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# CHIANG MAI UNIVERSITY LAW REVIEW

Chiang Mai University, Faculty of Law

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# คณะนิติศาสตร์ มหาวิทยาลัยเชียงใหม่ FACULTY OF LAW CHIANG MAI UNIVERSITY

## **Chiang Mai University Law Review**

The vision of Chiang Mai University Law Review (CMULR) is designed to improve the quality of legal and social research in Thailand. CMULR is the only Thailand law review with 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 is 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 a student-run legal journal, with assistance and supervision of the faculty. It focuses on articles and notes 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 are 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 Editor-in-Chief



This is the first volume of Law Review from the Faculty of Law, Chiang Mai University. We are publishing this Law Review focusing on many students' Legal Notes. Each student picked a topic of their own interest and their Notes were reviewed by their peer members. This project began in January 2013 with students who attended English Skill for Lawyers Programme classes, however we are delighted to have Legal Notes from any student who wants to be part of Law Review.

Let this Law Review be a space for those who wish to participate and analyze any issue taking place in the society surrounding them. We welcome all readers to share their point of view and review these issues.

As Editor-in-Chief and on behalf of my fellow members, I would thank Dean Chatree Rueangdetnarong who granted us this special opportunity, Assistant Dean Kanya Hirunwattanapong for all the support and encouragement, lastly and most especially Faculty Advisor Susan Billstrom for everything from starting this program to final publication. This would not be possible without your help. May this program be a path for the next generation of law students to study and be inspired by this Law Review to contribute and participate with us.

From us to the world,  
Thank you,  
Chonlatit Teerasantipan, Editor-in-Chief

**The Effect of  
*Kirtsaeng v. John Wiley & Sons, Inc.*  
Upon Thai Education**

*Susan Billstrom, J.D.\**

**Introduction**

With the holding by the U.S. Supreme Court in the case of *Kirtsaeng v. John Wiley & Sons, Inc.*, has the United States now taken the leading role in the movement for international exhaustion of rights regarding copyright law? Will the international policies of copyright law balance a copyright owner's downstream control of the protected works against the copyright owner's exhaustion of rights upon the first sale of the protected works anywhere in the world? These are questions pertinent to international law, economic conditions and demand for particular goods across the globe.

This case specifically dealt with Supap Kirtsaeng, a Thai student, who attended universities in the United States from approximately 1997 until 2010. During the years of 2007 – 2008, his family and friends in Thailand purchased textbooks manufactured in Thailand and sent the textbooks to him in the United States; however Wiley & Sons, Inc. brought suit in district court for the subsequent sale of said textbook for copyright infringement of its rights of distribution, in the United States. The matter went to the U.S. Supreme Court:

Respondent, John Wiley & Sons, Inc., [hereinafter “Wiley”] an academic textbook publisher, often assigns to its wholly owned foreign subsidiary [“Wiley Asia”] rights to publish, print, and sell foreign editions of Wiley's English language textbooks abroad. Wiley Asia's books state that they are not to be taken (without permission) into the United States. When petitioner Kirtsaeng moved from Thailand to the United States to study mathematics, he asked friends and family to buy foreign edition English-language textbooks in Thai book shops, where they sold at low prices, and to mail them to him in the United States. He then sold the books, reimbursed his family and friends, and kept the profit.

Wiley filed suit, claiming that Kirtsaeng's unauthorized importation and resale of its books was an infringement of Wiley's §106(3) exclusive right to distribute and §602's import prohibition. Kirtsaeng replied that because his books were “lawfully made” and acquired legitimately, §109(a)'s “first sale” doctrine

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\* Susan Billstrom, J.D., Foreign Legal Expert, Chiang Mai University, College of Law. Special acknowledgment to Deeraporn Sirimongkol, Pattrawan Satjaorntep, Sadaya Suppaya and Kessuda Fongmala for their research and contributions to this article.

permitted importation and resale without Wiley's further permission. The District Court held that Kirtsaeng could not assert this defense because the doctrine does not apply to goods manufactured abroad. The jury then found that Kirtsaeng had willfully infringed Wiley's American copyrights and assessed damages. The Second Circuit affirmed, concluding that §109(a)'s "lawfully made under this title" language indicated that the "first sale" doctrine does not apply to copies of American copyrighted works manufacture abroad. *Held*: The "first sale" doctrine applies to copies of a copyrighted work lawfully made abroad. Pp. 1357 – 1371.<sup>1</sup>

### **The First Sale Doctrine in the United States**

Section 106 of the Copyright Act grants "the owner of copyright under this title" certain "exclusive rights," including the right "to distribute copies ... of the copyrighted work to the public by sale or other transfer of ownership."<sup>2</sup> These rights are qualified, however, by the application of various limitations set forth in the next several sections of the Act, §§ 107 through 122<sup>3</sup>. Those sections, regarding limitations on exclusive rights, "include, for example, the principle of "fair use" (§107), permission for limited library archival reproduction (§108), and the doctrine at issue here, the "first sale" doctrine", as follows:

"Notwithstanding the provisions of section106(3) [the section that grants the owner exclusive distribution rights], the owner of a particular copy or phonorecord *lawfully made under this title* ... is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord." (Emphasis added)<sup>4</sup>

The "first sale" doctrine is an important doctrine in the United States copyright law. This doctrine limits the right of copyright owner and attempts to balance the ownership rights of intellectual property and the fair competition of the public.

The first sale doctrine of the Copyright Act states that once a copyrighted work, such as a textbook, is sold, and the copyright owner earns its profit from the original sale. The new owner of the textbook may then freely sell that textbook without the copyright owner's permission and the copyright owner is not entitled to additional profits. Whether the first sale doctrine applies to legitimate sales outside the United States; or alternatively, whether the first sale doctrine is

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<sup>1</sup> *Kirtsaeng v. John Wiley & Sons, Inc.*, 133 S. Ct. 1351, 1352. (2013) [hereinafter "Kirtsaeng"].

<sup>2</sup> 17 U.S.C. §106 (2006) [hereinafter "Copyright Act"], <http://www.copyright.gov/title17/92chap1.html>, accessed on Jan. 22, 2013.

<sup>3</sup> *Id.* at §§ 107 – 122.

<sup>4</sup> *Id.* at §106(3).

triggered either by any sale abroad, or only by importation into the United States was decided by the Supreme Court.

This case dealt with the question of whether the first sale doctrine applies if the work was manufactured outside of the United States. It was determined by the Supreme Court that work could be manufactured outside the United States and then first sold directly in the United States by the original rights holder without controversy and that the geographic area in which it was manufactured does not exclude the work from the application of the first sale doctrine. This appears to be logically supported by the fact that the publisher's parent company Wiley authorized its subsidiary company Wiley Asia to manufacture the textbook in Thailand. Therefore, this cannot be a copy of the original textbook, but it is the original textbook and the parent company in the United States knowingly authorized its manufacture in Thailand. Additionally, the subsidiary company, Wiley Asia and therefore Wiley, earned its profit upon the first sale of the original textbook.

In the United States, if someone has infringed on the rights of the copyright owner without the permission or license of the copyright owner, that person is strictly liable, without regard to that person's intent. However, note that:

- Infringement can occur only if the whole or a substantial part of the work is involved. 'Substantial' is undefined, although case law suggests that content (e.g. key phrases, concluding remarks or headlines) in many cases is as significant as extent; and
- You will not be able to prosecute successfully if the unauthorized act falls within one of the copyright exceptions...<sup>5</sup>

Historically, the first sale doctrine applied to copies "lawfully made under this title" which was interpreted by the courts to mean that the copyrighted work was manufactured in the United States. Does the first sale doctrine also apply to the product that is produced and distributed or acquired abroad? The answer to this question appears in the *Kirtsaeng* case.<sup>6</sup> Pursuant to the findings of the United States Supreme Court, the phrase "lawfully made under this title" does not include any geographic limitation which means the first sale doctrine applies to copies of the products that are lawfully manufactured anywhere in this world. Therefore, the concept of the first sale doctrine in the United States does limit the rights of the copyright owners and cannot stop the purchaser who purchased product abroad and thereafter resells the product in the United States, without the permission of the owner, even if they were manufactured and sold overseas.

Are copyrighted works manufactured abroad and imported for resale in the United States protected by the law against general forms of infringement or protected specifically against unauthorized importation? Prior to the establishment of modern United States copyright law, a

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<sup>5</sup> University of Cambridge, Centre for Applied Research in Educational Technologies, *What are the rights of the copyright owners?*, (Sept. 12, 2005), <http://www.caret.cam.ac.uk/copyright/Page130.html>, accessed on May 22, 2013.

<sup>6</sup> *Kirtsaeng supra* note 1, at 1357.

colonial copyright statute stated an innocent seller, which means a seller who did not know that the printing of his copies was unauthorized, was not liable.<sup>7</sup>

Today, as per 17 U.S.C. §602: Infringing importation or exportation of copies or phonorecords: Infringing importation or exportation of copies:

- (1) Importation - importation into the U.S., without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the U.S. is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501;
- (2) Importation or exportation of infringing items - importation into the U.S. or exportation from the U.S., without the authority of the owner of copyright under this title, of copies or phonorecords, the making of which either constituted an infringement of copyright, or which would have constituted an infringement of copyright if this title had been applicable, is an infringement of the exclusive right to distribute copies or phonorecords.<sup>8</sup>

It may be questioned whether Kirtsaeng was an “innocent seller”, pursuant to colonial law, who resold the textbooks without a license from the copyright owner. However, as the principle of the first sale doctrine implies today, a third party buyer may import textbooks lawfully printed overseas by United States publisher and resell them in the United States. While Kirtsaeng turned a substantial profit as possible importer and it may be argued in the future by that such action should require a license or consent from the copyright owner.

The issue becomes relevant in cases of so-called parallel importation.

Parallel imports of genuine goods, refer to a fact pattern in which someone other than the designated exclusive United States importer buys genuine trademarked goods outside the United States and imports them for sale into the United States in competition with the exclusive United States importer.<sup>9</sup>

Said goods are ostensibly brought into the United States to compete with the prices of domestic goods.

The above principles have different implications depending on whether the country of importation, for reasons of law or policy, applies the concept of national, regional or international

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<sup>7</sup> Alan Latman and William S. Tager, *Liability of Innocent Infringers of Copyrights*, S. Res. No. 240 Study 25, 135 at 140 (1958), <http://copyright.gov/history/studies/study25.pdf>, accessed on May 25, 2013.

<sup>8</sup> Copyright Act, *supra* note, at 602.

<sup>9</sup> J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, §29:46 (2007).

<https://publish.illinois.edu/illinoisblj/2008/03/10/varying-intellectual-property-regimes-the-reception-of-gray-market-goods-in-the-united-states-and-the-european-union/>, accessed on May 30, 2014.

exhaustion. The concept of national exhaustion does not allow the copyright owner to control the commercial exploitation of goods put on the domestic market by the copyright owner or with his consent. However, the copyright owner (or his authorized licensee) could still oppose the importation of original goods marketed abroad based on the right of importation. In the case of regional exhaustion, the first sale of the copyright protected work by the copyright owner or with his consent exhausts any copyright rights over these given products not only domestically, but within the entire international region, as opposed to a region within one country, and parallel imports within the region can no longer be opposed based on the copyright. Where a country applies the concept of international exhaustion, the copyright rights are exhausted once the product has been sold by the copyright owner or with his consent in any part of the world.<sup>10</sup>

If the copyright owner retains the right to control the following sale, it is contrary to the principle of free competition. Therefore, the exhaustion of rights is an important role in balancing of justice between the intellectual property ownership right and the fair competition of the public.

The international exhaustion of rights states that the rights of the copyright owner are exhausted with the products' first sale "regardless of the place of sale".<sup>11</sup> The individuals who purchased the products legally may resell that copyrighted product anywhere around the world.

Due to the fact that both the United States and Thailand are members of the Berne Convention for the Protection of Literary and Artistic Works (the "Berne Convention")<sup>12</sup> and Trade Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (the "TRIPs Agreement")<sup>13</sup>, created through the World Trade Organization ("WTO"), the United States and Thailand copyright owners shall be protected by each country's copyright law.

The marketing strategy called market segmentation involves designing and implementing strategies to target the needs and desires of different consumers and setting different prices based on a country's different Gross National Product and standard of living.

For example, publishers set lower prices of textbooks or sell the older versions of the textbooks in a "developing country", defined according to the UN, "a developing country is a country with a relatively low standard of living, undeveloped industrial base, and moderate to low Human Development Index (HDI). This index is a comparative measure of poverty, literacy, education, life expectancy, and other factors for countries worldwide".<sup>14</sup> For example, a student in Thailand, a "developing country" can purchase the identical content textbook for less money than

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<sup>10</sup> WIPO, *International Exhaustion and Parallel Importation*, [http://www.wipo.int/sme/en/ip\\_business/export/international\\_exhaustion.htm](http://www.wipo.int/sme/en/ip_business/export/international_exhaustion.htm), accessed on May 22, 2014.

<sup>11</sup> *Id.*

<sup>12</sup> Berne Convention for the Protection of Literary and Artistic Works, [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=15](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15), accessed on Jan. 30, 2013.

<sup>13</sup> Trade Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (the "TRIPs Agreement"), [https://www.wto.org/english/tratop\\_e/trips\\_e/t\\_agm4\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/t_agm4_e.htm), and see <http://www.thailawforum.com/articles/fta-us-thailand.html>, accessed on Jan. 30, 2013.

<sup>14</sup> developing country, [http://www.educationalpathwaysinternational.org/?page\\_id=97](http://www.educationalpathwaysinternational.org/?page_id=97), accessed on Jan. 30, 2013.

the student in the United States, a “developed country”, defined as a country having a high level of economic development according to the high Gross National Product, etc.

The publisher might change the pricing strategy to increase the price in a developing country if the publisher cannot control the price due to international arbitrage, the strategy of taking advantage of a price difference between two or more markets striking a combination of matching deals that capitalize upon the imbalance, the profit being the difference between the market prices involving different countries.

In this case, Kirtsaeng legally imported the less expensive textbooks from the Thailand to the United States and thereafter established a higher price in the United States resale market. This price basically undercut the sale price established by Wiley in the college and university bookstores in the United States.

Publishers in the United States may now struggle with a future where many people from developing countries may export and resell textbooks in United States, which may result in an effective elimination of market segmentation. One way a publisher might solve this problem is setting higher prices for the textbooks in developing countries, including Thailand. And that may directly affect Thai education because many students may not be able to afford the higher priced textbook. However this strategy may also result in fewer sales for the publisher. If higher prices are not imposed, a consequence is that this might obviously lead to the necessity of using outdated textbooks resulting in a problem of a decrease in the quality of education in Thailand. Another possibility is that a publisher may require students to present their student ID cards in order to purchase textbooks, as a device to make it impossible for a Kirtsaeng situation to occur in the future.

### **Exhaustion Rule in Thailand**

In Thailand there is no first sale doctrine. Under Thailand Copyright Act section 15, paragraph (1), (2) and (4), the copyright owner has “the exclusive right to reproduction and communication to public (and) distributing by and other means. If a person distributes the copyrighted work without the consent of the copyright owner, his act shall be deemed a copyright infringement.” In Thailand, the copyright owner has the right to distribute his work under section 15(2) without explicit limitation, during the duration of his copyright ownership.<sup>15</sup>

However, there is an exhaustion rule known as exhaustion of rights which exists in Thai Patent and Trademark Acts, however, it does not appear specifically in any section of the Thai Copyright Act.

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<sup>15</sup> Copyright Act, (TH 1994), §15.

According to the Thai Patent Act, section 36:

No other person except the patentee shall have following rights:

(1) where the subject matter of a patent is a product, the right to produce, use, sell, have in the possession for sale, after for sale or import the patented product;

(2) where the subject matter of a patent is a process, the right to use the patented process, to produce, use, sell, have in the possession for sale, offer for sale or import the product produced by the patented process...

The preceding paragraph shall not apply to:

(7) the use, sale, having in possession for sale, offering for sale or importation of a patented product when it has been produced or sold with the authorization or consent of the patentee.<sup>16</sup>

Also, there is a judgment of the Thai Supreme Court that accepted the exhaustion of rights in a trademark case.<sup>17</sup>

According to the Thai Copyright Act, section 15, subject to sections 9, 10 and 14, the owner of copyright has the exclusive rights of:

- (1) reproduction or adaptation;
- (2) communication to public;
- (3) letting for hire of the original or the copies of a computer program, an audiovisual work, a cinematographic work and a sound recording;
- (4) giving benefits accruing from the copyright to other persons;
- (5) licensing the rights mentioned in (1), (2) or (3) with or without conditions, provided that the said conditions shall not unfairly restrict the competition.<sup>18</sup>

The third party buyers who want to resell the copyrighted works must ask for permission from the copyright owner, otherwise they will infringe the copyright. However, Section 32, paragraph 1 of the Thai Copyright Act states an exception to copyright infringement. To wit, if the copyrighted product that was resold in the country “does not conflict with a normal exploitation of the copyright work by the owner of copyright and does not unreasonably prejudice the legitimate right of the owner of copyright is not deemed an infringement of copyright.”<sup>19</sup>

In the future this may be a basis for an exhaustion rule to be codified into the Thai Copyright Act, i.e., the individual who bought the copyrighted work in Thailand shall be excepted from copyright infringement due to the fact that the copyright owner already received profits from the

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<sup>16</sup> Patent Act, (TH 1979) as amended by Act (No. 3) (TH 1999), §36.

<sup>17</sup> Supreme Court Judgment No. 2817/2543 (TH 2000).

<sup>18</sup> Copyright Act *supra* note 15.

<sup>19</sup> *Id.*, at §32.

first sale, therefore it does not conflict with a “normal exploitation of the copyright work” by the copyright owner and does not unreasonably prejudice the legitimate right of the copyright owner.

Whether the conditions as mentioned in sub-section (5) of Section 15 are unfair restrictions of competition or not shall be considered in accordance with the rules, methods and conditions set forth in the Ministerial Regulation, subject to paragraph 1:

Any act against the copyrighted work in paragraph 1 is not deemed an infringement of copyright provided that the act is one of the following:

- (1) research or study of the work which is not for profit;
- (2) use for personal benefit or for self-benefit together with the benefit of other family members or close relatives;
- (3) comment, criticism or introduction of the work with an acknowledgement of the ownership of copyright in such work;
- (4) news reporting through mass media with an acknowledgement of the ownership of copyright in such work;
- (5) reproduction, adaptation, exhibition or display for the benefit of judicial proceedings or administrative proceedings by authorized officials or reporting such proceedings;
- (6) reproduction, adaptation, exhibition or display by an instructor for the benefit of instruction provided that the act is not for profit;
- (7) reproduction, adaptation in part of a work or abridgement or making a summary by an instructor or an educational institution so as to distribute or sell to students in a class or in an educational institution provided that the act is not for profit;
- (8) use of the work as part of questions and answers in an examination.<sup>20</sup>

## **Education in Developing Countries**

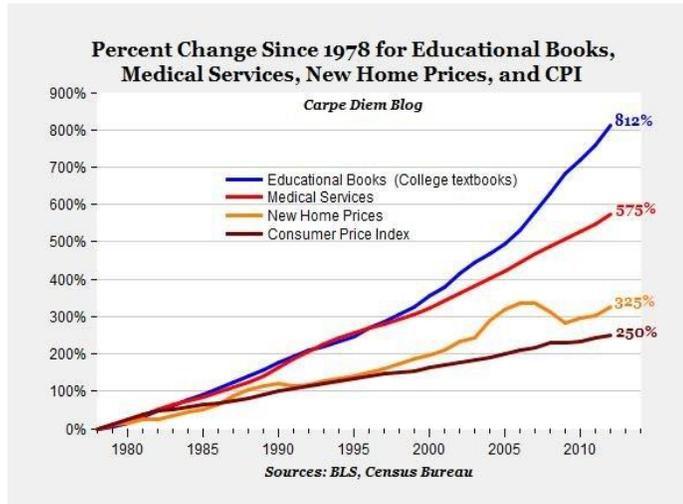
Textbooks create enormous profits. Textbooks are used in colleges and universities throughout the world. Every few years a new edition includes new scholarly developments within a field of study. Upon publishing the new edition, the learning institution (colleges and universities) requires the students to purchase the new edition. The developments may be major or minor, however it does affect the pagination and chapters and therefore each student must purchase the new edition in order to follow the course outline as prescribed by the educational institution. The prior editions become obsolete. Therefore, an edition may only hold its resale value for a year or two.

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<sup>20</sup> *Id.*

During the last few decades the costs of college and university education have increased exponentially, as have the costs of textbooks. This is not a fledgling market, but rather a well-established market.

The 812% increase in the price of college textbooks since 1978 makes the run-up in house prices and housing bubble (and subsequent crash) in the 2000s seem rather inconsequential, and the nine-fold increase in textbook prices also dwarfs the increase in the cost of medical services over the last three decades. Compared to the 250% increase in the Consumer Price Index (CPI) over the last 34 years, college textbooks have risen more than three times the amount of the average increase for all goods and services.<sup>21</sup>



This long established system actually offers the opportunity for creative writing and ideas, and as such is protected by copyright law, and also balances the continued stream of commerce may be protected by common law. Because copyright law includes in the copyright owner's protected rights the infringement against copying updated materials, the students have no choice but to purchase the new editions as they are required by the educational institution. This enables the publisher to obtain enormous profits from both in the publisher's parent company, in this case in the United States, where textbooks are manufactured and sold for higher prices, and in the publisher's subsidiary company, such as in Thailand, where textbooks are manufactured and sold for somewhat lower prices.

<sup>21</sup> Sam Ro, Business Insider, *The College Textbook Bubble Is Out Of Control*, (Dec. 26, 2012), <http://www.businessinsider.com/college-textbook-inflation-2012-12>, accessed on June 4, 2015.

Furthermore, as the English language has become the “lingua franca”<sup>22</sup> of the world, and English is the official business language for ASEAN, textbooks printed in English have a larger and larger market share. Developing countries throughout the world require textbooks printed in English in order to raise their standard of education and competitive workforce. Publishers are aware of this trend and create subsidiaries throughout the world in order to take advantage of the potential financial gain. And, as has been so amply stated by John Calvin Coolidge Jr., the 30th President of the United States (1923–1929), in his January 17, 1925 *Address to the American Society of Newspaper Editors, Washington, D.C.*, “The business of America is business.”<sup>23</sup>

English is an enormously important export in America. If the market requires a lesser price for the same product, which will still create a profit, so be it. The publisher in this case, printed on the title page its requirement that the textbook only be sold in Thailand. It did so with full knowledge of the lower sales price and with the objective of not undercutting any other of its markets where the textbook does sell for a higher price. This is the basic concept of parallel markets. However, the copyright owner cannot dictate the resale price of the work, in this case the textbook, once it has been sold to the new property owner.

The concept behind selling these textbooks at different prices involves market segmentation whereby products are priced in accordance with what the market will bear in various countries due to their financial development. This allows the publishers of the textbooks to continue to sell their products in financially disparate economies and also make a profit.

This right of resale is the basis for companies like eBay, Amazon.com, etsy.com, Goodwill and multitudes of used property stores, used car dealers, used book stores and your local garage sale. In none of these instances does the original copyright owner receive a profit from the resale of used goods. Whether this is known as the first sale doctrine, as in the United States, or the exhaustion of rights, as in some other countries, and perhaps in the international marketplace, each country has its own sovereign right to create its own copyright laws and therefore it’s right to resale laws.

So why, out of so many opportunities for a well-established publisher, such as Wiley, did they decide to bring suit against this particular Thai student, studying in the United States, for resale of its textbooks when there are numerous used textbook distributors in the United States? Perhaps, it was to send this message: individuals and businesses in developing countries should not have the right to earn a profit off of market segmentation, parallel pricing and international arbitrage and that only the publishers should enjoy the privilege of reoccurring profits regardless of the long established concepts and intents of the first sale doctrine and/or the exhaustion of rights.

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<sup>22</sup> Oxford Dictionaries “lingua franca: A language that is adopted as a common language between speakers whose native languages are different.” <http://www.oxforddictionaries.com/definition/english/lingua-franca>, accessed on June 4, 2015.

<sup>23</sup> Calvin Coolidge, *Address to the American Society of Newspaper Editors, Washington, D.C.*, (Jan. 17, 1925). Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/?pid=24180> accessed on June 12, 2015.

Was the thought that Kirtsaeng would not have the financial wherewithal to contest this matter in not only the District Court of New York, but also the Appellate Court and then the United States Supreme Court? As is so often the case, large, affluent and powerful plaintiffs choose a less powerful defendant in order to obtain large enough damages to effectively deter the defendant from continuing to fight for its rights in higher courts of appeal.

In any event, publishers such as Wiley continue to bring their copyright infringement cases to the courts. Last year the book publishing industry hit a milestone. For the first time ever, Wiley successfully sued consumers Jeff Ng, Ralph Mohr, Robert Carpenter, Xiaoshu Chen and Does 1 - 24 in United States District Court for the Western District of New York<sup>24</sup> for pirating books via BitTorrent. The New York residents will pay \$7,000 in damages to Wiley the company that puts out the "For Dummies" series of instructional books.<sup>25</sup> Wiley had requested the statutory damages of \$150,000.

Piracy is a fact of life in the digital age. Like music and movies, e-books get pirated. But that doesn't mean suing everyone you can find is the only possible response. Despite the victory for Wiley it is uncertain whether the book publisher will continue to press action against BitTorrent users. Many of their mass BitTorrent lawsuits have been dismissed recently and Wiley hasn't filed any new ones since September last year.

Today, the United States Copyright Act of 1976 may need revision due to technology, easy world access, the digital age and the new problems presented that were not anticipated in the past. Some may argue that market segmentation should be allowed together with the innocent resale of products manufactured abroad. Perhaps requiring a license from imports but not from resellers achieves this goal. "Congress may be better able to address the issue...It may be able to draft legislation to give copyright owners control over importation of items purchased abroad but limit that liability to defendants who knew or should have known that their actions defeat a market segmentation plan. Such a solution, or a similar one, will place liability on the likes of Kirtsaeng, but not on the innocent buyers...departing from the strict liability framework of the Copyright Act."<sup>26</sup>

Both the first sale doctrine and the exhaustion of rights are similar in concept and limit the copyright owner's rights. At least according to Kirtsaeng and its dissent, the first sale doctrine is itself a form exhaustion and the right of the copyright owner is exhausted after the products' first sale.<sup>27</sup> The owner can no longer follow his manufactured product in order to obtain secondary

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<sup>24</sup> WDNY, 1:12-cv-00914-RJA (2013), <https://extratorrentlive.xyz/article/2750/%E2%80%9Cfor+dummies%E2%80%9D+publishers+sued+bittorrent+users.html> accessed on June 15, 2015.

<sup>25</sup> Ernesto, *\$7,000 Fine for Sharing "Wordpress for Dummies" on Bittorrent*, (2012), <https://torrentfreak.com/7000-fine-for-sharing-wordpress-for-dummies-on-bittorrent-120702/>, accessed on June 15, 2015.

<sup>26</sup> Guy A. Rub, *The Economics of Kirtsaeng v John Wiley & Sons, Inc.: The Efficiency of a Balanced Approach to the First Sale Doctrine*, Fordham Law Review, Vol. 81, 41 at page 53-54,

[http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1016&context=res\\_gestae](http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1016&context=res_gestae) accessed on Jan. 15, 2013.

<sup>27</sup> Kirtsaeng *supra* note 1, at 1373-74.

profits from resale. For the first sale doctrine, the United States Supreme Court has stated that there is no geographic significance to fix the area of the doctrine.

Therefore, the first sale doctrine in the United States applies to the copyrighted work that is lawfully manufactured anywhere in the world. Similarly, it may be decided in the future, Thai Copyright Law will include an exhaustion of rights limitation, and the international community may also develop a cohesive international exhaustion of rights provision which will concur with this United States Supreme Court decision.

While some may state that this case will have a chilling effect on publishers manufacturing, distributing and/or selling textbooks in English in developing countries, such as Thailand, English is now the dominate world language and as such, English as a Foreign Language has spread in Thailand to approximately 27% of its approximate 63,000,000 population, equaling 17,000,000 English as a Second Language speakers.<sup>28</sup>

English has now inarguably achieved global status...indeed, if one looks at some of the facts about the amazing reach of the English language many would be surprised. English is used in over 90 countries as an official or semi-official language. English is the working language of the Asian trade group ASEAN. It is the de facto working language of 98 percent of international research physicists and research chemists. It is the official language of the European Central Bank, even though the bank is in Frankfurt and neither Britain nor any other predominantly English-speaking country is a member of the European Monetary Union. It is the language in which Indian parents and black parents in South Africa overwhelmingly wish their children to be educated. It is believed that over one billion people worldwide are currently learning English.<sup>29</sup>

Therefore, there is no reason to believe that well-established publishing companies will refrain from using their subsidiaries to manufacture textbooks in a country like Thailand, where perhaps there is an ever increasing market of the Thai population which could benefit from such books.<sup>30</sup> With numerous textbooks being required by students and the market segmentation prices already in effect, if some individuals or businesses purchase new textbooks and then resell them in other geographic areas, those sales should not significantly impact the profits of the publisher, which is providing textbooks to an ever growing English speaking global market. In fact, there

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<sup>28</sup> Crystal, David, Cambridge, UK: Cambridge University Press, *The Cambridge Encyclopedia of the English Language*, 109 (2d ed. 2003), <https://www.scribd.com/doc/77462665/The-Cambridge-Encyclopedia-of-the-English-Language>, accessed on May 31, 2015.

<sup>29</sup> *Id.*, at p. 113.

<sup>30</sup> John Villasenor, *A Supreme Court Case Over Textbooks Could Make Copyright Law Even More Restrictive*, (2012) [http://www.slate.com/blogs/future\\_tense/2012/10/23/kirtsaeng\\_v\\_john\\_wiley\\_sons\\_case\\_may\\_upend\\_international\\_copyright\\_la\\_w.html](http://www.slate.com/blogs/future_tense/2012/10/23/kirtsaeng_v_john_wiley_sons_case_may_upend_international_copyright_la_w.html), accessed on May 29, 2014.

may be a need for the publisher to manufacture more books, manufactured of those cheaper materials, to meet the market need of supply and demand.<sup>31</sup>

The perceived outcome may exist that publishers will inflate the prices of their textbooks in developing countries. This may result in a decrease in textbook sales; however, as more students enter college, more textbooks may be sold at a reasonable price for that market. As more of the Thai population attends colleges and universities, graduates who have studied in English may obtain higher paying jobs in Thailand, in the ASEAN community and the world at large. The gross national product of Thailand, in turn, may increase and so will the prices generally. This may indeed be the outcome that will continue to benefit the publishers, the educational system and Thailand in general.

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<sup>31</sup> [John Paul Titlow](http://readwrite.com/2013/01/10/why-winning-a-7-000-piracy-lawsuit-could-be-the-worst-news-ever-for-book-publishers), *Why Winning A \$7,000 Piracy Lawsuit Could Be The Worst News Ever For Book Publishers*, (Jan. 10, 2013), <http://readwrite.com/2013/01/10/why-winning-a-7-000-piracy-lawsuit-could-be-the-worst-news-ever-for-book-publishers>, accessed on June 30, 2015.

# **Effective Law Enforcement**

*By Chonlatit Teerasantipan\**

As we can see in Thailand today, underage smoking and drinking, driving motorcycles without a license and/or a helmet, and many other acts that are illegal but yet can be seen nationwide. Laws need enforcement and enforcement needs officials, including, but not limited to, police, Land Transport Office, administrative officers, etc. If these officials are lacking in their responsibility of enforcing the law then it does not matter how many laws have been enacted, the result would be the same: a lack of substantial enforcement of the law. We need the most effective enforcement as possible no matter if it involves criminal, civil or political matters.

## **Law enforcement**

“Law enforcement” is the system of society that attempts to organize the society by enacting the law, then enforcing it through organizations such as police. Therefore, law enforcement could be simply understood as applying the law to the real world with real people. There are certain issues with the system, the lack of effectiveness of enforcement officials that appear to be a critical issue in Thailand today.

What is the effectiveness of law enforcement? The effectiveness of law enforcement occurs when the people know and follow the law. At the same time law enforcement officials must make certain that laws are applied equally and fairly, both in protection and punishment, to all people.

In order to effectuate these results, both more laws and better enforcement are needed. In order to enact the necessary future laws that can address today’s social problems, first review the existing laws. Enforce the laws to it maximum effect and correct what is lacking in the laws, and enact a better version of the law.

Effectiveness of law enforcement can be measured in various ways. Public opinion polls are used to measure the effectiveness of law enforcement frequently, although they are not the most accurate measure. However the polls are fast and direct from the people.

## **Thailand and Law Enforcement**

Thailand’s main organization that enforces of the law is police. Thai police have a

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reputation for corruption and lack of responsibility throughout Thailand. The Assumption Business

Administration College, (hereinafter known as the “ABAC”) poll, *Police exploring Thailand's image in the public eye: a case study of people in Bangkok, Chiang Mai, Chon Buri, Nakhon Ratchasima and Songkhla*” survey conducted between March 1 - October 9, 2547<sup>1</sup>. The poll stated that people who have direct experiences with police share the same major problems, as set forth below:

- 22.1% were demanded bribes by police officers
- 10.9% were intimidated by police officers
- 7.8% were damaged from the performance of the police<sup>2</sup>

From above information, almost 40% of the people that have had direct experience with police have encountered problems. Police have the duty of enforcing the law, as set forth in the National Police Service Act 2004<sup>3</sup> and Criminal Code, section 157. There are penalties for misconduct or abuse of power of officials with the penalty of imprisonment of one to ten years or fined of two thousand to twenty thousand Baht, or both. <sup>4</sup>

However, the misconduct of officials is the police responsibility, as stated in the National Police Service Act and the Criminal Code, if it relates to a criminal matter. The result is that people feel insecure to complain and report the misconduct of police officers.

## Law Enforcement in Other Countries

### Denmark

Denmark has one of the best law enforcement countries in the world, especially in anti-corruption law. In Denmark there is very little legislation concerning corruption. Tom Nørring, the Ambassador of Denmark, to Hungary said that “In Denmark we have very little legislation concerning corruption. Danish criminal law only states that it is illegal to give and accept bribes of any kind or any size, both inside and outside of Denmark”<sup>5</sup>. Denmark law enforcement on the corruption issue focuses on Corporate Social Responsibility or CSR as a symbol of an anticorruption organization<sup>6</sup>. Therefore Denmark has demonstrated that with good law enforcement there will be no need of enacting many new laws.

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<sup>1</sup> เอบีซีโพลล์: การสำรวจภาพลักษณ์ตำรวจไทยในสายตาประชาชน, (13 ตุลาคม 2547), ABAC Poll: *Thailand's Police image in the public opinion*, (Oct. 13, 2004), available at <http://www.rvt9.com/s/abcp/154524>, accessed on Mar. 12, 2016.

<sup>2</sup> *Id.*

<sup>3</sup> พระราชบัญญัติตำรวจแห่งชาติ พ.ศ. ๒๕๔๗, National Police Service Act 2004, accessed on Mar. 12, 2016.

<sup>4</sup> ประมวลกฎหมายอาญา พ.ศ. ๒๔๙๙, Criminal Code (TH 1956), sec. 157.

<sup>5</sup> Budapest Times, Why Denmark always finishes on top, ( Mar. 19, 2013), available at <http://budapesttimes.hu/2013/03/19/why-denmark-always-finishes-on-top/>, accessed on Oct. 16, 2015.

<sup>6</sup> *Id.*

## **Singapore**

Singapore has a superior law enforcement agency, above the average of countries in Southeast Asia. There are many laws in Singapore that are considered minor matters in many countries, however in Singapore, these laws contain severe punishments, such as, Environmental Public Health (Public Cleansing) Regulations prescribes penalty for littering of \$1,000 fine and litterers receive "community work orders" where they are forced to pick up trash in public<sup>7</sup>. The punishment is intended to publicly embarrass convicted litterers. As can be seen, Singapore enforces the law by enacting severe penalty laws, therefore people avoid breaking the law in order not to be punished.

## **Solutions for Thailand**

### **1. Improve Police and other Official Law Enforcement Organizations**

This could include

- improving the recruiting system
- rise morality among officials
- enacting law with severe penalty for misconducted officials

This may seem to be an “easier said than done” solution but it is one of the most critical issue regarding legal enforcement problem in Thailand.

### **2. Check and Balance System**

- having an alternative organization for Internal Affairs which specialize in enforcing the law against misconduct police and officials
- improve reporting procedures, such as, online reporting

Therefore people will be more secure when they want to report official misconduct.

### **3. Involving Society**

People must follow the law, therefore, it is best to have the people as part of system. Currently in Thailand there are not many ways for people to check and report police behavior directly. Their only way to complain is when they are treated unfairly. Improvements could include:

- research and implement an alternative from police or officials reporting police performance
- television station or news station that has an annual public broadcast regarding officials performance

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<sup>7</sup> Environmental Public Health (Public Cleansing) Regulations. (SG 2000), sec. 30.

- all the information of law enforcement officials that concern the people must be put on public display for all of people to see.
- social movement must be recognized as a way that people can declare their intention for change or protection

4. Make Law Easier for People to Access and Understand.

- mass and social media is the best way to approach mass people
- simple advertisements explaining or introducing the law to the public can make a difference because advertisements are what people see the each day through the media
- when people understand the law, law will not be inaccessible for many people as it is today

# The Debt Collecting System in Thailand

By Noja Roongruangsri\*

## Introduction

According to the economics of Thailand the cost of living has increased. People need to access financial help and assistance. Persons, who have eventual future earnings, want to be able to afford their expenses. They would like to have credit cards or other credit to enhance their cash flow. However, persons, who have little income or uneven earnings might not be able to access the financial help from the banks or the financial institutions because of the strict regulations. Therefore, these people might go to a local loan individual who is able to lend them some money, however this will eventually result in the debts increasing. When the person is paid for their employment, many of the loan debtors are not able to pay the debt on the loan. Therefore, the creditors or the local loan individuals must find a way to collect the debts from the borrowers.

There are varying illegal methods of collecting debts, such as, making the debtor embarrassed, threatening to expose the debtors' secret, asking for the debts in public, not telephoning at the proper time, using abusive language, etc.<sup>1</sup>

The National Legislative Assembly has passed the Debt Collection Act (hereinafter known as DCA). The new law, which will take effect on Sept 2, years seeks to establish fair and standardized collection rules. It applies to all debt collectors, from institutional lenders such as banks to individual creditors. (The DCA described) "Debt collector" as a creditor who makes a loan to a debtor. The debt can be legal or illegal (A) creditor's authorized representative (such as an attorney), a debt collection agency and its authorized representative are all categorized as "debt collectors". A "debt collection business" means any business hired to collect a debt, directly or indirectly. Lawyers who collect debts for clients are not considered a "debt collection business". A "debtor" means any

natural person obligated to pay a debt. This includes an individual debt guarantor.<sup>2</sup>

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<sup>1</sup> นางสาววันวิภา สุขสวัสดิ์, กฎหมายติดตามทวงหนี้ซึ่งเป็นธรรม:กฎหมายความหวังของลูกหนี้, Wanwipha Suksawad, *The debt collection act: hope for the debtor*, Academic Focus, (July 2014), [http://library2.parliament.go.th/ejournal/content\\_af/2557/jul2557-2.pdf](http://library2.parliament.go.th/ejournal/content_af/2557/jul2557-2.pdf), accessed on Mar. 23, 2016.

<sup>2</sup> Tilleke & Gibbins International Ltd, *Thailand's New Debt Collection Law Provides a Measure of Protection*, (Aug. 21, 2015), <http://www.bangkokpost.com/business/news/664428/thailand-new-debt-collection-law-provides-a-measure-of-protection>, accessed on Mar. 23, 2016.

(The law prescribed) the debt collectors can only communicate with the debtor or another person authorized by the debtor (such as a lawyer). A collector can only contact third parties to acquire information or learn the debtor's location.

A collector is also limited to identifying himself and inquiring about the debtor's whereabouts to a third party. The collector cannot tell the third party that the debtor owes a debt unless the third party is a spouse, parent or child of the debtor. The collector is also required to communicate confidentially with the third party. He cannot use any language, symbol, mark or business name of the debt collector on any correspondences that indicate to debt collection. The collector can also only contact the debtor at a place indicated by the debtor. Attorneys for debt collectors must state their names, agency, creditors' names and the debt amount. The collector must show his power of evidence of payment such as a receipt.

(The DCA prohibit): threaten to use violence against the debtor or any action that injures the body, property or reputation of the debtor; notify and disclose any debt of the debtor to third parties who are not related to the collection; use profane or other language that insults the hearer or reader; use false information to deceive a debtor -- for example, by falsely claiming to have a court order or be a state official or lawyer; or by falsely threatening to seize the debtor's assets or salary. In addition, when contacting third parties, collectors cannot disclose that they are to collect a debt. They cannot contact debtors by postcard, open letter, fax or any other "non-discreet" methods. The collector cannot collect any fees or expenses over an official limit set by the Committee Governing Debt Collection, appointed under the DCA<sup>3</sup>.

Thailand's DCA penalties are criminal punishment such as fines and jail sentences. The maximum penalties are a jail sentence up to five years or fine up to 500,000 baht. It also contains the administrative enforcement from the Debt Collecting Commission.<sup>4</sup>

## **The effect of DCA**

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<sup>3</sup> *Id.*

<sup>4</sup> Debt Collection Act, (TH 2015), art. 41, [http://library2.parliament.go.th/giventake/content\\_nla2557/law16-060358-1.pdf](http://library2.parliament.go.th/giventake/content_nla2557/law16-060358-1.pdf), accessed on Mar. 23, 2016.

In January-July 2015, there were cases from consumer complaining to trial court all over in Thailand. The cases was approximately 346,884 cases, divided into individual credits/loans/guarantee 152,830 cases, student loans 92,736 cases, credit cards 56,326 cases, car leasing 40,226 cases and motorcycle leasing 4,766 cases. These numbers were the amount of cases before the DCA was valid. These numbers showed the tendency of the case in the court that will increase. Although the DCA described methods of collecting the debt not to violate the right of borrower but the creditor changed their mind instead of giving the proper time to pay the debt, the creditor wanted to be paid in three months because the creditor were afraid of illegal methods to collect the debt.<sup>5</sup>

## Comparative Law

Comparing the DCA of Thailand to the Fair Debt Collection Practices Act 1977 (FDCPA), this American law was slightly different from the Thai law. For example, the FDCPA stated a “debt” means “any obligation or alleged obligation of a consumer to pay money arising out of a transaction of the money, properties, insurances or services for personal, family, or household purposes”.<sup>6</sup> The FDCPA does not cover the debt from a bank loan, tax, fine, child support, tort liability, etc. The debtor must be an individual person. Moreover, the debt collector included any officer or employee of a creditor (any person who offers or extends credit creating a debt or to whom a debt is owed) while, in the name of the creditor, collecting debts for such creditor. The penalties of this Act were civil liability.

## Solutions

The solutions for the debt collecting system of Thailand include many methods.

- First, modifying the penalties and adding the civil liabilities and punitive damages in the DCA because if there were more severe penalties, it could prevent the illegal debt collecting.
- Second, establish a debt collecting enforcement organization and a specialized court in debt collection cases. According to the DCA, it does not have effective enforcement because of the long proceedings and these proceedings are not

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<sup>5</sup> ผลกระทบจากกฎหมายทวงหนี้ (9 พย. 2558), *The effect of Thai Debt Collecting Act*, (Nov. 9, 2015),

<http://www.dailynews.co.th/article/359499>, accessed on Apr. 11, 2016.

<sup>6</sup> Federal Trade Commission, Fair Debt Collection Practices Act, (US 1977), sec. 803(5), <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/fair-debt-collection-practices-act-text>, accessed on Mar. 23, 2016.

understood by the Thai people. In Thailand, there are great number of these problems. Therefore, the length of the legal action in the court should be streamlined. Also, establishment of the specialized court may result in the decrease of the amount of cases in the trial court.

- Third, there should be established a complaint center for the debt collecting problems of Thai debtors in order to explain their situations and experiences.
- Fourth, the debt collector companies or individual debt collectors (not including the lawyers) should be registered and should include permission licenses from the Debt Collecting Commission before collecting the debts. When the debt collecting companies interact with to the borrower, the companies should show their licenses. If they do not have the registration and permission licenses, that debt collecting company would be illegal. The creditors would not have right to collect the debts without state's sanctions, including but not limited to, civil liabilities and punitive damages.

# Thai Citizens' Right to Participate in Environmental Impact Assessment Process

By Saisuwan Ketdam\*

At the present time, environmental problems have become severe in every part of the world. As a result of increasing environmental problems, the Environmental Impact Assessment (EIA) process has been applied in Thailand as a tool for environmental planning and management in the economic development project screening approach since 1981<sup>1</sup>. In all countries the EIA is an important tool to consider large-scale projects that cause social and environmental impact. EIA main principle is the participation of citizens in state's decision-making processes.

EIA is one of the environmental management tools used in project decision making. The main objective of EIA in Thailand is to prevent environmental problems from major development projects in order to reach sustainable development. It is essentially an assessment of the gravity of both potential positive and negative impacts of a development project. The EIA is often referred to as an "analysis of the potential impacts, both positive and negative, of different types of projects or activities on the environment, conditions or circumstances that may affect those projects or activities, and measures for prevention, control and rectification before commencement of the projects or activities."<sup>2</sup>

According to section 67 in the second paragraph of the previous Constitution of the Kingdom of Thailand 2007 states that:

*Any project or activity which may seriously affect to the community in quality of the environment, natural resources and health shall not be permitted, unless its impact on the quality of the environment and health condition of the community have been studied and evaluated and the public hearing process to obtain the opinion of people and interest parties has been held.<sup>3</sup>*

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<sup>1</sup> Office of Natural Resources and Environmental Policy and Planning, Ministry of Natural Resources and Environment, *Environmental Impact Assessment In Thailand*, (2012), [http://www.onep.go.th/eia/images/7handbook/Environmental\\_Impact\\_Assessment\\_in\\_Thailand.pdf](http://www.onep.go.th/eia/images/7handbook/Environmental_Impact_Assessment_in_Thailand.pdf) accessed on Mar. 31, 2016. "Presently, under Section 46 of the Enhancement and Conservation of National Environmental Quality Act 1992. The Minister of Natural Resources and Environment with the approval of National Environment Board (NEB), has the power to notify the type and size of projects or activities requiring EIA."

<sup>2</sup> Environmental Impact Assessment in Thailand, Office of Natural Resources and Environmental Policy and Planning. Ministry of Natural Resources and Environment, Environmental Impact Investigation Bureau, <http://www.onep.go.th/eia>, accessed on Feb. 5, 2016.

<sup>3</sup>รัฐธรรมนูญแห่งราชอาณาจักรไทย พ.ศ.๒๕๕๐ มาตรา ๖๗, Constitution of the Kingdom, (TH 2007), sec. 67.

It generally means that the role of the public in the EIA process is very important. Without public review, projects or activities that are harmful to the environment cannot be established.

Public participation is a crucially important part of the EIA report because EIA is a study that bases environmental impacts of activity in the project and its surrounding areas in interaction with living, non-living organisms and the environment in both the short and long-term. Therefore, if there is an effect from that activity or project the very first people who the impact would hurt are people in the surrounding area. In other words public participation is a significant criterion of the EIA. As a result, it is indispensable to hold a public hearing and discuss all the information from the assessment report and allow the public express their comments or opinions in order to make further adjustments.

Public participation is the process by which an organization consults with interested or affected individuals, organizations, and government entities before making a decision. It is two-way communication and collaborative problem solving with the goal of achieving better and more acceptable decisions. It prevents or minimizes disputes by creating a process for resolving issues before they become polarized.<sup>4</sup>

Public participation can lead to better decisions. That is, decisions that better meet the needs of more people and it also encourages democracy because it shows people that they are valued and that their views are important<sup>5</sup>. That is why the Thai previous Constitution guarantees the public a right to involvement in the EIA process.

Although said previous Constitution guaranteed this right by stating that there will be no substantial projects built in the backyards of our citizens if the government does not let the citizens express their opinions upon the projects. Thailand still faces the lack of public participation on environmental issues since there is no provision in the EIA Regulations for public participation. The draft EIA does not have to be released to the public, public comments are not asked for, and, critically, the government does not have to respond to public concerns. Usually, after the EIA is given to the government by the project proponent for review, the public is not given access to it.

Thailand right now still faces a public participation problem even though there is a guarantee in the previous Constitution because of these limitations:

First, In Thailand almost all EIA's are written by private consulting companies hired by the project's proponents. Since the consultants are paid by the proponent, they will try to justify a

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<sup>4</sup> Tim Bonnemann, *What Is Public Participation?*, Intellitics, (Mar. 24, 2008), <http://www.intellitics.com/blog/2008/03/24/what-is-public-participation/>, accessed on Mar. 26, 2016.

<sup>5</sup> Secretary of State for the Environment, Transport and the Regions, *Public Participation in Making Local Environmental Decisions: The Aarhus Convention Newcastle Workshop Good Practice Handbook*, ch. 2, p. 11, [https://bch.cbd.int/protocol/outreach/aarhus\\_handbook.pdf](https://bch.cbd.int/protocol/outreach/aarhus_handbook.pdf), accessed on Mar. 20, 2016.

project rather than give an objective assessment of damage.<sup>6</sup> After making an EIA report, the proponent submits the EIA to the government (to the Office of Environmental Policy and Planning), which then sends it to a committee of experts who review and approve or reject the proposal<sup>7</sup>.

Second, it may appear that the private consulting companies that wrote an EIA report are not from the surrounding area. When the decision making process does not include the surrounding area people, it is detrimental because they are the very first ones who would face the environmental problems.

Third, the legal challenges to EIA's have not been properly addressed. In Thailand, there have been very few court challenges to EIA's because the policies of Thailand's environmental law have not been enforced. Furthermore, Thailand has not had environment problems of comparable magnitude of those arising today.

Fourth, Thais prefer a non-confrontational approach and non-litigious settlements (Tan 1998).<sup>8</sup> Therefore, the environmental issues have not been litigated or enforced.

Fifth, a major problem is the limitations of the communities, including the quality of community members. Most of the villagers in the surrounding rural areas are uneducated. Many communities' members lack of knowledge and lack of interest in seeking knowledge regarding the impact of the project to their communities. To know and understand their rights to participate in the management of natural resources and the environment will allow citizens to exercise their right correctly. Without knowing the perhaps detrimental impact of the project to the community, the villagers have no bargaining power to fight against the project proponent because of this limitation in understanding the problem.

The EIA process is an important part of environmental legislation in any country. Public participation in the process is essentially important. Without the public being involved there is too much of a tendency to hide things, which can ultimately lead to corruption. Statements written down in the previous Constitution are too conceptual and too broad and do not directly address the concept of public participation. To make the concept become more defined and enforceable, there must be secondary legislation and acts which guarantee public participation. The Enhancement and Conservation of National Environmental Quality Act, section 48 states that when the EIA report has been completed, the project proponents shall report to the Office of Natural Resources

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<sup>6</sup> John W. Stampe, *Lessons Learned from Environmental Impact Assessments: A Look at Two Widely Different Approaches – The USA and Thailand*, *The Journal of Transdisciplinary Environmental Studies*, vol. 8, no. 1, (2009), [www.journal-tes.dk/vol\\_8\\_no\\_1/no\\_2\\_john\\_stampe.html](http://www.journal-tes.dk/vol_8_no_1/no_2_john_stampe.html), accessed on Feb. 20, 2016.

<sup>7</sup>พระราชบัญญัติส่งเสริมและรักษาคุณภาพสิ่งแวดล้อมแห่งชาติ พ.ศ. ๒๕๓๕ มาตรา๔๗, The Enhancement and Conservation of National Environmental Quality Act (TH 1992), sec. 47.

<sup>8</sup> Stampe, *supra* note 6. See: Tan, Allan (1998): *Preliminary Assessment of Thailand's Environmental Law. Technical Report*, Asia-Pacific Centre for Environmental Law.

and Environmental Policy and Planning.<sup>9</sup> The Environmental Impact Assessment Office will verify the accuracy of the report first. Then, this office presents it to the committee of experts, consisting of experts or specialists in related fields and officials authorized by law to consider and approve the report<sup>10</sup>. The Act is silent as to public participation.

Nowhere does the Act address that people in the surrounding area have standing to be a part of decision-making process. The law should be changed and allow the people in the surrounding area with expertise be included in the approval process.

The heart of the EIA's success is based on:

- 1) Strengthening the knowledge of the community members who have been affected by providing the knowledge related to the environment issues, and
- 2) Decentralization of decision-making in prevention and mitigation of environmental impacts and allowing the community to be a part of decision-making process.

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<sup>9</sup> *Id.*, sec. 48.

<sup>10</sup> Environmental Quality Act, *supra* note 7.

# How can Police Corruption in Thailand be Corrected?

*By Soravit Wiraphongkamon\**

The Royal Thai Police is an organization headed by a Commissioner General and also under the command of Prime Minister. Its missions are:

- Provide security to His Majesty the King, Her Majesty the Queen, the Heirs to the Throne, members of the Royal Family, the Regent, Royal Representatives, and Royal Guests;
- Direct and supervise the operation of all police officers to ensure quality service and compliance with the laws;
- Prevent and suppress crime;
- Maintain public order and national security;
- Assist the public;
- Perform other activities stipulated by Thai law;
- Carry out law enforcement activities as assigned by the Prime Minister in support of national development.<sup>1</sup>

Thai police have a ranking system; therefore, they basically follow the command of the higher ranked police officer. The ranks are

1. Commissioned officer: Police General, Police Lieutenant General, Police Major General, Police Senior Colonel, Police Colonel, Police Lieutenant Colonel, Police Major, Police Captain, Police Lieutenant, Police Sub-Lieutenant and Police Cadet.
2. Non-Commissioned officer: Police Senior Sergeant Major, Police Sergeant Major, Police Sergeant, Police Corporal, Police Lance Corporal, and Policeman Constable.<sup>2</sup>

The ranking can be separated into 3 comprehensive roles:

- First, the Police General is the director of the entire police force which has the authority over 200,000 police officers.

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<sup>1</sup> Interpol Bangkok, *Thailand's Royal Thai Police*, <http://www.interpol.int/Member-countries/Asia-South-Pacific/Thailand>, accessed on Mar. 13, 2016.

<sup>2</sup> ASEANAPOL Secretariat, *The Royal Thai Police*, <http://www.aseanapol.org/information/royal-thai-police>, accessed on Mar. 13, 2016.

- Second, there are twelve Deputy Director-Generals and seventeen Assistant Director-Generals under the Director-General of the Police. They have a responsibility for crime suppression, administration, protect Royal family, etc.
- Third, the Police Lieutenant General is the head at bureau level that controls the police divisions.<sup>3</sup>

## Police Corruption

Today in Thailand, evidence indicates that the Police department is corrupt. Not only low ranking police officers but also the higher ranked officers. What does police corruption mean? “It means action by the police to make money by abusing their power, taking bribes to act or not act on a case or to falsify evidence or even participating in organized crime themselves.”<sup>4</sup>

The most common police corruption that can easily be found is conducted by the traffic police. They try to open opportunities from the people who they pulled over to solicit a bribe. Under the assumption that if a person just gives money to the police and then the police will not give that person a ticket. The reason why people choose to offer a bribe rather than accept the ticket is because they can spend just 100-200 baht right there. However, if they received a ticket they have to pay the fine of perhaps 400 baht only at the police station.<sup>5</sup>

Not only are the traffic police a significant part of the problem, sometimes there is also a problem at the alcohol checkpoints. There may be 5-10 police officers at the checkpoint. If a person is driving and the police officers suspect that the driver is drunk, the officers will administer the alcohol test via the breath analyzer, urine or blood.<sup>6</sup> If the breath analyzer is utilized, and the alcohol level exceeds 50 mg%, the suspect will be arrested, taken to jail, and may be able to post bail in certain circumstances. Next, the suspect may have to go to the court. If the suspect is found guilty, he shall be imprisoned for not more than 1 year, and a fine is not less than 5,000 baht and not more than 20,000 baht according to Section 160, Road Traffic Act 2007.<sup>7</sup>

<sup>3</sup>*Id.*

<sup>4</sup>Jon Fernquest, *Thailand's police corruption problem*, Bangkok Post, (Dec. 24, 2013), <http://www.bangkokpost.com/learning/learning-from-news/327755/thailand-police-corruption-problem>, accessed on Mar. 18, 2016.

<sup>5</sup>Reuters, *Traffic police in Thailand offered money to turn down bribes*, ABC, (Oct. 10, 2014), <http://www.abc.net.au/news/2014-10-10/traffic-cops-in-thailand-offered-money-to-turn-down-bribes/5804344>, accessed on Mar. 18, 2016.

<sup>6</sup>พระราชบัญญัติจราจรทางบก(ฉบับที่ 7) พ.ศ. ๒๕๕๐, Road Traffic Act, (TH 1979), sec. 5, as amended by the Road Traffic Act (No.4) (TH 1992), the Minister of Interior, [http://www.trafficpolice.go.th/qa\\_answer.php?id=13031](http://www.trafficpolice.go.th/qa_answer.php?id=13031), accessed on Apr. 11, 2016.

<sup>7</sup>*Id.*, sec.160 “มาตรา ๑๖๐ ตรี ผู้ใดฝ่าฝืนมาตรา ๔๑ (๒) ต้องระวางโทษจำคุกไม่เกินหนึ่งปีหรือปรับตั้งแต่ ห้าพันบาทถึงสองหมื่นบาท หรือทั้งจำ ทั้งปรับ และให้ศาลสั่งพักใช้ใบอนุญาตขับขี่ของผู้ นั้นมีกำหนด ไม่น้อยกว่าหกเดือน หรือเพิกถอนใบอนุญาตขับขี่, [http://www.krisdika.go.th/wps/wcm/connect/bf71ba004ba0f3aa96529e8b4221fda7/Road\\_Traffic\\_Act\\_BE\\_2522\\_\(1979\).pdf?MOD=AJPERES&CACHEID=bf71ba004ba0f3aa96529e8b4221fda7](http://www.krisdika.go.th/wps/wcm/connect/bf71ba004ba0f3aa96529e8b4221fda7/Road_Traffic_Act_BE_2522_(1979).pdf?MOD=AJPERES&CACHEID=bf71ba004ba0f3aa96529e8b4221fda7), accessed on Apr. 11, 2016 and [http://library2.parliament.go.th/giventake/content\\_law/law291250-1.pdf](http://library2.parliament.go.th/giventake/content_law/law291250-1.pdf), accessed on Apr. 11, 2016.

Therefore, in such situations the police officers may indicate that the individual may pay a high bribe because this may avoid the police station and judicial system entirely. The bribe might be very high, up to 10,000 baht; however there will not be additional fines and jail time.

These are examples of corruption in lower ranked police. In the higher ranked police it can be worse, however the public is not able to directly witness this corruption in person frequently unless the public knows someone inside the police department or are a member of the public which is rich and powerful enough to gain direct access. Higher ranking police may receive huge amounts of money from businessman such as night club owners or prostitution business owners in order to obtain special benefits.<sup>8</sup>

When the lower ranked police receive a bribe where does the money go? That money does not go to the government. They must share the bribe with the head of police division and the police captain. Why? Because, the lower ranking officers want to be promoted to a higher rank and if their Captain is satisfied with their sharing of the bribes, the lower ranking officer will not be transfer to another department and may indeed be promoted. Of course, the Captain must pass the bribe up to someone in order to maintain their position or be promoted, or to be transferred to “Grade A” place which can earn more money<sup>9</sup>.

Corruption mainly is about money. Sometimes the police just want to close the big case by making fake investigation, evidence or scapegoats, such as Koh Tao cases<sup>10</sup>. Allegedly, the police arrested 2 men who were Burmese migrant workers and forced them to confess to the murder charges of the foreigners which took place on September 15, 2014. The reasons behind this may be unknown. However, “The murder investigation was criticized due to the alleged torture of both Myanmar migrant workers and mishandling of evidence by Thai police.” Or, maybe the police just wanted to close the case as soon as possible because the case was getting more attention and being monitored by international journalists, which might result in lower tourism.<sup>11</sup>

## Corruption in Criminal Law

In the Thailand Criminal Code there is a specific law to be enforced against police officers. It is stated in Chapter 2, section 157, “MALFEASANCE IN OFFICE”:

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<sup>8</sup> คอร์รัปชันในแวดวงสีเทา: วงจรอุบาทว์ที่การแก้ไข “เป็นไปได้” 26 มี.ค. 2557, *Police corruption “cannot be fixed”,* iLaw (Mar. 26, 2014) <http://www.ilaw.or.th/node/3074>, accessed on Mar.18, 2016.

<sup>9</sup> เปิดตำรา “คร.ผาสุก-สังคิต” ค้นวิชาโกง วงการตำรวจ “ช่วย-สินบน-บ่อน-ซื้อตำแหน่ง” เชื้อ “ถ้าโกงแค่ 5 พันล้าน ตำรวจจะพอมกว่านี้เยอะ”, 26 พ.ย 57, ThaiPublica, (Nov. 26, 2014), <http://thaipublica.org/2014/11/police-corruption/>, accessed on Mar. 20, 2016.

<sup>10</sup> Sanitsuda Ekachai, *Koh Tao case shatters faith in our police*, <http://www.bangkokpost.com/opinion/opinion/436453/koh-tao-case-shatters-faith-in-our-police>, accessed on Mar. 20, 2016.

<sup>11</sup> John Quinley III, *Thailand’s Migrant Worker Woes Exposed in Koh Tao Murder Case*, <http://thediplomat.com/2016/01/thailands-migrant-worker-woes-exposed-in-koh-tao-murder-case>, accessed on Apr. 8, 2016.

Whoever, being an official, wrongfully exercises or does not exercise any of his functions to the injury of any person, or dishonestly exercises or omits to exercise any of his functions, shall be punished with imprisonment of one to ten years or fined of two thousand to twenty thousand Baht, or both.<sup>12</sup>

This section covers the wrongful acts of the police officers. In order to sue the officers there must be substantial evidence. The officers may offer the defense that they not soliciting bribes or entrapment just to check if the public will try to bribe them and engage in criminal activity.

## Solutions

The bribery will not happen if the public obeys the laws and the police stop themselves from all the greed. To fix this problem is quite difficult because it all begins with high ranked police. Therefore, the low ranked police must follow in order to become more successful. To fix the problem of bribery and corruption, it can begin with the enforcement the law against the corrupt police department. Start from a small point step by step. It is very difficult if you are the only officer in the department who is not taking bribes. But, if the entire department is taking bribes, no one can do anything to resist this protocol, even the Captain himself.

In order to investigate the police officers, one by one, use the Internal Affairs and Office of Public Sector Anti-Corruption Commission, similar to the anti-corruption process in Boston.<sup>13</sup> The corrupt police department in Boston was irradiated by the secretive anti-corruption unit and its Commissioner. This could happen in Thailand, too. Another solution is giving the low ranked police a salary raise or a rewarded for a policeman who refuses to take bribes.<sup>14</sup> Therefore, the police officer is able to provide enough money for themselves and their families and will be able to stop taking bribes.

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<sup>12</sup> ประมวลกฎหมายอาญา พ.ศ. ๒๔๕๕ B.E.2499, Criminal Code (TH 1956), sec. 157, accessed on Mar. 20, 2016.

<sup>13</sup> Michele McPhee, *Busted*, (April 2008), <http://www.bostonmagazine.com/2008/03/cleaning-up-the-boston-police-department/>, accessed on Mar. 21, 2016.

<sup>14</sup> Reuters, *supra* note 5.

# The Syrian Refugee Struggle Throughout the World and in Thailand

By Kanthika Phunsuk\*

## Introduction

When a person is in danger, it is necessary to find a way to survive. For example, Syria's Civil War began in March 2011. After President Bashar al-Assad gave an order to vanquish the protesters against his regime, who were gathered peacefully and called for the president to step down.<sup>1</sup>

The war intensified until more than 11.5% of population in the country or approximately 470,000 people were killed.<sup>2</sup>

“More than 4.5 million people have fled Syria since the start of the conflict, most of them women and children.... About 10% of Syrian refugees have sought safety in Europe.”<sup>3</sup>

However, some Syrians decided to obtain Thai tourist visas and come to Thailand:

After the start of the civil war in 2011, [people] were forced to flee their homeland and gain refugee status from the UN High Commissioner for Refugees (UNHCR). Rather than flee directly to Europe, the more expensive and dangerous route, their group of travelling Syrians opted to head to Thailand on tourist visas, which are easy to obtain...<sup>4</sup> among hundreds of refugees and asylum seekers who have escaped Syria's brutal civil war by flying nearly 7,000 kilometers (4,200 miles) to this tropical Southeast Asian country.<sup>5</sup>

## Struggle of Refugees in Thailand

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<sup>1</sup> Lucy Rodgers, David Gritten, James Offer and Patrick Asare. *Syria: the story of the conflict*, (Mar. 11, 2016), <http://www.bbc.com/news/world-middle-east-26116868>, accessed on Apr. 19, 2016.

<sup>2</sup> Simon Lewis, *The Death Toll From Syria's War Is Actually 470,000, New Research Claims*, (Feb. 11, 2016), <http://time.com/4216896/death-toll-syria-war-47000-01/>, accessed on Apr. 20, 2016.

<sup>3</sup> Rodgers, *supra* note 1.

<sup>4</sup> Alexi Demetriadi, *Syrian refugees in Bangkok: caught between a rock and a hard place*, (Oct. 7, 2015), <http://newint.org/features/web-exclusive/2015/10/07/syrian-refugees-in-bangkok/>, accessed on Apr. 21, 2016.

<sup>5</sup> Alisa Tang. *Syrian refugees get to Thailand easily but surviving is tough*. Thomson Reuters Foundation. (June 18, 2014), <http://news.trust.org/item/20140618120400-6powv/?source=search>, accessed on Apr. 20, 2016.

The 1951 Refugee Convention, and its 1967 Protocol, is the only global legal instrument dealing with the status and rights of refugees."<sup>6</sup> According to the Convention, the definition of “refugee”, is stated as:

For the purposes of the present Convention, the term “refugee” shall apply to any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear is unwilling to return to it.<sup>7</sup>

Thailand has not ratified the 1951 Convention and the 1967 Protocol<sup>8</sup> and also has no specific laws to protect the rights of refugees or define their status in Thailand.

Most of the Syrian refugees travel to Thailand with authentic passports and tourist visas. Nonetheless, some refugees come with fake passports and enter the country through the smugglers. They have saved their money to come to Thailand. When their tourist visas expire, under Thai law, they are considered illegal immigrants and they will be at “risk of being arrested and imprisoned, even when the UN has recognized their refugee status. The police often harass and extort refugees and then release them, but arrest can also result in indefinite detention.”<sup>9</sup> Although the United Nations has granted their refugees status, the Thai police still harass and threaten them and then release them. However, the detention may prolong indefinitely.<sup>10</sup>

Refugees and asylum seekers have no right to stay and work legally in Thailand since they are illegal immigrants. They may have spent all their savings and have no job, and they are hardly able to access education and hospitality.<sup>11</sup>

Some asylum seekers are lucky to be recognized by the UN and will be sent to another country.<sup>12</sup>

## **Which countries accept them?**

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<sup>6</sup> Asylum Access, *What are Refugee Rights?*, <http://asylumaccess.org/approach/refugee-rights/>, accessed on Apr. 24, 2016.

<sup>7</sup> United Nations High Commissioner for Refugees, *Convention and Protocol Relating to the Status of Refugees*, (2010), art. 1, p. 14, <http://www.unhcr.org/3b66c2aa10.html>, accessed on Apr. 24, 2016.

<sup>8</sup> United Nations High Commissioner for Refugees, *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*, (2015), p.4, <http://www.unhcr.org/3b73b0d63.html>, accessed on Apr. 20, 2016.

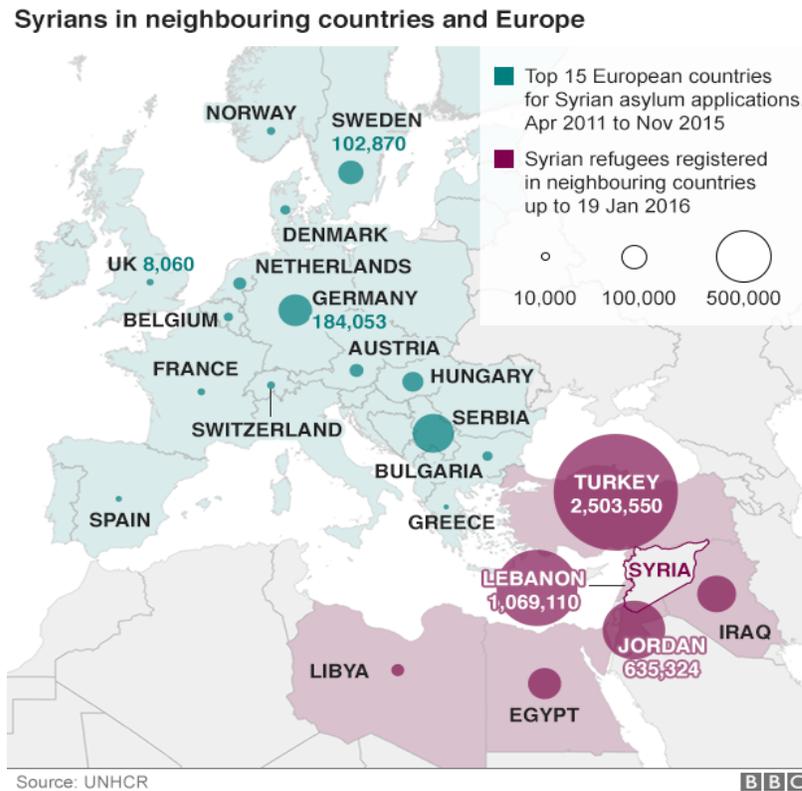
<sup>9</sup> Asylum Access: Thailand, <http://asylumaccess.org/program/thailand/>, accessed on Apr. 21, 2016.

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

<sup>11</sup> *Id.*

<sup>12</sup> Tang, *supra* note 5.

The number of Syrian refugees has been increasing since 2011, according to Amnesty International:



*Source: BBC News, <http://www.bbc.com/news/world-middle-east-35462698>*

The figures show that the countries that accept Syrian refugees are Syria's neighboring countries and some prosperous EU countries. Again, what is the reason for the Syrian refugees to cross 6,749 kilometers<sup>13</sup> from their home to an unstable economic and political country such as Thailand?

### **Temporary Shelter and the Thailand Immigration Act**

The main reasons that Syrian refugees travel to Thailand is that Thailand is a country where a visa can be obtained easily and Thailand has a low cost of living. Therefore, the refugees may come to Thailand and request refugee status from the United Nations of High Commissioner for Refugees (UNHCR).

<sup>13</sup> Distancefromto, *Distance from Syria to Thailand*, <http://www.distancefromto.net/distance-from-syria-to-thailand>, accessed on Apr. 24, 2016.

Thailand has had experience with refugee migrations:

...it became the reluctant host to over one million Indochinese refugees in the late 1970s. If it has lacked the political will to protect refugees, it has also lacked the tools: it has neither the requisite legal regime nor adequate screening procedures in place to afford real protection<sup>14</sup>

...the first refugees arrived in 1984, no one could have ever predicted that only would they still be there 30 years later. Majority of the refugees in the camps are Karen (79.1%) or Karenni (10.3%) from eastern Burma (TBC, December, 2014), who have fled armed conflicts and/or horrendous human rights abuse and persecution by the Burmese military.<sup>15</sup>

There are nine temporary refugee camps along Thailand-Burma border. "Until 1995, refugees on the Thailand-Burma border lived in village-type settlements and were allowed to travel outside the camps to get food and shelter materials."<sup>16</sup> After hosting them for many years, Thailand still has no enacted law for refugees.

The Thailand Immigration Act of 1979 has defined any person who is not of Thai nationality, as an alien and aliens, are those who enter Thailand as immigrants,<sup>17</sup> however, there are no definitions for refugee or asylum.

According to Section 34 of the Immigration Act, if Syrians or other foreigners enter Thailand with a tourist visa, pursuant to: "3. Touring"<sup>18</sup>.

Most Syrian refugees have obtained tourist visas, which allows them to stay in Thailand "...Not exceeding 90 days for a case under Section 34 (3)."<sup>19</sup> When refugees arrived in Thailand, they should request refugee status. After the request for refugee status from the UNHCR, they will be asylum seekers which is "...someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated."<sup>20</sup> under the UNHCR.

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<sup>14</sup> Human Rights Watch, [https://www.hrw.org/legacy/reports/reports98/thai/Thai989-02.htm#P127\\_17310](https://www.hrw.org/legacy/reports/reports98/thai/Thai989-02.htm#P127_17310), accessed on Apr. 27, 2016.

<sup>15</sup> *Refugees Camp*, (Updated Apr. 27, 2015), Burma Link, <http://www.burmalink.org/background/thailand-burma-border/displaced-in-thailand/refugee-camps/>, accessed on Apr. 25, 2016.

<sup>16</sup> *Id.*

<sup>17</sup> พระราชบัญญัติตรวจคนเข้าเมือง พ.ศ. ๒๕๒๒, หมวด ๑, มาตรา ๔, Immigration Act (TH 1979 ), Ch. 1, sec. 4, [http://www.immigration.go.th/nov2004/en/doc/Immigration\\_Act.pdf](http://www.immigration.go.th/nov2004/en/doc/Immigration_Act.pdf), accessed on Apr. 25, 2016.

<sup>18</sup> *Id.*, sec. 34.

<sup>19</sup> *Id.*, sec. 35.

<sup>20</sup> UNHCR The UN Refugees Agency, *Asylum-seekers*, <http://www.unhcr.org/pages/49c3646c137.html>, accessed on Apr. 27, 2016.

If the refugees have to wait for the status longer than 90 days, the refugees can extend the period to stay longer. According to section 35, paragraph 2 and 3:

If it is deemed necessary that the aliens have to stay in the Kingdom Longer than the period of time prescribed in the paragraphs (1) (2) (3) and (4) the Director General shall consider granting the aliens extension of stay for a period not exceeding one year for each time. After granting permission, the Director General shall report to the Commission for their information, with the reason, within seven days from the date of granting.

Each time when applying for an extension of temporary stay in the Kingdom, the alien shall submit an application and pay the fees as prescribed in the Ministerial Regulations. While waiting for directives the alien may be permitted to stay.<sup>21</sup>

Since the Syrian refugees entered with only the tourist visas, it does not allow the refugees to work legally in Thailand. According to the Immigration Act, section 37:

An alien having received a temporary entry permit into the Kingdom must comply with the following:

1. Shall not engage in the occupation or temporary or employment unless authorized by the Director General. or competent official deputized by the Director General. If, in any case, there is a law concerning alien employment provided hereafter, the granting of work privileges must comply with the law concerned.

The refugee can extend visas to stay longer and wait for the refugee status. However, the refugees cannot work legally in Thailand and will be known as "aliens", not refugees. They can stay in Thailand as tourists only. It will be a struggle for the refugees if they have to wait longer than a year with no job, which means they cannot earn their living. It will be hard for them to pay the government and stay longer in Thailand. The refugees would become illegal immigrants.

## **Solutions for the Syrian Refugees in Thailand**

The Thai government:

- could amend the Immigration Act to define “refugee” and "asylum", provide procedures to obtain asylum in Thailand. For example: section 4 of Thai

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<sup>21</sup> พระราชบัญญัติตรวจคนเข้าเมือง พ.ศ. ๒๕๒๒, หมวด ๔, มาตรา ๓๕, Immigration Act (TH 1979 ), Ch. 4, sec. 35, <http://www.thailawforum.com/database1/immigration-law-mejesty-5.html>, accessed on Apr. 28, 2016.

Immigration Act has defined the alien who comes to Thailand. Therefore, "refugee" and "asylum" should be included in this section.

- could sign the 1951 Refugee Convention and Protocol Relating to the Status of Refugee 1967.
- could build and/or provide shelters for refugees, including apartments in urban or rural areas, and provide the refugees a good quality place to stay
- create long term visas specifically for refugees. The refugee visa may allow annual renewal while they are waiting for the refugee status from the UNHCR. Also, this visa could allow the refugee to work in Thailand and obtain the work permit legally.
- create a permanent stay visa in Thailand. For example, Australia's granted 12,000 Syrian refugees permanent visas on Australia's Humanitarian Program.<sup>22</sup>

Thailand has signed the International Covenant on Civil and Political Rights (ICCPR).<sup>23</sup> It is a reason that Thailand should become active on hosting the refugees for humanitarian reasons.

## Conclusion

The Syrian refugee crisis is impacting the entire world. Many governments have offered the refugees asylum and allowed them to stay in their countries. However, Thailand still has problems due to its domestic political crisis, poor economy and no laws to protect refugees.

The solutions provided above are some recommendations for the Thai government to demonstrate their concern for the refugees. As people from Syria may have college degrees and have abilities to work in professional jobs, the Thai government may issue work permits, which may lead to an increase in the Thai economy.

Helping Syrian refugees is a way to demonstrate Thailand's resolve to assist refugees as per the International Covenant on Civil and Political Rights which was signed by the Thai government. Thailand may show the world that it has the commitment to save refugees. At least, it may recover some image of Thailand as a country as a proponent of Human Rights.

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<sup>22</sup> Australia Government: Department of Immigration and Border Protection, *Australia's response to the Syrian and Iraqi humanitarian crisis*, <https://www.border.gov.au/Trav/Refu/response-syrian-humanitarian-crisis>, accessed on Apr. 27, 2016.

<sup>23</sup> United Nations Treaty Collection, (May 8, 2016), [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg\\_no=IV-4&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-4&chapter=4&lang=en), accessed on May 2, 2016.

# Should Same Sex Marriage be Legalized in Thailand?

By Thatchakorn Limkeerati\*

## Introduction

Undeniably, the world has changed. People become more individualistic and in this regard, may reveal more about their gender preferences. People have rights to be the person they are. A person's sexual orientation depends on the persons inherit DNA. Recently, people who are "Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Asexual or Ally"<sup>1</sup> have been accepted more than in the past. However, Thailand does not have the law to support the LGBT, which refers to:

- **Lesbian:** A woman who is primarily attracted to other women.
- **Gay:** A person who is attracted primarily to members of the same sex...
- **Bisexual:** A person who is attracted to both people of their own gender and another gender...
- **Transgender:** An umbrella term to refer to all people who do not identify with their assigned gender at birth or the binary gender system...<sup>2</sup>

The LGBT individuals' activities are not illegal in Thailand but they do not have equal rights as heterosexual activities. In other countries, such as, the Netherlands, Belgium or France LGBT activities are legal<sup>3</sup>. The numbers of LGBT people in Thailand increase continuously and they have faced many problems from the lack of supporting Thai law. Therefore, as one example, LGBT's need the law to validate in the case of their marriage.

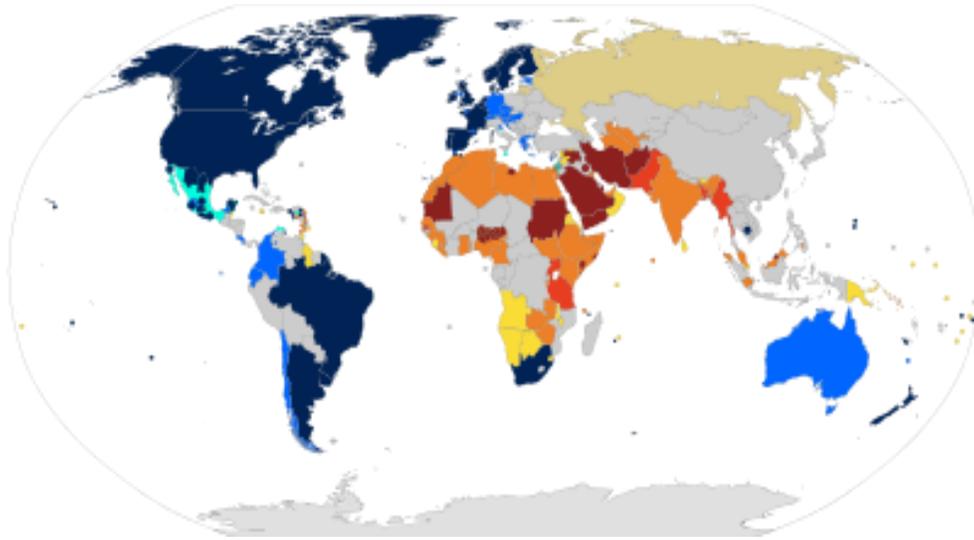
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<sup>1</sup>University of Michigan Spectrum Center, *LGBT Terms and Definitions*, <https://internationalspectrum.umich.edu/life/definitions>, accessed on Apr. 10, 2016.

<sup>2</sup> *Id.*

<sup>3</sup> Siraphob Thanthong-Knight, *The bitter truth behind Thailand's gay-friendly image*, Deutsche Presse-Agentur, The Nation, (Jan. 23, 2015), <http://www.nationmultimedia.com/opinion/The-bitter-truth-behind-Thailands-gay-friendly-ima-30252466.html>, accessed on Apr. 1, 2016.



**Worldwide laws regarding homosexual relationships and expression**

- |  |                                    |
|--|------------------------------------|
| ■ Marriage   | ■ Restricted freedom of expression |
| ■ Civil union, registered partnership or unregistered cohabitation | ■ Unenforced penalty               |
| ■ Marriage recognized but not performed                            | ■ Imprisonment                     |
| ■ Same-sex unions not recognized                                   | ■ Up to life in prison             |
|  | ■ Death penalty                    |

SOURCE: [https://en.wikipedia.org/wiki/Same-sex\\_marriage](https://en.wikipedia.org/wiki/Same-sex_marriage)

### **Same Sex's Rights Regarding Marriage in Countries**

As can be seen in the chart, same-sex marriage has been accepted in many part of the United States of America and Europe while other countries still have no support. There are only 22 countries, such as: Netherlands, Canada, Spain, South Africa, England and Wales and United States of America which support same-sex marriage by legalizing it and enacting their own laws.

### **The Acceptance of Thai People to LGBT**

Thais have traditional and religious beliefs that LGBT individuals who are in loving same-sex relationships were adulterous and committed other immoral acts during their past lives. However, in Thailand being LGBT is not illegal and does not carry the death penalty for loving a person of the same sex.

Thais between 15 and 24 years old, 56 per cent think homosexuality is wrong, according to recent research by Khon Thai Foundation, a non-profit organization. By comparison, more than 70 per cent of young people in Japan, South Korea, the Philippines and western European countries think that homosexuality should be accepted by society at large, according to the Pew Research Centre, an American think-tank.

In a country where nearly 95 per cent of people are Buddhists, many believe that gay or transgender people suffer from bad karma for committing adultery in their past lives.<sup>4</sup>

However, some Thais do not scorn the LGBT. They can live together in the society. As can be seen, the LGBT were more visible than in the past. Therefore, it may be inferred that Thais are now more accepting of LGBT community.

### **Problems in Family Law**

According to Book V, Family Law of the Civil and Commercial Code of Thailand, Sections 1435-1535 has prescribed that the party who will marry must be a man and a woman only. The code specifies that the gender of the party who will marry cannot be the same-sex. Therefore, the Thai law does not support same-sex marriage yet.

Section 1448: A marriage can take place only when the man and woman have completed their seventeenth year of age. But the Court may, in case of having appropriate reason, allow them to marry before attaining such age.<sup>5</sup>

### **Possibility of Gay Marriage in Thailand**

Gay marriage is not illegal in Thailand. However, LGBT couples cannot enter into legally sanctioned betrothal and marriage. They cannot become the husband and wife according to Thai Family Law. However, some of Thailand's LGBT couples are celebrating their wedding ceremonies to announce that they belong together.

Thailand has no laws against discrimination toward LGBT people, and a recent surrogacy bill defines parents as members of heterosexual couples only. Same-sex marriage is neither licensed nor recognized.

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<sup>4</sup> *Id.*

<sup>5</sup> ประมวลกฎหมายแพ่งและพาณิชย์ พ.ศ.๒๕๖๘, มาตรา ๑๔๔๘, Civil and Commercial Code (TH 1925), sec. 1448, <https://www.samuiforsale.com/law-texts/thailand-civil-code-part-1.html#V>, accessed on Apr. 1, 2016.

The Anjaree Group, Thailand's largest lesbian and gay rights activist organization, has criticized the bill for not granting homosexual couples the same rights as their heterosexual counterparts. The proposed Civil Partnership Act includes the right to use one's spouse's surname, the right to end the partnership and property rights. But it also raises the age of legal consent from 17 to 20 and does not include joint adoption or parental rights.<sup>6</sup>

Although Thailand has not yet granted legal marriage registration, gay wedding ceremonies can take place here under Buddhist law. There are different styles of ceremonies available at gay weddings in Thailand, still it is important to note that they are commitment ceremonies that are not legally registered.<sup>7</sup>

### **Should the US Supreme Court Case decision in *Obergefell v Hodges*, No. 14-556, 2015 be used as a role model in Thailand?**

Thailand is a civil code law jurisdiction whereas the U.S. bases a great of its law in common law. Therefore, the U.S. legalized same-sex marriage pursuant to the judgment of Supreme Court:

Courts must exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect. History and tradition guide and discipline the inquiry but do not set its outer boundaries. When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed.

Applying these tenets, the Court has long held the right to marry is protected by the Constitution.

Four principles and traditions demonstrate that the reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples.

The first premise of this Court's relevant precedents is that the right to personal choice regarding marriage is inherent in the concept of individual autonomy. This abiding connection between marriage and liberty is why Loving invalidated interracial marriage bans under the Due Process Clause. See 388 U.S., at 12. Decisions about marriage are

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<sup>6</sup> Thanthong-Knight, *supra* note 3.

<sup>7</sup> Gay Weddings, *Thai the Knot*, Western Event Planning in Thailand, <http://www.thaitheknot.org/ceremonies/gay.html>, accessed on Apr.1, 2016.

among the most intimate that an individual can make. See Lawrence, supra, at 574. This is true for all persons, whatever their sexual orientation.

A second principle in this Court's jurisprudence is that the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals. The intimate association protected by this right was central to *Griswold v. Connecticut* 381 U.S., at 485.

A third basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education. See, e.g., *Pierce v. Society of Sisters*, 268 U.S. 510.

Finally, this Court's cases and the Nation's traditions make clear that marriage is a keystone of the Nation's social order. See *Maynard v. Hill*, 125 U.S. 190, 211.<sup>8</sup>

However, the Thai legal system is civil law in which the judgment depends on the provision in the code section.

Thailand laws follow the pattern of civil law countries of conventional Europe. When a dispute is brought before the judge, the court will decide a case based on an interpretation of the statutory provisions. The court's interpretation is not as broad as that of a court in a common law country and unlike a common law court; its decision will not develop a body of law. Although, interpretations by the highest courts (Dika Court or Supreme Court) become precedent under the doctrine of *stare decisis*.<sup>9</sup>

Therefore, Thailand should use a civil law country to be the role model instead of the United States of America. Belgium was the second country in the world which established the same-sex marriage law. The law was enacted in 2003. The Netherlands was the first country which established the law in 2001. Moreover, Belgium is a civil law country. Thailand may choose Belgium as a role model of legalization of the same-sex marriage law.

Beginning in 1998, the Belgian parliament offered limited rights to same-sex couples through registered partnerships. Same-sex couples could register with a city clerk and formally assume joint responsibility for a household. Five years later, in January 2003, the Belgian

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<sup>8</sup> *Obergefell et. al. v. Hodges, Director, Ohio Dep't of Health, et. al., No. 14-556*. (Argued Apr. 28, 2015—Decided June 26, 2015), [http://www.supremecourt.gov/opinions/14pdf/14-556\\_3204.pdf](http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf), accessed on Apr. 19, 2016.

<sup>9</sup> Thailand Legal System, *Knowing Thailand Legal System*, [http://www.thailaws.com/index\\_legal\\_system.htm](http://www.thailaws.com/index_legal_system.htm), accessed on Apr. 5, 2016.

parliament legalized same-sex marriage, giving gay and lesbian couples the same tax and inheritance rights as heterosexual couples.

The 2003 law allowed the marriages of Belgian same-sex couples and recognized as married those from other countries where same-sex marriage was legal. Those provisions were broadened in 2004 to allow any same-sex couple to marry as long as one member of the couple had lived in Belgium for at least three months. In 2006, the parliament also granted same-sex partners the right to adopt children.<sup>10</sup>

## **Solutions**

The acceptance of LGBT individuals among Thailand people is increasing. However, marriage of the same-sex couples have been discuss for a while, without the necessary enactment of same-sex marriage laws. Unfortunately, Thailand is a place of political instability. The discussion of same-sex marriage has apparently been placed on hold until the political issues are resolved. Although the same-sex marriage bill was being drafted, prior to the 2014 coup, it may not be vetted in the near future. The LGBT community should stimulate Thailand's parliament to reconsideration the same-sex marriage issue, create petitions and obtain the necessary signatures, to create public hearings to estimate the possibility of enacting a new same-sex marriage act in Thailand.

## **Conclusion**

Thailand is known as the LGBT-friendly country and interacts with foreign tourism and domestic Thai nationals with the transgender shows. However, Thailand has not enacted law which support the LGBT rights compared with other countries. Therefore, Thailand should legalized the law to support the LGBT in the same-sex marriage issue.

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<sup>10</sup> Pew Research Center, *Gay Marriage Around the World*, (June 26, 2015), <http://www.pewforum.org/2015/06/26/gay-marriage-around-the-world-2013/>, accessed on Apr. 21, 2016.

# **Drug Trafficking:**

## **Should Marijuana be Legalized?**

*By Phimnda Bhinyochaiphiriya\**

The legalization of marijuana, a drug made from a hemp plant and usually smoked,<sup>1</sup> has been a topic of argument in Thailand. There are different views concerning the effects of legalizing marijuana. Currently, marijuana is illegal in Thailand. However, it is commonly used by many people. Marijuana may be used for medical reasons, doctors prescribe medical marijuana to treat:

- Muscle spasms caused by multiple sclerosis
- Nausea from cancer chemotherapy
- Poor appetite and weight loss caused by chronic illness, such as HIV, or nerve pain
- Seizure disorders
- Crohn's disease<sup>2</sup>

As well as headaches, a disease like cancer, or a long-term condition, like glaucoma or nerve pain.<sup>3</sup> It may also be used for socializing. It may be useful to some people. Many cities and/or countries in the world reviewed the advantages of marijuana and their governments have decriminalized the usage of marijuana.<sup>4</sup>

Marijuana, since its discovery, has been used as a recreational drug by many individuals. Many marijuana users believe that it does not have serious side effects like cocaine, crack, and heroin. They believe that smoking marijuana is better and it stimulates their brain. Actually, marijuana has been used for specific medical reasons, including but not limited to:

Nausea and vomiting associated with cancer chemotherapy, anorexia and cachexia in HIV/AIDS, chronic, especially neuropathic pain, spasticity in multiple sclerosis and spinal cord injury there is strong evidence for medical benefits. For many other indications, such as epilepsy, pruritus and depression there is much less available data.<sup>5</sup>

However, it remains illegal in most countries. The debate over marijuana usage has been going on for several years, including campaigns on Facebook and other social networks.

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<sup>1</sup> Macmillan English Dictionary, 2002.

<sup>2</sup> Ace, *What You Need to Know about the Medical Marijuana Regulation and Safety Act: Part 3*, Oaksterdam University, (Mar. 3, 2016), <http://oaksterdamuniversity.com/mm-regulation-safety-act-part-3>, accessed on Mar. 7, 2016.

<sup>3</sup> Anne Harding, *Medical Marijuana*, WebMD, (2013), <http://www.webmd.com/pain-management/features/medical-marijuana-uses>, accessed on Mar.21, 2016.

<sup>4</sup> Emma Brant, *Where in the world you can legally smoked cannabis?*, BBC Newsbeat, (Oct. 3, 2014), <http://www.bbc.co.uk/newsbeat/article/29834450/where-in-the-world-can-you-legally-smoke-cannabis>, accessed on Mar. 7, 2016.

<sup>5</sup> Medical Uses of Cannabis and THC, <http://www.cannabis-med.org/english/patients-use.htm>, accessed on Mar. 7, 2016.

“*Ganja*”<sup>6</sup> defined as a “potent preparation of marijuana used especially for smoking” is a natural plant. It appears that there are no chemicals in ganja that cause addiction either physically or mentally. Completely different from tobacco as we know many people are not able to quit smoking for life. The reason is tobacco companies mix too many addictive compounds including “carbon monoxide, hydrogen cyanide and ammonia”<sup>7</sup> and it becomes a toxin when smoked.<sup>8</sup> Nevertheless, the Thai government allows tobacco sales freely. Regardless of the fact that many people who have smoked cigarettes have contracted lung cancer and many die.<sup>9</sup> ‘No one has ever died from smoking marijuana’.<sup>10</sup>

Due to tobacco sales, the government receives a lot of tax revenue.<sup>11</sup> However, the government fails to realize the advantages of marijuana sales. If government legalized marijuana it would present an opportunity for businesses and revenue for the government.

At present, the government collects enormous revenue from the taxation of cigarettes, alcohol and other recreational activities. Further, legalizing marijuana will lead to marijuana businesses, which presents a source of income for the participants and government revenue through taxation of such establishments. The government can redirect that extra money to other demanding sectors.

## The Interviews

I have ever used almost of drugs and I quit all of them after I used marijuana. Marijuana able to help me quit drinking alcohol and smoking. I have never seen people who used it becomes a criminal or harm to others. Also, the usages should know about dose of marijuana in each person that is good for relax.<sup>12</sup>

I had smoked marijuana for nearly 10 years. I now am 28 years old. All of my family and friends had known that I used it. I had been ordained as a monk for 15 days. While I was a monk, I had not been smoked marijuana nor had not even felt I needed it at all. When I went travelling in a foreign country, I had not used it either and I was totally fine, my family knew that. I now quit it because I was on a drug test for THC, which has been accumulated in human fats for 1-3 months. Though, it

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<sup>6</sup> Dictionary.com, <http://www.dictionary.com/browse/ganja>, accessed on Mar. 21, 2016.

<sup>7</sup> Hoffmann D, Hoffmann I. *The changing cigarette: chemical studies and bioassays*. Smoking and Tobacco Control Monograph No 13, 159-191, (2001), [http://www.cancerresearchuk.org/about-cancer/causes-of-cancer/smoking-and-cancer/smoking-facts-and-evidence#smoking\\_facts6](http://www.cancerresearchuk.org/about-cancer/causes-of-cancer/smoking-and-cancer/smoking-facts-and-evidence#smoking_facts6), accessed on Mar. 7, 2016.

<sup>8</sup> Tobacco smoke contains many dangerous chemicals, [http://www.cancerresearchuk.org/about-cancer/causes-of-cancer/smoking-and-cancer/smoking-facts-and-evidence#smoking\\_facts6](http://www.cancerresearchuk.org/about-cancer/causes-of-cancer/smoking-and-cancer/smoking-facts-and-evidence#smoking_facts6), accessed on Mar. 7, 2016.

<sup>9</sup> Batty, มะเร็งปอด คนไทยตายปีละ 5 แสนคน, (July 13, 2013), <http://www.oknation.net/blog/DIVING/2013/07/13/entry-1>, accessed on Mar. 7, 2016.

<sup>10</sup> Nick Wing, *Alcohol Has Killed Thousands Of People Since This Morning. Pot Use Has Killed Zero Since Forever*, (Sept. 13, 2013), [http://www.huffingtonpost.com/2013/09/13/alcohol-pot-use\\_n\\_3914511.html](http://www.huffingtonpost.com/2013/09/13/alcohol-pot-use_n_3914511.html), accessed on Mar. 21, 2016.

<sup>11</sup> ประมวลรัษฎากร พ.ศ. ๒๕๕๘, Revenue Code, (TH 2015), part 3, sec. 79/5.

<sup>12</sup> Interview with Danupol, Musician, Chiang Mai, Oct. 13, 2015.

is different in each person. At the time, I was fined for 7,000 baht. I do not want to risk it again. I suggest that quit it otherwise you might be put in a prison for at least a month or be fined. However, one day if marijuana was legal, I would definitely have used it again.<sup>13</sup>

Charges	Penalty
Produced, imported or exported. Or possession for distribution	- Imprisonment for a term of two to fifteen years and to a fine of two hundred thousand to two million and five hundred thousand baht.
Occupy	- Imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand baht or to both.
Addiction	- Imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand baht or to both..

Note: Narcotics Act, B.E.2522 Section 7(5), Section 75, Section 76 and Section 92

The above table indicated that Thailand will be faced with an overflow of jail inmates. Statistics arresting fresh marijuana: 810 cases and dried marijuana: 17,013 cases, (2556). Arresting marijuana: 1,562 cases and dried marijuana: 13,958 cases, (2557).<sup>14</sup>

The underlying concept to stop the war on drugs in the Netherlands government was achieved by placing marijuana in the same category with alcohol. This policy change the criminal justice system that is interesting issue. The amount of usage and crimes have decreased. The government announced the closure of 19 jails in year 2013 that lead to reducing the national budget.<sup>15</sup>

Although the Thai government considers marijuana illegal, the evidence supports that there is proven medical benefits associated with its use. Several common medical conditions qualify for medical marijuana usage, making it an affordable alternative from traditional treatments. Studies have showed that marijuana is not addictive, and does not cause cancer as is commonly confused with cigarette smoking. Also, the marijuana issue will be a cause of overflow of jail inmates.

However, under controlled conditions marijuana may be legislated. This can be accomplished by defining possession of marijuana, such as, a minimum age limit of 24 years of age, and limited locations, such as, usage in personal residences only. Also, prohibit encouraging others to abuse the marijuana. The possession of marijuana should not exceed at

<sup>13</sup> Interview with Peerapon, Student, Chiang Mai, Oct. 13, 2015.

<sup>14</sup> Office of the Narcotics Control Board, ผลการปราบปรามยาเสพติดทั่วประเทศประจำปี2557, page 2,

<https://www.oncb.go.th/Home/DocLib18/%E0%B8%A3%E0%B8%B2%E0%B8%A2%E0%B8%87%E0%B8%B2%E0%B8%99%E0%B8%9B%E0%B8%B5%202557.pdf>, accessed on Mar. 23, 2016.

<sup>15</sup> Decryption program fix overflow jail inmates at the Amsterdam model (1), <https://www.gotoknow.org/posts/591821>, accessed on Mar. 21, 2016.

5 grams for entertainment purposes. Producers should be permitted and controlled by the government.

# Abortion Legalization

By Munintapath Ruerueng\*

## Abortion in General

Women should have the moral right to decide what to do with their bodies. They should have the right to be pregnant and the right to terminate a pregnancy with the advice of their doctor if there are medical reasons not to have a child. Abortion should be every woman's right. "She may be rich or poor, married or unmarried; and it is a decision which she alone should be able to make, especially in a society where the responsibility for childrearing in the vast majority of cases falls directly upon the individual mother."<sup>1</sup>

However, "the powerful in government who up until now have taken it upon themselves to define the rules, the time and the place where women"<sup>2</sup> can or cannot abort the fetus. "The laws that restrict abortion to emergencies and exceptional situations, along with the ridiculously rigid policies of hospital abortion approval committees which limit the number of legal abortions to a minute fraction of the actual need are among the most obvious and unjust examples of the way our society oppresses women"<sup>3</sup>.

One of woman's most basic freedoms is her right to control her own body and to determine if she bears a child. Only she can determine whether she has enough emotional, physical, and economic resources at a given time to bear and rear a child. An unwanted pregnancy is a lonely ordeal, and the consequences are immeasurable in terms of personal suffering. Only the pregnant woman can understand the guilt, fear, and anxiety of being caught between society's morals and her own needs and desires. But far more painful and destructive than an unwanted pregnancy is an unwanted child.<sup>4</sup>

"Because abortions are illegal, they are expensive"<sup>5</sup>. That means that rich and privilege women can usually receive hospital treatment, can afford to fly to other countries or to buy safe abortions on the black market. On the other hand, poor women do not have enough money to obtain a safe abortion in a hospital. They have to take a risk with an unsafe abortion in illegal abortion clinic and pay a lot of money for an abortion, or have to bear unwanted children or face unsafe back alley or self-induced abortions.

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<sup>1</sup> *Free Abortion is Every Woman's Right: Statement of the Chicago Women's Liberation Union, CWLU Herstory, (1970-1971)*, <https://www.uic.edu/orgs/cwluherstory/CWLUArchive/abortionrights.html>, accessed on Mar. 24, 2016.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

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

Most of the women who die from illegal abortions are poor women. There were deaths from abortion, some of these die from self-induced abortion. Banning abortion puts women at risk by forcing them to use illegal abortionists.<sup>6</sup>

## Abortion in Thailand

“Limiting the rights of women to choose abortion because conservative ideas about family.”<sup>7</sup> In old Thai culture, women have to marry before having sex, and women have a duty to take care of their child under the family's traditions. On the other hand, the women who have sex before marriage are seen as a “disgrace”. Nevertheless, even today, protecting themselves from pregnancy by contraception is prohibited in unmarried teens and abortion is also banned.<sup>8</sup>

However, there is a legal case in Thailand that indicates that women opened an unlicensed clinic and performed illegal abortions. The news stated that they found the remains of more than 2,000 fetuses, thought to be from illegal abortions, hidden at a Buddhist temple in Bangkok. Police apparently became suspicious when they noticed a "strong smell" coming from the Bangkok temple. When they investigated, “they found ‘piles of plastic bags containing more than 300 fetuses’. In the morgue beneath the temple, they discovered thousands more, bringing the total to 2,002.”<sup>9</sup>

“Abortion is illegal in Thailand except in the case of rape, threat to the mother's health, or fetal abnormality. The fetuses likely came from illegal abortions. Given this, it's possible that it was difficult to find a facility that would create them without alerting the authorities.”<sup>10</sup>

“It would be wonderful if contraception, education, and safe abortion were available everywhere. It's possible that more liberal abortion laws would have prevented this bizarre crime,”<sup>11</sup> however, it has proved difficult to vet and amend Thai law.

## Offence of Abortion: Thailand Criminal Code

Section 301: Any woman, causing herself to be aborted or allowing the other person to procure the abortion for her, shall be imprisoned not out of three years or fined not out of six thousand Baht, or both.<sup>12</sup>

Section 302: Whoever, procures abortion for a woman with her consent, shall be punished with imprisonment not exceeding five years or fined

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<sup>6</sup> *Id.*

<sup>7</sup> Giles Ji Ungpakorn, Thailand's why women must have the right to free abortion, (Nov.20, 2010), <http://prachatai.com/journal/2010/11/3197>, accessed on Mar. 24, 2016.

<sup>8</sup> *Id.*

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

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

<sup>11</sup> *Id.*

<sup>12</sup> ประเทศไทยทางอาญา พ.ศ.๒๔๕๕, Criminal Code (TH 1956), <https://www.samuihorsale.com/law-texts/thailand-penal-code.html#300>, accessed on Apr. 8, 2016.

not exceeding ten thousand Baht, or both. If such act causes other grievous bodily harm to the woman also, the offender shall be punished with imprisonment not exceeding seven years or fined not exceeding fourteen thousand Baht, or both. If such act causes death to the woman, the offender shall be punished with imprisonment not exceeding ten years and fined not exceeding twenty thousand Baht.<sup>13</sup>

Section 303: Whoever, procures abortion for a woman without her consent, shall be punished with imprisonment not exceeding seven years or fined not exceeding fourteen thousand Baht, or both. If such act causes other grievous bodily harm to the woman also, the offender shall be punished with imprisonment of one to ten years and fined of two thousand to twenty thousand Baht.<sup>14</sup>

If such act causes death to the woman, the offender shall be punished with imprisonment of five to twenty years and fined of ten thousand to forty thousand Baht.

Section 304: Whoever, attempts to commit the offence according to Section 301 or Section 302, first paragraph, shall not be punished.<sup>15</sup>

Section 305: If the offence mentioned in Section 301 and Section 302, be committed by a medical practitioner, and it is necessary for the sake of the health of such woman; or the woman is pregnant on account of the commission of the offence as provided in Section 276, Section 277, Section 282, Section 283 or Section 284 the offender is not guilty.<sup>16</sup>

## **Solutions regarding Abortion Laws in Thailand**

On the part of the government, the Senate now considers an immediate passage of the Pro-life Reproductive Health Bill which is considered as a preventive measure that will give cultural awareness to Thai nationals and will give information on effective Birth Control Methods. In the said Bill, the government is mandated to provide accommodation for young mothers as well as their newly born babies' free health care. It maintains that legalizing abortion is not the solution to Thailand high rate of population growth. It says that effective sex education is better than amendments to legal abortion in Thailand.<sup>17</sup>

In conclusion, "women need free access to abortion in order to achieve full political, social, and economic equality with men. They need the right to abortion in order to have the same freedom as men. Besides, they need the right to abortion to have full rights over their

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Thailand Law, *Legality of Abortion in Thailand*, (June 17, 2013), <http://www.thailandlaw.org/legality-of-abortion-in-thailand.html>, Apr. 8, 2016.

own bodies (including the right to decide whether or not to carry a fetus to birth) - without this right they do not have the same moral status as men.”<sup>18</sup>

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<sup>18</sup> *Women's rights arguments in favour of abortion*, BBC (2014), [http://www.bbc.co.uk/ethics/abortion/mother/for\\_1.shtml](http://www.bbc.co.uk/ethics/abortion/mother/for_1.shtml) accessed on Mar. 24, 2016.

## **Why does Society Discriminate against a Person who is HIV/AIDS-Infected?**

*By Pawarut Kerdnin\**

On the earth, the top priority is the human being. People are people although they have different characteristics such as, skin color, culture, language, ethnicity, sex, etc. Everybody is a human being. They should have equal Human Rights as set forth in the United Nations Universal Declaration, Article 1: “*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*”<sup>1</sup>

Every United Nations member has registered the legal protection of HIV/AIDS-infected individuals as a Human Rights protection.

Acquired immunodeficiency syndrome (AIDS) is a chronic, potentially life-threatening condition caused by the human immunodeficiency virus (HIV). By damaging your immune system, HIV interferes with your body's ability to fight the organisms that cause disease.

HIV is a sexually transmitted infection. It can also be spread by contact with infected blood or from mother to child during pregnancy, childbirth or breast-feeding. Without medication, it may take years before HIV weakens your immune system to the point that you have AIDS.

There's no cure for HIV/AIDS, but there are medications that can dramatically slow the progression of the disease. These drugs have reduced AIDS deaths in many developed nations. But HIV continues to decimate populations in Africa, Haiti and parts of Asia.<sup>2</sup>

Thailand is a United Nations member and therefore Thailand must follow the intention of United Nations.

The Constitution of the Kingdom of Thailand (Interim), section 4 states:

Subject to the provisions of this Constitution, all human dignity, rights, liberties and equality of the people protected by the constitutional convention under a democratic regime of government

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<sup>1</sup> United Nations Universal Declaration, Art. 1 (1948), <http://www.un.org/en/universal-declaration-human-rights>, accessed on Mar. 22, 2016.

<sup>2</sup> HIV/AIDS definition, Mayo Clinic, (2016), <http://www.mayoclinic.org/diseases-conditions/hiv-aids/basics/definition/con-20013732>, accessed on May 9, 2016.

with the King as the Head of State, and by international obligations bound by Thailand, shall be protected and upheld by this Constitution.<sup>3</sup>

Therefore, the Thai Constitution prohibits housing discrimination against persons with disabilities, including persons with HIV/AIDS. This Constitution is enforced by the National Council for Peace and Order (NCPO). However, Thailand does not have a national HIV/AIDS law per se. The Thai Constitution does prohibit discrimination on the grounds of health status.

A health care provider is only required to treat a person who is seeking treatment or services within that provider's area of expertise. If the patient falls outside the health care provider's area of specialization, that provider can refer the patient with HIV/AIDS to another provider in an appropriate specialty.

Employment of HIV/AIDS individuals has been discriminated against by employers. For example, an employer may have refused an individual who has applied for a job based upon their HIV status. The owner of a company may be afraid of the transmission of the HIV virus and its effect on safety in workplace. If a company has an employee who is infected with HIV, that employee might spread virus to another worker. Moreover, Thailand does not provide legal protection for an employee. Laws prohibiting discrimination on the "ground of health", is the only protection available in Thailand<sup>4</sup>.

Regarding discrimination in education, a school refused a student who was HIV positive because they were afraid of transmission of the HIV virus. Other students in the school were afraid of the HIV positive individual because they were taught by their parents and/or teachers that HIV is dangerous. The parents and/or teachers only stated the problems caused by HIV and did not educate students about how to stop transmission of the virus or how to live with the virus. That is a root effect of discrimination in schools because the majority of society wants to avoid the HIV/AIDS infected individual.

Another reason, HIV positive students are refused for admission to a university may be based upon the field of study. For example, in the faculty of medicine a student who passed the admission exam may be rejected because they are HIV positive. A faculty may cut them out of admission because a medical student must interact and examine patients. Patients are usually ill and a medical student or doctor who has HIV virus might transmit the virus to the patient.

This reason is not strong enough because that individual may be qualified by the faculty of medicine to work in another position, such as, teacher, researcher, pharmacist and/or consultant. The employment may only involve paperwork, teaching or medication and those positions do not necessarily include the touching of another person. Actually, a physical skills of a doctor are important, however this is not the top priority for an educated person. The top

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<sup>3</sup> รัฐธรรมนูญชั่วคราว พ.ศ.๒๕๕๗, มาตรา ๔ , Constitution (Interim), (TH 2014), sec. 4,

<http://lawdrafter.blogspot.com/2014/07/translation-of-constitution-of-kingdom.html>, accessed on Mar. 22, 2014.

<sup>4</sup> UNDP, Bangkok, *HIV and the Law in South-East Asia*, Legal Protection table 1, page 15, (2015), <file:///C:/Users/HP/Downloads/rbap-hhd-2015-hiv-and-the-law-in-southeast-asia.pdf>, accessed on Mar. 22, 2016.

priority is thinking and understanding. Therefore, HIV/AIDS virus may not directly affect the brain and may not pose a problem in education, if controlled properly.

Regarding solutions to the problem if someone with HIV/AIDS has been discriminated against because they have the virus, they are allowed to sue the public company, organization or employer in the Administrative Court. The public company has freedom to choose prospective employees.

However, the private company in Thailand is different from official or public company, organization or employer. Therefore, prospective employees which are not given a job in certain private companies in Thailand are under the rules of the Association of Thai Businesses Front against AIDS (TBCA)<sup>5</sup>. It is the organization determining the standard management of HIV/AIDS workplace activities. It is the policy of Thai Ministry of Labor. The TBCA tries to change the employer thinking regarding HIV. If the TBCA standards are not enforced, the prospective employee has a right to file the case in Court of Justice.

In the twenty-first century, many antiviral drug medications have been improved. Many medical institutes, such as, the Center for Control and Prevention (CDC)<sup>6</sup>, the Thai Food and Drug Administration (FDA)<sup>7</sup>, and the Thai Red Cross AIDS Research Center under the name of Adam Love<sup>8</sup> try to deploy medical service to patients and also prescribe the antiviral drugs. When the HIV patient takes the proper antiviral medication, the level of 'virus load' will decline to an appropriate level. 'Viral load' is "the term used to describe the amount of HIV in your blood".<sup>9</sup> If proper antiviral medication is prescribed the patient may be able to live with HIV "without the greater your risk of becoming ill because of HIV".<sup>10</sup> It is possible that their disease will be unnoticeable; however, the patient will have to take a lot of medicine for many years.

One approach to solving the HIV/AIDS discrimination problem should start with education because many people do not understand the cause of the HIV/AIDS inflection. There is a lack of knowledge, for example, how the HIV virus is transmitted to another, why individuals should have protected sex, or which high risk individuals should avoid having sexual relationship with. After people have been educated in these areas, and that knowledge is understood, people will realize correct behaviors and not act purely out of fear of the unknown.

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5 *Standard management of HIV/AIDS in the workplace* (ASO TH), Ministry of Labor (2009), <http://tbca.or.th/th/index.html>, accessed on Oct. 12, 2015 and [http://www.mol.go.th/en/academician/aso\\_thailand](http://www.mol.go.th/en/academician/aso_thailand), accessed on Oct. 12, 2015.

6 U.S. Department of Health & Human Services, (July 24, 2015): "CDC works 24/7 to protect America from health, safety and security threats, both foreign and in the U.S. Whether diseases start at home or abroad, are chronic or acute, curable or preventable, human error or deliberate attack, CDC fights disease and supports communities and citizens to do the same." <http://www.cdc.gov/about/organization/cio.htm>, accessed on Oct. 12, 2015.

7 Food and Drug Administration Thailand, *Vision*, (Oct. 21, 2004), <http://www.fda.moph.go.th/eng/about/vision.stm>, accessed on Oct. 12, 2015.

8 The Thai Red Cross AIDS Research Centre, Adam's Love, *Who We Are*, (2011), <http://www.adamslove.org/en-d.php?id=1>, accessed on Oct. 12, 2015.

9 NAM aids map, (2012), <http://www.aidsmap.com/Viral-load/page/1327496>, accessed on Mar. 22, 2016.

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

Furthermore, they will avoid high risk conduction and behavior. Then, educated individuals can help another people with further education in this area.

If individuals are educated, they will change the fearful attitudes and perspectives regarding HIV/AIDS virus which will result in the solution to reduce the level of discrimination of HIV individuals.