

Filling in legal gaps to promote women's empowerment under international commitments: Thailand's case studies¹

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Introduction

It has been four decades since the entry into force of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 3 September 1981. The CEDAW, being considered as one of the most comprehensive instruments in gender equality, is one of the most highly ratified international human rights conventions with 188 State Parties. As a result, domestic laws are put in place in many countries to implement principles enshrined in the Convention. There are also many civil society organisations which play active role in protecting and promoting women's rights.

Despite all these efforts, a *de facto* structural context of inequality has not been effectively addressed, in particular, on the economic front. Many women worldwide are forced to encounter obstacles and shortcomings in various aspects, ranging from suffering from abuse and violence to struggling in their efforts of balancing career and family.

In the context of numerous legal frameworks and community's efforts, the implementation of applicable international human rights framework is the most essential for upholding the rule of law.³ The question that is very timely is whether women's rights protection and promotion are being implemented on the ground. The main problem lies on the effectiveness of each individual country to enforce its international commitments domestically.

This paper will identify some existing problems in the implementation of international commitments concerning women empowerment using Thailand as a case study. The focus will be on what the Thai Government could do to help address the *de facto* context of inequality in the Thai society.

Women's empowerment in the context of international law

At the international level, it was not until 1979 that the first legal instrument aiming to protect and promote women's rights – the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), was adopted with a view to achieving women's *de jure* and *de facto* equality with men. In other words, it requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of result.⁴ The Convention covers wide areas of anti-discrimination against women, ranging across social, economic and political aspects, based on 3 core principles: substantive equality, non-discrimination and State obligation.

¹ This article is prepared for the seminar "Women in Leadership: Achieving an equal future in a post COVID-19 world", organised by the Department of International Organizations, Ministry of Foreign Affairs of Thailand, on the occasion of International Women Day (IWD), 3 March 2021, which Dr. Mangklatanakul participated as a panelist. It was written with the assistance of a research team from the Treaties Division, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs of Thailand.

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⁴ CEDAW, General recommendation No. 25 (1999) on Article 4 Paragraph 1.

From that point onwards, the coverage of women's rights recognised by the international community has increased significantly. The Beijing Platform for Action (BPFA) was adopted in 1995, at the Fourth World Conference on Women in Beijing. It provides a progressive blueprint for gender equality and women's empowerment, by flagging 12 key areas which require urgent action, including in the field of decision-making and in the economy. Apart from this, the inclusion of gender equality and women's empowerment as Goal 5 of the Sustainable Development Goals (SDGs) in 2015 was indeed a reaffirmation of global commitment on this matter.

In addition to these 3 important milestones laying out fundamental principles for gender equality, there are several international efforts in specific sectors, for instance:

- The International Labour Organization (ILO): one of its key mandates is to promote gender equality in the world of work as enshrined in its Constitution and reflected in relevant international labour standards. The four key ILO Conventions concerning gender equality are the Equal Remuneration Convention (No.100), Discrimination in respect of Employment and Occupation Convention (No.111), Workers with Family Responsibilities Convention (No.156) and Maternity Protection Convention (No.183). These Conventions, together with relevant Recommendations, set requirements for domestic legal framework for the promotion of health and safety of mother and child, including the right to a maternity leave period, maternity benefits and the right to return to the same position after the maternity leave.
- The World Health Organization: at the World Health Assembly in May 2016, Member States endorsed a global plan of action on strengthening the role of the health systems in addressing interpersonal violence, particularly against women and girls and against children.⁵

Assessing the implementation of current international frameworks

The CEDAW, though being rather comprehensive, only lays out principles but leaves it to States to interpret and implement them in individual States' contexts. Such obscurities could affect women's rights development as a whole. In a specialised field such as labour rights, the ILO admits that governments of Parties to ILO Conventions are "sensitive to pleas that they fulfill the obligations they have undertaken in ratifying ILO Conventions". Instead, it was the public pressure that brought about changes both in law and in practice, which will eventually lead to improved working conditions.⁶

In addition to the reluctance of some governments to promote gender equality, the lack of efficiency of enforcement mechanisms in such field of human rights prompts some countries to take unilateral and bilateral measures in trade sanctions, which allows social issues, not only human rights but also labour and environmental protection, to be politicised by the more powerful trading partners based on economic benefits rather than genuine efforts to enhance protection for those in need.

Such a situation calls for the international community and governments to step up the efforts and revisit the effectiveness of the implementation of women's rights principles domestically. In this respect, the current situation in Thailand is worth mentioning.

⁵ 'Women And Gender Equity' (*World Health Organization*, 2021)

<https://www.who.int/social_determinants/themes/womenandgender/en/> accessed 8 March 2021.

⁶ ILO Manager, 'ILO Conventions-Enforcement Procedures' (*Iloencyclopaedia.org*, 2011)

<<https://www.iloencyclopaedia.org/part-iii-48230/resources-institutional-structural-and-legal/international-governmental-and-non-governmental-safety-and-health/item/226-ilo-conventions-enforcement-procedures>> accessed 8 March 2021.

Thailand as a case study

Thailand has legally advanced women's rights and gender equality through its ratification of CEDAW in 1985 and its Optional Protocol in 2000, endorsement of the Beijing Platform for Action (BPFA) in 1995, and commitment to the Sustainable Development Goals (SDGs) in 2015.

At the national level, Thailand has made significant efforts to integrate the international principles and instruments into domestic legislation and policy. The recognition of gender equality is evident in the Constitution of the Kingdom of Thailand B.E. 2560 (2017), which stipulates in Article 27 that 'men and women shall enjoy equal rights'. The Gender Equality Act, 2015, established a Committee to Promote Gender Equality (CPGE) to formulate policies and mechanisms with a view to eliminating gender discrimination. In addition, the Women Development Strategy (2017-2021), initiated by the Ministry of Social Development and Human Security, sets out goals, objectives and targets in the area of gender equality.

Despite essential developments in terms of public policy towards gender equality, women in Thailand are not fully empowered. This is especially the case for urban women in the current Thai society, who carry no less family burden than men. The difficulties faced by Thai women which will be discussed in the following sections will demonstrate the obstacle of implementing international commitments without gender perspective at the Thai policy level.

Gender imbalance at the policy level in Thailand

The ignorance of women's aspects in the social structure is a result of gender-imbalance in the country's check-and-balance system. The progress in Thailand is rather slow when it comes to women's representation at policy-making level; especially, in the Parliament, as well as in the judiciary and administrative branches. This is happening against the backdrop of Thailand's enabling environment for women's leadership in other sectors⁷.

In the governmental sector, even though there have been some positive developments, it is still rather difficult for women to climb up to the executive level. Few organisations were ever led by women: two for the Office of the Council of State; one for the Ministry of Justice; and one for the Supreme Court. The Office of Attorney General, on the other hand, has never had a female Attorney General. In foreign services, the Ministry of Foreign Affairs Thailand (MFA), had its first female Permanent-Secretary in 2016. In respect of the MFA's human resources management, women accounts for 62% of civil servants working in the Ministry; and 52% of the total number of diplomats. Nevertheless, out of 77 at ambassador-level, only 23 are women (29%).

An effectively inclusive society starts at the policy level. Thailand needs to set a higher goal and step up its efforts in promoting women in leadership to promote the equality goal enshrined in both the Thai Constitution and the Gender Equality Act, 2015. To this end, there were suggestions that a legal framework to guarantee gender balance in each separate branch of power should be considered seriously; for instance, legal provisions which stipulate a minimum percentage of female representation in a political party and the establishment of female quota in

⁷ A report from UN Women indicates that Thailand has surpassed the 30 percent goal and is currently among the Asia-Pacific countries with the highest proportion of leadership roles held by women at 43%. Unfortunately, the report does not inform the percentage of women with or without family burden.

the Parliament.⁸ However, the mere fact of setting a minimum percentage or quota of women in leadership without first considering how to relieve extra weight over urban women's shoulders will not enable equal-footing competition as such. It is thus time for regulators to scrutinise and provide women with regulatory protections in social aspect to unlock women's capacity and prevent them from leaving the workforce.

Filling in legal gaps to keep women in the workforce

On the occasion of International Women's Day 2021, the Prime Minister of the Kingdom of Thailand, as he commended women as driving forces of the country, pointed out the need to address the women-inferiority narrative in the Thai society. He also highlighted that women should play a stronger role in politics and policymaking to achieve an ethical and just society, without discrimination

One of the most critical gaps in the Thai society are challenges for working women. Female employees are given significantly less opportunity to achieve their work goals due to an assumption that they are less committed to work when they have a family; and there appears to be only slight effort from companies to address such gender-specific disadvantage on both ends. Many women facing such dilemma find the current society contexts too discouraging and therefore decide to leave the workforce.

The undeniable truth is that urban women in the current Thai society, while carrying as much family burden as men, still struggle. While protection accorded to women may seem adequate at the beginning of their careers, such protection is not enough when it comes to women at senior or executive level – they will need to make sacrifices one way or another – either work or family life.

A study by Mahidol University shows that women must adapt themselves after giving birth,⁹ including reducing working hours or even leaving their career behind. Most of them find it difficult to go back into business after a maternity drop-out or if they do, they cannot compete on equal ground with others. The consequences of such changes affect not only individuals and families but also the size and structure of the country's labour market. Statistics show that women who are economically empowered often decide not to get married,¹⁰ leading Thailand into an ageing society.

In terms of policymaking, it is necessary to give women choices and flexibility to drop out and get back into work while minimizing the impact of such decision on their career advancement. In the Internet of Things (IOT) era, working from home in viable sectors, e.g. finance, creative industry, import & export and IT, should be allowed as an option for women to pursue their career goals and feel empowered while continuing to perform their maternal duties.

The current situation also calls for an urgent upgrade in social welfare for women, in particular, normalising child day-care services in public and private organs. The UK provides a great model of an inter-generational day-care centre in London that may be appropriate for an evolving ageing society in Thailand. The Nightingale House in Wandsworth is the first in the

⁸ Pailin Phuweenaphan, *"The Glass Ceiling And The Political Roles Thai Women In The Electoral System"* (Faculty of Political Science and Public Administration, Chiang Mai University 2020) <<https://so05.tci-thaijo.org/index.php/polscicmujournal/article/view/246473>> accessed 9 March 2021.

⁹ Manasigan Kanchanachitra, *How Families With Children Adapt Their Working Behavior? A Qualitative Study From Online Data* (Thailand Research Fund 2018) <http://elibrary.trf.or.th/project_content.asp?PJID=SRI61X0901> accessed 8 March 2021.

¹⁰ Lusi Liao and Sasiwimon W Paweenawat, *"Gold Miss" Or "Earthy Mom"? Evidence From Thailand* (PIER Discussion Papers no110 2019) <https://www.pier.or.th/?post_type=abridged&p=7405> accessed 8 March 2021.

UK that integrates both older residents and children under the same roof. This model relieves the maternal burden from women as well as improves mental health for the participating elderly. On top of that, it is cost-effective.

It is also imperative to translate inclusive women welfare schemes into rules and regulations in order to keep women in the workforce. This could be done through public measures and incentives, such as tax incentives for complying companies, possibility to take leave for maternal reasons, possibility to choose between overtime pay or holiday pay, as well as work-from-home option for women employees.

Conclusion

The CEDAW served its purpose at the time as a breakthrough in the realm of women's right promotion and protection but its ambiguity may result in an undesirable *status quo* in the global human rights development.

Since the advancement of women's empowerment relies greatly on the willingness of each society to implement its international commitment, it is essential for governments to ensure its national stakeholders that national laws and practices fully respond to dynamic changes in the society while also serving the main objective of promoting gender balance. Other measures, such as social welfare, are also necessary to help a country realise its equality goal.

The case studies in Thailand demonstrates that amid the advanced legal mechanisms already in place for the protection and promotion of women's right, there remains a lot to be done to steer our future society away from the historic male-oriented prototype. Shifting a paradigm will not happen overnight. It is therefore incumbent upon us to continue our collective efforts in advocating for a truly gender balanced society.
