

# EXECUTIVE SUMMARY

## INTRODUCTION

This publication is based on the report of a regional technical assistance (RETA) study supported by the Asian Development Bank (ADB) to develop a knowledge base on the sociolegal status of women in four of its developing member countries (DMCs)—Indonesia, Malaysia, Philippines, and Thailand. The study was carried out by a team of consultants managed by Agrodev Canada Inc. under the guidance and supervision of ADB staff.

The primary objectives of this regional TA were to

- (i) review and compile a knowledge base on the sociolegal status of women in four DMCs for use in ADB operations;
- (ii) assess these DMCs' legal constraints on women's participation in economic and social activities;
- (iii) identify the nature of law reform and strategic entry points for legal reforms, institution-building, and training activities that have potential for ADB involvement; and
- (iv) develop legally based strategies and actions to protect and promote women's economic and social status.

## FINDINGS

### A. Major Constraints Affecting the Sociolegal Status of Women

The major constraints affecting the sociolegal status of women in the four countries can be grouped under three categories: (i) substantive constraints; (ii) structural and institutional constraints; and (iii) social/cultural constraints.

Major substantive constraints include the following:

- (i) gender-biased and conflicting laws and regulations, and gender-biased administrative and judicial interpretations and rulings;
- (ii) gender biases in religious laws and customs;
- (iii) biases in customary and *adat* law (or customary rights favorable to women that have been undermined by modern state laws and policies);
- (iv) outmoded colonial laws that still prevail and influence societal values; and
- (v) lack of gender-sensitive law reform to deal with changes resulting from globalization and changes in social patterns and values.

Major structural and institutional constraints include:

- (i) Gender biases and insensitivity in administrative agencies (including law enforcement), the judiciary, and the legal profession;
- (ii) Lack of equitable, gender-sensitive implementation and enforcement of existing laws, and inadequate resources dedicated to the protection of women's interests;
- (iii) Limited access to justice and unaffordability of legal services; and
- (iv) Lack of political and bureaucratic will to pursue gender-sensitive reform of policies and laws, and to improve their implementation and enforcement.

Major social/cultural constraints include:

- (i) Patriarchal attitudes and conservative religious values;
- (ii) Lack of gender awareness and sensitivity in the society as a whole; and
- (iii) Intolerance of minority ethnic (including indigenous) and religious groups.

**B. Issues Related to the Legal System**

- (i) In all four DMCs, their legal and judicial systems have been shaped by their particular history, political system, social structure, dominant religion, economic performance, and other factors. Indonesia, Malaysia, and Philippines have legal systems that reflect, to some extent, those of the countries that colonized them. In contrast, Thailand has never been colonized and is a constitutional monarchy.
- (ii) Religious influences are evident in the legal systems of the four DMCs. The values that underlie Islam have strongly influenced the status of women in Malaysia, Indonesia, and parts of the Philippines, particularly in the area of personal laws. In Thailand, the influence of Buddhism has introduced a relatively enlightened view of the role and status of women in society. In the Philippines, the influence of Roman Catholicism is evident in the absence of a divorce law.
- (iii) All four DMCs are constitutional democracies. The constitution is the highest law and all other laws must conform to it. Inherent in this system is the superiority of "state" or "civil" law over customary laws, including indigenous laws and practices. Not infrequently, state laws conflict with and override indigenous laws and practices, for example, relating to landownership and use in parts of Malaysia and the Philippines, where the constitutions declare that all land belongs to the State. This has paved the way for government and private entities to lay claim to ancestral lands of indigenous groups which, in turn, has led to their dispossession and displacement.
- (iv) In Malaysia, Indonesia, and Philippines, the Supreme Court is the highest court of the land. Thailand has a Constitutional Court and a Supreme Court of Justice. Courts may be called on to interpret traditional or adat law, including changes in the law over time. These judicial interpretations have the effect of "formalizing" what was traditionally informal and unwritten law.

- (v) All four countries have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as well as other international treaties promoting and protecting women's status, including several International Labour Organisation (ILO) conventions. Thailand has also ratified the new Optional Protocol to CEDAW, which gives women in ratifying countries the right to notify CEDAW's expert committee about violations of their rights under CEDAW, and authorizes the expert committee on its own initiative to investigate grave or systemic violations of CEDAW.
- (vi) Indonesia, Malaysia, and Thailand have asserted reservations to CEDAW. Malaysia's reservations are the most extensive, and relate to possible conflicts between CEDAW's provisions, on the one hand, and provisions of Malaysian civil and Islamic laws, on the other.
- (vii) Women and women's organizations in the four countries have used CEDAW as a tool for encouraging their respective governments to introduce, implement, and enforce laws that improve women's status.
- (viii) The country reports indicate that women are often subject to the following:
- confusing, contradictory, and disparate laws, and overall lack of uniformity of laws and their application;
  - inadequate and inconsistent application and enforcement of laws and penalties;
  - unnecessarily long and complicated investigation, enquiry, and reporting procedures;
  - differing applications of the law and bureaucratic requirements by federal/national, state/provincial, and/or district and village authorities;
  - inappropriate attitudes and behavior on the part of law enforcement agencies, and the courts; and
  - overt discrimination and gender bias by the authorities theoretically designated to protect citizens against violations of the law and criminal acts.

- (ix) Discrimination is practiced by and within the legal and judicial systems: much systemic discrimination and inequality directly flows from the attitudes of lawyers (usually male but sometimes female), courts, law schools, firms, societies, and government legal departments. In order to bring about change in the other sectors identified above it will also be necessary to bring about attitudinal and behavioral change within the legal profession and judiciary. There are many barriers to entry for women in the legal profession, and in most countries it is still a "men's club". Women are underrepresented in law faculties and at the senior levels of the profession. Circumstances and the corporate culture in most law practices are such that it is difficult for women to succeed—particularly women who have primary responsibilities for childcare and home management
- (x) Women who are educated and urbanized, and members of NGOs or women's organizations, tend to be aware of their legal rights. Relatively few rural or urban poor women know their rights or how to access the legal and court systems. Access to the courts is further constrained by lack of money to pay for legal proceedings that can be lengthy and time-consuming.
- (xi) Many women fail to report incidents of domestic abuse and violence to the police, medical practitioners, social workers, or to women's organizations and shelters. This is due to fear, shame, embarrassment, and the belief that these are personal and not legal matters.
- (xii) To date, formal alternative dispute resolution (ADR) processes have had little impact on women's status, rights and obligations. Little training in ADR has been provided in formal legal and judicial circles.
- (xiii) Numerous gaps, disparities, contradictions, and inconsistencies exist between laws and international conventions, agreements and commitments, among statutory laws, common laws, religious laws, and customary laws and between de jure law and de facto implementation and enforcement.

### C. Country-Specific Issues

Notwithstanding the common concerns listed above, there are emerging issues which are of particular concern to specific countries. In Indonesia, the major legal issues are problems caused by dualism in laws confronting married women who are increasingly engaged in business: no separate tax numbers for women, constraints in access to credit, rights and protection of women workers in the nonformal sector; and difficulties associated with unregistered marriages.

In Malaysia, the problem is in reconciling the resurgence of Islam with the challenges of globalization. There is a growing concern that the reassertion of conservative Islam and traditional beliefs justified in the name of religion increasingly undermine women's abilities to access rights granted them under the law. Women's groups are at the forefront in challenging the traditional interpretation of religious laws.

In the Philippines, the major issues have been the poor implementation and enforcement of laws that safeguard women's rights; and difficulty in organizing women for sustained unified action as workers, consumers and voters, which weakens the ability of groups to promote women's concerns and increases the marginalization of women.

In Thailand, the major issues that need to be addressed are the regulation of working conditions of women in the nonformal and formal sectors; and the problems of migrant workers, including women working internationally as domestic workers and sex workers, and women workers coming into Thailand who are not covered by Thai labor laws. Further issues involve the increased trafficking in women and children, increased international organized crime in drugs, and increased HIV/AIDS resulting from the flourishing sex trade.

## RECOMMENDATIONS FOR POTENTIAL ADB INVOLVEMENT

ADB's overarching goal of poverty reduction is closely linked to improving the status of women, since equity—especially gender equity—is now recognized as an essential factor in transforming growth to development and reducing poverty. Moreover, poverty is increasingly seen as a deprivation not only of essential assets and opportunities, but

of rights, and therefore any effective strategy to reduce poverty must empower disadvantaged groups, especially women, to exercise their rights and participate more actively in decisions that affect them. Efforts to strengthen women's capacity to participate in the development process are likely to be more successful and enduring if there is a more equitable legal environment in which women can participate freely and equally, and if women have the information and resources to claim their entitlements and defend their interests. This regional overview report therefore includes recommendations for possible ADB interventions to improve women's status and legal empowerment at policy, sector, country, and regional levels.

### **1. Strategies and Policies**

The findings of this study have important implications for ADB's recently approved Long-Term Strategic Framework (LTSF), Medium-Term Strategy (MTS) and Poverty Reduction Strategy, all of which emphasize the need to improve equity—especially gender equity—and the empowerment of disadvantaged groups, including women, in order to achieve sustainable development and poverty reduction. The study also supports ADB's gender mainstreaming approach under its Gender and Development (GAD) Policy, and suggests areas for further attention under ADB's Governance Policy and Social Protection Strategy.

### **2. Law, Policy Reform, and Legal Empowerment**

The report also suggests a number of specific legal technical assistance (TA) projects that could be undertaken, either on a country or regional basis, to improve women's status and legal empowerment, including

- (i) follow-up studies of women's sociolegal status in other regions such as South Asia, the Pacific, the Greater Mekong Subregion, and the Central Asian republics;
- (ii) support for improved collection of data on women's sociolegal status, and development of sociolegal indicators;

- (iii) training of judges, lawmakers, lawyers, court officers, and law enforcement personnel in gender awareness and gender sensitization;
- (iv) support for legal aid offices and women's organizations that promote women's legal awareness and protect their interests;
- (v) promotion of information sharing and exchange on legal issues relevant to women, including use of the Internet; and
- (vi) specific research and law reform activities on priority issues such as migration; trafficking; land reform; employment laws; small business regulation; social security coverage (including coverage of informal sector and home-based workers); and laws against rape, domestic violence, and sexual harassment.

### **3. Country Strategies and Programs**

The report recommends that further attention be given to women's most urgent and pervasive sociolegal constraints in country programming activities, including poverty analyses, gender assessments, preparation of country briefing papers on gender, incorporation of gender concerns in country strategies and programs, and ongoing policy dialogue with government officials.

### **4. Loan Operations**

Under its LTSF, MTS, and Poverty Reduction Strategy, ADB will continue to assist its DMCs through program and project loans and grant-based assistance, as well as through new or hybrid modalities such as "clusters" of lending and nonlending assistance and more open-ended sectorwide approaches. All of these modalities can be potent instruments for improving the sociolegal environment for women in the DMCs. The report makes a number of recommendations for addressing women's sociolegal status in priority sectors, including agriculture and natural resources, energy, finance and industry, transport and communications, social infrastructure, and in multisectoral projects.

## 5. Regional Cooperation

The findings of this study also suggest that ADB should give further attention to the gender implications of regional cooperation and integration, including the impact on women and girls of international, regional, and national frameworks that apply to the migration of workers and trafficking in persons, and their implementation and enforcement.

### **COUNTRY-SPECIFIC RECOMMENDATIONS FOR ADB, GOVERNMENTS, AND NGOS**

Finally, based on the country reports included in this study, the report recommends a number of concrete actions that can be taken by ADB, governments, and civil society groups to improve women's status and legal empowerment in Indonesia, Malaysia, Philippines, and Thailand. The major areas discussed include

- (i) improvements in institutional and policy frameworks;
- (ii) substantive law reforms;
- (iii) legal awareness and sensitization programs; and
- (iv) legal institution-building, capacity building, and legal training.