

II. Gender, Law, and Policy in Country Partnership Strategies

This section is intended to provide guidance to ADB staff and consultants involved in specific country programming activities, including (i) country performance assessments for Asian Development Fund (ADF)-eligible countries, (ii) preparation of CGAs, and (iii) preparation of CPSs (Table 3).

Table 3. Gender, Law, and Policy in Country Partnership Strategies

Country Programming Activity	Gender, Law, and Policy (GLP) Activity
Country performance assessment (for Asian Development Fund-eligible countries)	Consider laws and policies relevant to the gender equality rating that is part of the country performance assessment
Country gender assessment	Analyze key laws, policies and institutions relevant to gender equality (including implementation and enforcement issues)
Country gender strategy (appendix to country partnership strategy)	Highlight key GLP issues from full country gender assessment
Sector road map (appendix to country partnership strategy)	Highlight key GLP issues in the sector, based on the country gender assessment, sector studies, or recent experience in Asian Development Bank projects.

A. Gender Ratings for Country Performance Assessments

Under ADB's revised Policy on the Performance-Based Allocation of ADF Resources (2004), allocations of ADF resources are made based on a **country performance assessment** that includes **gender equality** as one of several rating categories. Under the revised policy, ADB's criteria for performance-based allocations have been harmonized with the World Bank's criteria for country performance and institutional assessments (CPIAs). The gender equality rating in ADB's policy is based on criteria that the World Bank originally developed for its CPIAs.

Specifically, the **gender equality rating** is based on an assessment of "the extent to which the country has enacted and put in place institutions and programs to enforce laws and policies that:

- promote equal access for men and women to human capital development opportunities;
- promote equal access for men and women to productive and economic resources; and
- give men and women equal status and protection under the law."

The laws and policies that should be considered in developing a gender equality rating are described in Table 4. The complete guidelines for developing a gender equality rating are in Appendix 2.

Attention to gender, law and policy issues can enhance the quality of country partnership strategies, including sector road maps

Table 4. Relevant Laws and Policies for Gender Equality Rating

Rating Criteria	Relevant Laws and Policies
Human capital development opportunities	Laws and policies governing access to primary and secondary education, family planning services, and antenatal and delivery care
Equal access to economic and productive resources	Laws and policies governing labor force participation and remuneration, business ownership and management, and land tenure and inheritance
Equal status and protection under the law	Laws and policies related to personal status and citizenship, violence against women, and political participation at the national and local levels

B. Country Gender Assessments

Under ADB's Policy on Gender and Development, a **CGA** must be prepared and updated periodically as an input to the preparation of each CPS. The CGA should include one or more sections on key laws, policies, and institutions relevant to gender equality in the country, including consideration of inconsistencies, gaps, or weaknesses in these laws, policies, and institutions. Box 4 illustrates the range of law and policy issues and institutional factors that can be explored through a CGA. Suggested terms of reference for analyzing GLP issues in CGAs are provided in Appendix 3.

Box 4. Country Gender Assessment for the People's Republic of China

The People's Republic of China (PRC) has made great strides in reducing income poverty levels and raising living standards for millions of its citizens. However, concern about growing inequality, particularly between urban and rural residents and between registered urban residents and unregistered migrant workers in urban areas, is substantial. Research also indicates that women and men have not benefited equally from the country's rapid economic growth, and that gender disparities have actually widened in some respects. The Asian Development Bank (ADB)'s country operations in the PRC are heavily concentrated in infrastructure development-including transport, energy, urban infrastructure, and water, sanitation and flood control facilities, although support is increasing for agriculture and natural resource management in the western region of the country. ADB is also providing grant-based support for policy analysis and reform to a wider range of sectors including finance, education, and health care. Partly because of the nature of its country operations, ADB addressed gender concerns only marginally in earlier loans and technical assistance to the PRC. However, a new CGA identifies a number of entry points for addressing gender concerns through ADB operations, consistent with the PRC's own international, national, and local commitments to gender equality and women's development.

The PRC has a strong law and policy framework for promoting gender equality and women's development. At the international level, the PRC is a party to CEDAW and has submitted several reports to the CEDAW expert committee on the implementation of its CEDAW commitments. The PRC has also ratified ILO

Conventions Nos. 100 and 111. The PRC has participated actively in international conferences on women, and hosted the Fourth World Conference on Women in 1995. The PRC Constitution establishes equal rights for women and men in political, economic, social, cultural, and family life. These rights are further elaborated in the Law for Protecting the Legal Rights and Interests of Women (Women's Law), which was enacted in 1992 and most recently amended in 2005. Notably, the 2005 amendments to the Women's Law establish gender equality as a general principle of national policy; clarify the responsibility of government departments to integrate women's development objectives into national and local planning and to protect women's rights and interests; prohibit sexual harassment and domestic violence against women; reaffirm the importance of increasing women's representation in national and local government; and introduce important supplements on women's rights related to work, social security, and land contracts. Equal rights for women and men are also stipulated in the laws on labor, elections, urban and village governance, land contracts, marriage and adoption, inheritance, education, health care, and civil and criminal matters. In addition, government commitments to gender equality are reflected in the Basic Policy on Equality between Men and Women and the current Programme for the Development of Chinese Women (2001-2010), and in local women's development programs established in more than 30 provinces, autonomous regions, and municipalities.

The main official bodies for promoting gender equality include the National Working Committee on Children and Women

Box 4. Country Gender Assessment for the People's Republic of China (cont'd.)

under the State Council; the Office for Workers, Youth and Women under the Standing Committee of the National People's Congress; and the All-China Women's Federation (ACWF) and local federations, committees, and groups. Despite this comprehensive law and policy framework, gaps and weaknesses in the implementation and enforcement of gender equality laws and policies are significant. For example, very few lawsuits have successfully challenged discriminatory government actions on the basis of the Constitution's broad provisions on gender equality. Despite impressive efforts by the ACWF and local women's federations, gender awareness within the general population, gender sensitivity among law enforcement officials and judges, and access to legal aid services, especially for poor women, are all still limited. At the same time, public sector reforms and market liberalization have resulted in disproportionate layoffs of women from the public sector, discriminatory hiring practices and wage setting in the expanding private sector, and gender biases in bank lending to small businesses. Despite gender equality provisions in land legislation, large numbers of rural women do not have secure land tenure due to patrilocal residence patterns, increasing divorce rates, and gender bias among local government officials and community leaders.

Women's representation in public decision-making bodies also remains extremely low (with the exception of urban resident committees), and women representatives are commonly assigned responsibility for "soft" areas such as education and health care. The introduction of fees for school and health especially in poor regions and settlements. Despite some relaxation of the household registration system (*hukou*), migrant workers living in urban areas continue to have limited access to education and health care services and little protection against unsafe working conditions and exploitative employers. Domestic violence disproportionately

Source: ADB et al. 2006b

harms women and girls and has been linked to the country's unusually high female suicide rate. Meanwhile, the expansion of road and highway networks is also increasing the risk of HIV infection and human trafficking in rural areas as well as urban centers.

The analysis of GLP issues in the CGA for the PRC suggests several opportunities for ADB to address GLP issues through its PRC operations. These include measures to (i) ensure gender balance, equal pay, and safe and appropriate working conditions in infrastructure and other projects, consistent with the Labor Law; (ii) ensure equitable representation of women in all local decision-making bodies involved in implementing infrastructure and other projects (including both existing bodies and new bodies established in resettled communities), consistent with the organic laws of villagers' committees and urban residents' committees; (iii) promote and protect women's equal land rights in both rural and urban development projects, consistent with the Law on Rural Land Contracts and other relevant laws; (iv) ensure equal access to credit and business services in private sector and financial sector development projects; (v) remove existing gender biases in social security programs, such as the earlier retirement age for women and allocation of certain benefits only to "heads of households"; (vi) ensure that migrant workers and their families have access to basic services and legal protections; and (vii) ensure that HIV and human trafficking risks are effectively addressed in transport and other large infrastructure projects, consistent with the Infectious Disease Prevention and Treatment Law, Women's Law, and other laws and policies addressing HIV/AIDS and trafficking. The CGA also identifies a range of potential partners to help implement and monitor these measures, including the ACWF and local women's federations, service-oriented women's organizations, occupational groups, and research institutes.

This **GLP analysis** should generally cover the following topics:

- **International treaties**, e.g., CEDAW, other human rights treaties and relevant ILO conventions; and any substantive reservations;⁶
- **Other international commitments**, e.g., the Beijing Platform for Action and Cairo Programme of Action;⁷
- **Constitutional provisions**, e.g., on equality and nondiscrimination; civil, political, cultural, economic, and social rights; protection of constitutional rights; and any priority given to religious or customary laws;
- **Any gender equality or equal opportunity law** and its enforcement mechanism;
- **The national policy and action plan on gender** equality and implementing bodies, e.g., national commission and/or ministry for gender equality or women's affairs;

⁶ See footnote 3 for information on international law instruments.

⁷ *Ibid.*

- **Gender equality goals, targets, and initiatives** included in the constitution, statutes, the national development plan, national poverty reduction strategy, national MDGs, or other sources;
- **Civil law and personal status/family law(s)**, including provisions on equality, citizenship, names, marriage and family, divorce, maintenance and child custody;
- **Property laws**, including those covering land, inheritance, registration, and ownership of businesses;
- **Labor and social security laws**, including provisions on equality and nondiscrimination, working conditions, parental leave, protection from hazardous or strenuous work, work and family measures, child labor, and social security entitlements; and any proposals to modify or repeal “protective” laws on night work or particular types of work;
- **Laws on health and reproductive rights**, including any law/policy on HIV/AIDS⁸ and other sexually transmitted infections;
- **Criminal laws**, including provisions on gender-based violence, sexual harassment, and human trafficking;
- General assessment of the **capacity of government bodies** to implement and enforce gender equality laws and policies;
- General assessment of **public awareness**, especially among poor and marginalized women, of their rights and of the procedures for making claims and obtaining legal protection; and
- General assessment of government and NGO activities to increase **legal literacy and access to justice**, especially among poor and marginalized women.

C. Country Gender Strategies

ADB’s Policy on Gender and Development also requires the preparation of a **country gender strategy** to be included as an appendix to each CPS. The country gender strategy is based on the CGA, but is relatively short (less than five pages) and therefore can only highlight the main findings and recommendations from the full gender assessment. In terms of **GLP issues**, the country gender strategy should generally highlight:

- **gender equality provisions** in the constitution, national development plan, and/or national poverty reduction strategy;
- the **gender equality law** (if any), **national action plan on gender equality**, and implementing bodies;
- any **recent or pending GLP initiatives**, e.g., gender reform of land, inheritance, or other laws; laws on equality in the workplace, gender-based violence, sexual harassment, or human trafficking; or measures to increase women’s representation in public decision making at national or local levels;
- any **other GLP issues in the main sectors that ADB supports**, which should be picked up in the relevant sector road maps discussed below.

⁸ Human immunodeficiency virus/acquired immune deficiency syndrome. This analysis should also address HIV/AIDS-related stigmas or discrimination; legal protections for people living with HIV/AIDS, if any; and provisions for HIV counseling and testing (which should be voluntary and confidential).

D. Sector Road Maps

For each CPS, **sector road maps** are prepared for each of the main sectors supported by ADB through its country operations and are included as appendixes to the CPS. These road maps are intended to identify key issues related to sector policies and institutions. Since gender is a crosscutting priority, the sector road maps should also identify any key GLP issues in the sector, based on the CGA, sector studies, or recent experience in ADB projects. These **GLP issues** might include any of the following:

- gender issues in the **main laws, policies, and institutions governing the sector**, such as:
 - gender bias or gender gaps in the sector law/policy;
 - gender bias in implementing or enforcing the sector law/policy;
 - gender balance or imbalance in staffing the sector ministry, especially at the local level;
 - the need for capacity building for ministry staff to understand and integrate gender concerns in their work; or
 - the need for targeted measures to ensure that women and men have equal access to government services in the sector.

- gender issues in **other laws, policies, and institutions affecting the sector**, including land law(s), the decentralization law/policy, labor laws/regulations, or civil service laws/regulations; and

- gender issues in **customary laws or practices affecting the sector**, e.g., relating to land tenure and use, management of other natural resources, tenancy arrangements, community decision making, resolution of local disputes, gender roles in the household, women's mobility, early marriage, or divorce matters including property allocation, maintenance, and child custody.