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Rule of Law for Human Rights in the Asean Region: A Base-line Study



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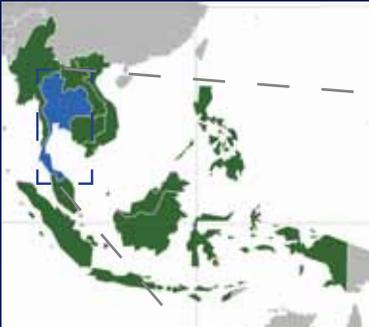
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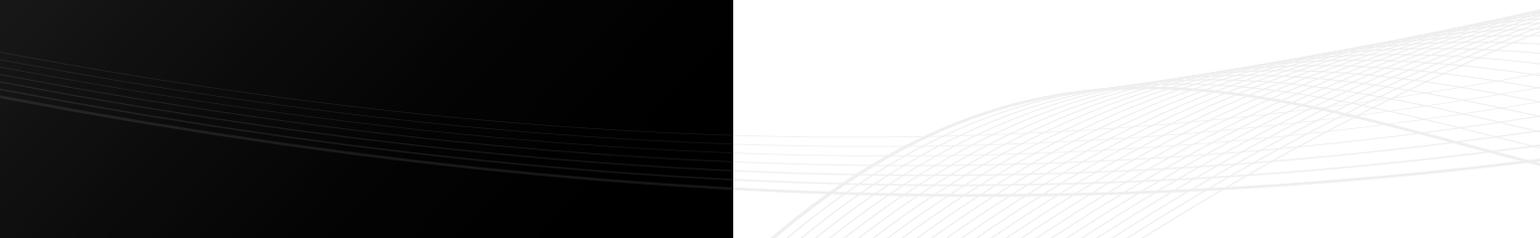


The Kingdom of Thailand



Thailand

Kitti Jayangakula



Snapshot Box

Country Name	The Kingdom of Thailand
Capital city:	Bangkok
Independence:	1238 (traditional founding date; never colonised)
Historical Background:	The Thai Kingdom was formed in the mid-14th century, known as Siam until 1939, when it was changed to Thailand. Thailand is the only Southeast Asian country never to have been taken over by a European power during the colonial era. Thailand was governed under an absolute monarchy until the bloodless revolution in 1932, which led to a constitutional monarchy. There have been number of military coups in Thailand; the most recent being in September 2006 for ousting PM Thaksin Shinawatra. In 2009, the Democrat Party formed a new coalition government and Abhisit Vejjajiva became Prime Minister.
Size:	513,120 sq km: land 510,890 sq km and water 2,230 sq km
Land Boundaries:	Thailand is located in the centre of peninsular Southeast Asia. Myanmar is to the west, Laos to the north and east, Cambodia to the southeast, and Malaysia to the south. The south coast of Thailand faces the Gulf of Thailand.
Population:	63,525,062: Male 31,293,096 and Female: 32,231,366 (2009) ⁱ
Demography:	(July 2010 est.) 0-14 yrs. =20.8%; 15-64 yrs. =70.5%; 65 yrs and over=8.7%; Median age: 34 yrs. (male 33.2 yrs. female 34.8 yrs.); Growth rate: 0.653%; Birth rate: 13.01 births/1,000 population; Death rate: 6.47 deaths/1,000 population ⁱⁱ
Ethnic Groups:	Thai 75%, Chinese 14%, other 11%
Languages:	Thai, English (secondary language of the elite), ethnic and regional dialects
Religion:	Buddhist 94.6%, Muslim 4.6%, Christian 0.7%, other 0.1%
Education and Literacy:	Adult literacy rate: 94% of the population over 15 can read and write (2003-2008); Youth literacy rate (15yrs-24yrs) 98% (2003-2007) ⁱⁱⁱ
Welfare:	Thailand has social welfare and social insurance systems.
Gross Domestic Product (GDP):	2.6% USD 26,377 million (2009); -2.2% (2010) ^{iv}
Government Overview:	
Executive Branch:	Thailand is a constitutional monarchy with a democratically elected Parliament. The country has a multiparty political system, albeit one often dependent on the formation of coalitions of numerous parties in order to form a government.
Legislative Branch:	Thailand has a legislature called the National Assembly, which consists of two chambers: House of Senators and House of Representatives. The Senators being elected from each province, and the rest number selected by the Senator Selection Commission. The members of the House of Representatives being elected on a constituency basis and a proportional representation basis.
Judicial Branch:	Thailand has four categories of court: a three-level court system collectively known as the Courts of Justice (i.e., Courts of First Instance, Court of Appeal and Supreme Court, including specialised Courts of Justice such as the Central Bankruptcy Court, the Labour Court, the Juvenile and Family Court and the Central Intellectual Property and International Trade Court); Constitutional Court; Administrative Court; and Military Court.
Membership in International Organisations and Human Rights Treaties ratified:	Thailand belongs to many international organisations, in particular, the United Nations and the Association of Southeast Asian Nations (ASEAN). Thailand is a signatory to seven human rights treaties namely: CERD, ICCPR, ICESCR, CEDAW, CAT, CRC and CRPD

Overview

The Kingdom of Thailand is located in the Southeast Asian Region and is one of the founders of the Association of South East Asia Nations (ASEAN), which was formed on August 8, 1967. Thailand's legal system is based on a civil law system with influences of common law. The supreme law of the country is the Constitution of the Kingdom of Thailand, which is higher than all other laws, decrees, administrative rules and regulations. Since the mid-14th century, Thailand had been governed under an absolute monarchy until the first revolution during the reign of the King Rama VII in 1932. After the revolution, the absolute monarchy was replaced by a constitutional monarchy under the first Constitution of the country on June 26, 1932 (Temporary Charter for the Administration of Siam Act of 1932). After that, the Temporary Charter was replaced by the Constitution of the Siam Kingdom of 1932, which was the first permanent Constitution, which was promulgated on December 10, 1932 and King Rama VII became the first king under the constitutional monarchy.

The Siamese revolutionary change appeared for a glimpse to brighten the future of the rule of law and democracy for Thailand. In the letter delivered by King Rama VII to the nation before becoming the first king under the constitutional monarchy he stated that: *"I am willing to relinquish the power which previously belonged to me, to the people in general, but I refuse to hand these powers to any specific person or group to exercise them in an absolute way and without the real voice of the people"*^v

Since then, Thailand has been ruled by democratic government with the King as head of state. The power of the King is limited by the constitution and the King is portrayed as a symbolic head of state. Ideally, the rule of law should limit arbitrary power, and in that respect, aptly describes the way a King should act and the how legislative, executive, and judiciary powers are exercised in a Thai regime of constitutional monarchy.^{vi}

During 78 years of a constitutional monarchy in the country, several constitutions were promulgated, amended as well as revoked. Since 1932, Thailand has had 18 constitutions and charters^{vii} (the latest version of the constitution is the 18th Constitution of the Kingdom

of Thailand, promulgated in August 2007 [‘the 2007 Constitution’]), 57 governments and a number of military coups forming the democratic regime (the most recent of which took place on September 19, 2006). Thailand's constitutional credibility has been constantly eroded by military coups and political figures who often act in self-interest instead of acting for the people.^{viii} Importantly, the number of constitutions (and frequency of military coups) reflects the high degree of political instability in Thailand since the 1930s. The large number of military coups in Thailand has been widely criticised as seen as a denudation of the rule of law in Thailand. In this sense, Thai constitutions have been seen as nominal rather than normative and represent realities of power relations more than being the source of political legitimacy.^{ix}

The highlight of the country's reforms is the 16th Constitution of the Kingdom of Thailand of 1997 (the 1997 Constitution), which is often considered to be the best constitution Thailand ever had. It was known as the *'People's Constitution'*, which introduced measures to hold the government accountable, protect civil liberties and reform Thai criminal justice. Furthermore, it offered Thailand a great chance to incorporate judicial review into administrative procedure, in particular, establishing the Administrative Court and other measures to prevent monopoly of the executive arm.

In 2006, the 1997 Constitution was abrogated after a military junta seized power from the interim caretaker government of Thaksin Shinawatra and dissolved the National Assembly, the Council of Ministers and the Constitutional Court. The Junta then promulgated the Constitution of the Kingdom of Thailand (Interim) 2006, which specified a process for drafting yet another new permanent constitution.

The 2007 Constitution was drafted by a committee established by the military junta and brought into force on August 24, 2007. It affirms the sovereign power of the Thai people with the King as a head of state (Section 3(1)) and provides that the King shall exercise such power through the three independent separate branches: the National Assembly, the Councils of Ministers and the Courts.

The rule of law has been continuously recognised in the provisions of the Constitutions since 1932. The 2007 Constitution reaffirms the rule of law in the following terms: “The performance of duties of the National Assembly, the Council of Ministers, the Courts, and the constitutional organs as well as State agencies shall be under the Rule of Law”^x. Moreover, Section 78(6) provides for the State: “to take action enabling law agencies which have legal duties to give opinions on the operation of the State and scrutinise the law-making of the State to perform their duties independently to ensure that the administration of State affairs shall be in compliance with the Rule of Law principle”.

In accordance with the principles of the separation of power enshrined in the Constitution, the power to enact legislation rests with the legislative power branch, normally exercised by the National Assembly. In an emergency, however, the government may approve a law on condition that such law be ratified by the Assembly as soon as possible.^{xi} As a result, the executive branch is entitled to enact and enforce emergency rule before taking it through the legislative mechanism of the Assembly.

Despite the recognition of the rule of law, Thailand has always faced problems of violation of the rule of law, especially in the conflicts in the south of Thailand. For the last 7 years, the southern conflicts resulted in 4,370 deaths (3,825 civilians, 291 soldiers and 254 policemen), 5,111 orphans and 2,188 widows.^{xii} According to the Report of the Bureau of the Budget of Thailand, the Thai Government allocated a budget equivalent to THB 14.5 billion to solve the problems during 2004–2010.^{xiii} The government declared the state of emergency over the three southern-most provinces: Yala, Pattani and Narathiwat in July 2005 and passed the Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 of 2005 (2005 Emergency Decree) under Section 218 of the 1997 Constitution. Since then, the emergency has presented a major rule of law issue *vis-à-vis* the emergency decree, especially with the enforcement of the Emergency Decree and Martial Law in these three deep-South provinces.^{xiv} Since 2005, 7,680 security cases were dealt with in the south. Among these, the investigation of 5,296 cases were terminated because of the absence of suspects. Recently, the conviction of *Durunee Charnchaoenpakula* for a speech allegedly

offensive to the monarchy; the pending charge against *Chiranuch Premchaijorn*, webmaster of the independent news site Prachathai; and the failure to resolve and continued impunity in the case of *Somchai Neelapaichit*^{xv} and *Imam Yapa Kaseng*, have brought to fore, the challenging issues of the rule of law in Thai society.

During the demonstrations (April/May 2010), the government declared of a state of emergency in Bangkok and another 17 provinces in northern, north-eastern, and central Thailand. The ensuing government crackdown on the protestors in Bangkok,^{xvi} which left at least 91 dead and more than 2,100 injured, has questioned the sanctity of the rule of law in Thailand.^{xvii} On December 21, 2010, the government ended the emergency in Bangkok and neighboring provinces, but it nevertheless remains in force in the three provinces of Yala, Pattani and Narathiwat.

Historically, Thailand has witnessed various changes concerning human rights. The country voted for the 1948 Universal Declaration of Human Rights (UDHR). Gradually, Thailand has become party to a number of human rights treaties, having acceded to seven major human rights treaties: the Convention on the Elimination of All Forms of Racial Discrimination (CERD); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC); and the Convention on the Rights of Persons with Disabilities (CRPD). Even though several reservations to these treaties have been made, those reservations have gradually been withdrawn. Presently, there are only a few remaining reservations such as the right to women with respect to non-discrimination in family in CEDAW, the right to acquire nationality and the right of refugee children in CRC or the meaning of self-determination in ICCPR and ICESCR.^{xviii}

As a State party to these human rights instruments, Thailand has an obligation to implement these obligations at a domestic level through domestic legislative transformation. After the judicial reform under the 1997 Constitution, the Court of Justice has been given more power and duties to protect fundamental individual rights. The 2007

Constitution gives power to the Supreme Court of Justice to try and adjudicate election-related cases as well as the suspension of the right to vote at an election of members of the House of Representatives and acquisition of senators. The Court of Appeal is also empowered to adjudicate election-related cases and the suspension of the right to vote at an election of member of the local assembly or local administrations.^{xx} Furthermore, according to Section 219, the Supreme Court of Justice is granted powers to try and adjudicate criminal cases of persons who hold political office. Through these powers, the Constitution protects the civil and political rights of the general public by providing for judicial scrutiny over executive action.^{xx}

The rule of law is one of important principles under the current government's Policy on Law and Justice. This was delivered by Prime Minister Abhisit Vejjajiva as the Policy

Statement of the Council of Ministers to the National Assembly on December 29, 2008 "to bring laws up-to-date with current socio-economic situations and the protection of individuals' rights in accordance with the rule of law".^{xxi}

Since then, the government frequently reaffirms the application of rule of law as its policies in many forms both domestically and internationally. For example, the speech by PM Abhisit Vejjajiva on "Thailand's Economic Development Roadmap" that "...democracy is not just about elections and majority rule but must also uphold the rule of law, transparency and accountability."^{xxii}

The above demonstrates the need for all branches of government to act in accordance with the rule of law.

Administration of Justice Grid

Indicator	Figure
No. of judges in country	Gross (per capita): 4,296 ^{xxiii}
No. of lawyers in country	Gross (per capita): 55,320 ^{xxiv}
Annual bar intake? Cost/fees	Gross (USD equivalent): Yes, USD 100 fees
Standard length of time for training/ qualification	Years: 1-2
Availability of post-qualification training	Required, Providing by Judicial Training Institute
Average length of time from arrest to trial (criminal)	48 hours – 7 days
Average length of trials (from opening to judgment)	2-3 months to 2-3 years depends on the nature and complexity of the case
Accessibility of individual rulings to public	Required, accessible in summarised form
Appeal structure	Court of First Instance, Court of Appeal and Supreme Court
Cases before the National Human Rights Commission (NHRC)	Gross per year: 695 cases (2009) ^{xxv}
Complaints filed against police, judiciary or other institutions (per year)? How many resolved?	Gross per year: Before NHRC: police 96 cases; judiciary 5 cases and others governmental institutions 90 cases (2009) ^{xxvi} Before the Department of Discipline of the Royal Thai Police: 5,015 cases (2009) ^{xxvii}

A. Country's practice in applying central principles for rule of law for human rights

1. The government and its officials and agents are accountable under the law.

- a. Are the powers of the government are defined and limited by a constitution or other fundamental law?

The separation of powers has been enshrined in all Thai constitutions since 1932. The 1932 Temporary Charter mandated that the King, who is the head of state, exercise sovereign power in conformity with the provisions of the Constitution, through the People's Assembly (legislature), the People's Committee of Siam (executive) and the Courts of Law (judiciary). From then on, the separation of power has been continually ensured by every constitution, including the current 2007 Constitution, which also stipulates such concept in Section 3.

Under the 2007 Constitution, the legislative branch, called the National Assembly, consists of two chambers: the Senate and the House of Representatives. The Senate is elected from each province, one member from each province, and in the number equivalent to the total number of provinces.^{xxxiii} The members of the House of Representatives are elected on a constituency and proportional representation basis.^{xxxix}

The executive branch consists of the King as the head of state, and the Prime Minister, who is elected from among members of House of Representatives, as head of government. The leader of the political party commanding a majority of seats or is best placed to organise a majority coalition usually becomes prime minister. He is appointed by the King and his term is limited to two four-year terms.^{xxx} In addition to the Prime Minister, there is a Council of Ministers whose duty it is to carry out the administration of State affairs with collective accountability.^{xxxii}

The judicial branch is vested with the power to try and adjudicate cases in the Courts in the name of the King. Thailand has four categories of Court: Court of Justice, Constitutional Court, Administrative Court and Military

Court. *The Courts of Justice* has a three-level court structure, comprising Courts of First Instance, the Court of Appeal and the Supreme Court, and also includes other specialised courts such as the Central Bankruptcy Court, the Labour Court and the Central Intellectual Property and International Trade Court. *The Constitutional Court* is an independent court established under the 1997 Constitution with jurisdiction over the constitutionality of parliamentary acts, royal decrees, draft legislations, as well as the appointment and removal of public officials and issues regarding political parties. The *Administrative Court* has jurisdiction over disputes arising from administrative acts of state officials and the *Military Court* was established to deal with military personnel and persons arrested during periods of martial law.

Under the constitutional monarchy, the constitution affirms that the sovereign power belongs to the Thai people and the King shall exercise such power through three separate organs. In addition, the rule of law is inserted in the 2007 Constitution that all separated organs shall perform duties of office by the rule of law. Where the administration is not democratically carried out and the rule of law is not maintained, the King may intervene in accordance with the Constitution.^{xxxii} He may refuse to give his assent to the bill, if he does not agree with such bill^{xxxiii}; and he also plays a role by appointing the Prime Minister and other ministers.^{xxxiv} For example, he intervened in the *14 October Uprising* in 1973 and royally-appointed Prime Minister after the uprising.^{xxxv} The King is also influential in the sense that he continues pleading that judges be impartial, and is also empowered by the constitution to grant a royal pardon.^{xxxvi}

The Constitution clearly defines and limits the exercise of powers of each branch of State. The legislative power includes the power to enact an Act in accordance with legislative procedure; the power for the constitutional control of the enactment of laws; the power to control the administration of state affairs; the powers to enact an Emergency Decree, to declare war or to declare a state of emergency; and the exercise of judicial powers to trial and adjudication are clearly defined and the exercise of separated powers is being limited and inspected by the mechanism provided by the constitution. The inspection mechanism requires that persons holding political positions have their assets and liabilities inspected by

the National Anti Corruption Commission (NACC). In addition, to prevent a conflict of interests, these persons are not allowed to hold any position or have any duty in a government agency, State agency or State enterprise, or hold a position as a member of a local assembly, local administrator or local government official.^{xxxvii} Moreover, the constitution forbids a political position holder holding form or intervening in mass communication businesses (Section 48), and there are other prohibitions of senators (Section 116), ministers (Section 174), governmental officials (Section 194) and judges (Section 197, 205 and 207). In addition, the separated powers are also limited by the provisions on the Inspection of State power the organic laws, and the Constitutions of Court of Justice and other specialised Courts.

One notable objective of the 2007 Constitution was to eliminate the abuse of state powers. Accordingly, the Constitution puts in place a number of measures to prevent the monopoly of the executive arm, for instance, in issuing an Emergency Decree. The government is subjected to scrutiny by the Constitutional Court (Section 185). In addition, the Administrative Court has been set up to use judicial powers, similar to the Court of Justice but has special competence to investigate and to decide disputes arising from administrative acts by state officials, whether that matter concerns a state organ and private individual or is one between state organs themselves.^{xxxviii}

- b. Can the fundamental law may be amended or suspended only in accordance with the rules and procedures set forth in the fundamental law?

Section 291 stipulates rules and procedures for amending the Constitution. Any motion for amendment – with no effect of changing the democratic regime of government with the King as Head of State or changing the form of the State – must be proposed by the Council of Ministers; member of the House of Representatives or/and senators; or persons having the right to vote in the numbers as stated in the Constitution.^{xxxix}

A motion must be proposed in the form of a draft Constitution Amendment and the National Assembly will consider and vote on it in three readings. After the resolution has been passed, the draft will be presented to the King for his signature and it shall come into force

after being published in the Government Gazette. In this regard, even though the role of the King is passive and symbolic, the legislative power may be influenced by the King and in cases where he does not agree with that draft; he can refuse to give his accent to that draft. For instance, in 1992, the King did not sign the *Amendment of the Civil Code Bill* because the Bill would have allowed much higher damages for defamation committed by the press and publishers.^{xl} In addition, the King was concerned that the Bill would obstruct the freedom of speech and the right to information.^{xli} However, according to the Constitution, his rejection is not absolute because if the Parliament reaffirms the draft with the required number of votes, the draft can be enforced as law as if the King has signed it.^{xlii}

The enactment of ordinary legislation is governed by Sections 142 to 153 of the Constitution. In cases of an unavoidable emergency where there is a need to maintain national or public safety or national economic security, or avert a public calamity, the King may issue an Emergency Decree which shall have the force of an Act. Those rules and procedures can be waived under certain circumstances. The enactment of an Emergency Decree is regulated under Section 184 of the 1997 Constitution, which shall be made only when the Cabinet is of the opinion that it is a case of emergency and of necessary urgency. However, the Cabinet shall submit the Emergency Decree to the Parliament for its consideration immediately at the next succeeding sitting.

If the House of Representatives approves an Emergency Decree but the Senate disapproves it, the House of Representatives can re-approve the Decree. If the re-approval is obtained by less than one-half the total number of existing members of the House, the Emergency will lapse. On the other hand, if the re-approval is obtained from more than one-half the total number of the existing members of the House, it will be valid and continue to have the force of law. Nothing will affect any act done during the enforcement of such an Emergency Decree.

Thereafter, the Prime Minister shall cause the approval or disapproval of the Emergency Decree to be published in the Government Gazette. Where it has been approved, it shall be effective from the day following the date of its publication in the Government Gazette (mainly 30-60 days after being promulgated). The consideration of

an Emergency Decree by the House of Representatives and the Senate in case of reaffirmation of an Emergency Decree must take place at the first opportunity when those two Houses hold their sittings.

In this regard, the rules and procedures for the amendment of the constitution and other fundamental laws as well as the enactment of the emergency decree are stated in the provisions of the Constitution; therefore, the amendment shall be done in accordance with those provisions respectively. Hence, the Thai constitution may be amended or suspended in accordance with rules and procedures set forth in the provisions of the Constitution.

Historically, there were some situations, where the Thai constitutions were abrogated in unconstitutional ways, that is, after the military coups. According to the decision of the Supreme Court, it held that the coup is empowered to change, rectify and repeal laws so as to continue to administer the nation, for if that were not the case, the nation could not exist peacefully (Supreme Court Decision, Dika No. 45/2496 and No. 1662/2505),^{xliii} however, the Court held not to recognise the law enacted by the particular group that had taken authority, if such law provided a criminal penalty with a retro-active effect or if such law set up a committee having the power to adjudicate cases, similar to that of the courts (Supreme Court Decision, Dika No. 921/2536).^{xliv}

- c. Are government officials and agents, including police and judicial officers, accountable under the law for official misconduct, including abuse of office for private gain, acts that exceed their authority, and violations of fundamental rights?

The Thai judicial reform in 1997 set up the mechanisms for dealing with cases of misconduct, corruption, acts that exceed authority and violations of fundamental rights committed by government officials and agents. The mechanisms established by the Thai Constitution of 1997 namely: the Constitutional Court, Administrative Court, NHRC, Ombudsman, Supreme Court's Criminal Division for Persons Holding Political Positions and National Anti Corruption Commission (NACC).

Under Thai law, government officials and agents are liable both in criminal law as well as under the Act on Liability for Wrongful Act of Official B.E. 2539 (1996) for any misconduct. This Act does provide many remedial options, such as compensation or action between the administration agency with private sector or administrative agency with state officials. Victims can obtain compensation from administration agencies. The Administrative Court can investigate and to decide disputes arising from administrative acts of state officials.

In addition, misconduct and violation of fundamental rights may be brought to the attention of the Ombudsman. Under the 2009 Organic Law on Ombudsman, the Ombudsman may consider and investigate complaints against civil servants, members or employees of a government agency, state enterprise, or local government if they violate the law or exceed limits of their authority; or for any act or omission by civil servants, members or employees of a government agency, state enterprise, or local government that causes harm, damage or injustice to an individual or to the general public. Action can also be brought in the event of negligence of duties or malfeasance by the statutory agencies and the Courts.^{xlv}

Under the National Human Rights Commission Act B.E 2542 (1999), the Commission is authorised to investigate alleged human rights violation cases, to act upon complaints regarding governmental and non-governmental commissions or omissions of acts which violate human rights.^{xlvi} According to complaints statistics of the NHRC during 2007-2009, fundamental rights, especially the violation of the right to justice and the right to life and body, more than 60% of cases involved violations by police officers.^{xlvii}

The NACC has powers to deal with state officials who become unusually wealthy or have committed an offence of corruption, malfeasance in office or judicial office, including any state official or government official who has colluded with the said state official or government official to commit a wrongful offence or other offences.

The NACC is empowered to inspect the accuracy, actual existence, as well as change of assets and liabilities of persons holding political positions and submit the case to the Supreme Court's Criminal Division for Persons Holding

Political Positions,^{xlviii} which has jurisdiction over such cases. Between 2006 and 2010, 39 cases of official misconduct were brought to this Division by the NACC. In the last five years, most cases concerned the corrupt acts of Thaksin, his wife and ministers in his government (Case Nos. 1/2551-20/2551)^{xlix} and in October 2008, the Supreme Court's Criminal Division for Persons Holding Political Positions sentenced Thaksin to two-years' imprisonment on corruption charges.^l He currently lives in the United Kingdom as an exile.^{li}

Official misconduct, abuse of power and excess of jurisdiction is also dealt with by the various disciplinary boards established under internal codes for each organ, such as the civil service commission, the judicial officers commission, and the police commission. In 2009, 5,015 cases of police misconduct were investigated by the Department of Discipline of the Royal Thai Police.^{lii}

2. Laws and procedure for arrest, detention and punishment are publicly available, lawful and not arbitrary; and preserve the fundamental rights to physical integrity, liberty and security of persons, and procedural fairness in law.

- a. Are the criminal laws and procedures, including administrative rules that provide for preventative detention or otherwise have a penal effect, published and widely accessible in a form that is up to date and available in all official languages?

In Thailand, the laws and procedures regarding preventative detention or arrest are governed by the Thai Criminal Procedure Code and other administrative rules such as the Ministerial Regulations on Rules and Procedure relating to detention, imprisonment and provisional release. Under the Constitution, the approved law before the National Assembly shall be presented to the King for his signature and if he agrees, it comes into force upon its publication in the Government Gazette.

All laws are written in the Thai language, the only official language of Thailand, and this makes it quite easily for the public to read and understand the law. Beyond publication in the Government Gazette, they are also published on the official web site of Governmental organs. Hence, Thai

laws are widely and easily accessible for everyone both in hard copy and on-line versions. The printed Government Gazette series can normally be found in the collections of libraries of Universities and governmental organs and the on-line version of laws, which are published in the Government Gazette can be found at the website of the Government Gazette <<http://www.ratchakitja.soc.go.th>> or at the website of the Office of the Council of State <<http://www.krisdika.go.th>>.

- b. Are these laws accessible, understandable, non-retroactive, applied in a consistent and predictable way to everyone equally, including the government authorities, and consistent with the other applicable law?

As aforementioned, laws and procedures for arrest, detention and punishment are printed and published in the Government Gazette, and published on-line via the official web site of governmental organs. Hence, these laws and procedures are accessible for everyone. Adult literacy rate in Thailand is 94%.^{liii} If an arrested person does not understand the Thai language, the criminal procedure law requires that the inquiry officials provide a translator for the arrestee.^{liv}

Under the Constitution, a law will come into force after being published in the Government Gazette, generally 30–60 days after being promulgated. Laws do not generally have retroactive effect. The Constitution provides that: *No person shall be subjected to a criminal penalty unless he has committed an act which the law in force at the time of commission provides to be an offence and provides a punishment therefore, and the punishment to be imposed on such person shall not be greater severity than that provided by law in force at the time of the commission of the offence.*

Moreover, the Thai Penal Code reaffirms this doctrine in Articles 2(1) and (2): *"If, according to the law as provided afterwards, such act is no more an offence, the person doing such act shall be relieved from being an offender"* and *"if there is a final judgment inflicting the punishment, such person shall be deemed as not having ever been convicted by the judgment for committing such offence. If, however, such person is still undergoing the punishment, the punishment shall forthwith terminate."*

This doctrine is respected even after a military coup. Coup leaders are not allowed to perpetrate or enforce non-retroactive acts. The Supreme Court does not recognise any law that creates a criminal penalty with a retroactive effect.

While laws and procedures are published in the Thai language and is theoretically accessible to everyone, the reality is that laws are written in legal and technical language which is not easy for people lacking legal knowledge to understand, especially the poor in rural areas and displaced persons.^{lv}

- c. Do these laws authorise administrative/preventative detention without charge or trial during or outside a genuine state of emergency?

Any arrest or detention must be made by the order or warrant of the Court or upon other causes provided by law. The Court may issue an order or a warrant according to the rules and procedures designed by the President of the Supreme Court.^{lvi} Normally, to protect the people from arbitrary arrest and detention, government officials and police officers are unable to arrest anyone without an arrest warrant or the Court's order, except that a police officer may arrest a person without a warrant for a crime committed in the presence of the officer.^{lvii} In addition, the Court will issue the warrant of arrest, detention and imprisonment only when evidence reasonably show that the accused has committed an offence and there is cause to believe that he will escape or interfere with the evidences.^{lviii}

Normally, arrest without provisional release is limited to 48 hours from the time the arrested person is taken to the inquiry official-house, which is generally the police station. However, the police or the Public Prosecutor may request the Court for a warrant of detention for up to 48 days depending on the punishment of the offence and the circumstance of the case.^{lix}

However, the 2005 Emergency Decree, which applied in three provinces: Yala, Narathiwat and Pattani, provides broad powers to the Prime Minister, permitting the delegation of sweeping emergency power to law enforcement officials and reduced accountability to the parliament and the courts. In particular, the Prime Minister

may give a competent official the power of arrest and detention over persons suspected of having a role in causing the emergency situation.^{lx} In addition, it allows competent officials to arrest and detain a person for an initial period of seven days, with possible extensions for up to 30 days.^{lxi} The competent official must seek authorisation from the court for the detention and extension. The ordinary procedure for detention under the Criminal Procedure Code only applies at the end of this period of detention.^{lxii}

The Internal Security Act empowers the Internal Security Operations Command (ISOC) to undertake operations in the insurgency in the deep-South of Thailand, narcotics prevention and suppression, illegal immigration, human trafficking and natural resources and environmental protection.^{lxiii} The Emergency Decree gives broad powers to the executive arm in the case of a genuine emergency situation and shall not exceed three months with the possibility for extension (Section 5).^{lxiv} In reality, the emergency rules have been continual applied in three provinces in the south of Thailand by the government in response to the conflict since 2005. The fact that these rules have applied to the South for over five years reflects the inefficiency of governmental measures dealing with the Southern conflicts.

- d. Do these laws protect accused persons from arbitrary or extra-legal treatment or punishment, including inhumane treatment, torture, arbitrary arrest, detention without charge or trial and extra-judicial killing by the State? Is the right to habeas corpus limited in any circumstance?

Thailand is a party to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Constitution recognises the prohibition of a torture, brutal acts, or punishment by cruel or inhuman means. This is also recognised under the Criminal Procedure Code: *"the inquiry official shall be prohibited to make or to be made any act as deception, threat, promise, torture, coerce to the accused to make any particular statement in the charge against him"*.^{lxv} As a result, the arrest or detention or imprisonment of a person can only be made under an order or warrant of the Court. To prevent arbitrary arrest, sufficient evidence must be adduced to give the Court grounds for issuing such an order or warrant.^{lxvi}

Even though torture is prohibited, the Report of the Asian Legal Resource Centre shows that torture is routinely practiced and accepted in Thailand. It is used by all security agencies, especially the Royal Thai Police.^{lxvii} Ordinarily, the police are associated with routine physical abuse and humiliation of persons in their custody. Unusually cruel forms of tortures are also inflicted both on persons taken into custody over special crimes such as terrorist activities or ordinary crimes. Remarkably, no domestic law efficiently addresses the use of torture even though Thailand is a party to the CAT.

The 1997 Constitution prohibited arbitrary arrest and detention, but government forces occasionally arrested and detained persons arbitrarily. NGOs and legal organisations continue to report that the Thai police occasionally tortured and beat suspects to obtain confessions.^{lxviii} On September 19, 2006, the military coup leaders revoked the Constitution and decreed martial law. Four former high-level government officials were detained without formal charges, but they were all released on October 1, 2006.^{lxix}

Extra-judicial killings in Thailand are prohibited although the police has wide powers to deal with a fugitive who resists arrest or attempts to escape.^{lxx} Regarding this, extra-judicial killing may be undertaken by the officials only for self-defence^{lxxi} or to prevent the suspects from escaping. Furthermore, the inquiry officers must investigate to determine the causes of death in extra-judicial killing cases as required in Article 150 of the Criminal Procedure Code.

The reality is somewhat different. In 2003, extra-judicial killings suspected drug traffickers claimed some 1,300 suspected drug traffickers during the Thaksin's "War on Drugs" campaign. This campaign was one of the justifications for the 2006 coup.^{lxxii} On December 14, the Ministry of Justice's Department for Special Investigations opened four investigations of possible extra-judicial killings associated to the 2003 War on Drugs. Unfortunately, no one has been brought to justice to date.^{lxxiii}

The Court is required to find reasonable evidence before issuing a warrant to detain or imprison the accused person; nevertheless if there is a claim regarding illegal detention, such detainees shall have the right to *habeas corpus*.

The Thai Criminal Procedure Law recognises the right to *habeas corpus* in the case of any person is detained in a criminal case or in any other case unlawfully. According to the law, the detainee himself, the public prosecutor, the inquiry official, the head of the jail or the jail officer, or spouse or relatives of the detainee are entitled to file a petition with the Court to be empowered to trial the criminal case to be released. The Court shall proceed without delay and if the jail officer is unable to satisfy the Court that the custody is lawful then the Court shall order to release the detainee without delay.^{lxxiv}

e. Do these laws provide for the presumption of innocence?

An accused person is presumed innocent until proven guilty. The presumption of innocence is recognised by ICCPR and reaffirmed by the Constitution; in particular before a final judgment an accused person shall not be treated as a convict.^{lxxv} In addition, only a person who has been charged in the court with the commission of an offence is called an accused, and a person who has not yet been charged in the court is called an alleged person.^{lxxvi} There is no provision in the Criminal Procedure Code to explicitly reaffirm the presumption of innocence. However, the Code recognises that where any reasonable doubt exists as to whether or not the accused has committed the offence, the benefit of doubt shall be given to him, therefore, the presumption of innocence is also guaranteed by such provision.^{lxxvii}

An arrestee may receive provisional release.^{lxxviii} The presumption of innocence mirrored in the Criminal Procedure Code that the arrestee in custody must be released as soon as possible. The arrestee may be kept in custody, in general, for not more than forty-eight hours from the time of his arrival at the office of the administrative or police official. However, if necessary, this period may be extended as long as such necessity persists, but in no case shall it be longer than seven days.

- f. Do all accused persons have prompt and regular access to legal counsel of their choosing and the right to be represented by such counsel at each significant stage of the proceedings, with the court assigning competent representation for accused persons who cannot afford to pay? Are accused persons informed, if they do not have legal assistance, of these rights?

The right to counsel or having trusted persons present during interrogation are recognised by the Constitution.^{lxxxix} The law on criminal procedure requires that after the arrest, the arrested person or the accused is entitled to meet and talk with the person, who will be their lawyer and has the right to let their lawyer or trusted person present during interrogation.^{lxxx} In addition, the accused person is entitled to be informed of these rights at the time of arrest.^{lxxxi}

The alleged persons have the right to legal assistance from counsel, including the right to choose counsel themselves. They are entitled to be represented by counsel in the preliminary examination or trial in the Court.^{lxxxii} Before the start of criminal hearings, if the accused has no counsel, one will be appointed by the Court if the charge carries a maximum sentence of death or by request where the accused is aged 18 or younger. According to the Criminal Procedure Code, in cases where the accused is not more than 18 years old, before being informed of the offence, the inquiry officer may ask whether he has counsel or not. If he requests one, the state shall appoint one.^{lxxxiii} The lawyer fees will be paid by the Court according to fees prescribed by the Rules of the Ministry of Justice. Nevertheless, lawyer fees are very low, and are determined by the judge based on the complexity of the case. Fees range between THB 2,000-10,000 (approx. USD 70-350).

In the case of poor persons, who are unable to afford legal counsel, they are entitled to find legal counsel through the legal aid unit. Generally, there are several legal aid organisations and programs in Thailand. Some of them are supported and funded by the national government while others are supported with funds from private enterprises. The Government funds the Office of Public Legal Aid which provides legal aid. For many years, the Government has made great efforts to improve and promote the legal profession and develop the legal aid system in Thailand.

In cases where poor persons are unwilling to find legal counsel themselves or unable to afford to find the legal counsel, they are entitled to submit an application to the Court and the Court has the power to appoint counsel. The appointed counsel has the right to receive a gratuity and expenses according to the regulations of the Justice Executive Committee.^{lxxxiv}

Moreover, under the Criminal Procedure Code, in the case of the death penalty or where the accused is less than eighteen years old, the inquiry official or Court must ask the accused if they have a lawyer or not. If he/she does not have one then the state shall appoint one.^{lxxxv} The appointed lawyers are entitled to receive a gratuity and expenses from the Court pursuant to the rules designed by the Administrative Committee of Court of Justice.^{lxxxvi}

- g. Do these laws guarantee accused persons the right to be informed of the precise charges against them in a timely manner, adequate time to prepare their defence and communicate with their legal counsel?

The arrestee has the right to be informed of the precise charges against him. The criminal procedure law stipulates: *"After being arrested, the arrestees must be transferred to the inquiry official-house without delay and the inquiry officials has to notify the charges and details in respect of the cause of arrest to the arrested persons"*.^{lxxxvii} Moreover, it provides that in the case where an accused person is summoned or brought or appears voluntarily before the inquiry official, the official shall notify him of the charges.^{lxxxviii} Regarding this, the Thai criminal procedure law guarantees the accused persons' right to be informed of the precise charges against them.

In criminal cases, the Constitution provides that the suspect or accused has the right to defend himself and to examine or be informed of evidence as necessary with legal assistance from an attorney.^{lxxxix} Furthermore, the right to communicate with their legal counsel is reaffirmed by the provision of the Criminal Procedure Law that 'the arrestee or accused person is entitled to be informed of the right to meet and talk with their lawyer, and the accused is

entitled to communicate with their lawyer.^{xc} In addition, the accused is entitled to have the lawyer or trusted person present during interrogation^{xcj} and to appoint the lawyer to deal with preparing their defence in any stage of the proceedings.

- h. Do these laws guarantee accused persons the right to be tried without undue delay, tried in their presence, and to defend themselves in person and examine, or have their counsel examine, the witnesses and evidence against them?

The right to a speedy trial was recognised under the 1996 Constitution until the present version of 2007. The constitutional right to speedy trial states that “a person shall have the rights in the administrative of justice to have the right to correct, speedy and fair trial of his or her case”.^{xcii} Thai criminal procedure law reaffirms such right by stating that ‘from the time of entry of a charge, an accused is entitled to be tried speedily, continuously and fairly’ and restates that the accused person is entitled to be examined rapidly, consecutively and impartially.^{xciii}

Additionally, Thai criminal procedure law stipulates that the trial and taking of evidence shall be conducted in open Court and in the presence of the accused.^{xciv} However, the trial and taking of evidence in the absence of the accused shall be done, if the accused and lawyer have the Court’s permission not to attend the trial and the taking of evidence. However, the Court may issue an order that the trial be conducted within closed doors, in the interest of public order and morality or in order to prevent secrets concerning the security of the State from being disclosed to the public. Nevertheless, the judgment and order of such trial shall be read in open Court.

Matters of procedure not specially provided for in the Criminal Procedure Code shall be governed by the Civil Procedure Code.^{xcv} The Civil Procedure Code provides that all parties are entitled to appoint legal counsel to examine witnesses and evidence against them, and to appeal the judgment and any decision of the court.^{xcvi} In this regard, the accused persons have the right to defend themselves in person and the right to have legal counsel examine witnesses and the evidence against them. If the accused persons do not have counsel, the Court shall appoint one for them.^{xcvii}

- i. Do these laws adequately provide for the right to appeal against conviction and/or sentence to a higher court according to law?

Thailand has a three-tiered court system collectively known as the Courts of Justice, which has jurisdiction over all cases except those specified by the Constitution or other written law. The Court of Justice comprises: Courts of First Instance; the Court of Appeal and the Supreme Court of Justice (DIKA Court). The Criminal Procedure Code recognises the right to appeal against the judgment or order on questions of fact or questions of law to a higher court, except where such appeal is prohibited under the law.^{xcviii} When judgment has been rendered by the Court of First Instance, the parties have the right to appeal to the Court of Appeal and then all the way to the Supreme Court of Justice.^{xcix}

- j. Do these laws prohibit the use of coerced confessions as a form of evidence and do they guarantee the accused person’s right to remain silent?

Thai Criminal Procedure Law prohibits the use of coerced confessions, deception, threat, inducement, or torture to induce the accused to make any statement in the charge against him.^c Moreover, Thai Evidence Law provides that where it appears to the Court that any evidence has been adduced by inducement, promise, threat, deception or other unlawful means, it is inadmissible.^{ci}

Additionally, inquiry officials must inform the accused of his right to remain silent. If the accused is unwilling to make any statement, it shall be noted. This right to remain silent is guaranteed under the Criminal Procedure Code.^{cii} At trial, the accused also has the right to remain silent by refusing to make any statement.^{ciii}

- k. Do these laws prohibit persons from being tried or punished again for an offence for which they have already been finally convicted or acquitted?

The principle of *Ne Bis in Idem*, that no one shall be twice tried for the same offence, is recognised under the Penal Code and Criminal Procedure Code.

The Penal Code forbids punishment for the same act, and this includes offences committed outside the country. In the latter instance, where final judgment of a foreign court acquits or convicts the accused, such judgment is final and he may not be prosecuted again in Thailand.^{civ} In addition, Article 39 of the Criminal Procedure Code prohibits prosecution twice of a case for the same cause of action: *“the right to institute a criminal prosecution is extinguished by the final judgment in reference to the offence for which the prosecution has been instituted”*. Hence the re-trial or re-punishment of an offence, where a person has already been convicted or acquitted is prohibited.

- I. Do these laws provide for the right to seek a timely and effective remedy before a competent court for violations of fundamental rights?

Under the 2007 Constitution, the right to seek remedy of the victims and witnesses is found in section 40(5) which stipulates: *“An injured person, suspect, defendant and witness in a criminal case shall have the right to necessary and appropriate assistance from the State. Remuneration, compensation and necessary expenses shall be as provided by law.”*

Victims of crime suffer damage from their rights, *i.e.* the loss of property, bodily injury, death and mental suffering. It is therefore fair that they receive reasonable restitution. Such remedies may include the return of property, payment for harm or loss suffered, and reimbursement of expense incurred as a result of the proceeding or the issue or restitution order directly by the Court. Under the Criminal Procedure Code, the victim is entitled to claim compensation for any act causing death, bodily harm, mental harm, loss of bodily freedom, reputation or property damage arising from the accused person’s committing the offence.^{cv}

The injured party is not allowed to enter into the *partie civile*, a procedure in which the victim of crime can pursue a civil claim against the offender at the same time and in the same proceedings as the criminal trial. However, the criminal procedure allows the prosecutor, in some offences, (*ie*, in the case of theft, snatching, robbery, gang-robbery, piracy, extortion, cheating and fraud, criminal misappropriation and receiving stolen property) to apply

for restitution of the property or the value thereof on behalf of the injured party. A civil case can also be instituted by the injured party in connection with the criminal case. However, it is difficult for them to receive adequate compensation or any compensation at all, because in many criminal cases offenders cannot be identified and brought to justice. In addition, the offenders may lack enough money to pay for a victim’s damages or the victims themselves may not be able to collect enough evidence to sustain civil actions as well as to hire the lawyer.

Apart from claiming directly from the offenders, crime victims may be entitled to compensation from the State for monetary relief from the apprehension and conviction of the offender pursuant to the Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act, B.E. 2544.

3. The process by which the laws are enacted and enforced is accessible, fair, efficient, and equally applied.

- a. Are legislative proceedings held with timely notice and are open to the public?

Legislation may be introduced by four channels: the Council of Ministers, the members of the House of Representatives, the Court or the constitutional independent organ, or persons having the right to vote and the legislative proceedings will be held within the duration as stated in the provision of the Constitution.

After submitting the draft, the Act will be introduced to the National Assembly. The draft will be first considered by the House of Representatives and upon approval, submitted to the Senate. The Senate must consider the bill within sixty days and if the Senate agrees with the House of Representatives, the Prime Minister shall present it to the King for assent within twenty days from the date of the receipt of the draft Act from the National Assembly. The law comes into force upon its publication in the Government Gazette.

The Constitution requires legislative proceedings to be made publicly and conveniently accessible.^{cv} Every person has access to legislative proceedings by following and watching on-line, the sitting on the web site of the

Thai National Assembly at <www.parliament.go.th> or the official web site of the Senate of Thailand at <<http://www.senate.go.th>>. The draft Acts, recordings and transcripts of the sitting are uploaded on the website for universal access.

- b. Are official drafts of laws and transcripts or minutes of legislative proceedings made available to the public on a timely basis?

As stated above, legislative proceedings are publicly accessible in a convenient manner. When any Bill is submitted to the House of Representatives, it must be accompanied by an explanatory note summarizing essential contents of the law. Hence, everyone is able to get the official drafted laws for the legislative proceedings at the web site of the Thai National Assembly at <<http://www.parliament.go.th>>, the web site of the Senate of Thailand at <<http://www.senate.go.th>> or the website of the Office of the Council of State at <<http://www.krisdika.go.th>>.

Apart from watching a realtime web-cast of the National Assembly the National Assembly <<http://www.parliament.go.th>> or the web site of the Senate of Thailand at <<http://www.senate.go.th>>, everyone, who is unable to watch in real time, is able to access the day-by-day legislative proceeding by getting the transcripts or minutes of the sitting to consider via those web sites.

- c. Are the thresholds for legal standing before courts clearly specified, not discriminatory and not unduly restrictive?

The threshold for standing for the Court of Justice is prescribed by the Criminal Procedure Code and Civil Procedure Code. Under the Criminal Procedure Code, cases can be brought by the Public Prosecutor and/or the injured person.^{cvi} The threshold for criminal cases is where an injury is sustained as a result of any offence under the Penal Code and such injury resulted from the act of the accused (causation).

A criminal case may be brought by an injured person as a personal complaint and an inquiry will be conducted by the special investigators of the Department of Special Investigation, Ministry of Justice.^{cvi} After the inquiry the

law enforcement agencies will present the case and the accused to the Public Prosecutor, who may bring the case to court (Thai prosecutors are not empowered to initiate investigate or to institute the cases themselves). In addition, an injured person is entitled to associate himself with the Public Prosecutor in any stage. If the Public Prosecutor has an order of non-prosecution, the injured person is entitled to enter the action himself.^{cix}

A criminal case may be withdrawn at any time before it is decided but if the Public Prosecutor withdraws a prosecution of a compoundable offence, he must obtain the written consent of the injured person. However, the withdrawal of cases concerning both compoundable and non-compoundable offences, by the Public Prosecutor does not preclude the injured person from re-instituting the suit. In the same way, the withdrawal of case relating to a non-compoundable offence by the injured person does not preclude re-institution of the case by the Public Prosecutor.^{cx}

In civil cases, the plaintiff must establish a number of requirements before he has *locus standi* before a court of first instance. Under the Civil Procedure Code, the thresholds for legal standing before the civil court are: disputation involving his rights or duties under the civil law or willingness to exercise his right through a court. If the case meets these requirements, the plaintiff may submit his case to a civil court having jurisdiction and competence over the case.^{cx}

However, there is a traditional restriction the filing of suit. In "*Utthalum Cases*", a person is prohibited from filing a suit (whether civil or criminal), against his own parents or grandparents, unless the Public Prosecutor does so on behalf of the plaintiff.^{cxii}

In the Supreme Court's Criminal Division for Persons Holding Political Position, a case may be submitted by the NACC under the Organic Act on Counter Corruption, pursuant to a request by the injured person. An injured party is entitled to submit a petition to a general meeting of the Supreme Court of Justice if the NCHR dismisses a petition for inquisition, or the inquisition has been unduly delayed, or the inquisition has concluded that there is no *prima facie* case in the accusation.^{cxiii}

A case may be filed through the Constitutional Court by the Court, the Ombudsman, the NCHR or any person. The Court shall submit its opinion on the constitutionality of a law to the Constitutional Court. Similarly, the Ombudsman may submit a case concerning a question of constitutionality to the Constitutional Court. If the NCHR is of the view that a law is detrimental to human rights as guaranteed by the Constitution, it may raise the question of constitutionality to the Constitutional Court. Any person whose rights or liberties are violated has the right to submit a motion to the Constitutional Court for its decision as to whether the provisions of the law are contrary to or inconsistent with the Constitution.

Pending the enactment of the Organic Act on Rules and Procedure of the Constitutional Court, the Court is empowered to prescribe rules on procedures and the rendering of decisions (Section 300(5)). According to the Constitutional Court's Rules on Procedure, persons whose rights or liberties have been violated must first submit their complaint to the Court, Ombudsman or NCHR. Only if he is unable to exercise his right through those three channels, then he is entitled to submit his case to the Constitutional Court personally.^{cxiv}

Apart cases submitted by the Ombudsman (Section 245) and the NCHR (Section 257), The Administrative Court may submit a case at the Court on behalf of any person who is aggrieved or injured in consequence of an act or omission by a State agency or a State official or who has a dispute in connection with an administrative contract or other case falling within the jurisdiction of the Administrative Court according to the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 and the Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, B.E. 2543.^{cxv}

The rules and procedures of the Military Court, including the requirements to submit the case before the Martial Court are found in the Constitution of Military Court. The Constitution of Martial Court allows militarily prosecutors as well as any injured person to bring a case in the Military Court.^{cxvi}

- d. Are judicial hearings and decisions public and made readily available to affected parties?

Thai criminal procedure law states the trial and the taking of evidence, including the reading of judgment or order shall be conducted in open Court.^{cxvii} In addition the judgment and order shall be read in open Court. The decisions are then made available to parties in the case. Non-interested third parties have not access the full judgment of the Court of Justice, but only the summary of the judgments of the Supreme Court through the official web site of the Supreme Court at <http://www.deka2007.supremecourt.or.th/deka/web/search.jsp>. It provides two versions of summary: the short version and the long version. Unaffected parties wanting access to the full judgment of the Supreme Court must submit a request form and state their reasons for wanting a copy, along with payment of copy fees.

Judgments of other Courts, the Administrative Court and the Constitutional Court, are published publicly. Everyone can access the decisions of the and judgments of these Courts at the official web site of the Constitutional Court <http://www.constitutionalcourt.or.th> and the official web site of the Administrative Court <http://www.admincourt.go.th>.

- e. All persons are equal before the law and are entitled to equal protection of the law without any discrimination?

Equality before the law, equal protection of the law and non-discrimination are guaranteed under the Constitution. The General Provisions recognise that human dignity, rights, liberties and equality of the people shall be protected and all Thai people shall enjoy equal protection under this Constitution, irrespective of their origins, sex or religion.^{cxviii} Moreover, it also specifically recognises that *"all persons are equal before the law and shall enjoy equal protection under the law"* and *"the unjust discrimination against persons on the grounds of origins, race, language, sex age disability, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political views, shall not be permitted."*^{cxix}

In reality, this guarantee may well be flouted on account of one's political views. In 2009, the red-shirt (pro-Thaksin) protesters forced leaders of ASEAN and partner countries to flee from a summit venue in Pattaya; PM Abhisit Vejjajiva imposed a state of emergency as blockades and violence spread in Bangkok. A court promptly issued arrest warrants for the leaders of the red-shirted demonstrators. Some were quickly rounded up and detained, while others went into hiding. In contrast, in 2008, the yellow-shirts (anti-Thaksin) demonstrators took over Government House and occupied two international airports for an extended period. Yet they were allowed to stay put until the government was forced out through a court ruling on a narrow question under the army-imposed 2007 Constitution. The criminal inquiries were repeatedly postponed and it took a long time to have the yellow shirts' leaders arrested and held in custody.

On November 29, 2010, the Constitutional Court heard a case involving the ruling Democratic Party's suspected illegal use of political funds and handed down a not-guilty verdict in favour of the Democrat Party. While this meant that the Democrat Party avoided dissolution, the pro-Thaksin faction which had received guilty verdicts in 2007 and 2008 and had subsequently had been dissolved both times, has increased criticism of the 'judicial system's double standard', and there is concern that protest activities may increase.

- f. Do persons have equal and effective access to judicial institutions without being subjected to unreasonable fees or arbitrary administrative obstacles?

The jurisdiction of the courts is divided into four sections: Civil Courts, Criminal Courts, Municipal Courts and Provincial Courts. The municipal courts hear smaller matters, where civil claim does not exceed THB 300,000 (approx. USD 10,000), or the fine or prison sentence does not exceed 3 years or a fine exceeding THB 60,000 (approx. USD 2,000). Another difference between the municipal courts and the general courts is the quorum. The general court requires two judges, whereas a single judge presides in the municipal court.

In 2010, Thailand had 232 courthouses of Court of Justice: 221 Courts of First Instance, 10 Courts of Appeal and 1 Supreme Court.^{xx} During 2006-2008, three new courts were established in Suratthani, Lopburi and Songkhla provinces to provide access to the courts within one -and -a -half hours.^{xxi} Thailand also has a number of specialised courts such as the eleven courthouses of the Administrative Court, Administrative Courts of First Instance, one Supreme Administrative Court and one Constitutional Court.

Court fees are not an impediment to judicial access in criminal cases as there is no court fee in criminal cases. In civil cases, fees are 2 percent of the disputed sum. That said, the amount could still be quite high, in particular for poor people.^{xxii} In addition, there are some other administrative obstacles such as the justice services, which are very complicated and require legal knowledge. These obstacles increase inaccessibility to the courts for the poor.^{xxiii} Poor people may, however, access through the Legal Aid Unit in Thailand, particularly the Lawyer Council of Thailand.

- g. Are the laws effectively, fairly and equally enforced? Are persons seeking access to justice provided proper assistance?

Under the Constitution, all Thai persons are equal before the law and everyone is entitled to equal protection by law. All Thais have equal access to justice. Thailand gives specific rights to Muslims in four provinces in the South: Satun, Yala, Pattani, and Narathiwat. There is no Sharia Court in Thailand but the Statute of the Court of Justice (the Law of Court Organisation) provides that in civil suits such as in family and succession cases, Islamic judges, called "Dato Yuttidham" also known as "Kadi" will preside. The Act on the Application of Islamic Law in the Territorial Jurisdictions of Pattani, Narathiwat, Yala and Satun Provinces, B.E. 2489 was promulgated in 1946 and applies to civil suits concerning families and inheritance among Thai Muslims. The decision to apply Islamic law stems from the fact that more than 80 percent of the population in these four provinces are Muslims. This law is applied when both parties are Muslim. The decision of the *Dato Yutitham* is final in such cases.

The poor are entitled to assistance for equal access to the courts. This is provided by the Legal Aid Unit of the Lawyer Council of Thailand. The Office of Public Legal Aid of the Lawyer Council of Thailand, was established in 1995 pursuant to the Lawyer Act. Its main aim is to support and provide legal aid services for the poor and special groups. It is administrated by the Lawyer Council of Thailand under the supervision of the Public Legal Aid Committee. It provides free consultation and advice on legal issues, free representation to eligible persons and legal dissemination activities. Moreover, it also runs a legal aid hotline from Mondays to Fridays and legal aid services via its web board. Moreover, the poor may also ask for any assistance from the Thai Bar or the Office of Attorney General.

The Office of Public Legal Aid relies on volunteer lawyers. The volunteer lawyers receive token remuneration under the rules made under the Lawyer Act. According to the Lawyer Act, funding of the Office of Public Legal Aids comes from four sources: National Government budget (annually around THB 50 million); Lawyer Council of Thailand (10% of its revenues); donations from the public; and interests earned from the abovementioned three sources.

According to the 2008–2009 statistics, the Office of Public Legal Aid had advised and assisted 54,620 cases in 2009 and 57,356 cases in 2008 and 6,955 cases were provided with actual legal representation services.^{cxiv} However, the Office of Public Legal Aid faces a number of issues and challenges. One major problem is the very low number of volunteer lawyers compared with the numbers of cases; and the small budget is not enough for the operation. In addition, the number of lawyers who work in local areas in Thailand is very small; 55,320 qualified lawyers are registered as members of the Lawyer Council of Thailand.^{cxv} While these numbers would ordinarily be sufficient, there are insufficient lawyers in rural areas where there is lack of a legal aid system and a shortage of lawyers.^{cxvi}

- h. Do the laws provide for adequate, effective and prompt reparation to victims of crime or human rights violations for harm suffered? Do these victims have access to relevant information concerning violations and reparation mechanism?

The right to seek remedy for the victims and witnesses is recognised under the 2007 Constitution as well as the Thai Criminal Procedure Code and victims are entitled to claim reparation both from the offenders directly pursuant to the criminal procedure law and from the State according to the Compensation for Victims of Crime Act B.E. 2544.

To claim reparation from the offender, the prosecutor may apply on the victims' behalf. In real life, it would be difficult to attain restitution since the injured party would need to have assistance from a lawyer and the lengthy civil proceeding would deter such practice. Then, it would be difficult for the victims to receive adequate compensation or any compensation at all from the offenders. Hence, the compensation from State would be more effective.

Under the Compensation for Victims of Crime Act B.E. 2544, an injured is one whose life, body or mind has been injured by a criminal offense, such as offences: relating to sexuality; against life and body; causing death or bodily harm; of abortion; and abandonment of children, sick or aged persons. The request may be submitted to the Committee via the Office of Monetary Assistance to Injured Person and Accused Person in Criminal Case, the Rights and Liberties Protection Department, Ministry of Justice or at the Office of Justice in every province within one year from the date the offence was committed and was known to the injured person.^{cxvii}

Victims in a criminal case have access to relevant information concerning violations and reparation mechanisms via the Office of Monetary Assistance to Injured Person and Accused Person in Criminal Case, the Rights and Liberties Protection Department, Ministry of Justice as well as the official web site of the Rights and Liberties Protection Department at <<http://www.rlpd.moj.go.th>>.

- i. Do the laws provide for and do prosecutors, judges and judicial officers take measures to minimise the inconvenience to witnesses and victims (and their representatives), protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect their interests?

Under the Constitution, witnesses and victims have the right to appropriate treatment in the judicial process. The Act on the Protection of Witness in Criminal Cases BE 2546 provides for the general and special protection for witnesses in criminal cases, and for the consideration, compensation and allowances to witness. In addition, the Office of Witness Protection was established in 2003 to deal with the protection of witness.

The Judicial Officials Regulation on the Treatment of the Witness B.E. 2548 provides that witnesses be treated politely and in a non-discriminatory fashion, bearing in mind local customs and traditions. It also provides the allowances and measures for the convenience of witnesses as well as security measures for the witness including his family before, during and after presenting evidence. The witness is entitled to request special protection before the court and after giving oral evidence, the court has to provide an allowance to the witness. The victim, who is an important witness, is entitled to the same protection as the general witness.

The Criminal Procedure Code was amended to include a new procedure for the interrogation of children who were victims of violence, particular domestic violence, by allowing them to have a prosecutor, psychologist and social worker present during the interrogation. Teleconference testimonies may be provided during the hearing to reduce confrontation with the defendants.^{xxxiii} In addition, the Compensation for Victims of Crime Act BE 2544 of 2001 also provides measures to consider the compensation for the victims or injured persons, in criminal cases.

4. Justice is administered by competent, impartial and independent judiciary and justice institutions

- a. Are prosecutors, judges and judicial officers appointed, re-appointed, promoted, assigned, disciplined and dismissed in a manner that fosters both independence and accountability?

Previously, the judiciary was administered by the Ministry of Justice but in 2000, the judiciary was completely separated from the Ministry of Justice. The President of the Supreme Court acts as head of the judiciary. The courts have an independent central administrative body, the Office of Judiciary, which has powers and duties to support judicial proceedings in all aspects of administrative works, judicial affairs and judicial technical affairs, including cooperation with other governmental agencies.^{xxxix} Additionally, to achieve judicial independence, the term of judges shall be secured by the rule of law, where a judge can only be removed through death, disability, resignation, retirement and deprivation of as a result of malpractices.

Section 197(2) of the Constitution affirms the independence of judges as follows: *"Judges are independent in the proper, swift and fair trial and adjudication of cases in accordance with the Constitution and laws"* and *"The transfer of a judge without his prior consent shall not be permitted except in the case of a periodic transfer, promotion to a higher position, being subject to a disciplinary action or becoming a defendant in a criminal case, being a case which prejudices justice in the trial and adjudication of cases or in case of force majeure or any other unavoidable necessity."*^{xxx}

Apart from these constitutional guarantees, there are some laws to ensure judiciary independence, such as the Law on Court Organisation B.E. 2543, which in Article 32 provides the responsibility for assignation, transfer and reclamation of the cases; and other Judicial Officials' Regulations Regarding Cases Management.

The appointment and removal from office of a judge is done by the King. In the case of the Court of Justice, the Judicial Commission oversees the appointment, promotion and discipline of judges, then the appointment and removal from office of a judge of a Court of Justice must

be approved by the Judicial Commission of the Courts of Justice before they are presented to the King. The promotion, increase of salaries and punishment of judges of the Courts of Justice must be approved by the Judicial Commission of the Courts of Justice.^{xxxxi}

Hence, the judiciary and its functions are virtually independent from both legislative and executive arms. Judges are governed by the Regulation of the Judicial Service Act B.E. 2543 and may be dismissed from service only for proven misconduct, incapacity, or infirmity.

In practice, there are a number of cases regarding the removal of judges in the country. For instance, on 26 July 2009, *Judge Petchwat Watthanapongsirikul*, a lay judge in the Labour Court,^{xxxxii} was dismissed by the King because of his unsuitable role as a leader of the red-shirt protesters. He was found guilty under Section 15(7) of the Establishment of the Labor Court and Procedure Act.^{xxxxiii} On July 13, 2010, the King removed *Judge Topping Thamnieb* and *Judge Chaipruk Himmaphan* because of their malpractices pursuant to the Regulation of the Judicial Service Act.^{xxxxiv} On October 14, 2010, *Judge Prayuth Neerapol*, a judge at the Thon-buri Criminal Court was dismissed based on his inappropriate manner.^{xxxxv} And, currently, the Judicial Commission of the Court of Justice decided to present the case of *Judge Somsak Chantakul* to the King for his order to remove because his inappropriate social life and infirmity which breaches the Code of Conduct of Judges.^{xxxxvi}

- b. Do prosecutors, judges and judicial officers receive adequate training, resources, and compensation commensurate with their institutional responsibilities? What percentage of the State's budget is allocated for the judiciary and other principal justice institutions, such as the courts?

Judges in Thailand are recruited by the Judicial Commission and are appointed by the King. Besides having certain qualifications – such as being of Thai nationality, passing the Thai Bar Examination -Law, being at least 25 years of age – a candidate must pass a highly competitive examination given by the Commission. Once recruited, they have to be trained as judge-trainee for at least one year. Those candidates who satisfactorily complete

the training will be approved by the Commission and tendered to the King for royal appointment as judges.^{xxxxvii} However, new judges do not have experience.

To become a prosecutor, Law graduates shall have qualifications as required by the Regulation of Public Prosecutor Officers Act B.E. 2521 (1978) such as having a Bachelor's Degree in law (LL.B.), being of Thai nationality, being not less than 25 years of age, passing Thai Bar Association as well as passing the public prosecutor -trainee examination. After passing prosecutor-trainee examinations, they will be called to participate in training and will be evaluated before appointment as Assistant District Public Prosecutor. Every public prosecutor-trainee must be trained by the Attorney-General's Office for not less than one year and must be evaluated by the Public Prosecutor Committee to determine whether he/she has obtained appropriate knowledge and ability and has the appropriate conduct to be appointed as an Assistant District Public Prosecutor^{xxxxviii}

So, for prosecutors, judges and judicial officers, there are the institutions responsible for providing the training of people *i.e.*, the Judicial Training Institute for the judges and judicial officers, and the Training and Development Institute Office of the Attorney General for the prosecutors. These Institutes have oversight over all training as well as operating conferences, seminars and symposium for the judges, judicial officers and prosecutors in order to facilitate the works of the courts. In recent years the Court of Justice has pursued training programs overseas to promote a better understanding of international perspectives and instruments among judges.

Statistically, Thailand annually allocates a budget for the judiciary and other justice institutions such as the Court of Justice, the Administrative Court, the Constitutional Court, the Office of Prosecutor General, the Office of the Royal Thai Police, the NCHR and the NACC. According to Statistics, from 2006 to 2010^{xxxxix}, Thailand allocated the equivalent of 0.7% of State's budget to Courts, 0.3% to the Office of Prosecutor General, 3.8 % to the Office of Royal Thai Police, 0.008% to the NCHR and 0.04% to the NACC. For 2011, the budget allocated was the same percentage of the State's budget to those judiciary and justice institutions. Thailand allocates THB 14.5 billion (0.7%) to Court of Justice, Administrative Court and

Constitutional Court; THB 6.4 billion (0.31%) to the Office of Prosecutor General; THB 75 billion (3.62%) to the Office of Royal Thai Police; THB 182 million (0.008%) to the NCHR; and THB 1032.1 million (0.05%) to the NACC.^{cd}

- c. Are judicial proceedings conducted in an impartial manner and free of improper influence by public officials or private corporations?

As stated earlier, the independence of the judiciary is guaranteed by the Constitution. To protect judges from outside pressures or influences from any other sources, their terms of office are secured by the rule of law. Moreover, judges are not allowed to be political officials or hold political positions.^{cdi} These measures seek to prevent impartial manner and improper influence by public officials or any private cooperation.

Practically, however, the influences of public officials or private corporations in judicial proceedings have frequently been demonstrated. For example, in 2007, Thaksin's lawyer and his associates attempted to bribe court officials using THB 2 million. It was believed that this was an attempt to clear a way for a judge. In addition, the credibility of the Constitutional Court faced an important challenge during countdown to the verdict on the Democrat Party dissolution case in November 2010 because five video clips, showed former court employee, *Pasit Sakdanarong* and two judges discussing ways to fend off adverse impact from alleged fraud involving the recruitment of court officials, were uploaded to YouTube by "ohmygod3009".^{cdii}

- d. Are lawyers or representatives provided by the court to accused persons, witnesses and victim competent, adequately trained, and of sufficient number?

As mentioned earlier, the Court is duty-bound to provide lawyers or legal counsel under the Criminal Procedure Code. To qualify as lawyers, the pre-requisite is an LL.B. degree from a Thai University as well as a pass in a 7–8 month training course provided by the Lawyers Council of Thailand. Alternatively, law graduates may serve as lawyer trainees (i.e., articled clerks) for one year in a law office and then pass the Lawyer Council examination

before applying to the Lawyers Council for permission to practice law. Those who wish to do so may pursue a Barrister-at-Law degree, a further one-year course offered by the Bar Institute of Thailand.

As of August 20, 2010, the number of lawyers registered as members of the Lawyer Council of Thailand was 55,320. This is quite lot compared to the number of judges (4,296) and prosecutors (3,187). The number of lawyers registered as public defenders is only around 100–200 lawyers in each Court which is insufficient. Each year, the Court will assign 3–5 cases per year, and may pay a gratuity, depending on the Administrative Committee of Court of Justice's rules, of around THB 2,000-10,000 (approx. USD 70-350) per case. Most public defenders are male, between 25-36 years old, and having very little or no experience in being a public defender. Indeed, most registered public defenders are young lawyers who just passed the Lawyer Council examination. These lawyers gain practical experience, including mooted experience from assigned cases from the Court as public defenders.^{cdiii}

The objectives of providing appointed lawyers by the Court to the accused are to protect the rights and liberties of the accused and to guarantee equality of arms in the proceedings. Alas, court-appointed public defenders are unable to protect the rights and liberties of the accused sufficiently. According to the complaints of the Asian Human Rights Commission, there are many cases where human rights protection challenges the role of public defenders and their failure to properly represent their clients.^{cdiv}

- e. Do legal procedures and courthouses ensure adequate access, safety and security for accused persons, prosecutors, judges and judicial officers before, during and after judicial, administrative, or other proceedings? Do they ensure the same for the public and all affected parties during the proceedings?

There is no specialised sector responsible for the security and protection of prosecutors, judges, judicial officers as well as courthouses. However, the Ministerial Regulation on National Security, B.E. 2552 states that all governmental organisations shall have their own security

mechanisms^{cxlv} so the Official of Judicial officers, Office of Attorney General as well as Office of Court of Justice, including Administrative Court and Constitutional Court have to provide security for their personnel and institutions themselves. In the other words, they are empowered to hire security companies to protect themselves.

Normally, the security system at the courthouse will be set up by a private company to provide overall protection to persons in the courthouse. Only if the judges are being threatened, police officers in that area will be assigned to protect them. In some cases, when a judge takes risk to be a victim, he may ask for special security protection. These measures would be enough for normal civil or criminal case, but not for important cases, which may be influenced by political interference, in particular, criminal cases of persons holding political positions in the Supreme Court of Justice.^{cxlvi}

There are some cases in which judges or prosecutors were killed. In 2004, Judge *Rapin Rueankaew*, a judge of the Pattani Provincial Court, was shot dead in Pattani.^{cxlvii} In addition, harm is not only limited to these persons but also to their family members. In addition, in some circumstance, these persons and their family member become victims, for example, on March 3, 2009, Judge *Unita Limsinsomboon*, a lay judge of the Pitsanulok Provincial Court and the wife of the chief prosecutor in the Office of General Attorney, was killed in her house in Pitsanulok^{cxlviii}; or on September 23, 2010, the wife of the chief prosecutor in Surat Thani was shot dead on a public bus in Ratchaburi.^{cxlix} Recently, in the case pertaining to dissolving of the Democrat Party, judges received threats of death or bodily harm.

Members of the public, journalists, and affected parties enjoy the same protection provided by the Court. There have been some exceptions for example, victims and witnesses are entitled to enjoy special protection under the Act on the Protection of Witness in Criminal Cases Act B.E. 2546, the Compensation for Victims of Crime Act B.E. 2544, and other regulations such as the Judicial Officials Regulation on the Treatment of the Witness B.E. 2548 or the Judicial Officials Regulation on the Protection of and Allowance for the Witnesses in Criminal Cases, B.E. 2548.

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