



Volume 4: July 2019

# CHIANG MAI UNIVERSITY LAW REVIEW

**Chiang Mai University, Faculty of Law**

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Published by the Chiang Mai University Faculty of Law  
239 Huay Keaw Road, Suthep, Muang, Chiang Mai 50200 Thailand

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## **Editors-In-Chief**

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Mesaya Kingmuang

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## Table of Contents

### LAW REVIEW ARTICLES

*The Impact of Cryptocurrency and FinTech Law in Thailand  
and the First Thai Legal Promulgation* .....1

Saranros Janarporn

*Graffiti Vandalism in Thailand* .....16

Deeraporn Sirimongkol

### STUDENT LEGAL NOTES

*Domestic Violence of Men by their Family Members* .....35

Naruesorn Naruemitapa

*Women Banned from the Thailand Police Cadet Academy  
(RPCA) Beginning in Academic Year 2019* .....51

Mesaya Kingmuang



## **Chiang Mai University Law Review**

The vision of Chiang Mai University Law Review (CMULR) was designed to improve the quality of legal and social research at Chiang Mai University and in Thailand. CMULR may be the only Thailand Law Review with faculty/peer review of articles and notes, and a collaborative review of the publication process. Potential employers recognize that CMULR student members have learned how to conduct large amounts of legal research, to write a persuasive document to support a legal argument, and have proven editing skills, which shows their commitment to an intellectually demanding activity.

CMULR understands that its members and its readers are well-educated and that a purpose of the CMULR is to attract new and brilliant students to the Faculty of Law by providing them a unique legal education in Thailand which endorses the learning of the law in English, research without plagiarism, and excellent academic writing, all which surpasses other legal educational facilities.

CMULR is committed to initiating and encouraging legal scholarship in Thailand. CMULR provides the opportunity for the students to build connections within the legal community that may lead to important work after graduation. The role and position of Thailand's premier law review was the hope to foster a culture where the publication process is not an end in itself but a stepping stone to other scholarly endeavors.

CMULR is committed to the development of law and society in Thailand and Southeast Asia. Its objective is to promote critical thinking and social progress and to maintain itself as an objective and accurate source of legal information. Law Review membership is a prestigious one and students may strive to become a part of this scholarly organization.

CMULR is now a faculty and student-run legal journal. It focuses on articles, notes and comments relating to Thailand and international comparative law. The publication is distributed online at the Chiang Mai University Faculty of Law website.

In summary, the long term vision is that students would join CMULR if they feel proficient in English, have a desire to improve research and writing skills, footnote accurately, understand uniform citations and prepare a document that the student can be proud of and publish.

## A Note from the Editors-In-Chief



As Editors-in-Chief, we are delighted to introduce Chiang Mai University Law Review (CMULR) Volume 4. It is a vehicle for delivery of timely and thoughtful information and opinion on many areas of law. CMULR is a faculty and student-run legal journal that focuses on articles relating to Thai law which are of interest to the students and the legal community in Thailand.

Additionally, this year we focus on team work of student members, legal writing procedures and preparing newer members for the next year. The procedures include learning how to write an outline, doing in depth legal research, writing the legal note and abstract, then making the corrections through the editing process.

More importantly, this Law Review is a stage and an opportunity for people in the legal community to express their vision and contribute to the Thai legal community. Therefore, we welcome all readers to explore these issues.

CMULR looks forward to future submissions from members of the legal community including lawyers, judges, academia, researchers, experts and students. Submissions may be in the form of articles, essays, notes and comments on legal, social, cultural, political, human rights and international relation issues affecting Thailand.

Finally, on behalf of all the members of the Chiang Mai University Law Review (CMULR) Volume 4, we would thank Dean of the Faculty of Law, Assistant Professor Dr. Pornchai Wisuttisak who granted us this special opportunity. Also, Assistant Professor Dr. Usanee Aimsiranun, Assistant Dean for Academic and Foreign Affairs – ASEAN Legal Studies Unit, for her support and encouragement, and especially Foreign Legal Expert, Susan Billstrom, J.D. for conversations, comments and suggestions to members of this Law Review that greatly improved our articles and performances. Let this Law Review be a path for the next generation members to express their knowledge of the law and solutions for the future.

Best regards,  
Naruesorn Naruemitapa and Mesaya Kingmuang, Editors-in-Chief

# **The Impact of Cryptocurrency and FinTech Law in Thailand and the First Thai Legal Promulgation**

by

*Saranros Janarporn\**

## ***Abstract***

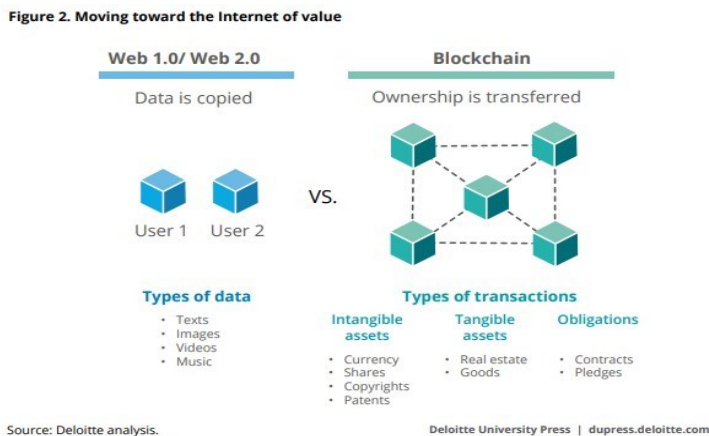
*The Cryptocurrency and FinTech will fill an important role in the financial future of Thai society. The emergence of digital finance in the world has involved business models and stakeholders in the industries. This has also happened in Thailand. Based upon the first Thai Legal Promulgation, the investors and the operators have to adhere to the newly promulgated rule which will apply to many of business aspects, especially in the investment sector. Legal framework has not yet codified for cryptocurrency as national-currency or a tool as a medium instrument for exchange goods or services in the public. Moreover, there is still incongruity in the transition phrase where not all of the involved financial institutions have collaborated. This article will analyze the latest legal status of related digital assets and financial technology; and advantages and disadvantages of implementation of digital finance regulation. This article states that financial technology should be implemented and it will prove a useful tool for development in the future.*

## **The Beginning of Invention: Cryptocurrency and FinTech**

Cryptocurrency has been developed from the traditional coins to the intangible coins which transfer by the method of Financial Technology (hereinafter known as “FinTech”). It is the system that money, payment and transformation of finance through encryption network without the intermediary called Blockchain. It is the decentralized digital database system that stores a set of databases to which multiple computers are con-

*\* A corporate counsel in a National Power Supply Public Company and Graduate of Chiang Mai University, Faculty of Law*

nected. The process requires a consensus and participation among the users; therefore, it is difficult to forge information and only a password holder is able to access the system. This main principle is to make the transaction more convenient and carry the confidential information securely.<sup>1</sup>



Source: Deloitte Analysis,  
[https://www2.deloitte.com/content/dam/insights/us/articles/4185\\_blockchain-public-sector/DUP\\_will-blockchain-transform-public-sector.pdf](https://www2.deloitte.com/content/dam/insights/us/articles/4185_blockchain-public-sector/DUP_will-blockchain-transform-public-sector.pdf)

The blockchain has embedded new tools to make payments and invented a new electronic currency. The first emergence of cryptocurrency was in 2009, bitcoin was created as a decentralized currency stored across the internet, by the pseudonym inventor ‘Satoshi Nakamoto’ to replace government or bank-controlled financing.<sup>2</sup> The idea of the invention of cryptocurrency is to minimize fees, and to easily set up and verify transactions.<sup>3</sup> The inventor believed that everyone could be a money-holder through the blockchain and the providers of the payment

<sup>1</sup> Will Blockchain transform the Public Sector? Deloitte University Press, at *What is blockchain? A Digital Ledger with a Difference* p.5, (2017)  
[https://www2.deloitte.com/content/dam/insights/us/articles/4185\\_blockchain-public-sector/DUP\\_will-blockchain-transform-public-sector.pdf](https://www2.deloitte.com/content/dam/insights/us/articles/4185_blockchain-public-sector/DUP_will-blockchain-transform-public-sector.pdf).

<sup>2</sup> Bernard Marr, *A Short History of Bitcoin and Crypto Currency Everyone Should Read*, (2017),  
<https://www.forbes.com/sites/bernardmarr/2017/12/06/a-short-history-of-bitcoin-and-crypto-currency-everyone-should-read>.

<sup>3</sup> บิตคอยน์คืออะไร, “หากนี่ถึง บิตคอยน์ควรจะนึกถึงอะไร?”, *What is Bitcoin? What should be considered as Bitcoin?*, <https://siamblockchain.com/bitcoin-%E0%B8%84%E0%B8%B7%E0%B8%AD-%E0%B8%AD%E0%B8%B0%E0%B9%84%E0%B8%A3/> (last visited Oct. 19, 2018).

verification service would receive a return as virtual money that is created from the process of computer mining process.<sup>4</sup> Thereafter, the money is traded in the form of input utilizing the password. The process to produce bitcoin is as follows:

Bitcoins are created through the process of mining - a process which rewards users for contributing computing power to the network by awarding newly created bitcoins to every user who resolves a complicated mathematical problem (the so-called 'Proof of Work') whose difficulty increases with overall network strength. The mining process ultimately serves to ensure the security and integrity of the overall system, by providing a means to verify transactions through a decentralized network of peers simultaneously processing transaction data (often in exchange of a fee) before they are recorded into a public ledger or blockchain.<sup>5</sup>

Refer to the mathematical problem in creation of bitcoin is that the process of using an elliptic curve and a finite field through the access of Elliptic Curve Digital Signature Algorithm to sign the data allowed, third parties could verify the authenticity of signature. Along with the signer still remains the ability creating the signature so when the data is signed, the transaction will transfers ownership.<sup>6</sup>

As per this mentioned method indicate that blockchain technology is underlying cryptocurrency, FinTech, and digital tokens. The decentralized system has changed the centralized server-based system. In terms of data security, data storage, the transaction without intermediary and also low

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<sup>4</sup> พิพัฒน์ เหลืองนฤมิตชัย, *รถไฟเหาะคริปโตเคอเรนซี*, “ภูมิสมบัติของเงินดิจิทัล”, (๑๘ กุมภาพันธ์ ๒๕๖๑), Pipat Luengnaruemitchai, *Cryptocurrency-roller-coaster*, at *The Features of Digital Finance*, (Feb. 19, 2018), <https://www.the101.world/cryptocurrency-roller-coaster/>.

<sup>5</sup> Primavera De Filippi, *Bitcoin: a Regulatory Nightmare to a Libertarian Dream*, at *General Overview*, (May. 23, 2014), <https://policyreview.info/node/286/pdf>.

<sup>6</sup> Eric Rykwalder, *The Math Behind Bitcoin*, at *ECDSA*, Coindesk, (Oct. 19, 2014), <https://www.coindesk.com/math-behind-bitcoin>.



fees compare to banks. This technology has dramatically increased the challenge for financial institutions currently.

## **New Challenges of Financial Innovation Technology**

The new challenges are the evolution of payment tools and the matter of money, both from paper to the digital system which is intangible and allow buyers to remain anonymous. These have created a struggle with the traditional financial system. In contrast, everyone can exchange through their computer and mobile phone with minimal means of identification. When the technology has changed, the government has to play a role in the control of this technological transformation to balance the opportunities and risks.<sup>7</sup> Especially, cryptocurrency is not universally accepted according to Agustín Carstens, a general manager of the Bank of International Settlements who states that cryptocurrency is not a medium of exchange and it will affect financial stability in the future.<sup>8</sup>

Besides, there is the confusion whether cryptocurrency should be categorized as one of securities or the new currency that will be operated under the traditional financial institutions. At the present time, there are only the issuers and the investors that exchange these digital finances. In addition, the high instability and the new approach of cybercrime (e.g., crime conducted via the Internet or some other computer network) are still uncertain. For example, the most worldwide transnational crime is known as AlphaBay using bitcoin and other cryptocurrencies to trade on illegal websites. It had been seized by the Thai police as a result of coordinated efforts across the globe:

In early July, multiple computer servers used by the AlphaBay website were seized worldwide, and the site's creator and administrator - a 25-year-old Canadian citizen living in

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<sup>7</sup> Jesus Alcocer, *Bitcoin catches fire in Thailand*, Bangkok Post, (Dec. 17, 2017), <https://www.bangkokpost.com/business/finance/1384362/bitcoin-catches-fire-in-thailand>.

<sup>8</sup> นายฉวีรัตน์ โพธิ์พัฒน์ชัย, ตอนที่๒: ข้อมูลเบื้องต้นเกี่ยวกับเงินดิจิทัล, (๒๕๖๑), Narun Popattanachai, Law Reform Commission of the Council of State, (TH 2018).

Thailand - was arrested. AlphaBay operated for more than two years and had transactions exceeding \$1 billion in bitcoin and other digital currencies. The site, which operated on the anonymous Tor network, was a major source of heroin and fentanyl, and sales originating from AlphaBay have been linked to multiple overdose deaths in the United States.<sup>9</sup>

This case indicates that the cybercrime is largest and the most severe if there are uncontrolled gaps in the law. The world governments must oversee the innovation technology closely and requires a global partnership due to the fact that the internet has very few boundaries and it may be a threat to easily commit cybercrime. Thailand is one criminal hot-spot. Therefore, during this transition phase, government first enacted laws to control this digital monetary scheme according to the current trends and criminal transactions. Nevertheless, neither cryptocurrency nor digital tokens had been designated as national-currency but a digital asset which is only for investment purpose.

### **Legal and Regulatory Implications of Cryptocurrency and Digital Tokens in Thailand**

Thailand is the one of twenty-nine countries in the world that recognized this financial status as legitimate investment.<sup>10</sup> It is categorized as one of the securities in a similar concept to the corresponding provisions in the Thailand Securities and Exchange Act B.E. 2535 (1992) by which the Securities and Exchange Commission (hereinafter known as “SEC”) will implement of the application for a license, trading rules, and supervising operators. The objective of promulgating rules and regulations on technological innovation is to increase the security and to definition the involved digital finance, according to Thailand Emergency Decree on Digital Asset Businesses B.E. 2561 (2018), Section 3:

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<sup>9</sup> *Darknet Takedown, Authorities Shutter Online Criminal Market AlphaBay*, FBI News, (July. 20, 2017), <https://www.fbi.gov/news/stories/alphabay-takedown>.

<sup>10</sup> Frederick Reese, *Bitcoin Regulations by Country*, Bitcoin Market Journal, (Sep. 28, 2018), <https://www.bitcoinmarketjournal.com/bitcoin-regulation-by-country/>.

“cryptocurrency” means an electronic data unit created on an electronic system or network for the purpose of being used as a medium of exchange for the acquisition of goods, services or any other rights, or the exchange between digital assets, and shall include any other electronic data units as specified in the notification of the SEC.

“digital token” means an electronic data unit created on an electronic system or network for the purpose of:

(1) specifying the right of a person to participate in an investment in any project or business;

(2) specifying the right of a person to acquire specific goods, specific service, or any specific other right under an agreement between the issuer and the holder, and shall include any other electronic data units of right as specified in the notification of the SEC.

“digital asset business” means any of the following businesses:

(1) digital asset exchange

(2) digital asset broker

(3) digital asset dealer

(4) other businesses relating to digital assets as prescribed by the Minister under the recommendation of the SEC.<sup>11</sup>

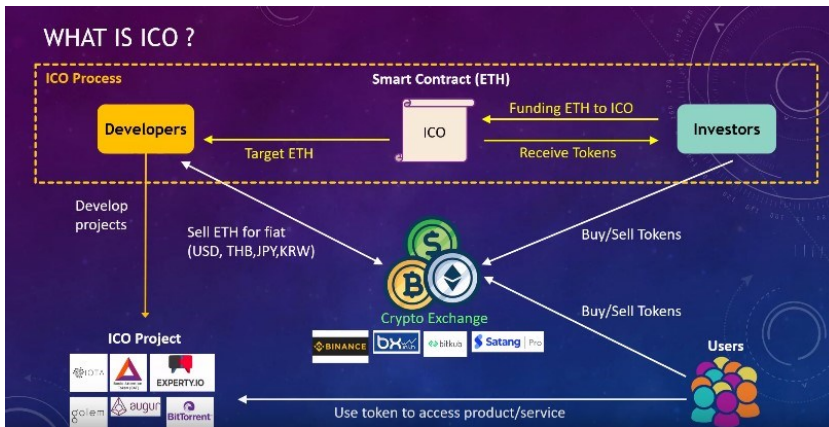
As mentioned above, its main intent is regarding the issuers to obtain approval from the Ministry of Finance through the SEC office<sup>12</sup> and that digital finance may be offered through the Initial Coin Offerings (hereinafter known as “ICOs”) or individual digital asset business. This

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<sup>11</sup> พระราชกำหนดการประกอบธุรกิจสินทรัพย์ดิจิทัล พ.ศ.๒๕๖๑, The Emergency Decree on Digital Asset Businesses, sec. 3, B.E. 2561 (TH 2018), [https://www.sec.or.th/EN/SECInfo/LawsRegulation/Documents/actandroyal/digitalasset\\_decree\\_2561\\_EN.pdf](https://www.sec.or.th/EN/SECInfo/LawsRegulation/Documents/actandroyal/digitalasset_decree_2561_EN.pdf).

<sup>12</sup> *Summary of the Royal Decree on the Digital Asset Businesses B.E. 2561, at The Essence of the Royal Decree*, The Office of the Securities and Exchange Commission, (May 2018), [https://www.sec.or.th/TH/Documents/DigitalAsset/enactment\\_digital\\_2561\\_summary\\_en.pdf](https://www.sec.or.th/TH/Documents/DigitalAsset/enactment_digital_2561_summary_en.pdf).

will ensure the operators will be registered with the centralized government section compared to Initial Public Offerings (hereinafter known as “IPOs”) in the stock market to show a detailed business plan, including audited financial statements, proper ‘*Know Your Customer*’ (e.g., collect and retain information about their customers and their identities and share that information with SEC), cyber security, safekeeping, and fair marketplace before launching and going public.



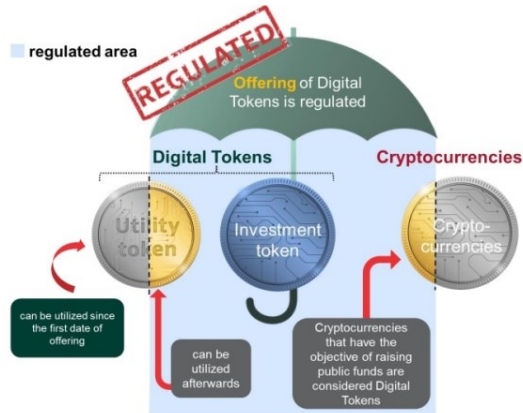
Source: Pay Wachi, Thailand

<https://www.youtube.com/watch?v=xRrvUyAa-Yk>

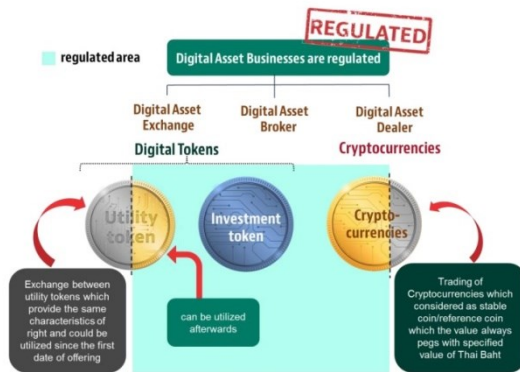
In contrast, ICOs will be using cryptocurrency in an exchange with a digital token or digital asset to receive an exclusivity right (e.g., specific goods, services, right for investment token, and right agreed for utility token). The issuing of digital tokens is not processed through banks. It starts with fund-raising, offering issue digital tokens, and carrying only registered limited companies in Thailand. This means that most of the international transactions have limited legal protection and tax must be assessed on case by case basis.<sup>13</sup>

<sup>13</sup> Komkrit K., Nopporn. C, Kullarat. P, *Cryptocurrencies and ICOs Now Regulated in Thailand, What is the overview of the regulatory landscape?* p.5 (June, 2018),

## 1. Offering of Digital Tokens to the Public



## 2. Operating of Digital Assets Businesses



Source: Baker & McKenzie, Bangkok, Thailand

<https://www.bakermckenzie.com/->

[/media/files/insight/publications/2018/06/al\\_thailand\\_cryptocurrenciesandicos\\_june2018.pdf?la=en](/media/files/insight/publications/2018/06/al_thailand_cryptocurrenciesandicos_june2018.pdf?la=en).

The reason Thailand has enacted this legal framework is to regulate such trading due to the many cryptocurrencies not only the dominant bitcoin, but also bitcoin cash, ethereum, ethereum classic, litecoin, ripple, and stellar, as SEC designates in its first list of approved cryptocurrencies. Furthermore, the income shall be counted in taxation according to the Amendments to the Thailand Revenue Code (No. 19) Section 40(4) B.E. 2561 (2018) as follows:

Section 40(4) (h) a share of profit or any benefits derived from holding or having possession of Digital Tokens is regarded as taxable income.

Section 40(4) (i) a capital gains from the transfer of Cryptocurrencies or of Digital Tokens is regarded as taxable income.

In the case of assessable income mentioned above, the calculation shall be deducted at the rate of 15 percent.<sup>14</sup>

Individuals who derive income will be subject 15% of a withholding tax and they are still being required into their personal income tax at progressive rates yearly. This 15% of withholding tax is also creditable against the personal income tax payable in tax return filing. However, it is still an argument that the tax is high at the rate of 15% of such income earned by the taxpayer. Moreover, the Revenue Department would subject to VAT due to the digital assets are regarded as intangible assets under VAT law.

### **Pros and Cons of new Thailand Legal Promulgation**

According to the legal promulgation, the investors will be protected from unfair market practices and dissemination false information by the operators. Also, the unauthorized operation will be subject to criminal liabilities if they do not comply with the regulation. There are many problems that have to be solved by analysis between pros and cons in respectively.

First of all, according to remarks in the last page of the Emergency Decree on Digital Asset Businesses B.E. 2561 (2018):

This Emergency Decree is promulgated to regulate and oversee the business operations and activities related to digital assets, to support the technological innovation that would drive the

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<sup>14</sup> พระราชกำหนดแก้ไขเพิ่มเติมประมวลรัษฎากร (ฉบับที่๑๘) พ.ศ. ๒๕๖๑, Amendments to the Revenue Code, B.E. 2561, (No. 19), sec. 40(4), (TH 2018), <http://www.ratchakitcha.soc.go.th/DATA/PDF/2561/A/033/71.PDF>.

economy and society towards sustainable development, and to provide and facilitate competent business operator with a variety of fund-raising instruments. This Emergency Decree also aims to support and facilitate the public and relevant parties with accurate and adequate information for their decision making, to create transparency in the operations, and to prevent the exploitation of digital assets of unclear origin in a fraudulent manner or which are linked to criminal activities. Accordingly, there is an urgent and inevitable need to preserve the country's economic stability, and it is, therefore, necessary to enact this Emergency Decree.<sup>15</sup>

The promulgation's purpose is to provide medium instruments to exchange the digital asset legally, control the economic stability, and regulate the transparency of the process under the government's authority. This is beneficial for the investors and operators from accusations of shady trading to determined legitimacy. However, the regulation has stated but the Bank of Thailand still prohibits financial institutions to be involved with cryptocurrency and ICOs.<sup>16</sup> It is only a legalized cryptocurrency for investment purpose.

Second, this legal framework also has affected the following groups:

- Trader and Digger

They have to spend more on the operation and they are not able sell the profitable cryptocurrency as Thai baht and withdraw through to the Thai-platform, instead, turning to trade on foreign websites which may reduce Thai website liquidity.

- Broker and Trading websites

The effect will be the same as it is to the Trader and Digger in terms of approving, negotiating, monitoring, and collecting tax system for users. Those processes will be affected by less income due to high costs of

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<sup>15</sup> Emergency Decree, *supra* note 11.

<sup>16</sup> Kevin Helms, *Thailand to Pass Two New Cryptocurrency Laws*, Bitcoin.com, (Mar. 17, 2018), <https://news.bitcoin.com/thailand-pass-two-cryptocurrency-laws/>.

operation. This may result the monopoly web-traders with less competition and with customers that receive less benefits.

- Individuals, companies, and ICOs start-ups

The startup must be registered as a corporation before raising funds through ICOs. This registration will increase their costs and complexity as well. They are simply a group of people that came up with ideas but lack of fund-raising skills, in compliance with current laws. They may be able to raise funds overseas with less stringent laws. The benefits will grow in other countries.<sup>17</sup>

Third, this legal framework does not state clearly in exchange conversion rates. It will be a barrier to impose the exchange rate for traders. According to the Amendments to the Thailand Revenue Code (No. 19) Section 40(4), the taxation collection does not clearly address the items as follows:

- Incorrect tax withholding

The complication of buying and selling the digital assets at different time and the exact cost could not be clearly identified.

- Different conversion method

The transfer of different digital assets, such as the exchange of bitcoin for ethereum that both are obliged to withhold tax, and there is no method for conversion into the specified value of Thai baht equally. Moreover, there are various exchange rates that may cause practical issues relating to the conversion of digital assets.

- Increase burden for the seller in payment

The seller would be obliged to withhold tax and if it does not have a market price, such as, when cryptocurrency is used to exchange for newly issued digital tokens. This would discourage the use and the acceptance of digital assets as a means of payment for the purchase price.<sup>18</sup>

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<sup>17</sup> จีรภัต สิริบุญสวัสดิ์, วิเคราะห์พรก.การประกอบธุรกิจทรัพย์สินดิจิทัลอาจมีข้อดีมากกว่าที่คิด, (๑๔ พฤษภาคม ๒๕๖๑), Jirapas Siribunchawan, *Analysis of The Emergency Decree on Digital Asset Businesses may have more advantages than you think*, Siam Block, (May 14. 2018), <https://siamblockchain.com/2018/05/14/analysis-of-ratchakitcha-in-thailand-maybe-it-have-something-good/>.

<sup>18</sup> Komkrit, *supra* note 13.



Fourth, cryptocurrency is a new technology which is time consuming for the public to learn and which, at this time, the public may still not be interested in this new approach to making payments in digital currency. Also, the difficulty in applying for the SEC registered-holder as the application process is subject fee paid. Furthermore, the Decree is proclaimed to respond to an urgent situation is uncertain and maybe subject to change. Due to the next trend, the Security Token Offerings (hereinafter known as “STOs”) has approach instead of ICOs because it is safer and more profitable. The investors will get a shareholder’s right, dividend, and trading/holding asset tokenization.<sup>19</sup> In addition, the court institutions might want to monitor the development of digital assets and may establish a separate specialized court in the future to catch up the current technological innovation.

As analysis mentioned above indicated, Thailand is keen to operate in payment innovation. It may be considered as a hub of digital assets that will lead the future of economic development. Even though, the law may subject to change according to complicated and uncertain situations, Thai government’s agencies are still sorting out challenges both technological and managerial along with the current trending.

### **Case Study of Implication of Cryptocurrency**

Most countries prefer to take a wait and see approach. However, until this time cryptocurrency, such as bitcoin, has never been legally acceptable as a substitute for a nation’s legal tender. This is also the case since this is a totally new technology practical use. Some countries have indirectly assented to the legal use of bitcoin by enacting some regulatory oversight:

- The United States of America, under the Bank Secrecy Act 2018 which requires the operators to adhere to the rules like reporting,

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<sup>19</sup> จีรบูรณ์ นาคทอง, *Security Token Offering(STO) คืออะไร ต่างจาก ICO อย่างไร และทำไมถึงเป็นอีกตัวเลือกที่น่าสนใจ* ตามอง, (๘ พฤศจิกายน ๒๕๖๑), Jiraboon Narktong, *What is Security Token Offering (STO), how different from ICO, and why it is an interesting option*, Siam Block, (Nov. 8, 2018), <https://siamblockchain.com/2018/11/08/security-token-offering-sto-%E0%B8%84%E0%B8%B7%E0%B8%AD-%E0%B8%AD%E0%B8%B0%E0%B9%84%E0%B8%A3/>.

registration, and record keeping. It is also taxable under United States Internal Revenue Service.

- Canada considers the bitcoin exchange as business income and it need to be registered with the Canadian Financial Transactions and Reports Analysis Centre to report any suspicious transactions, abide by the compliance plans, and even keep certain records.
- The United Kingdom under the British Financial Conduct Authority which has a pro-bitcoin stance is supportive of the digital currency and it also taxable.
- Germany considered bitcoin legal but taxes them differently depend on whether the authorities are dealing with exchanges, miners, enterprises or users.<sup>20</sup>

Overall, many countries still do not strictly restrict or ban cryptocurrency. It is a challenge that bitcoin is beyond the reach of the governments to legalize this new approach digital payment while preventing criminal transactions. Many countries are still analyzing ways to regulate the cryptocurrency.

### **Solutions of the Future Data-Driven Finance**

The importance of data in finance cannot be underestimated. Most business models in finance will rely very heavily on data in the next decade. Currently, digital finance is in a transition phase where new models are emerging, and at the same time old models are trying to adapt. There are many ways to find out the methods to solve the problems:

First, the Thai government agencies should conduct research on exchanging cryptocurrency or any expected payment approach and clarification by a conversion of digital assets into Thai baht against financial fluctuations. Start from a specific scale between both registered buyer and seller or a business model, in order to find an improvement and

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<sup>20</sup> Prableen Bajpai, *Countries Where Bitcoin Is Legal & Illegal, Countries that Say Yes to Bitcoin, (DISH), (OTSK)*, Investopedia, (Feb 10, 2019), <https://www.investopedia.com/articles/forex/041515/countries-where-bitcoin-legal-illegal.asp>.

develop as a form of national-currency in the future. Moreover, in the transition process of development, the business industries should collaborate to form Self-Regulatory Organization (hereinafter known as “SRO”) in order to monitor and develop each other under SEC supervision, e.g., the practical stakeholders will check and prevent suspicious or new foreign digital tokens by not necessarily going directly through SEC authorization which is due to a lack of up-to-date information. Even more, the SRO will surely add a listing rule of exchange market to either prevent unauthorized digital assets.

Second, there should be a discussion and association of all involved Thai financial institutions due to the lack of affiliation between SEC and Bank of Thailand. They should resolve the concerns over the existence of digital assets and not decisively prohibit cryptocurrency. This may result in an inconsistency due to the direction of collecting digital finance and a lack of conversion rate for collecting tax.

Third, at the present time, the Amendments to the Thailand Revenue Code (No. 19) Section 40(4) should reduce the rate of withholding tax from 15% to 7-8% which is an acceptable price due to the unpredictable market price and uncertain situation. Moreover, the Amendments did not state on how to prove a trading profitable while exchanging from cryptocurrency to cryptocurrency and the exchange of cryptocurrency into fiat money from foreign trade websites to Thai’s and the burden of prove on mining costs that a person should clarify on their own statement. As per mentioned, there needs be respectively issued more subordinate legislation to solve this uncertain situation through public hearings. However, at this moment, the SEC might reduce the cost of operation and the complexity process. Through the blockchain technology the buyer and seller could register easier without any charge for services.

Fourth, the government should establish a new department or court to specialize in digital finance which interfaces with a technology department, in order to prevent money-laundering and/or the monopoly web-trader. To establish a specialized court, the public hearings will be

conducted by the Office of Judiciary from all relevant sections to collect the content before handed to the Minister of Justice. Thereafter, the drafting of an act for the establishment of the Innovative Court and Innovative Litigation Procedure to the National Legislative Assembly for enacting the law. The purpose of a particular court is that a complication of differentiation from general civil and criminal cases determined by a professional judge and a lay judge who also an expert at such matters. Hence, it may result in a more convenient, efficient and suitable trial.

Finally, the government should promote the awareness of digital finance and educate to the public at large. This method may lead to new stakeholders and traders and increase a variety of options in the Thai-platform websites, in order reducing the need for foreign markets that have less strict rules, and especially to stimulate national digital economy. Furthermore, in the near future, blockchain technology may be used not only in the business area, but can also be deployed to society reforms, such as e-voting, safety government data storage, etc.

# Graffiti Vandalism in Thailand

by

Deeraporn Sirimongkol\*

## *Abstract*

*When saying the word 'graffiti', most people think of scribbles, colorfully painted walls, political satire or advertising campaigns, only few of them will conceive of the legal matter, known as a form of vandalism. Walking along the alleys, streets and roads today, various styles of graffiti are found painted on the walls which causes an eyesore to the communities. Not all of the properties' owners admire this kind of a self-expression which was created on their properties without their permission. However, to find the persons responsible for this vandalism has been easy either. Graffiti must be limited only in appropriate places or permitted areas. Therefore, the government should take this opportunity to develop a creative atmosphere in the abandoned places by organizing public campaigns and invite graffiti artists to join. This paper intends to point out Thai laws related to graffiti, that it is a form of vandalism, and solutions to this problem. Graffiti is prohibited in Thailand and the laws must be enforced.*

## **Introduction**

Graffiti is an Italian plural form of graffito<sup>1</sup>, which means writings or drawings that have been scribbled, scratched or sprayed illicitly on surface in public places.<sup>2</sup> In English, the word graffiti is usually used as both a

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<sup>1</sup> Glen D. Curry and Scott H. Decker, *Graffiti*, Encyclopedia Britannica (Dec.7, 2017), <https://www.britannica.com/art/graffiti-art>.

<sup>2</sup> Graffiti, English Oxford Living Dictionary, <https://en.oxforddictionaries.com/definition/graffiti>. (last visited May 17, 2019).

singular and a plural noun and the word graffito and it is found only in the specialized texts in archeology and other technical writings.<sup>3</sup>

Graffiti is a form of communication which is created on the public places by an individual or group of people from different neighborhoods.<sup>4</sup> It is usually illegal as there is no permission from the owners of such places. In the United States, subways, billboards and walls are popular places for graffiti artists since the 1960s<sup>5</sup> as they attract a great deal of attention from the society. The graffiti artists competed with each other for attention.<sup>6</sup> Their goal was tagging (writing an artist's name with spray paints or marker pens)<sup>7</sup> in as many places as they could. The more dangerous and visible places they created graffiti, the more they gained attention from people.<sup>8</sup> Graffiti became a phenomenon which then spread to Europe and eventually worldwide. Graffiti may be created to satirize the society, but some graffiti is created just for fun or to mark the territory of the gang. Therefore, some people believed that graffiti artists had an antisocial behavior, on the other hand, people who admired graffiti culture classified it as a form of art.

In many countries, painting or marking on surfaces of property without the permission of its owners is considered vandalism. Vandalism is an intentional destruction of or damage to public property of another. People commit vandalism when they intend to deface or destruct the public property of public or property owned by others without permission from the owner.<sup>9</sup> There are many actions that can be considered as vandalism. For example, cutting trees without permission, tire slashing, egg throwing

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<sup>3</sup> Graffiti, Dictionary.com, <https://www.dictionary.com/browse/graffiti> (last visited on Mar. 22, 2019).

<sup>4</sup> Graffiti, *supra* note 1.

<sup>5</sup> Dimitri Ehrlich and Gregor Ehrlich, *Graffiti in Its Own Words*, New York Magazine, (July 3, 2007), <http://nymag.com/nymag/features/17406/index1.html>.

<sup>6</sup> *What does graffiti have to do with hip-hop?*, Urbanario, (Nov. 8, 2010),

<https://urbanario.es/en/articulo/what-does-graffiti-have-to-do-with-hip-hop/>.

<sup>7</sup> *Styles of graffiti*, Graffitocanberra, Wordpress, <https://graffitocanberra.wordpress.com/styles-of-graffiti/> (last visited on Feb. 19, 2018).

<sup>8</sup> Ehrlich, *supra* note 5.

<sup>9</sup> Vandalism, The Free Dictionary by Farlex, <https://legal-dictionary.thefreedictionary.com/vandalism> (last visited on Oct. 26, 2018).

or even deleting information on website.<sup>10</sup> Graffiti is one of actions considered as vandalism.

## History of Graffiti in Thailand

In the twentieth century, the graffiti culture was popular to a group of the young generation through the movies, music video or magazines or otherwise their own experience from abroad.<sup>11</sup> Besides the public places, to avoid being stopped by the owners or police or get caught by other people, the favorite targets for graffiti artists were walls in obscure areas or abandoned buildings.<sup>12</sup> Graffiti brought dirtiness to the abandoned areas of the communities. Dirty walls and buildings in public places were eyesores to those who lived nearby or were passing through.

For the past ten years, the graffiti culture has not been accepted by most governments and their laws, yet the graffiti artists still continue creating their graffiti pieces. During this time, graffiti can be found more often in public places, such as, bus stops, road signs, sidewalks or even in private places, every place where their graffiti pieces may receive attention from people who are passing by or living there, including not only Thai graffiti artists who leave their graffiti pieces, but also foreign graffiti artists. Some foreign graffiti artists leave their graffiti in public places, private places on

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<sup>10</sup> Vandalism, Find Law, Thomson Reuters, <https://criminal.findlaw.com/criminal-charges/vandalism.html#> (last visited on Mar. 23, 2019).

<sup>11</sup> ปรีติวัฒน์ ชำนาญอื่น ผู้ก่อตั้ง BKK KRAFF, บทความที่ 4/การบุกเบิกกราฟฟิตีในประเทศไทย, (๑๙ พฤศจิกายน ๒๕๖๑), Pretiwat Chamnan, *Graffiti Story from Spray Paint, Article 4/ Graffiti Pioneering in Thailand*, (Nov. 19, 2017), [http://borntograffiti.blogspot.com/2017/11/graffiti\\_19.html](http://borntograffiti.blogspot.com/2017/11/graffiti_19.html).

<sup>12</sup> กราฟฟิตี เมื่อศิลปะบนกำแพงกลายเป็นแรงขับเคลื่อนสังคม, (๓๐ กันยายน ๒๕๖๒), *Graffiti: When graffiti turns out to be driving force of the society*, TipsDD, (Sep. 30, 2018), <https://www.tipsdd.com/living/%E0%B8%81%E0%B8%A3%E0%B8%B2%E0%B8%9F%E0%B8%9F%E0%B8%B4%E0%B8%95%E0%B8%B5%E0%B9%89-graffiti-%E0%B9%80%E0%B8%A1%E0%B8%B7%E0%B9%88%E0%B8%AD%E0%B8%A8%E0%B8%B4%E0%B8%A5%E0%B8%9B%E0%B8%B0%E0%B8%9A/>.

ancient monuments.<sup>13</sup> Most of them do not know that graffiti is prohibited in Thailand until they are arrested.<sup>14</sup>

On the other hand, there are some foreign artists invited to join in graffiti campaigns, such as, Meeting of Styles (MOS): International Graffiti Festival<sup>15</sup>. This campaign may help to develop the lawful presentation of graffiti. People may open their minds to this positive side of graffiti. Moreover, creating graffiti in appropriate places may change the atmosphere of such places and turn them into more aesthetically pleasing areas for both Thai and foreign tourists.

Last year, a Thai graffiti artist named Headache Stencil became well known from the graffiti pieces where he stated social, political or satirical messages. There were two graffiti pieces of his regarding Thai politics which went viral on a social media. His graffiti pieces gained attention from people in Thailand and all over the world. The first piece that went viral in social media was of Deputy Prime Minister Prawit Wongsuwon's face on an alarm clock, which was created on a public wall, and posted on the social media on January 30, 2018. His graffiti was whitewashed (painted over) on February 2, 2018. This graffiti piece referred to the 25 high-end watches costing tens of millions of Thai baht that the Deputy Prime Minister Prawit Wongsuwon failed to declare.<sup>16</sup>

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<sup>13</sup> พระราชบัญญัติโบราณสถาน โบราณวัตถุ ศิลปวัตถุและพิพิธภัณฑสถานแห่งชาติ (ฉบับที่ ๒) พ.ศ. ๒๕๓๕, Ancient Monuments, Antiques, Objects of Art and National Museum Act, (no. 2), sec. 4, B.E. 2535 (TH 1992), [http://www.finearts.go.th/olddata/files/u8/Document/Laws\\_eng.pdf?fbclid=IwAR1n-wrM3MSO7nB1Qsm1Dqu6kCjbRbIZvcxnZXjBTIBO4YCKvyrC-M461-E](http://www.finearts.go.th/olddata/files/u8/Document/Laws_eng.pdf?fbclid=IwAR1n-wrM3MSO7nB1Qsm1Dqu6kCjbRbIZvcxnZXjBTIBO4YCKvyrC-M461-E).

<sup>14</sup> Chayanit Itthipongmaetee, *Briton arrested for spray painting Chiang Mai railway station*, Khaosod English, (July 13, 2017), <http://www.khaosodenglish.com/news/crimecourtscalamity/crime-crime/2017/07/13/briton-arrested-spray-painting-chiang-mai-railway-station/>. See also *Briton faces jail for spraying 'Scouser Lee' on Thai gate*, BBC News, (Oct. 19, 2018), <https://www.bbc.com/news/uk-england-merseyside-45914971>.

<sup>15</sup> Honghame Pimdee, *MOS Thailand 2018: A 2-day International Graffiti Festival that Turned the Ordinary into a Work of Art*, *siam2nite*, (Aug. 21, 2018), <https://www.siam2nite.com/en/magazine/lifestyle/item/897-mos-thailand-2018-a-2-day-international-graffiti-festival-that-turned-the-ordinary-into-a-work-of-art>).

<sup>16</sup> Kathleen F., *Meet Thailand's self-proclaimed graffiti 'terrorist', Headache Stencil*, *The Online Citizen*, (Aug. 7, 2018), <https://www.theonlinecitizen.com/2018/08/07/meet-thailands-self-proclaimed-graffiti-terrorist-headache-stencil/>.



The second piece was graffiti of a black panther with a computer's mute symbol, which was created on March 3, 2018, on private property and there was no evidence proved that the artist received any consent from the owner of the wall. This graffiti piece referred to a story of a rich businessman, Mr. Premchai Karnasuta, who was apprehended with carcasses of a black panther and many more wild animals. He claimed that he did not kill those animals. This case was another case in which a rich man avoided conviction of crimes. The artist decided to create the graffiti of the black panther to claim for justice of the death of the black panther. Unfortunately, this graffiti was mysterious whitewashed on the day after while other graffiti nearby had not been painted over.<sup>17</sup>

In the meantime, there was also another group of graffiti artists who were members of A Call for Animal Rights in Thailand Facebook group that created graffiti of a black panther with the messages 'Justice for Wildlife' and 'No Crimes against Nature' painted on a shop's wall on Phetchburi Road near the Italian-Thai Development Office and the office of Mr. Premchai Karnasuta.<sup>18</sup> The graffiti artist was given permission by the owner of the property. This type of graffiti takes the graffiti culture to a higher level, in fact, it shows that this form of expression makes a difference in society.

The law enforcement regarding illegal graffiti is rarely enforced against graffiti artists as these people are difficult to ascertain and apprehend. Graffiti is randomly created at night time, to protect their anonymity and to avoid arrest by the police. Mostly people who spray paint in important places are arrested by tracking through the surveillance cameras. For example, on May 24, 2015, an anarchy symbol was spray painted on the Criminal Court sign on Ratchadapisek Road, in Bangkok. The act of vandalism was recorded by the surveillance cameras in front of the Criminal Court. The man responsible for spray painting was arrested on

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<sup>17</sup> ลบไปแล้ว! กราฟฟิตีรูป “เสือดำ-ลำโพงถูกปิดเสียง”, โพสต์ทูเดย์, (๔ มีนาคม ๒๕๖๑), *Deleted! Graffiti of “Black Panther – Muted speaker*, Posttoday (Mar. 4, 2018), <https://www.posttoday.com/social/general/542977>.

<sup>18</sup> Online Reporters, *Animal rights activists close in on Premchai*, Bangkok Post, (Mar. 8, 2018), <https://www.bangkokpost.com/news/environment/1424626/animal-rights-activists-close-in-on-premchai>.

May 26, 2015. He was tracked by the CCTV cameras in the area then he was charged with damaging public property and violated Act on Maintenance.<sup>19</sup> The police took only a day to track this artist and arrest him. Therefore, surveillance cameras help recording the act of graffiti vandalism as well as may identify the offenders.

## **Thai Law relating to Graffiti Vandalism**

Graffiti is illegal, in Thailand, unless it is for a public graffiti campaign or the owner of such place gives permission to do so. There are several acts and laws prohibiting graffiti although the word ‘graffiti’ is not defined. The acts and laws are as follows:

### **1. Act on Maintenance of the Cleanliness and Orderliness of the Country and Creating Graffiti on Public Spaces/Public Places**

In Thailand, an action for illegal writings or drawings that have been scratched on the surfaces or spray painted on the walls or buildings in public places are prohibited by the Act on Maintenance of the Cleanliness and Orderliness of the Country B.E.2535 (1992) (hereinafter known as the ‘Act on Maintenance’), Sections 4, 12 and 56

#### Section 4:

“public place” means the public property of the State other than the deserted area and shall include road and water way;

“road” means roadway, pavement, wayside, hard shoulder, crossing under the law on lane transport, alley, lane, bridge or private road that an owner allows the people to use as a transport path.

#### Section 12:

No one shall scrape, chip, scratch, write, spray paint or make it appear by any means of any message, image or photo

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<sup>19</sup> *22-Year-Old Arrested for ‘Anarchy Graffiti’ at BKK Criminal Court*, Khaosod English, (May 26, 2015), <http://www.khaosodenglish.com/news/crimecourtscalamity/2015/05/26/1432640998/>.

on the wall adjacent to the road, on the road, on the tree or any part of the building adjacent to the road or in the public place except such action is the action of the local administration, other administration or state enterprise or agency with the power to do so.

Section 56:

Any person violating or failing to comply with section 10, paragraph one, section 12, section 16, paragraph one, section 17 or section 18 shall be liable to a fine not exceeding five thousand baht.”<sup>20</sup>

Graffiti which is “created by scratching, writing and spray painting on wall or building next to the road or in the deserted area are prohibited”. Moreover, graffiti on a “footbridge, the wall or part of the building in alleys, lanes, and bridges are also prohibited”. The writers, graffiti artists or “any person who violates this Act shall be liable to a fine not over 5,000 (five thousand) Thai baht”.<sup>21</sup>

## **2. Thailand Penal Code and Creating Graffiti on Private Property without Consent from Property Owner**

Thailand Penal Code, B.E. 2499 (1956), and amendments in B.E. 2560 (2017), Title XII, Chapter 7, Section 358 - 362<sup>22</sup> People who commit vandalism, in Thailand, may be arrested for criminal mischief if the graffiti pieces are created on private properties.

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<sup>20</sup> พระราชบัญญัติรักษาความสะอาดและความเป็นระเบียบเรียบร้อยของบ้านเมือง พ.ศ.๒๕๓๕, Act on the Maintenance of the Cleanliness and Orderliness of the Country, ch. 1, sec.4, sec.12 and ch. 6, sec. 56, B.E.2535 (TH 1992), [http://web.krisdika.go.th/data//document/ext809/809966\\_0001.pdf](http://web.krisdika.go.th/data//document/ext809/809966_0001.pdf). (last visited on Feb.24, 2019).

<sup>21</sup> *Id.*

<sup>22</sup> ประมวลกฎหมายอาญา พ.ศ.๒๔๘๘, Thai Penal Code, tit. XII, ch.7, sec. 358-362, B.E. 2499 (TH 1956), <https://www.samuiforsale.com/law-texts/thailand-penal-code.html>. See also พระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายอาญา (ฉบับที่๒๖) พ.ศ.๒๕๖๐, The Amendment of Thai Penal Code (No. 26),-sec. 4, B.E. 2560 (TH 2017), <https://jla.coj.go.th/th/content/category/detail/id/8/cid/113/iid/121231>.

Section 358:

Whoever, damaging, destroying, causing the depreciation of value or rendering useless the property belonging to the other person or which the other person to be the co-owner, such person to be said to commit mischief, and shall be imprisoned not out of three years or fined not out of six thousand Baht, or both.

In the event that the graffiti was created on an individual's property without his/her permission, he/she has a right to report to the police officer with "offence of mischief".<sup>23</sup>

The offense of mischief is a compoundable offence, defined as an offence that caused damage directly affects the prosecutor. On the part of the police, the prosecutor can decide to stop the criminal case by withdrawal of the complaint. On the part of the court case, the prosecutor has a right to prosecute the offender or ask the public prosecutor to take part in the prosecution instead. However, the prosecutor can decide to stop the court case by withdrawing the court case, as mentioned in section 361: "The offences under section 358 and 359 are compoundable offences."<sup>24</sup>

Section 360: "Whoever, damaging, destroying, causing the depreciation of value or rendering useless the property used or possessed for public benefit, shall be imprisoned not out of five years or fined not more of one hundred thousand baht, or both." And "property used or possessed for public benefit"<sup>25</sup>, for example are payphones, public toilets, road signs and traffic signs.

If the graffiti artist enters in someone's property without permission to create the graffiti, the owner of such property has right to report to the police officer "the offence of trespass".

Section 362: "Whoever, entering into the immovable property belonging to the other person so as to take possession of such property to

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<sup>23</sup> *Id.* sec. 358.

<sup>24</sup> *Id.* sec. 361.

<sup>25</sup> *Id.* sec. 360.

do any act disturbing the peaceful possession of such person, shall be imprisoned not out of one year or fined not out of two thousand baht, or both.”<sup>26</sup>

### 3. Creating Graffiti on the Ancient Monument

The Ancient Monuments, Antiques, Objects of Art and National Museum Act, (no.2), B.E. 2535 (1992), (hereinafter referred to as ‘Act on Ancient Monuments’) Chapter 5, Sections 4 and 32.

Section 4:

“ ‘ancient monument’ ” means an immoveable property which, by its age or architectural characteristics or historical evidence, is useful in the field of art, history or archaeology and shall included places which are archaeological sites, historic sites and historic parks.”

Section 32:

Any person who trespasses ancient monument or damages, destroys, causes depreciation in value to or make useless of any ancient monument, shall be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding seven hundred thousand Baht or to both.

If the offence under paragraph one is committed against the registered ancient monuments, the offender shall be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one million Baht or to both.<sup>27</sup>

As previously mentioned, on October 18, 2018, two foreigners had been charged with vandalism for spray painting graffiti on the wall near

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<sup>26</sup> *Id.* sec. 362.

<sup>27</sup> Ancient Monuments Act, *supra* note 13, see also *Act on Ancient Monuments, Antiques and Objects of Art and National Museums*, B.E. 2504 (TH 1961), [http://www.finearts.go.th/olddata/files/u8/Document/Laws\\_eng.pdf?fbclid=IwAR1n-wrM3MSO7nB1Qsm1Dqu6kCjbRbIZvcxnZXjBTIBQ4YCKyyrC-M46I-E](http://www.finearts.go.th/olddata/files/u8/Document/Laws_eng.pdf?fbclid=IwAR1n-wrM3MSO7nB1Qsm1Dqu6kCjbRbIZvcxnZXjBTIBQ4YCKyyrC-M46I-E).

the Tha Pae Gate in Chiang Mai.<sup>28</sup> This wall is an ancient monument that has been registered as a National Historic Site since B.E. 2478 (1935).<sup>29</sup> Pursuant to section 32 paragraph 2 of the Act on Ancient Monuments, both of the foreigners could face up to ten years in prison and fine of up to a maximum of one million Thai baht. However, the court decision was a sentence of one year, a fine of 100,000 baht and a one year suspended sentence.<sup>30</sup> This case should be a case study for Tourism Authority of Thailand to present that graffiti is prohibited in Thailand. Furthermore, the tourists who visit Thailand should learn the result of creating graffiti in public places or an ancient monument from these two foreigners.

### **Rewarding for the Informer**

According to the Act on the Maintenance, “the person who is a witness of the violation under this Act can inform the officer and he/she becomes an injured person under the Thai Criminal Procedure Code, Chapter 5, Sections 51, 48 paragraph 3, 49.

#### Section 51:

In the case that there is a violation under this Act, a person witnessing such violation may inform the inquiry officer, the local official or the competent official for the inquiry officer, the local official or the competent official to take action in accordance with his or her power and duties without undue delay and it shall be deemed that a person witnessing such violation is an injured person under the Criminal Procedure Code.<sup>31</sup>

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<sup>28</sup> *Supra* note 14.

<sup>29</sup> ประกาศกรมศิลปากร กำหนดจำนวนโบราณสถานสำหรับชาติ, (๘ มีนาคม ๒๔๗๘), Announcement of the Fine Arts Department: Set of the Historic Sites for Nations, (Mar. 8, 1935), <http://www.ratchakittha.soc.go.th/DATA/PDF/2478/D/3679.PDF>.

<sup>30</sup> Anna McMillan, *Alberta tourist, friend charged with vandalism in Thailand avoid prison*, CBC News (Nov. 12, 2018), [https://www.cbc.ca/news/canada/edmonton/brittney-schneider-thailand-graffiti-no-prison-1.4902611?fbclid=IwAR25ce\\_NvWa2eJRuVG-trMP454avn\\_fZ8mO4IVKR\\_06DtHDBaVK78\\_nob4](https://www.cbc.ca/news/canada/edmonton/brittney-schneider-thailand-graffiti-no-prison-1.4902611?fbclid=IwAR25ce_NvWa2eJRuVG-trMP454avn_fZ8mO4IVKR_06DtHDBaVK78_nob4).

<sup>31</sup> ประมวลกฎหมายวิธีพิจารณาความอาญา พ.ศ. ๒๔๗๗, Thai Criminal Procedure Code B.E. 2477, ch. 5, sec. 51 (TH 1934).

The informer will receive half of a fine from the case settlement and the other half belongs to the officer who makes the arrest.

Section 48, paragraph 3:

Offences under this Act, the local official or the person appointed by the local official and the inquiry official shall have the power to settle the case. When the accused pays a fine as settled within fifteen days, it shall be deemed that the case is settled under the Criminal Procedure Code...If the accused fails to settle the case or when the accused agrees to settle the case but fails to pay a fine within such specified period of time, the legal proceedings for litigation shall be initiated...Half of a fine from the case settlement under paragraph one shall be given to the informer under section 51 and another half of a fine shall be given to the competent official, the traffic official or the police officer controlling the traffic, the police making an arrest.<sup>32</sup>

However, the fee and fine settled under this Act is the revenue of the local administration.

Section 49: “Under the application of section 48, paragraph three, the fee and a fine settled under this Act shall be the revenue of the local Administration.”<sup>33</sup>

The purpose of Act on Maintenance is to maintain the orderliness of the cities. Section 48 paragraph 3, 49 and 51 conclude that the reward from the fine will be divided to three parts.<sup>34</sup> There is one part for the revenue of the Local Administration. Other parts are shared between the informer under section 51 and the officers who have the power to settle the case section 48 paragraph three. The reward will be given to the informer if the offender has paid the fine and the informer has already applied the

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<sup>32</sup> *Id.* sec. 48 para. 3.

<sup>33</sup> *Id.* sec. 49

<sup>34</sup> วรณโชค ไชยสะอาด, *ไขข้อข้องใจแจ้งจับได้ส่วนแบ่ง 50% “ชีวิตจริงไม่่ง่ายอย่างที่คิด”*, (๒๑ กันยายน ๒๕๕๕), Wannachok chai Sa-at, *Revealing a 50% share from making a report “In real life is not as easy as you think.”*, Posttoday (Sep. 21, 2016), <https://www.posttoday.com/politic/report/455927>.

Application for Payment to the officer who is responsible the case, according to Bangkok Regulations.<sup>35</sup> However, the amount of the fine depends on the discretion of the officer and the time frame of the reward is unlimited.<sup>36</sup>

## Graffiti Laws in Foreign Countries

Since the 80s, graffiti has become a worldwide phenomenon in many countries facilitated by the internet, as it grew in popularity in this world. Graffiti has become legalized in at least 10 cities in the world: Hosier Lane, Melbourne, Australia; Warsaw, Poland; Tesnov, Prague; Queens, New York, United States; Paris, France; Taipei, Taiwan; Zürich, Switzerland; Sydhavnen, Copenhagen, Denmark; Burghausen, Germany; and Venice, California, United States.<sup>37</sup> Many other cities in countries have spent a great deal of money each year to clean up graffiti.

## Graffiti Laws in New York City

The early seventies, the graffiti culture moved from Philadelphia to New York City where TAKI183, Tracy168 and JOE182 became well known as their graffiti received attention from the media.<sup>38</sup> Graffiti was found on buildings, walls, subways and bridges. Through the subway system, the graffiti easily expanded to other communities. At the present time, Queens, New York, is a place where the graffiti artists whose works

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<sup>35</sup> ประกาศแล้ว! ระเบียบกม. หลักเกณฑ์การแบ่งค่าปรับผู้แจ้งความนำจับ, (๑๑ สิงหาคม ๒๕๖๐), *Announced! Bangkok Regulations, Rule of Dividing the Fine to the Informer*, Voicetv, (Aug, 11, 2017), <https://www.voicetv.co.th/read/514873>. See also ระเบียบกรุงเทพมหานคร ว่าด้วยหลักเกณฑ์ วิธีการ และเงื่อนไขการแบ่งค่าปรับที่ได้จากการเปรียบเทียบให้แก่ผู้แจ้งความ นำจับ ตามกฎหมายว่าด้วยการรักษาความสะอาดและความเป็นระเบียบเรียบร้อยของบ้านเมือง พ.ศ. 2560, (๑๑ สิงหาคม ๒๕๖๐), *Bangkok Regulations, regarding rules, procedures and conditions for diving the fine obtained from the pay fine to the informer, according to the Act on the Maintenance of the Cleanliness and Orderliness of the Country B.E.2560 (TH2017)*, Government Gazette, (Aug. 11, 2017), <http://www.ratchakittha.soc.go.th/DATA/PDF/2560/E/204/1.PDF>.

<sup>36</sup> Wannachok chai Sa-at, *supra* note 34.

<sup>37</sup> Juliane Huang, *10 Places Where Graffiti is Legal*, Matador Network, (Jan. 29, 2009), [https://matadornetwork.com/trips/10-places-where-graffiti-is-legal/?fbclid=IwAR2erI3rhiXmeSWvDBnV9fsm0\\_9w1cDmwdisPiHe2g2sdqZL-m8elloCXZE](https://matadornetwork.com/trips/10-places-where-graffiti-is-legal/?fbclid=IwAR2erI3rhiXmeSWvDBnV9fsm0_9w1cDmwdisPiHe2g2sdqZL-m8elloCXZE).

<sup>38</sup> Graffiti in New York City, *supra* note 5.



have been reviewed, are granted permission by the curator Meres One and may legally create their graffiti.<sup>39</sup>

However, writing, painting, drawing or even covering with posters or stickers on another person's property whether it is owned by an individual or the government may violate the New York Penal Law Section 145.60. The writers or the graffiti artists may be convicted of a class A misdemeanor which is the most serious type of misdemeanor offense. The penalties for this class can range from:

- Fines ranging from \$500 to \$5,000
- Punishable by a jail term of one year maximum (up to 1 year imprisonment)
- Community service
- Rehabilitation Program

#### Section 145.60: Making Graffiti

1. For purposes of this section, the term "graffiti" shall mean the etching, painting, covering, drawing, upon or otherwise placing of a mark upon public or private property with intent to damage such property.

2. No person shall make graffiti of any type on any building, public or private, or any other property real or personal owned by any person, firm or corporation or any public agency or instrumentality, without the express permission of the owner or operate of said property. Making graffiti is a class A misdemeanor."

Also according to New York Penal Law Section 145.65:  
Possession of graffiti instruments:

A person is guilty of possession of graffiti instruments when he possesses any tool, instrument, article, substance, solution or other compound designed or commonly used to

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<sup>39</sup> Huang, *supra* note 37.

etch, paint, cover, draw upon or otherwise place a mark upon a piece of property which that person has no permission or authority to etch, paint, cover, draw upon or otherwise mark, under circumstances evincing an intent to use same in order to damage such property. Possession of graffiti instruments is a class B misdemeanor.

If such person violates this subdivision he/she will be fined not more than \$500 or imprisonment not more than 3 months, or both, as well as the person who sell or offer to sell an aerosol spray paint to any person less than 21 years of age.<sup>40</sup>

The person who possesses aerosol spray paint with the intention to make graffiti is prohibited.

New York City Administrative Code, Title 10, Chapter 1, section 10-117 subdivision:

(b) No person shall possess an aerosol spray paint can, broad tipped indelible marker or etching acid with the intent to violate the provisions of subdivision (a) of this section.

(c) No person shall sell or offer to sell an aerosol spray paint can, broad tipped indelible marker or etching acid to any person under twenty-one years of age.<sup>41</sup>

Moreover, there are laws providing for parental liability for the malicious acts of their children. The parents of a child older than 10 years of age but less than 18 years of age liable for the damage caused by their children who intend to make graffiti. They may be fined up to \$2,500.00. New York State General Obligations Law section 3-112, New York State

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<sup>40</sup> Consolidated Laws of New York's Penal Code, part 3, tit. 1, art. 145.60, (Jan. 1, 2019), <http://ypdcrime.com/penal.law/article145.htm#p145.60> (last visited on Oct 30, 2018).

<sup>41</sup> New York City Administrative Code, tit. 10, ch.1, sec.10-117 (b)(c) (2017), Law Server, [https://www.lawserver.com/law/state/new-york/ny-laws/ny\\_new\\_york\\_city\\_administrative\\_code\\_10-117](https://www.lawserver.com/law/state/new-york/ny-laws/ny_new_york_city_administrative_code_10-117).

General Municipal Law, Section 78-a, Education Law, Section 1604, 1709, 2503, 2554, and 2590-g and Executive Law, Section 171.<sup>42</sup>

Witnesses who report the graffiti vandalism to the police and such information results in the arrest and conviction of individual(s) for violations of Administrative Code Provisions or Penal Law Statutes are eligible for up to \$500.00 reward.<sup>43</sup>

## **Graffiti Laws in Australia**

Since 1988, Australia, especially in New South Wales and Victoria, faced the problem of graffiti and vandalism. Graffiti was mostly found bombing (tagging), spraying on the outside of a moving train and on the train. There were 140 graffiti gangs with 800 to 3500 writers, youth from 12 to 18 years of age, only in New South Wales. Both New South Wales and Melbourne's urban rail system lost about \$5 million a year fighting through graffiti and vandalism. Today, graffiti is still prohibited if there is no permission from the owner of the property.<sup>44</sup> However, Hosier Lane, Melbourne, Australia, as featured in travel guides and advertising campaigns, allows writers to create all types of street art.<sup>45</sup>

Pursuant to Graffiti Vandalism Act, Sections 5, 6 and 7 (2016), a person who violates Section 5 of this Act will be fined \$24,000 and imprisonment for 2 years.

Section 5: Damaging property by graffiti:

1. A person must not destroy, damage, or deface the property of another person by graffiti without that other person's

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<sup>42</sup> Michael R. Bloomberg and Raymond W. Kelly, *Combating Graffiti Reclaiming the Public Spaces of New York*, Police Department of New York City, 5-6 (2013), [http://www.nyc.gov/html/nypd/downloads/pdf/anti\\_graffiti/Combating\\_Graffiti.pdf?fbclid=IwAR0b6ARIHwKr0\\_FWIL1mMGZYFzj2fxGvsDBS9XpV8XK7D9ZlZawqC7P1NYU](http://www.nyc.gov/html/nypd/downloads/pdf/anti_graffiti/Combating_Graffiti.pdf?fbclid=IwAR0b6ARIHwKr0_FWIL1mMGZYFzj2fxGvsDBS9XpV8XK7D9ZlZawqC7P1NYU).

<sup>43</sup> *Id.* at 7.

<sup>44</sup> Susan Geason and Paul Wilson, *Preventing Graffiti and Vandalism*, Australian Institute of Criminology, (Aug. 1990), <https://aic.gov.au/publications/crimprev/graffiti?fbclid=IwAR2Tz3K-ID7OhGUiqxbwnBRdGnOSgBiOHSFn9PB3ksetjibTD1Ji16H6wA>.

<sup>45</sup> Haung, *supra* note 37.

consent. Penalty: a fine of \$24,000 and imprisonment for 2 years, but the minimum penalty

- (a) for an adult offender, is a community based order;
- (b) for a child offender, is a youth community based order.

2. Property that is capable of being destroyed, damaged or defaced by graffiti includes vegetation.

3. This section operates despite the Youth Offenders Act 1994 section 46(5a).

It also offence to person who possesses a can of spray paint, a pen or marker pen, or other instrument with an intent to use for graffiti will be fined \$6,000, according to section 6 of this Act.

Section: 6 Possessing thing with intent to apply graffiti:

1. A person must not be in possession of a thing with the intention of using it to destroy, damage, or deface property by applying graffiti.

Penalty: a fine of \$6,000.

2. A person is presumed to have an intention referred to in this section in relation to a thing in the person's possession if the person is in possession of the thing in circumstances that give rise to a reasonable suspicion that the person has the intention, unless the contrary is proved.

There is also an offence to person who sells graffiti implements to a child, the fine is up to \$12,000 depending on an offence.

Section 7: Selling graffiti implement to child:

1. A person must not sell a graffiti implement to a child.

Penalty: (a) for a first offence, a fine of \$6,000

(b) for a subsequent offence, a fine of \$12,000

2. It is a defense to a charge of an offence under subsection (1) to prove the accused, or a person acting of the accused,

believed on reasonable grounds that the person to whom the implement was sold was an adult.<sup>46</sup>

Australia also provides graffiti removal programs which are ordered by the court for young graffiti vandals with 12 – 18 years of age who are found guilty or plead guilty to a graffiti offence. There are 3 ways such young graffiti vandals may receive punishment:

1. Court – order child to attend the program for a set number of hours
2. Police referral – attend the program for 2 hours, if the child admits his/her guilty to the police
3. A youth justice conference agreement

Activities for the young graffiti vandals are

1. removal of the offender's own graffiti
2. removal of other graffiti
3. work related to graffiti removal
4. other activities to make amends such as cleaning up public areas<sup>47</sup>

Members of community who report graffiti vandalism to the police or Crime Stoppers may claim a reward if their information leads to the arrest.<sup>48</sup>

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<sup>46</sup> Graffiti Vandalism Act 2016, Western Australia, *sec. 5-7* (2016), [https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrcmp\\_29241.pdf/\\$FILE/Graffiti%20Vandalism%20Act%202016%20Compare%20%5B00-b0-00%5D%20-%20%5B00-c0-00%5D.pdf?OpenElement](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrcmp_29241.pdf/$FILE/Graffiti%20Vandalism%20Act%202016%20Compare%20%5B00-b0-00%5D%20-%20%5B00-c0-00%5D.pdf?OpenElement).

<sup>47</sup> *Graffiti Removal Programs*, Queensland Government, (June 8, 2018), [https://www.qld.gov.au/law/sentencing-prisons-and-probation/young-offenders-and-the-justice-system/youth-justice-community-programs-and-services/graffiti-removal-programs?fbclid=IwAR0qvY0NHrjHMji2OASoAhrjxBZ\\_QlXg8nqoaDyrtx9tYZR-j0b4VgX0F28](https://www.qld.gov.au/law/sentencing-prisons-and-probation/young-offenders-and-the-justice-system/youth-justice-community-programs-and-services/graffiti-removal-programs?fbclid=IwAR0qvY0NHrjHMji2OASoAhrjxBZ_QlXg8nqoaDyrtx9tYZR-j0b4VgX0F28).

<sup>48</sup> *Graffiti Rewards*, State Graffiti Taskforce, (Jan. 19, 2018), <https://www.goodbyegrffiti.wa.gov.au/Police/Graffiti-Rewards?fbclid=IwAR26gQzXu7-S6N-sTeBW5r28ZyWl9i17HfWRqbHHs-iQlg5HQ3yWu0E>.

## **Comparisons of New York and Australian Laws to Thai Laws**

The comparison of graffiti law in New York City, United States, the origin of graffiti, and the Graffiti Vandalism Act 2016 of Australia, and high cost of graffiti removal, to Thai law found that both foreign countries have very strict law enforcement to persons who illegally create graffiti, possess graffiti implements with an intent to use for creating graffiti, and sell graffiti implements to a child, all have high rates of fines. Australia provides graffiti removal programs for young graffiti vandals between 12 to 18 years of age. These children may also receive driver's license orders if they are found guilty of graffiti crimes which will delay opportunity to apply for their driver's license.<sup>49</sup> However, no such driver's license laws appear in Thailand. New York City also has a parental liability to parents of a child older than 10 years of age but less than 18 years of age who attempting to create graffiti. Rewards for a person who reports graffiti vandalism to the officer is provided for in all three countries.

### **Solutions for Thailand**

The creation of graffiti gains support from the government by organizing Graffiti Campaigns once or twice a year, both Thai and foreign graffiti artists may improve the atmosphere of abandoned areas. Colorful walls will attract both Thai and foreign tourists to visit. The more attractive of the places, the more safety to live around or walk through areas which have been rehabilitated through art and are no longer dark and dirty may enhance the happiness of the communities. These Campaigns will be more successful if the Tourism Minister of Thailand takes part and promotes these Campaigns to foreigners together with a program of 'Graffiti Vandalism Crimes in Thailand that Tourists should Know.' Therefore, the tourists will learn from such a program before visiting Thailand.

This problem of illegal graffiti may turn into major issue if the government and the police officers are not able to control it. The illegal

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<sup>49</sup> *Graffiti and the Law*, Legal Service Commission of South Australia, (Jan. 2018) [https://lsc.sa.gov.au/cb\\_pages/young\\_people\\_and\\_graffiti.php?fbclid=IwAR1wd6hPx3xOGadbq6-sDzdONRlb9Os-JyF\\_Rwy66xeNU4hJbWotS\\_ankfk](https://lsc.sa.gov.au/cb_pages/young_people_and_graffiti.php?fbclid=IwAR1wd6hPx3xOGadbq6-sDzdONRlb9Os-JyF_Rwy66xeNU4hJbWotS_ankfk).

graffiti is usually created in the dark of the night which makes it difficult to be observed by witnesses. In addition, the patrolling police officers are lacking at night, so the public surveillance cameras would be helpful. Many criminals or offenders are arrested by tracking through the footage of the surveillance cameras around the crime scenes.

First of all, regarding the present laws, the government should amend the Act on the Maintenance, Sections 12 and 56, as it has not been updated since 1992. Section 12 should be amended by inserting, immediately after the words “any message, image or photo” the following definition: “including with creating graffiti”. The word “graffiti” should be mentioned in such Act, clearly. Section 56 should be amended by deleting the words “five thousand baht” and substituting the words “ten thousand baht”. The fine penalty should be increased to act as a deterrent.

Secondly, the government should install more surveillance cameras in the abandoned areas of every community as well as immediately maintain them when they are out of order. The graffiti artists who tend to create illegal graffiti may aware of the increased danger of being arrested. Therefore, graffiti vandalism may decrease.

Thirdly, Graffiti Removal Programs must arranged for the suspect after he/she is caught, evidence is provided, together with a fair trial, and found guilty or if the suspect admits their guilt to the police officer. The Program must contain be especially responsible for removal of their own graffiti. For example, the offenders must take their responsibility by cleaning their graffiti within 48 hours after they are arrested. In the event that the owner of the property has already painted over such graffiti, the offenders must pay the compensation to the owner of the property, exclusive of the fine penalty.

Finally, illegal graffiti may become legal if the laws are changed to allow the legality of creation of graffiti in certain areas of Thailand. This is an effective solution in many countries of the world.

# **Domestic Violence of Men by their Family Members**

by

Naruesorn Naruemitapa\*

## ***Abstract***

*Domestic violence against men in Thailand is an under-reported crime. Male victims' sufferings are underestimated by the police or witnesses. The Thai Domestic Violence Victim Protection Act focuses on maintaining peaceful and secure relations amongst families, however it is not concerned enough with the rights of the victims which results in decreasing the male victims' courage of reaching for help. There are many male victims in the society who are suffering from the domestic violence and could not leave their toxic relationships or dangerous situations because of the lack of knowledge, help and support. This article will state that there should be amendments to the Protection Act enacted and raise awareness of domestic violence in which men and women are considered having an equal possibility of becoming a victim...It is quite unfair for the victims to live with anxiety because the abusers may still be involved with their lives. Therefore, there should be legislation offering a compromise procedure, expedient injunctions, specific protective orders for many possible circumstances, provide victims with proper treatments and procedures, providing education to society especially in the schools and the police officers. By having changes in law or society, male victims will feel more secure because they are being supported and there are the exact protection orders which are effectively enforced to prevent the abusive circumstances or offenses against the victims.*

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## Introduction

Domestic violence against men is an under-reported crime. The abuse by their family members may be physically, emotionally and mentally. Domestic violence usually happens “in a relationship such as marriage, cohabitation or even within a family.”<sup>1</sup> However “male victims are far less likely to report or seek help for domestic violence than female victims.”<sup>2</sup> This indicates and substantiates that there are problems in all societies including Thai society that does not support male victims who reach out for help.

The Thai Domestic Violence Victim Protection Act, B.E. 2550, (2007) (hereinafter known as the ‘Protection Act’) Section 3, states:

“Domestic violence” means any act done with the intention to or in the manner likely to cause harm to the body, mind or health of a family member or to exert coercion or immoral influence over a family member in order to wrongfully cause him to do, not to do or yield to any act, but not including an act done negligently...

“Family member” means a spouse, a former spouse, a person cohabiting or having cohabited with another husband and wife without civil marriage, a child, an adopted child, a member of a household, as well as any person counting on and living in a family.<sup>3</sup>

For example, it is said that “[w]ithin larger families, the babies are most likely to be bullied while the perpetrators are probably boys and probably the oldest kids in the house...But among kids who were involved in bullying at all, the majority were both bully and victim at

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<sup>1</sup> Jess Lester, *Men too Male domestic abuse statistics in the UK*, The Sun, <https://www.thesun.co.uk/fabulous/6081393/male-domestic-abuse-statistics-help> (last visited Jan. 5, 2019).

<sup>2</sup> *Defining Domestic Violence*, Sheltering Wings, <https://shelteringwings.org/what-is-domestic-violence/> (last visited Jan. 5, 2019).

<sup>3</sup> พระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. ๒๕๕๐, *Domestic Violence Victim Protection Act*, sec. 3 B.E.2550 (TH 2007), <http://www.thailawforum.com/thailand-domestic-violence-law/> (last visited Oct. 9, 2018).

different times.”<sup>4</sup> The “Researchers defined sibling bullying as psychological abuse like saying nasty or hurtful things, physical abuse like hitting or kicking or pushing, or emotional abuse like telling lies or spreading hurtful rumors.”<sup>5</sup>

Furthermore, “Domestic violence can be purely psychological and committed in the form of forced social and economic isolation, verbal harassment, threats of future violence, or destruction of personal property.”<sup>6</sup>

The abusive family members usually have more power than the abused victims. For example, in social status, the abusive family members might be well-known and respected or be the only one in the family that has a job. Besides, acts of domestic violence are common in society therefore, the abusive family members may be ignorant regarding what is considered as domestic violence or abuse, such as, stated above “bullying” may be a precursor.

## Historical and Legal Context in Thailand

The patriarchal system is one of the factors that leads to domestic violence. Because, in most of the families in Thai society, men have more power and control. On the other hand, women tend to be more vulnerable and powerless. Men have ruled the family and women had no rights to speak or make decisions on their own. It appears that men are believed to be the person who took care of the family. They usually made decisions in family matters while women could not express their ideas.

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<sup>4</sup> *Younger siblings with older brothers more likely to be bullied*, Channel News Asia, <https://www.channelnewsasia.com/news/health/younger-siblings-with-older-brothers-more-likely-to-be-bullied-1127188> (last visited Apr. 1, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> Joy M. Bingham, *Protecting Victims by Working Around the System and Within the System: Statutory Protection for Emotional Abuse in the Domestic Violence Context*, 81 N.D. L. Rev. 837, 857 (2005),

<https://1.next.westlaw.com/Document/I325fec515ad611dbbd2dfa5ce1d08a25/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad7403700000166670cddeb712ab92d%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI325fec515ad611dbbd2dfa5ce1d08a25%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=9dd19be35c79b41264f004fda8b2a20c&list=ANALYTICAL&rank=10&sessionScopeId=1fcbd3eee4a28dec1a1c6ef74f1173d0acff9e2b599b56b059d72fe72280c5ef&originContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29>.

As a result, they commit domestic violence without the thought that they are abusing their partners or family members.

Domestic violence that women have to face could be economic, physical, verbal or emotional abuse. For example, men do not give women money for a living, dissocialize women from their companies, and beat them as an assault or battery or torture. Moreover the bodily harms usually become more severe from time to time. Women could be killed by their partners. And for sexual abuse, women could be raped by their intimate partners or family members. In Thailand, when men are angry, 42 percent of them force their wives or girlfriends to have sex with them<sup>7</sup>.

Apparently, there is a similar case happened in Singapore. A Singaporean woman, “Madam Lim [,] was a victim of abuse. Her ex-husband routinely forced her to have sex.”<sup>8</sup> “I wasn't confident I could survive financially without him.”<sup>9</sup> Madam Lim said, after she left her husband. It appears that she had low self-esteem because she was made to believe that she had to rely on her husband and please him. And the mindsets of the society have affected the victims not to have courage to fight for their rights.

Madam Lim said, “Friends, even my own mother, told me that there was no such thing as a husband raping his wife. Some even asked me why I bothered to get married if I hated to have sex...”<sup>10</sup> She had a son who was the result of rape and she kept distance from her child. An abandoned child may have lack of both emotional and physical development. However, men in the family may also be the victims of domestic violence. In some families women have more power than men. Therefore men can be abused by their wives, parents, relatives or their same-sex lovers, etc.

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<sup>7</sup> ชายไทยเกือบครึ่งยอมรับทำร้ายร่างกายคนรัก, บีบีซีไทย, (๒๒ พฤศจิกายน ๒๕๕๘), *Almost half of Thai men admit that they abuse their partners*, BBC, (Nov. 22, 2016), <https://www.bbc.com/thai/thailand-38067231>.

<sup>8</sup> *'My husband raped me for years': Singapore woman*, Asia One, <https://www.asiaone.com/health/my-husband-raped-me-years-singapore-woman> (last visited Apr. 2, 2019).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

Domestic violence is often considered as a private matter. When domestic violence happens, people who witness the crime or the neighbors rarely help. In Thailand, “Up to 94.9 per cent of people witnessing domestic violence decided not to intervene...”<sup>11</sup> There is a belief that after an episode of the domestic violence has been completed, the person who committed the domestic violence and the victim will reconcile. Even if when the victims are abused once, they will be abused again. The victims usually face verbal abuse first and then face physical abuse.

Domestic violence may also be verbal or emotional abuse are not seen as social disruptions but merely inconveniences by the society. Because it appears that the results of verbal or emotional abuse are not obviously shown out. It affects victims’ emotional state, which is recognized by society much lesser than the effect of physical abuse. Therefore it is believed that it does not affect the society in broad area. As a result, society does not see it as social disruptions.

Verbal abuse might be used by the abusive family members to decrease victims’ self-esteem. Such as, telling the victims that they can do nothing by themselves, they are a burden and/or they should not have been born, or verbally humiliating the victims in front of other people. People in society such as the neighbors or witnesses may help only when the victims are badly injured or killed by “the conduct of the abusive family members which have penalty in criminal code.”<sup>12</sup>

There are many physical abuses that male victims may have to encounter. For example, battery such as, “slapping, kicking, hitting, pushing, shoving, choking, hair pulling, biting, etc.”<sup>13</sup> physically assault by using weapons, murder, sexual violence, or rape. In addition to male rape, “almost half of male (44.9%) victims of rape in the United States were raped by an acquaintance. Of these, 29% of male rape victims were

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<sup>11</sup> *Foundation urges people to step in as domestic violence cases rise*, The Nation, <http://www.nationmultimedia.com/detail/national/30352831> (last visited Jan. 9, 2019).

<sup>12</sup> นางสาวพิชชฎาภา เจียมแท้, ความหมายและมาตรการทางกฎหมายต่อการกระทำด้วยความรุนแรงในครอบครัว : ศึกษาเปรียบเทียบกับกฎหมายต่างประเทศ, (๒๕๕๕), Phitchayapa Jiamtae, *Definitions and Legal Measures of Domestic Violence : A Comparative Study*, (2012), p.22, <http://digi.library.tu.ac.th/thesis/la/1905/title-appendices.pdf>.

<sup>13</sup> *Physical Abuse Law and Legal Definition*, US Legal, <https://definitions.uslegal.com/p/physical-abuse/> (last visited Feb. 15, 2019).

raped by an intimate partner.”<sup>14</sup> “...male rape victims predominantly had male perpetrators, but other forms of sexual violence experienced by men were either perpetrated predominantly by women (i.e., being made to penetrate and sexual coercion) or split more evenly among male and female perpetrators (i.e., unwanted sexual contact and noncontact unwanted sexual experiences).”<sup>15</sup> Male rape is one of the physical abuses that is being ignored by the society and is not being reported consistently.

Domestic violence problems may cause the society more problems. The violence may be used by the victims or abusive family members of domestic violence to other people which are not part of the family. If they grow up in the abusive family, the victims may imitate abusers’ behavior and use such violent or abusive behaviors to create the illusion of their own power. They might choose to solve problems with violence or use inappropriate words in terms of verbal abuse. After it causes problems and effects the quality of the society, people may be more concerned about domestic violence.

Therefore, the Protection Act was established because “the criminal law is not appropriate for domestic violence problems. Criminal law only intends to penalize the offenders, rather than to reform them or protect the domestic violence victims”<sup>16</sup>. The purpose of the Protection Act was to “enable the offenders to reform themselves, preventing them from relapsing into offences, maintaining good relations amongst families, and entitling the children, juveniles and family members to the State-provided protection from the acts of violence and unfair treatment”.<sup>17</sup>

### **The Issues of Domestic Violence against Men**

There are several problems of domestic violence against men in Thailand. First of all, there is a stereotype of men that they are strong and

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<sup>14</sup> NCADV, *National Statistics Rape*, The National Coalition against Domestic Violence, <https://ncadv.org/statistics> (last visited Feb. 15, 2019).

<sup>15</sup> *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization — National Intimate Partner and Sexual Violence Survey, United States, 2011*, Centers for Disease Control and Prevention, <https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm> (last visited Feb. 15, 2019).

<sup>16</sup> Protection Act, *supra* note 3, Statement of Grounds.

<sup>17</sup> *Id.*

cannot be the victims. Thus when they face domestic violence, they are ignorant or their sufferings are underestimated by the police or witnesses. For example, there is a story of a man in the United Kingdom who faced domestic violence that similar to what happens in Thailand. He called the police after he was attacked by his wife. It was written that “We were both arrested. They interviewed me straight away as I hadn’t been drinking and they had to wait for her to sober up. After she was interviewed, the police told me they would just let us both go even though I had marks on me and she didn’t.”<sup>18</sup> And it appears that there are similar circumstances happen to Thai men, too.

Also, male victims rarely tell the police officers because they are afraid of the embarrassment or being abused again by the police, this time, or by their spouse later. As it is stated in the “Focus on Violent Crime and Sexual Offences”<sup>19</sup> statistics that “Male victims (39%) are over three times as likely as women (12%) not to tell anyone about the partner abuse they are suffering from. Only 10% of male victims will tell the police (26% women), only 23% will tell a person in an official position (43% women).”<sup>20</sup> Additionally, if men prosecute against their family members especially women, they will be judged by other people, e.g., they are not a man, or that poor woman how can she be prosecuted by her male family member, etc.

“Any act done with the intention to or in the manner likely to cause harm to the body, mind or health of a family member”<sup>21</sup> is considered a domestic violence. However, the emotional or verbal abuse are difficult to prove, as is evident in cases of women’s domestic abuse cases. “Not only the missing law for emotional abuse is an issue, but also the fact that victims often think their experiences wouldn’t be considered severe

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<sup>18</sup> *Matthew’s story*, <https://www.mankind.org.uk/wp-content/uploads/2015/05/Matthews-Story.pdf>, p.2 (last visited Jan. 9, 2019).

<sup>19</sup> *Focus on Violent Crime and Sexual Offences: Year ending March 2015*, Office for National Statistics, <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/compendium/focusonviolentcrimeandsexualoffences/yearendingmarch2015> (last visited Feb. 15, 2019).

<sup>20</sup> Mark Brooks, *Male victims of domestic and partner abuse 35 key facts*, Man Kind Initiative, <https://www.mankind.org.uk/wp-content/uploads/2018/04/35-Key-Facts-Male-Victims-March-2018-1.pdf>, p.3 (last visited Jan. 9, 2019).

<sup>21</sup> Protection Act, *supra* note 3, sec.3.

enough by officials.”<sup>22</sup> The violence affects the victims’ emotional state whether there is or is not physical evidence. This also relates to the stereotype of men that they are strong, they will not be emotionally effected. Therefore the male victims may decide not to file a case against the abuser.

“Psychological abuse independently causes long-term damage to a victim’s mental health.”<sup>23</sup> The abuser usually makes the victims feel like they are supposed to be abused. Therefore, if victims are being verbally abused repeatedly, the victim might believe that they are supposed to be abused and have low self-esteem which can lead to suicide. Such as the case which “a mother told her own child to die and actually made her child committed suicide.”<sup>24</sup>

Domestic violence could be assault, battery, rape, sodomy, torture, murder, etc. which are written in Thailand Criminal Code. It means that domestic violence victims both male and women have a chance to face these criminal acts and injure more severely due to the bodily injuries or death. For an assault or battery, as stated in Thailand Criminal Code, Section 295: “Whoever, causes injury to the other person in body or mind is said to commit bodily harm...”<sup>25</sup> The example of assault or battery are that sons, husbands, or elderly are beaten, hurt with weapons, etc. There is a 4 year old Walking Street performer who was taken into care of Paveena Hongsakul Foundation which is “a non-profit organization which helps women and children who are abused or come from poor families who are unable to support their children... The boy... alleges that if he did not make enough money in a night, he would be beaten by his Father.”<sup>26</sup>

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<sup>22</sup> Viktoria Isabel M., *Proving Emotional Abuse in Court*, Medium, <https://medium.com/broken-angels-project/proving-emotional-abuse-in-court-how-impossible-is-it-b3e42eb0c9ff> (last visited Jan. 9, 2019).

<sup>23</sup> *Id.*

<sup>24</sup> *เพศ 10 คำทำร้ายหัวใจ วอนขอให้ใช้คำพูดเชิงบวก ลดความรุนแรงในครอบครัว*, ไทยรัฐออนไลน์, *Revealing 10 words that hurt feeling, wish for use of positive words to reduce domestic violence*, Thairath Online, <https://www.thairath.co.th/content/1128472> (last visited Jan. 9, 2019).

<sup>25</sup> *ประมวลกฎหมายอาญา พ.ศ. ๒๔๘๘*, *Thailand Criminal Code*, sec. 295 B.E. 2499 (TH 1956), <https://www.samuiforsale.com/law-texts/thailand-penal-code.html> (last visited Apr. 1, 2019).

<sup>26</sup> *Paveena Foundation Takes 4 Year Old Walking Street Performer into Care Following Public Complaints*, Thai Visa, <https://forum.thaivisa.com/topic/170370-paveena-foundation-takes-4-year-old-walking-street-performer-into-care-following-public-complaints/> (last visited Apr. 1, 2019).

These types of bodily harm may expand into torture if it appears that the abusers want to control and take charge in victims' life. In Thailand Criminal Code, Section 296: "Whoever, committing bodily harm, if such offence having any circumstance as prescribed by Section 289..."<sup>27</sup> Since it enforces the provisions of offenses of murder in Thailand Criminal Code, Section 289 (5): "Whoever commits murder on: The other person by employing torture or acts of cruelty"<sup>28</sup> the punishment of bodily harm will be increased from Section 295.

There is the example of male victim who was tortured by his girlfriend is "Alex Skeel [who] was beaten and tortured by control freak Jordan Worth, who poured boiling water on him and threatened to run him over and kill him if he tried to escape."<sup>29</sup> Moreover, men may be forced into raped or sodomy by their family members like their wife, mother, father, siblings or husband, etc. Human trafficking is another type of domestic violence. The victims, both men and women, are forced or sold by their families to be forced labors such as sex workers, labors at the sea, underage labors, etc.

The Protection Act, Section 4, states:

Any person who commits an act of domestic violence is said to commit an offence of domestic violence and shall thereby be liable to imprisonment for not more than six months, or a fine of not exceeding six thousand baht or both.

The offence under paragraph 1 shall be compoundable, without nullifying the offences under the Criminal Code or other laws. Should the act under paragraph 1 also constitute an offence of causing bodily harm pursuant to section 295 of the Criminal Code, this offence shall be compoundable.<sup>30</sup>

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<sup>27</sup> Thailand Criminal Code, *supra* note 24, sec. 296.

<sup>28</sup> Thailand Criminal Code, *supra* note 24, sec. 289.

<sup>29</sup> *Torture Torment Battered boyfriend was '10 days from death' after being starved, stabbed and doused in boiling water by controlling girlfriend*, The Sun, <https://www.thesun.co.uk/news/8072126/domestic-abuse-jordan-worth-alex-skeel/> (last visited Apr. 1, 2019).

<sup>30</sup> Protection Act, *supra* note 3, sec.4.



Therefore, an offence of domestic violence may or may not be compoundable. Even though the Protection Act has the provision that the victims can choose not to have compromise with the abusers and the offences of domestic violence may be liable under criminal or civil laws. It still focuses on maintaining good relations amongst families. It is not concerned enough with the rights of the victim. The victims are not fairly treated. The officers have a lack of training, perception and compassion when it comes to protecting the victims. The officers often focus more on maintaining good relations of the family and do not punish the abusers. Instead they try to compromise the case. It appears that they persuade the victims to go back to the family and solve the problems. As a result, the victims are forced back to the toxic environment and are more likely to be abused again.

## **Solutions**

First of all, Thai society should be less ignorant to domestic violence against men. There should be a campaign to raise awareness of domestic violence, in which men and women are considered having an equal possibility of being a victim. The “#MeToo”<sup>31</sup> campaign is one of the efficient ways to raise peoples’ awareness. Using social media to pass the information of domestic violence may assist the spreading of knowledge faster. It may be used to express that men also suffer from domestic violence and encourage male victims to reach out for help. Therefore, a new hashtag for male victims should be created to start the campaign.

There are the emergency shelters, established by the Association for the Promotion of the Status of Women, which are the temporary shelters for women and children who suffer from family problems, unwanted pregnancy, being raped, HIV/AIDS, being abused by husband, etc. They provide housing, food, health care, advice, life skills and the process of organizing mental therapy groups with social workers and psychologists as a 24-hour consultant.<sup>32</sup> However there are no emergency shelters for

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<sup>31</sup> Hannah Ellis-Petersen, 'Time to start talking about consent': Thailand's nascent #MeToo moment, The Guardian, (Jan 17, 2019) <https://www.theguardian.com/world/2019/jan/17/time-to-start-talking-about-consent-thailands-nascent-metoo-moment>.

<sup>32</sup> บ้านพักฉุกเฉิน, *emergency shelters*, the Association for the Promotion of the Status of Women, <http://www.apsw-thailand.org/socialworker-th.html> (last visited May. 19, 2019).

men in Thailand. These types of shelter assist men and enable them to have more courage to reach out for help without being judged. The government should provide a place for male victims to stay when it is an urgent necessity or during the criminal procedures, e.g. the shelters.

Moreover, the victims need support groups to give them more courage to remain in treatment and obtain physical and psychological care. Hence the government should support the organizations to establish shelters for male domestic violence victims in Thailand. For example, ‘*The Taylor House Domestic Violence Shelter for Men*’ which was opened in Batesville, Arkansas”<sup>33</sup> in the United States. Therefore, men do not have to be afraid that they have to go back to their abusive families and they are also provided with advisors and support groups.

Furthermore, educating people is a way to provide the awareness that the stereotype of men should no longer exist and be relevant, while not making the male victims feel discriminated against. The education should start in the family because it helps children, both boys and girls, to know “how to handle challenging situations”<sup>34</sup> and that bullying or abuse are not acceptable. If children have siblings, “[p]arents should talk to their children about their values and expectations and help guide children into interacting with siblings in prosocial ways.”<sup>35</sup>

There should be education about human rights in schools for both boys and girls to know their rights and how to respect the others. The course in Thai schools in Social Study subject that teaches the duties of children should be modified and developed since it teaches children to have duties based on their gender and their stereotypes. For example, boys have to do the job outside the home and earn money for a living of a family, boys should do hard work, such as, lifting heavy things while girls have duties to serve and obey their families and to do domestic chores, etc. It should change into how to respect the others and teach them that they have rights

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<sup>33</sup> Mia Mercado, *The Country's First Shelter For Male Domestic Violence Survivors Sheds Light On Dangerous Misconceptions About Abuse*, Bustle, [https://www.bustle.com/p/the-countrys-first-shelter-for-male-domestic-violence-survivors-sheds-light-on-dangerous-misconceptions-about-abuse-66995?fbclid=IwAR1-Ty46coQMsXzKGVVEVdqf-9M4Zx\\_IDakKcp3gk4xeqmm06LeEq5LECKml](https://www.bustle.com/p/the-countrys-first-shelter-for-male-domestic-violence-survivors-sheds-light-on-dangerous-misconceptions-about-abuse-66995?fbclid=IwAR1-Ty46coQMsXzKGVVEVdqf-9M4Zx_IDakKcp3gk4xeqmm06LeEq5LECKml) (last visited Nov. 5, 2018).

<sup>34</sup> Younger siblings, *supra* note 4.

<sup>35</sup> *Id.*

to refuse abusive acts against them to protect themselves. Consequently, the abusive activity like the hazing in university must be abolished.

Also, the Protection Act would be more effective if police officers have new training techniques. There is a course of ways to handle the domestic violence cases in the police academies or the training courses. In Thailand, before the officer may work in domestic violence cases, the officers have to pass the training course of how to be officers in case of protecting domestic violence victims. If the officers already have working experience, they do not have to pass the training course however, they must be evaluated by the Director and must be qualified.<sup>36</sup>

To date, 64.3 per cent of the officers have never been in the process of training.<sup>37</sup> Therefore, police officers should be more educated to remove stereotypes of men in domestic violence and acknowledge that women can also be abusive. In the course, it should contain a practice in real situations and have psychologists to help police officers adjust their mindsets about the victims and give them knowledge of how to interact with the victims. The schools, police officers and other institutions should read the Protection Act to be able to help and instantly give the victims advice. Therefore, the abused men will have more courage and confidence to go to the police officers with their injuries and their cases for criminal prosecution.

Domestic violence is often considered as a private matter, the Protection Act was written in which domestic violence penalties can be compromised to maintain good family relations, at the police or court level. And a mediator could be “fathers, mothers, guardians or relatives of the parties

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<sup>36</sup> ระเบียบกระทรวงการพัฒนาสังคมและความมั่นคงของมนุษย์ว่าด้วยหลักเกณฑ์การแต่งตั้งพนักงานเจ้าหน้าที่พนักงานสอบสวนและพนักงานเจ้าหน้าที่ที่มีฐานะเทียบได้ไม่ต่ำกว่าพนักงานฝ่ายปกครองหรือตำรวจชั้นผู้ใหญ่ในการคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. ๒๕๕๑, *Ministry of Social Development and Human Security regulations regarding to the criteria for the appointment of officers, investigating officers and officials with a comparative status of not less than administrative officials or senior police officers to protect domestic violence victims 2008*, sec. 4, B.E. 2551 (TH 2008), [http://law.m-society.go.th/law2016/law/download\\_by\\_name/36?filename=20081024\\_01\\_04\\_47\\_4818.doc](http://law.m-society.go.th/law2016/law/download_by_name/36?filename=20081024_01_04_47_4818.doc) (last visited May. 19, 2019).

<sup>37</sup> ร้อยเอกหญิงนาถสุดา เอโกบล, บัญชีทหารบังคับใช้พระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรง ในครอบครัว พ.ศ. 2550 ของผู้ปฏิบัติงานในกลุ่มพนักงานสอบสวน, (๒๕๕๘), Captain Nadsuda Akobol, *Problems on Legal Implementation of the Domestic Violence Act B.E. 2550 by Inquiry Officials*, (2015), p.18, [http://phad.ph.mahidol.ac.th/journal\\_law/1-1/06\\_Nadsuda.pdf](http://phad.ph.mahidol.ac.th/journal_law/1-1/06_Nadsuda.pdf).

or other persons found appropriate by the competent authority or court.”<sup>38</sup> However, in the procedure of dispute mediation, victims should not be persuaded by other people but have their own choices. Because there might be possible impartial perceptions that effect the decisions of the victims. In addition, the compromise procedure should not be the main focus when it comes to the issues. Because the compromise procedure will not completely stop domestic violence. The victims need to have more tools to stop domestic violence after they complete the criminal procedure.

For that reason, there should be amendments to the Protection Act enacted. The legislature should create an amendment to Section 16 paragraph 1 which now states:

For the purpose of compounding an offence of domestic violence, a competent authority or court, whichever applies, may appoint a mediator or panel of mediators, consisting of the fathers, mothers, guardians or relatives of the parties or other persons found appropriate by the competent authority or court...or...may direct any social worker, social work agency or person to assist in adopting a compromise between the parties.<sup>39</sup>

It should be amended to state: For the purpose of compounding an offence of domestic violence, a competent authority or court, whichever applies, must appoint panel of mediators, consisting of the fathers, mothers, guardians or relatives of the parties or other persons found appropriate by the competent authority or court, together with social worker or social work agency and psychologists.

There should always be psychologists in mediation processes and by having panel of mediators which have victims’ family members, the social workers and psychologists will help the victims not to be persuaded by one-sided and emotional arguments as a basis of their decisions.

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<sup>38</sup> Protection Act, *supra* note 3, sec. 16.

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

Also, the Protection Act, Section 15 should be amended from “Irrespective of to whatever extent the trial of a domestic violence case has progressed, the court shall attempt to arrange an agreement or settlement on the matters in issue between the parties, for the sake of the peaceful coexistence of the family members...”<sup>40</sup> to - Irrespective of whatever extent the trial of a domestic violence case has progressed, if the victims are willing to have an agreement or settlement, the court shall arrange an agreement or settlement on the matters in issue between the parties...

The amendment should provide victims proper treatments and procedure. The procedure should start with protecting the victims and their rights. Even though there are measures that could have “the person committing the act of domestic violence provide relief money in agreement with his living condition, or the person committing domestic violence be prohibited from entering the residence of the family in question or from being near any of its members”<sup>41</sup>. And that “a court may issue an injunction indicating certain provisional measures or reliefs under Section 10 or may issue any different injunction as it deems expedient.”<sup>42</sup>

However, it is difficult for the victims to live with anxiety because the abusers are still in the society and may be involved with their life. Therefore it should have specific restraining orders or protective orders to ensure the victims’ security.

The amendment to the Protection Act should distinctly provide for a Criminal Protective Order similar to The California Penal Code, Section 136.2 (c) (7), which states:

...upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, a court with jurisdiction over a criminal matter may issue orders...an order protecting a victim or witness of violent crime from all contact by the

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<sup>40</sup> Protection Act, *supra* note 3, sec. 15.

<sup>41</sup> Protection Act, *supra* note 3, sec. 10.

<sup>42</sup> Protection Act, *supra* note 3, sec. 11.

defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant.<sup>43</sup>

The Protection Act, Section 10 should be amended by adding more specific words from “...be prohibited...from being near any of its members”<sup>44</sup> to “...from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant.”<sup>45</sup>, in order to be able to practically protect the victims.

And also the Protection Act, Section 10 should be amended by changing “...be prohibited from entering the residence of the family in question...”<sup>46</sup> to be similar to the Emergency Protective Order, from the California Penal Code Section 646.91 (a), states: “the court shall order that any party enjoined pursuant to Section 646.91 be prohibited from taking any action to obtain the address or location of a protected party or a protected party’s family members, caretakers, or guardian.”<sup>47</sup>

These protective orders would help in case of the victims are stalked by the abusers because the victims might change their resident. Therefore the abusers will have lesser chance to know the victims resident, not just being prohibited from entering the residence. Moreover, in case of abusers’ rehabilitation, the domestic violence rehabilitation center should be established and provide housing, health care and treatment for the abusers. It may separate the abuser from the family for a period of time. This may prove to be more helpful in the long term than incarceration in jails or prisons and later released with the same abusive tendencies.

If people understand what male victims have suffered from domestic violence, there will be better supports from the society that could help encourage male victims to reach out for help. Providing

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<sup>43</sup> CA. Penal. Code, sec. 136.2 (c) (7), Justia US Law, <https://law.justia.com/codes/california/2011/pen/part-1/132-141/136.2/> (last visited Nov. 5, 2018).

<sup>44</sup> Protection Act, *supra* note 3, sec. 10.

<sup>45</sup> CA. Penal. Code, *supra* note 43.

<sup>46</sup> Protection Act, *supra* note 3, sec. 10.

<sup>47</sup> CA. Penal. Code, Justia US Law, sec. 646.91 (a), <https://law.justia.com/codes/california/2011/pen/part-1/639-653.2/646.91a/> (last visited Nov. 5, 2018).

support groups or the shelters help male victims to remain in support groups and obtain physical and psychological care. Therefore they can normally live their life. Moreover, by having the specific restraining orders, male victims will feel safer and more secure because there are the exact protection orders which are effectively enforced to the abusive circumstances against the victims.

# **Women Banned from the Thailand Police Cadet Academy (RPCA) Beginning in Academic Year 2019**

*by*

*Mesaya Kingmuang\**

## ***Abstract***

*The lack of Women Inquiry Officers in the Royal Thai Police Office has been a chronic problem in Thailand for a long time. On August 28, 2018, the Royal Thai Police Office announced the cancellation of recruiting women into the Police Cadet Academy (RPCA), which caused a wide dissatisfaction in Thai society. This idea must be rejected. The first part of this Legal Note describes the causes and effects of the declaration. The second part shows the importance of female officers and the bias against women victims. The solutions address the legal methods to recruit more Female Inquiry Officers, to amend the laws, solicit and join the international organizations, encouraging women to be in law enforcement and start to instill the concept of gender equality to the next generation of young people, starting with the family institutions, which will result in a major change within the Thai society.*

## **Introduction**

Patriarchy is a society in which the oldest male is the leader of the family, or a society controlled by men in which they use their power to their own advantage.<sup>1</sup>

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<sup>1</sup> Cambridge Dictionary, *Patriarchy*, <https://dictionary.cambridge.org/dictionary/english/patriarchy> (last visited Jan. 3, 2019).



Patriarchy in Thailand has a long history. Since the Three Seals Law<sup>2</sup> (Kotmai Tra Sam Duang) which is a popular name given to a corpus of traditional laws of Thailand compiled in 1805 by the order of King Rama I of the reigning Chakri Dynasty<sup>3</sup> that allowed men to absolutely control and own their wives and daughters, even to sell them. Women were regarded as property.<sup>4</sup> In the traditional views, women are expected to be only housewives who should stay and work at home. Therefore, parents may not give their daughters the opportunities to study. Women were considered as having the lack of ability and knowledge since then.

This idea is strongly held in the police system. It affects the thinking method referring to gender in the job. The Police is regarded as a job primarily for men and the ratio of men officers far exceed the number of women officers. In the past, women worked only in the office and support roles in Thailand's police force. Since 1995, the Royal Thai Police Office (hereinafter referred to as RTPO) appointed 15 women to be Trial Inquiry Officers in offenses relating to sexuality, juveniles and female assaults<sup>5</sup> and it has been successful when they started to accept women into the Police Academy in 2009. It has now been 10 years since accepting women into the Police Cadet Academy and now RTPO decided to terminate this endeavor.

## Causes of the Issues

After the declaration was announced to allow only men to apply for the Inquiry Official Position and RTPO also recruit more 250 officers from only male barristers<sup>6</sup>, there was an attempt made to justify the decision by

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<sup>2</sup> สำนักงานคณะกรรมการกฤษฎีกา, กฎหมายตราสามดวง พ.ศ.๒๓๔๗, Office of the Council of State, The Three Seals Law (1804), [http://www.thailaws.com/download/thaidownload/200year\\_3duanglaw.pdf](http://www.thailaws.com/download/thaidownload/200year_3duanglaw.pdf) (last visited May 20, 2019).

<sup>3</sup> Yoneo ISHIII, *The Kotmai Tra Sam Duang or the Laws of the Three Seals*, [http://mydatabase.jp/gissv/01three\\_seals/01outline\\_e.html](http://mydatabase.jp/gissv/01three_seals/01outline_e.html) (last visited Jan. 3, 2019).

<sup>4</sup> Dr. Passanan Assavarak, *Patriarchy: behind the silent voice of domestic violence*, page 2, <http://humansecurityconf.polsci.chula.ac.th/Documents/Presentations/Passanan.doc> (last visited Jan. 3, 2019).

<sup>5</sup> อภาวรรณ โสภณธรรมรักษ์, ชมรมพนักงานสอบสวนหญิง `คดีเด็ก-ผู้หญิง` ตำรวจเข้าใจ, ข้อหน้าที่ ๒, (วันที่ ๑๕ เมษายน พ.ศ.๒๕๖๐), Arphawan Sopontammarak, *Female Investigator Club `Child-woman case*, Paragraph 2 (Apr. 19, 2017), <https://www.thaihealth.or.th/Content/36271>.

<sup>6</sup> ประชาไท, คำสั่งไม่รับพนักงานสอบสวนหญิง: สะท้อนความล่าช้าการปฏิรูปตำรวจ, (วันที่ ๘ เดือน สิงหาคม พ.ศ.๒๕๖๑), Prachatai, The declaration that not accepted women officers : reflecting the backwardness of police reform, (Aug. 8, 2018), <https://prachatai.com/journal/2018/08/78189>.

suggesting that family duties caused the Female Inquiry Officers to quit their jobs.<sup>7</sup> According to Pol. Lt. Col. Pongpol Iamwijarn, a spokesman for RTPO, stated, as follows:

...There are a lot of Inquiry Officers resigning especially woman because most of them have the family responsibilities that are harder than man Inquiry Officers and the intention to solve such problems as urgent in consideration of women's welfare and nothing is against the woman rights. The vulnerability of the victim or victim is a woman and child. There is a women police cadet who graduates from the police academy every year to be part of the inquiry. In addition, statistics show that from the year 2013 to 2016, the number of sexually violence cases decreased gradually from more than 3,300 cases, down to only 2,200 cases...<sup>8</sup>

### **Effects of the Declaration and Movement of Thais**

When the declaration is enforced, it will cause the unfair gender discrimination which is against the present Constitution of the Kingdom of Thailand, B.E. 2560 (2017) (hereinafter the 'Thai Constitution'):

Section 4, states, as follows: "Human dignity, rights, liberties and equality of the people shall be protected. The Thai people shall enjoy equal protection under the Constitution."

Section 27, states, as follows:

All persons are equal before the law and shall have rights and liberties and be protected equally under the law.

Men and women shall enjoy equal rights.

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<sup>7</sup> Jamie Fullerton, *Thai police academy bans women from enrolling* (Sep. 5, 2018), <https://www.theguardian.com/world/2018/sep/05/thai-police-academy-bans-women-from-enrolling>.

<sup>8</sup> วีระเดช คชเสนีย์, สดช.ชี้แจงประเด็นความเสมอภาคทางเพศ กรณีการเปิดรับสมัครพนักงานสอบสวนเพศชายเท่านั้น, (วันที่ ๖ สิงหาคม พ.ศ.๒๕๖๑), Weeradech Kotchasenee, *the Royal Thai Police Office (RTPO) clarify about the gender equality issues in case of the recruitment only male Inquiry Officers*, (Aug. 6, 2018), [http://thainews.prd.go.th/website\\_th/news/print\\_news/TNSOC6108060010018](http://thainews.prd.go.th/website_th/news/print_news/TNSOC6108060010018).

Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability, physical or health condition, personal status, economic and social standing, religious belief, education, or political view which is not contrary to the provisions of the Constitution or on any other grounds, shall not be permitted.

Measures determined by the State in order to eliminate an obstacle to or to promote a person's ability to exercise their rights or liberties on the same basis as other persons or to protect or facilitate children, women, the elderly, persons with disabilities or underprivileged persons shall not be deemed as unjust discrimination under paragraph three.

Members of the armed forces, police force, government officials, other officials of the State, and officers or employees of State organizations shall enjoy the same rights and liberties as those enjoyed by other persons, except those restricted by law specifically in relation to politics, capacities, disciplines or ethics.<sup>9</sup>

The Gender Equality Act of Thailand, B.E. 2558 (2015) (hereinafter the 'Gender Equality Act'), Chapter 3 Inspection of Unfair Gender Discrimination: Section 17, states, as follows:

"The establishment of policy, rule, regulation, notification, project or procedures either by government agencies or private organizations or any individual with the characteristics of unfair gender discrimination shall not be permitted."<sup>10</sup>

The declaration is also in contravention of the Convention on the Elimination of All Forms of Discrimination Against Women Treaty (1979)

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<sup>9</sup> คณะกรรมการร่างรัฐธรรมนูญ, รัฐธรรมนูญแห่งราชอาณาจักรไทย พ.ศ.๒๕๖๐, (วันที่ ๒๘ สิงหาคม พ.ศ.๒๕๖๑), Constitution Drafting Commission, Constitution of the Kingdom of Thailand B.E. 2560 (2017), [https://cdc.parliament.go.th/draftconstitution2/more\\_news.php?cid=128](https://cdc.parliament.go.th/draftconstitution2/more_news.php?cid=128).

<sup>10</sup> พระราชบัญญัติ ความเท่าเทียมระหว่างเพศ, พ.ศ.๒๕๕๘, Thailand Gender Equality Act. (2015), <http://www.ratchakitcha.soc.go.th/DATA/PDF/2558/A/018/17.PDF> (last visited May 20, 2019).

(hereinafter the ‘CEDAW Treaty’)<sup>11</sup> which Thailand is a state party and The Royal Thai Government expressed its understanding that the purposes of the Convention are to eliminate discrimination against women and to accord to every person, men and women alike, equality before the law, and are in accordance with the principles prescribed by the Constitution of the Kingdom of Thailand.<sup>12</sup>

Meanwhile the top priority of United Nations Police is to increase the number of female police officers in peacekeeping operations and encourage the recruitment of women in domestic police services.<sup>13</sup> RTPO decided to solve the lacking of female officers in a different way which is unacceptable to many people and they came out to criticize broadly:

Supensri Puengkokesoong, a women’s welfare activist and director of the Social Equality Promotion Foundation stated that according to the law, if a woman is sexually assaulted, the police officer in charge of their case must be a woman. Cases about family and children, the police officers need to have communication skills as well as knowledge about human, female and children’s rights.<sup>14</sup>

Jadet Chaowilai, director of the rights group The Women and Men Progressive Movement stated that under Thai law, female rape victims must be interviewed by female officers, but according to United Nations, 90% of rapes of women in Thailand go unreported. “This is a very backward move for women’s rights and women’s safety in Thailand,” Chaowilai said. “Victims may be embarrassed or reluctant to speak to male officers.”<sup>15</sup>

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<sup>11</sup> United Nations Treaty Collection, *Convention on the Elimination of All Forms of Discrimination against Women* (1981), <https://treaties.un.org/pages/ViewDetails> (last visited Jan. ,8 2019).

<sup>12</sup> *Id.*

<sup>13</sup> United Nations Police, *recruiting more policewomen*, <https://police.un.org/en/recruiting-more-police-women> (last visited Jan ,18 2019).

<sup>14</sup> Asaree Thaitrakulpanich, *Women Banned from Police Academy Starting 2019*, (Sep. 3, 2018) <http://www.khaosodenglish.com/news/2018/09/03/women-banned-from-police-academy-starting-2019/>.

<sup>15</sup> Jamie Fullerton in Bangkok, *Thai police academy bans women from enrolling*, (Sep. 5, 2018), <https://www.theguardian.com/world/2018/sep/05/thai-police-academy-bans-women-from-enrolling>.

The Thai Women Inquiry Officer Women's Club provided the information that Thailand has less than 500 female Inquiry Officers in the past 20 years.<sup>16</sup> The Thai National Human Rights Commissioner and the president of the Club agreed that if in the future, if the national police office does not accept more Female Inquiry Officers, the cases of sexual violence against children and women might be a problem<sup>17</sup> because these cases has a different investigation from general criminal or civil cases which female victims are more willing to talk to female officers and tend to be less embarrassed compared to being grilled by male officers. Also, female officers are regarded as more suitable to question victimized children in child abuse cases.<sup>18</sup>

In addition to having to examine the facts, the Female Inquiry Officers must consider and coordinate to send the victim to rehabilitation in the relevant agencies and the general Inquiry Officer may not understand these procedures.<sup>19</sup>

## The Importance of Women Inquiry Officers in Other Countries

Michigan, U.S.A. Female Investigators stated:

...we have discovered some clients prefer speaking with women investigators. Some women tend to feel more comfortable speaking to another female regarding personal issues, like infidelity, investigating a new love interest, locating a past relationship, etc. After all, females tend to be viewed as compassionate and understanding. Men tend to be problem solvers. They ask the needed questions and get right to work. Women tend to be multi-taskers. They can be comforting a caller while casually leading the conversation to the answers they need...<sup>20</sup>

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<sup>16</sup> ฉันทภัทร อินทรกล่อม, หัวหน้าชุด “พนักงานสอบสวนหญิง” ทำเพื่อความรุนแรงทางเพศ ไม่กล้าแจ้งความ, (วันที่ ๑๐ สิงหาคม พ.ศ.๒๕๖๑), Nichapat Intaglom, *Lack of female Inquiry Officers will cause sexual violence victims to not notice*, (Aug. 10, 2018), <https://www.pptvhd36.com/news>.

<sup>17</sup> Asaree, *supra* note 14.

<sup>18</sup> Thai PBS, *Police's job openings for male-only officers discriminatory: NHRC*, (Aug. 06, 2018), <http://englishnews.thaipbs.or.th/polices-job-openings-for-male-only-officers-discriminatory-nhrc/>.

<sup>19</sup> Arphawan, *supra* note 5.

<sup>20</sup> ASG Investigations, *Michigan Female Investigators*, <https://www.sherlockpi.com/michigan-female-investigators/> (last visited May 22, 2019).

## The Bias against Women Victims

In Thailand, often time the male police officers do not believe the victim was raped and blame the victim instead of the perpetrator and some people in the justice system still have prejudices against women. In the case of raping a woman on the train is questioned by a Thai officer, stating: “How can it happen? When the train has a lot of mattresses.”<sup>21</sup> Therefore, if the police officer in the charge of these cases is not a woman, the victims have mostly refused to give a testimony to a male officer<sup>22</sup> because of the embarrassment when being interrogated and the painful form of words and gestures that insult women.

This bias not only happened only in Thailand, but it has happened around the world. In the U.S., August, 2016, a Department of Justice [Investigation](#) found the Baltimore Police department has been negligent in responding to sex crimes. They leave most rape kits untested and ignore evidence. It described a culture of hostility towards victims. The ‘negligence’ described in the Justice Department report could be alleviated by the recruitment of more women officers. Only 15.8 percent out of 2,535 sworn members serve on the police force in Baltimore. Despite the criticisms in the report, James Handley, the director of recruitment of the Baltimore Police Department, said he was not changing his recruitment strategy to bring in more women. “That’s higher than the national average,” he said. “We’re doing pretty good.”<sup>23</sup>

## Solutions

- **Recruiting more Female Inquiry Officers**

Thailand has 1,500 police stations. There are 400 female officers, which means there are more than 1,000 police stations that do not have female officer. It is clear that the number of female officers is not enough to complete the work efficiently. Both female and male investigators must deal with a lot of difficult and high pressure situations.<sup>24</sup> It is extremely necessary to recruit

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<sup>21</sup> โปสตัดูเดย์, เสียงจากเหยื่อ...เมื่อกระบวนการยุติธรรมข่มขืนซ้ำ, (วันที่ ๑๑ กันยายน พ.ศ.๒๕๕๙), Post Today, *The voice of the victim ... When the justice procedure re-Revictimization*, (Sep. 11, 2014), <https://www.posttoday.com/politic/report/306056>.

<sup>22</sup> Asaree, *supra* note 14.

<sup>23</sup> [Christina Asquith](#), *Why Aren't U.S. Police Departments Recruiting More Women?*, (Aug. 30, 2016), <https://www.theatlantic.com/politics/archive/2016/08/police-departments-women-officers/497963/>.

<sup>24</sup> สมศรี หาญอนันตสุข, คำสั่งไม่รับพนักงานสอบสวนหญิง: สะท้อนความลำเอียงการปฏิบัติตำรวจ, (วันที่ ๘ กันยายน พ.ศ.๒๕๖๑)

more than 1,000 female officers and to encourage more women to be a police officer.

Therefore, RTPO should recruit more both men and women with more opportunities to be the Inquiry Officers in order to meet the needs of the public. If there are enough officers for the number of cases, they will be able to work independently and be able to help more the people. Difficulty and stress in work will be decreased. Finally, fewer officers will want to resign as the work will be more prudent, faster and more accurate.

- **Solicitation or Join International Organizations**

After the declaration was announced, people criticized it broadly until the spokesman for RTPO had to clarify the reasons for the declaration. Both Thai and foreign journalists were very interested in this topic and it became international news. It also attracted the attention of international organizations such as United Nations. They solicited the government to resolve the issue as soon as possible by explaining the impact and providing suggestions for solving the problem but there has still been no response from the government or RTPO.

Moreover, Thailand may want to join the international organizations, such as, the International Association of Women Police (IAWP). Its mission is to strengthen, unite and raise the profile of women in criminal justice internationally and to ensure that women's lives are free from discrimination, valued for their contributions, and treated with respect and dignity.<sup>25</sup> The IAWP is resolved to fight against the discrimination of women on police forces around the world. Fighting against cases of sexual harassment, limited job opportunities, and discriminatory treatment from male colleagues. It also works to ensure that women are satisfied with their careers on the force, and to make sure they do not feel powerless or unappreciated in their line of work.<sup>26</sup>

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Somsri Hananantasuk, *Command not accepting female employees: reflecting the backwardness of police reform*, (Sep. 8, 2017), <https://prachatai.com/journal/2018/08/78189>.

<sup>25</sup> International association of women police, *MISSION STATEMENT*, <https://iaawppublic.wildapricot.org/> (last visited Apr. 5, 2019).

<sup>26</sup> Dantzker, M.L.; Betsy Kubin (1998). "*JOB SATISFACTION: The Gender Perspective Among Police Officers*", *American Journal of Criminal Justice*, Volume 23, Issue 1, pp 19–31.

- **Amendment to the Laws**

The declaration is clearly in violation of the written laws in the CEDAW Treaty, the Thai Constitution, and the Gender Equality Act.

First, the CEDAW Treaty states the punishment of breaking the Treaty when there is a failure to comply with the obligations of the Treaty, the choice of the counterparty country can be used in many ways. In this case it might be by cutting or reducing diplomatic relations, or the state that does not comply with the Treaty may have to provide compensation for damages caused by the problem.<sup>27</sup>

Second, the Thai Constitution is the highest law of the country which also effects other laws which cannot be contrary to the Thai Constitution. There are organizations which have the duty to control and inspect the laws against the Constitution as follows: Court of Justice, Constitutional Court, Committee on the Constitution and Parliament in the Legislative Branch: however since the declaration announced until the present, there has been no movement of any organization yet.

Lastly, the Gender Equality Act should state the punishment of breaking the law to prevent the action of violation because according to Thai law, the Act can prescribe the punishment as it is not contrary to the higher law or the Thai Constitution.

- **Encourage Women to Work in Law Enforcement**

Regarding to the Gender Equality Act, Chapter 3 Inspection of Unfair Gender Discrimination: Section 17: “The establishment of policy, rule, regulation, notification, project or procedures either by government agencies or private organizations or any individual with the characteristics of unfair gender discrimination shall not be permitted.”<sup>28</sup>

However, the declaration is still enforced in 2019 may show the legislative problem in the country regarding the examination contradictory laws before approval. The declaration is not only against with the CEDAW Treaty but also

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<sup>27</sup> หลักเกณฑ์และผลทางกฎหมายของการไม่ปฏิบัติตาม, หน้า ๒, Rules and legal consequences of non-compliance, page 2, <http://digi.library.tu.ac.th/thesis/la/1531/02INTRODUCTION.pdf> (last visited Jan ,8 2019).

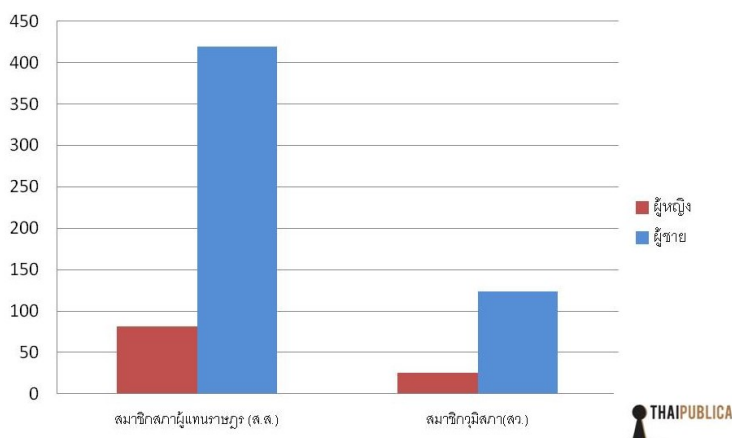
<sup>28</sup> Thailand Gender Equality Act. (2015), *supra* note 10.



the Gender Equality Act. Therefore, this declaration should be invalidated, revoked or amended, instead of approved.

This are the reasons that there should be more women in the law enforcement. To solve the problem, begin with encouraging them to pursue careers in law enforcement. There should also be a new generation of women being promoted to law enforcement leadership and command roles, with a growing number of police chief positions across the country being filled by women.<sup>29</sup> Then the problems that women have faced could be understood and resolved by legislating, supporting and amending laws related to women's rights. “If women get a chance to be a representative of Thai society, they may lead the change to all levels for woman,” said by Michelle Bachelet, the director of The United Nations Entity for Gender Equality and the Empowerment of Women.<sup>30</sup>

กราฟแสดงสัดส่วนส.ส. ส.ว. เพศหญิงและชาย



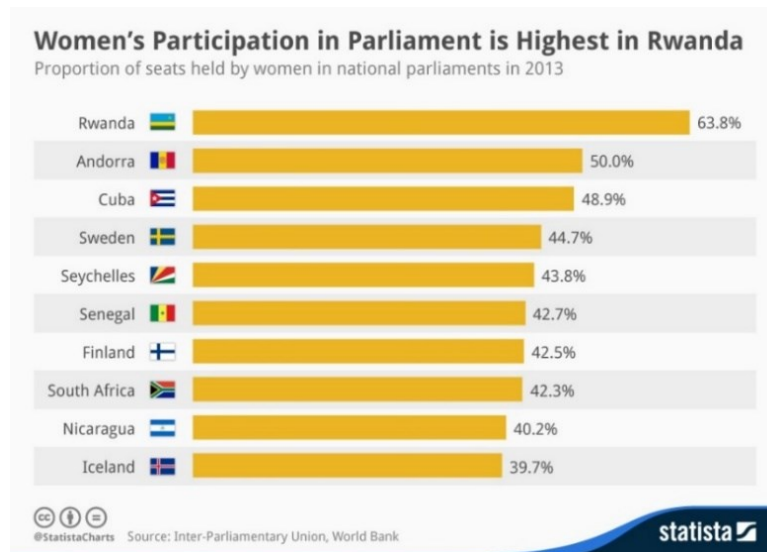
Source: Thaipublica, <https://thaipublica.org/2012/12/un-women/>

From the statistics of female politicians in Thailand found that the proportion of members of the House of Representatives (MPs) and Senators

<sup>29</sup> Law Enforcement and Public Safety Leadership, *Why We Need More Women Working in Law Enforcement*, <https://onlinedegrees.sandiego.edu/women-in-law-enforcement/> (last visited Jan. 18, 2019).

<sup>30</sup> โทษพันลิล้า, คอ. UN Women แนะนำเปิดทาง “ผู้หญิง” เข้าสภาให้มากขึ้น, (วันที่ ๘ ธันวาคม พ.ศ.๒๕๕๕), Thai Publica, *Director of UN Women suggests that women go to the council more*, (Dec. 9,2012), <https://thaipublica.org/2012/12/un-women/>.

between females and males is very low, with only 81 female MPs to 419 male MPs. For Senate, the number of females is 25 while males is 124.<sup>31</sup>



Source: Statista, <https://www.statista.com/chart/2234/womens-participation-in-parliament-is-highest-in-rwanda/>

Rwanda has the highest representation of women in Parliament in the world. In 1994, the Rwanda genocide caused the death of more than 800,000 people.<sup>32</sup> In 2003, barely a decade after the genocide, nearly 50 per cent of Parliamentary seats went to women. This may indicate how gender equality in democracy may benefit women in the workplace and in the law enforcement through legislation. Their constitution set a quota of 30 percent women as Parliamentary members. After the 2008 elections in Rwanda, women made up 56 percent of Parliament. The number jumped to 64 percent after the 2013 elections<sup>33</sup> and is likely to increase every next year.

“There are other lessons to be learned from the country's rebuilding process. One of those is about handling disputes, and the need to increase the participation of women in post-conflict societies.”<sup>34</sup> Thailand could use Rwanda as an example.

<sup>31</sup> *Id.*

<sup>32</sup> Jane Dudman, *Lessons from Rwanda's female-run institutions*, (Jul. 1, 2014),

<https://www.theguardian.com/society/2014/jul/01/lessons-rwanda-female-run-institutions-mps>.

<sup>33</sup> UN Women, *Revisiting Rwanda five years after record-breaking parliamentary elections*, (Aug. 13, 2018) <http://www.unwomen.org/en/news/stories/2018/8/feature-rwanda-women-in-parliament>.

<sup>34</sup> Dudman, *supra* note 32.

- **Instill the Concept of Gender Equality to the Next Generation of Young People**

Even in the 21st century, women have become increasingly active, especially in political areas. Gender equality is evolving but it has not happened to a large extent in Thailand. The World Economic Council reports that they have tried to reduce the disparity between males and females. Even if women are more active than the past but, in the end, they will still encounter the invisible ceiling caused by social bias towards the ability of women in the workplace and in the highest leadership positions.

Therefore, creating equality between males and females is to change attitudes, beliefs and cultures towards women. Starting at family level from small matters in everyday life to the larger aspects in society to break down the invisible ceiling which was created by men with prejudice against women.<sup>35</sup>

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<sup>35</sup> กานท์กลอน รักธรรม, สภาเศรษฐกิจโลกเผย บางประเทศใช้เวลากว่า ๑,๐๐๐ ปี เพื่อให้ผู้หญิงเท่าเทียมกับผู้ชาย, (วันที่ ๑๘ มกราคม พ.ศ.๒๕๖๐), Karnklon Raktham, *World Economic Council reveals Some countries spend more than 1,000 years for women to be equal to men*, (Jan 18, 2017), <https://themomentum.co/momentum-feature-world-economic-forum-woman-right-must-take-more-1000-years-for-equivalent-man/>.