

Legislating Gender Equality: Support for Law and Policy Reforms

Introduction

Gender-responsive laws and legal institutions are prerequisites for women's agency. Legal equality for women is the window to exercising rights and agency across the economic, political, and social arenas. In Asia and the Pacific, most countries have in place constitutions that include guarantees of equality and nondiscrimination, including equality between the sexes. Several countries have also enacted specific laws on gender equality, while others have introduced laws, or amendments to existing laws, to eliminate discrimination in particular areas such as personal status, citizenship, land and other property, inheritance, contracts, employment, and elections. Laws have also been enacted to address harmful practices such as child marriage, domestic violence, and human trafficking.

The region has witnessed a positive transformation in women's legal rights over the previous decade. Despite the significant advances in formal legislative commitments to gender equality, laws and regulations that discriminate against women still exist; loopholes remain in legal frameworks; there is widespread poor and weak enforcement of existing legislation and regulations; and the justice infrastructure of courts, police, and judiciary remain notoriously female-unfriendly. These factors, combined with women's

limited awareness and knowledge of their legal rights, continue to hinder women's access to justice and hence denial of their legal rights. Despite progressive legislation, for many women across the region the justice system remains out of reach.

I. Key Issues

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides the comprehensive framework for gender equality and women's rights, including legal rights. Virtually all countries in Asia and the Pacific have ratified CEDAW,¹ but implementation continues to be hindered by "reservations" often with respect to family, personal, and citizenship laws.² While CEDAW has been instrumental in spearheading gender equality laws, especially domestic violence and antitrafficking laws, many countries have yet to fully implement CEDAW with respect to repealing laws that explicitly discriminate against women, extending the rule of law to the private domain (e.g., domestic violence), and comprehensively addressing the impact of laws on women's lives.³

Laws and legislative frameworks governing gender equality remain inadequate. Some (Southeast and

¹ Palau and Tonga are exceptions. See CEDAW Task Force of The Leadership Conference on Civil and Human Rights. CEDAW 2014. <http://www.cedaw2010.org/index.php/about-cedaw/cedaw-by-the-numbers>

² World Bank. 2014. *Voice and Agency: Constraints and Pathways to Empowering Women and Girls for Shared Prosperity*. Final Draft. Washington, DC. p. 14.

³ UN Women. *Progress of the World's Women 2011–2012: In Pursuit of Justice*. New York.



South Asian) countries with a colonial legacy have been left with diverse family law systems; some with a socialist past have laws that are not in sync with current realities; and some with a plural legal system (secular and religious laws) have different laws for different groups of women.⁴ More than half of the countries in East Asia and the Pacific and over three-quarters of those in South Asia are marked by medium to high level of gender-based discrimination in economic and social rights—laws on domestic violence, citizenship rights, entitlements to land and property, and other forms of social rights.⁵ In South Asia, nearly half of the countries have no law on domestic violence. In East Asia, however, more than three-quarters of the countries have drafted legislation on domestic abuse.⁶

Even where laws protecting women exist on paper, they are not always translated into better access to justice for women. In many contexts, judicial practices reflect the influence of entrenched cultural and discriminatory social norms that undermine women’s legal rights. Well-functioning legal and justice systems provide an essential framework for women to achieve their rights and to progress women’s agency. Laws can be an essential platform for progress on gender equality by repealing discriminatory laws; enacting laws to protect women; improving the gender balance of the judiciary and police; making the justice infrastructure of courts, judiciary, and police female-friendly; and making justice systems work better for women.

II. Support for Law and Policy Reforms to Promote Gender Equality

The Asian Development Bank (ADB) has supported gender equality laws and policy reforms through its policy-based lending, project loans, and technical assistance grant projects. The following are some examples:

Policy-based lending

Pakistan: Access to Justice and Decentralized Support Program

In Pakistan, two separate policy-based loans and a technical assistance loan supported a package of legal and institutional reforms aimed at reducing poverty and promoting good governance through reform of both the judicial and police systems. The package also supported improved access to justice for women.

The results of the initiatives included (i) amendments to the Family Courts Act to provide women with greater protection in divorce cases, speeding up and reducing the time for divorce proceedings; (ii) a near doubling in the number of women judges in the subordinate judiciary; (iii) creation of gender crime cells at the national level to prioritize investigation of crimes against women; (iv) abolition of provincial quotas limiting the number of police posts for women, together with the establishment of five women-only police stations in Sindh; (v) passage of the sexual harassment in the workplace bill;⁷ and (vi) integration of a curriculum on women’s rights in the police training program.

The number of women in the judicial profession was increased through an affirmative opportunities program that includes preferential home-based postings and job quotas. The share of women judges in the lower courts increased from 3.67% to 5.76% in Punjab, from 5.88% to 11.90% in Balochistan, from 7.61% to 13.72% in North-West Frontier Province, and from 7.30% to 15.45% in Sindh.⁸

The police reforms supported by the Access to Justice Program introduced gender sensitization policy targeting police services. The National Police Bureau created a gender crime cell at the national level to prioritize cases of crimes against women. At the provincial level, the quota limiting the number of police posts for women was abolished and the police became an equal opportunity department.⁹

⁴ United Nations Development Programme. 2010. *Asia-Pacific Human Development Report—Power, Voice and Rights: A Turning Point for Gender Equality in Asia and the Pacific*. New Delhi: Macmillan Publishers India. p. 115.

⁵ Footnote 4.

⁶ Footnote 4, p. 124.

⁷ Adopted in 2010, the groundwork and bill preparation was supported under ADB-financed technical assistance.

⁸ ADB. 2009. *Completion Report: Pakistan: Access to Justice Program*. Manila.

⁹ Footnote 8.

In Pakistan, almost all laws and judgments were written in English. With support from the program, the government prepared simplified Urdu versions of major enacted laws for easy access and comprehension by the public. Furthermore, high courts established information technology directorates, launched websites, and fixed electronic notice boards outside of courtrooms to provide real-time information on cases being heard.¹⁰ These steps allowed women to follow the procedures more easily.

Philippines: Governance in Justice Sector Reform Program

The policy matrix of the Governance in Justice Sector Reform Program included the following policy actions: the Supreme Court to adopt a gender action plan and evaluate its implementation; gender-sensitivity training to be conducted for judges, lawyers, court clerks, and legal researchers; and the Philippine National Police required to establish 1,700 women and children desks at police stations, provide capacity development and training to police desk officers handling gender-based violence cases, and establish a monitoring and evaluation system for the desks.¹¹ The program also supported the development of a comprehensive procedural manual and an accompanying pocket-size booklet for dealing with gender-based violence crimes for police first responders.¹² In addition, training was provided to family court judges and court personnel on sensitive handling of gender-based violence cases.

Project loans supporting gender equality laws

The Constitution of Nepal guaranteed fundamental rights and equal treatment for all without discrimination on the basis of sex. The Constitution, however, also included discriminatory provisions related to citizenship and 137 other discriminatory laws.¹³

ADB's Gender Equality and Empowerment of Women Project¹⁴ aimed to tackle the multiple and mutually reinforcing dimensions of gender discrimination through cross-sector interventions to promote women's economic, legal, and social empowerment.

The project supported a number of gender-related legal and policy reforms to create a more level playing field for women. As a first step, the project included passage of the Gender Equality Act (2006) as a condition for loan effectiveness and removal of gender discriminatory provisions in 64 existing laws. The project also included support for introduction of an affirmative action policy to increase the number of women civil servants. Under the project, the government also committed to pass legislation on domestic violence and on the powers of the National Women Commission.

The legal empowerment component supported (i) a large-scale awareness-raising campaign on legal issues related to gender, caste, and ethnicity; (ii) preparation of a university law course on the rights of women and other vulnerable groups; (iii) training of judicial and local government officials and police officers on women's rights; (iv) establishment of alternative dispute resolution mechanisms and training of mediators and paralegals; and (v) legal aid to poor women in project districts.

Support was provided to the Judicial Council and National Judicial Academy to train judges, prosecutors, and court personnel on the rights of women and gender-sensitive ways of dealing with female court users. The project oriented 8,000 women and an equal number of men on their legal rights; trained 30 police officers from women police cells, 27 prosecutors, and 28 advocates from project sites on women's rights and gender-sensitive ways of dealing with survivors of gender-based violence; and assisted 80% of women in the project area to obtain citizenship certificates and nearly 77% to register their marriages and obtain birth certificates. To facilitate greater access to legal information, the project established 15 legal libraries in the project area.¹⁵

Technical assistance grants for gender equality laws

Legislating gender equality requires review and revision of gender discriminatory laws, addressing inconsistencies in existing laws and dealing with the unequal treatment of men and women in the legal system.

¹⁰ Footnote 8.

¹¹ ADB. 2012. *Gender Tool Kit: Public Sector Management*. Manila. p. 45.

¹² ADB. 2010. *SeaGen Waves Newsletter*, October.

¹³ ADB. 2006. *Gender, Law, and Policy in ADB Operations: A Tool Kit*. Manila.

¹⁴ ADB. 2004. *Gender Equality and Empowerment of Women Project*. Manila.

¹⁵ Government of Nepal. *Gender Equality and Empowerment of Women Project*. Final Impact Report. Unpublished.

In Viet Nam, ADB supported the preparation and adoption of the Gender Equality Law through a technical assistance project that supported the Vietnam Women's Union in drafting the Law on Gender Equality.¹⁶ Aside from drafting the comprehensive law repealing gender-biased and conflicting laws and regulations, the technical assistance also supported (i) development of suggested gender-sensitive systems and procedures; (ii) increased gender awareness by the judiciary, law enforcement, administrative personnel, and the legal profession; and (iii) enhanced legal literacy of the poor, especially women.

The law, passed in 2006, triggered the amendment and repeal of discriminatory laws and regulations and the issuance of a new implementing decree to operationalize the Gender Equality Law and extend coverage across all government ministries and agencies.¹⁷

Likewise in Mongolia, ADB, along with other development partners, assisted the government with the Gender Equality Law adopted by the Parliament in February 2011. Support was also provided to review and modify implementation and enforcement systems. The newly adopted Gender Equality Law prohibits any form of discrimination in the spheres of family relations, including gender-based violence and sexual harassment in the workplace. The law explicitly requires employers to take preventive measures against all form of sexual harassment (verbal, behavioral, and physical) in the workplace. The passage of the law sets the standards to ensure women's equal participation in all political, legal, economic, cultural, and social spheres.

III. Lessons Learned

Legislation supporting gender equality provides the necessary framework to give women voice and to exercise agency. However, legislation on its own is insufficient if implementation is weak, the justice system dysfunctional, and customary and social norms continue to influence women's access to justice.

A multipronged approach is required that (i) tackles legal reforms and repeal of discriminatory laws; gender balance in the judiciary and law enforcement agencies, through affirmative action, if required; and gender capacity development of judges, magistrates, legal personnel, and police; (ii) enhances women's knowledge of their rights; and (iii) assists them to navigate complex legal procedures.

Targeted initiatives may be needed to facilitate access to justice for poor and vulnerable women where social norms and cultural practices inhibit women's expression of voice despite equality under the law. These initiatives could include simplified provisions for women to file cases, mobile courts in rural areas, training of paralegals, telephone hotlines, waivers or subsidization of fees, and legal aid.

¹⁶ ADB. 2004. *Supporting the Preparation of the Law on Gender Equality in Viet Nam*. Manila.

¹⁷ ADB. 2007. *Technical Assistance Completion Report: Viet Nam: Supporting the Preparation of the Law on Gender Equality*. Manila.