

A. INTRODUCTION

CHAPTER 1:

THE SOCIOLEGAL STATUS OF WOMEN

Law functions in various capacities: [it] defines and protects individual and group rights, punishes, regulates access to and distribution of economic, political and social resources, legitimizes or delegitimizes actions and institutions and reflects fundamental values and beliefs of society. (APDC 1993:1)

1.1 Introduction

Legal and institutional reforms are increasingly seen as essential to combat structural barriers to women's full and equitable participation in society and in social and economic development. Such reforms also enhance good governance and the rule of law, which together form the foundation of sustainable and equitable development. These efforts are reinforced by the commitments countries have made under international treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the general recognition of women's rights as human rights. Such international commitments provide a framework for eliminating discriminatory laws and practices in individual countries.

The relationship between the law and women's status is complex. A country's legal system is a powerful social institution, which can either enable or constrain women's full enjoyment of their rights and control over their bodies and lives. In addition, access to resources, such as land and credit, are keys to women's economic survival, yet women often face legal discrimination in these areas. Current economic conditions and structural adjustment policies operate to further constrain women's economic opportunities relative to men (World Bank 2001: 107; UNIFEM 2000: 54; ESCAP 1999; CIDA 1995: 8).

For these reason, governments must take concrete steps, and exercise strong political leadership, to provide legal frameworks that recognize women's rights to participate in society and to control the

various aspects of their lives. In particular, it is the responsibility of governments to change laws and regulations that systematically disadvantage women. This may mean amending laws that do not effectively protect women from discrimination, such as labor laws that do not guarantee equal pay for women and men; or laws that subordinate women, such as family laws that define women as being under the legal guardianship of a living male relative (such as a father or husband). In other circumstances, legal reform may require the introduction of entirely new laws, such as laws against domestic violence and sexual harassment in the workplace.

Most international development organizations now recognize that laws and legal frameworks provide critical links between public policy and development. Laws and regulations based on sound principles can help to create legitimacy for policymakers seeking change and for those advocating change. But to be legitimate, laws must also be fairly and consistently implemented and enforced. Equalizing opportunities for women and men through legal reforms, and through improved administration and enforcement of existing laws, would be a significant step in furthering a country's developmental goals and enhancing the fairness and effectiveness of the country's legal system.

The general conclusion of this report is that the laws, regulations, and administration of justice in Indonesia, Malaysia, the Philippines, and Thailand continue to discriminate against women. As the following chapters demonstrate, such legal discrimination has perpetuated gender inequalities and prevented the full participation of women in society and economic development. Discrimination in the economic sphere, for example, has negatively affected women's status in both the informal and formal sectors, and has been detrimental to women's occupational health and safety. Furthermore, the interpretation of certain religious and customary laws in some of these countries has reinforced perceptions of female subordination and worked against the recognition of women's full human rights. For these reasons, there is a pressing need for governments and civil society groups to change discriminatory laws and practices, and to enact new laws and improve law enforcement to ensure that women's rights are adequately protected.

1.2 Legal and Nonlegal Factors Affecting Women's Sociolegal Status

The major constraints affecting the sociolegal status of women are very often quite separate from the substantive nature of the law itself. As Bauer (1996: 101) argues, even in countries where women's human rights are fully guaranteed in law, the actual implementation and protection of those rights are often compromised by a complex system of practices based on historical, cultural, linguistic, religious, political, and other traditions. As this report points out, all four countries have signed many of the major international conventions and agreements that affect the role and status of women. This does not necessarily mean, however, that the countries have ratified or implemented them, or put into place strong enforcement mechanisms. The lack of adequate implementation and enforcement was a recurring theme in all four countries.

In many cases, the factors giving rise to discrimination are many and deep-rooted, and relate to nonlegal or paralegal issues. For this reason, it is useful to apply a model employed by Margaret Schuler (1986), based on the work of Lawrence Friedman (1973), which analyses women's sociolegal status in terms of three interrelated components of any legal system. These are

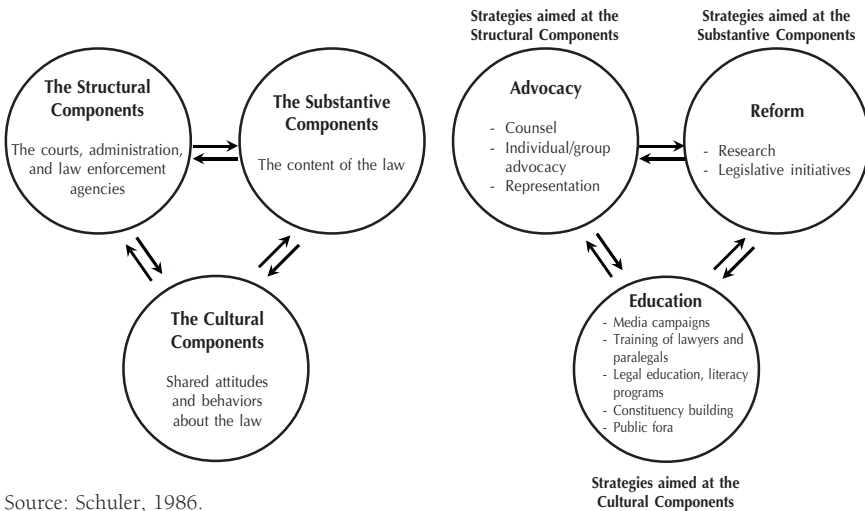
- substantive components, such as gender-biased and discriminatory laws, or the lack of appropriate laws such as laws prohibiting domestic violence and sexual harassment;
- structural and institutional components, such as the courts and the enforcement and administrative agencies of the state; and
- cultural components, such as shared attitudes and behavior toward the law. (See Figure 1).

This report adopts Schuler's model in Chapters 4 and 5, setting out the basic substantive, structural, and cultural constraints facing women in the four countries. In particular, due attention must be paid to the substantive content of the law, which may take the form of treaties, constitutions, statutes, regulations and rules, as well as judicial decisions; and informal customs and practices. After all, it is the law—broadly defined—that institutionalizes and sanctions certain behavior in various

social and economic settings. For the purpose of analysis, the substantive component of the law in this report is divided into four major categories:

- constitutional law;
- family relations and family laws;
- laws pertaining to labor, employment, and economic rights; and
- laws against violence and sexual exploitation

Figure 1
Components of a Legal System



Source: Schuler, 1986.

Relationship Between Components of the Legal System and Program Strategies

As the diagram above illustrates, activities aimed at law reform target the substantive components of the legal system; those aimed at educating people about the law target the cultural component; and those aimed at advocacy within the courts and administrative agencies focus on the structural component of the system. Just as the system components are integrally linked to one another, so does the program component imply a relationship and an interaction. The arrows describe this interaction.