

**Reply of the Kingdom of Thailand on the List of Issues
To be taken up by the Human Rights Committee
in connection with the consideration of the initial report of Thailand
under Article 40 of the
International Covenant on Civil and Political Rights-ICCPR**

Constitutional and legal framework within which the Covenant is implemented (Art. 2)

1. Please provide examples of cases, if any, in which the provisions of the Covenant were directly invoked before the courts, and with what results.

Thailand adheres to the dualist system which means that an international treaty to which Thailand has become party does not automatically form part of Thai law. Such treaty needs to be transformed into Thai law for it to be enforceable within the Kingdom.¹ However, Section 224 (2) of the 1997 Constitution of the Kingdom of Thailand stipulates, *inter alia*, that “[a] treaty which ... requires the enactment of an Act for its implementation must be approved by the National Assembly.” Thus, before becoming party to a treaty, a process needs to be taken to scrutinize treaty provisions to determine whether parliamentary approval needs to be sought. In the case of the Covenant, there have already been legal provisions under existing law which can give effect to the obligations thereunder. The Covenant can thus be invoked via such provisions before Thai courts which enforce those provisions under the due process of law. A recent example is a judgment in March 2005 in which Mrs. Gun-Tia, a Cambodian citizen and an agent for human trafficking, was arrested and prosecuted in Thailand for luring 11 Cambodian children and women into prostitution in Malaysia, using Thailand as a transit country. She was sentenced to 50 years of imprisonment by the Thai Court for having committed offences under Sections 283 and 319(2) of the Thai Penal Code relating to sexual exploitation and indecent treatment of minors. In this case, the rights guaranteed by the Covenant, particularly by Articles 2, 7, and 24, were protected by the Thai Court applying Thai legal provisions.

Examples of the Thai Implementing Legislation

The Covenant	The Thai Implementing Legislation
Article 1	Sections 282-290 of the 1997 Constitution
Article 2	Sections 30, 39, 54, and 55 of the 1997 Constitution
Article 3	Section 30 of the 1997 Constitution
Article 4	Section 29 of the 1997 Constitution

¹ Sec. 233 of the Thai Constitution stipulates:
“The trial and adjudication of cases are the powers of the Courts, which must proceed in accordance with the Constitution and the law and in the name of the King.”

Article 5	Sections 29 and 63 of the 1997 Constitution
Article 6	Section 31 of the 1997 Constitution
Article 7	Section 31 of the 1997 Constitution
Article 9	Section 31 of the 1997 Constitution
Article 12	Section 36 of the 1997 Constitution
Article 15	Section 32 of the 1997 Constitution
Article 17	Section 34 of the 1997 Constitution
Article 18	Section 38 of the 1997 Constitution
Article 19	Section 34 of the 1997 Constitution
Article 21	Section 44 of the 1997 Constitution
Article 22	Section 45 of the 1997 Constitution
Article 26	Section 30 of the 1997 Constitution
Article 27	Section 46 of the 1997 Constitution

Accordingly, no provision of the Covenant has been directly invoked before the Thai courts.

If it is found subsequently that the existing law is insufficient to fully give effect to the Covenant provisions, the Royal Thai Government is obligated to enact new legislation to implement its obligations under the Covenant.

2. Is the State party considering the ratification of the first Optional Protocol to the Covenant?

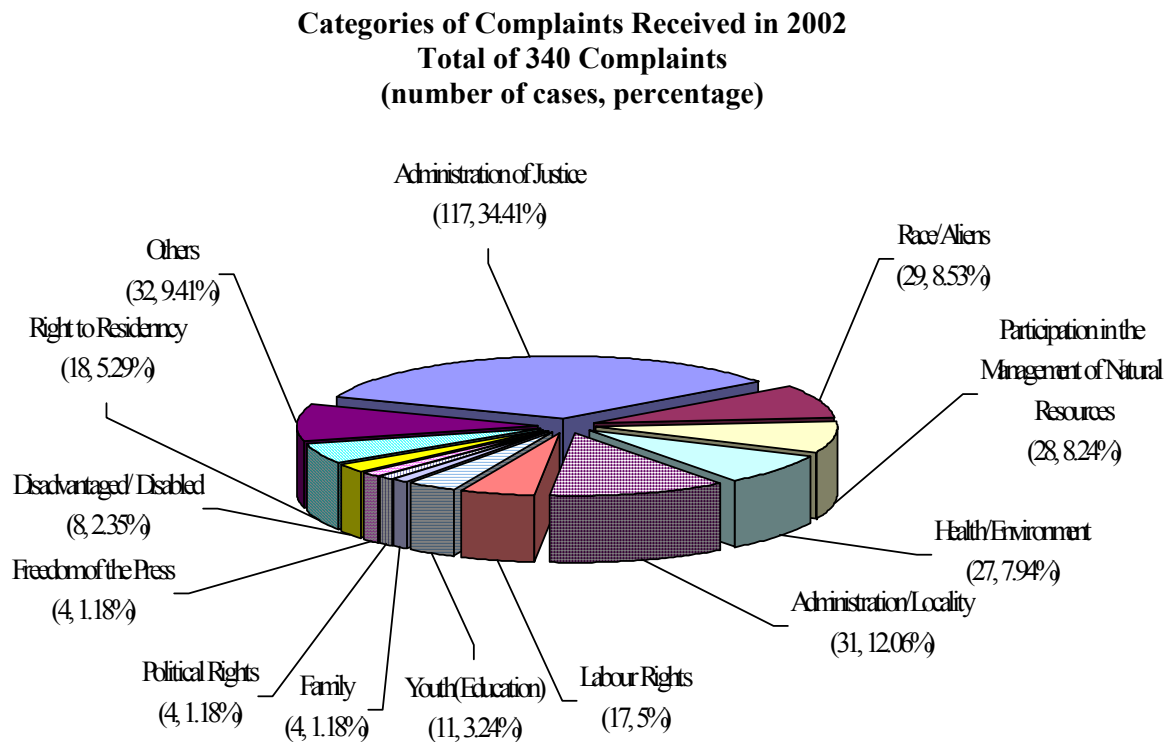
Thailand attaches importance to all human rights instruments. Currently, Thailand is in the process of becoming party to (1) the Convention against Torture, (2) the two Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, and on the Sale of Children, Child Prostitution and Child Pornography which we expect to be able to become party by the end of this year, and (3) the First Additional Protocol to the four Geneva Conventions of 1949. However, the process of becoming party to these instruments pursuant to Section 224 (2) of the Thai Constitution takes some time. When that process is completed, Thailand will begin the process of becoming party to the First Optional Protocol to the Covenant.

3. Please inform the Committee about action taken by the National Human Rights Commission since its establishment (paras. 187-189 of the report) in the implementation of the Covenant rights. Please provide figures on how many complaints have been received, and how many investigations have been made by the NHRC, and with what results.

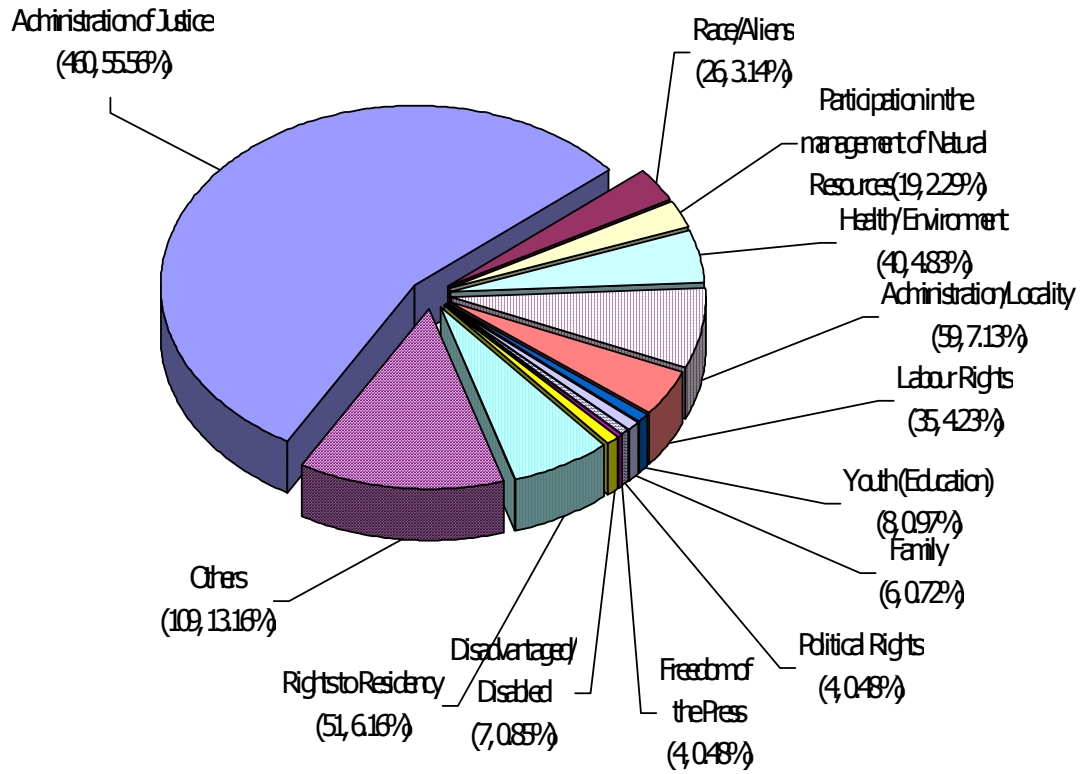
The National Human Rights Commission has been established pursuant to the 1999 National Human Rights Commission Act in accordance with Sections 199-200 of the 1997 Constitution of the Kingdom of Thailand. As an independent body, its main responsibilities are to promote and protect human rights, including civil and political rights, as prescribed in the Constitution, legislation and human rights treaties to which Thailand is party.

The following information is supplied by the National Human Rights Commission as of 31 May 2005.

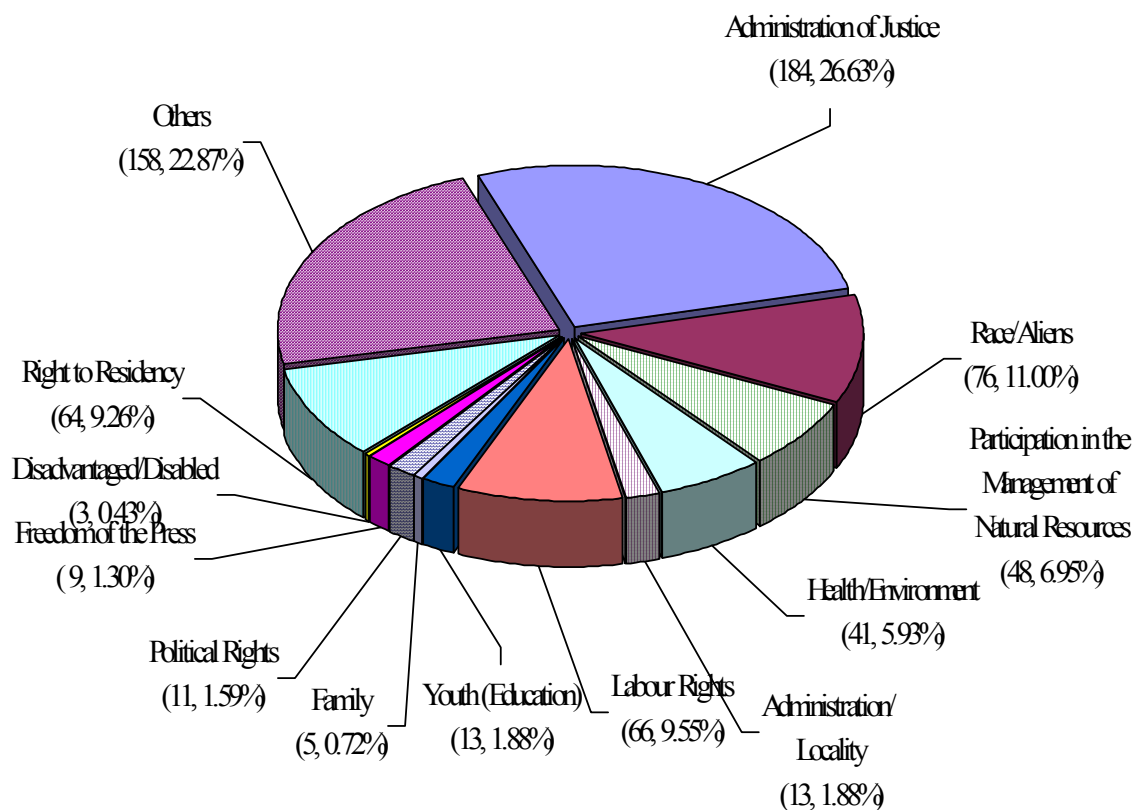
Since the Commission began its functioning on 13 July 2001 till 31 May 2005, it received a total of 2,148 complaints of which 1,309 have already been investigated, 559 are still in the process of investigation, and 209 in the process of gathering evidence. These complaints cover not only civil and political rights but also other spheres of rights including economic, social and cultural rights. The statistics of the categories of complaints received between 2002 - 2004 are provided as follows:



Categories of Complaints Received in 2003
Total of 828 Complaints
(number of cases, percentage)



Categories of Complaints Received in 2004
Total of 691 Complaints
(number of cases, percentage)



Derogations (Art. 4, 6, 7, 8, 9)

4. (a) Has a state of emergency been declared by Thailand and have the provisions of article 4 been complied with?

The state of emergency which threatens the life of the nation within the meaning of Article 4 of the Covenant is covered by the 1952 Administration in Emergency Situation Act, Section 3 of which defines, *inter alia*, “a state of emergency” as “a situation which may threaten the security and safety of the Kingdom or may put the nation into a crisis or a state of combating or war as will be declared to the public.”

As of 15 July 2005, Thailand had never declared a state of emergency since becoming party to the International Covenant on Civil and Political Rights in 1996. However, on 15 July 2005, the Thai Cabinet has approved the replacement of the 1952 Act by the new 2005 Administration in Emergency Situation Act, which will be submitted to Parliament when it resumes its session in September 2005.

(b) In the light of the reports about the escalating violence and tensions in the Southern provinces, and the special powers given to the military personnel by way of the Martial Law (para. 471) and section 6 of the Military Law (para. 472), please explain how the State party intends to guarantee respect for the non-derogable rights mentioned in article 4 when a state of emergency is declared. In this connection, please provide information on the extent of the application of Martial Law in the State party (paras. 236(a); 471-3; 490(d)(ii)), including the extension of its application as declared by the Prime Minister in June 2004. Please specify which articles of Martial Law are extended to which particular geographical areas of the State party and under what circumstances.

1. Paragraphs 471- 473 and 490(d)(ii) of the report stated the principles of the 1914 Martial Law Act in general. As far as the situation in the Southern provinces of Thailand is concerned, military personnel have been given power under the Martial Law Act of 1914 in order to deal with the unrest as well as to contribute to social development and resource management to win heart and mind of the local people there.

2. The deployment of military personnel in the area is due largely to the fact that the continuing unrest is sporadic in its geographical locations and the police do not have sufficient manpower to cover the entire area of the 3 provinces, therefore martial law was proclaimed so as to give military personnel legal authority to help the police within a strictly limited and temporary mandate to contain the situation.

3. It must be stressed, however, that there is no derogation of fundamental rights guaranteed by Article 4 of the Covenant. In particular, the application of the Martial Law Act of 1914 is subject to other constitutional guarantees. Furthermore, according to Section 7 of the 1914 Act, except in the cases under the jurisdiction of Military Tribunal in time of war, civilian courts continue to be ordinary courts of law in the area in which the application of martial law has been declared.

4. Thailand has on 5 and 26 January 2004 officially proclaimed martial law in certain areas in Southern parts as follows:

Narathiwat Province: Muang, Bajor, Ruesor, Takbai, Su-ngai-padi, Yi-ngor, and Su-ngai-gorlok Districts

Pattani Province: Muang, Kapor, Nongjig, Yaring, Mayor, Yarang, Maelan, Saiburi, Tungyangdaeng, Kokpo, Maikan and Panarae Districts

Yala Province: Muang and Raman Districts and Krongpinang Sub-District

Satooon Province: Muang, Kuandon, La-ngu and Tapae Districts.

In the aforementioned areas, military personnel have confined the exercise of their powers under the Martial Law Act to the setting up of check points, conducting search without warrant (Section 9 of the 1914 Act) and detaining persons for interrogation without charge for up to 7 days (Section 15bis of the 1914 Act). The aforementioned powers are exercised to the extent absolutely necessary, duly taking into account the inconvenience it may cause to the persons involved. Safeguard measures are also in place to ensure transparency of the measures taken. For example, the exercise of powers under Section 15bis of the 1914 Act has in practice been more in the nature of inviting persons to cooperate by providing information.

5. There has been no extension of the application of Martial Law since it was proclaimed in January 2004. There was never a declaration by the Prime Minister to extend the application of Martial Law. Furthermore, in February 2005, the National Reconciliation Commission was set up by the Prime Minister, headed by former Prime Minister Anand Panyarachun and consisting of members from cross sectors of the Thai society, to study and

recommend to the Government the peaceful means, directions and solutions to resolve the unrest in the southern part of Thailand.

(c) With regard to the incidents in the southern provinces, please indicate the number of deaths that have occurred and the number of persons whose rights under articles 7 and 10 have been affected, including any consequent action taken by the authorities in this regard

1. The number of deaths and injured caused by the unrest in Pattani, Yala, Narathiwat and Songkhla Provinces from 4 January 2004 to 30 June 2005 is as follows:

- (1) Government officials: death-271, injured-416
- (2) Civilians: death-336, injured-748
- (3) Assailants: death-210, injured-70.

2. So far, no official complaint has been lodged with the police regarding alleged violations of rights contained in Articles 7 and 10 of the Covenant. Should the authorities receive such a complaint, action shall be taken promptly to investigate the matter in accordance with the rule of law. It is never the policy of the Thai Government to violate rights or impinge on freedom of individuals or to condone such violation/impingement. Thailand will do her utmost to protect human rights for all in accordance with its Constitution and international obligations even while the country faces indiscriminate violent militant attacks in the South.

3. The authorities have taken the following actions to provide assistance to those who died or were injured as a result of officials acting in their official capacity. In this regard, a national committee has been set up to look into the loss and suffering of those concerned. Remedies have been made in the form of financial assistance of upto 300,000 Baht per person. Other assistance has also been given to families of those who were affected, for instance, by providing free education, as well as social assistance to enable the family of the affected persons to continue their daily lives and living. All this assistance has been offered by the Government regardless of the result of the investigation into the deaths of the affected persons in an attempt to restore reconciliatory atmosphere in the restive South.

- (1) Persons affected by officials acting in an official capacity in Yala and Pattani Provinces including the Krue Se Mosque incident are entitled to receive monetary assistance from the Royal Thai Government in the amount of at least 100,000 Baht per person.
- (2) Persons affected in the Tak Bai incident are entitled to receive monetary assistance as follows:
 - The family of those deceased: 100,000 Baht
 - Those made permanently disabled: 80,000 Baht
 - Those seriously injured but not permanently disabled: 50,000 Baht
 - Those less severely injured: 30,000 Baht
 - Those with minor injuries: 10,000 Baht.
- (3) Children affected or orphaned by the above incidents: scholarships of up to 20,000 Baht per year until their graduation with a bachelor's degree.

As for other civilians who have been affected both in the cases of death and injury, they have also been given government assistance likewise. In addition, the Prime Minister has instructed all authorities concerned to make a prompt payment and avoid any delay in payment to both the people affected by acts of government officials and others.

5. Please provide information about the anti-terrorism laws adopted in the State Party, if any, and their compatibility with the Covenant, in particular articles 6, 7, 9, and 14.

At present, Thailand does not have specific anti-terrorism law nor specific anti-terrorism legal procedures. However, acts of terrorism or terrorism-related offences are proscribed under: (a) provisions of the 1978 Act of Certain Offences against Civil Aviations (as amended in 1995) enacted to implement the obligations under the 4 anti-terrorism conventions relating to civil aviation;² and (b) Sections 135/1-4³ of the Penal Code enacted in

² 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft; 1970 Hague Convention on the Unlawful Seizure of Aircraft; 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation; and 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, (supplementary to the 1971 Montreal Convention).

³ **Section 135/1**

Whoever commits any of the following criminal offences :

1. an act of violence or any act to cause death or serious injury to the life and freedom of an individual;
2. an act causing serious damage to a public transportation system, a telecommunication system, or an infrastructure facility of public use;
3. an act causing damage to property belonging to a State or an individual, or the environment, resulting or likely to result in major economic loss,

if the commission of the offence is intended to threaten or coerce the Royal Thai Government, or any foreign government, or an international organization, to do or abstain from doing any act which causes serious damages, or is intended to raise unrest so as to intimidate a population, that person is said to commit a terrorist act and shall be punished with death, imprisonment for life, or imprisonment of three to twenty years and fine of sixty thousand to one million .

Any demonstration, gathering, protest, objection or movement that calls for the government's assistance or for fair treatment, as an exercise of their freedom under the Thai Constitution, shall not be regarded as a terrorist offence.

Section 135/2

Whoever

1. threatens to commit a terrorist act by demonstrating behavior which leads to a reasonable belief that the person will do as threatened;
2. collects forces or arms, provides or compiles any assets, gives or receives training relating to terrorism, makes preparations or conspires to commit a terrorist act, or commits any offence which is part of the plot to commit a terrorist act, or instigate the people to partake in committing a terrorist act, or does any act to conceal the knowledge of the commission of a terrorist act, shall be punished with imprisonment of two to ten years and fine of forty thousand to two hundred thousand .

Section 135/3

Whoever being a supporter to commit any offence mentioned in Section 135/1 or 135/2, shall be liable to the same punishment as a principal in such offence.

2003 to implement Thailand's obligations under the Convention on Suppression of Financing of Terrorism, to which Thailand has become party. The rights guaranteed under Articles 6, 7, 9, 14 of the Covenant are guaranteed by the 1997 Constitution of the Kingdom of Thailand, the Penal Code, the Criminal Procedure Code, etc. which apply to all persons without distinction, including those accused or convicted of terrorism-related offences. Hence, an offender who is charged with terrorism-related offences is entitled to the same protection under the law as any other offenders. The amendment of the Penal Code in 2003 to include the elements of the crime of terrorism in the Penal Code is consistent with the provisions of the Covenant.

**Non-discrimination and gender equality; rights of persons belonging to minorities
(Art. 2 (1), 3, 26, 27)**

6. Please inform the Committee whether all rights guaranteed under Thai legislation, including Constitutional guarantees, are extended to all persons under its jurisdiction, including non-citizens, migrants, refugees and asylum-seekers.

The Constitution of the Kingdom of Thailand states unequivocally in Section 4 under Chapter I (General Provisions) the spirit and intent of the Constitution to protect the human dignity, including the right and liberty of all the people irrespective of their nationality.

Although the provisions of Chapter III are under the heading "Rights and Liberties of Thai People", only a few rights are reserved exclusively under Thai law to Thai nationals, such as the right to vote and the right to hold immovable properties.

Civil rights (for example, the right to equality before the law and equal protection under the law, non-discrimination, and the right and liberty in one's life and person) are accorded to all, be they Thai or non-Thai nationals.

The Government also attaches importance to revising existing regulations or to initiating new administrative measures to more effectively ensure better protection and promotion of fundamental human rights for all people living in Thailand without discrimination. Recent measures include, for instance,

(a) Cabinet's resolution on 18 January 2005 which endorsed the Strategy on the management of status problem and rights of persons. The strategy aims at resolving, in an effective and durable manner, the status and rights problems of some groups of people residing in Thailand, including the protection of their human rights in a systematic manner without adverse impact on national security and also attaching importance to the human dignity of these persons. The strategy includes urgent and long-term measures with regard to (1) measures to consider and identify appropriate legal status for groups of people with status and rights problems, (2) measures to ensure realization of their fundamental rights, and (3) systematic administrative measures.

Section 135/4

A person who is a member of a group designated by a United Nations Security Council resolution or declaration as a group committing an act of terrorism, which resolution or declaration has been endorsed by the Royal Thai Government, shall be liable to imprisonment not exceeding seven years and to fine not exceeding one hundred forty thousand .

(b) Cabinet's resolution on 5 July 2005 which endorsed the Ministerial Regulation with regard to the provision of education to children without household registration or those of non-Thai nationality. The new regulation would further expand access to education to all children residing in Thailand without restriction with regard to type or area where they will be educated (except for children of asylum seekers who will be provided education in the area where they reside). It also states the need to allocate subsidy-budget per head for institutions which provide education to these groups of children, the same as being provided to Thai children.

7. In addition to the information provided in paras. 56 and 57 of the report, please inform the Committee on whether discrimination on the basis of sex in Thai legislation, particularly in areas such as access to employment, access to social services and marriage and inheritance rights, is prohibited.

Respect for women's equal rights and dignity is well reflected in Thai legislation, policy and practices. Section 30 of the 1997 Constitution clearly stipulates that men and women shall enjoy equal rights. Unjust discrimination and treatment against women are, therefore, prohibited.

1. Employment

(1) Right to work- There is no law that limits women's right to work. Thai law, moreover, stipulates special protection for female workers and grants them certain rights that are different from men, based on differences between the sexes, particularly in terms of physical conditions, women's childbearing responsibilities and occupational safety.⁴

(2) Remuneration- For the same type and quality of work, female and male employees are entitled to the equal terms of wages, overtime, holiday and weekend benefits. In cases of violation, employers are subject to criminal penalty up to 20,000 Baht. The daily minimum wages equally available to male and female workers are set by a tripartite committee, consisting of employers, employees and government agencies concerned, and become legally effective through the decree issued by the Ministry of Labour. However, there remain some loopholes in the law, where employers may take advantage and pay lower wages than the minimum as prescribed by the decree, for in stance, by using a sub-contracting employment system. In this regard, the Prime Minister has recently assigned the Deputy Prime Minister overseeing the Ministry of Labour to receive representatives of employee associations to discuss for the first time how to prevent and get ride of such loopholes. The Ministry of Labour in consultation with employee representatives will seek the amendment of the law accordingly. At the same time, the Government is trying to solve the problem by strengthening law enforcement, such as toughening inspection of factories along with penalizing employers who have been found to violate the law.

2. Social Services

The Social Welfare Act B.E. 2546 (2003) which came into effect on 29 March 2004 serves as a blueprint for social welfare provisions by both the government and non-government sectors. It promotes and encourages individuals, families, communities, local administrative bodies and other organizations to participate in providing social welfare so as to help enhance human security for all individuals, in particular vulnerable groups, in an adequate, accessible and fair manner.

⁴ Ss. 15 and 146 of the Labour Protection Act of 1998.

3. Marriage

The nine conditions under Chapter 2 of Title 5 of the Civil Code (Sections 1448-1460) governing marriage apply to men and women equally. For example, it provides for equal minimum age of 17 for both men and women, that marriage is done only by agreement of both sides, and all are free to choose their own spouse in entering into marriage. To further promote gender equality within the family, the relevant provision of the Thai law has been amended to enable married women to retain their maiden name if they so wish.⁵

There are twelve grounds for divorce, but only one discriminates against women, that is, if a woman commits adultery just once,⁶ the husband may cite this behaviour as reason for divorce.⁷ On the other hand, a woman can only file for a divorce from her legal husband on grounds of adultery only if it could be proven that the latter supports and honors another woman as his wife.⁸ Efforts are being made to change the conditions for divorce so that men and women can have equal rights.

4. Inheritance

According to Sections 1629 and 1635 of the Civil Code, men and women have equal rights to inheritance.

With respect to equality within the family, issues related to the revision of some provisions of the family law which may still discriminate against women are continuously being raised and widely discussed among lawyers and legislators. Women's roles and contribution are also well recognized in politics, commerce, trade, education, academia, agriculture, and at home. This is to guarantee that, in practice, women can express their concerns and initiate changes when and where their rights are not fully respected.

A set of long-term Policies and Plan for the Development of Women (1992-2011) was formulated to address constraints and vulnerabilities encountered by women, and also to identify strategies and actions for the full enjoyment of human rights. Among areas of prime concern are the problems of women and poverty, violence against women, women and health, and women and sexual exploitation. It adopts an integrated, holistic and preventive approach to address not only the root causes of problems (such as social values which attach greater importance to men than women including inequality of opportunity or the existence of environments unfavourable to women, but also to ensure that women are more empowered through educational and training programme, including participation in decision-making.

8. Please inform the Committee of the extent of domestic violence, particularly against women in Thailand, and of the measures taken, legislative or otherwise to combat this problem.

There are incidents of physical and sexual abuse against women in Thai society even though government and non-governmental organizations have continuously conducted prevention campaigns and other measures to solve the problem. Most offenders are family members or acquaintances of the victims.

Sections 295-298 of the Penal Code stipulate that physical assault, within or outside of the family, is a criminal offence. However, in Thai society, domestic violence is considered a family matter, not normally subject to outside intervention. Consequently, in most cases,

⁵ Section 12 of the Personal Name Act of 1962 as amended by the Personal Name (No. 3) Act of 2005.

⁶ Section 1516 of the Civil Code

⁷ Section 1516(1) of the Civil Code

⁸ Section 1516(1) of the Civil Code

members of the victim's family including the victims themselves do not want to reveal the details of their ordeal to outsiders to ask for assistance or to prosecute the offenders. As a result, the number of reported cases of domestic violence represents only a small fraction of those who are abused.

According to an independent research conducted in 2001 on 2,078 women with a partner or previously having a partner, 56 % of them have never been subject to violence, 15 % of them have been subject to physical violence only, 16% of them have been subject to sexual violence only; and 13% of them have been subject to both physical and sexual violence.⁹

In terms of prevention, progress has been made in eradicating violence against women and children, particularly through collaborative efforts between the government and the private sector in initiating programme and activities, along with improvements and revisions in the law.

At present a new comprehensive draft legislation entitled the Prevention and Resolve of the Domestic Violence Act is in the process of being presented to Parliament for enactment.

The 1997 Constitution addresses the issue of violence in Section 53: "Children, youth and family members shall have the right to be protected by the Government from violence and unfair treatment". This statement clearly demonstrates society's concern about the problem of domestic violence.

Enactment of new relevant legislation related to violence against women include, *inter alia*,

(a) Section 133bis of the Criminal Procedure Code, as amended in 1999, provides for special procedure in interrogation of persons 18 years of age or younger who have been accused of, or are victims of or witnesses to any case including cases related to sex-related crimes. The purpose of the amendment is to make the interrogation process more child-friendly and allow children to testify without enduring further hardship. The law specifies several procedures that must be followed, including having a psychologist and social worker participate in the interrogation process and avoiding confrontation between the accused and the victim or witness;

(b) the enactment in 1996 of the Prevention and Suppression of Prostitution Act to toughen the punishment of those who exploit children aged below 18 years regardless of consent;

(c) the enactment in 1997 of the Act Concerning Measures of Prevention and Suppression of the Trafficking in Women and Children to combat local as well as transnational syndicates of organized trafficking;

(d) Section 287 of the Penal Code (as amended in 1982) extends the offence of pornography to cover offences committed on boys as well as girls; and

⁹ Krittaya Archvanijkul, Cheunruthai Karnjanajittra, Vasana Im-aim (Population and Society Research Institute, Mahidol University) and Usa Lertsrisantad (Women Foundation), "Initial Research on Violence against Ever Partnered Women: the Size of the Problem, the Effects on Health, and Solutions", Document for the Workshop and Campaign to Promote Love and Peace in Marriage Life organized by Working Group for the Elimination of Violence against Women and Alliance for Women's Progress and supported by World Health Organization and UNIFAME at Manangkasila Hall, National Council of Women under the Patronage of His Majesty the King, on 9-10 November 2001, at p. 15

(e) the enactment in 2003 of the Child Protection Act which came into effect on 30 March 2004 and is intended to provide protection for children from all forms of abuses, exploitation, violence and gross negligence by clearly stipulating that any child below the age of 18 is protected by the State. The law is consistent with every international legal instrument concerning children as it attaches primary importance to the maximum benefits of the child, prohibits unfair discrimination, and provides protection to every child in the country, irrespective of their nationality. To ensure its efficient implementation, a Child Protection Committee which has been set up at both national, provincial and district levels, comprising representatives of government agencies, non-governmental organizations, and experts working on child protection to ensure a multidisciplinary approach in addressing this matter, is now operational at all levels.

A draft Bill on Prevention and Resolve of Domestic Violence B.E.”, which aims to protect individuals and resolve all forms of domestic violence, was approved by the Cabinet on 12 July 2005.¹⁰

Administrative Measures

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The Cabinet’s Resolution on 29 June 1999 endorsed “eight measures to solve problems concerning violence against women” as proposed by non-governmental organizations through the National Commission on Women’s Affairs (NCWA). Those measures are to guard women’s safety both within the family and in public. They include the suppression of pornography, improvement in sex education, and improvement of services to victimized women, most notably the speeding up of the establishment of a centre to assist women in crisis in the emergency ward of public hospitals.

At present, a one-stop crisis service centre has been established in several hospitals around the country. A 24-hour hotline Centre has been set up by the Department of Public Welfare which is staffed by social workers and psychologists to provide counselling services and handle grievances and complaints.

The Centre for the Protection of Children, Youth and Women was established in 1998 within the Royal Thai Police through the collaboration of government and private organizations responsible for assisting children, youth, and women whose rights have been violated, especially in cases of assaults and sexual violence.

Emergency homes for children and families have been set up to provide temporary shelters for victims of domestic violence before sending them back home or before transferring them to other concerned agencies which could provide them with needed assistance.

¹⁰ The substance of the draft bill is: to stipulate domestic violence as an offence which, although can be settled by an agreement, does not eliminate guilt under the Penal Code and is subject to jurisdiction of the Court if the conditions under the agreement or the withdrawal of the case are violated; to confer the power on the Court to stipulate the methods to rehabilitate and control the behaviour of the offenders; to order the offender to pay compensation, do community work, and/or refrain from an action which results in the use of violence or to put the offender on probation under the stipulated method and duration in stead of punishment; to stipulate the duty of the victim and those who have seen or known the domestic violence to notify the law enforcement authorities; to confer the power on the authorities to enter the residence for inquiry and to take the victim to receive treatment or advice as well as to file a complaint; to stipulate that the Prosecutor must file a charge before the Court in writing or verbally within 48 hours and if necessary he/she may ask the Court for the charge to be postponed for 72 hours each time but not exceeding 6 times; and to confer the power on the Court or the law enforcement authorities to order provisional measures or means of relief to the victim including compensation and restraint order.

Protection and Occupational Development Centres have been set up to provide services and assistance to women in need.

The Cabinet's Resolution of 29 June 1999 has declared November every year the month to campaign for the elimination of violence against women and children. Since November 1999, various organizations have been working together to organize annual activities in different parts of Thailand to raise social awareness, in particular amongst male citizens, to take part in the campaign to stop violence against women and children.

Family development centres have been set up at the community level to promote the families and the community to join in a surveillance network to help prevent domestic problems and violence. At present, such centres have been set up in 1,835 sub-districts and it is expected that, by the year 2008, all 7,250 sub-districts in the country will have such a centre.

9. According to information received by the Committee, there is widespread human trafficking for the purpose of prostitution, which may add to the increase of HIV/AIDS victims. Please comment on specific measures taken by the Government to combat human trafficking and to protect HIV/AIDS victims.

As a country of origin, transit and destination, Thailand recognizes the serious problems caused by human trafficking and has long adopted an integrated approach in addressing them.

National Level

On 6 August 2004, the Prime Minister reaffirmed the Thai Government's strong determination and commitment to combat human trafficking by declaring the issue a national agenda, condemning all acts of human trafficking as *mala in se* not just *mala prohibita*, and setting up a national trust fund of 12.5 million US dollars. A large part of this fund will be geared towards helping and rehabilitating victims of human trafficking. Human trafficking has been made one of the offences under the Money Laundering Control Act whereby money and assets from human trafficking and its activities can be seized. The Prime Minister also stressed that any government official found involved in human trafficking will be severely punished.

On 31 March 2005, the Prime Minister established a National Committee on Prevention and Suppression of Human Trafficking which is chaired by a Deputy Prime Minister. The mandate of the Committee includes the formulation of policies, guidelines, and measures to prevent and resolve human trafficking in all its forms, as well as to assist, protect and rehabilitate victims of trafficking. The Committee also serves as the national focal point for national and international coordination and cooperation with other governments, international organizations, local and international non-governmental organizations.

On law enforcement, to better respond to the present problems and challenges as well as to ensure more comprehensive and effective law enforcement, the Cabinet has also approved, on 14 June 2005, the "Draft Act on the Prevention and Suppression of Human Trafficking B.E." which focuses on the human rights of victims of trafficking and impose heavier penalties for offenders. The new Act would define the meaning of human trafficking, and specify, among others, the offences, judicial process, compensation, legal assistance, protection of victims, provision of food, shelter and physical and psychological rehabilitation, and security protection for the victims and members of their family both within and outside

the Kingdom. The new Act would also have a provision allowing the establishment of a fund derived from money or properties confiscated from human trafficking-related offences which would be used for the protection and suppression of human trafficking, including welfare protection of victims.

Administrative measures include among others (1) the Cabinet's approval on 14 June 2005 for the establishment of the Operation Centre on Human Trafficking, operating at the national and provincial levels and at Thai diplomatic and consular missions abroad. These focal points would coordinate works among the concerned agencies from the respective sectors to protect and assist victims of human trafficking, develop policies, measures and campaigns, and disseminate information on human trafficking; and (2) the establishment by the Royal Thai Police of a command unit to deal specially with trafficking cases, which has been operational since 1 July 2005.

International Level

Thailand has actively taken part in many sub-regional, regional, and international fora to collaborate in human trafficking prevention, Thailand took active part under the framework of the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) from the beginning, serving on the 4-member Steering Group as well as the coordinator for the Ad Hoc Expert's Group II on law enforcement. The said Expert's Group has made significant progress in developing model legislation to assist governments in enacting and implementing domestic laws criminalizing people smuggling and trafficking as well as strengthening networking among law enforcement agencies. Thailand also works closely with other agencies and in June 2005 works with the OSCE by organizing a seminar/workshop on human trafficking. Thailand will continue to seek active cooperation internationally.

At the sub-regional level, Thailand has been working in close cooperation with the United Nations and the governments of the Mekong Sub-region (Cambodia, China, Laos, Myanmar, and Vietnam) to step up cooperation in combating trafficking in women and children in the region. Thailand has been active in providing assistance to trafficked victims from the Mekong Sub-region and help them return to their home countries, in cooperation with the authorities concerned and NGOs of the 5 countries. On 31 May 2003, Thailand and Cambodia concluded a bilateral Memorandum of Understanding on the Suppression of Trafficking in Women and Children and Assistance to Trafficked Victims. This bilateral MOU, which aims to prevent trafficking and the safe and orderly return and reintegration of trafficked victims, marks a milestone in strengthening international cooperation to combat trafficking in persons. In addition, Thailand and Lao PDR signed the MOU on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking on 13 July 2005. A similar MOU between Thailand and Vietnam is under negotiation.

Measures to Protect HIV/AIDS Victims

The Royal Thai Government has adopted as a top priority the policy to combat HIV/AIDs and provide social services to improve the well-being of people affected and living with HIV/AIDS, attaching importance to the fundamental rights of these individuals as well as their physical, psychological, social and spiritual needs. Since 1985, a National Aids Prevention and Alleviation Committee has been operational, chaired by the Prime Minister and comprising representatives from the government, civil society including people affected by HIV/AIDS. In addition, the Government also promotes access to medicines and

diagnostics related to the treatment of HIV/AIDS and, in May 2004, the Ministry of Health has officially declared HIV medicines to be covered under the 30- national health insurance system. Only a few countries in the world have such a policy.

Thailand recognizes the worrying world trends concerning the increased risks of HIV/AIDS infection among drug users and trafficked persons. For Thailand's part, **we have treated drug users and trafficked persons not as criminals, but as patients or victims who need to receive proper treatment and good care.** Therefore, in general, both drug users, and trafficked persons who are infected by HIV/AIDS do have access to proper treatment and care. However, we are also under no illusion that much remains to be done to prevent new HIV infection cases and to provide wider care and treatment for these high-risk groups.

Right to life; prevention of torture (Art. 6 and 7)
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10. Please indicate the crimes for which the death penalty is mandatory (para. 158). Please explain the position of the State party regarding the imposition of death penalty on drug-related crimes in light of article 6 (2) of the Covenant.

1. The Penal Code prescribes death penalty as the sole punishment for aggravated murder offences such as regicide, patricide, matricide, premeditated murder, or robbery causing death to another person.

Although the law stipulates that such offences shall be punishable by death, the Court can exercise its discretion to reduce the death penalty to life imprisonment or imprisonment for a definite time if the accused has confessed to have committed the crime or otherwise provided useful testimony for the trial, or if there are other reasonable grounds not to impose the death sentence.

2. Drug-related offences punishable by death include production, import or export for the sale of deadly drugs. Some other drug-related offences are punishable either by death or by imprisonment. The Court of Justice may impose death penalty on those convicted of a drug offence, particularly in cases involving a large quantity of drugs. The Court of Justice will exercise its sentencing discretion in these cases, with which the Executive branch may not interfere.

11. Please provide up-to-date information on the measures taken and implemented by the State Party to protect the rights of suspects killed by law enforcement personnel acting in an official capacity (para. 156). In particular, please provide information on steps taken by the State party to investigate the large number of alleged killings during the "war on drugs", and on the results of the formal enquiry that was initiated.

1. In the past 3 years, during a campaign on drug suppression, 58 drug offenders were found dead allegedly in connection with law enforcement officers acting in their official capacity. These cases are required by the Criminal Procedure Code to be subject to public inquests by the Court of Justice in order to determine whether the law enforcement officers exercised their power within the limit permissible under the law.

2. Beside the incidents referred to in the preceding paragraph, there were 2,598 murders of persons who were alleged by some people to have been related to drug trafficking and to have been killed by law enforcement officers.

The government has not stood idle. Rather, it has instructed the relevant authorities to carry out investigation pursuant to the due process of law. A committee was set up to specifically investigate these cases.

The result of such investigation is as follows:

- Offenders in 752 murders have been arrested.
- The identity of the suspects in other 117 murders has been identified and their arrest is being sought.
- There remain 1,729 murders in which there is no suspect, but which are still within the period of the statute of limitations. The police shall therefore conduct further investigation into these murders. If any person has evidence or information that will lead to the person or persons responsible for the murders, the government has emphatically instructed the police to perform its duty according to the law and bring the accused to justice promptly and under the due process of law.

12. Please provide statistics on the executions that have taken place in the last 5 years, and information on pending cases.

- 1) Executions carried out:

Year 2000	1 person
Year 2001	11 persons
Year 2002	11 persons
Year 2003	4 persons
Year 2004	none
- 2) Prisoners on death row as of 16 July 2005

Men	68 persons
Women	8 persons
Total	76 persons

Section 225 of the 1997 Constitution of the Kingdom of Thailand provides that “the King has the prerogative to grant a pardon.” Sections 259-267 of the Criminal Procedure Code also contain provisions on pardon. Therefore, when the judgment is final, in every single case of prisoners on death row, a petition for pardon will be transmitted for His Majesty the King’s consideration. Royal pardon can be granted either on an individual case basis or en masse on special and auspicious occasions. Traditionally, the majority of cases (except in cases of those convicted of trafficking and production of illicit drugs) have been given pardon, commuting death penalty to life imprisonment or lower.

At present there remain 887 prisoners sentenced to death whose cases have not reached a final court judgment pending an appellate procedure.

13. What judicial remedies are available to victims of human rights violations committed by law enforcement officers and members of security forces? Please provide statistics on the number of such cases and their results.

Pursuant to Section 240 of the Constitution and Section 90 of the Criminal Procedure Code, a person who is detained unlawfully by law enforcement officers can seek judicial remedies by filing a plaint before the court of justice. Beside the detainee himself, the public prosecutor or any other person acting in the interest of the detainee can also file such plaint on

the detainee's behalf. The court shall have power to order the person responsible for the unlawful detention to bring the detainee to appear before the court promptly. If the officer responsible for the unlawful detention cannot satisfy the court that the detention is lawful, the court shall order an immediate release of the detainee.

Other violations of human rights are criminal offences and are also subject to tortious liabilities. The victim can pursue criminal prosecution against the person violating his rights, and can also file a civil action for damages.

As for the statistics on the number of such cases, it must be admitted that Thailand has not been collecting statistics of this type of cases. Therefore, it is not possible to provide the aforementioned statistics to the Human Rights Committee at this time. Thailand fully realizes the importance of having this type of statistics and will shortly adopt a measure to collect statistics on cases concerning mistreatment by law enforcement officers. We believe that this would greatly enhance the protection of human rights in the country.

**Right of liberty and security of persons; treatment of detainees;
independence of the judiciary; right to a fair trial
(Arts. 9, 10, 14)**

14. Please clarify whether and why the practice of continued shackling of death row prisoners is considered necessary, in the light of the State party's obligations under article 10 of the Covenant. Also, please provide explanation on the allegation that the State party intends to broadcast executions and prison conditions of death row inmates as a deterrence measures. Similarly, please comment on the use of flogging as penalty for breach of prison regulations and its application to children.

- **Practice of continued shackling of death row prisoners**

As explained in the answer to Question 12 above, there are now 76 inmates on death row, plus another 887 prisoners sentenced to death whose cases have not reached a final court judgment pending an appellate procedure. These two groups of prisoners, totalling 963 in number, are being incarcerated all together in just one place, due to the limit in the availability of maximum prison security, at the Bang Kwang maximum security prison in the suburb of Bangkok. At this moment, the government is trying its best to solve this shortage of maximum security prison, which also hinders the use of solitary confinement for such prisoners. Shackling of such prisoners are therefore still absolutely imperative until the Department of Corrections can improve the prison conditions. The government has realized the seriousness of this problem and shall expeditiously take measures to improve the prison conditions

- **Broadcasting of the execution and the condition of the penitentiary of the prisoners with death penalty via mass media**

The Royal Thai Government does not have or intend to have a policy to broadcast executions or the condition of the penitentiary of the prisoners with death penalty.

- **The use of flogging as a penalty for breach of prison regulations and its application to children**

There has been no use of flogging. Although the 1936 Act of Corrections has stipulated the use of flogging as a penalty for breach of prison regulations, in practice thus far,

such use has not been carried out and the consideration of the formal abolition of this Act is underway.

For convicted children or youth held in detention centres pursuant to the 1991 Act Establishing Youth and Family Courts, there has been no use of flogging as a penalty for breach of prison regulations.

15. Please provide information on the treatment of terrorist suspects and drug addicts who have been taken into police custody, and whether their treatment in detention complies with the requirements of articles 9 and 10 of the Covenant.

Terrorist suspects and drug addicts in police custody are subject to all constitutional guarantees accorded to persons in similar situations. For example, they are presumed innocent until proven guilty by the final court decision that is subject to no further appeal (Section 33 of the Constitution), protected while in detention (Section 240 of the Constitution), and entitled to the right to a speedy and just trial (Section 241 of the Constitution).

In addition, the rights of the offenders in these cases are protected by the Criminal Procedure Code, especially the recent amendments made in 2004, which adopt high standards of protection of the rights of suspects and defendants, as in, for example, Sections 84, 86, and 87 regarding the charges and rights of the persons arrested, the means to control and the length of time to detain the persons arrested. Non-compliance with these provisions may result in the evidence obtained from such persons being ruled inadmissible by the court.

Therefore, from a legal standpoint, treatment in detention of these persons complies with the requirements of Articles 9 and 10 of the Covenant. In case of drug addicts, action of police officers against drug addicts is governed by the 1989 Narcotics Act, the 2002 Narcotics Prevention and Elimination Act, along with the government policy to treat drug addicts as patients, and not criminals, who deserve treatment and rehabilitation.

(1) In case a drug addict voluntarily asks for the treatment in the hospital before being charged with a drug taking offence, he or she will be assisted and supported for treatment in one of the public rehabilitation institutes run by the Ministry of Public Health across the country.

(2) In case a person has been charged with a drug taking offence, he or she will be sent to a rehabilitation centre for treatment for at least 6 months. If, after 6 months, the rehabilitation centre can give an assurance that the person has stopped using drugs, his or her criminal charge will be dropped. Otherwise, he or she will be prosecuted in accordance with the 2002 Narcotics Prevention and Elimination Act.

16. Please inform the Committee on steps undertaken by the State Party to investigate allegations of threats to and attacks on non-governmental human rights organisations and human rights defenders, and to bring to justice those found responsible. Please provide information on the individual outcomes of each case.

Firstly, an injured individual can submit complaints in such matters via many channels, such as the local police and/or the Ministry of Justice's Department of Rights and Liberties Protection, Central Forensic Science Institute and Department of Special Investigation.

Secondly, these authorities shall proceed to investigate the complaints and if there are grounds to suspect criminal wrongdoing, the local police and/or the Department of Special

Investigation shall take on the cases according to the Criminal Procedure Code. If special investigation is considered necessary, the Department of Special Investigation shall cooperate with the local police and the public prosecutor in the investigation.

An example is the case of the murder of Mr. Charoen Wat-akworn, an environmentalist and community leader who protested against a construction of a new coal power plan. He was shot dead a year ago, allegedly while attempting to oppose the encroachment of community land by certain influential people. Another case is the kidnap of a human rights lawyer, Mr. Somchai Neelapaijit.

These 2 cases have been considered to deserve special investigation, and the Department of Special Investigation, the local police and the public prosecutor have been working together to find the masterminds.

In the case of Mr. Charoen Wat-aksorn, so far we have been able to arrest 5 suspects, one of whom was arrested after the start of the special investigation process. The authorities have continued to gather more evidence so as to find the mastermind(s) of his murder.

With regard to the case of Mr. Somchai Neelapaijit, 4 police officers have been charged with the offence of deprivation of his liberty, and the then Royal Thai Police Commissioner General was transferred to an inactive post until his retirement. However, the 4 police officers have not been charged with a more serious offence because there is no substantial evidence to prove that Mr. Somchai Neelapaijit was dead. The authorities continue to gather further evidence, and Mr. Somchai Neelapaijit's wife has been placed under the Ministry of Justice's witness protection programme.

17. Does any mechanism exist to monitor the independent operation of judges in the State party? Please indicate whether judges benefit from security of tenure.

The 1997 Constitution provides the following measures to shield judges from outside intervention in order to ensure independence of the judges.

1. Section 249 of the Constitution underscores the importance of judges' independence by stating: "The trial and adjudication by judges shall not be subject to hierarchical supervision." Another way to monitor an independent and fair operation of judges is to restrict the recall or transfer of cases. Neither the recall nor the transfer of case files shall be permitted, "except in the case where justice in the trial and adjudication of the case shall otherwise be affected." Judges are also guaranteed security of tenure. Transfers of judges without their prior consent are not permitted. Exceptions are in the case of "termly transfer as provided by law, promotion to a higher position, being under a disciplinary action or becoming a defendant in a criminal case."

2. Even though judges of the Courts of Justice do not enjoy life-time tenure, their appointment and removal from office are made by an independent body, the Judicial Commission (Section 273 of the Constitution). The Judicial Commission is another mechanism to ensure transparency of the Courts of Justice. The Judicial Commission of the Courts of Justice consists of the following persons: (1) the President of the Supreme Court of Justice as Chairman; (2) twelve qualified members of all levels of Courts, four judges of each of the three level of Courts and elected by judicial officials of all levels of Courts; (3) two qualified members who are not or were not judicial officials and who are elected by the Senate. This example discusses only the Courts of Justice, where most trials are conducted. Other Courts (the Constitution Court, Administrative Court, and Military Court), are

governed by Chapter VIII, Parts 2, 4, and 5 of the 1997 Constitution. Generally, judges of these other Courts enjoy the same protection of freedom and independence as judges of the Courts of Justice.

Freedom of movement; expulsion of aliens (arts. 12 & 13)

18. The report contains information on migrants from Laos, Cambodia and Vietnam (paras. 337-354), but little on those from Burma. In light of information before the Committee about the situation of Burmese migrant workers, asylum seekers and refugees, please provide information on the situation, treatment, as well as grounds and conditions of deportation of Burmese migrant workers, asylum-seekers and refugees.

First of all, it must be stressed that, since the 1970s, Thailand has been a country of first asylum for hundreds of thousands of persons fleeing their homelands in Indochina as well as Myanmar and that Thailand has had to bear burdens on its economy, natural resources as well as human resources. However, even though Thailand is not a State Party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, we have provided temporary shelters for persons in genuine need of protection. Much has been done on our part to help relieve the plight of those unfortunate displaced persons. Our track record on this matter during the last three decades speaks for itself. Thailand therefore seeks the Human Rights Committee's understanding on the various difficulties that a country of first asylum has in this regard and Thailand's practice should be examined within the context of those difficulties.

- **Displaced persons fleeing fighting from Myanmar**

Thailand has borne the burden of being host to hundreds of thousand Myanmar who fled fighting in their country since 1984. It is the Thai Government's policy not to involuntarily repatriate these displaced persons back to Myanmar. At present, Thailand continues to host more than 120,000 displaced persons from Myanmar in nine temporary shelter areas along the border. Thailand has been working closely with the UNHCR and other humanitarian organizations in providing protection and finding durable solutions for these displaced persons, particularly under the 1998 Thailand-UNHCR Working Arrangements which cover many protection measures, including admission to asylum, registration, UNHCR's access, assistance parameters and long-term strategies. Moreover, additional measures to broaden their education and new skills and more access to income-generating opportunities are currently under consideration of the Thai authorities concerned.

It is however necessary to note that the long-time presence of these displaced persons has raised social and security concerns among local communities, fueled by the presence of millions of illegal immigrants from neighbouring countries dispersing across Thailand in search of better economic opportunities. The Royal Thai Government cannot afford to neglect the fact that many Thai villagers nearby are still living in poorer conditions than those in the shelter areas, thus the mere existence of the shelter areas, not to mention their expansion, could lead to negative attitudes and resistance shown to displaced persons.

Voluntary repatriation of displaced persons continues to be the preferred durable solution and such solution will never be possible if we neglect the role of the country of origin. Thailand therefore welcomes and fully supports the increasing role of international humanitarian organizations, including the UNHCR, in working towards an enabling environment inside Myanmar, and considers that humanitarian assistance should be expanded

to cover infrastructure development necessary for the reintegration of displaced persons as well as the prevention of further influxes, particularly in border areas.

- **Persons of concern and asylum seekers**

Thailand has long exercised a humanitarian tradition and openness in providing adequate humanitarian protection and assistance to those in need. However, we are increasingly concerned that there are cases of abuse of this hospitality by Myanmar persons of concerns (POCs) and asylum seekers and wish to ascertain that they abide by their obligations to the host country and fully respect Thai laws. The Thai authorities have therefore been in close cooperation with the UNHCR to work out safeguard measures in this respect as well as to ensure their protection and security needs.

During the past two years, the transfer of Myanmar POCs to temporary shelter areas was planned and implemented in close consultation among the parties concerned, i.e. the Thai authorities, the UNHCR and resettlement countries.

Since early 2004, the Thai Government has approved the resettlement programme of these Myanmar POCs as proposed by resettlement countries, particularly the United States. We strongly hope that the resettlement would continue so that a durable solution could be found for these POCs.

- **Illegal immigrants**

It is estimated that currently there are around two million economic migrants from Myanmar who have entered Thailand illegally.

However, we have recognized the fact that these illegal immigrants from Myanmar have migrated in search for better opportunities. Since there is a local demand for migrant workers in some business sectors, the Royal Thai Government has adopted a pragmatic attitude and practical approach in addressing the problem of illegal migrant workers from neighbouring countries.

Strategies and measures undertaken in recent years include:

(1) Promoting legal and regular channels for labour migration: In 2003, Thailand signed the MOUs on Guidelines and Procedures for Employment, Protection, and Return of Workers to Their Respective Countries upon Completion or Termination of Their Contracts in Thailand with Lao PDR, Myanmar and Cambodia. The three countries agreed to send their officials to Thailand to conduct the nationality verification and issue identity documents for their nationals currently in Thailand.

(2) Regularization of illegal migrant workers and families: In July 2004, Thailand undertook a nationwide registration programme of about 1.3 million illegal migrant workers from Myanmar (921,492), Lao PDR (179,887), and Cambodia (183,541), allowing them and their families to temporarily reside and be employed in Thailand on a yearly basis. As a result, 850,000 registered migrant workers inclusive of 634,000 Myanmar nationals were issued work permits in 2004 to work for over 200,000 registered employers. In June 2005, the Government decided to extend the stay and work permits for these registered migrant workers for another year until 30 June 2006. This programme has essentially regularized the presence of illegal migrant workers in Thailand and made them more accessible to protection.

(3) Enhancing the capacity of countries of origin: Thailand believes that enhancing the capacity of countries of origin to reduce the development gap would address the root causes of irregular migration. In this connection, Thailand has promoted the economic cooperation strategy in the border areas with neighbouring countries (known as Ayeyawaddy-Chao Phraya-Mekong Economic Cooperation Strategy or ACMECS) to develop an enabling environment for the economic activities and creation of employment. We hope that this strategy could alleviate emigration pressure among economically and socially vulnerable populations in our neighbouring countries as well as address some concerns related to other transnational crime, such as human trafficking and drug trafficking.

Freedom of opinion and expression (Art. 19)
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19. Please provide information on the actual exercise of the right to freedom of opinion and expression by the Thai media, in light of information before the Committee of increasing government pressure on independent media.

The right to freedom of expression of the media is guaranteed by the 1997 Constitution well in line with Article 19 of ICCPR. Article 39 of the Thai Constitution guarantees for the right to freedom of expression, speech, writing, printing, publishing, and expression through other means of media. It is forbidden for the authority to order a closure of a publishing house, a radio station, or a television station in deprivation of the rights provided thereof. Censorship of news and articles before their publication or broadcasting is also prohibited.

In addition, Article 41 of the Constitution also provides that employees of any media undertaking shall enjoy the freedom to present news and express their opinions insofar as they are not in breach of the Constitution. Even if they are working for government agencies or state enterprises, they shall so enjoy the same freedom.

Apart from these constitutional provisions, there is no piece of legislation in Thailand that can affect, curtail, or restrict the freedom of expression enjoyed by the Thai media.

In the past, whenever a coup d'état took place, the Thai media were subject to strict censorship, government interference and closure. The decree of the National Reform Council who took over the government in 1976, the so-called National Reform Council Decree No. 73, gave the authorities such sweeping power to interfere, censor and close down media undertakings. But since the Decree No.73 was repealed in the early 90's with nothing to replace it and with the promulgation of the 1997 Constitution, the Thai media, especially the printed press, have enjoyed absolute freedom guaranteed by the Constitution. Interference, censorship and closure by government agencies are totally prohibited by law. There does not even exist any kind of judicial injunction (as in some western democracies) whereby a private individuals can request the court to give temporary injunction to a publication that could harm or infringe an individual's reputation or privacy. The only remedy to an individual whose reputation or privacy is infringed by the exercise media's freedom of expression is through the libel suit in the court of law.

In short, there is no law whatsoever in the land that enables the government or any of its agencies to assert pressure on or restrict press freedom. The Thai media's freedom is subject to nothing but the libel provisions in the Penal Code and the Civil Code. The press freedom enjoyed in Thailand is no less than the standard freedom enjoyed in many Western democracies. But while such freedom has been enjoyed and exercised in the West for centuries, this freedom in Thailand is new and has been enjoyed for only less than a decade.

Certain quarters of the media, naturally, remain skeptical and distrustful as they are still accustomed to the treatment by those pre-1997 Constitution non-democratic governments who always sought control over media to sustain power.

Thailand is certain that the standard of the press freedom enjoyed in the country is higher than that enjoyed by many of our neighbours in the region.

In a test case concerning 21 newsroom employees of the iTV station, these 21 newsroom staff were dismissed in February 2001. They took the matter to the court of law. The Supreme Court found that the dismissal order of the iTV was unlawful and ordered the company to reinstate the 21 journalists and pay damages equivalent to their wages owed to them from the day of their dismissal. The case testifies that Articles 39 and 41 are well-upheld to protect freedom of the media.

While the Thai press enjoys high standard of press freedom, the only way the government can do if it finds any news report or article to be inaccurate or distorting is to publicly clarify the government version of the matter in the hope that the press will be kind enough to publish it. In many cases they do, but in somecases, the press exercise their freedom and choose not to publish it. What the government can do in that circumstance is just to accept that.

20. Please inform the Committee on the status of the recent libel suit against critics of the Thai Prime Minister, as well as suits filed against editors of the Thai Post and a media-reform campaigner by a corporation founded by the Prime Minister.

This is a libel suit filed by Shin Corp., a private firm, against Ms. Supinya Klangnarong and the Thai Post editors.

Shin Corp. was a company founded several years ago by Prime Minister Thaksin Shinawatra. But in holding a political office, the Thai constitution requires political office holders to relinquish their shares and interests in private firms. Prime Minister Thaksin has done so since he took office. He has no power and authority over the executives of Shin Corp. Besides, Shin Corp. is a public company listed in the Stock Market of Thailand, run by the Board that is accountable to their shareholders.

As Shin Corp. is a legal entity under the Thai law and Ms. Supinya is also a Thai citizen, they are both equally subject to the rights and responsibilities under the same Thai law. What is said by the latter, if felt libelous by the former, can lead to a libel case brought before the court of law. And since what was said was published, according to the Civil Code on libels, a suit can also be filed against the editors or publishers. That was the case in point.

Shin Corp. has the right to resort to the due process of law in order to defend its reputation. Ms Supinya and the Thai Post editors, on the other hand, have the right to defend their innocence also through the due process of law. So this libel suit is one of numerous cases proceeded under the Civil Code. It may be unfortunate that the firm involved was once founded by the Prime Minister several years ago. However, that fact should not deprive the right of the company to file a suit against anyone, a critic or not a critic of the Prime Minister, if the company finds its reputation being defamed. Equality before the law should always prevail.

Unless and until it is evident that the court proceedings are interfered with so that justice cannot be administered, this libel suit is simply one of the many the court of law has to pass judgment and see that justice is delivered.

The trial of this case will begin by testimony of the witness of the plaintiff on July 19, 2005.

Freedom of association (Art. 22)

21. Please explain in further detail how the present economic and social conditions are not congenial to full compliance by the State party with requirements of Article 22 of the Covenant. Please also provide information on how the State party is working towards improvement of these conditions.

There are currently about 1,300 labour unions in the private sector and about 45 in state-owned enterprises. The Government has been promoting freedom of association in both public and private sectors through legal instruments and public policies. In addition to the right to unite and form association under Section 45 of the present Thai Constitution, the 1975 Labour Relations Act and the 2000 State Enterprise Labour Relations Act are considered the two principal pieces of legislation which guarantee the rights of employers and employees in both private and public enterprises to form associations to protect their interests.

The existing laws have a small number of issues that may not be consistent with ILO Conventions No. 87 (Freedom of Association and Protection of the Right to Organize) and No. 98 (Right to Organize and Collective Bargaining). Some of the reasons behind these restrictions were due to the political situation in 1991 when Thailand did not have an elected government. Though the political situation has improved with the adoption of the 1997 Constitution and the subsequent democratically elected Governments, the economic impact of the 1997 financial crisis posed new aspects of constraints on the Government. At present, the Thai economy has fully recovered and the current Government is in the process of taking the following steps with a view to further promoting the right to freedom of association:

1. Revision of the Labour Relations Act (1975) and the State Enterprise Labour Relations Act (2000) by brainstorming with employers, employees, and public officers, in order to enhance coverage of rights and protection.
2. Commissioning a research project in 2004 to determine whether the Royal Thai Government is ready to ratify International Labour Organization Conventions No. 87 and No. 98.
3. Reviews and revisions of existing labour regulations, principles, guidelines, and procedures in preparation for future bilateral and multilateral negotiations on free-trade agreements and to ensure compliance with International Labour Conventions.

22. Please explain the reasons for the State party's dismissal of the findings of the National Human Rights Commission that the level of force and type of tactics used by the police and voluntary militias in the crackdown on 16 October 2004 of peaceful protestors made up of landless farmers were disproportionate.

According to the National Human Rights Commission (NHRC), the NHRC submitted its findings on 15 June 2005, in which the timeframe of two months has been given to respond. Now that the two months timeframe has not lapsed, the relevant government

authorities are still considering the report. So far, there has not been any indication of dismissing the National Human Rights Commission's reports and findings.

Protection of Children (Art. 24)

23. Please provide information on measures taken to deal with the problem of forced child labour exploitation, including information on prosecutions and convictions related to forced child labour.

1. The Ministry of Labour has issued orders to its representatives in every province to closely monitor any abuse of child labour. It has set up local teams and check-points in Bangkok and all provinces. The following regulations are strictly enforced:

(a) If employees under 15 years of age are found, officers must immediately report the case to investigation officers.

(b) If employers hold child workers against their will or torture them, those employers will be prosecuted in both criminal suits under the laws governing the Ministry of Labour and any related measures under the 1998 Labour Protection Act.

(c) If employers do not follow the 1998 Labour Protection Act with regard to child workers, labour inspection officers can order them to make necessary improvements. If the violation continues, these employers may be prosecuted.

2. Both Thai and foreign child workers are entitled to equal protection under the Labour Protection law.

3. Under the Labour Protection Act of 1998, the minimum age for hiring children as workers increases from 13 to 15 years. The Act also forbids employers, directors, managers or inspectors from sexually harassing employees, especially child workers. Child workers are not allowed to work in places where their safety and health are at risk. For example, jobs that might expose child workers to toxic substances, or explosive or flammable materials, except for jobs at gas stations, are not permitted.

4. The Ministry of Labour also expands the legal protection to cover women and children whose jobs may be outside the regular system. For example, female or child employees who take their work home are covered by the new Ministry Ordinance with regard to Employees Working from Home. The Ordinance has been in effect since 8 September 2004. A similar piece of legislation was the Ministry Ordinance Protecting Workforce in Agriculture, which became effective on 13 April 2005. Both pieces of legislation award equal protection regarding safety in workplace and employee benefits granted by laws to female and child employees, who work from home or in the agricultural sector.

5. The table below gives an overview of the latest child labour survey conducted by the Ministry of Labour.

Year	No. of businesses inspected nationwide	No. of businesses found in violation of child labour laws	No. of forced child labour
2002	473	10	36
2003	1,785	15	125
2004	1,241	9	35
2005 (Jan. 3-Jun. 28)	288	4	34

Right to take part in public affairs (Art. 25)

24. Please provide information on measures undertaken by the State party to ensure the conformity of Thai electoral laws with article 25 of the Covenant, including any specific measures introduced to ensure the transparency of the electoral process and the fairness of the general election that took place on 6 February 2005.

The Constitution of 1997 has extended the right to take part in public affairs to a broader spectrum of society. For example, Section 105(2) accords the right to vote at an election to persons of not less than 18 years of age on 1 January of the year of the election. Thai nationals residing overseas are also entitled, for the first time, to vote at Parliamentary elections.

General elections in Thailand are governed by the Organic Law on the 1998 Elections of Members of the House of Representatives and the Senate (as amended in 1999 and 2000) and under the supervision by the Election Commission which is an independent agency under the 1997 Constitution of the Kingdom of Thailand.

The Election Commission has undertaken the following measures to ensure fair and legitimate elections:

1. Measures to improve the quality of the decision making of voters, for example, by providing voters with complete information regarding voters' responsibilities;
2. Measures to improve the quality of election campaigns, for example, by providing complete information regarding what can and cannot be done in such campaigns and the penalty for unlawful activities;
3. Measures to improve the quality of the election, for example, by providing appropriate arrangements of the voting venues and training election staff to further their knowledge on voting methods;
4. Measures to improve the quality of the observation of the election by having private bodies supervising the election and giving the representatives of the candidates an opportunity to take part in such an observation; and
5. Measures to implement the policies to ensure that provincial and local election commissions give voters complete information in this regard through the use of knowledge tools, dissemination and customer relations.

Any person who violates election laws will be prosecuted and punished by either imprisonment or fines.

Furthermore, Section 147 of the 1997 Constitution of the Kingdom of Thailand stipulates: "The Election Commission shall forthwith conduct an investigation and inquiry for finding facts in any of the following cases;

- (1) an objection by a voter, a candidate in an election or a political party a member of which stood for the election in any of the constituencies has been raised that the election in that constituency has proceeded inappropriately or unlawfully;

- (2) convincing evidence has appeared that any member of the House of representatives, senator, member of a local assembly or local administrator, before being elected, had committed any dishonest act to enable him or her to be elected, or has dishonestly been elected as a result of an act committed by any person or political party in violation of the organic law on the election of members of the House of Representatives and senators, the organic law on political parties or the law on the election of members of local assemblies and local administrators;
- (3) convincing evidence has appeared that the voting in a referendum did not proceed lawfully or an objection has been raised by a voter that the voting in a referendum in any polling station proceeded inappropriately or unlawfully;

Upon completion of actions under paragraph one, the Election Commission shall pass a decision forthwith.”

In practice, the Election Commission has decided on a number of occasions that the election of the members of the House of Representatives, senators or members of local government are not in accordance with the provision of Section 147 and has not approved the result of such elections with the consequence that new elections had to be conducted and the elected candidates found guilty of wrongdoing had to pay for the expense of the unapproved elections. The Election Commission has found some frauds and irregularities in some electoral constituencies where the Government parties enjoyed the majority of votes. The fraudulent and irregularity cases have been dealt with by the Election Commission in accordance with its scale and gravity. For instance, in most serious cases, a by-election is called whereby a candidate found guilty by the Election Commission is barred from re-standing

The general election on 6 February 2005 has complied with the measures by the Election Commission to improve the quality of the election and the rules and criteria of the election laws and Constitution in all aspects.

Right of minorities (Art. 27)

25. Please provide the Committee with information on the situation of the members of hill tribes (Highlanders) in their enjoyment of their rights under article 27 of the Covenant and their rights to freedom of movement, right to citizenship and right to land/property.

The Constitution of Thailand has provisions on the religious and cultural rights of minority groups.

Section 38

“A person shall enjoy full liberty to profess a religious, a religious sect or creed, and observe religious precepts or exercise a form of worship in accordance with his or her belief; provided that it is not contrary to his or her civic duties, public order or good morals.

In exercising the liberty referred to in paragraph one, a person is protected from any act of the State, which is derogatory to his or her rights or detrimental to his or her due benefits on the grounds of professing a religious, a religious sect or creed or observing religious precepts or

exercising a form of worship in accordance with his or her different belief from that of others.”

Section 46

“Persons who gathered to become a local community have the right to conserve and restore custom, local wisdom and good arts and good cultures.”

There are approximately 870,000 hill tribe population of at least nine tribes in Thailand residing in 20 provinces. These population can be categorized into two main groups: (1) those born or originally lived in Thailand and (2) those migrated from other countries.

Right to citizenship

Those who originally lived in Thailand (approximately 600,000) and have not got Thai nationality for being left out in the census are eligible for Thai nationality under the Central Registration Regulations 1992 and 1996, upon submission of a petition, provided that they can fulfil some specific qualifications required by the government, for example, being a person who makes living honestly, not being a grower of narcotic plants, being communicative in Thai. Almost all of this group have already received Thai nationality.

Those who had migrated from other countries (approximately 270,000) were divided into two groups according to the time of their entry:

(1) those who entered Thailand before 4 October 1985 (60,000) were provided by Cabinet decision of 2000 a legal migrant status under the stateless category for the first generation and a Thai nationality for their children who were born after their parents had been granted the legal migrant status, upon approval of the Minister of Interior.

(2) those who entered Thailand between 4 October 1985 - 31 December 1994 (210,000) were provided by Cabinet decision of 18 January 2005 the approval in principle for their enjoyment of the same right as given to those entered Thailand before 4 October 1985.

Right to freedom of movement

Those who received Thai nationality and legal migrant status enjoy their right to freedom of movement.

Those who have not got Thai nationality or legal migrant status are in principle permitted to travel within their dwelling province. However, their children are allowed to move freely to have access to education as a result of the Cabinet’s resolution on 5 July 2005. Exceptions on travel restriction for some reasons, such as for medical treatment, can also be made upon the approval of the governor of the province on a case by case basis.

Right to land ownership

In general, only Thai nationals are entitled to land ownership. The Royal Thai Government is trying to solve the problem of highlanders seeking to cultivate land in protected forest areas with compassion and understanding of the needs and traditional way of life of these highlanders.

In conclusion, the Government attaches importance to revising existing regulations or to initiating new administrative measures to ensure more effectively better protection and

promotion of fundamental human rights for all peoples living in Thailand including members of the hill tribes. The recent Cabinet's resolution on 18 January 2005, as referred to in our reply to Question No. 6, aims at resolving, in an effective and durable manner, the status and rights problems of some groups of people residing in Thailand, including the hill tribe people. This measure will contribute to efforts to address the problems of their status and rights as well as to ensure the realization of their fundamental rights.

Dissemination of information relating to the Covenant (Art. 2)

26. Please provide detailed information on programme for education and trainings of members of the judiciary, law enforcement and security officials about human rights as recognized in international instruments and national law.

Based on a Cabinet's resolution in 1991, all public agencies with officers who may use weapons legally have to provide educational training on human rights issues for every agent in the office. Today most government agencies, especially the military, the Office of the Attorney General, the correctional facilities, and public offices have widely and continuously organized basic training on human rights issues. Education provided during these trainings promotes protection of human rights in work place according to international agreements to which Thailand is a party. Other materials include human rights clauses in the Thai Constitution, remedies for damage caused by human rights violations, and legal proceedings with respect to human rights cases. The examples below show how various public agencies are proactive in educating their staff members on human rights issues.

1. Ministry of Defense

- a. The Ministry includes classes on human rights in training of military personnel.
- b. The Judge Advocate General's Department has prepared educational materials in a variety of media such as video cassettes or compact discs in order to broaden the audience. These materials include tutorials on human rights and laws governing arms conflicts.
- c. The Ministry of Defense and its Supreme Command Headquarters have periodically organized seminars on the topic of human rights, in conjunction with international military offices. For example, the Supreme Command Headquarters and the Directorate of Joint and Combined Exercises organized a seminar for their officers in May 2005 on human rights and laws governing conflicts of firearms. Another military-wide seminar took place in May 2005. The conclusions of these seminars have been published for the Commanders of the Thai military for further action. In addition, the Ministry regularly sends its representatives to participate in seminars on human rights.

2. Courts of Justice

- a. The Courts of Justice pay serious attention to educating their officers on the topic of human rights. The Institute of Development for Judicial Officers makes a course on human rights a requirement in their core curriculum, even before Thailand joined the ICCPR.
- b. Moreover, there are regular training and tutorials aimed at educating their officers on both theoretical and practical aspects of human rights protection.

The tutorials, which generally include domestic and international laws, are offered to all levels of judges: assistant judges, judges of the Courts of First Instance, high ranking administrators of the Courts of First Instance, and judges of higher Courts. The Courts of Justice can proudly say that all judges have been well informed on human rights issues and have been applying these principles in their deliberations.

3. Office of the Attorney General

- a. The Office of the Attorney General is responsible for promoting human rights protection. Based on the Ministry of Justice Ordinance with regard to Division of Offices (2003), the Office of the Attorney General is responsible for administering human rights protection and educating the public on their civil and political rights. The Office of the Attorney General has well-trained officials with experience in human rights protection. In addition, the Office of the Attorney General has a bureau that directly oversees human rights issues – the Office of Civil Rights Protection and Legal Aid Provision. The Office provides excellent support for the work of the Attorney General Office.
- b. The Office organizes seminars and educational training for prosecutors in different locations across the country. Completion of these courses is a requirement for all levels of prosecutors: assistant prosecutors, provincial prosecutors, and high ranking officials before they take office. Additional training on specialized topics is offered, including Rights of AIDS Patients, Campaigns to Stop Violence on Women, etc.
- c. The Office also offers a seminar called, “Executives and Protection of Human Rights.” The seminar is open to public officers such as judicial officers, high ranking prosecutors (above level 5), police officers, and soldiers as well as other professionals such as attorneys and physicians.

4. The Rights and Liberties Protection Department has the following programmes to promote human rights.

- a. Training courses of officers in the Department of Corrections on human rights protection. The Office has already trained four cohorts of officers (a total of 604 officers) in both central and rural areas. The curriculum covers three topics: Human Rights Situations and Future Directions of the Department of Corrections, Human Integrity, and Basic Rights of Correctional Work. Active participation of trainees is strongly encouraged during the training course. The goal of this training program is to raise awareness among officers at correctional facilities of human integrity and inform these officers about rights of prisoners.
- b. A plan to establish the Institute of Human Rights Promotion during the 2006 budgetary year. According to the Seventh National Strategic Plan that promote democracy, civil engagement, the new institute has four important duties:
 - i. Promote research and development on human rights issues;
 - ii. Provide training and education on human rights to public officials;
 - iii. Function as the information center for domestic human rights issues;
 - iv. Serve as the coordinator for National Master Plan on Human Rights.
- c. The Department has set aside budgets to implement the following plans of action.

- i. 1.1 million Baht (around US \$25,000) for evaluating the possibility of establishing the Institute of Human Rights Promotion in 2006;
 - ii. 9.9 million Baht (around US \$200,000) for establishing the Institute by 2007;
 - iii. 21 million Baht (around US \$500,000) for promoting and organizing activities of the Institute by 2008.
5. **Office of Justice Affairs**, especially the Institute for Development of Judicial Officers, offers training on judicial processes to public officials of the Ministry of Justice, including police officers, judges, and prosecutors. A topic of human rights is included in every training programme.
6. **The Royal Thai Police** gives high priority to educating its officers on human rights. It issued an order to police stations around the country, making sure that every police officer understands the human rights clauses in the new Constitution. This policy is aimed at preventing human rights violation by police officers while on duty.
 - a. The research division of the Royal Thai Police issues a human rights handbook for police officers. It contains the UN Treaty on Human Rights, sub-treaties and international agreements on human rights, the 1997 Constitution of Thailand, and related laws. The handbook was completed in June 2000 and has been distributed to all police units across the country. The Royal Thai Police has insisted that every officer be familiar with the content of the handbook in order to avoid any misconduct while on duty. In addition, all 15 regional offices have organized education and training programme for police officers on human rights issues.
 - b. When unrest occurs, the Royal Thai Police will cooperate with public and private agencies responsible for human rights protection so as to provide appropriate training for local police officers in the area. For example, training for police officers in the South by the Foundation for Human Rights and Development took place in October 2004 in Yala province.
 - c. The Royal Thai Police has also set up an office to be directly responsible for human rights protection of children, youth, and women; namely the Police Command for Elimination of Wrongdoing against Children, Youth, and Women. The office has been in operation since 1 July 2005.
