



# Women and Justice in Southeast Asia: The Case of Thailand

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**W**omen's access to justice (A2J) is a human right<sup>1</sup> essential to the realization of all rights protected under the Convention on the Elimination of All Forms of Discrimination Against Women, the implementation of which is monitored by the Committee on the Elimination of Discrimination Against Women (CEDAW).<sup>2</sup> As stated by the U.N. Development Programme (UNDP), A2J is “a key means to defend other rights” and “an enabling right” that allows individuals to enforce their substantive rights and obtain a remedy when these rights are violated.<sup>3</sup> A2J is the ability of people to seek and obtain a remedy through formal or informal institutions of justice and in conformity with human rights standards.<sup>4</sup>

In July 2015, CEDAW filled an important gap by its adoption of a comprehensive general recommendation on women's A2J, recognizing its importance in optimizing the “emancipatory and transformative potential of law.”<sup>5</sup> It accordingly considers the obstacles that restrict women's A2J, reinforces earlier work of the committee, and identifies six interrelated and essential components to the concept across all areas of laws: “justiciability, availability, accessibility, good-quality, accountability of justice systems, and provision of remedies for victims.”<sup>6</sup>

A2J is also a fundamental element of the rule of law,<sup>7</sup> which is the bedrock for both justice and security and also a cornerstone of good governance and democracy.<sup>8</sup> It has different meanings. It may be defined narrowly to signify an individual's right to bring a claim to a court or tribunal and to have that court or tribunal decide the claim.<sup>9</sup> It could also refer to the right to be given legal aid<sup>10</sup> when the individual does not have the resources required to avail him- or herself of legal remedies.<sup>11</sup> And, in a broad sense, A2J also includes, as a critical element, the individual's right to have his or her claim decided according to substantive standards of fairness and justice.<sup>12</sup>

In international human rights instruments—such as the 1948 Universal Declaration of Human Rights (UDHR),<sup>13</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>14</sup> and the European Convention on Human Rights (ECHR)<sup>15</sup>—A2J as a term of art is not used, but the right of access to justice *per se* is clearly guaranteed.<sup>16</sup>

International law and standards require countries to respect, protect, and fulfill the civil, cultural, economic, political, and social rights of all those within its territory and jurisdiction without distinction of any kind.<sup>17</sup>

In fact, effective protection of human rights depends largely on domestic legal systems. In Southeast Asia, systems of laws are varied and include civil, common, religious,<sup>18</sup> and customary laws or combinations thereof.<sup>19</sup>

On the one hand, formally, the right of A2J is guaranteed and respected; in fact the Thai Constitution states that all citizens should enjoy equal protection under the law regardless of origin, sex, or religion; it also has antidiscrimination and gender-equality provisions.<sup>20</sup> On the other hand, 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.<sup>21</sup>

There are many barriers and restrictions that impede women from realizing their right of A2J on a basis of equality.<sup>22</sup> These obstacles occur in a structural context of discrimination and inequality<sup>23</sup> (e.g., patriarchy<sup>24</sup>; the disproportionate power of rigid, male-oriented interpretations of religious laws; the lack of gender sensitivity and gender responsiveness at all levels of the justice process; societal values, culture, and traditions; and gender stereotypes), gender bias in the legal systems,<sup>25</sup> social and economic barriers,<sup>26</sup> institutional barriers (e.g., police and courts practices),<sup>27</sup> and additional challenges faced by specific groups of women (e.g., LGBT individuals, migrants, and rural populations).<sup>28</sup>

There are also legal barriers in accessing justice. One solution is to adopt a strong gender perspective in investigation and adjudication.<sup>29</sup> This does not mean taking the side of the woman in every case and throwing out standards of fairness in investigations or reneging on the duty to make sound evidence-based adjudication,<sup>30</sup> but recognizing that men and women are treated differently due to their gender and therefore have a unique personal perspective.

It is also important to have female legal experts. This is especially true in Southeast Asia where, depending on the specific Asian culture, women prefer to talk to other women.<sup>31</sup> Unfortunately, the percentage of women in the justice system is quite low compared with other governmental offices.<sup>32</sup>

But what does it mean to be a woman in Thailand who wants access to legal professions?

Thailand's society is patriarchal in nature, which gives men superior positions as compared to women. Women therefore face myriad issues when it comes to joining the legal professions,<sup>33</sup> especially in a male-dominated area. In the past, women were not admitted to law schools and faced a long struggle to change the perception that women were not suitable for legal careers.<sup>34</sup>

There are two clear examples that explain the scenario. The recruitment process for female judges began in 1975, when just a few women had achieved the presidency of the Supreme Court of Thailand.<sup>35</sup>

The problems faced by female lawyers are also unique to the region, ranging from traditional-minded clients, who may prefer male partners on their accounts, to conservative societal pressures that may frown upon female ambition.<sup>36</sup>

The percentage of women in the justice system is quite low compared to other governmental offices.<sup>37</sup> As shown by statistics, there are four types of public servants with the huge gender gap between male and female employment: police officers, public prosecutors, judges, and autonomous organization's officers.

In the last few years, Thailand has improved a lot, as have Malaysia, Hong Kong, and the Philippines.<sup>38</sup> There have been recent studies that show that Thailand is ranked in the top three in terms of having women in senior management positions, together with the Philippines.<sup>39</sup>

Western influences were the most important factor that brought about changes in the role and status of Thai legal expert women.

The truth is women do not suffer de jure restrictions to mobility, education, and labor force participation. What women in Thailand suffer is a lack of the de facto access to power: a cultural disempowerment that is in part a result of sexual imperialism, state policies, and gender-specific socialization.<sup>40</sup>

An expression still heard in Thailand refers to women as "the hind legs of an elephant," meaning they play a big role behind scenes

supporting men and being productive members of the economy—and they always come last. ☉



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*University, 2018).*

## Endnotes

<sup>1</sup>FRANCESCO FRANCONI, ACCESS TO JUSTICE AS A HUMAN RIGHT 21 (2007).

<sup>2</sup>Thailand ratified the CEDAW Convention on Aug. 9, 1985. Art. 2(c) speaks of the obligations of state parties "[t]o establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination. G.A. RES. 34/180, CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (Dec. 18, 1979) [hereinafter CEDAW CONVENTION], <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>; see also COMM. ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, GENERAL RECOMMENDATION NO. 33 ON WOMEN'S ACCESS TO JUSTICE ¶ 1 (Aug. 3, 2015) [hereinafter GENERAL RECOMMENDATION NO. 33], <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.

<sup>3</sup>CENTRE OF STUDIES FOR PEACE & DEV., WOMEN'S ACCESS TO LAND AND PROPERTY RIGHTS IN THE PLURAL JUSTICE SYSTEM OF TIMOR-LESTE 20 (2014), [http://asiapacific.unwomen.org/~media/field%20office%20eseasia/docs/publications/2015/01/cepad%20a2j%20research%20report\\_english\\_to%20print.pdf](http://asiapacific.unwomen.org/~media/field%20office%20eseasia/docs/publications/2015/01/cepad%20a2j%20research%20report_english_to%20print.pdf).

<sup>4</sup>UNDP, PROGRAMMING FOR JUSTICE, ACCESS FOR ALL: A PRACTITIONER'S GUIDE TO A HUMAN RIGHTS-BASED APPROACH TO ACCESS TO JUSTICE 5 (2005).

<sup>5</sup>GENERAL RECOMMENDATION NO. 33, ¶ 2.

<sup>6</sup>*Id.* ¶ 14; see also AMY BARROW & JOY L. CHIA, GENDER, VIOLENCE AND THE STATE IN ASIA 25 (2016).

<sup>7</sup>GENERAL RECOMMENDATION NO. 33, ¶ 1.

<sup>8</sup>*Women's Access to Justice*, UN WOMEN, <http://asiapacific.unwomen.org/en/focus-areas/governance/womens-access-to-justice> (last visited Sept. 7, 2018).

<sup>9</sup>U.N. ENTITY FOR GEND. EQUAL. & THE EMPOWERMENT OF WOMEN, ACCESS TO JUSTICE FOR WOMEN IN PLURAL LEGAL SYSTEM OF SOUTHEAST ASIA 5 (2014).

<sup>10</sup>U.N. OFF. ON DRUGS & CRIME, UNITED NATIONS PRINCIPLES AND GUIDELINES ON ACCESS TO LEGAL AID IN CRIMINAL JUSTICE SYSTEMS 8 (June 2013), [https://www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf).

<sup>11</sup>See *supra* note 9.

<sup>12</sup>See *supra* note 1.

<sup>13</sup>Art. 8 guarantees the right to an effective remedy before competent national tribunals for violations of human rights. Art. 10 declared further that "everyone is entitled in full equality to a fair and public hearings by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Arts. 7, 11 and 3 guarantee for the right to equal protection of the law, the right to be presumed innocent in the criminal investigations, and the right to nondiscrimination are

also related to the right to access to justice. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

<sup>14</sup>G.A. Res. 2200 (XXI) A, International Covenant on Civil and Political Rights (Dec. 16, 1966), Arts. 2(3), 2(3)(b)-(c), 14(1).

<sup>15</sup>ECHR Arts. 6 and 13 are on the right to a fair trial and provide that “[i]n the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Eur. Ct. H.R., European Convention on Human Rights (Nov. 4, 1950).

<sup>16</sup>*Supra* note 9.

<sup>17</sup>ANTONIO CASSESE, INTERNATIONAL LAW 141 (2d ed. 2005).

<sup>18</sup>“Law, in the religious sense, also includes codes of ethics and morality which are upheld and required by God. Examples include customary Hindu law, Islamic law, and the divine law of the Mosaic code or Torah.” *Religious Law and Legal Definition*, US LEGAL, <https://definitions.uslegal.com/r/religious> (last visited Sept. 7, 2018).

<sup>19</sup>THAILAND INSTITUTE OF JUSTICE & UNIVERSITY OF CAMBRIDGE, SCOPING STUDY—WOMEN’S ACCESS TO JUSTICE: PERSPECTIVES FROM THE ASEAN 21 (2016).

<sup>20</sup>Constitution of the Kingdom of Thailand, B.E. 2550 (2007), ch. I, § 5 & ch. III, pt. II, § 30.

<sup>21</sup>U.N. OFF. ON DRUGS & CRIME, ASSESSMENT OF THE SITUATION OF WOMEN IN THE CRIMINAL JUSTICE SYSTEM IN VIET NAM 32-39, 67-69 (July 2013).

<sup>22</sup>*See supra* note 5, ¶ 3.

<sup>23</sup>*Human Development Reports: Gender Inequality Index (GII)*, U.N. DEV. PROGRAMME, <http://hdr.undp.org/en/content/gender-inequality-index-gii> (last visited Sept. 7, 2018) (Thailand ranks 87/188).

<sup>24</sup>Patriarchy is defined by the United Nations 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).

<sup>25</sup>*See supra* note 5, ¶ 26.

<sup>26</sup>*See supra* note 19, at 14.

<sup>27</sup>*See supra* note 5, ¶ 37.

<sup>28</sup>*Id.*, ¶ 10.

<sup>29</sup>UN WOMEN, GENDER STEREOTYPES IN LAWS AND COURT DECISIONS IN SOUTHEAST ASIA. A REFERENCE FOR JUSTICE ACTORS 104 (2016).

<sup>30</sup>*Id.*

<sup>31</sup>This is not a general rule but in most of the cases, women felt more comfortable explaining their cases to other women; otherwise they prefer to or do not talk.

<sup>32</sup>USAMARD SIAMPUKDEE, STATUS OF WOMEN PROFESSION: GENDER EQUALITY OF JUDICIAL OCCUPATION IN THAILAND 134 (2012).

<sup>33</sup>The legal profession can be divided into three categories, namely: Thai judges, Thai public prosecutors, and lawyers.

<sup>34</sup>*See supra* note 32.

<sup>35</sup>In the law court more than 70% of 3,813 judges are men (78.80% in 2005 and 77.37% in 2007). *See supra* note 32, at 125 citing Ministry of Justice, Thailand, 2006. In the Police Bureau, more than 90% are men (93.46% in 2005 and 94.16% in 2007). *Id.* citing OCSC 2008. Advancement of women working in the justice system remains low. From 1987 to 2007, the growth of women judges has increased from 6.28% to 22.63% and for public prosecutors, from 7.47% to 17.55%. *Id.* at 126.

<sup>36</sup>Seher Hussain, *Women in Law*, ASIAN LEGAL BUS. (July 23, 2012), <https://www.legalbusinessonline.com/features/women-law/57703>.

<sup>37</sup>*See supra* note 32.

<sup>38</sup>*See supra* note 36.

<sup>39</sup>*Id.*

<sup>40</sup>Jasmine Chia, *The Privileged Lie of Gender Equality in Thailand*, HARV. INT’L L. REV. (Mar. 30, 2016), <http://hir.harvard.edu/article/?a=13011>.



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