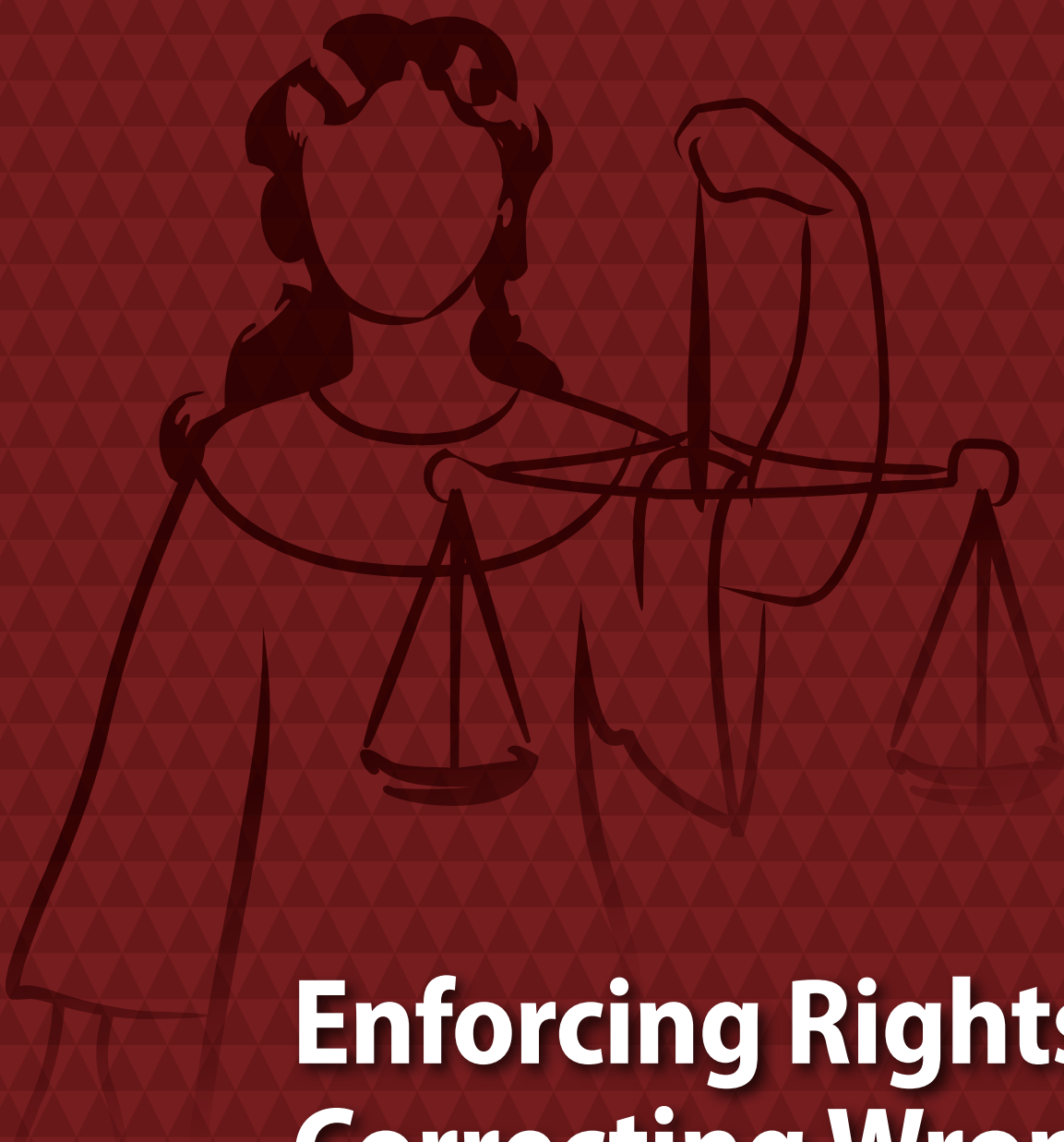




*Empowered lives.  
Resilient nations.*



# **Enforcing Rights and Correcting Wrongs**

**Overcoming Gender Barriers  
in Legal Systems**





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## Overcoming Gender Barriers in Legal Systems

**ANURADHA RAJIVAN AND HASNA CHEEMA**

Human Development Report Unit  
UNDP Asia-Pacific Regional Centre

**Suggested citation:**

Rajivan, Anuradha, and Hasna Cheema. 2011. *Enforcing Rights and Correcting Wrongs: Overcoming Gender Barriers in Legal Systems*. Bangkok: UNDP Asia-Pacific Regional Centre.

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**Human Development Report Unit (HDRU)**

UNDP Asia-Pacific Regional Centre  
United Nations Service Building, 3rd Floor  
Rajdamern Nok Avenue  
Bangkok 10200  
Thailand

ISBN: 978-974-680-310-6

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# Acknowledgments

This paper is based on research coordinated by the Human Development Report Unit, UNDP Asia-Pacific Regional Centre during the preparation of the Asia-Pacific Human Development Report, *Power, Voice and Rights: A Turning Point for Gender Equality in Asia and the Pacific*. The authors would like to acknowledge the statistical support provided by Manoja Wickramarathne and Pradeepa Malkanthi. Thanks are also due to the Knowledge Resources Review Committee at the UNDP Asia-Pacific Regional Centre.

# Abstract

The aims of this paper are two-fold: to uncover barriers to equality in legal systems that restrict human rights along gender lines – patent and latent; and to propose possible ways to redress legal discrimination for accelerating human development.

The focus of evidence is from countries of Asia-Pacific. However, given widespread gender-linked gaps in justice systems, and similarities of legal challenges posed, the paper is expected to be relevant also for other similarly placed countries.

Asia-Pacific has some extreme forms of discrimination and violence, not seen elsewhere, that prosperity has not been able to eliminate. Despite being one of the world's most economically dynamic regions with broad policy consensus around 'inclusiveness', exclusion on the basis of gender has continued to persist not just in fact, but also in law.

The motivation of the paper draws from a conviction that all human beings are equally valuable, and that gender by itself is not a legitimate basis for legal discrimination. It is based on the premise that men and women must be able experience substantive equality in justice systems; mechanical equality is not adequate. Women, much more than men, are excluded from the rule of law. Barriers operate, one, in the content of laws and legal practices; and two, in restricted access to justice systems. The substantive content of laws itself can be a source of discrimination. Laws may be discriminatory, have gaps or be contradictory. Women's access to formal and customary justice systems remains restricted and inadequate enforcement mechanisms continue to be of serious concern. Specific barriers, rooted in gender, prevent women from getting to courts or finding fair judgments once there.

The paper explores three strategic avenues for simultaneous action. One, fixing institutions – laws, legal practices and modes of access; two, changing attitudes of those who create, uphold, and use laws; and three, establishing ongoing assessments to reveal inequalities and monitor progress.

Key words: law, legal system, human development, gender equality.

# 1. Gender Equality In Law

## 1.1 Background and motivation

The legal system of a country touches every aspect of human life in the public and private spheres. Law constitutes an institutional backbone that affects the capabilities and opportunities of men, women, and people of other gender identities. It influences not only outcomes like physical security, equal earning opportunities, fair inheritance and property rights, or equality in family relations, for example, but also, at a much deeper level, the attitudes people hold. Equality in law is critical to back greater equality in economic power and political voice, which, in turn, can shape laws themselves – a synergistic relationship.

The aims of this paper are two-fold: to uncover barriers to equality along gender lines in legal systems—patent and latent; and to propose possible ways to redress legal discrimination to promote human rights and freedoms.

Asia-Pacific has some extreme forms of discrimination and violence, not seen elsewhere, that prosperity has not been able to eliminate. Despite being one of the world's most economically dynamic regions with broad policy consensus around 'inclusiveness', exclusion on the basis of gender has continued to persist not just in fact, but also in law. Hence the focus of evidence is from countries of Asia-Pacific. However, given widespread gender-linked gaps in justice systems, and similarities of legal challenges posed, the paper is expected to be relevant also for other similarly placed countries.

The motivation of the paper draws from a conviction that all human beings are equally valuable, and that gender by itself is not a legitimate basis for legal discrimination. It is based on the premise that men and women must be able experience substantive equality in justice systems; mechanical equality is not adequate. Yet women, much more than men, are excluded from the rule of law. The situation is aggravated through added disadvantages like poverty, other forms of exclusion, including other gender identities.<sup>1</sup> With about 60 per cent of the world's poor

living in the region,<sup>2</sup> women of Asia-Pacific are more vulnerable to poverty than men – not just because they have lower incomes, but also because their economic opportunities and political voice are constrained through restrictions on mobility, employment choices, control over assets and incomes.

After a brief discussion of the legal approaches to equality in *section one*, *section two* provides selected snapshots of the Asia-Pacific where, despite growing prosperity and stated policies of inclusiveness, gender-linked inequalities are pervasive and can take on unacceptable forms. Since laws are not crafted or enforced in isolation, *section three* focuses on multiple influences – both negative as well as positive – that shape the region's legal systems. *Sections four and five* uncover the two broad types of barriers to gender equality within justice systems – barriers in law and restricted access. The final *section six* presents three strategic avenues for simultaneous action: fixing *institutions* – laws, legal practices and modes of access; changing *attitudes* of those who create, uphold, and use laws; and three establishing ongoing *assessments* to reveal inequalities, encourage and monitor progress.

## 1.2 Legal barriers to gender equality

In much of the Asia-Pacific, several laws and legal practices allow, even encourage, discrimination to prevail and persist. Barriers to gender equality operate in two broad ways: (a) barriers in the content of law, and, (b) barriers of access to legal institutions and justice through them.

The substantive content of law itself can be a source of inequality in the presence of discriminatory provisions – patent or latent. Laws may be inconsistent; for example, constitutional provisions of equality may not be consistent with unequal labour or inheritance laws. In other cases they may be absent altogether, like when marital rape is not recognized in law. Moreover, access to justice systems, whether formal or customary, can also be highly restricted. Such barriers, rooted in gender, prevent



women from getting to the institutions of justice, like the police stations and courts, in the first place. Even when they do find their way to these institutions, finding equal treatment cannot be taken for granted.

While legal equality may require an even-handed application of principles of the rule of law – supremacy of law, equality before the law and predominance of the legal spirit<sup>3</sup> – gender equality in law requires something further. It requires uncovering gender biases and taking cumulative historical disadvantages into account. Women and men have different starting points and face different social, economic, political and institutional circumstances that shape rights, opportunities and capabilities. Sometimes equality is assumed to be at work in laws intended to treat everyone alike, but when examined against the backdrop of gender-linked discrimination, inequality can become explicit. Even with “neutral” laws in place, courts may view women through a gender-stereotype prism, influencing judgments.

### 1.3 Legal approaches for gender equality

The concept of equality is an area of much debate. Its application to gender is based on the notion of equal value of all human beings. Three main approaches on equality in law<sup>4</sup> can be identified that are relevant for gender:

*The traditional approach* is about “non discrimination” that entails equal treatment of all. It is based on the ‘sameness’ principle. Typically, it ignores gender differences between men and women and does not aim to achieve equality of outcomes. A law that treats women differently, for

example, provisions for affirmative action, may be considered an infringement of equality.

*The protectionist approach* sees women and men differently. It is also based on the notion that “likes should be treated alike”<sup>5</sup> but considers biological differences and justifies differential treatment of men and women, often perceiving women as “weaker” in need of protection. The objective of law then is to protect women. For example, labor laws may prevent female workers from working in night shifts<sup>6</sup> to protect them. The effect is often to restrict the victim rather than the perpetrator.

*The corrective approach* is consistent with the principle of substantive equality. It takes into account historic discrimination against women and seeks remedial measures. Over the past few years several progressive legal initiatives – legislative and judicial – have in fact been taken in many countries of the region, demonstrating commitments to advancing women’s legal rights.

Promoting gender equality in the legal systems requires recognition that women, men and persons of other gender identities, can experience laws and legal systems differently.<sup>7</sup> It requires ensuring equality of access and results.<sup>8</sup> This means going beyond mechanical equality in law that may ignore the different circumstances faced by people that are directly linked to gender. Thus, under the corrective approach, it includes redressing historical and systemic legal disadvantages, and is consistent with temporary special measures in favour of the systematically disadvantaged. Without such a consensus, the highly unequal conditions for men and women will continue as the gender snapshots from Asia-Pacific indicate in the section 2.

## 2. Assessing Gender Gaps: Snapshots From Asia-Pacific

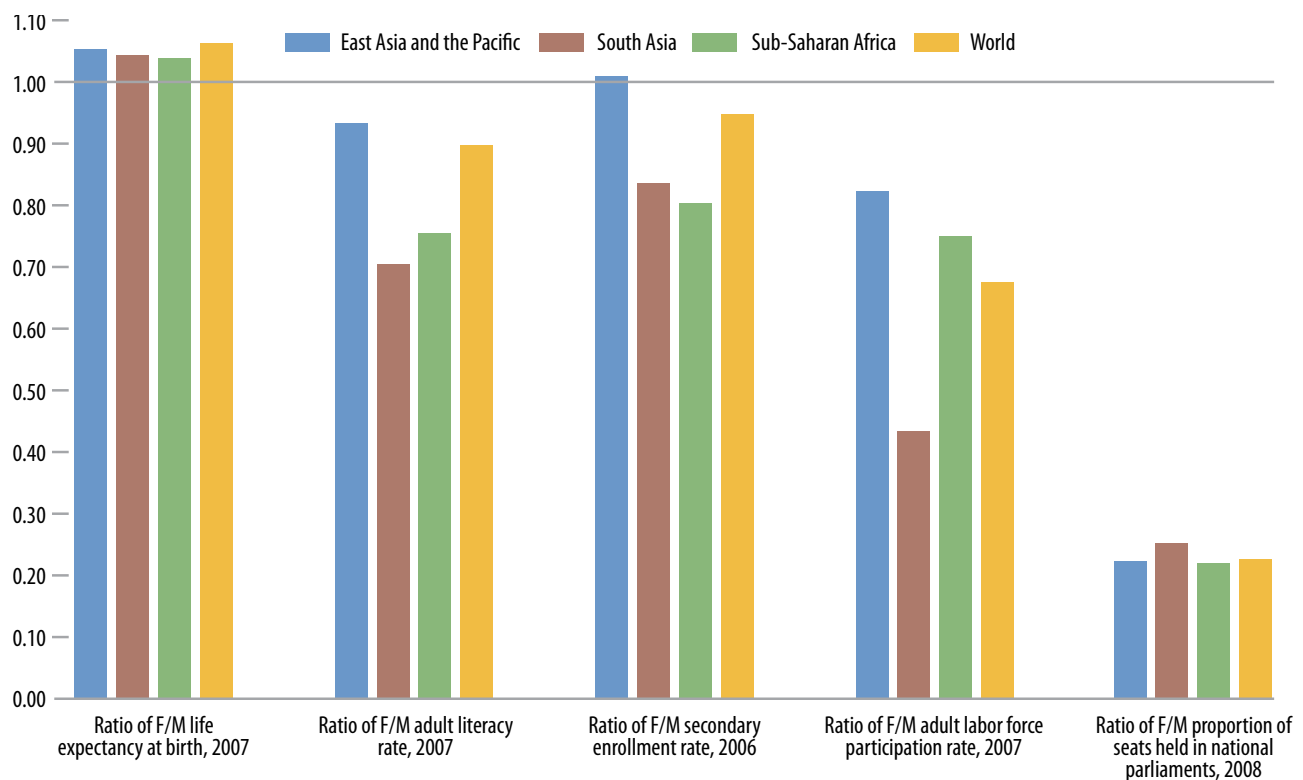
### 2.1 Growing prosperity does not automatically redress gender gaps

Asia-Pacific, recognized as the world's fastest growing region, allows some extreme forms of gender gaps to continue. The inadequate attention to gender equality in law finds reflection in the region's poor record on gender overall, including some extreme forms not seen elsewhere. Opposing forces operate: progress is certainly visible, but is interrupted by reversals as "tradition" is used to erect barriers. In fact, in parts of South Asia, girls cannot even take being born for granted and pregnancy can be

a life-threatening situation. Travel, assets, inheritance, work outside the home, etc., when mediated through male relatives, can become barriers of daily life. Assessments of the gender gaps in important aspects of life, as well as economic and social rights overall, become important.

Some of the barriers women face in everyday life can be seen in Figure 1. South Asia's rankings can be close to or lower than those in sub-Saharan Africa, such as life expectancy, adult literacy, secondary education, and participation in the paid labour force. Political participation of women shows the largest male-female gaps in all parts of the world.

**Figure 1: Asia-Pacific Ranks Low on Basic Gender Indicators**



*Note:* EAP – East Asia and the Pacific; SA – South Asia; SSA – Sub-Saharan Africa.

*Source:* UNDP 2010.

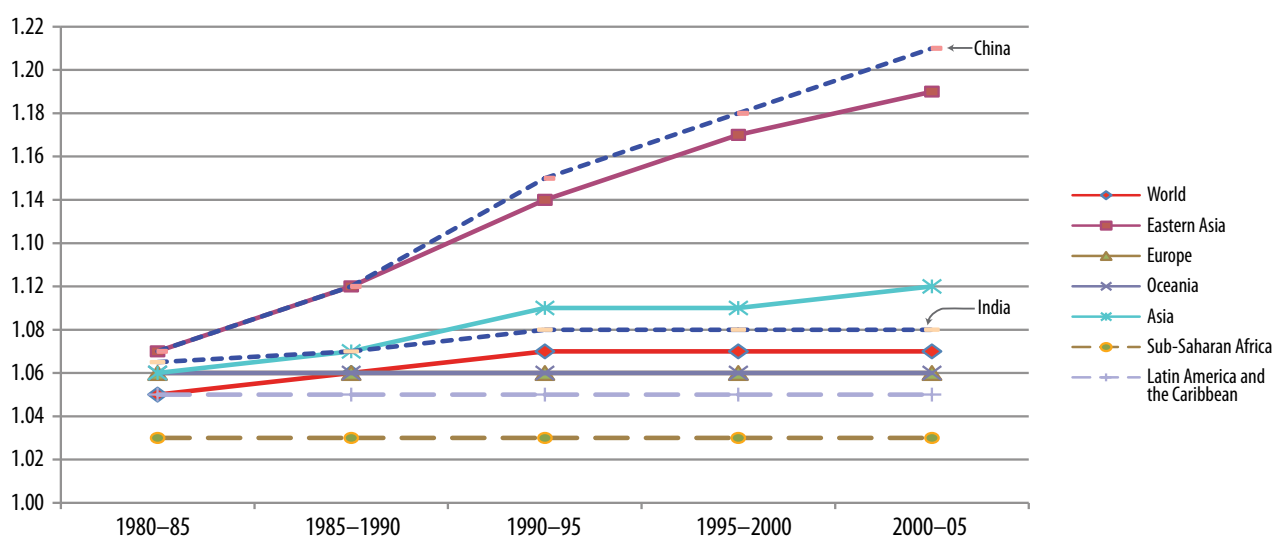
## 2.2 The male-female survival gap is high and growing

Gender inequality can begin even before birth. The strong preference for a male child combined with technological advances in fertility control has meant that, not only are far more boys than girls born in Asia as a whole as compared with the rest of the world, but also that the difference is widening (Figure 2). China and India, two of the world's fastest growing and most populous countries, seem to influence this trend. Compared with the world

average of 107 boys for every 100 girls (2000–2005), East Asia has the highest male-female sex ratio at birth of 119 boys for every 100 girls. In contrast, Sub Saharan Africa has the lowest sex ratio at birth.

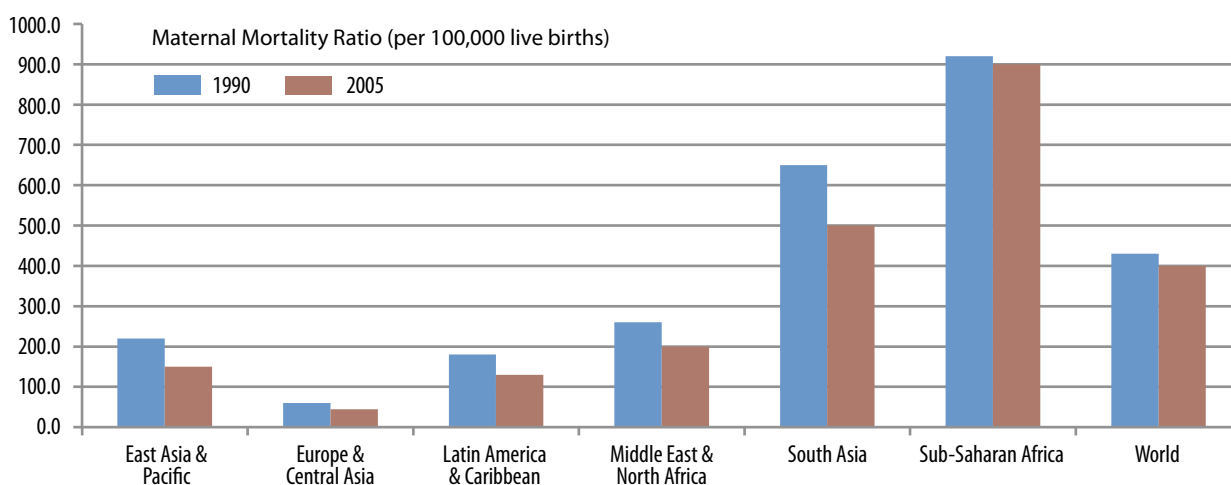
Pregnancy and childbirth, which should be normal biological processes for the human species, can be life threatening to women. Maternal mortality risks are high. More so in South Asia than elsewhere, more women die in childbirth – 500 for every 100,000 live births (Figure 3). The only exception is Sub-Saharan Africa where the maternal mortality ratio was higher in 2005.

**Figure 2: More Boys are Born than Girls: Male-to-Female Sex Ratio at Birth, 1980–85 to 2000–05**



Source: UNDP 2010.

**Figure 3: High Risks of Dying in Childbirth in South Asia**



Source: UNDP 2010.

In fact, a large number of women are estimated as “missing”. Women and girls dead due to neglect, denial of treatment for health, poor nutrition or neglect are estimated as close to 100 million in Asia, with China and India accounting for a majority of them. The numbers seem to be increasing in absolute terms.<sup>9</sup>

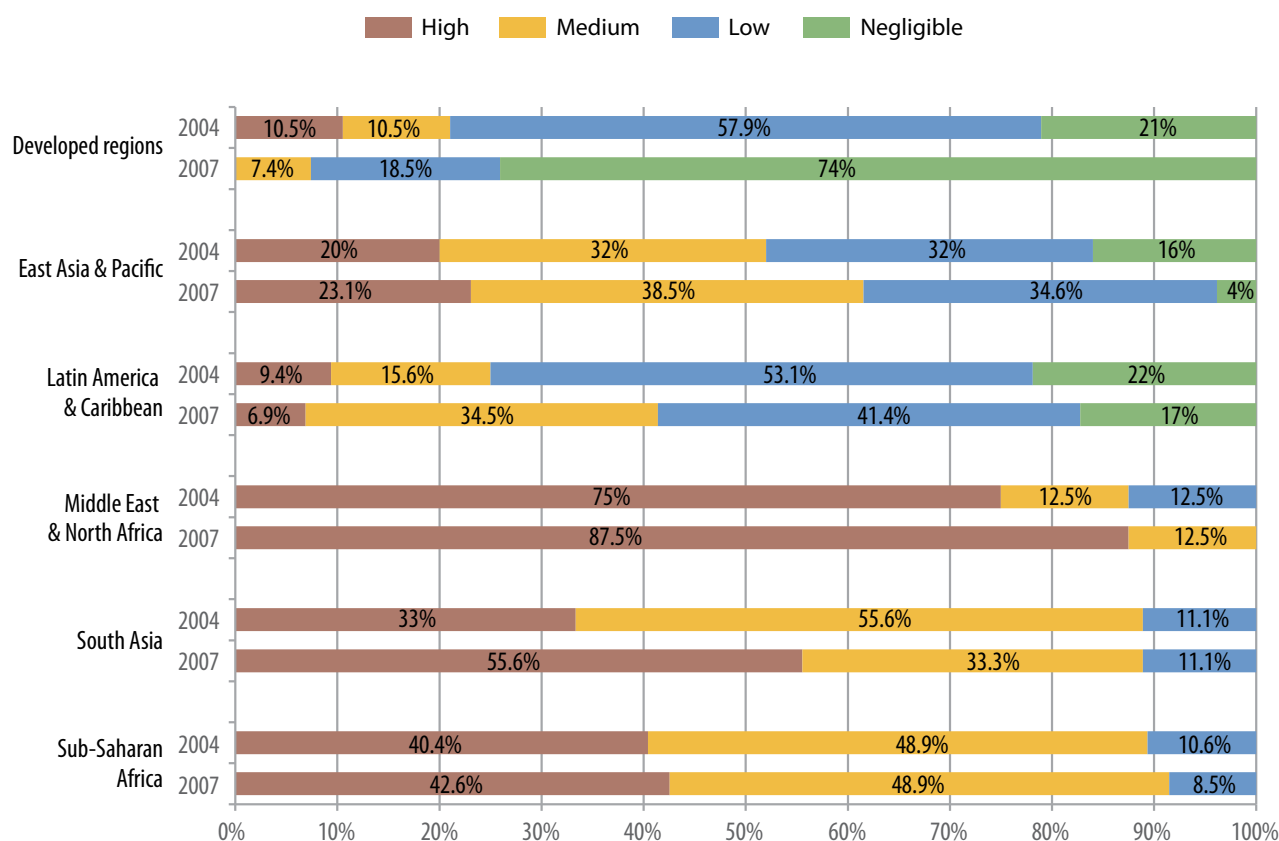
## 2.3 Economic and social rights are poor

An assessment of upholding economic and social rights for women overall indicates that between 2004 and 2007, discrimination has increased in developing countries of Asia-Pacific. The percentage of countries with high discrimination in one or other category increased. In East Asia and the Pacific, the percentage which was zero in 2004, increased to seven in respect of high economic

discrimination. The percentage of countries between medium to high levels of discrimination remained as high at 59 per cent in 2007, though it was a decline from the 63 per cent of 2004. In South Asia, the share of countries with high economic discrimination increased from 33 per cent to 44 per cent in the corresponding period.<sup>10</sup>

The social rights situation in Asia-Pacific is worse than that of economic rights, and is observed to be declining. The share of countries with high social discrimination increased overall. In South Asia, the figures increased from 33 per cent in 2004 to 56 per cent in 2007. In East Asia and Pacific, while the share of countries with high social discrimination increased marginally, the share with medium to high discrimination rose from 52 per cent in 2004 to 62 per cent in 2007 (Figure 4).<sup>11</sup>

**Figure 4: Discrimination in Women’s Social Rights**



Source: UNDP 2010.

# 3. Multiple Influences on Law

A network of competing and complementary factors affects laws and legal institutions. Laws are neither made nor enforced in isolation: domestic and international factors, past and present, operate. Customs and traditional practices, religious interpretations, domestic constituencies that advocate for equality, external influences like colonial pasts and evolving international legal standards—together matter. These factors, both positive and negative, shape ideas of equality, and influence how a particular law evolves and interpreted. We briefly examine some of these key factors as they impact gender.

## 3.1 Customs and traditional practices

Customs are considered the oldest form of law-making in as much as they refer to those ‘rules of human action which are established by usage and regarded as

legally binding’.<sup>12</sup> Customary practices are awarded constitutional recognition in some countries. Customary law may operate in many ways: it could be unwritten and un-codified custom law enforced in a *de facto* manner by village leaders; codified and enforced by mainstream courts; or broadly recognized in the constitutions, with courts determining its impact on other laws. Tensions between customary laws or traditions on the one hand, and formal law on the other, can allow leeway for varied interpretation to the legal disadvantage for women.

In an assessment of formal laws for CEDAW compliance in five Asian countries, it was observed that only three of them had express constitutional provisions granting primacy of formal laws over customary practices (Table 1). Virtually all countries of the Pacific region recognize customary law in their constitutions<sup>13</sup> and lack explicit constitutional provisions giving precedence to formal

**Table 1: Constitutional Primacy of Formal Laws over Customs Cannot be Assumed**

Country	Constitution	Relevant Constitutional Provision on Primacy of Formal Laws
Indonesia	Constitution of the Republic of Indonesia 2002	Article 18B (2) states ‘the State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law’.
Pakistan	Constitution of the Islamic Republic of Pakistan 1973	Article 8 (1) stipulates ‘any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void’.
Philippines	Constitution of the Republic of the Philippines 1987	There is no constitutional provision that awards primacy to formal laws over customs and practices.
Sri Lanka	Constitution of the Democratic Socialist Republic of Sri Lanka 1978	There is no constitutional provision that awards primacy to formal laws over customs and practices.
Viet Nam	Constitution of the Socialist Republic of Viet Nam 1992	Article 30 (2) requires the state to ‘eliminates superstition and bad customs’.

Source: Cheema 2010.

### BOX 1: Laws and Customs Operate Against Women: An Example from Pakistan

Customs and religious beliefs can be deliberately mixed with the law to consolidate political, economic and social power – to the detriment of less powerful women and men. In Pakistan in 2002, a local *jirga* pronounced the “punishment” of gang rape on Mukhtar Mai, whose 14-year-old brother was accused of molesting a woman in an upper class family – as a cover-up to the fact that the boy had been sodomized by men in that family.

An anti-terrorism court convicted six men in the Mukhtar Mai case and sentenced them to death in 2002. The convicts appealed in Lahore High Court. The Court, in its 2005 order, acquitted five accused men and commuted the death sentence of sixth accused to life imprisonment. The Federal Government decided to appeal against the acquittal. In the meantime, the Federal Shariat Court decided to overrule the decision of the Lahore High Court and the accused were arrested again. The very next day, the Supreme Court ruled that the Federal Shariat Court did not have the authority to overrule the decision, and decided to hear the case. In April 2011, the Supreme Court upheld the verdict of Lahore High Court in Mai’s gang rape case. The decision can be viewed as a setback for Mukhtar Mai and for broader struggle to end violence against Pakistani women.

Sources: Jahangir 2004; The Nation 2011.

law in case of conflict with customary law. Afghanistan attempts to strike a balance through legal provisions that require courts to rule in accordance with general custom, provided that the custom does not contradict existing laws or the principles of justice.<sup>14</sup> This kind of latitude, while intended to respect and accommodate prevailing norms, has been insufficient in eliminating practices that harm women. It gives judges and magistrates, themselves products of patriarchal societies, wide space to interpret laws which may not only be detrimental to the legal interests of women, but also deter them from approaching the institutions of justice in the first place.

Courts struggle to manage the simultaneous operation of customary laws and practices, constitutional provisions, longstanding notions of women’s subordinate status and emerging expectations around women’s rights to equality. For example, Tuvalu’s traditional practice of *moetolo* where a man enters the traditional house (*fāle*) and rapes a woman, while others are sleeping or pretending to sleep, often results in a charge only of trespassing<sup>15</sup> even if the rapist is taken to court. In fact such crimes are mostly unreported, and if they are, the court may maintain that someone would have tried to stop it if in fact rape was being committed. Why the watchers did not interfere is ignored – did they believe that a woman’s role is to please

men, a belief often shared by judicial officials? In Pakistan, at times, custom and law can be used as an instrument to consolidate power at the cost of vulnerable women and men (Box 1).

Nevertheless, not all customs are automatically more regressive than modern or secular laws. The Inheritance Law of Bhutan, for example, guarantees equal inheritance for sons and daughters, but traditional inheritance practices may also be observed. For most Bhutanese, these practices stipulate that daughters inherit family land. As a result, 60 per cent of rural women hold land registration titles – a higher figure than anywhere else in South Asia. Bhutan’s inheritance practices favouring daughters also account for the large number of women who own shops and businesses.<sup>16</sup>

## 3.2 Discrimination through interpretation of religion

Religion-based rules have made their way into the legal codes of many countries. Recognition of religion in constitutions has made it a potent legal and political force, with consequences for how women experience the justice system. In many societies, religion is used by some

vested interests through varied interpretations. Religion may be used to curtail women's freedoms and rights within the sphere of family laws – marriage, property and inheritance.

Most of the Asia-Pacific countries confer some form of constitutional recognition to religious values. In the Pacific 72 per cent of the countries have constitutional provisions recognizing Christian principles. The situation in South Asia is also similar with 67 per cent of constitutions having incorporated provisions on religion. By contrast, in East Asia only 37 per cent of the constitutions recognize religion (Annex: Table 1).

Most members of the Pacific's religious hierarchy have adopted an orthodox and patriarchal interpretation of religion. The Vanuatu Family Protection Act 2008 was designed to protect women from violence. Some Christian churches and traditional chiefs maintained the law contradicts ni-Vanuatu customs and the Christian and Melanesian values in the preamble of the Vanuatu Constitution. The Supreme Court ruled in late November 2008 that the new law is consistent with Vanuatu's Constitution.<sup>17</sup>

In Pakistan the debate over the role of religion in shaping women's legal rights is unending. Muslim Family Laws Ordinance 1961 aimed at upholding women's legal rights by discouraging polygamy and preserving their rights to divorce. The Ordinance drew criticism from religious leaders and had to be protected through a Fundamental Rights Bill, the first amendment to the Constitution. The amendment specified that the Muslim Family Laws Ordinance was not open to judicial review.<sup>18</sup> The politicization of religion under the 1977–1985 military regime<sup>19</sup> affected women's freedoms and rights in Pakistan. An "Islamization agenda" was introduced including the draconian Hudood Ordinance in 1979.<sup>20</sup> The harsh Zina Ordinance required rape victims to produce four male witnesses as evidence for the alleged crime or face adultery charges. A bill to amend the discriminatory law was introduced in the National Assembly of Pakistan in 2004 which led to a split among the Assembly's members. Conservative groups felt that the law made in the "name of Islam" should not be abolished. Liberal groups contended that customs and laws that discriminate against women must be repealed.<sup>21</sup> The law was finally overturned in 2006 through the Women Protection Bill.<sup>22</sup>

In India there are constitutional provisions on equal rights for all. The Special Marriage Act of 1954 is one concrete example under which any couple can marry in a civil ceremony, irrespective of community. But even though discussions around a uniform civil code for all communities are vibrant, efforts to actually enact such a code have not been successful.<sup>23</sup> Communities have the freedom to follow their own personal laws and many discriminatory legal practices are grounded in religion.

Religion also plays an important role in shaping the legal systems of East Asia. In Thailand, Buddhism has considerable influence in the way society views the role and status of women. Buddhist female monks are not considered equal to male monks. Thailand's National Buddhist Monks Committee still considers nuns as only "churchwomen" and not monks. Consequently, nuns do not have rights nor receive the same benefits as other members of this committee.<sup>24</sup>

### 3.3 Colonial pasts impinge upon the present

Asia-Pacific countries continue to carry the external marks of their colonial pasts. Outdated legal codes persist in the legal systems of many of the former British colonies. For example, the Penal Code, the Evidence Act and the Code of Criminal Procedure based on British legacy form the basis of the criminal justice systems in Bangladesh, India, Pakistan and Sri Lanka even today.<sup>25</sup>

Pre-colonial India based its law in religious texts considered sacred. Different communities followed their own divinely inspired laws.<sup>26</sup> The function of the state was restricted to enforcing laws rather than making them since the laws were already considered complete. Judicial procedures were not highly institutionalized. A typical legal proceeding in pre-colonial India was likely to be conducted by a village headman or a committee or panchayat, consisting of local men of status. The plaintiff and defendant would conduct their case while members of the village council assessed the circumstances and rendered verdicts.<sup>27</sup>

The colonists believed that their legal system and laws should serve as a model for others regardless of local values systems and norms.<sup>28</sup> As a consequence, many



discriminatory legal norms and practices took root in the criminal systems: rape laws with narrow definitions including the exclusion of marital rape, and considering consent from the view of the offender. British colonies also inherited laws criminalizing sodomy and sex work, some of which still remain in force.<sup>29</sup>

Colonization influenced the Pacific also. The traditionally matrilineal societies – Fiji, Republic of Marshall Island, Vanuatu and Solomon Islands – turned patrilineal. Women no longer had the same rights to assets or inheritance. In Pohnpei in Federated States of Micronesia, German Law codified land legislation that favoured patrilineal inheritance. It awarded ‘each adult male a piece of land’, so land is now commonly transferred from father to son.<sup>30</sup>

### 3.4 National demands for legislative and judicial reforms

Countries in Asia-Pacific have themselves pursued legal reforms in response to growing demands from internal constituencies, new national priorities and to better conform to international standards and commitments. While some reforms have brought in more gender equality, progress has been mixed.<sup>31</sup> Legislative changes and judicial precedents have contributed to reform.

*Legislative reforms:* In South Asia, Sri Lanka’s Penal Code of 1883 has undergone many amendments since 1995 taking account of some criminal law offences with adverse impacts on women. To curb violence against women, the Penal Code included provisions on sexual harassment, grave sexual abuse, incest, sexual exploitation of children, trafficking, etc. In addition the revised Penal Code provisions 1995, imposed “severe sentences, mandatory imprisonment and fine” on perpetrators. Award of mandatory compensation to victims of sexual assault is also introduced. Section 364 of the Penal Code (as amended by Act No. 13, 22 of 1995 and 10, 16 of 2006) increased imprisonment for rape offences. Before the amended law the perpetrator faced zero to 20 years of imprisonment. With the new amendment, the minimum sentence for rape has been increased from zero to seven years.<sup>32</sup>

Over the years, Pakistan has also undertaken legislative initiatives to uphold the legal rights of women. Through Protection of Women (Criminal Laws Amendment) Act

2006, some of the discriminatory provisions of 1979 Hudood Ordinance have been changed. Gang rape is criminalized, ten years minimum sentence for rape is prescribed for perpetrators and the coercive circumstances under which consent can be obtained from the victim has been expanded. Most importantly, rape has been brought under the purview of the Penal Code. This eliminates the previous requirement for four male witnesses to validate a woman’s allegation of rape and allows convictions to be made on the basis of forensic and circumstantial evidence.<sup>33</sup>

In East Asia, legal reforms have focused on enacting new laws and changes in existing discriminatory legislation. Many countries in the region have enacted laws on violence against women. Cambodia, China and Viet Nam have made their land laws more equal, conferring equal rights to land tilting. Viet Nam has enacted the comprehensive Law on Gender Equality in 2006 that guarantees women’s rights in the public and private spheres by eliminating discrimination against women and girls and promoting gender equality.<sup>34</sup> Indonesia has reformed its discriminatory Citizenship Act (1958) in 2006, conferring on Indonesian women the right to pass on their nationality to the children irrespective of their marital status or spouse’s nationality.<sup>35</sup>

In countries of the Pacific too new legislative initiatives have been introduced to redress legal discrimination against women. Papua New Guinea reformed its criminal law through the Criminal Code (Sexual Offences and Crimes against Children) Act 2002. The Act dramatically changed its sexual assault regime. A number of new offences have been introduced, for instance, and offences graded according to the gravity of harm, integrating the many ways in which women are sexually violated. Harsher sentences have been introduced, marital immunity that had previously prevented husbands from being prosecuted for a charge of rape was removed, and the common law practice of requiring corroboration as evidence was abolished.<sup>36</sup>

*Judicial precedents:* Judicial rulings can have impacts, positive and negative, on women’s legal interests. Bangladesh’s High Court gave a landmark 2009 judgment in the first application of its sexual harassment guidelines. The affected female students of Jahangirnagar University challenged the sexual harassment inquiry set-up by



the university in the High Court and got a verdict in their favour. The Court held that University's decision to exonerate the perpetrator and expel the students was "without lawful authority".<sup>37</sup> The Court's ruling is significant in two ways: one, it reinforces the importance of common law in providing legal protection to victims of sexual offences; and two, it sets a precedent which can act as a deterrent for future perpetrators. In addition, the Court, during the case hearing, observed that rigid rules of corroboration and standard of "beyond a reasonable doubt" are not always required to substantiate allegations of sexual harassment. This points to a positive emerging trend within the region – realization among the legal fraternity, judges in particular, of the importance of having flexible rules of evidentiary requirements for sexual offences.

Judicial precedents may also stand in the way of achieving substantive equality for all. In 2008, the Sri Lankan Supreme Court, in a rape case, concluded that the minimum mandatory sentence for rape and other sexual offences was tantamount to interference with judicial discretion by the legislature. The Section 364(2) (e) of the Penal Code (as amended by Penal Code (Amendment) Act No. 22 of 1995) prescribes a minimum mandatory sentence of 10 years the offence of rape. The Court observed that the minimum mandatory sentence is in conflict with Articles 4 (c), 11 and 12 (1) of the Constitution and that the High Court is not inhibited from imposing a sentence that it deems appropriate in the exercise of its "judicial discretion" notwithstanding the minimum mandatory sentence.<sup>38</sup>

In the Pacific region, there are numerous cases where judges have protected and upheld women's freedoms and rights through just rulings and progressive precedents (Box 2).

### 3.5 International legal standards for gender equality

International agreements can be important benchmarks to guide gender equality and internal support groups. Countries of Asia-Pacific have pro-actively used them to influence domestic legislation. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) offers a comprehensive framework for gender equality based on the principles of equality, non-discrimination and state obligation.<sup>39</sup> The Convention's substantive equality framework is applied outside as well as inside the home. In its preamble the Convention explicitly acknowledges that "extensive discrimination against women continues to exist" and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". Article 1 of the Convention defines discrimination as "any distinction, exclusion or restriction made on the basis of sex.... in the political, economic, social, cultural, civil or any other field". Articles 2–4 cover the general obligations of States Parties. Articles 5–16 include substantive provisions i.e. employment, education, health, political participation, nationality, rural women, trafficking etc. (Annex: Table 2).<sup>40</sup>

Out of 39 Asia-Pacific countries, 35 states have ratified or acceded to the Convention.<sup>41</sup> This is a positive change. But this change has not come without "reservations" – a device allowing countries to opt out of parts of the Convention. Most objections to CEDAW have been on grounds of supremacy of constitutional and national laws, obligations based on religion and reluctance to modify discriminatory social and customary practices.<sup>42</sup>

#### BOX 2. Toakarawa V the Republic of Kiribati – A Case of Domestic Violence

In 2006, Kiribati Court of Appeal took a strong stand on domestic abuses within family and in a ruling observed that domestic violence is not a "private matter" but should be treated as a serious crime. The Chief Justice sentenced the perpetrator (husband) to three years imprisonment for causing permanent injuries to his wife. In addition, the Court of Appeal refused to entertain the perpetrator's request for a reduced sentence.

Source: Kiribati Court of Appeal 2006.

Outside the Middle East and North Africa, Asia-Pacific has the highest percentage of CEDAW states parties with some form of reservation. It is also second only to the Middle East and North Africa in the percentage of countries that have not signed the CEDAW Optional Protocol, a complaint mechanism meant to strengthen enforcement of CEDAW.<sup>43</sup> In the Pacific, a study of nine countries on compliance with CEDAW within their laws found rates ranging from 18 per cent to 44 per cent, with Fiji having the highest ranking.<sup>44</sup>

Nevertheless, the CEDAW has been instrumental in some countries to reform civil and criminal laws. For example, the 2003 Fiji Family Law Act removes systemic discrimination against women and children in a manner consistent with CEDAW. Vanuatu's 2008 Family Protection Act is the only stand-alone legislation combating domestic violence in the Pacific which was guided by CEDAW and the Convention on the Rights of the Child.<sup>45</sup> Viet Nam is using CEDAW in its comprehensive review of legal normative documents that has followed the adoption of its 2006 Law on Gender Equality. In Cambodia, the Ministry of Justice is spearheading a CEDAW review of legislation on domestic violence, trafficking, domestic workers and marriage.<sup>46</sup>

In Nepal, although marital rape is still not a criminal offence, a judgment of the Supreme Court held that an exemption from marital rape conflicts with CEDAW. The Court used CEDAW and reasoned that if an act is an offence by its very nature, it is unreasonable to say that it is not an offence merely because different categories of individuals commit it. The Court ruled that marital rape is a denial of a woman's independent right to existence and self respect.<sup>47</sup>

International instruments also aim to redress specific gender issues such as the conditions of female combatants.

Women have been active participants in several armed conflicts and political upheavals – in Nepal's Maoist movement, as volunteers in the Iraqi army, in the independence struggle of Timor-Leste, and in Sri Lanka's Tamil conflict. They undergo intense physical, psychological and emotional experiences, and also pick up a variety of skills some of which are transferable to productive civil life. But post-conflict rehabilitation efforts that predominantly focus on civilians, refugees and other displaced population miss out on the special needs and enormous potential of females.

Gender comes in the way when women and girls tend to be counted among camp followers and refugees rather than ex-combatants eligible for full rehabilitation packages. Both sexes share the same danger, insecurity and living conditions as females function not just in "support" roles but also for all other activities like intelligence, combat, bombings and suicide missions, logistics and administration. To redress grievances of female combatants, the Security Council Resolution 1325, passed in 2000, aims to remove barriers to equal participation in peace building.<sup>48</sup> The Resolution encourages 'all those involved in the planning of disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants'.<sup>49</sup>

There are other international instruments which address different aspects of discrimination against women. For instance Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) address discrimination on the basis of sex. Thus, international instruments can support national efforts towards greater equality. Nevertheless barriers remain embedded in laws that govern justice systems. It is to these barriers that section four turns.

# 4. Barriers of Laws

Laws in Asia-Pacific continue to fall short of fully embracing notions of equality for all citizens. While some progress has been made, this section examines barriers in the substantive content of laws themselves that come in the way of women's full enjoyment of equal legal rights. Laws, as constructed, may be inconsistent or have gaps. In some cases they may be absent altogether when a systematic gender-linked circumstance is not recognized. Such barriers in the provisions of laws can be patent or latent.

## 4.1 Patent barriers

Across the region, many discriminatory laws hold women (and other disadvantaged people) back. From general constitutional provision on non-discrimination, unequal penal code provisions and nationality laws, lack of laws against violence against women, protectionist labour laws to diversity in personal laws – the list of legal gender inequalities is long.

*General constitutional provisions on non-discrimination open doors for wide interpretation.* An obvious place for locating an overt barrier in national legal systems is the constitution – the basis for securing further rights across legal systems. Most countries in the region provide only general constitutional guarantees of equality and non-discrimination for various groups, including women. South Asian countries, with the exception of Nepal, refer

to the biological sex, rather than the broader definition of gender, which include socialized roles and behaviours. Discrimination is not defined, and the prohibition mostly applies to the state, excluding the growing private sector. The lack of constitutional definitions on gender equality allows laws and court systems wide latitude in interpretation, including in ways that can perpetuate discrimination.

Most East Asian countries prohibit discrimination on the grounds of sex and mention equality in their constitutions. Lao People's Democratic Republic and Viet Nam have gone further in defining the specifics of gender equality and non-discrimination in their constitutions. Both have consequently been able to assign penalties for discriminatory acts through legal provisions.<sup>50</sup> Malaysia also added the word "gender" in its constitutional provision that led to the review of its legal system (Box 3).

China's constitution stipulates that men and women should enjoy equal rights in all spheres of life but does not clearly define discrimination.<sup>51</sup> It lacks specific legal provisions on some issues integral to achieving gender equality such as a guarantee of equal pay for equal work despite persistence of wage gaps.<sup>52</sup>

In countries of the Pacific, most constitutions have a general equality provision with specific definitions of discrimination in which citizens are entitled to certain

### BOX 3. Constitutional Provision on Gender Discrimination Paves the Way for Legal Review in Malaysia

In 2001, Malaysia added the word "gender" to a constitutional provision against discrimination that includes religion, race, descent and place of birth. This seemingly simple change prompted a broad review of all legislation, including laws on domestic violence, marriage and divorce, and land. While there is still no clear definition of "discrimination against women" in Malaysian law, the change has eliminated any legal argument that gender-based discrimination is permissible.

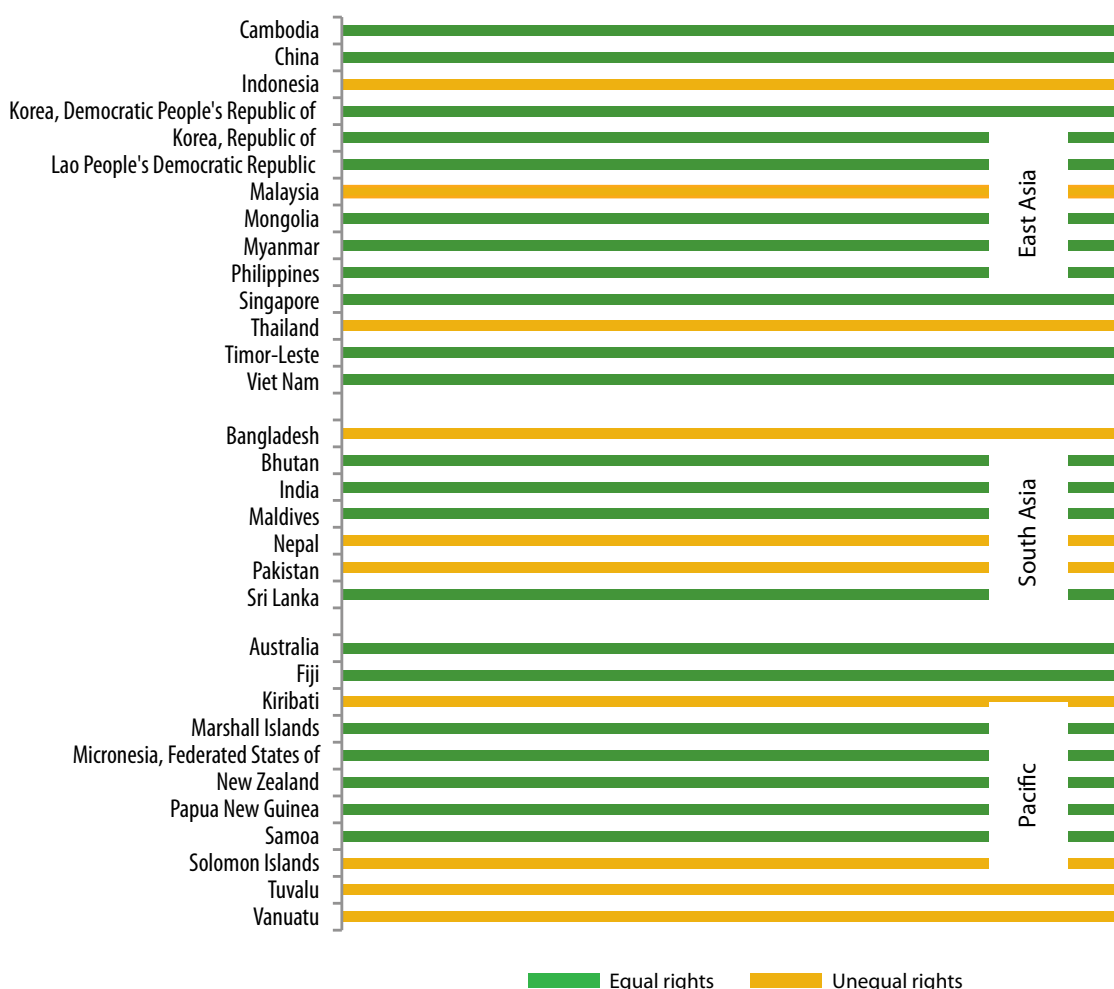
Source: CEDAW 2004d.

basic rights, regardless of their religion, race, place of origin, political opinions, colour, religion or creed and so on. Apart from Fiji, no constitution specifically protects discrimination on the grounds of sexual orientation.<sup>53</sup> However, Vanuatu's example of criminalizing discrimination exists where the 1981 Penal Code makes discrimination a criminal offence – an unusual provision in the Pacific region.<sup>54</sup> But no one in Vanuatu has been known to have been prosecuted for a breach of Section 150 despite the high level of discrimination against ni-Vanuatu women in both conventional and *kustom* law systems.

*Legal provisions discriminate on the basis of gender.* One of the most glaring examples of how legal systems in Asia-Pacific drift from the principles of equality is in nationality rights, part of the foundation of citizenship

itself. Women cannot take equal citizenship for granted as they may lose their right to retain nationality in case of a marriage to a foreign national. Figure 5 shows that 43 per cent of countries in South Asia deny women, married to foreign nationals, their right to acquire, retain or renounce nationality. In the Pacific, 36 per cent of the countries follow similar discriminatory nationality laws. East Asia's record in upholding women's nationality rights is better than South Asia or the Pacific as 22 per cent countries discriminate against women married to foreign men. Based on the patriarchic notion that men are the automatic "head of the family", it is assumed that everything should flow through them. Some countries deny female citizens the right to determine the nationality of children born from a foreign spouse. While foreign spouses of women do not have the right to obtain citizenship, male citizens do not face similar constraints.

**Figure 5: Some Countries Continue to Have Discriminatory Nationality Provisions**



Source: UNDP 2010.

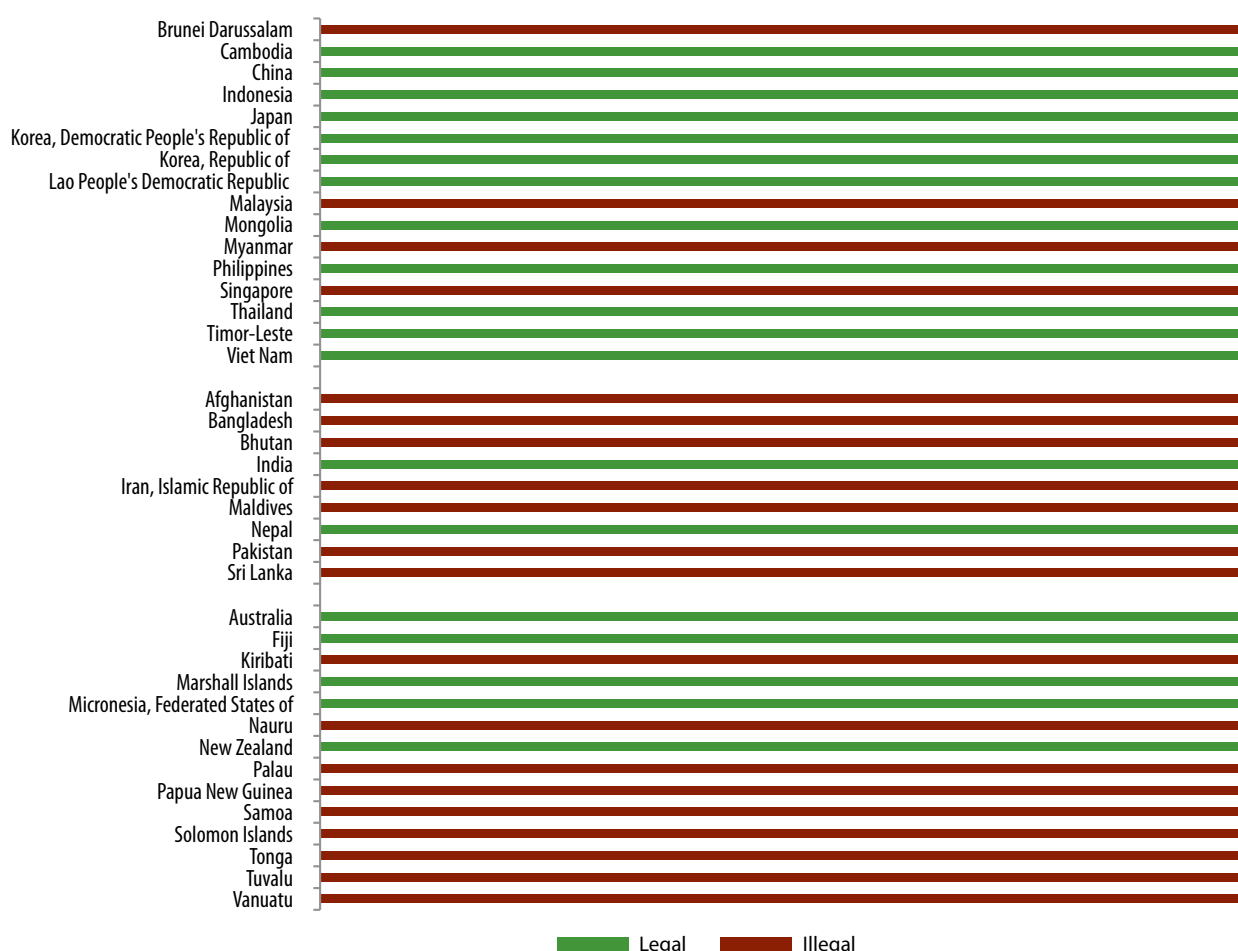
Malaysia's constitutional provision on citizenship, for example, states that a Malaysian woman married to a foreigner can only confer her Malaysian nationality on her child if the child is born in Malaysia. A Malaysian man married to a foreigner, however, can confer his Malaysian nationality on his child regardless of the place of birth.<sup>55</sup> To redress this legal inequity, Pakistan has amended discriminatory nationality law through 2000 amendment of its Citizenship Act 1951. The amended law allows women married to foreign nationals to determine the nationality of their children.<sup>56</sup>

Patent discrimination can also prevail through different notions on acceptable sexuality for women and men, even

in the presence of explicit constitutional equality. The case of the Philippines may be seen in Box 4.

Overt legal discrimination is not perpetuated against women and girls only, but also against people of other gender identities. Most of the legal systems in the Asia-Pacific criminalize same-sex relationships (Figure 6). Such relationships are considered unlawful in majority of the countries in West and South Asia. Higher courts of India and Nepal, however, have issued rulings that decriminalize same-sex relations and uphold the fundamental rights of sexual minorities.<sup>58</sup> In East Asia, 25 per cent of countries discriminate on the basis of sexual orientation. The situation in the Pacific is far more unequal. About 64

**Figure 6: Same Sex Relationships are Unlawful in Many Countries of the Region**



*Notes:* *East Asia:* In Indonesia, it is legal except in provinces or districts that have enacted local laws based on *Sharia* law (e.g. South Sumatra Province); *West and South Asia:* For India, such relationships are legal in the National Capital of Delhi, as a result of Naz Foundation Case 2009. Application of this judgment to other jurisdictions of India is yet to be determined. Supreme Court proceedings are pending. In Nepal, it is legal as a result of a 2007 Supreme Court ruling; *Pacific:* in Fiji, homosexuality has been decriminalized as a result of the 2010's Crimes Decree.

*Source:* Godwin 2010.

#### BOX 4. Discriminatory Legal Notions on Sexuality in the Philippines

The Constitution of the Republic of the Philippines 1987 upholds equality before the law for all citizens. However its 1930 Penal Code followed discriminatory notions on sexuality. Articles 333 and 334 of the Revised Penal Code in the Philippines define sexual infidelity differently for men and women. A wife is criminally liable for adultery with a man who is not her husband. On the other hand, a husband's adulterous act with a woman not his wife is not a crime. The husband can be criminally liable for the crime of "concubinage" only if he is caught with another woman "under scandalous circumstances" or when he cohabits with another woman in the conjugal dwelling or in any other place.<sup>57</sup>

Source: Cheema 2010.

per cent of its Penal Codes criminalize same-sex relations and impose punishments.

*Absence of laws on gender-based violence.* Even when well-intentioned principles provide a framework for gender equality, gaps in legal systems occur on issues related to women. An area in Asia-Pacific where gaps in laws are longstanding is violence against women. It may be dismissed as insignificant despite being pervasive – perhaps because some of it is seen as too close to the home and linked to ideas of 'honour'. This is despite mounting evidence on the prevalence of different forms of violence inside and outside the home – domestic abuse, rape, trafficking, sexual harassment at work, harmful traditions such as honour killings, and sex-selective abortions and infanticide.

A groundbreaking 2006 global study on violence against women by the United Nations Secretary-General compared national surveys on one form of violence: the prevalence of physical assaults on women by their male partners. Prevalence rates in Papua New Guinea were among the highest in the world at 67 per cent; Bangladesh crossed 47 per cent in multiple surveys; the Viet Nam figure was 25 per cent. The Philippines had the lowest prevalence rate in Asia-Pacific at 10 per cent.<sup>59</sup>

In South Asia, nearly half the countries have no law on domestic violence, while in the Pacific more than 60 per cent of the countries are without relevant legislation (Figure 7). In East Asia, in contrast, more than three-fourths of the countries have drafted legislation on domestic abuse, even though some of it has been quite recent within the past few years – Indonesia, Lao People's

Democratic Republic, Republic of Korea, Thailand and Viet Nam. Thus there are clear signs of positive change.

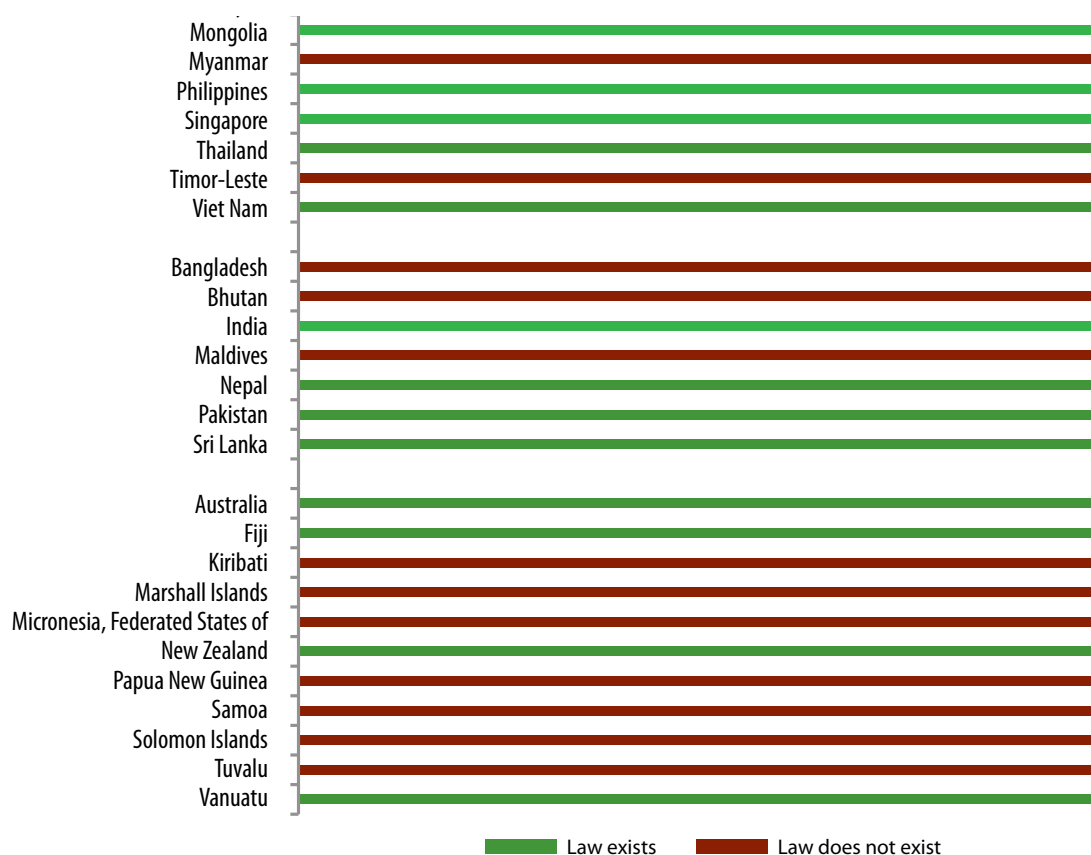
Most Asia-Pacific countries have little to offer in legislation on sexual harassment at the workplace, despite surveys in the region suggesting that 30 to 40 per cent of women workers report some form of harassment – verbal, physical or sexual.<sup>60</sup> Most countries in the Pacific fail to provide legal protection to female workers as around 73 per cent of them have no legislation on sexual harassment at the workplace. The record of East Asia and South Asia in upholding female workers rights is better – 46 and 43 per cent respectively (Annex: Table 3).

Is the bringing up of the next generation only the mother's responsibility, even at the cost of losing wages and curtailing other activities? Most South Asian countries do have provisions on maternity leave, while paternity leave is still not widely accepted. In East Asia only a few countries have provisions for paternity leave. Malaysia and the Philippines grant seven days to fathers of newborns.<sup>61</sup> In the Pacific none of the nine countries examined by a CEDAW legislative indicators study met the standard of 14 weeks of paid maternity leave recommended by CEDAW and the ILO. CEDAW recommends that it be paid and the ILO specifies the 14 weeks.<sup>62</sup>

Some countries are making progress to fill legal gaps in particular areas. The 2002 Acid Attacks Crime Repression Act and Acid Control Act in Bangladesh aims to stop the practice of disfiguring women by throwing acid on them and goes so far as to prescribe death penalty for perpetrators.<sup>63</sup> To address its large number of dowry-related murders, India added a separate definition of



**Figure 7: Most Pacific Countries Need to Enact Laws against Domestic Violence**



Source: UNDP 2010.

“dowry death” in its Penal Code. When the death of a woman occurs within seven years of marriage due to burns or bodily injury, and it is shown that she was treated with cruelty or harassment by her husband and/or relatives before death, the law presumes that the husband and/or relatives were the cause of her death.<sup>64</sup>

Another legal milestone in the region is the Anti-Violence against Women and Their Children Act (R.A. 9262) of the Philippines, passed in 2004. It covers domestic violence and supersedes Penal Code provisions for crimes where an intimate relationship is alleged. The Act encompasses physical, sexual, psychological and economic abuses. It considers violence against women and their children a public offense, which means that a complaint may be filed by any citizen who is aware of the crime.<sup>65</sup>

In the Pacific region, as well efforts are evident to fill legal gaps through law-making, despite resistance from opposing forces (Box 5).

*Protectionist labour laws can hold back female workers.* Labour laws may impose protectionist measures aimed to keep women away from certain jobs deemed unsafe. Such discriminatory laws are often justified on the basis of male-female differences. This can limit paid work opportunities for female workers and cause hostility when employment laws stipulate equal work opportunities for both male and female workers. While certain conditions may warrant this kind of regulation – for example, maternity – others simply deprive individuals of opportunities and choices or reinforce prevailing gender stereotypes about women’s capabilities outside the home.<sup>66</sup>

A number of Pacific countries and territories, for example, restrict women’s employment choices by banning them from night work and sectors like mining.<sup>67</sup> In Papua New Guinea and Samoa women are also prohibited from undertaking manual work.<sup>68</sup> Similar discriminatory provisions exist in Lao People’s Democratic Republic, Mongolia, the Republic of Korea and Viet Nam. Under Article 113 of the Labor Code in Viet Nam, an employer

## BOX 5. Domestic Violence Declared A Criminal Offence in Vanuatu

In 2008, the Vanuatu Parliament passed the Family Protection Act after more than 10 years of intense lobbying and campaigning by the Vanuatu Women's Centre, the Vanuatu National Council of Women and other women's NGOs. In passing the bill, the Government side voted unanimously for it but the opposition walked out of Parliament. Many people and groups were consulted in preparing draft legislation, including churches and the *Malvatumauri* (House of Chiefs).

The law recognizes domestic violence both as a criminal offence punishable by imprisonment and a civil offence that allows for protection orders. Any person in a domestic relationship is entitled to a protection order. The Act makes it illegal to use culture, custom or the payment of bride price as a defense. It removes various legal impediments that prevent successful prosecution. The police have extensive powers and can arrest without a warrant. They are required to bring an arrested person to court within 48 hours.

Source: Jalal 2009; The Family Protection Act 2008.

cannot assign a female employee to heavy or dangerous work, or work requiring contact with toxic substances, which has adverse effects on her ability to "bear and raise a child".<sup>69</sup> Sri Lanka had restrictions on female overseas workers with young children. Legal protections on working conditions should be available to all workers to promote of decent work, regardless of gender.

Some countries are starting to reverse discriminatory employment legislation. Although the Fiji Ministry for Employment still has discretion to limit the types of work that women do, it removed restrictions from legislation some years ago in response to lobbying from women's organizations.<sup>70</sup>

*Diversity can undermine women's rights.* Where individual communities are legally bound to follow their own personal laws influenced mainly by religion, women's legitimate rights to free marriage, property and inheritance can be adversely affected. This is particularly so in countries of South Asia like Bangladesh, India and Pakistan, where marriage and divorce laws endeavour to meet the complicated requirements of Hindu, Muslim and Christian communities. In India, people from Hindu, Muslim and Christian communities may be married under their community law, under an optional civil law or under the 1954 Special Marriages Act for inter-religious marriages. One side-effect of the civil law, flowing from the requirement of a month or more notice period in the office of registrar of marriages, is enabling radical religious

groups or objecting relatives to track these notices and harass couples in cases of mixed marriages.<sup>71</sup>

Divorce regulations in South Asia also vary by community. The Islamic procedure, where the divorce is through pronouncing the word *talaq* three times in the presence of two witnesses, is allowed in Afghanistan, India, Iran (Islamic Republic of), Nepal and Sri Lanka. Bangladesh and Pakistan have restricted this in favour of reconciliation. Since post-divorce maintenance laws for Muslims are also influenced by Islamic traditions, a woman may not be entitled to maintenance beyond the conventional three-month period of *Iddat*, if she is pregnant, until the birth of her child or till she remarries.<sup>72</sup> While this was quite progressive in the past, the growing social fragmentation of modern societies means that it often results in female deprivation.

The law of divorce for Hindus in India was based on establishing "wrongs", where the spouse who seeks divorce had to prove cruelty, adultery, desertion or other grounds listed in the statute. While Christian men can seek divorce on the grounds of adultery or other reasons; Christian women can only file based on adultery. Hindus in Bangladesh and Pakistan cannot obtain divorces since they are considered prohibited under *Shastric* Hindu scriptures.<sup>73</sup>

In the Pacific, formal legislation forbids multiple forms of marriage, even though these were historically accepted



in most parts of the sub-region until the spread of Christianity. This results in a different kind of problem. In Fiji, some 27 percent of Muslims also enter into Muslim marriages that are not technically legal.<sup>74</sup> Women then do not have legal protections on issues such as divorce, property and custody of children.

Viet Nam has shown progressive legal action through its 2006 Law on Gender Equality, which protects diverse customs barring those perceived as harmful under current human rights standards. Thus, while there is protection for 'the fine customs and practices of the ethnic minority people', "backward" marriage and family customs like underage and forced marriages, polygamy and snatching wives are restricted.<sup>75</sup>

## 4.2 Latent barriers

Less explicit subtler inequalities prevalent in legal systems also need to be examined as they also contribute to exclusion. These may be invisible or dismissed as insignificant. Some are justified on the basis of perceived gender roles or social norms.

*Inconsistencies give room for discrimination.* Loosely defined provisions on equality in constitutions or the recognition of multiple systems of law without establishing a clear hierarchy may cause hidden barriers to equality through allowing legal inconsistencies.

In the Pacific, virtually all countries have their constitution as the supreme law, but recognize customary laws as well.<sup>76</sup> Which should take precedence when they conflict is unclear. Some constitutions allow exceptions to the principle of non-discrimination for customary laws. For example, the Constitution of Solomon Islands 1978 stipulates that 'this section (protection against discrimination) shall not apply to any law so far as that law makes provision.... for the application of customary law'.<sup>77</sup> This means that even though statutes derived from the constitution may not discriminate against women, customary forms of discrimination can still legally take place with constitutional backing.

Another hidden barrier that undercuts women's legal rights is the persistence of discriminatory notions about sexuality and gender roles in some legal systems.

Indonesia's Marriage Law No. 1 of 1974 distinguishes the role of a husband from that of a wife. The husband is considered the "head" of the family and the wife regarded "mother" of the household.<sup>78</sup> Concepts such as the "head" of the family do not have legal recognition in all countries, but are widely used in official surveys and statistics. Such narrow definitions of gender roles within marriage can curtail women's choices and freedoms.

*Narrowly defined law can limit scope.* This is another subtle legal barrier that produces legal discrimination. Countries may have a specific law against domestic violence, but may stop short of prescribing adequate penalties for perpetrators, negating its stated intent. In Lao People's Democratic Republic, for example, domestic violence is recognized in its 2004 Family Law, but there is no penalty contemplated. In case 'violence is not serious', the law insists upon mediation through family members, close relatives or a village mediation unit rather than prosecution of the perpetrator.<sup>79</sup> Viet Nam's Penal Code considers a women's ability to defend herself – not the issue of whether or not she has given consent. Prior sexual conduct can be used to establish consent<sup>80</sup> though it may not be there.

When a law omits certain perpetrators from its purview, such an exclusion may restrict women's ability to seek legal remedies. The Philippines's 1995 Anti-Sexual Harassment Act prohibits harassment in the workplace where only supervisors, employers and managers with "authority and influence" are penalized for acts of harassment. The law is silent on sexual abuses by co-workers.<sup>81</sup>

In the Pacific, although countries have legislated against sexual assault, but many fall short of adequate protection for the range of sexual violations perpetrated against girls and women. And most fail to prescribe adequate penalties for sexual assault crimes.<sup>82</sup> This can imply that sexual assault is not a serious offence.

*Social norms and gender stereotypes can be potent barriers.* Social norms and prevailing stereotypes on gender also influence notions about men and women that are reflected in legal systems. Patriarchal societies of the Asia-Pacific are premised on a social notion of male superiority. Violent behaviour in the home may be treated as "normal" male behaviour not requiring legal intervention. In Viet Nam the Confucian concept that men are responsible for

the “education” of their wives and children underpins acceptance of physical violence. Similarly despite of its 2006 Law on Gender equality, women may be denied their due inheritance rights as in some rural ethnic groups where parents may refuse due inheritance share to their married daughters<sup>83</sup> though marriage does not debar sons, in spite of general equality in inheritance.

In the Pacific customs and traditions may stand in the way of women’s legitimate rights to own land and inherit property. The Custom Policy in Vanuatu, for example, provides that the “true custom owners” of land are men whose lineage is directly linked to the community living within the borders of the land. If these men die, male guest residents may assume ownership rights if they have lived there for at least four generations. If the long-term guests have also died out, adopted sons and their descendants may assume rights. Control over land may pass to ni-Vanuatu woman only if all these men are dead, and no uncles are alive. This means that women in Vanuatu may own land, if at all, only as a very last resort.<sup>84</sup>

Influenced by social norms, child marriages continue to be widely practiced in Bangladesh.<sup>85</sup> This contradicts the legal provision of minimum marriage age of 18 years for girls.<sup>86</sup>

*Some legal practices can have negative effects.* Although justice systems across the region have tried to remove overtly discriminatory statutes, they still allow certain discriminatory legal practices like forgiveness and settlement.

In the Philippines, marital rape is a criminal offence under its 1997 Anti-Rape Law. However the legal provision

of “forgiveness” extinguishes the criminal dimension of the offence and its penalties.<sup>87</sup> Article 266-C of the Law stipulates “in case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty”. A similar legal practice is observed in Pakistan. Under Article 306(c) of the 1860 Pakistani Penal Code, if a man murders his wife and they have children, her children cannot ask for *qisas* (essentially the death penalty) for her murder. In these circumstances, the maximum sentence that can be given when a man murders his wife is fourteen years. Many see a father financially compensating (*diyat*) his children for the loss of their mother as a “mockery”.<sup>88</sup>

Such legal practices prevail in the Pacific also. Most countries observe customary reconciliation practices of forgiveness – *I-bulubulu* in Fiji or *ifoga* in Samoa. The parties involved in “settlement deal” are the rapist’s and survivor’s families. Such practices are used by the police and courts not only to justify reduced sentences if convicted, but also in some cases not filing charges at all. “Forgiveness” ceremonies can take place without the complainant’s actual participation (Box 6).<sup>89</sup>

There have been several legal initiatives to redress such cases of discriminatory legal practices. Pakistan has legislated against the despicable customary law practice of *vanni* – the giving away of women as compensation for pardoning of the offender. An amendment incorporated in Section 310 of the Penal Code has made *vanni* a criminal offence, punishable by imprisonment of up to 14 years and a minimum sentence of not less than seven years.<sup>90</sup> In the Pacific Vanuatu has taken the lead by legislating

## BOX 6. A Harmful Customary Settlement

### Public Prosecutor Vs Tabisal, Vanuatu

The accused had pleaded guilty of raping a nine-year old year. He paid the local chiefs customary settlement of three pigs and six mats in total valued at 74,000 *vatu*. Neither the rape survivor nor her parents shared in the compensation. In court, the charge was reduced from rape to unlawful sexual intercourse. The High Court said that the offence was very serious because of the girl’s tender age. However, because the accused was a “first offender” and had made a customary settlement, he was sentenced for only three years.

Source: Jalal 1998.

against forgiveness ceremonies. Family Protection Act 2008 stipulates that the payment of bride price has no bearing on guilt or punishment in domestic violence cases.<sup>91</sup> Section 10 (2) states “it is not a defence to an offence that the defendant has paid an amount of money or given other valuable consideration in relation to his or her custom marriage to the complainant”.

*Judicial rulings can be regressive as can legislation.* Judicial rulings can reflect biases against legislative reforms and may consider them as infringement of judicial discretion. Reversals may result from internal efforts towards legal equality.

Sri Lanka’s legislature reformed its 1883 Penal Code and through its 2006 amendment Section 364(1) as amended by Penal Code (Amendment Act No. 13, 22 of 1995 and 10, 16 of 2006) and prescribed a minimum mandatory sentence of seven years for the offence of rape.<sup>92</sup> In 2008 the Sri Lankan Supreme Court, in a rape case, concluded

that the law setting a minimum mandatory sentence for rape was tantamount to “interference with judicial discretion” by the legislature. The court observed that a minimum sentencing guideline conflicts with the Constitution. It maintained its right to impose a sentence that it deemed “appropriate”.<sup>93</sup>

At a time when countries across the region are making efforts to advance gender equality they may face strong resistance resulting in reversals. In April 2009, scores of Afghan Shia women protested against the controversial provisions of a Shia Personal Status Law. They argued that the new law “insults the dignity of women” and must be withdrawn because it was imposed on them without consultation.<sup>94</sup> The law – which grants custody rights for children exclusively to fathers and grandfathers, and stipulates that a woman can leave the house without her husband’s permission only if she has “reasonable legal reasons” – was passed anyway, though it contained many provisions that deny women rights.<sup>95</sup>

# 5. Barriers of Access

Apart from the content of the law and legal practices, access to justice systems – formal and customary – can also be very different for males and females, even when laws are sound. This section explores gender-based barriers of access to legal institutions like courts, and also barriers inside courtrooms. Globally, four billion people – most of the world's population – are excluded from the rule of law<sup>96</sup>, with gender being an important contributory factor. Women, more than men, may not be able to access justice mechanisms to seek redress.<sup>97</sup>

## 5.1 Barriers to reaching courts

A number of factors may restrict women's full access to formal and customary justice systems. The most obvious is opportunities to travel – courts may be too far and social norms may limit female mobility without facilitation or permission from a male relative, sometime the very person against whom a woman is seeking redress. Women's disproportionate household responsibilities can leave limited time for complicated legal processes and frequent interactions with the lawyers. They may face physical threats in pursuing action against husbands, other family members, or even the broader power structure. Fear of losing children or economic sustenance can be very real. Norms that require women to remain silent may be internalized, when they come to believe themselves as being of less value less and deserving less.<sup>98</sup> The sheer costs of access to police stations, lawyers, travel and stay can be a deterrent. This is even more so for the poor.

In respect of customary mechanisms, women may be excluded through factors such as ineffective enforcements of decisions (mandatory or voluntary), elite capture, procedures contrary to national and international standards. Lack of well understood minimum standards for mediators may also curtail women's expectations within customary justice systems, and deter them from access.<sup>99</sup> At times, factors like custom and tradition explain why some women never access justice systems. A survey carried out by the Cambodian Ministry of

Women's Affairs found that even though over 22 per cent of married women report experiencing violence within their homes,<sup>100</sup> up to 89 per cent do nothing, despite new national laws to protect them from such violence. Those who do report can face customary expectations of violence being a private issue and a prerogative of men.<sup>101</sup>

To overcome access barriers, countries have taken steps to bring judicial mechanisms closer to women. In Afghanistan, the Government has introduced mobile courts as a practical solution to improve overall access. Teams of experienced judges, prosecutors, lawyers and administrative officials make periodic visits to more remote or insecure places that may be too small to justify permanent staffing.<sup>102</sup> India has taken a step forward on the issue of sexual harassment by requiring workplaces that employ women to set up commissions that are at least 50 per cent female to receive and act on complaints.<sup>103</sup> Malaysia has pioneered one-stop centres in hospitals that provide easy access to medical care, social services and specially trained police units for victims of domestic or sexual violence.<sup>104</sup>

## 5.2 Barriers inside courtrooms

Even when women do find their way to legal institutions, finding equal treatment cannot be taken for granted. Judicial practices may also be influenced by discriminatory social norms that undervalue women's rights or concerns, or treat them less than seriously. The onerous court procedures are also a factor.

Most countries in the Asia-Pacific have a fault-based divorce system. This requires proof of a matrimonial offence such as adultery, desertion for a required number of years, willful refusal to consummate marriage, habitual cruelty, etc., which can force women to face indignities. In a study conducted to assess national laws compliance with CEDAW, all five Asian countries grant divorce on certain grounds only (Table 2). In addition, parties must hire lawyers, file court cases and bring witnesses to court to

provide supporting evidence – a tremendous burden for anyone, and more so for poor and rural women. Divorce laws that are gender-neutral may fail to take into account the unequal gendered circumstances.

Women face difficulties in obtaining custody of their children during divorce proceedings in the region. Most courts follow the principle of acting in the “best interests of the child”. While this is a valid approach, courts frequently interpret it in terms of financial advantage. This places women at a disadvantage because they have

less education and access to jobs and assets, or may have been economically dependent on the men they want to divorce.<sup>105</sup>

These barriers are compounded by unfair distribution of marital property and limited capacity to enforce maintenance awards, which are often inadequate to begin with. Their share in marital assets is often linked to women’s measurable financial contribution to family resources. The long hours of unpaid household work, care work, work in the informal economy and enabling

**Table 2. Divorce Allowed only on Specified Grounds: Examples of Five Asian Countries**

Country	Relevant Law	Grounds for Divorce
Indonesia	The Law on Marriage 1974	Adultery; addiction to alcohol or narcotics; gambling or other vice that is hard to cure; abandonment for two continuous years; imprisonment for five years; physical disability that prevent from performing his conjugal duties; acts of cruelty and constant disputes with the spouse.
Pakistan	The Dissolution of Muslim Marriages Act 1939	whereabouts of the husband have not been known for a period of four years; husband has neglected or has failed to provide for her maintenance for a period of two years; husband has been sentenced to imprisonment for a period of seven years or upwards; husband has failed to perform, without reasonable cause, his marital obligations for a period of three years; husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease; husband treats her with cruelty;
Philippines	The Family Code of the Philippines 1987	Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner; physical violence or moral pressure to compel the petitioner to change religious or political affiliation; attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement; final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned; drug addiction or habitual alcoholism of the respondent; homosexuality of the respondent; contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad; sexual infidelity or perversion; abandonment of petitioner by respondent without justifiable cause for more than one year.
Sri Lanka	The Marriage Registration Ordinance 1908	Adultery; malicious desertion; incurable impotence at the time of marriage.
Viet Nam	The Marriage and Family Law, 2000	Couple can no longer live together; marriage purposes cannot be achieved; spouse of the person has been declared missing.

Source: Cheema 2010.



support for the spouse that he leverages to earn, are rarely recognized. It took until late 2008 for a Fiji court, drawing on a new law on the more equal division of property, to finally take into account domestic contributions and award a wife of 37 years half the marital assets.<sup>106</sup>

Court systems continue to inflict procedural indignities that can leave women doubly victimized. In sensitive cases such as rape and domestic violence, women may still be expected to narrate their experiences in graphic detail, including to male personnel, in cultures where public discussion of sexual acts is unacceptable. Some lower courts in India still insist on archaic tests on a woman's hymen as "proof" of rape or to raise the issue of whether or not she is habituated to sexual relationships<sup>107</sup> – neither of which is relevant to establish non-consensual acts.

Courts may demonstrate reluctance to uphold judgments or pursue crimes against women. Some of it is due to a lack of appropriate orientation and gender-sensitization or sanctions against judicial personnel for neglect or bias. The absence of training for police and court officials on gender and the specifics of gender-based crimes can be telling. On crimes that involve gender-based violence there is an unwillingness to exercise powers of arrest, file charges and pursue criminal prosecutions. Considered low priority, such cases may be assigned to less experienced judicial personnel. Untrained police and court personnel may rely more on stereotypes than on current knowledge of why gender-based violence occurs and the serious damage it can cause.<sup>108</sup> In Fiji, before enforcement mechanisms were tightened for maintenance payments after divorce, 50 per cent of maintenance awards were not paid or enforced, a further 35 per cent of orders were enforced only intermittently and just 15 per cent of fathers paid maintenance regularly under maintenance orders.<sup>109</sup>

Pacific courts rarely award prison sentences that reflect the seriousness of domestic violence as a crime, despite the fact it can easily be a repeated offense. They tend to give probationary orders that command the offender not to commit another crime for a specified period. If the offender does commit the crime again, he may be punished for just the original crime. In practice, courts

hesitate to imprison a male breadwinner in the perceived interest of the victim and family.

Yet there is some anecdotal evidence of higher rates of prosecutions in Pacific countries and territories – Fiji, Vanuatu, Cooks Islands, Papua New Guinea, Samoa and Solomon Islands – where the police have dedicated units investigating and prosecuting violence against women, domestic and sexual assault. Together with "no drop" policies (so even if the victim is unwilling to pursue prosecution after filing criminal charges, charges will not be dropped), there seems to be better detection and prosecution, even though systematic research is unavailable.<sup>110</sup>

Discriminatory rules of evidence may undermine women's voice in courts. In Pakistan, the value of a woman's testimony in court is considered half that of a man's in financial matters and future obligations.<sup>111</sup> Many Pacific Island countries and territories continue to require proof of resistance in sexual assault cases and allow the admission of past sexual history.<sup>112</sup> These requirements not only discourage rape victims from reporting due to the heavy social sanctions against speaking out, they also interfere with prosecution even after the victim has somehow managed to reach a court from reluctance to relive the experience through a trial.

Sometimes the legal system is deliberately used to harm women. Though running away from home is not a crime in Afghanistan, many girls and women are in prison, some for as long as 10 years now, for having done so.<sup>113</sup> Courts in India and Sri Lanka have allowed the defense of "grave and sudden provocation" to continue as a hangover from common law.<sup>114</sup> Under Indian Penal Code 1860: Section 300 (on murder) sub section (d) exception 1 stipulates "Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident".<sup>115</sup> Such a defense mitigates the seriousness of crimes such as murder – the concern here being "honour killings". Despite an amendment in the Pakistan Penal Code, the mitigation of sentences for such killings has continued.<sup>116</sup>

### BOX 7. Two Cases of Local Dispute Resolution: Pakistan and Bangladesh

The Musalihat Anjuman system in Pakistan is a state sanctioned Alternative Dispute Mechanism. It was constituted under the 2001 Local Government Ordinance. It resolves conflicts through arbitration and mediation. This justice mechanism system encourages parties to identify issues, explore areas of compromise and generate options to resolve the dispute amicably.

Bangladesh's *shalishi* mediation councils are a type of traditional alternative dispute resolution system that is often used at the local level. An estimated 60–70 per cent of local disputes are solved through it. They are often used for the resolution of small disputes and are accessible to disadvantaged groups. Marriage, family, dowry and land issues are also often dealt with through the Salish councils. The resolution of dispute is sought through discussion between the plaintiffs and the defendant, assisted by mediation and counseling of a group of respected village elders.

Sources: Government of Pakistan 2008; UNDP 2005.

## 5.3 Mixed experiences in customary justice systems

Customary justice systems are pre-existing methods of resolving disputes within the communities.<sup>117</sup> They may include state sanctioned Alternative Dispute Resolution (ADR) processes as well as non-state local justice systems. ADR mechanisms are set up to address shortcomings of formal courts and are considered to have some value in bringing justice closer to people by being less expensive, less time-consuming and enforcing decisions quickly through community consent. They may decide on petty matters, such as a dispute over lost livestock, but they can also act on serious issues such as adultery and murder. Being closer, such systems may be more accessible to women than formal justice systems. The *jirga* system that operates in Afghanistan and parts of Pakistan, and the *shalishi* system in rural Bangladesh

are informal mechanisms that decide by consensus and impose punishments (Box 7).

But such systems may also produce discrimination through their very processes. In India, community justice mechanisms connected to caste have carried out some violent sentences against members of Dalit communities for “crimes” such as marrying someone from another community. They commonly serve the interests of local elites, backed by community sanction, and so attempts to rein in their influence have generally not been successful.<sup>118</sup> *Jirga* decisions may be prone to gender bias – few women participate in them as they are often run exclusively by older men. According to a sample survey in 2007 conducted by the Afghan Centre for Socio-economic and Opinion Research, women comprised only two per cent of representatives on local *jirgas*. Elderly men constituted 65 per cent of the membership. Other members included mullahs, local leaders and commanders.<sup>119</sup>

# 6. Redressing Gender Barriers: Enforcing Rights And Correcting Wrongs

How can laws and justice systems enable all human beings equal access to opportunities and capabilities so a person's freedoms, choices and outcomes are not restricted based simply on gender?

There is no single strategy that can work in isolation – the exclusions are numerous and fed by multiple sources as seen above. Principles particularly important for gender equality and have been articulated at the level of constitutions are: equality before the law, non-discrimination, and state obligation towards eliminating it.<sup>120</sup> While this may seem to beg the question of what is equality, it needs to be interpreted in line with the third approach to equality – the corrective approach – consistent with CEDAW. Not only more direct forms of inequality in law, but also all legal exclusions that curtail rights and opportunities on the basis of gender must be systematically identified and eliminated. Indirect discrimination which flows from assumptions that men and women already have equal opportunities, when in fact they do not, is no less important than the more explicit kind. Towards this end, three strategic avenues for simultaneous action are proposed: fixing *institutions* – laws, legal practices and modes of access; changing *attitudes* of those who create, uphold, and use laws; and establishing ongoing *assessments* to reveal inequalities, encourage and monitor progress.<sup>121</sup> All countries of Asia-Pacific have in fact made commitments to establish gender-equal societies. There are specific national machineries and plans for this (Annex: Table 4). This can provide opportunities to address institutional gaps, change attitudes and put in place ongoing assessments.

## 6.1 Fix institutions

Legal reforms towards gender equality must address the substance and the construction of laws. This includes

legislation, constitutions, formal law, common law, customary law, legal practices, rules and procedures. Reforms should also address systems of judicial practices and institutions designed to uphold laws, taking into account the surrounding cultural norms that shape. The structures that implement the law are no less important – courts, court administration and law enforcement agencies. So also are cultural norms that influence justice – social and economic conditions, attitudes of law enforcement agencies, judges, magistrates, court officials, police and the community. A gender-based audit can greatly assist this process. What are the possible entry points to fix institutions?

*Enshrine constitutional provisions on gender equality.* The principles of substantive gender equality, non-discrimination and state obligations should be well defined and enshrined at the level of constitutions. Any form of discrimination can then be challenged in courts on the basis of these constitutional provisions.

*Change discriminatory laws.* Legal provisions that curtail freedoms or choices of people need to be reviewed and changed. Formal and customary laws and practices should be covered. Those causing direct harm should be prioritised – discriminatory penal code provisions, unequal nationality laws, unwarranted requirements of proof, and protectionist labour laws.

*Fill legal gaps.* In view of absent or inadequate legislation against domestic violence, sexual harassment at workplaces and insufficient maternity leave provisions, countries need to identify gaps and pass suitable laws.

*Promulgate tougher laws.* Tougher laws with stiffer penalties are required to combat pervasive violence against women. Legal provisions that insist upon mediation



rather than prosecution of offenders, stipulate forgiveness clauses, or omit certain perpetrators should be repealed.

*Review harmful customary practices.* Use constitutional means with primacy to formal laws where possible to address harmful customs. Specific laws can also be made to eliminate practices that curtail women's freedoms and opportunities in the region.

*Uphold equality within personal laws.* Go beyond the public sphere to review gender-inequitable personal laws that influence rights and duties of women in domestic sphere. Narrowly defined gender roles within marriage, limited maintenance rights, unequal access to marital property and unjust inheritance practices need to be prioritised.

*Strengthen enforcement mechanisms.* Ensure dedicated personnel capacity where possible, including a larger share of female personnel, and organize obligatory gender training for all law enforcement agents – judges, lawyers, magistrates, mediators dispensing justice at community levels, and police officials. This requires adequate human and financial resources. Do not take the ability for gender-analysis for granted. With training, both men and women officials can be change agents for gender equality.

## 6.2 Change attitudes

Countering pre-conceived notions on gender stereotypes is critical, especially in patriarchal societies. New ways of thinking that give legitimacy and acceptance to the equal value and dignity of all human beings needs to be promoted. Well-designed advocacy and social mobilization campaigns can raise public awareness and get people to recognize the value of thinking in new ways. Entry points that can be leveraged are inside judicial systems, across the political spectrum, and in society.

*Inside the judicial systems.* Pre-service legal education with required gender sensitization can be supplemented by in-service gender-training of law enforcement officers – police, judges and others. Focus on legal inequalities that disadvantage women, a better understanding of legal neutrality and equality, and the potential for a

strongly positive role of judicial interpretation can make a difference.

*Across the political spectrum.* The legislature has a role through drafting and passage of laws. Political leaders make police, magisterial and judicial appointments and also allocate budgets to courts, prisons, police and legal aid initiatives to assist the poor. Being responsive to voter from constituencies can also pay political dividends. These can be useful entry points.

*In society.* Social mobilization has been used to serve several aims. It can be used to create and reinforce ideas of equality and to persuade people of ways it can enrich quality of lives. Educate people through campaigns on legal facts and provide guidance on better using legal institutions. Places where social norms are consolidated and transmitted such as schools, the media, religious organizations and community groups make key entry points.

## 6.3 Establish ongoing assessments

Ongoing reviews of laws and institutions of justice should be put in place to ensure systematic assessments aimed at revealing inequalities as well as other limitations. These assessments can feed into efforts to close gender disparities. International legal instruments on gender equality and national legal reforms are useful assessment tools.

*International legal instruments.* International instruments such as CEDAW, the Beijing Declaration and Platform for Action, the ILO's Migrant Workers Convention, and the UN MDGs are useful global norms on gender equality. Countries can and have used CEDAW to reform their civil and criminal laws. The effectiveness of legislative and judicial reforms at the national level can benefit from international standards.

*National reforms.* Not just legislative change, but progressive judicial precedents too can be useful correctives in support of historically disadvantaged groups. Judicial precedents can take much less time—one has only to convince the judge, as against the much longer and less certain process of legislative change.

## 6.4 Addressing gender as a barrier

Law is devised by human beings and cannot claim perfection; equally, human beings can change it. This does not imply any automatic legal bias in favour of women and other marginalized groups. But it does require acknowledging the very different experiences

of men and women regarding the same laws and legal institutions. Institutions and attitudes may have to recognize that with very unequal pre-existing conditions, one may need elements of inequality to promote greater equality. Once the equal value of all human beings is accepted, a strong motivation for positive change can be established.<sup>122</sup>

# Annex

**Table 1: Asia-Pacific: Constitutional Provisions on Religion**

HDI Rank	Countries*	Constitution	Constitutional Provision on Religion
East Asia			
12	Japan	The Constitution of Japan 1946.	No constitutional provision on religion exists.
15	Korea (Republic of)	Constitution of the Republic of Korea 1987.	No constitutional provision on religion exists.
26	Singapore	Constitution of the Republic of Singapore 1999.	No constitutional provision on religion exists.
33	Brunei Darussalam	The Constitution of Brunei Darussalam 1984.	The Preamble stipulates “in the name of God, Compassionate, the Merciful, praise to be God, the Lord of the Universe, and may the benediction and peace of God be upon our leader Muhammad and upon all his relations and friends”.
61	Malaysia	Constitution of Malaysia 1957.	Article 3(1) of the Constitution states “Islam is the religion of the Federation”.
101	China	Constitution of the People’s Republic of China 2004.	No constitutional provision on religion exists
103	Thailand	Constitution of the Kingdom of Thailand 2007.	No constitutional provision on religion exists.
110	Mongolia	Constitution of the People’s Republic of Mongolia 1992	No constitutional provision on religion exists.
112	Philippines	The 1987 Constitution of the Republic of the Philippines.	The Preamble states “we, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society”.
124	Indonesia	Constitution of the Republic of Indonesia 2002.	Article 29(1) stipulates “The State shall be based upon the belief in the One and Only God”.
128	Viet Nam	Constitution of the Socialist Republic of Viet Nam 1992	No constitutional provision on religion exists.
138	Lao People’s Democratic Republic	Constitution of the Lao People’s Democratic Republic 2003	No constitutional provision on religion exists.
139	Cambodia	Constitution of the Kingdom of Cambodia 1993	Article 43 (3) states ‘Buddhism is the state religion’.

HDI Rank	Countries*	Constitution	Constitutional Provision on Religion
147	Timor-Leste	Constitution of the Democratic Republic of Timor-Leste 2002	The Preamble stipulates “interpreting the profound sentiments, the aspirations and the faith in God of the People of East Timor”.
149	Myanmar	The Constitution of The Socialist Republic of the Union of Burma 1974	No constitutional provision on religion exists.
	Korea (Democratic People’s Republic of)	Constitution of the Democratic People’s Republic of Korea 1998	No constitutional provision on religion exists.
<b>South and West Asia</b>			
88	Iran (Islamic Republic of)	Constitution of Islamic Republic of Iran 1979	Article 1 stipulates “The form of government of Iran is that of an Islamic Republic, endorsed by the people of Iran on the basis of their longstanding belief in the sovereignty of truth and Quranic justice”.
97	Sri Lanka	Constitution of the Democratic Socialist Republic of Sri Lanka 1978	Article 9 states “The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the state to protect and foster the Buddha Sasana”.
109	Maldives	Constitution of the Republic of Maldives 2008	Article 2 states “The Maldives is a sovereign, independent, democratic Republic based on the principles of Islam”.
134	India	Constitution of India 1949	No constitutional provision on religion exists.
141	Bhutan	Constitution of the Kingdom of Bhutan 2005	No constitutional provision on religion exists.
145	Pakistan	Constitution of the Islamic Republic of Pakistan 1973	Its Preamble stipulates sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust’.
146	Bangladesh	The Constitution of the People’s Republic of Bangladesh 1972	Its Preamble states “pledging that the high ideals of absolute trust and faith in the Almighty Allah, nationalism, democracy and social justice.... shall be fundamental principles of the Constitution”.
157	Nepal	Interim Constitution of Nepal 2007	No constitutional provision on religion exists.
172	Afghanistan	Constitution of Afghanistan 2004	The Preamble states “we the people of Afghanistan: With firm faith in God Almighty and relying on His lawful mercy, and Believing in the Sacred religion of Islam...”

HDI Rank	Countries*	Constitution	Constitutional Provision on Religion
Pacific			
2	Australia	Commonwealth of Australia Constitution Act 1900	No constitutional provision on religion exists.
5	New Zealand	Constitution Act 1986	No constitutional provision on religion exists.
49	Palau	The Constitution of the Republic of Palau 1979	The Preamble states “in establishing this Constitution of the sovereign Republic of Palau, We venture into the future with full reliance on our own efforts and the divine guidance of Almighty God”.
90	Tonga	The Act of Constitution of Tonga 1988	Section 6 stipulates “the Sabbath Day shall be kept holy in Tonga and no person shall practise his trade or profession or conduct any commercial undertaking on the Sabbath Day except according to law”.
99	Samoa	Constitution of the Independent State of Samoa 1960	The Preamble states “whereas the Leaders of Samoa have declared that Samoa should be an Independent State based on Christian principles and Samoan custom and tradition”.
100	Fiji	Constitution Amendment Act 1997	The Preamble states “we, the people of Fiji Islands, recall the conversion of the indigenous inhabitants of these islands from heathenism to Christianity through the power of the name of Jesus Christ; the enduring influence of Christianity in these islands”.
116	Micronesia (Federated States of)	Constitution of the Federated States of Micronesia 1978	No constitutional provision on religion exists.
122	Kiribati	The Constitution of Kiribati 1979	The Preamble states “we the people of Kiribati, acknowledging God as the Almighty Father in whom we put our trust, and with faith in the enduring value of our traditions and heritage”.
125	Vanuatu	Constitution of the Republic of Vanuatu 1980	The Preamble states ‘we the people of Vanuatu...hereby proclaim the establishment of the united and free Republic of Vanuatu founded on traditional Melanesian values, faith in God, and Christian principles.’
142	Solomon Islands	The Constitution of Solomon Islands 1978	No constitutional provision on religion exists.
153	Papua New Guinea	Constitution of the Independent State of Papua New Guinea 1975	The Preamble states “we, the people of Papua New Guinea, pledge ourselves to guard and pass on to those who come after us our noble traditions and the Christian principles that are ours now”.

HDI Rank	Countries*	Constitution	Constitutional Provision on Religion
–	Marshall Islands	Constitution of the Republic of the Marshall Islands 1979	The Preamble states “trusting in God, the Giver of our life, liberty, identity and our inherent rights, do hereby exercise these rights and establish for ourselves and generations to come this Constitution, setting forth the legitimate legal framework for the governance of the Republic”.
–	Nauru	Constitution of Nauru 1968	The Preamble states “we the people of Nauru acknowledge God as the almighty and everlasting Lord and the giver of all good things”.
–	Tuvalu	The Constitution of Tuvalu 1978	The Preamble states “and whereas the people of Tuvalu desire to constitute themselves as an independent State based on Christian principles, the Rule of Law, and Tuvaluan custom and tradition”.

*Note:* \* Countries are listed according to the HDI 2011 (UNDP 2011).

**Table 2: Sixteen Substantive Articles of the Convention on the Elimination of all Forms of Discrimination against Women**

Article 1	Define “discrimination against women”.
Article 2	<p>Condemn discrimination against women and commit to eliminate it through:</p> <ul style="list-style-type: none"> <li>• Embody equality of men and women in national constitution and laws.</li> <li>• Adopt laws and impose sanctions that prohibit discrimination against women.</li> <li>• Establish competent tribunals and public institutions to provide legal protection to women against discriminatory acts.</li> <li>• Repeal discriminatory national penal code provisions.</li> <li>• Modify or abolish existing laws, regulations, customs and practices of discriminatory nature.</li> </ul>
Article 3	Take measures for full development and advancement of women in all field – political, social, economic and cultural.
Article 4	Adopt temporary special measures to accelerate <i>de facto</i> equality between men and women.
Article 5	<p>Take measures to:</p> <ul style="list-style-type: none"> <li>• Modify social and cultural patterns and eliminate customary practices that promote gender stereotypes.</li> <li>• Ensure family education include proper understanding of maternity as a social function and recognition of shared responsibilities at home.</li> </ul>
Article 6	Take measures to suppress trafficking in women and exploitation of women in prostitution.
Article 7	<p>Take measures to eliminate discrimination against women in the political and public life. Such measures include:</p> <ul style="list-style-type: none"> <li>• Right to vote and hold public office.</li> <li>• Participate in government policy making and implementation</li> <li>• Participate in NGOs and associations concerned with the political and public life.</li> </ul>
Article 8	<p>Take measures to provide equal opportunities to women for:</p> <ul style="list-style-type: none"> <li>• Representation in international organizations.</li> <li>• Participate in the work of international organizations.</li> </ul>
Article 9	<p>Grant women the equal rights to nationality and citizenship. The rights include:</p> <ul style="list-style-type: none"> <li>• Equal right to acquire, change or retain nationality, regardless of marriage to a foreign national or change of nationality by husband.</li> <li>• Equal right to determine the nationality of children.</li> </ul>
Article 10	<p>Take measures to grant equal rights to women in the field of education. These rights include:</p> <ul style="list-style-type: none"> <li>• Equal opportunities in all levels of education – pre-school, general, technical, professional and higher technical education; equal opportunity to benefit from scholarships and study grants.</li> <li>• Access to same curricula, examinations, teachers, facilities and school equipments.</li> <li>• Eliminate gender stereotypes through co-education, revision of text books and adaptation of teaching methods.</li> <li>• Reduce female students drop-outs rates.</li> <li>• Equal opportunities to participate actively in sports and physical education.</li> <li>• Access to information and advice on family planning</li> </ul>

Article 11	<p>Take measures to eliminate discrimination against women in the field of employment and uphold their economic rights. These rights include:</p> <ul style="list-style-type: none"> <li>• Right to work.</li> <li>• Right to same employment opportunities.</li> <li>• Right to free choice of profession and employment.</li> <li>• Right to equal remuneration and equal pay for work of equal value.</li> <li>• Equal treatment at the workplace and equal evaluation standards.</li> <li>• Equal rights to social security – retirement, unemployment, illness, old age, entitlement to paid leave.</li> <li>• Health and safety protection including safeguards from harmful work during pregnancy.</li> <li>• Prohibit dismissal of female workers on the grounds of pregnancy or marital status.</li> <li>• Entitlement to paid maternity leave without loss of seniority or benefits.</li> <li>• Provide social services that enable parents to combine family obligations and work responsibilities. This is achieved through establishment and development of network of child-care facilities.</li> </ul>
Article 12	<p>Take measures to eliminate discrimination against women in the field of health care through:</p> <ul style="list-style-type: none"> <li>• Equal access to health care services that include family planning.</li> <li>• Provisions of adequate services during pregnancy and childbirth, and nutrition during pregnancy and breastfeeding.</li> </ul>
Article 13	<p>Take measures to eliminate discrimination against women in other areas of economic and social life. And provide women:</p> <ul style="list-style-type: none"> <li>• Equal right to family benefits.</li> <li>• Equal right to bank loans, mortgages and other forms of financial credit.</li> <li>• Equal right to participate in recreational activities and all aspects of cultural life.</li> </ul>
Article 14	<p>Take into account problems faced by women in rural areas and eliminate discrimination against them. And provide rural women the right to:</p> <ul style="list-style-type: none"> <li>• Participate in development planning at all levels.</li> <li>• Access to adequate health care facilities.</li> <li>• Right to benefit directly from social security programmes</li> <li>• Right to enjoy adequate living conditions – housing, sanitation, electricity and water supply, transport and communication.</li> <li>• Access to agricultural credit and loans, marketing facilities and technology.</li> <li>• Right to equal treatment in land, agrarian reform and land resettlement schemes.</li> </ul>
Article 15	<p>Accord women equality before the law. The civil rights include:</p> <ul style="list-style-type: none"> <li>• Equal right to conclude contract and administer property; equal treatment during judicial proceedings – in courts as well as in tribunals.</li> <li>• Nullify any contract or private instrument that restricts the legal capacity of women.</li> <li>• Freedom of movement; equal right to choose place of residence and domicile.</li> </ul>



Article 16	<p>Take measures to eliminate discrimination against women in matters related to marriage and family relations. And ensure equality between men and women through:</p> <ul style="list-style-type: none"> <li>• Equal right to enter into marriage only with full consent; freedom to choose a spouse; make registration of marriages compulsory.</li> <li>• Equal rights and responsibilities during marriage and at its dissolution</li> <li>• Equal rights and responsibilities as parents, irrespective of their marital status.</li> <li>• Equal rights and responsibilities regarding guardianship and adoption of children</li> <li>• Nullify child marriages</li> <li>• Equal rights to own, acquire, administer, manage and dispose of conjugal property</li> </ul>
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*Source:* Adapted from OHCHR 2007.

**Table 3: Many Countries Fail to Protect Female Workers against Sexual Harassment**

HDI Rank	Countries*	Existence of law on sexual harassment at workplace**
<b>East Asia</b>		
12	Japan	Yes
15	Korea (Republic of)	Yes
26	Singapore	No
33	Brunei Darussalam	(..)
61	Malaysia	No
101	China	..
103	Thailand	Yes
110	Mongolia	No
112	Philippines	Yes
124	Indonesia	No
128	Viet Nam	No
138	Lao People's Democratic Republic	..
139	Cambodia	Yes
147	Timor-Leste	Yes
149	Myanmar	..
–	Korea (Democratic People's Republic of)	..
<b>South and West Asia</b>		
88	Iran (Islamic Republic of)	–
97	Sri Lanka	Yes
109	Maldives	No
134	India	No
141	Bhutan	Yes
145	Pakistan	Yes
146	Bangladesh	Yes
157	Nepal	No
172	Afghanistan	(..)
<b>Pacific</b>		
2	Australia	Yes
5	New Zealand	Yes
49	Palau	–
90	Tonga	–

HDI Rank	Countries*	Existence of law on sexual harassment at workplace**
99	Samoa	Yes
100	Fiji	No
116	Micronesia (Federated States of)	No
122	Kiribati	No
125	Vanuatu	No
142	Solomon Islands	No
153	Papua New Guinea	No
–	Marshall Islands	No
–	Nauru	–
–	Tuvalu	No

*Notes:*

\* Countries are listed according to the HDI 2011 (UNDP 2011).

\*\* The sources for information presented in this column are States Parties reports to UN Committee on CEDAW; national laws (in case where new laws are enacted or old ones changed/amended); Jivan and Forster 2007. Further:

.. Refers to no Information available from States parties Reports to UN Committee on CEDAW.

(..) States parties Reports to UN Committee on CEDAW not submitted.

– Refers to no data as countries are non-signatory to CEDAW.

**Table 4: National Commitments to Advance Women's Rights**

HDI Rank	Countries*	National Plans	Objectives	National Machinery for Implementation of Women's Policies	Main Functions
East Asia					
12	Japan	Second Basic Plan for Gender Equality 2005 (CEDAW 2008c).	The Plan promote policies related to the formation of gender-equal society in a comprehensive and systematic manner; raising the percentage of women in leadership positions in all fields to at least around 30 per cent of the total by 2020.	Gender Equality Bureau 2001 (UNESCAP n.d.).	The Bureau functions as the Secretariat for the Council for Gender Equality and undertakes the planning and overall coordination of various matters related to the promotion of the formation of a gender-equal society.
15	Korea (Republic of)	Third Basic Plan for Women's Policies (2008–2012) (CEDAW 2007c).	The Plan aims to: Realize a gender-equal society through policies that induce changes in men's perception and attitudes as well as transformation in social relationship between men and women; identifies gender-mainstreaming as the key strategy in women's policies; incorporate gender perspectives into government policies; establish partnership among the national and local governments, women's organizations, and expert groups.	Ministry of Gender Equality 2001 (UNESCAP n.d.).	The functions of the Ministry include: Coordination and planning of gender equality policies; analysis and assessment of the policy outcome on gender; development and utilization of the female workforce; expansion of women's social participation; prevention of domestic and sexual violence and protection of victims; and cooperation with women's groups and international organizations.
26	Singapore	No information available	No information available	Ministry of Community Development and Sports, Family Development Division. (Women's Desk). 2002. (UNESCAP n.d)	The Ministry serves as the national focal point on policy matters and for international cooperation pertaining to women; acts as the Secretariat to the Inter-Ministry Committee on CEDAW and facilitates work on the implementation of the Convention; and works with local women's groups to address women's issues.

HDI Rank	Countries*	National Plans	Objectives	National Machinery for Implementation of Women's Policies	Main Functions
33	Brunei Darussalam	No information available	No information available	Department of Community Development 2002 (UNESCAP n.d.).	It provides: Financial assistance for the disadvantage groups( women, poor families, children, elderly); shelter homes for the protection of women and children who are violated (abused, abandon and morally endanger cases); rehabilitation homes for juvenile delinquents under the age of 18;and financial, shelter and food assistance for victims of natural disaster.
61	Malaysia	National Policy on Women 1989 (CEDAW 2004e).	The Policy: Recognizes poverty, lack of education and sometimes culture and tradition hinder women's progress; and acknowledge the international efforts made and draws on number of international legal tools to improve the status of women.	Ministry of Women, Family and Community Development 200 (UNESCAP n.d.).	The functions of the Ministry include: Promote and raise public perception on the importance of the role of women and family institution in contributing towards the developmental agenda of the nation; creation and promotion of community and social awareness programmes ; and progression of the nation's social development objectives.

HDI Rank	Countries*	National Plans	Objectives	National Machinery for Implementation of Women's Policies	Main Functions
101	China	Programme for the Development of Chinese Women (2001–2010) (CEDAW 2004a).	It was adopted in 2001 and makes gender equality basic State policy for the enhancement of national social progress. The six areas for priority development include: women and the economy; women's participation in decision-making; women and education; women and health; women and law; women and the environment.	Women's Commission 2001 (UNESCAP n.d.).	The Women's Commission is tasked to perform the following functions: advise the Government on the development of a long term vision and strategies related to the development and advancement of women; advise the Government on the integration of policies and initiatives which are of concern to women, which fall under the purview of different Policy Bureaux; keep under review, in the light of women's needs, services delivered within and outside the Government and to identify priority areas for action, and monitor the development of new or improved services; initiate and undertake independent surveys and research studies on women's issues and organise educational and promotional activities; and develop and maintain contact with local and international women's groups and service agencies with a view to sharing experiences and improving communication and understanding.
103	Thailand	Thai Women's Development Plan in the 10th National Economic and Social Development Plan (2007–2011) (UN 2009).	It aims to address violence against women; and to enhance the security for women's life and body.	The Office of Women's Affairs and Family Development 2003 (UNESCAP n.d.).	To promote gender equality and family development.

HDI Rank	Countries*	National Plans	Objectives	National Machinery for Implementation of Women's Policies	Main Functions
110	Mongolia	National Program for Gender Equality 2002 (CEDAW 2007a).	It aims to achieve gender equality in: family relations; economic relations; rural development; decision making; civil society participation.	National Committee on Gender Equality 2005 (CEDAW 2007a).	Its functions include: elaboration and implementation of the state policy; support any initiatives of the state, civil society organizations and individuals in assessing state policy results; cooperate with, and coordinate activities of, international organizations and donors.
112	Philippines	Philippine Plan for Gender – Responsive Development (1995–2025) (CEDAW 2004b).	It outlines the policies, strategies, programs and projects that the government must adopt to enable women to participate in and benefit from national development. The Plan is operationalize through Framework Plan for Women. It envisions development as 'equitable, sustainable, free from violence, respectful of human rights, supportive of self-determination and the actualization of human potentials, participatory and empowering'.	National Commission on the Role of Filipino Women 1975 (UNESCAP n.d.).	The main functions of the Commission include: institute the gender responsiveness of national development plans and coordinate the preparation, assessment and updating of the National Plan for Women; and undertake continuing advocacy to promote economic, social and political empowerment of women; conducts policy studies and reviews legislations to integrate women's concerns.
124	Indonesia	Broad Guidelines of State Policy 1999 (CEDAW 2005b).	It aims at empowerment of women to achieve gender equality and justice.	The Ministry of Women's Empowerment 1978 (UNESCAP n.d.).	The functions of the Ministry include: increase quality of women's life; increase women's participation in politic and decision making; eliminate violence against women; increase children protection and welfare; and increase institutionalization for gender mainstreaming.



HDI Rank	Countries*	National Plans	Objectives	National Machinery for Implementation of Women's Policies	Main Functions
128	Viet Nam	National Strategy for the Advancement of Women until 2020 (CEDAW 2005a).	The Strategy sets out five concrete objectives: eliminate all forms of discrimination against women; promote gender equality at work, education, health care; increase the quality and efficiency of women's participation in political, economic, cultural and social fields; improve the capacity in promoting women's advancement.	The National Committee for the Advancement of Women 1993 (UNESCAP n.d.).	The Committee's functions include: assist the Prime Minister in making laws and policies on women, cooperating with relevant agencies in supervising and promoting the implementation of legislation and policies on women; working with relevant agencies to carry out communication and educational activities regarding the implementation of legislation and policies on women and CEDAW; preparing national reports on the implementation of CEDAW.
138	Lao People's Democratic Republic	The National Policy Plan on the Advancement of Women 2006–2010 (CEDAW 2008a).	The Plan aims to: improve the participation of women in the implementation of the national growth and poverty eradication strategy; promote opportunities for women and girls to be equal with men in education; improve healthcare services for women; increase the number of women in the leading positions of all levels; strengthen the capacity building of national organizations that protect and advance women's rights.	Lao National Commission for the Advancement of Women 2004 (UNESCAP n.d.).	The functions of the Commission include: assist the Government in formulating national policy guidance and strategic plans of action in order to promote the advancement of women in every aspect; acts as the Focal Point and coordinated closely with local authorities and international organizations concerned for the implementation of the Government's policy on promoting gender equality as well as on eliminating forms of discrimination against Women.
139	Cambodia	The National Plan of Neary Ratanak (CEDAW 2004f).	It aims to: build up women's capacity; and focus on priority fields such as education, health, legal protection and economic development.	Cambodian National Council for Women 2001 (CEDAW 2004f).	The Council provides: coordination and advisory mechanisms on issues relating to promote the status, role and social welfare of Cambodian women; and also aims to reduce and abolish all forms of discrimination and violence against women.

HDI Rank	Countries*	National Plans	Objectives	National Machinery for Implementation of Women's Policies	Main Functions
147	Timor-Leste	National Development Plan 2002 (CEDAW 2008b).	It aims to: protect women's fundamental rights; develop and improve the quality of text books, other materials and learning processes, stress the importance of eliminating gender stereotypes; improve educational provision, particularly through the provision of professional training, notably for girls and women; reduce the number of illiterate people within the adult population, with an emphasis particularly on women.	Office for the Promotion of Equality (CEDAW 2008b).	The functions of the office include: develop gender mainstreaming guidelines; establish a gender focal point system and inter-ministerial working group; train key planning officers, gender focal points, as well as placing gender advisors in prioritized ministries.
149	Myanmar	Myanmar National Plan of Action for the Advancement of Women 1997 (UNESCAP n.d.).	The Plan aims to advance women's interest in the areas of: education; health; violence against women; economy; culture and girl-child.	Myanmar National Committee for Women's Affairs 1996 (UNESCAP n.d.).	The policy guidelines for the Committee include: promote the health, education and socioeconomic status of women down to the grass-roots level; educate and organize the Myanmar women to uphold the tradition, culture and to safeguard one's own lineage; implement the resolutions of the World Women's Conferences into action in accord with the state policy and political, economic and social objective.
	Korea (Democratic People's Republic of)	No Information Available	No Information Available	No Information Available	No Information Available

HDI Rank	Countries*	National Plans	Objectives	National Machinery for Implementation of Women's Policies	Main Functions
South and West Asia					
88	Iran (Islamic Republic of)	Charter for Women's Rights and Responsibilities (Islamic Republic of Iran 2010).	The Charter serves as a model for: social security and economic facilities to Iranian women; government's commitment to support women in case of divorce, poverty or disability.	Centre for Women Participation 1997 (UNESCAP n.d.).	Its functions include: study and examine the situation of women and families by conducting research on ways of improving their status in accordance with Islamic principles; liaison with all ministries and other stakeholders in planning activities relating to women and families with a view to coordination and improving current and future programs; plan and coordinate with NGOs and presenting general and common policies for their activities.
97	Sri Lanka	The Women's Charter 1993 (CEDAW 1999).	The Policy aims at the realization of gender equality in all areas of life in conformity with constitutional provisions and international norms and obligations.	Ministry of Women's Affairs 1997 (UNESCAP n.d.).	The functions of the Ministry include: Catalysing government and NGOs in mainstreaming gender; formulating implementing and monitoring of policies programmes and projects for empowerment of women; networking with government, NGOs, media and donor agencies on women's empowerment; implementing, coordinating an monitoring projects and programmes through government and NGOs for Early Childhood Development; implementing and monitoring the Women's Charter, the Policy document on women.
109	Maldives	Sixth National Development Plan 2001 (CEDAW 2005f).	It aims to promote gender equality in all areas by mainstreaming gender so that gender issues are considered in the national development plans.	Ministry of Women's Affairs and Social Security 1998 (UNESCAP n.d.).	The functions include: To plan, administer, implement, monitor and evaluate all development projects and action programmes for women.

HDI Rank	Countries*	National Plans	Objectives	National Machinery for Implementation of Women's Policies	Main Functions
134	India	National Policy for the Empowerment of Women 2001 (CEDAW 2005e).	The objectives of this Policy are to: create an environment for the full development of women through positive economic and social policies; enable them to realise their full potential, ensure equal access to education, health care, employment, social security and public office and participation in decision making in social, political and economic spheres; change societal attitudes and community practices by active participation involvement of both men and women, mainstreaming a gender perspective in the development processes; eliminating discrimination and all forms of violence against women and girl children.	Department of Women and Child Development 1985 (CEDAW 2005e).	It aims to: provide institutional mechanisms and policies such as gender budgeting, gender mainstreaming in national policies and planning; review various laws and recommended amendments to many of the laws with the objective of promoting equality and to amend discriminatory provisions; address crimes against women
141	Bhutan	National Plan of Action for Gender 2006 (CEDAW 2007b).	The Plan include: review existing discriminatory laws against women; safer and more protective environment for women and children.	National Women's Association of Bhutan 1981 CEDAW 2007b).	It aims to: improve the living standards and socio-economic status of women; create awareness among women of the importance of proper maternal and child care; encourage women to take an active part in the implementation of socio-economic development programmes and in all other nation-building activities.

HDI Rank	Countries*	National Plans	Objectives	National Machinery for Implementation of Women's Policies	Main Functions
145	Pakistan	National Plan of Action for the Advancement of Women 2002 (CEDAW 2005c).	It states that equality between women and men is a matter of human rights and a condition for social justice. It is also a necessary and fundamental pre-requisite for equality, development and peace for the promotion of people centered sustainable development.	Ministry of Women Development, Social Welfare and Special Education 1979 (UNESCAP n.d.).	Its main functions are to: formulate public policies to meet specific needs of women; ensure women's interests and needs are adequately safeguarded and met by various organs of the government; ensure equality of opportunity in education and employment and fuller participation of women in all spheres of national life; Matters relating to equality of opportunity in education and employment and fuller participation of women in all spheres of national life
146	Bangladesh	National Policy for Advancement of Women 1997 (CEDAW 2010b).	The policy goal is to eliminate all forms of discrimination against women and empower them with abilities to be equal partners of men in the development process.	Ministry of Women and Children Affairs CEDAW 2010b).	The Ministry aims to: implement policies and programs; focal point for actions on issues of women's equality; develop and promote comprehensive and consistent responses to the needs and priorities of women in activities of all Government agencies.
157	Nepal	National Plan of Action on gender equality and women empowerment 2003 (CEDAW 2003b).	The Plan includes strategies to increase the number of women in the constitutional bodies, judicial service, public enterprises, and the civil service; suggest various legal and capacity-enhancement measures for implementation.	Ministry of Women and Social Welfare 1995 (UNESCAP. n.d.).	The functions include: mainstreaming women in national development; empowerment of women; gender sensitization.
172	Afghanistan	National Action Plan for the Women of Afghanistan (UNIFEM Afghanistan 2007).	The vision of the Plan is to build a peaceful and progressive Afghanistan where women and men both enjoy security, equal rights and opportunities in all aspects of life.	Ministry of Women's Affairs 2001 (UNIFEM Afghanistan 2007).	The Ministry works within the government and with international and NGO partners to ensure that government policies, budgets and services consider their impacts on both Afghan women and men.

HDI Rank	Countries*	National Plans	Objectives	National Machinery for Implementation of Women's Policies	Main Functions
Pacific					
2	Australia	Beijing Plus Five Action Plan 2001 – 2005 (CEDAW 2004c).	The Plan aims to: eliminate of harmful gender stereotypes; encourage men and boys to become actively involved in advancing gender equality; build on existing policies; and improve outcomes for women through collaboration between agencies, governments, the community, business and the media.	Office of the Status of Women 2001 (UNESCAP n.d.).	The Office has the responsibility for facilitating women's participation in all aspects of society. It has a key role in providing strategic policy advice to government on issues that concern women. The Office also coordinates and monitors government initiatives that impact on women.
5	New Zealand	Action Plan for New Zealand Women 2004 (CEDAW 2006b).	The Plan articulates the Government's commitment to improve a range of outcomes for women and to reducing inequalities between women and men, and between particular groups of women. The three priority areas are: economic sustainability- to improve women's economic independence and ability to contribute to the New Zealand economy; work-life balance – to help women to achieve a greater balance between paid work and life outside work; well-being – to improve health and social outcomes for women.	Ministry of Women's Affairs 1984 (UNESCAP n.d.).	The Ministry of Women's Affairs is the Government agency responsible for providing policy advice on issues specific to New Zealand women. MWA contributes to the Government's vision for a sustainable New Zealand by: providing policy advice on issues that impact on social and economic outcomes for women; assisting the Government to fulfil its international obligations in relation to the status of women; nominating appropriately-qualified women for state sector boards.
49	Palau	No information available	No information available.	Bureau of Women's Interest 1993 (UNESCAP n.d.).	Its primary objective is to develop, coordinate and facilitate women's programmes and services throughout Palau.



HDI Rank	Countries*	National Plans	Objectives	National Machinery for Implementation of Women's Policies	Main Functions
90	Tonga	National Policy on Gender and Development 2001 (UNESCAP n.d.).	The Policy aims to promote equality between genders.	Women and Development Centre 1993 (UNESCAP n.d.).	Its mission is to promote the full and equal participation of men, women and children in economic, social and cultural development through facilitating policy formulation and monitoring of the implementation of programmes.
99	Samoa	National Policy for Women of Samoa 2001–2004 (CEDAW 2003a).	The Policy has three objectives: to provide information and guidelines to enable the full integration of women issues into development plans; to monitor the achievement of specific indicators towards the attainment of general objectives; and to provide direction for the work of the Ministry of Women Affairs and NGOs which are consistent with national obligations under international protocols that Samoa is a party to, such as CEDAW and the CRC.	Ministry of Women Community and Social Development 2003 (UNESCAP n.d.).	The functions of the Ministry include: To provide professional and quality advice to the Minister and relevant line Ministries of Government on policies and plans to address issues concerning the economic and social development of families and community; and to coordinate the planning, implementation, monitoring and evaluation of Community Development Welfare and Social Services to: (a) strengthen the capacity of men, women and youth in improving their standards of living (b) strengthen the capacity of social structures in addressing social issues which are impacting on family harmony and community cohesion.



HDI Rank	Countries*	National Plans	Objectives	National Machinery for Implementation of Women's Policies	Main Functions
100	Fiji	Women's Plan of Action 1999–2008 (CEDAW 2010a).	The Plan focuses on five areas of concern: mainstream women's and gender concerns in the planning process and all policy areas; women and the law; micro-enterprise development; balance gender in decision making; and eliminate violence against women and children.	Ministry of Women and Culture 1960 (UNESCAP n.d.).	The functions of the Ministry include: Mainstreaming of women's and gender concerns in the planning process and all policy areas; review of laws that are disadvantageous to women; allocation of additional resources to develop women's micro-enterprise financial institutions to be encouraged to review lending policies to disadvantaged women and young women who lack traditional sources of collateral; gender balanced partnership at all levels of decision making and assigning fifty per cent of representation, participation, training, appointments and promoting at all levels of government to women on merit and as appropriate and encourage the same in the private sector; campaign to promote a sound and stable environment that is free of violence, especially domestic violence, sexual harassment and child abuse.
116	Micronesia (Federated States of)	No information available	No information available	National Gender Office 1991 (UNESCAP n.d.).	Its objectives are to: upgrade women's and social affairs portfolios to cabinet level status; formulate and adopt official FSM gender policy and strategic development agenda; establish effective mechanisms for engaging women in the democratic, development and governance processes.
122	Kiribati	No information available.	No information available.	Kiribati Women's Federation 1982 (UNESCAP n.d.).	The functions of the Federation include: provide women and various agencies with information and training opportunities; research on women's needs; develop or upgrade the status of women ;draw up the National Women Development Plan

HDI Rank	Countries*	National Plans	Objectives	National Machinery for Implementation of Women's Policies	Main Functions
125	Vanuatu	Gender Equity Policy 1997 (CEDAW 2005d).	The Policy's central objective is to mainstream gender in all government business, including national/sectoral planning and macroeconomic policy.	Department of Women's Affairs 1980 (UNESCAP n.d.).	Some of the objectives of the Department include: Develop policies that would facilitate positive economic and social development of women; use temporary measures to enable women to enjoy fundamental human rights and participate in all spheres on equal basis with men; gender sensitivity awareness that encourage active participation of men and women as a way to change degrading social attitudes towards women; and mainstream gender perspectives in all government policy planning and implementation, and ensure gender dimension in planning by collecting gender sex disaggregated data by sector.
142	Solomon Islands	National Policy on Gender Equality and Women's Development 2010–2015 (JICA 2010).	The Policy's primary goal is to promote gender equality and enhance women's development ensuring the active contribution of both Solomon Islands women and men in all spheres, and at all levels of development and decision-making.	Women and Development Division 1964 (UNESCAP n.d.).	The primary role of the Division is to act as national women's machinery in Solomon Islands. It is responsible for the implementation of
153	Papua New Guinea	National Women's Policy 1991 (CEDAW 2009a).	It reaffirms the goal for equality. It also calls for equal participation by women in all political, economic, social, religious and cultural activities	Women's Affairs Division 1983 (CEDAW 2009a).	It acts as the central focal point for women and wider gender equity issues within government.
	Marshall Islands	Vision 2018 adopted in 2003 (Republic of Marshall Islands 2010).	The Vision ensures optimal accessibility to opportunities to ensure wider participation of women in the self-reliant and sustainable development process.	No Information available.	No Information available.

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	Nauru	Women's National Plan of Action 1998 (Republic of Nauru 2009).	In 2004, the Plan was revised to focus on six priority areas of: girl child; religion; community and family; good governance; youth; women in sports.	Women's Affairs Section 1997 (UNESCAP n.d.)	The functions of the Section include: To support government mainstreaming of a gender equality perspective in all policy areas; to get Government's full blessing for the Unit in the provision of financial and institutional arrangements, to ensure its continuity.
	Tuvalu	National Women's Policy 1998 (UNESCAP n.d.).	The Policy aims to advance women's interests in 13 strategic areas of development.	Department of Women Affairs 1999 (UNESCAP n.d.).	The Department aims to support, promote, enhance and monitor the equitable gender status in the socio-economic and political development of Tuvalu.

*Note:* \* Countries are listed according to the HDI 2011 (UNDP 2011).

# Endnotes

- 1 UNDP 2010.
- 2 Chen and Ravallion 2008.
- 3 Dicey 1885.
- 4 Ramaseshan 2009.
- 5 UNIFEM South Asia Regional Office and Partners for Law in Development 2004.
- 6 Cheema 2010.
- 7 Kapur 2007.
- 8 Cheema 2010.
- 9 Klasen and Wink 2002.
- 10 UNDP 2010.
- 11 UNDP 2010.
- 12 Mahajan 2006.
- 13 Jalal 2009.
- 14 Civil Law of the Republic of Afghanistan (Civil Code) 1977: Article 2.
- 15 Jalal 2009.
- 16 U.S.Department of State 2009.
- 17 Jalal 2009.
- 18 Roy 1996.
- 19 Of Zia-ul-Haq.
- 20 Ihsan and Zaidi 2006. Hudood (limits) Ordinance 1979 constitute five criminal statutes of Pakistan: Property Ordinance deals with theft and robbery; Zina Ordinance stipulates legal provisions on rape, adultery, fornication and abduction; Prohibition Order deals with alcohol and narcotics related offences; Qazf Ordinance deals with offence of false accusation of zina; and the Execution of the Punishment of Whipping Ordinance specifies the mode of whipping for those convicted under the Hudood Ordinances.
- 21 Abbas 2004.
- 22 Cheema 2010.
- 23 Ramaseshan 2009.
- 24 CEDAW 2004d.
- 25 Ramaseshan 2009.
- 26 Muslims followed the Quran; Hindus regulated their conduct through the Vedas and Dharamshastras, the oldest of which was the code of Manu believed to be written in 200BC and AD100.
- 27 De Schweinitz 1983.
- 28 Dhagamwar 1992.
- 29 Ramaseshan 2009.
- 30 Stege et al. 2008.
- 31 UNDP 2010.
- 32 Cheema 2010.
- 33 Cheema 2010.
- 34 Manuel 2009.
- 35 Law of the Republic of Indonesia No. 12 on Citizenship of the Republic of Indonesia 2006: Article 4.
- 36 Jivan and Forster 2007.
- 37 Women Living Under Muslim Laws 2009.
- 38 Cheema 2010.
- 39 OHCHR 2007.
- 40 Cheema 2010.
- 41 UN n.d.
- 42 UNDP 2010.
- 43 UNIFEM 2008.
- 44 Jivan and Forster 2007.
- 45 Jalal 2009.
- 46 Chiongson 2009.
- 47 Supreme Court of Nepal 2002.
- 48 Rajivan and Senarathne 2009.
- 49 UN 2000.
- 50 CEDAW 2008a; Law on Gender Equality 2006.
- 51 Constitution of the People's Republic of China 2004: Article 48(1).
- 52 CEDAW 2006a.
- 53 Jalal 2009.
- 54 Penal Code (Cap 135) 1981: Section 150.
- 55 Constitution of Malaysia 1957: Article 15 (3).
- 56 Cheema 2010.
- 57 A bill is under consideration to amend articles 333 and 334 of the Philippines's Penal Code.
- 58 The Delhi High Court, in its 2009 ruling, delivered a landmark judgment against the archaic colonial era Section 377 of the Indian Penal Code, thus decriminalizing private same-sex relations between consenting adults. Nepal Supreme Court, in its 2007 ruling, issued directive orders to the government to end discrimination against sexual minorities and to ensure their equal rights.
- 59 UN 2006.
- 60 UN 2006.
- 61 Manuel 2009.
- 62 Jivan and Forster 2007.
- 63 CEDAW 2003c.
- 64 Indian Penal Code 1860: Section 304 B.
- 65 Cheema 2010.
- 66 UNDP 2010.
- 67 Jalal 2009.
- 68 Labour and Employment Act 1972: Section 33(2); Employment Act 1978: Section 98 (b). In case of Samoa

- the draft Labour and Employment Bill 2009 shall remove the limitation on manual work.
- 69 Labour Code of Socialist Republic of Viet Nam 1994: Article 113(1).
  - 70 Fiji Employment (Amendment) Act No. 6 of 1996: Section 3.
  - 71 Ramaseshan 2009.
  - 72 Ramaseshan 2009.
  - 73 Ramaseshan 2009.
  - 74 Jalal 2009.
  - 75 Chiongson 2009.
  - 76 Jalal 2009.
  - 77 The Constitution of Solomon Islands 1978. No. 783: Section 15(5) d.
  - 78 Cheema 2010.
  - 79 Decree of the President of the Lao People's Democratic Republic on the Promulgation of the Law on Development and Protection of Women 2004: Section 35.
  - 80 Chiongson 2009.
  - 81 Anti-Sexual Harassment Act 1995: Section 3.
  - 82 Jivan and Forster 2007.
  - 83 CEDAW 2005a.
  - 84 AusAID 2008.
  - 85 CEDAW 2003c.
  - 86 The Child Marriage Restraint Act 1929(Amendment Ordinance 1984): Section 4.
  - 87 The Anti-Rape Law of 1997.
  - 88 Cheema 2010.
  - 89 Jalal 2009.
  - 90 Criminal Law (Amendment) Act 2004.
  - 91 The Family Protection Act 2008.
  - 92 Penal Code 1883.
  - 93 Malalasekera 2008.
  - 94 Al Jazeera 2009.
  - 95 Reid 2009.
  - 96 Commission on Legal Empowerment of the Poor 2008.
  - 97 UNDP 2005.
  - 98 Partners for Law in Development 2006.
  - 99 UNDP 2005.
  - 100 UN 2005.
  - 101 MoWA et al. 2005.
  - 102 Ramaseshan 2009.
  - 103 Supreme Court of India 1997.
  - 104 CEDAW 2004e.
  - 105 UNDP 2010.
  - 106 High Court of Fiji 2008.
  - 107 Ramaseshan 2009.
  - 108 Jalal 2009.
  - 109 Jalal 2009.
  - 110 Jalal 2009.
  - 111 Qanun-e-Shahadat Order 1984: Article 17.
  - 112 Jivan and Forster 2007.
  - 113 Kabul Center for Strategic Studies 2008.
  - 114 Common law refers to the body of law derived from judicial decisions, rather than from statutes or constitutions.
  - 115 Indian Penal Code 1860: Section 300(d) exception 1; Penal Code 1883 (for Sri Lanka): Section 325.
  - 116 Jilani and Ahmed 2004.
  - 117 UNDP 2005.
  - 118 Ramaseshan 2009.
  - 119 Wardak 2009.
  - 120 OHCHR 2007.
  - 121 UNDP 2010.
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Exclusion on the basis of gender has continued to persist not just in fact, but also in law. The aim of this paper is to uncover patent and latent barriers to gender equality in the justice systems of Asia-Pacific. Based on background research done for the Asia-Pacific HDR on Gender, *Power, Voice and Rights*, this paper looks at possible ways to redress legal discrimination for accelerating human development. The paper testifies that Asia-Pacific has some extreme forms of discrimination and violence despite being one of the world's most 'inclusive' and economically dynamic regions.

Legal Barriers operate, both in the content of laws and legal practices; and, in restricted access to justice systems. The substantive content of laws itself can be a source of discrimination – laws may be discriminatory, have gaps or be contradictory. The less explicit subtler inequalities can also contribute to exclusion. Women's access to formal and customary justice systems remains restricted and inadequate enforcement mechanisms continue to be of serious concern. Specific barriers, rooted in gender, prevent women from getting to courts or finding fair judgments once there.

What are some of the important remedial measures for enforcing rights and correcting wrongs? The paper explores three strategic avenues: One, fixing *institutions* – laws, legal practices and modes of access; two, changing *attitudes* of those who create, uphold, and use laws; and three establishing ongoing *assessments* to reveal inequalities and monitor progress.



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