

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.

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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	<ul style="list-style-type: none"><li data-bbox="499 597 1027 774">(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.<li data-bbox="499 808 1027 869">(b) Include legal and health issues in reproductive health care projects.<li data-bbox="499 904 1027 1138">(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).<li data-bbox="499 1173 1027 1381">(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.<li data-bbox="499 1416 1027 1503">(e) Include women in health and legal audit and advisory committees, as well as in the development of health-related curricula, to

Sector	Potential Component for Inclusion in ADB Projects to Address Women's Sociolegal Status
2. Water Supply and Sanitation	<p data-bbox="479 352 973 409">include women's legal rights to health care and protection against rape and violence.</p> <p data-bbox="442 444 973 682">(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 data-bbox="442 716 973 864">(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 data-bbox="442 899 973 1107">(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 data-bbox="442 1142 973 1501">(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>

APPENDIX 3: SECTOR-SPECIFIC RECOMMENDATIONS

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>

APPENDIX 3: SECTOR-SPECIFIC RECOMMENDATIONS

Sector	Potential Component for Inclusion in ADB Projects to Address Women's Sociolegal Status
B. AGRICULTURE AND NATURAL RESOURCES	<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>
<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
C. TRANSPORT AND COMMUNICATIONS	<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>
<ul style="list-style-type: none"> - Roads - Railways - Airports - Communications - Regional Infrastructure Development 	

APPENDIX 3: SECTOR-SPECIFIC RECOMMENDATIONS

Sector	Potential Component for Inclusion in ADB Projects to Address Women's Sociolegal Status
	<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>
<p>D. FINANCE AND INDUSTRY</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	
- Rural Electrification	(a) In connection with any land acquisition or resettlement, consider the factors outlined in Section C above. In all hydropower projects, consider the traditional rights of women to water, fish, and forest resources; ensure that women are fully compensated for losses of traditional rights of access through provision of new sources of water, fuel, and livelihoods.
- Gas Infrastructure	
- Renewable Energy Sources	
- Hydropower	
	(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	
- Governance, including Capacity	(a) Review civil service laws and regulations, including laws and regulations applicable to line agencies and local government; recommend changes to eliminate discriminatory provisions relating to hiring and promotion of regular and contractual staff; ensure that salaries, benefits, and working conditions are gender-equitable; identify opportunities for improving recruitment and retention of women at all levels; recommend 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.
- Building of Local Governments	
- Institutional Development	
- Law and Policy Reform	
- Access to Justice/Legal Empowerment	

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="500 361 1033 508">(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="500 543 1033 630">(c) Promote participation of women in decision making at senior levels of law enforcement agencies, ministry of justice, and the judiciary.<li data-bbox="500 664 1033 808">(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

(a) National Policies

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 *bidang pembangunan hukum nasional* (the area of national law and development and the subsector on the “role of women in nation building”).

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.

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.

Responsibility: Government of Indonesia, Asian Development Bank (ADB) could monitor through loan covenants on relevant policy projects

(b) Development of a Legal Database

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

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
(a) Labor Laws

The following recommendations for labor law reform have been submitted to the National Development Planning Board (BAPPENAS):

- (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:
 - 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. 4/1998, especially points 2 and 3 on health allowances which does not meet international labor standards ratified by the Government of Indonesia (ILO No. 100).

These reforms should be enacted as recommended.

Responsibility: Government of Indonesia, ADB could insist on these reforms through loan covenants on relevant labor-related projects.

Common Strateg/
Approach

Indonesia

(b) Access to Credit

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/P/19/1990 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.

Responsibility: Government of Indonesia, ADB could insist on this reform though loan covenants on credit, financing, or gender projects.

(c) Monitoring of Improvements in the Legal Status of Women

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.

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.

3. Legal Awareness and Gender Sensitization Programs

(a) Legal Education

(i) Support for the establishment of legal aid centers and legal literacy programs for women (rural and urban)

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)

Common Strateg/
Approach

Indonesia

- (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.
- Responsibility: Government of Indonesia in cooperation with universities, colleges, hospitals, military, police. ADB could support through specific law and development or education projects.
- (iii) Preparation of legal literacy booklets and pamphlets appropriate for diverse sociocultural backgrounds
- Responsibility: Government of Indonesia with possible support from ADB or other funding agencies
- 4. Legal Institutional Building, Capacity Building, and Legal Training Activities**
- (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
- Responsibility: Consortium of law schools with possible assistance from ADB or other funding agencies
- (b) Training for policymakers and decision makers, the judiciary, and members of the legislative body in gender sensitization**
- Responsibility: Government of Indonesia with possible support of ADB or other funding agencies
- (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.
- 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.
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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
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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

Common Strategy/
Approach

Malaysia

(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

Responsibility: Federal and state governments. ADB could require these changes as part of loan covenants on projects related to land development or indigenous peoples.

(e) Environmental Law and Policies

All existing environmental legislation, laws, and regulations should be reviewed and revised to incorporate both women's concerns and gender perspectives.

Responsibility: Government of Malaysia with possible assistance from funding agencies

(a) Training for enforcement officers, police, and social welfare officers on how to handle victims of rape, incest, domestic violence sensitively

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.

Responsibility: HAWA and National Institute of Public Administration (INTAN)

(b) Develop nationwide legal awareness and literacy program with all agencies that now have their own programs.

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.

(c) Provide materials and training to women in indigenous and aboriginal communities on legal rights in relation to landownership and employment/labor standards.

Responsibility: HAWA with possible support from ADB TA in the current pipeline.

(d) Gender Sensitization of judicial and legal officers. Priority should be to provide this type of training.

Common Strategy/
Approach

Malaysia

Responsibility: Government working with ADB through a country-specific project (e.g., the project in the current pipeline) or a regional TA

4. **Legal Institutional Building, Capacity Building and Legal Training Activities**
(a) **Establish legal aid centers for women and link these to the proposed integrative family courts.**

Responsibility: JAG

(b) **Identify strategies to get more women involved in the political process and legal reform.**

Responsibility: JAG

(c) **Assist in the institutional strengthening and capacity building efforts of JAG and its members.**

Responsibility: JAG with possible support from funding agencies

(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

(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.

Responsibility: HAWA with possible support from ADB through country-specific project or regional TA

(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, 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

(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.**

1. Institutional and Policy Framework

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> <p>(a) Undertake survey of the level of legal awareness of Filipino women. Responsibility: NCRFW</p>
3. Legal Awareness and Gender Sensitization Programs	

Common Strategy/
Approach

Philippines

(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

(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

(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

(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

(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

4. Legal Institutional Building, Capacity Building, and Legal Training Activities

4D: THAILAND

Common Strategy/ Approach	Thailand
<p>1. Institutional and Policy Framework</p> <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>
3. Legal Institutional Building, Capacity Building, and Legal Training Activities	<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>

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**

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APPENDIX 5: REGIONAL WORKSHOP AGENDA AND LIST OF PARTICIPANTS

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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

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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

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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.