TABLE 1
SNAPSHOT

<table>
<thead>
<tr>
<th>Formal Name</th>
<th>The Kingdom of Thailand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital City</td>
<td>Bangkok</td>
</tr>
<tr>
<td>Independence</td>
<td>1238 (traditional founding date; never colonised)</td>
</tr>
<tr>
<td>Historical Background</td>
<td>The Kingdom of Thailand (formerly named as the Kingdom of Siam until 1939) was formed in the mid-14th century. Thailand was governed under an absolute monarchy until the bloodless revolution in 1932, which led to a constitutional monarchy, and the drafting and promulgation of the country’s first Constitution. Since 1932, Thailand has had twenty charters or constitutions (as at 2015), many adopted following military coups, which reflects high degrees of political instability. The most recent coup d’état launched by the Royal Thai Armed Forces, led by General Prayut Chan-o-cha, Commander of the Royal Thai Army (RTA), was on 22 May 2014. The military established a junta called the National Council for Peace and Order (NCPO) to govern the nation, and General Prayut Chan-o-cha became Prime Minister of the country.</td>
</tr>
<tr>
<td>Size</td>
<td>513,120 sq. km.; land: 510,890 sq. km.; and water 2,230 sq. km.</td>
</tr>
<tr>
<td>Land Boundaries</td>
<td>Thailand is located at 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.</td>
</tr>
<tr>
<td>Population</td>
<td>65,124,716; male: 31,999,008; female: 33,125,708</td>
</tr>
<tr>
<td>Demography</td>
<td>0-15 yrs. = 17.8%; 15-59 yrs. = 65.7%; 60 yrs. and over = 16.5%; 65 yrs. and over = 11% (2016 est.)</td>
</tr>
<tr>
<td>Ethnic Groups</td>
<td>Thai 95.9%, Burmese 2%, other 1.3%, unspecified 0.9% (2010 est.)</td>
</tr>
<tr>
<td>Languages</td>
<td>Thai, English (secondary language of the elite), ethnic and regional dialects</td>
</tr>
<tr>
<td>Religion</td>
<td>Buddhist (official) 93.6%, Muslim 4.9%, Christian 1.2%, other 0.2%, none 0.1% (2010 est.)</td>
</tr>
</tbody>
</table>

2 Ibid.
5 CIA World Factbook.
6 Ibid.
7 Ibid.
The Royal Thai Government, ruled by a succession of military leaders, was installed after 2014 coups. The 2007 Constitution was annulled by the 2014 coup-makers who run the country as a military dictatorship. The government of Thailand is composed of three branches: the executive, the legislative, and the judiciary.

• Executive branch: Council of Ministers (Cabinet), consisting of the Prime Minister appointed by the King in accordance with the resolution of the National Legislative Assembly, and not more than 35 others Ministers who are appointed by the King upon the advice of the Prime Minister. They have duties to carry out the administration of state affairs and to put into effect reforms in different fields and to promote unity and harmony amongst the people of the nation.\(^{10}\)

• Legislative branch: The National Legislative Assembly, consisting of not more than 220 members appointed by the King, upon the advice of the NCPO, acts as the House of Representatives, the Senate, and the National Assembly.\(^{11}\)

• Judicial branch: Thailand has four categories of courts: a three-level court system collectively known as the Courts of Justice (i.e., Courts of First Instance; Court of Appeal; and Dika (Supreme) Court, including specialized Courts of Justice, such as the Central Bankruptcy Court, the Labor Court, the Juvenile and Family Court, Environmental Court and the Central Intellectual Property and International Trade Court); Constitutional Court; Administrative Court; and Military Court.

The military coup in 2014 did not only go against the principle of democracy recognised under the ASEAN Charter but the rule of law in Thailand has also been questioned because the elected Prime Minister, the Cabinet as well as the Constitution have been discarded. These issues have continued after the coup. Importantly, under the current government, the NCPO has broad authority to limit or suppress fundamental human rights and is granted immunity for its actions,\(^{12}\) as reflected in the provisions of the junta-promulgated Interim Constitution.\(^{13}\)

- Freedom of expression and association: after the coup, the junta ordered print media not to publicize commentaries critical of the military. TV and radio programs were instructed not to invite guests who might comment negatively on the situation in Thailand.\(^{14}\)
- Arbitrary detention: since the coup, the junta has detained more than 300 politicians, activists, journalists, and people that it accused of supporting the deposed government, disrespecting the monarchy, or those involved in anti-coup protests and activities.\textsuperscript{15}

More recently on 29 March 2016, the Constitution Drafting Committee revealed a draft of the new Constitution, which provides the process for electing members of the House of Representative and the process for electing and selecting the members of the Senate. The draft also allows the possibility of a parliament-selected Prime Minister, if approved by a joint session of the lower house and the appointed Senate. The draft will be put to a national referendum in August 2016.\textsuperscript{16}

- Enforced disappearances: Thailand has already signed the International Convention on the Protection of All Persons from Enforced Disappearance (CED), but has not yet ratified it. The problem of enforced disappearances is one of the most serious human rights violations faced by the country, frequently happening to activists.\textsuperscript{17} These include the disappearance of prominent human rights lawyer Somchai Neelapaijit and prominent ethnic Karen activist Por Cha Lee Rakchongcharoen, known as “Billy,” who has forcibly disappeared after officials at Kaengkrachan National Park arrested him on 17 April 2014 in Petchaburi province.\textsuperscript{18}

- Trafficking in persons: Thailand is now faced with the problem of human trafficking because it is a source, destination, and transit country for men, women, and children subjected to forced labour and sex trafficking. There are an estimated three to four million migrant workers in Thailand, most from Thailand’s neighbouring countries—Myanmar, Laos, and Cambodia. In addition to Thai victims of trafficking, some of these migrant workers are also believed to be forced, coerced, or defrauded into labour or sex trafficking.\textsuperscript{19} Importantly, the US Trafficking in Persons (TIP) Report has downgraded Thailand from the Tier 2 Watch List to Tier 3 since 2014 because the government of Thailand does not fully comply with the minimum standards for the elimination of trafficking.\textsuperscript{20}

\textsuperscript{15} Ibid.


| Membership in International Organisations\(^{21}\) | ASEAN Community (AC); Asian Development Bank (ADB); Asian Institute of Technology (AIT); Asian-Pacific Postal Union (APPU); Asia-Pacific Telecommunity (APT); Asian Reinsurance Corporation (ARC); International Criminal Police Organisation (INTERPOL); International Committee of the Red Cross (ICRC); International Federation of Red Cross and Red Crescent Societies (IFRC); International Organisation for Migration (IOM); International Union for Conservation of Nature and Natural Resources (IUCN); Network of Aquaculture Centres in Asia-Pacific (NACA); Southeast Asian Fisheries Development Center (SEAFDEC); Southeast Asian Ministers of Education Secretariat (SEAMES); World Trade Organisation (WTO); United Nations (UN); UN Organisations, namely, International Monetary Fund (IMF), Secretariat of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), International Bank for Reconstruction and Development (IBRD), International Civil Aviation Organisation (ICAO), International Finance Corporation (IFC), International Labour Organisation (ILO), International Telecommunication Union (ITU), United Nations Development Programme (UNDP), United Nations Environment Programme (UNEP); United Nations Educational, Scientific and Cultural Organisation (UNESCO), United Nations Population Fund (UNFPA), United Nations High Commissioner for Refugees (UNHCR), United Nations Children’s Fund (UNICEF), United Nations Industrial Development Organisation (UNIDO), United Nations Office on Drugs and Crime (UNODC), United Nations Office for Project Services (UNOPS), United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), Universal Postal Union (UPU), World Food Programme (WFP), and World Health Organisation (WHO). |
| Human Rights Treaty Commitments | Thailand is a party to seven core human rights treaties, namely:  
3. International Covenant on Civil and Political Rights (ICCPR): acceded on 29 October 1996;  
6. Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT): acceded on 2 October 2007; and  
In addition, on 9 January 2012, Thailand signed the CED and is now in the process of considering ratification. |

---


---

4 Update on the Rule of Law for Human Rights in ASEAN:  
The Path to Integration
I. INTRODUCTION

The Kingdom of Thailand (formerly called the Kingdom of Siam until 1939) is located in the South East Asian Region and is a member of the ASEAN Community (AC), which was launched officially at the end of 2015. Beginning in the mid-14th century, Thailand was governed by an absolute monarchy, until the bloodless revolution during the reign of 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 26 June 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 of the country (10 December 1932), and King Rama VII became the first king under the constitutional monarchy.

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. Interestingly, during the 83 years of constitutional monarchy in Thailand, several constitutions were promulgated, amended, as well as revoked; many were adopted following military coups. Since 1932, Thailand has had 20 constitutions and charters. A number of governments and military coups, forming the democratic regime (the latest military coup took place on 22 July 2014), reflect a high degree of political instability in the country. After each successful coup, military regimes abrogated existing constitutions and promulgated new ones. The current 2014 Interim Constitution was promulgated after the 2014 coup, and now, the new Constitution of the country is undergoing a drafting process.

Among the 20 constitutions of the country, the 16th Constitution of the Kingdom of Thailand (1997) is considered to be the best constitution that 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 the monopoly of the executive arm. The independent organisations set up by the 1997 Constitution are still continuously working up to the present, even though the 1997 Constitution was revoked after the 2006 military coup.

After the 2006 coup, the 2007 Constitution was drafted and came into force on 24 August 2007. The country continued to face political instability, in particular, after the general election in 2011, when Yingluck Shinawatra and the Pheu Thai Party obtained a landslide victory and formed the government with Yingluck as Prime Minister. Anti-government protesters, led by former Democrat Party secretary general Suthep Thaugsuban, formed the People's Democratic Reform Committee for the purpose of demanding the establishment of an unelected “people's council” to supervise a “political reform,” while pro-government groups, including the Red Shirts, held mass rallies in response. Violence occasionally occurred, resulting in a number of deaths and injuries during such period. Next, on 7 May 2014, the Constitutional Court unanimously removed Prime Minister Yingluck and nine other senior ministers from office over the controversial transfer of a top security officer in 2011. The remaining ministers selected Deputy Prime Minister and Minister of Commerce Niwatthamrong Boonsongpaisan to replace Yingluck as caretaker Prime Minister as protests continued.

On 22 May 2014, the Royal Thai Armed Forces, led by General Prayut Chan-o-cha, Commander of the Royal Thai Army, launched a coup d'état (the 12th since the country's first coup in 1932) against the caretaker

---

22 Charters have traditionally been temporary instruments, promulgated following military coups.
government. The military dissolved the government and the Senate and established a junta called the National Council for Peace and Order (NCPO) to govern the nation. The NCPO vested the executive and legislative powers in its leader and ordered the judicial branch to operate under its directives. In addition, it partially repealed the 2007 Constitution and promulgated the 2014 Interim Constitution, declared martial law and curfew nationwide, banned political gatherings, arrested and detained politicians and anti-coup activists, imposed internet censorship, and took control of the media. Martial law was finally revoked in Thailand on 20 March 2015; however, instead of returning Thailand to civilian rule as it had promised, the Thai junta replaced martial law with its new protocol, Section 44 of the Interim Constitution, which has significantly broadened its authority while still retaining the power to crush political dissent with arrests and detentions.

Section 44 provides that, “In the case where the Head of the National Council for Peace and Order deems necessary for the purpose of reforms in various fields, for the enhancement of unity and harmony among people in the country, or for the prevention, restraint, or suppression of any act which undermines public order or national security, the Throne, the national economy, or State affairs, irrespective of whether such act occurred inside or outside the Kingdom, the Head of the National Council for Peace and Order, with the approval of the National Council for Peace and Order, shall have power to order, restrain, or perform any act, whether such act has legislative, executive, or judicial force; the orders and the acts, including the performance in compliance with such orders, shall be deemed lawful and constitutional under this Constitution, and shall be final. When those have been carried out, a report shall be made to the President of the National Assembly and the Prime Minister for acknowledgement without delay.” In this regard, all orders so issued are considered lawful and final, and all public discussions about the Interim Constitution are prohibited. Furthermore, the Constitution also grants amnesty for all past and future military actions concerning the coup.

Key Rule of Law Structures

The 2014 Interim Constitution recognises Thailand as a democratic state, with the King as Head of State, and the sovereign power belonging to Thai people. The rule of law provisions under the 2007 were revoked, however, the Interim Constitution provides for the recognition of human dignity, rights, liberties, and equality previously enjoyed by the Thai people under conventions issued by the democratic regime of government with the King as Head of State. In addition, the Interim Constitution states that all of Thailand's existing international obligations shall be protected. The Interim Constitution was drafted to pave the way for the establishment of a national legislature to exercise the legislative power, a provisional cabinet to take charge of public administration, and an independent judiciary. In addition, it sets up the National Reform Council to execute extensive national reforms and approve a draft new Constitution drafted by the Constitution Drafting Commission.

In Thailand, the rule of law is a basic principle applied to govern the country since the uncodified Constitution up to the present. The rule of law has been continuously recognised in provisions since the 1932 Constitution. Even though rule of law provisions under the 2007 Constitution were removed in the 2014 Interim Constitution, all human dignity, rights, and liberties previously enjoyed by the Thai people,

---

24 2014 Interim Constitution, Sections 2 and 3.
as well as international obligations of the country, are still protected by the 2014 Interim Constitution. In addition, it provides that the Constitution Drafting Commission shall prepare the draft Constitution to cover many matters, including an efficient mechanism for the reinforcement of principles of the rule of law, and the cultivation of morality, ethics, and good governance in every sector and every level. Resulting from this, in the current Draft Constitution of the Kingdom of Thailand of 2016, the rule of law is recognised as a general principle by which the performance of duties of the National Assembly, the Council of Ministers, the courts, constitutional organisations, and state agencies shall comply with.

Foundation & Evolution of Rule of Law

In 2011-2015, the government-appointed Independence National Rule of Law Commission (NRLC) underwent a process of formation. The NRLC, chaired by Professor Dr. Ukit Mongkolnavin, aims to promote the sustainable development of the rule of law in Thailand. Due to the work of the NRLC, the rule of law situation in Thailand was studied and researched. The solutions to disseminating information on the rule of law to all sectors of society to enhance people's knowledge and understanding on the subject, as well as their awareness of its significance, respect for, and compliance with it, were analysed. One remarkable piece of work of the NRLC is the booklet on “The Rule of Law: Meaning, Essence and Sanctions of the Rule of Law.” This booklet is the result of the collaboration of a group of law academics from leading universities and practitioners in the justice process, including judges, public prosecutors, police officers, solicitors, and barristers, who jointly undertook an extensive study, analysis and debate, and have achieved a successful result.

The NRLC’s works define the meaning rule of law as a basic legal principle, which any legislation, justice process, or act shall not contravene, be in conflict with, or be contrary to. The essence and sanctions of the rule of law are divided into two categories of strict and general meanings of the rule of law.

The strict or narrow meaning of the rule of law consists of the following:

1. The principle of independence and impartiality of the judges shall be adhered to;
2. Law must be applicable to all;
3. Law must be promulgated to the public;
4. State officials shall exercise their powers only to the extent as authorised by law;
5. An alleged offender or defendant in a criminal case shall have the right of defence;
6. Criminal law shall not have a negative retroactive effect on the offender;
7. Double jeopardy is prohibited;
8. A person enjoys the right against self-incrimination; and
9. The law cannot exempt from liability any act which has not been committed.
Any legislation, justice process or act which contravenes, is in conflict with, or is contrary to this strict meaning of the rule of law shall be invalid.30

The general or broad meaning of the rule of law means good characteristics of any legislation, justice process, or act, which could be considered as the ideology of law and justice process. The essence of the general or broad meaning of the rule of law means:

1. Good law must be clear;
2. Good law must not conflict with itself;
3. Good law must be based on reasonableness;
4. Good law must lead to fairness;
5. Good law must protect human rights, human dignity, and fundamental rights;
6. Good law must be a living instrument that could respond to the changes in society, economy, politics, culture and technology;
7. Good law must be enacted by the competent authority in accordance with procedures prescribed by the law;
8. Good law shall not have a negative retroactive effect on a person’s rights, duties or liberties;
9. Good law must have an appropriate penalty proportional to the gravity of the offence;
10. Good law must be effectively enforced; public awareness and the respect for the law and the rule of law must be promoted;
11. The legislative process must be open, transparent, and accountable;
12. Good justice process must provide an opportunity to appeal;
13. Good justice process must provide an easy access, without undue delay, at reasonable costs;
14. Good justice process must provide an easy access to alternative dispute resolution;
15. Lawyers, state officials, and persons involved in the justice process must be independent and impartial in the performance of their duties; and
16. Lawyers, state officials, and persons involved in the justice process must maintain integrity, morality, kindness, and peacefulness.

Any legislation, justice process or act which does not possess those good characteristics and the essence pursuant to the general meaning of the rule of law are still enforceable so long as they are not in conflict with the strict meaning of the rule of law.

Human Rights Treaties

Thailand is a party to seven of nine major human rights treaties, with some reservations, namely: Article 30(1) of the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Article 22 of the Convention on the Rights of the Child (CRC); and Articles 7, 10, 16, and 29(1) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Thailand is in the process of incorporating treaty obligations into domestic laws. In addition, on 9 January 2012, Thailand

30 Ibid.
signed the International Convention on the Protection of All Persons from Enforced Disappearance (CED), which is one of the core human rights treaties, and is now in the process of ratifying the same.

**Interpretation & Use of the ‘Rule of Law’**

Since 2011, the political turmoil and military coup led the rule of law to become one of the most contentious issues in society. Within the junta governing, the circumstances to invoke or to give effect to the rule of law are limited. In 2014, the 2007 Constitution, which explicitly recognised the rule of law, was annulled and circumstances to invoke the rule of law have been controlled and limited by the junta. However, Section 35(6) of the Interim Constitution stipulates that the Constitution Drafting Commission shall prepare an efficient mechanism for the reinforcement of principles of the rule of law and the cultivation of morality, ethics, and good governance in every sector and every level. During the drafting process, the proposal of the NRLC concerning the definition, essence, and sanctions of the rule of law were submitted to the Constitution Drafting Commission.

**TABLE 2**

**ADMINISTRATION OF JUSTICE GRID**

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Figure</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of judges in country</td>
<td>4,480 (Nov 2015)(^{31}) (increase of 184 since 2011)</td>
</tr>
<tr>
<td>No. of lawyers in country</td>
<td>65,647 (Feb 2016)(^{32}) (increase of 10,327 since 2011)</td>
</tr>
<tr>
<td>Annual bar intake (including costs and fees)</td>
<td>US$ 100 (approx.)(^{33}) (no change since 2011)</td>
</tr>
<tr>
<td>Standard length of time for training/qualification</td>
<td>1 year(^{34})</td>
</tr>
<tr>
<td>Availability of post-qualification training</td>
<td>Training is available to lawyers, provided by the Lawyers Council of Thailand; to prosecutors, by the Training and Development Office of the Attorney-General; and to judges, provided by the Judicial Training Institute(^{35})</td>
</tr>
<tr>
<td>Average length of time from arrest to trial (criminal cases)</td>
<td>Less than 1 month (in 2014, 80% of criminal cases were terminated)(^{36})</td>
</tr>
</tbody>
</table>

---

\(^{31}\) Office of Court of Justice (23 November 2015).

\(^{32}\) Lawyers Council of Thailand under the Royal Patronage (10 February 2016)

\(^{33}\) The Thai Bar under the Royal Patronage <www.thethaibar.or.th>

\(^{34}\) Ibid.


### Thailand

<table>
<thead>
<tr>
<th>Average length of trials (from opening to judgment)</th>
<th>In general, 2-3 months to 2-3 years, depending on the nature and complexity of the case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accessibility of individual rulings to public</td>
<td>Full judgments are accessible to litigants, and in summarised form, to the public (no change since 2011); also accessible online via <a href="http://www.deka.2007.supremecourt.or.th">http://www.deka.2007.supremecourt.or.th</a></td>
</tr>
<tr>
<td>Appeal structure</td>
<td>Court of First Instance, Court of Appeal, and Dika (Supreme) Court</td>
</tr>
<tr>
<td>Cases before the National Human Rights Institution</td>
<td>689 cases (gross per year) (2014) Most concern violations of rights in criminal proceedings, community rights, and political rights.37</td>
</tr>
</tbody>
</table>
| Complaints filed against the police, the military, lawyers, judges/justices, prosecutors or other institutions (per year) | **Before the Department of Discipline of the Royal Thai Police** 956 cases (2013)38  
**Before the Lawyer Professional Ethics Commission** 336 cases (2014)39 |
| Complaints filed against other public officers and employees | **Before the National Anti-Corruption Commission** 2,876 cases (2013)40 |


39 Lawyers Council of Thailand (10 February 2016)

II. COUNTRY PRACTICE
IN APPLYING THE CENTRAL PRINCIPLES OF RULE OF LAW
FOR HUMAN RIGHTS

A. On Central Principle 1
(Government and its officials and agents are accountable under the law)

Definition and Limitation of the Powers of Government in the Fundamental Law

The separation of powers has been enshrined in all Thai constitutions since the 1932 Constitution. Under the 2014 Interim Constitution, the legislative branch, called the National Legislative Assembly, consisting of not more than 220 members appointed by the King upon the advice of the NCPO, acts as the House of Representatives, the Senate, and the National Assembly. The executive branch consists of the King as the Head of State; the Prime Minister, who is appointed by the King as the head of government; and not more than 35 other ministers, appointed upon the advice of the Prime Minister, constituting the Council of Ministers, which has the duty to carry out the administration of state affairs, put into effect a reform of different fields, and promote unity and harmony among the people of the nation.

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 courts: Courts of Justice, Constitutional Court, Administrative Court, and Military Court. The Courts of Justice has a three-level court structure, comprising of 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, the Environmental Court, 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.

Human rights groups in the region have however noted that the National Council for Peace and Order (NCPO) Order 13/2016 confers sweeping powers to “Prevention and Suppression Officers” from the Royal Thai Armed Forces and their actions under this Order are not subject to judicial review. This results in a removal of power from the judiciary and erodes the system of checks and balances.41

The 2014 Interim Constitution reaffirms that the sovereign power belongs to the Thai people, and the King shall exercise such power through three separate organs. This is according to the provision of Chapter II, The King, of the 2007 Constitution, which is still in force as part of the 2014 Interim Constitution under Announcement of the NCPO No. 11/2557, dated 22nd May, B.E. 2557 (2014).

The National Anti-Corruption Commission (NACC), an inspection mechanism, continues to inspect the assets and liabilities of persons holding political positions. The government is subject to scrutiny by the Constitutional Court. In addition, the Administrative Court has been set up to use judicial powers to investigate and to decide disputes arising from administrative acts by state officials, whether that matter concerns a state organ and a private individual, or is one between state organs themselves.

Amendment or Suspension of the Fundamental Law

The 2007 Constitution of the Kingdom of Thailand stipulates rules and procedures on amending the Constitution. However, after the coup in 2014, the 2007 Constitution was partly cancelled by the junta, including the rules and procedures on amending the Constitution as stipulated in the 2007 Constitution, violating the rule of law and democratic principles recognised by the ASEAN Charter, as well as basic political rights. The mechanism of drafting the new Constitution of the country is established by the 2014 Interim Constitution. Sections 32 to 39 provide for a Constitution Drafting Commission appointed by the president of the National Reform Council. The Commission shall prepare the draft Constitution to cover the following matters:

1. The recognition of the unity and indivisibility of the Kingdom;
2. The adoption of a democratic regime of government with the King as Head of State;
3. An efficient mechanism for preventing, scrutinising, and eliminating dishonest acts and malfeasance in both the public sector and private sector, including a supervision and control mechanism, which ensures that state powers are executed in the common interests of the nation and the public;
4. An efficient mechanism for prevention and scrutiny to absolutely exclude from holding a political position a person who has been convicted of committing a dishonest act or a malfeasance, by judgment or lawful order, or has committed an act which causes an election not to proceed in an honest or fair manner;
5. An efficient mechanism for ensuring that state officials, especially those holding political positions, and political parties, are able to perform duties or carry out activities independently, without being illegally manipulated or directed by any person or group of persons;
6. An efficient mechanism for the reinforcement of principles of the rule of law and the cultivation of morality, ethics, and good governance in every sector and every level;
7. An efficient mechanism for restructuring and stimulating the system of economy and society for the purpose of attaining sustainable fairness and preventing the administration of state affairs that is aimed at creating demagoguery that may cause detriment to the economic system of the country and the public in the long term;
8. An efficient mechanism for ensuring that the expenditure of the state is worthwhile and able to respond to the common interests of the public, while being in accordance with the financial and fiscal status of the country, and an efficient mechanism for scrutiny and disclosure of expenditure of the state;
9. An efficient mechanism to prevent the impairment of essential principles which are to be enshrined by the Constitution; and
10. A mechanism to drive the completion of a reform of substantial matters.

Presently, Thailand is under the process of drafting the new Constitution. Sections 252 to 253 of the draft Constitution stipulate rules and procedures on amending the Constitution. Any motion for amendment must be proposed by the Council of Ministers, members of the House of Representatives or/and senators, or persons having the right to vote in numbers which are stated in the Constitution. The motion must be

42 The Constitution of the Kingdom of Thailand of 2007 [2007 Constitution], Section 291.
proposed in the form of a draft constitutional 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. The enactment of ordinary legislation is done by the National Legislative Assembly according to Sections 14 to 15 of the current Constitution. The King enacts an Act by and with the advice and consent of the National Legislative Assembly.

**Laws Holding Public Officers and Employees Accountable**

The mechanisms established by the 1997 Constitution, namely: the Constitutional Court, Administrative Court, National Human Rights Commission, Ombudsman, Supreme Court’s Criminal Division for Persons Holding Political Positions, and NACC, are still in force. Accountability for private gain, acts that exceed their authorities, and the violation of fundamental rights are subject to those mechanisms.

Apart from abovementioned mechanisms, official misconduct, abuse of power, and excess of jurisdiction are also dealt with by the various disciplinary boards established under internal codes for each organ, such as the civil service commission, the judicial officer commission, and the police commission. For instance, 956 cases (2013) of police misconduct have been investigated by the Department of Discipline of the Royal Thai Police.44

**Special Courts and Prosecutors of Public Officers and Employees**

In Thailand, the Supreme Court’s Criminal Division for Persons Holding Political Positions is the court that handles criminal cases against persons who hold political positions. Apart from that, the Administrative Court has competence to try and adjudicate administrative cases, which refer to disputes between a private individual and an administrative agency or a state official, or to a dispute between an administrative agency and state officials themselves.45 The nature of such cases necessarily involves the exercise of administrative power, neglect of official duties, unreasonable delay in the performance of duties, an administrative tort, or other liabilities incurred by an administrative agency or state official in relation to an administrative case falling within the jurisdiction of the Administrative Court. Before the Administrative Court, administrative judges and prosecutors for administrative cases are assigned to specific cases.

**B. On Central Principle 2**

*(Laws and procedures for arrest, detention and punishment are publicly available, lawful, and not arbitrary)*

**Publication of and Access to Criminal Laws and Procedures**

There are no remarkable changes in policy or practice; the criminal laws and procedures, including administrative rules, such as the Ministerial Regulations on Rules and Procedure relating to detention, imprisonment, and provisional release, are published in Thai language. This makes it quite easy for the public to read and understand them. Beyond publication in the Government Gazette, they are also published on

44 The Royal Thai Police, Statistic of Cases.

45 Administrative Court <http://www.admincourt.go.th/>
the official website of government organs. Hence, Thai laws are widely and easily accessible for everyone, not only in hardcopies but also in electronic versions at the websites of the Government Gazette <http://www.ratchakitja.soc.go.th> or the Office of the Council of State <http://www.krisdika.go.th>.

**Accessibility, Intelligibility, Non-reactivity, Consistency, and Predictability of Criminal Laws**

Laws and procedures on arrest, detention, and punishment are printed and published in the Government Gazette, and published online via the official website of government organs. Hence, these laws and procedures are accessible to everyone. If an arrested person does not understand the Thai language, criminal procedure law requires that the inquiry officials provide a translator for the arrestee.46

Under the Interim Constitution, a law will come into force after being published in the Government Gazette.47 Laws do not generally have retroactive effect. Even though the provision of the 2007 Constitution concerning non-retroactivity has been annulled, the Thai Penal Code guarantees non-retroactivity with regard to criminal offences.48

**Detention Without Charge Outside an Emergency**

According to law, any arrest or detention must be made by the order or warrant of the court, or upon other causes provided by law.49 The court will issue the warrant of arrest, detention, and imprisonment only when evidence reasonably shows that the accused has committed an offence, and there is cause to believe that he will escape or interfere with the evidence.50

The 2005 Emergency Decree provides broad powers to the Prime Minister, permitting the delegation of sweeping emergency power to law enforcement officials, and reducing accountability to the parliament and the courts.51 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.52 The ordinary procedure on detention under the Criminal Procedure Code only applies at the end of this period of detention.53

However, after the coup, the junta replaced martial law with its new protocol, Section 44 of the Interim Constitution, which has significantly broadened its authority while still retaining the power to crush political dissent with arrests and detentions. All orders so issued are considered lawful and final, and all public discussions about the Interim Constitution are prohibited.

---

46 Criminal Procedure Code, Article 13.
47 2014 Interim Constitution, Section 15.
48 Penal Code, Section 2(1)-(2).
49 Criminal Procedure Code, Section 58; and the Regulations of the President of the Supreme Court on Rule and Procedure Relating to the Issuing of the Order or a Warrant B.E.2548.
50 Ibid., Sections 66 and 71.
51 The 2005 Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 ['2005 Emergency Decree']
52 Ibid., Section 12, para 1.
53 Ibid.
Rights of the Accused

**Freedom from Arbitrary or Extra-legal Treatment or Punishment, and Extra-Judicial Killing**

There are no remarkable changes in the law. Thailand is a party to the CAT and is now in the process of its implementation. Currently, the only provision relating to this is in the Criminal Procedure Code, which stipulates that inquiry officials are not allowed to make, or be made to do, any act of deception, threat, promise, torture, or coercion over the accused to make any particular statement in connection with the charge.\(^{54}\)

Extra-judicial killing in Thailand is prohibited; it may be undertaken by officials only for self-defence, or to prevent suspects from escaping.\(^{55}\)

Thai Criminal Procedure Law recognises the right to habeas corpus in the case of any person detained in a criminal case, or in any other unlawful case. 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 to determine the release of the person with the court empowered to try the criminal case. 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.\(^{56}\)

**Presumption of Innocence**

There is no data found indicating remarkable changes in law; the presumption of innocence is still recognised by laws. A person who has been charged in court with the commission of an offence is called an accused, and a person who has not yet been charged in court is called an alleged person.\(^{57}\) Although there is no provision in the Criminal Procedure Code that explicitly affirms the presumption of innocence, it however recognises that where any reasonable doubt exists as to whether or not the accused has committed the offence, the benefit of the doubt shall be given to him; therefore, the presumption of innocence is also guaranteed by such provision.\(^{58}\)

**Legal Counsel and Assistance**

There is no data found indicating remarkable changes in law; rights of the accused are still recognised by laws, including the right to counsel, or having the presence of trusted persons during interrogation. The accused is also entitled to meet and talk with the person who will be his or her lawyer, and has the right to let his or her lawyer or trusted person be present during interrogation.\(^{59}\) In addition, the accused person is entitled to be informed of these rights at the time of arrest.\(^{60}\)

\(^{54}\) Criminal Procedure Code, Section 135.  
\(^{55}\) Penal Code, Section 78.  
\(^{56}\) Criminal Procedure Code, Section 90.  
\(^{57}\) Criminal Procedure Code, Sections 2(2) and (3).  
\(^{58}\) Id., Sections 227, para 2.  
\(^{59}\) Criminal Procedure Code, Sections 7/1 (1) and (2).  
\(^{60}\) Id., Section 7/1, para 2.
Moreover, under the Criminal Procedure Code, in offences punishable by death penalty, or where the accused is less than 18 years old, the inquiry official or court must ask the accused if he or she has a lawyer. If he or she does not have one, then the state shall appoint one. The appointed lawyers are entitled to receive a gratuity and be paid for their expenses by the court, pursuant to the rules designed by the Administrative Committee of Court of Justice.

**Knowing the Nature and Cause of the Accusation**

There is no data found indicating remarkable changes in law; the right to be informed is still guaranteed by laws. According to the Criminal Procedure Code, the arrestee has the right to be informed of the precise charges against him, and in case an accused person is summoned or brought or appears voluntarily before the inquiry official, the official shall notify him of the charges. The right to communicate with their legal counsel is confirmed by the provision of the Criminal Procedure Code, which states that the arrestee or accused person is entitled to be informed of the right to meet and talk with his or her lawyer, and is entitled to communicate with his or her lawyer. Additionally, the accused is entitled to have the presence of the lawyer or trusted person during interrogation, and to appoint the lawyer to deal with preparing his or her defence at any stage of the proceedings.

**Guarantees during Trial**

There are no significant changes found in law; the right to be tried without delay, or the right to a speedy trial, is guaranteed by the Criminal Procedure Code. From the time of the entry of a charge, an accused is entitled to be tried speedily, continuously, and fairly. It restates that the accused is entitled to be examined rapidly, consecutively, and impartially. Additionally, the trial and taking of evidence shall be conducted in open court and in the presence of the accused. The trial and taking of evidence in the absence of the accused shall be done as an exception where the accused and lawyer have the court’s permission not to attend the trial and the taking of evidence. In addition, 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.

**Appeal**

No data indicating remarkable changes in policy or practice was found; the right to appeal is still recognised by the law. The Courts of Justice, which has jurisdiction over all cases, comprise the following: Courts of First Instance; the Court of Appeal, and the Supreme Court of Justice (Dika Court). The Criminal Procedure Code,

---

61 Criminal Procedure Code, Sections 134/1 and 173.
62 The Administrative Committee of Court of Justice’s Rules on the Gratuity and Expense Payment for the Lawyer Appointed by the Court for the Accused or Defendant According to Article 173 of the Criminal Procedure Code B.E. 2548, and (No. 2) of B.E. 2550.
63 Criminal Procedure Code, Section 84.
64 Id., Section 134.
65 Criminal Procedure Code, Sections 7/1 and 8(3).
66 Id., Section 134/4 (2).
67 Criminal Procedure Code, Sections 8(1) and 134 para 3.
68 Id., Section 172.
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.\textsuperscript{69} 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.\textsuperscript{70}

\textbf{Freedom from Double Jeopardy}

No data indicating remarkable changes in policy or practice was found; the principle of \textit{Ne Bis in Idem}, that no one shall be twice tried for the same offence, is recognised under the Penal Code and the Criminal Procedure Code. The Penal Code forbids punishment for the same act, including offences committed outside the country where the final judgment of the foreign court acquits or convicts the accused, in which case such judgment is final, and he or she may not be prosecuted again in Thailand.\textsuperscript{71} In addition, Article 39 of the Criminal Procedure Code prohibits the prosecution of a case for the same cause of action twice and the re-trial or re-punishment of an offence, where a person has already been convicted or acquitted.

\textbf{Remedy before a Court for Violations of Fundamental Rights}

Even though the provision regarding the right of victims and witnesses to seek remedy, as stipulated in the 2007 Constitution, was annulled, victims of crimes who suffer damage to their rights may receive reasonable restitution. Under the provision of 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 commission of the offence.\textsuperscript{72} In addition, 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.

Despite there being no remarkable change in policy, since the 2014 coup, there has been no explicit practice on remedy before the court for fundamental rights violations, in particular, for persons whose fundamental rights have been violated by the coup as well as the junta government.

\begin{footnotesize}
\begin{enumerate}
\item Id., Sections 192 bis, 218 and 219
\item Id., Section 193 and 216.
\item Penal Code, Sections 10 and 11.
\item Criminal Procedure Code, Section 44/1.
\end{enumerate}
\end{footnotesize}
C. On Central Principle 3:
(The process by which the laws are enacted and enforced is accessible, fair, efficient and equally applied)

Law Enactment

*Openness and Timeliness of Release of Record of Legislative Proceedings*

Legislation may be introduced through three channels: the National Legislative Assembly; the Council of Ministers; and the National Reform Council, as stated in the Constitution. Upon approval of a bill by the National Legislative Assembly, the Prime Minister shall present it to the King for His Royal Signature within 20 days from the date of the receipt of the bill from the National Legislative Assembly. The law comes into force upon its publication in the Government Gazette.

The legislative proceedings are made publicly and conveniently accessible. Every person has access to legislative proceedings by following and watching them online through the website of the Thai National Legislative Assembly at <http://www.senate.go.th/w3c/senate/main.php>.

*Timeliness of Release and Availability of Legislative Materials*

Draft acts, recordings, and transcripts are promptly uploaded on the website <http://www.senate.go.th/w3c/senate/lawdraft.php> for universal access. Apart from watching a real-time webcast of the National Legislative Assembly at <http://www.senate.go.th>, everyone who is unable to watch it in real time is able to access day-by-day legislative proceedings by getting the transcripts or minutes of the proceedings via such websites.

As stated above, legislative proceedings are publicly accessible in a convenient manner. Hence, everyone is able to get official draft laws and records of the legislative proceedings from the website of the Thai National Legislative Assembly at <http://www.senate.go.th/w3c/senate/main.php>, or of the Office of the Council of State at <http://www.krisdika.go.th>.

Law Enforcement

*Equal Protection of the Law and Non-Discrimination*

In Thailand, there is no Sharia Court, 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 poor is entitled to assistance for equal access to the courts, provided by the Legal Aid Unit of the Lawyers Council of Thailand. It provides free consultation and advice on legal issues, free representation to eligible persons, and legal dissemination activities. Further, 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.
Equality before the law is still protected by the law. Although the 2007 Constitution was revoked, Section 4 of the 2014 Interim Constitution recognises and protects human dignity, rights, liberties, and equality previously enjoyed by the Thai people under conventions issued by a democratic regime of government with the King as Head of State and existing international obligations. However, in practice, after the coup, equal protection of the law and non-discrimination has been challenged by the junta in banning political gatherings and arresting and detaining politicians and anti-coup activists.

Reparation for Crimes and Human Rights Violations’ Victims/Survivors

Although the provision of the 2007 Constitution regarding the right of victims and witnesses to seek remedy was annulled, under the Criminal Procedure Code victims are entitled to claim reparation both from the offenders directly pursuant to the Criminal Procedure Code, and from the state according to the Compensation for Victims of Crime Act, B.E. 2544. An injured person is entitled to submit the request for compensation 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 known to the injured person.73 There is no available data highlighting practice in regards reparations for human rights abuses after the 2014 coup.

D. On Central Principle 4:
(Justice is administered by competent, impartial, and independent judiciary and justice institutions)

Appointment and Other Personnel Actions in the Judiciary and among Prosecutors

No data indicating remarkable changes in policy in regards personnel actions was found. Administratively, judges and prosecutors are in practice independent from the influence of the military government. The appointment and removal from office of a judge or a prosecutor is done by the King. To be appointed as a judge or a prosecutor, a candidate must pass a highly competitive examination and chosen to be trainee before the royal appointment.

The judiciary was completely separated from the Ministry of Justice. The President of the Supreme Court acts as the 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 work, judicial affairs, and judicial technical affairs, including cooperation with other government agencies.74 Section 26 of the Interim Constitution affirms the independence of judges. Additionally, there are some laws to ensure judicial independence, such as the Law on Court Organisation, B.E. 2543, in which Section 32 provides that the President of the Supreme Court, the President of the Court of Appeal, presidents of regional courts of appeal, chief judges of courts of first instance, chief judges or chief justices of divisions in each court, shall be responsible for the assignment of cases to quorums of judges in their respective courts or divisions, in accordance with the rules and procedures prescribed by the judicial regulations of the Courts of Justice and the Judicial Officials’ Regulations Regarding Cases Management. However, as noted above, the

73 The Act on Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case B.E. 2544 (2001), Section 22.
74 Rule of Law for Human Rights Study, p.272
power of judicial review has been significantly clipped by the NCPO.\textsuperscript{75}

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

Hence, administratively, the judiciary and its functions are virtually independent from both the legislative and executive arms of government. 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.

\textbf{Training, Resources, and Compensation}

With regard to the training of the judiciary, the Judicial Training Institute is an institute responsible for the training of judicial personnel.\textsuperscript{76} The institute runs various kinds of legal and related knowledge trainings and seminars for all levels of judicial personnel, namely: career judges (including judge-trainees), lay judges (associate judges), senior judges, and Kadis (Datoh Justice).\textsuperscript{77} Meanwhile, the Training and Development Office of the Attorney-General runs the training on legal and related knowledge programs for public prosecutors, as well as public prosecutor-trainees for annual recruitment.\textsuperscript{78} According to a study on the potential development of judges, inadequate training is seen in both the structures and contents of the trainings, in particular the content on human rights, ASEAN integration, and ASEAN legal instruments.\textsuperscript{79}

\textbf{State’s Budget Allocation for the Judiciary and Other Principal Justice Institutions}

From 2011 to 2016, Thailand allocated budgets for the Ministry of Justice at around 0.05-0.15% of the total state budget. The amount of THB 2,364.1 million (0.1% of the state's budget) was allocated for the Ministry in 2011; THB 2,821.88 million (0.1% of the state's budget) in 2012; THB 2,862.16 million (0.14% of the state's budget) in 2013; THB 1,973.17 million (0.09% of the state's budget) in 2014; THB 1,512.54 million (0.07% of the state's budget) in 2015; and THB 1,256.97 million (0.05% of the state's budget) in 2016.\textsuperscript{80} Drawing from the mentioned statistics, the respective amounts allocated to the Ministry of Justice of Thailand are quite small compared to the overall amount of the budget each year, and the budget allocated decreased gradually in the last five years.

With regard to judicial agencies, THB 3,362.11 million (0.15% of the state’s budget) was allotted in 2015, and THB 4,697.24 million (0.20%) in 2016.

\begin{itemize}
\item \textsuperscript{76} Judicial Training Institute, <http://www.jti.coj.go.th/> accessed 1 February 2016.
\item \textsuperscript{77} The Act on Judicial Administration of the Courts of Justice, B.E. 2543
\item \textsuperscript{78} Training and Development Institute Office of the Attorney-General, <http://www.dt.ago.co.th> accessed 1 February 2016.
\item \textsuperscript{80} Bureau of the Budget, \textit{Thailand’s Budget in Brief Fiscal} <http://www.bb.go.th/> accessed 10 Feb 2016.
\end{itemize}
Impartiality and Independence of Judicial Proceedings

The independence of the judiciary is guaranteed continuously by the Constitution of the country, including by Section 26 of the current Interim Constitution. The current Interim Constitution does not include a provision concerning the impartial manner of judicial proceedings and freedom from improper influence. In practice, after the coup, there are some cases which were influenced by the junta government, particularly those against politicians and anti-coup activists.

The draft of the new Constitution explicitly provides that judges are not allowed to be political officials or hold political positions. These measures seek to prevent partiality and improper influence by public officials or any private cooperation.

Provision of Lawyers or Representatives by the Court to Witnesses and Victims/Survivors

No data indicating remarkable changes in policy or practice on competence and adequate training for lawyers was found. Lawyers, under the Criminal Procedure Code, have to be qualified lawyers who hold Bachelor of Laws (LL.B.) degrees from university and should have passed a training course provided by the Lawyers Council of Thailand. Regarding their sufficiency in number, as at 10 February 2016, there were 65,647 lawyers registered as members of the Lawyers Council of Thailand, which reflects a sufficient number of lawyers in the country.

Safety and Security of the Judiciary, Prosecutors, Litigants, Witnesses, and Affected Public

No data indicating remarkable changes in policy or practice was found. There is no specialised sector responsible for the security and protection of prosecutors, judges, judicial officers, as well as courthouses. However, Ministerial Regulation on National Security, B.E. 2552 states that all governmental organisations shall have their own security mechanisms so the respective offices of judicial officials and the Office of the Attorney General have to provide security for their personnel and the 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. The members of the public, journalists, and affected parties enjoy the protection as such. 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.

---

81 2016 Draft Constitution, Section 198.
82 Ministerial Regulation on National Security B.E. 2551, Section 8.
Specific, Non-Discriminatory, and Unduly Restrictive Thresholds for Legal Standing

No data indicating remarkable changes in policy or practice was found; the threshold for standing before the courts of justice is prescribed by the Criminal Procedure Code and the Civil Procedure Code. Under the Criminal Procedure Code, cases can be brought by the Public Prosecutor and/or the injured person.83 The threshold for criminal cases relates to the injury sustained as a result of any offence under the Penal Code, and such injury must have resulted from the act of the accused (causation). A criminal case may be withdrawn at any time before it is decided, but if the Public Prosecutor withdraws the 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 reinstituting the suit. In the same way, the withdrawal of cases relating to a non-compoundable offence by the injured person does not preclude reinstitution of the case by the public prosecutor.84

In civil cases, under the Civil Procedure Code, the thresholds for legal standing before the civil court are: disputation involving his or her rights or duties under the civil law or willingness to exercise his or her right through a court. If the case meets these requirements, the plaintiff may submit his or her case to a civil court having jurisdiction and competence over the case.85

Publication of and Access to Judicial Hearings and Decisions

No data indicating remarkable changes in policy or practice was found; the judgment or order shall be read in open court, and then made available to parties to the case. Non-interested third parties do not have access to the full judgment of the court of justice, but only to the summary of the judgments of the Supreme Court through the official website of the Supreme Court at <http://www.deka2007.supremecourt.or.th/deka/web/search.jsp>. Moreover, judgments of the Administrative Court and the Constitutional Court are published publicly. Everyone can access the decisions and judgments of these courts through the official website of the Constitutional Court <http://www.constitutionalcourt.or.th> or the official website of the Administrative Court <http://www.admincourt.go.th>.

Reasonable Fees and Non-arbitrary Administrative Obstacles to Judicial Institutions

No data indicating remarkable changes in policy or practice was found; the jurisdiction of the courts is divided into four sections according to the court concerned: Civil Courts, Criminal Courts, Municipal Courts, and Provincial Courts. The municipal courts hear smaller matters, where the civil claim does not exceed THB 300,000 (approx. US$ 10,000), or when the imposable prison sentence does not exceed three years or a fine not exceeding THB 60,000 (approx. USD 2,000). Another difference between municipal courts and general courts is quorum. A general court requires two judges, whereas a single judge presides in a municipal court.

83 Criminal Procedure Code, Section 28.
84 Id., Sections 35 and 36.
85 Civil Procedure Code, Section 55.
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 two per cent of the disputed sum. In addition, there are some other administrative obstacles, such as justice services, which are very complicated and require legal knowledge. These obstacles increase inaccessibility to the courts for the poor; however, they may have access through the Legal Aid Unit in Thailand, particularly through the Lawyers Council of Thailand.

**Assistance for Persons Seeking Access to Justice**

No data indicating remarkable changes in policy or practice was found. Under the Constitution, all Thai persons are equal before the law, and everyone is entitled to equal protection by the law. All Thais have equal access to justice. The poor are entitled to assistance for equal access to the courts. This is provided by the Legal Aid Unit of the Lawyers Council of Thailand, the Thai Bar, or the Office of the Attorney General.

**Measures to Minimize Inconvenience to Litigants and Witnesses, and their Families, Protect their Privacy, and Ensure Safety from Intimidation/Retaliation**

No data indicating remarkable changes in policy or practice was found; the Act on the Protection of Witness in Criminal Cases Act, BE 2546 provides for the general and special protection of witnesses in criminal cases, and for the consideration of witnesses for compensation and allowances. In addition, the Office of Witness Protection was established in 2003 to deal with the protection of witnesses. Further, the Judicial Officials Regulation on the Treatment of the Witness, B.E. 2548 provides that witnesses should be treated politely and in a non-discriminatory fashion, bearing in mind local customs and traditions. The Criminal Procedure Code was amended to include a new procedure for the interrogation of children who are victims of violence, particular domestic violence, by allowing them to have prosecutors, psychologists, and social workers present during interrogation. Teleconference testimonies may be provided during the hearing to reduce confrontation with the defendants.\(^{86}\) In addition, the Compensation for Victims of Crime Act, BE 2544 of 2001 also provides measures that consider compensation for the victims or injured persons in criminal cases.

**Available and Fair Legal Aid to All Entitled**

There are several legal aid organisations and programs in Thailand, and everyone can receive such aid. Some legal aid bureaus are supported and funded by the national government, while others are supported with funds from private enterprises. Much of the state-sponsored legal aid is provided by the Office of the Attorney General. With its role as the principal agency responsible for criminal prosecution and the provision of legal advice to the government and state agencies, the Office of the Attorney General is also tasked with the duty to protect civil rights and provide legal aid/assistance to the needy.\(^{87}\) Legal aid is also offered in certain circumstances by the Lawyers Council, the Rights and Liberties Protection Department of the Ministry of Justice, the Legal Aid Office of the Thai Bar, and various law schools.

\(^{86}\) Criminal Procedure Code, Section 133 bis.

General Public Awareness of Pro Bono Initiatives and Legal Aid or Assistance

The pro bono culture in Thailand is still at the beginning stage of development. Overall, the level of pro bono activity in Thailand is quite low, especially compared to the size and scope of the legal profession in Thailand. Support for pro bono work in the private sector is particularly lacking, and only a small minority of lawyers at private law firms volunteers their time for law-related pro bono projects. Nonetheless, there are limited pockets of pro bono opportunities in Thailand, mainly offered by non-profit organisations.

III. INTEGRATING INTO A RULES-BASED ASEAN

Progress towards Achieving a Rules-Based ASEAN Community

On Mutual Support and Assistance on the Rule of Law

To strengthen the rule of law pursuant to the blueprint of the ASEAN Political and Security Community (APSC), the Thailand Institute of Justice (TIJ) proposed to establish an ASEAN Conference on Crime Prevention and Criminal Justice (ACPCJ), which was accepted by Member States at the 16th ASEAN Senior Law Officials Meeting (ASLOM) held in Bali, Indonesia. The ACPCJ aims to promote and examine regional legal cooperation on the prevention of transnational organised crime and the strengthening of criminal justice institutions to facilitate greater ASEAN cooperation in support of ASEAN integration. Importantly, Thailand has already ratified the Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries, which will be used as an instrument for cooperation on mutual assistance in criminal matters in the ASEAN region. In addition, Thailand has already arranged bilateral extradition treaties with many countries, such as the United Kingdom, Belgium, United States, China, Bangladesh, and some ASEAN countries, i.e., Cambodia, Laos, Indonesia, Malaysia, and the Philippines.

On Legislative and Substantive Changes Promoting the Rule of Law

Thailand is in the process of drafting a new Constitution, wherein rule of law is one of the fundamental principles, The draft of the new Constitution contains provisions concerning the rule of law, which is applied throughout the legislative, executive, and judiciary branches of government. Civil society and politicians from all sides are reported to have expressed that they do not want a Constitution that will prolong military rule or distort democratic will. The draft currently provides the process for electing members of the House of Representative and the process for electing and selecting the members of the Senate. The draft also allows the possibility of a parliament-selected Prime Minister, if approved by a joint session of the lower house and the appointed Senate.

On Enactment of Laws relating to the ASEAN Community Blueprints and Similar Plans

To comply with the ASEAN Blueprints, the Preparedness Centre for the ASEAN Community (PCAC) has been set up, and Prime Minister Prayut Chan-o-cha chairs the Centre. The country has not yet amended the law or enacted a new law to implement the ASEAN blueprints, but the country has a plan to amend the law, as well as enact new laws, to promote compliance with the blueprints, such as at least seven pieces of legislation related to copyright, engineering, immigration, trademarks, extradition, foreign business, and foreign workers.

On Integration as Encouraging Steps toward Building the Rule of Law

After the coup in 2014, Thailand has been under a junta regime. The issue of the rule of law is widely criticised in public. ASEAN integration covers the rule of law in each ASEAN country, including Thailand. The rule of law in Thailand is promoted and encouraged under the drafting process of the new Constitution of the country and in the rule of law provisions provided in the current draft of the new Constitution, which recognise the rule of law in the legislative, executive, and judicial branches of government. However, some provisions of the draft Constitution are deemed problematic, including by the different political parties of the country. For example, the Democratic Party’s leader, Abhisit Vejjajiva, expressed concern that the draft would deprive people of their right to participate in the political process.

On the Contribution of ASEAN Integration to the Building of Stronger State Institutions

The Thailand Institute of Justice (TIJ) was established by the Royal Thai Government in 2011, aiming to promote excellence in research and capacity building in justice and against crimes. Building on Thailand’s engagement in the UN Commission on Crime Prevention and Criminal Justice and the UN Crime Congresses, TIJ serves as a bridge that transports global ideas to local practise, including in enhancing domestic justice reform and the rules-based community within the ASEAN region. The primary objectives of the TIJ are to promote the implementation of the United Nation Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) as well as other relevant UN standards and norms, especially those related to women and children. TIJ also gears its work towards important cross-cutting issues on the UN agenda, such as the rule of law, development, human rights, peace, and security.

Prospects and Challenges

Challenges to a Strengthened Commitment to the Rule of Law

Strengthening the rule of law is challenged by the political instability in the country, particularly, under the junta government, in which the rule of law is eroded by the coup and the NCPO has broad authority to limit or suppress fundamental human rights and is granted immunity for its actions. Media is controlled by the military and human rights violations have been commented on and argued negatively in many forums in all levels: domestically, regionally, and globally.

Commitments and Plans/Initiatives in relation to ASEAN-wide Commitments and Declarations on Human Rights

Thailand has commitments concerning the rule of law for human rights in regional instruments, such as the ASEAN Charter, the ASEAN Declaration against Trafficking in Persons Particularly Women and Children and the ASEAN Declaration on Human Rights, which have been signed by Thailand. In addition, the country has ratified the Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries, and signed but not yet ratified the binding ASEAN Convention Against Trafficking in Persons, Especially Women and Children, which aims to prevent and combat trafficking in persons, to ensure the just and effective punishment of traffickers, to protect and assist victims, and foster cooperation among the parties. Apart from that, the country initiated the Regional Plan of Action to Combat Trafficking in Persons in the ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) in 2012 to support the UN Global Plan of Action to Combat Trafficking in Persons and initiated the ASEAN Convention on Trafficking in Persons during the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) in 2013.93

IV. CONCLUSION

Nexus of the Changes to the Overall State of the Rule of Law for Human Rights

Due to the country’s situation, the rule of law provisions recognised by the Constitution were revoked. Thus, the role of the rule of law for human rights, as an issue, has been questioned after the 2014 coup. The junta government, which was set up after the coup, has been questioned in particular for the way it has come to power and its exercise of power. The rule of law, which is fully recognised by the 2007 Constitution, has been eroded by the coup and continues to be eroded by the exercise of power by the junta. Hence, overall, the rule of law for human rights in the country has been degraded in the view of the international community.

Contributing Factors

The main factor that eroded the rule of law in the country has been the political conflict and the 2014 military coup. The military regime plays a great role in eroding the regime of the rule of law for human rights in the country. In particular, after the coup, the revocation of the 2007 Constitution, including the rule of law provisions, led to the country under the junta regime to be questioned for violations of human rights, particularly those committed by the NCPO and soldiers.

Role of the ASEAN Declaration on Human Rights in Strengthening Rule of Law for Human Rights

The principles on democracy, the rule of law, and human rights stipulated in the ASEAN Charter as well as the ASEAN Declaration on Human Rights reflect the regional development of the rule of law and human rights, which creates a good reputation not only for the region as a whole, but for each ASEAN country, particularly those committed by the NCPO and soldiers.

93 Ministry of Foreign Affairs, <http://www.mfa.go.th/main/th/issues/9894-%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%84%E0%B9%89%E0%B8%B2%E0%B8%A1%E0%B8%99%E0%B8%B8%E0%B8%A9%E0%B8%A2%E0%B9%8C.html> accessed 10 March 2016.

Update on the Rule of Law for Human Rights in ASEAN: The Path to Integration
including Thailand. Thailand is a signatory of the ASEAN Declaration on Human Rights, in which a minimum standard of human rights guarantees is recognised by the international community. However, there are events that erode the rule of law, such as the coup in 2014 and its aftermath, and other alleged human rights violations by the junta—in particular, violations of the political rights of the people in the country and the violations of human rights by officials, especially those under the control of the NCPO.
BIBLIOGRAPHY


Ministry of Foreign Affairs, <http://www.mfa.go.th/main/th/issues/9894-%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%84%E0%B9%89%E0%B8%B2%E0%B8%A1%E0%B8%99%E0%B8%B8%E0%B8%A9%E0%B8%A2%E0%B9%8C.html> accessed 10 March 2016.


**LAWS AND REGULATIONS**

Civil Procedure Code

Criminal Procedure Code

Ministerial Regulation on National Security B.E. 2551

Penal Code.

The Act on Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case B.E. 2544 (2001)

The Act on Judicial Administration of the Courts of Justice, B.E. 2543

The Administrative Committee of Court of Justice’s Rules on the Gratuity and Expense Payment for the Lawyer Appointed by the Court for the Accused or Defendant According to Article 173 of the Criminal Procedure Code B.E. 2548, and (No. 2) of B.E. 2550

The Draft Constitution of the Kingdom of Thailand, B.E. 2559 (2016)

The Constitution of the Kingdom of Thailand, B.E. 2550 (2007)

The Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005)

The Interim Constitution of the Kingdom of Thailand, B.E. 2557 (2014)
Regulations of the President of the Supreme Court on Rule and Procedure Relating to the Issuing of the Order or a Warrant B.E.2548 (2005)

WEBSITES

Administrative Court <http://www.admncourt.go.th/>

Judicial Training Institute <http://www.jti.coj.go.th/>

Lawyers Council of Thailand under the Royal Patronage <http://www.lawyerscouncil.or.th/>

The Thai Bar under the Royal Patronage <www.thethaibar.or.th>
