



Scoping Study

Women's Access to Justice: Perspectives from the ASEAN region



Disclaimer

This work is the product of a collaboration between external consultants from the University of Cambridge and internal contributions from the Thailand Institute of Justice. The findings, interpretations, and conclusions expressed in this work do not necessarily reflect the views of The Thailand Institute of Justice.

The Thailand Institute of Justice does not guarantee the accuracy of the data included in this work. The majority of the data and legal information included have been taken from official reports accessed between July 2014 to December 2015 and as such, new materials and information may have been made available in the interim. Some additional findings may have been incorporated in the report prior to publishing. This work is a preliminary scoping study and is not intended to be a comprehensive analysis of the situation at hand.

Rights and Permissions

The Thailand Institute of Justice encourages dissemination of its knowledge and this work may be reproduced, in whole or in part, for non-commercial purposes as long as full attribution to this work is given.



**UNIVERSITY OF
CAMBRIDGE**





Scoping Study
Women's Access
to Justice:
Perspectives from
the ASEAN region

A collaboration between
Thailand Institute of Justice
University of Cambridge

FOREWORD



Access to justice for all is an inextricable foundation of a fair and just society. It remains to be a formidable challenge that disproportionately affects the most vulnerable in society, including the majority of women and is a daunting barrier for the achievement of women’s human rights. Women are faced with obstacles at every stage of the justice process starting from the initial decision to take action, to the investigation, prosecution and litigation of the case through to the issuance of a final verdict and its enforcement. In the absence of access to a justice system that is effective, responsive, reliable and fair, women are unable to have their voices heard, to exercise their rights and to challenge discrimination. These shortcomings are also detrimental to achieving the Rule of Law, which is the bedrock for both justice and security.

The countries of the Association of Southeast Asian Nations (ASEAN) have made considerable progress in the advancement of women’s access to justice but there is much more that can be done. From a policy perspective, it is of great importance for us to understand the status quo and identify the specific challenges faced by women, so that well-informed policies can improve and rectify the situation.

One of the core mandates of the Thailand Institute of Justice (TIJ) is to be a leading regional and international research institute and policy development centre that is at the forefront of not only the field of crime prevention and criminal justice, but also contribute to strengthening justice systems both nationally and internationally. In this regard, improving women’s access to justice is key to our work on women empowerment in the justice system. We seek to enhance the growing body of academic research on women that can be utilised to inform the formulation and development of robust policies.

This scoping study is intended to build on the literature that can be used by the judiciary, policy makers and development practitioners in their work to ensure women’s access to justice. It also sets out a future research agenda that can be beneficial to national or regional policy changes. It is without a doubt that collaboration between all members of the ASEAN region will be integral to the continued efforts of improving access to justice for women.

A handwritten signature in black ink that reads "K. Kittayarak".

Kittipong Kittayarak

Executive Director, Thailand Institute of Justice

ACKNOWLEDGEMENTS

This scoping study on Women's Access to Justice: Perspectives from the ASEAN region is the result of a collaboration between the Thailand Institute of Justice and the University of Cambridge.

The report was written by:

The University of Cambridge Centre of Development Studies:

- *Lucy McMahon* and *Catalina Droppelmann* under the direction and supervision of *Dr. Shailaja Fennell*.

The Thailand Institute of Justice:

- *Magali Lapouge*, Policy and Research Officer and *Soramon Urapeepatanapong*, Policy and Research Officer under the direction and supervision of *Dr. Sita Sumrit*, Chief of the Women and Children Empowerment Programme.

The Thailand Institute of Justice would like to thank all the organisations and individuals involved and wishes to acknowledge the generous support provided by the ASEAN Commission on the Rights of Women and Children (ACWC), Melissa K. Booth, Senior Researcher, Enlightened Myanmar Research Foundation (EMReF) and Professor Barbara Owen, Expert on Criminology and Treatment of Female Offenders, California State University.

TABLE OF CONTENTS

| | |
|----|--|
| 4 | Foreword |
| 5 | Acknowledgements |
| 8 | Glossary |
| 11 | Acronyms |
| 12 | Executive summary |
| 14 | Summary of challenges for women's access to justice in the ASEAN |

16 Introduction

| | |
|----|-------------------|
| 17 | The ASEAN context |
| 18 | Methodology |
| 19 | Limitations |

20 Chapter 1: Women's access to justice: A regional imperative

| | |
|----|--|
| 21 | 1.1 What do we mean by access to justice? |
| 21 | 1.1.i Defining 'access to justice' |
| 22 | 1.1.ii Status quo |
| 22 | 1.2 What are the specific challenges for women? |
| 22 | 1.2.i Gender inequality and patriarchy |
| 25 | 1.2.ii Gender bias in the justice systems |
| 27 | 1.2.iii Violence against Women (VAW) |
| 31 | 1.3 Legal pluralism |

35 Chapter 2: International frameworks

| | |
|----|---|
| 36 | 2.1 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) |
| 37 | 2.1.i The Relationship between the CEDAW and the ASEAN States |
| 38 | 2.1.ii Implementation of the CEDAW |
| 39 | 2.2 Regional institutions and frameworks |
| 39 | 2.2.i Key agreements |

42 Chapter 3: Legal barriers in accessing justice

| | |
|----|--|
| 43 | 3.1 Absence of legislation |
| 45 | 3.2 Oppressive laws |
| 46 | 3.2.i Discriminatory practices in customary law |
| 48 | 3.2.ii Discriminatory practices in religious law |
| 53 | 3.2.iii Challenges to freedom of association |

54 Chapter 4: Social and economic barriers

| | |
|----|---|
| 55 | 4.1 Barriers to reporting domestic and sexual violence |
| 56 | 4.1.i Culture of fear, stigma and silence |
| 57 | 4.1.ii Normalisation of violence |
| 59 | 4.1.iii Women's status in the household |
| 59 | 4.2 Financial barriers and legal aid |
| 60 | 4.2.i Legal aid reform in Southeast Asia |
| 62 | 4.2.ii Costs of legal aid |
| 63 | 4.2.iii Legal aid and victim protection |

64 Chapter 5: Institutional barriers

| | |
|----|---|
| 65 | 5.1 The Police system |
| 67 | 5.2 Court practices |
| 68 | 5.2.i Lack of confidence in judicial proceedings and outcomes |
| 69 | 5.2.ii Gender stereotyping |
| 69 | 5.2.iii The Language of the law |
| 70 | 5.3 Corruption |

71 Chapter 6: Additional challenges faced by specific groups of women

| | |
|----|---|
| 72 | 6.1 Sex workers |
| 75 | 6.2 Migrant workers |
| 77 | 6.3 Indigenous peoples and ethnic minorities |

80 Chapter 7: A Legal empowerment framework for change

| | |
|----|--|
| 81 | 7.1 The Legal empowerment approach |
| 83 | 7.2 Moving forward: A legal empowerment research agenda |

84 Chapter 8: Preliminary policy recommendations

90 Chapter 9: Future research and policy design

| | |
|-----|--------------|
| 95 | Bibliography |
| 107 | Appendices |

GLOSSARY

'Access to justice for women' refers to the ability of women to use the systems of justice established in the constitutions of each country, as well as the customary and religious systems. It requires an understanding of an individuals' rights and the knowledge of the mechanisms available to fulfil justice needs, the confidence in the capacity of justice institutions and mechanisms to provide a fair, transparent and affordable process and adequate access to legal aid.

ASEAN Association of Southeast Asian Nations. Established in 1967, it is a region that as of January 2016 includes the member states of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. In this study, Timor-Leste, while not a member state, is included.

CEDAW Convention on the Elimination of All Forms of Discrimination against Women. It is an international treaty adopted in 1979 by the United Nations General Assembly as a bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes as discrimination against women and sets up an agenda for national action to end such discrimination.

Civil law A system of law based on written concepts, categories and rules that cannot be altered during court or other justice proceedings.

Common law A system of law that also uses written formal laws but these are interpreted through the decisions of judges, courts and other tribunals. Cases can have an effect on future cases.

Customary law Traditional practices, not necessarily written down, which have become a part of expected conduct in a community, and when infringed are dealt with according to custom. It is not always used in local contexts but is also a source of international law.

Domestic violence There are multiple understandings about what constitutes domestic violence but it broadly includes physical, sexual, psychological and economic violence conducted in the domestic (usually household) space.

Freedom of association The right to join or leave groups of a person's own choosing, and for the group to be free to take collective action to pursue the interests of members.

Gender The state of being male or female as constructed by social or cultural ideas and practices. This differs from sex which refers to the biological differences between men and women.

Gender blind or Gender neutral An approach that refuses to acknowledge any difference on the basis of gender.

Gender mainstreaming Ensuring that gender perspectives and attention to the goal of gender equality are central to any planned policy action including legislation and programmes, in all areas and levels.

Gender stereotyping The practice of ascribing generalised views or preconceptions about attributes, characteristics or roles of an individual based on their gender.

Legal empowerment A process of systematic change through which people are enabled to exercise and advance their rights and interests using the law, the legal system and legal services. It is a process through which the rule of law and access to justice are strengthened to ensure that people are empowered to make choices, have equal access to opportunities and realise their freedom via legal mechanisms.

Legal pluralism The existence of multiple legal systems within one geographical area.

Paralegal A trained individual, qualified by education or work experience, who does legal work related to or similar to that of lawyers but is not fully qualified as a lawyer.

Patriarchy In a narrow sense, patriarchy refers to men's power over women in the household or family. More specifically, it refers to the way in which broader society and politics reproduce this unequal relationship of power.

A patriarchal society is characterised by current and historic power inequalities between women and men, in which women are systematically disadvantaged on the basis of their gender in multiple spheres.

Patrilineal A system where descent is traced through male family members.

Personal law The portion of law which pertains to all matters related to any individual, or their families. It is often considered to be the main bastion of Islamic law since the Quran devotes greater attention to subjects such as marriage, divorce and inheritance than it does to any other legal topic.

Religious law A system of law based on religious doctrine or other religious texts.

Scoping study A study to synthesise existing research and outline directions to take research further.

Secondary victimisation or Re-victimisation The process where by a person who has suffered (e.g. from violence) is made to suffer again typically as a result of 'victim blaming' in social service provision, the justice system and culture. This can further traumatise victims of violence who are being served by these agencies, or deter them from seeking help.

Sexual violence Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic or otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.¹

Sharia law A set of disciplines and principles recommended in Islamic texts (the Quran, Hadith and Sunna) for members of the Islamic faith to use to guide their decisions and behaviour towards themselves, their families and their communities. Sharia is also used by Muslims to inform interactions between communities and social and economic organisations. Some states or communities have institutionalised Sharia law into legal systems and processes which have fixed penalties for law-breaking.

Strategic litigation A process that identifies specific cases that can be used as the basis for a strategy of justice reform in order to change laws, identify gaps between national and international law or ensure laws are enforced properly.

Transformative accommodation A process that promotes respect and legitimacy for customary or religious law and encourages dialogue between different justice systems but also encourages individuals to question, challenge and change whatever system they are living under.

¹ As defined by the World Health Organisation.

ACRONYMS

| | | | |
|--------------|--|---------------|--|
| ACSC | ASEAN Civil Society Conference | LAN | Legal Aid Network |
| ACW | ASEAN Committee on Women | LANGO | Law on Associations and Non-Governmental Organisations |
| ACWC | ASEAN Commission on the Rights of Women and Children | LGBTQ | Lesbian, Gay, Bisexual, Trans and Queer |
| ADB | Asian Development Bank | NGO | Non-Governmental Organisation |
| AEC | ASEAN Economic Community | PNI | Institutes of the UN Crime Prevention and Criminal Justice Programme Network |
| AIPP | Asia Indigenous Peoples Pact | TIJ | Thailand Institute of Justice |
| APF | ASEAN Peoples' Forum | UN | United Nations |
| ASEAN | Association of Southeast Asian Nations | UNDP | United Nations Development Programme |
| AWID | Association for Women's Rights in Development | UNFPA | United Nations Population Fund |
| CEDAW | Convention on the Elimination of all Forms of Discrimination against Women | UNICEF | United Nations Children's Emergency Fund |
| CEPAD | Centre of Studies for Peace and Development | UNODC | United Nations on Drugs and Crime |
| CSO | Civil Society Organisation | UNV | United Nations Volunteers |
| FGM | Female Genital Mutilation | VAW | Violence against Women |
| GDP | Gross Domestic Product | | |
| HIV | Human Immunodeficiency Virus | | |
| ICCPR | International Covenant on Civil and Political Rights | | |
| ICJ | International Commission of Jurists | | |
| ICNL | The International Centre for Not-for-Profit Law | | |
| ILO | International Labour Organisation | | |
| IWRAW | International Women's Rights Action Watch Asia Pacific | | |
| JAG | Joint Action Group for Gender Equality | | |
| JFP | Justice for Peace Foundation | | |
| KWAT | Kachin Women's Association in Thailand | | |


EXECUTIVE SUMMARY

This scoping study identifies the challenges faced by women in accessing justice in the Association of Southeast Asian Nations (ASEAN) and examines the opportunities that are offered to them in the various contexts of each country. Initial findings reveal that the main challenges to women's access to justice can be broadly categorised to include gender inequality in society, gender bias in the legal systems, socio-economic barriers and institutional barriers. These obstacles are rooted in factors such as deeply embedded patriarchal attitudes that pervade all facets of society, the absence of legislation and the existence of oppressive and inadequate legislation, financial barriers and overall distrust in the justice processes, among others. These findings are intended to serve as a starting point for academics, policy makers and practitioners to further develop and improve approaches that can fight against the injustices that women encounter in their quest to access to justice. The scoping study concludes with preliminary policy recommendations and a suggested research agenda that may be beneficial in informing future policy proposals.

Chapter 1 sets out the context of the study by establishing the key theoretical understandings of women's access to justice and situating the scoping study in relation to legal feminist perspectives as well as development and international social justice theories. It also outlines some statistics for the ASEAN region in terms of gender and development and highlights in particular some figures on domestic and sexual violence. The chapter concludes by introducing the concept of legal pluralism and the challenges it poses across the ASEAN States.

Chapter 2 considers the role of international and ASEAN human rights agreements and how they define the goals and terms of discussion on women's access to justice in the region. It explores the intersections between international and local justice systems in relation to the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** and also delves into the relationship between the justice systems and ASEAN human rights agreements. It puts forward the argument that women's access to justice depends not so much on the successful implementation of the CEDAW recommendations in the formal legislation, but on a nuanced appreciation of local contextual features that can be best explored through the work of local advocacy organisations, NGOs and other CSOs.

The main part of the study (**Chapters 3-6**) introduces the vast range of barriers women face in accessing justice from the creation of legislation to the outcome of court decisions. This section is a summary of the range of issues involved, and aims to establish the potential scope of the future research agenda as well as identifying the most pressing priorities within it. **Chapter 3** considers in particular the legislative obstacles to accessing justice using two lenses of analysis. One looks at how the absence of legislation leaves women vulnerable and unable to utilise the justice system. The other looks at how existing legislation – in formal, customary and religious systems can serve as a hindrance



to women accessing justice, particularly given that authoritative figures in all systems are often men. **Chapter 4** analyses the socio-economic barriers that inhibit women's access to justice including societal norms, financial barriers, lack of legal aid, and lack of understanding of the language of the law. **Chapter 5** tackles the status and processes of institutions such as the police and the court and how they affect women's access to justice. **Chapter 6** discusses the additional challenges faced by specific groups of women in their justice-seeking process with a focus on sex workers, migrant workers, indigenous peoples and ethnic minorities.

Chapter 7 introduces the 'legal empowerment approach', and outlines what it would entail as a starting point for the research agenda.

Chapter 8 builds on the legal empowerment approach to outline the preliminary policy recommendations based on the findings of the scoping study. These six key recommendations include:

1. Legislative reform and changes in the civil/common law systems.
2. Respect and protect the cultural, religious and legal rights of women accessing customary/religious courts.
3. Support the work of grassroots campaigning and advocacy organisations, especially those working in the area of women's legal empowerment and support services.
4. Address the socio-economic obstacles to women accessing justice.
5. Strengthen justice institutions through investment and training, with a gender mainstreaming approach that is particularly conscious of the specific challenges faced by the most marginalised groups.
6. Call for concerted efforts by all ASEAN countries to cooperate in enhancing and strengthening women's access to justice and fulfil their obligations under the CEDAW.

Lastly, **Chapter 9** delineates what these areas would entail in terms of a future research agenda that could be used to influence national or regional policy changes. The recommendations are informed by case studies of good practices.

SUMMARY OF CHALLENGES FOR WOMEN'S ACCESS TO JUSTICE IN THE ASEAN

1



GENDER INEQUALITY IN SOCIETY

Patriarchy

Disproportionate power of rigid and patriarchal interpretations of religious laws that discriminate against women

Lack of gender sensitivity and gender responsiveness at all levels of the justice process, societal values, culture and traditions

2



GENDER BIAS IN THE LEGAL SYSTEMS

Absence of legislation on domestic and sexual violence

Oppressive and inadequate laws and failure to fully comply with the CEDAW

Legality of polygamy

3

SOCIAL AND ECONOMIC BARRIERS

Limited awareness of existing laws, court procedures and support services

Inaccessibility of legal aid (e.g. financial costs)

Normalisation of violence against women

Imbalance of gender power relations in the household



Financial barriers

Language barriers

Culture of fear, stigma and silence

4



INSTITUTIONAL BARRIERS

The Police

- Poor law enforcement
 - Fear and distrust of the police
 - Preference given to traditional actors to solve problems
-

Court practices

- Women's lack of confidence in judicial processes
 - Gender stereotyping
 - The language of the law
-

Inefficiency of legal aid (e.g. bureaucratic procedures)

Limited availability of support services for victims

Lack of victim and witness protection

Corruption and culture of impunity

5



ADDITIONAL CHALLENGES FACED BY SPECIFIC GROUPS OF WOMEN

Laws that discriminate against marginalised women including, among others:

- Women from religious minorities
 - Women from ethnic minorities
 - Indigenous women
 - Rural women²
 - Women with disabilities
 - Women living with HIV/AIDS
 - LGBT community
 - Female sex workers
 - Female migrant workers
 - Women refugees
 - Stateless women
 - Women in post-conflict situations
 - Alcohol and substance abusers
-

² See Appendix N°1 for CEDAW General recommendation No. 34 on the Rights of Rural Women.

Introduction





The ASEAN context

The **Association of Southeast Asian Nations (ASEAN)**³ is a highly diverse group of states in terms of history, political structure, trajectory of economic growth, culture and religion. As the ASEAN region is moving towards ever-increasing economic integration, the need to enhance mutual understanding and collaboration between the member states in other spheres than the economic field appears more and more vital for the durability of regional progress and stability. At the core of the entity, the 2008 ASEAN Charter explicitly provides for an aim of the regional states ‘to enhance the wellbeing and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice’ (ASEAN, 2008: 5). On the international scene, the 2030 Agenda for Sustainable Development recognises that equal access to justice and participation is a key to fight poverty and promote long-term stability. Access to justice (together with rule of law and **legal empowerment**) is therefore a crucial component of a sound and sustainable regional project.

‘**Access to justice for women**’ refers to the ability of women to use the systems of justice established in the constitutions of each country, as well as the customary and religious systems that are used by their communities. The 2011 UN report, ‘Progress of the World’s Women: In Pursuit of Justice’, revealed both how vital justice systems are for women’s rights and wellbeing, and how current systems generally fail women through discrimination, lack of resources and low participation in policy and decision-making, particularly by poor and marginalised women. **Women’s access to justice is generally affected by their socio-economic status, religion, ethnicity and level of education among other things.** Therefore, any study on women’s access to justice demands a broad and cross-cutting evaluation of economic, political and cultural systems as well as detailed attention to institutional processes, the written law and national constitutions.

Considering the complexity of each ASEAN State’s political and cultural context, this scoping study’s primary aim is to provide an overview of the situation on women’s access to justice by synthesising and analysing a wide range of existing research and policy materials. It must be noted from the start that the dimensions of the problem vary intricately according to the political context of each ASEAN Member State. The challenges explored in this study include legal, socio-economic and cultural barriers faced by women themselves, by institutions of justice and by civil society organisations working on improving women’s access to justice. These intersectional disadvantages are not exclusive to women, but the study outlines both the reasons and the processes through which gender plays an important role.

³ At present, the ASEAN includes the member states of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. In this study we also include Timor-Leste, whose membership is currently being evaluated by the ASEAN Secretariat.

The state of women's access to justice in the ASEAN region is not only an important indicator of the region's capability to achieve progress towards the ASEAN's missions and visions; it also estimates the degree of compliance of the ASEAN Member States with regional and international standards, especially in the area of women's human rights. The ASEAN nations have now all committed to a range of both international and ASEAN-specific human rights declarations. The year 2016 is a crucial juncture both in the ASEAN cooperation and in the first years of the post-2015 development agenda. It is essential that these new declarations can be used by groups working to improve women's access to justice across the region.

Finally, such an overview of the question also puts into perspective the problematic mismatch between the race for economic growth and the efforts needed for women to access justice in the region. According to the Asia Indigenous Peoples Pact (AIPP), the Asian Civil Society Conference (ACSC) and the ASEAN Peoples' Forum (APF), some of the ASEAN's economic goals pose grave threats to women's access to justice, and therefore, the sustainability of the regional plan.

In sum, this scoping study explores the various dimensions of the challenges that women encounter in the justice-seeking process, which covers several stages: their access to legal advice, law enforcement services and courts, as well as the processes and outcomes of justice-seeking. It also questions the gaps between the official positions of political actors and the actual implementation. Finally, the study proposes some recommendations and ways forward.

This scoping study eventually aims to identify where the research and policy work of the Thailand Institute of Justice (TIJ) should be focused over the next three years. The long term ambition is to produce a body of high quality research that can be used to influence policies and practices that improve women's access to justice across the ASEAN region. The TIJ recently joined the Institutes of the UN Crime Prevention and Criminal Justice Programme Network (PNIs) and this will give the TIJ an opportunity to play an active role in influencing global and regional policy in the fields of crime prevention and criminal justice. This study therefore seeks to expand the knowledge base of the Institute and to establish an updated perspective on women's struggle to access justice across the ASEAN region.

A real improvement in women's access to justice along the lines of the recommendations outlined at the end of this study would not only have implications for all women, but also for men, for people of other genders and for economically and politically marginalised groups more generally.

Methodology

Research for this study began with a primary desk study, synthesis and application of feminist legal approaches from international and ASEAN scholars. The second stage involved a review of the existing international reports on policies and legislation in ASEAN nations pertaining to women's rights and their ability to access justice. Materials analysed include academic sources, reports by international organisations, non-governmental organisations such as, The Asia Foundation, the UN and the statements and policy documents of the Asia Indigenous Peoples Pact (AIPP), the ASEAN Peoples' Forum (APF) and the Asian Civil Society Conference (ACSC), among others. The next step was to review

the CEDAW Committee country reports for all 11 countries. The findings were then organised according to key areas of interest: legal barriers such as the absence of legislation and the challenges posed by plural legal systems, socio-economic barriers, institutional barriers such as the court systems and law enforcement as well as other types of challenges that are specific to marginalised groups. From here, more detailed academic work on specific country cases was consulted.

Limitations

This study aims to provide an overview and analysis of the range of challenges and potential initiatives in the area of women's access to justice. It is important that future research that follows on from this scoping study is more detailed and nuanced to local contexts. In particular, primary qualitative data, including interviews and consultation with women who have experience accessing justice, or helping other women to access justice would provide a more in depth understanding of women's perspectives in accessing justice.

All the resources included in this study were in English. Since the countries covered in the research all have their own native languages, a substantial part of the existing literature was not available for review due to the language barriers. Furthermore, for some of the countries explored in this study, such as Brunei Darussalam, the available information, particularly through official channels, was limited.

Another limitation to this study is that while it is primarily focused on providing an overview of access to justice for all women, it has deliberately omitted the case of women as offenders.⁴

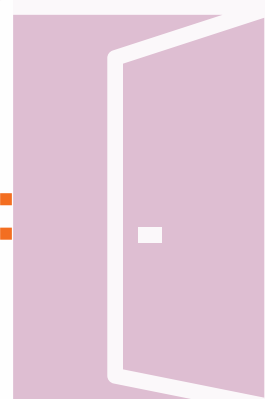
The aim of the study is also to focus on obstacles women encounter in the stages leading up to formal court proceedings and other justice proceedings due to the fact that the majority of cases are never reported, let alone taken to court. Therefore, this study lacks a comprehensive analysis of the outcomes, implementation and follow through of the justice decisions, which are equally important.

Many of the barriers to accessing justice go far beyond the availability or accessibility of legal institutions or procedures. These include the role of labour rights, citizenship rights and political rights, among others. Some of these topics have been mentioned in the study and are included as suggestions for future research agendas outlined in Chapter 9, but detail is limited and much more work is required.

4 Part of the TIJ's wider mandate is to monitor the implementation and outcomes of the Bangkok Rules, which are a series of rules and recommendations adopted by the UN General Assembly in 2010 to address the needs of women offenders and prisoners. For more information about women as offenders and access to justice see: Thailand Institute of Justice (2013). Penal Reform International. UK AID. Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules). Retrieved from <http://www.penalreform.org/wp-content/uploads/2013/10/PRI-TIJ-Guidance-Document-on-Bangkok-Rules-October-2013.pdf>

Thailand Institute of Justice (2014). Women Prisoners and the Implementation of the Bangkok Rules in Thailand. Retrieved from http://www.tijthailand.org/useruploads/files/women_prisoners_and_the_implementation_of_the_bangkok_rules_in_thailand_tij.pdf

Chapter 1:
**Women's access to justice:
a regional imperative**



This chapter explores key theoretical concepts of feminist legal perspectives and defines the study's interpretation of access to justice for women (1.1) and outlines the particularities of the ASEAN context in terms of existing gender inequalities and the underlying patriarchal ideology (1.2.i), gender bias in the justice system (1.2.ii) and violence against women (1.2.iii). These specific challenges lay the groundwork for further exploration of legal, socio-economic and institutional barriers, which will be discussed in subsequent chapters.

1.1. What do we mean by access to justice?

1.1.i Defining 'access to justice'

'Access to justice' goes beyond the mere ability of individuals to seek, access and obtain a remedy through formal or informal institutions of law. It encompasses confidence and trust in the systems in their capacity to render fair, accessible and sustainable outcomes. **Institutions of justice should be physically, financially and symbolically accessible to the individuals, in particular the most vulnerable.** Access to justice in formal systems also incorporates legal protection, legal awareness, **legal aid** and counsel, adjudication and enforcement. As such, it requires a strong justice system that is independent, impartial, and responsive to the needs of the people.

In Southeast Asia, systems of law are varied and include **civil law, common law, religious law, customary law**, or combinations of these. Accessing justice entails different elements, such as normative legal frameworks, awareness of the laws, rights and procedures for accessing the legal system and effective administration of the justice institutions (IWRAW, 2015).

For the purposes of this study, access to justice will be operationalised in three main elements:

1. The understanding of individual rights and the knowledge of the mechanisms available to fulfil justice needs.
2. The confidence in the capacity of these institutions and mechanisms to provide a fair, transparent and affordable process.
3. Adequate access to legal aid and the legal system (formal and informal).

1.1.ii Status quo

In all societies, access to justice is perhaps most prohibitive for groups who have been rendered vulnerable by social, economic and political policies. These groups tend to include informal workers, refugees, children, disabled people and women, among others. There is a symbiotic relationship between poverty, political exclusion and lack of access to justice. Indeed, the lack of access to justice exacerbates the social, economic and political marginalisation faced by these groups, and vice versa. The next section outlines the specific reasons why women as a group, globally, face challenges in accessing the justice systems. It also demonstrates why improving women's access to justice is a regional imperative for Southeast Asia.

1.2 What are the specific challenges for women?

1.2.i Gender inequality and patriarchy

The formal definition of equality stipulates that men and women should be treated equally before the law, without specific considerations of their particular characteristic (e.g. age, gender, socio-economic status, etc.). Following this line of logic, the law should be neutral and justice practitioners should be impartial to the status of those it is applied to. However, this conception ignores the reality that the law is an expression of power and control and that there is inherently unequal access to justice between genders. Thus, the application of the same law renders different impacts on women as a result of discrimination that is historically embedded, prohibiting women from starting on an equal footing to men (MacKinnon, 2011; Stanford Encyclopedia of Philosophy, 2013).

Worldwide, women earn 24 per cent less than men, participate less in political decisions and spend at least twice as much time as men on unpaid domestic work (UNIFEM, 2009; UN, 2010). Inequalities between men and women are present in almost all spheres of society. **The CEDAW's 2015 General recommendation No. 33 on women's access to justice corroborates the incontrovertible link between access to justice and gender equality.** The recommendation states that deeply entrenched legal structural obstacles and discriminatory gender norms prevent women from accessing justice, while justice institutions too are dominated by these same obstacles and norms (Oxford Human Rights Hub, 2015). One term used to describe this situation is **patriarchy**.

Patriarchy is defined by the UN as the shaping of society around men's control over women and children within the family and the replication of this unequal relationship in other spheres of life (UN, 2008). Patriarchal political philosophy classically divides the world into two spheres – that of the male public sphere and the female private sphere (Fennell, 2009). Within these divides, the law is associated with the public sphere, while the rights of the man to manage the private sphere without interference are protected as his 'private property' (Fennell, 2009). In many instances, the law has been more concerned with protecting women as the property of men, than with protecting their psychical and emotional integrity and autonomy (Bibbings & Nicolson, 2000).

The state typically plays a role in perpetuating patriarchy through systematically biased policies and actions (Walby, 2010). Patriarchal paradigms tend to have a profound influence on legal systems. Patriarchal legal systems often claim to be **gender neutral** when in reality, they are complicit in the

oppression and subordination of women. By tacitly privileging male interests, they fail to recognise the different ways in which the law treats men and women and the different outcomes men and women face when accessing justice depending on their political and economic position in the family and society (Fennell, 2010; Irving, 2008; Elson, 2002).

In Southeast Asia, there are manifestations of patriarchy in the legislative frameworks as they were modelled from a mixture of patriarchal western legal codes and pre-existing ideologies and customs (Kramarae & Spender, 2000). **'Laws in ASEAN Member States often reinforce socially constructed and stereotyped roles of men and women in family, community and society. The dominant notion of the superiority of men over women and similarly constructed notions of women's sexuality and of masculinity underpin the protectionist approach in domestic legislation'** (UN Women, n.d.-c: 3).

Gender inequality that is manifested through the legal systems have practical consequences for women both in the private and public sphere (Sultana, 2011) including:

Decision-making in the household: In Indonesia, the 1974 Marriage Law stipulates that only a man (or husband) can be legally considered 'head of household', ignoring the fact that, according to the Indonesian Bureau of Statistics, it is estimated in 2014 that nearly 14 per cent of households are headed by women (Zulminarni, 2014).

Female employment: In many ASEAN countries, men are more likely to work as employees whereas women are more likely to work as unpaid family workers.⁵ Additionally, women are twice as likely to work in the informal sector and be paid less than men for similar work (Romain, 2015). 'They face higher barriers to enter the workforce, are more likely to be dismissed following childbirth and maternity leave, and tend to retire earlier. These factors have decisive implications for their entitlement to social insurance, especially whenever the benefits are based on the level of accumulated contributions made in the course of working life (e.g. pension)' (Ministry of Labor, Invalids and Social Affairs of Vietnam, 2014: 18).

Domestic violence: This issue is often seen in Southeast Asia as a private matter that should not be regulated by the State. In Cambodia and Thailand, the definition of domestic violence excludes acts of disciplining wives if it is conducted with 'compassion' or because of 'negligence' (UN Women, n.d.-c).

Sexual freedom: Singapore, Malaysia, Myanmar and Brunei Darussalam have retained old British colonial laws criminalising same-sex relations. Sharia laws, introduced in Brunei Darussalam, the state of Aceh in Indonesia and multiple states of Malaysia, impose even harsher punishments for same-sex relations and ban cross-dressing (ASEAN SOGIE Caucus, 2015). Brunei Darussalam has planned to impose stoning for adultery, which puts women at a greater risk of being accused since, in case of rape, they need four male witnesses to prove that they were raped or else it can be considered as adultery (Southeast Asia Women's Caucus on ASEAN, 2014b).

⁵ According to a report entitled *Legal Empowerment for Women and Disadvantaged Groups on women and labour markets in Asia* by the ADB and the ILO, as of 2009, the labour force participation rate for men in Southeast Asia was 81.8 per cent compared to 58.8 per cent for women.

Marriage: In the Philippines, an extramarital affair is considered as adultery only when it is committed by a woman and only needs to be proven by circumstantial evidence. However, it is considered as ‘concubinage’ if it is committed by a man.⁶ The penalty for adultery is much more severe compared to that concubinage (Caincay et al., n.d.).

Reproductive decisions: Abortion is considered as a punishable offense in Brunei Darussalam unless the mother’s life is at risk (Freedom House, 2014). Similarly in Timor-Leste, abortion has been permitted when a woman’s life is at risk as of 2009, otherwise practitioners can face up to three years in prison (The Brunei Times, 2009).

Although in many instances, the state sustains patriarchal attitudes through its legal system, it can also play a role in breaking them. For example, in the case of **domestic violence** through increasing safety for women fleeing violent homes, focusing on prevention rather than only punishment, or using education, law and the judiciary, it can assert that domestic violence is not tolerated in the society (UN, 2009).

Facets of addressing gender equality can be identified through a substantive equality approach and gender mainstreaming. Substantive equality is a feminist legal approach that goes beyond creating formal legal equality, but rather emphasises the differing outcomes and impacts of laws and policies. It seeks to establish an equal standing between men and women by taking into account the substantive differences between their lives. It recognises that some policies might appear neutral but are in fact, discriminatory due to people’s different circumstances. For example, a fine imposed on a very wealthy person does not have the same impact as the same fine imposed on a much poorer person. In the same way, laws that are based on the assumption that a woman and a man have the same level of autonomy in a relationship fail to take into account the potentially substantive differences of the impact the laws have on each of them. Therefore, governments must tailor judicial processes and legislation in response to the realities of women’s lives, by implementing gender responsive policies and laws (UNICEF, n.d.).

Gender mainstreaming is a systemic strategy aimed at addressing gender inequality and achieving a more substantively equal outcome by taking into account gender in all areas of decision-making. It is not the prioritisation of women’s rights over those of men, but rather the recognition that to achieve equality, an approach that is sensitive to the substantive social, cultural, political and economic differences between men and women is necessary. Within a gender mainstreaming approach, women’s access to justice is understood as inalienable from women’s position in an international system of patriarchy (Fraser, 2007). Neither substantive equality nor gender mainstreaming should homogenise women as a group; indeed some women have greater access to justice than many men. As such, the approach recommended in this scoping study asserts the importance of understanding intersectional disadvantages and recognising those barriers faced both by women and men.

⁶ See *Marital Infidelity laws, Articles 333 and 334 of the Revised Penal Code*.

‘Gender mainstreaming is a globally accepted strategy for promoting gender equality. Mainstreaming is not an end in itself but a strategy, an approach, a means to achieve the goal of gender equality. Mainstreaming involves ensuring that gender perspectives and attention to the goal of gender equality are central to all activities - policy development, research, advocacy/dialogue, legislation, resource allocation, and planning, implementation and monitoring of programmes and projects.’

Source: Office of the Special Advisor on Gender Issues and Advancement of Women, 2001

1.2.ii Gender bias in the justice systems

Gender stereotyping plays a crucial role in the decisions of justice system actors. Marital status, motherhood and idealised female stereotypes strongly influence laws, jurisprudence, sentencing and corrections practices (Fox, 2000; Gelsthorpe, 2004). A legal system that is biased against women leaves them vulnerable to violence, exploitation and discrimination and thus, impedes their development and access to other social rights (Domingo & O’Neil, 2014). Sometimes, these stereotypes can mean that women are treated with relative leniency from the police and criminal authorities in some situations (Bibbings & Nicolson, 2000). However, gender biases based on stereotypes can also work against women and impede them from accessing justice. Stereotyping can particularly harm women victims whose demeanour and appearance may not match traditional gender stereotypes. They are perceived as double deviant (breaking both formal law and informal social norms) and are treated harshly. This is the case of single mothers, drug addicts, prostitutes, lesbians and political activists, among others (Bibbings & Nicolson, 2000).

‘Ineffective investigations, especially involving crimes against women, further prejudice women’s chances of successfully prosecuting any offence. Insufficient documentation of the cases by the police leaves out important evidence. There are also many instances where the interpretation of evidence by judges favour perpetrators and challenge the credibility of the women victims. In addition, judgments of acquittal or lenient punishment meted out to those convicted of offences, particularly related to violence against women, result in denying women their right to effective remedy before the courts.’

Source: UN Women, 2013b: 7

Gender biases and stereotypes are well entrenched in many of the legal systems in Southeast Asia. However, there are a number of strategies that could facilitate gender mainstreaming in legislation. For example, strategic litigation is a tactic that has been used to tackle gender discrimination and create awareness about women’s rights (UN Women, 2011). It involves pursuing cases on critical human rights issues, which if successful, are likely to have a high impact by serving as legal precedents for jurisprudence or promoting changes in legislation, policy and public opinion (Interights, 2015). It also helps to identify gaps between domestic and international human rights standards and to tackle discriminatory and discretionary interpretations of the law.

Box N°1: The Vertido case – an example of strategic litigation

Karen Tayag Vertido, a 42-year old executive in the Philippines filed a rape complaint in 1996 against the then president of the company where she worked.

She accused him of raping her in a hotel, when he offered her a lift home after a business meeting. In 2005, after eight years of litigation, the female judge acquitted the accused for insufficient evidence, based on guiding principles from former rape cases in the Philippines.

Subsequently, Mrs. Vertido submitted a communication before the CEDAW Committee, arguing that the court decision was grounded in some of the following gender-based myths and misconceptions about rape and rape victims:

- A rape victim must try to escape at every opportunity.
- To be raped by means of intimidation, the victim must be timid or easily cowed.
- To conclude that a rape occurred by means of threat, there must be clear evidence of a direct threat.
- The fact that the accused and the victim are ‘more than nodding acquaintances’ makes the sex consensual.
- It is a problem when a rape victim reacts to the assault by resisting the attack and also by cowering in submission because of fear.
- The rape victim could not have resisted the sexual attack if the accused was able to proceed to ejaculation.
- A man in his sixties would not be capable of rape.

As a result the CEDAW Committee called on the Philippines to compensate Mrs. Vertido and to ensure that decisions in sexual assault cases are impartial and not affected by prejudices or stereotypes. However, the government of the Philippines has yet to take any action or measure in response to the Committee’s views and recommendations.

Source: Cusack & Timmer, 2011; UN Committee on the Elimination of Discrimination against Women, 2010

The Karen Vertido case is considered as a landmark case, because it gave rise to the concept of ‘re-victimisation’ and attracted the attention of the international community on rape myths widespread in court decisions.

Box N°2: R.P.B. v. the Philippines

In 2011, another case was brought to the Optional Protocol CEDAW Committee⁷ by the same Filipino lawyer from Mrs. Vertido's case. The plaintiff was a deaf and mute Filipino girl who had been raped by a neighbour when she was 17. Even though she showed evidence of physical injuries and had undertaken a medical examination confirming the sexual assault, the court said that her statement was not credible since she had not sufficiently resisted the assault. The plaintiff was not given any translation services during the trial, even though she could only understand English sign languages. The defendant was ultimately acquitted. The CEDAW Committee concluded in 2014 that the State Party failed to fulfil its obligations pursuant to the Convention and other human rights instruments.

Source: UN Committee on the Elimination of Discrimination against Women, 2014

1.2.iii Violence against Women (VAW)

Violence against women has a profound effect on women's access to all citizenship rights, including to justice, while at the same time gendered exclusion from these rights exacerbates violence against women (UN Women, 2012b). It is also an expression of women's subordination and inequality in the private and public spheres (UNiTE, 2015). 35 per cent of women worldwide were said to have experienced either physical and/or sexual intimate partner violence or **sexual violence** by a non-partner at some point in their lives (WHO, 2013). In the majority of countries with available data, less than 40 per cent of the women who experience violence seek help of any sort (UN, 2015).

While violence against women is a universal problem, women across ASEAN countries are subjected to physical, sexual, psychological and economic violence at alarmingly high rates, especially by their intimate partners. Violence against women in the region ranges from domestic violence, trafficking, rape and sexual assault, to sexual harassment, but also forced/child marriage, bride kidnapping, bride price, son preference, sex-selective abortions and others. **Domestic violence is one of the most common but under-reported forms of violence in the ASEAN region.** Sexual violence is also widespread, and affects a lot of young men and women (UN Women, n.d.-c).

⁷ See Chapter 2.1.ii of this scoping study for more information.

Table N°1: Prevalence of physical and sexual violence against women

| | | Prevalence of physical violence against women (%) | | | | Prevalence of sexual violence against women (%) | | | | |
|-------------------|---------|---|-----------|---------------------|-----------|---|-----------|---------------------|-----------|--------------------------------|
| Country or Area | Year | All Perpetrators | | By Intimate Partner | | All Perpetrators | | By Intimate Partner | | Study Coverage and Notes |
| | | Life time | 12 months | Life time | 12 months | Life time | 12 months | Life time | 12 months | |
| Cambodia | 2005 | 22.3 | 10.3 | 12.8 | 7.9 | .. | .. | 2.7 | 1.7 | Age 15-49, Ever-married women |
| The Philippines | 2013 | 19.6 | 5.6 | 12.7 | 5.3 | 6.3 | 2.7 | 5.3 | 3.2 | Age 15-49, All women |
| Singapore | 2009 | 6.8 | 1.0 | 5.7 | 0.9 | 4.2 | 0.3 | 1.2 | 0.1 | Age 18-69, All women |
| Thailand Province | 2002 | .. | .. | 33.8 | 13.4 | .. | .. | 28.9 | 15.6 | Age 15-49, Province, All women |
| Thailand City | 2005 | .. | .. | 22.9 | 7.9 | .. | .. | 29.9 | 17.1 | Age 15-49, City, All women |
| Timor - Leste | 2009-10 | 38.1 | 29.2 | 33.5 | 30.7 | 3.4 | .. | 2.9 | 2.0 | Age 15-49, All women |
| Vietnam | 2010 | 35.2 | .. | 31.5 | 6.4 | 10.8 | .. | 9.9 | 4.2 | Age 18-60, Ever-married women |

Source: The World's Women - Trends and Statistics (UN, 2015)

The ratio between partner and non-partner violence shows that most acts of violence against women are perpetrated by intimate partners. It should be noted that statistics on violence are not absolute due to rampant underreporting. A vast majority of victims do not officially report their assault for fear of harassment and embarrassment. Thus, actual prevalence of physical violence against women in the region may be much higher than the statistics suggest. In the ASEAN region, few countries have available and reliable data on violence against women although the 2004 ASEAN Declaration on the Elimination of Violence against Women underscored the need for reliable statistics both to assess the prevalence of the social problem and to continually monitor changes (ASEAN, 2004).

A 2013 study by Partners for Prevention,⁸ entitled 'Why Do Some Men Use Violence against Women and How Can we Prevent it?' reveals that in Cambodia and all surveyed sites in Indonesia, a larger proportion of interviewed men reported having perpetrated sexual violence against an intimate partner rather than physical partner violence. In some cases, specifically Cambodia and Indonesia-Papua, a relatively large proportion of men reported that they were younger than 15 years at the time they first perpetrated rape (Fulu et al., 2013).

⁸ Partners for Prevention is a UNDP, UNFPA, UN Women and UNV regional joint programme for the prevention of violence against women and girls in Asia and the Pacific. For more information, see <http://www.partners4prevention.org/>

Table N°2: At a glance – Violence against Women in the ASEAN

| Country | Fact |
|-----------------|--|
| CAMBODIA | In a 2013 report by Partners for Prevention, 96.2 per cent of Cambodian men and 98.5 per cent of Cambodian women surveyed thought that a woman should obey her husband. And 67 per cent of women believed they should tolerate violence in order to maintain the family (Fulu et al., 2013). |
| INDONESIA | In 2009, up to 96 per cent of domestic violence cases surveyed were perpetrated by husbands against their wives (UN Women, n.d.-c). |
| LAO PDR | As of 2012, 46 per cent of women and 35 per cent of men surveyed believed that violence is justified in instances when the woman neglects their children (Lao Statistics Bureau & Ministry of Health, 2012). |
| MALAYSIA | In 2007, up to 57 per cent of domestic violence survivors surveyed had suffered violence by their husband, ex-husband, live-in partner or boyfriend, and the majority of them faced abuse in the first year of their marriage/relationship (UN Women, n.d.-c). |
| MYANMAR | A project by USAID found that there was a strong correlation between state fragility and violence against women (USAID, 2005). Domestic violence can be exacerbated by the effects of armed conflict or uncertain living situations and economic hardships such as forcible displacement to refugee camps where unemployment, depression, alcohol and drug abuse worsen strained relations (Meger, 2014). |
| THE PHILIPPINES | Results from the 2008 National Demographic and Health Survey show that 1 in 25 women aged 15-49 experienced forced first sexual intercourse, while 1 in 10 women aged 15-49 reported that they have experienced sexual violence. Overall, 4 per cent of women who have been pregnant experienced physical violence during pregnancy. These numbers tend to increase slightly with the number of living children; decrease slightly with age; decrease with education level; and decline steadily with wealth quintile (Philippine Commission on Women, 2014a). |
| THAILAND | Statistics indicate that a woman is raped every 15 minutes, resulting in 30,000 rape cases a year although in reality, a mere 4,000 cases are reported and only 2,400 cases result in the arrest of offenders (TIJ, 2014). |
| TIMOR-LESTE | Findings from The Asia Foundation show that 3 in 5 women surveyed aged 15-49 who had been in an intimate relationship with a man reported they had experienced violence in the 12 months prior to the interview. These women were 5 times more likely to have suicidal thoughts and 2.5 times more likely to be at risk of disability when compared to women who had never experienced partner violence (Warner, 2015). |
| VIETNAM | Issues of sexual violence are barely spoken about due to a strong social prejudice because 'a young woman's worth is judged by her virginity' (UN Women, n.d.-c). |

Violence against women yields far reaching consequences on society that are not only confined to women, but also on the general order of society, sustainable development and trust in the state and justice systems. For example, it has enormous economic costs that hinder countries' development as violence prevents women from doing their daily activities, going to work or seeking justice (UN Women, 2013). A study conducted in Vietnam showed that the expenditures and lost earnings due to gender violence represented nearly 1.41 per cent of the GDP in 2010, with total productivity losses 1.78 per cent of GDP. Moreover, the study found that women who are victims of violence earn 35 per cent less than the ones who are not (UN Women, 2012b).

Health effects are another consequence of violence against women. Violence and the threat of violence increase women's vulnerability to HIV and are both a cause and a consequence of infection. Additionally, infected women face additional obstacles when accessing justice and support services (UNiTE, 2013).

Box N°3: Women's Court in Southeast Asia

In 2009, the first Southeast Asia's 'Women's Court' on trafficking and HIV was held in Bali to shed light on first-hand stories from women who endured trafficking, violence, exploitation and HIV. A consensus was reached that 'the existing jurisprudence is gender blind and we need to move towards a justice that is restorative and healing of individuals and communities. It is essential that the linkages between HIV and human trafficking be viewed and addressed through the prism of dignity, access to justice, health and human security of individuals and communities' (UNODC, 2009).

The Jury issued a statement at the conclusion of the Court that 'the vulnerabilities of women to trafficking and HIV are rooted in the disproportionate human insecurity, poverty, illiteracy and disempowerment that they face in their daily lives.' In several countries, women who are trafficked are harmed by the same laws that are meant to protect them. They are treated as 'illegal migrants' and 'criminals' and are often denied their rights and choices (UNDP, 2009).

As the cases above suggest, there is a strong relationship between violence against women and the challenges that women face in accessing justice. These challenges stem from a combination of gender-neutral and patriarchal institutions and justice processes. There are various other barriers at every stage of the justice process which will be further explored in subsequent chapters.

1.3 Legal pluralism

Legal pluralism characterises nations where more than one system of justice coexist. It is one of the particularities of the ASEAN region which is home to one of the most diverse population of indigenous peoples in the world, who use a range of traditional dispute settlements systems (AIPP, 2013). It is also a region where many religions coexist and where religious law, particularly Islamic law, has been institutionalised into parallel justice systems. The colonial legacy also produced a diverse legal landscape across Southeast Asia. **Legal pluralism can both be an area of concern and a potential opportunity for women’s access to justice.**

‘In one limited sense, legal pluralism refers to state legal pluralism, which means that different bodies of state law apply to different groups of the population within the state, depending on ethnicity, religion, nationality, or locality. However, other legal orders operate within the state alongside the official legal system, and these sometimes complement, conflict, or overlap with the latter.’

Source: UN Women, 2014: 1

Box N°4: Different types of legal systems

Civil law is law that is written down in legislation, backed up normally by a state constitution. Common law is established instead by the practice of courts and the implementation of legislation is based on the interpretations and decisions of judges and juries. Religious law is derived from understandings or documentation of religious doctrine. Customary law is law derived from long-term understandings of justice that have developed in a particular community. Personal law is the portion of law that pertains to all matters related to any individual, or their families.

Legal pluralism exists in all countries in the ASEAN but to varying degrees of acceptance by the official state legal system. As a result of the indigenous peoples’ movement in the region, progress has been made towards greater acceptance of legal pluralism and customary laws in recent years, particularly in the case of Malaysia, Indonesia and the Philippines (AIPP, 2011). Some states have even integrated them into their constitutions, whereas other states that have not explicitly recognised customary justice systems may acknowledge the existence of some customary laws within the context of a broad ‘right to culture’ (Cuskelly, 2011).

Table N°3: Legal systems of the ASEAN States

| Country | Constitutional/ Formal legal system | Other legal systems |
|----------------------|---|---|
| BRUNEI DARUSSALAM | Mixed legal system based on English common law and Islamic law. | In May 2014, the first phase of a sharia-based penal codes was instituted, which applies to Muslims and non-Muslims and exists in parallel to the existing common law-based code. |
| CAMBODIA | Civil law system (influenced by the UN Transitional Authority in Cambodia) customary law, Communist legal theory, and common law. | |
| INDONESIA | Civil law system based on the Roman-Dutch model and influenced by customary law. | Islamic law in Aceh province (Zambardino, 2014). |
| LAO PDR | Civil law system similar in form to the French system. | Customary law (Lao PDR Ministry of Justice, 2011). |
| MALAYSIA | Mixed legal system of English common law, Islamic law, and customary law; judicial review of legislative acts in the Federal Court at request of supreme head of the federation. | |
| MYANMAR | Mixed legal system of English common law (as introduced in colonial India) and customary law. | Islamic law is also recognised and applied in the Muslim community (Marlar Than Aung, n.d.). Burmese law also acknowledges Christian and Hindu customary law (Crouch, 2015). |
| THE PHILIPPINES | Mixed legal system of civil, common, Islamic, and customary law. | |
| SINGAPORE | English common law. | Sharia court system with special laws (mostly related to family law and inheritance) enacted exclusively for Muslims (Black, 2012). |
| THAILAND | Civil law system with common law influences. | Islamic law in southern provinces (Dorloh & Mokhtar, 2015). |
| TIMOR-LESTE | Civil law system based on the Portuguese model; penal and civil law codes to replace the Indonesian codes were passed by the Parliament and promulgated in 2009 and 2011, respectively. | Customary law (Constitution of the Democratic Republic of Timor-Leste, 2002). |
| VIETNAM | Civil law system; the civil code of 2005 reflects a European-style civil law. | Customary law mostly among indigenous rural communities (Phan, 2011). |

Table N°3 shows the diversity of the legal systems among the countries of the ASEAN. These different systems are by no means mutually exclusive; customs inform civil, common and religious law, while civil legislation can equally shape customs and approaches to religion. The reason for separating them in the table is that the different systems pose specific challenges for accessing justice. The coexistence of different systems in plural legal systems call for multi-directional policy and research strategies (IWRAW, 2015).

On the other hand, there are also a number of benefits of plural legal systems from the perspective of accessing justice. Customary systems, for example, provide easier, closer, cheaper and faster ways to solve conflicts. Customary laws are mostly orally transmitted and therefore flexible and able to adapt to change over time. Usually, poor people or indigenous people in marginalised and remote areas still prefer using customary systems, because it is the most accessible and easily understood form of justice to them and their practitioners are also trusted by the community (Lao PDR Ministry of Justice, 2011).

For example, customary law in Lao PDR is perhaps potentially more dynamic and more reflective of the needs and desires of local communities (Lao PDR Ministry of Justice, 2011). It is also validated by tradition and by the reputation and accessibility of the justice representatives, usually older and experienced people. Therefore, the refusal to recognise customary and religious legal systems by some states is arguably discriminatory against ethnic minorities and religious groups, eroding their power to preserve their culture, identity and distinctiveness (Okin, 1999; Fluet, Calaguas & Drost, 2006; UN Women, 2011). State legal systems are symbolically far more distant to most people. A judge or a lawyer is seen as an alien not only to the woman seeking justice but also to her ethnic background and to her real justice needs.

However, the coexistence of various legal systems does not necessarily mean that women can choose between them in practice. The state courts in Southeast Asia are not accessible to most women, particularly indigenous women. Their unfamiliarity with official proceedings compounded with other potential barriers such as the language gap and general distrust in the state courts leave them with little choice. They are often forced to turn to the customary informal justice systems, even though these same systems may be biased against them (AIPP, 2013). In the same vein, legal pluralism has been criticised as restrictive to those groups who do not have access to the civil or common legal systems and have to rely on customary or religious systems, which in many cases are more likely than state systems to reproduce racial, social and gender inequality (Fluet, Calaguas & Drost, 2006; UN Women, 2011).

Religious systems also bear some challenges for women in their quest to access justice. The increasing power of conservative religious elites over religious legal practices in a number of ASEAN countries poses a grave threat to women's access to justice and is one of the main focuses for feminist legal advocacy in these countries. Governments in Brunei Darussalam, Thailand, Malaysia, Indonesia, the Philippines and Myanmar are facing increasing pressure from conservative religious groups to either accord autonomy to certain religious courts, usually in cases of family law (Thailand, Indonesia, Malaysia), or to incorporate religious law in civil law (Brunei Darussalam, the Philippines, Myanmar). Approaching the challenges (and at times opportunities) of a strong religious leadership and political influence in many ASEAN States must form a significant part of any agenda of improving women's access to justice.

The types of punishment that are given by state courts (e.g. fines or incarceration) should also be given more attention with regard to their impact on women's lives, bearing in mind alternatives used by customary justice systems. For instance, the loss of income for the family due to the absence of the sole breadwinner may bear extensive repercussions. At the same time, the kind of punishments or resolutions proposed by customary justice systems also require careful evaluation in terms of their outcomes for women's safety and autonomy. The shortcomings of legal remedies, whether it be from state courts or customary courts, are well presented in the study 'Justice and the Identities of Women: The Case of Indonesian Women Victims of Domestic Violence who Have Access to Family Court'. The study shows that while women victims initially tried to seek help from the criminal justice system and the police, their response was often inadequate. Therefore, women turned to the family court of Indonesia where they could file for divorce despite being confronted with a plethora of new barriers and gender bias. In addition, in order to report cases of domestic violence, women must instead go back to the criminal courts (Saraswati, 2013).

A subset of feminist legal scholars are advocating for a female-friendly form of legal pluralism. This method, known as **transformative accommodation**, entails a joint jurisdiction and interaction of non-state and state law on specific matters under the compliance with certain egalitarian gender norms (Shachar, 2001). This form of legal pluralism arguably relieves women from the dilemma of choosing between their rights or their beliefs, enhancing gender equality within their group of preference and at the same time respecting their religious and cultural preferences (Cohen, 2012).

However, the integration of several legal systems into one is not an easy task, especially considering that customary law is very dynamic and usually orally transmitted, making it very difficult to define its specific scope, characteristic and jurisprudence. Moreover, it is not unusual that customary and state systems clash, mainly because the former prioritises community or family harmony over individual rights. Thus, the main challenge of plural systems is to find a balance between retaining the tradition and legitimacy of customary law, while making sure they comply with human rights imperatives and do not become appropriated by or prohibitively applied under the control of the state.

Chapter 2: International frameworks



This chapter examines the existing international (2.1) and regional instruments, institutions and agreements (2.2) that are relevant to women's rights and access to justice.

2.1 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

In 1979, the General Assembly of the United Nations adopted the CEDAW, the most far-reaching international commitment of governments working for gender equality to eliminate all kinds of gender discrimination prevalent in society. The Convention came into force on September 3, 1981, after it had been ratified by 20 states. In 2015, 187 (out of 194) states have ratified the Convention. CEDAW is an international bill of rights for women and delineates substantive obligations and international monitoring mechanisms for women's human rights. The CEDAW General recommendation No. 33 (2015) on women's access to justice specifically champions the right of access to justice for women as a precondition to realise all the rights protected under the CEDAW.

Although most countries in Southeast Asia officially regard the CEDAW as an international binding convention, the actual implementation and progress that has been made in regards to eradicating women's poverty and discrimination has been varied. Even though the laws and constitutions of states in the ASEAN region increasingly reference and recognise international conventions on human rights that enshrine principles of gender equality, a significant gap remains between these formal commitments and the reality of women's lives.

The CEDAW General recommendation No. 33 (2015) on women's access to justice is based on the principle of inclusiveness. It underlines the necessity of women's access to justice in diverse legal systems across all areas of law for all women. It covers all justice settings (formal and informal) and all sources of law (common, civil, religious, customary or a combination of these).

'In this general recommendation, the Committee examines the obligations of States parties to ensure that women have access to justice. These obligations encompass the protection of women's rights against all forms of discrimination with a view to empowering them as individuals and as rights holders. Effective access to justice optimises the emancipatory and transformative potential of law.'

Source: UN Committee on the Elimination of Discrimination against Women, 2015: 3

2.1.i The Relationship between the CEDAW and the ASEAN States

The CEDAW's 30 articles call for the elimination of gender inequality as defined in areas such as the labour market, the home, civil society, culture and political institutions. All ASEAN States have ratified the CEDAW, which in theory, commits them to undertake a series of policy and legislative measures and submit regular reports on their progress. **The CEDAW does not dictate that countries implement a designated series of laws. Nevertheless, alongside legislative changes, countries are encouraged to employ methods other than legislations to resolve gender inequality.** In many of the national CEDAW reports, countries emphasise the significance of education, the media and the work of NGOs and advocacy groups, since implementing the law has proven to be much more difficult than changing it.

Box N°5: The CEDAW core principles

The principle of substantive equality

- Formal equality is not sufficient to ensure that women enjoy the same rights as men.
- Sex and gender differences between men and women result in the discrimination of women.
- Men and women should be treated differently in order to acquire real equality.
- Policies have to promote autonomy rather than protection or dependency by correcting the environment, evening the playfield and promoting gender sensitive laws.

The principle of non-discrimination

- The recognition of discrimination: Discrimination against women is understood as 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field' (UN General Assembly, 1979).
- The correction of discrimination: Differences between women's private and public spheres and customary practices based on superiority and inferiority of stereotyped sex and gender roles must be discarded.

The principle of state-obligation

- A state party to the CEDAW voluntarily accepts a range of legally binding obligations to eliminate discrimination against women and bring about equality between women and men.
- States must respect, protect, promote and fulfil women's rights.
- States are obliged to ensure women's rights through legislation, institutional mechanisms and regulatory policies.

Source: IWRAW, 2009

Among human rights treaties, the CEDAW is unusual in its claim that culture and tradition influence gender discrimination. This relatively vague use of the terms 'culture and tradition' encourages the creation of a binary between 'culture' and 'rights'. As such, country reports and academic discussion tend to place 'culture and tradition' as barriers to implementing the CEDAW's internationalist moral framework. In the case of ASEAN, the idea that there are some kind of over-arching 'Asian Values'⁹ that are in conflict with the CEDAW remains a common justification given by states for continued discrimination against women.¹⁰

A further complication arises from the legacy of colonialism in which Western states imposed particular 'cultures' on the countries they colonised, equating Western culture with notions of 'civilisation' and/or 'freedom'. In this context, the human rights paradigm was considered to be 'Western' and therefore, linked to forms of cultural domination, even though many of the ideas motivating human rights have long been part of religious and cultural philosophies across the world. The ambivalence towards adopting international human rights treaties in Indonesia, Malaysia, the Philippines, Singapore and Thailand until the 1990s did not come from a resistance to universal human rights per se, but rather from the perception that these treaties were not in fact universal but a 'post war construct with strong Western liberal democracy influences' (Tan, 2011: 14). This idea was propagated in the 1993 Bangkok Declaration which claimed that human rights were 'Western biased' (Peerenboom, 2002). *States' adoption of 'culture' as a panacea for a multiplicity of very specific and localised obstacles to justice for women has been contested by scholars and policy makers.*

2.1.ii Implementation of the CEDAW

Over the last 10 years, most countries in the ASEAN have updated significant parts of their legislation towards meeting the requirements of the CEDAW in response to national human rights campaigns as well as international pressure. *The CEDAW officially prevails when it comes into conflict with the provisions of recently formalised religious or customary systems. It is also important to note that despite the concerns of cultural imperialism noted above, under international law, the application of religious and customary laws can never be used as a justification for failures to comply with the international obligations* (UN Committee on the Elimination of Discrimination against Women, 2010). The CEDAW has also instructed that all courts, including those applying religious law should be required to apply the principle of equality and to interpret the law, in line with non-discrimination and equality requirements. The ASEAN Member States are responsible for 'eliminat[ing] public morality clauses and cultural relativism justifications used to deny and violate rights of the people,' especially women (ACSC/APF, 2015).

Although the CEDAW is an important tool used by women's and human rights groups to campaign with and pressure states, it remains a largely 'top-down' project. Many of the failures to legislate or to implement legislation in accordance with the CEDAW has just as much to do with secular as religious patriarchal cultures fuelled by economic and political instability. A nuanced understanding of local economic as well as cultural conditions may provide alternative approaches to that of CEDAW, or more effective ways of implementing the treaty.

⁹ The 'Asian Values' refer to an ideology of the 1990s which has been defined as values and patterns of behaviour that are common to Asian countries and peoples. It emphasises communitarianism rather than individualism, social order and harmony, respect for elders, discipline, a paternalistic state and the primary role of government in economic development (Boll, 2001).

¹⁰ See The CEDAW Malaysia Country Report, Article 92, 2004.

Box N°6: Optional Protocol to CEDAW

The Optional Protocol to CEDAW (OP-CEDAW) is a separate treaty that must be independently ratified or acceded to by States that are already parties to the CEDAW Convention. While it does not create any new substantive rights, it provides procedures by which rights given in the CEDAW Convention can be claimed by women. In Southeast Asian countries that have ratified or acceded to the OP-CEDAW, such as the Philippines, Thailand and Timor-Leste, civil society groups have begun exploring the potential of the treaty to provide a means of justice for women at the international level, when the domestic legal system has failed them. NGOs in the Philippines are leading the way, assisting a complainant in filing the very first individual OP-CEDAW complaint from the region in 2007 and also filing the first OP-CEDAW inquiry from the region in 2008. Their experience of using the instruments of the OP-CEDAW are being shared regionally with NGOs from other countries, such as Thailand, who are also considering applying the OP-CEDAW to address violations against women.

Source: UNIFEM 2009: xvii

2.2. Regional institutions and frameworks

2.2.i Key agreements

There has been increasing collaboration between the ASEAN nations in the area of human rights, which resulted in a number of key ASEAN declarations¹¹:

| | |
|------|--|
| 1988 | ASEAN Declaration on the Advancement of Women in the ASEAN Region |
| 2001 | ASEAN Declaration on the Commitments for Children in the ASEAN |
| 2004 | ASEAN Declaration against Trafficking in Persons particularly Women and Children |
| 2007 | ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers |
| 2010 | Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children |
| 2013 | ASEAN Declaration on the Elimination of Violence against Women and Violence against Children in the ASEAN Region |

¹¹ See Appendix N°2 for more details.

The agreement to create a new ASEAN Economic Community (AEC) by 2015 at a meeting of political leaders in the Philippines in 2007 included a Charter that made 16 references to human rights. The Charter outlined plans to establish an ASEAN Commission on Women and Children and advocated the idea of an ASEAN human rights mechanism. This move is arguably a significant shift by ASEAN nations towards accepting the idea of universally binding legal norms that protect the human person, and led to the incorporation of human rights in all subsequent ASEAN meetings agendas. Apart from the very real ideological disagreements about particular family issues (as outlined in the section above), another concern about these human rights agreements is that they will have no real impact if they are not coupled by the resources and commitment to ensure implementation (Linton, 2008).

In addition to these declarations, there are two ASEAN Commissions and a Regional Plan of Action that are relevant to women's access to justice:

I. The ASEAN Intergovernmental Commission on Human Rights (AICHR) established in 2009

This Commission grew out of the Vienna Declaration at the UN in 1993, at which foreign ministers agreed that ASEAN should adopt a coordinated approach towards human rights. ASEAN States also asserted that since 'development is an inalienable right', wealthier states outside the ASEAN should not use human rights as a conditionality for economic cooperation and development assistance. They also stressed the need to respect 'national sovereignty' and asserted that there should be 'a balance between the rights of the individual and those of the community' (AICHR, 2012). By the time the AICHR was established, the Commission planned to conduct five year-long thematic studies on various issues including 'Trafficking in Persons Particularly Women and Children', 'Women and Children in Conflicts and Disasters', 'Right to Information in Criminal Justice', 'Rights to Health' (includes reproductive health of women), and 'Right to Life' (includes capital punishment) among other things.

More research is needed to determine what impact this initiative under AICHR has had on the abilities of states to uphold their obligations to human rights and women's access to justice in particular. **Since the Commission has no power to receive and investigate complaints of human rights violations, this is currently a very weak instrument for organisations seeking to improve women's access to justice.**

II. The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) established in 2010

The purpose of this Commission is to 'promote and protect the human rights and fundamental freedoms of women and children in the ASEAN.' More specifically it is to promote the international instruments of human rights, advocate on behalf of marginalised women and children, promote public awareness, encourage the collection of sex-disaggregated data and undertake periodic reviews, facilitate the sharing of experiences and good practices between the member states and support the participation of ASEAN women and children in the process. Similarly to the AICHR, the ACWC also does not have authority to receive and investigate complaints of human rights violations (Human Rights in ASEAN, 2013).

III. The ASEAN Regional Plan of Action on Elimination of Violence against Women and the ASEAN Regional Plan of Action on Elimination of Violence against Children in 2015

The two plans were developed by the ACWC, the ASEAN Committee on Women (ACW) and Thailand's National Office for Women's Affairs. They were simultaneously launched and adopted by ASEAN heads of state at the ASEAN Summit held in November 2015. The aim was to accelerate the implementation of the ASEAN Declaration on the Elimination of Violence against Women in ASEAN (UNiTE, 2015). It aims to cover the period 2016-2025, along with the ASEAN Community Blueprints.¹² While the regional plans are not directly related to the advancement of women's access to justice, there are a couple of key actions and strategies that are relevant. **Among the eight key actions proposed, two are particularly relevant for this study, Action 2: Protection and Support Services for Victims/Survivors and Action 3: Legal Framework, Prosecution and Justice System.**

Action 3: Legal Framework, Prosecution and Justice System

'Review and amend laws, regulations, policies, practices and customs that perpetuate violence against women and any discriminatory practices which result in violence, including customary or religious laws, and any legislation which accepts the 'defence of honour' as a mitigating factor related to crimes against women and girls and female genital mutilation (FGM) and honour killings. Whether in customary or religious law and the formal justice system, cases should be resolved with respect for the human rights of victims/survivors and in accordance with relevant international obligations on gender equality and international human rights standards. All duty-bearers in the justice sector are to be held accountable for guaranteeing the safety, protection and dignity of victims/survivors (national level).'

Source: ACWC & ACW, 2015

One common theme in analyses of the ASEAN regional initiatives is the claim that despite the increasing number of official declarations on gender justice, states' adherence to a neo-liberal economic model may conflict with certain human rights and fall short from prioritising women's rights in particular (AIPP, 2013). This is a formidable challenge that the ASEAN institutions need to address considering the continuously expanding economic integration of the ASEAN community.

¹² The ASEAN Community Blueprints sets out strategic measures for the ASEAN Economic Community. See <http://www.asean.org/storage/images/2015/November/aec-page/AEC-Blueprint-2025-FINAL.pdf/> for additional information.

Chapter 3: **Legal barriers in accessing justice**



Women's subordinate position in societies is reflected in many of the ASEAN States' legal systems and norms. When considering the effects that norms and laws have on women's lives, legislators can benefit from using a gender lens to differentiate between the laws oppressing women and the laws empowering them. At times, the absence of law can also prevent women from being protected in the way they are entitled to according to international standards and norms. This is why the CEDAW is a useful tool to refer to when national, customary or religious laws and systems are being scrutinised. Even before the process of seeking justice, barriers are placed on the path of women's empowerment. This chapter analyses and puts forward the legal obstacles women encounter in their quest to access justice caused either by an absence of laws (3.1) or oppressive laws (3.2) and the conflicting nature of existing laws.

3.1 Absence of legislation

The absence of direct legislation protecting women and their rights is usually due to the fact that no gender lens was employed during the creation of the national legal systems. Furthermore, women's needs are not usually prioritised in political and legislative agendas unless advocacy efforts are pursued by women's groups, civil society organisations or by people engaged in judicial activism. The work of civil society organisations is therefore, crucial to help reveal the absence of laws protecting women, with the most pressing issues being violence against women. This is why this section focuses particularly on the absence of legislation in the area of domestic and sexual violence, as it is the first imperative to be addressed at the national and regional level.

This absence of legislation can be understood as a lack of consideration of a matter by the state, or as a lack of clear definition. For instance, the notion of rape or domestic violence may be present in certain legislations, but it is not always sufficiently articulated, as it is the case in Indonesia, for example. Indeed, the Marriage Act in Indonesia does not include a specific definition of the extent that the conduct of a husband must fall in, in order for it to be considered mistreatment and endangerment of his wife (Butt, 2016). Therefore, it is left largely to judges' interpretations. This means that the adequacy of the court's decision in protecting women depends on the judges' degree of sensitivity and understanding of gender issues.

Box N°7: Limitations of current domestic violence laws in the ASEAN countries

- Laws do not necessarily include a detailed definition of domestic violence acts that capture the different manifestations of violence against women, opening the way for judicial discretion and gender biases in decision-making.
- Some laws prioritise the preservation of the family over the protection of women's rights.
- In some countries, laws are strongly influenced by religion and culture and domestic violence acts are at risk of being misinterpreted.
- Some laws are restricted to very specific relationships in which domestic violence can take part, such as matrimonial relationships only.
- Not all countries include specific provisions, orders and sanctions for domestic violence cases and thus they do not provide clear orientations to judges on how to proceed to protect victims.

Source: UN Women, 2013

Table N°4 provides a summary of domestic law compliance with international law, taken from a 2015 UNICEF report which categorises countries by 'full' (1), 'partial' (2) and 'no' (3) compliance. By 'partial', the report means legislation that 'does not fully reach international standards denotes the need to review and replace laws to close gaps.' 'No compliance' means that there is a need for significant reform or the development of new standards. Timor-Leste was not included in the report.

Table N°4: Summary of domestic law compliance with international law

| Country | Recognition of domestic violence as a distinct form of violence | All acts of domestic violence recognised by law | Prohibition of forced marriage | Definition of rape as lack of consent |
|-------------------|---|---|--------------------------------|---------------------------------------|
| | 1 - Full Compliance | 2 - Partial Compliance | 3 - No Compliance | |
| Brunei Darussalam | 2 | 2 | 2 | 1 |
| Cambodia | 1 | 2 | 2 | 3 |
| Indonesia | 1 | 2 | 2 | 3 |
| Lao PDR | 2 | 2 | 2 | 3 |
| Malaysia | 1 | 2 | 2 | 1 |
| Myanmar | 3 | 1 | 2 | 1 |
| The Philippines | 1 | 2 | 2 | 3 |
| Singapore | 2 | 2 | 2 | 1 |
| Thailand | 1 | 2 | 3 | 3 |
| Vietnam | 1 | 2 | 1 | 2 |

Source: Legal Protection from Violence (UNICEF, 2015)

Forced marriage, definition of rape and recognition of domestic violence are considered to be fully compliant with international law in only 30 per cent of the ASEAN domestic laws shown in this table.

Box N°8: Summary of the gaps in laws on domestic violence

- Myanmar: There is no framework or definition of domestic violence yet, but a law is now being drafted and it is expected to be submitted to the Parliament in the near future (UNFPA Myanmar, 2015).
- The Philippines: The domestic violence law does not explicitly criminalise rape of an intimate partner or family member and the 1997 Anti-Rape law provides that legal marriage may serve as an ‘effect of pardon’ for rape (UNICEF, 2015). However, the Supreme Court of the Philippines ruled in a landmark case that rape in marriage can be prosecuted and that ‘husbands do not have property rights over their wives’ bodies. Sexual intercourse, albeit within the realm of marriage, if not consensual, is rape (Larano & Cuneta, 2014).
- Brunei Darussalam and Singapore: There is no mention of sexual violence in the domestic violence provisions (UNICEF, 2015). In Singapore, rape is not recognised as a form of violence that might be committed in an intimate partner setting unless the parties are living apart, where sexual penetration without consent may be treated as rape (UNICEF, 2015).
- Thailand and Timor-Leste: Marital rape was only made a crime very recently in these two countries. In Thailand, domestic violence is a criminal offense, but if a woman withdraws her complaint, the state does not continue with the prosecution of the case (ICJ & JFP, 2012).
- Cambodia and Malaysia: It is unclear how consent is established, so that marital rape may not fall under the same category (UNICEF, 2015).

Source: IWRRAW, 2009

3.2 Oppressive laws

Oppressive laws exist in all of the different legal systems of the ASEAN States. According to the CEDAW, it is the obligation of the states to detect, acknowledge and suppress or modify such laws in order to promote women’s empowerment and their access to justice. **In the ASEAN’s plural legal systems, the challenges lie in finding ways to respect customary and religious legal systems without compromising on women’s rights.** Nonetheless, state legal systems themselves may also contain provisions that discriminate against women and require reform. For example, Myanmar passed a Population Control Law in 2015 which imposes requirements on women in certain regions to space

the birth of their children 36 months apart. The law legally allows the government '[...] to request a presidential order limiting reproductive rates if it is determined that population growth, accelerating birth rates, or rising infant or maternal mortality rates are negatively impacting regional development' (Rahman & Zeldin, 2015). Under the guise of the need for population control and regional development, this law directly interferes with women's reproductive rights and has been criticised for targeting the country's Muslim minority (Caster, 2015).

In addition, the non-interference of the state against discriminative norms poses a problem for women's empowerment and access to justice. For instance, even though **personal law** should be suppressed or reformed by the states when it violates constitutional provisions on non-discrimination or equality, it is recognised as valid in Brunei Darussalam, Malaysia and Singapore (World Bank Group, 2015). As a result, in these countries, women could perhaps suffer from discriminative measures emanating from personal laws if the states do not interfere.

3.2.i Discriminatory practices in customary law

Certain discriminatory practices embedded within **customary law** and traditions can at times serve as barriers to accessing justice for women. As evidenced in the first-hand account from a Chin woman in Myanmar in the following section, women can find themselves trapped under the authority of customary law and traditions that limit their freedom and ability to exercise their own rights.

'When I got back from Malaysia, I was shocked to be told that my mother was in severe health condition and my husband was committing adultery. This news made me rush back to the Chin mountains. What I was told by my husband when I first stepped into my native town was, 'You are now divorced from me.' I was totally shocked and blacked out.

Of course, yes. He really did have affairs behind my back. And men from both sides of our families decided my divorce case on their own, without my knowledge or approval. I was told that my price was a mython (bull) according to our Chin tradition. I even didn't know who took that compensation or I just don't want to know about that anymore. I didn't even ask about it. My husband took all our belongings that we both saved by working our fingers to the bone, and it was me who had to go back to my mother's house with bare hands.

As a matter of fact, there has been much money that I earned and saved for my family during our 10 years of marriage life. I think I should have the right to enjoy at least a small pin. I reported my case to the Women's Affairs Organisation and they told me that they were not in a position to take any action on my case, since it had been decided and resolved in agreement with our Chin tradition [...].

What I wanted was just to be involved in the discussion and informed about my divorce as I was also part of it. I also feel so hurt and angry with my relatives from my father's side. I just decided to stay silent and quiet, as the shame would always be on me even if I resolved the problem in a court [...]. I really want protective laws for our women, since our Chin traditions are really disadvantageous for women.'

Source: Gender Equality Network, 2015: 156

However, it must be noted that in numerous communities where customary laws prevail, the status of women is not always inferior to that of men. This chapter is, in no way, an attempt to make generalisations about conservatism in customary laws. Its purpose is rather to highlight that the states should scrutinise and monitor the implementation and outcome of customary laws so as to ensure that women's rights are protected. Furthermore, states should provide the necessary support and legal recourse that women are entitled to in accordance with the CEDAW.

There are also instances when there is an outright clash between the state law and local approaches to justice. According to findings from a study on access to justice and land rights in Timor-Leste by the Centre of Studies for Peace and Development (CEPAD), some women have claimed that while state organisations have supported women in claiming what is rightfully theirs (e.g. wives having equal ownership of property as their husbands'), they can often be faced with family pressures that prevent them from making these claims.

'I am married to other people's son, this son has many brothers...how can I put my name...I am brought into this family as daughter in law and I am not brave enough to say to them to put my name. I cannot say that I own the land because my husband has many brothers.'

Source: CEPAD, 2014: 53

Women often find themselves embroiled in situations where they are forced to choose between the formal justice system and family customs. **Findings demonstrate that most women will chose to preserve the harmony within their family, rather than upholding their own rights.** The CEPAD study reveals that 92 per cent of people preferred traditional justice systems in Timor-Leste (CEPAD, 2014). This is also the case for issues related to domestic violence where women are likely to prefer keeping mediation processes within the realm of families or communities, rather than taking the matter to court (Kovar, 2014).

Taking all of this into consideration, it must be understood that the state's responsibility to protect women through the monitoring of customary systems is not an easy feat. The difficulty stems from the fact that many customary systems exist, all with unique sets of rules and traditions. Using formal legislation as a means to change social patterns that are discriminatory towards women is therefore, not necessarily the optimal course of action.

‘Concerns have been raised regarding the effectiveness of direct interventions to make the normative rules of state and non-state justice systems conform to international human rights standards. It has been pointed out that without any general social acceptance or corresponding engagement with deeper processes of social change, formal changes in laws are ineffective in changing social behaviour. Further, there is concern that interventions in traditional or customary legal systems may disrupt the fluid, dynamic and flexible nature of customary law and its dispute resolution function, which provides ‘considerable space for contestation and adaptation,’ and may actually reduce the spaces where women can engage in constructive contestation to advance their rights. Formalizing traditional or indigenous non-state justice systems may also prejudice the effectiveness of these systems. These concerns must be taken into account both in the study of women’s access to justice and in developing programmes to enhance women’s access to justice.’

Source: UN Women, 2014: 30

3.2.ii Discriminatory practices in religious law

Freedom of religion or belief is recognised as a fundamental right in the international community but it can pose great challenges to the coexistence of people, legal systems and collective norms. The ASEAN region is home to a great number of religions and it is often a struggle for the states to harmonise conflicting perspectives on human rights in general, and women’s rights in particular. Governments can be dominated by particular religious groups, which influences their ability to find the best compromise across interest groups.

The case in Box N°9 is an illustration of how legislation that may seem beneficial to women’s rights is, in actuality, a form of cultural suppression. It demonstrates the extent of the challenges faced by Myanmar, as other ASEAN nations, to further women’s legal, cultural, economic and political rights without compromising in any areas.

Box N°9: Myanmar's Special Marriage Law

In July 2015, Myanmar's Parliament passed the Special Marriage Law, despite campaigns by human rights and women's groups. It contravenes the International Covenant on Civil and Political Rights, which upholds the right to marry and found a family indiscriminately of religion, and also the CEDAW's articles on equality of marriage, divorce and custody.

The law was formulated by the Association of the Protection of Race and Religion, or Ma Ba Tha.¹³ It requires among other things, that Buddhist women under 20 must obtain consent from their parents to marry a non-Buddhist. It also requires Muslim men to convert to Buddhism before marrying Buddhist women and restricts women's marriage and inheritance rights (Human Rights in ASEAN, 2014). An outpouring of condemnation by numerous civil society organisations culminated in the release of a joint public statement, calling out the Bill for 'impos[ing] a patriarchal concept of marriage that assumes women pass from property of the father to the husband, violates the right to exercise freely and without fear of intimidation their belief, religion, choice of partner and sexuality and has the potential to violate their freedom of expression, association and movement' (Human Rights in ASEAN, 2014). Women who signed the letter received death threats from Ma Ba Tha (AWID, 2014).

The bill came as part of a package of four laws. One of the bills in this package was the Monogamy Law which bans polygamy. Although this seems like a step forward for women, in the context of the rest of the bill, critics suspect it is targeted at the Muslim minority rather than at women's rights (Human Rights Watch 2015). This is an important case study when considering the measurement of a country's progress on CEDAW implementation. Although the banning of polygamy is a step forward in terms of women's rights, legislation done in the name of oppressing a religious minority (half of whom will be women) does not provide particularly hopeful grounds for change in terms of women's access to justice.

Box N°10 provides another example of a case undermining women's rights through the use of legal means by conservative religious groups in the case of conservative Catholics in the Philippines.

13 Ma Ba Tha is an ultra-national Buddhist association that is explicitly Islamophobic. It is led by monks, some of whom have links to nationalist political groups.

Box N^o10: Legal obstacles in the Philippines Executive Order 003

One of the most important contemporary legal obstacles to women's access to justice in the Philippines is Executive Order 003, which was introduced in 2000. The order banned modern contraception in Manila and closed down centres that formerly provided legal and health information to women. A 2010 report called 'Imposing Misery' illustrated that the Philippine laws in theory provide the basis to nullify EO 003 policies when brought together with the Philippines commitment to the CEDAW and the ICCPR. The report called for the Department of Health and NGOs to defy the order and resume provision of contraceptive services and for lawyers and advocates to challenge it through the courts. The lack of contraception and reproductive care service provision has led to intensified poverty as a result of women having more pregnancies than they would otherwise have opted to, especially those without the funds to access private healthcare. It has resulted in increased levels of unsafe abortions and abusive relationships in cases where women refuse sex for fear of pregnancy (ReproCen & Center for Reproductive Rights, 2007).

In an inquiry concerning the Philippines from 2015, the CEDAW concluded that 'the Philippine government is to be held accountable for grave and systematic violations of women's rights' (ESCR, 2015). Activists also recently pushed for the passing of the Reproductive Health and Population Development Act, which, as well as contraception, sexually transmitted infection and abortion support also included policies related to tackling violence against women and mandatory health education for schools.

The Act gained an unprecedented level of support but, it was eventually blocked as a result of threats from the Catholic Bishops' Conference of the Philippines. However, the Reproductive Health Bill was subsequently passed in 2014. Yet the implementation has been hampered by its conflict with Manila's EO 003. As with laws on divorce, there is some hope that shifts inside the Catholic church might help activists to make a case against EO 003 (Moss, 2015).

Source: ReproCen & Center for Reproductive Rights, 2007 (updated in 2010)

Another case of religious conservatism affecting women's access to justice is in some applications of Sharia law. With the exception of Brunei Darussalam (where Sharia law is applied to the entire country), the ASEAN nations that use **Sharia law** do so alongside a civil or common law system and Sharia law is only officially legal in the form of Islamic family law for citizens of the Islamic faith.¹⁴

¹⁴ In Aceh, Indonesia, the scope of Sharia goes beyond family law in some cases and the reach of religious law was extended to non-Muslims in particular cases (Simanjuntak & Parlina, 2014).

A major challenge for Muslim women is the repeal, reform and review of certain types of Muslim family laws, which are detrimental to women's rights. These rights are often already recognised in Islam, according to women's groups such as Sisters in Islam, who asserts that often discrimination lies in the biased interpretations rather than in the writings in the religion. In a similar vein, Muslim feminists in Malaysia claim that the kinds of Islamic law being codified diverge dramatically from traditional Islamic jurisprudence. In Malaysia's case, legal codification of Islamic law (imposed by British colonial rule) actually narrowed the range of rights women could claim in classical Islamic jurisprudence (Moustafa, 2013). *Islamic feminist scholars have advocated that Islamic legal theory is in actuality, remarkable for its 'flexibility, its commitment to pluralism and its non-binding nature,' which is in stark contrast to modern applications of Islamic law within the country* (Moustafa, 2013:169). Sisters in Islam and other groups are beginning to resist the dominance of a rigid understanding of Sharia, arguing that the right to divorce, for example, is embedded in certain interpretations of Sharia law.

Hence, advocacy programmes in the legal domain are crucial. Advocacy work needs to be supported by women activists, progressive Muslim intellectuals and scholars (both female and male) in the domain of religious knowledge through discourse, debate and scholarship, particularly in the interpretation of texts and laws (Asia Society, 2015). The extent to which this internal debate among Muslims can help constitute and re-constitute women's rights and gender equality in Islam depends on the democratic space or culture that exists in Muslim societies (Othman, 2006).

Box N^o11: Brunei Darussalam's new Sharia Penal Code Order 2013

Brunei Darussalam's new Sharia Penal Code Order was enacted in 2013. It was the first time that conservative Islamic law was imposed in the country at a national level (with some provisions concerning also non-Muslims). Because of its impact on women's well-being, status and rights, it has come under harsh critique from the Southeast Asia Women's Caucus on ASEAN.¹⁵ The penal code came into force in May 2014. Fines and jail terms are imposed on pregnancies out of marriage and the Women's Caucus stresses that women will be the main victims of the law as they face more difficulty to gather evidence to prove their innocence due to the fact that a woman 'cannot be a witness as she is not an equal in the eyes of this law.'

Another disturbing dimension of the Sharia law is the fact that in rape cases, men will only be punished if the crime can be proved by either i) confession, ii) pregnancy or iii) four witnesses who have seen the sexual act. Implemented in three phases, phase three plans to punish a broad range of sexual offenses with death by stoning for rape, adultery, premarital sex and anal sex between heterosexual or homosexual couples (International Gay and Lesbian Human Rights Commission, 2014).

Source: Southeast Asia Women's Caucus on ASEAN, 2014a

¹⁵ The Southeast Asia Women's Caucus is a network of over 100 organizations and networks that engage ASEAN to advance women's human rights.

Box N°12: Sharia in Indonesia

In the Aceh region of Indonesia, special autonomy granted to the region has led to the introduction of a Sharia Police force (Wiliyatul Hisbah) and Sharia laws, which prohibit among other things ‘inappropriate physical proximity’ and ‘non-Islamic attire’ with punishment of public flogging. Komnas Perempuan, the National Commission of Violence against Women, report that these practices are also being developed in other local governments in Indonesia. Muslim leaders in Indonesia – particularly women – are condemning these practices not only on the grounds of gender but also because they are ‘discriminatory, selectively and arbitrarily applied: young people, women and the poor are punished much more frequently’ (Van Lierde, 2013: 9).

Source: Van Lierde, 2013

Box N°13: Sharia in Malaysia

Malaysian Sharia family law is considered to be one of the most progressive interpretations of the Sharia in promoting gender equality in the Islamic world. For example, marriage must be consented to by both parties and polygamy is strongly regulated. Moreover, women have several legal options for divorce and they have access to a division of assets after divorce.

Nevertheless, the conservative political climate of the last years has severely affected the interpretation and application of the law, damaging the potential of Malaysian Sharia family law to protect women’s rights. Polygamy is highly underreported in Malaysia. Nowadays it is very difficult for women to get economic maintenance after divorce and men can enter a polygamous marriage by paying a fine to the court. Women are not generally required to attend the hearing for a polygamy application, and in some cases women are not aware that the man is already married. Due to the lack of a central computerised database of Muslim marriages, men are able to marry a second wife in another state or another country.

Source: Fournier et al., 2011 and WAO, 2011

Box N°14: Sharia in Thailand

Since 1946, Thai law has specified that for Muslim citizens of Pattani, Narathiwat, Yala and Satun, courts of first-instance shall apply Islamic family and inheritance law rather than Thai state law. This policy was consolidated in 2009 on the grounds of granting local autonomy, and a number of informal (but tacitly state recognised) justice systems have been established in a large number of villages across these provinces.

Reports from women interviewed in an ICJ and JFP study indicate that these systems are a source of considerable fear for women. According to the study, regulations include the threat of arm amputation for women wearing short sleeves and forced marriage for any women found alone in the company of a man who is not a family member. More research is needed to determine whether these threats are being carried out, and the level of regulation that is applied.

Source: ICJ & JFP, 2012

3.2.iii Challenges to freedom of association

Civil society institutions such as NGOs, unions, neighbourhood associations, political parties and advocacy groups all have the potential to play an important role in facilitating women's access to justice. To do so, however, they need funding, democratic structures, an open and accessible membership and a degree of leverage in political decision-making. In this regard, it is important to note that the power of these institutions can be curbed by legal barriers that threaten **freedom of association**.

Until recently, Cambodia had placed legal restrictions on the right to freedom of peaceful assembly despite protections provided for under Cambodian constitutional, domestic and international law. While this oppressive measure affects all civil organisations, it has diminished the capacity of women's groups to participate and influence the Cambodian political discourse. For example, a meeting on women's rights planned in Phnom Penh for the 2014 International Women's Day at a local university was deemed too political in nature and banned by the university's administration as well as local authorities (Narim, 2014).

This restriction was reaffirmed in 2015 with the passing of the Law on Associations and Non-Governmental Organisations (LANGO), which requires the 'mandatory registration for all domestic and international associations; unfettered discretion by the Ministry of Interior over registration, and the requirement of 'political neutrality' applicable to all associations and organisations' (ICNL, 2015). This law threatens the right of association of both political and non-political groups, which can directly impact women's advocacy organisations. In conjunction with this law, the Cambodian government has also been planning to tighten internet censorship and institutionalise land seizures. These proposed legislations, in addition to other laws that were passed in early 2014 to undermine the independence of courts, play an instrumental role in restricting free speech and other basic rights. Human rights networks claimed that these laws 'will restrict the space for dissenting voices and criminalise demands for justice' (ICNL, 2015).

Chapter 4: **Social and economic barriers**

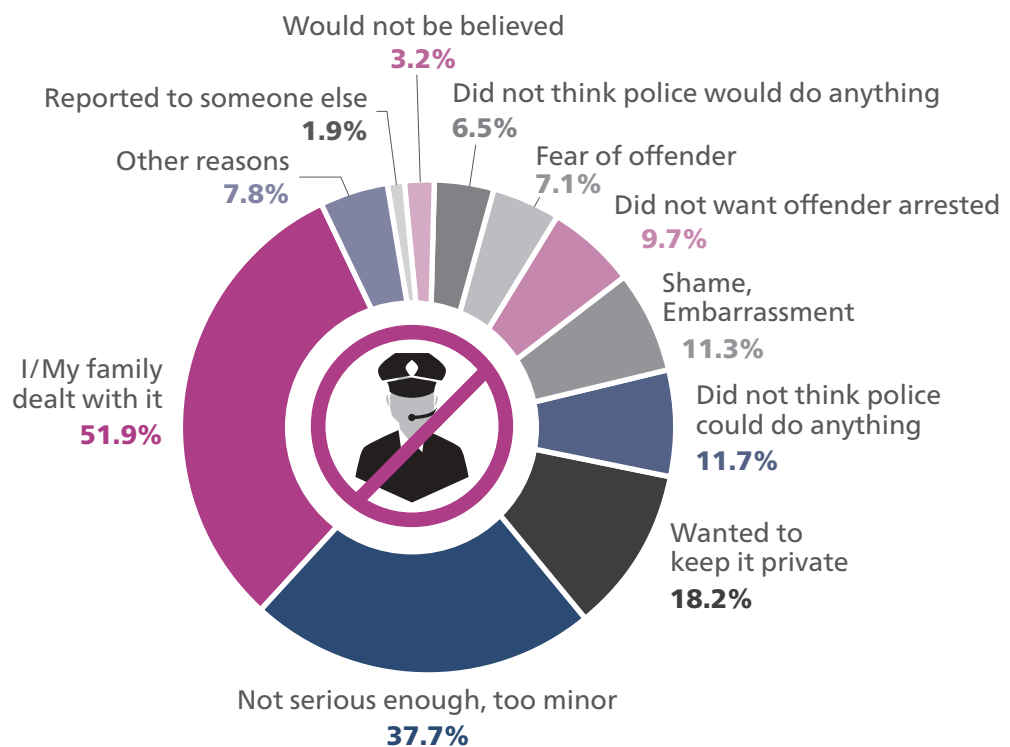


This section focuses on the barriers to accessing justice that come not from legislative issues but rather from the social and economic position of women. The first half of the chapter considers the reasons why women do not report domestic or sexual violence crimes even where there is legislation available (4.1). It elucidates how women’s access to justice is deeply affected by their subordinate position in other spheres, demonstrating the need for attention to women’s economic, cultural and political rights alongside legal reform. The second half of the chapter examines the accessibility of justice systems in terms of cost and availability of legal aid (4.2).

4.1 Barriers to reporting domestic and sexual violence

There are multiple reasons why women do not report domestic and sexual violence; for most, the reasons will be personal. Yet, it is still possible to identify general trends which themselves indicate severe systemic barriers to justice. A survey on violence against women conducted in Singapore explored the reasons that prevent women from reporting violent incidents to the police (Bouhours, Cheong, Bong & Anderson, 2013).

Graph N°1: Reasons for not reporting violent incidents to the police



Source: International Violence against Women Survey Singapore (Bouhours et al., 2013)

Although the reasons vary, what is clear from the results is that most women in Singapore handle violent incidents in the private sphere and do not consider the intervention of the justice system to protect their rights.

4.1.i Culture of fear, stigma and silence

One very significant barrier to reporting highlighted by feminists across the world is that women fear they will be blamed for the offence, or held in some way responsible due to their behaviour (UN, 2011). For example, a recent study on sexual violence in India, Thailand and Vietnam reveals that perspectives on rape change according to the past sexual history of the victim (Skinnider, Montgomery & Garrett, 2014) and another study in Cambodia showed that a high number of women who had been raped said that ‘they had done something wrong and brought the rape upon themselves’ (Amnesty International, 2010). **A dimension of this blame comes from the primacy of the family, and the pressure on women not to disturb family hierarchies or bring shame on the family by reporting.** For example, in Vietnam, the family is constitutionally considered the most important unit of society. Accordingly, the State has strongly campaigned to keep families together. Villages can even receive monetary acknowledgments for promoting reconciliation among couples that have been involved in domestic violence issues, preventing women to report and follow a proper legal procedure (Le et al., 2015).

A 2014 United Nations Security Council report hailed that sexual violence ‘is almost universally underreported because of the risks faced by survivors and witnesses.’ The report notes that risks include ‘severe stigmatization, familial and social shunning and reprisals’ (UNSC, 2014).

‘The most common form of non-partner sexual violence among the women interviewed was groping in public spaces. Particularly in Yangon, sexual touching on crowded city buses was common [...]. The women tended to describe this abuse as a normal part of life. However, they also noted that women overall do not openly discuss their experiences of harassment because they are afraid or ashamed. This silence most likely stems from beliefs around women’s sexual purity and honour, and fear of the social consequences related to admitting experiences of sexual abuse.’

Source: Gender Equality Network, 2015: 3

Box N°15: Extract from the Brunei Times

'In 2014, the Royal Brunei Police Force (RBPF) reported 88 cases of domestic violence. The overwhelming majority of victims were women, with only three cases of spousal abuse involving men.

Similarly, all reported cases of rape in the past year were perpetrated against women, as well as the vast majority of molestation or sexual harassment cases. Police statistics show that in more than half of rape cases, victims were under the age of 16. A prevailing culture of shame and stigma is holding victims back from reporting incidents of abuse, added Nur Judy Abdullah, deputy president of the Council on Social Welfare (MKM).

MKM runs a free legal clinic that assists women suffering from spousal abuse, whether physical or emotional. 'The first obstacle is fear [...] of the husband and also fear of giving shame to the family and relatives,' Nur Judy said, explaining that many women withstand violence to keep the family together, or because they are financially dependent on their husband. 'Second is lack of knowledge on what to do, as they do not have confidence to get a lawyer as they cannot afford one.'

Nur Judy said many women do not want to pursue criminal charges, but they go to MKM to help them get a restraining order, seek a divorce and maintain custody of their children.'

Source: Bandial & Begawan, 2015

Another factor that deters women from reporting cases is fear for their own security. An Amnesty International report reveals that many women fear that reporting would result in continued abuse, with one woman telling the research team that 'the perpetrator told me he would kill me if I told anyone' (Amnesty International, 2010: 18).

In addition to engrained societal notions of shame and stigma associated with admitting they are a victim of violence, women may also be reluctant to involve formal justice institutions. In instances when a case goes to court, the trial can often be a re-traumatising experience particularly when women are questioned about their past sexual history (Mohamad et al., 2006). Therefore, women can choose to involve other available support services, or not report acts of violence at all.

4.1.ii Normalisation of violence

In societies where law enforcement has little grasp or control on violence against women, such violence may appear as normal. Among the reasons for not reporting is the perception that violence can perhaps be condoned when the woman is 'deserving' in some ways.

Table N°5: Percentage of women and men who think it is justified for husbands to beat their wives

| Country | Year | Burns the food | | Argues with husband | | Goes out without telling him | | Neglects the children | | Refuses to have sex with him | | At least one of those reasons | |
|-----------------|-----------|----------------|------|---------------------|------|------------------------------|------|-----------------------|------|------------------------------|------|-------------------------------|------|
| | | Women | Men | Women | Men | Women | Men | Women | Men | Women | Men | Women | Men |
| Timor-Leste | 2009-2010 | 43.2 | 37.5 | 63.9 | 44.1 | 72.2 | 64.8 | 76.4 | 71.1 | 29.5 | 26.5 | 86.2 | 80.7 |
| Cambodia | 2010 | 13.3 | 3.8 | 23.4 | 10.5 | 29.8 | 9.6 | 39.1 | 16.8 | 13.7 | 5.1 | 45.7 | 22.4 |
| Vietnam | 2011 | 3.2 | .. | 20.6 | .. | 13.6 | .. | 26.8 | .. | 5.7 | .. | 35.8 | .. |
| Lao PDR | 2011-2012 | 19.4 | 13.5 | 26.8 | 24.8 | 32.1 | 25.3 | 46.2 | 35.4 | 24.9 | 20.6 | 58.2 | 49.1 |
| Indonesia | 2012 | 2.5 | 0.8 | 5.7 | 3.4 | 24.0 | 11.8 | 27.3 | 11.9 | 8.9 | 3.1 | 34.5 | 17.3 |
| Thailand | 2012 | 1.0 | .. | 2.0 | .. | 4.3 | .. | 10.8 | .. | 2.0 | .. | 13.1 | .. |
| The Philippines | 2013 | 1.8 | .. | 3.0 | .. | 4.3 | .. | 10.6 | .. | 1.6 | .. | 12.9 | .. |

Source: UN, 2015



Percentage of women who think it is justified for husbands to beat their wives, by reason



Percentage of men (age 15-49) who think it is justified for husbands to beat their wives, by reason

As seen in Table N°5, both men and women can find reasons spanning a variety of factors – from burning the food to neglecting the children – to justify violence against women in the household. In particular, neglecting the children is the most commonly cited justification in all the countries surveyed. The statistics from Timor-Leste are particularly notable as a staggering 86.2 per cent of the women surveyed considered that at least one of the five reasons listed can justify husbands inflicting violence upon their wives.

4.1.iii Women's status in the household

Another reason why women do not or cannot report is their lack of autonomy in decisions about their lives. Indicatively, in Cambodia, only 45 per cent of women decide by themselves regarding their own healthcare and 18 per cent regarding household purchases. These decisions are mainly taken jointly with their husband, and in a small amount of cases, women do not participate at all in these decisions (Cambodia National Institute of Statistics & Ministry of Health, 2010). Lack of financial independence can be an extreme deterrent to leaving violent situations, as too can fear of violence getting worse.

Ultimately, women's status in the household varies across communities and countries. In certain situations, women may have decision-making power over the family's children education and household budget, but their roles may be notably overlooked in the fields of governance and community development. Further research is needed to understand the nuances of their status in the household in different communities and national contexts.

4.2 Financial barriers and legal aid

The outcome of accessing justice is not only about conviction, acquittal or resolution, but also the safety, autonomy and wellbeing of those involved before, during and after the court process. Legal aid is the provision of legal assistance and representation for people otherwise unable to afford the cost of a lawyer, and it also encompasses victim protection.

Section VII ¶ 42 from the General recommendation on article 16 of the CEDAW, states that free legal aid should be provided for women without the means to pay for court costs and attorney fees in the case of divorce. The lack of legal aid can undermine the right to a fair trial pursuant to Article 6 of International Declaration of Human Rights. **Legal aid is therefore a crucial procedural right not only for people accused or suspected of crimes, but also for victims and witnesses, in order for the victim or perpetrator to get access to a fair trial and an effective remedy.** It also promotes an adequate functioning of the justice system by fostering transparency and reducing the amount of time in which people stay on detention and remand (Isobel, 2013).

In 2012, the United Nations General Assembly adopted a set of principles and guidelines on access to legal aid in the criminal justice systems. These guidelines encourage states to provide legal aid, particularly when the penalty the person faces is very severe. They also emphasise the role of gender in the legal aid process.

Box N°16: United Nations implementation of the right of women to access legal aid

States should take applicable and appropriate measures to ensure the right of women to access legal aid, including:

(a) Introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice;

(b) Taking active steps to ensure that, where possible, female lawyers are available to represent female defendants, accused and victims;

(c) Providing legal aid, advice and court support services in all legal proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimization and other such services, which may include the translation of legal documents where requested or required.

Source: UNODC, 2013

4.2.i Legal aid reform in Southeast Asia

In 2015, the Open Society Foundations and the Ateneo Human Rights Center conducted a study to assess the regulatory framework on legal aid in Southeast Asian countries. They observed that all the ASEAN Member States provide at least some legal aid under several restrictions as outlined in Table N°6.

While in Singapore, the legal aid system is comprehensive and sophisticated, in other countries, such as Myanmar, the system is very rudimentary, providing legal aid for capital offenses only. Women may be excluded from legal aid benefits because their family income is above the poverty line. The system does not consider the fact that numerous women in ASEAN countries do not have any access to the family revenue and thus cannot pay for legal aid.

Although some ASEAN countries have implemented reforms in their legal aid systems, these efforts have not yet been translated into proper transformations. For example, in Vietnam, in 2011, the Ministry of Justice passed a Circular that identifies certain categories of women that should be prioritised by the legal aid system, which includes victims of domestic violence, exploitation, human trafficking and sexual abuse. In spite of the Circular, these guidelines have not yet been included in the Legal Aid Law and thus their enforcement is quite unclear (UNODC, 2013).

Table N°6: Legal aid in the ASEAN States

| Country | Constitutional basis | Who gets legal aid? | Who provides legal aid? |
|-------------------|----------------------|---|--|
| Brunei Darussalam | No | Criminal cases that face capital charges | Government and NGOs |
| Cambodia | No | People who committed felonies and minors | Legal Aid of Cambodia (LAC); The Bar Association of the Kingdom of Cambodia (Saray, 2015) |
| Indonesia | Yes | Criminal and civil cases | Ministry of Law and Human Rights administers the national legal aid system |
| Lao PDR | Yes | Criminal and civil cases committed by minors or disabled people and individuals who will receive a death penalty | Lao Bar Association |
| Malaysia | Yes | Criminal, civil, administrative, family and Sharia cases | Malaysian Bar and Legal Aid Bureau administered by the Prime Minister's Office |
| Myanmar | No | Only criminal cases punishable by death | The government is trying to implement a publicly funded lawyers' board that provides legal aid |
| The Philippines | Yes | Criminal, civil, administrative and labour cases | National Committee on Legal Aid |
| Singapore | No | Criminal and civil cases | Criminal Legal Aid Scheme, Legal Assistance Scheme for Capital Offenses and Legal Aid Bureau |
| Thailand | Yes | Criminal and civil cases | Office of the Attorney General's Department of Rights and Liberties Protection, Lawyers Society of Thailand, NGOs and university legal clinics |
| Vietnam | No | Criminal and civil cases for disable, elderly, children, ethnic minorities and people who with merits by serving the revolution | National Legal Aid Agency and Provincial Legal Aid Centres |

Box N°17: Vietnam legal aid

Civil society organisations in Vietnam have long been campaigning for a better legislative framework to provide for legal aid, and the outcome may provide a useful model for other countries. In July 2015, 200 representatives from government agencies, the Vietnamese Bar Association, the National Legal Aid Agency and other organisations attended a two day conference on revising the Law on Legal Aid in Hanoi. The conference was organised by the Ministry of Justice, the UNODC and the Embassy of Ireland and it sparked the discussion on how to improve the Law, and assure the independence of the legal aid system (UNODC, 2015).

In June, the Prime Minister had signed Decision 749/QĐ-TTg which issued a reform project on legal aid. This decision committed the government to ensure that after the year 2025, legal aid providers will become legal practitioners who provide a service 'equivalent to the service provided in the market' (Vietnam Ministry of Justice, 2015). There are some grey areas in this decision, which make it unclear whether the reform was more about cutting costs than ensuring investment. For example, it stresses the importance of 'streamlining the organization, structure and staffing, reducing administrative costs [...] ensuring efficiency and consistence with economic-social conditions', while also aiming to increase lawyers and legal aid officials, improve and extend training.

The conversion of legal aid providers to lawyers, without having to participate in professional training course and probation suggests that the government is supporting the creation of a service that may not be up to par. However, it also asserts it will extend the beneficiary group to 'near poor households, households who just escaped from poverty; victims of domestic violence, children under 18 years old' (Vietnam Ministry of Justice, 2015). Therefore the likely impact of Decision 749 remains unclear and it will be important to conduct an impact assessment of how it helps women access legal aid between now and 2025.

Source: Vietnam Ministry of Justice, 2015

4.2.ii Costs of legal aid

Since most states only provide legal aid for a specific group of criminal offenses, women often have to cover extensive costs when taking a case into the formal justice system. These costs might involve lawyers' fees, forensic examinations, transport and bribes, among others. In Indonesia, only 17 per cent of poor people can bring a case into court and it has been calculated that individuals have to spend around USD 570 on lawyers' fees in land cases (UNDP, 2013b; American Bar Association, 2012).

Bringing a divorce case into religious courts in Indonesia costs USD 90. In Cambodia fees for forensic examinations cost between USD 5 and USD 14, which is equivalent of a half-month average income in rural areas (UN Women, 2011b).

Another barrier that hinders women's access to legal aid is the cost of travelling to court, especially for women living in rural areas. In a survey conducted in Indonesia, 62 per cent of interviewees argued that courts were not located within an accessible distance from their home (UN Women, 2011b). Furthermore, the time spent dealing with the courts and police may also equate to substantial loss in terms of household income.

4.2.iii Legal aid and victim protection

Another related area under legal aid is victim protection. In the 2015 CEDAW General recommendation No. 33 on women's access to justice, Section III calls for states to 'take effective measures to protect women against **secondary victimisation** in their interactions with law enforcement' (UN Committee on the Elimination of Discrimination against Women, 2015), and for them to 'take appropriate measures to create supportive environments that encourage women to claim their rights, report crimes [...] and actively participate in proceedings [...] and to prevent retaliation against women seeking recourse in justice' (UN Committee on the Elimination of Discrimination against Women, 2015).

Many NGOs, state institutions and women's advocacy organisations that work in the area of violence against women seek to provide immediate support and rehabilitation to women. For example, despite a lack of provision in legislation for this kind of support, Thailand's state funded One-Stop Crisis Centres provide mobile units and a hotline, not only to receive cases, but also to support, track and evaluate rehabilitation (UN Women, 2013). **In order to improve access to justice for women, states should be able to support women fleeing violent or oppressive situations, whether or not they report a crime.** This is intrinsically important and makes it more likely for justice to be achieved.

For example, in Thailand, in accordance to Section 5 of the Domestic Violence Victim Protection Act, B.E. 2550 (2007), '[...] a person who has found or known of domestic violence conduct shall have the duty to notify a competent official for the execution of this Act' (Royal Thai Government Gazette, 2007). Accordingly, a witness can file a report against the perpetrator or an alleged perpetrator of domestic violence. In Cambodia, the Law on the Prevention of Domestic Violence and the Protection of Victims states that the criminal prosecution of perpetrators in accordance with penal procedures can still proceed even if the victim requests to drop the charges in the event that it is a repeated offense (Royal Kram, 2005).

Most ASEAN countries have victim protection systems but their implementation is variable and access is particularly difficult for women in refugee camps, illegal and informal workers and for trafficking victims. For example the US Department of State has claimed that Timor-Leste's authorities make 'negligible' efforts to protect victims of trafficking (US Department of State, 2015). The CEDAW 2015 recommendation calls for victim protection to be managed alongside CSOs.

Taken altogether, the absence or inefficacy of legal aid and victim protection are applicable for both men and women. However, it is important to understand that in most cases, women are more severely affected by these limitations due to the gender power imbalance and the status quo is such that women tend to have more vulnerable employment and living conditions, and less access to education or information about their rights.



Chapter 5: **Institutional barriers**



This chapter considers the institutional factors that bar women's access to justice. Institutions that have an impact on women's access to justice include schools, health facilities, unions and NGOs, among others. This chapter focuses on conventional 'legal' institutions, which includes the police system (5.1) and the courts (5.2). In Southeast Asia, women tend to be poorly represented in positions of authority and decision-making positions that are instrumental in translating laws and policies into practices. Even though relative progress is visible in some countries – such as the Philippines where approximately 34 per cent of judges in High Courts and the Supreme Court are women (Philippine Commission on Women, 2014b) – women remain generally a minority at every level of the justice chain. Conventional 'legal' institutions are usually male-dominated and lack gender sensitivity such that women may not perceive or experience any benefits of engaging with them.

5.1 The Police system

The CEDAW's General recommendation No. 33 on women's access to justice notes that 'many countries have critical shortages of trained police and legal and forensic staff capable of dealing with the requirements of criminal investigations' (UN Committee on the Elimination of Discrimination against Women, 2015: 18).

Below are select examples of recommendations that are relevant for the improvement of law enforcement:

¶ 51

'(c) Take effective measures to protect women against secondary victimization in their interactions with law enforcement and judicial authorities. Consider establishing specialised gender units within law enforcement, penal and prosecution systems;

(d) Take appropriate measures to create supportive environments that encourage women to claim their rights, report crimes committed against them and actively participate in criminal justice processes; and take measures to prevent retaliation against women seeking recourse in justice [...]

(g) Use a confidential and gender sensitive approach to avoid stigmatization during all legal proceedings, including secondary victimization in cases of violence, during questioning, evidence collection and other procedures related to the investigation; [...]

(j) Take steps to guarantee that women are not subjected to undue delays in applications for protection orders and that all cases of gender-based discrimination under criminal law, including violence, are heard in a timely and impartial manner;

(k) Develop protocols for police and healthcare providers for the collection and preservation of forensic evidence in cases of violence against women; and train sufficient numbers of police and legal and forensic staff to competently conduct criminal investigations; [...]

Source: UN Committee on the Elimination of Discrimination against Women, 2015

In Southeast Asia, there is a shortage of police, legal and forensic staff that are qualified to work on cases involving gender-based crimes. UN Women has found that in 2011, reportedly only one doctor in Timor-Leste was sufficiently trained to collect evidence in rape cases (UN Women, 2011a). Despite the shortage of qualified personnel, some progress has been made in certain countries. The police forces in the Philippines have created women's units to open up opportunities for women to serve in the police, as well as to deal with the increasing numbers of domestic violence cases being reported (UN Women, 2011a).

The perceived efficiency of the police system is often an important institutional barrier to women's access to justice. In some societies, traditional mechanisms are preferred to state law enforcement. In 2004, findings from the International Women's Rights Action Watch Asia Pacific (IWRAP) indicated that 8 out of 10 Timorese recognised community leaders, and not the police, as responsible for maintaining law and order (IWRAP, 2013).

Women's lack of trust in the police – across the world – prevents innumerable amounts of domestic violence cases from being reported (UN Women, 2011b). Since men account for most of the police forces,¹⁶ women fear that the police will not take their cases seriously and they prefer to get help from a family member or a friend instead (UN Women, 2011b). The ICJ study on access to justice in Thailand reported a case of a lesbian woman who reported so called 'corrective rape'¹⁷ and police 'just laughed and did nothing' (ICJ & JFP, 2012: 60). Findings from UN Women in Cambodia reveal that 'over 60 per cent of local officials and police in Cambodia believe a husband can threaten his wife with a weapon when she questions him, while 30 per cent of men maintain that different forms of violence are appropriate at times in their marriages' (UN Women, 2011a: 5). The lack of trust in the police system explains how despite the implementation of new laws to protect women from violence, 89 per cent of Cambodian women do not report incidents of domestic violence.

¹⁶ Globally, women account on average for only 9 per cent of the police force (UN Women, 2011).

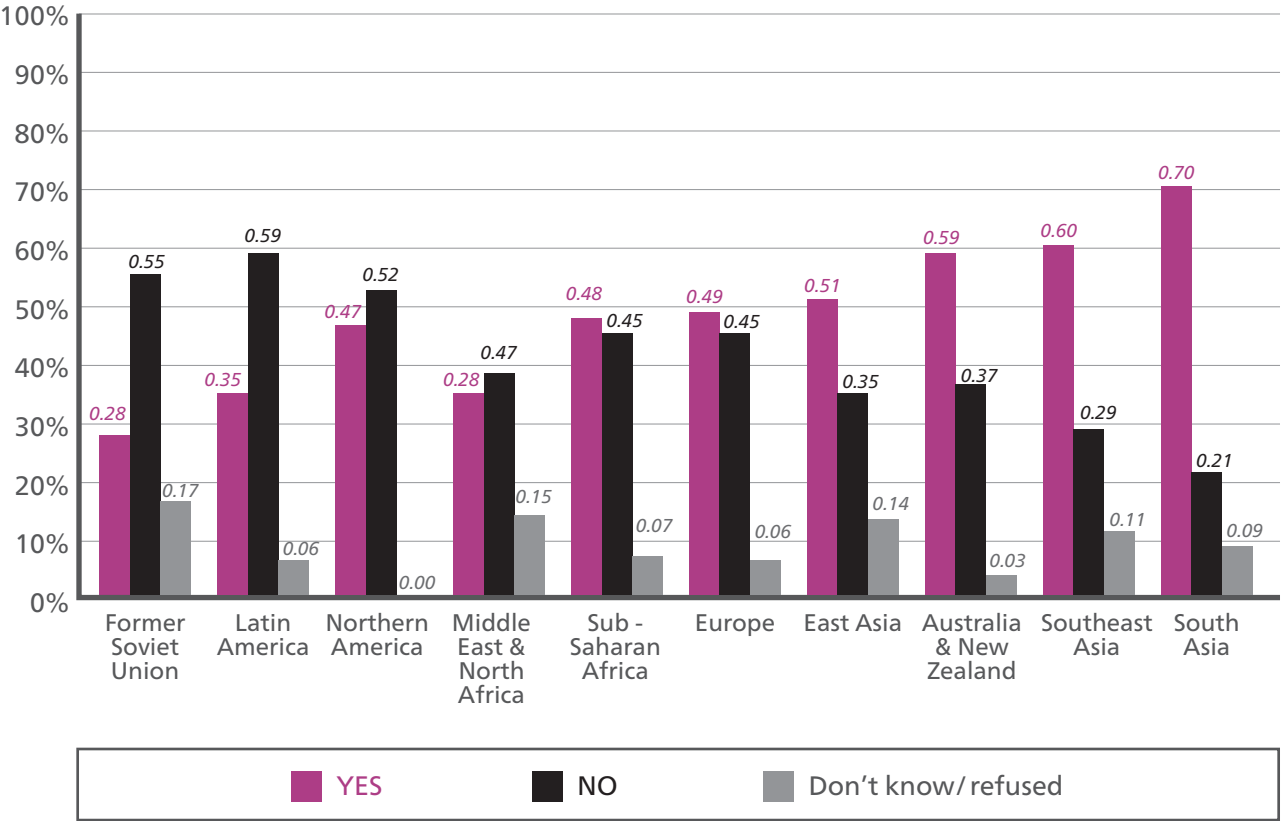
¹⁷ Where a homosexual person (normally a woman) is raped as a means of 'correcting' their sexual orientation.

A baseline survey in Indonesia on women’s legal empowerment for the World Bank showed that although 97 per cent of respondents disagree with the fact that a husband has the right to hit his wife, only 27 per cent of them would report domestic violence to the police (ACNielsen, 2006). Distrust and fear of the police may also be grounded in actual police brutality. In Timor-Leste, many of the perpetrators of violence against women are police officers themselves (Swaine, 2015). Sexual assault by members of the military or police against sex workers have been reported in several countries (UNDP, 2012c).

5.2 Court practices

Confidence or trust in the justice system has been defined as ‘the belief among members of the public that the justice system has the appropriate intentions toward them and is competent in the tasks assigned to it’ (Hough et al., 2013:12). Although in Southeast Asia confidence in the justice system and the courts is quite high in comparison with other regions (see Graph N°2), this might not entirely be representative of women’s perceptions. In this regard, findings from Gallup in 2014 note that some Southeast Asian countries, such as Vietnam and Lao PDR, are relatively closed societies and those surveyed may be more hesitant to voice any concerns about judicial proceedings.

Graph N°2: Confidence in the justice system and the courts



Source: Rochelle & Loschky, 2014

5.2.i Lack of confidence in judicial proceedings and outcomes

Lack of confidence in the justice system can be attributed in part, with dissatisfaction regarding the leniency of sentencing and with perceptions of unfair and unpredictable judicial processes (Hough & Roberts, 2004; Van de Walle, 2009). In Indonesia, conviction rates are exceedingly low and perpetrators rarely serve more than two years of a maximum 12 year sentence, regardless of the crime's brutality (Bennett & Manderson, 2003). A major deterrent for pursuing justice is doubt in the likelihood of a conviction or satisfactory resolution. For instance, crime solution efficiency¹⁸ in the Philippines was only 36.67 per cent in 2012 (SEPO, 2013). In 2009, the International Violence against Women Survey found that in Singapore, 12 per cent of reported cases of intimate partner violence and 9.1 per cent of non-partner violence were convicted (Bouhours et al., 2013). If no resolution is reached, the dangers women face in reporting a crime are exacerbated, which is particularly dangerous in cases of violent crime. The Asia Pacific Support Collective report on gender-based violence argues that in the majority of cases, the lack of witnesses and evidence can draw out cases so victims and their families resort instead to traditional mediation (APSCTL, 2009).

Also, the appropriateness of the types of punishment commonly granted by official courts may not necessarily meet the actual needs of the women. For instance, jailing and fining a husband for a domestic violence charge may not be perceived by the wife as an outcome that is in her best interest should the husband be the sole breadwinner of the family. Therefore, women may feel obliged to resort to informal mediation. On the other hand, as shown in Box N°18, excessive leniency in sentencing also undermines the integrity of the justice system.

Box N°18: Polygamy in Malaysia: the case of Kinabatangan MP Bung Moktar Radin

In Malaysia, the Joint Action Group for Gender Equality (JAG) highlighted the case of the Shah Alam Sharia High Court decision to set aside Kinabatangan MP Bung Moktar Radin's jail sentence for committing illegal polygamy, instead fining him RM 1,000 (approx. USD 250).

The JAG report suggests that this sent out a dangerous signal that 'men who try to get around the law by marrying another wife without [legal] consent can expect to be treated lightly.' The JAG pointed to the significance of this decision in light of a Sisters in Islam¹⁹ study that showed that 44 per cent of first wives had to take on extra work after their husbands married a second wife and 53 per cent cited an increase in domestic violence (JAG, 2010). Judge Mukhyuddin Ibrahim justified the decision on the grounds that a jail sentence would affect his responsibilities to his family. The JAG argued that Bung Moktar was given privileged treatment due to his MP status and that 'the perceived unequal treatment by the court between those in power and those without will do far more damage to the nation than seeing an individual politician be brought to account for his law-breaking.'

Source: Marican, 2010

¹⁸ Crime solution efficiency is the percentage of solved cases out of the total number of crime incidents handled by law enforcement agencies.

¹⁹ Sisters in Islam is a civil society campaigning organisation based in Malaysia that works to improve women's rights using both Islamic and international human rights frameworks.

The case of Malaysia highlights that even when the state provides for a specific punishment in order to regulate gender inequality in society, the implementation and enforcement of the law is not conducted in a neutral manner. Judges can interpret and adapt the law in favour of men or people in powerful positions, creating dangerous precedents for other cases that are unfavourable to women achieving equality.

5.2.ii Gender stereotyping

As introduced in Chapter 1, another factor contributing to the inaccessibility of courts to women is gender stereotyping, which may lead to discrimination in court processes. The CEDAW Committee has expressed its concerns regarding the effect that gender stereotypes can have in judicial decisions (UN Women, 2011). **In cases of rape, evidence suggests that factors such as the victim's physical appearance and her dressing style strongly influence the attribution of responsibility** (Ellison, 2009).

Although there is no general agreement of what should be understood as gender stereotypes in the legal arena, feminist legal perspectives have developed what has been called the 'woman question' to identify if a certain law, policy, or practice adversely affects women through the use of stereotypes.

The international legal literature has identified several gender stereotypes mainly based in controversial and emblematic cases. Gender stereotypes can harm women in different ways:

- By denying women benefits
- By imposing a burden on women
- By degrading women, diminishing their dignity, or otherwise marginalizing them (Cook, 2011)

5.2.iii The Language of the law

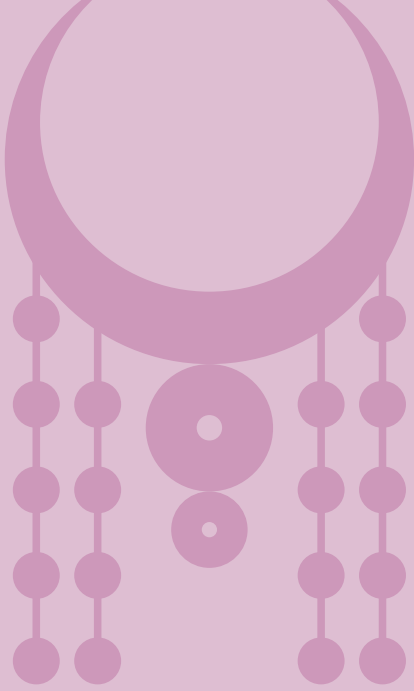
State justice systems often use a language that is not understood by users (UN Women, 2014). The national code of law provides the formal context within which the testimony of the victim is understood in national courts. The judicial rulings provided by judges focuses on the text of the legal code and the precedence of past cases to arbitrate on the oral and written statements of the concerned parties. **These formal procedures that are undertaken in the national language and use technical terms, make it difficult for local voices often speaking minority languages to be heard** (Fennell, 2008). Language barriers are a very important problem for women accessing justice, particularly where translators may only be men. Due to expected responsibilities in the home among other reasons, women are less likely in general to have had enough education to be able to understand a second language.

In Timor-Leste, according to a survey by The Asia Foundation, the language barrier was one of the main reasons people gave for not using the formal justice systems, which is not surprising since the 2011 Civil Code has not even yet been translated into Tetum and other local languages (The Asia Foundation, 2013; CEPAD, 2014). 12 per cent of respondents in the Asia Foundation study said that the proceedings were conducted in a language other than their preferred language. Furthermore, 30 per cent said they did not understand the legal proceedings while in court (The Asia Foundation 2013:17).

In Thailand, migrant women, hill tribe women and Malay-Muslim women face severe language barriers; an ICJ study demonstrated that almost all available information on rights on the law is only available in Thai (ICJ & JFP, 2012).

5.3 Corruption

Corruption is another major impediment for women's access to justice in Southeast Asia. In Myanmar, a lot of cases, particularly sexual violence cases committed by the military, are dismissed. In a report by the Gender Equality Network on 'Violence against Women and their Resilience: Myanmar', their work on the availability of legal support sheds light on the futile efforts of women who spend their time, effort and money but ultimately, seeing their abusive husbands prevail by successfully bribing legal officers (Gender Equality Network, 2014). In another report by the Legal Aid Network (LAN) and the Kachin Women's Association in Thailand (KWAT) on 'Seeking Truth about Sexual Violence and War Crime Case in Burma', the two organisations denounce how violent crimes committed by the military on women are often covered by impunity, from flawed investigation procedures to unwilling judges (LAN & KWAT, 2016).



Chapter 6:
**Additional challenges
faced by specific
groups of women**



Chapters 3 to 5 of the scoping study have identified the key obstacles for women's access to justice in Southeast Asia. These barriers are compounded for the most vulnerable social groups. Such groups include indigenous women, stateless women, women with disabilities, sex workers, documented and undocumented migrant workers, domestic workers, trafficked women, women living with HIV, girls, older women, LGBTQ women, women living in disaster or conflict affected areas, refugees and displaced women, women's human rights defenders and offenders, among others. Many women may face intersectional marginalisation through being part of two or more of these groups, making them vulnerable to violence (ASEAN, 2015). This section focusses on the specific barriers to justice faced by Sex Workers (6.1), Migrant Workers (6.2), and Indigenous/Ethnic Minority Women (6.3).

6.1 Sex workers

Sex workers are perhaps one of the social groups that are least protected by the law, most violated by law enforcement and most seriously discriminated against by the wider society. The chain of oppression in regards to the sexuality of women can start influencing their choices long before their entry into the sex industry. According to a multi-country study by the UNFPA, in Myanmar, many female participants reported having entered sex work after being thrown out of their family home or ostracised because of the stigma related to pre-marital sex, even though it may have been a result of sexual abuse. This may feed into the vicious cycle of oppression, pushing women to see sex work as their last resort (Bhattacharjya et al., 2015).

Partly as a result of the criminalisation of sex work, which is prevalent to differing degrees across ASEAN, sex workers are often completely excluded from citizenship rights. Across ASEAN, sex workers also have very little access to labour or social security rights. In Lao PDR, Malaysia and Myanmar, sex workers have difficulties obtaining identity cards to facilitate freedom of movement and access to education (UNDP, 2012c). In the Philippines, while sex work is illegal under the Revised Penal Code, there is an unstated acceptance that it exists in the guise of entertainment complexes and massage parlours. Most establishment-based sex workers are not covered by health insurance and employers take advantage of a loophole in employment laws by claiming that sex workers are not regular employees because they are commission-based (UNDP, 2012c).

In Indonesia, sex workers' basic social and economic rights are also severely limited from access to education, health care, housing and financial institutions to inheritance and property. They have limited access to legal services and remain largely unprotected by the law. Their lack of identification

cards as a result of migration renders them unable to establish citizenship and thus, inhibits their ability to access health and social services. On a larger scale, since commercial sex is deemed as 'morally illegal', they are normally surrounded by many criminal activities including criminal gangs that leave them even more vulnerable to exploitation (UNDP, 2012c).

Box N°19: Legality of sex work in Southeast Asia

| Country | Sex work in private | Soliciting | Brothels |
|-----------------|---------------------|------------|----------|
| Brunei | | | |
| Cambodia | | | |
| Indonesia | | | |
| Lao PDR | | | |
| Malaysia | | | |
| Myanmar | | | |
| The Philippines | | | |
| Singapore | | | |
| Thailand | | | |
| Timor-Leste | | | |
| Vietnam | | | |

Legal
 Illegal
 Not Illegal (Generally not prohibited but exceptions apply)

Source: Sex Work and the Law in Asia and the Pacific (UNDP, 2012c)

A recent UNDP study on sex work in Asia also shows that criminalisation makes women more vulnerable by fuelling stigma and discrimination. For example, confiscation of condoms by the police is often used as evidence of illegal conduct or to justify harassment and extortion. Sex workers from Indonesia, Malaysia, Myanmar, the Philippines and Vietnam have reported condom confiscation or police harassment, which poses further risks for them (UNDP, 2012c).

Sex workers are also particularly vulnerable to violence. In a multi-country study of Sex Work in Asia by UNFPA and UNDP, all participants in all four country sites (Indonesia, Myanmar, Nepal and Sri Lanka) declared having experienced violence – by police and by clients (Bhattacharjya et al., 2015).

Box N°20: Sex workers in the Philippines

Prostitution is criminalised in the Philippines and women who are charged are subjected to all kinds of indignities, even with laws that are supposed to protect them from violence under police custody. One of these is Article 245 of the Revised Penal Code, which forbids public officers from making sexual advances towards female detainees. However, it is of little use to women who suffer various sexual abuses en route to the police stations and are held under duress and without the benefit of counsel. Most arrests are also not officially registered. These women may also be physically incarcerated together with male detainees when in holding because there are not always separate quarters in many police stations. This is a clear violation of Philippine regulations and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Source: Women's Legal Bureau Inc., 2006

Box N°21: Sex workers in Indonesia

'Sex workers are also vulnerable to violence from clients, the local community, or even their own pimp or madam. Their vulnerability leads to a problem of reluctance [to] file complaints with the police [even] if they suffer from violence. This is mostly caused by their lack of legal awareness and bad experiences of their friends when filing complaints with the police. A case of violence against a sex worker that the police did not handle properly is Ms. Shakira's case, which arose in 2011. Shakira was shot dead by an unknown man in Taman Lawang. The police did not seem to care about this case, even though the coalition of NGOs pushed them to solve [it] immediately.'

Source: UNDP, 2012c

The same study explores the interrelatedness between sex work, violence and HIV and discovers that one of the factors increasing participants' exposure to violence and HIV risk includes: 'a culture of impunity in which perpetrators of violence are not held accountable, and which undermines sex workers' access to justice and creates an environment in which violence against sex workers is normalised and justified' (Bhattacharjya et al., 2015: 12).

In March 2014, sex workers from across ASEAN (except Brunei Darussalam) came together at the ASEAN Civil Society Conference/ASEAN Peoples' Forum in Myanmar. They questioned whether they would see any improvement of their status from the ASEAN Economic Community, arguing that it did not look like the Community would facilitate access to social security, or reverse the travel bans that many face. The workers asserted the need for greater access to sexual and reproductive health resources, protection under national labour laws and the abolition of criminalisation procedures that leave many workers in prison (Project X, 2015).

6.2. Migrant workers

In all ASEAN countries, migrant workers are widely excluded from access to justice and the local policies tend to not prioritise their rights. This leaves them vulnerable despite their definitive contribution to the economies for their host countries. In Singapore for instance, there are 856,000 migrant workers in a population of 5 million (World Justice Project, 2015). The lack of access to legal support runs in tandem with political interests and the country's economic model, which uses liberalised foreign labour recruitment policies and provides little state funding for social support.

Migrant workers in Singapore are often unpaid (especially in the case of trafficked or illegal workers) or irregularly paid. They also receive unequal remuneration based on arbitrary discrimination and face unsafe work environments, physical, emotional and sexual abuse, forced labour, debt bondage and poor accommodation (World Justice Project, 2015). With regards to women workers in particular, the law against domestic workers performing any other kind of work effectively traps women in potentially abusive systems of economic dependency without access to legal remedies. If domestic workers become pregnant they risk being blacklisted and deported. The abusive system exacerbates the problem as it often leads to informal and secret abortions that pose several dangers to women's health (Seow, 2015). Migrant workers' attendance records, contracts and salary slips are often held back by the employer, which prevents workers from accessing justice as these are needed to place a legal claim against the employer (Humanitarian Organisation for Migration Economics, 2010). In sum, the 'special' status of migrants, even in a relatively strong legal system of Singapore, poses grave threats to their human rights. Revising immigration laws is therefore an essential first step towards assuring female migrants' access to justice.

The Singaporean government has introduced a range of measures to protect migrant workers. Employers stand to lose a SGD 5,000 (approx. USD 3,700) bond if they do not pay their workers in a timely manner and the government has prosecuted errant employers and run public legal education campaigns (Humanitarian Organisation for Migration Economics, 2010). However, workers still face extreme levels of exploitation, in part because of, rather than despite the formal legal system. For example, the lack of transparency in the process of 'blacklisting' an employee gives an employer immense power.

Box N°22: Female migrant domestic workers in Malaysia

In Malaysia, migrant domestic workers (over 160,000 of 2 million migrant workers are domestic workers) are dependent on their employers for a work permit; if employment is terminated, they are left without the right to work in the country and no means for legal recourse. Many women are discouraged from seeking legal redress for any abuse they face since there is no specific legislation that protects them and they are also excluded from the Domestic Violence Act, which now gives some protection to wives.

For workers who have legal contracts, they tend to establish the worker as the 'property of the employer to be used as the employer's wish, rather than as a professional worker hired to do a specific job.' State policies tend to safeguard the interests of the employer over the domestic worker. This is in large part due to the stigmatisation of migrant domestic workers in the media, and racism towards Indonesian and Filipino workers.

The Women's Aid Organisation has designed a Model Contract Employment. It is lobbying for employment contracts and for arrival orientations for migrant domestic workers to be conducted by the Ministry of Human Resources on their rights.

Source: Women's Aid Organisation, 2011

A study by the ICJ shows that migrant workers in Thailand also face severe limitations. Thai immigration laws prevent migrant workers from accessing justice, and asserts that undocumented workers who have faced human rights abuses must be enabled to remain and have access to the justice system. The widespread view among undocumented migrants is that 'you cannot complain because you are illegal' (ICJ & JFP, 2012: 36). Those who do bring cases are often simply arrested and deported. Even among documented migrants access to justice is particularly difficult as employers often confiscate work permits; a practice which the report highlights as a priority area for attention (ICJ & JFP, 2012).

Migrant sex workers are also very vulnerable to violence and excluded from the justice system. In Thailand for example, undocumented sex workers are breaking two sets of laws (illegal entry to work in the Kingdom and prostitution laws). They are therefore highly vulnerable to arrest, detention and abuse from male guards. Also, the chain of oppression does not stop when women are deported. During the repatriation process, Thai authorities may disclose the identities of migrant sex workers to Myanmar authorities, who tend to proceed with informing the victims' local village officials and family members. As a result, sex workers risk arrest after their return to Myanmar or being ostracised from their village and family (UNDP, 2012c).

Box N°23: Lao PDR – trafficking reforms

While trafficking is widespread across ASEAN, Lao PDR faces particularly high numbers of trafficked women who are mainly sent to Thailand. Concerns have been raised that trafficking victims often end up in immigration detention facilities and are deterred from reporting or escaping for fear of the poverty and potential detention associated with repatriation (Human Trafficking, 2006).

In 2012, the government passed a long awaited plan to fight human trafficking that aims to improve victim identification, resources and monitoring (Kimmons, 2014). The plan has yet to be implemented, however, and the victim protection system remains insecure, with repatriated people often becoming victims of trafficking once more before authorities get around to successfully rehabilitating them (US Department of State, 2014).

This weakness reflects problems in the wider system in general with a public who does not trust the system, which is underfunded and staffed with undertrained lawyers (US Department of State, 2014). But these weaknesses also reflect a more important problem for trafficking in Lao PDR, which is the poverty and desperation of women in the first place. The Lao Women’s Union, who have been at the forefront of anti-trafficking initiatives assert that legal reform will be ineffective without land titling, education, labour protection and job creation for women (Lao Women’s Union, 2009).

6.3 Indigenous peoples and ethnic minorities

The Asia Indigenous Peoples Pact (AIPP)²⁰, an organisation of different indigenous peoples’ movements across the continent, has estimated that there are approximately 94 to 200 million indigenous peoples in Southeast Asia and that women represent half of this population (AIPP, 2013). However, it is extremely difficult to obtain exact statistics due to the wide variety of groups in existence and the states’ lack of data collection on this subject. It is also important to note that the challenges outlined below are not an attempt to generalise across indigenous peoples and ethnic minorities in the ASEAN region.

20 For the ASEAN region, this group includes the Cordillera Peoples’ Alliance (CPA), PANGTAGBO-Mindanao and Kalipunan ng mga Katutubang Mamamayan ng Pilipinas (KAMP) in the Philippines; Partners of Community Organisation (PACOS) and the Indigenous Peoples’ Network (JOAS) in Malaysia; the Alliance of Indigenous Peoples of the Archipelago (AMAN) in Indonesia, the Community knowledge Support Association (CKSA) and Gender and Development Organisation (GDA) in Lao PDR; the Center for Sustainable Development in Mountainous Areas (CSDM) in Vietnam; the Cambodia Indigenous Youth Association (CIYA), the Organization to Promote Kui Culture (OPKC), the Indigenous Rights Active Member (IRAM) and the Highlander Association in Cambodia; the Assembly of Indigenous and Tribal Peoples, the Karen Network for Culture and Environment, the Hmong Association for Development, the Indigenous Women’s Network and the Inter Mountain Peoples Education and Culture in Thailand (IMPECT); the Chin Human Rights Organisation and the Nationalities Youth Forum in Burma; and the Covalima Youth Center (CYC) in Timor-Leste.

One of the main problems for indigenous peoples is that they are often not recognised as citizens of the country they reside in and are therefore ineligible to claim collective rights they are entitled to in accordance to the United Nations Declaration on the Rights of Indigenous Peoples.

‘Economic rights are generally not justiciable, while indigenous, customary or community-based legal mechanisms have no power to decide over community resource allocations [...]. Accessing a justice mechanism to secure economic and social rights may also be impossible for itinerant or mobile groups who are denied basic social services because they are not considered part of the legitimate population.’

Source: UN Women, 2014: 27

Indigenous groups in Southeast Asia perhaps disproportionately find themselves at the losing end of economic development models, particularly, *development aggression*.²¹ Extractive industries of hydropower, mining or intensive agriculture forcibly displace communities. Indigenous peoples also face the effects of climate change disrupting traditional ways of living (AIPP, 2012). As a result, coalitions such as the AIPP are working towards state recognition of their collective rights to ancestral land and customary land laws, but also for attention to the specific needs of indigenous women (AIPP, 2015). The AIPP is also committed to uphold the CEDAW in its actions. The rights called for in the statement are summarised in the box below:

Box N°24 Statement of needs by AIPP women’s programme

1. Security of rights to territories, lands and natural resources including indigenous women.
2. Integrity of indigenous cultural heritage.
3. Respect for identity and non-discrimination including the respect and dignity for indigenous women.
4. Culturally appropriate education for indigenous women and girls’ health, including appropriate health indicators for indigenous women and girls.
5. Full, informed and effective participation of indigenous women.
6. Access to infrastructure and basic social services to meet the needs of indigenous women and girls.
7. Protection of indigenous women and girls from external threats such as conflicts and militarisation and trafficking and access to justice.

Source: AIPP, 2015

²¹ *Development aggression is a term used to describe the imposition of profit-oriented development projects that violate human rights in all dimensions: economic, social, cultural, civil and political.*

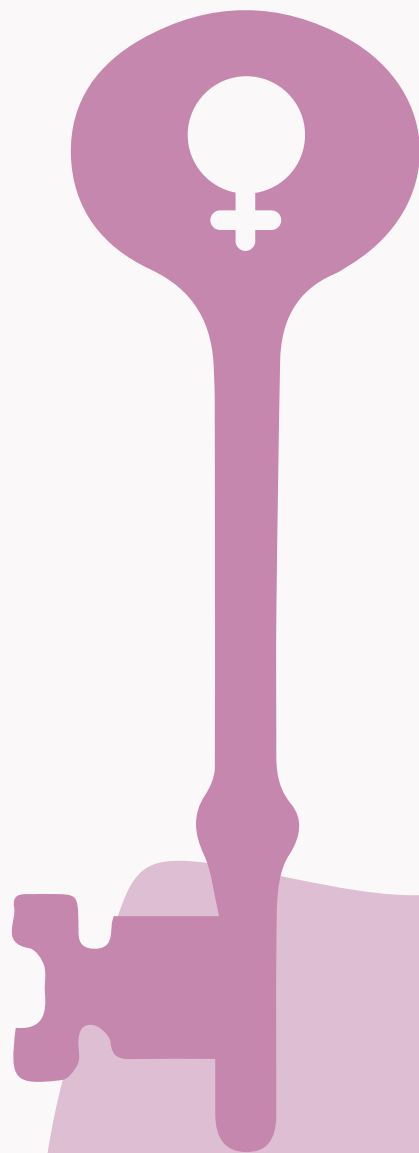
If both indigenous men and women are marginalised in the state justice systems, women tend to be even more so – many indigenous women are not literate in the national languages used by the formal justice system, suffer disproportionately from the impacts of development aggression, militarisation of indigenous territory, and lack information on their basic human rights (AIPP, 2012). The Indigenous Women’s Statement within AIPP asserts that such injustices are also compounded by increased gender violence within the communities that may be attributed to rapid economic change or forced migration (AIPP, 2015). The state systems are not physically, financially or symbolically accessible to them, while the indigenous justice systems, according to the AIPP, ‘are in the majority male-dominated and have no space for women’s voices or participation’ (AIPP, 2012: 4).

‘For women, these harms can take different forms. The influx of non-indigenous workers and security personnel into indigenous areas has led to an increase of sex work, for example, along with sexual harassment and rape. As indigenous livelihoods are altered or destroyed, levels of gender-based violence often rise, and economic, social and cultural harms can affect women differently as their burdens shift or increase. Yet with lower levels of education, and held back by multiple layers of discrimination, indigenous women can struggle to highlight their concerns and lead change.’

Source: UN Women, 2012c

In 2014, a meeting of indigenous women leaders was organised in Chiang Mai, Thailand, for these women to meet and to work with rights experts in order to share their experiences and organise themselves in regards to the changes affecting them. For instance, the militarisation of their territory appears to be one of their main concerns.

Chapter 7:
**A Legal
empowerment
framework
for change**



This chapter provides an introduction to the legal empowerment concept and recommends the adoption of a legal empowerment framework to improve women's access to justice, as a potential way to approach the multifaceted nature of the challenge (7.1). It also includes some examples of past and ongoing legal empowerment initiatives in the ASEAN region that have proven to be promising. It concludes by delineating future research areas that would be beneficial to enhancing the implementation of legal empowerment as a tool to improve women's access to justice (7.2).

7.1 The Legal empowerment approach

The legal empowerment approach describes the process of systematic change through which the use of the law and legal systems improve or transform individuals' social, political or economic situations. This process not only improves access to justice, but also contests unjust power relations (Domingo & O'Neil, 2014).

'Legal empowerment is the use of legal rights, services, systems, and reform, by and for the disadvantaged populations and often in combination with other activities, to directly alleviate their poverty, improve their influence on government actions and services, or otherwise increase their freedom.'

Source: Golub, 2010

Legal empowerment as a concept emerged in the early 2000s as a critique of the 'top-down' approach which reduced legal reform simply to legislative change alone (Golub, 2003, 2015). Its theoretical roots can be found in Amartya Sen's notion of development as freedom (Sen, 2001). Under his view, poverty is a complex and multidimensional phenomenon that incorporates the lack of income, but goes much further to include and focus in the lack of 'freedom' to pursue the life that each person has reason to value (Sen, 2001). Sen identifies five main types of freedom (political freedom, economic facilities, social opportunities, transparency guarantees and protective securities) that complement and affect each other. This approach shifts the attention from the 'means', such as income, to the 'ends' (beings and doings) that people are able and have the freedom to pursue.

In 2008, legal empowerment gained more attention when the Commission on Legal Empowerment for the Poor,²² an independent international organisation hosted by the UNDP, adopted it as a main strategy to promote development and tackle poverty (CLEP & UNDP, 2008). Its approach is based on four pillars (access to justice and the rule of law, property rights, labour rights and business rights) and has received some criticisms. Some international development scholars have noted that the Commission has used a very narrow conception of legal empowerment, promoting a top-down approach, centred mainly in governmental reforms (Golub, 2012).

Legal empowerment for women can be defined as a process of systematic change through which women are enabled to exercise and advance their rights and interests using the law, the legal system and legal services. It is a process through which the rule of law and access to justice are strengthened to ensure that women are empowered to make choices, have equal access to opportunities and realise their freedom via legal mechanisms.

Legal empowerment describes both a process and a visible result after women start being able to make autonomous decisions with the help of available legal tools and formal or informal justice mechanisms. This empowerment can be individual or collective (Domingo & O'Neil, 2014). It can have an enormous impact on gender equality, improving women's agency, personal capacities and self-realisation (Golub, 2003). It also promotes social integration and evidence suggests that it might be well implemented in informal justice systems (Ubink & McInerney, 2011). A study conducted in 2014 reviewed the results of 199 legal empowerment programmes around the globe and concluded that there is substantial evidence on the beneficial impact of legal empowerment. This included increasing legal knowledge and community participation, promoting dispute resolutions and changing institutional policies and practices (Goodwin & Maru, 2014).

In the ASEAN region, legal empowerment initiatives have started to flourish. In Timor-Leste, the Asia Foundation worked with NGO partners in legal empowerment programmes for women. As there is a lack of female legal practitioners in Timor-Leste, the foundation supported legal studies of some women who had to interrupt their education following the 1999 violent crisis. Additionally, it also supported the Judicial System Monitoring Programme's Victim Support Services handling sensitive women's cases from the whole country (The Asia Foundation, 2007).

In 2009, the Asian Development Bank (ADB) tested legal empowerment pilot projects for women and disadvantaged groups in Indonesia, Pakistan and Bangladesh (ADB & The Asia Foundation, 2009). The objective of the Indonesian initiative was 'to empower community-based organisations to use legal and administrative procedures to advance their rights.' Examples of activities that were carried out include training on gender issues for community committee members, media knowledge campaigns encompassing both print and radio messages to provide information to disadvantaged groups and a social mapping exercise involving the community members to collect data on the needs of the communities. Close examination of the achievements of this pilot project were considered to be positive and encouraging.

In Thailand, the UNDP launched a project in 2013 entitled, 'Legal Reform and Legal Empowerment.' It is being conducted in partnership with the Law Reform Commission of Thailand (LRCT), an

²² The Commission on Legal Empowerment for the Poor is an independent international organisation, hosted by the UNDP. It was established in 2008 to focus on the links between exclusion, poverty and the law through research.

independent organisation created by the Constitution in 2010 to promote social equality in the kingdom and the project is expected to conclude in 2016. The UNDP is in charge of helping the LRCT to better its institutional capacity and effectively align Thai law reform with human rights standards and norms. Furthermore, it is dedicated to improve legal services, develop a comprehensive strategic framework based on international experiences and advocate for new legal aid legislation to improve access, quality and equity in service provision, among others (UNDP, 2012b).

7.2 Moving forward: A legal empowerment research agenda

Future research based on this scoping study has the potential to provide a roadmap to develop a public policy and legal reform agenda that is oriented towards women's legal empowerment.

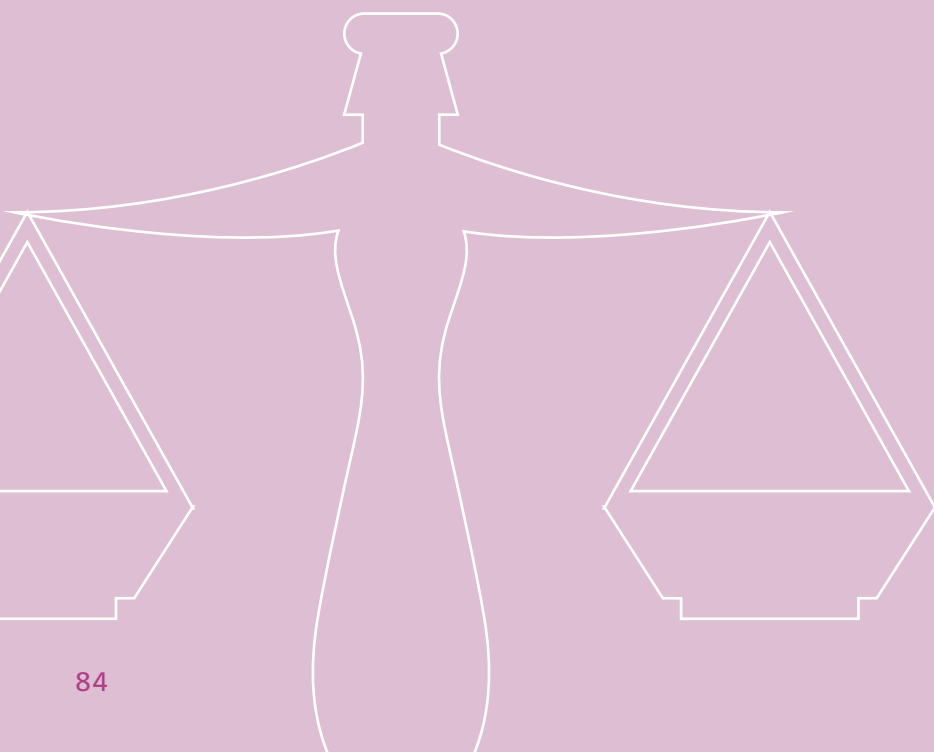
There are different ways in which legal empowerment can be implemented and a legal empowerment approach to women's access to justice would demand the following research objectives:

- Identifying the conceptual elements of legal empowerment and its potential indicators.
- Exploring the issues impeding and triggering the development of legal empowerment in the ASEAN region from an institutional and individual perspective.
- Reviewing and assessing current practices promoting legal empowerment in ASEAN countries.

This agenda should aim to provide the following outcome:

- A clear picture of individual's perceptions and capabilities to develop legal empowerment, considering their cultural particularities and preferences.
- A conceptual definition and operationalisation of legal empowerment from an ASEAN perspective.
- An understanding of the institutional and legal obstacles to trigger legal empowerment.
- A systematic review of possible areas of interventions and key actors.

Chapter 8: **Preliminary policy recommendations**



Based on the key findings from this scoping study, six main preliminary recommendations have emerged for the ASEAN States to consider in order to address the challenges to women's access to justice in the region. They are not intended to comprehensively cover the entirety of necessary measures, but to make a start in setting recommendations for designing and devising a legal empowerment-based policy agenda.

1. Legislative reform and changes in the civil/common law systems

Key Findings

Preliminary analysis of the justice systems and legislations in ASEAN revealed the prevalence of some gender biases and lack of gender sensitivity not only in the laws, but also in the way the legal systems and personnel operate. For some countries, the main challenges lie in the absence of adequate legislation on domestic and sexual violence against women and the existence of oppressive laws that fail to comply with the CEDAW obligations. Some laws are found to be discriminatory against marginalised women such as religious minorities, indigenous women and women living with HIV/AIDS, among others.

It is important to acknowledge that gender biases are not only explicitly discernible in the law itself but also in the ways in which the law is conceived (or its failure to be conceived), interpreted, administered and enforced.

Recommendations

- Mainstream gender equality and women's empowerment in the creation, administration and review of laws.
- Assure the effective implementation of laws on domestic and sexual violence, which clearly codify victims' rights such as the right to access to justice, the right to compensation and remedies by using the CEDAW recommendations as a foundation. For states that don't have these laws, create appropriate legislation.
- Facilitate the review and reform of laws that criminalise vulnerable women (e.g. women with disabilities, migrant women, refugees, the lesbian, bisexual and transgender community, prisoners, stateless women and women in post-conflict situation, etc.).

- Employ strategic litigation as a means to change law or policy that violates human rights norms and ensure that laws are interpreted and properly enforced. This strategy uses the justice sector to achieve legal and social changes through test cases and can tackle issues such as gender discrimination and create awareness about women's rights (UN Women, 2012a). If successful, it is likely to have a high impact and serve as legal precedents for jurisprudence and promote changes in legislation, policy and public opinion (Interights, 2015).
- Include CSOs at every stage of these legislative reforms.

2. Respect and protect the cultural, religious and legal rights of women accessing customary/religious courts

Key Findings

Gender discriminatory elements can be found in some traditional settings and customary systems across Southeast Asia. Conservative interpretations of religious law can, in many instances, discriminate against women. This challenge reflects the lack of well-rounded understanding of religious laws and the reliance on generic interpretations, which often dismiss the power of the religion and customs in empowering women.

Recommendations

- Provide support for women's organisations and women's rights groups that encourage alternative (and less gender biased) interpretations of customary and religious laws.
- Promote initiatives that encourage women's involvement in designing, interpreting and managing customary and religious courts both in operational and leadership roles.
- Establish strategies for transformative accommodation particularly in the context of multi-cultural jurisdictions.

3. Support the work of grassroots campaigning and advocacy organisations, especially those working in the area of women's legal empowerment and support services

Key Findings

Despite the crucial roles of the formal justice systems and stakeholders in providing and facilitating access to justice for women, CSOs (especially women's rights organisations and trade unions), particularly at the grassroots and community level, are indispensable in the legal empowerment of women. This is particularly true when the state lacks economic resources, as CSOs can play an essential role in encouraging states to prioritise the needs of local people in economic planning (Greening, 2013).

The roles of CSOs may complement government and formal justice systems tremendously by filling in the gaps and bringing in new perspectives and ways of working, especially in awareness raising, education and campaign and victim support areas. They can serve as important moral mediators as well, using ethical reasoning that can be more crucial than legalistic arguments to build social support for gender justice (Ong, 2011). Nonetheless, their roles and importance are yet to be fully recognised and accepted by some state governments and formal justice actors.

Recommendations

- Build and maintain partnerships with a broad range of stakeholders, encouraging justice institutions and CSOs to collaborate closely and help identify how to generate maximum impact based on their strengths and specialisations.
- Provide resources and spaces for CSOs to enhance their contributions to legal aid, legal education and legal empowerment for women, particularly in the area of community-based justice. It is also important to identify places where freedom of association are being threatened and subsequently, work towards ways of expanding the freedom of these organisations.

4. Address the socio-economic obstacles to women accessing justice

Key Findings

The culture of fear, stigma and silence still pervades all societies in the region. As a result, women victims in cases of sexual violence opt not to report or are often faced with social punishment when their cases are made public. Violence against women, especially in cases of domestic violence, is tolerated in some societies and to a certain extent, accepted and even normalised.

Women are often regarded as inferior and dependent on men in some cultures, which is detrimental to their financial status and social mobility. As such, economic policies that make women more vulnerable, such as 'liberalisation' of labour laws, the displacement of communities through development initiatives and the cutting or underfunding of welfare initiatives must be considered very carefully. Given the financially costly nature of justice proceedings, women face difficulties in not only accessing but also obtaining justice. This also extends to the issue of legal literacy, as most women have yet to be sufficiently equipped with legal knowledge and awareness of existing laws, court procedures and available support services.

Recommendations

- Interrogate those state practices that inflict violence on women for political or economic reasons. Consider the implications of all areas of economic and political policy on women's and human rights.
- Promote awareness raising programmes and strategic action plans in society and the courts to address re-victimisation and other stigma in cases of violence against women.

- Improve services for women seeking support in legal matters such as legal aid programmes, translation services, transportation support and availability of legal representation for women with limited means by collaborating with legal aid clinics, lawyers' associations and pro-bono schemes from the private sector.
- Improve the accessibility of the justice system for women of all backgrounds. Steps must be taken to ensure that illiterate members of society, the majority of which are women, can access information on their rights and how to access justice.

5. Strengthen justice institutions through investment and training, with a gender mainstreaming approach that is particularly conscious of the specific challenges faced by women

Key Findings

Institutional barriers pose critical challenges for women and their pursuit of justice. There are various institutional obstacles in the criminal justice processes of most countries, starting as early as the police, which is arguably the entry point to the criminal justice system for victims. **These issues include poor and discriminative law enforcement, gender biased procedures and practices and institutional inability to establish and acquire trust from women.** Additionally, there is usually no accountability or monitoring of the police support services. Corruption and a culture of impunity have exacerbated this intractable problem in some countries.

Recommendations

- Institutionalise gender sensitisation and comprehensive training for all justice providers in consultation with CSOs, women's rights groups and key stakeholders.
- Increase the amount of female practitioners in the justice system and law enforcement.
- Establish accountability and monitoring mechanisms that hold justice institutions accountable for their work and services.
- Enhance coordination and linkages to facilitate effective working relationships among justice providers with clear budget and resource allocation.

6. Call for concerted efforts by all ASEAN countries to cooperate in enhancing and strengthening women's access to justice and fulfil their obligations under the CEDAW

Key Findings

Despite continuous efforts and relative progress by the ASEAN Member States to fulfil their obligations to the CEDAW and to improve women's access to justice, there is still room for further

improvements to be made. This requires sustained dialogue and discourse among all stakeholders as well as political will and commitment by the ASEAN countries.

In addition, the ASEAN countries should work towards finding the appropriate balance between economic gains and ensuring the protection of women's rights.

Recommendations

- Create a continuous platform for dialogue between all the ASEAN countries on the matter of women's access to justice.
- Establish tangible steps and strategies to implement the ASEAN Regional Plan of Action on Elimination of Violence against Women with proper allocation of budget and resources.
- Monitor and assess the region's progress in the implementation of the CEDAW and devise ways forward to actualise women's legal rights and substantive equality within the CEDAW framework.



Chapter 9: **Future research and policy design**



The last chapter of the scoping study will delve into the six recommendations outlined in Chapter 8, define the future direction of the proposed research design and provide examples of best practices for each.

Research suggestion 1: Legislative reform and change needed in the civil/common law system in line with the CEDAW's recommendations

- Analyse the local and regional political and economic factors that obstruct the implementation of legislative change in regards to women's rights, hindering the provision of high quality, accessible and sustainable institutions.
- Analyse the impact of court decisions and sentencing (e.g. incarceration, or fines levied) when compared to women's actual needs.

The Magna Carta of Women (MCW), The Philippines

The MCW is a comprehensive women's human rights law that guarantees substantive rights and seeks to eliminate discrimination through the official recognition, protection, fulfilment and promotion of rights for Filipino women. It mandates the state to take steps to review, amend or repeal existing laws that are discriminatory towards women. It has been deemed as a landmark initiative in Southeast Asia.

Source: Philippine Commission on Women, 2009

Research suggestion 2: Women's access to customary/religious courts

- Analyse the role of customary and religious laws in dispute resolution, its integration with state law and the overall impact on women's status and rights.
- Further consider women's participation in Islamic feminist approaches to justice and Sharia law.
- Evaluate local cultural understandings of the concept of justice and the processes of accessing justice.

LBH APIK, Indonesia

Women's Legal Aid of the Indonesian Women's Association for Justice (LBH APIK) was founded by a recognised Muslim feminist lawyer, Nursyahbani Katjasungkana, based on the concept of gender sensitive transformative legal aid, which is the notion that the law can be reformed to serve the interests of women. Women clients' dependence on their lawyer is not beneficial to a community which needs to develop its own support system. LBH APIK's core mandate is to provide community-based legal aid, train former clients and victims to be paralegals and ultimately encouraging the transfer of skills and knowledge to the community. Moreover, when it is observed that the law is not responsive to the needs of women, LBH APIK also carries out policy advocacy to change the laws.

Source: Katjasungkana, 2004

Research suggestion 3: Role of grassroots campaigning and advocacy organisations, especially those working in the area of women's legal empowerment and support service

- Analyse the role of state support for CSOs (e.g. legal aid clinics, legal empowerment initiatives, victim support services, etc.).
- Identify and measure the impact of other best practices examples by women's labour organisations, NGOs and other civil society advocacy organisations.
- Understand the strategies that CSOs employ to convey the challenges faced by women on the ground.
- Identify places where freedom of association, speech or labour organising is being threatened.

Banteay Srei Peace Shelters, Cambodia

Banteay Srei is a Cambodian NGO that has worked for more than 20 years building women's capacity in leadership to bring about political, economic and social change. Peace shelters is a project that provides psychological, legal aid and accommodation for victims and perpetrators of domestic violence. Their approach is unique in terms of involving perpetrators into the process, while providing victims protection and support. Men receive interventions that allow them to take responsibility for their behaviour, restore the harm they have done and stop their violent and abusive patterns. The shelters accommodate perpetrators as well in order to allow victims to go back home and see their children.

Source: Banteay Srei, 2015

Research suggestion 4: Socio-economic obstacles to women accessing justice

- Understand the potential for states to prioritise access to justice in economic/human development priorities.
- Understand the intersectional marginalisation of particularly vulnerable groups of women.
- Study existing successful initiatives that improve women's access to justice in their communities.

Baan Kredtrakan, Thailand

The Thai Ministry of Social Development and Human Security founded the Kredtrakan Protection and Occupational Development Centre to provide protection, assistance and rehabilitation to both Thai and non-Thai women and children who are victims of trafficking and other social problems. The process of protection of the girls and women include education, medical care (both physical and mental), legal assistance, family tracing, repatriation, re-integration and follow-up.

Source: Philippine Commission on Women, 2009

Research suggestion 5: Impact of gender mainstreaming on the legal institutions

- Determine the ways in which legal institutions and law enforcement can improve in order to gain the trust of women.
- Establish an understanding of judicial perceptions of gender stereotypes and the impact on sentencing.
- Analyse the impact of gender mainstreaming approaches on legal institutions.

The Asia Foundation Religious Courts Programme, Indonesia
Religious Courts in Indonesia see approximately 200,000 family law cases every year. The Asia Foundation conducts a gender sensibility training programme for religious court judges in order to strengthen judges' decision-making skills when interpreting Islamic law. The aim is that judges take into account gender in the sentencing process.

10 per cent of all Indonesian judges have been already trained in issues such as

- Gender sensitivity
- Legal reasoning
- Gender justice in marriage, domestic violence, divorce, polygamy and inheritance
- Mediation skills

Performance criteria have been developed in order to assess judges' application of gender equality principles in the courtroom.

Source: The Asia Foundation, 2010

Research suggestion 6: Opportunities for the ASEAN States to increase cooperation in regards to women's access to justice.

- Collect qualitative and quantitative data on women's challenges in accessing justice in the region and identify the optimal modes of data collection. Improve comparability in existing data on women's access to justice.
- Establish research partnerships between groups in different countries, and bring groups together in academic settings to explore best practices and shared challenges.
- Consider the feasibility of creating new indicators for women's access to justice in the region.

Combating human trafficking, Indonesia

As part of its comprehensive anti-trafficking law, the Indonesian government created the National Agency for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI). It provides services such as the distribution of biometric ID cards to migrants, national human trafficking hotline, and the creation of a national database of registered migrants leaving Indonesia to find work abroad. This initiative has significantly contributed to the government's ability to protect its migrant workers in Malaysia. This successful initiative played a role in influencing the adoption of an ASEAN protocol on human trafficking.

Source: Lee & Lim, 2013



Bibliography

Works cited and consulted:

- Agarwal, B. (1994). Gender and Command over Property: A Critical Gap in Economic Analysis and Policy in South Asia. *World Development*, 22(10), 1455–1478. Retrieved from [http://doi.org/10.1016/0305-750X\(94\)90031-0](http://doi.org/10.1016/0305-750X(94)90031-0)
- Agarwal, B. (2003). Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market. *Journal of Agrarian Change*, 3(1-2), 184–224. Retrieved from <http://doi.org/10.1111/1471-0366.00054>
- Amnesty International (2010). *Breaking the Silence: Sexual Violence in Cambodia*. Retrieved from <http://www.amnesty.org/en/documents/ASA23/001/2010/en/>
- ASEAN (2004). *The Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN*. ASEAN Secretariat. Retrieved from <http://www.asean.org/storage/images/archive/23rdASEANSummit/6.%20declaration%20on%20evawc%20in%20asean%20-%20final.pdf>
- ASEAN (2008). *Charter of the Association of Southeast Asian Nations*. ASEAN Secretariat. Retrieved from http://www.asean.org/storage/2016/02/The_ASEAN_Charter.pdf
- ASEAN (2014). *ASEAN Economic Community*. ASEAN Secretariat. Retrieved from <http://www.asean.org/communities/asean-economic-community>
- ASEAN (2015). *ASEAN Regional Plan of Action on the Elimination of Violence against Women*. ASEAN Secretariat. Retrieved from http://www.asean.org/storage/images/2015/November/27th-summit/ASCC_documents/ASEAN%20Regional%20Plan%20of%20Action%20on%20Elimination%20of%20Violence%20Against%20WomenAdopted.pdf
- ASEAN Civil Society Conference (ACSC) & ASEAN Peoples' Forum (APF) (2015). *Reclaiming the ASEAN Community for the People ACSC/APF - CSO Statement*. Retrieved from <http://aseanpeople.org/reclaiming-the-asean-community/>
- ASEAN Intergovernmental Commission on Human Rights (AICHR) (2012). ABOUT - ASEAN Intergovernmental Commission on Human Rights. *Asia Indigenous Peoples Pact*. Retrieved from http://aichr.org/about/?doing_wp_cron=1445117778.1852509975433349609375
- ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) & ASEAN Committee on Women (ACW) (2015). *ASEAN Regional Plan of Action on the Elimination of Violence against Women (ASEAN RPA on EVAW)*. Retrieved from [http://www.labour.go.th/th/attachments/article/28027/RPA%20on%20EVAW%20\(Eng\).pdf](http://www.labour.go.th/th/attachments/article/28027/RPA%20on%20EVAW%20(Eng).pdf)
- ASEAN SOGIE Caucus (2015). *Statement on the ASEAN Community Vision 2025*. Retrieved from <https://aseansogie.wordpress.com/2015/11/23/statement-on-the-asean-community-vision-2025/>
- Asian Development Bank (ADB) & The Asia Foundation (2009). *Legal Empowerment for Women and Disadvantaged Groups*. The Asia Foundation. Retrieved from <http://asiafoundation.org/publications/pdf/555>
- Asia Indigenous Peoples Pact (AIPP) (2011). *Divers Paths to Justice: Legal Pluralism and the Rights of Indigenous Peoples in Southeast Asia*. Asia Indigenous Peoples Pact. Retrieved from <http://hrbaportal.org/wp-content/files/divers-paths-justice-cover.pdf>
- Asia Indigenous Peoples Pact (AIPP) (2013). Indigenous Women in Southeast Asia: Challenges in their Access to Justice. *Asia Indigenous Peoples Pact*. Retrieved from <http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/StudyAccessToJustice/AIPP.pdf>
- Asia Indigenous Peoples Pact (AIPP) (2015). AIPP Statement for 16 Days of Activism against Gender-Based Violence. *Asia Indigenous Peoples Pact*. Retrieved from <http://www.aippnet.org/index.php/indigenous-women/1578-aipp-statement-for-16-days-of-activism-against-gender-based-violence>
- Asia Pacific Support Collective Timor Leste (2009). Baseline Study on Sexual and Gender-Based Violence in Covalima and Bobonaro. *Timor Leste: Asia Pacific Support Collective Timor Leste*. Retrieved from http://www.unwomen-eseasia.org/docs/SGBV_Baseline_study_Report_English_version.pdf
- Asia Society (2015). *Islamic Family Law and Justice for Muslim Women*. Retrieved from <http://asiasociety.org/islamic-family-law-and-justice-muslim-women>

- Association for Women's Rights in Development (AWID) (2014). *Women's Rights Activists Resist Myanmar's Proposed 'Law on Protection of Race and Religion'*. Association for Women's Rights in Development. Retrieved from <http://www.awid.org/news-and-analysis/womens-rights-activists-resist-myanmars-proposed-law-protection-race-and-religion>
- Baliamoune-Lutz, M. (2007). Globalisation and Gender Inequality: Is Africa Different? *Journal of African Economies*, 16(2), 301–348. Retrieved from <http://doi.org/10.1093/jae/ejl037>
- Bandial, Q. & Begawan, B. S. (2015). Eliminate Violence against Women. *The Brunei Times*. Retrieved from <http://www.bt.com.bn/news-national/2015/11/25/eliminate-violence-against-women>
- Banteay Srei (2015). *Peace Centre Project*. Banteay Srei. Retrieved from <http://banteaysrei.info/programmes/community-action-against-gender-based-violence/peace-shelter-project/>
- Bennett, L. R., & Manderson, L. (2003). *Violence against Women in Asian Societies: Gender Inequality and Technologies of Violence*. London, UK: Routledge.
- Bhattacharjya, M., Fulu, E., Murthy, L., Seshu, M. S., Cabassi, J. & Vallejo-Mestres, M. (2015). *The Right(s) Evidence: Sex Work, Violence and HIV in Asia*. UNFPA, UNDP, Asia Pacific Network of Sex Workers, SANGRAM. Retrieved from http://asiapacific.unfpa.org/sites/asiapacific/files/pub-pdf/Rights-Evidence-Report-2015-final_0.pdf
- Bibbings, L., & Nicolson, D. (2000). *Feminist Perspectives on Criminal Law*. London, UK: Cavendish Publishing.
- Black, A. (2012). Replicating 'A Model of Mutual Respect': Could Singapore's Legal Pluralism Work in Australia? *Journal of Legal Pluralism*, 65. Retrieved from <http://commission-on-legal-pluralism.com/volumes/65/black-art.pdf>
- Boll, A. (2001). The Asian Values Debate and its Relevance to International Humanitarian Law. *ICRC Resource Centre*. Retrieved from <https://www.icrc.org/eng/resources/documents/misc/57jqzl.htm>
- Bouhours, B., Cheong, C. W., Bong, B., & Anderson, S. (2013). *International Violence against Women Survey: Final Report on Singapore*. Retrieved from [http://www.ncss.gov.sg/documents/Singapore%20IVAWS%20\(final%20report\).pdf](http://www.ncss.gov.sg/documents/Singapore%20IVAWS%20(final%20report).pdf)
- Butt, S. (2016). Between Control and Appeasement. In T. Lindsey & H. Pausacker (Eds.), *Religion, Law and Intolerance in Indonesia*, 42-67. Abingdon, UK; New York, NY: Routledge.
- Caincay, M.C., Cornejo, A.J.K., Magno, J.G., Paquibot, J.M. & Sanchez, R. (n.d.). *Article 333 and Article 334 of the Revised Penal Code of the Philippines: A Violation of the Equal Protection Clause and the Convention on the Elimination of All Forms of Discrimination against Women*. Academia. Retrieved from http://www.academia.edu/18737579/Article_333_and_Article_334_of_the_Revised_Penal_Code_of_the_Philippines_A_Violation_of_the_Equal_Protection_Clause_and_the_UN_Convention_on_the_Elimination_of_All_Forms_of_Discrimination_Against_Women
- Cambodia National Institute of Statistics & Ministry of Health (2010). *2010 Cambodia Demographic and Health Survey: Key Findings*. National Institute of Statistics, Directorate General for Health and ICF Macro. Retrieved from <https://dhsprogram.com/pubs/pdf/SR185/SR185.pdf>
- Caster, M. (2015). The Truth about Myanmar's New Discriminatory Laws. *The Diplomat*. Retrieved from <http://thediplomat.com/2015/08/the-truth-about-myanmars-new-discriminatory-laws/>
- Center for Reproductive Rights (2015). U.N. Committee Finds Women in the Philippines Face Reproductive Rights Violations and Discrimination. *Center for Reproductive Rights*. Retrieved from <http://www.reproductiverights.org/press-room/un-committee-finds-women-in-the-philippines-face-reproductive-rights-violations-and-discrimination>
- Center of Studies for Peace and Development (CEPAD) (2014). *Women's Access to Land and Property Rights in the Plural Justice System of Timor-Leste*. Timor Leste: Center of Studies for Peace and Development. Retrieved from http://asiapacific.unwomen.org/~media/field%20office%20eseasia/docs/publications/2015/01/cepad%20a2j%20research%20report_english_to%20print.pdf
- CIA World Fact Book (2016). *Legal System: Country Comparison to the World*. Central Intelligence Agency. Retrieved from <https://www.cia.gov/library/publications/the-world-factbook/fields/2100.html>

- Commission on Legal Empowerment of the Poor (CLEP) & United Nations Development Programme (UNDP) (2008). *Making the Law Work for Everyone*. Retrieved from http://www.unrol.org/files/Making_the_Law_Work_for_Everyone.pdf
- Cohen, J.L. (2012). The Politics and Risks of the New Legal Pluralism in the Domain of Intimacy. *Oxford International Journal of Constitutional Law*, 10(2), 380-397. Retrieved from <http://icon.oxfordjournals.org/content/10/2/380.full>
- Constitution of the Democratic Republic of Timor-Leste (2002). Section 2 § 4. Retrieved from http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf
- Cook, R., & Cusack, S. (2011). *Gender Stereotyping: Transnational Legal Perspectives*. Philadelphia, PA: University of Pennsylvania Press.
- Crouch, M. (2015). Constructing Religion by Law in Myanmar. *Review of Faith and International Affairs*, 13(4). Retrieved from <http://www.tandfonline.com/doi/abs/10.1080/15570274.2015.1104961>
- Cusack, S., & Timmer, A. S. H. (2011). Gender Stereotyping in Rape Cases: The CEDAW Committee's Decision in Vertido v The Philippines. *Human Rights Law Review*, 11(2), 329–342. Retrieved from <http://doi.org/10.1093/hrlr/ngr004>
- Cuskelly, K. (2011). *Customs and Constitutions: State Recognition of Customary Law around the World*. International Union for Conservation of Nature and Natural Resources (IUCN). Bangkok: IUCN Asia Regional Office. Retrieved from <https://portals.iucn.org/library/efiles/edocs/2011-101.pdf>
- Domingo, P., & O'Neil, T. (2014). *Overview: The Political Economy of Legal Empowerment*. Overseas Development Institute. Retrieved from <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9009.pdf>
- Dorloh, S., & Mokhtar, A. B. H. (2015). Right of Muslim Women in Thailand under the Muslim Family Law of Inheritance Code, 1941. *Universiti Malaya e-Journal*. Retrieved from <http://e-journal.um.edu.my/public/article-view.php?id=8340>
- Ellison, L., & Munro, V. E. (2009). Reacting to Rape Exploring Mock Jurors' Assessments of Complainant Credibility. *British Journal of Criminology*, 49(2), 202-219. Retrieved from <http://doi.org/10.1093/bjc/azn077>
- Elson, D. (2002). Gender Justice, Human Rights and Neo-Liberal Economic Policies. In M. Molyneux & S. Razavi, *Gender Justice, Development and Rights*. Oxford, UK: Oxford University Press.
- ESCR (2015). *Committee on the Elimination of Discrimination against Women (CEDAW) Inquiry Concerning the Philippines (CEDAW/C/OP.8/PHL/1)*. ESCR-Net. Retrieved from <https://www.escr-net.org/node/365940>
- Fennell, S. (2009). *Rules, Rubrics and Riches: The Interrelations between Legal Reform and International Development: The Relationship Between Law, Institutions and International Development*. Abingdon, UK; New York, NY: Routledge-Cavendish.
- Fennell, S. (2013). *Law, Institutions and International Development: The Interrelations between Legal Reform and International Development*. Abingdon, UK; New York, NY: Routledge.
- Fluet, E., Calaguas, M., & Drost, C. (2006). Legal Pluralism & Women's Rights: A Study in Post-Colonial Tanzania. *Bepress Legal Series*. Retrieved from <http://law.bepress.com/expresso/eps/1683>
- Fournier, P., Nicol, J., & Dekker, A. (2011). *En-Gender-Ing Legal Reforms: Islamic Law in Africa and East Asia* (SSRN Scholarly Paper No. ID 1919744). Rochester, NY: Social Science Research Network. Retrieved from <http://papers.ssrn.com/abstract=1919744>
- Freedom House (2014). *Brunei*. Freedom House. Retrieved from <https://freedomhouse.org/report/freedom-world/2014/brunei>
- Fulu, E., Warner, X., Miedema, S., Jewkes, R., Roselli, T. & Lang, J. (2013). *Why do some Men Use Violence against Women and how can we Prevent it?* Partners for Prevention. Retrieved from <http://www.partners4prevention.org/sites/default/files/resources/p4p-report.pdf>
- Gelsthorpe, L. (2004). Back to Basics in Crime Control: Weaving in Women. *Critical Review of International Social and Political Philosophy*, 7(2), 76–103. Retrieved from <http://doi.org/10.1080/1369823042000266530>

- Gender Equality Network (GEN) (2014). *Behind the Silence – Violence against Women and their Resilience Myanmar. Briefing Paper*. Gender Equality Network. Retrieved from http://www.burmalibrary.org/docs20/GEN-2014-11-Behind_the_Silence-en-ocr-tpo.pdf
- Gender Equality Network (GEN) (2015). *Raising the Curtain: Cultural Norms, Social Practices and Gender Equality in Myanmar*. Gender Equality Network. Retrieved from <http://www.genmyanmar.org/publications/GEN%20Raising%20the%20Curtain%20Full%20Eng.pdf>
- Golub, S. (2003). Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative. *Carnegie Endowment for International Peace*. Retrieved from <http://carnegieendowment.org/2003/10/14/beyond-rule-of-law-orthodoxy-legal-empowerment-alternative>
- Golub, S. (2010). What is Legal Empowerment? An Introduction. In Stephen Golub (Ed.), *Legal Empowerment: Practitioners' Perspectives 2*. Retrieved from http://www.idlo.org/Documents/Legal_Empowerment_Practitioners_Perspectives_Book.pdf
- Golub, S. (2012). The Present and Possible Future of Legal Empowerment: One Practitioner's Perspective. In *Innovations in the Rule of Law*. World Justice Project/Hague Institute for the Internationalisation of Law.
- Goodwin, L., & Maru, V. (2014). *What do we Know about Legal Empowerment? Mapping the Evidence*. Namati. Retrieved from <https://namati.org/resources/legal-empowerment-evidence-review/>
- Greening, J. (2013). Why Support Legal Empowerment? *Justice Initiatives*. Retrieved from <https://www.opensocietyfoundations.org/sites/default/files/justice-initiatives-legal-empowerment-20140102.pdf>
- Hough, M., & Roberts, J. (2004). *Confidence in Justice: An International Review*. Retrieved from [https://kclpure.kcl.ac.uk/portal/en/publications/confidence-in-justice-an-international-review\(0c7a3424-163e-42bb-86df-93fb03b9ca5f\)/export.html](https://kclpure.kcl.ac.uk/portal/en/publications/confidence-in-justice-an-international-review(0c7a3424-163e-42bb-86df-93fb03b9ca5f)/export.html)
- Humantrafficking.org (n.d.). *Thailand*. Retrieved from <http://www.humantrafficking.org/organizations/222>
- Human Rights in ASEAN Online Platform (2013). *ASEAN Commission on the Rights of Women and Children*. Human Rights in ASEAN Online Platform. Retrieved from <http://humanrightsinasean.info/asean-commission-rights-women-and-children/about.html>
- Human Rights in ASEAN Online Platform (2014). *Statement of Women's Groups and CSOs on Preparation of Draft Interfaith Marriage Law in Myanmar*. Human Rights in ASEAN Online Platform. Retrieved from <http://humanrightsinasean.info/campaign/statement-women%E2%80%99s-groups-and-csos-preparation-draft-interfaith-marriage-law-myanmar.html>
- Human Trafficking (2006). *Lao PDR*. Retrieved from http://www.humantrafficking.org/countries/lao_pdr
- Humanitarian Organisation for Migration Economics and Transient Workers Count Too (2010). *Justice Delayed, Justice Denied*. Retrieved from <http://twc2.org.sg/2010/12/15/justice-delayed-justice-denied/>
- The International Center for Not-for-Profit Law (ICNL) (2015). *NGO Law Monitor: Cambodia*. Retrieved from <http://www.icnl.org/research/monitor/cambodia.html>
- International Commission of Jurists (ICJ) & Justice for Peace Foundation (JFP) (2012). *Women's Access to Justice: Identifying the Obstacles & Need for Change: Thailand*. Retrieved from <http://www.icj.org/womens-access-to-justice-in-thailand-identifying-the-obstacles-and-need-for-change/>
- International Development Law Organization (IDLO) (2014). *Doing Justice to Sustainable Development: Integrating the Rule of Law into the Post-2015 Development Agenda*. Rome: International Development Law Organization. Retrieved from <http://www.idlo.int/sites/default/files/pdfs/publications/Doing%20Justice%20to%20Sustainable%20Development.pdf>
- Interights (2015). *Strategic Litigation*. Retrieved from <http://www.interights.org/our-cases/index.html>
- International Gay and Lesbian Human Rights Commission (2014). Discrimination and Violence against Women in Brunei Darussalam on the Basis of Sexual Orientation and Gender Identity. Geneva: 59th Session of the CEDAW. Retrieved from <http://www.refworld.org/pdfid/547713094.pdf>
- Irving, H. (2008). *Gender and the Constitution: Equity and Agency in Comparative Constitutional Design*. Cambridge, UK: Cambridge University Press.

- Isobel, M. (2013). *Legal Tools: Right to Legal Aid*. Open Society Foundations. Retrieved from <http://www.opensocietyfoundations.org/briefing-papers/legal-tools-right-legal-aid>
- IWRAW Asia Pacific (2009). Convention on the Elimination of all Forms of Discrimination against Women. IWRAW Asia Pacific Knowledge Portal. Retrieved from <http://admin.iwraw-ap.org/plugins/tinymce/plugins/moxiemanager/data/files/CEDAW%3EWhat%20is%20CEDAW%3ECEDAW%20Principles/1%20cedaw-1.pdf>
- IWRAW Asia Pacific (2013). *Mapping of Women's Access to Justice in Southeast Asia*. Kuala Lumpur: IWRAW. Retrieved from <http://admin.iwraw-ap.org/plugins/tinymce/plugins/moxiemanager/data/files/Organization%3EOur%20Publications/Training%20Materials/Mapping%20Women's%20Access%20to%20Justice.pdf>
- IWRAW Asia Pacific (2014). *Women, Development & Access to Justice: The ASEAN Context Regional Training of Trainers for Southeast Asia*. Phnom Penh: UN Women NGO-CEDAW.
- IWRAW Asia Pacific (2015). *Handbook on Women, Development and Access to Justice*. International Women's Rights Action Watch Asia Pacific. Retrieved from <http://admin.iwraw-ap.org/plugins/tinymce/plugins/moxiemanager/data/files/Organization%3EOur%20Publications/Training%20Materials/Women,%20Development%20&%20Access%20to%20Justice.pdf>
- Joint Action Group for Gender Equality (JAG) (2010). *Sisters in Islam: Court Decision on Bung Moktar Case Undermines Gender Equality and Justice*. Retrieved from <http://www.sistersinislam.org.my/news.php?item.824.7>
- Katjasungkana, N. (2004). Gender and Transformative Legal Aid. An Analysis of APIK, the Indonesian Women's Association for Justice. In K. Mokate (Ed.) *Women's Participation in Social Development: Experiences from Asia, Latin America and the Caribbean*, 147-162. Washington, DC: Inter-American Development Bank.
- Kimmons, S. (2014). Sex Trafficking Victims Go Unnoticed in Laos. *The Diplomat*. Retrieved from <http://thediplomat.com/2014/03/trafficking-victims-go-unnoticed-in-laos/>
- Kovar, A. (2012). Approaches to Domestic Violence against Women in Timor-Leste: A Review and Critique. *Human Rights Education in Asia-Pacific*, 3. Retrieved from <http://www.hurights.or.jp/archives/asia-pacific/section1/pdf/9%20-%20Approaches%20to%20Domestic%20Violence%20against%20Women%20in%20Timor-Leste.pdf>
- Kramarae, C. & Spender, D. (2000). *Routledge International Encyclopedia of Women: Global Women's Issues*. New York: Routledge.
- Lao PDR Ministry of Justice (2011). *Customary Law and Practise in Lao PDR*. Law Research and International Cooperation Institute. Retrieved from http://www.la.undp.org/content/lao_pdr/en/home/library/democratic_governance/customary-law.html
- Lao Statistics Bureau & Ministry of Health (2012). *Lao PDR: Lao Social Indicator Survey 2011-2012*. Retrieved from <https://dhsprogram.com/pubs/pdf/FR268/FR268.pdf>
- Lao Women's Union (2009). *Promotion and Protection of Lao Women's Rights*. Retrieved from http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/LA/LWU_UPR_LAO_S08_2010_LaoWomensUnion.pdf
- Larano, C. & Cuneta, J. (2014). Philippine Supreme Court Affirms Rape in Marriage can be Prosecuted. *The Wall Street Journal*. Retrieved from <http://www.wsj.com/articles/SB10001424052702304908304579565734151261484>
- Le, T.T., Le, H.T., Nguyen, H.T.T. & Chu, H.T.T. (2015). *Access to Justice in the Plural Legal System in Vietnam: A Case Study of Women Domestic Violence Survivors*. UN Women. Retrieved from <http://asiapacific.unwomen.org/en/digital-library/publications/2015/06/access-to-justice-in-the-plural-legal-system-in-viet-nam>
- Lee, K. & Lim, S. (2013). The Effect of ASEAN on Human Trafficking in Southeast Asia. *University Honors*. Retrieved from <http://aladinrc.wrlc.org/bitstream/handle/1961/15049/Lee,%20Kelsey%20-%20Spring%202013.pdf?sequence=1>
- Legal Aid Network (LAN) & Kachin Women's Association in Thailand (KWAT) (2016). *Seeking Truth about Sexual Violence and War Crime Cases in Burma: Justice Delayed, Justice Denied*. Retrieved from <http://www.burmalink.org/justice-delayed-justice-denied-new-report-by-kwat-and-lan/>
- Linton, S. (2008). ASEAN States, their Reservations to Human Rights Treaties and the Proposed ASEAN Commission on Women and Children. *Human Rights Quarterly*, 30(2), 436-493. Retrieved from <http://doi.org/10.1353/hrq.0.0010>

- MacKinnon, C. (2011). Substantive Equality: A Perspective. *Minnesota Law Review*, 96(1). Retrieved from http://www.minnesotalawreview.org/wp-content/uploads/2012/01/MacKinnon_MLR.pdf
- Marican, D. H. (2010). *Bung Moktar Case a Blow for Gender Equality*. Retrieved from <https://www.malaysiakini.com/letters/139875>
- Marlar Than Aung (n.d.). Current Legal Framework on Islamic Family Law in Myanmar. *Burma Library*. Retrieved from http://www.burmalibrary.org/docs21/Marlar_Than_Aung-Current_Legal_Framework_of_Islamic_Family_Law_in_Myanmar.pdf
- Meger, S. (2014). Sexual and Gender-Based Violence in Burma/Myanmar. *Monash University*. Retrieved from <http://artsonline.monash.edu.au/preventing-mass-sexual-violence-in-asia-pacific/files/2014/10/Sexual-and-Gender-Based-Violence-in-Burma-PSVAP-Report-2014.pdf>
- Ministry of Labor, Invalids and Social Affairs (2014). *Maternity Protection for Female Workers: Laws and Practices in ASEAN*. ASEAN. Retrieved from http://www.asean.org/storage/images/2015/August/ASEAN-Labour-Ministerial-Meeting-document/maternity%2012_3_2014.pdf
- Mohamad, M., Ng, C., & Hui, T.B. (2006). *Feminism and the Women's Movement in Malaysia: An Unsung (R)evolution*. Abingdon, UK; New York, NY: Routledge.
- Moss, T. (2015). Pope Faces Changing Attitudes on Birth Control in the Philippines. *The Wall Street Journal*. Retrieved from <http://www.wsj.com/articles/pope-faces-changing-attitudes-on-birth-control-in-philippines-1421230505>
- Moustafa, T. (2013). Islamic Law, Women's Rights, and Popular Legal Consciousness in Malaysia. *Law and Social Inquiry*, 38, 168-188. Retrieved from <http://papers.ssrn.com/abstract=1950668>
- Narim, K. (2014). University Bans Women's Day Event, Says it's Too Political. *The Cambodia Daily*. Retrieved from <https://www.cambodiadaily.com/archives/university-bans-womens-day-event-says-its-too-political-53675/>
- Nurlaelawati, E., & Salim, A. (2013). Gendering the Islamic Judiciary: Female Judges in the Religious Courts of Indonesia. *Al-Jami'ah*, 51(2). Retrieved from <http://repository.uinjkt.ac.id/dspace/bitstream/123456789/27494/1/ASRKAL%20SALIM-FSH.pdf>
- Office of the Special Advisor on Gender Issues and Advancement of Women (2001). Gender Mainstreaming: Strategy for Promoting Gender Equality. *United Nations*. Retrieved from <http://www.un.org/womenwatch/osagi/pdf/factsheet1.pdf>
- Oxford Human Rights Hub (2015). *Access to Justice: A Facet of Gender Equality*. Retrieved from <http://ohrh.law.ox.ac.uk/access-to-justice-a-facet-of-gender-equality/>
- Okin, S. M. (1999). *Is Multiculturalism Bad for Women?* Princeton, NJ: Princeton University Press.
- Ong, A. (2011). Translating Gender Justice in Southeast Asia: Situated Ethics, NGOs, and Bio-Welfare. *Hawwa*, 9(1), 26-48. Retrieved from <http://doi.org/10.1163/156920811X575523>
- Othman, N. (2006). Muslim Women and the Challenge of Islamic Fundamentalism/Extremism: An Overview of Southeast Asian Muslim Women's Struggle for Human Rights and Gender Equality. *Women's Studies International Forum* 29(4), 339-353. Retrieved from <http://doi.org/10.1016/j.wsif.2006.05.008>
- Peerenboom, R. (2002). Beyond Universalism and Relativism: The Evolving Debates about 'Values in Asia'. *Social Science Research Network*. Retrieved from <http://papers.ssrn.com/abstract=331340>
- Phan, N. (2011). *Recognising Customary Law in Vietnam: Legal Pluralism and Human Rights*. University of Wollongong. Retrieved from <http://ro.uow.edu.au/theses/3455>
- Philippine Commission on Women (2009). *Republic Act 9710*. Retrieved from <http://pcw.gov.ph/law/republic-act-9710>
- Philippine Commission on Women (2014a). *Statistics on Violence against Filipino Women*. Retrieved from <http://pcw.gov.ph/statistics/201405/statistics-violence-against-filipino-women>
- Philippine Commission on Women (2014b). *Women Participation in Politics and Governance*. Retrieved from <http://www.pcw.gov.ph/statistics/201405/women-participation-politics-and-governance>
- Project X (2015). *Sex Workers of ASEAN Demand Recognition and Equal Rights*. Retrieved from <http://theprojectx.org/2015/02/25/lorem-ipsum-3/>

- Rahman, S. & Zeldin, W. (2015). Burma: Four 'Race and Religion Protection Laws' Adopted. *Global Legal Monitor: The Law Library of Congress*. Retrieved from <http://www.loc.gov/law/foreign-news/article/burma-four-race-and-religion-protection-laws-adopted/>
- ReproCen & Center for Reproductive Rights (2007). *Imposing Misery: The Impact of Manila's Ban on Contraception*. Reproductive Health, Rights and Ethics Center for Studies and Training and Center for Reproductive Rights. Retrieved from <http://www.reproductiverights.org/document/imposing-misery-the-impact-of-manilas-contraception-ban-on-women-and-families>
- Reyes, J. A. (n.d.) *Baseline Study on Legal Aid in Southeast Asia* [PowerPoint slides]. Ateneo Human Rights Center. Retrieved from https://www.google.co.th/ url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiu5c3XiNTMAhULpl8KHVgoAlsQFggaMAA&url=http%3A%2F%2Fwww.rlpd.go.th%2Frlpdnew%2Fimages%2Frlpd_1%2Fppt%2FA_Baseline_Study_on_Legal_Aid_in_Southeast.ppt&usg=AFQjCNHKepKzI022de7eD9Cq-T4YoNBjJA&sig2=rF2xppVGhLhYdtNbHzallg&bvm=bv.121926005,d.c2l
- Rochelle, S. & Loschky, J. (2014). *Confidence in Judicial Systems Varies Worldwide*. Gallup. Retrieved from <http://www.gallup.com/poll/178757/confidence-judicial-systems-varies-worldwide.aspx>
- Romain, F. (2015). Women in the Workplace in ASEAN – Part Two [Brief]. *ASEAN Briefing*, Retrieved from <http://www.aseanbriefing.com/news/2015/11/12/women-in-the-workplace-in-asean-part-two.html>
- Royal Kram (2005). The Law on the Prevention of Domestic Violence and the Protection of Victims Chapter 7 Art. 36. (English trans.). Retrieved from <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86091/96929/F134217659/KHM86091.pdf>
- Royal Thai Government Gazette (2007). Domestic Violence Victim Protection Act, B.E. 2550 Section 5 (English trans.). Retrieved from http://thailaws.com/law/t_laws/tlaw0403.pdf
- Saraswati, R. (2013). Justice and the Identities of Women: The Case of Indonesian Women Victims of Domestic Violence who Have Access to Family Court. *Forum on Public Policy: A Journal of the Oxford Round Table 1-21*. Retrieved from <http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1748&context=lhapapers>
- Saray, R. (2013) *Access to Legal Aid* [PowerPoint slides]. Legal Aid of Cambodia. Retrieved from www.rlpd.go.th/rlpdnew/images/rlpd_1/ppt/Legal_Aid_in_Cambodia.ppt
- Seow, J. (2015). Maids Fear Losing Job when they get Pregnant. *The Straits Times*. Retrieved from <http://www.straitstimes.com/singapore/maids-fear-losing-job-when-they-get-pregnant>
- Sen, A. (2001). *Development as Freedom* (New Ed.). Oxford, UK ; New York, NY: OUP Oxford.
- SEPO (2013). *Crime Statistics: At a Glance*. Senate Economic Planning Office. Retrieved from <https://www.senate.gov.ph/publications/AAG%202013-05%20-%20Crime%20Statistics.pdf>
- Shachar, A. (2001). *Multicultural Jurisdictions: Cultural Differences and Women's Rights*. Cambridge, UK: Cambridge University Press.
- Simanjuntak, H. & Parlina, I. (2014). Aceh Fully Enforces Sharia. *The Jakarta Post*. Retrieved from <http://www.thejakartapost.com/news/2014/02/07/aceh-fully-enforces-sharia.html>
- Skinnider, E., Montgomery, R., & Garrett, S. (2014). The Trial of Rape: Understanding the Criminal Justice System Response to Sexual Violence in India, Thailand and Vietnam [Discussion Paper].
- Southeast Asia Women's Caucus on ASEAN (2013). *ASEAN Handbook for Women's Rights Activists*. Asia Pacific Forum on Women, Law and Development (APWLD). Retrieved from <http://apwld.org/wp-content/uploads/2013/12/ASEAN-Handbook-for-Womens-Rights-Activists.pdf>
- Southeast Asia Women's Caucus on ASEAN (2014a). Statement on Brunei's New Penal Code. Retrieved from <https://womenscaucusonasean.wordpress.com/2014/05/26/statement-on-bruneis-new-penal-code/>
- Southeast Asia Women's Caucus on ASEAN (2014b). Women's Rights in Brunei are Highly Threatened. *Southeast Asia Women's Caucus on ASEAN*. Retrieved from https://womenscaucusonasean.files.wordpress.com/2014/05/wc_concern_brunei-penal-code_final.pdf
- Stanford Encyclopedia of Philosophy (2013). Feminist Philosophy of Law. *Stanford University*. Retrieved from <http://plato.stanford.edu/entries/feminism-law/>

- Sultana, A. (2011). Patriarchy and Women's Subordination: A Theoretical Analysis. *The Arts Faculty Journal*, 4, 1-18. Retrieved from http://www.bdresearch.org/home/attachments/article/nArt/A5_12929-47213-1-PB.pdf
- Swaine, A. (2015). Beyond Strategic Rape and Between the Public and Private: Violence against Women in Armed Conflict. *Human Rights Quarterly*, 37(3), 755–786. Retrieved from <http://doi.org/10.1353/hrq.2015.0043>
- Tan, H.L. (2011). *The ASEAN Intergovernmental Commission on Human Rights: Institutionalising Human Rights in Southeast Asia*. Cambridge, UK: Cambridge University Press.
- TIJ (2014). *TIJ Launches Campaign #SpeakUpWomen*. Thailand Institute of Justice. Retrieved from <http://www.tijthailand.org/main/en/content/218.html>
- The Asia Foundation (2007). *Women's Empowerment Programs in East Timor*. The Asia Foundation. Retrieved from <http://asiafoundation.org/publication/womens-empowerment-programs-in-east-timor/>
- The Asia Foundation (2010). *Religious Courts: Improving Women's Access to Justice in Indonesia*. The Asia Foundation. Retrieved from <https://asiafoundation.org/resources/pdfs/V4IDReligiousCourtsWEP4pgWEB.pdf>
- The Asia Foundation (2013). *Timor-Leste Law and Justice Survey 2013*. Dili: The Asia Foundation. Retrieved from <https://asiafoundation.org/resources/pdfs/TimorLesteLJSurvey2013.pdf>
- The Brunei Times (2009). Secret Abortions Killing Women in Timor Leste. *The Brunei Times*. Retrieved from http://www.bt.com.bn/asia_news/2009/06/12/secret_abortions_killing_women_in_timor_leshte#sthash.sRPKQFYP.dpbs
- Ubink, J., & McNerney, T. (2011). Customary Justice: Perspectives on Legal Empowerment (Legal and Governance Reform: Lessons Learned No. 3). International Development Law Organization, Universiteit Leiden Faculty of Law. Retrieved from <http://www.idlo.int/sites/default/files/Customary%20Justice%203%20-%20Perspectives%20on%20Legal%20Empowerment.pdf>
- UN (2008). *Women 2000 and beyond: The Role of Men and Boys in Achieving Gender Equality*. United Nations Division for the Advancement of Women. Retrieved from <http://www.un.org/womenwatch/daw/public/w2000/W2000%20Men%20and%20Boys%20E%20web.pdf>
- UN (2015). *The World's Women 2015 Trends and Statistics*. United Nations Statistics Division. Retrieved from <http://unstats.un.org/unsd/gender/worldswomen.html>
- UN (n.d.). *15 Years of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences*. United Nations Special Rapporteur on Violence against Women. Retrieved from <http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>
- UN Committee on the Elimination of Discrimination against Women (CEDAW) (1992). *General recommendation No. 19 on Violence against Women*. Retrieved from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf
- UN Committee on the Elimination of Discrimination against Women (CEDAW) (2010). *General recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*. Retrieved from <http://www.refworld.org/docid/4d467ea72.html>
- UN Committee on the Elimination of Discrimination against Women (CEDAW) (2010). *Communication No. 18/2008. Committee on the Elimination of Discrimination against women*. Retrieved from <http://pcw.gov.ph/sites/default/files/documents/efiles/webmaster/cedaw-op-karen-vertido-case.pdf>
- UN Committee on the Elimination of Discrimination against Women (CEDAW) (2013). *General recommendation on Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women*. Retrieved from http://www2.ohchr.org/english/bodies/cedaw/docs/comments/CEDAW-C-52-WP-1_en.pdf
- UN Committee on the Elimination of Discrimination against Women (CEDAW) (2014). *Communication No. 34/2011*. Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/57/D/34/2011&Lang=en
- UN Committee on the Elimination of Discrimination against Women (CEDAW) (2015). *General recommendation No. 33 on Women's Access to Justice*. Retrieved from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf

- UN Committee on the Elimination of Discrimination against Women (CEDAW) (2016). *General recommendation No. 34 on the Rights of Rural Women*. Retrieved from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf
- UN General Assembly (1979). *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. Retrieved from <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>
- UN Women (2011a). *Factsheet: Access to Justice for Women in East and Southeast Asia*. Retrieved from http://unwomen-eseasia.org/docs/newsletter/20110914_FINAL_Factsheet_ESEASIA.PDF
- UN Women (2011b). *Progress of the World's Women: In Pursuit of Justice*. Retrieved from <http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2011/progressoftheworldswomen-2011-en.pdf>
- UN Women (2012a). *Engage in Strategic Litigation*. Retrieved from <http://www.endvawnow.org/en/articles/948-engage-in-strategic-litigation.html>
- UN Women (2012b). *Estimating the Costs of Domestic Violence against Women in Vietnam*. Retrieved from http://www.endvawnow.org/uploads/browser/files/costing_dv_vietnam_unwomen_2012en.pdf
- UN Women (2012c). *Indigenous Women Leaders in Southeast Asia Unite against Development-Based Violence*. Retrieved from <http://asiapacific.unwomen.org/en/news-and-events/stories/2014/12/indigenous-women-leaders-in-southeast-asia-unite-against-development-based-violence>
- UN Women (2013a). *Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries Based on Standards and Good Practices*. Retrieved from <http://www.unwomen.org/~media/field%20office%20eseasia/docs/publications/2015/03/domestic%20violence%20legislation%20and%20its%20implementation-cedaw.pdf?v=1&d=20150320T080014>
- UN Women (2013b). *Southeast Asia Regional Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice*. Retrieved from <http://asiapacific.unwomen.org/~media/field%20office%20eseasia/docs/publications/2014/7/sea%20judicial%20colloquium%20final%20pdf.ashx>
- UN Women (2013c). *Thailand Launches One-Stop Crisis Centre to Respond to Violence against Women*. Retrieved from <http://www.unwomen.org/en/news/stories/2013/4/thailand-launches-one-stop-crisis-centre-to-respond-to-violence-against-women>
- UN Women (2013d). *It is Time for Action to End Violence against Women: A Speech by Lakshmi Puri at the ACP-EU Parliamentary Assembly*. Retrieved from <http://www.unwomen.org/en/news/stories/2013/6/it-is-time-for-action-to-end-violence-against-women-a-speech-by-lakshmi-puri>
- UN Women (2014). *Access to Justice for Women in Plural Legal Systems of Southeast Asia*. United Nations Entity for Gender Equality and the Empowerment of Women. Retrieved from <http://asiapacific.unwomen.org/~media/field%20office%20eseasia/docs/publications/2014/7/access%20to%20justice%20final%20pdf.ashx>
- UN Women (2015). *Violence against Women* [UN Women Briefs on Women's Human Rights in the ASEAN Region]. Retrieved from http://unwomen-asiapacific.org/docs/cedaw/archive/issue_brief/Issue_Brief_Violence%20Against%20Women.pdf
- UN Women (2016). *Facts and Figures: Ending Violence against Women*. Retrieved from <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>
- UN Women (n.d.-a). *Ending Violence against Women*. Retrieved from <http://www.unwomen.org/en/what-we-do/ending-violence-against-women>
- UN Women (n.d.-b). *OSAGI Gender Mainstreaming*. Retrieved from <http://www.un.org/womenwatch/osagi/gendermainstreaming>
- UN Women (n.d.-c). *Violence against Women* [UN Women Briefs on Women's Human Rights in the ASEAN Region]. Retrieved from http://unwomen-asiapacific.org/docs/cedaw/archive/issue_brief/Issue_Brief_Violence%20Against%20Women.pdf

- UNDP (2009). *Court of Women Hears Testimonies from Trafficked, Sexually Exploited* [Press Release]. Retrieved from http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2009/08/06/unprecedented-court-of-women-hears-testimonies-from-the-trafficked-and-sexually-exploited/_jcr_content/centerparsys.html
- UNDP (2012a). *Access to Justice Assessment in the Asia Pacific: A Review of Experiences and Tools from the Region*. Retrieved from http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/Democratic%20Governance/APRC-DG-2012-A2J_Assessments.pdf
- UNDP (2012b). *Legal Reform and Legal Empowerment*. UNDP Thailand. Retrieved from http://www.th.undp.org/content/thailand/en/home/operations/projects/democratic_governance/legal_reform_and_legal_empowerment.html#
- UNDP (2012c). *Sex Work and the Law in Asia and the Pacific*. Retrieved from <http://www.undp.org/content/dam/undp/library/hiv aids/English/HIV-2012-SexWorkAndLaw.pdf>
- UNDP (2013a). *Breaking the Cycle of Domestic Violence in Timor-Leste: Access to Justice Options, Barriers and Decision Making Processes in the Context of Legal Pluralism*. UNDP Timor-Leste. Retrieved from http://www.undp.org/content/dam/timorleste/docs/reports/DG/Domestic%20Violence%20Report%20_with%20cover%20FINAL.pdf
- UNDP (2013b). *UNDP Results 'Strengthening Access to Justice in Indonesia' (SAJI) Project*. Retrieved from http://www.id.undp.org/content/dam/indonesia/docs/gover/SAJI%20Results%20Sheet_final.pdf
- UNDP (2015). *Millennium Development Goal 3*. Retrieved from <http://www.undp.org/content/rbap/en/home/mdgoverview/overview/mdg3.html>
- UNFPA Myanmar (2015). *Increasing Women Participation in the Drafting of Landmark Anti-Violence against Women Law*. Retrieved from http://countryoffice.unfpa.org/myanmar/2015/08/05/12572/increasing_women_participation_in_the_drafting_of_landmark_anti_violence_against_women_law/
- UNICEF (2015). *Legal Protection from Violence: Analysis of Domestic Laws Related to Violence against Children in ASEAN Member States*. Bangkok: UNICEF East Asia and Pacific Regional Office. Retrieved from [http://www.unicef.org/eapro/ASEAN_VAC\(1\).pdf](http://www.unicef.org/eapro/ASEAN_VAC(1).pdf)
- UNICEF (n.d.). *Glossary: Definitions A-Z - UNICEF Gender Training Content Resource*. Gender Equality UN Coherence & You. Retrieved from: <http://www.unicef.org/gender/training/content/resources/Glossary.pdf>
- UNIFEM (2009). *Time for Action: Implementing CEDAW in Southeast Asia*. Thailand: United Nations Development Fund for Women. Retrieved from http://unwomen-asiapacific.org/docs/cedaw/archive/timeforaction/1_Forward_and_Intro.pdf
- UNiTE (2013). *Preventing and Responding to Violence against Women and Girls in Asia and the Pacific*. United Nations Secretary-Generals Campaign to End Violence against Women. Retrieved from http://unwomen-eseasia.org/docs/tor/sitecore/2013/UNiTE_CSW_8pp_FNL.pdf
- UNiTE (2015). *Unite: 5 Years in Asia and the Pacific*. United Nations Secretary-Generals Campaign to End Violence against Women. Retrieved from http://www2.unwomen.org/~media/field%20office%20eseasia/docs/publications/2016/02/unite%205%20years%20publication%20v6_lo-res.pdf?v=1&d=20160218T075650
- UNODC (2009). *South East Asia's First 'Women's Court' on Trafficking and HIV*. Retrieved from <https://www.unodc.org/southeastasiaandpacific/en/2009/08/UNDP-WOMEN/south-east-asias-first-womens-court-on-trafficking-and-hiv.html>
- UNODC (2013). *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*. Retrieved from https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf
- UNODC (2015). *UNODC and Vietnam Collaborate on Legal Aid Reforms*. Retrieved from <https://www.unodc.org/southeastasiaandpacific/en/vietnam/2015/07/legal-aid-reforms/story.html>
- US Department of State (2014). *Laos 2014 Trafficking in Persons Report (Tier 2 Watch List)*. Retrieved from <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226758.htm>

- US Department of State (2015). *Timor-Leste* [Report]. Bureau of Public Affairs, Department Of State. Retrieved from <http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243548.htm>
- USAID (2005). Fragile States Strategy. *USAID*. Retrieved from http://pdf.usaid.gov/pdf_docs/PDACA999.pdf
- Van de Walle, S. (2009). Confidence in the Criminal Justice System: Does Experience Count? *British Journal of Criminology*, 49(3), 384–398. Retrieved from <http://doi.org/10.1093/bjc/azp001>
- Van Lierde, F. (2013). *Looking for that Other Face: Women Muslim Leaders and Violent Extremism in Indonesia*. The Hague: CORDAID. Retrieved from https://www.cordaid.org/media/publications/Cordaid_Other_Face_-LRtotaal_gecorrigeerd.pdf
- Vietnam Ministry of Justice (2015). *Introduction of the Reform Project on Legal Aid*. Retrieved from <http://legalaid.gov.vn/news-event/introduction-of-the-reform-project-on-legal-aid-0>
- Walby, S. (2010). Structuring Patriarchal Societies. In A. Giddens & P. Sutton (Eds.), *Sociology: Introductory Readings*, 30-35. Cambridge: Polity Press.
- Warner, X. (2015). New Study Reveals Patterns of Violence against Women in Timor-Leste. *The Asia Foundation*. Retrieved from <http://asiafoundation.org/2015/12/09/new-study-reveals-patterns-of-violence-against-women-in-timor-leste/>
- Wexler, D. B. (2010). *Therapeutic Jurisprudence and its Application to Criminal Justice Research and Development* (SSRN Scholarly Paper No. ID 1628804). Rochester, NY: Social Science Research Network. Retrieved from <http://papers.ssrn.com/abstract=1628804>
- Women's Aid Organisation (2011). *Migrant Domestic Workers*. Retrieved from http://www.wao.org.my/Migrant+Domestic+Workers_54_5_1.htm
- Women's Legal Bureau, Inc. (2006). *Philippine NGOs Shadow Report to the 36th Session of the Committee on the Elimination of Discrimination against Women*. Retrieved from <http://asiapacific.unwomen.org/en/focus-areas/cedaw-human-rights/philippines>
- ACNielsen (2006). *Baseline Study Toward Revitalization of Legal Aid and Women's Legal Empowerment*. World Bank Group. Retrieved from <http://documents.worldbank.org/curated/en/2006/01/12384872/baseline-study-toward-revitalization-legal-aid-womens-legal-empowerment>
- World Bank Group (2015). Women, Business and the Law 2016: Getting to Equal. Washington, DC: *World Bank Group*. Retrieved from http://wbl.worldbank.org/~/_media/WBG/WBL/Documents/Reports/2016/Women-Business-and-the-Law-2016.pdf
- World Health Organization (2013). *Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence*. Retrieved from http://www.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf?ua=1
- World Justice Project (2015). *Access to Justice for Migrant Workers in Singapore*. Retrieved from <http://worldjusticeproject.org/opportunity-fund/access-justice-migrant-workers-singapore>
- Zambardino, A. (2014). In Pictures: New Islamic Law in Indonesia. *Al Jazeera English*. Retrieved from <http://www.aljazeera.com/indepth/inpictures/2014/11/pictures-new-islamic-law-indon-2014112811847248153.html>
- Zhang, J., & Chan, W. (1999). Dowry and Wife's Welfare: A Theoretical and Empirical Analysis. *Journal of Political Economy*, 107(4), 786–808. Retrieved from <http://doi.org/10.1086/250079>
- Zulminarni, N. (2014). Giving Indonesia's Women Head of Households a Fighting Chance. *The Asia Foundation*. Retrieved from <http://asiafoundation.org/2014/06/18/giving-indonesias-women-head-of-households-a-fighting-chance/>



Appendices

APPENDIX N^o1: Extract of the CEDAW General recommendation No. 34 on The Rights Of Rural Women

Discriminatory or otherwise inadequate legal frameworks, complex legal systems, conflict and post-conflict settings, lack of information and socio-cultural constraints can combine to make justice inaccessible for rural women. Factors that contribute to discriminatory stereotypes and practices, especially in rural areas, include the parallel existence of often overlapping and conflicting statutory, customary, and religious laws and authorities. Many rural women and girls live in communities where informal justice mechanisms are used to resolve disputes. While informal justice may be more accessible to them, in those situations where rules and mechanisms are not in conformity with the Convention, these must be brought in line with it as well as with GR 33 (2015) on women's access to justice.

9. States parties should ensure that legal frameworks are non-discriminatory and guarantee access to justice to rural women, in line with GR 33, including by:

- (a) Conducting a gender impact analysis of current laws to assess their impact on rural women;
- (b) Enacting legislation to regulate the relationship between different mechanisms within plural legal systems in order to reduce conflicts of law and ensure that rural women can claim their rights;
- (c) Increasing rural women's awareness and legal literacy by providing them with information on their legal rights, and the existence of plural legal systems (where relevant);
- (d) Ensuring free or affordable access to legal services and legal aid;
- (e) Promoting rural women's legal empowerment, including through gender responsive quasi-judicial and judicial procedures;
- (f) Dismantling barriers to rural women's access to justice by ensuring that formal and informal justice mechanisms and dispute resolution alternatives are available to them;
- (g) Ensuring physical access to courts and other justice mechanisms, for example, through the provision of mobile courts which are accessible to rural women;
- (h) Providing training to the judiciary, lawyers, law enforcement officials, paralegals, traditional leaders, and other relevant authorities and officials in rural areas, on the rights of rural women and the negative impact of discrimination against them.

Source: CEDAW, 2016

APPENDIX N^o2: Regional human rights key agreements in ASEAN

| Date | Agreement | Outline/Comments |
|------|--|--|
| 1988 | ASEAN Declaration on the Advancement of Women in the ASEAN Region | The focus of this declaration is on the active participation of women as 'active agents and beneficiaries of national and regional development.' Notably absent is a commitment to women's empowerment in the male-dominated political and economic realms. |
| 2001 | ASEAN Declaration on the Commitments for Children in ASEAN | This declaration asserts commitment to children's rights including the right to participate in society and politics, to education, and to special attention for indigenous and disabled children. There is no mention of gender, beyond the suggestion that women alongside children, youth and the elderly need special protection by the family. |
| 2004 | ASEAN Declaration against Trafficking in Persons particularly Women and Children (2004) | This committed states to establish a regional focal network to prevent and combat trafficking, to protect passports, share information across states, 'to distinguish victims of trafficking in persons from the perpetrators' and ensure prompt repatriation and to offer each other assistance in justice proceedings. |
| 2007 | ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers | This commits states to help workers who have 'become undocumented' but asserts that this does not imply that states are responsible for the 'regularisation' of undocumented workers. The demands of this declaration are very extensive for both 'receiving states' and 'sending states' but make no explicit reference to the protection of female migrant workers. While it shows ASEAN's readiness to commit to collaboration and resource sharing in the protection of migrant workers, it seems at present highly unlikely that most states will be able to fulfil these demands. |
| 2010 | Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children | This seeks to enhance welfare, rights and development of women and children, including seeking 'concrete actions to end violence against women and children'. Member States committed to 'improve the proportion of children and women with access to housing, improved sources of drinking water and adequate sanitation facilities and hygiene, education and other basic necessities' and to deliver 'basic social services.' (Southeast Asia Women's Caucus on ASEAN, 2013: 66) According to the Southeast Asia Women's Caucus on ASEAN this declaration is paternalistic and protective' although it does call for ASEAN Member States to improve women's participation in decision making and leadership (Southeast Asia Women's Caucus on ASEAN, 2013: 67). |
| 2013 | ASEAN Declaration on the Elimination of Violence against Women and Violence against Children in the ASEAN Region | This commits states to strengthen, amend and implement legislation on violence against women and support initiatives to prevent offending and care for victims. It also commits to 'eliminate harmful practices that perpetuate sex stereotyping, to encourage research and data collection and to develop collaborations with ASEAN Dialogue Partners, UN Agencies, civil society, community-based organisations, academia, philanthropists and private entities. |

Scoping Study
Women's Access
to Justice:
Perspectives from
the ASEAN region

A collaboration between
Thailand Institute of Justice
and University of Cambridge