



## ASIA-PACIFIC RIGHTS AND JUSTICE INITIATIVE

Case Studies on Access to Justice by the Poor and Disadvantaged

# Promoting Gender Sensitivity in the Philippine Court System in the Philippines

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### SUMMARY BOX

#### Categorization of lesson:

Strategies and mechanisms to address gender biases in the court system.

#### Critical lessons for the sub-practice:

1. Even when legal frameworks formally recognise women's rights, their access to justice may be impeded by the existence of gender biases in the court system.
2. Because gender biases in the court system are often invisible and remain largely unacknowledged, the translation of awareness into action arises from a number of external factors.
3. Addressing gender biases in the court system is insufficient to fully ensure women's access to justice in obtaining effective remedies.
4. The design of gender sensitivity training should involve both gender experts and judges so that it is responsive to the needs of court personnel.
5. To institutionalise gender training in law curricula, officials must be convinced of the necessity of addressing gender bias in the court system.
6. A Committee on Gender Responsiveness in the Judiciary may be effective if the committee is led by a person with "moral ascendancy," and if commitment can be obtained to allocate financial and human resources toward implementation of the GAD plan.
7. Donor co-ordination must be ensured for accurate, thorough gender assessments, and resources for GAD programmes must be used strategically and effectively.
8. Having a committee rather than a designated individual focal point to formulate the GAD plan means the plan will be a result of participatory consensus building

#### Recommendations:

- ❖ To mainstream gender in the judiciary, create awareness; follow with gender sensitivity training; include gender issues in law curricula; strengthen ethical guidelines; "engender" court processes; establish adequate structures to formulate and implement a results-oriented plan geared toward eliminating biases; and allocate internal resources.
- ❖ Find a champion at the highest level.
- ❖ Strengthen co-ordination and dialogue among national institutions with a role in the justice system, such as through establishing a committee to facilitate the process.
- ❖ Achieve attitudinal changes by involving both judges and gender advocates in design of trainings and using techniques adequate for adult education.
- ❖ Analyse causes outside the judiciary per se that impede women's access to justice.

## CATEGORISATION OF LESSON

Strategies and mechanisms to address gender biases in the court system

## BACKGROUND

Gender biases in the court system may exist at different court levels and in different stages of criminal and civil cases. Such biases are largely attitudinal, affecting the resolution and outcomes of cases; this in turn constrains women's capacity to obtain effective remedies to grievances.

The root causes of such biases in the courts are not only socio-cultural, but also structural. Because of the feminisation of poverty, it is mostly women who lack representation and participation in decision making and experience discrimination in access to economic resources. This situation is reinforced by illiteracy, lack of education and awareness, and powerlessness.<sup>1</sup>

The Supreme Court of the Philippines, through its Action Programme for Judicial Reform (APJR) 2001-2006, is targeting its efforts toward achieving a judiciary that is independent, effective and efficient, and worthy of public trust and confidence. UNDP Philippines is supporting the Supreme Court in implementing the APJR through interventions that strengthen the capacity of the judiciary and other pillars of the justice system to improve access to justice, particularly by the poor and disadvantaged.<sup>2</sup> A UNDP-supported intervention involved carrying out a study entitled "Gender Sensitivity in the Court System," as the Supreme Court recognised the need to have adequate, timely information available on the nature and extent of gender bias in the courts. The study also gathered data on the composition and structure of the Philippine judiciary, and identified and analysed previous policy and programme reforms and recommendations by various sectors to eradicate gender bias.

After completing the study, the Supreme Court developed a programme of action to mainstream gender in the judiciary, seeking to improve the quality of judicial services and access to justice by all, regardless of gender. The Court's programme of action mainly involves:

- Gender-sensitivity training for the Programme Management Office (PMO), created by the Supreme Court to manage and oversee the implementation of the APJR, as well as judges, prosecutors, lawyers, public attorneys and other court personnel, especially those involved in handling domestic violence cases.
- Institutionalising gender issues in the law into law schools and the Philippine Judicial Academy curricula.
- Strengthening ethical guidelines in the practice of law and law enforcement professions.
- "Engendering" court processes, or making courts gender-responsive.

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<sup>1</sup> The Philippines provides illustrative evidence of this problem. Despite important advances in gender equality in the country at normative and policy levels, gender bias is reflected in the Government's delivery of basic services and gender inequality persists in access to employment and income, quality of health and medical care, and decision making and leadership. In the Philippine justice system, there is an overall invisibility of gender bias against women, a lack of recognition of its existence, and a corresponding lack of gender responsiveness in the way cases are handled. Though the rules of the court may appear gender-neutral, there is gender bias in the application of the same rules. There is also a lack of sensitivity by some law enforcers, social workers, judges and lawyers to the predicament of women and the lack of appreciation of the unequal power relations between spouses. Consequently the Philippine court system is weak in its capacity to provide effective, gender-responsive remedies, particularly in the area of adjudication.

<sup>2</sup> PHI/02/007 Judicial Reform: Strengthening Access to Justice by the Disadvantaged

- Creating *mechanisms* to ensure all policies, programmes, operations and structures of the judiciary are gender-responsive.
  - Formulation of a *Committee on Gender Responsiveness in the Judiciary* (CGRJ) with representation from agencies of the judiciary. The mandate of the CGRJ is to integrate gender and development (GAD) principles into the judiciary's policies, programmes and structures. Composition of the CGRJ includes the Office of the Chief Justice, Offices of the Associate Justices, the Court Administrator, the Philippine Judicial Academy, the Clerk of the Court and the PMO.
  - Identification of *gender issues and gaps* affecting the judiciary and related to the judicial reform programme and its sub-projects.
  - Formulation and implementation of a comprehensive *GAD plan for the judiciary* by the CGRJ and *GAD operational guidelines for the judicial reform programme*.
  - The Supreme Court's Executive Committee decided that funding for all activities related to GAD shall be taken from the Supreme Court budget. The *institutionalisation of the allocation of 5 percent of the judiciary budget for gender programmes* provides the basis for ensuring that minimum efforts toward addressing gender issues and gaps in the judiciary are made. This allocation of resources is important for the sustainability of the gender mainstreaming action plan, because it reduces dependency on donor support.

## FINDINGS AND CONCLUSIONS

### *Lessons on Output/Outcome*

Even when legal frameworks formally recognise women's rights, their access to justice may be impeded by the existence of gender biases in the court system.

The main manifestations of gender bias against women in the court system are (a) the negative attitudes toward female victims and offenders; (b) trivialisation of sexual and domestic violence, where women are often judged as having provoked the violence or seduced the rapist; (c) gender-insensitive court procedures; (d) gender stereotypes affecting court action; and (e) under-representation of women in the courts.<sup>3</sup> As a result, cases are dismissed or women feel reluctant to go through the intimidating process of court trial, and thus impunity persists. This in turn sustains and promotes the incidence of abuses against women.

Because gender biases in the court system are often invisible and remain largely unacknowledged, the translation of awareness into action arises from a number of external factors.

The fact that awareness was translated into action was due to:

- *Openness and political will* at the highest level (Chief Justice) to recognise the existence of gender issues in the judiciary.
- *Existence of champions in courts*, particularly the PMO, which caught the attention of the Chief Justice after completion of the study and drafted the administrative circulars and structures later established by the Supreme Court.

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<sup>3</sup> Data derived from the Philippines Department of Justice's Task Force on the Protection of Women Against Abuse, Exploitation and Discrimination from January to September 2002 indicates that, of the 76 cases during that period, 46 percent were dismissed due to insufficiency of evidence or reluctance on the part of victims to go through court trial. Similarly, as of 31 December 2002, only 23.4 percent of the total number of justices in the Philippines were women. In Muslim Mindanao, there are no female judges or justices in the local court system.

- *Establishing clear accountabilities and allocating resources to fulfill them ensured that the programme of action was operationalised.* Goodwill is not a reliable way to ensure gender is mainstreamed. Designation of a gender focal person in the PMO, which proved effective in catalysing and co-ordinating the programme of action to mainstream gender in the judiciary.

Addressing gender biases in the court system is insufficient to fully ensure women's access to justice in obtaining effective remedies.

The gender sensitivity study, although creating awareness of different manifestations of gender biases within the court system, was insufficient as a mechanism that would result in increased women's access to justice. Nevertheless, it had influential results in this respect – results not strictly within the planned scope of the activity (the programme of action). Even so, ensuring women's access to justice requires developing institutional capacities of all pillars of justice – community, prosecutors, corrections and law enforcement officials – not only the judiciary, to provide effective, gender-responsive remedies and access to these. The focus should be not only on formal remedies, but also on informal institutions, since these are more physically and culturally accessible to women and other marginalised groups. Effective access also requires expanding women's access to information on the judicial system and legal literacy, as well as availability of legal counsel.

### *Lessons on Process*

The design of gender sensitivity training should involve both gender experts and judges so that it is responsive to the needs of court personnel.

Effectiveness of gender sensitivity training depends on participants' being open to gender sensitization; gender trainings per se may be insufficient to obtain attitudinal changes. In the case of the gender training for judges, the training design needed to be responsive specifically to the needs of court personnel; this required involving both gender experts and judges in the design. The training also managed to obtain attitudinal changes by use of adult education training techniques such as open discussions and role-play. It will be important in the future to continue gathering feedback on the impact of gender sensitivity training and the GAD plan for the judiciary.

To institutionalise gender training in law curricula, officials must be convinced of the necessity of addressing gender bias in the court system.

Efforts to institutionalise a gender perspective on the practice of law in law school curricula was met with resistance by deans and other officials unless they were persuaded that gender bias in the courts was real. However, it should be noted that the fact that the Philippines' cultural background is relatively less oppressive of women than other cultural settings acted as an overall advantage.

A Committee on Gender Responsiveness in the Judiciary may be effective if the committee is led by a person with "moral ascendancy," and if commitment can be obtained to allocate financial and human resources toward implementation of the GAD plan.

The challenge of getting CGRJ members to devote themselves to mainstreaming gender in the judiciary can be facilitated by having the chair be a person with "moral ascendancy" – such as a Justice of the Supreme Court. The Committee also included a representative of the judges' association, which strengthened its outreach. Its weakness was that it did not have representation of civil society or community leaders. In addition, a challenge is involved in obtaining commitments from the different heads of agencies of the judiciary to allocate financial and human resources toward implementation of the GAD guidelines for the

judicial reform programme. Credibility and leadership of the Supreme Court in carrying forward judicial reform efforts also must be maintained from the point of view of all agencies of the judiciary.

Donor co-ordination must be ensured for accurate and thorough gender assessments, and resources for GAD programmes must be used strategically and effectively.

Different donors in the area of judicial reform have their own gender assessment tools, and there is a need for harmonisation. Accurate and thorough gender assessment of the judicial reform programme and its sub-projects must arise from this myriad of tools. At the same time, the 5 percent of judicial budget earmarked for GAD programmes must be used so that real change will occur and an increase in the allocation can be achieved.

### *Operational Lessons*

Having a committee rather than a designated individual focal point to formulate the GAD plan means the plan will be a result of participatory consensus building

If a single focal point from the PMO or another agency of the judiciary were to develop the GAD plan, other agencies could easily neglect their responsibility to mainstream gender in their own policies, operations and structures. This is very possible, given that senior-level management of agencies of the judiciary is dominated by men, who may not be gender-aware. Establishment of a committee facilitated ownership of the plan by all involved agencies.

## RECOMMENDATIONS

- ❖ To mainstream gender in the judiciary, create awareness of the extent of the problem; follow with gender sensitivity training; include gender issues in law curricula; strengthen ethical guidelines; “engender” court processes; establish adequate structures to formulate and implement a results-oriented plan geared toward eliminating biases; and allocate internal resources.
- ❖ Find a champion at the highest level who believes in gender sensitivity in the court system and who can bring all agencies of the judiciary together to support such an initiative.
- ❖ Strengthen co-ordination and dialogue among national institutions with a role in the justice system, such as through establishing a committee to facilitate the process. Such a committee needs continuous advocacy and technical support – in the case of the judicial reform programme, a PMO was useful.
- ❖ Achieve attitudinal changes by involving both judges and gender advocates in design of trainings and using techniques adequate for adult education. Trainings should be followed by setting specific goals and establishing adequate structures to oversee implementation.
- ❖ Analyse causes outside the judiciary per se that impede women’s access to justice, arising from other pillars of the justice system and structural factors.