

## **CHAPTER 6**

### **COUNTRY-SPECIFIC RECOMMENDATIONS**

#### **6.1 Introduction**

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

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

#### **6.2 Indonesia**

##### **6.2.1 Institutional and Policy Framework**

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

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

## **6.2.2 Legal Reforms**

### **(a) Labor Laws**

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

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

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

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

### **(b) Access to Credit**

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

### **6.2.3 Legal Awareness and Gender Sensitization Programs**

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

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

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

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

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

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

### **6.2.5 Specific Leveraging Opportunities to Overcome Constraints**

The following are three major leveraging opportunities to overcome constraints:

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

### **6.2.6 Other Points of Intervention**

Other recommended points of intervention in Indonesia are as follows:

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

## 6.3 Malaysia

### 6.3.1 Institutional and Policy Framework

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

#### (a) Develop an Integrated Family Court System.

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

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

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

**(b) Incorporate Gender Perspective in Land and Environmental Legislation**

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

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

### 6.3.2 Legal Reforms

#### (a) Violence Against Women

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

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

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

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

**(b) Land and Property Laws**

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

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

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

**(c) Environmental Law and Policies**

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

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

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

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

### **6.3.3 Legal Awareness and Gender Sensitization Programs**

#### **(a) Gender Sensitization and Legal Awareness Programs**

The following measures are recommended:

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

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

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

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

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

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

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

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

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

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

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

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

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

The following recommendations are proposed:

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

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

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

### 6.3.5 Indicators, Monitoring, and Evaluation

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

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

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

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

## 6.4 Philippines

### 6.4.1 Philippines: Institutional and Policy Framework

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

#### (a) Review the Concept of "Equality Before the Law"

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

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

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

**6.4.2 Philippines: Legal Reforms**

**(a) Harmonize State, Islamic, and Customary Laws**

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

**(b) Outlaw Violence Against Women and Children**

The following measures are recommended:

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

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

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

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

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

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

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

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

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

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

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

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

**(g) Reduce Filing Fees for Domestic Violence Cases**

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

**(h) Provide Lawyers for Children in Custody Cases**

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

**6.4.3 Philippines: Legal Awareness and Gender Sensitization Programs**

The following reforms are recommended:

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

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

**(b) Expand and Institutionalize Existing Legal Awareness Programs**

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

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

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

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

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

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

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

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

**(b) Integrate the Legal and Health Services**

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

**(c) Compile Indigenous Laws**

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

**(d) Integrate Curricula for Muslim Students**

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

**6.4.5 Specific Leveraging Opportunities to Overcome Constraints**

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

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

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

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

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

**(c) Organize Women for the Party List System**

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

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

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

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

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

**6.4.6 Allocation of Resources for Legal Implementation and Enforcement**

**(a) Increase the Budget for the Judiciary**

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

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

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

**6.5 Thailand**

**6.5.1 Institutional and Policy Framework**

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

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

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

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

**(b) Implement the NCWA Program**

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

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

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

**(c) Develop More Responsive Political Parties**

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

## 6.5.2 Legal Reform

### (a) Implement the Beijing Goals

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

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

### (b) Reform Court, Judicial, and Parliamentary Systems

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

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

### **6.5.3 Legal Awareness and Gender Sensitization Programs**

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

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

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

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

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

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

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

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

#### **6.5.5. Specific Leveraging Opportunities to Overcome Restraints**

##### **(a) Broaden the Scope of the New Constitution**

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

**(b) Recruit More Women as Policymakers and Decision Makers**

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

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

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

**6.5.6 Allocation of Resources for Legal Implementation and Enforcement**

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