

## CHAPTER 4

### SOCIOLEGAL STATUS OF WOMEN IN THE FOUR COUNTRIES

#### 4.1 Introduction

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

#### 4.2. Constitutional Status of Women

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

##### 4.2.1 Constitutional Rights of Women

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

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

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

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

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

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

#### 4.2.2 Citizenship and Political Representation

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

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

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

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

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

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

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

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

#### 4.2.3 Rights to Education

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

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

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

### 4.3. Family Relations and Family Law

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

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

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

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

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

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

Sisters in Islam, Petaling Jaya.

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

### 4.3.1 Marriage, Bigamy, and Polygamy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4.3.2 Divorce

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

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

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

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

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

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

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

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

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

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

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

#### 4.3.3 Child Custody and Support

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

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

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

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

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

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

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

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

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

#### 4.3.4 Inheritance

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

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

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

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

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

#### 4.3.5 Family Planning

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

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

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

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

#### 4.4. Labor, Employment, and Economic Rights

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

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

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

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

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

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

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

#### **4.4.1 International Labour Organisation Conventions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **4.4.3 Labor Conditions and Employment Issues**

##### **(a) Maternity and Paternity Leave and Child Care**

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

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

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

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

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

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

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

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

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

### (b) Health and Occupational Safety

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

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

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

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

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

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

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

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

(c) **Minimum Age of Employment and Child Labor**

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

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

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

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

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

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

#### **(d) Unemployment and Other Benefits**

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

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

#### **(e) Right to Organize and Unionize**

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

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

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

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

(f) **Other Conditions of Work**

(i) Hours and Nightwork

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

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

(ii) Seniors or Retirees

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

#### 4.4.4 Cross-Border Migration of Workers

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

#### Box 3. Checklist for Deployment of Workers: Indonesia

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

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

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

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

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

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

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

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

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

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

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

#### **4.4.5 Property and Economic Rights**

##### **(a) Land Rights and Landownership**

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

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

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

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

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

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

### **(b) State-Assisted Agricultural and Land Reform**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### (d) Credit and Contracts

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

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

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

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

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

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

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

#### **Box 4. Credit Programs Available to Women in Indonesia**

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

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

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

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

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

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

## 4.5. Violence and Sexual Exploitation

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

### 4.5.1 Rape

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

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

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

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

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

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

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

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

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

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

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

#### 4.5.2 Incest

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

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<sup>4</sup> Figures as of 1998.

**Box 5. Protection for Rape Survivors: The Philippines**

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

*Rape crisis centers*

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

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

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

*Protective measures*

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

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

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

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

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

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

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

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

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

### 4.5.3 Domestic Violence

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4.5.4 Prostitution

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

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

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

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

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

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

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

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

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

#### **4.5.5 Trafficking in Women**

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

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

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

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

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

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

#### 4.5.6 Sexual Harassment

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

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

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