



Gender Network News

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This is a special edition of the quarterly newsletter addressing Gender and Law issues. For any comments, kindly send them to Francesco Tornieri (ftornieri@adb.org) or Zarah Zafra (zmzafra@adb.org).

Gender Network Secretariat

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A. Gender-Responsive Law Reform and Legal Empowerment of Women

Promoting gender-responsive law reform and legal empowerment supports poverty reduction. Legal empowerment seeks to “create and administer more transparent and predictable systems of laws and dispute resolution ... and ensures that those laws are implemented and enforced in an equitable and non-discriminatory manner.”¹ Gender-responsive laws and legal empowerment are increasingly recognized as critical tools to promote gender equality and the advancement of women.

1. Gender-responsive law reform. A properly functioning legal system is a requirement for sustainable economic growth and development. It ensures predictability and protection from the arbitrary and discretionary power of the State, its agents, or specific social groups. Conversely, the legal system can be a barrier to development and an instrument in the perpetuation of vulnerability. The behavioral changes needed to address gender-based discriminatory practices must start with the establishment of a gender-responsive legal framework. A gender-responsive law reform process begins with the systematic elimination of any domestic law provisions that directly or indirectly preclude equal treatment and opportunities for both men and women. While law is only one aspect of a gender-sensitive development paradigm, it is crucial. It can establish an equitable framework, which defines and protects individual and group rights; punishes; regulates access to and distribution of economic, political and social resources; and legitimizes or delegitimizes actions and institutions.²

2. Legal empowerment of women. Sometimes, the goal of establishing a gender-responsive legal framework is dismissed by development practitioners as an exercise in legal engineering, devoid of any immediate

Editorial

Poverty reduction interventions focusing exclusively on economic growth often fail to address the complex interaction of economic, social, cultural and legal factors, which contribute to poverty and vulnerability. In many Asian and Pacific societies, women make up the greater proportion of the poor and socially vulnerable. They experience social exclusion in accessing socioeconomic entitlements and opportunities due to the persistence of patriarchal values, low social status, lesser endowments of land and productive assets, and lack of rights in marriage and inheritance.

Recognizing structural (sociocultural, institutional, and legal) impediments to women's empowerment and how these affect women's lives and their ability to contribute to economic growth and development is the essence of the gender and law paradigm. Development interventions that do not recognize the effect of gender-based discriminatory practices and/or do not devise practical mechanisms to address these barriers fail to address some of the underlying causes of poverty. These interventions will bear limited impact on poverty reduction and indirectly contribute to reinforcing gender-based discriminatory practices.

Systemic sociocultural and legal barriers to women's empowerment result in their limited access to productive resources (land, technology, and credit) and more precisely insecurity of women's property and land rights; gender-based discriminatory practices in land redistribution and land registration schemes, and in accessing credit; and women's limited access to inheritance and succession rights. Persisting structural barriers to women's empowerment lead to women's greater exposure to the violation of basic socioeconomic rights, such as right to housing (occupancy rights); land tenure and land user rights; right to access water and forest user rights; right to core labor standards in the formal sector, covering issues such as unsafe working conditions, irregular wages, wrongful termination, and compensation for occupational injuries; physical and sexual abuse; right to access credit and financial services for women's entrepreneurs; and right to health, including reproductive and HIV/AIDS-related rights.

The information provided in this Newsletter highlights ADB increasing effort to more systematically address gender and law concerns through analytical work and gradual mainstreaming within the design and implementation of ADB programs. Our expectation is that the examples and lessons learned will further stimulate cross-fertilization of experience and creative thinking among ADB staff working in the broad area of gender, law and governance, and persuade colleagues in operations to more proactively consider the inherent benefits of mainstreaming gender equality and social justice concerns within the design, and implementation of lending and non-lending programs.

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1 ADB. 2003. *Law and Policy Reform at the Asian Development Bank*. Manila.

2 ADB. 2002. *Sociolegal Status of Women in Indonesia, Malaysia, Philippines, and Thailand*. Manila.

and practical impact on the lives of women. From this perspective, a better way to describe the critical contribution of the law to tackling gender-based discriminatory practices is the notion of legal empowerment. Legal empowerment is a process whereby women and vulnerable groups learn about and are encouraged to resort to the law and legal institutions to increase the control they exercise over their lives. As a continuing process, legal empowerment requires the adoption of a broad and coherent strategy of complementary and integrated initiatives, which may include the following:

- *Law drafting.* Law can be an engine of change in transforming fundamental societal values and beliefs underpinning gender-based discriminatory practices.
- *Law enforcement.* Women and vulnerable groups attempting to enforce gender-responsive provisions and judgments through formal and informal decision-making structures can be assisted through law enforcement initiatives. Monitoring the enforcement and denouncing the violation of gender-responsive provisions are powerful and tactical ways to raise awareness and build consensus on the need to address exclusionary practices affecting the lives of women. This processes may additionally call attention to other exclusionary practices, i.e., ethnic- and/or caste-based.
- *Legal literacy.* The translation and dissemination of basic legal information is part of legal literacy programs. Legal literacy also provides legal information, in simple language, on critical areas affecting women's lives. This information, meant for immediate and practical use, should be conveyed using a broad range of tools and techniques, targeting both the literate and the illiterate.
- *Legal aid.* Provision of free or low-cost legal services to women and vulnerable groups on both civil and criminal matters is another valuable tool for achieving legal empowerment. While legal aid can include representation in formal court proceedings, it frequently involves only advice and assistance, which may avoid courts trials. Legal aid also utilizes techniques such as alternative dispute resolution or engagement with administrative agencies.³

³ ADB. 2001. Legal Empowerment: Advancing Good Governance and Poverty Reduction, supra. Manila.

B. The Way Forward in Gender and Law

ADB's gender and law initiative attempts to maximize the opportunities provided through policy dialogue, lending, and technical assistance to support developing member country (DMC) goals of eliminating structural (sociocultural, institutional and legal) barriers to women's empowerment and overall poverty reduction. Further opportunities for supporting the mainstreaming of gender and law concerns in ADB operations could include the following:

1. *Support to government agencies.* Existing support for the respective Ministry of Women's Affairs could be accompanied by complementary support for the Ministry of Justice and other non-traditional partners (e.g., National AIDS Councils).
2. *Support to civil society.* ADB pilot-tested support under a regional technical assistance to women's nongovernment organizations (NGO), including community-based legal service NGOs involved in private schemes of legal literacy and legal aid provision targeting women and vulnerable groups. This approach could be extended to a broader range of stakeholders, including bar associations, professional associations of women jurists, and networks of legal aid societies.
3. *Focus on participatory and inclusive processes of law drafting.* The persistence of gender-discriminatory provisions in personal and family law requires more iterative and consultative processes of law drafting with a broad range of stakeholders, including traditional and religious leaders, who are able to reach a stronger base of consensus in critical areas of gender-relevant law reform. Additional critical areas of law reform include inheritance and succession, access to property rights, and land tenure.

Box 1: Legal Empowerment

An ADB-supported study examined how legal empowerment contributes to good governance, poverty reduction, and other development goals. Using seven country reports, the study identified the constraints faced by the poor in accessing the legal system and in participating in local or national governance. These included (i) lack of economic independence; (ii) minimal understanding of law and the rights it confers; (iii) limited access to affordable legal services; (iv) lack of knowledge, incentives, and resources among government officials; (v) limitations in the outreach and capacity of civil society organizations to provide legal services to the disadvantaged; (vi) inconsistency between formal law and traditional values; (vii) poorly drafted or contradictory laws and regulations; (viii) failure to implement sound laws; (ix) traditional use of law as an instrument of control; and (x) corruption.

ADB. 2001. *Report on Regional Technical Assistance on Legal Literacy for Supporting Governance—Legal Empowerment: Advancing Good Governance and Poverty Reduction, in Law and Policy Reform at ADB.* Manila.

4. *Targeting of a broader range of socioeconomic rights.* A multi-sector approach is required to mainstream gender and law concerns within the design and implementation of ADB interventions, including social infrastructure (health and population, HIV/AIDS, water supply and sanitation, and education); agriculture and natural resources (watershed management, irrigation, agro-industry, agricultural development, agrarian reform, and microfinance); finance and industry (micro- and small and medium enterprise development), energy; and social protection. Target groups which could benefit from increased emphasis on legal empowerment include

- urban and semi-urban squatters, victims of unlawful and forced eviction, homeless women; and people affected by resettlement;
- victims of land expropriation, and of debt bondage;
- rural women and vulnerable groups;
- labor-exploited women and children affected by unsafe working conditions, irregular wages, wrongful termination, lack of compensation for occupational injuries, and physical and sexual abuse;
- victims of gender-based discriminatory practices (i.e., inheritance/succession and dowry-related violence), domestic violence, sexual offences, and rape;
- women entrepreneurs (household, micro, and small enterprises);
- women with HIV/AIDS, women widowed and children orphaned by HIV/AIDS, trafficked and sexually exploited women, and children and illegal migrants.

5. *Cross-fertilization of experience among government and civil society stakeholders.* This should be promoted among key government agencies (e.g., Ministries of Women's Affairs and Ministries of Justice), NGOs, and civil society (e.g., legal aid societies, bar associations, and professional associations of women's jurists) in the areas of gender-responsive law reform, legal literacy, and legal aid. In light of the enactment of increased quota systems to promote women's representation within political and administrative structures, the cross-fertilization of experience among women's parliamentarians and local governments' representatives would be particularly beneficial.

C. Ongoing ADB Gender and Law Activities

The following is a list of ongoing ADB interventions in the area of gender, law, and empowerment resulting from collaborative efforts between ADB operational departments, Office of the General Counsel (OGC), and Poverty Reduction and Social Development Division (RSPD) within the Regional and Sustainable Development Department (RSDD).

1. *Analytical Work on Gender and Law.* In 1996, a regional technical assistance project was undertaken in four DMCs—Indonesia, Malaysia,

Philippines, and Thailand. This project illustrated the complex interaction and links among civil, religious, and customary laws and practices, which affect women's status. The study also evaluated the ways in which the law reflects and reinforces social and cultural norms and expectations. The importance of assessing the persistence of gender-discriminatory structures, rules, and processes and how these affect the impact of ADB interventions has been identified in ADB's Gender and Development Policy (1998), and further reiterated in ADB's Country Gender Assessments and sector-specific Gender Checklists.

2. **Loans Mainstreaming Gender and Law.** The following are some innovative approaches to operationalize gender and law concerns within ADB's lending program.

a. **Pakistan: Access to Justice Program Loans (2001)**

The key objective of the Improved Access to Legal Services for the Poor and Socially Vulnerable component of the Access to Justice Program (AJP) loans is to assist the Government of Pakistan in improving access to justice to provide security and ensure equal protection under the law to citizens, particularly the poor; secure and sustain entitlements and thereby reduce the vulnerability of the poor; strengthen the legitimacy of state institutions; and create conditions conducive to pro-poor growth. Through a combination of policy changes, capacity building, and support for civil society initiatives, the AJP is addressing gender-based discriminatory practices in the legal system and supporting greater equity and accessibility to legal services for the vulnerable. Concrete activities to be funded under AJP include revising service rules for judges to remove gender bias, facilitate the induction of more women judges, and promote gender sensitization; offering special courses for prospective women judges; and providing training courses in gender sensitization for the judiciary and the police.

b. **Cambodia: Commune Council Development Project (2002)**

The Civil Registration component of the Commune Council Development Project Loan aims at establishing an efficient national civil registration system and mobilizing women and other vulnerable groups to fully understand the critical implications and benefits derived from birth, death, and marriage certification. From a gender and law perspective, the most relevant activities of the component include (i) training women and ethnic minority councilors and officials, to ensure that these potentially excluded groups are fully involved, and that training materials and methodologies are adapted to meet women's and ethnic minorities' needs; (ii) launching an intensive public awareness and mobilization campaign, using mass media methods and local mobilizers, mainly NGOs, to encourage households in low turn-out areas to complete historic and current registrations. Since women will be key beneficiaries of marriage and birth registration, the media campaign and selection of NGOs will prioritize reaching women and ensuring that they understand the importance of registration.

c. **Pakistan: Sindh Rural Development Project (2002)**

The Improved Governance and Legal Support component of this loan project will support community-based improvement of rural livelihood through a rights-based approach to development. This will be done through better recognition of and compliance with stakeholders' rights and obligations, capacity building, and institutional support for district governments and other stakeholders, and review of relevant legislation. From a gender and law perspective, the project will assist in implementing legal awareness campaigns on a series of gender-relevant issues, which include the amended tenancy legislation, land revenue legislation and forms, debt bondage, the importance of registration as a tenant, and national identity cards. The campaign will also include the translation of relevant legislation into local languages, a media campaign, and community-based training and workshops with relevant stakeholders, including vigilance committees. To improve access to the judicial system, the project will train paralegals, directly support the provision of legal advice, and facilitate legal-aid referral initiatives.

d. **Nepal: Governance Reform Program (2001)**

The Governance Reform Program (GRP) is aimed at supporting government efforts to address gender imbalances in the civil service by

introducing affirmative action amendments to the Civil Service Act. The amendments will focus on alleviating constraints and creating new opportunities for women, ethnic groups (janjati), and disadvantaged occupational castes (dalits) in the civil and other public services. These include issuance of directives to line ministries mandating women's participation in civil service staff development training activities; developing a merit-based approach to recruitment and promotion, taking into account the current gender imbalance in the civil service system; and developing new, gender-sensitive approaches to procedures and processes for handling grievance and transfer issues. To mitigate any negative impact on women while rightsizing the civil service, a promotion scheme that will offset sociocultural impediments to women's career advancement will be introduced, as well as incentive mechanisms to retain and recruit more women. These schemes will include changes in legislation and regulations to increase women's ability to compete with men for high-paying positions (e.g., innovations in maternity leave, specific in-service training for women, and gender-friendly physical facilities).

3. **Technical Assistance in the Area of Gender and Law.** A range of regional technical assistance (RETA) and advisory technical assistance (ADTA) projects were implemented in the broad area of law and governance to promote equal access to entitlements and opportunities and to establish pro-poor and gender-responsive decision-making processes and local governance structures. In 1999, ADB's Office of the General Counsel supported a RETA on Legal Literacy for Supporting Governance, including support to legal NGOs involved in providing mediation and other legal services to its women members in Bangladesh. In 1999, ADB supported a TA on Women's Plan of Action to Fiji Islands, assisting the Fiji's Women's Rights Movement to review, draft, and amend discriminatory legislation, policies, and regulations relating to women's employment and economic rights. Under the TA, support was also provided to the enactment of the Family Law bill. In 2000, OGC supervised a TA on Strengthening Institutional Capacity for Judicial and Legal Reform, which provided the groundwork for the Access to Justice Program loans approved in 2001 (see above for details). A TA for Implementation of Land Legislation was provided to Cambodia in 2000 to support implementation of its new Land Law, including training

Box 2: The Gender and Legal Dimensions of HIV/AIDS

HIV/AIDS is a significant—and worsening—health, economic, and social issue in Asia and the Pacific. Because of physiological, sociocultural, and economic factors, women are more vulnerable to both the risks and impact of HIV/AIDS. Gender-responsive law reform constitutes a viable, yet virtually ignored, policy tool to advance the impact of ever-larger national AIDS programs. A powerful tool to contribute to the prevention of HIV/AIDS transmission is by encouraging mandatory pre-marital testing for at-risk groups or criminalizing the willful transmission of HIV/AIDS, using the *prescriptive* function of the law. People living with HIV/AIDS (PLWA) may also be protected by enacting anti-discriminatory legislation in the workplace and regulatory measures to enforce anti-stigmatization practices, using the *protective* function of the law. Women's traditional dependency on their marital status to access productive resources (such as land and credit) and their insecurity in exercising socioeconomic rights and opportunities is much worse for women living with HIV/AIDS and HIV/AIDS widows. HIV/AIDS-related discrimination and stigmatization further deepen the impact of gender-based discriminatory practices against women living with HIV/AIDS, and HIV/AIDS widows and orphans. The HIV/AIDS epidemic provides yet another rationale for continuous support to gender-responsive law reform, aimed to change underlying values and patterns of social interaction that contribute to the vulnerability to HIV infection, using the *enabling* function of the law. Test-piloting legal empowerment interventions targeting women living with HIV/AIDS, and HIV/AIDS widows and orphans is critical and should be pursued as part of ADB's increasing involvement in HIV/AIDS-related prevention, treatment and care.

Box 3: Cross-Regional Learning: The World Bank Africa Region Gender and Law Program (1999-2004)

The World Bank Africa Region *Gender and Law (AFR G&L) Program* was presented to Asian Development Bank (ADB) staff during a Gender Network brown bag event on 1 March 2004. Since the outset, the AFR G&L Program was tailored to respond to the needs of Sub-Saharan African countries, characterized by deep-rooted structural (legal and sociocultural) barriers to women's empowerment, further affected by (i) the persistence of dual legal systems with complex interaction between sometime conflicting modern, religious, and/or customary laws and institutions; (ii) institutional weaknesses within both Government (Legal Units within Ministries of Women's Affairs) and civil society nongovernment organizations [NGO] (bar associations, professional associations of women jurists, women's rights NGOs, legal aid NGOs) involved in the promotion of gender-responsive legal reform, legal literacy, and access to legal aid services for the poor and socially vulnerable. Innovative features of this World Bank Gender and Law Program included (i) self-standing (grant-funded) proposals for institutional strengthening and capacity-building support of Government and collaborating NGOs involved in promoting the socio-legal status of women; (ii) support to the iterative and consultative process of law drafting in critical areas of personal and family law reform and through the association of religious and traditional leaders; (iii) continued emphasis on the need to strengthen public and private legal aid schemes and the gender-responsiveness of informal (alternative dispute resolution and traditional) mechanisms of conflict resolution.

These projects demonstrated the need for substantive reforms in the area of personal and family law, resulting in an overemphasis on the law reform aspect of legal empowerment interventions. Moreover, the chronic institutional weaknesses of both governments agencies, legal service NGOs, and community-based networks of paralegals provided limited opportunities to scale-up legal empowerment interventions within self-standing WB loan components. However, the constructive dialogue with key stakeholders involved in project implementation enabled the WB team to ensure the association of traditionally excluded women's representatives within key Government and civil society NGOs in the consultative process for the design of country assistance strategies (the WB equivalent of country strategy and programs) and poverty reduction strategy program.

for court personnel and lawyers and a public information program on gender-related aspects of land registration and land titling. In 2001, within the context of a RETA on Combating Trafficking of Women and Children in South Asia, a study was conducted to (i) review existing legislation, regulations, and policies in Bangladesh, India, and Nepal for the protection of persons against trafficking, and the rescue, repatriation, and support of trafficked persons; and (ii) identify aspects of the legal frameworks that could be improved to protect persons against trafficking, and to rescue, repatriate, and support trafficked persons.

D. Forthcoming Gender and Law Activities

Operational departments, OGC, and RSPR will collaborate in the following gender and law initiatives:

1. *Gender and Law Toolkit*. This toolkit will help ADB and government staff identify key legal/regulatory policies and provisions that need to be in place to ensure effective mainstreaming of social justice and gender-equity concerns in ADB project/program design and policy reform in ADB operational areas of interventions, including education, health (HIV/AIDS and other sexually transmitted infections), agriculture and natural resources, water and sanitation, roads and transportation, finance and industry, and social protection.
2. *Gender Equality and Empowerment of Women Loan (Nepal)*. This proposed loan takes a comprehensive approach to support empowerment, by concurrently addressing the economic, sociocultural, and legal dimensions of gender-based discriminatory practices. The objective of the legal empowerment component is to (i) increase the knowledge and awareness of poor rural women and vulnerable groups on their legal and administrative rights and obligations; and (ii) build an enabling environment to implement and enforce these rights. Under sub component (i), the project will assist in carrying out a massive awareness campaign on a broad range of issues to address the gender-, caste- and/or ethnic dimensions of persisting discriminatory practices.

The issues addressed will include civil rights; safe migration and trafficking issues; domestic violence and sexual offenses; polygamy and child marriage; birth, citizenship, and marriage certificates; property, inheritance, and water rights; labor standards; and debt bondage. The campaign will include the translation of relevant legislation, regulations, and orders into local languages, media campaigns, and community-based legal training. The project will also assist Tribhuvan University in preparing a specialized course and syllabus on women's rights for inclusion in its Bachelor of Law Program. Under subcomponent (ii), the loan will provide support to the Judicial Council and National Judicial Academy for the training of judges, prosecutors, and court personnel on the rights of women and other vulnerable groups and gender-sensitive ways to deal with female court users. The project will assist in establishing ADR mechanisms, and the training of mediators and paralegals.

3. *RETA on Legal Identity (Bangladesh, Cambodia, and Nepal)*. The objective of this proposed RETA is to facilitate the access of women and vulnerable groups to existing resources, services and opportunities by eliminating inequalities in legal status and entitlements, and removing barriers to establishing legal identity. The objectives of the RETA are to (i) examine the relevant legal framework, institutions, and practices of participating DMCs to determine the extent to which the absence of a birth record impedes access to opportunities, services and resources; (ii) identify ways and develop tools that will assist in addressing the issue, including legal reform, capacity building of institutions involved, and removing de facto barriers such as geographic distance from registration facilities; and (iii) raise awareness within ADB and with relevant stakeholders on the importance of legal identity and ways to address it in future ADB projects and programs.

4. *RETA on Legal Literacy/Aid Targeting Women and Vulnerable Groups (Bangladesh, Indonesia, Pakistan)*. The purpose of this RETA is to contribute to advance existing partnership modalities between Governments and community-based legal aid NGOs involved in the provision of pro-poor legal literacy and legal aid to women and vulnerable groups in the project areas. The RETA will also contribute to further explore how legal literacy/aid interventions impact poverty reduction efforts. This will be done by (i) stocktaking of existing public and private partnership modalities in providing legal literacy and legal aid services; (ii) capacity-building of Government agencies and collaborating legal aid NGOs; (iii) testing of innovative approaches to advance the technical and financial sustainability of legal literacy and legal aid schemes; (iv) monitoring the impact of legal literacy/aid interventions on poverty reduction; and (v) coordinating cross-country evaluation of impact. In the past, there has been a shortage of empirical research linking specific legal empowerment activities to poverty reduction: the innovative methodology of the proposed RETA lies in testing a new evidence-based approach to legal empowerment, moving from predominantly anecdotal reports to firmer, verifiable data that can guide legal empowerment work. The proposed methodology will combine traditional G&L Output Indicators (see Table 1 below) with qualitative opinions of key stakeholders, quantitative results from sample surveys, and observations from focus group discussions.

Table 1: Gender and Law Output Indicators

a	Number of socially inclusive and gender-responsive legal and regulatory actions undertaken
b	Number of socially inclusive and gender-responsive legal and regulatory actions undertaken
c	Number of legal literacy/education and legal training materials on gender-based discriminatory practices published, translated in local language (for the literate) and image boxes (for the illiterate)
d	Number of para-jurists trained
e	Number of target groups sensitized and/or trained in gender- and law-related issues
f	Number of people sensitized through legal literacy campaigns
g	Number of legal aid societies (legal advocacy, legal aid and/or legal clinics) established and/or strengthened at both central, provincial and/or district level
h	Number of cases of violation of socioeconomic rights brought to (and solved) within formal/informal jurisdictions;
i	Jurisprudence on family and personal law-related issues compiled and distributed (including alternative dispute resolution and traditional mechanisms of conflict resolution)