

CHAPTER 2:

SOCIOECONOMIC CONTEXT AND THE LAW: FACTORS AFFECTING WOMEN'S STATUS

For millions of women around the world, landownership and access to credit are keys to survival, yet rarely their right. Current economic conditions and structural adjustment policies further deny women economic opportunity in every part of the world without exception. (CIDA 1995: 8)

2.1 Introduction

Of particular relevance to any assessment of the sociolegal status of women in Southeast Asia is the impact of rapid economic growth and globalization on legal and judicial systems.

Rapid economic growth in the region over the past 20 years has presented many new opportunities for women in Indonesia, Malaysia, Philippines, and Thailand. However, women have not benefited to the same extent as men, and this is partially due to gaps in legislation related to women and weak law enforcement. Economic growth has also been accompanied by far-ranging socioeconomic change, which has made it difficult at times for legal reform to keep pace with social and economic transformation.

More recently, the Asian financial crisis that began in 1997 and the stabilization measures adopted by these countries have had further negative ramifications on both the sociolegal status of women and the reform process. For example, women make up the majority of overseas workers, and many of them lost their positions and were repatriated as a result of the financial crisis. Plant shutdowns and retrenchments are also likely to reduce significantly the employment opportunities and economic gains made by women over the last 10 years. Of greater significance for the longer term is the risk that the attention of policymakers and activists will be diverted to what are considered to be more pressing short-term matters, and the momentum built up to address women's issues will be

lost. Of concern here is the likely deterioration of working conditions due to weakened enforcement and monitoring of labor laws. It is for this reason that, in times of financial crisis, the formulation and enhancement of women's legal and institutional rights must be accelerated to protect the hard-earned gains that are at risk of being lost.

2.2 Economic Globalization

The governments of all four countries have adopted export-led growth policies. Both Indonesia and the Philippines have opted for an economic growth path led by labor-intensive manufactured exports. Malaysia went through a similar stage during the 1980s, when the manufacturing sector led its economic recovery. Most factories in export-processing zones and similar locales employ large numbers of women. In Thailand, the cultivation of traditional subsistence crops has given way to export-oriented commercial agricultural and aquacultural ventures. Formerly self-sufficient women in subsistence agriculture and fisheries have become wage laborers in commercial agriculture and aquaculture enterprises.

The need for women in the Southeast Asian region to pursue legal and judicial reform has become even more pressing since the economic crisis. In general, women and women activists in Southeast Asia have promoted legal reform to mainstream women into all aspects of development and society. During times of economic crisis, such efforts become even more urgent. The danger here is that unless women vigorously pursue these issues now, they will become further marginalized as economic crisis, structural adjustment, and economic globalization divert the attention of policymakers and activists toward pressing, short-term matters.

The following groups of issues have been identified as having important sociolegal implications for women in the four countries. Many of these issues have relevance across the four countries and would benefit from a regional approach (Chapter 6.6).

2.2.1 Issues facing Female Workers in the Formal (Export) Sector

- *Adequate legislation to manage the tension between legal rights/provisions for minimum wage and decent working conditions on the one hand, and local competition for jobs and international competition for cheap labor on the other.*
- *Legal safeguards, benefits, social security, and employment security in the context of flexible work arrangements.*
- *Nondiscriminatory access by women to credit and equitable systems of taxation.*
- *Enhanced recognition of and legal protection from domestic violence and other forms of sexual exploitation and harassment.*

A larger proportion of women have now entered the formal sector, and women constitute a larger and rising share of formal sector workers. Due to their limited training, these women are typically hired in the lower occupational categories, with low job security, low wages, and minimal labor protection. The hazardous conditions in many of these factories (due to their use of harmful chemicals), sexual harassment from superiors, and poor living conditions worsen the work environment. Women workers, in turn, are generally not aware of their rights or of the existence of regulations that protect workers.

The issue of a minimum wage and other “costly” labor transactions in a country with an oversupply of labor is a classic problem. The rapid rise in real wages dampens employment creation in the formal sector; a rise in transaction costs for employers, such as those brought about by government regulations and bureaucratic red tape, has the same effect. In a country where there is an oversupply of labor, this is a real concern. In Indonesia, minimum wage levels have been raised substantially in the recent past; employers in textile and related industries, who are suffering from reduced exports, have threatened to reduce their workforce by about 50 percent if forced to comply with these levels.

Due to the intense competition in the export market, many companies use subcontracting arrangements, which have led to an increase in home-based piece-work arrangements for women. Such “flexible work” is attractive to employers who wish to engage women in home-based

manufacturing activities to avoid paying higher wages, maternity and leave privileges, and other benefits. Women may also prefer such work as it allows them to combine child care and market-oriented work, especially in contexts where child care and other support services are absent. However, these arrangements weaken the bargaining leverage of both home-based workers and other female workers in the formal sector. The question of legal safeguards, social security, and employment security for subcontractees has not been satisfactorily resolved either. Young children are often employed, violating child labor laws. None of the countries has signed the International Labour Organisation (ILO) Convention on Homeworkers (1996); governments are hesitant to regulate the practice of subcontracting, as this may adversely affect their international competitiveness. Present labor laws in the four countries therefore cover only the formal sector and offer little protection to these home-based workers.

This is not to deny that new employment opportunities have been created for women. Educated and trained women, in particular, have found high-paying jobs in multinational corporations and government agencies. Economic growth and the consequent rise in incomes have encouraged some women to become entrepreneurs and establish their own businesses. However, laws and the policies of credit institutions do not yet reflect the reality of women in business. In Indonesia, for example, married women cannot enter into contracts unless assisted by their husbands. Although the Women in Nation Building Act of the Philippines gives men and women equal rights to enter into contracts and loan agreements, the consent of the husband is necessary to obtain credit if property is used as collateral. The same is true in Thailand. In the absence of a divorce, a woman who is separated from her husband may have difficulty in using property as collateral, since she will need the consent of her husband, to whom she is still considered legally married.

Furthermore, as women move into the formal labor sector, relationships in the household also change. While in fact many women have become the main breadwinner in the family, men are still considered household heads with corresponding legal rights. Cases of domestic violence may also arise in response to the tensions of modern life and rapid social change. Women receive little legal protection from the existing weak laws on domestic violence, and even less support from the generally poor enforcement across the four countries. Women are

subject to other forms of exploitation, such as sexual harassment. The lack of sexual harassment laws in most of the countries, the difficulties encountered in accessing the legal system, the fear of retaliation and sense of shame, and the threat of losing their jobs leave women vulnerable.

2.2.2 Issues facing Rural and Indigenous Women

- *Adequacy of land compensation and/or legal recognition of landownership rights of rural and indigenous women.*

Women in indigenous and ethnic communities have been further marginalized, particularly with regard to land ownership. In Malaysia, for example, indigenous women have been deprived of their rights under customary law to be co-owners of land, because government resettlement projects award land titles and certificates of titles to crops to men as “head of the family”. With increasing development, land will become an even scarcer commodity. Indigenous women who do not have the skills to fit into the market economy will end up on the lowest rung of unskilled jobs. The same will hold true for rural women displaced from converted plantation lands, who will most likely migrate to urban centers.

2.2.3 Issues Related to Migrant Labor, particularly Domestic Workers

- *The need for legal protection for a growing domestic worker sector.*
- *Ineffective laws and governance structures to protect overseas workers.*
- *The need for bilateral and regional approaches to offset the tension between respect for the sovereignty of the host country and the responsibility to uphold human and political rights of migrant workers.*

There are further omissions and gaps in the laws of these countries from the perspective of rural-urban and international migrant workers.

Given the large number of women migrating for work across the region, there is also a pressing need for bilateral and regional agreements to respect and protect the rights of female migrant workers. Discriminatory marriage and citizenship laws in the countries have created problems for the children of women who marry citizens from another country. In addition, foreign wives and migrant workers who are victims of violence may have little legal protection, as temporary visas or work permit arrangements can be withdrawn.

Rural-urban migrants often take up domestic work. There are often no laws protecting these wage earners, and where laws exist they are inadequately enforced. Consequently, women in this sector receive low wages and can be abused by both employers and labor supply agents.

Indonesia and the Philippines both recognize the contribution of overseas domestic workers to the economy. International migration is also growing in Thailand. Malaysia attracts labor from Indonesia, Philippines, Bangladesh, and Pakistan. There have been cases of sexual harassment, abuse, and violence against foreign domestic workers.

Domestic work is not well regulated in many countries because of its “private” and “informal” nature. In the Philippines, as elsewhere, working conditions inside employers’ homes are not open to scrutiny or verification. In Indonesia, existing regulations concern only the management and control of labor supply agencies. Finally, women are overtly penalized in Indonesia: they are required to pay more than men for overseas placement services, irrespective of the nature of the job.

2.2.4 Issues Related to New Telecommunications and Information Technology

- *Use of telecommunications and information technology, and media regulation, to exploit and degrade women, and/or to reduce the potential for discriminatory content and practices.*

The expansion of telecommunications, such as satellite communications and the Internet, raise new issues related to the commodification and use of women as objects. Filipino women are, for instance, “for sale” on the Internet. Complex issues relating to freedom of information and the dissemination and accessibility of pornographic

material will also arise. At the international level, there may be a need to initiate a study on the possibility of an international agreement.

2.2.5 Global and Regional Health Issues

- *Antidiscrimination laws and effective privacy laws to protect victims of HIV/AIDS and infectious diseases.*

The HIV/AIDS crisis will have an increasing impact on women in the four countries and there will be increasing pressure for this problem to be addressed effectively. Women in the four countries are vulnerable because of the unavailability of clear and accurate information on the disease and its prevention; because of prevailing taboos that prevent women from actively seeking advice on reproductive health and HIV/AIDS, and because of discrimination against victims.