

SOCIOLEGAL STATUS OF WOMEN IN
INDONESIA, MALAYSIA,
PHILIPPINES, AND THAILAND

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*The views expressed herein are those of the authors and do not necessarily
reflect the official policy of the Asian Development Bank or
its participating developing member countries.*

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ABBREVIATIONS

ADB	Asian Development Bank
AWAM	All Women's Action Society (Malaysia)
BAPPENAS	National Development Planning Board (Indonesia)
BPHN	Badan Pembinaan Hukum Nasional, Agency for National Law and Development (Indonesia)
CEDAW	Convention for the Elimination of All Forms of Discrimination Against Women
CSP	country strategy and program
CYW	Child and Youth Welfare [Code] (Philippines)
DMC	developing member country
DVA	Domestic Violence Act (Malaysia)
GAD	gender and development
GBHN	Garis-garis Besar Haluan Negara, Broad Guidelines of State Policy (Indonesia)
HAWA	Women's Affairs Department (Malaysia)
ILO	International Labour Organisation
INTAN	National Institute of Public Administration (Malaysia)
IPO	interim protection order
JAG	Joint Action Group [Against Violence Against Women] (Indonesia)
KUA	Kantor Urusan Agama, Registration office for marriage, divorce and reconciliation (Indonesia)
LBH-APIK	Lembaga Bantuan Hukum - Asosiasi Perempuan Indonesia untuk Keadilan, Legal Aid Institute - Association of Indonesian Women for Justice
LTSF	Long-Term Strategic Framework
MoM	Ministry of Manpower (Indonesia)
MTS	Medium-Term Strategy
NCL	native customary land (Malaysia)
NCRFW	National Commission on the Role of Filipino Women
NCWA	National Commission on Women's Affairs (Thailand)
NGO	nongovernment organization
OSHA	Occupational Safety and Health Act (Malaysia)
PO	protection order

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PAPR	partnership agreement on poverty reduction
TA	technical assistance
UN	United Nations
WGPA	Women and Girls Protection Act (Malaysia)

GLOSSARY

adat	custom
hakim	(legal) arbitrators (Malaysia)
Hudud	strict Islamic law relating to murder, theft, drinking alcohol, fornication, adultery and rape
mitra usaha	partnership
nusyuz	situation in which a woman withholds her association with her husband without valid reason
Orang Asli	First People, aboriginal inhabitants of Peninsular Malaysia
penghulu	religious courts
shadaqah	alms
shari'a, or syariah	rules of conduct derived from the Koran (Quran); more broadly, Islamic or shari'ah law
Syariah Court	Islamic Court
Syariah Law	law system based on syariah
talaq	divorce
wakaf	property or money donated for religious or community use
wali	father, grandfather, brother, or uncle
wali mujbir	male relative legally responsible for a bride

FOREWORD

Through its Long-Term Strategic Framework for the years 2001 to 2015, the Asian Development Bank (ADB) has rededicated itself to reducing poverty and improving the quality of life in its developing member countries (DMCs). ADB recognizes that improving equity—especially gender equity—is critical to any strategy for reducing poverty and achieving inclusive, sustainable development in Asia and the Pacific. Women constitute half the population and play critical roles in their economies and societies as entrepreneurs and workers, caregivers, community leaders, and citizens. Yet they continue to face constraints and discrimination in their access to resources, employment opportunities, personal choices, and participation in public decision making. Moreover, women are disproportionately affected by economic downturns and uncertainty, as witnessed in the Asian financial crisis of the late 1990s. It is therefore crucial for ADB to continue working with its DMCs to improve the status of women, for their own benefit and for the general improvement of their societies. In doing so, ADB supports the commitments that its DMCs have already made—ratifying the Convention on the Elimination of All Forms of Discrimination Against Women, subscribing to the Beijing Declaration and Platform for Action, and pursuing their own national plans of action to improve women's status and participation in national development.

To ensure gender equity in development policies and programs, it is necessary to understand the various constraints and types of discrimination that women face. ADB initiated this regional technical assistance study to examine the sociolegal status of women in four DMCs: Indonesia, Malaysia, Philippines, and Thailand. The four country studies illustrate the complex interactions of civil, religious, and customary laws that shape women's status, and the ways in which laws reflect and reinforce social and cultural norms and expectations. At the same time, the studies highlight steps that governments and civil society groups have been taking to amend discriminatory laws, to enact new laws to protect women's rights, to correct entrenched biases against women in the way laws are administered and enforced, and to improve women's legal awareness and access to justice. Finally, the studies include

recommendations for further actions that governments, civil society groups, ADB, and others can take to improve women's sociolegal status and access to justice.

This report consolidates the findings and recommendations of four country studies and an overview study. These were refined and validated through national workshops and a final regional workshop. I hope that this overview report, and the four detailed country reports, will be useful for government officials, civil society organizations, and other funding agencies working to improve gender equity and women's rights. The country reports and the general themes and recommendations of the overview report will be an important resource for ADB staff working in the four countries concerned, and for all of ADB's regional and country work.

BRAHM PRAKASH

Director, Poverty Reduction and Social Development Division

Regional and Sustainable Development Department

Asian Development Bank

EXECUTIVE SUMMARY

INTRODUCTION

This publication is based on the report of a regional technical assistance (RETA) study supported by the Asian Development Bank (ADB) to develop a knowledge base on the sociolegal status of women in four of its developing member countries (DMCs)—Indonesia, Malaysia, Philippines, and Thailand. The study was carried out by a team of consultants managed by Agrodev Canada Inc. under the guidance and supervision of ADB staff.

The primary objectives of this regional TA were to

- (i) review and compile a knowledge base on the sociolegal status of women in four DMCs for use in ADB operations;
- (ii) assess these DMCs' legal constraints on women's participation in economic and social activities;
- (iii) identify the nature of law reform and strategic entry points for legal reforms, institution-building, and training activities that have potential for ADB involvement; and
- (iv) develop legally based strategies and actions to protect and promote women's economic and social status.

FINDINGS

A. Major Constraints Affecting the Sociolegal Status of Women

The major constraints affecting the sociolegal status of women in the four countries can be grouped under three categories: (i) substantive constraints; (ii) structural and institutional constraints; and (iii) social/cultural constraints.

Major substantive constraints include the following:

- (i) gender-biased and conflicting laws and regulations, and gender-biased administrative and judicial interpretations and rulings;
- (ii) gender biases in religious laws and customs;
- (iii) biases in customary and *adat* law (or customary rights favorable to women that have been undermined by modern state laws and policies);
- (iv) outmoded colonial laws that still prevail and influence societal values; and
- (v) lack of gender-sensitive law reform to deal with changes resulting from globalization and changes in social patterns and values.

Major structural and institutional constraints include:

- (i) Gender biases and insensitivity in administrative agencies (including law enforcement), the judiciary, and the legal profession;
- (ii) Lack of equitable, gender-sensitive implementation and enforcement of existing laws, and inadequate resources dedicated to the protection of women's interests;
- (iii) Limited access to justice and unaffordability of legal services; and
- (iv) Lack of political and bureaucratic will to pursue gender-sensitive reform of policies and laws, and to improve their implementation and enforcement.

Major social/cultural constraints include:

- (i) Patriarchal attitudes and conservative religious values;
- (ii) Lack of gender awareness and sensitivity in the society as a whole; and
- (iii) Intolerance of minority ethnic (including indigenous) and religious groups.

B. Issues Related to the Legal System

- (i) In all four DMCs, their legal and judicial systems have been shaped by their particular history, political system, social structure, dominant religion, economic performance, and other factors. Indonesia, Malaysia, and Philippines have legal systems that reflect, to some extent, those of the countries that colonized them. In contrast, Thailand has never been colonized and is a constitutional monarchy.
- (ii) Religious influences are evident in the legal systems of the four DMCs. The values that underlie Islam have strongly influenced the status of women in Malaysia, Indonesia, and parts of the Philippines, particularly in the area of personal laws. In Thailand, the influence of Buddhism has introduced a relatively enlightened view of the role and status of women in society. In the Philippines, the influence of Roman Catholicism is evident in the absence of a divorce law.
- (iii) All four DMCs are constitutional democracies. The constitution is the highest law and all other laws must conform to it. Inherent in this system is the superiority of "state" or "civil" law over customary laws, including indigenous laws and practices. Not infrequently, state laws conflict with and override indigenous laws and practices, for example, relating to landownership and use in parts of Malaysia and the Philippines, where the constitutions declare that all land belongs to the State. This has paved the way for government and private entities to lay claim to ancestral lands of indigenous groups which, in turn, has led to their dispossession and displacement.
- (iv) In Malaysia, Indonesia, and Philippines, the Supreme Court is the highest court of the land. Thailand has a Constitutional Court and a Supreme Court of Justice. Courts may be called on to interpret traditional or adat law, including changes in the law over time. These judicial interpretations have the effect of "formalizing" what was traditionally informal and unwritten law.

- (v) All four countries have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as well as other international treaties promoting and protecting women's status, including several International Labour Organisation (ILO) conventions. Thailand has also ratified the new Optional Protocol to CEDAW, which gives women in ratifying countries the right to notify CEDAW's expert committee about violations of their rights under CEDAW, and authorizes the expert committee on its own initiative to investigate grave or systemic violations of CEDAW.
- (vi) Indonesia, Malaysia, and Thailand have asserted reservations to CEDAW. Malaysia's reservations are the most extensive, and relate to possible conflicts between CEDAW's provisions, on the one hand, and provisions of Malaysian civil and Islamic laws, on the other.
- (vii) Women and women's organizations in the four countries have used CEDAW as a tool for encouraging their respective governments to introduce, implement, and enforce laws that improve women's status.
- (viii) The country reports indicate that women are often subject to the following:
 - confusing, contradictory, and disparate laws, and overall lack of uniformity of laws and their application;
 - inadequate and inconsistent application and enforcement of laws and penalties;
 - unnecessarily long and complicated investigation, enquiry, and reporting procedures;
 - differing applications of the law and bureaucratic requirements by federal/national, state/provincial, and/or district and village authorities;
 - inappropriate attitudes and behavior on the part of law enforcement agencies, and the courts; and
 - overt discrimination and gender bias by the authorities theoretically designated to protect citizens against violations of the law and criminal acts.

- (ix) Discrimination is practiced by and within the legal and judicial systems: much systemic discrimination and inequality directly flows from the attitudes of lawyers (usually male but sometimes female), courts, law schools, firms, societies, and government legal departments. In order to bring about change in the other sectors identified above it will also be necessary to bring about attitudinal and behavioral change within the legal profession and judiciary. There are many barriers to entry for women in the legal profession, and in most countries it is still a "men's club". Women are underrepresented in law faculties and at the senior levels of the profession. Circumstances and the corporate culture in most law practices are such that it is difficult for women to succeed—particularly women who have primary responsibilities for childcare and home management
- (x) Women who are educated and urbanized, and members of NGOs or women's organizations, tend to be aware of their legal rights. Relatively few rural or urban poor women know their rights or how to access the legal and court systems. Access to the courts is further constrained by lack of money to pay for legal proceedings that can be lengthy and time-consuming.
- (xi) Many women fail to report incidents of domestic abuse and violence to the police, medical practitioners, social workers, or to women's organizations and shelters. This is due to fear, shame, embarrassment, and the belief that these are personal and not legal matters.
- (xii) To date, formal alternative dispute resolution (ADR) processes have had little impact on women's status, rights and obligations. Little training in ADR has been provided in formal legal and judicial circles.
- (xiii) Numerous gaps, disparities, contradictions, and inconsistencies exist between laws and international conventions, agreements and commitments, among statutory laws, common laws, religious laws, and customary laws and between de jure law and de facto implementation and enforcement.

C. Country-Specific Issues

Notwithstanding the common concerns listed above, there are emerging issues which are of particular concern to specific countries. In Indonesia, the major legal issues are problems caused by dualism in laws confronting married women who are increasingly engaged in business: no separate tax numbers for women, constraints in access to credit, rights and protection of women workers in the nonformal sector; and difficulties associated with unregistered marriages.

In Malaysia, the problem is in reconciling the resurgence of Islam with the challenges of globalization. There is a growing concern that the reassertion of conservative Islam and traditional beliefs justified in the name of religion increasingly undermine women's abilities to access rights granted them under the law. Women's groups are at the forefront in challenging the traditional interpretation of religious laws.

In the Philippines, the major issues have been the poor implementation and enforcement of laws that safeguard women's rights; and difficulty in organizing women for sustained unified action as workers, consumers and voters, which weakens the ability of groups to promote women's concerns and increases the marginalization of women.

In Thailand, the major issues that need to be addressed are the regulation of working conditions of women in the nonformal and formal sectors; and the problems of migrant workers, including women working internationally as domestic workers and sex workers, and women workers coming into Thailand who are not covered by Thai labor laws. Further issues involve the increased trafficking in women and children, increased international organized crime in drugs, and increased HIV/AIDS resulting from the flourishing sex trade.

RECOMMENDATIONS FOR POTENTIAL ADB INVOLVEMENT

ADB's overarching goal of poverty reduction is closely linked to improving the status of women, since equity—especially gender equity—is now recognized as an essential factor in transforming growth to development and reducing poverty. Moreover, poverty is increasingly seen as a deprivation not only of essential assets and opportunities, but

of rights, and therefore any effective strategy to reduce poverty must empower disadvantaged groups, especially women, to exercise their rights and participate more actively in decisions that affect them. Efforts to strengthen women's capacity to participate in the development process are likely to be more successful and enduring if there is a more equitable legal environment in which women can participate freely and equally, and if women have the information and resources to claim their entitlements and defend their interests. This regional overview report therefore includes recommendations for possible ADB interventions to improve women's status and legal empowerment at policy, sector, country, and regional levels.

1. Strategies and Policies

The findings of this study have important implications for ADB's recently approved Long- Term Strategic Framework (LTSF), Medium-Term Strategy (MTS) and Poverty Reduction Strategy, all of which emphasize the need to improve equity—especially gender equity—and the empowerment of disadvantaged groups, including women, in order to achieve sustainable development and poverty reduction. The study also supports ADB's gender mainstreaming approach under its Gender and Development (GAD) Policy, and suggests areas for further attention under ADB's Governance Policy and Social Protection Strategy.

2. Law, Policy Reform, and Legal Empowerment

The report also suggests a number of specific legal technical assistance (TA) projects that could be undertaken, either on a country or regional basis, to improve women's status and legal empowerment, including

- (i) follow-up studies of women's sociolegal status in other regions such as South Asia, the Pacific, the Greater Mekong Subregion, and the Central Asian republics;
- (ii) support for improved collection of data on women's sociolegal status, and development of sociolegal indicators;

- (iii) training of judges, lawmakers, lawyers, court officers, and law enforcement personnel in gender awareness and gender sensitization;
- (iv) support for legal aid offices and women's organizations that promote women's legal awareness and protect their interests;
- (v) promotion of information sharing and exchange on legal issues relevant to women, including use of the Internet; and
- (vi) specific research and law reform activities on priority issues such as migration; trafficking; land reform; employment laws; small business regulation; social security coverage (including coverage of informal sector and home-based workers); and laws against rape, domestic violence, and sexual harassment.

3. Country Strategies and Programs

The report recommends that further attention be given to women's most urgent and pervasive sociolegal constraints in country programming activities, including poverty analyses, gender assessments, preparation of country briefing papers on gender, incorporation of gender concerns in country strategies and programs, and ongoing policy dialogue with government officials.

4. Loan Operations

Under its LTSF, MTS, and Poverty Reduction Strategy, ADB will continue to assist its DMCs through program and project loans and grant-based assistance, as well as through new or hybrid modalities such as "clusters" of lending and nonlending assistance and more open-ended sectorwide approaches. All of these modalities can be potent instruments for improving the sociolegal environment for women in the DMCs. The report makes a number of recommendations for addressing women's sociolegal status in priority sectors, including agriculture and natural resources, energy, finance and industry, transport and communications, social infrastructure, and in multisectoral projects.

5. Regional Cooperation

The findings of this study also suggest that ADB should give further attention to the gender implications of regional cooperation and integration, including the impact on women and girls of international, regional, and national frameworks that apply to the migration of workers and trafficking in persons, and their implementation and enforcement.

COUNTRY-SPECIFIC RECOMMENDATIONS FOR ADB, GOVERNMENTS, AND NGOS

Finally, based on the country reports included in this study, the report recommends a number of concrete actions that can be taken by ADB, governments, and civil society groups to improve women's status and legal empowerment in Indonesia, Malaysia, Philippines, and Thailand. The major areas discussed include

- (i) improvements in institutional and policy frameworks;
- (ii) substantive law reforms;
- (iii) legal awareness and sensitization programs; and
- (iv) legal institution-building, capacity building, and legal training.

A. INTRODUCTION

CHAPTER 1:

THE SOCIOLEGAL STATUS OF WOMEN

Law functions in various capacities: [it] defines and protects individual and group rights, punishes, regulates access to and distribution of economic, political and social resources, legitimizes or delegitimizes actions and institutions and reflects fundamental values and beliefs of society. (APDC 1993:1)

1.1 Introduction

Legal and institutional reforms are increasingly seen as essential to combat structural barriers to women's full and equitable participation in society and in social and economic development. Such reforms also enhance good governance and the rule of law, which together form the foundation of sustainable and equitable development. These efforts are reinforced by the commitments countries have made under international treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the general recognition of women's rights as human rights. Such international commitments provide a framework for eliminating discriminatory laws and practices in individual countries.

The relationship between the law and women's status is complex. A country's legal system is a powerful social institution, which can either enable or constrain women's full enjoyment of their rights and control over their bodies and lives. In addition, access to resources, such as land and credit, are keys to women's economic survival, yet women often face legal discrimination in these areas. Current economic conditions and structural adjustment policies operate to further constrain women's economic opportunities relative to men (World Bank 2001: 107; UNIFEM 2000: 54; ESCAP 1999; CIDA 1995: 8).

For these reason, governments must take concrete steps, and exercise strong political leadership, to provide legal frameworks that recognize women's rights to participate in society and to control the

various aspects of their lives. In particular, it is the responsibility of governments to change laws and regulations that systematically disadvantage women. This may mean amending laws that do not effectively protect women from discrimination, such as labor laws that do not guarantee equal pay for women and men; or laws that subordinate women, such as family laws that define women as being under the legal guardianship of a living male relative (such as a father or husband). In other circumstances, legal reform may require the introduction of entirely new laws, such as laws against domestic violence and sexual harassment in the workplace.

Most international development organizations now recognize that laws and legal frameworks provide critical links between public policy and development. Laws and regulations based on sound principles can help to create legitimacy for policymakers seeking change and for those advocating change. But to be legitimate, laws must also be fairly and consistently implemented and enforced. Equalizing opportunities for women and men through legal reforms, and through improved administration and enforcement of existing laws, would be a significant step in furthering a country's developmental goals and enhancing the fairness and effectiveness of the country's legal system.

The general conclusion of this report is that the laws, regulations, and administration of justice in Indonesia, Malaysia, the Philippines, and Thailand continue to discriminate against women. As the following chapters demonstrate, such legal discrimination has perpetuated gender inequalities and prevented the full participation of women in society and economic development. Discrimination in the economic sphere, for example, has negatively affected women's status in both the informal and formal sectors, and has been detrimental to women's occupational health and safety. Furthermore, the interpretation of certain religious and customary laws in some of these countries has reinforced perceptions of female subordination and worked against the recognition of women's full human rights. For these reasons, there is a pressing need for governments and civil society groups to change discriminatory laws and practices, and to enact new laws and improve law enforcement to ensure that women's rights are adequately protected.

1.2 Legal and Nonlegal Factors Affecting Women's Sociolegal Status

The major constraints affecting the sociolegal status of women are very often quite separate from the substantive nature of the law itself. As Bauer (1996: 101) argues, even in countries where women's human rights are fully guaranteed in law, the actual implementation and protection of those rights are often compromised by a complex system of practices based on historical, cultural, linguistic, religious, political, and other traditions. As this report points out, all four countries have signed many of the major international conventions and agreements that affect the role and status of women. This does not necessarily mean, however, that the countries have ratified or implemented them, or put into place strong enforcement mechanisms. The lack of adequate implementation and enforcement was a recurring theme in all four countries.

In many cases, the factors giving rise to discrimination are many and deep-rooted, and relate to nonlegal or paralegal issues. For this reason, it is useful to apply a model employed by Margaret Schuler (1986), based on the work of Lawrence Friedman (1973), which analyses women's sociolegal status in terms of three interrelated components of any legal system. These are

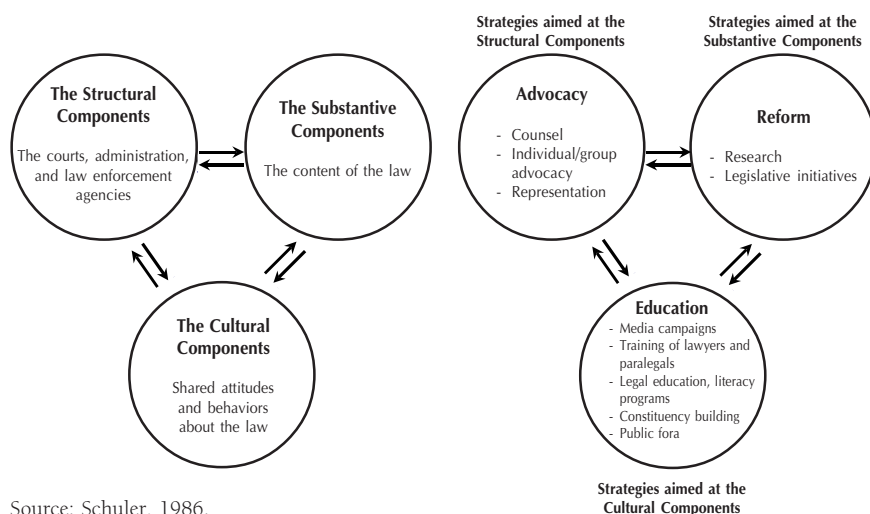
- substantive components, such as gender-biased and discriminatory laws, or the lack of appropriate laws such as laws prohibiting domestic violence and sexual harassment;
- structural and institutional components, such as the courts and the enforcement and administrative agencies of the state; and
- cultural components, such as shared attitudes and behavior toward the law. (See Figure 1).

This report adopts Schuler's model in Chapters 4 and 5, setting out the basic substantive, structural, and cultural constraints facing women in the four countries. In particular, due attention must be paid to the substantive content of the law, which may take the form of treaties, constitutions, statutes, regulations and rules, as well as judicial decisions; and informal customs and practices. After all, it is the law—broadly defined—that institutionalizes and sanctions certain behavior in various

social and economic settings. For the purpose of analysis, the substantive component of the law in this report is divided into four major categories:

- constitutional law;
- family relations and family laws;
- laws pertaining to labor, employment, and economic rights; and
- laws against violence and sexual exploitation

Figure 1
Components of a Legal System



Source: Schuler, 1986.

Relationship Between Components of the Legal System and Program Strategies

As the diagram above illustrates, activities aimed at law reform target the substantive components of the legal system; those aimed at educating people about the law target the cultural component; and those aimed at advocacy within the courts and administrative agencies focus on the structural component of the system. Just as the system components are integrally linked to one another, so does the program component imply a relationship and an interaction. The arrows describe this interaction.

CHAPTER 2:

SOCIOECONOMIC CONTEXT AND THE LAW: FACTORS AFFECTING WOMEN'S STATUS

For millions of women around the world, landownership and access to credit are keys to survival, yet rarely their right. Current economic conditions and structural adjustment policies further deny women economic opportunity in every part of the world without exception. (CIDA 1995: 8)

2.1 Introduction

Of particular relevance to any assessment of the sociolegal status of women in Southeast Asia is the impact of rapid economic growth and globalization on legal and judicial systems.

Rapid economic growth in the region over the past 20 years has presented many new opportunities for women in Indonesia, Malaysia, Philippines, and Thailand. However, women have not benefited to the same extent as men, and this is partially due to gaps in legislation related to women and weak law enforcement. Economic growth has also been accompanied by far-ranging socioeconomic change, which has made it difficult at times for legal reform to keep pace with social and economic transformation.

More recently, the Asian financial crisis that began in 1997 and the stabilization measures adopted by these countries have had further negative ramifications on both the sociolegal status of women and the reform process. For example, women make up the majority of overseas workers, and many of them lost their positions and were repatriated as a result of the financial crisis. Plant shutdowns and retrenchments are also likely to reduce significantly the employment opportunities and economic gains made by women over the last 10 years. Of greater significance for the longer term is the risk that the attention of policymakers and activists will be diverted to what are considered to be more pressing short-term matters, and the momentum built up to address women's issues will be

lost. Of concern here is the likely deterioration of working conditions due to weakened enforcement and monitoring of labor laws. It is for this reason that, in times of financial crisis, the formulation and enhancement of women's legal and institutional rights must be accelerated to protect the hard-earned gains that are at risk of being lost.

2.2 Economic Globalization

The governments of all four countries have adopted export-led growth policies. Both Indonesia and the Philippines have opted for an economic growth path led by labor-intensive manufactured exports. Malaysia went through a similar stage during the 1980s, when the manufacturing sector led its economic recovery. Most factories in export-processing zones and similar locales employ large numbers of women. In Thailand, the cultivation of traditional subsistence crops has given way to export-oriented commercial agricultural and aquacultural ventures. Formerly self-sufficient women in subsistence agriculture and fisheries have become wage laborers in commercial agriculture and aquaculture enterprises.

The need for women in the Southeast Asian region to pursue legal and judicial reform has become even more pressing since the economic crisis. In general, women and women activists in Southeast Asia have promoted legal reform to mainstream women into all aspects of development and society. During times of economic crisis, such efforts become even more urgent. The danger here is that unless women vigorously pursue these issues now, they will become further marginalized as economic crisis, structural adjustment, and economic globalization divert the attention of policymakers and activists toward pressing, short-term matters.

The following groups of issues have been identified as having important sociolegal implications for women in the four countries. Many of these issues have relevance across the four countries and would benefit from a regional approach (Chapter 6.6).

2.2.1 Issues facing Female Workers in the Formal (Export) Sector

- *Adequate legislation to manage the tension between legal rights/provisions for minimum wage and decent working conditions on the one hand, and local competition for jobs and international competition for cheap labor on the other.*
- *Legal safeguards, benefits, social security, and employment security in the context of flexible work arrangements.*
- *Nondiscriminatory access by women to credit and equitable systems of taxation.*
- *Enhanced recognition of and legal protection from domestic violence and other forms of sexual exploitation and harassment.*

A larger proportion of women have now entered the formal sector, and women constitute a larger and rising share of formal sector workers. Due to their limited training, these women are typically hired in the lower occupational categories, with low job security, low wages, and minimal labor protection. The hazardous conditions in many of these factories (due to their use of harmful chemicals), sexual harassment from superiors, and poor living conditions worsen the work environment. Women workers, in turn, are generally not aware of their rights or of the existence of regulations that protect workers.

The issue of a minimum wage and other “costly” labor transactions in a country with an oversupply of labor is a classic problem. The rapid rise in real wages dampens employment creation in the formal sector; a rise in transaction costs for employers, such as those brought about by government regulations and bureaucratic red tape, has the same effect. In a country where there is an oversupply of labor, this is a real concern. In Indonesia, minimum wage levels have been raised substantially in the recent past; employers in textile and related industries, who are suffering from reduced exports, have threatened to reduce their workforce by about 50 percent if forced to comply with these levels.

Due to the intense competition in the export market, many companies use subcontracting arrangements, which have led to an increase in home-based piece-work arrangements for women. Such “flexible work” is attractive to employers who wish to engage women in home-based

manufacturing activities to avoid paying higher wages, maternity and leave privileges, and other benefits. Women may also prefer such work as it allows them to combine child care and market-oriented work, especially in contexts where child care and other support services are absent. However, these arrangements weaken the bargaining leverage of both home-based workers and other female workers in the formal sector. The question of legal safeguards, social security, and employment security for subcontractees has not been satisfactorily resolved either. Young children are often employed, violating child labor laws. None of the countries has signed the International Labour Organisation (ILO) Convention on Homeworkers (1996); governments are hesitant to regulate the practice of subcontracting, as this may adversely affect their international competitiveness. Present labor laws in the four countries therefore cover only the formal sector and offer little protection to these home-based workers.

This is not to deny that new employment opportunities have been created for women. Educated and trained women, in particular, have found high-paying jobs in multinational corporations and government agencies. Economic growth and the consequent rise in incomes have encouraged some women to become entrepreneurs and establish their own businesses. However, laws and the policies of credit institutions do not yet reflect the reality of women in business. In Indonesia, for example, married women cannot enter into contracts unless assisted by their husbands. Although the Women in Nation Building Act of the Philippines gives men and women equal rights to enter into contracts and loan agreements, the consent of the husband is necessary to obtain credit if property is used as collateral. The same is true in Thailand. In the absence of a divorce, a woman who is separated from her husband may have difficulty in using property as collateral, since she will need the consent of her husband, to whom she is still considered legally married.

Furthermore, as women move into the formal labor sector, relationships in the household also change. While in fact many women have become the main breadwinner in the family, men are still considered household heads with corresponding legal rights. Cases of domestic violence may also arise in response to the tensions of modern life and rapid social change. Women receive little legal protection from the existing weak laws on domestic violence, and even less support from the generally poor enforcement across the four countries. Women are

subject to other forms of exploitation, such as sexual harassment. The lack of sexual harassment laws in most of the countries, the difficulties encountered in accessing the legal system, the fear of retaliation and sense of shame, and the threat of losing their jobs leave women vulnerable.

2.2.2 Issues facing Rural and Indigenous Women

- *Adequacy of land compensation and/or legal recognition of landownership rights of rural and indigenous women.*

Women in indigenous and ethnic communities have been further marginalized, particularly with regard to land ownership. In Malaysia, for example, indigenous women have been deprived of their rights under customary law to be co-owners of land, because government resettlement projects award land titles and certificates of titles to crops to men as “head of the family”. With increasing development, land will become an even scarcer commodity. Indigenous women who do not have the skills to fit into the market economy will end up on the lowest rung of unskilled jobs. The same will hold true for rural women displaced from converted plantation lands, who will most likely migrate to urban centers.

2.2.3 Issues Related to Migrant Labor, particularly Domestic Workers

- *The need for legal protection for a growing domestic worker sector.*
- *Ineffective laws and governance structures to protect overseas workers.*
- *The need for bilateral and regional approaches to offset the tension between respect for the sovereignty of the host country and the responsibility to uphold human and political rights of migrant workers.*

There are further omissions and gaps in the laws of these countries from the perspective of rural-urban and international migrant workers.

Given the large number of women migrating for work across the region, there is also a pressing need for bilateral and regional agreements to respect and protect the rights of female migrant workers. Discriminatory marriage and citizenship laws in the countries have created problems for the children of women who marry citizens from another country. In addition, foreign wives and migrant workers who are victims of violence may have little legal protection, as temporary visas or work permit arrangements can be withdrawn.

Rural-urban migrants often take up domestic work. There are often no laws protecting these wage earners, and where laws exist they are inadequately enforced. Consequently, women in this sector receive low wages and can be abused by both employers and labor supply agents.

Indonesia and the Philippines both recognize the contribution of overseas domestic workers to the economy. International migration is also growing in Thailand. Malaysia attracts labor from Indonesia, Philippines, Bangladesh, and Pakistan. There have been cases of sexual harassment, abuse, and violence against foreign domestic workers.

Domestic work is not well regulated in many countries because of its “private” and “informal” nature. In the Philippines, as elsewhere, working conditions inside employers’ homes are not open to scrutiny or verification. In Indonesia, existing regulations concern only the management and control of labor supply agencies. Finally, women are overtly penalized in Indonesia: they are required to pay more than men for overseas placement services, irrespective of the nature of the job.

2.2.4 Issues Related to New Telecommunications and Information Technology

- *Use of telecommunications and information technology, and media regulation, to exploit and degrade women, and/or to reduce the potential for discriminatory content and practices.*

The expansion of telecommunications, such as satellite communications and the Internet, raise new issues related to the commodification and use of women as objects. Filipino women are, for instance, “for sale” on the Internet. Complex issues relating to freedom of information and the dissemination and accessibility of pornographic

material will also arise. At the international level, there may be a need to initiate a study on the possibility of an international agreement.

2.2.5 Global and Regional Health Issues

- *Antidiscrimination laws and effective privacy laws to protect victims of HIV/AIDS and infectious diseases.*

The HIV/AIDS crisis will have an increasing impact on women in the four countries and there will be increasing pressure for this problem to be addressed effectively. Women in the four countries are vulnerable because of the unavailability of clear and accurate information on the disease and its prevention; because of prevailing taboos that prevent women from actively seeking advice on reproductive health and HIV/AIDS, and because of discrimination against victims.

B. MAJOR FINDINGS

CHAPTER 3:

LEGAL AND INSTITUTIONAL FRAMEWORKS

3.1 Introduction

This chapter reviews the legal frameworks of Indonesia, Malaysia, the Philippines, and Thailand. Such frameworks provide an important context for assessing women's sociolegal status. The information provided on each of the four countries was current as of the date of the relevant country report. In addition, the chapter considers women's status in these countries in terms of the international conventions, declarations, and platforms affirmed by their governments. The information provided on treaty ratifications and reservations was current as of July 2001.

3.2 Legal and Institutional Frameworks

Indonesia, Malaysia, and Philippines are each characterized by long periods of colonization, each by a different European power; the Philippines was also more briefly a US colony. This colonial heritage had a profound effect on the present legal system of each of these countries. Thailand is the exception here, and the monarchy enjoyed absolute rule until it was transformed into a constitutional monarchy in the early twentieth century. Because of their different colonial experiences and influences, each country has evolved its own legal and judicial system.

All four countries are constitutional democracies. The Constitution is the highest law in all four countries and all other laws must adhere to it. Inherent in this system is the superiority of State or legislated law over all other laws such as indigenous laws and practices. At times this brings State law into direct conflict with the laws of the indigenous peoples, notably on the issue of land use and ownership in Malaysia and the Philippines, where—due to colonial influences—the constitutions declare that all land belongs to the State. This has paved the way for governments and private

entities to lay claim to ancestral lands which, in turn, has led to the massive dispossession and displacement of indigenous peoples.

In Indonesia, Malaysia, and Philippines, the Supreme Court is the highest court. Thailand has both a Constitutional Court and a Supreme Court of Justice. Courts may be called on to interpret traditional or customary laws, including changes in these laws over time. These judicial interpretations have the effect of “formalizing” what was originally informal and unwritten law.

Customary law still prevails and governs many aspects of life in Indonesia, Malaysia, Philippines, and Thailand, but it is strongest in Indonesia and in indigenous communities within Indonesia, Malaysia, and Philippines. Customary law refers to the proper way of behaving within a group or community. It covers the proper way of performing rites; of acting as mothers, fathers, in-laws, grandparents, and neighbors; of behaving as tenants, landlords, and traders. Customary law is also used to ensure the legality of certain actions or transactions. Customary law traditionally has mirrored the local way of life and behavior of indigenous peoples, and has incorporated the religious values of local regions.

Religious influences are also evident in the legal systems of the four countries. The values that underlie Islam have defined the status of Muslim women in Indonesia, Malaysia, and parts of the Philippines, particularly in the areas of family and personal law. Recent Islamic resurgence throughout the region has resulted in renewed efforts by Muslim activists to bring about greater Islamization of the State and its legal systems. This trend has been noted by many women’s organizations in the region, which discern a direct relationship between growing Islamic resurgence and greater discrimination against women, particularly in the areas of family and personal law. In contrast, the influence of Buddhism in Thailand has introduced a relatively enlightened view of the role and status of women in society. In the Philippines, the influence of the Roman Catholic religion is exemplified by the absence of a divorce law.

3.2.1 Indonesia

Indonesia’s system of laws is highly complicated, due in part to its colonial history. When the Dutch colonized Indonesia, they classified the population into three different groups for legal purposes: Europeans,

Natives, and Foreign Orientals. Dutch legal policy differentiated the population based on racial criteria that coincided with the respective group's economic roles. Fifty years after independence, this differentiated legal system is still in place in Indonesia, and many colonial regulations have not yet been replaced. In effect, this means that except for some matters for which written laws were promulgated, indigenous Indonesians are subject to customary law or *adat*. More recently, *adat* has been refined or expanded to include *adat* law. *Adat* law is customary law to which legal consequences are attached. Nineteen regions in which *adat* is in force have been identified in Indonesia. They are remarkably diverse and the *adat* prevailing in each varies greatly in accordance with the type of kinship system.

The impact of *adat* law on and its consequences for women varies enormously from one area to another. In patrilineal societies (Batak, South Sumatra), descent occurs through the father's line. A daughter upon marriage is transferred from her father's home to her husband's patrilineal group and is not entitled to inherit land or property from her father. In matrilineal societies (Minangkabau) daughters provide the links in the line of family descent. They remain in their mother's house and village, while in general sons are expected to move to their wife's family home and village. In both cases, the head of the clan exercises considerable authority over individuals. By contrast, individuals in a bilateral kinship system (Borneo, Java) have considerably more freedom and autonomy to act. They are deemed to be affiliated both with the mothers' and the fathers' families, and both daughters and sons may inherit parental property, although the actual portions may differ according to gender.

Because of prevailing *adat* law, no civil laws on inheritance for indigenous Indonesians have been enacted. Inheritance law reform has not been incorporated into a draft law forwarded to Parliament. Some recent Supreme Court decisions have established that daughters in patrilineal societies have the right to inherit their fathers' property on the basis that "when daughters are excluded from such rights, it... is contrary to justice and humane values." Thus a conflict exists between patrilineally-based *adat* law and the Constitution and Supreme Court. Ultimately, law reform will need to untangle the web of conflicting laws and legal decisions and create laws that are consistent with each other and are effectively implemented and enforced.

Defenders of the current system argue that adat law is dynamic and can change to reflect changes in policy and in the norms of the community. It is argued that judges are able to perceive such changes and to rule accordingly. This gives the judges, especially those in the Supreme Court, wide latitude for issuing precedents. Nevertheless, concerns have arisen as to the suitability of adat law to cope with modernization. In particular, a number of legal areas still governed by adat law—and often concomitant patriarchal attitudes—are seen as in conflict with the Constitution and with Supreme Court decisions that promote women’s equality.

The Indonesian judicial system is divided into four jurisdictions, each with three levels with the Supreme Court constituting the fourth level, as shown in Figure 2.

Figure 2. Levels of the Judicial System in Indonesia			
Supreme Court : Mahkamah Agung ↓			
1. Courts of General Jurisdiction	2. Administrative Courts	3. Military Courts	4. Religious Courts
Operating at the following levels:	Operating at the following levels:	Operating at the following levels:	Operating at the following levels:
Appellate Courts	Appellate Courts	Appellate Courts	Appellate Courts
↓	↓	↓	↓
District Courts	District Courts	District Courts	District Courts
Source: Adapted from Sociolegal Status of Women in Indonesia, Final Report. March 1998.			

3.2.2 Malaysia

Malaysia attained independence from British rule in 1957. The federal Constitution defines Malaysia as a parliamentary democracy with a constitutional monarch. A remaining vestige of British colonial rule is the application of principles of English law in instances where local statutes are absent; only that part of English law is used that is suited to local circumstances. Each of the 13 states has its own legislature. *Syariah*¹ laws and land laws are under the jurisdiction of these state governments. In some states of Peninsular Malaysia, this has led to the introduction of more conservative interpretations of Islamic law principles. Feminist and other groups such as Sisters in Islam have argued vocally against the introduction of *Hudud* law in Kelantan and Trengganu, asserting that such fundamentalist interpretations of Islamic law doctrines are oppressive to Muslim women in these states and against the spirit of the Quran.

Syariah laws, administered through the *syariah* courts, are applicable only to Muslims in the area of family law, inheritance, and certain matrimonial and religious criminal offences. Native, Malay, and Chinese customary laws are minor sources of law in East and West Malaysia. In Sabah and Sarawak, there are various forms of customary law administered by the native courts. Native courts have jurisdiction only in cases arising from native law or custom and where the parties are natives. There are considerable similarities between *syariah* law in Malaysia and *adat* law in Indonesia, particularly in the area of indigenous or native laws.

Malaysia has a Federal judiciary, which administers both federal and state laws throughout the Federation. The only state courts are the *syariah* and native Courts. In addition there are courts with specific jurisdictions:

¹ The Arabic word referring to rules of conduct derived from the Koran (also spelled Quran) and other authentic Islamic sources has been transliterated in several ways, including *shari'a* or *shari'ah*. This report contains different spellings, reflecting the spellings found in the underlying country reports. The different spellings also signal a more significant point, which is that statutes, case law, and informal laws derived from Islamic rules and principles can vary substantially from country to country and, in the case of Malaysia, even from state to state; they may also be influenced by other sources, such as colonial civil laws and local norms and practices. For this reason, groups and networks such as Women Living Under Muslim Laws have suggested that, in the context of a particular country, it would be more appropriate to refer to "Muslim laws," to emphasize both the diversity of laws based on Islamic sources, and their culturally specific context. (Shaheed 1995: 308-311)

Juvenile Court, Court Martial, and Special Court. The hierarchy of the judiciary is set out in Figure 3.

Figure 3. Levels of the Judicial System in Malaysia

1. Federal Judiciary ↓	2. State Courts ↓	3. Special Courts ↓	4. Administrative Tribunals ↓
Civil ↓ Superior Courts – High Court – Court of Appeal – Federal Court Subordinate Courts – Sessions Court – Magistrates' Court – <i>Penghulu's</i> (religious) Court	Criminal ↓ Superior Courts – High Court – Court of Appeal – Federal Court Subordinate Courts – Sessions Court – Magistrates' Court – <i>Penghulu's</i> Court	(a) Syariah (b) Native (a) Juvenile (b) Court Martial	(a) Industrial Court (b) Special Commissioners for Income Tax (c) Public Services Disciplinary Boards

Source: Adapted from Sociolegal Status of Women in Malaysia, Final Report. March 1998.

3.2.3 Philippines

The legal system of the Philippines is a result of various influences. Muslim Malays migrated to the Philippines from other parts of Southeast Asia and introduced the Islamic religion and way of life to the inhabitants. When Spain colonized the Philippines, the Roman Catholic religion was introduced. Spanish colonizers claimed all lands in the name of the King of Spain and imposed their own laws in the country. This regalian doctrine is still enshrined in the present Constitution, which states that public land and natural resources are owned by the State. During Spanish colonization, the pre-Hispanic equality and high social status enjoyed by Filipino women was replaced with legalized inequality. Under the Spanish Civil Code, the Filipino woman was treated as a minor under the protection of her father or, upon marriage, her husband. In the late 19th

century, the Philippines came under American domination. During American colonial rule, women's oppressed status eased somewhat. However, there still remain to this day laws that discriminate against Filipino women.

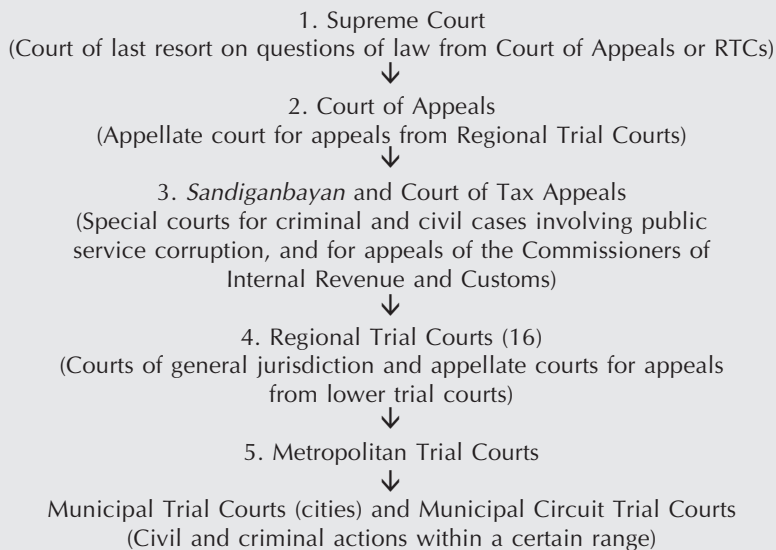
In spite of the Philippines' long colonial history, there were areas like the Cordillera in the North and the Muslim areas in the South that were never under the effective control of the colonizers. The people in these areas continued to practice their own customs and traditions.

These historical factors resulted in a legal system that combines elements of these influences, that is, a blend of customary law, Roman civil law, and Anglo-American common law. Civil law operates in such areas as family relations, property, succession, and contract and criminal law, while statutes and principles of common law origin are evident in such areas as constitutional law, procedure, corporation law, negotiable instruments, taxation, insurance, labor relations, and banking and currency. Islamic laws are observed in some areas of the South and Muslims continue to honor the *shari'a* and traditional laws based on Islamic principles. Shari'a courts have been established to try cases involving offences under the Code of Muslim Personal Laws and communal property disputes. In recognition of its distinct political and legal system, the Autonomous Region for Muslim Mindanao was recently established.

Customary law is part of the Filipino legal heritage and system. The 1987 Constitution (Article XIV(17)) provides for the recognition, respect, and protection of the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It also advocates the consideration of such rights when forming national plans and policies. The Civil Code acknowledges the existence of customs. Judges may apply customs to a controversy or dispute in the absence of any governing statute. This recognition of customary law is a source of conflict between the Government and indigenous communities, especially in the area of landownership, where it comes into conflict with the regalian doctrine enshrined in the Constitution.

The judicial system of the Philippines consists of a hierarchy of courts (Figure 4), with the Supreme Court at its apex and a series of lower courts established by law. Parallel with this judicial system is a judicial system for the minority Muslim communities in Mindanao. Shari'a district

Figure 4. Levels of the Judicial System in the Philippines



Source: Sociolegal Status of Women in the Philippines, Final Report. March 1998.

and circuit courts have been established in five special judicial districts. These courts have jurisdiction over cases involving offences under the Muslim Code of Personal Laws, as well as the settlement and disposition of deceased Muslims' estates. These courts have a significant impact on women, their children, and their lifestyles and livelihoods.

3.2.4 Thailand

The Thai people originated as a nation more than 2,000 years ago. Foreigners were welcomed. Thai culture blends Indian and Chinese culture with animist, Hindu, and Buddhist elements. During the last century, Western culture has also been an influence.

In the Sukhothai period, women enjoyed religious freedoms, such as the right of public worship, and could participate fully in community life. This situation changed in the middle of the Ayutthaya period (1424–

1448) when the King welcomed Brahma (the supreme essence of the Hindu universe) to support his authority. Women's status was then changed to make it in line with Brahmanic society. They were not permitted to engage in public activities, or in study. This situation continued until the reign of Rama IV (1851–1868), who encouraged Buddhism as well as certain elements of Western culture.

Thailand is a quasi-matrilineal society, with matrilineal residence rules. Thai women have traditionally been able to rely on their own kin, and return to their parents' or mothers' home, and have not been dominated by or been reliant on men, husbands or, on their in-laws. Nevertheless, sexual inequality and exploitation of women do exist. In Thai society, men are generally assumed to be the family, community, and country leaders, while women are expected to assume full domestic and child care responsibilities. However, this division of labor is gradually changing because of economic, social, and cultural developments.

Thailand has been a constitutional monarchy since 1932. Under the Constitution, the monarch is the Head of State, and due to the great esteem in which the monarchy is held, it is common for the monarch to offer informal guidance on the political development of the country. Thailand has a parliament composed of an elected House of Representatives and an appointed Senate. Thailand's government has been characterized by short periods of electoral democracy and long periods of military rule following coups d'état.

Between 1932 and 1997, Thailand had 15 constitutions. The latest was enacted in 1997 following public consultations in which women's groups lobbied actively to include provisions favorable to women and to some extent succeeded (Section 4.2.1). The 1997 Constitution provides for a Constitutional Court, three levels of Courts of Justice (Courts of First Instance, a Court of Appeal and a Supreme Court of Justice), as well as administrative and military courts.

3.3 International Treaties and Other International Commitments

The international treaties and other undertakings to which countries commit themselves ideally serve to shape their domestic

policies and legislation. All four countries in this study have ratified or acceded to² many of the international treaties that pertain to the rights and status of women, and have participated in the major international conferences addressing women's concerns. However, the countries vary substantially in the degree to which they have implemented these international commitments, including steps taken to bring their domestic laws and regulations into compliance with their treaty obligations (Box 1).

Box 1. CEDAW

One human rights instrument, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), is explicitly intended to secure rights for women. Adopted in 1979 by the UN General Assembly, it specifically acknowledges the extensive discrimination against women that continues to exist. CEDAW provides a comprehensive framework for challenging the various forces that have created and maintained discrimination based on sex.

Despite the value and merit of CEDAW and its ratification by 111 governments [to date], it has received little active support. Eighty countries have lodged substantive reservations on it—the highest number for any international convention. This means that while a country may have signed the agreement, it may have excepted itself from so many clauses in the Convention that women's rights are rendered meaningless and unenforceable.

Source: CIDA, 1995.

The Philippines is the only one among the four countries to provide in its Constitution that generally accepted principles of international law are considered part of the law of the land (Article II.2). Such principles thus have the same authority as enacted legislation. Nevertheless, under international law, all of the countries are obliged to comply with the international treaties they have ratified. Of the four countries, the Philippines has also ratified the largest number of treaties pertaining to

² The distinction between ratification and accession is technical, and indicates only whether a country was an original signatory to a treaty, and subsequently took the necessary steps to ratify its acceptance of the treaty's terms, or whether the country joined (acceded to) the treaty after the initial period for signatures had closed. For simplification, this report uses the term "ratification" to mean either ratification or accession.

women's status, and is the only country of the four to have ratified them without reservation.

It is problematic when a ratifying country exempts itself from key provisions of a treaty, since valid reservations narrow the scope of the country's obligations under the treaty, and broad reservations call into question the country's commitment to the treaty's objectives. Human rights treaties, in particular the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), discussed further below, has been especially susceptible to reservations and "interpretive declarations" (Charlesworth and Chinkin 2000: 103).

Furthermore, the international treaties most relevant to women's status have very limited enforcement mechanisms, consisting mainly of review by an expert committee of periodic reports submitted by the State parties to the treaty. A few of these treaties, including CEDAW through its new Optional Protocol, go farther and empower the expert treaty committee to investigate allegations that a State party is not meeting its obligations under the treaty. In all these cases, however, the treaty committee can only make recommendations based on its review, and require follow-up reports by the State party in question. The treaty committee cannot compel a state party to comply with the terms of the treaty or its recommendations.

In contrast to treaties such as CEDAW and other international covenants and conventions, "soft law" commitments, such as declarations and program documents negotiated at United Nations (UN) conferences, are not intended to be legally binding on countries, although they do express the intentions and expectations of their signatories regarding their own future conduct and that of other states and other actors (including international institutions) (Charlesworth and Chinkin 2000: 66; see also Chinkin 1989).

Despite their weaknesses in terms of compliance and enforcement, international treaties and other commitments are not without effect. They establish international norms of conduct for countries and international institutions. Groups within countries also use them as a basis for promoting changes in domestic law and policy, and for challenging existing laws and practices that are inconsistent with a country's international commitments. It is relevant therefore to consider the positions of Indonesia, Malaysia, Philippines, and Thailand in relation to

the international treaties and other commitments that seek to eliminate discrimination against women and further women's full participation in their societies.

As shown in Table 1, one or more of the four countries have ratified these treaties, which expressly or implicitly address the status of women:

- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- CEDAW
- Convention on the Rights of the Child
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Political Rights of Women
- Convention on the Nationality of Married Women
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery
- Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- Convention and Protocol Relating to the Status of Refugees.

In addition, all four countries have ratified several ILO Conventions—discussed in more detail in Chapter 4—that seek to improve women's status in the workplace. As of July 2001, two of the countries have also signed, but not yet ratified, new protocols relating to the smuggling of migrants and trafficking in persons.

The most comprehensive treaty relating to women's status is CEDAW, which was adopted by the UN General Assembly in 1979 and entered into force in 1981. Now ratified by close to 170 countries, including all four countries in this study, CEDAW provides a comprehensive framework for challenging the various forces that continue to discriminate against women and girls. Women and women's organizations in the four countries tend to concentrate on this Convention and use it as a tool for encouraging their respective governments to introduce, implement, and enforce laws to improve the status of women. CEDAW is also important because it requires all State parties to report

periodically on their progress in implementing its provisions. Of the four countries, only Malaysia has not yet submitted a report under CEDAW.

Indonesia ratified CEDAW in 1984, with one reservation: to an article on the settlement of disputes between State parties by the International Court of Justice (ICJ), which it maintained was a constraint on its national sovereignty. Indonesia filed its most recent progress report in 1998.

Malaysia acceded to CEDAW in 1993, with a general reservation that its accession assumed there was no conflict between CEDAW, on the one hand, and Islamic syariah law and the Malaysian Constitution, on the other. In this regard, the reservation specified several articles of CEDAW to which Malaysia did not consider itself bound. Malaysia subsequently withdrew reservations to some of these articles, but still maintains reservations to CEDAW provisions that it deems incompatible with syariah inheritance law, the appointment of men as syariah court judges and religious officials, Malaysia's nationality law, and different marriage age limits for women and men. Several other State parties to CEDAW have objected to Malaysia's reservations, on the ground that they are incompatible with the object and purpose of the convention.

Consistent with its position on other treaties, the **Philippines** ratified CEDAW in 1984 without reservation. Its latest progress report was submitted in 1997.

When **Thailand** acceded to CEDAW in 1985, it lodged reservations to seven articles. However, by 1996, Thailand had withdrawn five of the seven reservations. The office of the National Commission on Women's Affairs (NCWA) strongly advocated the withdrawal of the last two reservations—to Article 16 (on marriage and family relations) and Article 29 (on dispute settlement by the ICJ)—but despite nationwide debate, they remain. Thailand submitted its most recent progress report in 1999.

The Optional Protocol to CEDAW, which entered into force in December 2000, gives women in countries that ratify the protocol the right to notify CEDAW's expert committee about violations of their rights under CEDAW. If the communication is admissible, the committee will review it together with the country's response, and then issue its views and any recommendations. On its own initiative, the committee can also investigate reliable information about grave or systematic violations of rights under CEDAW, and issue findings and recommendations.

Table 1
Summary of the Legal Frameworks
(unless otherwise stated, dates

Indonesia	
A. International Treaties	
(i) International Covenant on Economic, Social and Cultural Rights	—
(ii) International Covenant on Civil and Political Rights	—
(iii) (a) CEDAW	1984
(iii) (b) Optional Protocol to CEDAW	2000 (signature)
(iv) Convention on the Rights of the Child	1990
(v) International Convention on the Elimination of All Forms of Racial Discrimination	1999
(vi) Convention on the Political Rights of Women	1958
(vii) Convention on the Nationality of Married Women	—
(viii) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	—
(ix) Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery	—
(x) Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	—
(xi) Convention and Protocol Relating to the Status of Refugees	—
(xii) (a) United Nations Convention against Transnational Organized Crime (not yet in force)	2000 (signature)
(xii) (b) Protocol against the Smuggling of Migrants by Land, Sea and Air (not yet in force)	2000 (signature)
(xii) (c) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (not yet in force)	2000 (signature)
(xiv) ILO Conventions	See Chapter 4

**Relevant to the Status of Women
indicate treaty ratification or accession)**

Malaysia	Philippines	Thailand
—	1974	1999
—	1986	1996
1995	1981	1985
—	2000 (signature)	2000
1995	1990	1992
—	1967	—
—	1957	1954
1959	—	—
—	1965	—
1957	1964	—
—	1952	—
—	1981	—
—	2000 (signature)	2000 (signature)
—	2000 (signature)	—
—	2000 (signature)	—
See Chapter 4	See Chapter 4	See Chapter 4

	Indonesia	Malaysia	Philippines	Thailand
B. National Constitutions	<ul style="list-style-type: none"> Women not mentioned specifically in 1945 Constitution. "All citizens" and "every citizen" in Article 27 implicitly include women. 	<ul style="list-style-type: none"> Constitutional monarchy with a parliamentary democracy Constitution implicitly includes men and women 	<ul style="list-style-type: none"> Men and women are mentioned in the 1987 Constitution. Rights detailed in Bill of Rights. 	<ul style="list-style-type: none"> Constitutional monarchy Mentions both men and women in the Constitution
C. Religious Laws and Practices	<ul style="list-style-type: none"> 1945 Constitution guarantees "freedom for every citizen to embrace their own religion..." Implicitly, this freedom applies to women. However, in practice this freedom may be somewhat restricted by the 1989 Act No. 7, which gives Religious Courts jurisdiction over Muslims in the areas of: marriage; inheritance and bequests; <i>wakaf</i> or the setting aside of possessions for religious or community interests; and <i>shadaqah</i> or alms. No women serve on the religious courts and 	<ul style="list-style-type: none"> Islam is the official religion of Malaysia, but all citizens may practice their own religion. Islamic law applies only to Muslims, and only in the areas of family law, inheritance, and some matrimonial offenses. 	<ul style="list-style-type: none"> The Philippine Constitution declares the separation of Church and State to be inviolable. The Philippine legal system recognizes an Islamic personal law as embodied in the Code of Muslim Personal Laws. Divorce is illegal. 	<ul style="list-style-type: none"> Thailand is a Buddhist country that has traditionally practiced religious tolerance. In the four southern provinces, people tend to practice Islam and adhere to Muslim tenets.

	Indonesia	Malaysia	Philippines	Thailand
D. Customary Laws and Practices	Islamic law tends to be interpreted by male clerics from a male perspective. Women's religious freedom is at times curtailed.	<ul style="list-style-type: none">• Adat law• Also native customary laws and Chinese laws	<ul style="list-style-type: none">• Customary law forms part of the Filipino legal heritage and system. The 1987 Constitution (Article XIV [17]) provides for the recognition, respect, and protection of the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions.• The 1987 Constitution also advocates that such rights should be considered when forming national plans and policies. The Civil Code acknowledges the existence of customs. Judges may apply customs to a	
	<ul style="list-style-type: none">• Indonesia's legal system, encompasses Islamic religious law, <i>adat</i> or customary law; civil law based on the European model; and patrilineal and matrilineal systems with respect to inheritance.			

	Indonesia	Malaysia	Philippines	Thailand
E. Relevant National Policies and Institutional Implementation Mechanisms	<ul style="list-style-type: none"> 1993 GBHN included Role of Women in nation-building, putting major responsibility for family and children on women PKK continues to be major program area REPELITA IV has a separate chapter on women REPELITA V to be prepared in 1998 	<ul style="list-style-type: none"> Malaysia formally adopted a National Policy for Women (NPW) in 1989, which promotes women's full participation in development and sets forth an action plan. The NPW is part of Malaysia's overall framework of national development policies, including Vision 2020 and five-year development plans. Both the Sixth (1991–1995) and Seventh (1996–2000) plans contained chapters on policies on women. The Women's Affairs Department (HAWA) (now upgraded from a division) within the Ministry of National Unity and Social 	<p>controversy or dispute in the absence of any governing stature.</p> <ul style="list-style-type: none"> Has approved and adopted the Philippine Plan for Gender Responsive Development (1995–2025) Ensures women and men will participate equally in and benefit from development NCRFW given major responsibility for drafting and implementing policies and activities related to women 	<ul style="list-style-type: none"> Thailand's Four Plan (1977–1981) focused on women's development in rural areas: the Fifth Plan (1982–1986) advocated poverty eradication in 38 of the poorest provinces and emphasized women's development activities, organizations and revenue generation. The Sixth Plan (1987–1991) continued the Fifth Plan's thrusts, without targeting women specifically as a group and without drawing up a specific women's plan of action. Thailand's Seventh (1991–1996) and Eighth National Development Plans (1996–2001) have emphasized human development, but have

Indonesia	Malaysia	Philippines	Thailand
	Development is concerned with women's integration into development, including coordination, monitoring, evaluation, planning, policy and reporting. The upgrading of HAWA, as a result of an ADB-funded institutional assessment of HAWA in 1996, is expected to remove serious constraints on its actions within government.		not targeted women. The Government's policy is to treat women's activities as mainstream.

ADB = Asian Development Bank; GBHN = Broad Outline of State Policy; NCRFW = National Commission on the Role of Filipino Women; PKK = Family Welfare movement; REPELITA = Five-Year Development Plan.

Sources: UN and UN High Commissioner for Human Rights websites, <http://www.un.org> and <http://www.unhchr.org>, as of 1 August 2001; final country reports for this RETA, March 1998.

Indonesia and the Philippines have signed (but not yet ratified) the Optional Protocol, while Thailand has signed and ratified it, which is an extremely promising development for Thai women.

Beginning in 1975, with the UN Declaration of International Women's Year and the first international conference on women held in Mexico City, countries and international organizations have also expressed their collective commitments to improve the status of women through a number of declarations and program documents. These include the Beijing Declaration and Platform for Action from the Fourth World Conference on Women in 1995, as well as program documents from the International Conference on Environment and Development (Rio, 1990), the World Conference on Human Rights (Vienna, 1993), the International Conference on Population and Development (Cairo, 1994), and the World Summit on Social Development (Copenhagen, 1995). Although the degree of follow-up by individual countries on these commitments has been mixed, a general trend in all four countries in response to the international conferences on women has been the establishment and strengthening of national committees or other bodies designated to monitor and promote women's status in society.

In **Thailand**, for example, a Sub-Committee on Women and Youth Development Planning was established under the auspices of the National Economic and Social Development Board. Its purpose is to review data on women, draw up 5- and 20-year plans for women's development, and identify indicators to measure and monitor women's progress. The significance of the subcommittee's work was enhanced when it was moved to the prime minister's office in the mid-1990s. In 1989, Thailand also established the NCWA, as a result of its participation in the Third World Conference on Women held in Nairobi in 1985.

The Fourth World Conference on Women in Beijing in 1995 was especially influential in encouraging governments' commitments to improve women's status. For example, in **Indonesia**, then-President Suharto endorsed the Beijing Declaration and Platform for Action by establishing Women's Day. In his first Women's Day speech in December 1995, he called for a "national movement to reaffirm equal partnership between women and men." Other responses included translation of the Beijing Platform for Action into Indonesian and a workshop in March 1996 organized by the Office of the State Ministry for the Role of Women

that reaffirmed the “equal partnership between women and men as the implementers of the results of the Fourth Conference”.

In the **Philippines**, former President Ramos issued an executive order in response to the Beijing Declaration and Platform for Action, which adopted a long-term “Philippine Plan for Gender-Responsive Development (1995–2025).”

Similarly, the **Thai** Government set up a committee to ensure that the provisions of the Platform for Action were incorporated into Thailand’s Eighth National Development Plan (1996–2001).

CHAPTER 4

SOCIOLEGAL STATUS OF WOMEN IN THE FOUR COUNTRIES

4.1 Introduction

This chapter details the status of women within the following four areas of law: women's constitutional status; family relations and family law; labor, employment and economic rights; and violence and exploitation. The descriptions provided of laws and regulations in the four countries were current as of the dates of the underlying country reports for this study.

4.2. Constitutional Status of Women

A nation's constitution is the recorded repository of the ideals, values, and aims of its citizens. In order for women to achieve equal rights as citizens, their status under constitutional provisions must be clear and unambiguous. The constitutional status of women takes on an increasing importance in today's situation of growing economic integration and globalization. Of particular note in this regard are the issues of citizenship, human rights, and equal rights, especially in the context of transnational labor migration.

4.2.1 Constitutional Rights of Women

The constitutions of the four countries guarantee equality before the law, equal protection of the law, and enjoyment of equal rights and obligations. Nonetheless, gender discrimination persists in practice.

Indonesia's Constitution uses the term "citizen". While both women and men are subsumed within this, the Constitution limits protection only to citizens of Indonesia and excludes others such as migrant workers. Indonesia participated in the 1993 Vienna Human

Rights Conference, but the linkage between human rights and women's rights has not emerged as a particularly pressing issue.

Malaysia's federal Constitution does not prevent gender-based discrimination (see next section). Other types of discrimination based on religion, race, descent, or place of birth are expressly prohibited. Clause 2, which prohibits discrimination on various grounds, does not include sex. This omission implies that it is permissible to discriminate on the basis of a person's sex. This omission is increasingly regarded as significant and in need of change, inasmuch as it allows for protective discrimination against women in the Employment Act.

The **Philippines'** 1987 Constitution values the dignity of every human being and guarantees full respect for human rights. Women's role in nation building is explicitly recognized. Section 14 of Article II has been used by the National Commission on the Role of Filipino Women (NCRFW) as the strategic anchor for the inclusion of issues of gender in the Government's development planning, implementation, monitoring, and evaluation. Many of the 16,538 statutes enacted under 27 different codes, especially the Family Code and the Child and Youth Welfare Code, recognize the rights and status of women and children. Special laws have been passed to address the emerging role of women and to penalize violence against women and girls.

Thailand, a constitutional monarchy since 1932, mentions both men and women in its present Constitution. Section 30 states: "All persons shall enjoy rights and liberties subject to the provisions of the Constitution. *Men and women shall enjoy equal rights.*" Section 80, Chapter V of the Constitution in its "directive principles" to government departments states that "The State should uphold, promote and develop children and youth, promote *the equality of men and women.*" Thai women worked actively to ensure that the references to equality between men and women were retained by the Constitution Drafting Assembly in 1997. Of Thailand's past 15 constitutions, the 1974 constitution was the first to specify equality between men and women. This provision was deleted in 1976. It was then reinstated in 1994, after a vigorous campaign by the NCWA and nongovernment organizations (NGOs).

4.2.2 Citizenship and Political Representation

All countries with the exception of the Philippines have varying degrees of discrimination in citizenship provisions, mostly anchored on the belief that a wife's citizenship is related to that of her husband.

The rights and obligations of *all Indonesia's* citizens are embodied in its basic laws and regulations. However, it is the only one of the four countries that does not allow children of its women citizens to acquire citizenship when the father is not an Indonesian citizen. A child with a legal relation to the father acquires the father's nationality. A child born out of wedlock to an Indonesian mother and a foreign father, or the child of a mother divorced from the foreign father of her child and granted custody, can submit a request for citizenship registration one year after his or her 18th birthday. Until then the child is considered a foreigner, and immigration and other laws pertaining to foreigners apply. This becomes a burden to the mother and is unjust to the child, and does not reflect the intent and spirit of the law as embodied in the Constitution. In July 1997 the Legal Aid Institute (LBH) and the State Ministry for the Role of Women proposed that the Act on Citizenship be reformed to respect and reflect women's and children's rights.

In **Thailand** and **Malaysia**, children may acquire the citizenship of either parent. A foreign woman who marries a citizen can be registered as a citizen, but the same privilege is not accorded to a foreigner who marries a woman citizen. This has caused many Malaysian women to emigrate. Article 15 (1) of the Malaysian Constitution states that a child born outside Malaysia with a Malaysian father is automatically a citizen, but if the mother is the citizen, the birth needs to be registered in order for the child to be recognized as a citizen. Although the Immigration Department is under the Federal Ministry of Home Affairs, the fact that each state has its own immigration office, which applies immigration laws according to its state's needs and practices, results in inconsistent application of antidiscrimination policies and leads to undue discrimination against women.

Thailand's 1982 Name Act obliges a woman who marries to take her husband's surname and to change the prefix from the Thai equivalent of Miss to Mrs. Upon divorce, she must take back her maiden name but keep the prefix Mrs. As of the date of the related country report, the Cabinet had approved a change in the law, but it still had not been passed

by Parliament. Since 1987, a widow is no longer required to keep her husband's surname.

Philippine laws on citizenship seem to be the most gender-fair, with both women and men accorded the same citizenship rights. Women who marry foreigners (noncitizens) retain their citizenship status, and all children of Filipino citizens acquire Filipino citizenship automatically. A foreign woman or a man who marries a Filipino citizen needs to go through a judicial or administrative process in order to acquire Filipino citizenship.

The **Malaysian** Constitution gives every citizen, male or female, who is 21 years of age or above, the right to vote in federal and state elections, and to stand for election. Women are not prohibited from holding public (elected or appointed) office. However, by custom, women are excluded from becoming members of the influential Islamic religious councils and syariah courts. Women's representation in the state assemblies, ministries, and parliaments, and in local councils and the leadership of political parties, is minimal.

In the **Philippines**, the full participation of women in political processes has been assisted by the inclusion and acceptance of international conventions and national laws guaranteeing political rights regardless of gender. The 1987 Constitution (Article V) gives the right to vote to *all* Philippine citizens 18 years or older, with residency of more than one year; no literacy or property requirements are imposed. Article II (26) also guarantees "equal access to opportunities for public service, and prohibits political dynasties as defined by law." The Omnibus Election Code specifies age, literacy, and residency as criteria for eligibility to run for political office. Property, wealth, or gender qualifications are not criteria. Legally, therefore, women have an equal opportunity with men to participate fully as elected officials or in the government bureaucracy. The number of women who actually run for office, are elected to public office, or attain senior government positions, is, however, considerably smaller than that of men.

4.2.3 Rights to Education

The four countries face similar problems with regard to education. While there are no legal barriers to women's access to education,

sociocultural attitudes and sexual stereotypes of parents, education systems, and educational professionals limit and constrain women's educational opportunities at the senior and postsecondary level. School curricula and training programs for teachers and administrators lack principles of gender equality. School textbooks need to be revised to eliminate gender biases. Teachers also need to be appropriately sensitized to gender issues, so as not to continue to perpetuate gender stereotypes. Career counselors and administrators are inclined to influence the career paths chosen by girls and boys according to conventional stereotypes.

In **Malaysia** access of girls to all levels of formal education and the expansion of educational facilities has raised the overall female literacy rate to over 90 percent. Care must now be taken to ensure that young woman and girls have the same technical and vocational opportunities, skills training, and access to facilities as men, so that they can take advantage of the opportunities available in Malaysia's technologically advanced economy.

4.3. Family Relations and Family Law

The status of women in society is arguably most strongly influenced by family law, which is in turn influenced by customs and local cultural practices. The interpretation of religious laws, for example, demonstrates patriarchal cultural values, and these values often become entrenched in the legal system. This situation can be especially detrimental to women, since they use personal and family laws to defend themselves. While all the countries in the study prescribe a minimum age for marriage, Indonesian and Malaysian Islamic laws in certain states allow a court to permit underage persons to marry. A guardian may give a daughter or granddaughter in marriage without her consent if she is a virgin. Women's groups want this provision eliminated, as it grossly discriminates against women. Patriarchal values that dictate that women should be "protected" by men can become a source of inequality for women and prevent them from realizing their full potential. Women's advocacy groups in the four countries have succeeded to a limited extent in modifying discriminatory provisions. However, religious resurgence, particularly in the Muslim societies of these four countries, threatens to undo many of the gains

made by governments in the past (Box 2.) Much more work needs to be done in this area.

Box 2: Ideal State of Marriage in Islam (Malaysia)

The recent regulations introduced by the Jabatan Agama Islam Selangor [Department of Islamic Religion in Selangor state], to assist Muslim men in expediting applications for polygamy, without the need to obtain consent from their existing wife or wives, are a cause for concern. In the wake of recent calls for the better protection of rights of our Muslim women, the decision appears ill-advised, if not an indication of misplaced priorities. What is especially alarming is the rationale for it. It was reported that the regulations stem from the notion that polygamy is the right of the Muslim male; and what the regulations sought to do were merely to ensure that this alleged right is made more accessible...

Malaysia in the late 1970s and early 1980s embarked upon a remarkable program of reformation of Islamic family laws under the doctrine of *siasah syariah* (in codification of the law, the state may choose opinions of differing schools to serve the best interest of the community), which introduced among others the restriction of polygamy to help ensure that justice is done as envisaged by the Quran. As interpreted into law, this means that the decision to marry a second or subsequent wife no longer rests on the Muslim male in this country. The State, which is vested with the responsibility of the administration of justice, is now entrusted with the task of scrutinizing the application for polygamy to ensure that it meets with the notion of justice envisioned by the Quran. The reformed law laid down a set of conditions upon which it sought to assess that justice would be done. Consent of the existing wife or wives is one of the factors to be taken into consideration by the court. Four conditions also need to be fulfilled: the proposed marriage is “just and necessary”; the applicant has the financial means to support his existing and future dependants; he would be able to accord equal treatment to all his wives; and the proposed marriage would not cause any harm to the existing wife or wives.

If this trend continues, how can the Government expect to engender confidence among its citizens that Islamization would indeed bring about a fair and just society? If we truly believe that Islam is a fair and just religion, then it is time that we revise our priorities in the interest of justice—for all.

Sisters in Islam, Petaling Jaya.

Source: Letters/Opinions, *The Star*, 22 October 1996.

4.3.1 Marriage, Bigamy, and Polygamy

Indonesian laws clearly state that the rights and position of the wife are equal to the rights and position of the husband. However, in practice, and in some regulations, treatment is unequal. The wife is assigned the nurturing and reproductive role in the private sphere, while the husband is assigned the productive role in the public sphere.

The 1974 Marriage Law (Act No.1) sets out general principles that provide some consistency. Article 31 states that “the rights and position of the wife are equal to the rights and position of the husband, both in the family and in society”. However, polygamy may be allowed upon mutual petition to the court. Moreover, “the husband is the head of the family, while the wife is the mother of the household. The husband is the provider of the family.” The husband is expected to protect his wife and “provide for all necessities of life required in a family to the best of his ability,” while “the wife shall manage the household to the best of her ability.” These provisions undermine women’s equality, development, and advancement.

The same law sets out preconditions for marriage. The consent of both parties must be given for persons under the age of 21 to marry. Marriage is allowed only if the man is at least 19 and the woman at least 16. Exceptions can be granted by petition to the Supreme Court. In addition, Islamic law allows a male guardian (*wali mujbur*) to give in marriage a daughter or granddaughter under 16, if she is a virgin and he considers that the marriage will be in her best interests.

Indonesia gives the adherents of different religions the right to contract their marriages according to the regulations prescribed by their respective religions, subject to general regulations. The basic principle of marriage is monogamy, but the court may allow the husband to have more than one wife if the parties agree. The laws of Indonesia provide that a Muslim man may apply to the court to have more than one wife only if the first wife agrees and if he can give financial support and equal treatment to the families. But this protection is more apparent than real, as the wife usually cannot refuse to give permission to the husband to take another wife, and so the conditions necessary for equal treatment are seldom fulfilled.

Indonesia's civil servants are subject to various government regulations regarding marriage and divorce under the 1992 Government Regulation Governing Permission For Marriage and Divorce of Civil Servants. They must seek permission to marry or divorce. The regulations aim to give women more protection under the Marriage Law. For example, a civil servant who seeks a divorce must share his salary with his wife and children at the rate of one third each. If childless, he must share with his wife on a 50–50 basis.

In **Malaysia**, the laws on marriage and divorce reflect the multicultural composition of Malaysian society. There are two systems of family law in Malaysia, one for Muslims and the other for non-Muslims. The Islamic law on marriage mirrors the fundamental belief that men have authority over women. Polygamy and ease of divorce are privileges accorded to Muslim men. Feminists and other activists, such as Sisters in Islam, are opposed to Islamic law reform that would facilitate polygamy and other marriage practices deemed unfair to women (Box 2). Islamic family law is under the legislative jurisdiction of the states and each has its own law based on a model statute. This has simplified local laws, but has resulted in a lack of uniformity of laws among states.

The 1976 Law Reform (Marriage and Divorce) Act (164) governs the marriage and divorce of non-Muslims. Parties are able to marry without parental consent at 18 years of age, the age of majority under the Malaysian Age of Majority Act (1971). Indigenous people are governed by native customary or aboriginal law unless they elect to marry under the Law Reform Act. Islamic family law applies to Muslims. Islamic family law allows for dispensation with the minimum age for marriage for underage persons.

The Law Reform Act, applicable to non-Muslims, has abolished polygamy and underage marriages. In the event of one spouse converting to Islam, the Law Reform Act provides for the automatic dissolution of the marriage if the nonconverting spouse fails to apply for divorce within three months of the conversion. Conflict arises if the nonconverting spouse does not file for divorce or contests a divorce, especially if the other party subsequently marries under Islamic law.

In the **Philippines**, the value that society and the State place on family is reflected in the Constitution and the 1987 Family Code. The Family Code made major changes concerning marriage, divorce, custody, property, and inheritance in order to address the rights of women. In the

Philippine Civil Code, marriage is recognized as an “inviolable social institution and the foundation of the family”. Both husband and wife have a mutual responsibility and authority to choose a family residence, manage conjugal property, and have custody of the children. A wife may now choose to have a career or profession without her husband’s consent. Widows have the right to retain parental authority over their children, whether or not they remarry. There is still some discrimination against women in laws pertaining to community property, conjugal partnership property, and custody over children, as the husband’s decision prevails in disagreements.

The Family Code sets the age of marriage at 18 years for both men and women. Monogamous marriage is the rule and the consent of both parties must be freely given.

The Code of Muslim Personal Laws, on the other hand, allows Filipino Muslims to have more than one wife under conditions similar to those prescribed under Malaysian and Indonesian law. A wife may receive any property “by gratuitous title” only from certain relatives; a husband is not so restricted. A widow or divorcee is restricted as to when she can remarry. There is a minimum age for marriage but a *shari’a* court may grant the petition of the *wali* (guardian) for the marriage of a girl under 15 years of age if she has attained puberty and is not less than 12 years of age. A marriage through a wali of a minor below the prescribed age may be annulled upon petition by either party within four years of attaining the age of puberty provided no voluntary cohabitation has taken place and the wali is not the father or the paternal grandfather.

In **Thailand**, a marriage is registered and legal when both parties are 17 or older. If one party is under the age of 20, the consent of both parties’ parents must be obtained. If a party to a marriage is under 17, the consent of a parent or guardian *and* a court is necessary. In cases where a man has consensual sexual intercourse with a girl who is over 13 but not yet 15 years old, the Court may allow the couple to get married, thus allowing the man to avoid punishment under the statutory rape law (Section 277 of the Criminal Code: Offences Relating to Sexuality).

Women and men are by law equal in marriage and family relations in Thailand. In practice inequality exists. The law in Thailand supports monogamy, but bigamy is treated lightly as a form of perjury. (Prior to 1990, all registrations of marriage were considered legal, unless and until

the first wife sued in court to invalidate her husband's other registered marriages.) Inefficiencies in the central marriage registration system hinder the enforcement of monogamy. Despite a lengthy campaign by the NCWA, the Interior Department has not introduced computerized identity cards showing marital status, nor has it required officials to check men's status before registration of a marriage.

4.3.2 Divorce

Indonesia's 1974 Marriage Law (Act No. 1) states that marriage is dissolved by death, divorce, and/or a court judgement after the court "has unsuccessfully endeavoured to reconcile the parties." Suits for divorce are brought by the parties or their representatives before one of two court systems: the Religious Court for Muslims and the Court of Justice for non-Muslims. Grounds for divorce include adultery, addiction, desertion for two years; a jail sentence of five years or more, serious cruelty or mistreatment endangering life, physical disability or disease preventing the performance of conjugal duties, and constant disagreement and quarrels between husband and wife that undermine the harmony of family life.

Women activists in Indonesia believe that it is too easy for men to divorce their wives under Islamic law. By merely uttering the word *talaq* (divorce) a man can repudiate his wife and obtain a divorce. Since the implementation of the Marriage Law in 1975, a divorce may be decreed only before a court, and sufficient grounds are required.

Separate and progressive regulations govern the divorces of civil servants. For example, if a male civil servant fails to report his divorce or additional marriages within a specified time, he is subject to "severe disciplinary punishment".

Indonesia's 1974 Property Law distinguishes between property brought into the marriage by either spouse and property (termed conjugal) acquired during marriage. "Conjugal property is owned jointly and in common" and upon divorce is shared "pursuant to the respective laws." This could mean that the wife receives a smaller share if customary or religious laws so stipulate. Property brought into the marriage or acquired through inheritance is treated as each spouse's separate property and therefore is not shared upon divorce.

Among **Malaysian** Muslims, both men and women may divorce. A divorce has to be heard by a court, but divorce may also be valid if a man pronounces the *talaq* outside the court and without the court's permission. The penalties for this are light and nondeterrent. For non-Muslims, divorce by mutual consent after two years of marriage is easily obtainable. In a contested divorce, the couple must first go through a conciliatory process. As noted above, non-Muslim women who marry under the Law Reform Act may suddenly find themselves in a divorce situation if their spouse converts to Islam.

Of the four countries, the **Philippines** is alone in having no divorce law for any but its Muslim citizens. This is widely acknowledged as an influence of the Roman Catholic Church. Legal separation is available but the parties cannot remarry. Legal separation can be obtained if application is filed with a court within five years of the occurrence of any one of 10 causes, including physical violence and grossly abusive conduct against the petitioner or their children. The court can order the spouses to live separately and to support their common children and can define custody and support arrangements. The Family Code provides for the declaration of absolute nullity of marriage based on "psychological incapacity," the effects of which are similar to that of divorce. However, neither the law nor jurisprudence has defined this term, so it is open to interpretation.

Divorce for Filipino Muslims is allowed under the code of Muslim personal laws. It is easier for male Muslims to get a divorce under this law than it is for women. The practice of *talaq* or unilateral divorce is available only to men. This renders meaningless the provision requiring that the first wife consent to any subsequent marriage by the husband, since the husband can resort to unilateral divorce if he fails to get the first wife's consent.

In the Philippines, different regimes govern ownership of property in marriage. If a prenuptial agreement is made, it will govern the disposition of property upon annulment or separation. If not, then they are subject to different legal provisions, as follows:

- The Family Code applies "absolute community of property," whereby all properties, including those acquired by either spouse before marriage, become converted into common property upon marriage, with a couple of minor exceptions.

- The Conjugal Partnership of Gains section governs property relations between spouses who married before the 1987 Family Code took effect. The property of each spouse acquired before the marriage is treated separately, but the income arising from such properties during their marriage becomes joint property.
- The Complete Separation of Property section under the Family Code allows each spouse to retain ownership, management, and control of his or her property (including resultant earnings) acquired before or after marriage, provided either a marriage settlement or a judicial order was effected. No common property exists.

In **Thailand**, two kinds of divorce exist, consensual and judicial. Divorce can be granted with the written consent of both parties and takes effect upon registration. Judicial divorce outlines ten grounds for divorce. Nine of those apply equally to men and women. However, where adultery is concerned, a difference exists. A husband may sue his wife for divorce on grounds of adultery. A woman may not sue her husband, unless she can prove that her husband maintained and honored the other woman as a wife (in effect, committing bigamy). A Cabinet decision in April 1996 approved a change in this law, whereby the wife would have the same rights and compensation as a husband. As of the date of the related country report, the legislation had not been passed by Parliament, due to objections from male members of the legislative committee.

4.3.3 Child Custody and Support

Women in all four countries have difficulty in ensuring that ex-husbands comply with either voluntary agreements or court-determined settlements for alimony or maintenance. Ex-husbands escape their obligations due to the lack of comprehensive marriage registration systems, monitoring mechanisms, and enforcement procedures. No laws exist to ensure that ex-husbands pay alimony, maintenance and/or child support to their ex-wives on a regular, timely basis. Penalties for noncompliance also do not exist.

Indonesia's 1974 Marriage Law, in Article 4(a), stipulates that in a divorce both parents are responsible for the "sustenance and education of

their children". An unmarried child under 18 is expected to remain the custody of its parents unless that power is divested. The father is responsible for all the children's expenses upon divorce unless he is unable to fulfill his obligations. The court may then decide the mother is responsible for the expenses. The court will also decide custody of the children in case of a dispute, and may require the husband to pay alimony to his ex-wife (or vice versa). However, under the government regulation pertaining to civil servants, the ex-husband must pay one third of his salary to his ex-wife and one third to his children, or half to his ex-wife if there are no children.

The **Malaysian** Law Reform Act provides for the custody and maintenance of children, but the Guardianship of Infants Act (1961) governs guardianship. This Act discriminates against women by not conferring equal rights to mothers. The father is automatically deemed to be the guardian of the child and property. If he is not living, then the mother can be designated the guardian, although the court has the ability to appoint some other person (usually male) to be the guardian or act jointly with the mother. The court can also remove a parent or other guardian at any time and appoint a new guardian for the child. If the father is living but his whereabouts unknown, if he is unfit for various reasons, or if he has been abusive, the mother may ask the court for guardianship. Usually, the mother is faced with innumerable practical problems, such as obtaining official documents for the child and hiring legal representation. If women do not obtain legal custody, then they must continue to obtain the father's consent in order to acquire official documents for the child such as passports and identity cards.

In Malaysian Islamic law, a woman is entitled to maintenance from her husband. This is revoked when she is *nusyuz*, which means that without valid reason, she withholds her association with her husband, leaves her husband's home against his will, or refuses to move with him to another home or place. The concept of *nusyuz* is not well understood and may deter women facing domestic violence from leaving their home. Another concern is that the legal definition of *nusyuz* is only applied to errant wives. It has been pointed out that *nusyuz* in the syariah law refers to both men and women, and should be defined as disruption of marital harmony by either spouse. A woman seeking maintenance from her husband has to contend with delays; one reason contributing to the problem is the lack of procedural guidelines.

Under the Family Code of the **Philippines**, support is a mutual obligation of both husband and wife. In cases of separation where the court orders the husband to pay support, it is difficult to enforce the order. The provisions of the code of Muslim personal laws on support are taken from the provisions of the Civil Code, where the wife is entitled to support from the husband.

The issue of custody is linked with the concept of parental authority. Under the Philippines Child and Youth Welfare Code, the father and mother have joint parental authority and visitation rights, but in cases of disagreement, the father's decision prevails unless there is a judicial order to the contrary. This is sometimes made in favor of mothers, when the "tender years" presumption leads the courts to give custody to the mother of children under seven years of age.

In **Thailand**, an important reform in 1992 provided that in case of divorce, the court can order a levy on the income of a civil servant husband/father to ensure child support or maintenance payments. Unfortunately, this reform only extends to public-sector employees. Furthermore, many divorces and separations do not go through the legal system and in these cases, the wife is left with no protection.

Parental authority is exercised equally by the father and the mother. In the case of divorce, parental authority will depend on the agreement of the parties. Should no agreement be reached, a court order must be obtained. In such cases, the court takes into consideration the well-being and best interest of the child.

4.3.4 Inheritance

Inheritance law in **Indonesia** is very complicated. Both written and unwritten laws govern inheritance. The written laws include the Civil Code (Books II: Chapters 12 and 16), which applies to Europeans and others acceding to the Code; and the Islamic Law (Compilation of Islamic Law in Indonesia) applicable to Muslims. Likewise, the Judicial Decisions of the Supreme Court may have some sway, but in the Indonesian judicial system, the lower courts need not abide by higher courts' decisions. Unwritten law covers all customary and adat law applicable in patrilineal, matrilineal, and bilateral communities.

Indonesian Islamic laws discriminate against women because daughters inherit a smaller share than sons and a widower gets a bigger share than a widow. The Civil Code, applicable to non-Muslims, provides that inheritance shares are equal. Customary laws operative in matrilineal and patrilineal societies add complexity to this situation, as sometimes a number of different inheritance laws apply to different sorts of property (i.e., Islamic inheritance laws apply to some land, while traditional usage rights follow customary inheritance systems).

In **Malaysia**, inheritance is governed by the 1971 Inheritance (Family Provision) Act (39) and by the 1958 Distribution Act (30). The Inheritance Act and the Distribution Act both discriminate against women. For example, if a married woman dies intestate, the whole of her estate goes to her husband. If a man dies intestate, only one third goes to his wife if there are children, or one half if there are no children. The National Council of Women's Organizations and the Women's Affairs Department (HAWA) are seeking reform of and amendments to these acts, as well as to the Guardianship Act, to ensure equality of treatment between men and women.

Malaysia's Muslim women inherit only half as much as men do. This is justified by the belief that the men are responsible for supporting family members.

Under the **Philippines'** civil law, sons and daughters inherit equally, and husbands and wives likewise have the same rights. The Code of Muslim Personal Laws discriminates against women, as sons are entitled to double the share of daughters.

4.3.5 Family Planning

There are a number of issues and concerns for women that pertain to population and family planning, including the following:

- contraception, including issues such as the use of oral contraceptives, condoms, and IUDs; sterilization (male, female); education; and attitudinal change;
- abortion and issues such as freedom of choice, right to life, health and social implications;
- child and maternal health care;

- boy child preference, girl child infanticide or malnourishment; and
- environmental issues related to population, health, access to resources, and food security, and their impact on air, land, water, wildlife, and biodiversity.

The **Philippines** is the only one of the four countries that faces entrenched opposition to family planning by religious groups. The Roman Catholic Church continues to oppose family planning programs despite the Government's commitment to a policy of reducing the population growth rate. The Department of Health runs a Maternal Care/Safe Motherhood Program, as well as programs on immunization, integrated child care, and development. Since almost 1.8 million pregnancies occur every year, with a maternal mortality rate of 209 per 10,000 live births, this program is crucial to women. Maternal death is caused most often by haemorrhage, sepsis, and abortion complications, all aggravated by poverty, malnutrition, lack of access to health facilities, untrained midwives or *hilots*, and certain detrimental cultural practices.

4.4. Labor, Employment, and Economic Rights

Paid work and the capacity to earn a livelihood are crucial for people in today's world. This area considerably disadvantages women in the quest for equality, but it is also the area that presents them with great possibilities. The current trend toward trade liberalization has far-reaching and varying impacts on the work and lives of women and men.³ One example is the issues confronting local women workers in the formal export sector, where tension exists between the legal rights and provisions for minimum wages and decent working conditions on the one hand, and local competition for jobs and international competition for cheap labor on the other.

Another issue is the perplexing one of the "double load"—that is, balancing family responsibilities with the requirements of paid work.

³ See Dr. Noeleen Heyzer, Director, UNIFEM, Women Leaders Network Meeting, Ottawa, September 1997.

Flexible work arrangements are helpful in such situations, but may also undermine legal safeguards, benefits, and social and economic security.

Modern technology offers challenges and opportunities at the same time as it does away with traditional jobs. Women will need to have access to such technologies in order not to become increasingly marginalized.

Arguably, the most urgent issues are those concerning overseas workers. The tension between respecting the sovereignty of the host country and the responsibility of upholding the human and political rights of migrant workers, who are predominantly women, is exacerbated by ineffective laws and governance structures aimed at their protection. Remittances from overseas workers have helped alleviate poverty in rural areas, but have also had severe social and economic costs, impacting heavily on women and children. Family life suffers among those left behind; those who go overseas are exposed to abuse. Receiving states have exacerbated the situation for overseas workers by perpetrating or condoning violence in their own enforcement and criminal justice systems.

As a final note, current definitions of “work” in international labor conventions and national labor laws typically exclude unpaid work in the home, which is performed primarily by women and girls. Their contribution is unacknowledged, and in many cases they lack equitable access to education, health care, credit, land, property, pensions, and technology. Appropriate legal frameworks supporting activities that sustain households, communities, and societies would be an effective means of ensuring equitable access to these resources.

4.4.1 International Labour Organisation Conventions

All four countries are members of ILO and have ratified several ILO Conventions supporting the rights of women workers. Table 2 shows the countries’ ratifications of the eight “fundamental” ILO Conventions, as well as others that are especially relevant to women. As indicated, Indonesia has ratified all, and Malaysia and the Philippines have ratified substantially all, of the “fundamental” ILO Conventions, which relate to freedom of association, equality, forced labor, and child labor. Of these, Convention No. 100 (on equal pay) and No. 111 (on employment discrimination) have been noted as especially relevant to women in the four countries in this study. However, none of the four countries has

Table 2
International Labour Organisation Conventions
(unless otherwise stated, dates indicate ratification)

ILO Convention	Indonesia	Malaysia	Philippines	Thailand
A. Fundamental Conventions				
(i) Freedom of Association and Protection of the Right to Organize Convention (No. 87)	1998	—	1953	—
(ii) Right to Organize and Collective Bargaining Convention (No. 98)	1957	1961	1953	—
(iii) Discrimination (Employment and Occupation) Convention (No. 111)	1999	—	1960	—
(iv) Equal Remuneration Convention (No. 100)	1958	1997	1953	1999
(v) Forced Labour Convention (No. 29)	1950	1957	—	1969
(vi) Abolition of Forced Labour Convention (No. 105)	1999	1958 (but denounced in 1990)	1960	1969
(vii) Minimum Age Convention (No. 138)	1999	1997	1998	—
(viii) Worst Forms of Child Labour Convention (No. 182)	2000	2000	2000	2001
B. Other Conventions Relevant to Women (partial list)				
(ix) Maternity Protection Convention, revised (No. 103)	—	—	—	—
(x) Workers with Family Responsibilities Convention (No. 156)	—	—	—	—
(xi) Part-time Work Convention (No. 175)	—	—	—	—
(xii) Home Work Convention (No. 177)	—	—	—	—
(xiii) Underground Work (Women) Convention (No. 45)	1950	1957 (ratified by Peninsular Malaysia)	—	—
(xiv) Night Work (Women) Convention, revised (No. 89)	—	—	1953	—

Source: International Labour Organisation website, <http://www.ilo.org>, as of 1 August 2001.

ratified the ILO Conventions on maternity protection (No. 103), workers with family responsibilities (No. 156), part-time work (No. 175), or home work (No. 177). In the 1950s, three of the countries ratified conventions “protecting” women from certain forms of underground work and night work. While these “protective” conventions are still in force, they are increasingly viewed as outdated and discriminatory against women.

Indonesia’s employment or labor law is based on the 1945 Constitution, which states that “every citizen has the right to employment commensurate with human dignity.” While women are implicitly included in this statement, their rights are more explicitly set out in subsequent legislation and regulations. For example, the 1981 Government Regulation No. 8 states that “employers shall not discriminate between women and men workers in determining the rates of remuneration for work of equal value.” Act No. 7 (1984), ratifying CEDAW, emphasizes equality between men and women, the inalienable right to work, and the need to eliminate discrimination against women in employment, as well as a number of other rights. Several measures to prevent discrimination against women because of pregnancy or marriage are specified.

A 1988 circular from the Ministry of Manpower (MoM), as part of the implementation of CEDAW, prohibits discrimination between men and women in collective agreements. A 1993 regulation establishes the conditions for Fixed Period Employment Agreements. It does not mention women specifically. It can be used by women to support their case for appropriate work arrangements and relations.

Nonpermanent workers, temporary workers, or laborers who receive a daily minimum wage based on work attendance are the most vulnerable. MoM expects employers to keep a register of temporary workers and to register them in the Social Insurance Program for Workers. These measures are meant to give a modicum of protection to such workers, but it is unclear to what extent they succeed. MoM Regulation No. 3 gives some protection to women by prohibiting employers from terminating the “employment of workers with fixed or nonfixed employment periods due to marriage, pregnancy or childbirth.” It is not known to what extent women workers are aware of these provisions, or to what degree they are enforced and complied with.

There are also anomalies within the system of allowances. For example, a wife and/or children are considered dependents of the man (Government Decree No. 37 of 1967—Wage System for Employees in State Companies). Male workers are thereby automatically eligible for dependency allowances. Women workers, however, are only eligible for allowances that apply to themselves personally but not to their dependents, unless they can prove that they are the main income earners in their family due to widowhood or the inability of their husbands to work. As a result, women workers receive fewer State benefits than men workers do.

Proposed labor legislation is expected to address past anomalies with respect to women's status and rights. Despite these gains, the proposed Workers' Rights Bill does not set out clear principles on the rights of workers and the power of employers, nor does it cover the informal sector. Since approximately 80 percent of women workers are in the informal sector, they are not covered by the bill and have no legal or financial recourse against abuse or discrimination.

In **Malaysia**, labor legislation generally does not distinguish between male and female workers, except for some "protective" laws which apply exclusively to female workers. These "protective" laws are increasingly seen as outdated and counterproductive, since they effectively limit women's work opportunities.

The main legislation regulating minimum standards of employment for private sector employees in Peninsular Malaysia is the 1955 Employment Act. Sabah and Sarawak are regulated by their own separate labor ordinances. The 1955 Act establishes minimum standards regarding hours of work, rest days, public holidays, sick leave and annual leave, maternity benefits, payment of wages, written contracts, termination, and layoff benefits. The Act specifies conditions for the protection of women regarding night work, underground work, and maternity. Minimum wage legislation does not exist in Malaysia, although minimum wages are specified in some industries.

The 1955 Employment Act provides little protection to domestic servants compared with other categories of workers. They receive no minimum benefits, including rest days, paid public holidays, annual and sick leave, maternity benefits, or limits on the hours they work per day or week. In theory they are entitled to a written contract of service. In

reality they rarely receive a contract. Most are ignorant of their rights or status in law; they are illiterate; they are vulnerable to their employers; they have limited negotiating strength; and in some areas their supply far exceeds demand. They need the protection of the Employment Act and of the Employees Provident Fund.

Domestic workers can lodge a complaint at the Labor Office against their employers. In reality, few complaints are thoroughly investigated, if at all. Complainants are rarely informed about the results of their complaints, nor do they receive any satisfaction that justice has been done. Labor officers are expected to inspect places of employment to ensure that the Act is complied with. Only slightly over 10 percent are inspected (viz., in 1994, out of 240,636 places, only 28,546 inspections were carried out), and penalties are light.

The **Philippines'** Labor Code, amended by a later act (1989, No. 6725), specifically states that it is unlawful "for any employer to discriminate against any woman employee with respect to the terms and conditions of employment solely on account of her sex." It assigns criminal liability for the "willful commission of any unlawful act" of discrimination. Such acts include paying less to women than men for work of equal value; favoring a man over a woman for promotion; making training, study, and scholarship grants solely on the basis of sex; or making a woman's married or single status a condition of employment or reason for dismissal.

Basic provisions of the Philippines Labor Code—wages, work hours, labor relations, pre- and postemployment conditions—apply to all workers. The code also includes specific provisions for women workers "due to acknowledged and social considerations." These encompass bans on night work, prohibition against discrimination (including termination of employment because of pregnancy), family planning services and maternity leave benefits, and facilities for women. The amended Labor Code also defines standards protecting the safety and health of women workers. These include rest areas, toilets, nurseries, infirmaries or clinics, and in some cases, family planning facilities and supplies. The Labor Code includes a provision defining women who work in bars and night clubs as employees of those establishments. This provision is intended to give the women some protection under labor and social legislation, as they had previously been exploited as "independent contractors" by owners.

To help working women, especially those at the bottom of the economic ladder, the 1990 Republic Act (No. 6972) was enacted to mandate day-care centers in every *barangay* (administrative village) and programs for children's development and protection (including immunization and growth and nutritional monitoring). As a consequence, the Department of Social Welfare and Development has set up more than 20,000 centers.

Another act in support of the Labor Code was passed in 1993 to increase the minimum wage of domestic servants or househelpers and ensure that they receive sanitary lodging, adequate food and medical attention, and education if under 18 years of age; to extend social security and other benefits to househelpers; and to have employers review employment contracts every three years. Househelpers are not to be assigned to commercial, industrial, or agricultural work unless they are paid the going rate for that sector. The Philippines Labor Code stipulates that minimum terms and conditions of work must be set by the secretary of labor for employment of industrial home workers.

It is important to note that most of the ILO conventions that have been signed date back to the 1940s, 1950s, and earlier. Given the rapid changes in the world during the past decades, it is perhaps time for a review of the effectiveness and applicability of these treaties, by both the international community and national governments. Importantly, these ILO conventions do not adequately cover the situation of migrant labor, such as female domestic workers, who lack labor guarantees and protective rights (see 4.4.3).

4.4.3 Labor Conditions and Employment Issues

(a) Maternity and Paternity Leave and Child Care

Indonesia, Malaysia, and Philippines have laws stating that female employees are not to lose their jobs on account of marriage, pregnancy, or childbirth. All four countries provide female employees with maternity leave and other benefits. The benefits given are not uniform and, in the case of maternity leave, range from 42 to 90 days. None of the four countries has complied fully with the ILO's Maternity Protection Recommendations 1952 (C. 103), which recommend maternity leave of

12 weeks (84 days), and specify that day-care centers, nursing facilities, and breaks be provided by government, private employers, or compulsory social insurance.

In **Indonesia**, the labor laws and regulations offer protection to women in consideration of their childbearing function. These include relief from work during menstruation and breast-feeding, and job protection during pregnancy. The 1948 Labor Act, validated by Act No. 1951, provides women employees with two days off per month for menstruation, six weeks off before and after childbirth (or miscarriage), three months off after childbirth with a medical certificate, and time during working hours to breast-feed infants. The 1976 Government Regulation concerning Leave of Civil Servants gives women staff one month before and two months after birth at full salary, for up to three children. For the fourth and subsequent children, they may take leave without pay. However, this does not apply to the general public or the private sector.

In **Malaysia**, woman civil servants receive 42 days of maternity leave, with no restrictions based on the number of children they have. Otherwise, women workers generally receive 60 days' leave for every pregnancy, unless they already have five surviving children. There is no provision for taking leave without pay in excess of the 60 days. No woman can be dismissed while on maternity leave, or if she is ill due to maternity-related complications, even 90 days after that leave.

The **Philippines'** Labor Code provides the legal basis for maternity leave and related benefits for women in the private sector and government service. Women workers who have made at least three social security contributions in the 12 months prior to childbirth, abortion, or miscarriage can claim a maternity benefit equivalent to 100 percent of their present salary. It is interesting to note that in a predominantly Catholic country abortion is included as a reason for taking leave; it presumably pertains to unintended or involuntary termination of pregnancy or medically justified abortion. Many employers are still reluctant to hire women workers because of the perceived extra costs of maternity leave. To offset this attitude or perception and to equalize the treatment of men before the law, the Paternity Leave Act of 1996 entitles all married men to paternity leave of seven days for their wives' first four deliveries (births or miscarriages).

The role of the father in the delivery and birth of his child is generally not recognized by the labor laws in the four countries. Only the Philippines has a Paternity Leave Act (1996), to enable a husband to lend support effectively to his wife in her period of delivery and/or in the nursing of the newly born child. The time is considered too short, however (7 days), and it is available only to those legally married, and only for the first four babies.

In **Thailand**, because of the efforts made by NCWA and many women's NGOs, maternity leave is allowed for civil servants for 90 days with pay, and for another 180 days without pay. For those covered under Thailand's Social Security Act, maternity leave is 45 days with pay from the employer and 45 days with pay from the Social Security Fund.

A major hindrance to a woman's full participation in the labor force is lack of child care. Only the **Philippines** has legislation in this area. The Secretary of Labor may require an employer to maintain a nursery in the workplace. In addition, a law has been passed for the Government to establish day-care centers in the barangays (see above).

In **Malaysia**, the Government has been trying to encourage private firms to set up facilities for workers with young children, but has met with little success.

(b) Health and Occupational Safety

Health and occupational safety legislation and regulations in the four countries are inadequate. Safety has not been a prime concern of most businesses and industries, and numerous unnecessary work-related accidents and illnesses occur. The existing laws and regulations in general do not distinguish between the needs of men and women.

Indonesia's Work Safety Act regulates safety in all Indonesian workplaces. It does not provide special treatment for women, although some detailed regulations require companies to provide special facilities for women, such as washrooms and rest places. The 1964 Ministry of Manpower Regulation on Conditions of Health, Cleanliness and Lighting in Workplaces specifies that employers must provide separate lavatories for men and women, and several well-lit, spacious restrooms. Complaints have been received by women's organizations that women workers in many businesses work in unhealthy conditions.

Under **Malaysia's** 1955 Employment Act, minimum standards are set out as to benefits for employees earning less than RM1,500/month or manual workers irrespective of their wages. Problems arise for workers employed as shift workers, for workers over the entitlement to paid holidays, and for sick employees with less than five years of service.

Malaysia's Factories and Machinery Act (1967) and its 15 supporting regulations provide for the control and inspection of factories and machinery, and prescribe minimum safety and health standards. The 1970 Safety, Health and Welfare Regulations state that workers "should be" provided with various types of safety equipment when required. Every factory must have a restroom for women and, if more than 15 women are employed, a dressing room.

Malaysia's 1994 Occupational Safety and Health Act (OSHA) promotes high safety and health standards at work. It is superimposed over existing legislation, such as the Factories and Machinery Act. OSHA officers have fairly wide powers to inspect workplaces, prohibit activities, issue improvement notices, and/or prosecute persons contravening the act, leading to court-imposed fines or jail terms. OSHA's provisions are supposed to complement existing legislation, but when conflict arises, OSHA prevails. Malaysia's OSHA is unique among the four countries, as no other country report indicated similar mechanisms to police the safety and health standards of the working environment.

In the **Philippines**, health as a basic human right is enshrined in the Constitution. Article XIII extends protection to working women in terms of providing safe and healthy working conditions, "taking into account their maternal functions." The Secretary of Labor sets and enforces occupational health and safety standards in all workplaces. The Bureau of Labor Standards issues detailed lists of hazardous workplaces. The Department of Labor and Employment has an inspection program to enforce health and safety standards with particular emphasis on women. Article 132 of the Labor Code (1974) establishes standards that ensure the safety and health of women employees with respect to special facilities in the workplace, and employment standards in special occupations dominated by women.

The Philippines has adequate laws to guarantee the health and safety of women workers, but implementation and enforcement need to be improved. Ineffective enforcement is aggravated by women workers'

general lack of awareness about health and safety standards, legal requirements, labor laws and standards, and what legal recourse is available. There are insufficient numbers of trained women assigned to the inspectorate program to enforce labor standards. Unions have not been effective in incorporating women's issues into their agendas. For this reason, women's NGOs have suggested that more women be appointed to the inspectorate program for this purpose.

(c) Minimum Age of Employment and Child Labor

In **Indonesia**, children under 14 are prohibited from working in factories, workshops, construction work, and train companies, and from loading/unloading ships (a 1925 regulation, State Gazette No. 647). Enforcement of this provision and other similar regulations is generally inconsistent and difficult. A minimum wage is set by the Government.

In **Malaysia**, children under 14 years of age, and young persons between 14 and 16, come under the Children and Young Person's (Employment) Act (1966). This act regulates the kinds of work children and young persons may do and their hours and conditions of work. It does not stipulate a minimum age below which a child cannot work. In addition, the Contracts Act states that persons are competent to enter into contracts only upon reaching the age of majority (18). This appears to give both males and females equal rights to enter into contracts and take on employment.

In the **Philippines**, as a result of intervention by the United Nations Children's Fund, the Labor Code was amended so that children under 15 years of age are not to be employed except in specific circumstances, such as working directly for parents or guardians, or working for public entertainment (TV, radio, cinema), where their presence is essential. The code was also amended to allow the employment of persons between 15 and 18 years of age in certain areas of work, subject to establishment by the Secretary of Labor of guidelines and parameters of work. The Child and Youth Welfare (CYW) Code stipulates that employers must make regular reports about all employed children.

The CYW Code stipulates that employers of children under 16 who are working as domestics must give such children an opportunity to complete at least elementary education. Allowing the employer to deduct

the working child's educational costs from his or her wages, however, undermines this provision, reducing the child's incentive and motivation to get an education. The CYW Code also covers apprenticeships, stipulating that the child must be at least 14 years old, have certain vocational aptitudes as shown by tests, and be able to understand oral and written instructions. Apprenticeship agreements are not to exceed six months and wages must not be less than 75 percent of the minimum wage.

Despite the plethora of laws, codes, and other regulations, children continue to be subjected to harsh working conditions for lack of regular, effective monitoring and enforcement.

(d) Unemployment and Other Benefits

Neither unemployment nor disability insurance exists for the majority of workers in the four countries, whether they are employed in the public or private sectors.

Malaysia's Employees' Social Security Act, 1969, and Pension Act 1980 both prescribe different entitlements for widows and widowers for compensation and pension payments for death or injury. The other three countries have no similar written provision.

(e) Right to Organize and Unionize

The union movement is growing in each of the four countries and more women are joining unions. Unions have paid relatively little attention to women's needs and concerns or taken action on them. Women's units within unions tend to be underfunded and underresourced, and have little real power or influence.

In **Malaysia**, workers constitutionally have the right to organize, unionize, assemble for peaceful purposes, and strike. The 1959 Trade Union Act provides for the registration and regulation of trade unions, and defines their rights, powers, and duties. The Industrial Relations Act (1967) provides for the regulation of relations between employers, workers, and their unions, including recognition of unions, collective bargaining, conciliation, arbitration, and industrial action. However, rights and concessions extended to employers and foreign investors in

free trade zones and other specially nominated areas often contradict workers' constitutional rights.

In the **Philippines**, the Labor Code allows for the organization of unions, but relatively few women have taken advantage of this right, in part because they are not aware of it. Moreover, unions have tended to be dominated by men; women's issues are not taken very seriously and few women are appointed or elected to key decision-making positions.

(f) Other Conditions of Work

(i) Hours and Nightwork

In **Indonesia**, women and children are prohibited from working between the hours of 10 p.m. and 5 a.m. A 1989 MoM Decree states that women are not obliged to work at night. They may be allowed to work at night if permission is obtained from the MoM and/or from their husbands or (male) guardians, keeping in mind local customs. A 1989 decree gives more protection by specifying that women night workers must be over 18 years of age, or married, and must receive transportation to and from work, food, health care, and security facilities.

Malaysia is grappling with a similar problem of night work for women. The Employment Act of 1955 (Section 34) states that women workers in agriculture and industry cannot be required to work between 10 p.m. and 5 a.m. Flexibility is provided by empowering the director-general of labor to exempt female workers from the legal restriction. The minister (under Section 36) may make new regulations pertaining to nightwork. In the 1970 Employment (Women Shift Workers) Regulations, prohibited hours do not extend to what are termed "approved undertakings." In effect, because of rapid industrialization, a tight labor market and a demand for more women workers, the prohibitions on women's night work in the 1955 Act have been countermanded by other regulations and legal mechanisms. So long as this countermanding remains in place, it contributes to an inconsistency in the law, and could be used against women and their work.

(ii) Seniors or Retirees

In the **Philippines**, the 1992 Republic Act (No. 7432) gives benefits to senior resident citizens who are at least 60 years old, who have retired from private or public office, and who have incomes of less than 60,000 pesos per year. These include various types of discounts (transport, lodging, theaters, etc.), exemptions from income tax (if below the poverty line), and free medical and dental services in government institutions. This is a progressive law, provided it is effectively implemented and enforced. It could be emulated by the other countries also facing a growing population of seniors.

4.4.4 Cross-Border Migration of Workers

The migration of female workers has been a major concern in all four countries in the context of migration from rural to urban areas; of women being exploited as domestic household help or “entertainers”; and of the plight of overseas migrant workers.

Box 3. Checklist for Deployment of Workers: Indonesia

1. An operations permit for a labor deployment services undertaking (SIUP-PJPKI) can deploy workers to employers abroad or within Indonesia.
2. A labor supply agency (PJTKI), a limited liability company that works with SIUP, supplies workers' services.
3. An agency or corporate business, either a *mitra usaha* (partner) or a workers' service user, undertakes the placement and deployment of workers to employers.
4. A written Recruitment Agreement between PJTKI and the *mitra usaha* or the workers' service user details the rights and duties of each party.
5. A written employment agreement or contract between a worker and an employer states each party's rights and duties.

Source: *Sociolegal Status of Women in Indonesia*, Final Report. March 1998.

In **Indonesia**, the “Deployment of Workers within and Outside the Country,” an MoM 1994 regulation, is designed to provide protection for workers going abroad and working inside Indonesia (Box 3). However,

the arrangements detailed in this regulation are quite complicated and the majority of migrant Indonesian workers, who are also predominantly women, are unaware of the complex and complicated set of rules and regulations that ultimately control their lives and their livelihoods. Although workers are supposed to (i) have social insurance, (ii) be paid a monthly salary, (iii) receive eight hours of rest per day, (iv) be given medical treatment, and (v) receive/send uncensored letters, there is inadequate monitoring of their situation. This lack of monitoring and enforcement of legal provisions and contracts causes many workers to receive only a fraction of the emoluments to which they are entitled.

In the **Philippines**, women represent over 70 percent of migrant workers and are known as overseas Filipino workers (OFWs) or overseas contract workers (OCWs). In general, skilled migrant workers receive good pay and satisfactory working conditions. However, the unskilled and “undocumented” receive low wages, have long working hours, and, in many documented cases, have been abused.

Migration for work abroad has helped the Philippine economy and alleviated poverty in many rural areas. Repatriated earnings are a major source of foreign exchange for the Philippines. The dislocations resulting from the need for Filipinos, especially women, to seek work overseas affect family life in the Philippines and can have negative impacts. Women employed abroad in domestic service or “entertainment” are largely unprotected by law in the countries in which they work and, as noted above, can suffer many forms of abuse. Women migrant workers are especially vulnerable in countries engaged in armed conflict. They often must flee to safety without money, belongings, or identification documents. Male migrant workers face similar problems.

The Coalition Against Trafficking of Women in Asia-Pacific is an NGO network which has been reviewing the deaths of migrant women workers. The Coalition has found that severe maltreatment and sexual abuse often preceded death. Racial hostility was prevalent. In particular, Filipina workers were prohibited from meeting together, and sometimes from using facilities in local housing. The coalition is urging sending countries to take more decisive action for the protection of women migrant workers, including putting into place policies, laws, and legal remedies.

The Philippine Migrant Workers and Overseas Filipinos Act 1995 provides for the protection of OFWs. In particular the Act

- establishes a higher standard of protection for migrant workers, their families and overseas Filipinos “in distress”;
- limits the countries of deployment (i.e., those receiving migrant workers) to those that protect their rights and limits the sending of workers only to those jobs requiring skilled workers;
- gives both documented and undocumented workers equal protection and treatment; and
- addresses a range of labor migration issues from funding to illegal recruitment.

A major problem with the Act is that it conflicts with other government policies and laws that promote overseas employment. It also conflicts with the trend or policy to deregulate recruitment activities and encourage more placement agencies.

The governments of receiving states often exacerbate the problems of OFWs by condoning violence and by oppressively applying immigration and deportation laws. There appears to be little support for bilateral agreements between receiving and sending countries to ensure that migrant workers receive some form of protection from abuse and exploitation. Often migrant workers are viewed as human commodities to be exploited and reaped by both sending and receiving countries.

4.4.5 Property and Economic Rights

(a) Land Rights and Landownership

Women in Asian farming communities have played, and continue to play, a strong agricultural role in close collaboration with men and their families. They clear the land, plant, weed, tend seedlings, harvest crops, and process seeds. They grow, collect, and sell vegetables; look after livestock; collect firewood and water for cooking and washing; and look after their families. They often make medicines from plants. They are usually the repositories of rituals, traditions, customs, and history. Their cultures and traditions have been rooted in the land, but increasingly they are being uprooted, as forests and prime agricultural land are “developed.” Many of the land laws were put into place in the 1950s and 1960s, and provided some form of protection. Increasingly, despite innumerable amendments

and policy changes, those laws are unable to cope with the today's fast-paced changes. Women particularly are at risk, often losing their traditional rights to land and/or crops to "developers," industrialization, plantations, golf courses, shopping centers, and commercialization.

While women citizens are not expressly discriminated against under the constitutions of the four countries with respect to buying, selling, or dealing in land, the implementation and enforcement of existing land laws and land distribution policies often discriminate against women, due to underlying cultural biases and practices. In Indonesia and Thailand, the right to landownership is also conditioned on citizenship status.

Indonesia's Basic Agrarian Law (1960, Act No.5) stipulates that individuals as well as corporations have rights over land. It limits a "full relationship with the land, water and air" to Indonesian citizens, but allows any Indonesian citizen equal opportunities to obtain rights, benefits, and yield for himself/herself and family. Women are deemed to have land rights and may obtain title to land by registering land in their names. The Basic Agrarian Law, however, discriminates against women foreigners married to Indonesians, preventing them from obtaining land rights, unlike a foreign man, who may acquire such rights through a prenuptial agreement.

In **Thailand**, Thai women married to foreign nationals who have not renounced their Thai citizenship have restricted land purchase rights. Those who have acquired the same citizenship as their husband and own more land than is allowed for foreigners must sell the excess land within one year.

Two further areas where discriminatory biases against women can be seen are in the areas of State-assisted agrarian and land reform projects and indigenous land rights.

(b) State-Assisted Agricultural and Land Reform

Agrarian and land reform schemes in the four countries have as a rule respected men's rights to landownership and extension services over women's. Land titles are typically registered in the name of the husband, with the wife's name merely descriptive of the husband's status. Women are not regarded as "full-time farmers" and thus receive little access to

credit, production inputs, new farming technologies, or other technologies that will enable them to reduce their double workload. Nor are women satisfactorily represented on decision-making bodies. Hiring practices on plantations tend to follow the line of “hire men first, fire women first.”

Both **Indonesia** and **Malaysia** have implemented large-scale land redevelopment schemes. Transmigration in Indonesia and Federal Land Development Authority schemes in Malaysia have opened up land to agricultural cultivation. In both cases, nuclear family units were the preferred recipients and in both cases, men were targeted as the main farmers and heads of families. Women who previously had important independent agricultural roles were typically redefined as dependent wives, whose role was to support their husband’s farming. While women settlers lost autonomy under these arrangements, many indigenous women and men lost the right to the land that was given to the new settlers (see below).

The **Philippines’** Comprehensive Agrarian Reform Law Section 40 (5) of RA 6659 recognizes the role of women and stipulates equal rights to ownership of land by women. It specifically provides that “all qualified women members of the agricultural labor force must be guaranteed and accessed equal rights to ownership of land, equal shares of the farm’s produce, and representation on advisory or decision-making bodies”. However, succession policies and practices involving agricultural lands are biased against women and lead to predominantly male ownership of landholdings. For this reason, titles to land that is joint property are still being registered in the husband’s name.

Thailand’s Land Allocation Program contains restrictions for married women in the use of land. As long as the husband is alive (and therefore head of the family), the wife cannot hold the land in her name. Ostensibly, this is to prevent families from holding more land than allowed.

(c) **Indigenous, Aboriginal, and/or Tribal Rights**

Malaysia has three distinct indigenous communities: those in Sabah, in Sarawak, and the *Orang Asli*, or aboriginal “First People” of Peninsular Malaysia. The *Orang Asli* comprise 18 subethnic groups that constitute only about 1 to 2 percent of the national population. Of all groups in

Malaysia, they are among the poorest and have the least influence. The Orang Asli, by not having title to their traditional lands or permanent security of tenure, have been—and are being—dispossessed of their traditional homelands and of their culture, identity, and livelihood.

There are definite anomalies between the spirit and letter of the various land laws in Malaysia and their implementation or application in light of the swift move to industrialization and modernization. Women in indigenous communities, who theoretically are guaranteed protection under state laws and the federal Constitution, have encountered major difficulties (loss of land, loss of homes, and little or no compensation) when confronted with big business and the Government involved in rapid development and economic growth. These anomalies will worsen if not addressed.

The guarantees under the federal Constitution and the Land Ordinance do not seem to be working in favor of indigenous communities, and especially not for their women. The lack of implementation and enforcement of their customary rights are due to

- Land and Surveys Department officers' ignoring indigenous rural villagers' applications for customary land and giving preference over that land to state or other government agencies and influential individuals;
- lack of notice being given to indigenous potential claimants of native customary land (NCL) claims to untitled land, or substantive delays resulting in lost opportunities;
- indigenous claimants' lack of legal information and knowledge—and advice—so that they do not know that they must apply for and register titles, do not know the significance of registered titles; and fail to apply, thereby losing out again;
- inadequate resources within the Land and Surveys Department, including staff training and technology; and
- The acquisition by wealthy individuals with political connections of title to large tracts of land through government land schemes, increasingly the preserve of “exclusive male clubs.”

Women, who had traditional use of and control over land, have been the major losers of land, resources, and products. They have tended

to defer to the men: their husbands and government officials. They have rarely applied for land title, although they are not barred by law from doing so. With the move from subsistence farming to cash cropping, and the attitudinal change—from viewing land as sacred and being held in inalienable trust, to being another saleable commodity—women have been sidelined or excluded by government land schemes and agencies. The higher level of illiteracy among women has exacerbated the situation.

In Sabah, 39 different ethnic groups make up almost 85 percent of the population. The federal Constitution guarantees Sabah's NCL rights, and the Sabah Land Ordinance provides for two systems of individual landownership. The first is an "open system" that lets any individual apply for land. The second is based on adat, so that it is open only to Sabah natives and allows them to have ownership by proving customary rights over land through continuous occupation or cultivation and use of the land for more than three years or by specific title. But rights to land are based on documentary title, which vests the right of ownership. Since all land is now owned by the state, claims to ownership must be registered and approved by the state. Major conflicts have arisen between NCL and state law regarding ownership, cultivation and tenure, and inheritance rights to land. In effect, Sabah's indigenous people, and particularly their women, are losing control of the land to government and state agencies, plantation owners, politicians, and wealthy individuals with influential connections.

In Sarawak, there are 37 ethnic groups. Sarawak recognizes NCL rights through its Sarawak Land Code. The Code lets natives acquire customary rights, by adhering to a community's customary law and by such actions as felling virgin forest, occupying land, planting fruit trees, putting in burial grounds or shrines, and using the land for rights of way. The Code also can also be used to remove or question these rights. This, combined with the state's land use development strategy and policies, has contributed to substantial erosion of indigenous peoples' customary land rights. Vast areas of land have been alienated or leased to government and private agencies for exploitation: logging, commercial agriculture or cash cropping, and tourism. Indigenous communities have been uprooted and displaced; their lands have been degraded, and their resources lost. Disputes between powerful developers and their backers and the natives have increased.

The Sarawak Government in 1995 introduced a “New Concept of Customary Land,” whereby huge tracts of native land can be turned into “land banks” and new forms of landownership devised to transform traditional, subsistence rural economies into strong, modern economies. In these situations, women’s problems are compounded by their own lack of legal literacy and access to legal advice, and by their almost total exclusion from participation in the schemes and the overall decision making at all levels.

In the **Philippines**, reports from indigenous women’s organizations indicate that large numbers of indigenous people are being displaced by the construction of hydroelectric projects, large-scale agribusinesses, and logging and mining operations. Increasingly they are losing control over and access to their ancestral lands, their burial grounds, and their water, fuel, and food resources. Indigenous women are particularly affected. Public policy relating to land reform and stewardship is supposed to grant indigenous women the right and opportunity to own land. In fact, only a small percentage of women benefit. Less than 12 percent of indigenous women become emancipation patent holders and less than 10 percent have certificates of landownership agreement registered in their names. The Philippine Plan for Gender-Responsive Development attributed this situation to prevailing beliefs that “men are household heads” who have “primary control over and access to productive lands.” These attitudes have been reflected in the administration of the land reform and stewardship programs and by officials untrained in and insensitive to indigenous women’s traditional roles, status, and affiliation with the land.

(d) Credit and Contracts

An additional area of discrimination is the inherent bias against married women in access to credit. In Indonesia, Malaysia, Philippines, and Thailand, all persons except minors are legally capable of entering into contracts. However, this has not prevented discrimination against married women, who are often limited in their credit and contractual arrangements.

For example, the **Indonesian** Civil Code (Article 321) requires four elements to effect a contract: the parties’ consent, capacity to contract, a specific subject, and a lawful purpose. Article 108, however, hampers

married women from entering into contracts on their own behalf by requiring that they be “assisted” in formalizing a contract by their husband, by his presence or permission. However, this article is falling into disuse: recently notaries have begun to draw up contracts for women without their husband’s permission.

There is also an inherent bias in Indonesia against married women’s earning incomes from individual business activity. Tax regulations do not allow married women to be given a separate tax number and require them to use their husband’s tax number. Thus married women find it difficult to engage in formal financial activities, like opening a checking account, that could facilitate application for credit. Furthermore, married businesswomen cannot file independent tax returns, and since income taxes are progressive, such women are likely to have higher marginal tax rates than married men are.

Several regulations or acts govern credit in Indonesia. These are the Banking Act No. 7 (1992), the Cooperatives Act No. 25 (1992), the Small Business Act No. 9 (1995), and the regulation on Implementation of Lending and Borrowing by Cooperatives (Government Regulation, 1995). These do not differentiate between men and women, although it is well known that men receive better treatment from credit institutions than women. Box 4 enumerates the credit programs available to women in Indonesia.

Indonesia’s 1995 Act concerning limited liability companies specifies that two persons are required to incorporate such a company. However, persons may transfer one share to another person “not in joint property”. This effectively excludes either a husband or wife from sharing corporate property, *unless* before marrying they had a prenuptial agreement allowing them to have joint or separate property. This provision has particularly handicapped wives from taking over their husband’s limited liability companies.

In the **Philippines**, Act 7192 provides equal opportunities for women entering into contracts and loan agreements. Nevertheless, banks typically require a husband’s consent for large loans requiring property as collateral. Women are further compromised by Article 2238 of the Civil Code, which presumes in an insolvency that the husband is the sole administrator of partnerships or community property. This provision is detrimental to wives or third parties and does not conform with the

Box 4. Credit Programs Available to Women in Indonesia

1. The General Rural Credit Scheme operates through the village subbranches of the Bank Rakyat Indonesia and makes loans (from Rp25,000–Rp25 million) that must be signed by the village head and the borrower's spouse. Collateral can be land, vehicles, and buildings. Women's participation is 25–35 percent.
2. Subdistrict credit agencies provide small, short-term, unsecured loans, without the village head's approval **if** the amount is less than Rp25,000. Interest rates are very high (up to 130 percent). Women's participation rate is about 60 percent.
3. Village cooperative units make small (Rp5,000–Rp50,000), unsecured loans, to mostly poor women.
4. The Family Welfare Movement provides small loans to women, mainly for consumption purposes.
5. The Indonesian Institute for Banking Development has initiated a project for women similar to those of the Grameen Bank. Women constitute 90 percent of the participants.
6. The National Family Planning and Coordinating Board (BKKBN) makes loans of Rp5,000–Rp1.5 million to family planning acceptors, women of childbearing age, or selected groups, as incentives for participating in the family planning program. Interest rates are quite low (about 3 percent).
7. Under a Presidential Instruction in 1996, BKKBN initiated a new Poverty Alleviation Program to assist the "very poor" or "slightly better off," to provide working capital to families to assist them in developing economic productive activities. Funding comes from wealthy individuals and corporations.

Source: Sociolegal Status of Women in Indonesia, Final Report. March 1998.

Family Code's provision giving joint administration to both husband and wife.

In addition, Articles 802 and 1047 of the Civil Code limit women's capacity to enjoy full contracting rights, including

- prohibiting a married woman from making a will without her husband's consent and a court's authority;
- presuming that a woman cannot participate actively in certain contracts without her husband's consent;

- allowing a donation to be revoked in the case of an act of ingratitude against the donor's wife, but not a donor's husband; and
- allowing a married woman who is "of age" to repudiate an inheritance without her husband's consent, but presumably not a younger woman.

4.5. Violence and Sexual Exploitation

Violence against women not only harms their health and emotional well-being, but also constrains their social and economic activities. Specialists and volunteers who work with victims of violence need ongoing government support to sustain their programs and services. The quality of such support services needs to be improved, more information and education is required, and legal and paralegal systems need to be more responsive to victims. This issue is further taken up in Chapter 5.

4.5.1 Rape

In all countries but the Philippines, rape is covered by the criminal code or penal code, where it is limited in its definition to forced sexual intercourse by a man upon a woman. Other forms of sexual violence that inflict the same physical and psychological damage on the victim are not provided for. In Malaysia, there is a recognition that inserting fingers or any object in the vagina is a grave sexual offence, but the law does not define such acts as rape, and a lesser penalty is prescribed. These legal systems also do not recognize marital rape, implicitly supporting the view that a wife cannot refuse sexual relations with her husband.

Indonesia's population is covered by the Criminal Code, Royal Decree No. 33 of October 15, 1915 (S. 1915; 732). This Criminal Code was based on the Criminal Code of the Netherlands. Article 285 states that a person who uses force or threat to compel a woman to have sexual intercourse with him *outside of marriage* will be guilty of rape and punished by a maximum of 12 years in jail. It goes on to stipulate a maximum jail sentence of nine years if a man, again outside of marriage, has carnal knowledge of a woman who is "helpless, underage [i.e., less

than 15 or ‘not yet marriageable’] or unconscious.” Prosecution proceeds if a complaint is lodged by a victim, unless she is under 12, in which case prosecution is obligatory; if she has suffered a serious injury; or if she is a victim under the “obscene act” section (which basically describes incest). Only Article 288 refers to marital rape. It specifies that a man *in marriage* having carnal knowledge of a woman *not yet marriageable* will be punished with a maximum of four years in prison if the act results in *bodily harm*. Article 285 is perceived as detrimental to women, in that it can be interpreted as legitimizing forced sexual intercourse if initiated by a husband.

Malaysia’s Penal Code (Section 375) defines rape as “sexual intercourse by a man with a woman without her consent or against her will,” with intercourse meaning vaginal penetration by the penis. Punishment for rape is a minimum jail term of five years to a maximum of 20 years, and a whipping. If the hands or other objects are used, this does not constitute rape but is deemed to be “assault with intent to outrage modesty” which carries a lighter punishment (maximum 10 years’ imprisonment or fine or whipping) than rape. Abortions of pregnancies resulting from rape are legal.

The Malaysian Penal Code also covers statutory rape, which is “sexual intercourse with a woman under the age of 16 years, with or without her consent.” It does not recognize marital rape, but it does recognize a situation where a woman lives apart from her husband, or is in divorce proceedings, or has obtained an injunction against her husband.

Regarding admissible evidence, the Malaysian Evidence Act (1950) disallows examination of the rape victim’s past sexual history or her “immoral” character. The Criminal Procedure Code allows rape cases to be heard *in camera*. It protects children (up to age 18) from media attention or exploitation by withholding identity information. These legal processes help to prevent victims from being “revictimized” by the legal and judicial system.

The **Philippines** is the only country of the four with an antirape law (1997). It was the subject of an intense 10-year lobbying effort by women’s groups, and served as a rallying point for them. It reclassifies rape from “a crime against chastity” to a crime against persons. Both men and women may be victims of rape. The definition of rape was expanded from penile penetration to all forms of intercourse—anal, oral or with objects. Marital

rape is implied in the provision that when the offender is the legal husband, he will not be penalized if he is forgiven by the wife. Although not as progressive as women's advocates would have wanted, the new law is still to a large extent a great departure from the traditional legal concept of rape and is a significant victory for women (see Box 5). This law may provide a model for the other countries to consider, particularly as this law includes procedures for handling such cases with sensitivity.

The Philippines Anti-Rape Law disallows evidence on the victim's past sexual history. This has not overcome cultural attitudes that women somehow "invite" rape, and does not deter defense lawyers from subjecting the victim to intense interrogation to impugn her credibility.

One topic overlooked in the area of statutory rape is that of pedophilia. In the Philippines, a person can be punished for having sex with a girl child under 12 years of age, regardless of whether she gave consent. No such provision covers sex with a boy child under 12.

Thailand treats rape of or sexual violence against a woman by a stranger as a crime. However, domestic rape or sexual assault is viewed as a personal matter within the family, or between husband and wife. Penalties for rape (by a stranger) are imprisonment for 4–20 years and a fine of 8,000–40,000 baht (approximately US\$320–\$1,600).⁴ Life imprisonment is the penalty for rape using a gun or resulting in grievous bodily harm to the victim. Penalties for "an indecent act" are much lighter. Marital or domestic rape and family violence are virtually ignored, and police generally will not take action in what they perceive as a family matter. Section 285 of the Penal Code increases the fine three times in cases where a father rapes a daughter, a teacher rapes a student, or a supervisor rapes a subordinate.

4.5.2 Incest

There are no separate laws on incest in the four countries. To a large extent, incest is treated as a taboo subject and all four countries have perpetuated the myth that children are loved, hence violence against children, including incest, rarely occurs. In general, incest is an offense subsumed under the law on rape. However, there is a recognition that

⁴ Figures as of 1998.

Box 5. Protection for Rape Survivors: The Philippines

The passage of the new antirape law gives women greater protection against rape. The act provides for the setting up of rape crisis centers in every province and city nationwide. It also lays down certain measures in the investigation and trial of rape cases.

Rape crisis centers

The rape crisis centers were to be established in government hospitals or health clinics. They would offer the following services:

- psychological counseling and medical and health services, including medico-legal examination;
- legal assistance;
- assistance in investigations to hasten the arrest of offenders and the filing of cases in court;
- ensuring the privacy and safety of rape victims;
- psychological counseling and medical services for the families of rape victims;
- training programs for law enforcement officers, public prosecutors, lawyers, medico-legal officers, social workers, and barangay (village) officials on human rights and responsibilities and gender sensitivity and legal management of rape cases; and
- programs to rehabilitate rape victims.

The [act stipulates] that the Department of Social Welfare and Development, as the lead agency for the Government, and nongovernment organizations with a proven track record in handling sexual abuse cases, manage the rape crisis centers.

Protective measures

The [act] also seeks to protect the victim and the accused “from any social degradation, embarrassment, humiliation, or other emotional stress or trauma” caused by sensationalized publicity. It even calls for closed-door investigation, prosecution, and trial, where the name of the victim and the accused and other information that may identify them may not be disclosed to the public.

The [act] specifically cites the duties of police officers in handling rape cases. Once a complaint for rape is filed, they must “immediately conduct an investigation, arrange for counseling and medical services for the victim, gather evidence for the arrest and prosecution of the offender, and make a report on the investigation and endorse the case to the proper office, within 24 hours from the conclusion of the investigation but not later than 72 hours from its filing.

Yna Masilungan, National Commission on the Role of Filipino Women
San Miguel, Manila.

Source: “We, The People,” *Manila Times*, October 26, 1997.

rape committed against somebody who is considered a close relative is a graver offence.

Indonesia's Criminal Code penalizes a person who commits "any obscene acts (against) *his* (sic) underage children, stepchild, or foster child, his student, a minor entrusted to his care, or his underage servant/subordinate." It does not define or deal with either incest or sexual harassment *per se* and it does not recognize that obscene acts could be committed by women. By implication, it appears to tolerate "obscene acts" against servants or subordinates who are not underage. To a large degree, incest is still treated as a taboo subject and needs more public exposure.

In **Malaysia** no separate incest law exists. As of the date of the related country report, such a law was being proposed, along with amendments to the rape provisions of the Penal Code and Evidence Act. Incest is subsumed under the rape provisions of the Penal Code.

The **Philippines'** Revised Penal Code does not mention or define incest. It does stipulate that one of the circumstances that can increase the penalty for rape to death is when the victim is "under 18 years of age and the offender is a parent, ascendant stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the victim's parent." A 1993 Study by the Women's Crisis Center showed that incest comprised 23–32 percent of all rape cases, with 7–9 percent committed by strangers and 59–70 percent by persons known to the victim. It is thought that as with rape, incest is underreported. With the growing number of child and adult prostitutes and the call for legal reforms to deal with the complexity of prostitution, there is a need to look at the linkage between incest victims and prostitution and bring in coherent and integrative law reform that reflects the linkages.

In **Thailand**, incest is not a crime. Section 1450 of the Civil and Commercial Code prohibits the marriage registration of "blood relatives," and section 1496 says such unions may be annulled. However, as stated above, rape by a father of a daughter does attract more severe penalties than rape by a man of a stranger.

4.5.3 Domestic Violence

In Indonesia, Philippines, and Thailand, domestic violence is not treated as a separate crime with its own penalties and enforcement procedures. Malaysia has passed a separate Domestic Violence Act (1994). The general attitude of law enforcers toward domestic violence is that it is a family affair that is of low priority compared to other crimes. For this reason, it often remains unrecorded, depriving women of necessary evidence. Women themselves are unaware of their legal rights in this area, and in many cases agree with other relatives to keep quiet about such incidents to keep the family intact and avoid exposing the family and themselves to shame and dishonor.

In **Indonesia**, domestic violence is not spelled out in the Criminal Code. Instead it is termed as “an act of maltreatment”. The act requires evidence of premeditation and physical injury to death. Punishments for “an act of maltreatment” are relatively lenient, with violence causing death receiving between 7 and 15 years’ imprisonment. Courts may increase the punishment by one third if the maltreatment occurs against a mother, lawful father, a spouse, or the child of the offender. There have been recent moves to bring domestic or marital violence under this section of the Criminal Code. However, women activists want to see a totally new section on domestic or marital violence developed and incorporated.

Malaysia is the only country among the four with a Domestic Violence Act 1994 (DVA). The DVA is considered a landmark, as it provides legal protection in situations of domestic violence and stipulates that women have the right not to be battered. The DVA defines domestic violence to include any action that places the victim in fear of physical injury, causes physical injury to the victim, or compels the victim to engage in any conduct from which the victim has a right to abstain. This also includes detaining a victim against her/his will. This provision distinguishes the DVA from laws in other countries where a victim of domestic violence has to exhibit external physical injuries before any complaint can be made.

At the same time the laws are inconsistent. Domestic violence is not specified as a separate crime with its own penalties and enforcement procedures. Thus the DVA must be read together with the Penal Code and the Criminal Procedure Code. The problems inherent in using three

separate pieces of legislation for one crime create confusion and inconsistent application, resulting in weak judgements and inadequate enforcement of penalties against perpetrators of domestic violence. The problems are exacerbated by the fact that most domestic violence acts are deemed “nonseizable”, i.e., they cause less serious injury and thus require, under the Penal Code and Criminal Procedure Code, an investigation order from the Deputy Public prosecutor before police will proceed to investigate a complaint. In practice, most domestic violence acts, which are often repetitious and injurious, escape investigation and prosecution.

The DVA is supposed to accord a victim of domestic violence the right to protection through an interim protection order (IPO) during the investigation period, or a protection order (PO) when the perpetrator is being charged or tried. The IPO protects only against the actual use of violence against the victim; the wider PO protects the victim against violence by the perpetrator and third parties, against all communication, and against access to the victim’s residence or job site. But the PO can be revoked if the victim finds a new place of residence, thereby exposing the victim to contact and violence. Courts can alternatively order the parties to undergo counseling and conciliation instead of issuing a PO. However, if a woman wants temporary custody of her children, she must initially obtain an IPO, which supports her later claim for full custody.

In theory, the DVA gives the victim the right to compensation for personal injuries, damage to property, or financial loss. But it is not clear how compensation is to be determined, how the victim will obtain it from the abuser, or what mechanisms are in place to ensure that any of these measures are carried out.

A number of legal safeguards against gender-based or intrafamily violence exist in the **Philippines**, contained in the 1987 Constitution, the Revised Penal Code, the Family Code, the Child and Youth Welfare Code, various acts, and President Ramos’ 1995 Presidential Memorandum “Call to Action Against Domestic Violence”. But to date no marital or domestic violence law exists. This may be in part due to the sanctity of the family home in Filipino society. The consequence is that Filipino families and society deny that domestic violence exists or is a major problem, and generally refuse to intervene on behalf of a wife.

In the Philippines, repeated physical violence is grounds for legal separation under the Family Code. The code stipulates that spouse

beating may be proof of one spouse lacking the psychological capacity to fulfill marital obligations, thereby justifying a declaration of absolute nullity of marriage.

The Revised Penal Code of the Philippines covers parricide, murder, homicide, infanticide, abortion, and “physical injuries”. Most wife- or child-beating cases would fall under “physical injuries” (Article 262-6). Some conflict has arisen between this Article and Article 263, which allows leniency in punishment if the injuries inflicted on the child are by a parent disciplining the child. However, the Supreme Court ruled that no leniency would be provided. This ruling seems to be backed up by a 1992 Republic Act giving a much broader definition of child abuse. Yet the CYW Code allows that the act of disciplining a child is a right of parents if the discipline is “just and reasonable”. If the discipline is excessive, then parents may be punished under the Family Code, or their authority over the child suspended or terminated by a court.

In an attempt to protect children against child abuse and exploitation, the Philippines Republic Act No. 7610 was enacted to implement the UN Convention on the Rights of the Child, to cover a child’s physical and psychological abuse, neglect, cruelty, sexual abuse, emotional maltreatment, and deprivation of basic needs.

Thailand’s Penal Code stipulates that sexual violence and rape are serious crimes, but there is no legal and police protection for women who are victims of domestic violence and marital rape. While domestic violence is a ground for divorce, the majority of women are not aware of their legal rights here. The NCWA is seeking to change the present “hands off” approach of the police and other law enforcement agents through a revision to the pertinent section of the Penal Code (Section 295). As of the date of the related country report, the Cabinet had approved this revision, but the Legislative Drafting Committee had not yet given its approval.

4.5.4 Prostitution

The large number of economically deprived families in the region is a vital factor in the presence of prostitution and trafficking in women. With the growth of the region’s tourism industry, there is a greater demand for workers in the sex industry. Many women and children from rural areas are recruited to the cities on false pretences of domestic or

overseas employment, only to end up in sex rings, brothels, and sex tourism. The stigma and illegality surrounding prostitution has contributed to the spread of HIV/AIDS and other sexually transmitted diseases. These have also resulted in prostitutes being subjected to rape, assault, extortion, and other forms of harassment by the authorities.

In **Indonesia**, prostitution *per se* is not considered a criminal act. It is the procurer of services or “souteneur” who is targeted by the 1914 Criminal Code and subject to maximum imprisonment of one year. Some local governments, such as Salatiga, have instituted police raids or passed regulations to control prostitution, persons engaging in prostitution, brothels, and visitors to brothels.

In **Malaysia**, prostitution is also not a crime. The 1973/1987 Women and Girls Protection Act (WGPA) provides for the prosecution of persons involved in prostitution and trafficking in women and girls. A woman working as a prostitute is not regarded as performing an illegal act, unless she is soliciting in a public place. Women under 21 years of age may be removed from places of prostitution and temporarily detained in a refuge upon authorization by a magistrate’s court. After an inquiry, women may be placed for up to three years in custodial institutions for their protection.

The **Philippines’** law on prostitution is the most archaic and discriminatory against women. Under the Revised Penal Code, prostitution is punished as “a crime against decency and good customs.” The Code does not recognize or target male prostitutes. Prostitutes may be punished with fines, jail sentences, or both. The Code does not specifically target pimps or procurers, but it punishes those who promote the prostitution of an underage person “to satisfy the lust of another” or who engage in the business or profits of prostitution.

The Code is weak because it targets and discriminates against women; fails to target male prostitutes, pimps, recruiters, and clients; and uses ambiguous and moralistic terms like “lasciviousness”. Furthermore, it does not cover child prostitution and child pornography, or adequately address sex tourism. Although the Revised Penal Code mentions HIV/AIDS in the context of rape (where the death penalty can be imposed when a person commits rape knowing that he (the rapist) is afflicted with HIV/AIDS), it does not deal with it in terms of prostitution, whether child or adult.

In **Thailand**, NGOs and the NCWA have been working to change the 1960 Anti-Prostitution Act which punishes “sex workers” but not their clients, unless the prostitute is under 18 years of age. It levies light penalties on brothel owners and apparently none on pimps. The changes sought include lighter penalties for prostitutes, heavier penalties for brothel owners and clients, and a broadened definition of a brothel. As of the date of the related country report, the 1960 Act had not been amended or replaced, although a Prostitution Prevention and Suppression Act has been in force since 22 December 1997. The parents or guardians who deceive their daughters or wards into prostitution are punished and so are the agents. Penalties are quite severe. The current law was brought about by the efforts of women’s groups and is a considerable improvement upon the former law that called for punishment only of the women engaged in prostitution.

In order to deal with the growing problem of the sexual exploitation of children, a National Policy and Plan of Action for the Prevention and Eradication of the Commercial Sexual Exploitation of Children was developed in 1996. Its five components encompass prevention, including surveillance; suppression, through a new law; assistance to and protection of victims; rehabilitation; and an effective implementation plan.

While it was recognized that unregulated prostitution and brothels, along with drug use, were contributing to the rapid rise in sexually transmitted diseases and HIV/AIDS, no laws exist to deal with this crucial health issue.

4.5.5 Trafficking in Women

Trafficking in women and children is a major problem in all four countries, but existing laws pointedly fail to address this issue. Furthermore, existing laws on trafficking in women and children in the four countries vary, making a concerted regional response to this problem more difficult. For example, while trade in women and minor males is illegal in Indonesia and Thailand, the law in the Philippines is specific to child trafficking and not to women.

Indonesia’s Criminal Code states the “trade in women and minors of the *male* sex shall be punished by a maximum imprisonment of six

years”. Either a major oversight has occurred by defining minors as being only of the male sex, or female minors are implicitly included in “women”. The failure to specify minors of the female sex is a loophole that can be exploited by traders or traffickers.

Concern has been expressed that the law governing the deployment of workers abroad or in other parts of Indonesia has contributed to the trafficking in women and minors. Many workers do not know or understand what they are contracting for when they seek employment. Once abroad they have no support system or money to assist them to return to Indonesia.

Malaysia’s Penal Code provides penalties for trafficking in women and underage girls for purposes of prostitution.

In the **Philippines**, the full extent of trafficking in women and children is not adequately defined or covered by law. While Republic Act No. 7610, Article IV (7 and 8) punishes child trafficking and attempts to commit child trafficking, no law appears to punish trafficking in women. Women’s organizations have been calling for laws to deal with the growing problems surrounding trafficking and prostitution, both within the Philippines and in relation to overseas contract workers.

4.5.6 Sexual Harassment

Despite a growing awareness of sexual harassment of women, few laws, regulations, or policies exist. Those that do are not uniformly and consistently implemented and enforced. An attitude still prevails among men generally that women “ask for it,” or “want it,” or that they are “complimented by such attentions”. Women’s organizations are working on the issue, bringing it to the attention of the Government and major employers or companies, and creating more awareness among women themselves about the unacceptability of harassment in any form and how they can combat it. Without strong policies, laws, enforcement, and penalties in place, women will have difficulty in reducing or eliminating harassment in the workplace.

The **Philippines** is the first country in Asia to enact a law on sexual harassment. The law is based on the recognition of the full respect for human rights and dignity of workers; employees; applicants for employment; students; or those undergoing training, instruction, or education.

The other countries do not have a separate law on sexual harassment. It is treated lightly, except in **Indonesia**, where Article 289 of the Criminal Code states that a person who forces (or threatens to force) a person to do an “obscene act” is guilty of “moral delinquency” punishable by up to nine years in jail. The common view is that acts that might be viewed as sexual harassment are merely expressions of admiration or appreciation of the other person’s sexuality. Persons who complain are thought to be oversensitive. Sexual harassment, as with many aspects of violence against women, is really an expression of power over the victim and reflects social attitudes where women are assigned roles as sex objects for men.

CHAPTER 5

STRUCTURAL, PRACTICAL, AND CULTURAL CONSTRAINTS

Since the creation of the United Nations Organization, it has always been asserted that women's rights are fundamental rights, that women must be able to participate fully in every aspect of society be it political, civil, economic, social or cultural and that discrimination toward them must be eliminated. Nonetheless and despite the efforts made throughout the years, inequality between men and women remains a characteristic of social relationships in areas such as the law and the institutions. (Bauer 1996: p.101)

5.1 Introduction

The preceding chapter described the substantive component of the legal systems in the four countries; namely, the contents of the various laws that affect women. This chapter discusses some of the broader factors that impact on women's sociolegal status—the legal structure in the four countries; cultural mores and practical barriers that affect the implementation of justice; and finally, the need for more effective statistical collection and evaluation of women's sociolegal status.

As noted in Chapter 1, legal barriers and lacunae relating to women's status arise out of a number of factors. Important here are laws that clearly discriminate against women, and the *absence* of gender-sensitive laws on important issues such as domestic violence. Other law-related issues to be considered are conflicting rules and regulations, and conflicts between laws derived from varying sources, such as conflicts between civil codes that espouse women's equality and religious and customary laws that reflect patriarchal norms.

The situation is further compounded by structural, cultural, and practical factors that determine the level of responsiveness and accessibility of the legal system, its laws and institutions. It is therefore critical to examine the broader context in which the law and legal

institutions work, remembering that such laws and institutions reflect the values and beliefs of dominant groups within a society. Issues to be considered here include

- the widespread lack of gender sensitivity among implementing and enforcement agencies, including the judiciary;
- women's lack of legal awareness and legal literacy;
- women's low utilization of the legal system;
- prevailing sociocultural attitudes towards women's legal problems;
- women's lack of financial capacity to have recourse to the law; and
- women's lack of access to legal services.

A further practical barrier to the improvement of women's sociolegal status is the lack of gender statistics. In order to effectively monitor and evaluate the sociolegal status of woman, good data collection and evaluation are important.

The need for women in the Southeast Asian region to pursue legal and judicial reform is even more pressing following the Asian economic crisis of the late 1990s. Stabilization policies and structural adjustment programs have high social costs. Women, particularly poor women, tend to bear a large share of the costs when there are drastic cutbacks in basic government services such as education, health care, and family planning. In terms of sociolegal status, poverty acts as a further inhibitor to women and men seeking court action or taking legal action to protect their rights. Lack of education, particularly as children are withdrawn from school early, makes this barrier even more pronounced, and has implications for women's ability to seek court action in the future.

Women activists in Southeast Asia have promoted legal reform to improve women's access to resources, economic opportunities, political participation, and general well-being. During times of economic crisis, such efforts become even more urgent. The danger here is that unless governments and their development partners vigorously pursue these issues now, women will become further marginalized, as economic crises and dislocations caused by economic globalization divert the attention of policymakers to pressing, short-term concerns.

5.2 Structural Aspects of the Legal System

Although the national economic and social policies of the four countries may provide a relatively favorable environment for women's development and protection of their rights, laws do not always translate into justice. Many structural factors affect women's access to justice. Major structural and institutional constraints that confront women in the four countries include

- low representation of women in administrative agencies (including law enforcement), the judiciary and the legal profession, and lack of awareness in such agencies of women's concerns;
- lack of equitable, gender-sensitive implementation and enforcement of laws pertaining to women;
- women's limited access to justice and inability to afford legal services; and
- lack of political and bureaucratic will to pursue gender-sensitive reform of policies and laws, and to improve their implementation and enforcement.

5.2.1 Administrative Agencies, the Judiciary, and the Legal Profession

There is much to be done in terms of restructuring the present legal institutions in the four countries. To begin with, there are no special family courts to handle women-related cases. The percentage of women in the judiciary is also relatively small (between 10 and 15 percent). While the prohibition against women becoming judges and State attorneys in Thailand has been lifted, as yet the number of women in these positions has not greatly increased. The situation is worse in religious courts. In Malaysia, for example, all syariah court judges are men, and all *hakim* (arbitrators) have to be men. All members of the state religious councils are men, although this is not a requirement. It is not surprising that their decisions tend to reflect primarily the interests of men.

Increasing the number of women judges is not a sufficient condition to make courts more women-friendly. For example, there are

women judges, such as in the Philippines, who are active in women's issues, but many are also unaware of these issues. Knowledge of and sensitivity to women's issues are important factors that will influence their handling of cases involving women. At present, judges and other court personnel do not have the requisite knowledge and training, or often the sensitivity, to handle such cases.

In addition, much systemic discrimination and inequality flow directly from the attitudes of lawyers (usually male, but sometimes female), courts, law schools, firms, societies, and government legal departments. In order to bring about change in major sectors of the legal system, it will also be necessary to bring about attitudinal and behavioral change within the legal profession and judiciary. There are many barriers to entry for women in the legal profession, and in most countries it is still a "men's club". Women are underrepresented in law faculties and at the senior levels of the profession. Circumstances and the corporate culture in most law practices are such that it is difficult for women to succeed, particularly women who have primary responsibility for child care and home management.

5.2.2 Implementation, Monitoring, and Enforcement

The implementation and enforcement of laws have been characterized by all four country teams as extremely problematic. In particular, there is widespread criticism of law enforcement agencies. Police forces in all countries have inadequate resources. Many police also overlook or ignore criminal events. The lack of regular monitoring and evaluation procedures makes it difficult to assess the institutional capacity or effectiveness of the enforcement agencies. The public generally is of the opinion that law enforcement needs an overhaul.

The number of women in the police forces of the four countries in the study is small. In **Thailand**, women police have only recently been introduced. This makes it difficult to implement the recommendation made by the NCWA and other women's organizations in Thailand that a policewoman be placed in every police station to handle cases of rape, divorce, domestic violence, and sexual harassment.

Government institutions with women's programs are inadequately staffed. In **Malaysia**, one problem identified in domestic violence cases is

that only a social welfare officer can apply for an IPO. A shortage of welfare officers impedes this process. For example, there was only one welfare officer in charge of domestic violence cases in an office serving a large metropolitan area. If she was on leave, there was no one to replace her, so victims of domestic violence had to wait for her return.

5.2.3 Accessible and Affordable Legal Services

Finally, limited legal aid in the four countries is a major barrier to justice for women, as women rarely have the money to pay for lawyers and to contend with lengthy legal or court proceedings.

In **Malaysia**, for example, if a woman wants to take a case to the labor court or industrial court, a lawyer or a union official must represent her. Rural women in particular are ill-served by the law, due to the overall lack of services in rural areas provided by either the Government or NGOs. Cheaper, more localized alternative dispute resolution services are also not common in the four countries, although there are some customary, alternative, or informal processes used by women. In the **Philippines**, a Barangay Justice Law is in place, with the authority to settle village disputes. However, the system does not work in cases of violence against women, because its objective is to settle cases amicably and not to protect the victim and punish the offender.

An effective and low-cost legal system is particularly relevant in areas where women are most affected: criminal law courts, family and domestic law courts, and religious or customary law venues. Legal reforms and strengthened judicial institutions are needed to facilitate economic development, social development and better environmental management. Effective judges and courts, legal processes, and legal institutions are crucial for the settlement of disputes. As pointed out at the Meeting of the Chief Justices and Ministers of Justice at ADB in August 1997, the availability of effective and low cost civil and commercial dispute settlement is an important condition for economic development.

5.2.4 Broader Political and Institutional Environment

There are few women in high-level positions in the governments of the four countries, and of these, not all are cognizant of or sensitive to

gender issues. This lack of women in positions of power in government agencies, the judiciary, and legislatures makes it far more difficult to implement law reforms and programs to redress gender bias in government.

Legal reform is hampered by the scarcity of female legislators. Pro-women legislation is often passed as a result of strong lobbying from women's groups, but there is no comprehensive agenda to address existing gender bias in any of the four countries.

Cultural norms in the four countries condition women to think their primary responsibilities are to the family and their husband. This partly explains why there are so few women in decision-making positions in government, as well as in other areas of public life. The same constraints face women who run for public office. Although many women are visible on the campaign trail and in fund-raising activities, traditional political parties seldom consider them as candidates. Voters also often have reservations about women candidates. Records show that very few women make it to high elected positions. In Thailand, women civil servants are still not allowed to hold positions related to national security.

5.3 Cultural and Practical Aspects of the Legal System

In general, women in the four countries suffer from discrimination as a result of entrenched attitudes and practices. Cultural values, attitudes, and habits of thought become part of the institutional framework of the society. Of relevance here is the way in which these attitudes and practices inform the laws and legal institutions within a country.

In addition to the influence of patriarchal attitudes and conservative religious norms, major cultural and practical constraints facing women in the four countries include

- women's lack of awareness of their rights and of how to access the legal system;
- bias and insensitivity of administrative and judicial personnel toward women's legal problems; and
- women's reluctance to access the legal system, based on fear, shame, or other factors.

5.3.1 Women's Legal Awareness and Legal Literacy

Women must be aware of the law and how it affects them if they are to benefit from legal reform. Women's lack of legal awareness is one of the greatest barriers to their utilization of the legal system to protect their interests. Unfortunately, few rural or urban poor women know their rights, or know how to access the legal and court systems. Few know about NGOs or legal aid centers that can assist them with their legal problems or court cases. In general, only educated elite women, and those women active in NGOs and women's organizations, are aware of their rights and familiar with court processes.

In **Indonesia**, for example, the majority of women are unaware that a marriage has to be registered to be valid. This disadvantages women in cases of separation, as only women whose marriages are registered can claim maintenance and other benefits.

In **Thailand**, women are gradually becoming more aware of their rights. The 1974 Constitution, which first provided for equality between men and women, and its successors, including the 1997 Constitution now in force, have helped generate a great deal of awareness about women's rights.

Malaysian women are generally unaware of their legal rights, protection, and sources of assistance. They also lack information about the health hazards of their jobs and of many industrial processes that use toxic or poisonous substances.

The lack of media attention to women's legal needs, including legal literacy, and the complexities of the law further disadvantage women who lack legal aid and advice from knowledgeable sources. More emphasis will need to be given to educating women about the law and their legal rights, and the legal services available to them. For this to be successful, other parallel programs will also need to be run, such as campaigns that emphasize the *unacceptability* of sex discrimination and violent acts against women (including incest) and how women can protect themselves both in public and within the home. It will also necessitate the retraining of myriad layers of law implementation and enforcement personnel to sensitize them not only to women's lack of legal literacy but also to the barriers that prevent women from seeking legal redress.

It is also important to consider the extent to which the legal and judicial systems intimidate women. Statutes, regulations, and court

decisions are generally dense and difficult to read even for well-educated women. Moreover, they are often not readily available to the general public. The preparation of easily understood and accessible information sheets on the most common laws pertaining to women, in an array of local languages, would be of benefit here.

Finally, community involvement needs to be considered if women are to feel empowered to seek legal redress, particularly in the prevention of violence against women. Community involvement removes the issue of violence from the private realm of the family to the public realm, and organizes community support to redress acts of violence through social sanctions such as “shaming”. Also important is information dissemination, basic legal literacy campaigns, counseling, and lobbying for legislation.

5.3.2 Gender Awareness and Attitudes toward Women’s Legal Problems

General attitudes within the administrative, legal, and judicial systems of the four countries leave much to be desired. The treatment of women complainants is often degrading and demeaning. Reporting procedures are limited at best, and often nonexistent. Moreover, women’s complaints are often not treated seriously enough to activate the necessary mechanisms to protect them. As noted above, there is a particular need for change in the attitudes of front-line police officials. However, the treatment of women will not improve without major attitudinal changes at the top of the legal, judicial, and enforcement institutions, and without direction from the political level. Some change is occurring, but it is not fast enough to cope with the escalating violence and demands to protect women and their children from that violence.

In order to change or modify attitudes and values, education and training are needed for the judiciary, legal, and enforcement systems. Furthermore, if gender bias in society is to be eliminated, there must be an increased understanding of the roots of women’s subordination, and of how the law has been and can be used to reinforce this inferior status. The rhetoric of protection of the individual and the family or, similarly, the interest of a well-ordered society, are often guises under which the inequality of women is perpetuated.

In addition, the ways in which sexist language structures and institutionalizes female subordination in the law as well as in society as a whole must be considered. Language has a direct impact on attitudes and perceptions. Use of gender-neutral terminology can help remove double standards, confusion, and ambiguity in the laws, as well as making legislators and those who draft laws more sensitive to women's position and needs. Language reform should thus be an integral part of legal, regulatory, and contractual reform. Some progress has been achieved in making the language of laws, regulations, and contracts more gender-neutral and inclusive. However, there is still a tendency in the four countries to use gender-exclusive terminology, for example, Ministry of *Manpower* instead of *Human Resources*.

The need for gender-neutral language was raised by the Philippine team in the context of the Civil Code, and specifically relating to property and inheritance. They urged that, wherever possible, in the language of laws, regulations, and contracts, "men" or "women" be replaced with "persons," "husband" or "wife" be replaced with "spouse," "son" or "daughter" be replaced with "child" or "children".

5.3.3 Women's Reluctance to Use the Legal System

It is also well documented that women in the four countries are often reluctant to use the available legal systems. This is frequently related to their lack of financial resources (see 5.2.3), or their lack of legal awareness and sense of intimidation by the legal system (see 5.3.1). It is also important to note, however, that women's sense of fear or shame can also be barriers to their utilization of the legal system, particularly in the case of domestic violence and rape.

Many women tolerate abuse and violence, and fail to report incidents to the police, medical practitioners, social workers, and women's organizations and shelters. In part this is due to shame, embarrassment and the belief that these are personal matters to be tolerated or worked out in a family context. As Bauer (1996) notes, there is a growing body of evidence that fear also causes women not to express themselves or seek legal redress. This fear is most often articulated during discussions of violence against women in general and of rape in particular. The fear not only reflects concern over the possibility of physical

retaliation, but is also linked to customs and attitudes that exclude, marginalize, and stigmatize women. It is hoped that with increasing publicity in the media about the unacceptability of violence against women and children in any form, many more women will come forward to report abuse and violence (Box 6). As more women come forward, more resources will be needed to ensure that women are provided with full legal support and recourse.

Box 6: On Our Own

We salute... the girl who, having been almost raped, and her attacker having fled in a taxi, nevertheless persuaded another taxi driver to help her apprehend those who had tried to violate her... The girl didn't allow her having been victimized to dampen her courage; the taxi driver who helped her showed an admirable concern for a fellow human being... Their stories show that ordinary citizens will not take crime and injustice sitting down. In the face of their resolve to see justice done, their almost superhuman efforts to ensure law and order, we can only ask: Where were the police?

But it is clear the police were, to put it charitably, the extras in these scenes of derring-do. This is a timely reminder to our law-enforcement officials. As the police top brass and the military exchange recriminations and expose corruption in each other's ranks, the citizenry finds itself having to attend to law and order by itself. We, the citizens, have been left to our own resources. If you are raped, then you yourself must give chase to the rapists if you ever want to see them behind bars; if you are held up and stabbed, far better for you to lunge at your assailants and bring them to justice, rather than expect succor from the police...

Source: Editorial, *Today*, 6 August 1997 (Philippines).

5.4 Gender Statistics: Measuring and Monitoring Women's Legal Status

In order to effectively monitor and evaluate the sociolegal status of women, collection and analysis of gender-disaggregated data are essential. Ideally, the data collection and analysis will be based on agreed indicators of women's status, and will involve all relevant government agencies.

5.4.1 Status of Data Collection and Analysis

Following are some highlights of the country studies in this area.

Indonesia. Indonesia's Central Bureau of Statistics collects and disaggregates most data it collects. The surveys and censuses typically cover population, employment, health, religion, housing, the environment, agriculture, mining, manufacturing, foreign trade, finance, consumption, and income. They also collect and publish data from other ministries and some of these data are relevant to the status of women.

The Department of Religious Affairs collects data on marriage, divorce, and reconciliation from the religious offices (KUA) and the religious courts where marriages and divorces are registered. The statistics are limited to Islamic marriages; marriages and divorces based on the other religions are not tabulated. The number of Islamic marriages and divorces are underreported due to registration costs, travel costs to the registry, the remoteness of many registries from rural areas, and the lack of readily accessible KUAs: most KUAs are in cities, while 64 percent of the population live in 67,000 rural villages.

The main problems in data collection and statistical analysis are poor management and administration of information; poor records and poor filing systems; incomplete registration of marriages; and underqualified staff. However, there is a real appreciation of the importance of sound data collection systems, and of the need for adequate budgets to hire technically expert staff at all levels.

Malaysia. Malaysia has recognized that there is a lack of gender-disaggregated data on the sociolegal status of women. The Statistics Department has expressed "strong interest and commitment" to help in gathering gender-disaggregated data from existing sources, provided the necessary budget and human resource allocations are made available. In 1999, ADB financed a technical assistance (TA) program for HAWA to develop a management information system and to strengthen its monitoring and evaluation. It is recommended that such TA incorporate into the program indicators on the sociolegal status of women.

It may be important for Malaysia, when gathering indicators on the sociolegal status of women, to look at the process of law reform, the uniformity of laws at the subnational level, and the institutional support

available for enforcement of laws. These concerns are important, given the reforms to Islamic family law that are being carried out by the Technical Committee to Coordinate the Syariah and Civil Laws under the Department of Islamic Development. The ability of Malaysian states to amend the original law may be open to exploitation, depending on how easy or difficult a specific legal process is when compared across states. The concern for institutional support for implementation and enforcement of laws is not limited to the participation of women. It is also a basic concern about staffing and workload that results in backlog of cases for women seeking legal redress.

Philippines. The Philippines has put much effort into establishing indicators that would capture changes in the overall situation of women. From as early as 1991, the National Commission on the Role of Filipino Women (NCRFW), jointly with the Statistical Research and Training Center, undertook the Development of Gender-Based Indicators System, Data Assessment and Data Improvement Plan project. The set of gender indicators developed under this project fell under four broad categories: agriculture sector, industry and economic sector, social sector, and special concerns. The last category consists mainly of migration, politics, violence against women, and women in media. In 1993, under a TA Agreement between ADB and NCRFW, the initial set of indicators was refined and grouped into eight categories: general indicators that provide information on the sex and age distribution of the population and rural-urban characteristics of the sexes; marriages/families and households; economic participation; political/community participation and leadership; education; health care; special concerns; and enjoyment of development services.

Both these projects focused on social and economic indicators. Some legal-related indicators were included but these were only incidental to the sector.

Thailand. In Thailand, the Committee on the Development of the Women's Information System prepared a report on gender indicators using 1990 as the base year. Using UN guidelines, the indicators cover nine areas⁵ including legal rights.

⁵ Population (5 indicators); households and families, marital status and fertility (12 indicators); learning and educational services (10 indicators); health, health services, and nutrition (22 indicators); economic activity and population not economically active (11 indicators); public affairs and political participation (10 indicators); legal rights issues (2 indicators); public order and safety (11 indicators); and leisure and cultural activities (2 indicators).

The Committee decided to use two innovative measures to capture the legal situation of Thai women. The first tracks progress in lifting the Government's reservations on CEDAW. The second set of indicators tracks gender equality with respect to selected rights under Thai law.

5.4.2 Suggested Sociolegal Indicators

All of the country reports recognize the pressing need to maximize the use of data collected by relevant government institutions, including the national statistics office or agency, the national ministry or committee for women's affairs, the ministry of justice and law enforcement agencies, the judiciary, the legislature, and other government offices participating in the implementation or enforcement of laws affecting women. In addition, it is also suggested that concerned agencies make better use of data generated by NGOs active in promoting women's rights.

The Philippine study also suggests three generic sets of indicators to monitor the legal status of women in the Philippines, which could be considered for possible application by other countries.

The first refers to laws and policies providing equal access and opportunities for women in various areas or fields like education and training, labor and employment, politics and decision making, health care, and nutrition. This category could include brief descriptions of the relevant laws or policies, the provisions particularly relevant to women, and any enforcement mechanisms (such as fines or injunctions) that ensure compliance.

The second category consists of indicators related to the implementation, enforcement, and monitoring of laws and policies relevant to women. Indicators identified under this category could include measures of women's ownership of land and access to credit; male/female differences regarding wages, benefits, and hiring/firing; data on marriages, separations and divorces, including the disposition of property and custody of children; statistics on reports and prosecutions of rape, domestic violence, and sexual harassment cases, including the penalties imposed for convictions; complaints about police treatment of women; and data on trafficking in women and children, child abuse and prostitution. This second category could also include indicators on legal

education and other support programs, and on the resources allocated for monitoring and enforcement of laws pertaining to women.

The third category relates to the participation of women in the formulation and implementation of laws affecting them. This category measures the extent of women's participation in activities aimed at achieving gender equality. Specific indicators under this category could include women's representation in different levels of government administration (including law enforcement), the judiciary, the legislature, the legal profession, and law schools.

C. RECOMMENDATIONS FOR LEGAL REFORM

CHAPTER 6

COUNTRY-SPECIFIC RECOMMENDATIONS

6.1 Introduction

The following recommendations have been provided by the four country reports on the sociolegal status of women prepared as part of this regional TA. The recommendations are based on laws and regulations in place as of the date of the related country report. As this report argues, governments have a clear role in bringing about concrete improvements in their respective legal regimes, through gender-sensitive lawmaking, improved implementation of laws, promotion of gender sensitivity among implementing and enforcement agencies, and development of effective access for poor and disadvantaged women to affordable legal services. However, NGOs and women's organizations also have important roles to play with regard to advocacy for gender-responsive laws and making women aware of their rights and responsibilities under the law, as well as in making legal support services more accessible, easy to use, and effective for poor women.

Recommendations are made here with regard to what can be done by governments, NGOs, and women's organizations in order to improve the sociolegal status of women. This part of the report discusses country-specific recommendations for the four countries in turn, before concluding with some general recommendations that could be applied on a regional basis.

6.2 Indonesia

6.2.1 Institutional and Policy Framework

The major recommendations for the reform of the institutional and policy framework in Indonesia are as follows:

- Policies for the improvement of the sociolegal status of women should be an integral part of the long-term five-year plan of national development, specifically in the area of national law development (BPHN), and the subsector on the Role of Women in Nation Building.
- BPHN should identify the legal constraints on women's participation in economic development, and formulate an action plan to eliminate the constraints, including proposals to develop regulations on female workers in the informal sector (home workers, women in agriculture and estates, domestic workers, and migrant workers).
- The Convention Watch Working Group should further develop draft curricula on gender issues for the faculties of law.
- The Ministries of Manpower, Agriculture, Mining, and Finance and the National Land Agency should revise ministerial decrees, regulations, and procedures that have discriminatory effects on women and strengthen monitoring and enforcement mechanisms to eliminate all forms of discrimination against women.

6.2.2 Legal Reforms

(a) Labor Laws

The following recommendations for law reform have been submitted by Nursyahbani Karjasungkana of Legal Aid—Indonesian Women's Association for Justice (LBH-APIK) to the National Development Planning Board (BAPPENAS) International Development Fund Legal Study, with a specific focus on legal gender issues:

- Enact appropriate implementing regulations for Law No. 80/1957 pursuant to the provision of International ILO Convention No. 100 on Equal Remuneration;
- Review and revise Government Regulation No. 8/1981 on Remuneration and Ministerial Circular No. SE 01/Men/1982 so that they provide a clear framework to avoid discrimination on the basis of gender and marital status;

- Enact legislation providing protection to female workers exposed to work-related harassment (Art. 294 of the Criminal Code does not provide such protection); and
- Review and revise the following regulations limiting the rights of female workers to wages and benefits:
 - Government Decree No. 37/1967 on Wage System in State Companies;
 - Ministerial Decree No. 2/P/M/Mining/1971;
 - Ministerial Decree No. KU440/01/Agriculture/2/1984;
 - Ministerial Decree No. 01/Agriculture/Ukku/3/1978;
 - Ministerial Circular of Manpower No. 7/1990 on Wages; and
 - Ministerial Circular of Manpower No. 4/1988, especially points 2 and 3 on health allowances, which does not meet international labor standards ratified by the Government of Indonesia (ILO No. 100).

In addition, studies should be undertaken on the legal barriers faced by workers in the nonformal sector, to form the basis for the issuance of laws and local regulations on the rights and protection of workers in this sector.

(b) Access to Credit

Article 8 of Act 10/94 and other related regulations describing procedures for the issuance of taxpayer numbers may impose restrictions on married women's access to credit. It is therefore proposed that the Minister of Finance revise the Circular letter and Decision of the director general of taxes (No. SE20/P19/1990 and No. KEP 78/PJ-41/1990) on the issuance of a tax number to a wife who is undertaking a business activity or independent work.

6.2.3 Legal Awareness and Gender Sensitization Programs

The following four recommendations on legal education and training form part of the overall effort to promote the awareness of citizens' rights and improved access to justice:

- Legal aid centers and legal literacy programs for women should be promoted.
- All men and women in legal institutions should be given gender-sensitive legal awareness training, and educational materials and curricula should be developed for this purpose.
- Analyses of the gender bias of laws, the protection provided to women, and changes in the laws affecting women should be packaged into various types of legal literacy booklets and pamphlets appropriate for use by people of different sociocultural backgrounds.
- Campaigns to promote legal awareness should be mounted in various media; such campaigns should be appropriate to the nature of their target groups.

6.2.4 Legal Institution-Building, Capacity-Building, and Training Activities

All existing legal institutions are characterized by insufficient qualified human resources and few are gender sensitive. In effect, all legal institutions need capacity building and gender sensitization training. Specific recommendations for reform are as follows:

There are more than 200 law schools and about 13,000 new lawyers every year in Indonesia. However, the new graduates lack practical know-how to apply their legal knowledge. In 1993, the Consortium of Law Schools, which has an advisory capacity within the Ministry of Education and Culture, had already embarked on reforming the law curriculum through the introduction of a new core curriculum that added professional skill subjects. The skills training includes drafting exercises, classes in advocacy, and supervised court attendance, among others. The 1993 curriculum also introduced new subjects that are expected to constitute the needed basic knowledge for law school graduates in their future employment. The subjects include law on intellectual property rights, telecommunications law, stock exchange market law, special effects law, international economy law, and commercial law (Reksodiputro n.d.: 64-65. The curriculum should be revised, updated, and modified to reflect current needs.

- The work of the Convention Working Group in developing modules, bibliographies, teaching methods, and gender-sensitive curricula in law schools should be enhanced.
- Policymakers and decision makers, the judiciary, and members of the legislative body should be given gender sensitisation training.
- The skills of administrative staff in legal institutions should be upgraded through training in the recording of court sessions, documentation, and filing of records and cases.

6.2.5 Specific Leveraging Opportunities to Overcome Constraints

The following are three major leveraging opportunities to overcome constraints:

- Many laws and regulations subscribe to gender equity. But the most crucial matter is the consistency of their enforcement. Women's groups could lobby the Government to institutionalise mechanisms to monitor and enforce these laws.
- Women's groups should also lobby the Government on the potential benefits of having more women in decision-making bodies. Women know their concerns and can best push their own interests.
- There are already laws that provide men and women with equal access to credit, improvement of expert knowledge, and other kinds of skills. But women may require additional support facilities such as day-care services and a network of persons who could provide support, such as guarantees for women's creditworthiness.

6.2.6 Other Points of Intervention

Other recommended points of intervention in Indonesia are as follows:

- Make funds available to the KUAs to register the marriages and births of those in remote communities and of poor people. An example is provided by the Jakarta-based KCS (civil registry), which recently adopted a strategy of dispatching its officials to lower-level administrative units—*desas* in rural areas, and *kelurahan* in cities and towns—to provide them with the necessary information. The poor, upon recommendation from the heads of their respective administrative units, were issued birth certificates free of charge.
- The Ministry of Internal Affairs should issue a clarifying decision concerning marriage, divorce, and reconciliation under nonrecognized (i.e., non-Muslim) religions. A clarification should also be issued concerning the issuance of birth certificates of children born of parents married according to nonrecognized religions.
- Measures/indicators to monitor improvements in the legal status of women in Indonesia should be established. BPHN, as the research and development agency for national law development, could establish a working group for this purpose.
- BAPPENAS could also form a team consisting of law and gender experts from various fields to develop measures/indicators on the legal status of women.

6.3 Malaysia

6.3.1 Institutional and Policy Framework

Following are the major recommendations for reform of the sociolegal institutional and policy framework in Malaysia:

(a) Develop an Integrated Family Court System.

- HAWA and the various women's organizations should again review the need and justification for an integrated family court to handle both Muslim and non-Muslim family matters, including divorce, custody and guardianship, domestic

violence, alimony and maintenance, adoption and juvenile delinquent cases now heard by the Juveniles Court, mediation, and counseling and reconciliation of spouses.

- Based on this review, HAWA should analyze the costs and benefits of moving toward an integrated family court system, including the appointment and training of judges in an integrative family law approach.
- Based on the study, HAWA should prepare a detailed, concrete proposal, including required resources, and submit it to the Government for action and implementation.

(b) Incorporate Gender Perspective in Land and Environmental Legislation

All existing land and environmental legislation, laws and regulations in Malaysia should be reviewed and revised to incorporate both women's concerns and a gender perspective. It is therefore recommended that

- HAWA set up a committee to study, review, and make recommendations on the land rights of women in indigenous communities, as well as on all native land policies of both the federal and state governments. The study and review should include the full participation of and consultation with local, indigenous communities, as well as key government agencies, with proportionate female representation. A goal of the committee should be to seek consistency between competing or conflicting laws.
- HAWA should urge the Government to set up an independent commission, with proper representation of women and indigenous people, to investigate and resolve conflicts of interest and rights to lands and forests between indigenous or aboriginal peoples and government or private interests.

6.3.2 Legal Reforms

(a) Violence Against Women

The Malaysian Government, through an interministerial committee, is reviewing *all* legislation pertaining to social matters, including WPGA and the DVA. Thus it is timely to strongly recommend the following:

- DVA itself should be strengthened by
 - ensuring that prosecution for domestic violence occurs whether or not a woman withdraws her charge;
 - making applications for POs independent of criminal charges and hearable within 24 hours of application, and rendering IPOs (interim) unnecessary; and
 - excluding perpetrators from shared residences, thereby removing the onus on victims to find alternative, safe shelters.
- Simultaneously, the DVA Rules and Regulations should be strengthened by
 - not differentiating between “seizable” and “nonseizable” acts of violence, and by making all domestic/marital violence subject to investigation;
 - ensuring that police investigations occur within 24 hours of the violence, not 14 days, as at present; and
 - instituting clear definitions of responsibilities between police and welfare officers, and streamlining police procedures.
- Parallel reviews and studies of the proposed amendments to existing rape laws (including the Evidence Act and Penal Code) and of the proposed new incest law should be undertaken by HAWA, All Women’s Action Society (AWAM), and other women’s organizations, and submitted to the Government. The examination of existing rape laws should include concrete alternative recommendations on such matters as marital rape, rehabilitation treatment, court discretion in sentencing and punishment, differentiation between first-time and repeat

offenders, expert consultation, privacy considerations and evidentiary rules, and a broadened definition of sexual intercourse. The study of the proposed incest law should broaden the present definition of incest to include child abuse and abuse of authority over a child by a person in power. Both would be submitted to the Government before its own legal reform review concludes.

- HAWA, in conjunction with other women's organizations, should undertake a comprehensive study of prostitution and trafficking in women, and consider a major reform of the WPGA, to handle the present ambiguities surrounding prostitution and trafficking in both women and minor children; or consider the formulation of new laws to deal with both prostitution and trafficking, taking into account experiences of other countries in the region. This should be linked to the Government's present legal reform.

(b) Land and Property Laws

Property and land policies in Malaysia should be reformed as follows to improve the sociolegal status of women:

- Develop and introduce legislation requiring that all land titles, share certificates, equity holdings, and unit trusts be registered in the name of both the man and the woman in a household; and also requiring that when women are co-heads of households they will be included in all development activities and consultations, that they be able to own their own assets, and that they be allocated resources on an equal basis with men.
- Where native lands are under consideration for development, introduce legislation requiring consultations with both husband and wife, or related men and women in a household, with the proviso that both parties must be privy to and sign any agreement in order for it to be valid.
- Amend the federal Constitution so that rights accorded to Malays and the indigenous peoples of Sabah and Sarawak are also extended to the Orang Asli.

- Amend the Sabah Land Ordinance to ensure that notices for NCL applications are delivered to residents, and not just posted, and are in Bahasa Malaysia and other local languages. Amend the appeal period from 30 to 90 days. Further amend the ordinance so that all NCL claims are investigated and, once given recognition, must be excluded from intended reserve areas.
- Establish a committee composed predominantly of Orang Asli men and women, in order to review, with a view to amending, the Aboriginal Peoples Act to accommodate the modern needs and aspirations of the Orang Asli, including guarantees of their rights to land, self-determination, and the practice of their own culture and traditional ways of life.
- Introduce legislation, or amendments to existing laws, to bring about a system to facilitate agreement among urban settlers faced with relocation, to avoid forced eviction and related tensions, and provide alternative housing and fair compensation.
- Extend the Employment Act to Sabah and Sarawak, to ensure that men and women compelled to take on wage labor are properly protected under the law and receive maximum employment benefits.

(c) Environmental Law and Policies

The sociolegal status of indigenous women would be improved by better monitoring and management of environmental resources. For this reason, the following measures are recommended:

- Collaboration and coordination on environmental issues between the federal and state governments should be strengthened by
 - establishing a special committee on the environment, composed of federal and state government experts and environmentalists, whose mandate would be to protect and preserve the environment;
 - ensuring that the composition of the special committee include a fair proportion of qualified women, with its

- members chosen for their qualifications, jurisdictions, and ability to act without fear or favor;
- directing the Special Committee to undertake in-depth studies on key environmental issues on a state-by-state basis; and to form plans and strategies for environmentally sound and sustainable development for each state; and
- directing the Committee to ensure that environmental protection programs are holistic and integrated throughout the country.
- Cooperation and coordination between and within federal ministries and departments involved in environmental issues should be strengthened through a systemic, systematic approach to policymaking, planning, and programming by
 - designating the Department of the Environment as the lead environmental agency in the Government, with responsibility for coordination and cooperation between and within government ministries, departments and units; and
 - ensuring that a representative proportion of qualified women experts and environmentalists are included in all environmental ministries and departments at all levels, and that any environmental committee includes a representative number of women.
- Environmental enforcement measures should be strengthened, positive compliance incentives put into place, and penalties (fines, property seizures, jail sentences) against violators substantially increased so as to ensure that polluters and other environmental violators pay the cost of degrading and depleting the environment. Such enforcement should include
 - the allocation of adequate resources to enforcement; and
 - the adoption and conveyance to enforcement officials, developers and businesses, and the general public of an attitude of zero tolerance for polluting, destroying, and degrading the environment.
- Independent environmental audit teams should be established, composed of NGOs, scientists, government officials, women's organizations, and progressive business people, to conduct

surprise independent audits of companies awarded timber concessions to ensure they comply with the law and report openly and transparently to the public. Such audit teams should be mandated to oversee environmental enforcement measures generally.

6.3.3 Legal Awareness and Gender Sensitization Programs

(a) Gender Sensitization and Legal Awareness Programs

The following measures are recommended:

- The National Institute of Public Administration (INTAN) will be using HAWA's gender sensitization program within the Government. To achieve the best, continuous results,
 - HAWA and INTAN should first target police and social welfare officers, the first line of defence in rape, incest, and domestic/marital violence crimes, and institute an ongoing training program that teaches specific skills and how to handle victims sensitively;
 - HAWA, INTAN, the Joint Action Groups Against Violence Against Women (JAG), other women's organizations, police, and social welfare representatives should review and evaluate the RCMP/JAG gender sensitization training, workshops, and results; develop a training program, action plan and time frame; develop training modules geared to different needs and levels; identify and train trainers; institute and carry out a nationwide gender sensitization program for police and social welfare workers; and include a monitoring and evaluation component to determine the program's effectiveness.
- HAWA should develop a coordinating mechanism to pull together all the legal awareness and literacy efforts and programs initiated by such organizations as its own together with the Association of Women Lawyers, JAG's members, AWAM, and the Legal Aid Center, women's studies centers and law faculties at the universities, etc.; and jointly develop a nationwide legal

awareness and literacy program, with the dissemination of jointly produced materials through the service centers being set up by each state's women's consultative committees. HAWA should involve the media and schools to the extent possible, to gain maximum exposure for its legal literacy campaigns and materials.

- HAWA should provide information and materials, as well as trainers, to the women of indigenous and aboriginal communities, who are faced with major legal problems in terms of both land and labor.

(b) Legal Awareness, Gender Sensitization, and Indigenous Women

The additional programs are recommended to better serve the interests of indigenous women, in particular Orang Asli women and indigenous women in Sabah and Sarawak:

- In order to enhance knowledge and raise consciousness about the linkages between women and the environment, extensive dissemination of information to and education of the general public and specific groups (women's organizations, NGOs, academe, public and private sector, unions) should be undertaken through conferences, workshops, seminars, the media, schools and universities.
- Women's organizations should form closer links with environmental NGOs to review and disseminate laws pertaining to the environment.
- The administrative, monitoring, and enforcement roles of government officers responsible for land development should be strengthened through more training and education, better technology and data collection, a greater allocation of resources, and increased institutional support. They should be charged with the priority of giving better attention to native land claim applications, and their processing and title registration, as well as in gender sensitization.

6.3.4 Legal Institution-Building, Capacity-Building, and Training Activities

(a) Capacity Building in Joint Action Group (Against Violence Against Women) and Women's Affairs Division

The following recommendations are to augment the capacity of JAG and HAWA in order to improve the legal status of women:

- Because legal institutions have, on the whole, not adequately handled women's issues or concerns, it is proposed that JAG take the lead in setting up a forum in which to discuss and formulate a plan of action for establishing legal aid centers for women, and linking these to the proposed integrative family courts. The centers would deal with family law and violence against women by undertaking to provide legal advice, information and aid; take on legal test cases; monitor the legal situation and evaluate progress in terms of existing laws and law reform; identify gaps and constraints; develop nation-wide strategies and action plans; institute training; and develop training modules for use at different levels of knowledge and expertise.
- JAG should carry out a systematic review and evaluation of the various methods used by women's organizations to influence policymakers and decision makers inside and outside of the Government; to identify the most effective techniques and political efforts; and to develop a strategy for involving more women in the political process and legal reform, including training women and sustaining their long-term involvement.
- JAG and HAWA, using the proposed legal aid centers for women, should develop a systematic plan to monitor the implementation and enforcement of the DVA and other key laws affecting women; establish monitoring indicators, criteria, and guidelines; and develop regular monitoring training programs for JAG members, NGOs, service centers' staff, etc.
- NGOs have filled a long-term void by providing counseling to women in need through the use of (volunteer) counselors, who

often lack formal qualifications but have many years of experience in counseling. With the passage of the new Counseling Act and more surveillance of the counseling profession, NGOs and their counselors may encounter difficulties. Thus, it is proposed that HAWA and JAG take the following actions:

- Undertake a study to examine the need for counseling services for victims and survivors of violence; the extent to which counseling needs are presently being met by different institutions besides NGOs; the type of counseling given and its effectiveness, such as rape counseling under the DVA and one-stop crisis centers in major hospitals; the training needs of counselors, in government, the private sector and NGOs; and the training institutions available for catering to their varied needs.
- Assess how the Act will affect NGO counseling services, their counselors, and training programs; whether a system can be set up to accredit existing services and their counselors; and which educational and training institutions might develop and run specialized certificate programs for volunteer counselors and NGOs.
- Ascertain to what extent JAG members and other women's organizations could provide more services, monitor, train, and provide public education and advocacy in the whole counseling area.
- Be given priority, with its member organizations, in accessing the HAWA Fund for NGOs.
- The above proposals will greatly increase the workload and resource burdens on JAG and its members (and HAWA, too). If JAG is expected to play such a major, "front-and-center" role in so many areas, a pertinent recommendation would be for institutional strengthening and capacity building within JAG itself and its constituent members.

(b) Capacity Building in the Area of Environmental Law and Policies

The following recommendations are proposed:

- More women should be integrated into key environmental ministries, departments, units, programs, and projects to promote gender and environment legal issues.
- In order for women to influence policymakers and decision makers in a substantive way, they will need to build up a cadre of experts on environmental law issues and conditions. Therefore environmental training courses should be developed for women in women's organizations, legal aid agencies, and NGOs to develop their knowledge base on gender and environment law.
- Faculties of law and environmental studies should institute curricula and courses that integrate environment law and gender issues, and encourage both men and women students to study these nontraditional legal areas.
- Women's organizations should develop a systematic approach to lobbying for better environmental protection policies and legislation, including media kits, public information materials, recommendations supported by research, monitoring mechanisms, reports on the environmental records or stance of elected representatives, and strategic actions plans targeted to specific sectors and regulatory bodies.
- Governments—national, state, and local—should undertake to include a fair representation of women on all environmental agencies and bodies, and involve women in all aspects of decision making on environmental issues and policies. Likewise, international institutions like ADB should strongly urge governments to move toward incorporating a fair representation of women in policy setting and decision making on environmental matters.
- Typically, both women and the environment receive considerably fewer resources—financial, human or physical—than other sectors. This should be remedied by allocating a fair

proportion of both overseas development assistance and the Government's budget, within a definite time span, to improving the status of women, improving and protecting the environment, and remedying detrimental impacts of environmental decline on women.

- Such financial resources should be allocated to both key governmental bodies (e.g., HAWA and the Department of Environment) and to NGOs/women's organizations to develop action plans and targeted strategies; to prepare information and education materials and campaigns; to put together training courses/modules and conduct training; to undertake research and data analysis; to set up legal aid and information centers, including in the rural areas; and to increase qualified staff while improving the effectiveness of existing staff.
- Given that the need for the enforcement of laws is vital to both women and the environment, and that most government departments lack enough qualified staff to undertake enforcement on a regular basis, government should not only increase the numbers of enforcement personnel but also increase their expertise and effectiveness. Women's organizations and environmental NGOs should be consulted on and involved in enforcement.

6.3.5 Indicators, Monitoring, and Evaluation

The lack of monitoring has undermined the protection of women's rights and the systematic application and enforcement of laws and regulations designed to protect women and give them equality. Toward alleviating this problem the following measures are recommended:

- the proposed women's legal aid centers, with assistance from JAG and HAWA, systematically undertake the monitoring task. This would entail, among others, collection of information and statistics from police reports, welfare cases, court cases, women's organizations' files, enforcement records, and proceedings; observations of the treatment of women by police, court officials, welfare officers, hospital staff, counselors, and

lawyers; in-depth analysis of the data and findings; and periodic evaluation studies to assess progress in protecting women's rights and improving their situation. This would also entail establishing long-term, comprehensive monitoring, analysis, and evaluation training programs for staff and NGOs;

- part of the monitoring program includes an in-depth review and analysis of educational curricula, textbooks, teacher training materials, etc., that contain and give biased, false, and inaccurate sex stereotyping and contradictory messages about women and girls, gender equality, and sex education; and
- databases for environment, women, and the law be substantially improved, if not actually redeveloped from the start, and that they include gender disaggregation on a systematic, regular basis.

6.4 Philippines

6.4.1 Philippines: Institutional and Policy Framework

The recommendations for reform of the sociolegal institutional and policy framework in the Philippines are as follows:

(a) Review the Concept of “Equality Before the Law”

As used in the provision for gender equality in the Constitution, this concept ignores sex and gender-based differences that are very real. When sex and gender-based differences are ignored, great pressure is placed on women to meet men's standards or perform like men, even at great risk or danger to themselves. On the other hand, the framers of the Constitution say that “reasonable differences” such as those due to biological differences are permissible and consequently deny women their rights or limit possible options. (One manifestation of a protectionist provision is the night work prohibition for women, which denies women extra income.) Also, many of the laws are actually biased against women, so it is difficult to achieve “equality before the law.”

(b) Conduct Genuine Consultations with Women Affected by Proposed Legislation or Policy

Women who attend consultations or hearings set by the legislative chambers leave feeling as if they have not been consulted at all. Legislators who are supposed to listen usually do all the talking. The resulting policy as often as not takes no consideration of the policy proposals put forward by women and reflecting the views of the affected parties. Guidelines must be put in place for government institutions to adhere to proposals generated in such consultations.

6.4.2 Philippines: Legal Reforms

(a) Harmonize State, Islamic, and Customary Laws

There is a need to harmonize these laws to avoid conflict and confusion. Under the Family Code, for example, the property regime between husband and wife is absolute community of property unless specified otherwise in a prenuptial agreement. Under Islamic law, the property regime is that of complete separation of property, but only the husband is obliged to support the family. In cases of separation or divorce, problems arise as to who owns the property acquired by the husband and wife during the marriage. There is a conflict between provisions of the Civil Code and Family Code and those of Islamic law.

(b) Outlaw Violence Against Women and Children

The following measures are recommended:

- Pass legislation outlawing violence against women, especially domestic violence.
- Review and revise courts' procedures and treatment of cases of violence against women. for example, a case of domestic violence where the offender is related to the victim should not be treated like a case where the offender is a stranger. Protective orders need to be issued.

- At present the crime of pedophilia is bailable. This law needs to be amended, as pedophiles, many of whom are foreigners, jump bail and leave the country and are thus never prosecuted.

(c) Review Conflicting Provisions on Adultery in the Civil Code/Family Code and the Revised Penal Code

Under the New Family Code, sexual infidelity of a spouse is grounds for separation. Under the Revised Penal Code (Article 333 & 334), however, adultery is illegal if committed by married women, but not if committed by married men. A man can be punished only for concubinage, which is more difficult to prove. Adultery also carries a heavier penalty than concubinage. The provision for premature remarriage of a widow has been abolished by the New Family Code but is still punishable under the Revised Penal Code.

(d) Review Management Of Property Provisions in the Civil Code/Family Code

The philosophy of management by both husband and wife under the new Family Code is one of joint ownership or management. However, in cases of conflict, the Code provides that the husband's decision prevails; if the wife wishes to contest her husband's decision, she must go to court. This is discriminatory against women. Both husband and wife should have to go to court in cases of disagreement.

(e) Restore Special Courts to Handle Cases on Women and Children

Under the present system, the Regional Trial Courts, aside from their regular jurisdiction, are designated to hear family and juvenile cases. Their attention is thus divided. The problem is compounded by the judges' lack of expertise in handling women's and children's cases. Trained support court personnel who can deal with the victims are also lacking.

The specialized courts should, however, not merely be designated as Juvenile and Domestic Courts, which limits their jurisdiction to family

and child-related problems. For example, cases of violence against women that are not caused by family relations would not come under the jurisdiction of such courts. If financial constraints prevent establishment of special courts, specific training programs for judges in handling cases concerning women and children must be put in place.

**(f) Offer Trauma-Free Dispute Resolution/
Rehabilitation for Victims**

Programs should be established for the rehabilitation of victims and perpetrators, especially in child abuse cases. Alternative dispute resolution mechanisms must be attempted, as present legal processes are traumatic to the victims.

(g) Reduce Filing Fees for Domestic Violence Cases

In domestic violence cases, especially where the wife is economically dependent on the husband, the wife does not usually have sufficient financial means to sustain litigation. Filing fees should be reduced on a sliding basis, or battered women and children should be exempted from such fees.

(h) Provide Lawyers for Children in Custody Cases

In child custody cases, both parents have lawyers who will work for their own interests. The children are left at the mercy of the lawyers working for their parents. The State should provide lawyers for the children who will look after their interests.

6.4.3 Philippines: Legal Awareness and Gender Sensitization Programs

The following reforms are recommended:

(a) Survey the Level of Legal Awareness of Filipino Women, Especially as to Their Rights

At present no institution, government or nongovernment, has done a survey among women on the levels of awareness of their rights. This knowledge is important for the creation of adequate programs that address the need of women to know their rights.

(b) Expand and Institutionalize Existing Legal Awareness Programs

Legal literacy raises women's consciousness about themselves and the need for social change. It is the first step toward encouraging women to assert their rights. The legal awareness training presently being done by NGOs and women's groups is sporadic, without clear parameters and guidelines. Government institutions should also institute legal awareness programs.

(c) Provide Gender Sensitivity Training for Health Service Providers, Police and Other Law Enforcers, Lawyers and Judges

Those who deal with women victims seeking redress through the legal system must be sensitive to the needs of such women. Health service providers are often the first place abused women turn to. Police and other law enforcers usually respond to calls and apprehend the perpetrator or bring initial charges; if such providers are uncaring and insensitive, women victims may be discouraged from taking further action. In cases of violence against women, many victims feel that during the trial, they undergo a second victimization at the hands of insensitive lawyers and judges.

(d) Provide Gender Sensitivity Training for Women Legislators and Their Staff

Records show that it is not enough that there be women in the legislature. The majority of them have *not* sponsored laws that address women's concerns. The experience of the lobby for the passage of the Anti-Rape Law showed that many women legislators are ignorant or unaware of women's issues. Gender sensitivity training may help them to draft laws addressing women's concerns and to defend them on the floor. The legislative staff that does most of the basic research and drafting of legislation would also benefit from such training.

6.4.4 Legal Institution-Building, Capacity-Building, and Training Activities

(a) Provide Training for Judges and Lawyers on Laws Regarding Women

The Institute of Judicial Administration has a training program for judges, and the University of the Philippines Law Center has a program on continuing legal education for lawyers. The Philippine Judges Association also conducts seminars for judges, although not on a regular basis. These kinds of training should be institutionalized and a curriculum for laws on women and children developed. Similarly, it is important to give future lawyers a more holistic view of women's issues and the law to equip them to handle cases of women victims.

(b) Integrate the Legal and Health Services

This is necessary to close the gap between the service provider and the legal profession. The Philippine General Hospital, which is administered by the University of the Philippines, once had an Institute of Law and Medicine, where training was given to lawyers and doctors on the legal and medical/psychological aspects of rape, incest, and the like. It was discontinued due to lack of funding. This kind of program can and should be revived.

(c) Compile Indigenous Laws

A study should be undertaken by the judiciary and NGOs working with indigenous communities to compile indigenous laws and determine how these interact with the national legal system, taking into consideration the issues of ancestral domain, self-determination, and indigenous people's cultural integrity. Centuries of oppression of indigenous peoples have brought about deep-seated resentments, conflicts, and misunderstandings. These must be addressed for any meaningful healing and reconciliation to take place.

(d) Integrate Curricula for Muslim Students

At present, there are two systems of education in Muslim areas, the public and private schools under the Department of Education and Sports (DECS) and the *madrasah* schools with Islamic curricula. Mindanao State University has proposed an integrated curriculum, but this was shelved for lack of funds. This issue should be addressed by DECS.

6.4.5 Specific Leveraging Opportunities to Overcome Constraints

(a) Appoint More Women in the Decision-Making Levels of the Bureaucracy; provide Gender Sensitivity Training for those Already Occupying those Positions

The appointment of more qualified women to decision-making positions in the bureaucracy will help ensure that policies crafted by these institutions will take women's issues into account. For this to happen, these women decision makers must also be aware of gender issues and constraints facing women.

(b) Closely Monitor the Implementation of the Women in Development and Nation Building Act

This law was passed to hasten the equality of women and men in all aspects of civil life and to motivate the bureaucracy to become gender-

sensitive. The present level of compliance by government institutions is still very low. More efforts are required to ensure that the letter and intent of the law are followed.

(c) Organize Women for the Party List System

The Party List system gives women an opportunity to elect their representatives to the House of Representatives, but women must organize to be able to muster enough votes. This can be a test of whether a women's bloc vote exists or can be developed.

(d) Implement the Local Government Code Provision Granting Women Sector Representation in Local Government Legislative Bodies

This provision was passed back in 1992 but has yet to be implemented. Women must mobilize to have this provision implemented so that they can have a say in the laws and policies promulgated in the local government units.

(e) Document Lessons from Lobbying of NGOs/POs for Social Legislation

NGOs and research institutions should prepare case studies on the approaches of different NGOs and coalitions with regard to lobbying for specific legislation and policy proposals, such as the Anti-Rape Law, the Comprehensive Agrarian Reform Law, the Fisheries Code, the logging ban, the Indigenous People's Rights Act, the Urban Development and Housing Act, and the Freedom From Debt Coalition campaign. This will help in developing and refining strategies to build support for gender-sensitive lawmaking.

6.4.6 Allocation of Resources for Legal Implementation and Enforcement

(a) Increase the Budget for the Judiciary

At present, the budgetary allocation for the judiciary is less than 1 percent of the total national budget. The results, such as lack of judges and court personnel and lack of available *salas* or courtrooms, contribute to delays in adjudication and constrain the delivery of justice.

(b) Hire More Female Law Enforcement Officers and Open More Women's Desks

The ceiling for hiring female police enforcers has been lifted, but it has yet to translate into the hiring of more policewomen, and more importantly, policewomen who are gender-sensitive. The present number of women's desks in police stations is still insufficient to cope with cases brought to them by women victims.

6.5 Thailand

6.5.1 Institutional and Policy Framework

The following reforms are recommended to strengthen the sociolegal institutional and policy framework in Thailand.

(a) Build a Stronger Role for the National Commission on Women's Affairs

The fact that the NCWA is being upgraded from a division to a department indicates that the Government recognizes the importance of women's role in the country. The role of NCWA should be strengthened, so that it has the capacity to

- influence government policy formulation;
- coordinate with other agencies effectively in advocacy work, leading to changes in laws and regulations;
- network with other agencies to improve the status of women;
- monitor the implementation of development activities;
- monitor the impact of changes in laws and regulations; and
- function as an information center on women's issues.

(b) Implement the NCWA Program

The policies identified in the NCWA Report entitled “Future Strategic Goals, Policies, Programs, Areas of Concern and Plan of Action for 1995–2000” aim to promote women's potential and well-being and their equal participation in social and economic development. These policies include the elimination of discrimination against women; promotion of equality between men and women, both *de jure* and *de facto*; protection against exploitation, violence and abuse; and development of self-esteem.

Programs to be implemented or coordinated by the NCWA include research and data collection and analysis, advocacy and dissemination of information on women's issues, and the development of solutions to specific problems.

Human and financial resources are certainly necessary for the NCWA to succeed in these endeavors.

(c) Develop More Responsive Political Parties

Political parties should indicate their policies regarding women's issues, thereby enabling women to make decisions about a party's stance on women's concerns. During campaigns, each political party should set out its policies and proposed action plans. In this way, the accountability of political parties toward gender issues can be increased.

6.5.2 Legal Reform

(a) Implement the Beijing Goals

In Thailand's report prepared for the Fourth World Conference on Women in Beijing in 1995, the NCWA identified and recommended target goals for the next decade in five areas: education, employment, health care, cross-sector participation in decision-making, and law and legal rights. Some 30 goals were identified. In the area of law and legal rights, the following goals were stated:

- Adopt the following reforms of the laws and citizens' rights on Thai women:
 - allow women to initiate the act of betrothal;
 - allow women to claim compensation in cases where a fiancé has sexual relations with another woman;
 - allow women to divorce on the grounds of adultery;
 - safeguard against bigamy;
 - ensure financial support after divorce;
 - abrogate the executive order-decree that prohibits Thai women from transmitting their nationality to their offspring under all circumstances; and
 - allow Thai women the choice after marriage of using their maiden name, husband's name, or both.
- Strengthen enforcement of laws against trafficking in women, especially against those who profit from the trade.
- Widen the legal scope for decisions to abort a pregnancy and exceptions allowing abortion to reflect current realities.
- Eliminate *de facto* discrimination against women in all areas.
- Give legal protection to rural agricultural women and domestic workers.

(b) Reform Court, Judicial, and Parliamentary Systems

Attempts are being made to require every parliamentary committee to include women in higher proportions than at present. With the revision of old laws and drafting of new laws, women's groups will need

to ensure that sufficient numbers of women are involved in the drafting process.

6.5.3 Legal Awareness and Gender Sensitization Programs

The NCWA established a National Committee on the Use of Gender-Based Analysis in Development. Planners at all levels were the prime targets and have been recruited as participants. Systematic evaluation and monitoring needs to be done to assess the effectiveness of this program.

Small NGOs are carrying out legal awareness activities to help poor and disadvantaged groups. The number of people receiving legal training or legal service is relatively small. Legal services provided are directed at individual women and do not impact on the society at large. All NGOs as well as government agencies should be encouraged and expected to include gender issues in all training programs.

Specifically, gender sensitization programs should be designed for four groups, the members of which come into contact with large numbers of people:

- personnel of mass media, such as broadcasters, disc jockeys, and news writers;
- lawyers, judges, law enforcement personnel, social services personnel, paralegals, and those in formal and nonformal education;
- teachers, professors, and vocational trainers; and
- planners and lawmakers, including midlevel and high-ranking administrators, members of parliament and senators.

6.5.4 Legal Institution-Building, Capacity-Building, and Training Activities

Almost all legal training is carried out by faculties of law at the university level. NGOs providing legal training also join the faculty members. Any gender-responsive legal institution building to be carried out will have to be connected with faculties of law in different universities. One of the reasons for the lack of training programs on legal issues is funding. There are no funding sources to support these types of activities. Training on legal issues should be given greater priority.

A large number of NGOs should be encouraged to work on capacity building by forming a network to exchange experiences and help strengthen each other. Business organizations could be encouraged to join the network or form a separate network. NGOs, people's organizations, and business organizations need to join together to show strength and have a perceptible impact on society. Two suggestions:

- Networking to enable organizations to be strengthened and specialized in specific areas, and at the same time to join hands and create a show of force working toward a certain goal; and
- Setting up or nominating one or two institutions and strengthening them to
 - provide training on legal education to the public;
 - develop a gender studies curriculum;
 - develop paralegal training;
 - provide legal counselling services or personal advice to individuals or groups;
 - receive complaints on misconduct in law enforcement and investigate; and
 - monitor changes taking place after laws and regulations have been changed.

6.5.5. Specific Leveraging Opportunities to Overcome Restraints

(a) Broaden the Scope of the New Constitution

To a certain extent the new Constitution promotes awareness among policymakers and decision makers on the issues of rights and equality. Members of the Network of Women and the Constitution will have to continue to push for gender-sensitive and gender-inclusive changes to simultaneously reform many discriminatory laws and regulations.

(b) Recruit More Women as Policymakers and Decision Makers

If women are decision makers themselves, and conscious of their role in improving the status of women, then women's condition will be improved. At the moment, women still shy away from taking the responsibility, partly through lack of confidence.

(c) Promote Gender Equality as a Human Resource Development Issue

Human resource development is given high priority by the government and international organizations, and needs to include women to be truly progressive. The NCWA has been working with NGOs to advocate changes in the law that will lead to greater equality of men and women and reflect concerns for human dignity and basic human rights, and it plans to monitor such changes.

6.5.6 Allocation of Resources for Legal Implementation and Enforcement

At this point, because of economic recession, it is not realistic to expect government support for resources to implement legal and enforcement programs. International funds in the form of grants appear to be the only alternative. It may be unrealistic to apply for loans for such programs during this low economic period.

CHAPTER 7

RECOMMENDATIONS AND CONCLUSION

7.1 Introduction

ADB's mission is to help its developing member countries (DMCs) reduce poverty and improve the living conditions and quality of life of their citizens. This overarching goal of poverty reduction is closely linked to improving the status of women, since equity—especially gender equity—is now recognized as an essential factor in transforming growth to development and reducing poverty. Moreover, poverty is increasingly seen as a deprivation not only of essential assets and opportunities, but of rights, and therefore any effective strategy to reduce poverty must empower disadvantaged groups, especially women, to exercise their rights and participate more actively in decisions that affect them.

Until the 1997 Asian crisis, the countries included in this regional study were heralded for their achievements in spurring economic growth, resulting in improved living conditions for many of their citizens. However, as the findings of this regional study show, women in Indonesia, Malaysia, the Philippines, and Thailand still face considerable legal, social, religious, and attitudinal barriers in accessing resources and economic opportunities, in their community activities and personal lives, and in their interactions with government institutions. These constraints intensified the impact of the 1997 crisis on women, especially poor women, and continue to limit their options and prospects.

Legal barriers and lacunae facing women in the Asia and Pacific region arise from a number of factors. These include, among others, laws that discriminate against women, either on their face or as applied; the absence of gender-sensitive laws, particularly laws relating to domestic violence; conflicts between laws based on varying sources, including religious and customary laws and practices, which are often based on patriarchal norms; and conflicting rules and regulations. The situation is further compounded by factors such as the widespread lack of gender sensitivity among government agencies, including the judiciary and law

enforcement; poor legal literacy among large numbers of women; prevailing attitudes toward women's status as well as their attempts to seek legal redress; women's limited financial capacity to seek legal recourse; and women's lack of access to legal services.

Women's capacity to respond to development efforts is often compromised by the legal and social barriers they face. Two thirds of the poor in the Asian and Pacific region are women (ADB 1999a: 12) and yet ADB's efforts to reduce poverty and improve the status of women can be stymied by legal and social obstacles to their participation. Efforts to strengthen women's capacity to participate in the development process are likely to have better and more enduring outcomes if there is a more equitable legal environment, in which women can participate freely and equally, and if women have the information and resources to claim their entitlements and defend their interests. Recommendations for possible ADB interventions to improve women's legal status and participation in development processes, at policy, sector, regional, and country levels, are presented below.

Any successful development agenda must be owned and led by the developing country itself, and this is especially true where the country's legal system and legal institutions are involved. As shown by the country reports carried out for this regional TA, the four countries studied here have already committed themselves to improving the status of their women citizens, through ratification of CEDAW and other treaties, and through their assent to the Beijing Platform for Action and other international commitments. The reports also document steps these countries have already taken to improve the legal frameworks applicable to women. To support these efforts, recommendations are included below for further steps governments can take, including gender-sensitive changes in laws and regulations; improved implementation of laws; promotion of greater gender sensitivity within the judiciary, law enforcement, and other government agencies; and improved access of women and other disadvantaged groups to affordable legal services.

This regional study also demonstrates the critical role that women's organizations in the four countries have played in monitoring their compliance with their international commitments relating to women, in advocating positive changes in laws and regulations and their implementation, in improving women's awareness of their rights, and in

making legal support services available to poor women. Recommendations therefore are also made below for additional actions that women's organizations and other civil society groups might take to further these important goals.

7.2 Recommendations for ADB

7.2.1 Strategies and Policies

The findings of this regional study have important implications for ADB's operations at the policy, sector, country, and regional levels. At the policy level, these findings are relevant not only to ADB's Gender and Development Policy, but more generally to ADB's new Long-Term Strategic Framework (LTSF; ADB 2001c) and related initiatives on poverty reduction, governance, and social protection.

a. ADB's Gender and Development Policy

In June 1998, ADB's Gender and Development (GAD) Policy was approved (ADB 1998f). The Policy seeks to operationalize GAD issues through mainstreaming gender considerations and implementation strategies in its policy dialogues, in its macroeconomic and sector programming, and through its TA and loan projects. This requires that ADB staff address gender issues in all of their operational work, formulate projects with GAD either as a primary or secondary classification, and ensure that gender concerns are addressed in all ADB projects, regardless of the sector in which they are classified. Along with mainstreaming, the policy recognizes the need to design stand-alone projects in order to address gender disparities.

The mainstreaming of gender concerns in ADB's operations is reflected in the bank-wide and departmental gender action plans that are being developed and implemented, as well as in the attention paid to gender issues in bank-wide strategies such as the new LTSF, Medium-Term Strategy (MTS; ADB 2001b), and Poverty Reduction Strategy (ADB 1999a). Consistent with its other efforts to work more closely with civil society groups, ADB also recently launched Gender and Development

Initiatives,⁶ a regional TA program to support innovative pilot schemes run by women's NGOs.

The findings of this regional study strongly support the mainstreaming approach of ADB's GAD Policy, since the four country studies provide numerous examples of ways in which women's economic, social, and political activities are constrained by a complex web of civil, religious, and customary laws; bureaucratic procedures; and social norms and attitudes. As women play multiple roles in their economies and societies—as employers, workers, consumers, caretakers, and community leaders—the sociolegal constraints on their choices and activities have negative repercussions in all sectors. Because these constraints are multilayered and pervasive, ADB's efforts to improve women's status need to extend to all economic sectors where women are active, as well as to improvements in basic public services, social protection programs, and local governance.

Two thematic areas touched on by all of the country reports are the negative effects on women of increased migration and trafficking in women, and the need for more effective implementation and enforcement of laws relating to domestic violence. These common themes suggest areas for possible future policy dialogue and TA, either on a country or regional basis. However, since a number of UN agencies and NGOs are already working actively on these issues, ADB should coordinate closely with them on policy advice and other assistance. (For example, ADB is already providing assistance to three South Asian countries on combating trafficking in women and children, in coordination with ILO and other UN agencies.)

While presenting several common themes, the country studies also illuminate distinctive patterns of gender discrimination and disempowerment within each country, as a result of its particular history, political system, religious orientation, social structure, and economic performance; as well as differences among women within the same country related to factors such as class, ethnicity, and religion. (The country studies make this point most starkly with respect to the precarious status of indigenous women, and also in outlining the different personal laws that can apply to women of the same country depending on

⁶ TA5889-REG: *Gender and Development Initiatives*, for \$850,000 approved in December 1999.

their ascribed religious or ethnic affiliation.) The regional study therefore reinforces the need for attention to the particular circumstances and priorities of women in each country (and within a country), and cautions against a uniform, “cookie-cutter” approach to improving women’s status within Southeast Asia, or in the Asian and Pacific region more generally.

b. ADB’s Long-Term Strategic Framework and Related Initiatives

The findings of this regional study also have implications for ADB’s LTSF and related strategies and policies, which already recognize the importance of gender equity and women’s empowerment to ADB’s overarching goal of poverty reduction. The LTSF, which will guide ADB’s operations through 2015, and the MTS for 2001–2005, outline three core areas of intervention, based on ADB’s Poverty Reduction Strategy adopted in 1999. These are

- sustainable economic growth,
- inclusive social development, and
- governance for effective policies and institutions (ADB 2001: 14).

The LTSF, MTS, and Poverty Reduction Strategy recognize that poverty is a complex phenomenon that can vary significantly in its underlying causes, victims, and impacts. More than simply a measure of low income or caloric intake, poverty is a deprivation of essential assets and opportunities, and implies powerlessness and lack of freedom to participate in decisions that shape one’s life. The LTSF, MTS, and Poverty Reduction Strategy also recognize the increasing feminization of poverty in Asia and the Pacific, resulting from gender disparities in education, health care, work opportunities, and access to assets and resources, as well as the additional burdens on women caused by male migration, economic slowdowns, and the collapse of social services, especially in transitional economies. They therefore stress the importance of equity, especially gender equity, to transform growth to development and to reduce poverty, and the need to empower women and other marginalized groups to participate in decisions that affect their lives and interests.

These twin themes of **equity** and **empowerment** are to be addressed explicitly in both programs and specific projects. Moreover, ADB's inclusive social development agenda entails reducing gender discrimination in all development efforts, as well as promoting more equitable land reform, property and tenure rights, accessible justice systems, and effective social protection programs.

This regional study on the sociolegal status of women demonstrates the specific and interrelated ways in which women, especially poor women, are denied equitable access to assets, resources, and economic opportunities, and are disempowered from pursuing and defending their interests by legal, institutional, and sociocultural barriers. The study therefore underscores the importance of maintaining a strong gender focus in all poverty reduction activities, to ensure that the goals of gender equity and women's empowerment are translated into concrete, meaningful steps to assist poor women in the Asian and Pacific region.

The regional study is also relevant to ADB's Governance Policy (ADB 1995), reflected in the third core area of the LTSF, and to ADB's recently approved Social Protection Strategy (ADB 2001a). Under the LTSF, ADB's governance work will focus not only on "core" public sector management issues, but also on legal system reforms, delivery of public services to poor people, and improvements in local governance. To support meaningful progress in these areas, it will be important for ADB to consider women's sociolegal status and constraints in structuring its governance interventions. For example, in its support for decentralization and improved local governance, ADB should ensure that women are included in local governing bodies, and that local institutions are responsive to women's needs. (The proposed TA on Gender and Governance, noted above, is a welcome initiative in this area.) In the area of social protection, the country reports included in this study provide several examples of laws and administrative practices that disadvantage women, including the channeling of pension and other benefits to the "head of household," who is assumed to be male, and the absence of social protections for part-time, informal sector, and home-based workers. These examples highlight the need to structure social protection programs to ensure that women, including those engaged in informal and home-based activities, are adequately covered.

7.2.2 Law, Policy Reform, and Legal Empowerment Activities

In recent years, ADB has accelerated its law and development activities, focusing in particular on assisting DMCs to strengthen their economic laws and judicial systems. These activities have complemented ADB's objective of promoting economic growth and also furthered its Governance Policy, which stresses principles of accountability, participation, predictability, and transparency. In response to the 1997 Asian crisis, ADB's law and development program focused increasingly on law and policy reforms for the financial systems and capital markets affected by the crisis. Most of the law and development activities to date have concentrated on creating a legal and regulatory environment conducive to economic growth, defined in terms of openness to private sector investment. However, ADB's new LTSF, MTS, and Poverty Reduction Strategy suggest that more law and development resources should be directed to improving equity, especially gender equity, in DMC legal systems, and to promoting legal empowerment of disadvantaged groups, including women. This latter goal is already being pursued through a regional study on legal literacy to support governance, which has reviewed legal empowerment initiatives in several DMCs and recommends that ADB include legal empowerment activities in its future programs and projects. Legal empowerment components are already being included in specified legal TAs, such as a TA to help Cambodia implement its new land law.

This regional study of women's sociolegal status has a number of implications for ADB's law, policy reform, and legal empowerment activities. The country reports included in the study illustrate the extent to which formal legal systems are embedded in complex social and cultural structures, and are shaped by evolving cultural norms. Therefore, even seemingly "gender-neutral" laws can disadvantage women, because of gender biases in their implementation or because of underlying social practices. The reports demonstrate the importance of international treaties such as CEDAW and "soft law" documents such as the Beijing Platform for Action in influencing national laws and policies. The reports also highlight some of the tensions and conflicts between international commitments and domestic laws relating to women's status, as well as conflicts between civil, religious, and customary laws, particularly

relating to personal status and ownership of assets. Perhaps most importantly, the country reports confirm the need for equitable and gender-sensitive implementation of laws, for the sensitization of judicial and law enforcement personnel to women's issues and concerns, and for improvements in women's legal literacy and access to justice.

The regional study suggests that it would be fruitful for project lawyers in the Office of General Counsel to familiarize themselves with the key human rights and ILO conventions that have been ratified by the DMCs they are responsible for, and also with key elements of the personal status laws that apply to different ethnic and religious groups in these countries. In considering any new law reform proposal, or the legal framework for a proposed project, project lawyers should also satisfy themselves that there are no obvious conflicts with the country's international treaty commitments, and that the proposed law or project framework will not have adverse effects on women, especially poor women. It is also recommended that any needs analysis carried out as a basis for a new legal TA proposal include a gender analysis, to ensure that ADB's gender equity and empowerment goals are mainstreamed in future law and development activities. For example, it would be important for any future legal empowerment activities to take into account the multiple barriers that poor women face in asserting their rights and protecting their interests. Gender issues are already being addressed in some legal TAs, such as the TA for legal and judicial reform in Pakistan, and in the proposed loan to Pakistan for an Access to Justice program.⁷

The regional study also suggests a number of specific TA projects that could be undertaken, either on a country or regional basis, to improve women's sociolegal status and legal empowerment:

⁷ TA 3433-PAK: *Strengthening of Institutional Capacity of Legal And Judicial Reform* for \$2,900,000, approved on 27 April 2000; TA 3577-CAM: *Implementation of Land Legislation*, for \$600,000, approved on 13 December 2000; TA 3640-PAK: *Supporting Access to Justice under the Local Government Plan*, for \$150,000, approved on 19 March 2001; and TA 3823-PAK: *Supporting and Monitoring Justice under the Access to Justice Program*, for \$900,000, approved on 20 December 2001.

a. Studies of Women's Sociolegal Status in Other Regions Such as South Asia, the Pacific, the Greater Mekong Subregion, and Central Asian Republics

The current regional study has been an important first step in deepening ADB's understanding of the complex framework that shapes women's sociolegal status in its DMCs, and in recommending steps to improve women's status and access to justice. However, while the current study reveals a number of common trends and themes, it also shows the diversity among countries, even within the same subregion, in terms of governance structures, legal frameworks, and religious and social norms and practices, all of which influence the sociolegal position of women in each country. It would therefore be advisable to undertake similar studies of women's sociolegal status in other subregions, to better understand the political, economic and social forces that shape the laws and norms applicable to women in those regions. Future regional studies could focus in particular on the sociolegal vulnerabilities of poor women, and on practical strategies for improving their status and access to justice, in light of ADB's increased emphasis on equity and empowerment in its poverty reduction work.

b. Support for Improved Collection of Data on Women's Sociolegal Status, and Development of Sociolegal Indicators

Both ADB and its DMCs have an interest in improving the collection of data on women's sociolegal status, and in developing monitorable indicators of improvements in women's status. Under its new LTSF, ADB is placing greater emphasis on measuring and monitoring the impact of its development assistance, as reflected in the monitorable benchmarks and indicators that will now be included in all of its country strategies and programs. Given the importance of improving women's status to ADB's mission of reducing poverty, there is an urgent need to establish benchmarks and indicators to measure women's status, including its sociolegal dimensions, and to improve the collection of gender-disaggregated data relevant to these indicators. DMCs also have urgent needs to establish indicators and improve their collection of data

relevant to women's status. This information is relevant not only to the country's planning, policy-making, and lawmaking processes, but also to the country's reporting obligations under CEDAW and other international treaties.

These needs could be addressed by country-specific TA or regional TA to develop monitorable indicators of women's status, including sociolegal factors. Some possible measures that have been identified through this regional study include women's ownership and access to economic resources such as land; male/female wage differences by occupation and sector; law and practice related to hiring and firing of women workers, and their access to statutory benefits; the legal status of women working in the informal sector and at home; data on the proportion of women working in government agencies (including law enforcement), legislative bodies and court systems; statistics from courts, police stations and prisons for civil and criminal offenses, on a gender-disaggregated basis; the number of rape cases reported and investigated, a breakdown of different types of rape reported (e.g., marital, incest, by strangers), and the nature and extent of penalties imposed on rapists; the number of reports of physical assault and battery, stalking, intimidation, and sexual harassment of women, and the disposition of these cases; the number of complaints about police treatment of women; data on trafficking in women and children, child abuse, and prostitution; and data on family formation and dissolution under the various systems of law (civil, religious, and customary).

TA will also be needed to improve the collection of gender-disaggregated data relevant to these indicators, by national statistical bureaus, courts, and other agencies. This would involve upgrading computer databases and training staff to input and analyze relevant data. Further assistance could be provided to a "lead" agency, such as a national commission or agency for women's affairs, to synthesize and publish these data, in hard copy or in electronic versions that are readily accessible and easily updated.

c. Training of Judges, Lawmakers, Lawyers, Court Officers and Law Enforcement Personnel in Gender Awareness and Gender Sensitization

A common theme that emerges from the country reports for this regional study relates to gender bias in the drafting and implementation of laws, and the insensitivity of government personnel, including judges and law enforcement officials, to women's concerns, especially in cases of rape and domestic violence. A large component of ADB's recent legal TA activity has involved training and capacity building of the judiciary, lawyers, and government officials involved in law reform. The findings of this regional study suggest there is a substantial need to extend these activities to include gender awareness and sensitization. Although any TA would need to be tailored to the country context and institution(s) concerned, such programs might include: training of legislators and their staffs, government lawyers, judges and court officials, and law enforcement personnel about their country's obligations under CEDAW, ILO conventions, and other treaties; conflicts between these international commitments and civil, religious, or customary laws; conflicts between constitutional guarantees of women's equality and laws and practices that discriminate against women or otherwise disadvantage them; and institutional biases and insensitivity that discourage women from seeking law enforcement protection and using the legal system to protect their interests.

Such training could be conducted by experts from justice ministries, law faculties, bar associations, training institutes, legal aid agencies, women's organizations, or a team of experts from different institutions. Any training should be interdisciplinary, to ensure that sociocultural as well as legal issues are addressed. Ideally, a training team would include a sociologist or other social development specialist who has worked directly with women. In this regard, the training programs currently offered in the Philippines could be a useful model for adaptation.

d. Women's Legal Empowerment

As noted above, ADB has recently broadened its law and development activities to address legal empowerment issues, recognizing that poor people and other disadvantaged groups frequently are unaware of their rights, or are discouraged from pursuing their rights, through administrative or judicial processes because of bureaucratic indifference, prejudice, corruption, cost, or other factors. As this regional study demonstrates, women, especially poor women and women from indigenous and ethnic minority groups, experience multiple forms of legal disempowerment due to their lack of awareness of their rights, their limited literacy and financial resources, the bias or indifference of government officials and court officers, community restrictions on their travel and public activities, and community and family pressures to resolve disputes informally. This study therefore suggests that ADB should give special attention to women's legal empowerment through country-specific TA and regional TA.

The country reports included in this regional study note the important role that has been played by legal aid offices, women's organizations, and other NGOs in educating and advocating for women in the four countries. However, the reports also note that these organizations serve only a fraction of the poor women who need their services, due to limited and uncertain funding. Because these NGOs have substantial experience in working with poor women, it would be desirable for ADB to channel training and capacity-building support to these organizations, and to encourage the formation of similar organizations in underserved areas. The Gender and Development Initiatives regional TA, which provides small grants to NGOs for innovative community-based programs, has been an extremely effective source of funds for these purposes. It is strongly recommended that this TA be renewed and expanded to support legal services for larger numbers of poor women.

To promote women's legal empowerment, ADB could also support the development of law school courses on gender and law, as well as clinical programs in DMC law schools to train law students to provide practical legal services to poor clients, including women. These activities could be supported not only through TA, but also through ADB loans for higher education. In addition, ADB could support the development of

paralegal or “barefoot lawyer” services for poor clients, including women, at affordable rates.

e. Specific Priorities for Legal TA Related to Women’s Status

The four country reports in this regional study include a number of specific recommendations for legal and institutional changes to improve women’s sociolegal status in those countries (outlined in the previous chapter and summarized in Appendix 4). Common themes in the country reports suggest that ADB could provide TA, either on a country or regional basis, in the following general priority areas related to women’s sociolegal status:

- gender implications of trade liberalization and integration, including the loosening of restrictions on the cross-border movement of people and goods and the establishment of free trade or special economic zones;
- possible improvements in international, regional, and bilateral approaches to related issues, including treatment of migrant workers, trafficking in persons (especially women and children), rights and conditions of workers (especially in special economic zones), food security, and public health concerns;
- gender implications of market reforms, such as land titling and privatization of essential services (including health care and water supply);
- implementation of international treaties and standards, particularly CEDAW and ILO conventions relevant to women, including improved mechanisms for collecting data and monitoring compliance; and
- support for drafting or improving laws particularly relevant to women (and their enforcement), including:
 - laws on nondiscrimination and equal pay in employment;
 - maternity protection laws;
 - laws and regulations applicable to small businesses (including business registration and tax laws);

- social security coverage for part-time, home-based, and informal sector workers; and
- laws against rape (including marital rape), domestic violence, and sexual harassment.

f. Promotion of Information Sharing and Exchange

The national and regional workshops for this study provided rare opportunities for government officials, legal academics and practitioners, and leaders of women's NGOs to share information, experiences, and strategies for improving women's status and legal empowerment. Another recommendation emerging from these workshops is that ADB could facilitate the setting up of networks and websites so that government officials, academics, lawyers, and women's NGOs in countries with similar legal systems could exchange information and proposals related to the implementation and reform of civil, religious, and customary laws to benefit women. Alternatively, ADB could sponsor these exchanges through LAW-DEV, its own Internet forum on law and development issues. ADB could also consider expanding its Project DIAL (Development of the Internet for Asian Law) to include international treaties, national laws (including case law), and legal commentaries relating to women's status.

7.2.3 Country Strategies and Programs

ADB's GAD Policy recommends that gender considerations be prominently reflected in ADB's country strategy and program (CSP) activities. Based on this recommendation, gender concerns have been integrated in CSPs through preparation of country briefing papers on gender and gender strategies, which provide analysis and recommendations for incorporation in the CSPs. Under ADB's LTSF and Poverty Reduction Strategy, the CSP now includes poverty assessments, resulting in a partnership agreement on poverty reduction (PAPR). Gender considerations should continue to be mainstreamed in these CSP activities, through inclusion of gender analysis in the poverty assessment, continued preparation of country briefing papers on gender, and gender strategies. These gender considerations should also be reflected in

concrete commitments in the PAPR. Based on the findings of the country reports for this regional study, it is recommended that the PAPR and the CSP should give particular attention to the most urgent and pervasive sociolegal constraints facing women in a given country, propose appropriate indicators and improvements in in-country data collection to monitor women's sociolegal status, and include specific strategies and programs in key economic and social sectors to improve women's status. In this regard, sociolegal issues and constraints affecting women could be summarized in an appendix to the PAPR and CSP, and related commitments or strategies could be integrated in the main text of the document.

Country strategy and programming missions should also raise the sociolegal constraints faced by women in their policy discussions with government officials, including discussions on strategies for achieving sustainable economic growth, more inclusive social development, and improved governance, and in identifying areas for possible ADB support.

7.2.4 Loan Operations

Under the LTSF, MTS, and Poverty Reduction Strategy, ADB will be continuing to assist its DMCs through program and project loans and grant-based TA, as well as through new or hybrid modalities such as “clusters” of lending and nonlending assistance and more open-ended sectorwide approaches. All of these modalities can be potent instruments for improving the sociolegal environment for women in the DMCs.

- **Assistance “clusters” and sector program loans** can be effective means for supporting reforms of legal and policy frameworks to achieve sustainable growth, inclusive social development, and improved governance. Program-based lending can also address gender and sociolegal issues. For example, loans for fiscal restructuring may include conditionalities protecting the access of poor women and girls to basic services such as health care, nutrition, and education. Similarly, public sector reform program loans may address issues of equal treatment of women workers, equal pay, and entitlements to benefits. Agriculture program loans can address women's rights and access to land

and other productive resources in the context of land titling, privatization, and redistribution.

- **Project loans** should also be designed with gender-related legal considerations in mind, especially for projects in sectors where women play an important role, such as agriculture. For example, in countries where women are significantly involved in farming operations, as in almost all the DMCs, or are *de jure* or *de facto* heads of agricultural households, the preparation of the project should include a review of laws and customs limiting women's access to land and other inputs, such as extension services and credit and marketing facilities. Appropriate covenants should be included in loan documents to ensure that women are involved in decision making related to the project, and have equal access to productive resources and services provided or facilitated through the project. These covenants could relate to land titles or use rights, extension services, allocation of spaces at markets, and access to credit facilities, without requiring the permission or signature of a husband or male relative.
- **Project preparatory technical assistance** grants should also include scope for consideration of sociolegal issues relevant to women. In this way, sociolegal constraints on women's participation in the particular project or program can be identified as early as possible, and can be more effectively addressed in the overall project or program design.

Gender and law issues can be integrated into projects in most sectors. For example, in the agriculture sector, the project design should take into consideration women's formal and informal rights to use agricultural land, both as landowners and tenants, and should ensure that the project supports rather than undermines those rights. (This is particularly important where the project supports the production of cash crops, which may encourage male farmers to expand cultivation into agricultural land previously used by their wives or other women relatives for growing staple foods for home consumption.) In financial sector reform programs and projects, steps should be taken to ensure that the program or project will improve rather than further restrict women's

access to financial services, for example, by eliminating any laws or regulations that require a husband or male guardian to countersign a loan made to a woman. In any project involving construction, the project design should ensure that women laborers are paid on equal terms with men and that the relevant DMC's labor and occupational safety laws and regulations are followed. In the health sector, greater attention could be paid to the issue of gender-based violence, and ADB could strengthen its health-care projects and programs by recommending improvements in the legal protections for victims, and by supporting community-based efforts to educate women about their legal rights.

Appendix 3 provides recommendations for addressing women's sociolegal status in ADB operations in six priority sectors, including agriculture and natural resources, energy, finance and industry, transport and communications, social infrastructure, and multisectoral projects. This table was designed to provide a practical checklist for the use of ADB staff in operations.

7.2.5 Country-Specific Interventions

Recommendations for specific interventions in Indonesia, Malaysia, the Philippines, and Thailand are detailed in the country reports and summarized in Appendix 4. These recommendations were current as of the dates of the country reports, and may already have been acted upon or superseded by other reforms. For each intervention, a government agency or other institution is suggested to take the lead in pursuing the matter; ADB's possible involvement is indicated, where appropriate. The major areas where support is recommended include improvements in the institutional and policy framework; legal reforms; legal awareness and gender sensitization programs; and legal institution-building, capacity-building and legal training activities. At a minimum, it is recommended that ADB continue to provide TAs to strengthen the national women's affairs agencies in each of the four countries, with specific components to address sociolegal constraints on women and promote greater gender awareness in justice ministries, the judiciary, and law enforcement agencies.

7.2.6 Regional Cooperation

One of the crosscutting strategic themes under ADB's new LTSF is support for regional cooperation and integration for development. ADB's regional cooperation initiatives already include technical assistance and loans to support cooperation and integration in the Greater Mekong subregion, Central Asian republics subregion, South Asia, East Asia, and the Pacific. The findings of this regional study suggest that ADB should give further attention to the gender implications of regional integration, for example, relating to the migration of women workers and trafficking in women and girls within subregions and throughout Asia and the Pacific. In this regard, consideration should be given to the international, regional, and national legal frameworks that govern migration and trafficking, and how their implementation affects the women and girls involved.

7.3 Recommendations for Government Action and Support by Other Funding Agencies

Based on the findings of the four country teams in this study, Appendix 4 outlines specific actions that the governments of Indonesia, Malaysia, Philippines, and Thailand could take to improve the sociolegal status of women in their countries. These include recommendations for specific changes in law and policy, as well as the commitment of human and financial resources to improve the gender-sensitive implementation of laws, women's legal awareness, and women's access to administrative and court processes. The recommendations were current as of the dates of the respective country reports, and may already have been implemented or superseded by other reforms. Given the current financial and economic constraints on each of the participating countries, it is extremely important that governments prioritize improvements in women's sociolegal status, since these improvements are critical to reducing poverty and improving the quality of life of their citizens. The possible involvement of other assistance providers is also noted in Appendix 4, particularly for actions that require modest, grant-based support. ADB may also want to consider cofinancing opportunities with the World Bank and bilateral aid providers.

7.4 Recommendations for NGOs and Other Civil Society Groups

As this regional study has revealed, NGOs working at the grassroots level in Indonesia, Malaysia, the Philippines, and Thailand play a unique and critical role in improving women's awareness of their rights relating to ownership and control of resources; employment; compensation; benefits and working conditions; entitlements to basic services; and protection against rape, other violence, and sexual harassment. NGOs in these countries have assisted women in obtaining legal protection and redress, and have also been active in lobbying for positive changes in laws and more gender-sensitive enforcement of existing laws. In order to play effective roles in strengthening poor women's legal status and empowerment, NGOs themselves need legal training, capacity building, and other support. Lawyers' associations also have a potentially greater role to play in supporting or providing free legal services to poor women. Appendix 4 includes recommendations for the participation of women's organizations and other NGOs in actions to improve women's sociolegal status and empowerment in their countries, as well as opportunities for ADB and other funding agencies to provide these NGOs with capacity building and other support. The recommendations were current as of the dates of the four country reports, and may already have been acted upon or superseded by other initiatives.

7.5 Conclusion

The findings of this regional study demonstrate the importance of improving the sociolegal status and legal empowerment of women in ADB's DMCs, to reduce poverty and improve the quality of life in the Asian and Pacific region. The study recommends a number of concrete actions that can be taken by governments, civil society groups, ADB, and other assistance providers to further these goals in Indonesia, Malaysia, Philippines, and Thailand, and points to similar steps that could be considered in other countries of the Asian and Pacific region.

APPENDIXES

Appendix 1: Acknowledgements

The numerous contributors to the completion of this project were motivated by one common concern: the improvement of women's status, opportunities, and quality of life in their communities, their countries, and the world. The contributors to this report begin with the participants who prepared the four country studies; these comprise women legislators and representatives of government, women's NGOs, women lawyers' groups and grassroots groups, as well as women in the villages. They have all been named and acknowledged in each of the country reports. They provided data, information, analysis, insights, opinions, criticisms, and suggestions and recommendations during interviews and during their attendance at the national workshops held in the participating countries in mid-1997. The country studies were prepared under the leadership of the following:

Indonesia: Ms Achie Luhulima, Gender Specialist/Team Leader; Prof. Tapi Omas Ihromi, Legal Specialist; Insan Harapan Sejahtera (IHS), research and administrative support.

Malaysia: Dr. Chee Heng Leng, Ph.D., Gender Specialist/Team Leader; Ms Stephanie Bastian, Legal Specialist.

Philippines: Prof. Myrna S. Feliciano, Legal Specialist/Team Leader; Ms Remedios I. Rikken, Gender Specialist; Center for Asia-Pacific Women in Politics (CAPWIP), research and administrative support.

Thailand: Dr. Amara Pongsapich, Ph.D., Gender Specialist/Team Leader; Prof. Wimolsiri Jamnarnwej, Legal Specialist.

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Appendix 2: The Project Team

ASIAN DEVELOPMENT BANK TEAM

Ms. Anita Kelles-Viitanen
Manager, Social Development Division (SOCD)

Dr. Manoshi Mitra
Social Development Specialist, SOCD

Dr. Shireen Lateef
Sr. Social Development Specialist (GAD), SOCD

Ms. Eugenia McGill
Sr. Administrative Officer

Ms. Eveline Fischer
Sr. Counsel

Ms. Maria Lourdes Quiogue-Kasilag
Sr. Clerk (Social Dimensions), SOCD

Ms. Louise Roxanne Pangan
Secretary (Social Dimensions), SOCD

INTERNATIONAL TEAM

Ms. Deborah Turnbull
Agrodev Canada
600-222 Somerset Street West
Ottawa, ON K2P 2G3 Canada
Tel: (613) 234-1781
Fax: (613) 563-9621
Email: agrodev@achilles.net

Ms. Elizabeth Samson

Agrodev Canada
600-222 Somerset Street West
Ottawa, ON K2P 2G3 Canada
Tel: (613) 234-1781
Fax: (613) 563-9621
Email: agrodev@achilles.net

Ms. Theodora Carroll

Box 241, 1026 Edgewater Crescent
Squamish, BC V0N 3G0 Canada
Tel: (604) 898-5658
Fax: (604) 898-5695

Dr. Rosa Linda T. Miranda

Centre for Asia Pacific Women in Politics (CAPWIP)
3rd Floor, PSSC Building
Quezon City, Metro Manila, Philippines
Tel: (632) 252-6783, 922-9621 to 30, ext. 313
Fax: (632) 924-4178 / 456-1923
Home Tel/Fax: (632) 924-3551
Email: capwip@philonline.com.ph

Ms. Joanna Wichers

Project Administrative Officer
Agrodev Canada
600-222 Somerset Street West
Ottawa, ON K2P 2G3 Canada
Tel: (613) 234-1781
Fax: (613) 563-9621

INDONESIA TEAM

Ms. Achie Luhulima

Centre for Analysis of Development of Science and Technology
Widya Graha LIPI, 8th Floor
Jl. Gatot Subroto 10
Jakarta 12710, Indonesia
Tel: (62-21)5225711, ext. 339
Fax: (62-21) 5201602
Home: Tebet Timur Dalam 107A, Jakarta 12820, Indonesia
Tel: (62-21) 829-8166
Fax: (62-21) 835-2753

Ms. Tapi Omas Ihromi

Jl. Dempo 14
Jakarta 10320
Indonesia
Tel/Fax: (62-21) 3904127

Insan Hitawasana Sejahtera

Mampang Ghaha 2nd Fl.
Mampang Prapatan Raya 100
Jakarta 12760, Indonesia
P.O. Box 4349
Mampang, Jakarta 12043
Indonesia
Tel: 62 21 798 8953/55/790 1114
Fax: 62 21 797 0054
Email: insanhs@indo.net.id

THAILAND TEAM

Dr. Amara Pongsapich

Chulalongkorn University
Department of Sociology and Anthropology
Faculty of Political Science
Wisit Prachuabmoh Building, CU
Phayathai Road, Bangkok 10330, Thailand
Tel: (662) 391-4560 (home)
(662) 218-7297 (office)
Fax: 011-662-391-7980
Email: amara@chulkn.car.chula.ac.th

Dr. Wimolsiri Jamnarnwej

Associate Professor, Faculty of Law
Saint John's University
110/5 Vipavadee Rangsit Road, Ladpraow
Bangkok, Thailand
Tel: 011-66-2-513-8584
Fax: 011-66-2-512-2275

MALAYSIA TEAM

Ms. Chee Heng Leng

Dept. of Nutrition & Community Health
University Putra Malaysia
UPM 43400 Serdang
Selangor
Tel: 011-6-03-948-6101, ext 1707
Fax: 011-6-03-942-6957
Email: hengleng@eco2.upm.edu.my

Home

Tel: 011-6-03-776-9885
Fax: 011-6-03-776-1510

Ms. Stephanie Bastian

76 Jalan 36/10
7 Koperasi Polis Fasa 2
68100 Batu Caves
Kuala Lumpur, Malaysia
Tel/Fax: 011-603-686-2367

PHILIPPINES TEAM

Ms. Remedios Rikken

Centre for Asia Pacific Women in Politics (CAPWIP)
3rd Floor, PSSC Building
Quezon City
Metro Manila, Philippines
Tel: 011-632-252-6783
Fax: 011-632-924-4178
Email: capwip@philonline.com.ph

Atty. Myrna Feliciano

CAPWIP
3rd Floor, PSSC Building
Quezon City
Metro Manila, Philippines
Tel: 011-632-252-6783
Fax: 011-632-924-4178
Email: capwip@philonline.com.ph

Appendix 3. Sector-Specific Recommendations to Ensure that ADB Projects Address Sociolegal Issues Related to Women

Sector	Potential Component for Inclusion in ADB Projects to Address Women's Sociolegal Status
A. SOCIAL INFRASTRUCTURE	
1. Health and Population	<p>(a) Develop modules for training medical staff and counselors on legal aspects of issues such as rape, domestic violence, incest, wife and child battering, elder abuse, HIV/AIDS testing of sex workers, DNA tests to determine paternity, and abortion.</p> <p>(b) Include legal and health issues in reproductive health care projects.</p> <p>(c) Produce and distribute materials advising urban and rural poor women of their legal rights to basic health services (whether preventive, promotive, curative, or alternative and integrative) for themselves and their children; and advising sex workers of their legal rights (against abuse, and for health care and HIV/AIDS testing).</p> <p>(d) Produce and distribute materials advising women that rape (including marital rape), domestic violence, and incest are legal and health issues, and advising them of their legal rights and about health resources; and inclusion of supportive infrastructure for the protection of women victims of gender violence.</p> <p>(e) Include women in health and legal audit and advisory committees, as well as in the development of health-related curricula, to</p>

Sector	Potential Component for Inclusion in ADB Projects to Address Women's Sociolegal Status
	<p>include women's legal rights to health care and protection against rape and violence.</p> <p>(f) Strengthen capacity of health policymakers, health educators and medical practitioners to ensure that training materials and training include information about laws pertaining to women and health, population planning, rape, incest, domestic violence, and women's rights; and to develop sociolegal indicators related to women's health.</p> <p>(g) Review and make recommendations for strengthening laws and enforcement mechanisms to protect women's health-related rights, including reproductive rights and rights to be free from abuse and violence.</p>
<p>2. Water Supply and Sanitation</p>	<p>(a) In water supply and sanitation and/or water conservancy (dam) projects, consider the effect of existing laws, regulations, and customs, particularly with respect to women's traditional roles related to water and sanitation; women's traditional access to land, water and other resources; and women's livelihoods and health.</p> <p>(b) In projects involving land acquisition or resettlement, consider women's statutory and traditional rights to land and other resources, and women's traditional roles and livelihoods in all aspects of resettlement planning, including site location, compensation arrangements, land exchanges, homestead allocations, and land titling arrangements. In particular, provide joint titles to husbands and wives for land distributed under any project, as well as housing developed with project assistance. Women heads of households should receive individual title to</p>

Sector	Potential Component for Inclusion in ADB Projects to Address Women's Sociolegal Status
	<p>land and homesteads. If relevant, also analyze and address the statutory and traditional rights of indigenous women in the project area.</p> <p>(c) In connection with any construction activities, ensure that women laborers are paid fair and equal wages, and that applicable labor and health/safety laws and regulations are followed.</p> <p>(d) Include women on any independent monitoring team, and employ gender-sensitive indicators or measurements to assess the extent of women's participation in any project and the project's impact on women's sociolegal status, including their statutory and traditional rights to land and other resources.</p> <p>(e) In institutional and capacity-building components, address sociolegal issues pertaining to women and water resources. These can include women's statutory and traditional rights to water for irrigation and other purposes; their membership and participation in water user associations (WUAs); and their access to credit and other resources through WUAs, farmer organizations, or other channels.</p> <p>(f) In connection with water and sanitation sector reform, consider the impact of the current legal and regulatory framework, and any proposed reforms (including cost recovery and privatization), on access of the poor, especially poor women, to water and sanitation services; ensure that women are included as experts, advisors, decision makers and public participants in any policy review and reform process; identify and address conflicts in the existing legal framework (e.g., between statutes</p>

Sector	Potential Component for Inclusion in ADB Projects to Address Women's Sociolegal Status
3. Technical/Vocational Training and Higher Education	<p>and implementing regulations, and between statutes/regulations and traditional water use rights and practices), to strengthen rather than undermine women's access to water and sanitation facilities; and ensure that community education includes information on relevant laws, regulations, grievance procedures, and dispute resolution mechanisms.</p>
	<p>(g) Build capacity of executing agencies (EAs) to address the sociolegal status and needs of women regarding access to and management of water resources and supplies; ensure that women are represented among EA staff, trainers and advisors, and in water user groups or associations.</p> <p>(a) In the context of technical/vocational training for women and other vulnerable groups, address structural and practical factors that limit women's access to technical and vocational training; review the impact of existing laws and regulations on women in the areas of employment, occupational health and safety, credit and finance, and small-business regulation; assess legal and attitudinal constraints on women in terms of ownership and management of microenterprises, home offices, and small and medium businesses; recommend reform and/or harmonization of laws to overcome constraints on women's access to credit and business opportunities; develop training materials for women on their rights as employees and on the laws and regulations applicable to small businesses; and sensitize ministries of justice, employment and social affairs, and staff of technical and vocational training institutions, regarding legal and practical constraints on women in the workplace and in business.</p>

Sector	Potential Component for Inclusion in ADB Projects to Address Women's Sociolegal Status
	<p>(b) Develop curricula on the sociolegal status of women and gender sensitivity for university law courses, continuing legal education courses for practicing lawyers and paralegals; retrain law faculties on gender and law and women's rights, and sensitize law faculties to gender dynamics and issues in the classroom; review law school hiring, evaluation, and promotion processes to ensure gender equity; and recommend policies and guidelines against sexual harassment, if not already in place.</p> <p>(c) In nonformal education projects, including technical and vocational training for women and the poor, include a legal component to inform participants of their basic rights: how to access administrative and judicial systems, including ombudsmen and alternative dispute resolution systems; and how and where to access legal help, e.g., legal aid offices, NGOs, and paralegals.</p>
B. AGRICULTURE AND NATURAL RESOURCES	
<ul style="list-style-type: none"> - Watershed Management - Flood Control - Irrigation - Coastal Zone Management - Agro-Industry - Agricultural Development - Agrarian Reform - Microfinance 	<p>(a) Rural livelihoods: Review and recommend changes in land and agricultural laws and regulations to land and property; analyze the likely impact of any agrarian reform or agricultural development project on women's access to and control over land, and modify the project design to ensure that women's interests are protected; ensure that women are full members of farmer and irrigation management groups; recommend improvements in laws, regulations, and enforcement mechanisms applicable to agricultural workers to improve the wages and working conditions of women agricultural laborers; and support training and informational campaigns to inform rural women of their labor and property rights, and of how to seek redress in disputes over land, wages, and other matters.</p>

Sector	Potential Component for Inclusion in ADB Projects to Address Women's Sociolegal Status
<p>C. TRANSPORT AND COMMUNICATIONS</p> <ul style="list-style-type: none"> - Roads - Railways - Airports - Communications - Regional Infrastructure Development 	<p>(b) Agricultural credit and technology: Review laws and regulations applicable to agricultural banks, other financial institutions, and microcredit facilities operating in any project area, and recommend changes to improve women's access to credit and other financial services; ensure that women are included in extension training, that the training supports appropriate technology, and that training materials and sessions are adapted to women farmers' needs and schedules; and in extension training for women farmers, include information on property rights, access to credit, and available mechanisms for filing grievances and settling disputes.</p> <p>(c) Protection, rehabilitation and sustainable use of coastal resources including fisheries, coral reefs, and related ecosystems: Review the legal and regulatory framework for coastal fisheries and coastal resource conservation, and recommend changes to ensure that women are involved in policy coordination, training, community-based management and enforcement, and monitoring and evaluation, and that women have equal access to fisheries and other resources.</p> <p>(a) Ensure that women's needs and priorities as users of infrastructure services are taken into account in the design and construction of infrastructure facilities, and in the setting of fares/rates and conditions of use. (b) Provide opportunities for employment of women in construction and operation of infrastructure facilities; and ensure that basic services (toilet facilities, etc.) are provided for women workers, that they receive fair and equal wages, and that applicable labor and health/safety laws and regulations are followed. (c) In connection with</p>

Sector	Potential Component for Inclusion in ADB Projects to Address Women's Sociolegal Status
D. FINANCE AND INDUSTRY	<p>any land acquisition or resettlement, consider women's statutory and traditional rights to land and other resources, and women's traditional roles and livelihoods in all aspects of resettlement planning, including site location, compensation arrangements, land exchanges, homestead allocations, and land titling arrangements. In particular, provide joint titles to husbands and wives for any land distributed, and provide women heads of households with individual land titles. If relevant, also analyze and address the statutory and traditional rights of indigenous women in the project area.</p>
<ul style="list-style-type: none"> - Industry Restructuring and Privatization - Industrial Pollution Control and Management - Industrial Park Development - SME Development - Financial Sector Reform - Leasing and Mortgage Finance 	<p>(a) Assess and quantify women's participation in the relevant sector as consumers, employees and owners/managers; review laws and regulations applicable to the sector, and recommend legal and regulatory changes to enhance women's participation in the sector. For example, recommend improvements in labor and health/safety laws, and their enforcement, to increase women's employment opportunities, and to ensure that women workers receive fair and equal wages and benefits, and operate in safe working conditions; and recommend changes in financial regulations and financial products to better meet the credit needs of women's small and medium-sized businesses. (b) In the context of restructuring and privatization, assess potential impact of proposed changes on women as employees and consumers/clients; ensure that "rightsizing" and/or privatization will not disproportionately affect women employees, and that employment policies and work conditions in the industry are consistent with applicable labor and health/safety laws and regulations. (c) In connection with any land acquisition,</p>

Sector	Potential Component for Inclusion in ADB Projects to Address Women's Sociolegal Status
	resettlement and/or construction, consider the factors outlined in Section C above.
E. ENERGY	(a) In connection with any land acquisition or
- Rural Electrification	resettlement, consider the factors outlined in
- Gas Infrastructure	Section C above. In all hydropower projects,
- Renewable Energy	consider the traditional rights of women to
Sources	water, fish, and forest resources; ensure that
- Hydropower	women are fully compensated for losses of
	traditional rights of access through provision of
	new sources of water, fuel, and livelihoods.
	(b) For construction activities, including
	construction of feeder roads and related
	infrastructure, provide opportunities for
	employment of women; ensure that basic
	services (toilet facilities, etc.) are provided for
	women workers, that they receive fair and equal
	wages, and that applicable labor and health/
	safety laws and regulations are followed.
F. MULTISECTORAL/ OTHERS	(a) Review civil service laws and regulations,
- Governance, including	including laws and regulations applicable to line
Capacity	agencies and local government; recommend
- Building of Local	changes to eliminate discriminatory provisions
Governments	relating to hiring and promotion of regular and
- Institutional	contractual staff; ensure that salaries, benefits, and
Development	working conditions are gender-equitable; identify
- Law and Policy Reform	opportunities for improving recruitment and
Access to Justice/Legal	retention of women at all levels; recommend
Empowerment	policies and guidelines against sexual harassment,
	if not already in place; ensure that any
	“rightsizing” of government ministries or other
	public sector reforms do not disproportionately
	affect women as employees, contract staff, or
	recipients of public services.

APPENDIX 3: SECTOR-SPECIFIC RECOMMENDATIONS

Sector	Potential Component for Inclusion in ADB Projects to Address Women's Sociolegal Status
	<ul style="list-style-type: none"><li data-bbox="517 366 1048 515">(b) Support training and other capacity-building activities to increase gender awareness and sensitivity of government agency staff, including law enforcement officials and judicial personnel, and members of the legal profession.<li data-bbox="517 550 1048 638">(c) Promote participation of women in decision making at senior levels of law enforcement agencies, ministry of justice, and the judiciary.<li data-bbox="517 673 1048 822">(d) Continue to support NGOs and other initiatives to improve women's legal literacy and access to justice (including administrative grievance procedures and alternative dispute resolution mechanisms).

APPENDIX 4: Country-Specific Recommendations to Improve Women's Sociolegal Status and Participation in Development

4A: INDONESIA

Common Strategy/ Approach	Indonesia
1. Institutional and Policy Framework	<p>(a) National Policies</p> <p>Ensure the policy on the improvement of the sociolegal status of women be an integral part of the long-term 5-year plan of national development, specifically the policy of the <i>bidang pembangunan hukum nasional</i> (the area of national law and development and the subsector on the “role of women in nation building”).</p> <p>Includes: (i) identification of the legal constraints on women's participation in economic development, and action plan to eliminate the constraints; and (ii) formulation of legal education and curriculum on gender issues.</p> <p>Inclusion in the REPELITA (5-year development plan) will be concrete proof of the Government's political commitment since this will be backed by the allocation of needed resources through the government budget.</p> <p>Responsibility: Government of Indonesia, Asian Development Bank (ADB) could monitor through loan covenants on relevant policy projects</p> <p>(b) Development of a Legal Database</p> <p>Available data published by the Central Bureau of Statistics on crime, which are obtained from civil courts and prisons, appear inconsistent and inconclusive. Similarly, data on family formation and dissolution appear to suffer from underenumeration as they deal only with a segment of the population, i.e., only Islamic and registered marriages, divorces, and</p>

reconciliations. Hence there is a need for a study to first analyze available data and then, as part of a cross-national endeavor, to develop a scheme for collecting and presenting appropriate legal data, as the basis for developing gender-disaggregated sociolegal indicators.

Responsibility: Ministry of State for the Role of Women with possible support from ADB through a regional technical assistance (TA) or a specific TA on improving legal status of women to Indonesia's national gender and development (GAD) machinery

(c) Strengthening Administration of Legal Institutions

The paucity and inadequacy of available data have resulted in inadequate administration, documentation, and record-keeping and filing in all legal institutions, including legal aid institutions and nongovernment organizations (NGOs) dealing with cases having legal implications. There also is a great need to develop qualified human resources for administration and improve the career structure for administrators and record keepers.

Responsibility: Government of Indonesia with possible assistance from ADB

(d) Establishment of Standardized Law Libraries and Legal Documentation Centers

Such centers could systematically collect all legislation and authoritative court verdicts. Such collections should be made available at every court and be accessible to all prosecutors and law offices. These law libraries and documentation centers should be staffed by professional librarians in order to facilitate judges in researching and finding information to provide proper support for their verdicts.

Responsibility: Government of Indonesia with possible support from funding agencies for the establishment of the necessary libraries and documentation centers following international systems of classification, and the necessary training for legal library staff

Common Strategy/ Approach	Indonesia
2. Legal Reforms	<p data-bbox="283 1047 306 1206">(a) Labor Laws</p> <p data-bbox="322 254 376 1206">The following recommendations for labor law reform have been submitted to the National Development Planning Board (BAPPENAS):</p> <ul data-bbox="389 254 910 1206" style="list-style-type: none"> <li data-bbox="389 254 620 1206">(i) enactment of appropriate implementing regulations for Law No. 80/1957 pursuant to the provision of International Labour Organisation (ILO) Convention No. 100; (ii) review and revision of Government Regulation No. 8/1981 on Remuneration and Ministerial Circular No. SE 01/Men/1982 for it to provide a clear framework to avoid discrimination on the basis of gender and marital status; (iii) enactment of legislation providing protection to female workers exposed to work-related harassment (Art. 294 of Criminal Code does not provide such protection); and (iv) review and revision of the following regulations limiting the right of the female workers to wages and benefits: <ul data-bbox="639 254 910 1206" style="list-style-type: none"> <li data-bbox="639 412 663 1206">• Government Decree No. 37/1967 on Wage System in State Companies; <li data-bbox="675 712 698 1206">• Ministerial Decree No. 2/P/M/Mining/1971; <li data-bbox="710 606 733 1206">• Ministerial Decree No. KU440/01/Agriculture/2/1984; <li data-bbox="745 624 769 1206">• Ministerial Decree No. 01/Agriculture/Ukku/3/1978; <li data-bbox="780 518 804 1206">• Ministerial Circular of Manpower No. 7/1990 on Wages; and <li data-bbox="816 254 910 1206">• Ministerial Circular of Manpower No. 4/1998, especially points 2 and 3 on health allowances which does not meet international labor standards ratified by the Government of Indonesia (ILO No. 100). <p data-bbox="921 659 945 1206">These reforms should be enacted as recommended.</p> <p data-bbox="957 254 1016 1206">Responsibility: Government of Indonesia, ADB could insist on these reforms through loan covenants on relevant labor-related projects.</p>

Common Strateg/ Approach	Indonesia
	<p data-bbox="221 994 248 1206">(b) Access to Credit</p> <p data-bbox="259 254 406 1206">Married women's access to credit is restricted based on the Article 8 of Act 10/94 and other related regulations describing procedures for the issuance of taxpayer numbers (Normor Wajib Pajak). It is recommended that the Minister of Finance revise the Circular Letter and Decision of the Director General of Taxes (No. SE20/P19/1990 and No. KEP 78/PJ-41/1990) on the issuance of a tax number to a wife who is undertaking a business activity or independent work.</p> <p data-bbox="418 254 475 1206">Responsibility: Government of Indonesia, ADB could insist on this reform through loan covenants on credit, financing, or gender projects.</p> <p data-bbox="486 543 513 1206">(c) Monitoring of Improvements in the Legal Status of Women</p> <p data-bbox="525 254 582 1206">To date there are no measures/indicators that allow for monitoring improvements in the legal status of women in Indonesia. This is certainly is an area of priority.</p> <p data-bbox="593 254 769 1206">Responsibility: The Agency for National Law Development (BPHN) as the research and development agency for national law development, could establish a working group to conduct a study on development of measures/indicators on the legal status of women. BAPPENAS could also form a team consisting of law and gender experts from various fields to develop measures/indicators on the legal status of women. ADB could provide support for this initiative either through a country-specific TA or a regional TA.</p> <p data-bbox="780 1000 807 1206">(a) Legal Education</p> <p data-bbox="819 254 876 1206">(i) Support for the establishment of legal aid centers and legal literacy programs for women (rural and urban)</p> <p data-bbox="887 254 973 1206">Responsibility: Government of Indonesia with possible support from ADB (through a country-specific project or regional TA) and other funding agencies (e.g., Canadian International Development Agency [CIDA], World Bank)</p>
3. Legal Awareness and Gender Sensitization Programs	

Common Strateg/ Approach	Indonesia
4. Legal Institutional Building, Capacity Building, and Legal Training Activities	<p>(ii) Gender sensitivity training to be mandatory for all students in legal faculties, paralegals, law enforcement officers, judiciary, lawyers, officials dealing with domestic violence, rape, incest, child abuse, etc.</p> <p>Responsibility: Government of Indonesia in cooperation with universities, colleges, hospitals, military, police. ADB could support through specific law and development or education projects.</p> <p>(iii) Preparation of legal literacy booklets and pamphlets appropriate for diverse sociocultural backgrounds</p> <p>Responsibility: Government of Indonesia with possible support from ADB or other funding agencies</p> <p>(a) Improvement of the law curriculum at the more than 200 law schools (13,000 new lawyers a year) to include a course on legal rights of women and gender sensitization relevant to the law</p> <p>Responsibility: Consortium of law schools with possible assistance from ADB or other funding agencies</p> <p>(b) Training for policymakers and decision makers, the judiciary, and members of the legislative body in gender sensitization</p> <p>Responsibility: Government of Indonesia with possible support of ADB or other funding agencies</p> <p>(c) Paralegal and Barefoot Lawyers: Establish a cadre of paralegals and barefoot lawyers to work in rural areas. These could include youth, young lawyers, and community leaders.</p> <p>Responsibility: Government of Indonesia with possible support from ADB or other funding agencies. This idea could evolve into a regional TA as other countries address the same issues.</p>

4B: MALAYSIA	
Common Strategy/ Approach	Malaysia
1. Institutional and Policy Framework	<p>(a) Family Court Review the need and justification for an integrated Family Court to handle both Muslim and non-Muslim family matters. This would include appointment and training of judges in an integrative family approach. Responsibility: Women's National Affairs Department (HAWA)</p> <p>(b) Land Law and Policies (i) Review land rights of women in indigenous communities. Responsibility: HAWA, by establishing a committee. A goal of the committee should be to seek consistency between competing or conflicting laws. (ii) Establish an independent commission to investigate and resolve conflicts of interest and rights to land and forest between native indigenous or aboriginal peoples and government or private interests. Women should be represented on the commission. Responsibility: HAWA to urge Government to take this action (iii) Train and educate government officers responsible for land development to give better attention to native land claim applications, their processing, and title registration. Responsibility: Government of Malaysia</p> <p>(c) Environmental Law and Policies Environmental land laws and policies in Malaysia should be reformed to improve the sociolegal status of women. This would require the establishment of a special committee on the environment composed of federal and state government experts and environmentalists, whose mandate would be to protect and preserve the environment.</p>

Common Strategy/
Approach

Malaysia

Responsibility: Federal and state governments, ADB could insist on these reforms through loan covenants in environment or natural resource projects.

(d) Monitoring and Evaluation: Monitoring protection of women's rights and systematic application and enforcement of laws. This program should be in tandem with setting up a national information management system. There is a TA pending on strengthening monitoring and evaluation in HAWA. This should be extended to developing a nationwide monitoring system and strategy. The mechanism should include linking the monitoring desk at HAWA with district and state level consultative committees and their service centers. It should include identifying what indicators to monitor, how and where the data can be collected, how to monitor (for example, legal cases), training the personnel in monitoring, how to keep records, analyze, present reports, etc. The feasibility and desirability of establishing a women's complaints bureau should be considered in this context. The scope should encompass other areas, such as labor and land problems, etc.

Responsibility: Women's legal aid centers, Joint Action Group (JAG) and HAWA working with NGOs. Establishment of indicators possibly through an ADB-supported regional TA. Support can be provided through ADB's proposed TA to HAWA (in current pipeline).

(a) Violence Against Women

Strengthen the Domestic Violence Act (DVA) by

- ensuring that prosecution for domestic violence occurs whether or not a woman withdraws her charge;
- making applications for protection orders independent of criminal charges and hearable within 24 hours of application, rendering IPOs (interim) unnecessary; and

2. Legal Reforms

Common Strategy/
Approach

Malaysia

- excluding perpetrators from shared residences, and removing the onus on victims to find alternative, safe shelters.

Simultaneously the Rules and Regulations to the DVA should be strengthened by

- not differentiating between “seizable” and “nonseizable” acts of violence, and by making all domestic/marital violence subject to investigation;
- ensuring that police investigations occur within 24 hours, and not the present 14 days, of the violence; and
- instituting clear definitions of responsibilities between police and welfare officers, and streamlining police procedures.

Responsibility: Malaysian Government through its existing interministerial committee. ADB could insist on these reforms through loan covenants on relevant projects (e.g., HAWA, health projects).

(b) Review proposed amendments to existing Rape Laws and proposed new Incest Law.

The study of existing Rape Laws should include concrete alternative recommendations (including the inclusion of marital rape as a specific crime, rehabilitation treatment, court discretion in sentencing and punishment, differentiation between first-time and repeat offenders, expert consultation, privacy considerations and evidentiary rules, and a broadened definition of sexual intercourse). The study of the proposed Incest Law should broaden the present definition of incest to include child abuse and abuse of authority over a child by a person in power. Both would be submitted to the Government before its own Legal Reform Review concludes.

Responsibility: All Women’s Action Society (AWAM), HAWA, and other women’s organizations

(c) Undertake a comprehensive study on prostitution and trafficking and consider a major reform of the Women and Girls Protection Act to handle the present ambiguities surrounding prostitution and trafficking in both women and minor children; or consider the formulation of new laws to deal with both prostitution and trafficking, taking into account experiences of other countries in the region. This should be linked in with the Government's present legal reform exercise.

Responsibility: HAWA working with other women's organizations; possibly ADB or other funding agencies to support through a national or regional study.

(d) Labor and Land Laws

Draft and introduce legislation requiring all land titles, share certificates, equity holdings, and unit trusts be in the name of both the man and woman in the household. Where native lands are under consideration for development, introduce legislation requiring that consultations to develop the land must be with both husband and wife, or related men and women, in a household, and that both parties must be privy to and sign the agreement in order for it to be valid. Amend the federal Constitution so that rights accorded to Malays and the indigenous peoples of Sabah and Sarawak are also extended to the Orang Asli (First People, aboriginal people of Peninsular Malaysia). Establish a committee composed of predominantly men and women Orang Asli, in order to review, with a view to amending the Aboriginal Peoples Act to accommodate the modern needs and aspirations of the Orang Asli, including guarantees of their rights to land, self-determination, and the practice of their own culture and traditional ways of life. Extend the Employment Act to Sabah and Sarawak to ensure that men and women compelled to take on wage labor are properly protected under the law and receive maximum employment benefits.

Common Strategy/ Approach	Malaysia
	<p>Responsibility: Federal and state governments. ADB could require these changes as part of loan covenants on projects related to land development or indigenous peoples.</p> <p>(e) Environmental Law and Policies</p> <p>All existing environmental legislation, laws, and regulations should be reviewed and revised to incorporate both women's concerns and gender perspectives.</p> <p>Responsibility: Government of Malaysia with possible assistance from funding agencies</p> <p>(a) Training for enforcement officers, police, and social welfare officers on how to handle victims of rape, incest, domestic violence sensitively</p> <p>Technical assistance would facilitate learning from experiences from other countries. Specialized training should encompass gender sensitivity, knowledge of the law, and appreciation of the nature and power of family violence.</p> <p>Responsibility: HAWA and National Institute of Public Administration (INTAN)</p> <p>(b) Develop nationwide legal awareness and literacy program with all agencies that now have their own programs.</p> <p>Disseminate materials jointly, involve media and schools. Responsibility: HAWA working with AWH, JAG, AWAM, legal aid centers, women's study centers, law faculties, NGOs. Possible support from ADB TA in the current pipeline.</p> <p>(c) Provide materials and training to women in indigenous and aboriginal communities on legal rights in relation to landownership and employment/labor standards.</p> <p>Responsibility: HAWA with possible support from ADB TA in the current pipeline.</p> <p>(d) Gender Sensitization of judicial and legal officers. Priority should be to provide this type of training.</p>
3. Legal Awareness and Gender Sensitization Programs	

Common Strategy/ Approach	Malaysia
4. Legal Institutional Building, Capacity Building and Legal Training Activities	<p>Responsibility: Government working with ADB through a country-specific project (e.g., the project in the current pipeline) or a regional TA</p> <p>(a) Establish legal aid centers for women and link these to the proposed integrative family courts. Responsibility: JAG</p> <p>(b) Identify strategies to get more women involved in the political process and legal reform. Responsibility: JAG</p> <p>(c) Assist in the institutional strengthening and capacity building efforts of JAG and its members. Responsibility: JAG with possible support from funding agencies</p> <p>(d) Environmental law and policies mechanisms should be established at the national, state, and local levels to assess the impact of development and environmental policies and laws on women. Responsibility: Government of Malaysia with possible support from funding agencies</p> <p>(e) Nongovernmental legal aid care for women: This could start with a feasibility study on setting up an NGO center for providing service, monitoring, taking up test cases, advocacy, and strategizing. The center would act as an important check and balance to the governmental monitoring network proposed for HAWA and the district and state consultative committees.</p> <p>Responsibility: HAWA with possible support from ADB through country-specific project or regional TA</p>

(f) Strategy for skills training and credit provision: Develop a strategy and program for skills development, including entrepreneurial skills development, and credit provision, to help women in crisis, as well as women in displaced communities.

Responsibility: HAWA with appropriate local agencies

(g) In-service training for the GAD national machinery: Develop and initiate a continuous and self-sustainable training program to upgrade the analytical, planning, and implementation skills of personnel in the national machinery for women in development. This includes personnel in HAWA, and in the state and district consultative committees for women's affairs. As part of the training program, each state and district team should be guided by HAWA and gender experts in developing a systematic policy and program. Programs should be sustainable in the long run. They should reach out to grassroots women, and incorporate the provision of referral services, giving information, monitoring, and networking with other centers, legal awareness raising and legal literacy, and public education in various aspects including the law as it pertains to women's rights.

Responsibility: HAWA working with appropriate groups; possible support from pending ADB TA with HAWA

1. Institutional and Policy Framework

(a) Review concept of "Equity Before the Law".

Responsibility: Ministry of Justice

(b) Restore special courts to handle cases concerning women and children.

Responsibility: Ministry of Justice with support from National Commission on the Role of Filipino Women (NCRFW)

(c) Appoint more women in the decision-making levels of the bureaucracy; enable gender sensitivity training for those already occupying these positions.

4C: PHILIPPINES

Common Strategy/
Approach

Philippines

Responsibility: Government of Philippines, NCRFW and local NGOs

(d) Monitor closely the implementation of the Women in Development and National Building Act to ensure that the letter and intent of the law are being followed.

Responsibility: NCRFW and local NGOs

(e) Implementation of the Local Government Code provision granting women sectoral representation in local government legislative bodies. This provision was passed back in 1992 but has yet to be implemented. Women must mobilize to have this provision implemented so that they can have a say in the laws and policies promulgated in the local government units.

Responsibility: NCRFW

(f) Increase the budget for the Judiciary. At present the budgetary allocation for the judiciary is less than 1 percent of the total budget. This places a lot of administrative constraints on the delivery of justice, such as lack of judges and court personnel and lack of available *salas* or courtrooms. This inadequacy contributes to the slow pace in the adjudication of cases.

Responsibility: Government of Philippines

(g) Hire more women law enforcement officers and open more women's desks. The ceiling for hiring female police enforcers has been lifted, but it still has to translate into the hiring of more policewomen, and more important, policewomen who are gender sensitive. The present number of women's desks in police stations is still insufficient to cope with cases brought to them by women victims.

Responsibility: Government of the Philippines

Common Strategy/ Approach	Philippines
2. Legal Reforms	<p>(a) Harmonize State Law, Islamic Law and Adat or Customary Law. Responsibility: Ministry of Justice</p> <p>(b) Pass law on domestic violence. Responsibility: NCRFW working with the Ministry of Justice</p> <p>(c) Review conflicting provisions in the New Civil Code/Family Code and the Revised Penal Code (Articles 333 & 334). Responsibility: NCRFW working with the Ministry of Justice</p> <p>(d) Review provisions in the Civil Code/Family Code which are discriminatory to women. These include management of property and parental consent to marry. Responsibility: NCRFW working with the Ministry of Justice</p> <p>(e) Draft laws making it mandatory to report crimes regarding violence against women and pedophilia. Responsibility: Ministry of Justice</p> <p>(f) Establish alternative dispute resolution mechanisms for rehabilitation of victims and perpetrators especially in child cases. Responsibility: Ministry of Justice</p> <p>(g) Reduce or eliminate filing fees especially for battered women and children. Responsibility: Ministry of Justice</p>
3. Legal Awareness and Gender Sensitization Programs	<p>(a) Undertake survey of the level of legal awareness of Filipino women. Responsibility: NCRFW</p>

Common Strategy/ Approach	Philippines
4. Legal Institutional Building, Capacity Building, and Legal Training Activities	<p>(b) Expand and institutionalize legal literacy and legal awareness programs. Responsibility: NCRFW working with NGOs; possible ADB support through country-specific TA or regional TA</p>
	<p>(c) Provide gender sensitivity training for health service providers, police, other law enforcers, lawyers, judges, women legislators and their staff. Responsibility: NCRFW working with the Ministry of Justice, NGOs, law faculties; possible support from a country-specific TA or regional TA</p>
	<p>(a) Institutionalize and expand existing training programs offered by the Institute of Judicial Administration, University of the Philippines Law Center, and the Philippine Judges Association. Ensure these are gender sensitive and address women's legal rights. Responsibility: agencies listed above</p>
	<p>(b) Reinstate training for lawyers and doctors on legal/medical/psychological aspects of rape and incest. This was formally offered by the University of the Philippines at the Philippine General Hospital. It was discontinued because of lack of funding. Responsibility: NCRFW with possible support from funding agencies</p>
	<p>(c) Compile indigenous laws and determine their interface with the national legal system, taking into consideration the issues of ancestral domain, self-determination, and the indigenous peoples' cultural integrity. Responsibility: NCRFW working with indigenous groups and associations</p>

4D: THAILAND

Common Strategy/ Approach	Thailand
1. Institutional and Policy Framework	<p>(a) Strengthen the Role of the National Commission on Women's Affairs (NCWA). NCWA should have the capacity to</p> <ul style="list-style-type: none">(i) influence government policy formation;(ii) coordinate with other agencies effectively in advocacy work leading to change in laws and regulations;(iii) network with other agencies to improve status of women;(iv) monitor development activities implemented;(v) monitor impact of change in laws and regulation; and(vi) function as an information center on women's issues. <p>Responsibility: Royal Thai Government with institutional support TA from ADB to strengthen NCWA</p> <p>(b) Political parties should be more responsive to needs of women electorate.</p> <p>Responsibility: Royal Thai Government</p> <p>(c) NCWA, working with NGOs, should advocate changes in laws. Strategies to be adopted are</p> <ul style="list-style-type: none">(i) Advocating changes in law that will lead to equality of men and women, reflecting concerns for human dignity and basic human rights; the strategy is to have all identified laws promulgated.(ii) After the finalization of the Constitution and related laws and regulations, additional or remaining laws and regulations requiring changes and annexation will continue to be so advocated. <p>Responsibility: NCWA working with the NGOs</p>

Common Strategies/ Approaches	Thailand
2. Legal Awareness and Gender Sensitization Programs	<p>(a) Design specific gender sensitization programs, focusing on women's legal rights for</p> <ul style="list-style-type: none"> (i) personnel of mass media, such as broadcasters, disc jockeys, and news writers; (ii) lawyers, judges, law enforcement personnel, social services personnel, paralegals, and formal and nonformal educators; and (iii) teachers, professors, and vocational trainers. <p>Responsibility: NCWA working with local NGOs, with possible support from country-specific ADB TA or regional TA.</p> <p>(b) Provide gender sensitization programs for political decision makers, planners, lawmakers, judges, members of parliament, senators.</p> <p>Responsibility: NCWA with possible support from country-specific ADB TA or regional TA</p> <p>(a) Support the development of training programs on women's legal rights issues to be given by faculties of law at the different universities.</p> <p>Responsibility: NCWA working with the universities</p> <p>(b) Support the development of an NGO network to</p> <ul style="list-style-type: none"> (i) provide training on legal education to the public; (ii) develop gender studies curriculum; (iii) develop paralegal training; (iv) provide legal counseling services or give personal advice to individuals or groups; (v) receive complaints on misconduct on law enforcement and investigate; and (vi) monitor changes taking place after laws and regulations have been changed. <p>Responsibility: NCWA with possible support from funding agencies (e.g., specific ADB TA to strengthen NCWA)</p>
3. Legal Institutional Building, Capacity Building, and Legal Training Activities	

Appendix 5: Regional Workshop Agenda and List of Participants

AGENDA

DAY ONE

Tuesday, 21 October 1997

- 8:00 – 9:00 a.m. Registration
- 9:00 – 10:00 a.m. ***Inaugural Session***
- 9:00 – 9:05 a.m. Welcome Remarks and Introduction to the Workshop
Dr. Kazi F. Jalal, Chief
Office of Environment and Social Development, ADB
- 9:05 – 9:20 a.m. Inaugural Address
Mr. Peter H. Sullivan Vice President (Region East),
ADB
- 9:20 – 9:25 a.m. Introduction of the Keynote Speaker
Ms. Anita Kelles-Viitanen, Manager
Social Development Division, ADB
- 9:25 – 10:00 a.m. Keynote Address
Honorable Leticia Ramos-Shahani
Philippines Senate President Pro-Tempore
- 10:00 – 10:30 a.m. Photo Session and Coffee Break
- 10:30 – 11:00 a.m. ***Plenary Session***
- Chair: Dr. Manoshi Mitra
Social Development Specialist, ADB
- 10:30 – 10:35 a.m. Introduction of the Plenary Speaker
Dr. Manoshi Mitra

10:35– 11:00 a.m. Plenary Address
Dr. Margaret Schuler, Executive Director
Women, Law and Development International

Laws are not Enough!
Strategies to Make the Law Relevant for Women

11:00– 12:30 p.m. ***Presentation of the Findings of the RETA***
Chair: Mr. Rajat Nag, Programs Manager,
Division 3 (West), ADB

Introduction to the RETA
Ms. Elizabeth Samson, Project Director

Country Studies

Philippines – Prof. Myrna Feliciano, Team Leader
Thailand – Dr. Amara Pongsapich, Team Leader

Discussions

Malaysia – Dr. Chee Heng Leng, Team Leader
Indonesia – Ms. Achie Luhulima, Team Leader

Discussions

12:30– 1:30 p.m. Lunch Break

1:30 – 2:15 p.m. ***Overview Study***

Chair: Mr. Jeremy Hovland
Assistant General Counsel, ADB

Ms. Theodora Carroll, Principal Legal Consultant
Dr. Rosa Linda Miranda, Principal Gender Consultant

Recommendations for ADB Interventions
Ms. Deborah Turnbull, Team Leader

Discussions

2:15 – 5:00 p.m. Panel Discussion

Strategies for Addressing Women and Law Issues

Chair: Dr. Manoshi Mitra
Social Development Specialist, ADB

Panelists:

Dr. Margaret Schuler
Women, Law and Development International
Ms. Saparinah Sadli
Women's Studies Graduate Program, Indonesia

Discussions

Panelists:

Ms. Renana Jhabvala
Self Employed Women's Association, India
Ms. Lucy Lazo
Consultant on women home-based workers
Philippines

Discussions

5:00 – 6:30 p.m. Reception – ADB Central Courtyard

DAY TWO Wednesday, 22 October 1997

8:30 – 10:00 a.m. Panel Discussion

Women and the Law: Emerging Scenarios from the Region and the Role of the Bank

Chair: Ms. Eugenia McGill
Senior Admin. and Policy Officer, ADB

Panelists:

Ms. Khunying Supatra Masdit
Member of the House of Representatives, Thailand
Prof. Christine Chinkin
London School of Economics
Ms. Zainah Anwar, Woman Activist, Malaysia
Mr. Barry Metzger, General Counsel, ADB

10:00– 10:10 a.m. Introduction to the Workshop
Ms. Deborah Turnbull, Team Leader

10:10– 10:30 a.m. Coffee Break

10:30– 12:00 p.m. Country Workshops¹ and representative
Chairpersons
Emerging Regional Issues

Workshop Globalization and Employment
Groups: Dr. Rosa Linda Miranda

Migrant Workers
Ms. Remmy Rikken and Ms. Lucy Lazo

Trafficking of Women and Children
Ms. Kirana Sumavong

Violence Against Women
Dr. Chee Heng Leng

Religion, Community and Personal Laws
Ms. B. Salleh and Ms. Zainah Anwar

Indigenous Peoples Issues and Women
and the Environment
Ms. Stephanie Bastian and
Ms. Theodora Carroll

¹ To discuss how ADB and other funding agencies can utilize the findings.

APPENDIX 5: REGIONAL WORKSHOP AGENDA AND LIST OF PARTICIPANTS

- 12:00 – 1:00 p.m. Lunch Break
- 1:00 – 2:00 p.m. Workshops Continue
- 2:00 – 3:30 p.m. Reports by Rapporteurs from Each Workshop and Discussions
- Chair: Mr. Khaja Moinuddin
Programs Manager, Division 2 (East), ADB
- 3:30 – 4:30 p.m. Open Discussion on
- Regional Strategies and Potential Bank Involvement***
- Chair: Dr. Shireen Lateef
Senior Social Development Specialist, ADB
- 4:30 – 4:45 p.m. Coffee Break
- 4:45 – 5:30 pm ***Plenary and Closing Session***
- Chair: Ms. Anita Kelles-Viitanen, Manager, SOCD, ADB
- 4:45 – 4:50 p.m. Introduction of Closing Speaker
Prof. Myrna S. Feliciano, Team Leader, Philippines
- 4:40 – 5:15 p.m. Closing Speech
Honorable Justice Cecilia Muñoz-Palma, Philippines
- 5:15 – 5:30 p.m. Closing Remarks
Ms. Anita Kelles-Viitanen

**REGIONAL WORKSHOP ON SOCIOLEGAL STATUS
OF WOMEN IN SELECTED DMCs**

LIST OF PARTICIPANTS

21-22 October 1997, ADB, Manila

ADB STAFF

6 ADB Avenue, Mandaluyong City 0401, Metro Manila, Philippines
Tel. (632) +32-5555; Fax (632) 636-2444

1. Mr. Peter H. Sullivan
Vice President, Region East
2. Mr. Barry Metzger
General Counsel
3. Dr. Kazi F. Jalal
Chief, Office of Environment and Social Development (OESD)
4. Mr. Khaja Moinuddin
Programs Manager, Division 2 (East)
5. Mr. Rajat Nag
Programs Manager, Division 3 (West)
6. Ms. Anita Kelles-Viitanen
Manager, Social Development Division (SOCD), OESD
7. Mr. Jeremy Hovland
Assistant General Counsel
8. Dr. Shireen Lateef
Senior Social Development Specialist, SOCD, OESD
9. Ms. Eugenia McGill
Senior Admin. and Policy Officer, Office of the Vice President
for Finance and Administration
10. Dr. Manoshi Mitra
Social Development Specialist, SOCD, OESD

CONSULTANT TEAM

1. Ms. Deborah Turnbull
Team Leader
Senior Advisor, Agrodev
600-222 Somerset Street West
Ottawa ON K2P 2G3
Canada
Fax: (613) 563-9621
Tel: (613) 234-1781
agrodev@achilles.net
2. Ms. Elizabeth Samson
Project Director
Managing Director, Global Bridges USA
21 Van Wie Terrace, Albany NY 12203
U.S.A.
Fax: (518) 464-0122
Tel: (518) 464-6427
globalbridges@worldnet.att.net
3. Ms. Theodora Carroll
Principal Legal Consultant
President, AD Astra Consulting Services
Box 241, 1026 Edgewater Cres.
Squamish, BC V0N 3G0
Canada
Fax: (604) 898-5695; 892-2249
Tel: (604) 898-5658
4. Dr. Rosa Linda Miranda
Principal Gender Consultant
Executive Director
Center for Asia-Pacific Women in Politics
Rm 315, Phil. Social Science Center
Commonwealth Ave. Diliman
Quezon City, Philippines
Fax: (632) 456-1923
Tel: (632) 456-1924
capwip@philonline.com.ph

5. Dr. Amara Pongsapich
Team Leader, Thailand/Gender Specialist
Chulalongkorn University
Department of Sociology and Anthropology
Faculty of Political Science
Thailand
Fax: (662) 391-7980
amara@chulkn.car.chula.ac.th
6. Dr. Wimolsiri Jamnarnwej
Legal Specialist
St. John's University
Associate Professor, Faculty of Law
110/5 Vipavadee Rangsit Road
Ladpraow, Bangkok, Thailand
Fax: (662) 391-7980
Tel: (662) 513-8584
7. Ms. Stephanie Bastian
Legal Specialist
76 Jalan 36/10, Fasa 2
Tamam Koperasi Polis
68100 Batu Caves, Kuala Lumpur
Malaysia
Fax: (603) 686-2367
Tel: (603) 686-2367
8. Dr. Chee Heng Leng
Team Leader, Malaysia/Gender Specialist
Dept. of Nutrition and Community Health, Faculty of Biomedical
and Health Services
Universiti Putra, Malaysia, 43400 UPM
Serdang Selangor, Malaysia
Fax: (603) 942-6957
Tel: (603) 948-6101, ext. 2510(off); 776-9885 (res)
hengleng@medic.upm.edu.my

9. Ms. Remedios Rikken
Gender Specialist
Center for Asia Pacific Women in Politics
Rm 315, Phil. Social Science Center
Commonwealth Ave. Diliman
Quezon City, Philippines
Telefax: (632) 941-5765
10. Prof. Myrna Feliciano
Team Leader, Philippines/Legal Specialist
UP Institute of Judicial Administration
Bocobo Hall, University of the Philippines
Diliman, Quezon City 1101, Philippines
Telefax: (632) 929-7137

SPEAKERS AND PANELISTS

1. Ms. Zainah Anwar
24 Lorong Setiapuspa 2
Medan Damansara
50490 Kuala Lumpur
Malaysia
Fax: (603) 255-3720
Tel: (603) 255-3720
Email: <zainaha@pc.jaring.my>
2. Prof. Christine Chinkin
London School of Economics and Political Science
Houghton St., London WC2A 2AE
England
Fax: (44-0171) 955-7366
Tel: (44-0171) 405-7686
Email: <C.CHINKIN@lse.ac.uk>

3. Ms. Renana Jhabvala
Self Employed Women's Association
Opp. Victoria Garden
Bhadra, Ahmedabad 380001
India
Fax: (91-79) 550-6446
Tel: (91-79) 550-6477
Email: <sewa.mahila@axcess.net.in>
4. Ms. Lucy Lazo
Office: c/o Golden Cane Furniture
Mitchell Highway, Clark Special Economic Zone
Angeles City, Pampanga
Philippines
Fax: (632) 599-2024
Tel: (632-045) 888-2071
Email: <goldcane@bworld.or.ph>
Residence: 6-12 Nana Drive
Villa Teresa, Angeles City, Pampanga
5. Ms. Khunying Supatra Masdit
Member
House of Representatives
154/27 Amnuay-Songkran Road
Dusit, Bangkok 10300
Thailand
Fax: (662) 243-6444
Tel: (662) 241-3287
Email: <supatra@ipied.tu.ac.th>
6. Hon. Cecilia Muñoz-Palma
Justice of the Supreme Court
c/o 32 13th St. New Manila, Quezon City
Philippines
Fax: (632) 721-3148
Tel: (632) 721-3148

7. Ms. Leticia Ramos-Shahani
Senate President Pro-Tempore
Philippines Senate
5th Floor, PICC Bldg., CCP Complex
Roxas Blvd. Pasay City
Philippines
Fax: (632) 552-6601; 552-6770
Tel: (632) 896-5475; 552-6872
8. Dr. Margaret Schuler
Executive Director
Women, Law and Development International
1350 Connecticut Avenue NW
Suite 407, Washington DC 20036-1701
USA
Fax: (202) 463-7480
Tel: (202) 463-7477
Email: <wld@wld.org>

NATIONAL DELEGATES

1. Ms. Noriani Abdul Rahman
Director General
Institute of Law and Judicial Training (ILKAP)
Prime Minister's Department
Kuala Lumpur, Malaysia
Fax: (603) 294-1913
Tel: (603) 294-5864
Email: ilkplbl@po.jaring.my
2. Dr. Jariah Masud
Gender and Development Research Centre
Universiti Putra Malaysia
43400 UPM Serdang, Selangor, Malaysia
Fax: (603) 943-6157

3. Dr. Badriyah Salleh
School of Humanities
Universiti Sains Malaysia
Minden, Penang, Malaysia
Fax: (604) 656-3707
Tel: (604) 657-7888
4. Ms. Catherine Ridu
Assistant Director, International Affairs Division
Women's Affairs Department
Ministry of National Unity and Community Development
Tingkat Raja Laut
50562 Kuala Lumpur, Malaysia
Fax: (603) 293-4740
Tel: (603) 293-0598
5. Ms. Ivy Josiah
Women's Aid Organization
P.O. Box 493, Jalan Sultan
46760 Petaling Jaya
Selangor, Malaysia
Fax: (603) 756-3488
Tel: (603) 756-3237
Email: ivyj@pc.jaring.my
6. Dr. Ma. Iris A. Melliza
Holy Cross of Davao College
Sta. Ana Avenue, Davao City, Philippines
Tel: (632-082) 221-9071
7. Ms. Teresita Castillo
Executive Director
National Commission on the Role of Filipino Women
1145 J.P. Laurel St. San Miguel
Manila, Philippines
Fax: (632) 735-4955
Tel: (632) 735-1655
Email: ncrfw@mnf.sequel.net

8. Ms. Mary Foy-Os
President
Pan-Cordillera Women's Network for Peace and Development
308 Purok 2, Bulanao, Tabuk
Kalinga Province, Philippines
9. Hon. Zenaida N. Elepano
Deputy Court Administrator
Supreme Court
Old Supreme Court Building
Padre Faura St.
Manila, Philippines
10. Prof. Virada Somsawasdi
Director, Women's Studies Center, Faculty of Social Sciences
Chiangmai University
Chiangmai, 50200 Thailand
Fax: (66-53) 943-572
Tel: (66-53) 219-245
11. Ms. Rangsee Phanthumchinda
Senior Policy and Planning Analyst
National Commission on Women's Affairs
Division of Policy Planning
Office of the National Commission on Women's Affairs
Government House, Bangkok 10300
Thailand
Fax: (662) 289-9690
Tel: (662) 981-3690
12. Ms. Supatra Putananusorn
Chief, Women's Information Center
National Commission on Women's Affairs
Office of the Permanent Secretary, Prime Minister's Office
Government House, Bangkok 10300
Thailand
Fax: (662) 282-5322
Tel: (662) 281-3690

13. Ms. Kirana Sumavong
Senator and President
Women Lawyer's Association of Thailand
c/o Davis Law Office
47, Asoke-Din Daeng Road, Rajthevi, Bangkok 10310
Thailand
Fax: (662) 252-6562; 255-8811
Tel: (662) 255-8811

WORKSHOP PARTICIPANTS

1. Ms. Michaela Bergman
GHK International, CAMP Clark Area
Municipalities Project
St. James Hall, Moore Park Road
London SW21W
United Kingdom
Fax: (045) 599-3356 (Local)
Tel: (045) 599-3403 Up To 04 (Local)
2. Ms. Francisca Indarsiani
Program Officer (Development)
Canadian Embassy
Wisma Metropolitan 1, 5th Floor
Jalan Sudirman Kav 29
Jakarta, Indonesia
3. Ms. Mobina Jaffer
Dohm Jaffer and Cashman
3316 Kingsway, Suite 268
Vancouver, BC, Canada V5R 5K7
Fax: ((604) 438-5576
Tel: (604) 438-3369

4. Cpt. Suwanee Sawangpol
Policy and Planning Session
Office of the National Commission on Women's Affairs
Government House, Bangkok 10300
Thailand
Fax: (662) 392-3690
Tel: (662) 282-2690
5. Ms. Nancy Spence
Director
Southeast Asia Gender Equity Program (SEAGEP)
40 Bukit Pasoh Road
Singapore 089854
Fax: (65) 323-2974
Tel: (65) 325-2313; 325-2314
6. Dr. Angelita Ago
Commissioner, National Commission on the Role of Filipino Women
Ago General Hospital
Legaspi City, Philippines
Tel: (63-5221) 455-058
7. Ms. Amelia Ancog
Undersecretary, Department of Science and Technology
Gen. Santos Avenue, Bicutan, Taguig
Metro Manila, Philippines
Fax: (632) 837-2937
Tel: (632) 834-2939; 834-2071 Up To 82
8. Ms. Ruby Beltran
President, SENTRO
Policy and Resource Center for Women Migrant Workers
36a Matalino St., Central District
Quezon City, Philippines
Fax: (632) 922-4958

9. Atty. Marily C. Cepe
57 Matahimi cor. Malingap, Teachers Village
Diliman, Quezon City
Philippines
Fax: (632) 433-3012
Tel: (632) 433-3012
10. Atty. Eleonor Conda
IWRAP, Asia-Pacific Philippines
c/o 117-D Matahimik St., Teachers Village
Diliman, Quezon City, Philippines
Fax: (632) 924-1996
Tel: (632) 924-1996
11. Ms. Jidith Dagaman
Philippines
12. Mr. Owen De Dios
National Commission on the Role of Filipino Women
Philippines
13. Commissioner Ms. Aurora de Dios
National Commission on the Role of Filipino Women
Suite 406, Victoria Plaza, 41 Annapolis St.
Greenhills, San Juan, Philippines
Fax: (632) 722-0755
Tel: (632) 722-0859
14. Hon. Rosario De La Rosa
Director, Bureau Of Family and Community
Department of Social Welfare and Development
Batasang Pambansa Complex
Constitution Hill., Quezon City, Philippines
Fax: (632) 931-8191
Tel: (632) 931-8068

15. Mr. Edgardo C. Diansuy
Commission on Human Rights
(Komisyon ng Karapatang Pantao)
State Auditing and Accounting Center
University of the Philippines Compound
Philippines
Fax: (632) 631-2641 to 42
16. Ms. Gisela Dizon-Reyes
UP Law Center
Institute of Government and Law Reform
1/F Bocobo Hall, UP Diliman
Quezon City 1101
Philippines
Fax: (632) 929-6785
Tel: (632) 434-9525 Or 920-5301 To 99 (Ext. 5206/5855)
17. Ms. Raquel Edralin-Tiglao
Women's Crisis Center
Philippines
Fax: (632) 922-5235
Tel: (632) 921-6783
18. Dr. Jeanne Illo
Ateneo De Manila University
Katipunan Road, Loyola Heights
Quezon City, Philippines
Fax: (632) 924-4690
Tel: (632) 924-4572
19. Atty. Lorna Kapunan
Roco, Bunag, Kapunan & Migallos
16th Floor, Strata 2000
Emerald Avenue, Ortigas Complex
Pasig, Philippines
Fax: (632) 631-9530
Tel: (632) 631-6171

20. Atty. Gloria Larot
Executive Director, National Council of Women of the Philippines
Philippine Women's University
Taft Avenue, Manila, Philippines
Fax: (632) 525-6391; 812-4731
Tel: (632) 525-6391; 812-4731
21. Hon. Leonor Luciano
Sector Representative for Women
Batasang Pambansa Complex
Philippines
Fax: (632) 931-5610
Tel: (632) 931-5610
22. Ms. Juanita A. Manalo
Lingkod-Tao Kalikasan Liaison Officer
2470 Del Carmen St. Malate
Manila, Philippines
Fax: (632) 523-0019; 523-0693
Tel: (632) 523-0818
23. Atty. Teresita Manzala
Director IV
Department of Labor and Employment
Bureau of Local Employment
Velco Center Building, Port Area
Manila, Philippines
Fax: (632) 527-2421
Tel: (632) 528-0087
24. Ms. Norly Grace Mercado
NGO Working Group on the ADB, Regional Secretariat
c/o HRC-KSK/FoE Phils., 2/F Puno Building
No. 27 Kalayaan Avenue, Diliman
Quezon City 1101, Philippines
Fax: (632) 920-7171; 658-3380
Tel: (632) 927-9670; 920-7172

25. Ms. Toby Melisa Monsod
Center for Asia-Pacific Women in Politics
3rd Floor, PSSC Building, Commonwealth Avenue
Quezon City, Philippines
Fax: (632) 456-1923
Tel: (632) 459-1924
26. Ms. Melinda Mae B. Ocampo
Gender Committee (LRC-KSK/Foe Phils.)
3/F Puno Building
No. 27 Kalayaan Avenue, Diliman
Quezon City 1101 Philippines
Fax: (632) 920-7171
Tel: (632) 927-9670
27. Ms. Zenaida Pawid
GRP-NDF Panel
10th Floor, Agustin Building, Emerald cor. Julia Vargas
Mandaluyong City, Philippines
Fax: (632) 636-0701
Tel: (632) 442-9239
28. Ms. Lilia Ramos
Executive Director, Approtech Asia
G/F PSDC Building, Magallanes cor. Real St.
Intramuros, Manila 1002 Philippines
Fax: (632) 527-3744
Tel: (632) 527-6514; 527-3744
29. Hon. Amina Rasul-Bernardo
Cabinet Secretary/Presidential Adviser on Youth Affairs
Chairperson and CEO, National Youth Commission
3rd Floor, Filomena Building, San Rafael St.
Malacañang, Manila, Philippines
Fax: (632) 734-6062
Tel: (632) 734-5911

30. Ms. Nona Ricafort
Director General, National Council of Women of the Philippines
President, Tinig Kababaihan
33 Coconut St., Valle Verde IV
Pasig City, Philippines
Fax: (632) 633-2145; 633-2146
Tel: (632) 631-0213; 631-0233
31. Ms. Jana Grace P. Ricasio
Philippines
32. Ms. Carolina S. Ruiz
Women's Legal Bureau Inc.
11 Matimtiman St. Teacher's Village
Quezon City, Philippines
Fax: (632) 921-3893
33. Ms. Anna Leah Sarabia
Women's Media Center
91 Maningning St. Teacher's Village
Quezon City, Philippines
Fax: (632) 921-0955; 911-6239
Tel: (632) 921-4945; 434-3998
34. Ms. Florence M. Tadiar
Women's Health Care Foundation
1589 Quezon Avenue
Quezon City, Philippines
Fax: (632) 924-0701
Tel: (632) 931-7176
35. Ms. Ana Tamayo
National Commission on the Role of Filipino Women
Philippines

36. Ms. Elaine Verano
Department of Foreign Affairs
Office of the Undersecretary for International Economic Relations
2330 Roxas Boulevard,
Pasay City, Philippines
Fax: (632) 834-1451
Tel: (632) 834-4000

MANILA-BASED FUNDING AGENCIES

1. Ms. Salima C. Bautista
Project Management Section
Japan International Cooperation Agency
12th Floor, Pacific Star Building
Sen. Gil J. Puyat Avenue
Makati City, Philippines
Fax: (632) 816-4222
Tel: (632) 893-3081
2. Ms. Nicole Bouchard
First Secretary for Development
Canadian International Development Agency
9th Floor, Allied Bank Center
6754 Ayala Avenue, Makati City
Fax: (632) 810-8839
Tel: (632) 810-8861
3. Ms. Kaat Landuyt
Associate Expert on Gender
International Labour Organisation
5th Floor, NEDA Building
106 Amorsolo St.
Legaspi Village, Makati City
Fax: (632) 812-6143
Tel: (632) 819-3614

4. Ms. Jayshree Balachander
Human Development Sector Officer for East Asia and Pacific Region
The World Bank
23rd Floor, Taipan Place Bldg.
Emerald Avenue, Pasig City
Fax: (632) 636-2195; 636-2191
Tel: (632) 917-9020
5. Mrs. Jana Grace P. Ricasio
Assistant Resident Representative (Programme Unit)
United Nations Development Programme
7th Floor, NEDA Bldg.
106 Amorsolo St.
Legaspi Village, Makati City
Fax: (632) 816-4061
Tel: (632) 892-0644 To 25
6. Mr. Winfried Wicklein
Programme Officer
United Nations Industrial Development Organization
2nd Floor, NEDA Bldg.
106 Amorsolo St.
Legaspi Village, Makati City
Fax: (632) 892-2560
Tel: (632) 892-0611
7. Ms. Kay Calavan
Gender Consultant
US Agency for International Development
Ramon Magsaysay Center
1880 Roxas Blvd. Ermita 1000 Manila
Telefax: (632) 833-6929
8. Ms. Perseveranda So
Programme Officer, Education Sector
United Nations Children's Fund (UNICEF)
6th Floor, NEDA Bldg.
106 Amorsolo St.
Legaspi Village, Makati City
Fax: (632) 892-6456

Appendix 6: Selected Papers from the Regional Workshop

KEYNOTE SPEECH OF SENATOR LETICIA RAMOS SHAHANI

Senate President Pro-Tempore

Republic of the Philippines

21 October 1997

Before anything else, let me thank you for inviting me to keynote this regional workshop. It is always a pleasure for me to be with friends and allies in the struggle to promote women's rights and responsibilities. And getting together is an important exercise because we must keep linking hands to deal with the new challenges that the 21st century lays before us. To use feminist language, an activity like this can be called "networking."

I am happy to learn about this program to develop a database that would show, among others, how laws and the legal environment can advance or impede the ability of women to function fully in society. I would like to especially thank and congratulate ADB for being the moving force in this project, and for its overall effort to take affirmative action for women as a principle of sustainable development. My dear friends, I have no doubt that with your expertise—honed from over two decades of painstaking learning and re-learning—you will leave no stone unturned in your scrutiny of the manifold issues involved.

For my part, I must confess that I am no longer in a position to give a regional overview of the topic in question nor can I offer incisive observations on the issues you will be raising. This would have been possible when I was Assistant Secretary General of the United Nations with data at my command, but today my immediate concern is with domestic legislation and how it affects the lives of Filipino women and their families. I have decided, therefore, to limit my speech this morning to the work I've done as a legislator, and to describing certain pieces of legislation which in my view will enable women to be empowered in various ways. As you are aware, legislation is important in giving

substance, direction and budgetary support to programs and projects on women. In so doing, I hope to offer some directions that the Asian Development Bank might take in its programs relative to human development, especially women.

Of course, legislation has its limits for in the final analysis it is the effective implementation of laws, programs and projects which really matter. But the basic political commitment for women must be loud and clear and unmistakable. This is why, in the 1987 Constitution, a group of women of which I was part, lobbied for a section in Article II on declaration of principles and state policies to the effect that “the State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of men and women.” Our original proposal was far more ambitious, aiming for equality with men in all spheres of life, but the male delegates who were in the majority saw it fit to limit equality between men and women to “equality before the law”—therefore, the need for continuing legislation to ensure equality between men and women in as many areas as possible in this country. As a Senator, elected after the promulgation of the 1987 elections, I conveniently took my cue from the said Constitution and have tried during my career to cover as many areas as possible to ensure equality for Filipino women through legislation.

A piece of legislation I am particularly proud to have pushed is what we call the Women’s Budget in the General Appropriations Act (GAA). This is a provision which has figured in the Government Budget as approved by Congress since the 1995-1996 budget, which directs all government departments, bureaus, offices and agencies to set aside the minimum amount of 5 percent of their appropriations, “to be used for projects designed to address gender issues in accordance with RA 7192.” RA 7192 is the Women in Nation-Building Act which I shall likewise touch on later. I also pushed for the same provision in the Government Budget of 1996 and 1997. Since the provision has to be introduced every year I shall push for it again next month in the 1998 budget in the hope that others will do the same next year since my term as Senator ends in May 1998.

To my mind, there is not a more concrete demonstration of the political will of a country to enhance women’s status, than to allocate—by law—a specific amount of the national budget for programs involving and benefiting women. As a result, P3.7 billion (US\$108,977,379 at

P33.9520 to US\$1.00) of the budget appropriations in 1996/97 has been earmarked exclusively for women's projects or projects directly or indirectly benefiting women. As an example of affirmative action, this provision aims to encourage government offices to undertake, initiate or continue programs for women.

The 5 percent provision in the GAA is also an example of how injecting the gender perspective in legislation can make an enormous difference. My point is that while it is important to enact women-centered laws, especially those designed to eradicate discrimination, it is equally important to look at how areas of legislation in general can benefit from a bias for women.

This is what we did with the Fisheries Code, a bill of major importance to the fisheries sector, which has been passed in the Senate and is undergoing discussion in the House of Representatives, where we made certain that specific provisions for women's participation was included. As you well know, people often think of fisherfolk as male. It is true that it is the men who go out to sea, but once fish are brought to shore the women have a major role. Their roles in the processing and marketing of fish and in coastal resource management are equally significant, and the "woman" provision in the Code seeks to ensure that these roles are recognized and duly supported.

Access is a decisive factor in women's empowerment, and access is what is provided by the Women in Nation-Building Act. Although I am not the bill's principal author, I have often cited RA 7192 as a landmark law in the history of feminist legislation. Enacted as early as 1991, the Act mandates the Government to ensure the provision to women and men of equal rights and opportunities. It guarantees the equal capacity of women to act and enter into contracts regardless of civil status. Moreover, it opened to women the doors of the Philippine Military Academy and of police schools – institutions which, in our culture, are ultimate male strongholds and bastions of "macho" culture. It was this law which inspired me to successfully propose an amendment to the revised Social Security Act which enables spouses, the majority of whom are women, who work in the home full time to get social security coverage on a voluntary basis, that is, if the working spouse agrees to pay the premiums, thereby also giving concrete recognition to housework as having important economic value. This is a major breakthrough for housewives and househusbands.

A law which I authored and one I would like to discuss at length is Republic Act 8353, popularly known as the Anti-Rape Bill. I filed the bill as early as 1989, also giving it to then Representative Raul Roco for authorship in the House. But at that time, the Eighth Congress had its hands full with such “heavyweight” concerns as legislating for the New Constitution, the Local Government Code, and the Agrarian Reform Bill. The Rape Bill thus died in committee.

It was unthinkable, however, for many of us that the concept of rape as a mere “crime against chastity” should be allowed to continue as such in this country. In our view, rape violates a woman’s personhood, not just her chastity. It strikes at her self-esteem and self-respect. Without appropriate legislation, it can cause a trauma that can have disabling effects on the rape victim and the members of her family. To empower women, I felt it would be necessary to insist on a law that would expose and duly penalize this vicious manner of inflicting violence against women.

Thus, I filed the Anti-Rape Bill once more in the Ninth Congress. In 1992, when President Ramos came up with his Social Reform Agenda, the bill caught the attention of the Social Reform Council which suggested it. In addition, activist women’s groups like SIBOL also backed it up. However, new elements had in the meantime been added to the bill which proved controversial, including the concept of marital rape. Until the bill’s passage into law last month, some of our colleagues in the House continued to oppose the bill for its provision on marital rape, ignoring its other progressive features.

I would also like to point out that the bill would probably have suffered its fate in the two previous Congresses, had not President Ramos certified it as a priority bill. Thus, commitment by legislators, advocacy by NGOs, and affirmative action by a gender-responsible Head of State all went together in seeing this controversial but empowering bill through the legislative mill.

Another reason why the Anti-Rape Bill means so much to concerned citizens is that it has created awareness of such a vital yet often glossed-over issue—the issue of rape being a public and not just a private crime. Thanks also to the notoriety it gained, ordinary people now talk about it. And the fact that there has been a 33 percent increase in rape cases reported in the National Capital Region shows that rape victims now have more faith in the justice system, that they no longer feel isolated and

hopeless. The Anti-Rape Bill has been instructive in educating not only the public but also law enforcers and the entire criminal justice system, not to mention the media, many of whose members have much to learn in the matter of responsible and gender-sensitive reporting.

There is a companion bill to the Anti-Rape Bill which dwells on the social infrastructure for dealing with rape cases. Originally part of the earlier version of the Anti-Rape Bill, the companion measure seeks both to remove the barriers to prosecuting rape cases, and to institutionalize protective measures that would ensure the recovery of rape survivors. Senate Bill No.2280 is ready to be debated in plenary and I see no difficulty in its passage.

To link all this then to the work of the Asian Development Bank, I would like to ask: has the Bank looked into how it can enhance the participation of women in such sectors as fisheries and farming, not as a welfare measure but in recognition of the vital and integral roles that women fulfill in the economy?

I am aware that one of the programs of ADB is assistance to the fisheries sector, and I hope that here the Bank will train some of the spotlight on the needs of women and the families of fisherfolk.

I am glad to note that ADB has been veering from its emphasis on physical infrastructure to human resources development, and that it is always on the lookout for dependable partners in the implementation of its programs. Well, you need look around no more. Women, who have always been there but were largely invisible, are the economic agents of the 21st century ready to be tapped.

I have just come from the capital town of Maasin, Southern Leyte, which province has just graduated from the Club of 20 Depressed Provinces. Its Governor, Dr. Oscar K. Tan, was telling me about how the women are preferred to run credit cooperatives because they are better managers—and are better loan payers. This is an experience common in the cooperative movement and in microfinancing, which should tell us a lot about women's dependability.

Lastly, ADB could initiate programs that encourage women to take part in politics, whether as supporters and campaigners, as advocates of gender issues, or as candidates themselves.

Standing for public office, I must stress, is the high point in women's political participation. There is no surer way to guarantee that

women's concerns become national issues than by the election or appointment to public office of women who know firsthand the problems and concerns of women. Not that we do not recognize and appreciate men who support women's causes, but it does take us women to take to center stage our own concerns.

This, I might add, was one of my motivations for entering politics in 1987—to have the power to determine policy through lawmaking and advocacy and thus help bring reform, change, and progress in a fundamental way. One of the reasons I ran for public office was to make sure that women's concerns were not marginalized but would help shape the culture and direction of this country not only in the present but for the years to come. It is a similar reason that has made me decide to be a contender for the position of Vice President in the coming national elections of 1998, to exercise the kind of leadership this country needs—firm, practical, honest, compassionate, and progressive. This is the kind of leadership that the Philippines needs and that not only men but also women can provide. .

I wish your regional workshop every success and look forward to networking with you again, then perhaps together we can examine the impact of this program of the Asian Development Bank on the lives of women in our region.

**PLENARY ADDRESS of
Dr. Margaret Schuler, Executive Director
Women, Law and Development International**
21 October 1997

“Laws are Not Enough: Making the Law Work for Women”

Thank you very much for inviting me to this important and timely conference. Improving the sociolegal status of women is a topic dear to my heart and I am very pleased to be here.

I congratulate the Asian Development Bank for undertaking an effort that recognizes the need to understand the links between law, development and gender and to search for solutions to the challenges these relationships incorporate. This and similar initiatives of the World Bank, the IMF, and the Inter American Development Bank represent enormous progress. (Coincidentally the IADB is holding a conference in Washington today and tomorrow on the issue of violence against women.) But it wasn't so long ago that these issues were not even perceived as problems; and when perceived, were viewed as unimportant or at the very least totally outside the purview of what a development bank or agency should be involved with.

It was only 12 years ago, at the Third UN World Conference on Women and NGO Forum in Nairobi, when issues of law and the human rights of women began to surface in connection with development. When we were organizing the Third World Forum on Women, Law and Development—which included such topics as violence against women, human rights, religion, ethnicity and the exercise of rights—there was uneasiness on the part of the development professionals to see these issues as having any impact on or any relevancy to development. It was conceded that family law and labor law, generally covering access to material resources, could have an affect on the allocation and distribution of resources in a society, but other issues of inequality and discrimination were not present in the discussion within the development frame of reference.

It is indeed heartening to see that the topics for discussion here in the conference include trafficking in women, violence against women,

religion, community and personal laws, as well as globalization and migrant workers. This diversity of topics demonstrates an understanding that all laws that influence women's social status potentially impact (for good or for ill) the outcomes of development schemes and programs.

I am also pleased to see that ADB recognizes that for research to become useful in articulating effective program interventions, a process of analysis, discussion, and consultation will be necessary and that the reason for this two-day conference is to undertake such a consultation.

Laws are not enough

As suggested by the title of my talk, "Laws Are Not Enough: Making the Law Work for Women," there are some pitfalls and additional considerations that if adequately confronted or attended to can make the difference between producing a merely useful piece of research or a dynamic tool for social change. What I want to do today is to share some insights about strategies to change the way the law works for women, drawing upon experience and interaction with women's organizations throughout the world for the last 20 years or so. The first set of issue I will address is why the law is not enough and why changing laws and politics, while a necessary exercise, is a limited—even an insufficient—approach. The second set of issues I will address revolves around how to make the law work for women.

Why the law doesn't work

The reason laws, or even the law, are not enough is very obvious to women who have been negatively affected by them but is sometimes missed by the experts and often by bureaucrats, whose assumptions about how the legal system works blind them to what is really going on. One of the first pitfalls to avoid is to focus on the law itself divorced from the context within which the law is embedded. When working with groups to develop strategies around the law, I always suggest that they not begin with the law, legislation or policies, but with women's problems.

It is important to ask: what are the issues that are affecting women negatively? What are the economic and social burdens that disproportionately affect women? I daresay, 15 years ago if research on

legal women's status were conducted using the law as the point of departure, violence against women would not have come up, because then it was not perceived by the experts and the bureaucrats to be an issue. However, beginning with the problem and THEN analyzing the role of the law in exacerbating or ameliorating the situation, the results are quite different. Merely looking at what the law says could not possibly detect the problem of violence against women.

I am suggesting that part of the reason the law may not work for women is the emphasis on the letter of the law on statutes, legislation, regulation, policy statements and the like, without consideration of the context in which the law functions and without consideration of the real interests and needs of women. Starting with the law is like starting with the solution without knowing WHAT the problem is that needs a solution. Looking at a constitution and concluding that what is needed is an equality provision may be, partially correct, but it doesn't really solve anything unless the concrete dimensions of inequality have been clearly articulated and defined.

Two other reasons why the law doesn't work

Related to this are two other reasons why the law is not enough. In addition to what the law says—that is, the content, the substance of the law—there is, of course, the application of the law, the structure of the legal system, the courts, the law enforcement, and the administrative agencies of the state. How the law or policy actually functions in practice is as important as the content of the law itself. We all know examples of states which have marvelous constitutions, which have ratified every treaty and convention the UN ever developed to protect the rights of citizens, and yet recognizable and gross violations of citizens rights occur everyday. It is clearly possible that the systemic component of the law can have a greater impact than the substantive.

Then, there is another critical element that is often overlooked and that is the "culture of the law." I am not talking about the general cultural environment or preferences but the way people specifically regard the law. Do they respect it, do they disrespect it? Do they use it? Do they feel alienated from it? Do they exempt themselves from it? Do they see it as oppressive, as liberating? Do people have a sense of rights? And do they

see the law and the legal system as protecting those rights? It is the attitudes and behaviors of all members of society, from ordinary citizens to supreme court judges, that make the greatest difference in the end, both about what the law says and how the system will work.

For example, if the police don't understand the law or don't believe that a law is important can they be trusted to investigate violations of the law, such as domestic violence? If judges think that women provoke sexual assault or harassment in the workplace, can they be trusted to make fair judgments in court? It is in this area of gender bias in law enforcement and in the courts that the law generally breaks down for women.

I've heard people concede that the substantive and the structural elements of the law are important and deserving of attention, but they throw up their hands at the cultural—as though the problem is so overwhelming they do not even want to deal with it. But for the law to work for women, it is this cultural element that has to be confronted. And I do not share the view that it is so overwhelming that nothing can be done.

Role of law

So where DO we start—making the law work for women? As my analysis of the problem of the law suggests, one of the traps we can fall into is to fail to recognize the dynamic and sometimes contradictory nature of the law. The legal sociologist Laura Nader reminds us of the multiple functions of the law. She says, “[The law] serves to educate, to punish, to protect private and public interests, to distribute scarce resources, to maintain the status quo, to maintain class systems and to cut across them, to integrate and disintegrate societies—all of these things in different places, at different times, and to different degrees.” She goes on to point out that “law may be a cause of crime; that it plays, by virtue of its discretionary power, the role of definer of crime and that the law may encourage respect or disrespect for itself.”

This is an important reminder. Since law can and does represent diverse functions in society, it is easy to see that the law can be both an instrument of and an obstacle to social change. As an instrument of regulation and control, it can either promote or inhibit access to goods

and services. And at the same time it supports attitudes and behaviors that maintain oppressive structures, the law can promote new more desirable attitudes and behaviors. Understanding this dynamic character provides a more balanced perspective.

The law is there to be respected and to be challenged. It is important to remember that the law doesn't really have a life of its own, although we often act as though it does. In fact, law is the product of social and political process. In dictatorships, it is the ruling classes who define the behavior the law supports; in democracies it is the citizens.

What does a system look like that works for women?

So, concretely, making the law work for women means having a system in place in which

The substance of laws, statutes, constitutions, etc., respond to women's real interests and define rights and standards in compliance with international human rights law.

1. There exists an effective commitment by the State to promote and protect the rights of all women under its jurisdiction and to enforce its own laws.
2. Women know their rights and have access to the legal system, know how to use the system to seek redress.

To sum up: the substance is adequate, the structures work, the State has a commitment to make them work, and women are actively engaged in the entire process. These are actually rather simple requirements, although this has not generally been the experience of women. But there have been some advances and victories which are very instructive to us about the processes necessary to bring about the conditions just described.

Here I would like to draw on the environmental movement, the consumer movement and the women's human rights movement. All offer insight about the process of making the law work. In each case, it was a political process, sometimes called advocacy, that brought about the change. It was a citizen-initiated process of transforming interests into policy solutions. There are at least four common threads to the advocacy experience:

First, interests or concerns surface, are examined and analyzed.

Second, the interests are articulated as a policy or legislative requirement

Third, a broader consensus begins to emerge about the problem and the solution

Fourth, action is taken at the legislative, administrative, or judicial level to resolve the problem or achieve the change in policy desired.

Conclusion and recommendations

I think my essential message is that it is essential to recognize that making the law work for women requires a process of social change, in fact, a process of profound social transformation. Understanding this as a broad frame of reference moves us beyond the simplistic and technocratic solution and guides us to some very important insights about the role of law in democratic societies, about practical steps that can be taken.

ADB has set as a goal to improve the policy environment with regard to the sociolegal status of women. This is a major step forward and I believe that ADB can play a strategic role in bringing this change about. However, it cannot do so without the active engagement and support of women.

Making the law work for women means that women need to be involved in the process of articulating their interests, defining their solutions, and taking an active role in building the broader consensus about the changes they want. At the same time, the leadership of ADB can be decisive, given its power to influence states and private actors whose attitudes and behaviors define the policy environment ADB recognizes is important, too.

I congratulate you for organizing this workshop to begin the dialogue. I urge you to conceive of this as a partnership with women and to search for the means to identify the leadership among women and women's organizations who are in touch with women's experience, who articulate their interests, and who have a pretty good idea about the kinds of policy solutions that will contribute to solving women's social and economic problems.

It will not always be simple and it will not always be neat. There will be conflicting interests that need to be sorted out, but if ADB is to make the kind of impact that it proposes, then it is not a choice. Women's issues have to be taken seriously and women's political organizing and participation to this end needs to be acknowledged and incorporated some way into the process.

What is needed is not more laws, but a powerful movement of women and men committed to development and to social justice.

Thank you very much.

Panel Discussion on Women and the Law — Resource Papers

Women and the Law: Emerging Scenarios From the Region and the Role of the Asian Development Bank

Khunying Supatra Masdit
Member of Parliament, Thailand

22 October 1997

I was asked to talk on Women and the Law: Emerging Scenarios from the Region and the Role of the Asian Development Bank. I am sure you will agree with me that the reports given yesterday provided us with the emerging scenarios not only on the national level as reported by the national teams but the Project Team even summarized these reports on the level of the region. So I will confine my talk to the Thai Constitution—the processes we underwent before its final approval in October 11, 1997, after which I would like to give my suggestions as to the role of ADB.

Before doing this, I would like to thank ADB for giving me the opportunity to be with you in this conference, although as I am speaking to you now, our Prime Minister is again changing his Cabinet.

For Thailand, the change from absolute monarchy to democratic monarchy has been envisioned to be the ultimate goal. But the struggle for democracy has proved to be long and difficult. Thailand was under military dictatorship after World War II during 1958-1973. The student uprising in 1993 has been documented as a turning point toward true democracy. Yet, during the past 25 years, political development in Thailand meant having nonelected prime ministers more often than ones who came from election. Meanwhile, constitutions were redrafted 15 times, political parties were strengthened, and decentralization of local governments was attempted.

Thailand's New Constitution: It is our hope that this document will fulfill the promise to transform Thailand's institutions and structures so

that our country will become to be truly democratic, contributing in no small measure to the promotion of women's legal status.

There are some instances regarding the new direction and reflection on the spirit to safeguard women's rights, as follows:

The vital clause (Article 30) that guarantees women's constitutional rights is "men and women are equal before the law." There is also a clause following the equal rights protection provision between women and men allowing enactment of legislative measures for positive action. This can be used as a positive measure to promote the advancement of women in various aspects. Moreover, the Commission on Human Rights, if set up, can also assume a monitoring role for any violations of women's human rights.

Article 28: A person may claim human dignity or rights and freedom as long as doing so does not violate others' rights and freedom or contradict the Constitution and good morale of the people. The person whose rights and freedom has been violated as guaranteed by this Constitution may raise this provision as a defense in the court of law.

Article 190: For every bill concerning youth, women, elderly and the disabled, if the special committee is set up for a second reading, one third of the committee membership must be NGO experts.

We are indeed happy that the phrase "men and women are equal before the law" is back because we used to have it and we lost it. Allow me a minute to relate to you my own personal experience to the effect that with a constitutional mandate such as this, a legislator can do so much more. This famous clause "men and women are equal before the law" was first introduced to the Thai Constitution in 1974 until 1976 when we had a coup d'état. I was first elected an MP in 1979, the first time the Constitution allowed a person under 30 to run and I was under 30, which made me the youngest person ever to be elected to the Parliament.

Because we didn't have the equality clause in the Constitution I could only push for two laws: an amendment that removed the word "men" from the requirement that states: "household head men can run for the head of the village." I was able to have that amended by just removing the word "men," the result of which is right now we have some 10,000 of almost 60,000 villages headed by women. The other law is increasing from 13 to 15 the age of girls in terms of being minors who cannot be compromised in terms of sexual favors.

In 1988 I was appointed as the Minister in charge of women, among other positions, and yet in spite of my powerful position I could not push laws, except for policies like creating a permanent National Commission on Women's Affairs on March 8, which gave this date another significance for Thai women. The Government agreed in 1989 to make April 14, the day after the Thai New Year, Family Day, and since then it has become a public holiday from April 12 to 15.

Let me go back to our present Constitution. A number of additional clauses under the section of the State's basic policy and the section on civil liberty help strengthen women's legal status directly and indirectly. However, it is the first time that the Thai Constitution prohibits the mention of "sexual preference," which is one form of discrimination.

This Constitution has responded to the eradication of domestic violence under Article 53, which stipulates the State's protection against violence and abusive action against family members. Thai women, like most women in the developing world, have long suffered from their husbands' domestic violence and have generally not received any outside help.

In Thailand, young girls in poor families are usually deprived of educational opportunities, more than boys. Women also commonly outlive their spouses by several years. These are the reasons why we are happy about two other articles in the new Constitution. These are on compulsory education, which shall be provided by the State for up to 12 years, and on the State's responsibility for senior citizens over 60 years of age. These will benefit women indirectly.

In short, Thailand's new Constitution has timely provided a solid framework for the improvement of women's legal status at the eve of the new millennium. In other words, it may be said that the gateway for the development of women's legal status has now been established in Thailand. However, advocates from both government and people's organizations know that much more needs to be done to iron out corresponding organic laws.

However, a framework or structure will not bring about the desired end results. What is urgently needed are broad-based civil society movements that will transform social values, beliefs and practices in the direction that is congruent with the provisions in the structure.

Thailand's economic crisis today is not an issue of collapse and failures alone. Although economic measures and urgent economic

solutions are needed to alleviate economic hardship and bankruptcy of the government, the root causes of this situation go deeper than economic mismanagement. We are confronted by a political system that allows various forms of abuse of power, legitimacy, and the rights of the citizenry to participate, to assert their rights and wishes, as well as to assume corollary responsibility as members of society.

Deep analysis will show us that while the government and groups of politicians that have gained control of majority seats in parliament have been unwilling, unable, and are too irresponsible and unresponsive to foster civil society movements throughout the country, the majority of Thai people are too weakly socialized to be good clients of the powers that be, or uninvolved and unparticipatory in the social and political processes that will ultimately affect their lives and well-being. Also, as women are responsible, hardworking, and dependable, they have been virtually excluded from participation in the public sphere: whether to be involved or in control of budget allocations, public spending or formulation and implementation of public policies.

The combination of women's visible and virtual lack of involvement in public decision making and the citizenry's virtual exclusion from participation outside of their homes have conveniently created a vacuum for power brokers to abuse their roles in society to the exclusion of transparency and accountability.

How do we get out of this seeming dilemma? With structures in place but needing strong civil society to make them work? Yesterday Margaret Schuler emphasized: "Laws are not enough, I always suggest that they do not begin with the law, legislation or policies, but with women's problems." But to me (and Margaret also said this), how can we listen to women unless they are organized? Unless they know how to articulate their problems and analyze them and provide part of the answer? Therefore, this could also be the answer to the present apathy that we see among the majority of our people that I mentioned above: help them to organize themselves that they may let us know their own situation. But sustained organizing work, finding the leadership and providing opportunities for their training and capacity building requires support in terms of training of leaders and members and information and communication which, in this day and age, means computer technology, internet connections, research, and data gathering and which, let's be frank about it, means money.

To me, if we want this undertaking to take root in the people and not end up as volumes of research data housed in libraries, ADB should review its policy of just limiting their relationship with or through governments. I really feel ADB should study in what ways they can directly relate with civil society and make it a strong partner in the attainment of development which is people-based.

I understand one of the main objectives of this Sociolegal Status of Women Research is for ADB to have ideas on what they can recommend to government in terms of improving the status of women, making these recommendations conditions for loans or grants. By the way, is this policy already written somewhere and formally approved by ADB? If so, I hereby recommend that this policy be made known and transparent to everyone, and I mean by this the general public, not just “between you and me,” which could lead to compromises between ADB and the governments. But if the public knows, especially us women, then we can help ADB push its recommendations by watching that our own governments abide by their own obligations.

What more do you want me to say after saying this? I am deadly serious. But maybe I should share with you what in turn we could do in this connection. I would like to believe that the rest of the women and men in this room share with me this idea:

Since this has been started, let's continue with it by each of the country teams involved going home and sharing this with their national groups of women. They in turn might select one or two problems, attempt to get themselves organized to study, analyze, and plan on how to find ways to solve them. For this to be a continuing learning process at the regional level, such national undertakings could be a source of exchange of experiences of both process and substantive contents. Can ADB be a partner in this regional undertaking? We see this as a continuing process which could lead to training, organizing, lobbying, and getting women committed to the long haul of improving their sociolegal status.

I think I should stop here because what I have just said will take you quite sometime to get done but definitely the women and men in this room are with me in monitoring what ADB will finally decide. I expect to hear good news.

Women and the Law: Emerging Scenarios from the Region and the Role of the Bank

Professor Christine Chinking
London School of Economics and Political Science
London, U.K.

The great strength of the regional technical assistance on the sociolegal status of women within Indonesia, Malaysia, the Philippines and Thailand is the collation of empirical data that affirms many of the unsubstantiated assumptions about the legal obstacles to the advancement of women. The recommendations that have emerged range from the routine to the truly innovative. This session is the flip side of the coin to those held yesterday, when the focus was on strategies that women can pursue within their own countries for their legal, economic and social empowerment. This session examines strategies that the ADB can consider to the same end. There must be correlation and coherence between the two. There is no point if they are like two parallel lines with no point of intersection and convergence;

In this brief presentation I want to address a few points that have emerged from my reading of the excellent country reports and the executive summary. They are the view of an outsider to the region with only limited knowledge of the ADB. They try to address some emerging issues within a broader framework of international law.

First, looking at the position of ADB, it is evident that overriding all the recommendations is the importance of the continuing and integrated gender and development policy, that is a serious and sustained policy of gender integration both within ADB itself and through its projects within member countries. A gender policy has been defined by the UN Division for the Advancement of Women as “assessing the implication for women and men of any planned action, including legislation, policies and programs in any areas and at all levels.” This requires an examination of both the institutional and professional cultures. The focus of this regional technical assistance on the sociolegal

status of women has exposed how laws inhibit women's choices and how what has been termed "The Hidden Gender of Law"¹ contributes to the lack of empowerment of women and sustains inequality between women and men, not just in those areas of law of obvious significance to women—family, labor, criminal, property—but throughout the entire structures, processes and culture of public and private law. Many of the legal obstacles themselves rest upon gendered assumptions, for example about the sexual division of labor, the appropriate allocation of public space and resources, and the inherent suitability of women to certain forms of work in the public and private sectors.

This indicates a need for training in gender integration for lawyers, including those within the Office of the General Counsel within ADB. This training should be made applicable to all legal work, its crosscutting and cross-issue character emphasized, and to strategic and operational planning. It requires understanding as to how the processes of key legal institutions contribute to gender inequality, to identifying in legal terms the needs of both women and men, and matching those needs to concrete legal proposals in their particular contexts. Such training should also encompass familiarization with legal indicators and criteria for evaluations. The gender experts within ADB do an excellent job at raising relevant concerns throughout all activities, but they cannot replace the responsibility of lawyers themselves to do within their own work. There is a need for internal, subject-oriented guidelines and training materials at every stage of all projects that foresee the participation of gender-aware women throughout the design, implementation, performance and evaluation of projects. There is an obvious need for prioritization. So many recommendations have been made that there is a risk of becoming overwhelmed unless long-, medium, and short-term priorities are identified. The overall objective is one of long-term social change—the advancement of women. This must be recognized in evaluation criteria where immediate change might not be discerned.

The downside of such a proposal is of course the considerable demands on the already daunting workload of the OGC. It reflects the reality that gender issues have not been part of the traditional legal education. The workshop has discussed the need for gender-sensitive

¹ R. Graycar and J. Morgan. 1990. *The Hidden Gender of Law*. Where: Federation Press.

curricula in regional law schools and the generation of appropriate materials and documents. This concept should be extended to the continuing legal education of practicing lawyers, including those within ADB itself.

Second, there was discussion yesterday of the desirability of drawing upon international legal standards to motivate domestic change, for example through advocacy for legal reform, by the preparation and fighting of test case litigation, and by providing yardsticks against which government behavior can be assessed. This same strategy can be applied to ADB. It is becoming more readily accepted that the human rights institutions within the international community share common goals with the development institutions and that human rights and development are integral to each other. This is especially true in the context of economic and social rights that hold particular significance for women.

All the States in the region have become parties to some international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). They have thereby incurred reporting and implementation obligations and one of the emerging issues is ensuring domestic compliance with these standards. ADB can legitimately look to these standards in its work on institution and capacity building. One of the important points about CEDAW is the level of discretion it allows in the achievement of the rights enumerated. States are required to take “appropriate measures” within their domestic systems for the implementation of the rights. This language is usually regarded as unsatisfactory in that it is weak and subjective in comparison with the immediate obligations contained in, for example the International Covenant on Civil and Political Rights. It can however be turned to an advantage by allowing strategic questions to be asked about the most appropriate way of fulfilling the Convention’s requirements in particular states. One of the clearest lessons of the country studies is that solutions must be context-specific and that what works in one place, or for women in one condition, will not necessarily work in other contexts, or for other women. The law has available a range of possible techniques and the discretionary language can be used as a peg to put forward proposals for law reform. These questions might include the following: What legal approach is desirable—affirmative action, protective legislation, or equality legislation? If equality legislation is favored should

this focus on formal equality, substantive equality, or incorporate equality of opportunity? Should targets be included? What inducements for compliance might be included? What remedies are appropriate, feasible, desirable? Should the reform be within the civil law or the criminal law, or both? Who is the reform targeted at? Is law the appropriate strategy at all? What other strategies should be considered in conjunction with, or as alternatives to, law? Seeking answers to such questions facilitates ensuring that some steps are taken towards reform while paying attention to state subjectivities. Third, the need for gender-sensitized training for lawyers, law enforcement officials and the judiciary has been frequently addressed. I would suggest that this be extended to training on the international obligations and in their potential for influencing domestic implementation. There have been important judicial colloquia held among judges of the Commonwealth, including within the Asian region.² These have resulted in the acceptance of principles with respect to the use of international standards within domestic courts that could be drawn upon and supported. Such training should be directed at judges at all levels. The higher judges are important for their leadership role in the molding of judicial thinking, while lower-court judges are those most likely to have cases concerning women come before them. Encouraging the use of international standards provides judges with criteria for the consideration of claims of rights and allows for judicial commonality across countries. Admittedly, the success of such proposals depends upon the willingness of judges to participate and draw upon these standards, but there has been much enthusiasm among many who attended the sessions referred to above and some evidence of their influence within some judgments;

Another way ADB can draw upon international machinery for the guarantee of human rights, and for integration of gender generally, is to look at what other international institutions are doing in this respect and to share common experiences and work. Since the 1995 World Conference on Women in Beijing, gender mainstreaming has been a key goal of many international bodies, including the Center of Human Rights,

² See Bangalore Principles, 1988. For similar statements on women see *Promotion of the Human Rights of Women and the Girl Child through the Judiciary, Commonwealth Declarations and Strategies for Action* (Commonwealth Secretariat 1997).

ECOSOC, specialized agencies, and UNDP. There have been a number of workshops, expert studies, proposals and programs developed through these and other bodies³. One of the defects of the international system is for institutions with comparable objectives to ignore each others' work and progress. This prevents a coherent approach to particular problems and leads to endless reinvention of the wheel. Thus collection and use of the relevant documentation might offer useful suggestions for appropriate strategies.

There are two particular areas where this is especially recommended: violence against women and trafficking in women and children. Both have been raised a number of times within the workshop as areas where national action is required, either for legislative reform or for implementation of legislation that exists. The adverse impact of violence upon women's economic contribution, the health aspects and the direct denial of rights involved all bring violence against women within the scope of law and development. The work of the Special Rapporteur on Violence against Women provides important work on the causes and consequences of violence, model laws, suggestions as to strategies, and information on approaches that have worked elsewhere, for example the innovations in Brazil. The General Assembly Declaration on the Elimination of Violence Against Women 1993 imposes a duty upon states to exercise due diligence to prevent, investigate, and punish acts of violence against women, whether they are committed by the State, by members of the community, or by private individuals. This last opens up the issue of violations by non-State actors. ADB's unique position with respect to the private sector might give it some leverage here. The duty upon states is to act within national legislation, which again provides an entry for the consideration of appropriate strategies. Most discussion on violence within the workshop has been on rape (including marital rape) sexual assault, and harassment. It must not be forgotten that there are other forms of violence, including mental and psychological violence and violence committed by State actors, for example in a military occupation, as in East Timor. These too need to be addressed. Legal measures on violence need to go beyond its criminalization (although this is an

³ See especially *Mainstreaming the gender perspective into all policies and programs in the United Nations system*, Report of the Secretary-General, UN Doc. E/1997/66, 12 June 1997.

important first step) to consideration of court procedures and rules of evidence. In many countries (including the UK) there is a low rate of conviction for rape even after the rate of reporting has increased. One suggested reason for this is the court process that requires victims to face their attackers, be subjected to intrusive questioning, and feel that they, not the accused, are on trial. The Rules of Evidence and Procedure of the International War Crimes Tribunal for Former Yugoslavia provide a good model for addressing these issues.

As with other areas, it is important to examine the causes of violence against women and not merely provide remedial measures for victims. Education programs are yet again important, for both men and women. Such programs should be properly resourced to ensure high quality counseling and legal advice to women. It is also important that the two are not confused. In this regard I echo the warning about the desirability of alternative dispute resolution (ADR) services. These can be favored by governments in that they provide a cheap alternative to access to courts. Their apparent informality, accessibility and non-confrontational approach can also be appealing to women. However, care should be taken that women do not negotiate away their legal rights and the ADR is especially problematic where there has been violence and power imbalance. It is essential that those offering ADR services have received full training on recognizing and dealing with the forms of violence. This requires adequate and ongoing resources. ADB has been involved in establishing ADR services, for example, in India. It is essential that such programs take account of women's needs in ADR.

Trafficking has been identified by the Special Rapporteur as a form of violence and her report into trafficking in Poland again provides a good deal of information on combating it. Especially significant is her conclusion that "trafficked women report high levels of State participation and complicity" with the direct involvement of officials. Since trafficking involves two or more countries, the protection of trafficked women requires inter-State cooperation in policing and prosecuting. The Special Rapporteur suggests that trafficking routes follow migration routes, thus compounding the problems. Receiving states and states of origin gain economic benefit from promoting the international migration of workers and official policy favors the revenues generated. The connection between trafficking and prostitution is also frequently blurred. Strategies must take

account of these realities and again should focus upon court processes to ensure that it is those who exploit women and children that are subject to legal process, not those who are subject to trafficking.

This leads to my final point. It has been assumed that legal reform is an appropriate strategy for women. The reality is more complex, for as Dr. Schuler reminded us yesterday, law can be oppressive as well as liberating. Law may not be seen by women as an instrument to be used for their own advantage; for example, the colonial history in some countries still associates law with the colonial power. In other situations indigenous women may fear the laws of the dominate group. Legal reform may not be possible where the law (or certain laws) have been appropriated by the State to promote economic policies or religious practices at the expense of women. Some states have deliberately promoted the stereotype of Asian women, for example as passive, submissive, beautiful, for the purposes of promoting tourism, the airline industry, or docile members of the workforce. In the words of one writer, "In contemporary South East Asia the State at its most benign is a fiscal beneficiary of the exploitation of women, at its least benign it is an active agent structuring the exploitation itself."⁴ This can also be confusing where other branches of government promote different signals about the role of women.

In these situations recourse to law is not a possible strategy.⁵ This also creates the problem of how ADB (or other agencies) can mediate between those who are campaigning for women's equality and policies aimed at continuing economic or social subordination. This turns attention more directly to appeals to civil society and the importance of partnership between civil society and ADB that has been stressed throughout the Workshop. The country studies have shown clearly the need for contextual analysis in the case of every proposal and the same is true here. In many Asian states women have had a long history of organizing and have developed their own strategies for negotiating states' demands for and on women and their own claims. They have developed their own appearances and forms and may operate in ways different from

⁴ G. Heng. 1997. *A great Way to Fly*. In *Colonial Genealogies*, edited by C. Mohanty and J. Alexander. London: Routledge.

⁵ See R. Coomaraswamy. 1994. *To Bellow like a Cow*. In *Women's Human Rights*, edited by R. Cook. Where: University of Pennsylvania.

those that have become expected of many NGOs. Seeking those best qualified to act in partnership with ADB is important and it should not be lightly assumed that these are the most visible or the most structured group. Women within the states do and must continue to view themselves as agents for transformation. The importance of constant constructive dialogue between ADB, the governments, and women's groups cannot be sufficiently stressed.

Sociolegal Issues on Women in Islam

Ms. Zainah Anwar
Sisters in Islam, Malaysia
October 22, 1997

The biggest challenge facing Muslim societies today is the challenge of change. How does one reconcile the tenets of one's faith to the challenge of modernity, to the challenge of changing times and circumstances?

The reassertion of Islam that has gripped almost all Muslim countries has brought forth different levels of tension and competing ideologies within Muslim societies. What Islam, whose Islam is the right Islam? In this conflict, the status of women has often been the first battleground.

The turn towards Islam is marked not by the liberating message of the religion that granted women the right to equality, to own property, to justice—rights considered revolutionary 1,400 years ago—but is often dominated by growing intolerance and repressive teachings and practices, particularly on matters involving women's rights and fundamental liberties.

While women in Malaysia do enjoy many rights and benefits that are often denied to their sisters in other Muslim countries, there is growing concern that the reassertion of conservative Islam and traditional beliefs justified in the name of religion increasingly undermine women's ability to access those rights granted to them under the law.

Highlights of some of the broad sociolegal issues of concern that impede women's struggle for equality and justice (with special reference to Malaysia) are as follows:

1. **The use of religion to justify the subordination of women.** This is happening at a time when women are increasingly better educated and better exposed and are joining the workforce and being promoted into senior positions in the Government and

private sector. And yet, on radio, television, in newspaper columns, in schools, and public lectures and religious classes, we continually hear and read of teachings of Islam that go against its fundamental principles of justice and equality. We are told that in Islam, the man is superior to the woman, that men have authority over women, that the evidence of two women equals that of one man, that a man has the right to four wives, a right to discipline his wife, that hell is full of women because they have been disobedient to their husbands, etc.

On the one hand, the Malaysian Government encourages women to pursue further studies, to join the workforce, to be entrepreneurs. On the other hand, an important arm of the Government, the religious authority, is sending conflicting signals about the proper role of women in the family and society that has little bearing on the changing realities of women's lives today.

2. **The continuing failure of women to enjoy the social rights that will enable them to access the legal rights granted to them under the law.** In the late 1970s, Malaysia embarked on a remarkable program of reformation of Islamic family laws. These laws are among the most enlightened in the Muslim world. They grant a woman the right to divorce on 12 grounds. She is entitled to a division of the matrimonial property, whether she has financially contributed to its acquisition or not; she is entitled to a compensatory gift if she has been divorced without just cause. But often, these rights remain on paper only because of prejudices and weaknesses in the implementation of the law and in the *syariah* system itself. However, there is blatant gender bias displayed by many *syariah* court judges in their handling of matrimonial cases initiated by women.

A major problem lies in the conflict between what is personal belief and what are the codified laws of the State. Many of the traditional religious officials in the *syariah* system do not agree with what they consider as the too liberal provisions in the Islamic family laws. For example, in most states in Malaysia, a

man has to fulfill four conditions before he can be granted the permission to marry a second wife. However, in practice, only the financial ability to support a second family is considered, if at all. The other conditions—just and necessary reason; the ability to treat his wives equally; and that the proposed marriage would not cause harm, physical, mental or spiritual, to the existing wife—are often ignored.

Many religious officials believe that polygamy is a God-given right in Islam and that there should not be any conditions placed in its practice. Thus, even though the law looks wonderful on paper, in practice it has not protected women's rights and interests.

Efforts at law reform have not been accompanied by any change in the mindset of officials who are responsible for implementing those laws. While the officials underwent training in the new provisions of the law, no training was provided to help them understand the perspectives and rationale for such reform. What is sorely lacking is a gender perspective in the legal training of syariah court and religious department officials.

3. **There is a failure to recognize the difference between what is revealed, and therefore divine and infallible, and what is the result of human intellectual effort and social customs, and therefore fallible and changeable and how this affects law reform.** Out of a total of over 6,200 verses in the Qur'an, only about 80 deal with legal prescriptions. The bulk of what is considered syariah today is made up of an enormous body of juristic efforts in interpreting the limitless message of the Qur'an. This is a human effort, an achievement by a particular group of people, dealing with particular problems within a particular sociohistorical context. Given a changing set of problems and changing circumstances, an interpretation made today would differ from one made 1,000 years ago, or even 100 years ago. They are historically evolved syariah, not divine law. And yet traditional Islamic scholars have elevated the interpretations and

commentaries of the earliest jurists in the earliest centuries of Islam to the same level as the word of God. For them, to question these laws, those interpretations of the Qur'an that inform the law, is to question the word of God and thus to doubt the infallibility of God and the perfection of the message. Many men, and women, too, and those in religious authority have used this belief to silence any dissent, and any questioning of religion.

What should be universal and valid for all times are the underlying principles of justice, equality, freedom, and virtue insistently enjoined by the Qur'an. It is these principles that should form the framework within which we seek to reconstruct society. Any law, any practice, any interpretation that violates these principles should not be acceptable.

4. **This is compounded by the fourth issue: The belief that only the *ulama*, the religious scholars, have the right to speak and debate on matters of religion.** Very few Muslims not traditionally educated in religion, have the courage to question or even discuss Islam in public. They have been socialized to accept that those in religious authority know best what is Islamic and what is not. Many fear that if they were to express an opinion that differs from the mainstream orthodox view, they would be accused of being an apostate, of being against Islam; or of having deviated from their faith. This is the common experience of individuals and groups pushing for reform in many parts of the Muslim world.

Because of such fears, policy making on matters of religion has largely become the exclusive preserve of the *ulama*. This has led to very disturbing and undemocratic developments in countries where religion is a part of public life.

Over the past two years, most states in Malaysia have adopted the Syariah Criminal Offences Act, which contains several provisions that have no basis in the textual sources or historical practices of Islam, and which, furthermore, violate fundamental principles of democracy and our fundamental liberties as guaranteed by the Federal Constitution. In

Malaysia, the Mufti, the Chief Religious Officer in a state, has the power to issue a *fatwa*, or religious ruling, without going through the legislative process. Once it is gazetted, the *fatwa* has the automatic force of law, it is binding on every Muslim residing in the state. Under the recently passed Syariah Criminal Offences Act, it is a crime for a Muslim to defy, disobey, dispute, or give, propagate, or disseminate any opinion contrary to any *fatwa* currently in force. This is really tantamount to rule by decree in a theocratic dictatorship. *Fatwas* have ranged from a ban on Muslim women taking part in beauty contests, to a ban on smoking, to the issue of Muslims attending non-Islamic religious ceremonies, to the use of profits from lotteries, to organ transplants and the use of contraception. Thus, if I were to question the wisdom of the *fatwa* on banning participation in beauty contests, I could be charged with a criminal offence for offering a differing opinion. This of course violates any constitutional right to freedom of expression.

How those preposterous laws could have been drafted and then enacted by the state legislative assemblies and Parliament without public knowledge or any public discussion reflect the obsessive belief that religion is a sensitive matter and should just be left to the *ulama*. Our elected representatives are either too ignorant or too cowardly to debate a matter of religion. They thus enacted provisions in violation of the Federal Constitution that have no basis in Islam, in advertent or inadvertent support of the effort to extend their control over the lives of the citizens. The absence of debate in the legislative assemblies meant silence in the media about the implications of such undemocratic provisions in law and their widespread impact on the fundamental liberties of Muslims. The public therefore remained ignorant that their lives could be so regulated, until all hell broke loose when the religious authority of one state decided to implement the law by arresting three young Muslim girls who took part in a beauty contest in the full glare of television cameras. They were to be charged for indecent dressing and for violating the *fatwa*.

There was an instantaneous public outcry. Malaysians, young and old, in the English and Malay media, expressed their outrage at this display of intolerance and over zealotry by the religious authority. The Government has now set up a committee to review all Islamic laws in the country and the administration of religion.

The concerns here are twofold. First, because of fear and ignorance on matters of religion, there was a serious dereliction of duty by all other arms of government responsible for lawmaking, thus allowing the drafting and adoption of laws that not only violate the Constitution, but have no historical precedent in Islam. The Government had, in effect, delegated total responsibility in the interpretation and implementation of Islam to a tiny minority whose views and values are often contrary to the vision of Islam held by federal leaders and by the silent majority of Malaysians.

Second, in a democratic society like Malaysia, can Islamic laws be made without going through the whole democratic process of lawmaking? There is a belief among those in religious authority that matters of religion should not be debated in the legislative assemblies by elected representatives who have not been traditionally educated in Islam, and certainly not by non-Muslims. Neither should it be open to public discussion, as they genuinely believe that they in all their wisdom and knowledge know best what is Islamic and what is not.

But in a democratic country, the lawmaking process cannot be delegated to an exclusive group of people, who are not democratically elected, who sit in a closed body and who do not believe that others have a right to discuss, debate and question matters of religion. The Government and ulama cannot remove lawmaking and policy making on Islamic matters from the public domain just because it is religion and it is sensitive. This violates fundamental democratic principles, and it will be challenged.

Strategies to deal with challenges

In many Muslim countries today, women's groups are at the forefront in challenging traditional religious authorities and their use of religion to justify our oppression and subordination to silence any dissent. Many of these groups are now fighting for change from within the religious framework. As Muslims and as believers, we want to find liberation from within our own faith. We feel strongly we have a right and a responsibility to reclaim our religion, to redefine it, to participate and contribute in an understanding of Islam, how it is codified and implemented in ways that take into consideration the realities and experience of women's lives today.

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