

Protection of Women's Human Rights in Judicial Processes⁴³

Following Thailand's accession to CEDAW in 1985, legal reforms have been instituted over the years to comply with its commitments under the Convention. Specifically, several amendments in criminal procedure were introduced to ensure a women and child-friendly legal process, particularly for victims of violence. At the core of these reforms is a "multi-disciplinary approach" that involves a team of judges, public prosecutors, lawyers, social workers and psychologists, who work together to deliver a coordinated response in the best interests of the victim-survivors. Several new procedures were introduced in the investigation and prosecution of cases in order to guarantee the rights of women and children. A victim-survivor who is not over 18 years old may request to be accompanied by a psychologist or social worker and a lawyer during the police or public prosecutor's investigation. Regardless of age, a victim-survivor in domestic violence cases must be accompanied by a psychologist, social worker or a trusted person of her own choosing during the investigation of the case.

As a pilot project, psycho-social counselling services for survivors of domestic violence were also provided by medical or court clinics in the Thonburi Criminal Court. Following the successful implementation of this project, it has been replicated in the Nontaburi Provincial Court and District Court as well as in the Chiang Mai Criminal Court.

In trials before Juvenile and Family Courts, the new rules on criminal procedure now allow a victim-survivor to give testimony through a psychologist or social worker to avoid confrontation with the defendant. For children, the court may allow the use of closed circuit television. Intended to prevent re-traumatisation of victim-survivors, the complainants or witnesses may use these procedures at any time during the trial, including during cross-examination.

In cases of sexual abuse, new rules on evidence now prohibit the courts to hear the presentation of any evidence that relates to the sexual behaviour of the complainant with other people, except with the defendant, unless deemed necessary. This new rule has been adopted to change existing practice in the prosecution of sexual offences wherein the character or sexual history of the complainant was allowed to be presented as evidence and considered relevant in determining the commission of a sexual crime.

In cases of domestic violence, such as when a wife kills her husband as a result of spousal abuse, the courts in Thailand have also admitted the battered wife syndrome as a defence. However, the courts do not consider it as a justifying circumstance that exempts the wife from any criminal or civil liability. Rather, this defence is only taken into account to come up with alternative sentencing of the accused spouse, such as probation or suspension of punishment. Since the admissibility of battered wife syndrome is not decreed in any law, its application is also dependent on the individual discretion of any judge.

43. Presentation of Justice Vacharin Patjekinvinusakul, Presiding Judge of the Supreme Court, Thailand, 4 September 2013