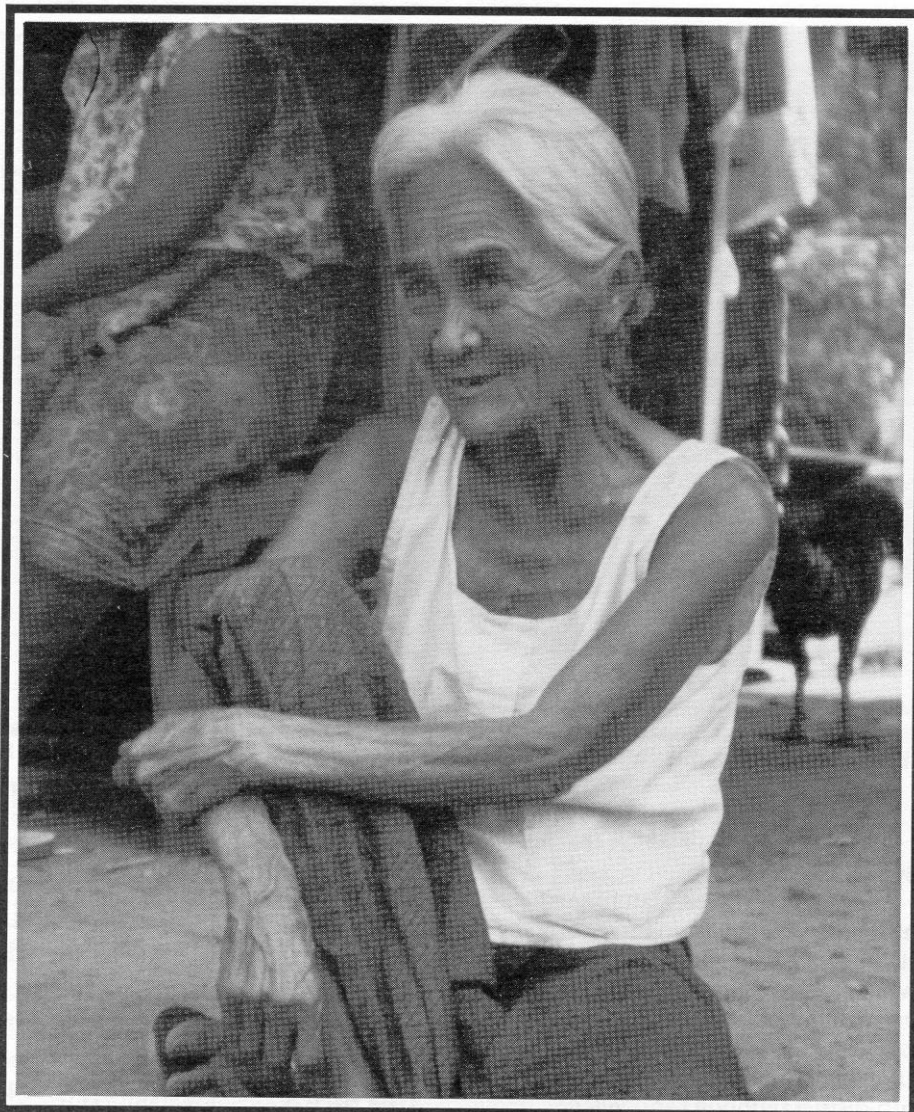




LAW VS CUSTOM IN THAILAND



Western statutory laws are slowly eroding the customary rights of rural women.

The common assumption that modern legal statutes are more supportive of women's rights than rural customs and traditions is coming under close scrutiny at an IDRC project in northern Thailand.

The project is studying the role of women under long-standing traditions which have the force of "customary laws" and the impact of more recently introduced, "modern" statutory laws.

The initial findings are not encouraging, says the project leader, Prof Virada Somswasdi. "Our assumption is that this external model of statutory law is weakening the role of women in rural society," she says. "Legislators must learn to leave some space for customary law."

More than 80% of Thais live in rural areas and most of them live and die in the same province where they were born. Largely isolated from outside influences, these people have over the generations developed communally accepted rules of allocating resources within the community, of making decisions about development, and of

resolving conflicts. Statutory law is a new development for many rural communities and, according to Prof Somswasdi, it has not been a completely positive one.

She says that discrimination against women has been able to adapt to the advent of statutory law. Statutory laws have made the best inroads in areas where the effect has been to undermine women's traditional rights. Meanwhile, many women remain largely ignorant of those statutes which theoretically guarantee them equality with men.

Prof Somswasdi, who is the chairperson of the Centre for Women's Studies at Chiang Mai University, is carrying out the research with the assistance of two colleagues at the university, economics professor Benchavan Thongsiri and sociologist Shalardchai Ramitanondh.

The Thai researchers are surveying households in three villages in Chiang Mai province. Results of this study will ultimately be compared with similar IDRC studies being carried out in China, Africa, and India.

UNDERMINED RIGHTS

The Thai study is the only one focusing on inheritance, community political participation, and family law. In at least two of these areas — inheritance and the family — recently introduced statutes based on Western models have undermined Thai women's traditional rights, at least in rural areas where customary law formerly held sway.

One of the key forms of social consensus in traditional rural Thai society has centred on the family. Traditional Thai society is matrilineal — upon marriage, a man goes to live with his wife's parents. Only after proving his responsibility by working their land with them for several years is he given a piece of his own land.

Matrilineal tradition also provides that the youngest daughter in the family remain with the parents and care for them until they die. In return, she inherits most of their property. Actually, custom specifies that this applies to the youngest child, but a son who is the youngest is expected to marry and stay with his wife's family.

REPORTS

In 1932, the end of absolute monarchy led to the creation of Thailand's first constitution. A civil code introduced at the same time contained inheritance provisions, still in effect today, which give all children equal claim to an estate, unless otherwise specified in a will.

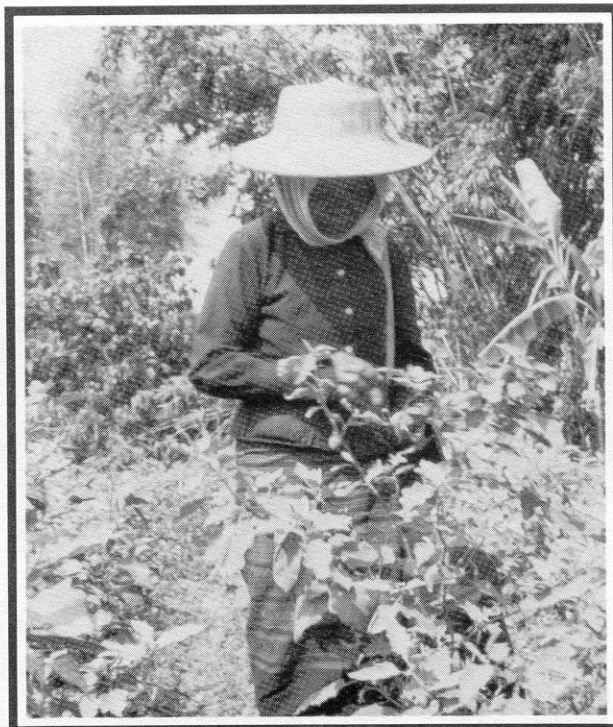
Because many rural Thais still consider it bad luck to think about one's own death, few prepare a will. The survey found several cases in which a family's youngest daughter still had to care for her parents, but ended up with little inheritance upon their deaths because the rest of the children had claimed their shares.

Prof Somswasdi notes that the new system has implications for more than just the youngest daughter. "Now the children have turned to using the law to demand their legal rights and the productive land is divided into pieces too small to work on," she says.

Village practices also show that customary law has a flexibility that is absent from the modern legal system. In one family, for example, the youngest daughter already had a large piece of property, so the youngest brother, a bachelor, was given inheritance of his parents' property. Although the legal system normally requires the villagers to take such issues to court, most remain oblivious to or ignore the statutory laws, preferring customary methods. The respect commanded by the traditional method of consulting village elders allows conflicts to be settled by consensus.

"People don't know the statutory law," says Prof Somswasdi. "Unlike the custom, the law does not have any relation with their lives. Rural villagers have lived with, and been raised by, these customs for years."

Not that the rural system of customary law is above criticism. Traditionally, women have been encouraged to participate in service-oriented community activities, like food preparation or temple beautification, but barred from policy-making. Women, for example, are recruited to make offerings to the temple, but cannot sit on temple affairs committees that consider finance and administration.



Law and practice don't recognize that most Thai farmers are women.

SOME BENEFITS

And, in some cases, statutory laws have been beneficial in increasing the status of women. One statutory law which seems to have had an unqualified positive effect on women is a local administration law of 1982 allowing women to be appointed sub-district (tambon) and village (moobaan) chiefs. Today, more than 800 women have been appointed to these positions, mostly in Thailand's northeast.

It's worth noting, however, that women are frequently barred from climbing higher up the administrative and political ladder, Prof Somswasdi says. The number of women parliamentarians in Thailand is extremely low. In the July 1988 elections, only 11 women were elected out of a total of 357 seats. No less a person than a recent interior minister has been quoted as saying that women are not fit to hold higher positions simply because they are women. It is for these reasons that initial conclusions from the study by Prof Somswasdi and her colleagues indicate that well-intentioned attempts

to bring "modern" statutory laws to Thailand may not have the intended effect. Examples like family relations and inheritance serve to show how newly introduced laws can be counter-productive, disrupting traditional patterns of community relations.

"The pace of this newly introduced, modern legality is so fast that Thai society, urban or rural, has been hard-pressed to adapt," says Prof Somswasdi. "In some cases, women have been further discriminated against in this period of adjustment. We are hoping in this study to redress that situation and regain balance between customary and statutory law."

Mark Timm in Thailand



Prof Virada Somswasdi,
Associate Professor/Chairman,
Faculty of Social Sciences,
Chiang Mai University, Chiang
Mai 50002, Thailand.