

## THAILAND'S EFFORT TO END VIOLENCE AGAINST WOMEN: ONE FORM OF CRIME MOTIVATED BY GENDER DISCRIMINATION

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Although there are many forms of crime motivated by gender discrimination, I chose to address the issue of violence against women as one form of gender-related crime which has its own complexities. It is considered a real challenge for the criminal justice system in Thailand to deal with this type of crime effectively. Consider the three cases below.

The first case concerns a drunk man, the ex-husband, who came to ring the doorbell at the front gate, yelling for his ex-wife to open the door, and promptly said, "Don't try to hide from me, you can't escape anyway". However, the woman stayed silent with her daughter behind the closed door. After waiting for a while, she peeked out from the window and saw a fire burning her clothes that were hanging on the clothesline near the front gate. She, together with her daughter, hastily extinguished the fire. The results of the investigation revealed that the ex-husband had reached out his hand into the house to ignite a cigarette lighter and set fire to those clothes. The prosecutor indicted the man for the offence of criminal mischief. Even though, he was convicted, the Court ordered a suspension of his punishment because the damage value for the clothes was trivial.

The second case is related to a defendant who was a university professor. On the night of the incident, the defendant brutally attacked his wife and hit her with a blunt object until she died. The Supreme Court, after having examined the case based on the evidence, concluded that the defendant was a doctorate degree professor, who continuously and carefully preserved his honour and reputation. His wife had a duty to take care of their son by taking him to and from school. On the day of the incident, she was heavily intoxicated, and did not go to pick up her son but left him with her servant alone at the school. She had also failed to pick up the defendant, which was the cause of their quarrel. She confessed to the defendant that she had met with her ex-boyfriend. Even though the defendant was highly educated, he is just a layman. In his anger, he grabbed the umbrella from his golf bag to hit his wife, although he could have chosen other lethal weapons. His weapon choice suggested that he had no intention to kill his wife. When he saw her lying unresponsive, he thought at first that it was because she was drunk and quickly sent her to the hospital while calling his wife's relatives to come take care of her. Since the defendant was well-educated and had confessed to his crimes, the court found him guilty but agreed to a reduced sentence, in order to allow the defendant to turn over a new leaf and to take care of his son.

In the third case, Soi lived with Ray since she was 17 and he was 23. They have 1 child and initially lived happily together. However, Ray gradually started to drink more and more, spending all his money on alcohol and cigarettes rather than on paying the bills. Instead, it fell on Soi to support the family by selling meat at the market. She also had to take care of the household chores without any help from Ray who was constantly drunk. He always found issues to scream at Soi for and was physically abusive. He would also act intrusive whenever Soi talked to other people. When Soi managed to save up enough money to build a new home, Ray would intentionally dirty up the house by walking around with muddy shoes or using the curtains to wipe his nose and mouth. However, the one thing that weighed her down the most was having to sleep on the same bed as Ray each night since Ray always stank of alcohol. Whenever Soi refused to sleep with him, Ray would flare-up and start screaming at Soi that she was disgusted by him, kicking her around, or pulling her hair. One time, Ray woke up in the middle of the night and found that Soi was not next to him. In a fit of anger, he pulled the quilt down from the bed and started stabbing at it with the knife he kept under the bed. Ray burnt the ruined quilt the next morning in the Longan field.<sup>1</sup>

This cycle kept on being repeated for over 23 years. There were many times when Soi wanted to run away but Ray threatened that he would find her and kill her if she ever did. In the end, Soi managed to

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<sup>1</sup> Napaporn Hawanon, *Testimonies of Battered Women*, p. 28-45.

escape but Ray followed her and pled with her to return to him, promising in front of his entire family that he would turn over a new leaf. Ray managed to quit drinking and they were able to live peacefully together for two months until one day they got into a minor argument. Ray kept Soi in a headlock and held a 3-inch knife to her stomach while saying that he was going to kill her today and himself afterwards. Soi calmed Ray down by talking about their child until Ray put away the knife. Soi knew then that either Ray would have to die, or she would die. That evening, Soi went out to buy gloves and a tarp. She secretly prepared the tarp under the bedsheets before going to bed. Once she was sure that Ray had fallen asleep, Soi stabbed him with the very knife that Ray had threatened her with earlier in the day. Soi was charged with premeditated murder and received a death sentence for her crimes. However, since Soi confessed to the crime, the court reduced her sentence to 25 years in prison.

What points do you see from these three different cases?

## **I. CRIMES MOTIVATED BY GENDER DISCRIMINATION IN THAILAND, FOCUSING ON VIOLENCE AGAINST WOMEN**

The study released by the United Nations Office on Drugs and Crime (UNODC) on the International Day for the Elimination of Violence against Women last year on 25 November 2018 revealed that a total of 87,000 women were killed worldwide in 2017 and 58 percent of those female victims were killed at the hands of intimate partners or family members.<sup>2</sup> The regions with the largest number of female victims killed by intimate partners and family members were Asia (20,000 women), followed by Africa (19,000 women).<sup>3</sup>

In principle, common elements of all crimes consist of (1) a voluntary act (“actus reus”); (2) a culpable intent (“mens rea”); (3) concurrence between the mens rea and the actus reus; and (4) causation of harm. To determine whether the defendant is guilty or not, the criminal justice personnel would concentrate only on the moment the crimes occurred. Therefore, most official records collected by the criminal justice organization neglect to include data on history or relationship between victim and offender as well as the motivation to commit a crime if such factors do not relate to an aggravated offence or a mitigated sentence. Thus, it is arguable whether the main drivers of the crimes are related to gender.

However, in the case of female victims of violence, it is well accepted that gender discrimination lies at the root of the crimes. According to the statement of the UN Secretary General Antonio Guterres, “... violence against women and girls is the manifestation of a profound lack of respect – a failure by men to recognize the inherent equality and dignity of women ... Violence against women is tied to broader issues of power and control in our societies. We live in a male-dominated society. Women are made vulnerable to violence through the multiple ways in which we keep them unequal ...”<sup>4</sup> The UNODC Executive Director Yury Fedotov also expressed his concern that, “While the vast majority of homicide victims are men, women continue to pay the highest price as a result of gender inequality, discrimination and negative stereotypes.”<sup>5</sup>

Violence against women is defined in the Declaration on the Elimination of Violence against Women, and reiterated in various international instruments including the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the field of Crime Prevention and Criminal Justice, to mean any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.<sup>6</sup>

<sup>2</sup> United Nations Office on Drugs and Crime (UNODC), *Global Study on Homicide 2018* (Vienna, 2018) <<https://www.unodc.org/unodc/en/data-and-analysis/global-study-on-homicide.html>> accessed 8 Jan. 2019.

<sup>3</sup> Ibid.

<sup>4</sup> United Nations, Antonio Guterres, *Remarks on International Day for the Elimination of Violence against Women* (19 November 2018) <<https://www.un.org/sg/en/content/sg/speeches/2018-11-19/international-day-elimination-violence-against-women-remarks>> accessed 8 Jan. 2019.

<sup>5</sup> United Nations Office on Drugs and Crime (UNODC), *UNODC press release* (25 November 2018) <<https://www.unodc.org/unodc/en/press/releases/2018/November/home-the-most-dangerous-place-for-women-with-majority-of-female-homicide-victims-worldwide-killed-by-partners-or-family-unodc-study-says.html>> accessed 8 Jan. 2019.

<sup>6</sup> General Assembly resolution 65/228, annex, para. 2.

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In Thailand, the male dominant attitude is still pervasive in society. There is a commonly known phrase that “A man is the front legs of an elephant” which implies that male always leads the way. This manifests the problem of structural inequalities of power. It has been deeply cultivated in Thai culture that a man is the leader of the family whereas a woman shall behave as a good wife by taking care of family and the house chores. All these beliefs make a man feel that he holds power over a woman and can act in any way towards to his female partner in exerting his dominance.

Considering the information revealed by a UNICEF-supported study on Comprehensive Sexuality Education in 2017 which found that 41 percent of male vocational school students believed that a husband is entitled to beat up his wife if he found that she is unfaithful to him,<sup>7</sup> male superiority is a problematic attitude that is deeply rooted in the society.

According to the study on Thai women’s experiences of and responses to domestic violence published in the International Journal of Women’s Health in 2018, about 16% of the 1,444 married or cohabiting women faced various forms of violence from their male partner, often repeatedly in most cases.<sup>8</sup> Previously, there was also a survey on domestic violence and violence against women that was carried out from January 27 to February 2, 2017 by the Women and Men Progressive Movement Foundation (WMP). There were 1,608 female respondents aged between 17 and 40 from various levels of education and occupations in Bangkok and its outskirts. The survey revealed that in terms of attitude towards love, 76.8% of respondents said women must have a monogamous relationship, 47.9% said men are family leaders, 43.3% said wives or girlfriends must obey and pay attention to their partners.<sup>9</sup>

## II. LEGISLATIVE DEVELOPMENT CONCERNING CRIMES MOTIVATED BY GENDER DISCRIMINATION

The male dominant attitude and the view that women become the property of their husbands can be seen generally even in Thai legislation. The Penal Code of Thailand was promulgated in 1956 (B.E. 2499). At that time, the offence of rape was provided in section 276 of the Penal Code, stating that “Whoever has sexual intercourse with a woman, who is not his wife, against her will, by threatening by any means whatever, by doing any act of violence, by taking advantage of the woman being in the condition of inability to resist, or by causing the woman to mistake him for the other person, shall be punished with imprisonment for four to twenty years and a fine of eight thousand to forty thousand Baht”. Thus, the Thai law at that time allowed a husband to rape his wife with impunity. It sent a message that if a woman got married, she instantly loses her right to refuse to have sexual intercourse with her husband.

This section in the Penal Code was amended by the Penal Code Amendment Act (No.19) B.E. 2550 (2007) with the reason given in the promulgation of the Act that section 276 of the Penal Code B.E. 2499 was drafted based on sexual discrimination and needed to be amended in order to be in line with the principles of equality between men and women that do not discriminate against sexual orientation. The Act removed the previous distinction under section 276 of the Penal Code which had limited rape to sexual intercourse between a man and a woman who is not his wife and expanded the definition of rape to cover all sexes and all types of sexual penetration. Therefore, at present, marital rape is criminalized in Thailand and the offender could be sentenced to a term of imprisonment for four to twenty years and a fine of eighty thousand baht to four hundred thousand baht. However, if the spouses still intended to live with each other as a married couple after the crime, the Court may reduce the sentence to any extent below that prescribed by law or may impose any additional condition to control the behaviour of the offender.

Thailand does not have a specific offence for gender-related murder while some countries have termed an act of killing women because they are women as “femicide” or “feminicide”. Thailand has also not adopted

<sup>7</sup> Bangkok Post, *Sex education falling short, Unicef finds* (1 June 2017) <<https://www.bangkokpost.com/news/general/1260046/sex-education-falling-short-unicef-finds>> accessed 8 Jan. 2019.

<sup>8</sup> Dovepress, *Thai Women’s experiences of and responses to domestic violence* (2018) <<https://www.dovepress.com/thai-womens-experiences-of-and-responses-to-domestic-violence-peer-reviewed-article-IJWH>> accessed 8 Jan. 2019.

<sup>9</sup> Bangkok Post, *Violence against women in Thailand, a survey* (11 Feb. 2017) <<https://www.bangkokpost.com/learning/advanced/1198332/violence-against-women-in-thailand-a-survey>> accessed 8 Jan 2019.

an approach of establishing gender-related motivation as an aggravating factor for criminal offence. The crime motivated by gender-discrimination in Thailand is treated as a normal crime under the law. However, with the view that domestic violence contains special factors which are different from ordinary cases of physical assault, the enforcement of a criminal offence under the Criminal Code alone is inappropriate. Therefore, the Domestic Violence Victim Protection Act of B.E. 2550 (2007) was promulgated to protect victims of domestic violence and to punish the perpetrators while providing various measures for the rehabilitation of the perpetrators. The Act established a domestic violence offence punishable by a term of imprisonment not exceeding six months or a fine not exceeding six thousand baht, or both. The Court may order an offender to pay financial assistance to the victim and direct the offender to refrain from the acts that gave rise to domestic violence. Another important point is that domestic violence under this law is a compoundable offence where the offender and victim can negotiate and settle the case without going to trial. However, where there is settlement, the inquiry officer or the Court, whichever the case maybe, shall arrange to have an initial settlement record made prior to such settlement in order to impose conditions for compliance. Later, if the offender violates or does not comply with such settlement record, the inquiry officer or the Court is able to resume the case again.

**Table 1** Statistics on violence cases, classified by charge and the relationship between the perpetrator and the victim for the fiscal year 2018 (1 Oct 2017- 30 Sept 2018)

Type of Charge	Relationship between perpetrator and victim						
	Spouse	Ex-spouse	Common law partner	Children	Adopted child	Family member	Dependent
1. Violence against life, body, and mind	56	12	28	23	4	33	2
2. Sexual Violence	-	-	-	1	-	1	2
3. Violence against freedom	-	-	1	-	-	-	-
4. Violence against health	-	-	-	-	-	-	-
5. Social Violence (negligence, abandonment, etc.)	-	-	-	-	-	-	-
<b>Total</b>	56	12	29	24	4	34	4

**Remarks:** In some cases, there is more than one perpetrator or victim.

**Source:** Office of the Attorney General of Thailand

**Table 2** Statistics on violence cases, classified by charge. Cases classified by age and perpetrator's gender, age and victim's gender for the fiscal year 2018 (1 Oct 2017- 30 Sept 2018)

Type of Charge	Amount							
	perpetrator's age between 0 - 18 years old		perpetrator's age above 18 years old		victim's age between 0 - 18 years old		victim's age above 18 years old	
	Male	Female	Male	Female	Male	Female	Male	Female
1. Violence against life, body, and mind	1	-	138	13	9	10	18	122
2. Sexual Violence	1	-	1	-	-	2	-	-
3. Violence against freedom	-	-	-	-	-	-	-	-
4. Violence against health	-	-	-	-	-	-	-	-
5. Social Violence (negligence, abandonment, etc.)	-	-	-	-	-	-	-	-
<b>Total</b>	2	-	139	13	9	12	18	122

**Remarks:** In some cases, there is more than one perpetrator or victim.

**Source:** Office of the Attorney General of Thailand

From the above statistics, we can see that those who are/were intimate partners, whether spouses, ex-spouses, or common law partners, make up the majority of people who commit violence against each other. Moreover, when Table 1 is compared to Table 2, we can see that in the majority of cases, men often perpetrate violence against women (91.56% of cases were committed by men).

### **III. CHALLENGES OF CRIMINAL JUSTICE RESPONSE TO WOMEN EXPERIENCING CRIMES MOTIVATED BY GENDER DISCRIMINATION**

#### **A. Women as Victims of Crime**

Despite various surveys demonstrating that a high percentage of women around the world have suffered from violence, cases of violence against women that survive to trial were fewer in number. It is a fact in every country that violence against women is underreported to authorities. Many factors are accountable for this phenomenon. For female victims of violence, speaking up and reporting the incident to an official is always the most difficult first step to take. For many reasons, some women may also face the dilemma of whether they should report a crime of violence committed by their intimate partners to the police. The worst factor is that these female victims do not see any benefit in reporting the crime because they know that they will not receive the help they really need.

In cases of domestic violence, many police officers still see it as a private issue or an internal family affair and therefore are reluctant to intervene at the early stages or even process the complaint as is normally done when a case of another nature is reported. There are also repeat cases wherein the women were battered by their intimate partners on a regular basis. Whenever they went to report the criminal incident to the police, the police would only conduct a mediation between the offender and the victim and drop the complaint. While the couple may agree to live together again, there would be no happily ever after in most cases.

Moreover, in the case where a woman's complaint survives to become an investigated case file that goes to trial in court, the insensitive process of the criminal justice system seems to unintentionally revictimize the female victim. The process requires the victims to tell their stories repetitively to different officers in each and every stage of the criminal procedure, forcing the victims to recall their tragic memories and suffer from such feelings over and over again. Some questions about the victims' behaviour or provocation of crime can make the victims feel even worse and begin considering that it might be their fault that the crime happened, not the perpetrator's.

Considering the fact that violence against women is a silent crime, occurring between two intimate partners, it is difficult to find another witness besides the victim herself at the crime scene. If the victims do not want to testify in court because they do not want to confront the defendant, or if the victims died as a result of the crimes, the Courts would rule that there were not enough evidence to prove beyond a reasonable doubt that the defendants have committed the crimes. Even if the Courts found the defendants guilty of the crimes, the defendants would be able to make an uncontested claim of provocation or self-defence to reduce their sentence, as demonstrated in the second case example earlier. Impunity for perpetrators usually happens in the case of domestic violence.

#### **B. Women as Criminal Offenders Caused by Being Abused in the Past**

There is also the aspect that women who were the victims of domestic violence become the defendants on trial for the murder of their abusive partners. When women who have been brutally abused for a long time rise up to fight back, believing that to be the only way they could protect themselves against the never-ending abuse, most of them are often subject to legal penalties without being able to receive a reduced sentence by the law. The legal principle of self-defence often cannot be applied in such cases where the danger of the situation may not be generally considered as imminent. Moreover, due to having less physical strength, women tend to use a weapon in committing their crimes. This is considered an aggravating factor that will result in harsher punishment.

In this regard, the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the field of Crime Prevention and Criminal Justice urges the Member States to ensure that claims of self-defence by women who have been victims of violence, particularly in cases of battered woman syndrome, are taken into account in investigations, prosecutions and sentences against them.

Moreover, psychologists confirmed that the mental state of women who were repeatedly traumatized by their loved ones is different from women who have never undergone such experiences. Nevertheless, in practice, the way in which criminal justice officers apply the concept of 'self-defence' in the case of previously abused female offenders does not differ from general standards in other cases.

This is similar to the scenario in case number three where Soi, who had patiently endured everything for years, decided to do something to protect her life. Nobody in the criminal justice system had paid attention or even asked about her motivation for killing Ray. The question remains as to whether or not what Soi had experienced for almost 23 years before the day that she murdered Ray matters in the eye of the criminal justice system. Her case did not even qualify for a claim of self-defence, necessity or even provocation to help mitigate the sentence.

#### **IV. THAILAND'S INTEGRATED EFFORTS TO OVERCOME THE CHALLENGES**

##### **A. Legislation**

Even though the substantive law of Thailand is quite comprehensive to criminalize all acts of violence against women, gender-insensitive judicial process is another challenge for the effective prosecution and punishment of perpetrators of violence against women. There is still room for improvement in the procedural law of Thailand regarding the procedures for investigating the case, collecting the evidence, as well as admitting evidence in court. Currently, the Office of the Attorney General is considering proposing an amendment to the Criminal Procedure Code of Thailand so that in cases of sexuality-related offences, the inquiry officer shall arrange an appropriate examination place for the female victim/witness and shall prepare an image and voice recorder for recording such examinations and they shall be used as admissible evidence in court. This proposed amendment is in line with the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the field of Crime Prevention and Criminal Justice, Section 15(c), according to which Member States are urged to update their criminal procedures to ensure that women subjected to violence are enabled to testify in criminal proceedings through adequate measures that facilitate such testimony by protecting privacy, identity and dignity of the women; ensure safety during legal proceeding; and avoid "secondary victimization."<sup>10</sup>

##### **B. Raising Awareness and Changing People's Mindset, Especially Law Enforcement**

When cases of domestic abuse, sexual assault, and rape against women are reported, many times we will hear victim-blaming criticism such as she dressed or expressed herself inappropriately, the place she went was isolated, the job she had was misleading, etc., which has the tendency to place the blame for the crime on the victim rather than the perpetrator. Elimination of violence against women requires true understanding of the issues and the right mindset of people in the criminal justice system. Referring to the first case recounted from my experiences with prosecution work, the reason given by the trial court to reduce the sentence and to suspend the punishment imposed on a defendant shows that the Court did not understand the psychological impact inflicted on the woman caused by the defendant who was her ex-husband. This psychological damage is huge and cannot be compensated quickly. That is why the Court considered only the monetary value of the damage. Cases like this are not unusual. Therefore, no matter how good the law is, if law enforcement does not understand the deeply rooted issue of power inequality between men and women, and have the correct attitudes towards gender discrimination, it is impossible to effectively enforce the law.

Thailand has been actively campaigning to raise awareness to end violence against women since 2008 when Her Royal Highness Princess Bajrakitiyabha Mahidol graciously accepted the position of Goodwill Ambassador for the Say No to Violence against Women initiative in Thailand. In 2010, under the leadership of Her Royal Highness Princess Bajrakitiyabha Mahidol, 622,189 actions taken by Thai individuals to end violence against women were recorded as part of the UN Secretary General's Campaign, UNITE to End Violence against Women. Since 2012, the Office of the Attorney General has joined hands with the Police Cadet Academy in organizing training workshops for young police cadets on the nature, extent, and seriousness of violence against women crimes and how the police have played a crucial role to end this problem. With the belief that such training would help shape the mindset of those who will become police officers in the near future, such training has been organized annually. The Office of the Attorney General also

<sup>10</sup> General Assembly resolution 65/228, annex, para. 15 (c)

conducts regular trainings and workshops for prosecutors at various levels on the issue of violence against women.

### **C. Providing a Mechanism for Access to Justice**

It is undeniable that insufficient access to justice is the main obstacle to the effective protection of the victim and punishment of the offender. In order to begin the legal process, the first stage that female victims of violence usually have to undergo is to report their cases to the police. Unfortunately, this simple process appears to be very difficult for the victims who have been frightened for a long time and who question whether the justice system can help them live better lives without violence or whether they can even reach the justice system at all. The information regarding what they will be facing in entering to the world of the criminal justice system, what rights they have under the law, and what will happen with their children etc., are necessary for female victims to make an informed decision throughout the process.

We currently live in a world of technological advances. We talk about many disruptive technologies that change the way we live our daily lives. It might be time to think of innovating the justice system in order to contribute to a safe environment for female victims to feel more comfortable in coming forwards. In Thailand, there is an effort to use Artificial Intelligence (AI) to compliment the conventional way to access justice. The development of the AI chat bot project, called "Police Noi", which means little police is one interesting example. Police Noi is a computer programme that was designed to give friendly answers to questions relating to violence against women in all aspects, ranging from medical treatment to preliminary legal counselling and includes providing the contacts of various related agencies from which help can be sought. Without having to come face to face with an unknown person, the victims of violence can talk and ask any questions including the legal process and its consequences before making a decision whether to report the case to the police. Moreover, the possibility that the AI chat bot can communicate with people through LINE and Facebook allows people to interact with Police Noi in a way that is similar to communicating with a real person. Therefore, Police Noi also serves as a lively platform that female victims can talk and tell stories to without fear of getting judgmental responses from the neutral AI. This is one instance where technology can overcome the inequalities or forms of discrimination that women face in accessing the justice system. This is in line with the target of Sustainable Development Goal 16, which aims to provide equal access to justice for all.

Violence against women is not an emerging crime but it is a crime that occurs in conjunction with the deeply rooted unequal power relations between men and women. Discriminatory attitudes of people in society as well as law enforcement officers cannot be changed over a short period of time. However, if we start doing whatever we can to end this gender-bias-motivated violence today, future women all over the world can surely enjoy their lives without violence.