stages that a female has to undergo in the justice process. The framework involves four (4) stages.

- The first stage involves the ***Occurrence of Grievance or Dispute to a Female and legal protection***. She then would seek for possible remedies to her grievance.
- The second stage is the ***Deliberation of Accessing Formal Justice Remedies***. Prior to accessing justice through the formal system, the female at this stage would already experience several forms and manifestations of gender bias from her family, friends, and duty-bearers, such as social workers, government officials, etc. These are, as stated earlier, the negative attitude to female victims which faults the female victims, double victimization which ignites fear in the victim, and insensitive rules and procedures such as the cost of legal fees. It is also at this second stage where the female would have second thoughts in accessing justice remedies.
- The third stage is ***Undergoing the Process of Adjudication***. The process of adjudication involves interaction between the female and the following duty-holders:
  - a. the police and investigators,
  - b. the prosecutors, and
  - c. judges and court personnel.

It is also at this stage where the following forms and manifestations of gender bias are manifested in by the above duty-holders:

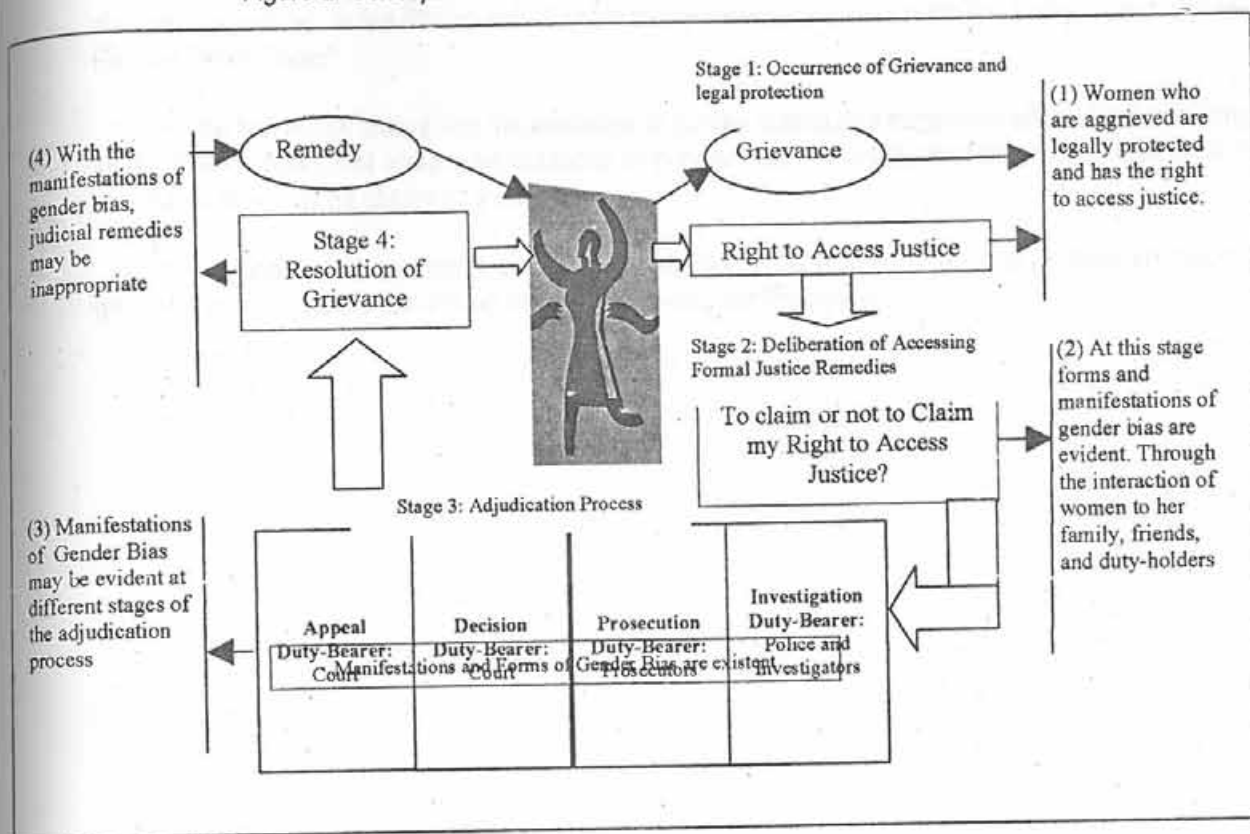
- double victimization
- negative attitude towards female victims
- gender insensitive rules and procedures
- trivializing gender crimes
- gender stereotypes affecting court actions
- legal discrimination
- under-representation of women
- sexist treatment of women in Court

- The last stage is the ***Resolution of the Grievance*** is directly linked to the adjudication process. The resolution of the grievance, when forms and manifestations of gender bias are evident, may be inadequate for the female victim.

6 Feliciano, Myrna S., et.al, Gender Sensitivity in the Court System, UNDP Studies: University of the Philippines Press: 2002

The conceptual framework for Gender Bias in the Justice Process (see figure 2) shows that the manifestations of gender bias limits women's access to fair and quality justice.

Figure 2: Conceptual Framework on Gender Bias in the Justice Process



At the second stage of the justice process, forms and manifestations of gender bias are evident and women victims are beginning to question the accessibility of justice.

Women who persevere to pursue their case undergoes the process of adjudication (see stage 3 in figure 2) where manifestations of gender bias are evident in the different duty-holders involved. The existence of gender bias may render a justice remedy inadequate. This happens when a case such as rape is first filed with the police. The under-representation of women in the police, for example, may affect a woman in filing a case as she may associate a policeman as her assailant.<sup>7</sup> The complainant may also feel more comfortable discussing her experience to a female instead of a male police officer. Trivializing gender crimes such as domestic crimes also affect the investigation process since the police may choose not to pursue the gathering of evidence because they feel that gender crimes should either be left inside the home and the intervention of the police is unnecessary.

7. Psychiatry, Psychology and the Law Congress, Royal Women's Hospital. Psychological Adjustment to Rape. Melbourne: November 1980

The paucity of evidence gathered during the investigation stage may lead prosecutors to dismiss the case for the lack of evidence or file a case for a lesser offense. An example is the filing of charges of white slavery instead of trafficking by the prosecutors.

In the decision stage, judges may be constrained by the legal discrimination in laws, that discriminate women. In the Philippines, discriminatory provisions are found in the Labor Code<sup>8</sup> and the Revised Penal Code.<sup>9</sup>

The framework shows that the existence of gender bias in one stage may affect the succeeding stage. It also shows that while manifestations of gender bias in the adjudication process may exist in one stage, they may be absent in another.

The conceptual framework will play a vital role in the review of the interventions on curbing gender bias in the judiciaries around the world including the Philippines.

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8 The Labor Code of the Philippines prohibits night work for women.

9 Criminal laws in the Philippines make adultery by the wife a graver offense than concubinage by the husband.



## Fighting Gender Bias in the Court: Efforts of the Judiciaries in the World

Through the women's movement and judicial reform efforts, the problem of gender bias in courts was tackled. Gender bias was first raised as a problem in 1980 by Professor Norma Wikler. Several mechanisms were developed to address the same. These mechanisms include the formation of a gender bias task force or committee; development of guidelines on gender bias; capacity-building on gender sensitivity, and ratification of international treaties and laws.

In 1982, the United State Judiciary established the first gender bias task force through the initiative of Chief Justice Robert N. Wilentz of the New Jersey Supreme Court.<sup>10</sup> The task force's mission was to investigate the extent of gender bias in the New Jersey courts and to develop an educational program for the 1983 New Jersey Judicial College to eliminate such bias.<sup>11</sup> This inspired the creation of task forces in different States. In California, guidelines for judicial officers were developed to avoid the appearance of gender bias in California courts.

In Europe, there is a substantial increase in the appointment of women in the Bench, particularly in Austria and Sweden. Women's judicial policy was developed and reviewed



International Treaties like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), signed by ninety percent (90%) of United Nations members, codify comprehensive international legal standards for women.<sup>15</sup> CEDAW serves as a legal impetus for a state party to resolve and eliminate discrimination against women.

### The Philippine Experience

In the Philippine Judiciary, the issue of Gender Bias in Courts was recognized as a major problem in providing efficient, fair, and accessible justice to the Filipino people. This prompted the former Chief Justice Hilario G. Davide, Jr. to establish the Committee on Gender Responsiveness in the Judiciary. The Committee is guided by the following vision:

A judicial system that is sensitive and responsive to gender equality and empowerment in all its policies, programs and activities, thereby providing effective, efficient and accessible justice to all.

and mission:

To enhance speedy and fair administration and dispensation of justice to all, regardless of age, gender, class, ethnicity, religion, race, functional or political beliefs, through an effective and efficient judicial system that works with dignity, integrity, accountability, and transparency.

The Committee was tasked to undertake, develop, recommend, and implement activities that would address key issues on gender. These key issues are

1. low/lack of awareness within the judicial system of gender issues, including those related to the management of cases;
2. lack of sensitivity of family court judges to concerns and circumstances of women and children;
3. the Rules of Court not being sensitive to conditions and circumstances of women and children such as their lack of resources;
4. lack of gender-sensitive personnel, policies, and procedures;
5. the Codes of Ethics for justices, judges, lawyers not addressing gender-sensitive issues;
6. vulnerability of women in the Judiciary to sexual harassment;
7. the concept that the integrity of the Judiciary is affected only by graft and corruption and not by other offenses (such as sexual abuse and harassment);
8. lack of gender-related and sex-disaggregated database on the Judiciary;

<sup>15</sup> [www.un.org/womenwatch/daw/cedaw/history.htm](http://www.un.org/womenwatch/daw/cedaw/history.htm)

9. the paucity of law schools discussing gender and the law, and gender issues in the court system; and the
10. absence of empirical data on which to base gender awareness training in the judiciary.

The Committee and its Subcommittees' mission is to address key issues that were identified through a series of consultations conducted by the Committee Members. The Committee developed a Medium-Term Gender and Development Plan that identified the seven core strategies to address the key gender issues in the Judiciary. These are

1. transform paradigm and enhance the commitment of the judicial system to gender equality through training and capability-building;
2. review or conduct gender audit of policies, programs, and practices to make these more gender-responsive;
3. establish a gender-responsive database in the judicial system;
4. promote the use of gender-fair language, core gender messages, and rituals for higher gender awareness;
5. enhance partnership and networking with other gender and development advocates;
6. regularize family courts throughout the country; and
7. create a Committee on Decorum and Investigation (CODI) in each court station and train CODI members to address sexual harassment in the workplace.

To ensure that these core strategies will be implemented, our country has Republic Act No. 7192, An Act Promoting the Integration of Women as Full and Equal Partners of Men in Development and Nation-building, and the Philippine Plan for Gender Responsive Development, which ensures that at least five percent (5%) of the total budget of the Philippine Judiciary is used to implement the GAD plan.

The discussion on gender mainstreaming activities and efforts of the Committee on Gender Responsiveness in the Judiciary (CGRJ) is divided into the following categories: establishment of focal points in the different levels of the Judiciary, training and capability building, gender audit of policies, programs and practices, gender responsive database in the judicial system, promotion on the use of gender-fair language, partnership and networking, regularize family courts creation and training of Committee on Decorum and Investigation.

#### **Establishment of Focal Points in the Different Branches of the Philippine Judiciary**

The Implementation Rules and Regulations (IRR) of Republic Act 7192 require all government department and agencies to establish and designate a Gender and Development Focal Point. The focal point, like the Committee on Gender Responsiveness in the Judiciary (CGRJ), serves as the "highest

official of the agency on matters concerning gender and women in development issues.<sup>16</sup> The Philippine Judiciary in coordination with the National Commission on the Role of Filipino Women (NCRFW) is establishing Gender and Development (GAD) Focal Points in the different Appellate Courts. This strategy is beneficial to the CGRJ since the GAD Focal Points will serve as the implementing body of the CGRJ gender mainstreaming activities in the various levels of the Philippine Judiciary.

### **Training and Capability Building in the Philippine Judiciary**

Training and Capability Building in the Philippine Judiciary is one of the core strategies of the Committee to address the issue on low/lack of awareness within the judicial system of gender issues, including those related to the management of cases. It will train all internal stakeholders of the Philippine Judiciary: court personnel, lawyers, judges and justices.

The Committee is also developing a Gender Sensitivity Training (GST) Module on international laws, new laws on women in the Philippines, and use of gender-fair language for all internal stakeholders of the Judiciary.

### **Gender Audit of Policies, Programs, and Practices**

To determine the extent of gender bias in the Judiciary particularly in its rules, policies, and practices, the Subcommittee on Gender Audit was established. The Subcommittee is tasked to develop guidelines on conducting gender audits for the Judiciary; to review for gender bias the Court's rules, policies, and procedures; and to provide recommendations for the elimination of said gender bias.

### **Gender Responsive Database in the Judicial System**

The lack of sex-disaggregated data in the Judiciary poses a problem in the development of gender-related interventions. The Subcommittee on Gender Responsive Database is assigned to develop a database that will contain all sex-disaggregated information in the Judiciary.

The Committee is pursuing the institutionalization of the generation and gathering of sex-disaggregated data in the Office of the Court Administrator, which handles data on the number and type of cases filed in the courts; the Judicial Bar Council (JBC), which is assigned to determine the number of male-female judicial appointees and judicial vacancies; the Office of Bar Confidant which is in charge of generating sex-disaggregated data on the number of male-female bar examinees, passers, topnotchers and lawyers admitted to the Bar. The Subcommittee is also pushing for the updating of the "Electronic Data Processing" (EDP) Database of the Judiciary since the database does not include information on the sex of the individual.

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16 National Commission on the Role of Filipino Women. Ways to Gender Responsive Organizations: Tools and Guides for Sowing Gender Responsiveness in Government Organizations, 2002

In its effort to develop a gender responsive database, the Committee is also pursuing the development of the Online Gender Corner which contains information about the efforts of the Judiciary on gender mainstreaming and a database on gender-related laws and jurisprudence and sex-disaggregated data.

#### **Promotion on the Use of Gender-Fair Language**

To intensify the campaign for the use of gender-fair language in the Judiciary, a primer on the same developed by the University of the Philippines was adopted in the *Manual of Style* by the Court. The primer was distributed to all courts. Moreover, the use of gender-fair language is included in the Gender Sensitivity Training Module used by the Judiciary.

To ensure that judges use gender-fair language, the Committee is recommending to the Society of Judicial Excellence, the award giving body for judges, the inclusion of the use of gender-fair language in court decisions as a criteria in the selection of awardees.

#### **Partnership and Networking**

To enhance partnership and networking with other GAD advocates, the Philippine Judiciary has been cooperating and partnering with the National Commission on the Role of Filipino Women (NCRFW) and the Overseas Development Assistance-Gender and Development (ODA-GAD) Network.

Another partnering and networking activity involves the coordination with the established Focal Points in the Appellate Courts. The establishment of linkages with other Focal Points ensure that the mainstreaming plans and activities of the Supreme Court and the appellate courts are harmonized.

#### **Regularize Family Courts**

In the Philippines, there is a need to regularize family courts so that these courts will have their own budget allocation. As an interim activity, the Supreme Court decided to designate Regional Trial Courts as Family Courts so that cases relating to women and children will have priority.

The Committee is also pursuing the appointment of a Focal Person that will handle the operations of designated Family Courts in the Philippines.

#### **Creation and Training of Committee on Investigation and Decorum**

The creation of Committee on Investigation and Decorum (CODI) is based on the law on sexual harassment or Republic Act 7877. To curb the sexist treatment of women in Courts, the Philippine Judiciary has developed a Rule on Administrative Procedure on Sexual Harassment Cases and Guidelines on Proper Work Decorum that will guide all levels of the Judiciary in establishing CODIs and the handling of cases of sexual harassment.

A CODI has already been established in the Supreme Court and the Court of Appeals. The CGRJ is pursuing for the establishment of CODI in the lower courts within the year.

### **Lessons Learned**

The implementation of the GAD plan for the Philippine Judiciary will not have been fruitful without top management support.

Crucial in the implementation of gender mainstreaming activities are the development partners and government commissions who provide assistance and support to the activities of the Committee, such as the National Commission on the Role of Filipino Women.

The identification of the seven core strategies and establishment of eight (8) subcommittees to handle each core strategy and resource mobilization of the CGRJ is also beneficial since it specifically targets the problems on gender bias in the Philippine Judiciary.

In the three years since the establishment of the Committee on Gender Responsiveness in the Judiciary, there are still a number of issues that need to be addressed. Nevertheless, the Committee is committed to achieve its vision and mission for a gender responsive Philippine Judiciary through the continuing support of court officials and personnel and civil society.



## **Findings: The Effects, Interventions, and Gaps in Curbing Gender Bias in the Judiciary**

The development of the Gender Bias in the Justice process framework enables the identification of effects of gender bias in the justice process; the type of interventions developed and implemented by the judiciaries around the world; and the gaps in the development and implementation of programs and projects to curb gender bias.

### **Effects of Gender Bias**

The effects of gender bias in the justice process can be viewed in two ways: first, it limits women to access formal justice remedies; and second, the judicial remedy that may be given to women may be inadequate due to the presence of gender bias during the adjudication process.

To address the first effect, interventions in the grassroots level need to be developed and implemented. Front-line duty-holders like community social workers and local government leaders must be sensitized to provide support for women seeking access to justice.

Even after having overcome the stage of deliberation on whether to access a justice remedy, women must still contend with gender bias existing in all stages of the adjudication process from investigation, prosecution, decision, and appeal. As described in the conceptual framework, gender bias in one stage of the adjudication process affects the outcome in the succeeding stages. The integrity and fairness of the justice process would have been compromised.

### **The Types of Interventions**

The type of interventions developed to curb gender bias in the Judiciary focuses extensively on the extent of gender bias in courts, while grassroots intervention by the Judiciary is minimal. This is evident because under the constitutional principle of separation of powers, the Judiciary is an independent entity from the Executive government, which is primarily involved in grassroots interventions. This, however, should not limit the Judiciary in developing interventions to further enhance access to justice. One way of curbing gender bias is to review court rules and procedures to ensure that filing fees remain within the economic means of women.

The Judiciary also plays a crucial role in the developing interventions for curbing gender bias in courts through the formation of judicial task forces to review the manifestations of gender bias in the courts and propose interventions as was done in the United States. In the Philippines, a Committee on Gender Responsiveness has been established to facilitate gender mainstreaming in the Philippine Judiciary.

Task forces and Committees may also put in place mechanisms to handle complaints of gender bias as proposed by the American Bar Association (ABA) Report.<sup>17</sup>

Anti-gender bias training or gender sensitivity training are also very effective tools for raising the awareness of judges on gender issues.

### **A Challenge to the Judiciaries of the World: Recommendations**

It is recommended that judiciaries around the world review the extent of gender bias in their courts. It is also important for them to assess the accessibility of justice in their respective jurisdictions through the review of their respective court rules and procedures.

The establishment of task forces and committees to review the extent of gender bias and to develop interventions, such as anti-bias training, gender bias complaint mechanisms, are also essential in curbing gender bias in courts.

Through these efforts, access to justice by the marginalized especially women and children becomes truly a right and not just a privilege.

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<sup>17</sup> Grossman, Joana, *The New ABA Report on Women and Law: Why The Solutions The Report Proposes May Not Work In The Real World*, May 2001



Comments on the draft paper by Justice Adolfo s. Azcuna (Draft Version/1st edit  
7/28/06) entitled Women in the Eyes of Justice: Gender Bias in the Justice Process  
Framework

By Annie Serrano, Programme Associate, Women and Gender Institute (which is  
Secretariat of the CEDAW Watch Network)

As women's human rights advocate, I welcome the paper by the esteemed Justice. It is a promising piece that can be seminal in the discourse on women's access to justice. It is made much more significant by the fact that it is authored by a Member of the Supreme Court. It is also a timely piece for WAGI which is conceptualizing – on behalf of UNDP-GOP Fostering Democratic Governance Programme – a project on Gender in Governance with the first component on “women's access to justice.”

The overall conceptual framework on gender bias in the justice system is very good, as it recognized the existence of this bias. Gender biases – held by individuals and institutionalized in the laws, rules and procedures of the institutions – serve as series stumbling blocks for women whose human rights are violated. These biases effectively render the justice system inaccessible to majority of women except for those who have extra-ordinary courage, support system and resources to break through or avoid these blocks, or to stand up after each fall.

I suggest two additions to the conceptual framework:

- a) Cover the five pillars of the justice system, particularly add the stage of penology. Even after his final conviction, Mr. Sanchez, who was raped an eleven year old girl from a poor family, lives in comfortable quarters inside the prison and enjoys extra-ordinary privileges. This is not full enjoyment of justice for the victim.
- b) Clarify that the whole justice process takes place within the pillar of the community from where the individuals and institutions learned their gender biases. Within the same community, there are also elements that are seeking to counter the biases by revealing their existence and their negative impact on women's access to justice, in addition to directly assisting and supporting women victims/survivors going through the justice process. The actions and decisions of the various actors -- from the investigators to the wardens -- are influenced by the community one way or the other. In the same way that the decision of the woman victim/survivor to see the justice process to its full completion (and not to back out in any stage before final conviction or even to monitor the penal stage) is also influenced by this same community context. The dynamics between those who perpetuate the status quo and those who are seeking to transform it is relevant to each and every case that goes through the justice process.

Adding these two aspects will have a bearing on how to beef up the sections on lessons learned, gaps and recommendations. For example:

- a) What has been the experience in the Philippines in regard to community support for victims/survivors? Had these made a difference in getting women to stick it out with the system – amidst its inefficiencies and delays? The Karen Vertido

rape case is a classic for the study of the impact on the survivor of the dynamics between women's human rights supporters and sexist elements of Davao City. What needs to be done at the community level – with the churches, schools, civic organizations and media? The law schools are important locus of immediate interventions.

- b) What interventions must be done at the penal system in order to secure what the victim/survivor gained from the courts?

There is another aspect to the issue that may be addressed also by the paper: the human rights of women who are accused and convicted of crimes. Gender bias in the justice system make women accused less able to be treated fairly, at the same time that they are made vulnerable to abuse inside the system. It is common knowledge that women in detention have been abused sexually by wardens and jail keepers, while women who are poor are also prey to unjustified detention and delayed action on their cases.

Finally, the paper should not fail to include the matter of "battered woman syndrome" which I – in my lay understanding – believe is a milestone in world human rights jurisprudence. A ruling by the Supreme Court on one case must be covered here.

16 August 2006



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## **UN Joint Project on Gender in Governance**

1. Programme Document dated 22 August 2006
2. Project Description (revised after UN-GMC workshop)
3. Results Matrices (based on UN-GMC Workshop)