

Safeguarding Vulnerable Victims Under the Criminal Procedure Code: Has Thailand Done Enough?

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Abstract

Vulnerable people are individuals who may be at higher risk of harm or exploitation due to numerous variables such as age, physical or mental health, economic status or other factors that impact their ability to protect themselves. As a result, they need extra safeguarding or protection measures, particularly when they are the victims of crime. The protection of vulnerable victims is a fundamental principle of international human rights law and criminal justice systems worldwide. Therefore, several international legal instruments establish guidelines and obligations for states to protect the vulnerable. Thailand's criminal justice system recognises such vulnerability and has enacted certain rules and measures to safeguard vulnerable victims, uphold their rights, and enable them actively to engage in, and fulfil, their roles within the criminal justice system. However, the current main regulation regarding the protection of victims of crime, the Criminal Procedure Code of Thailand B.E. 2477 (1934), has some limitations. This article aims to examine whether Thailand's Criminal Procedure Code meets international standards for protecting the rights of vulnerable victims. It examines the legislative framework, regulations, and practical implementation of victim protection measures and

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analyses shortcomings in, and issues with, Thailand's Criminal Procedure Code by comparing its laws and practices to international human rights standards. Analysis identifies areas where Thailand corresponds with worldwide best practice and where adjustments are required to ensure the protection of vulnerable victims. The article concludes with proposals aimed at enhancing the protection of vulnerable victims under the Criminal Procedure Code and ensuring that their rights are effectively protected within Thailand's criminal justice system.

Keywords: Vulnerable victims – Criminal justice system – Criminal Procedure Code of Thailand – Victim rights – Victim protection

I. BACKGROUND

“Vulnerable persons” refers to individuals or groups of people who are at a higher risk of harm or adverse effects due to certain characteristics or circumstances.¹ Due to their “vulnerability,” additional legal protections must be provided to safeguard them, especially when they fall victim to crime.

Victims of crime may be defined as: “Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws . . . including those laws proscribing criminal abuse of power.”² The term ‘victim’ also includes: “where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”³ Thus, a victim of crime can generally be defined as a person who has suffered physical, emotional, psychological, or financial harm as a result of a criminal act. This can include direct victims, who face the harm him/herself, as well as indirect victims such as family members of a deceased victim or those who experience harm due to their relationship with the direct victim.⁴

When it comes to vulnerable victims of crime, the protection of vulnerable victims within the criminal justice system is a fundamental requirement for ensuring justice, equality, and societal welfare. Vulnerable individuals, such as children or persons with disabilities, are more likely to be subject to harm, manipulation, and

¹ Simon Green, “Crime, Victimization and Vulnerability” in Sandra Walklate (ed), *Handbook of Victims and Victimology* (Routledge 2007) 97 <<https://doi.org/10.4324/9780203118207.ch4>>.

² Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (adopted 29 November 1985, UNGA Res 40/34) art 1.

³ *ibid*, art 2.

⁴ Claire Ferguson and Brent E. Turvey, “Victimology: A Brief History with an Introduction to Forensic Victimology” in Brent E. Turvey and Wayne Petherick (eds), *Forensic Victimology: Examining Violent Crime Victims in Investigative and Legal Contexts* (Academic Press 2009) 1 <<https://doi.org/10.1016/b978-0-12-821768-9.00001-x>>.

secondary victimisation. As such, legal frameworks must provide additional safeguards to uphold the principle of equal protection under the law, a right enshrined in international instruments, such as Art. 7 of the Universal Declaration of Human Rights.⁵ Furthermore, scholars have emphasised that the state bears a moral obligation to protect those who are unable to protect themselves, a notion grounded in the theory of paternalism.⁶ It is also further argued that safeguarding the vulnerable is essential to a just and compassionate society.⁷ In addition to ethical imperatives, many states, including Thailand, are legally bound to such protective measures through their commitments under international treaties, such as the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities.

In addition, from a procedural standpoint, the protection of victims, who are frequently central witnesses, enhances the integrity of the criminal justice process. Ensuring their safety facilitates accurate and uninhibited testimony, thereby supporting the identification and prosecution of offenders.⁸ Additionally, protective measures help mitigate psychological harm and support victim rehabilitation through counselling and security assurances.⁹ These practices not only enhance individual well-being but also foster broader public trust in the legal system.¹⁰ It is also contended that visible state commitment to victim protection strengthens the legitimacy of legal institutions and affirms the rule of law.¹¹ Moreover, since crime represents a failure of the state to safeguard its citizens, there is a duty to provide redress and ensure access to justice.¹² Ultimately, protecting vulnerable victims serves not only the individuals affected but also the broader objectives of legal fairness, social stability, and international human rights compliance.

Nonetheless, attempting to protect rights of victims faces one big challenge: how to balance the rights of victims without undermining defendants' rights? The

⁵ Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217 A (III)).

⁶ Gerald Dworkin, "Paternalism" *The Stanford Encyclopaedia of Philosophy* (Fall edn 2020) <<https://plato.stanford.edu/archives/fall2020/entries/paternalism/>>.

⁷ Robert E. Goodin, *Protecting the Vulnerable: A Re-Analysis of Our Social Responsibilities* (University of Chicago Press 1985) 1–28.

⁸ United Nations Human Rights Office of the High Commissioner, "Chapter 14 Protection of Victim, Witness and Other Cooperating Persons" in *Manual in Human Rights Monitoring* (United Nations Human Rights Office of the High Commissioner 2011).

⁹ "Victim Assistance and Witness Protection" *United Nations Office on Drug and Crime* (2024) <<https://www.unodc.org/unodc/en/organized-crime/witness-protection.html>>.

¹⁰ Ministry of Justice, New Zealand Government, "Victims' Trust and Confidence in the Criminal Justice System" *Ministry of Justice, New Zealand Government* (2021) <https://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE69515457>.

¹¹ Ahmed A. White, "Victims' Rights, Rule of Law, and the Threat to Liberal Jurisprudence" (1998) 87(2) *Kentucky Law Journal* 357.

¹² กัทธรรณ ทองใหญ่ และธีรนิติ เทพสุเมธานนท์, "มาตรการคุ้มครองสิทธิผู้เสียหายหรือเหยื่ออาชญากรรมในกระบวนการยุติธรรมทางอาญาของประเทศไทย" (2022) 40(1) *วารสารกฎหมายจุฬาลงกรณ์มหาวิทยาลัย* [Pattarawan Thongyai and Teerani Tepsumethanon, "The Protection Measures of the Injured Persons or Victims' Rights in the Criminal Justice System of Thailand: Making a Victim Personal Statement" (2022) 40(1) *Chulalongkorn Law Journal* 1] (Thai) 5.

victims' rights advocates view that victims' needs should be given great consideration since the lack of protection would result in re-victimisation and victims had suffered enough being a "victim" of crime.¹³ Meanwhile, the defendants' rights advocates argue that giving victims too much protection risk undermining defendants' rights, especially due process rights such as the right to confrontation, in a case where the victim would not be presented in court. They are concerned that increasing victim participation may slant procedures against offenders or introduce emotional factors that interfere with objective legal choices.¹⁴

In this regard, it could be said that protecting vulnerable victims' and defendants' rights could still be balanced by providing measures to balance their competing rights. This could be done by setting procedural accommodations that protect vulnerable victims while maintaining defendants' rights. For example, protocols for hearing vulnerable witnesses can be established in a way that safeguards witnesses during proceedings while preserving defendants' ability to challenge testimony and not be deemed a violation of the right of confrontation.¹⁵ Moreover, if there are other means to compensate defendants to exercise their confrontation right, the limitation of the confrontation right could be imposed, for example, if adequate opportunity to challenge the evidence is provided.¹⁶ In this sense, these accommodations, like allowing video testimony, often focus on how evidence is presented rather than changing substantive rights.¹⁷ Further, it is viewed that protective measures for victims, e.g., trauma-informed interviewing, simply support persons during testimony and thus are merely procedural. Therefore, they do not alter the burden of proof, the presumption of innocence, or the standard of evidence required to convict.¹⁸

To address the issue of safeguarding vulnerable victims, the Criminal Procedure Code of Thailand B.E. 2477 (1934)¹⁹ (hereafter referred to as the "Criminal Procedure Code"), which is the main instrument regulating the general rules regarding the criminal justice system in Thailand, protects and ensures the rights of these vulnerable victims under several provisions.

The Criminal Procedure Code also defines the term "victim" (also referred to as "injured person" in s. 2(4),²⁰ and includes a person against whom the offense has

¹³ Gregory P. Orvis and John David Reitzel, "Balancing Criminal Victims' and Criminal Defendants' Rights" in Laura Moriarty (ed), *Controversies in Victimology* (Routledge 2008) 1.

¹⁴ *ibid.*

¹⁵ European Court of Human Rights, *Doorson v The Netherlands*, App. No. 20524/92, Judgment of 26 March 1996 [1996] ECHR 14.

¹⁶ European Court of Human Rights, *Al-Khawaja and Tahery v United Kingdom*, App. Nos. 26766/05 and 22228/06, Judgment of 15 December 2011 [2011] ECHR 2127.

¹⁷ *Commonwealth of Pennsylvania v Shelton* (2017) 170 A.3d 549.

¹⁸ "Right of Victims to Justice and Protection" *United Nations Office on Drug and Crime* (2025) <<https://sherloc.unodc.org/cld/ar/education/tertiary/tip-and-som/module-9/key-issues/rights-of-victims-to-justice-and-protection.html>>.

¹⁹ ประมวลกฎหมายวิธีพิจารณาความอาญา พ.ศ. 2477 [Criminal Procedure Code of Thailand 1934] (Thai).

²⁰ *ibid.*, s 2(4): "A person who has received injury through the commission of any offense. This includes any other person who has the power to act on his behalf as provided in Section 4, 5, and 6."

been committed (direct victim) as well as any other whom the law may consider also to be a victim for the sake of proceedings in the criminal justice system (indirect victim). In this regard, direct victim means a person against whom the offense is committed, who has suffered damage due to the offense (a “victim in practice”) and who is a victim under the law (a “legal victim,” meaning that he/she did not participate in the commission of the offense or consent to the commission of the offense or was involved in the commission of the offense).²¹

Persons defined as vulnerable under Thailand’s criminal justice system, according to specific provisions under the Criminal Procedure Code,²² include children, individuals under the age of 18 who may lack the maturity and capacity to protect themselves from harm, women, who may be at risk due to gender-based violence or discrimination, the disabled, individuals with physical, mental, intellectual or sensory impairments that may hinder their full and effective participation in society on an equal basis with others, and those with mental disorders as well as individuals diagnosed with psychological or psychiatric disorders that may impair their judgment, behaviour or ability to function in daily life.

Apart from those recognised as vulnerable victims under the Criminal Procedure Code, it should be noted that other specific legislation, such as the Anti-Human Trafficking Act B.E. 2551 (2008)²³ and the Victims of Domestic Violence Protection Act B.E. 2550 (2007),²⁴ also enshrine special measures to protect and ensure the rights of vulnerable victims, specifically victims of trafficking in persons and of domestic violence offenses. But, as the names suggest, these special measures only apply to those specific offenses, meaning that others who may fall victim to “general” offenses, such as offenses against the body or those relating to sexuality, will be subject to the Criminal Procedure Code. Further, Thailand has also enacted general regulations to ensure rights of victims: the Compensation for Injured Persons and Damages for the Accused Act B.E. 2544 (2001),²⁵ which provides financial compensation to victims of some offenses and wrongful prosecutions. It also covers medical expenses, lost income, and rehabilitation costs.

Nonetheless, there are still some aspects of the protection of vulnerable victims which have yet to be included in the Criminal Procedure Code. Thus, this article examines the legal measures for protecting vulnerable victims under Thailand’s

²¹ เกียรติขจร วังนะสวัสดิ์, คำอธิบายหลักกฎหมายวิธีพิจารณาความอาญาว่าด้วยการดำเนินคดีในชั้นตอนก่อนการยื่นฟ้อง (พิมพ์ครั้งที่ 7 พลสยาม 2553) [Krietkajorn Wajanasawadi, *Explanation of the Principles of Criminal Procedure Law on the Prosecution in the Pre-trial Stage* (7th edn, Pholsiam Printing Partnership 2010)] (Thai) 65.

²² Details will be discussed in Section 2.

²³ พระราชบัญญัติป้องกันและปราบปรามการค้ามนุษย์ พ.ศ. 2551, ราชกิจจานุเบกษา เล่ม 125 ตอนที่ 29 ก หน้า 28 (6 กุมภาพันธ์ พ.ศ. 2551) [Anti-Human Trafficking Act 2008, Government Gazette vol 125 part 29a p 28 (6 February 2008)] (Thai).

²⁴ พระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. 2550, ราชกิจจานุเบกษา เล่ม 124 ตอนที่ 41 ก หน้า 1 (14 สิงหาคม พ.ศ. 2550) [Victims of Domestic Violence Protection Act 2007, Government Gazette vol 124 part 41a p 1 (14 August 2007)] (Thai).

²⁵ พระราชบัญญัติค่าตอบแทนผู้เสียหาย และค่าทดแทนและค่าใช้จ่ายแก่จำเลยในคดีอาญา พ.ศ. 2544 [Compensation for Injured Persons and Damages for the Accused Act 2001] (Thai).

Criminal Procedure Code, assessing their effectiveness and identifying gaps in implementation. This article also compares Thai laws and practices to international human rights standards. By analysing these legal frameworks and shortcomings, this article aims to propose reforms to strengthen Thailand's mechanisms of protection for vulnerable victims, enhance access to legal aid, and ensure a more victim-centred criminal justice process.

II. INTERNATIONAL LEGAL FRAMEWORK FOR PROTECTING VULNERABLE VICTIMS

Safeguarding vulnerable victims is a fundamental principle of international human rights law and criminal justice systems worldwide. Several international legal instruments set out standards for securing justice, preventing secondary victimisation, and giving required assistance to victims of crime, violence, and exploitation. These legal frameworks establish baseline requirements for national legislation and urge nations to implement victim-centered methods in their legal systems.

The United Nations provides several international legal instruments for protecting vulnerable victims, namely: the Universal Declaration of Human Rights 1948, Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, the Convention on the Rights of the Child (CRC) 1989, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, the Convention Against Transnational Organized Crime (UNTOC) 2000 and its Protocols, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984, and the Convention on the Rights of Persons with Disabilities (CRPD) 2006. However, this article will focus on vulnerable victims by types of persons, not by which offenses they are the victims of, as this article tackles vulnerable victims of general offenses, who are subject to the Criminal Procedure Code. Thus, only some of the selected international legal instruments will be analyzed here.

The Universal Declaration of Human Rights 1948 outlines a victim's right under Art. 8, which states: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."²⁶ Although it does not specifically mean victims of crime, it sets forth the foundation of the principle of victims' rights.

The main legal instrument regarding victims of crime is the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 (hereafter referred as "Basic Principles"), although it has no "real" legal standing, in the sense that it is not a treaty that is legally binding. Nonetheless, it sets forth the following principles: the recognition of a victim's right to access justice, fair

²⁶ Universal Declaration of Human Rights (n 5) art 8.

treatment, restitution, compensation and assistance. It also urges governments to ensure that victims receive legal, medical, psychological and social assistance, and it calls for specialized procedures to protect vulnerable victims, particularly in cases of violence, trafficking and organised crime. The Basic Principles²⁷ has set standards for protecting the rights of victims via four important points:

1. **Access to Justice and Fair Treatment:** to ensure that victims of crime are treated with respect for their human dignity and have the right to appeal through the justice process.²⁸ The judiciary and the executive bodies shall take necessary measures to empower victims to receive redress through expedited, fair, cost-effective and easily accessible proceedings.²⁹ This includes providing advice and informing the victim of the trial process about such aspects as the roles, duties, scope, duration, and progress of the case. It should also provide victims with the opportunity to express their opinions and feelings and provide facts through a process, listening to victims about the damage they have sustained under the criminal justice system of each country and providing victims with appropriate assistance services from the beginning of the case until the end of the legal process.³⁰
2. **Restitution:** the perpetrator, as well as third parties such as parents in the case that the perpetrators are minors, must compensate the victim, the victim's family or heirs fairly and appropriately. Such compensation includes the return of property or provision of compensation for the loss of, or damage to, such property. The compensation includes compensation for costs that the victim has paid as a consequence of being a victim of crime as well as other expenses, and compensation for the rights of the victim that have been lost.³¹ Moreover, the state should consider improving various practices, regulations, and related laws to provide compensation for damage by the offender (restitution) as an alternative form of punishment in criminal cases.³²
3. **Compensation by the state:** the state shall provide measures to provide compensation to the victim in cases where the compensation received from the perpetrator, or by other means, is not sufficient to compensate the victim,³³ including establishing a national fund to provide compensation to victims.³⁴

²⁷ "The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power" *Office of the United Nations High Commissioner for Human Rights* (2025) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>>.

²⁴ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (n 2) art 4.

²⁹ *ibid*, art 5.

³⁰ *ibid*, art 6.

³¹ *ibid*, art 8.

³² *ibid*, art 9.

³³ *ibid*, art 12.

³⁴ *ibid*, art 13.

4. Assistance: victims should receive necessary assistance, including material help and medical treatment, as well as mental, emotional, and social assistance from the state, from volunteers and from the community.³⁵

The second legal instrument is the Convention on the Rights of the Child (CRC) 1989, which requires states to implement child-sensitive justice mechanisms to protect child victims and witnesses. The CRC provides a baseline for protection against secondary victimisation. Art. 19 specifically protects children from violence and abuse, including during criminal investigations and court proceedings.³⁶ It requires states to provide recovery, rehabilitation, and reintegration services to child victims.³⁷ It ensures child-friendly judicial procedures, emphasising the protection of their rights.³⁸ It ensures a child's right to be heard and to participate, in which it grants children the right to express views during legal proceedings affecting them.³⁹ It establishes that legal assistance must be provided for children in conflict with the law and this also applies to victims requiring legal representation.⁴⁰ It also specifically recognizes that children, who are victims of sexual abuse, trafficking, domestic violence, and war crimes, require additional safeguards including psychosocial support and specialized legal procedures.⁴¹ In this regard, the Committee on the Rights of the Child also encourages alternative testimony methods, e.g., video-recorded interviews and closed courtroom procedures to be applied in the case of a child victim.⁴² In addition to the CRC, there are also the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime 2005, which recognizes the need for child-sensitive judicial processes. Though not legally binding, it sets forth the following key principles for protecting child victims:

1. Children should be treated with respect during judicial proceedings to ensure dignity and non-discrimination. There should be no discrimination of any kind against children.
2. Children have the right to receive age-appropriate information about their legal rights, case progress, decisions, and support services.
3. Children have the right to participate in proceedings and express themselves in a safe and supportive environment. Their evidence should be given the proper weight based on their age and maturity.

³⁵ *ibid*, art 14.

³⁶ Convention on the Rights of the Child (adopted 7 March 2009, UNCHR Res 1990/74) art 19.

³⁷ *ibid*, art 39.

³⁸ *ibid*, art 40.

³⁹ *ibid*, art 12.

⁴⁰ *ibid*, art 40.

⁴¹ *ibid*, arts 34 and 35.

⁴² UNICEF, *Implementation Handbook for the Convention on the Rights of the Child* (3rd edn UNICEF 2017) 53–58.

4. Authorities must provide safe environments in which children testify. This includes avoiding direct contact with the accused and the protection of children's identities.
5. Children have the right to effective legal, psychological, and social support prior to, during, and after proceedings. These include skilled experts like child-friendly police officers, attorneys, and social workers.
6. Child victims have a right to privacy. In this regard, personal information must be kept private. Furthermore, media controls may be required to ensure their safety.
7. Children are entitled to compensation and restitution. Child victims should be able to obtain rehabilitation, counselling, and to join social reintegration programs. Furthermore, reparations or restitution should be paid as appropriate.⁴³

The third legal instrument is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, which sets forth the requirement for legal protections against gender-based violence and for access to justice for female victims. Under CEDAW, women and vulnerable women, including survivors of gender-based violence, victims of human trafficking, women in armed conflict, rural women, women with disabilities, and migrant women are recognised as needing extra protection due to systemic discrimination and socio-economic marginalization. It made it a state's obligations to eliminate discrimination and obliges states to ensure effective legal remedies for women victims who face discrimination and violence.⁴⁴ Furthermore, it also suppresses trafficking and exploitation of women by recognizing trafficked women and sex workers as vulnerable groups who require special protection and rehabilitation.⁴⁵ Additionally, General Recommendation No. 19, Gender-based Violence⁴⁶ and No. 35, Strengthening Gender-Based Violence Protections,⁴⁷ emphasize the need for effective prosecution as well as victim protection and support services for female victims.

The fourth legal instrument is the Convention on the Rights of Persons with Disabilities (CRPD) 2006. It aims to protect and promote the rights of persons with disabilities, including their access to justice and their protection as victims of crime. It emphasises equal recognition before the law by recognizing that persons with disabilities have legal capacity on an equal basis with others and that states must provide support mechanisms to help persons with disabilities exercise their legal

⁴³ Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (adopted 22 July 2005, ECOSOC Res 2005/20).

⁴⁴ Convention on the Elimination of All Forms of Discrimination against Women (adopted 23 March 2006, UNGA Res 60/230) art 2.

⁴⁵ *ibid*, art 6.

⁴⁶ CEDAW General Recommendation No. 19: Violence Against Women (adopted 1992).

⁴⁷ UN Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 35: Combating Racist Hate Speech (adopted 26 September 2013).

rights, including in criminal justice processes.⁴⁸ It also strengthens access to justice by requiring that states provide effective access to justice for persons with disabilities. This article calls for procedural accommodations, such as accessible courtrooms and legal documents (e.g., Braille, sign language interpretation), legal assistance, and the presence of support persons during legal proceedings and training for police, prosecutors, and judges handling cases involving disabled victims.⁴⁹ Furthermore, it also calls for freedom from exploitation, violence, and abuse through the provision of legal and policy measures which prevent violence and abuse against persons with disabilities. It also requires the establishment of accessible reporting mechanisms and victim protection services, and mandates rehabilitation, social support, and legal remedies for disabled victims.⁵⁰

In summary, it may be seen that the above international legal framework sets forth the following key principles: access to justice and fair treatment, special measures for vulnerable victims, assistance and protection of vulnerable victims, and restitution and compensation for victims.

III. LEGAL FRAMEWORK FOR THE PROTECTION OF VULNERABLE VICTIMS IN THAILAND UNDER THE CRIMINAL PROCEDURE CODE AND RELEVANT LAWS

Ensuring justice for vulnerable victims requires a robust legal framework that prioritises their safety, dignity, and participation in the criminal justice system. The Constitution of Thailand provides fundamental rights for victims of crime, including access to justice. While the Criminal Procedure Code regulates the main legal protection under the criminal justice system for vulnerable victims in all offenses, it also provides for the protection of vulnerable victims from the first stage of criminal justice, the complaint; the second stage, such as interview; and the third stage, such as the trial. Additional regulation which aims to help victims of some offenses during the post-trial period in Thailand is enshrined in the Compensation for Injured Persons and Damages for the Accused Act 2001.⁵¹ Furthermore, as noted, other relevant laws such as the Anti-Human Trafficking Act 2008⁵² and the Victims of Domestic Violence Protection Act 2007,⁵³ also provide legal measures to protect victims during interviews, trials, and post-trial proceedings. But, as the name

⁴⁸ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, UNGA Res 61/106) art 12.

⁴⁹ *ibid*, art 13. See United Nations General Assembly, *Right to Access to Justice Under Article 13 of the Convention on the Rights of Persons with Disabilities: Report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/37/25 (United Nations 2017) 14–16.

⁵⁰ Convention on the Rights of Persons with Disabilities (n 48) art 16.

⁵¹ Compensation for Injured Persons and Damages for the Accused Act 2001 (n 25).

⁵² Anti-Human Trafficking Act 2008 (n 23).

⁵³ Victims of Domestic Violence Protection Act 2007 (n 24).

suggests, these measures only apply in the offenses of human trafficking and domestic violence. Altogether, these laws aim to prevent secondary victimization, facilitate access to justice, and uphold victims' rights.

This section will focus on legal frameworks which aim to protect the rights of vulnerable victims in general, namely the Constitution of Thailand B.E. 2560 (2017), the Criminal Procedure Code, and the Compensation for Injured Persons and Damages for the Accused Act 2001.

A. The Constitution of Thailand B.E. 2560 (2017)

Under the current Constitution, the Constitution of Thailand 2017,⁵⁴ s. 27 recognizes and protects the right to equality before the law. As for victims' rights, they are generally enshrined under s. 25, para 4, which states: "A person who has suffered damage from a violation of his rights or freedoms or from a criminal act of another person shall have the right to receive compensation or assistance from the state as prescribed by law."⁵⁵ Unlike the previous constitutions of 1997 and 2007, the current one guarantees specific victims' rights, like the right of victims to receive compensation from the state or witnesses' rights to be protected, if the victim is also a witness.⁵⁶ Furthermore, s. 68 of the Constitution of Thailand 2017⁵⁷ requires the state to organize an efficient justice process that allows citizens to access it conveniently, quickly, and without excessive costs.⁵⁸ It can be seen that the provision only lays out the general rules, not as rights of the people but as the state's obligation to ensure access to justice. It could be said that s. 68, para 3, obliges the state to help vulnerable victims to access the judicial process, but, in this case, access is limited to indigent or underprivileged persons. It lays out a general clause that the state is obliged to help them access justice, but no specific measure is provided except for providing a lawyer. Interestingly, the term "underprivileged" is not clearly defined

⁵⁴ รัฐธรรมนูญแห่งราชอาณาจักรไทย พ.ศ. 2560, ราชกิจจานุเบกษา เล่ม 134 ตอนที่ 40 ก หน้า 1 (6 เมษายน พ.ศ. 2560) [Constitution of Thailand 2017, Government Gazette vol 134 part 40a p 1 (6 April 2560)] (Thai).

⁵⁵ *ibid*, s 25 para 4.

⁵⁶ Notably, some of these rights may still be found under other laws, like the Criminal Procedure Code and the Witness Protection Act 2003. Read more at "สรุปรัฐธรรมนูญ 2560: สิทธิในกระบวนการยุติธรรม ตัดให้สั้นลง สิทธิมีหนายความหายไป" ["Summary of the 2017 Constitution: Rights to the Justice Process Are Shortened, the Right to a Lawyer is Gone"] *iLaw* (2019) <<https://www.ilaw.or.th/articles/3858>> (Thai).

⁵⁷ Constitution of Thailand 2017 (n 54) s 68.

⁵⁸ *ibid*, s 68:

The state should organise a system of management for the justice process in every aspect to ensure efficiency, fairness and non-discrimination and shall ensure that the people have access to the justice process in a convenient and swift manner without delay and do not have to bear excessive expenses.

The state should provide protective measures for state officials in the justice process to enable them to perform duties strictly and without any interference or manipulation.

The state should provide necessary and appropriate legal aid to indigent persons or underprivileged persons to access the judicial process, including providing a lawyer thereto.

under this section, thus, some observations have been made that, if the state refuses to provide lawyers to help those who may have some financial means, those people will not be able to claim their constitutional rights to demand “help” from the state.⁵⁹ Nonetheless, the right to have a lawyer is still a right under the Criminal Procedure Code, and it is open to all defendants who are facing imprisonment charges, without reference to their financial background.⁶⁰ In this regard, other types of vulnerable victims, who are neither indigent nor underprivileged, would not be considered to have a constitutional right to receive free legal representation from the state.

Section 71 para 3,⁶¹ however, could be said to ensure vulnerable victim rights more directly. In this regard, this section made it the state’s obligation to ensure fair treatment on vulnerable persons, which are children, youth, women, the elderly, persons with disabilities, indigent persons, and underprivileged persons, and to provide help in the form of treatment, rehabilitation, and remedies, especially for the victims.

B. The Criminal Procedure Code of Thailand B.E. 2477 (1934)

This section will focus on each stage of the criminal justice system, as regulated under the Criminal Procedure Code, to identify measures to protect all vulnerable victims of crime. Thus, it will begin with the first stage of the criminal justice system, the complaint, where the victim first comes into contact with the criminal justice system. Second is the inquiry, in which the victim, who is also a witness, gives evidence relating to a criminal case. Third is the trial, where the victim participates in a criminal trial as a witness.

1. The complaint.

A complaint, or the reporting of the offense, refers to the act of informing the authorities, such as the police or other relevant law enforcement agencies, about a crime or illegal activity. This process typically involves providing details about the incident, including who was involved, what happened, when and where it occurred, and any other pertinent information that can help authorities investigate and address the offense. Reporting an offense or making a complaint is crucial for initiating legal proceedings, ensuring justice, and maintaining public safety.⁶² The Criminal Procedure Code defines the term “complaint” under s. 2(3) as: “an allegation made by an injured person, given to the authorities according to the provisions of this code,

⁵⁹ iLaw, “2017 Constitution” (n 56).

⁶⁰ Criminal Procedure Code 1934 (n 19) s 134/1 para 2.

⁶¹ Constitution of Thailand 2017 (n 54) s 71 para 3: “The State should provide assistance to children, youth, women, the elderly, persons with disabilities, indigent persons and underprivileged persons to be able to have a quality living and shall protect such persons from violence or unfair treatment, as well as provide treatment, rehabilitation and remedies to such injured persons.”

⁶² Legal Information Institute, “Criminal Complaint” (Cornell Law School 2022) <https://www.law.cornell.edu/wex/criminal_complaint>.

that an offense has been committed, whether by a known or unknown person, to the detriment of the injured person, and such allegation is made with the intention to have the offender punished.”

According to s. 123, a victim may file a complaint with an inquiry officer. Moreover, under s. 124, a victim may file a complaint to an administrative or police official who has a position or duty either subordinate or superior to an inquirer and is charged by law with the duty to maintain peace and order. The complaint may be done in writing or orally and it must be done according to a set format. Thus, those vulnerable victims who may be illiterate should still be able to file a complaint independently.

As for a child victim, he/she may file a complaint by him/herself if old enough to be aware of the nature and essence of his/her act⁶³ since it is held that filing a complaint is not a juristic act.⁶⁴ For example, a 17-year-old female victim has a right to file a complaint to an inquiry officer, by herself, in an alleged sexual offense.⁶⁵ Notably, a child victim may also legally appoint someone else to file a complaint on his/her behalf.⁶⁶

As for an incompetent person,⁶⁷ he/she would not be able to file a complaint independently, thus, he/she needs a guardian to do so.

It should be noted that, however, a child victim cannot institute a criminal prosecution⁶⁸ by him/herself as it is viewed that prosecution is a type of a judicial act for which a child would require a legal representative⁶⁹ to instigate on his/her behalf.⁷⁰ Nevertheless, if a child, even if less than 18 years old, is legally married, that child will have become *sui juris* upon marriage,⁷¹ thus, he/she will not need a legal representative anymore.

As in the case of a child victim, a victim who is an incompetent person cannot institute a criminal prosecution by him/herself since it is considered a juristic act which would require a guardian to intercede.⁷²

Therefore, for a child and an incompetent victim, s. 5 stipulates that a legal representative or custodian, in respect only of offenses committed against the child or incompetent person, may act on behalf of the victim under his/her charge. Further, under s. 6, if a vulnerable victim, namely a child, a mentally disordered person, or an

⁶³ Thai Supreme Court Decision 3915/2551.

⁶⁴ Thai Supreme Court Decision 1847/2563.

⁶⁵ Thai Supreme Court Decision 214/2479.

⁶⁶ Thai Supreme Court Decision 775/2502. This judgement sets the principle that it is legally permissible to appoint someone to file a complaint on the victim's behalf.

⁶⁷ A mentally disordered person can be found incompetent by the court. See ประมวลกฎหมายแพ่งและพาณิชย์ พ.ศ. 2468 [Civil and Commercial Code 1925] (Thai) s 28.

⁶⁸ Under the Criminal Procedure Code 1934 (n 19) s 28(2), the victim is entitled to institute a criminal prosecution.

⁶⁹ See Civil and Commercial Code 1925 (n 67) s 1569: “Who usually is the father, mother or parent.”

⁷⁰ Thai Supreme Court Decision 1123/2479.

⁷¹ Civil and Commercial Code 1925 (n 67) ss 20, 1448.

⁷² An incompetent person, as the name suggests, is considered a non-competent person, and thus may not engage in any kind of juristic act. See Civil and Commercial Code 1925 (n 67) s 29.

incompetent person, does not have a legal representative or custodian or if the latter is unable to perform his/her duty, the court shall appoint a representative for the victim. This is to ensure that there is a suitable person to oversee vulnerable victims, ensure that their rights are protected, and that they are not being put in a disadvantageous situation.

As for a female victim, according to s. 4, if she is a married woman, she may file a complaint by herself. There is no need to receive prior permission from her husband. Moreover, according to s. 4, para 2, her husband is also entitled to bring a criminal complaint on behalf of his wife, but only with her express permission.

As for other types of vulnerable persons, such as the disabled or the mentally disordered, there is no specific regulation regarding the filing of a complaint. Thus, they may file a complaint by themselves under s. 123 and s. 124. For example, a person suffering from psychosis or a person with intellectual disabilities, who has not been declared by the court to be an incompetent person, if still aware of the nature and essence of their personal action, may file a complaint unaided. Equally, such a person might equally legally appoint someone else to file their complaint.⁷³ A similar concept also applies to the institution of criminal prosecution; in this regard, they are legally allowed to file without any impediment.

Furthermore, the recording of any complaint by a child victim is specifically regulated in s. 124/1, which specifies that it must follow regulations under s. 133 bis, paras 1, 2 and 3, which regulate special measures for an inquiry by a child witness,⁷⁴ by *mutatis mutandis*. As for other types of vulnerable victims, there is no specific regulation for the registration of a complaint. As with the filing of a complaint, a child victim may alter or withdraw a complaint by him/herself, provided that he/she is old enough to be aware of the nature and essence of his/her action. Similarly, the legal representative of a child victim can withdraw a complaint on the child victim's behalf.⁷⁵ However, it must be the child victim who wishes to do so.⁷⁶ Conversely, an incompetent person would not be allowed to do any of these. As for other types of vulnerable victims, such as the disabled, the mentally disordered, or the female, they may alter or withdraw the complaint by themselves, provided that they are aware of the nature and essence of their action.

2. The inquiry.

The inquiry may be considered to be the second stage in the criminal justice system for the victim. In the inquiry stage, the victim must give a statement or provide evidence for the police (or inquiry officer). In Thailand, the inquiry into the

⁷³ Please note that the logic here is that, as long as he is not declared to be unfit, thus becoming an incompetent person, he is still fully competent in the eyes of the law. According to the Civil and Commercial Code 1925 (n 67), types of persons deemed to have limited competence, or non-competence, are children under 18 years old, incompetent persons, and quasi-incompetent persons.

⁷⁴ Please see details in the next section.

⁷⁵ Thai Supreme Court Decision 1444/2479.

⁷⁶ Thai Supreme Court Decisions 214/2479 and 793/2557.

victim/witness is a part of the inquiry stage,⁷⁷ which is separate from the prosecution stage.⁷⁸ The main regulations regarding inquiries may be found under s. 133, paras 1 to 3. This is known as an “ordinary inquiry.” As for special measures for inquiries where the victims/witnesses are vulnerable persons, the Criminal Procedure Code offers these only in cases featuring two types of victims/witnesses: female victims in sex-related offenses, and children under 18 years old in some specific offenses.

Inquiries concerning female victims of sex-related offenses are dealt with under s. 133, para 4. In this regard, special measures may only be applied in sexual offenses under the Criminal Code,⁷⁹ such as rape (s. 276), aggravated rape (s. 277bis and s. 277ter), an indecent act (s. 287), an aggravated indecent act (s. 280), and offenses relating to sexuality which instigate the commission of sexual offenses (s. 282, s. 283, and s. 284). It should be noted that this provision applies to female victims of these offenses regardless of their age.⁸⁰ According to this section, the special provisions state that the inquiry must be carried out by a female officer and the victim can have a trusted individual present. Recording the inquiry visually or aurally is not mandatory. However, if necessary, the inquiry can be conducted by a male officer if a female officer is unavailable or whenever the victim agrees to it.⁸¹

The second type of special measure is the inquiry into victims of some specific offenses who are children under 18 years old. The relevant regulation may be found under s. 133bis. From the provision, if the victim is under 18 years old,⁸² there are five types of offenses in which special measures may be applied: firstly, sex-related offenses, offenses against the body except the following offenses: offenses of affray, offenses against liberty, offenses of extortion, robbery, and gang-robbery under the Criminal Code. Secondly, offenses under the Prevention and Suppression of Prostitution Act. Third, offenses under the Prevention and Suppression of Trafficking of Women and Children Act.⁸³ Fourth, offenses under the Law of Public Places of Entertainment. Fifth, other offenses which carry a penalty of imprisonment, provided that special measures are requested by a victim or a witness. For the first to fourth types of offense, the victim does not have to request special measures as they would be applied automatically in accordance with the law. As for the fifth type, which includes any offenses whether under the Criminal Code or other Acts, that carry a sentence of imprisonment, it will be up to the victim whether he/she prefers to invoke

⁷⁷ Criminal Procedure Code 1934 (n 19) s 131.

⁷⁸ อุทัย อาทิตเวช, การสอบสวน (วิ.เจ.พรินต์ติ้ง, 2562) [Uthai Arthitwech, *The Inquiry* (VJ Printing 2019)] (Thai) 13.

⁷⁹ ประมวลกฎหมายอาญา พ.ศ. 2499, ราชกิจจานุเบกษา เล่ม 73 ตอนที่ 95 หน้า 12 (15 พฤศจิกายน พ.ศ. 2499) [Criminal Code 1956, Government Gazette vol 73 part 95 p 12 (15 November 1956)] (Thai).

⁸⁰ Nonetheless, if the female victim is under 18 years old, her inquiry will be subject to the Criminal Procedure Code 1934 (n 19) s 133bis.

⁸¹ ณรงค์ ใจหาญ, หลักกฎหมาย วิธีพิจารณาความอาญา เล่ม 1 (วิญญูชน 2566) [Narong Jaiharn, *Principle of Criminal Procedure Law Book No.1* (Winyuchon 2021)] (Thai) 384.

⁸² The age 18 here is the legal age, not the mental age. See *ibid*.

⁸³ It should be noted that the Protection and Suppression of Trafficking of Women and Children Act has been abolished and replaced by the Anti-Human Trafficking Act 2008 (as amended in 2019). Thus, currently, it is offenses under the Anti-Human Trafficking Act.

special measures since it is the victim who needs to make a request for special measures to be applied.

According to s. 133bis, special measures include the following: the inquiry must be held in a child-friendly environment, separate from where adults are interviewed. A psychologist or social welfare worker, someone the child requests, and a public prosecutor must be present. The inquiry must be both visually and aurally recorded. Typically, an inquiry officer will ask the questions, with the psychologist intervening only if the questions are sensitive. However, if it is not feasible to provide special measures in an urgent situation with valid reasons, such as a child having a life-threatening condition, which permits only an immediate inquiry, or an impending expiration of the case's statute of limitations, the inquiry officer may proceed with the inquiry. The officer must handle the child victim with extra care and explain why the inquiry is to be conducted without special measures. Nevertheless, every inquiry must be recorded, without exception.⁸⁴ Section 133bis, para 4, also stipulates that audio and video recording of the inquiry can be continuously played back as evidence.

Section 133ter also stipulates that if the inquiry officer deems it is necessary that the child witness/victim has to identify any person, the officer must organize the identification at a place suitable for the child and ensure a means of preventing the person to be identified from directing their gaze towards the child. This must be done in the presence of a psychologist or social worker, a person applied for by the child, and a public prosecutor, unless it is necessary to do so without them, in which case the inquiry officer has to note down the reason. As for other types of vulnerable victims, there is no specific regulation for the identification of a person, thus, it would be subject to s. 133, para 5, which stipulates that the officer shall, taking into account the safety of the victim or witness according to the circumstances of the case, organize the determination or identification at a proper place and assure a means of preventing the offender or accused from laying eyes on the victim or witness, save where the victim or witness otherwise consents, in which event such consent should be recorded. In this regard, it can be seen that the current law already provides some basic protections to avoid confrontation between the victim and the alleged offender.

As noted, special measures during the inquiry stage are limited to women and children, thus, other types of vulnerable victims are not entitled to special measures and ordinary inquiry measures would be applied. As confirmed in Thai Supreme Court Decision 5922/2562 that the law does not specifically stipulate the inquiry of victim with intellectual disability, it is legal for the inquiry officer to use the same methods of inquiry for a victim with intellectual disability as they would for inquiry of an ordinary victim.⁸⁵

As for other types of vulnerable victims, s. 13, para 3 states that an interpreter must be provided during a criminal procedure process, especially during the inquiry

⁸⁴ คณิง ภาไชย, คำบรรยายกฎหมายวิธีพิจารณาความอาญา เล่ม 1 (วิญญูชน 2562) [Kanueg Rachai, *Law of Criminal Procedure No.1* (Winyuchon 2018)] (Thai) 358–59; Narong, *Criminal Procedural Law* (n 81) 378.

⁸⁵ Thai Supreme Court Decision 5922/2562.

and trial, if the victim, suspect, defendant, or witness has trouble speaking, hearing or communicating. Other appropriate methods may be employed to facilitate questions, answers, or communication but the usual method is to provide an interpreter. In this regard, vulnerable victims, like persons with communication disabilities, may use an interpreter to help them communicate effectively during the inquiry.

As for a personal search of a female victim, s. 132(1), para 2 stipulates that a search may be done with a victim's prior consent and it shall be conducted by a female official or another female and, where reasonable, in the presence of a person requested by the victim. Meanwhile, for other types of vulnerable victims, there is no specific regulation governing a search, thus, the search would be subject to s. 132. This stipulates that any search of the victim may be undertaken only with a victim's prior consent. Furthermore, according to s. 131/1, para 1, if scientific evidence is required, the inquirer shall be empowered to order any person to be analysed by scientific means. If scientific evidence from the body is needed, in an offense attracting a maximum term of imprisonment exceeding three years, s. 131/1, para 2 stipulates that a physician or expert may carry out such analysis to the extent necessary and appropriate and in a manner causing the minimum suffering to the person and not being detrimental to that person's body or health. In this instance, the consent of the victim must be obtained. Should the victim withhold consent or perform any act to impede any person concerned from giving such consent without justifiable grounds, it shall preliminarily be presumed that the fact is in line with the outcome of the analysis which, if having been held, would be procedurally unfavourable for such victim.

3. The trial.

A criminal trial is a formal judicial process in which a person or persons accused of a crime is/are tried in a court of law to determine their guilt or innocence. The trial involves presenting evidence, examining witnesses, and making legal arguments. The primary objective is to establish whether the prosecution has proven the defendant's guilt beyond a reasonable doubt. If the defendant is found guilty, sentencing will follow to determine the appropriate punishment.⁸⁶

As mentioned earlier, vulnerable victims can institute a criminal prosecution by themselves except when a victim is a child or an incompetent person, in which case a legal representative or guardian has to do so on their behalf. If they do not choose to institute a criminal prosecution by themselves, they may still, by motion and through a legal representative or guardian, associate themselves with the prosecutor to be a co-plaintiff at any stage of the trial before the court of first instance but prior to the delivery of judgment.⁸⁷

⁸⁶ "Criminal Procedure" *Legal Information Institute, Cornell Law School* (2022) <https://www.law.cornell.edu/wex/criminal_procedure>.

⁸⁷ Criminal Code (n 79) s 30.

During the trial, victims can be summoned as witnesses if they are needed. Under s. 172, para 1, the taking of evidence in trial shall be generally conducted in an open court and in the presence of the accused. As for vulnerable victims/witnesses, s. 172, para 3 stipulates that when the sex, age, status, health and mental state of a witness or their fear of the accused person have been considered, the taking of evidence in trial may be made without direct confrontation between witness and the accused person. This may be achieved by using a closed-circuit television, electronic media or any other way prescribed by the rules of the Chief Justice, and it may involve a psychologist, a social worker or other person in whom the witness has confidence. It can be seen that special measures may be imposed to make the victim/witness feel sufficiently comfortable to give evidence in trial.

As for a child victim, s. 172ter stipulates that arrangements must be made for a child witness to be in an environment suitable for a child. Moreover, the court may impose the following methods: the witness may be examined by the court alone or may receive questions via a psychologist or social welfare worker, allowing the parties to proceed with an examination-in-chief, cross-examination and re-examination through a psychologist or social welfare worker. In this regard, the court may arrange to reproduce video and audio recordings in the courtroom and a psychologist or social welfare worker may be appointed by the court. If the court thinks fit, or if a child witness or any party requests with reasonable cause (i.e., that it may be detrimental to the child if permission is not given as requested), the court may arrange to reproduce before the parties the images and voice of a victim/witness who is a child, the recordings having been made in the inquiry stage under s. 133bis. The court may, if it thinks fit, deem the recorded images and voice of the testimony as a part of the child's testimony in the trial stage by allowing the parties to proceed with more witness examination, cross-examination, or re-examination, all this to be done as necessary and to the extent which the court thinks fit.

In a case where it is unsuitable to bring a witness to give testimony, due to pressing circumstances, the court shall admit recorded images and voice of the child's testimony in the inquiry stage under s. 133bis as if it is their testimony in the trial stage of the case. The court may admit it alongside other witnesses' testimony in the trial and judgment of the case. It may be seen that s. 172ter aims to protect child victims/witnesses from having to repeat their testimony by offering recorded testimony from the inquiry as evidence-in-chief. If it is necessary to bring the witness to court, special measures may be invoked, like arranging for a suitable environment for a child and a facility for the court directly to question the witness alone or via a psychologist or social welfare worker.

In practice, apart from the mentioned Thai Supreme Court Decisions regarding vulnerable victims, there are also some other cases concerning vulnerable victims, for example in Thai Supreme Court Decisions 13360/2556 and 327/2560 and Judgment of the black case No. A.2186/2559. Nonetheless, it was not mentioned how vulnerable victims' rights are protected.

C. Other Key Laws

Apart from the above-mentioned specific measures to protect vulnerable victims under the Criminal Procedure Code, the Compensation for Injured Persons and Damages for the Accused Act 2001 as amended in 2016⁸⁸ (hereafter referred to as the “Compensation Act”) has also been enacted to protect the rights of victims. Although it does not specifically aim to ensure rights of vulnerable victims, but rather all victims, it is worth mentioning to help capture the whole picture of the law regarding victim protection and the assurance of victim’s rights in Thailand.

The Compensation Act aims to compensate a victim in a criminal case who dies or suffers damage to the body or mind due to the wrongdoing of another person, in the event that he/she was not involved in the wrongdoing and has no opportunity to receive other remedies for the damage. It also aims to compensate a person who is a defendant in a criminal case and is detained during the trial but is found by the final judgment not to have committed the crime or if the verdict establishes that the defendant’s action was not a crime.⁸⁹ It ensures that the victim has the right to receive compensation but also assures compensation and expenses for the defendant in a criminal case. Compensation and expenses would be provided by the Office of Financial Assistance for Victims and Defendants in Criminal Cases, Department of Rights and Liberties Protection, Ministry of Justice.⁹⁰ This right must be described to the victim by the police interviewer.⁹¹

A victim who sustains damage to the body and/or mind is entitled to receive compensation. If the victim dies, the victim’s heirs, descendants, parents, spouses, and any person who provides support to, or is under the care of, the deceased,⁹² are entitled to compensation.

⁸⁸ พระราชบัญญัติค่าตอบแทนผู้เสียหาย และค่าทดแทนและค่าใช้จ่ายแก่จำเลยในคดีอาญา (ฉบับที่ 2) พ.ศ. 2559, ราชกิจจานุเบกษา เล่ม 133 ตอนที่ 74 ก หน้า 1 (22 สิงหาคม พ.ศ. 2559) [Compensation for Injured Persons and Damages for the Accused Act 2001, amended No.2 2016, Government Gazette vol 133 part 74 a p 1 (22 August 2016)] (Thai).

⁸⁹ *ibid*, s 3.

⁹⁰ “Application for Compensation for Victims in Criminal Cases: In the Case of Victims” *Information Centre for Contacting Government Officials* (2025) <<https://info.go.th/procedure/94e56d2c-e5b0-4e83-817d-a248cboe3eb8/view?lat=&lng=>>.

⁹¹ บันทึกความร่วมมือว่าด้วยการให้ความช่วยเหลือประชาชน พ.ร.บ. ค่าตอบแทนผู้เสียหายและค่าทดแทนและค่าใช้จ่ายแก่จำเลยในคดีอาญา พ.ศ. 2544 (8 ธันวาคม พ.ศ. 2557) [Memorandum of Understanding on Providing Assistance to the Public Under the Act on Compensation for Victims and Compensation and Expenses for Defendants in Criminal Cases 2001 Between the Department of Rights and Liberties Protection and the Royal Thai Police (8 December 2014)] (Thai).

⁹² ระเบียบคณะกรรมการพิจารณาค่าตอบแทนผู้เสียหาย และค่าทดแทนและค่าใช้จ่ายแก่จำเลยในคดีอาญา ว่าด้วยการยื่นคำขอ และวิธีพิจารณาคำขอค่าตอบแทน ค่าทดแทน และค่าใช้จ่าย พ.ศ. 2559, ราชกิจจานุเบกษา เล่ม 133 ตอนพิเศษ 286 ง หน้า 14 (9 ธันวาคม พ.ศ. 2559) มาตรา 3 [Regulations of the Committee for Consideration of Compensation for Victims and Compensation and Expenses for Defendants in Criminal Cases on the Submission of Requests and the Procedure for Consideration of Requests for Compensation, Compensation and Expenses (No. 2) 2005, Government Gazette vol 133 special part 286 g p 14 (9 December 2016) s 3] (Thai).

Notably, compensation is only for victims of the following 17 offenses under the Criminal Code; offenses relating to causing danger to the public under s. 224 and s. 238, offenses relating to sex under s. 276 to s. 287, offenses relating to life and body under s. 288 to s. 308, offenses relating to reputation and freedom under s. 309 to s. 311, s. 312bis and s. 313, offenses relating to property under s. 366, s. 337, s. 339, s. 339bis, s. 340 and s. 340bis and offenses relating to trespassing under s. 365.⁹³

In cases where the victim is alive, the victim is entitled to receive the following amount of compensation from the state:

1. Necessary medical expenses actually paid, not exceeding 40,000 baht
2. Physical and mental rehabilitation expenses actually paid, not exceeding 20,000 baht
3. Compensation for lost benefits during the period of inability to work normally, paid at the minimum wage rate in the province where the work is performed, on the day/s that the work cannot be performed, for a period not exceeding one year from the first day when the work could no longer be performed normally
4. Other compensation for damages as deemed appropriate by the committee, not exceeding 50,000 baht⁹⁴

If the victim dies, the victim's heirs are entitled to receive the following amount of compensation from the state:

1. Compensation in the event of the victim's death, from 30,000 baht but not exceeding 100,000 baht
2. Funeral expenses, 20,000 baht⁹⁵
3. Loss of support, not exceeding 40,000 baht
4. Other damages as the committee deems appropriate but not exceeding 40,000 baht⁹⁶

⁹³ สารบัญของพระราชบัญญัติค่าตอบแทนผู้เสียหายและค่าทดแทนและค่าใช้จ่ายแก่จำเลยในคดีอาญา พ.ศ. 2544 [List of the Act on Compensation of Victims and Compensation and Expenses to Defendants in Criminal Cases 2001] (Thai).

⁹⁴ กฎกระทรวง กำหนดหลักเกณฑ์ วิธีการ และอัตราในการจ่ายค่าตอบแทนผู้เสียหาย และค่าทดแทนและค่าใช้จ่ายแก่จำเลยในคดีอาญา (ฉบับที่ 2) พ.ศ. 2559, ราชกิจจานุเบกษา เล่ม 133 ตอนที่ 83 ก หน้า 1 (23 กันยายน พ.ศ. 2559) มาตรา 2 [Ministerial Regulations on the Criteria, Methods and Rates for Payment of Compensation to Victims and Compensation and Expenses to Defendants in Criminal Cases (No. 2) 2016, Government Gazette vol 133 part 83 a p 1 (23 September 2016) s 2] (Thai).

⁹⁵ กฎกระทรวง กำหนดหลักเกณฑ์ วิธีการ และอัตราในการจ่ายค่าตอบแทนผู้เสียหายและค่าทดแทนและค่าใช้จ่ายแก่จำเลยในคดีอาญา พ.ศ. 2546, ราชกิจจานุเบกษา เล่ม 120 ตอนที่ 78 ก หน้า 1 (15 สิงหาคม พ.ศ. 2546) มาตรา 3 [Ministerial Regulations on the Criteria, Methods and Rates for Payment of Compensation to Victims and Compensation and Expenses to Defendants in Criminal Cases 2003, Government Gazette vol 120 part 78a p 1 (15 August 2003) s 3] (Thai).

⁹⁶ Ministerial Regulations on the Criteria, Methods and Rates for Payment of Compensation to Victims and Compensation and Expenses to Defendants in Criminal Cases (No. 2) 2016 (n 94) s 3.

In this regard, the Committee for the Consideration of Compensation for Victims and Compensation and Expenses for the Defendant in Criminal Cases shall determine whether or not the injured party shall receive compensation, taking into account the circumstances and seriousness of the offense and the damage suffered by the injured party, including the opportunity for the injured party to alleviate the damage in other ways.⁹⁷ Importantly, an application to receive compensation must be filed within one year of the date when the victim first became aware of the offense.⁹⁸

In conclusion, the Compensation Act is an important legislative instrument in Thailand's criminal justice system that protects the rights and dignity of both crime victims and falsely accused individuals. The Act establishes a framework for state-funded compensation, for both. However, the scope of compensation is limited to monetary sums.

IV. ANALYSIS AND SUGGESTIONS

This section will begin with the comparison of vulnerable victim protections under the Criminal Procedure Code and the international legal framework.

First, regarding the complaint stage, s. 123 and s. 124 of the Criminal Procedure Code allow a complaint to be filed orally or in writing, ensuring that even illiterate victims can access the process. This aligns with the international principle of ensuring effective access to justice under the Universal Declaration of Human Rights and Basic Principles. As for vulnerable victims like child and incompetent victims, under s. 5 and s. 6, a child may file a complaint if they are "old enough" to understand the nature of the act or the child may appoint a representative. Thus, these measures respect the CRC's emphasis on child-friendly justice and ensure that those lacking capacity are represented. Incompetent persons will require a guardian, and the court is empowered to appoint one if none exists. Since an incompetent person may also be "a person with a disability" under the CRPD, these measures ensure their access to justice as required by the CRPD. As for female victims, the Criminal Procedure Code states that a married female can file a complaint independently. In this regard, her husband⁹⁹ may also file on her behalf but only with her express permission. This respects the CEDAW's mandate for women's autonomous access to justice free from discriminatory restrictions.

Meanwhile, as for other vulnerable groups such as the disabled and mentally disordered, the Criminal Procedure Code provides no specialized measures for them. These victims may file complaints if they are deemed to be aware of their act or if they

⁹⁷ Compensation for Injured Persons and Damages for the Accused Act 2001, amended No. 2 2016, (n 88) s 18 para 3.

⁹⁸ *ibid*, s 22.

⁹⁹ Noted that although same-sex marriage is now allowed according to the Civil and Commercial Code of Thailand, the Criminal Procedure Code still has not been amended to reflect the change in the Civil and Commercial Code.

can appoint someone to act on their behalf. This may be in breach of the CRPD's provisions regarding access to justice and equal recognition before the law, which obligate states to provide support mechanisms to help persons with disabilities exercise their legal rights, including participation in criminal justice procedures.

Second, regarding the inquiry stage, the Criminal Procedure Code provides general rules of evidence gathering as victims will be providing evidence during the inquiry, which is kept separate from the prosecution stage. Hence, this separation helps protect the integrity of the victim's testimony and aligns with ensuring a dignified process. As for special measures, s. 133, para 4 mandates that inquiries involving female victims in sexual offense cases are conducted by a female officer (or a male officer but only if acceptable to the victim) and allows a trusted person's presence. It may be seen that these measures are consistent with the CEDAW's requirements to provide a supportive environment for female victims. As for child victims, s. 133bis provides for a child-friendly environment, the presence of a psychologist or social worker, and mandates audio-visual recording of the testimony. Section 133ter also provides for special arrangements which should be made available for identification procedures. It is evident that these specialized measures echo the CRC and the United Nations guidelines for child-sensitive justice, minimising re-traumatisation and ensuring that children are heard safely.

As for assistance with communication for persons with communication disabilities, s. 13, para 3 requires an interpreter to be present if the victim (or witness) has difficulties with communication. This aligns with the CRPD's call for accessible judicial processes, though further physical or procedural accommodations might enhance compliance. As for protection during searches and medical examinations, the Criminal Procedure Code states that searches and scientific examinations require the victim's consent and are to be conducted in a manner that minimizes discomfort and preserves dignity. Thus, these procedures meet the Basic Principles by ensuring that victims are not further harmed during evidence collection.

Third, regarding the trial stage, as for participation and representation, the Criminal Procedure Code states that vulnerable victims (except children and incompetent persons) can institute a prosecution on their own or join as co-plaintiffs through a legal representative. This facilitates access to justice and supports the victim's role in the process, in line with the Basic Principles. As for protection from direct confrontation, the Criminal Procedure Code s. 172(3) allows evidence to be taken, without direct confrontation with the accused, through alternative methods (e.g., closed-circuit television, intermediary questioning by a psychologist or social worker). For child victims, s. 172ter provides further options, such as using pre-recorded testimony or allowing examination in a child-friendly setting. In this regard, such provisions are directly in line with international recommendations to protect vulnerable victims from secondary victimisation during trials, as advocated by both the Basic Principles and the CRC.

Additionally, the Compensation Act, which compensates victims in selected offenses, is also compliant with the Basic Principles.

In conclusion, the Criminal Procedure Code largely incorporates international principles by ensuring accessible complaint mechanisms, providing tailored procedures for child and female victims, enabling protective measures during the inquiry and trial stages, and offering assistance with communication (e.g., interpreters) for persons with disabilities.

It can be seen that the Criminal Procedure Code, provides some protections and help for vulnerable victims. Nonetheless, there are some perspectives which have not been covered, and they are as follows:

First, registering a complaint from a female victim is not covered by a specific regulation like that of a child victim. In this regard, there should be regulation to protect a female victim. Since there is already regulation pertaining to an inquiry concerning a female victim/witness, one should also be made for the registration of a complaint. For example, in sexual offenses, there should be a female police officer tasked with receiving a complaint from a female victim. Giving details during the registration of a complaint, even if they are general details regarding the sexual offense, can be traumatising for the victim. It may simply be embarrassing or awkward for a female victim to file a complaint with male police officer, or it could lead to potentially serious religious problems with female/male interaction such as those experienced by Muslim women. A female victim may at least have more peace of mind if a female police officer is there to do the duty.

Second, there is no specific regulation concerning the registration of a complaint from vulnerable victims such as a person with an intellectual disability. As noted, if a person with an intellectual disability is not deemed to be an incompetent person, he/she may still file a complaint independently, so special measures should be provided to help in this matter. This may be done using a method similar to that used in registering a complaint from a child victim, although additional assistance, such as an intermediary to help with communication, should be provided. In so doing, Thailand would satisfy its obligation under the CRPD, specifically “effective access to justice.” Nonetheless, the biggest challenge here is for a police officer to be able to identify a person with an intellectual disability. Thus, it is suggested that there should be an introduction course to help police officers identify those with special needs. This includes persons with disabilities, persons with intellectual disabilities, and mentally disordered persons.

Third, the current law stipulates that an interpreter may be provided during the inquiry or trial. Nonetheless, this provision should apply also to the registration of a complaint by persons with communication disabilities. This is to ensure that they can communicate effectively when they first contact the criminal justice system so that there will be sufficient detail to decide whether a criminal investigation is appropriate. This might be done easily by amending s. 13, para 3 to include the stage of registering a complaint. Having achieved this, Thailand would effectively have fulfilled its obligation under the CRPD regarding effective access to justice.

Fourth, regarding the identification of a person, the current laws only include a specific regulation in a case where a child is the victim. Although basic regulations

regarding the identification of a person already provide for the avoidance of confrontation between the victim and another person, especially the alleged offender, there is room for improvement in the matter of vulnerable victims, especially females and persons with an intellectual disability. For example, a trusted person, chosen by the victim, may also attend the identification process to provide emotional support for the victim. This could also expand to include other vulnerable victims, such as a person suffering from some type of mental disorder who may benefit from having a trusted person present, e.g., a victim who may be suffering from severe depression, a panic attack, or anxiety. Notably, the role of a trusted person should be clearly defined and restricted to providing emotional support only. Preferably, the trusted person should have some kind of relationship with the victim.

Fifth, special measures during an inquiry are currently only available for children and female victims. In this regard vulnerable victims, such as a person with an intellectual disability, would also benefit from special measures as special measures like an intermediary, communication aids/tools, or the presence of a trusted person, may help them more effectively to participate in the inquiry.¹⁰⁰ In this regard, a vulnerable victim, such as a person suffering from any type of mental disorder, e.g., victims suffering from severe depression, panic attack, or anxiety, will benefit from having a trusted person present and should also be allowed to have such with them during the inquiry.¹⁰¹ This would also ensure that Thailand has satisfied its obligation regarding effective access to justice under the CRPD.

Sixth, more assistance and special measures for vulnerable victims should be available during trial. Currently, an interpreter can be provided for victims with communication difficulties and closed-circuit television, or electronic media may also be used when taking evidence from vulnerable victims. Additionally, for a child victim, video or audio data recorded at the inquiry stage can be used as evidence-in-chief during a trial. However, providing more comprehensive assistance and special measures, such as screens around the witness box to prevent the victim from having to see, or be confronted by, the defendant (and vice versa for the defendant), other communication aids/tools or giving evidence in private would also be beneficial.¹⁰² Furthermore, for a female victim of sexual offenses, evidence taken at the inquiry stage should also be allowed to be used as evidence-in-chief, to avoid any necessity for the victim to repeat traumatic testimony. In this regard, any inquiry into sexual

¹⁰⁰ For a proposal regarding this, see Yada Dejchai Tianprasit, *Special Measures for the Interview of Victims with Intellectual Disabilities: A Comparative Study of Laws of Thailand, the United Kingdom (England and Wales) and Norway: Final Research Report* (Faculty of Law, Thammasat University 2024) <https://digital.library.tu.ac.th/tu_dc/frontend/Info/item/dc:310577>.

¹⁰¹ For example, in England and Wales, these types of special measures are available. See “Special Measures” *Crown Prosecution Service* (2023) <<https://www.cps.gov.uk/legal-guidance/special-measures>>.

¹⁰² For example, in England and Wales, these types of special measures are available to help vulnerable witnesses. See *ibid*.

offenses perpetrated against a female victim must be recorded on video or audio media.¹⁰³

For similar reasons, the same concept should also be applied to vulnerable victims, such as a person with an intellectual disability, but it should be limited to some specific types of offenses, such as sexual, life-threatening, and physical offenses.¹⁰⁴ As for other types of vulnerable victim, such as a person suffering from some type of mental disorder, e.g., those suffering from severe depression, panic attack, or anxiety, it is suggested that, if the inquiry is video- or audio-recorded, it can be used subsequently as evidence-in-chief. This should be limited to cases where, if a victim were to be put on the stand, it would severely affect the victim's mental health. It should be limited to certain types of offenses such as sexual, life-threatening, and physical offenses, where there may be harm to the victim's psychological well-being.¹⁰⁵ Having achieved this, Thailand would emphatically satisfy its obligations under the CRPD and CEDAW.

Lastly, there are still some other types of what may be considered vulnerable witnesses which have not yet been covered by the Criminal Procedure Code, for example, the LGBTI community. Transgender and non-binary people, especially, might benefit from specific legal measures to protect them, particularly during a physical search of the body. Since the current laws regarding search distinguish only between male and female gender by birth, meaning that these persons, regardless of what they prefer to identify themselves as, would still be subjected to being searched by persons of their birth gender. For example, a female transgender would be searched by a male police officer under the current Criminal Procedure Code. In this regard, the law should provide a safeguard for searching, for example, asking them which gender of police officer they would prefer to be searched by.¹⁰⁶ This would ensure that that they would not feel violated. Additionally, other types of vulnerable witness, like the elderly, should also be considered as a vulnerable victim and protected by the Criminal Procedure Code for several reasons. For example, advancing age often brings physical frailty and cognitive decline, making the elderly more susceptible to various forms of abuse and exploitation.¹⁰⁷ Moreover, legally, recognizing the elderly as vulnerable victims aligns with principles of justice and equity. Laws and policies that acknowledge this vulnerability can lead to enhanced protections, stricter penalties for perpetrators, and improved support systems for

¹⁰³ Currently, it is not compulsory.

¹⁰⁴ For a proposal regarding this, see Yada, *Special Measures* (n 100).

¹⁰⁵ For example, in England and Wales, special measures are available to help intimidated witnesses including victims in sexual offenses and distressed witnesses. See Crown Prosecution Service, "Special Measures" (n 101).

¹⁰⁶ For example, in the State of Pennsylvania, transgender and non-binary people can ask for an officer of the same gender. See "Rights of Trans and/or Non-Binary People in Policing" *City of Philadelphia* (2024) <<https://www.phila.gov/2023-06-30-rights-of-trans-and-or-non-binary-people-in-policing/>>.

¹⁰⁷ Catherine C. Mcnamee and Mary B. Murphy, "Elder Abuse in the United States" (National Institute of Justice, 1 November 2006) <<https://nij.ojp.gov/topics/articles/elder-abuse-united-states>>.

victims. For instance, many jurisdictions have implemented specific elder abuse statutes and specialized courts to address these issues comprehensively.¹⁰⁸ In this regard, special measures, such as the use of remote video links or an intermediary for giving evidence during inquiry or trial, should be considered.¹⁰⁹

V. CONCLUSION

This study highlights Thailand’s progress in codifying legal safeguards into its Criminal Procedure Code, specifically during the complaint, the inquiry, and the trial stages, to better protect the rights of vulnerable victims, which largely aligns with its obligations under international human rights instruments. The inclusion of measures such as procedural modifications demonstrates Thailand’s commitment to creating a more equitable and supportive criminal justice system for vulnerable victims. Nevertheless, this examination reveals persistent gaps and areas necessitating further reform. Specifically, the current legal framework could be enhanced by the explicit inclusion of provisions for vulnerable populations such as the LGBTI community, the elderly, and the people who suffer from mental disorders (who are not yet covered by the law), ensuring that their unique needs are adequately addressed through tailored protective measures and their formal recognition as vulnerable victims under Thai law. Furthermore, the incorporation of new tools and procedures, such as the increased use of video links, intermediaries, or allowing a support person, in more various stage of criminal proceedings, should be considered.

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¹⁰⁸ “Policy” *American Bar Association* (3 March 2025) <https://www.americanbar.org/groups/law_aging/policy/>.

¹⁰⁹ For example, older victims and witnesses are considered vulnerable witnesses under England and Wales’ Youth Justice and Criminal Evidence Act 1999. Thus, they are eligible for special measures. See “Older People: Prosecuting Crime Against” *Crown Prosecution Service* (30 April 2020) <<https://www.cps.gov.uk/legal-guidance/older-people-prosecuting-crimes-against>>.

* **Indexing Thai names.** “Although family names are used in Thailand, Thai people are normally known by their given names, which come first, as in English names. The name is often alphabetized under the first name, but practice varies.” *The Chicago Manual of Style* (18th edn, University of Chicago Press 2024) §15.93.