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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT**

**Initial report**

**THAILAND***

* The report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

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## Introduction

1. Thailand has prepared this report to implement Art. 40 of the International Covenant on Civil and Political Rights 1966. It deals with the legislative, administrative and judicial process that serve to efficiently implement various provisions of the Covenant and shall be in accordance to the spirit of the Covenant. This report should be read together with the core document of Thailand which already narrates the general conditions of Thailand on geographical, economical, political, governmental aspects, including the legal system and judicial process in detail.

2. Thailand has become a party to the Covenant on Civil and Political Rights 1966 without making any reservations and is legally bound by it since 29 January 1997. Thailand has considered and found that under the present political legal and governmental system of Thailand, it can follow the Covenant without any obstacle.

3. However, Thailand has prepared an interpretative declaration which covers four points as follows:

(a) Paragraph 1 of Article 1 regarding the right to self – determination to freely determine political status and to freely pursue economic, social and cultural development, Thailand shall follow the interpretation on the exercise of right to self-determination according to the Vienna Declaration and its Plan of Action which is endorsed by the world conference on human rights and is the latest international document to have interpreted the said right. This document has stated that the exercise of this right shall not be related to any action which affects the integrity of territory or political unity of the State;

(b) On paragraph 5 of Article 6 regarding the prohibition of capital punishment for crime committed by persons under eighteen years of age, Thailand has made an interpretative declaration to explain the practice under the Thai Penal Code, stating that Thailand has never, in practice, imposed capital punishment on a person under eighteen years of age. Section 74 of the Penal Codes provides that a child not over fourteen years shall not be punished for an offence and Section 15 provides that the court shall reduce the scale of punishment provided for the offence by one half for a child over fourteen years but less than seventeen years of age, and for a person over seventeen years but not over twenty years of age, the provision of Section 76 authorizes the court to exercise its discretion to reduce the scale of punishment by one third or one half. In practice, the court has always exercised its discretion to reduce the scale of punishment; therefore there has never been a sentence which imposes capital punishment on a person under eighteen years of age;

(c) According to paragraph 2 and 3 of Article 18 of the latest amended Penal Code, 2003, capital punishment and life imprisonment shall not be imposed on a person under eighteen years of age and the said punishment shall be reduced to fifty years of jail term;

(d) On the period of time to bring the arrested person to court, Paragraph 3 of Article 9 of the Covenant has used the term “promptly”, the Thai Criminal Procedure Code authorized the inquiry official to detain the accused for 48 hours before bringing the person to court. If the inquiry has not been completed he can further detain the person for seven days.

This is not in line with the Covenant. Therefore, Thailand has made a declaration to explain that Thailand shall follow the commitment under this provision in the manner the law of Thailand so provides at the moment;

(e) Paragraph 1 of Article 20 provides on prohibition of propaganda for war, which Thailand made an interpretative declaration that Thailand shall interpret the term "war" to be a "war" under international law, which does not include the war as a result of self-defense.

4. The submission of the said four interpretative declarations shall enable Thailand to adjust the commitment under the Covenant to be compatible with the Thai domestic laws, thus no need for Thailand to revise its laws in order to fully follow the commitment. For the said reason it is not necessary to submit the matter of accession to the Covenant to the National Assembly for approval as provided under Section 181 of the Constitution of the Kingdom of Thailand, 1991. Thailand can promptly become a party to the Covenant by accession, under the provision of Article 48 of the Covenant.

5. Thailand has recognized the importance of educating its public officials about human rights. On 18 September 1992 the Cabinet decided to assign governmental departments that have the right to use weapons to educate their officials on basic human rights principles.

6. To date, training programs of various governmental departments have provided training on basic human rights principles. For example, the training of police officers at several levels, the training of public prosecutors from the assistant public prosecutors up to the provincial chief public prosecutors, the training of judges from judge-trainees up to chief judges of provincial courts and high ranking, the training of officers of the Department of Corrections at several levels and those trainings of the Ministry of Defense which includes trainings done at Armed Forces, National Security Center, School of Psychology Warfare, Armed Forces Chief of Staff School, Joint Staff College and the National Defense College.

7. To educate the public on human rights issues, the Ministry of Education has organized educational campaigns on human rights for students at many levels. For the general public, the Legal Aid Office which is an agency of the Office of the Attorney General, has disseminated the knowledge on law and human rights to the public all over the country both in the urban area and rural area since 1982 and the outcome has been very satisfactory.

## Article 1

8. The three principles under Article 1 has been similarly accepted in Thailand and is reflected in the 1997 Constitution, which provides in paragraph 1 of Section 47 that:

> "A person shall enjoy the liberty to unite and form a political party for the purpose of making political will of the people and carrying out political activities in fulfilment of such will through the democratic regime of government with the King as Head of the State as provided in this Constitution."

9. The laws concerning political party are the Organic Law on Political Parties (1998) and the Organic Law on Election of Members of the House of Representatives and Senators (1998) which came into force on 10 June 1998. The latter Act provides Thai citizens residing both within and outside the Kingdom the right to vote.

10. For Article 1 paragraph 2, the Constitution has already provided recognition of it, in Section 46 that:

> "Persons so assembling as to be a traditional community shall have the right to conserve or restore their customs, local knowledge, arts or good culture of their community and of the nation and participate in the management, maintenance, preservation and exploitation of natural resources and the environment in a balanced fashion and persistently as provided by law."

And Section 56 provides:

> "The right of a person to give to the State and the communities participation in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and preservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his or her health and sanitary condition, welfare or quality of life, shall be protected, as provided by law."

11. Any project or activity which may seriously affect the quality of the environment shall not be permitted, unless its impacts on the quality of the environment have been studied and evaluated and opinions of an independent organisation, consisting of representatives from private environmental organisations and from higher education institutions providing studies in the environmental field, have been obtained prior to the operation of such project or activity, as provided by law.

12. The right of a person to sue a State agency, State enterprise, local government organisation or other State authority to perform the duties as provided by law under paragraph one and paragraph two shall be protected."

13. In addition, under Chapter V. of the Constitution (Directive Principles of Fundamental State Policies) Section 79 also provides:

> "The State shall promote and encourage public participation in the preservation, maintenance and balanced exploitation of natural resources and biological diversity and in the promotion, maintenance and protection of the quality of the environment in accordance with the persistent development principle as well as the control and elimination of pollution affecting public health, sanitary conditions, welfare and quality of life."

14. The Constitution also for the first time provides for the protection of news resources. Section 40 provides:

> "Transmission frequencies for radio or television broadcasting and radio telecommunication are national communication resources for public interest.
>
> There shall be an independent regulatory body having the duty to distribute the frequencies under paragraph one and supervise radio or television broadcasting and telecommunication businesses as provided by law.
>
> In carrying out the act under paragraph two, regard shall be had to utmost public benefit at national and local levels in education, culture, State security, and other public interests including fair and free competition."

15. At present relevant agencies are in the process of drafting laws to carry out what is provided under Section 40.

16. Before the promulgation of the 1997 Constitution, to ensure that the exercise of the right of the people under Article 1 paragraph 2 shall be systematic and utmost in bringing about common good, Thailand has promulgated certain legislation to set up such a system. Such as the Forestry Act (1941), National Reserved Forests Act (1964), Minerals Act (1967), Land Reform for Agriculture Act (1975), Fishery Act (1947), Town Planning Act (1975), Improvement and Conservation of National Environmental Quality Act (1992), etc.

17. The implementation of the said laws may affect the rights or interests of the people for example if land has to be expropriated, people may be relocated for a necessary dam or road to be constructed. The state would provide a nearby plot of land residential or business purposes, and pay a fair and equitable compensation to the people within a period of reasonable time. This is in accordance with Section 49 of the 1997 Constitution.

18. In addition, Thailand has set a policy to cooperate with other countries in using the common natural resources on a reciprocal basis. This is to follow Section 74 of the Constitution which provides:

> "The State shall promote friendly relations with other countries and adopt the principle of non-discrimination."

19. Thailand has signed, but has not yet ratified certain treaties on the use of natural resources, for example the Convention on Biological Diversity or CBD, the Convention on Combating Desertification and Drought or CCD. Furthermore, Thailand has ratified to become a party to several international agreements on the use of natural resources, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora or CITES, the Convention on Wetland of International Importance especially as Waterfowl Habitat, and the Convention Concerning the Protection of the World Cultural and Natural Heritage.

20. In bringing about the fruition of Article 1, Thailand, an independent and democratic country, has recognised the general principles of international law, the principles under the Charter of the United Nations and is convinced that the power of the state came from the Thai people as a whole, therefore Thailand is resolved to follow the principle of Article 1, paragraph (1) and (2) to the best of its effort.

## Article 2

21. Thailand has gradually developed the process to promote and protect human rights to in legislative, executive and judicial aspects. She has fully given cooperation to the international community on the said matter. She has become a party to most treaties which are directly related to the promotion and protection of human rights, namely, the Convention on the Political Rights of Women, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, the Covenant on Civil, and Political Rights, the Covenant on Economic, Social and Cultural Rights, and the International Convention Elimination of All Forms of Racial Discrimination.

22. The 1997 Constitution has for the first time incorporated the principles on promotion and protection of human rights, which are well recognized internationally, into its provisions both substantive and procedural ones. It also set up new mechanisms to inspect the exercise of power of various State organs, be it a legislative, executive or judicial. This aims at guaranteeing the promotion and protection of human rights, which shall be dealt with respectively in various provisions of the Covenant.

23. Thailand has long respected the principle on non-discrimination, even though past constitutions did not provide provisions on the matter.

24. However, the present Constitution does stipulate a provision on non-discrimination in Article 30 which provides that:

> "All persons are equal before the law and shall enjoy equal protection under the law.
>
> Men and women shall enjoy equal rights.
>
> Unjust discrimination against a person on grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted.
>
> Measures determined by the State in order to eliminate obstacle to or to promote persons' ability to exercise their rights and liberties as other persons shall not be deemed as unjust discrimination under paragraph three."

25. A significant organisation established under the provision of the Constitution, to examine and report the commission or omission of acts which violate human rights or acts which do not comply with obligations under international laws to which Thailand is a party, including the issue of non-discrimination, is the National Human Rights Commission, fully operational since 1999.

### Race

26. The Thai people are in general of mixed races and they all are proud to jointly call themselves Thais without any ill feelings or discrimination against those who are of a different race. The Thai society is receptive thus allowing foreigners to adapt and get settles easily, ever

since the time when the city of Sri Ayuthaya was the capital of Thailand several hundred years ago. Thailand allowed foreigners, both westerners and Asians, to reside in order to trade, carry out religious dissemination mission, or take asylum from war or political endangerment. This is evident throughout history. And quite a number of them joined the royal service and became prominent officers in the Royal Court and had their families settled in Thailand. At present there are more and more foreigners who have settled in Thailand. They are all well received by the Thais and can adjust themselves to the Thai society naturally, by changing their names, and learning the Thai language.

27. The problem of racial discrimination is almost unknown in Thailand. In the past the government did set up an internal regulation forbidding the registration of marriage between a Thai male and a female of other nationalities whose countries were of contrasting regime and considered harmful to the national security of Thailand. But, later on, the Supreme Court of Thailand, has decided under the Marriage Registration Act (1935), that any two persons have the right to register their marriage under the said Act.

28. As for civil service, there is no racial limitation. This even applies in departments which deal with security. To apply for government service, it is generally mentioned that one holds Thai nationality. This is to follow the principle that every Thai national has the right to join the government service.

**Colour**

29. Thailand does not have any problem on discrimination arising out of the differences in colour of the skin.

**Sex**

30. The Constitution provides under paragraph two of Section 30 that "Men and women shall enjoy equal rights".

31. In the past, like various countries Thailand had certain problems on sexual discrimination. However, Thailand has tried to rectify the said problem to the extent that it is almost non-existent. The details of which shall be further dealt with under Article 3.

**Language**

32. Thailand's official oral and written language is Thai. There are certain groups of people who still use their local language, for example, the people in the four southern provinces, the majority of which are Muslims and most of them use their local language, Yawi. People in certain districts in Surindra and Burirum provinces use the Khmer language in their daily life. In practice, the access to governmental service does not in any way involve complications of language differences.

33. In addition, the government tries to facilitate those who speak local language in their daily life by appointing civil servants who speaks the local language enabling smoother communication with the people in the area.

34. In a criminal case, an interpreter shall be provided to the alleged offender or the accused, who does not communicate in Thai, to assist the person in the judicial process. This is to ensure the full exercise of the right to defend oneself.

**Religion**

35. Thailand has always given full liberty to its people to profess any religion according to his or her belief. Around 80% of Thais are Buddhists. The rest are Christians, Muslims, Hindus, Sikhs and others. Buddhism has long been Thailand's national religion. However, the current Thai Constitution does not, in any extent, provide so.

36. Therefore, the people, composing of Thai citizens and foreigners, who follow different religions can live together in harmony. The problem of discrimination on account of religious differences has never arisen in both private and public sectors. Everyone is equally protected and can exercise their rights equally. The details regarding the freedom to profess a religion shall be dealt with further at length under Article 18.

**Political view**

37. Article 39 of the Constitution provides:

> "A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise, and make expression by other means.
>
> The restriction on liberty under paragraph one shall not be imposed except by virtue of the provisions of the law specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or private rights of other person, maintaining public order or good morals or preventing the deterioration of the mind or health of the public.
>
> Etc."

38. Therefore the political view of each person is a liberty protected by the Constitution and to discriminate a person on account of his political views is forbidden by paragraph 3 of Article 30, unless such a political view is contradictory to the law. Thus, Section 63 provides:

> "No person shall exercise the rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of the State under this Constitution or to acquire the power to rule the country by any means which is not in accordance with the modes provided in this Constitution.
>
> In the case where a person or a political party has committed the act under paragraph one, the person knowing of such act shall have the right to request the Attorney General to investigate its facts and submit a motion to the Constitutional Court for ordering cessation of such act without, however, prejudice to the institution of a criminal action against such person."

39. Nevertheless, political views of certain groups of people who are governmental officials may be restricted under Section 64 of the Constitution which provides:

> "Members of the armed forces or the police force, Government officials, officials or employees of State agencies, State enterprises or local government organisations shall enjoy the same rights and liberties under the Constitution as those enjoyed by other persons, unless such enjoyment is restricted by law, by-law or regulation issued by virtue of the law specifically enacted in regard to politics, efficiency, disciplines or ethics."

40. Therefore, persons who are government officials may be restricted under Section 64 to express their political view because all laws concerning government officials stipulate that they have to be politically neutral. To take sides or participate in political activities when it is contrary to the duties of one's position may involve an offence and have disciplinary consequences.

**Nationality**

41. Thailand deems it necessary to reserve Thai nationality as a qualification in certain fields of work and activity, such as the right to participate in political activities, the right to serve under certain government positions, the right to carry out certain professions, e.g., lawyers, under the Advocates Act (1985), the owning of land or certain immovable properties under the Land Code, etc.

42. However, Thailand is in the process of preparing a draft bill to be submitted to the House of Representatives to give foreigners' rights have more diverse occupations in Thailand and have rights to own more land and immovable properties.

**Measures to promote certain groups of people to exercise rights and liberties as ordinary persons**

43. The last paragraph of Section 30 of the Constitution provides:

> "Measures determined by the State in order to eliminate obstacle to or to promote persons' ability to exercise their rights and liberties as other persons shall not be deemed as unjust discrimination under paragraph three."

44. A person who in comparison to others is handicapped such as the disabled and the aged would certainly be unequal to others in exercising their rights and liberties, and it is the duty of the State to especially assist and look after them.

*The aged*

45. For the aged, Section 54 of the Constitution provides:

> "A person who is over sixty years of age and has insufficient income shall have the right to receive aid from the State, as provided by law."

46. There is a great number of old persons who are not self reliable. Normally there is a close tie among members of the family in the Thai society. Descendants take care and support their ascendants like father, mother and grand parents. However, due to the present social and economic conditions, a vast number of descendants are not in a position of doing so despite the fact that they have all the intention to do so. This has resulted in a number of the aged who cannot look after themselves, lack the caring they need, thus making their lives very difficult.

47. In the past, there have been several private agencies and certain government agencies, like the Department of Public Welfare, supporting the aged. However, the services have been inadequate. Therefore, the Constitution provided certain assistant measures for the aged under Section 54, the organic law of which has already been enforced.

48. Thailand's Declaration on the Aged indicates the will of Thailand to take up measures to assist the aged in having a good quality of life and in protecting their rights. Furthermore, the Regulation of the Office of the Prime Minister on Promotion and Coordination on the Matters of the Aged (1999), submitted suggestions to the Cabinet to set policies, directions and operations in the promotion and coordination for the aged to ensure continuity, efficiency, and effectiveness in implementing State policies for the aged, to have higher standards of living and become self reliable.

*The disabled*

49. Section 55 of the Constitution provides protection of the disabled by stating that:

> "The disabled or handicapped shall have the right to receive public conveniences and other aids from the State, as provided by law."

50. The Ministry of Public Health has carried out a survey and found that Thailand has 4.8 million disabled persons. However, the figure of those who registered with the Public Welfare Department stands at only 0.16 million persons.

51. Most of the disabled suffer from physical disability. Whereas the intellectually impaired are lesser in number. The number of those who have visual impairment and hearing impairment are similar. Other than that, there are those who suffer from multiple-disability and mental-disability. Less than 2 percent of all disabled have jobs.

52. Thailand has promulgated the Rehabilitation Act (1991), providing the disabled with protection, aid, development, rehabilitation and opportunities in various aspects.

53. However, in practice, the protection is not carried out to the extent as to fulfil the spirit of the law. In particular, the facilities for the disabled such as roads, public footpaths, doors, stairs, lifts, bus terminals, train stations, airports, train and bus access, public libraries and traffic signs with sound announcement, etc.

54. Therefore, to ensure full protection of the disabled, Cabinet's Decision on 10 March 1998, required public organizations to provide more facilities for the disabled.

55. In addition, Thailand demonstrated that she attaches great importance to the protection of rights of the disabled by hosting the 7th FESPIC Games during 10-16 January 1999. This aims at improving the standards of living for the disabled and asserts pressure on the legal system and social welfare organizations, to re-evaluate and reorganize themselves to allow for more efficient protection of the right of the disabled.

*Homosexuals*

56. In the past, certain governmental educational institutes have set up regulations to bar homosexual from enrolment. The Ratchabhat Institute, a teacher's training college, explained the reason for having such a regulation on the grounds that the bodies and minds of homosexuals cannot appropriately carry out duties of a teacher. However, since the promulgation of the 1997 Constitution, there have been calls for repudiation of such a prohibition because it is considered to be a discriminatory and contrary to principle of human rights.

57. Therefore, such a prohibition under the said regulation was repealed. However, there are still two other limitations remaining in the regulation which states that the applicant:

(a) Shall not have history of severe mental or neurotic illness;

(b) Shall not have other characteristic irregularities which could be considered as an obstacle and hall cause damage to the teaching occupation;

(c) Each Ratchabhat Institute is to carry examinations on each individual to see whether he or she has a prohibitive character as mentioned;

(d) As for other educational institutes, there is no such discrimination against homosexuals.

**Intermarriage between Thais and foreigners**

58. Thailand acknowledges the registration of marriage between a Thai and a foreigner just as the one made between Thais, without any discrimination. An exemplary case is a case of a Thai and foreigner, who had a temporary stay in Thailand without a foreigner ID card. They applied for marriage registration, but the registrar refused to register the marriage by claiming that the Ministry of Interior had an instruction to stall the registration of a marriage done between a Thai and a foreigner who did not hold a foreigner identification card and did not have a household registration. The Supreme Court ruled that the said order of the Ministry of Interior cannot be regarded as the law. It was merely an internal regulation meant for the officials of the Ministry of Interior, thus not applicable to the general public. Therefore, the defendant, being the registrar who had a duty to record the marriage could not cite the Ministerial Regulation thereby breaching the duty provided by the law.

59. A Thai woman who is married to a foreigner would lose certain rights, such as the right to hold the title of land, the right to pass on nationality to one's children which was at one time allowed for a Thai male who married a foreign female. The present Constitution has brought about significant changes in the matter by allowing a child born out of a Thai mother and a foreign father to hold Thai nationality from birth.

**Article 3**

60. In the past, Thailand had a problem of inequality between man and woman. This can be seen from a former law promulgated in 1361 which provided that women were like a personal belonging to others. During her childhood, she belongs to her parents; when she is married, she is considered as a belonging of her husband. The parents had the right to sell their daughter and a husband had the right to beat or sell his wife.

61. Later on, as Thailand increased its foreign relations with other countries, the perception of the people on equality of men and women began to change. This can be seen from the Kidnapping Act (1865), which had a preamble that says:

> "Parents are not owners of sons and daughters for it is unlike owning cows, buffaloes, elephants and horses, which they can freely set the selling price."

62. It is an abolition of the power of the parents to sell their children. Should the parents become poor they could sell their sons and daughters only at their consent.

63. In 1867, there was the promulgation of the Husband's Selling of Wife Act (1867), which forbade a man to sell his wife. Should he like to sell her it could be done only at her consent.

64. The promotion of the status of woman in Thailand has continuously improved. This can be seen from the writing of King Rama VI in an article entitled "The Status of Woman is the Sign of Prosperity". In that article he praised the civilized society where men have respect for women, unlike the underdeveloped society in the archipelagic countries of the South Sea.

65. In 1932, Thailand had a change of regime from absolute monarchy to a democratic government with the King as Head of the State. The rights of women had been given more and more attention under various Constitutions of Thailand ever since. The 1974 Constitution promulgated during an era of tremendous awareness on democracy, had incorporated many provisions on the promotion and protection of human rights.

66. Regarding the equality between man and woman, Section 28 paragraph 2 of the said Constitution provides that:

> "Man and woman enjoy equal rights."

As a result of this provision, a number of laws, rules and regulations in various fields were repealed because they were in conflict with the principle of equality between man and woman.

67. The principle of equal rights of man and woman is also incorporated in the present Constitution under Section 30 paragraph 2.

68. Thailand has also become a party to the Convention on the Political Rights of Woman 1953 and the Convention on the Elimination of All Forms of Discrimination against Women 1979. This latter convention became binding for Thailand on 8 September 1985. There were seven reservations, five of which were withdrawn. The two remaining reservations are Article 16 on equality within a family, and Art and Article 29 on the jurisdictions of the International Court of Justice over any dispute.

**Family relations**

69. The Civil and Commercial Code Book V on Family promulgated in 1934, increased its recognition of the rights of women in the family, similar to those practiced in western countries, such as the recognition of spousal status only in the case of legal marriages, and that a man shall only have one legal wife.

70. In 1976, Thailand revised its Civil and Commercial Code, Book V, which came into force on 16 October. The substance of which are as follows:

(a) To repeal the provisions on assigning a man to be the head of the family, the one to choose the residence, and the only one to decide on family matters;

(b) In managing the marital property, the husband and the wife have to seek the approval from each other in making any legal action. Whereas, the old law called for the approval of the husband only;

(c) If a husband supports or gives recognition to another woman as a wife, his legal wife can file for a divorce. Whereas, former law only gave this right to the husband in the case that she commits adultery;

(d) The right for husband or wife to take action to claim compensation from the divorced partner and the other man or woman, who has taken away his or her spouse. The court has the power to rule for a one time or periodic compensation;

(e) Parents have equal rights in guardianship of their children. Former law gave the power of guardianship to the father only;

(f) The division of marital property shall be equal, disregarding the property before the marriage. The new law provides for only two kinds of properties, namely marital property and personal property. It thereby abolished the property before marriage and the common property under the old law.

71. The present Civil and Commercial Code under Section 1516 provides on causes for divorce in an unequal manner. When a woman commits adultery her husband can take action for divorce. On the contrary, if a husband has an extra-marital affair with another woman, it is not a cause for divorce in itself. The husband must evidently be giving support or recognizing a woman as a wife and only then, would it become a cause for divorce. Therefore, there is an attempt to push for a revision of the law to yield equality.

**Right to serve in the governmental service**

72. Before 1974 there had been several rules and regulations of several governmental agencies which forbade woman to hold certain positions, for example the Public Prosecutor Service Act (1960), and the Regulations of the Ministry of Interior, issued under the said Act did not allow a woman to become a public prosecutor. However, in 1977 the said regulations were repealed.

73. At present, all governmental services had abolished the prohibition on woman to join the services. There are exceptions for certain positions where the physical structure of a woman could be an obstacle in fulfilling the task of a certain position, such as the position in the corrections facilities which usually call for a male warder to look after male prisoners and a female warder to look after female prisoners.

74. In addition, Thailand has promoted women to hold higher positions. It allows women to hold the rank of Generals in various departments of the Ministry of Defense and the Royal Thai Police. For civil service, women are assigned higher administrative positions of Director Generals or Provincial Governors. They also play a higher role in the political sphere. This can be seen from the following figures:

**Table 1**

**The number of civil servant classified by types and sexes in the budgetary year of 1996**

| Type (Central Personnel Administration Organization) | Total number | Number | | Percentile | |
|---|---|---|---|---|---|
| | | Female | Male | Female | Male |
| 1. Regular Civil Servants | 373 562 | 208 315 | 165 247 | 55.76 | 44.24 |
| 2. Teachers | 526 681 | 307 043 | 219 638 | 58.30 | 41.70 |
| 3. University lecturers | 47 348 | 31 384 | 15 964 | 66.28 | 33.72 |
| 4. Parliamentary officers | 1 207 | 802 | 405 | 66.45 | 33.55 |
| 5. Judicial officers | 2 138 | 337 | 1 801 | 15.76 | 84.24 |
| 6. Public Prosecutors | 1 627 | 178 | 1 449 | 10.94 | 89.06 |
| 7. Police | 220 992 | 10 330 | 210 662 | 4.67 | 95.33 |
| 8. Bangkok Metropolitan officers | 29 949 | 20 520 | 9 429 | 68.52 | 31.48 |
| - (Regular) | 16 552 | 10 545 | 6 007 | 63.71 | 36.29 |
| - (Teacher) | 13 397 | 9 975 | 3 422 | 74.46 | 25.54 |
| 9. Provincial officers | 5 628 | 3 509 | 2 119 | 62.35 | 37.65 |
| 10. Municipal officers | 24 617 | 14 680 | 9 937 | 59.63 | 40.37 |
| - (Regular) | 11 581 | 5 289 | 6 292 | 45.67 | 54.33 |
| - (Teacher) | 13 036 | 9 391 | 3 645 | 72.04 | 27.96 |
| 11. Sanitary district officers | 3 418 | 1 997 | 1 421 | 58.43 | 41.57 |
| Total | 1 237 167 | 599 095 | 638 072 | 48.42 | 51.58 |

*Source*: All central personnel administration organizations and governmental agencies at the ministerial, bureau, and departmental levels.

**Table 2**

**Number of administrators classified by agencies, levels (rank classification), and sexes in the 1996 budgetary year**

| Agencies | Grand total | | | Level 9 | | Level 10 | | Level 11 | |
|---|---|---|---|---|---|---|---|---|---|
| | Total | Female | Male | Female | Male | Female | Male | Female | Male |
| Total | 449 | 57 | 392 | 37 | 206 | 19 | 163 | 1 | 23 |
| 1. Office of the Prime Minister | 70 | 13 | 57 | 4 | 14 | 9 | 33 | 0 | 10 |
| 2. Ministry of Finance | 30 | 6 | 24 | 6 | 13 | 0 | 10 | 0 | 1 |
| 3. Ministry of Foreign Affairs | 31 | 5 | 26 | 5 | 12 | 0 | 13 | 0 | 1 |
| 4. Ministry of Agriculture | 47 | 2 | 45 | 1 | 30 | 1 | 14 | 0 | 1 |
| 5. Ministry of Communication | 31 | 3 | 28 | 3 | 16 | 0 | 11 | 0 | 1 |
| 6. Ministry of Commerce | 32 | 6 | 26 | 6 | 14 | 0 | 11 | 0 | 1 |
| 7. Ministry of Interior | 36 | 0 | 36 | 3 | 22 | 3 | 13 | 0 | 1 |
| 8. Ministry of Justice | 13 | 0 | 13 | 0 | 6 | 0 | 6 | 0 | 1 |
| 9. Ministry of Labour | 22 | 3 | 19 | 2 | 11 | 1 | 7 | 0 | 1 |
| 10. Ministry of Science and Technology | 25 | 7 | 18 | 5 | 9 | 2 | 8 | 0 | 1 |
| 11. Ministry of Education | 53 | 5 | 48 | 2 | 34 | 3 | 13 | 0 | 1 |
| 12. Ministry of Public Health | 29 | 2 | 27 | 1 | 16 | 1 | 10 | 0 | 1 |
| 13. Ministry of Industry | 21 | 3 | 18 | 2 | 9 | 1 | 8 | 0 | 1 |
| 14. University Bureau | 4 | 0 | 4 | 0 | 0 | 0 | 3 | 0 | 1 |
| 15. Other Independent Agencies | 5 | 2 | 3 | 0 | 0 | 1 | 3 | 1 | 0 |

*Source*: Office of the Civil Service Commission.

**Table 3**

**Number of administrator in higher educational institutes (University Bureau) classified by position and sexes**

| | 2000 | | | | 1999 | | | |
|---|---|---|---|---|---|---|---|---|
| | Total | Female | Male | % Female | Total | Female | Male | % Female |
| Position | | | | | | | | |
| - Rector | 21 | 3 | 18 | 14.29 | 20 | 1 | 19 | 5.00 |
| - Vice Rector | 163 | 38 | 125 | 23.31 | 161 | 39 | 122 | 24.22 |
| Ministry of Education | | | | | | | | |
| - Rector | 39 | 6 | 33 | 15.38 | 38 | 7 | 31 | 18.42 |
| - Vice Rector | 224 | 49 | 175 | 21.88 | 190 | 40 | 150 | 21.05 |

(unit: person)

*Source*: Office of the Civil Service Commission.

**Table 4**

**Statistics of female in the position of head of sub district and head of village**

| Position | Total | Sex | |
|---|---|---|---|
| | | Male | Female |
| Head of Sub district | 7 145 | 6 982 | 163 |
| Head of Village | 61 568 | 60 328 | 1 240 |
| Sub district Health Official | 7 145 | 6 706 | 439 |
| Assistant to Head of Sub district | 14 290 | 13 900 | 390 |
| Assistant to Head of Village on Administration | 137 304 | 132 530 | 4 774 |
| Assistant to Head of Village on Peace Keeping | 4 368 | 40 339 | 29 |
| Total | 267 820 | 260 785 | 7 035 |

*Source*: Local Administration Department, Ministry of Interior.

**Table 5**

**Eligible voters and number of actual voters in the provincial council election**

| Date of election | Number of eligible voters | | | Actual voters who cast votes | | |
|---|---|---|---|---|---|---|
| | Total | Male | Female | Total | Male | Female |
| 25 August 1985 | 20 870 463 | 10 303 256 | 10 567 207 | 10 476 847 | 5 274 144 | 5 202 703 |
| Percentage | | 49.37 | 50.63 | | 50.34 | 49.66 |
| 20 October 1991 | 25 434 453 | 12 507 638 | 12 926815 | 13 169 959 | 6 528 070 | 6 641 889 |
| Percentage | | 49.18 | 50.82 | | 49.57 | 50.43 |
| 24 December 1995 | 31 517 767 | 15 523 158 | 15 994 609 | 16 142 717 | 7 751 615 | 8 391 102 |
| Percentage | | 49.25 | 50.75 | | 48.02 | 51.98 |
| 5 February 2000 | 31 906 304 | 15 634 172 | 16 272132 | 17 813 283 | 8 508 687 | 9 304 596 |
| Percentage | | 49.00 | 51.00 | | 47.77 | 52.23 |

*Source*: Election Division, Department of Local Administration, Ministry of Interior.

**Table 6**

**The comparison of the ratio of candidates and the elected classified by sexes**

| Time | Date of election | Number of candidates | | | Number of member of the House of Representatives | | | Percentage | |
|---|---|---|---|---|---|---|---|---|---|
| | | Total | Male | Female | Total | Male | Female | Male | Female |
| 13 | 18 April 1983 | 1 880 | 1 826 | 54 | 324 | 311 | 13 | 17.0 | 24.1 |
| 14 | 27 July 1986 | 3 811 | 3 449 | 362 | 347 | 335 | 12 | 9.7 | 3.3 |
| 15 | 24 July 1988 | 3 612 | 3 246 | 366 | 357 | 347 | 10 | 10.7 | 2.7 |
| 16 | 22 March 1992 | 2 954 | 2 742 | 212 | 360 | 348 | 12 | 12.7 | 5.7 |
| 17 | 13 September 1992 | 2 417 | 2 175 | 242 | 360 | 345 | 15 | 15.9 | 6.2 |
| 18 | 2 July 1995 | 2 372 | 2 130 | 242 | 391 | 367 | 24 | 17.2 | 9.9 |
| 19 | 17 November 1996 | 2 310 | 1 950 | 360 | 393 | 371 | 22 | 19.0 | 6.1 |

*Source*: Election Division, Department of Local Administration, Ministry of Interior.

**Table 7**

**The ratio of female members of the House of Representatives in the Parliament (1933-1996)**

| Time | Date of election | Number of candidates | | | Number of member of the House of Representatives | | |
|---|---|---|---|---|---|---|---|
| | | Total | Male | Female | Total | Male | Female |
| 1 | 15 November 1933 | n/a | n/a | n/a | 78 | n/a | n/a |
| 2 | 7 November 1937 | n/a | n/a | n/a | 91 | n/a | n/a |
| 3 | 12 November 1938 | n/a | n/a | n/a | 91 | n/a | n/a |
| 4 | 6 January 1946 | n/a | n/a | n/a | 96 | n/a | n/a |
| 5 | 29 January 1948 | n/a | n/a | n/a | 99 | n/a | n/a |
| 6 | 26 February 1952 | n/a | n/a | n/a | 123 | 119 | 4 |
| 7 | 26 February 1957 | 966 | n/a | n/a | 160 | 159 | 1 |
| 8 | 15 December 1957 | 813 | n/a | n/a | 160 | 156 | 4 |
| 9 | 10 February 1969 | 1 253 | 1 226 | 27 | 219 | 214 | 5 |
| 10 | 26 January 1975 | 2 199 | n/a | n/a | 269 | 266 | 3 |
| 11 | 4 April 1976 | 2 329 | n/a | n/a | 279 | 272 | 7 |
| 12 | 22 April 1979 | 1 626 | n/a | n/a | 301 | 292 | 9 |
| 13 | 18 April 1983 | 1 880 | 1 826 | 54 | 324 | 311 | 13 |
| 14 | 27 July 1986 | 3 811 | 3 449 | 362 | 347 | 335 | 12 |
| 15 | 24 July 1988 | 3 612 | 3 246 | 366 | 357 | 347 | 10 |
| 16 | 22 March 1992 | 2 954 | 2 742 | 212 | 360 | 348 | 12 |
| 17 | 13 September 1992 | 2 417 | 2 175 | 242 | 360 | 345 | 15 |
| 18 | 2 July 1995 | 2 372 | 2 130 | 242 | 391 | 367 | 24 |
| 19 | 17 November 1996 | 2 310 | 1 950 | 360 | 393 | 371 | 22 |

*Source*: Election Division, Department of Local Administration, Ministry of Interior.

*Note*: n/a (not available) are the years in which the data are not collectible.

**Table 8**

**Participation of female in the Senate (1985-2001)**

| Year | Male | Female | Total |
|---|---|---|---|
| 1985 | 238 | 5 | 243 |
| 1986 | 255 | 5 | 260 |
| 1987 | 255 | 5 | 260 |
| 1988 | 262 | 5 | 267 |
| 1989 | 261 | 6 | 267 |
| 1992 | 262 | 8 | 270 |
| 1996 | 239 | 21 | 260 |
| 1999 | 241 | 21 | 262 |
| 2000 | 179 | 21 | 200 |
| 2001 | 178 | 20 | 200 |

*Source:* Data from the cluster of registry and statistics, the Office of the Secretary-General of the Senate.

75. It is apparent that Thailand has increased various measures to ensure that there is no discrimination against women. However, to change the values of local people may require some time. The above figures illustrates the development in guaranteeing equal rights of man and woman in enjoying their civil and political rights, demonstrating a positive trend towards full abolition of discrimination against women in the near future.

**Right to join the public service**

76. The principle of equality is applied to all applications to join the public service.

*Joining the Civil Service*

77. Under the Civil Service Act (1992), filling a position for a civil servant shall be done by appointing those who passed the competitive examination for such a position. This means the appointment will be made according to the roster of those who have passed the examination. This is done under the supervision of the Civil Service Commission which has the duty of supervising and administering the examination to ensure equality and justice.

78. A person wishing to enter the civil service shall have the following qualifications:

(a) Being a person of Thai nationality;

(b) Being not less than 18 years of age;

(c) Being a true believer of democratic government with the King as the Head of the State;

(d) Not holding a political position;

(e) Not being handicapped to the extent of being unable to carry out his or her duties, incapable, being of unsound mind or of mental infirmity or having a disease as provided by the rules of the Civil Service Commission;

(f) Not having been suspended or temporarily discharged under the law on civil service or other laws;

(g) Not being morally unacceptable to the society;

(h) Not being a member of the board of a political party or an official of a political party;

(i) Not being bankrupt;

(j) Not having been imprisoned by a final judgment for having committed a crime except for an offence committed through negligence or a petty offence;

(k) Not having been removed, dismissed or expelled from a State enterprise or a State agency;

(l) Not having been disciplined and thereby removed or dismissed for committing a disciplinary offence under the law of Civil Service or other laws;

(m) Not having been disciplined and thereby expelled for committing a disciplinary offence under the law of civil service or other laws;

(n) Not having cheated in the competitive examination to join the civil service.

*Joining the Public Prosecutor Service*

79. Under the Public Prosecutor Service Act (1978), the appointment of persons to become Assistant Public Prosecutor shall be done by the Prime Minister or a superior officer as assigned by the Prime Minister. This is carried out by a selective examination. Applicants to the selective examination who seek the filling and appointment to become Assistant Public Prosecutor shall have certain qualifications namely, having graduated as a law bachelor or equivalent bachelor

degree; having passed the program of the Legal Education Institute of the Thai Bar Council and having carried out legal profession for a period of not less than two years as a judicial servant, advocate, legal officer or other legal profession as prescribed by the Public Prosecutor Commission; being of Thai nationality by birth and not being less than 25 years of age.

80. The statistics as of 1 December 1999 indicates that the Office of the Attorney General has 1801 public prosecutors, out of whom 217 are female as shown in the table below. The promotion, training and study trips are done fairly, on an equal basis between men and women. However, in the holding of the position of mid-level administrator like provincial chief public prosecutor, a female, in comparison to a male, is likely to have less opportunity for a female tends to choose to shoulder family responsibilities rather than to take up professional advancement. As a result, female public prosecutors usually take a position of lesser responsibility. Nevertheless, there is a positive trend of female public prosecutor being promoted to higher administrative positions.

**Statistics on the composition and ranks of officials of the Office of the Attorney General as of 1 December 1999**

**Public Prosecutor**

**Total number 1,801, male 1,584 female 217**

| | | | | | | |
|---|---|---|---|---|---|---|
| Class 8 | Number person | 1 | Male person | 1 | Female person | - |
| Class 7 | Number person | 4 | Male person | 4 | Female person | - |
| Class 6 | Number person | 200 | Male person | 200 | Female person | - |
| Class 5 | Number person | 293 | Male person | 269 | Female person | 24 |
| Class 4 | Number person | 651 | Male person | 575 | Female person | 76 |
| Class 3 | Number person | 453 | Male person | 360 | Female person | 93 |
| Class 2 | Number person | 43 | Male person | 38 | Female person | 5 |
| Class 1 | Number person | 156 | Male person | 137 | Female person | 19 |

## Statistics on the composition and ranks of the Office of Attorney General as of 30 September 2001

### Public Prosecutor

### Total number 2,148 (1,801) persons male 1,743 (1,584) persons female 298 (217) persons

| | | | | | | |
|---|---|---|---|---|---|---|
| Class 8 | Number person | 1 (-) | Male person | 1 (1) | Female person | - (-) |
| Class 7 | Number person | 4 (4) | Male person | 1 (4) | Female person | - (-) |
| Class 6 | Number person | 315 (220) | Male person | 297 (218) | Female person | 18 (2) |
| Class 5 | Number person | 297 (301) | Male person | 269 (272) | Female person | 28 (29) |
| Class 4 | Number person | 566 (690) | Male person | 479 (588) | Female person | 87 (102) |
| Class 3 | Number person | 481 (372) | Male person | 403 (309) | Female person | 78 (63) |
| Class 2 | Number person | 258 (141) | Male person | 201 (122) | Female person | 57 (19) |
| Class 1 | Number person | 119 (261) | Male person | 89 (204) | Female person | 30 (57) |
| Senior Public Prosecutor | Number person | 107 (73) | Male person | 106 (72) | Female person | 1 (1) |

### Clerical civil servant

### Total number 1,845 (1,769) persons male 422 (316) persons female 1,423 (1,480) persons

| | | | | | | |
|---|---|---|---|---|---|---|
| Class 8 | Number person | 4 (4) | Male person | 1 (1) | Female person | 3 (-) |
| Class 7 | Number person | 52 (54) | Male person | 20 (19) | Female person | 32 (35) |
| Class 6 | Number person | 141 (134) | Male person | 41 (34) | Female person | 100 (100) |
| Class 5 | Number person | 596 (548) | Male person | 147 (118) | Female person | 449 (430) |
| Class 4 | Number person | 559 (590) | Male person | 138 (52) | Female person | 421 (538) |
| Class 3 | Number person | 254 (266) | Male person | 62 (84) | Female person | 192 (182) |
| Class 2 | Number person | 198 (160) | Male person | 12 (6) | Female person | 186 (154) |
| Class 1 | Number person | 41 (40) | Male person | 1 (2) | Female person | 40 (38) |

*Note:* The figures in brackets are those of the year 2000.

*Joining the Judicial Service*

81. Under the Judicial Service Act (1978), the Minister of Justice shall order the filling and the appointment judge-trainees by a selective examination. The applicants for judicial service selective examination shall hold similar qualifications to those of the public prosecutors. This recruitment is under the supervision of the Judicial Service Commission. The statistics of the judicial servant recruitment as of 2000 is 2,793 judges, out of whom are 524 female as shown in the table shown below.

**Composition and ranks of judicial servant**

**Data as of October 1, 2002**

| Sex / Type | Persons (ratio) | | |
|---|---|---|---|
| | Male | Female | Total |
| Judge | 2 244 | 536 | 2 780 |
| Senior Judge | 130 | 5 | 135 |
| Judge Trainee | 172 | 82 | 254 |
| Total | 2 546 | 623 | 3 169 |

**Data as of March 1,2545 (2002)**

| Sex / Type | Persons (ratio) | | |
|---|---|---|---|
| | Male | Female | Total |
| Judge | 2 242 | 536 | 2 778 |
| Senior Judge | 128 | 5 | 133 |
| Judge Trainee | 169 | 82 | 251 |
| Total | 2 539 | 623 | 3 162 |

*Recruitment for military service*

82. Under the Regulations of Ministry of Defense on the Requirement on the Nationality of the Appointee to the position of regular commissioned officer, non-commissioned officer or regular private (volunteered private) 1963 No. 3, a person to be filled into the military service or refilled to be regular non-commissioned officers or regular privates must be of Thai nationality and their parents must have Thai nationalities by birth. Only defense civil servants who are filled in the military assignment shall not be required to have this latter qualification, but needs to be of Thai nationality by birth, according to the Military Regulation on Defense Civil Servant No. 3/4028, 1939. If the father of the commissioned officer or non-commissioned officer is of Thai nationality by birth, his mother does not have to be of Thai national by birth.

83. The provision under first paragraph shall also be applied to those who are transferred from a civil service department, except when he is an unassigned officer (an unassigned officer is an officer who does not have a regular position in the Ministry of Defense and the Ministry of Defense has ordered him to serve as an unassigned officer. Normally an unassigned officer does not have a duty to serve under the military service at all).

84. Thailand, like most other countries, has rules regarding the recruitment of public servants. For certain important departments relating to national security, the investigation of the qualifications of the position holder shall be done in a stricter manner and is reserved for Thai citizens only. It is also required that to join a military or police unit, the applicant shall be of Thai nationality and be of Thai race, that is the parents and grand parents must also be of Thai nationality. The reason behind it lies in the national security of the country.

85. Thailand has several other kinds of public servants like teachers, university lecturers, police officers, metropolitan administration officers, and local administration officers. Each of which has its own law and commission under the law to look after and ensure that recruitment is free, equal and just as required by the provision of law.

86. Many obstacles faced by women in joining the public service and holding positions in different State agencies, such as Head of District, Governor or warder, have mostly been removed by revision of the law.

87. Also, in January 1993, the Cabinet has repealed a Cabinet Decision made in 1978 which forbade a woman to hold the position of Assistant Head District. This position is in fact a channel for women to become Governors. Since the Cabinet has repealed the said prohibition, a female Governor, a female Deputy Governor, and ten female Heads of Districts were for the first time appointed in February 1993.

88. In the judicial sector, there are more and more females holding positions in the judicial process line of work. In 1995, the first female judge was appointed to the Supreme Court. At present, there are several female judges. The statistics since 1994 has shown that the number of females appointed as judges stand at 135.

*Female public servant in military and security sectors*

89. Females have advanced rapidly in military positions. There are currently five female officers who are promoted to the rank of Army Major Generals. This evidently shows the abolition of former restrictions. However, females are still restricted to the level of Major General and are assigned to tasks related to intelligence, finance, medical service and others which do not relate to the control of combat units. The number of female Generals in the Ministry of Defense is shown in the following table.

**Data on female generals in 1999-2001**

| Sequence | Royal Proclamation | Office of the Permanent Secretary of Ministry of Defense | Supreme Command Headquarter | Army | Navy | Air force | Total |
|---|---|---|---|---|---|---|---|
| 1 | 1 April 1999 | 1 | - | 2 | 1 | - | 4 |
| 2 | 1 October 1999 | 1 | 3 | - | - | 1 | 5 |
| 3 | 1 April 2000 | 2 | 3 | 1 | - | - | 6 |
| 4 | 1 October 2000 | 1 | - | 1 | 3 | - | 5 |
| 5 | 1 April 2001 | - | 2 | 2 | 1 | 1 | 6 |
| 6 | 1 October 2001 | 1 | 2 | - | - | 1 | 4 |
| Total | | 6 | 10 | 6 | 5 | 3 | 30 |

*Source:* Division of Military Force Administration, Office of Military Force, Secretariat Department, Office of the Permanent Secretary of Ministry of Defense.

*Female public servants in the Foreign Service*

90. The data as of 1 March 1996 shows that there are 27% female out of 132 persons in the administration level 8. In the level 9, the figure is 16% out of 63 persons and in the level 10, it is 7% out of 76 persons. At present, there are several women who have been appointed Ambassadors to many countries.

**Rights to receive information and participate in expressing views on important activities of the State**

91. Under the 1997 Constitution, the people are given the right to participate in the important activities of the State in a wider manner. This can be seen from Section 59 which provides:

> "A person shall have the right to receive information, explanation and reason from a State agency, State enterprise or local government organisation before permission is given for the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or her or a local community and shall have the right to express his or her opinions on such matters in accordance with the public hearing procedure, as provided by law."

92. In addition Section 60 also provides:

> "A person shall have the right to participate in the decision-making process of State officials in the performance of administrative functions which affect or may affect his or her rights and liberties, as provided by law."

93. In the case that the people are of the opinion that they are not being treated equitably in certain matters, they have the right to submit a petition, for Section 61 provides:

> "A person shall have the right to present a petition and to be informed of the result of its consideration within the appropriate time, as provided by law."

94. The Government had held several public hearings on draft bills that may affect the material interest of the people, such as the Draft National Education Act or the Draft Promotion and Protection of Human Rights, etc., to allow people to have more opportunities to freely and thoroughly consider and express their opinions, as provided in Section 59 before these bills are considered in the House of Representatives.

*Women and employment*

95. The employment of women involves the discrepancy between man and woman especially in matters concerning type of work, risks, welfares, such as recreational leave, maternity leave, etc. This has caused several organizations to campaign for women's rights and to call for change and improvements.

96. Thailand attaches importance to this matter and has always tried to revise and improve measures to protect women's rights. In 1997, a major legislation, the Labour Protection Act (1998), was promulgated. This law laid down measures to protect women in employment. This legislation was objected by a vast number of entrepreneurs that it is unfair in the sense that it is too much geared toward labour protection too heavily and is too burdensome for the employers or entrepreneurs.

97. Female labour protection under the said law is stipulated under chapter 3. The relevant provisions are as follows:

> Section 38 "The employer shall not allow a female employee to perform any of the following work:
>
> (a) Mining or construction which must be performed underground, underwater, in a cave, in a tunnel or passage in the mountain, except where the conditions of work are not hazardous to the employee's health or body;
>
> (b) Working on scaffolding which is 10 metres or more above the ground;
>
> (c) Producing or transporting explosives or inflammable materials;
>
> (d) Other works as to be prescribed by the ministerial regulations."

98. Anyhow, under the 7th Regulation of the Ministry of Labour, a provision states that employers are to allow female labours to perform professional or technical works which is related to exploration, drilling, refining; separation and production of petroleum and petrochemicals, as long as the nature or type of the work is not harmful to the health and body of the female worker.

99. Section 39 provides that "The employer shall not allow a female employee who is pregnant to work between 10.00 p.m. to 6.00 a.m.; to work overtime; to work on holidays; or to perform any of the following:

(a) Work on vibrating machinery or engines;

(b) Drive, or travel on vehicles;

(c) Lift, carry or bear on the shoulders or head, or pull or push loads that weigh more than fifteen kilograms;

(d) Work on vessels;

(e) Other works as to be prescribed by the regulations of the Ministry."

100. Section 40 states that "if the employer employs a female to work between 12.00 a.m. to 6.00 a.m., and the labour inspection official considers that such employment may be harmful to the health and safety of the female employee, the labour inspection official shall submit a report to the Director-General or his designate, to consider an issuance of an order which requires the employer to change the working time or reduce the working hours as deemed appropriate, and to comply with such order."

101. Section 41 indicates that "female employee who is pregnant shall be entitled to a maternity leave of not more than ninety days.

102. The days of maternity leave under paragraph one shall include holidays during the leave period as well."

103. Section 42 provides that "if a female employee who is pregnant has a certificate issued by a first class modern physician, which states that she is not able to perform her original duties any longer, such employee shall be entitled to request the employer to transfer her temporarily either before or after childbirth, and the employer shall consider transferring her to a more suitable duty."

104. Section 43 further provides that "it is prohibited for an employer to expel a female employee because of her pregnancy."

105. In addition, Section 16 also provides that "it is prohibited for the employer or a person who is the chief of staff, supervisor, or inspector to commit sexual harassment against employees who are women or children."

106. There is also a criminal liability for an employer who violates Section 16.

107. Section 16 is a new principle which aims at protecting the rights of female employees. Certain prohibitions which forbid female labour to work under Section 38 stem from the fact that they are harmful to the health and safety of female employees, such as the production and transportation of explosives and inflammables. In reality, however, if the source of danger can be technologically controlled or prevented, female labour should be allowed to work in those areas.

108. In addition, the 7th regulation of the Ministry of Labour Ministry allows pregnant employees to work in certain positions and areas of work, such as technical administrator, office management, financing and auditing. The employers are also allowed to have pregnant employees work overtime provided that they have the employees' consent.

*Violence against children and women*

109. There are several incidents of violence against women, be they girls or grown-ups. The government has paid close attention to the problem and has carried out measures to prevent and suppress violence, especially sexual violence, against woman. This is shown by the statistics of the Office of Attorney General.

**The statistics of child or juvenile victims in 1998-2000**

| Year | Office of Attorney General | Victims | | | | Offences on | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Less than 7 years old | Over 7 years old but not over 14 years old | Over 14 years old but not over 18 years old | Total | Sex | Life/ body | Freedom/ labour | Total |
| | | Person | Person | Person | Person | Case | Case | Case | Case |
| 1998 | Bangkok | 43 | 150 | 276 | 469 | 325 | 105 | 39 | 469 |
| | Other provinces | 29 | 161 | 159 | 349 | 285 | 35 | 29 | 349 |
| | Total | 72 | 311 | 435 | 818 | 610 | 140 | 68 | 818 |
| 1999 | Bangkok | 31 | 135 | 138 | 304 | 199 | 35 | 27 | 261 |
| | Other provinces | 50 | 160 | 110 | 320 | 258 | 28 | 13 | 299 |
| | Total | 81 | 295 | 248 | 624 | 457 | 63 | 40 | 660 |
| 2000 | Bangkok | 16 | 87 | 136 | 239 | 146 | 82 | 15 | 243 |
| | Other provinces | 41 | 124 | 112 | 277 | 233 | 29 | 21 | 283 |
| | Total | 57 | 211 | 248 | 516 | 379 | 111 | 36 | 526 |

*Note*: The figures of 2000 are from January to September.

110. In order to protect women from violent acts, the Royal Thai Police has issued a regulation regarding treatments for abused children and women in August 1998, covering seven points and the police stations across the country were instructed implement the regulation so that protection of children and women can be carried out easily, quickly with due respect to the human dignity at all times.

111. The Cabinet's Decision on 29 June 1999 approved the measures for solving the problem of violence against women and instructed relevant agencies to carry out the measures which aimed at creating suitable mechanism in giving assistance to children and women in difficulties. The decision also designated November of every year as "the month of campaign to stop violence against children and women."

112. Furthermore, 25 November of every year is recognized as the "stop violence against women" day. Each year non-governmental organizations and the Thai government have jointly organised activities to raise the awareness of the society on the issue and to seek ways to stop violence against women. This is done by creating a positive perception of women and encourages men to cease taking advantages of women or ill-treating women, and explore ways for men and women to stop the violence against women in a cohesive manner.

**Right to choose family name**

113. Under the Name of Persons Act (1962), Section 12 provides that "a woman shall use the family name of her husband". However, in principle, there have always been objections in this regard, as it is seen as a limitation of women's right and a discrimination against women, causing them to be unequal to men, when taking paragraphs 2 and 3 of Section 30 of the Constitution into consideration.

114. Therefore, the Cabinet decided on 18 May 1999 to support a draft bill to revise the Name of Persons Act, so that there is equality between men and women in using family names, which could be that of their own or their spouse.

115. In addition, there was a movement from the National Committee on Promotion and Cooperation of Women's Affairs, a unit under the Office of Prime Minister, to change the title of a woman because the fact the she has to use the term "Miss" before marriage and must be change into "Mrs." once she is married, is considered as inequality. A revision of a royal decree on the title of a woman (1917) is therefore proposed to ensure equality.

*The problem of child prostitute*

116. Thailand is another country that is being criticized about the problem of child prostitutes, which has a great impact on the female human dignity. Thailand attaches tremendous importance to the problem and tries to rectify it through legislative process, such as the promulgation of the Prevention and Suppression of Prostitute Act (1996), which prescribes measures to prevent anyone from supporting a child to enter prostitution, whether voluntarily or involuntarily. The Act provides a high penalty for violations and also measures to rehabilitate the child prostitute by providing her with vocational training so that she can return to society as a capable and efficient citizen. In addition, the Prevention and Suppression of Woman and Child Trafficking Act (1997), was promulgated to prevent and suppress child trafficking.

117. The Cabinet has also decided on 27 August 1996 to approve the action plan for preventing and rectifying the problem of sex industry. The decision required related governmental and private agencies to arrange projects and activities in this regard and report their outcome to the Cabinet every 6 months.

118. As for measures to prevent a child from entering into prostitution, the Cabinet had decided on 1 February 1994 to approve a proposal made by the Ministerial Committee on Social Affairs on guidelines to solve the problem of child prostitutes and assigned relevant governmental departments to consider implementing the decision accordingly and report to the Cabinet every 3 months.

*The nationality of a female married to a foreigner*

119. According to the Nationality Act (1992), a foreign man who is married to a Thai woman shall not be able to acquire the Thai nationality. Whereas a foreign woman who is married to a Thai man has a right to acquire Thai nationality. This results in equality in enjoying rights between Thai male and female.

120. Therefore, the Committee for Promotion and Cooperation on Women's Affairs submitted a proposal to the Cabinet to revise the said law to bring about equality. The Cabinet has later approved the revision of the law and assigned relevant agencies to take further steps. At the moment it is under the consideration of the relevant agencies. The details of which also appear in the report regarding Article 23.

**Article 4**

121. In the past, Thailand on several occasions declared a temporary state of emergency. They were meant for the survival of the country, for example, the declaration of martial law under the Martial Law Act (1914), within the power of the Ministry of Defense, and the declaration of a state of emergency under the Administration under Emergency Situation Act (1952), within the power of Ministry of Interior, as a civil agency.

122. However, after Thailand had become a party to this Covenant, there had not been any declaration of a state of emergency and should there be any necessity to do so, Thailand shall strictly follow the commitment as provided under Article 4.

123. Thailand is convinced that human rights protected under the Covenant on Civil and Political Rights (1966) are of great importance. Therefore in a state of emergency which threatened the survival of the country, the state may apply measures that evade or restrain the commitment under the Covenant, but the evasion or restraint shall be done under certain conditions or limitations, and it cannot be carried out at will. Certain important conditions were laid down by the Covenant, for example, a state of emergency shall be officially declared, measures shall be taken only when the necessary, and shall not be discriminating. Thailand respects and follows these conditions very strictly as can be seen from various provisions of the Constitution which are in line with the principles of the Covenant.

124. Article 29 of the 1997 Constitution recognises and is in line with the commitment under paragraph (1) of Article 4 of the Covenant which provides:

> "The restriction of such rights and liberties as recognised by the Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties.
>
> The law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provision of the Constitution authorising its enactment shall also be mentioned therein.
>
> The provisions of paragraph one and paragraph two shall apply mutatis mutandis to rules or regulations issued by virtue of the provisions of the law."

125. From the above-mentioned provision of the Constitution, one can see that a violation of the liberty of people shall be under strict limitations for the purpose of keeping the security of the State or public order and good morals of the people.

126. The right of a person to hold an opinion without any interference including freedom of expression and the right to seek, receive and impart information and data under Article 19 of the Covenant shall be guaranteed and shall not be violated unless it falls under the exemption in Section 37 of the Constitution which states:

> "A person shall enjoy the liberty of communication by lawful means.
>
> The censorship, detention or disclosure of communication between persons including any other act disclosing a statement in the communication between persons shall not be made except by virtue of the provisions of the law specifically enacted for security of the State or maintaining public order or good morals."

127. The right to assemble peacefully under Article 21 of the Covenant has been recognized by Thailand under the provision of Section 44 of the Constitution which provides:

> "A person shall enjoy the liberty to assemble peacefully and without arms.
>
> The restriction on such liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for the case of public assembling and for securing public convenience in the use of public places or for maintaining public order during the time when the country is in a state of war, or when a state of emergency or martial law is declared."

128. Right of a person to be free from forced labour unless it falls under exemption is also clearly guaranteed by Section 51 of the Constitution which provides:

> "Forced labour shall not be imposed except by virtue of the law specifically enacted for the purpose of averting imminent public calamity or by virtue of the law which provides for its imposition during the time when the country is in a state of war or armed conflict, or when a state of emergency or martial law is declared."

**Article 5**

129. Thailand has expressed its will to recognize the commitment under this article since the beginning, as Thailand has mad no reservation on this article when it became a State Party to this Covenant.

130. Accordingly, Article 29 of the present Constitution also provides that the State shall not limit the rights and liberties of a person as mentioned in Article 5 of the Covenant. Furthermore, paragraph 1 of Section 63 provides that:

> "No person shall exercise the rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of the State under this Constitution or to acquire the power to rule the country by any means which is not in accordance with the modes provided in this Constitution."

131. Therefore, should the State or any person takes any action which is contrary to Section 29 and 63, it shall be considered illegal and the State shall exercise its power to cease such an action and those involved shall be held responsible.

## Article 6

132. The right to life under paragraph 1 of the Covenant is guaranteed by the 1997 Constitution and Penal Code.

133. Article 31 of the Constitution provides the recognition of the right to life of a person as follows:

> "A person shall enjoy the right and liberty in his or her life and person.
>
> A torture, brutal act, or punishment by a cruel or inhumane means shall not be permitted; provided, however, that punishment by death penalty as provided by law shall not be deemed the punishment by a cruel or inhumane means under this paragraph.
>
> No arrest, detention or search of person or act affecting the right and liberty under paragraph one shall not be made except by virtue of the law."

**Taking the life of other people**

134. The law protects the right to life of a person from birth, through infantry and ends when the person dies (Section 15 The Civil and Commercial Code). Every person shall also be protected by the Penal Code. To kill a person is an offence under Section 288-289. To cause death to a person even when that person has given his consent to do so, or even euthanasia, shall be an offence of homicide under the Penal Code. To assist in a committing of a suicide is also an offence under Section 293 of the Penal Code.

135. However, in a report submitted in July 1997 of the Committee on Women, Youth and Elderly Affairs of the Senate, a proposal was made that Thailand should have a law on euthanasia by giving a person the right to refuse medical treatment. This can be done by expressing his will in writing while he is fully conscious or by the decision of the doctors and his family. Such a law has not been proposed yet and should there be a proposal of such a law, careful and detailed consideration of the matter is needed to explore any social objection. it shall be considered in detail and in a very thorough manner to see whether it suits the social condition of Thailand or not.

136. The prevention of babies from dying is a matter of priority for Thailand. A measure to alleviate this problem was the setting up of a program called "Safe Motherhood Program", which aims at reducing post birth mortality.

137. Abortion done with the consent of the woman or if the woman allows the other person to procure abortion for her, is an offence under Section 301 of the Penal Code. Any woman who causes abortion to herself shall be punished with imprisonment not exceeding three years or fined not exceeding six thousand baht, or both.

138. Whoever procures abortion for a woman with her consent shall be punished under Section 302. If the abortion is done without the consent of the woman, the person shall be punished under Section 303 of the Penal Code.

139. However, the abortion done for the health reasons, or if the woman is pregnant on account of the wrongdoing done by an offence in Section 276, 277, 282, 283 or 284 and the abortion is performed by a medical doctor, the offenders, namely, the doctor and the woman, are not guilty by virtue of Section 305 of Penal Code.

140. Anyhow, the Cabinet has decided to revise Section 305 of the Penal Code to expand the scope of legal abortion committed by medical doctor to cover cases that can be proved that the foetus in the womb has a serious contagious sickness which cannot be cured such as AIDS.

141. Thailand has tried to reduce the death rate in various cases, such as death rate of woman after delivery. The figure for January-December 1995 is 44 per 100,000. And in 1997 the rate of post birth mortality of 5,355 millions children between 0 - 5 years old is 34 per 1,000 (The figure from the formulation per National Public Health).

142. The figure of suicide of Thais in 1997 has increased dramatically, especially for the months of January to June, the figure for those who attempted suicide was 1,380 and the figure for those who managed in committing suicide was 50.

143. Thailand is putting an effort in trying to tackle problems leading to these deaths.

144. The authorities who are responsible for the safety of the country and the people, are the Armed Forces and the Police under the Ministry of Defense and the Royal Thai Police respectively. The Royal Thai Police‘s main responsibility is to protect the life and property of the people. It is an independent organization which reports directly to the Office of the Prime Minister.

145. The police, in general, have a system of training similar to that of Armed Forces. The Police shall have to study laws on criminal penalty, criminal procedure and other related, to become aware of the rights and liberties of the people.

146. The Cabinet’s Decision on 12 September 1992 required State agencies, which have staff capable of using weapons, such as the Armed Forces and police force, to study basic human rights principles, the curriculum of which has been referred to in the part on Article 2.

**Use of weapons by police and military officers**

147. When military and police officers or the officers of the administrative agencies kill a person, they are guilty of homicide under Section 288 or 289 of the Penal Code and shall be penalized accordingly like any ordinary citizen.

148. However, in carrying out their duties, police or military officers may fall into a situation where they are forced to commit extrajudicial killings. Should the police commit homicide in order to protect oneself or others, and such an act is considered to be reasonable, that officer would not be charged, but shall undergo a different investigation process, unlike other ordinary homicide cases. This is to protect the people from an unreasonably or unproportionate killing done by governmental officers.

149. Section 148-156 of the Criminal Procedure Code set up guaranteeing measures to ensure the right of the injured person in cases of extrajudicial killings, such as post mortem autopsy and investigation on the cause of death, under Section 150. This shall be conducted by an inquiry officer of the district where the body is found and the provincial health officer or a medical doctor of a health center or a hospital. Once the autopsy is conducted, the inquiry officers shall send the result of the autopsy to the public prosecutor, who would submit a petition to the Court of First Instance to carry out the inquest and rule on the cause and surroundings of the death.

150. In a court hearing, the court shall post the announced date of examination in advance for at least 15 days. Prior to or at the examination, the husband, wife, ascendants or descendants, legal representative or guardian of the deceased shall have the right to submit a petition to the court to asking for the right to cross examine witnesses of the public prosecutor and could also submit additional evidence or witnesses as well. Moreover, the petitioners could also appoint a lawyer to carry out matters on their behalf. The court may call for witnesses to be further examined or call for additional evidence or witnesses. When the court announced its rulings, they shall be final. This ruling, however, does not affect the right of someone else to take the same case to court for its consideration.

151. When the court has announced its ruling, the examination file of the court shall be sent to the public prosecutor and the inquiry officers for further action.

152. The authority to decide whether a case of extrajudicial killing shall be brought to court or not, by virtue of the last paragraph of Section 143 of the Criminal Procedure, lies with the Attorney General, the person in charge. The statistics on the manner in which extrajudicial killing cases have been handled by the Attorney General or the person in charge in 1997, is as follows:

**The statistics of extrajudicial killings,**
**the Office of the Attorney General**

| Outcome of consideration | 2000 | January-October 2001 |
|---|---|---|
| 1. Non-Prosecution | 56 | 34 |
| 2. Prosecution | 2 | 1 |
| 3. Pending | 5 | 23 |
| 4. File Returned | 22 | 11 |
| 5. Further Handling | 1 | - |
| Total | 46 | 69 |

153 Under section 22 of the Prevention of Communist Act (1952), cases of extrajudicial killings require the military prosecutor to handle the autopsy and the Judge Advocate General to rule on the result of the autopsy and decide whether to submit the case to court or not.

154. The Forensic Medicine Institute is a governmental agency which carries out the autopsy. It is under supervision of the Royal Thai Police. Persons who carry out autopsies are medical doctors of the Police Hospital. They are regular police officers who have ranks and positions

and are under the same system of command, promotion and discipline as other police officers. This is thus widely criticized that it may affect the result of the autopsy as it lacks the check and balance from other organisations. The reason being that the Forensic Medical Institute is under the same command, namely the Royal Thai Police, as the unit committing the extrajudicial killings and the unit responsible for the investigation of extra judicial killings. In addition, the law on autopsy still has many gaps. Attempts have been made to revise the law to yield a process that truly guarantees the right of everyone concerned. At present, the Ministry of Justice had revised the law on autopsy by proposing a bill to revise the Criminal Procedure Code to the Cabinet on 16 February 1998 requiring a forensic medical doctor and a public prosecutor to participate in the inquest. If the forensic medical doctor is not present, a medical doctor of a hospital on the provincial health officer shall replace the forensic medical doctor in the inquest. This is to allow for a check and balance and for the development of a system that guarantees the credibility of forensic evidence proof. This Bill also empowers the court to call for an expert to give his professional opinion in the due process of the court. The law further forbids any interference with the body or the surroundings of the body, before the autopsy is finalised.

155. In addition, the restructuring of the Ministry of Justice under the 1997 Constitution resulted in the transfer of the Forensic Medicine Institute from being under the supervision of the Royal Thai Police to being under that of the Ministry of Justice, allowing greater independence.

156. In the year 1997, there was a case of extrajudicial killing by a police officer during the arrest of drug trafficking suspects (amphetamine), whereby 6 suspects were killed at the District of Dan Chang of Suphanburi Province. Police officers claimed that the suspects resisted the arrest and so needed to fire their weapons in self defense. The district inquiry officials carried out the inquiry and the autopsy of the deceased. Subsequently the file of the inquest was sent to the provincial public prosecutor of Suphanburi in order to submit a petition to the District Court to carry out the inquest under section 150 of the Criminal Procedure Code. However, the public prosecutor asked for further inquiry on many issues to allow a clearer picture of the case and to allow more testimony and evidence to be collected for the court's consideration. Disagreeing with the order, the inquiry official objected the additional inquiry, stating that the public prosecutor has no authority to instruct inquiry officials to carry out further inquiry. The Ministry of Interior has decided to submit the matter to the Office of the Council of State for interpretation, which is in the opinion that the public prosecutor has the authority to hand out such an order. This indicates an attempt to protect the right of the suspects killed by the police officers on duty. This is a form of check and balance between the public prosecutor and the police.

157. The case is in the process of court's hearing in the District Court of Suphanburi. On the other hand, the special committee of the House of Representatives also carried out an investigation on the case. It could not, however, carry out the investigation in detail for there are no other witnesses apart from the four police officers who carried out the extrajudicial killings. They refused to provide facts and explanations to the committee citing that they are waiting to testify in court. The committee had made a remark on the defects of the law and the practice of the inquiry and the inquest in cases of extrajudicial killings. The remarks consisted of 9 issues which the Ministry of Justice had already incorporated in their revision of the law.

**Capital punishment**

158. Capital punishment has existed in the Thai law for a very long time and it is meant for the most serious crimes, such as offences regarding the national security, homicide, and offences resulting in death, such as incendiary or rape. It is also meant for the offences of drug trafficking.

159. Capital punishment can be carried out only when the law regarding the offence has so provided, and the court alone can hand down the decision for such a penalty. The court must handle the case under the legal presumption that the accused is innocent until it has been proven beyond any doubt that he has really committed the crime (Section 227 of the Criminal Procedure Code). In addition, the law also guarantees the right of the accused to be provided with a lawyer in cases of capital punishment (Section 172-173 of the Criminal Procedure Code and Section 242 of the Constitution).

160. Regarding the method of capital punishment, Section 19 of the Criminal Code provides that the offender shall be subjected to lethal injection. The procedure and the method of capital punishment are governed by the Corrections Act (1936). Those who are sentenced to death penalty have the right to submit a petition for pardon to the King.

161. The capital punishment can only be handed down by the decision of the Courts of Justice. Should it be a decision of the Courts of First Instance, the decision shall be immediately sent to the Court of Appeal for further reviewing. The Courts of Appeal shall consider both factual and the legal aspects of the case, whether the defendant had indeed committed the offence and consider the appropriateness of capital punishment in relation to the offense (Section 245 of the Criminal Procedure Code).

162. In the military court, the Military Judges have the authority to hear and sentence capital punishment similar to judicial judges. The Military Court in such a hearing shall consist of two commissioned officers and one military judge, who is a law graduate from a Thai university. The defendant can appeal to the Central Military Court and the Supreme Military Court respectively similar to the process of a civil court.

163. In 1999, there are 46 persons on death roll.

**Genocide**

164. Thailand is a party to the Treaty on Prohibition of Genocide and there have never been cases of genocide in Thailand. However, should such an incident occur, the offender shall be punished severely under Sections 288-289 of the Penal Code. The highest penalty of which is capital punishment.

**Pardon**

165. The authority to grant a pardon belongs to the King. According to Sections 259-267 of the Penal Code, there are two kinds of pardons, namely absolute pardon without any condition, and pardon to receive a lighter penalty. The petitioner can be the person penalized or concerned person such as parents, a spouse, or relatives.

166. The Criminal Procedure Code provides on the principle to submit a petition for a pardon and commutation that in the case that the accused had been sentenced to death, the sentence shall not be executed until the provisions of the code governing pardon have been complied with (Section 247). If the person sentenced to death becomes insane, the execution shall be suspended until the person has recovered. If the person of unsound mind recovers after a year from the date of the final judgment, capital punishment shall be commuted to life imprisonment (Section 248).

167. When the case becomes final, a petitioner may submit a petition to the King through the Minister of Interior.

168. The royal pardon is granted through the issuance of a Royal Decree under Section 261 bis. Nevertheless, this kind of pardon shall not apply to capital punishment of offences regarding the production and sale of narcotic drugs. However, the person penalized for drugs related offences still have an individual right to submit a petition for pardon. For instance, there was a case of a young English woman who was sentenced to a severe imprisonment term on account of sale of narcotic drugs. She later petitioned for a pardon and was granted a royal pardon. She was released to travel back to England.

169. The Minister of Interior has the duty to submit the petition together with recommendations on the appropriateness of the pardon of each case to the King. If no petition has been submitted, the Minister of Interior himself may consider submitting to the King a recommendation for a royal pardon of certain convicts (Section 261).

170. The petition for pardon on punishment other than capital punishment once rejected may not be resubmitted before two years have elapsed since the date of the rejection of the former petition (Section 264).

**Amnesty**

171. Amnesty is done by passing an act of amnesty on a case by case basis. An amnesty would result in an obliteration of the offence and the offender shall be considered as having never committed that offence.

172. Amnesty, in practice, is given to those who committed a rebel or a coup d'état.

**Reduction of penalty**

173. The reduction of penalty is governed by Section 267 of the Criminal Procedure Code, which provides that the provisions on pardon shall be applied mutatis mutandis to the petition for commutation or reduction of penalty.

174. However, it is a practice to reduce capital punishment to life imprisonment on special occasions such as the celebration of the King's Birthday anniversary.

**Sentencing persons of less than 18 years old or pregnant women to capital punishment**

175. The Penal Code sets the principles on the punishment of a child offender as follows.

176. A child of not over seven years of age or a child over seven years but not over fourteen years of age commits what is provided by law to be an offence, shall not be punished (Section 73 and 74).

177. Any person over fourteen years but not over seventeen years of age, commits any act provided by the law to be an offence, and the court deems it expedient to pass judgment inflicting punishment, shall reduce the scale of punishment provided for such offence by one half (Section 75). If a person over fourteen years but not over seventeen years of age commits an offence, the punishment of which is capital punishment, the court shall reduce the scale of punishment by one half, to life imprisonment or 25 to 50 years imprisonment. Therefore, a person over fourteen years but not over seventeen years of age shall not receive a death penalty.

178. A person over seventeen years but not over twenty years of age who commits any act provided by law to be an offence, Section 76 of the Penal Code provides that the court may consider reducing the scale of punishment provided for such an offence by one third or one half. In such a case though, even if the law requires the court to sentence capital punishment, in practice, the court had never been handed down such a decision to a person of this age. Should the court wishes to reduce the scale of punishment by one third, the punishment shall be life imprisonment. When reducing the punishment by one half, capital punishment shall become life imprisonment or 25 years to 50 years imprisonment. Therefore, a person over seventeen years but not over twenty years of age had never been sentenced to capital punishment.

179. In addition, the Office of the Attorney General is in the process of revising Section 76 of the Penal Code to be consistent with Article 6 (5) of the Covenant.

180. Under the Act on the Establishment of Juvenile and Family Courts and Procedure (1991), a child of less than 18 years old who resides in the district where there situates a Juvenile and Family Court, shall never be punished by capital punishment, as the law stipulates that such a court shall not hand down a sentence of death penalty to the offender.

181. For a pregnant woman who is sentenced to capital punishment, the law requires the execution of the sentence to be suspended until after her delivery, as capital punishment cannot be carried out on a pregnant woman (Section 247, the Criminal Procedure Code).

182. The offences which can be penalized by capital punishment are as follows:

**Offences relating to the security of the Kingdom**

Offences against the King, the Queen, the Heir, and the Regent.

Section 107 Causing death to the King or attempting to do so.

Section 108 Committing an act of violence against the King or His liberty or attempting to do so.

Section 109 Causing death to the Queen, the Heir, or the Regent or attempting to do so.

Section 110 Committing an act of violence against the Queen or Her liberty, the Heir or his/her liberty, the Regent or his/her liberty, which is likely to endanger the life of the Queen, the Heir or the Regent.

Section 111 Supporting the commission of any offence under Sections 107 to 110 shall be liable to the same punishment as a principal in such an offence.

**Offences against the internal security of the Kingdom**

Section 113 Insurrection.

Section 119 Committing an act with the intent to cause the State or any part thereof to fall under the sovereignty of a foreign state, or to deteriorate the independence of the State.

Section 121 Thais who bear the arms in battle against the State, or participates as an enemy of the State.

Section 124 Committing an act resulting in the obtaining of secret documents or information by other people, risking the safety if the State; an offence committed whilst the country is engaged in a battle or war, and is committed for the benefit of a foreign state.

Section 127 Committing an act with an intent for external factors to cause danger to the State.

**Offences detrimental to relations with foreign States**

Section 132 Causing death or attempting to cause death to a sovereign, the Queen or the Consort, the Heir or Head of a foreign State or a foreign representative accredited to Thailand.

**Offences relating to public security**

Section 218 Arson

Section 224 Arson or planting explosives causing death to the people.

**Offences relating to sexuality**

Section 227 bis, ter Having sexual intercourse with a woman who is not one's wife and causing death to the victim.

Section 280 Committing an indecent act causing death to the victim.

**Offences against life**

Section 288 and 289 Homicide

**Offences against liberty**

Section 313 Kidnapping for ransom causing grievous bodily harm to the kidnapped or the detained or restrained; or acts of torture or cruelty causing bodily harm or mental harm to the victim.

**Offences against property**

Section 339 and Section 339 bis

Robbery done by an act of violence causing death to a person.

Section 340 and Section 340 bis

Robbery done by three or more persons causing death to a person.

183. Offences punishable with capital punishment under the Narcotics Act (1979) are the sale of narcotic drugs, or having narcotic drugs in possession for sale, whereby the narcotic drugs are under type 1 (Heroin).

## Article 7

184. Thailand provides protection from cruel or inhumane punishment or torturing. Paragraph 2 of Section 31 the Constitution of the Kingdom of Thailand provides:

> "A torture, brutal act, or punishment by a cruel or inhumane means shall not be permitted; provided, however, that punishment by death penalty as provided by law shall not be deemed the punishment by a cruel or inhumane means under this paragraph."

185. The punishments under Section 18 of the Penal Code are death, imprisonment, confinement, fine and forfeiture of property. Thailand's punishment does not include flogging or hard labour.

186. In addition, the Penal Code provides for heavier punishment of a crime that is of cruel nature, such as the killing of a person by torturing or cruelty (Section 289 (5) of the Penal Code).

187. A mechanism established under Section 199-200 of the 1997 Constitution to oversee matters of human rights according to this article of the Covenant is the National Human Rights Commission (NHRC). The NHRC operates under the National Human Rights Commission Act (1999), with the main duty to examine and report acts which are in violation of human rights.

188. The National Human Rights Commission consists of a President and ten other members appointed by the King with the advice of the Senate. They are selected from persons having apparent knowledge and experiences in the protection of rights and liberties of the people having regard to the participation of the representatives from private organizations in the field of human rights as well. The members of the Commission shall hold their office for a term of six years and shall serve for only one term (Section 199 of the Constitution).

189. The Commission has the power to demand relevant documents or evidence from any person or summon any person to give statements of fact as provided by law. If the Commission found a violation of human rights, it shall propose appropriate measures to the person or agency committing such a violation to cease such actions. If no action is taken as proposed, it shall report to the Parliament for further action (Section 200 of the Constitution).

190. In addition, the House Committee on Justice and Human Rights has power to review any action violating human rights by requesting governmental officials or persons to testify before the Committee.

191. Section 7 bis of the Criminal Procedure Code protects the detained accused from torturing or inhumane treatment, by giving the accused the right to meet his or her lawyer in a face to face manner, the right to have reasonable visits and the right to receive medical treatment soon after falling ill. This requires the police or administrative officials who have arrested the suspects and detaining them at police stations or other detaining centers, to read the suspects their rights.

192. The handling of criminal cases by a prosecutor is governed by a regulation of the Department of the Public Prosecutor on the handling of criminal process by a public prosecutor. The regulation requires the public prosecutor to always take into consideration the human rights aspects when dealing with a criminal case.

193. The Corrections Act (1936), stipulates that the Department of Corrections shall refrain from using shackles on prisoners when taking them outside the prison by writ. Prisoners should be detained by no more than a pair of handcuffs. Chains and shackles should not be used as fetters unless the crime is one of severe offences. No fetters should be used on the aged or women unless he or she is cruel or of unsound mind.

194. The warders shall not use weapons against prisoners except in certain cases such as a group of three or more prisoners attempt to escape or cause violence. However, before using weapons the warder shall follow the conditions provided by law. Prisoners who work under the order of the warders shall have the right to receive rewards, such as an opportunity to produce goods or products for sale, perform social work outside the prison, etc. For those prisoners who breach rules of discipline, shall receive punishments, such as imprisonment in a sole cell or a dungeon, or to be whipped. The conditions on these methods of punishment shall also be applied accordingly.

195. Prisoners shall have the following rights or welfare:

(a) Education or training;

(b) Medical treatment shall be provided in a health facility to examine the health of the prisoners and to treat the sick or pregnant prisoners. Detainees who are addicted to narcotic drugs, or are pregnant or have just delivered a baby, shall be treated as patients;

(c) Final prisoners shall have the right to take a leave to go outside the prison. They also have right to probation, reduction of imprisonment terms, a commutation of severe punishment to a lighter punishment and to submit a petition for amnesty;

(d) Detainees shall have the right to visits or to communicate with outsiders or a lawyer;

(e) Prisoners shall be divided according to their sex, age and type of offences and reside in separation;

(f) Spouses, descendants or ascendants shall be allowed to stay with special prisoners in a training institute. They shall be provided with clothing and provisions for living. They shall also be temporarily provided with a plot of land for plantation and may also be provided with equipment and utensils;

(g) Provision of food which is not rancid;

(h) Provision of bedding items to final prisoners and detainees during appeals;

(i) Prisoners shall be allowed to exercise and walk outside the cell.

196. In case of an alleged torture or indecent treatment of prisoners by warders, the regulation of the Corrections Department issued under Section 58 of the Corrections Act, states that an independent commission shall be set up to investigate the matte. The commission is empowered to fine, demote, or dismiss the warder who committed the said action.

197. If a child in an Observation and Protection Center is tortured or suffers from any act of cruelty, the Observation and Protection Center set up under the Establishment of Juvenile and Family Court and Procedure Act (1991), stipulates that a committee shall be set up to inquire the matter and impose punishments accordingly. However, the law does allow punishment of a child in an Observation and Protection Center by flogging, which must strictly follow the procedures and principles provided by law in order to foil a too severe punishment, causing injury to the body of those children and juvenile, thereby putting them under harm.

198. If the accused or detainees are tortured, paragraph 2 Article 243 provides that:

> "Any statement of a person obtained from inducement, a promise, threat, deceit, torture, physical force, or any other unlawful act shall be inadmissible as evidence."

199. In addition, Section 226 of The Criminal Procedure Code provides:

> "Any material, documentary or oral evidence likely to prove the guilt or innocence of the accused is admissible, provided it was not obtained through inducement, promise, threat, deception or other unlawful means …". The Supreme Court has ruled many cases in recognition of this principle.

200. A person tortured by a government official becomes would fall under the category of an injured person in a criminal case and has the right to receive protection, proper treatment and necessary and appropriate remuneration from the State as provided by law (Section 245 of the Constitution).

201. If the accused has a mental symptom or defends by citing insanity, the diagnosis of the mind of the accused shall be carried out by a medical doctor of a hospital under the supervision of the Ministry of Public Health, rather than by a medical doctor from the Police Hospital, thus preventing ant relations to the inquiry in the criminal process. This is to ensure a just trial.

**Medical or scientific experimentation carried out on a person**

202. Under Chapter 6 of the Regulation on Preserving Ethics of Medical Profession (1985), issued under the Medical Profession Act (1982), there is a provision on the recognition of the right of a person who is undergoing a medical experimentation, by stating that the medical practitioner who carries out the experimentation on a human being shall have the consent of the person prior to the experimentation. He or she shall be ready to prevent the person from any danger which may arise from such an experiment. If danger or damage arises as a result of the experimentation, without the awareness of the person under experiment, the medical practitioner shall be held responsible.

203. In addition, in 1998 the Medical Council, Nurse Council and Pharmacist Council, Dentist Council and the Commission for the Control of Medical Practice have jointly issued a declaration on the rights of patients, Clause 8 of which specifies that:

> "A patient has the right to know complete information in deciding to participate or to withdraw himself from an experiment as part of a study or research of a practitioner of health related profession."

204. An experimentation undertaken with the consent of the person to participate as an object of study is also governed by the Civil and Commercial Code and the Penal Code, which provides that the object of study must be fully aware of the experimentation and the consequences of such an experiment. Otherwise, the consent would be considered as illegal. Furthermore, the experimentation shall not be against the public order and the good morals of the public. If the experimentation is carried out negligently and thereby causing death to a person, the conductor of the experiment shall be guilty of the offence under Section 291 of the Penal Code for causing death of a person by negligence.

205. At present, there is a movement in Thailand to propose a bill on Experimentation on Human which shall establish an organization to supervise the experimentation on human for medical and scientific purposes. The experimentation shall be approved, in a written form, from the authority that is empowered to issue a permit, which shall also specify the criminal offence for the conductor of the experiment who carried out an experiment in breach of the law. However, the bill has not been officially proposed.

206. Thailand had protested a case which the Health Department of the United States had AZT pills experimented on pregnant Thai women, who contacted HIVS and passed the disease on to 391 foetuses. The reason for the protest was that such a medical experimentation was unethical and against human dignity.

207. Medical or Scientific experimentation done to an accused, defendant, and prisoner, or persons who are detained in a place belonging to governmental agencies without the free consent of such a person, shall not be carried out and shall be considered as an illegal action. There has been dissemination of knowledge and understanding on this matter to medical and scientific personnel who by law has the duty and authority to supervise their personnel at all times.

208. Deportation of a person to face capital punishment is not a usual practice, unless it is done under an extradition treaty. An example would be the case of Major Buslul or Baslol Hooda, a former commissioner of Bangladesh, who committed a homicide by killing the first Prime Minister of Bangladesh in 1975. The Court in Bangladesh decided that he was guilty and sentenced him to capital punishment. The Supreme Court of Thailand thus ruled in November 1998 to send him back to Bangladesh under the extradition treaty between Thailand and Bangladesh.

## Article 8

### The prohibition of enslaving a person

209. Thailand abolished slavery by passing a law to prohibit enslaving of a person in 1905. Section 4 of the 1997 Constitution has recognized this right by providing that:

> "The human dignity, right and liberty of the people shall be protected."

210. Section 312 of the Penal Code penalizes whoever enslaves a person or causes a person to be in a position of servitude, brings into or sends the person out of the Kingdom, buys, sells a person, with a penalty of no more than seven year imprisonment, including a fine. In addition, Clause 20 of the Announcement No. 294 of the Revolutionary Party prohibits the purchase, sale, and exchange of a child for property.

211. The trading of slaves in the form of forcing women and children to be under the influence of others in order to seek interest in any of the following forms, such as forced prostitution or drug trafficking, has been prohibited by laws, such as clause 20 of the Announcement No. 294 of the Revolutionary Party, which forbids the use of a child as a tool in begging.

212. In addition, the Measures for Prevention and Suppression of Woman and Child Trafficking Act (1997), has set measures to prevent and suppress offences in the purchase, sale, distribution, inducement or provision of people by any means, with a purpose for sexual gratification of oneself or another, indecency or other unethical interests, whether by selling of a child, letting a child beg or work in conditions whereby his labour is cruelly exploited. The Revision Act (1997) (No. 14) of the Penal Code also regard those acts as offences.

213. On June 30 1999, a Memorandum of Understanding on the Guidelines and Measures on issues of trafficking of women and children who are victims of human trafficking was signed among concerned agencies, namely the Office of the Prime Minister, the Royal Thai Police, the Department of Public Welfare, the Coordinating Committee on Matters of Foreign Children, and the Network for Prevention and Rectification of Trafficking of Women and Children.

214. On top of this, the Control of Begging Act (1941), stipulates that a beggar shall receive welfare assistance and vocational training. It also empowers administrative officials or police officers to prevent or suppress beggars who have turned down welfare aid or assistance.

215. The Department of Public Welfare of the Ministry of Labour and Social Welfare has concluded that there are movements in bringing children and women into the sex business. This includes women and children from neighbouring countries who are induced and forced to provide sexual services. The policy of the government is to suppress the inducement, forcing, threatening, and cruel treatment in the conduct of sexual service. Punishment shall be carried out on all related persons who participated in bringing children into sexual services. This includes punishing officials who omits to implement government policies and enforce the law.

216. The Department of Public Welfare has measures to solve the problems of prostitution and child prostitution, such as protective measures by setting up 7 centers of assistance and training for women. The total number of trainees is 5,150 per year. These centers give vocational training to risk-prone groups. The Department also promotes young women and their families to have proper values in making a living and carrying on with their lives. The Department also prevents women, especially young women from migrating and earning their living outside of their domicile. In addition, the Department has been campaigning to fight against prostitution by training around 50,000 women from various villages per year; and has set up 42 centers to receive petitions on child labour and child prostitution.

217. The Prevention and Suppression of Prostitution Act (1996), was promulgated to suppress prostitution by stipulating that customers of child prostitutes of not over eighteen years old shall be penalized. It also increased imprisonment terms and fine terms for those who brought children into prostitution.

218. There shall be more severe punishment when prostitution is forced on a child or juvenile of not over 18 years old. The Act also provides an imprisonment term and fine term for parents and guardians, including the removal of parenthood and guardianship. The laws set up committees to protect women and create jobs in the capital and also in the provinces. The law also supports nongovernmental organizations in solving problems of prostitution by providing that the committees shall consist of at least 7 persons from private organizations. Also, if foundations, associations, and other private institutions with an objective to prevent or tackle problems of prostitution, ask for a permit to set up a reception center or an institute for the protection and vocational training of women and juveniles, they shall be granted a permit.

219. The government has assigned officials to work as provincial public welfare authorities, to oversee and prepare to receive women and children, who are sent to be provisionally detained, because they are under investigation or court procedure. After the cases end, they will be transferred to vocational training centers. There are 24 provisional reception centers. Four of which are also first reception institutes that protect and provide vocation training, and can facilitate approximately 1,250 persons.

220. The duties of the first reception institute is to provide care and medical treatment to women and children transferred for not over six months and to rehabilitate them according to their social welfare and psychological needs. Protection and vocational training institutes shall look after them for a period of not over two years, and provide them with basic and compulsory education, including vocational trainings and a placement for a suitable work. The institute shall then return them back to their hometown.

**Forced child labour**

221. Regarding problems of forced child labour, the term "child labour" under the Thai Labour Protection Act (1997), refers to working age population who are at least 13 but not over 15 years of age.

**The number of child labour**

222. The data of the National Statistical Office shows that in 1996 there are 506,600 child labour working in the agricultural sector and 674,400 child labour working outside of the agricultural sector.

223. The data of the Department of Labour Protection and Welfare as of 8 February 1997 shows that there are 115,110 child labour working in factories.

224. The data of the Ministry of Education in 1999 indicates that the number of children who have passed compulsory education (grade 6) but lack the opportunity to further their education, thereby having to work to earn a living, is 102,873.

**Measures to prevent child labour**

225. Thailand has implemented many measures to prevent the use of child labour.

226. The Ministry of Education has increased the opportunity in receiving education by extending compulsory education from 6 years to 9 years. It also provides welfare and other necessary assistance to disadvantaged students, in order to prevent them from entering the labour market, whether agricultural and non-agricultural sectors, before their suitable age.

227. Section 43 of the 1997 Constitution requires the State to provide not less than 12 years free basic education to the people. This came into force in 2002, providing more opportunity for children to receive education at a higher level. This measure shall be more efficient in preventing the use of child labour.

228. In addition, Thailand has promulgated the National Education Act (1999), which also recognized the right to receive education under Section 43 of the Constitution. The Act came into force on 20 August 1999.

229. The Ministry of Labour and Social Welfare has several measures to prevent the use of child labour.

230. In the budgetary year of 1995-1996, the Ministry has set up operational centers aiming at giving assistance to woman and child labour all over the country. This is to prevent problems of woman and child labour from entering the labour market. It was done by the setting up and carrying out of trainings for village volunteers on labour matters. The trainings provided knowledge to community leaders on the use of woman labour. They also provide knowledge to child labour preparing them for their work and livelihood. Furthermore, the trainings provide knowledge to school administrators on how to use the media in public relations campaigns.

231. A project to solve problems of child labour is a program that aims at gearing child labour in the provinces to enter the labour market with clear directions and for them to have knowledge and understanding on their rights and duties under the labour laws. In the budgetary years of 1995-1996, there were trainings for parents and community leaders on rights of child labour.

232. A program to disseminate knowledge to prevent and solve child labour problems is done by creating activities to disseminate information on labour issues, including projection of video tapes, exhibitions and question and answer sessions.

**Measures to protect child labour**

233. The Ministry of Labour and Social Welfare has carried out many measures to protect child labour, such as:

(a) Increased labour inspection in factories where there is heavy use of child labour, as well as in the small businesses;

(b) Sought cooperation from local police stations to suppress and take criminal action against those who use child labour of less than 13 years of age, treat child labour cruelly, detain or restrain child labour, or allow child labour to carry out dangerous work. Cases of child labour abuses usually face stern punishment from the court. For instance, a case of an owner of a drinking paper cones plant who forced 28 child labours, aged 9-20 years, to work from 5 a.m. to 11 p.m. without rest. The court held him guilty and sentenced him to 10 years imprisonment;

(c) Set up a 24 hour hot line operational centers to receive information of unfair use of child labour;

(d) Visited child labour on behalf of their parents;

(e) Revised labour protection laws by raising employment age from 13 years to 15 years of age, as well as increasing the penalty for breaching the said law;

(f) Set up a committee for the protection of child labour as required by the Cabinet's Decision, aiming at setting clear directions and measures for the protection and development of child labour;

(g) Set up complaint box on child labour matters.

**The prohibition of forced labour or involuntary labour**

234. Regarding forced labour, Section 51 of the Constitution provides that:

> "Forced labour shall not be imposed except by virtue of the law specifically enacted for the purpose of averting imminent public calamity or by virtue of the law which provides for its imposition during the time when the country is in a state of war or armed conflict, or when a state of emergency or martial law is declared."

235. In addition, a person who forces others to illegally work for him shall also be guilty, under Sections 309-310 of the Penal Code, for the offences against one's liberty.

236. Laws regarding forced labour are:

(a) Martial Law Act (1904);

(b) Local Administration Act (1904);

(c) Designation of Duties of Thais during War Time Act (1941);

(d) Drafting for Military Service Act (1987);

(e) Civil Defense Act (1979).

237. Use of prisoners' labour is governed by the Corrections Act (1936), which provides that warders can assign final prisoners to various works according to official rules and regulations.

238. The court may suspend the implementation of a sentence with an imprisonment term of less than two years, by putting the person on probation and assign him to perform community or public services instead. In such a case, the offender has to give his consent because it is considered to be a kind of forced labour, aiming to rehabilitate the offender, thereby allowing him to become a good citizen.

**The statistics of defendants sentenced to probation (1998)**

239. Number of defendants whose punishments were suspended and given probation:

| | |
|---|---|
| Since 1979-1998 | 471,015 persons |
| Present year (1998) | 126,168 persons |

240. Number of defendants who were sentenced to conduct social services:

| | |
|---|---|
| Defendants who were sentenced conduct social services | 137,048 persons |
| Defendants who are in the process of conducting social services | 50,865 persons |

241. Types of social services which are assigned by the Department of Probation during probation period:

(a) Clean public places;

(b) Carry out activities concerning the environment, such as gardening, tending trees, planting trees, trimming trees , reforestation and looking after the forests;

(c) Help facilitate or entertain disabled orphans, the aged, and the sick in welfare institutes and nursing homes, such as pushing wheel chairs, folding bandaged and feeding meals;

(d) Provide educational services, such as working in libraries, teaching children in early childhood centers;

(e) Provide general community services, such as social work on special occasions like activities on Children's Day;

(f) Other activities, such as painting traffic signs.

## Article 9

242. Section 29 and Paragraph 3 of Section 31 of the 1997 Constitution provides on the protection of the liberty and the safety of the body as follows:

> "The restriction of such rights and liberties as recognised by the Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties."
>
> "No arrest, detention or search of person or act affecting the right and liberty under paragraph one shall not be made except by virtue of the law."

### Arrest

243. Arrest of a person cannot be carried out until there is sufficient evidence that the person has committed a criminal offence. Section 237 of the Constitution provides as follows:

> "In a criminal case, no arrest and detention of a person may be made except where an order or a warrant of the Court is obtained, or where such person commits a flagrant offence or where there is such other necessity for an arrest without warrant as provided by law. The arrested person shall, without delay, be notified of the charge and details of such arrest and shall be given an opportunity to inform, at the earliest convenience, his or her relative, or the person of his or her confidence, of the arrest. The arrested person being kept in custody shall be sent to the Court within forty eight hours as from the time of his or her arrival at the office of the inquiry official in order for the court to consider whether there is a reasonable ground under the law for the detention of the arrested person or not, except for the case of force majeure or any other unavoidable necessity as provided by law.

244. A warrant of arrest or detention of a person may be issued where:

(a) There is reasonable evidence that such person is likely to have committed a serious offence which is punishable as provided by law; or

(b) There is reasonable evidence that such person is likely to have committed an offence and there also exists a reasonable cause to believe that such person is likely to abscond, tamper with the evidence or commit any other dangerous act."

**Right to be informed on the reason of the arrest**

245. Apart from Section 237 of the Constitution which provides on the requirement to promptly notify the arrested person on the charges and details of the arrest, the Criminal Procedure Code also protects the said right by providing in Section 83 that the officials or people who make the arrest shall notify the arrest to the one to be arrested and Section 84 provides that the arrested person shall be brought to the office of the administrative officials or the police immediately, and once there shall be notified of the charges.

246. The arrested person or the detained or jailed shall have the following rights:

(a) To meet and consult a lawyer in privacy;

(b) To be visited on a reasonable basis;

(c) To receive medical treatment promptly when he or she falls ill.

247. The law provides that the administrative officials or the police who receive the arrested person or the accused, shall also have a duty to let the arrested person or the accused know about those said rights (Section 7 bis Criminal Procedure Code).

248. The Constitution assigns the court to become a monitoring body in protecting the civil rights of the people when they are under arrest, as can be seen from paragraph 1 of Section 237 which provides:

> "… The arrested person being kept in custody shall be sent to the Court within forty eight hours as from the time of his or her arrival at the office of the inquiry official in order for the court to consider whether there is a reasonable ground under the law for the detention of the arrested person or not; except for the case of force majeure or any other unavoidable necessity as provided by law."

249. The period of time to keep the accused under custody during an inquiry of the inquiry official is provided under Section 87 of the Criminal Procedure Code, that it is prohibited to keep the arrested person under custody longer than 48 hours from the time the arrested person arrives at the office of the inquiry official or the police. However, if necessary, that period of time can be extended, but shall not exceed 3 days.

250. If the period has to be extended beyond the above said limit, permission from the court is required; the court shall then issue a writ of detention for the period of time during the inquiry. This varies according to the scale of imprisonment, namely:

251. In the case of an offence with the maximum penalty of not over 6 months imprisonment or a fine not over 500 baht, the court may issue a writ for a single detention of not over 7 days.

252. In the case of an offence with the maximum penalty of over 6 months but less than 10 years imprisonment or a fine over 500 baht or both, the court may issue a writ of detention for not over 12 days at a time, which shall not exceed 48 days in total.

253. In the case of an offence with the maximum penalty of over 10 years imprisonment, with or without a fine, the court may issue a writ of detention not exceeding 12 days at a time, which shall not exceed 84 days in total.

254. In giving a permission to detain an accused during an inquiry, the court shall ask the accused whether he or she would make any objection. The court may also call the inquiry official or the public prosecutor to provide details on the necessity of the detention, and he may summon other evidence as part of his consideration. If the court issues a writ to detain the accused beyond 48 days, the accused may engage a lawyer to state an objection or to cross examine witnesses, the court shall thus permit a detention of the accused during inquiry only when the necessary.

255. As for an illegal detention, Section 240 of the Constitution and Section 90 of the Criminal Procedure Code have provided means to resolve the situation by stating that the detained, the public prosecutor, or other persons acting on behalf and for the interest of the detained, shall have the right to petition the local court, with the criminal jurisdiction, that the detention is illegal. The court shall carry out its ex parte inquiry immediately. If the court sees that the petition has grounds for truth, the court shall have the power to instruct the officials to bring the detained to court promptly and if the officials could not provide satisfactory explanations to the court as to why the detention is legal, the court shall immediately set the detained free.

**Right to be tried promptly within a reasonable period of time**

256. This right is recognized in Section 241 of the Constitution which provides:

> "In a criminal case, the suspect or the accused has the right to a speedy, continuous and fair inquiry or trial.
>
> At the inquiry stage, the suspect has the right to have an advocate or a person of his or her confidence attend and listen to interrogations."

257. The trial of a Court of First Instance which is not a district court shall have 2 judges sitting together as a panel. However, at present there is a serious shortage of judges and the sitting of 2 judges on the panel as required by law would delay the case. Therefore, for the time being, there is only one judge who hears the trial. This helps ease the tardiness to a certain extent. However, when the judgment is to be handed down, there shall always be two judges to sit at the hearing and co-sign the decision.

258. Section 236 of the 1997 Constitution requires the hearing of a court to be done by a full quorum. Judges who did not sit in a trial shall not be able to give a decision or judgment unless there is a force majeure or any unavoidable necessity as provided by law. The Ministry of Justice thereby must urgently consider increasing the number of judges to avoid tardiness in hearing of cases, which causes harm to the administration of justice.

259. The setting of hearing schedules of the court is carried out on an interval basis; it is not a fix schedule. This is because of the unreadiness of both the plaintiff and the defendant for a continuous hearing. At times, the witnesses of both parties are not ready to come to court. Quite often, the police official are unable to bring the witnesses to testify in time. In the past, there was no law to protect governmental witnesses, which causes them to be reluctant to testify for the State in court. The judge is thereby forced to postpone the case rather often in order to gather as much evidence as possible.

260. Anyhow, Section 244 of the present Constitution provides that:

> "In a criminal case, a witness has the right to protection, proper treatment, necessary and appropriate remuneration from the State as provided by law."

261. The said protection of witnesses shall result in speedier consideration of trials. The Ministry of Justice has thus presented the Act on the Protection of Witnesses in Criminal Cases for Cabinet's consideration.

**Provisional release/bail**

262. Section 239 of the 1997 Constitution provides on the principles of provisional release of the suspect or accused as follows:

> "An application for a bail of the suspect or the accused in a criminal case must be accepted for consideration without delay, and an excessive bail shall not be demanded. The refusal of a bail must be based upon the grounds specifically provided by law, and the suspect or the accused must be informed of such grounds without delay.
>
> The right to appeal against the refusal of a bail is protected as provided by law."

263. As for the principles of deciding whether an accused or the defendant should be released on bail or not, Section 108 of the Criminal Procedure Code allows the inquiry officials, the public prosecutor or the judges to exercise discretion. They shall follow the principles of law by taking the following facts into consideration, namely:

(a) The gravity of the charge;

(b) The evidence adduced in the case;

(c) The circumstances of the case;

(d) Reliability of the applicant or the securities offered;

(e) The likelihood of the suspect or accused absconding;

(f) The danger or injury that might ensue from the provisional release;

(g) The court shall take the objection made by the inquiry official, public prosecutor, the plaintiff into consideration.

264. In addition, the regulations of the Ministry of Justice have laid down principles for the court to release applicants. Incidents of not releasing an applicant are a matter and are mostly cases under the Extradition Act. In a normal circumstance, the court would release the applicant taking the above mentioned facts into consideration, which shall be in line with the recommendation of the President of the Supreme Court. If an applicant is not given provisional release by the court, the applicant has the right to appeal to higher court. Furthermore, the law does not bar the applicant to submit a new petition for provisional release.

265. There is a trend to set a bail principal which allows for easier provisional release, for example, to release without bail (Section 111 of the Criminal Procedure Code). This could be done by allowing a reliable person to guarantee the release without having to use a security. There is also an attempt to expand the type of securities needed for provisional release. In the past, only cash or a plot of land can be used as a security. In addition, there has been an attempt to revise the law to allow the use of the same securities at the police level, the public prosecutor level and the court level, so as to facilitate the suspect or the alleged in applying for a provisional release.

266. Formerly, once the accused is acquitted by the court, he may only take action against government officials and governmental agencies by asking for compensation under the Civil and Commercial Code. However, the figure for taking such an action is rather low for in such a civil case, the claimant for damages have a burden to prove how he was damaged by the tort. It also takes much time and expenses to bring the case to court. However, Section 246 of the present Constitution provides:

> "Any person who has become the accused in a criminal case and has been detained during the trial shall, if it appears from the final judgement of that case that the accused did not commit the offence or the act of the accused does not constitute an offence, be entitled to appropriate compensation, expenses and the recovery of any right lost on account of that incident, upon the conditions and in the manner provided by law."

267. By virtue of Section 246 of the Constitution, the claimant only has to prove that he was illegally detained. This gives a better protection to the right of the people.

268. In addition, the Ministry of Justice has prepared a bill on Compensation Fund for the victims of Crime and Victim of Criminal Process, which was approved by the Cabinet, and is now being proposed to the National Assembly. Once this law is promulgated, the rights of the accused in a criminal process shall be more efficiently protected.

## Article 10

269. Thailand has given great importance to treat humanely the person deprived of right and liberty during the detention, arrest and inquiry. The detention includes detention by a court warrant and detention by a final judgement.

**The respect of the human dignity**

270. Section 26 of the Constitution of the Kingdom of Thailand (1997) provides that:

> "In exercising powers of all State authorities, regard shall be had to human dignity, rights and liberties in accordance with the provisions of this Constitution."

271. Therefore the treatment given to the person deprived of his right and liberty under Article 10 of the Covenant shall fall under Section 26 of the Constitution as well, no matter whether the case is under the police officer level, public prosecutor level, or court proceeding level or the Correctional Level of the Department of Corrections. The person shall be treated humanely and the human dignity shall be respected at all times.

**Detention by a court warrant**

272. Due to the budgetary limitations and thereby a detaining place is not built for the alleged offender detained under a court warrant during the inquiry of the inquiry official because temporary release is not allowed, or because of already being prosecuted as an accused and there is no permission for temporary release during the trial, therefore the alleged offender will be detained at a penitentiary of the Department of Corrections, unless the court has instructed otherwise (for example to be detained at the police station during the inquiry of the inquiry officials.) The treatment of detainee during inquiry or trial of court by the Department of Corrections shall be stated together under No. 3 in the case of serving imprisonment in a penitentiary under a final judgment.

**Detainment under a warrant of final judgment of imprisonment**

273. When there is a final judgment of imprisonment, the accused has to serve the penalty as provided under the Criminal Procedure Code and the Corrections Act (1936).

274. According to the treatment given to detainees under No. 2-3 that is under the responsibility of the Department of Corrections, Thailand has tried to treat detainees by following standards of the United Nations as much as possible. However, under the United Nations standards, all penitentiaries of the country have capacities for only 64,514 detainees, but in the year 1998, 179,514 detainees had to be accommodated to the penitentiaries. Especially the campaign of more arrests of drug addicted had increased the number of convicted of drug (speed pill) addiction cases by 48% of the total number of the detainees of the country. For example, in 1999 the Central Woman Penitentiary in Ladyao, Bangkok had 3,234 detainees out of 4,615 detainees or approximately 70% accounted for drug addicted. This has brought about problems of living and sleeping in overcrowded conditions which have negative impacts on inmates such as health problems, insufficient food, infectious diseases and severe stress leading to bodily harm or death to warders as well as increasing incidents of cell breaking. This causes problems in controlling and looking after detainees.

75. On the top of that having too many detainees have caused personnel problems in the penitentiaries. There is a shortage of manpower in looking after and rehabilitate the behaviour of detainees in order to help them become good citizens.

276. According to the standard of the Civil Service Commission, the Department of Corrections should have 1 officer for no more than 10 detainees. But at the moment the ratio of civil servants in every section and detainees is 1: 15. Moreover, if only the proportion between warders and detainees is considered, the ratio is 1: 34 at day time and 1: 500 at night time.

277. This situation poses a heavy burden for the warders; they have to work around 103 hours per week. This is somewhat more than the hours per week of general civil servants who work around 40-50 hours per week. The long hours caused excessive fatigue and stress. The low monthly income of junior civil servants also contribute to low morale and will to work. This affects the rehabilitation of detainees that aims to help them to become good citizens. At the moment, the Department of Corrections has tried to reduce the burden of the warders by using various technologies to assist the correction officials. Any case where employment of private sector is possible the private sector shall be engaged. This is to allow correction officers to look after the detainee more efficiently.

278. Apart from that, the Ministry of Interior has a project to set up more penitentiaries around the country. Once they are constructed, overcrowded problems in penitentiaries will be alleviated.

279. Other measures to be applied in parallel are amnesty, reduction of the days of imprisonment, parole, and exchange of prisoners who wish to serve their punishment in their homeland. These measures are aimed at encouraging detainees to have higher morale in behaviour rehabilitation before they are released. These measures also greatly ease the problems of overcrowded penitentiaries.

**Places for detainment**

*Alleged child or juvenile offenders*

280. During the inquiry if there is no Juvenile and Family Court in the district, detaining of the alleged shall be done at a police station. This is carried out under a governmental regulation which stipulates that an alleged juvenile offender has to be separated from adults.

281. But if there is a Juvenile and Family Court, a case involving an alleged juvenile offender shall be handled at the Juvenile and Family Court.

*Detaining at the prison and penitentiary*

282. There shall be a classification of detainees in every prison or penitentiary. This is done by separating male, female and children. And in every prison or penitentiary there shall be a reception section for newly arrived prisoners. Should there be unavailable space, the newly arrived prisoners shall sleep in a dormitory or a room separated from the old prisoners. This is to allow the new prisoners to adapt and to understand and learn about rules and regulations of the prison. In the prison there shall be a separation of detainees during trial and investigation from convicted detainees and there shall be an absolute separation of a child detainee from a grown up detainee.

283. The classification of detainees shall be done by designated officials who were trained in detainee classification program. Classification shall be carried out on every detainee starting from the day he is admitted to the prison until the day he leave the prison. There shall be an interview of detainees in order to set up and register a personal file.

284. Detainees are separated into 3 categories as follows:

(a) Central Prison;

(b) Provincial Prison;

(c) Provisional Prison.

285. Most of the prisons were built a long time ago and are inadequate, as the number of prisoners has been increasing year by year. A regular cell, 5 metres in width and 15 metres in length, has to accommodate 40 to 50 prisoners making segregation of convicted detainees from detainees under trial or inquiry difficult. All prisons are lacking in modern equipment, such as chemicals for checking narcotic drugs. Each prison has a separate vocational training hall.

286. At the Central Prison, there is a room for diplomatic officials to visit detainees of their nationalities. This room is called an ambassador room. The diplomatic officials have the right to visit detainees every week, in order to look after their well-being.

287. Prisons provide three meals per day to prisoners. If a prisoner is sick he or she shall receive special food. A detainee has the right to get food provided by relatives about once a week. However, this depends on the category of the prisoner.

288. For the military court, the detention of alleged offenders who are under its jurisdiction shall follow Section 46 of the Act on Organization of Military Court (1956). Under that section the military commandant shall mutatis mutandis follows the penalty authorities stated in a law on military discipline. However, this must not exceed 90 days or he may be detained each time for 12 days but in total not more than 90 days, depending on the case and the status of the alleged.

289. Under the Military Discipline Act; anyone who committed a disciplinary offence shall be punished in one of these five ways. They are admonition, probation, restraint, detention and imprisonment. No new ways of punishment shall be brought up and to punish in other forms is also forbidden.

290. Disciplinary punishment for the detainees shall be according to the Military Prison Act of 1936. The Commandant of the military prison may order an imprisonment in a solitary cell for not more than 15 days or 1 month according to the level of the prison. And no fetters shall be applied unless necessary. A military prison shall take in detainee who is punished for an imprisonment not over three years. If the duration of imprisonment is over 3 years he shall be sent to a civil prison.

291. Military prisoners have to work from 08.00 - 16.00 hrs. and rest between 12.00-13.00 hrs. during work day. During holidays they shall work on health and sanitary work in the morning from 06.00 - 12.00 hrs. and rest in the afternoon.

292. The Act on Establishment of Juvenile and Family Courts and Procedure (1991) provides that a juvenile detainee shall be sent to be detained in an Observation and Protection Center so that he or she shall not mingle with the grown-ups. There are 28 Observation and Protection Centers all over the country.

293. Formerly, drug addicted detainees were detained together with detainees who committed other offences, thereby preventing their rehabilitation. Later on, Thailand has promulgated the Narcotic Addict Rehabilitation Act (1991) which considers that drug addicts be treated as patients rather than criminals. They are put under the responsibility of the Ministry of Justice. But due to many legal obstacles, the Act is yet to be put into practice.

294. According to public health, prisoners shall be provided with a uniform and underwear that shall be laundered everyday. Moreover, prisoners shall take a bath and their toilet shall be cleaned up.

295. The Department of Corrections has provided medical teams including psychiatrists to visit prisoners. However, at present the medical personnel of the Department of Correction is insufficient.

296. Apart from vocational training, the Department of Corrections provides education in prisons as well. When detainees are first received, they are tested to see whether they are literate. If they did not finish the compulsory education, they are encouraged to finish compulsory education first, then they can further their studies at higher levels. This is carried out by governmental agencies and private organizations. The compulsory education is handled by the Department of Non-formal Education.

297. Sukhothaithammathirat University, an open university, is responsible for higher education. At present, there are many prisoners who have bachelor degrees. For the vocational education, it is under the responsibility of the Department of Non-formal Education, the Department of Skill Development and the Department of Labour.

298. There are also special activities to promote discipline run by the Volunteer Division of the Red Cross and the Red Cross Council. In prisons, there are newspapers, television, and spiritual development program. This development programme is carried out by inviting a priest to preach and teach prisoners on Buddhist religious days. And prisoners are allowed to carry out religious ceremonies.

299. In prisons, prisoners will work in workshops. The works include wood carving, machinery repairs, metallic works, welding, and carpentry. Those prisoners shall work according to their capability and skill and shall receive a remuneration of 50% of the profit from the work.

300. Relatives are allowed to visit detainees once in a week under the control of the Department of Corrections. Mail is permitted as well.

301. If there is a complaint of ill-treatment of detainees, the detainee may lodge a complaint by putting it into the complaint box of the prison. All of them shall be considered. A committee shall be set up to consider the matter of the complaint. In the case the wrongdoer is a correctional officer there shall be a disciplinary process by another committee which consists of the officials of the Department of Corrections. And if the officer has committed a serious crime in harming a prisoner he shall also be put into a criminal process.

302. The Department of Corrections also issued a regulation on inspection by the corrections inspector in the year 1992, requiring inspections to meet the minimum standard of the United Nations. And Section 44 of the Act on Corrections (1936) gives authority to the Minister of Interior to appoint the Prison Inspection Committee consisting of Officials from various departments. But in practice this Committee is not as efficient as it should be. In the near future it shall be improved.

303. The punishment to be carried out on children and juveniles under the control of the Observation and Protection Center or the Office of the Committee on Observation and Protection of Children as provided by the Act on Establishment of Juvenile and Family Courts and Procedure (1991) are:

(a) Flogging not over 12 times;

(b) Solitary detention, not over one week;

(c) Hard Labour;

(d) Cut of interests and certain facilities.

304. But at present solitary detention has been abolished only hard labour and flogging are left.

305. Flogging is applied in two cases. Flogging as a punishment for committing a criminal offence shall be ordered by a court. For example a fine may be changed into flogging. How many times it can be carried out is under the discretion of the court and in the case a child violates regulations of the Observation and Protection Center, the Director of the Center shall order the flogging as he sees it fit.

306. Any punishment by flogging shall not exceed 12 times and it shall be under the care and opinion of a medical doctor. After the flogging, there shall be a record in a personal book of the child. The Observation and Protection Center has an opinion that flogging is only a punishment done by a teacher to his student.

307. The hard labour is not a punishment for a juvenile who committed a criminal offence. However, it is a punishment for the breach of the regulations of the Observation and Protection Center. Types of work are civil work, grass mowing, earth digging, sewage cleaning. But these children shall receive no remuneration for their work because it is considered as punishment.

308. Juvenile under the control of the Observation and Protection Centers and the Office of the Committee for Observation and Protection of Children shall be separated by gender.

309. The Director of the Observation and Protection Center, the Chief of the Training School and the head of the school which has taken in children and juvenile shall have duties to look after and report on behaviour, health, mind, habits and others to the court at least once in a month.

310. In the case the court ordered a fine and the child or juvenile did not pay the fine, he shall be sent to an Observation and Protection Center, a school or a training school for an appropriate period of time but not over one year.

311. The training of children shall be done by a training school which has a curriculum of compulsory education as run by the Department of Non-formal Education. On the top of that there is a vocational training which shall vary according to the locality of each province. There shall be several types of vocational training like carpentry, mechanics, tailoring and wood carving. The juvenile can choose any course according to their own interest.

312. Juvenile who passed the vocational training program will receive a certificate of the Department of Non-formal Education.

313. A detainee who is mentally sick or an alleged offender who claimed that he committed the offence when he is mentally sick shall be sent to the Hospital of Forensic Psychiatry (Galya Rajanagarindra Institute) because the Department of Corrections does not have a facilities for a psychiatric patient.

314. The Hospital separates the male patient from the female patient. Treatment includes three methods, namely:

(a) Prescription for pills and injection;

(b) Electrical shock;

(c) Group Healing.

This is up to the symptoms of patients.

315. The living conditions of the Hospital of Forensic Psychiatry (Galya Rajanagarindra Institute) is rather overcrowded because it is already accommodating general psychiatric patients who are abandoned by relatives. This becomes a burden for the government to look after these patients for a very long time.

316. From the data in the above mentioned Article 10, it shows that Thailand has a strong will to treat these persons, whose rights are limited, in a humane way and in line with the standard of the United Nations.

## Article 11

317. Thailand has no law which provides for imprisonment of a person for being unable to perform his contractual obligation. Therefore the incident under Article 11 has never happened in Thailand.

318. However, in the case of civil process where the defendant or a judgment debtor who has an intention to obstruct the judicial process by not carrying out a certain action, the Civil Procedure Code authorizes the court to order the defendant or a judgment debtor to follow the judgment of the court. This can happen in two instances, namely:

(a) The court may order to detain the defendant when it appears to the court that the defendant has evaded a summon or a court order or that during the trial, the defendant has moved or hidden any documents which can be used as an evidence against him, or he has moved some or all of his property away from the jurisdiction of the court or the defendant has evaded or shall evade from the jurisdiction of the court which shall slow down or obstruct the hearing or the enforcement of the judgment which is to be enforced upon the defendant (Section 254);

(b) A case where a judgment debtor wilfully disobey a writ of execution, for example the writ required him to leave the land or the building or to remove the structures or to refill the land or level the disputed land. In such a case the court shall consider the evidence to assure that a judgment debtor shall be able to follow the judgment and there is no other means for a creditor to force a debtor (Section 297).

319. However, the above mentioned detention differs from imprisonment for it is not a criminal punishment. But it is a civil measure to force those who obstructed the civil judicial process. This is only to allow the judgment or the order to be effectively implemented and to protect the right of the party in civil case. In addition, the detainee in this case shall not be detained in a prison but shall be restrained in a detaining area or living in his own house or the house of others who has given consent to accept him. This is according to Section 24 of the Penal Code.

## Article 12

320. The rights under Article 12 are consistent with Section 36 of the Constitution of the Kingdom of Thailand that provides:

> "A person shall enjoy the liberty of travelling and the liberty of making the choice of his or her residence within the Kingdom.
>
> The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for maintaining the security of the State, public order, public welfare, town and country planning or welfare of the youth.
>
> No person of Thai nationality shall be deported or prohibited from entering the Kingdom."

**Liberty of travelling, choice of residence and travelling abroad**

321. Under Section 36 of the Constitution of the Kingdom of Thailand, every person has liberty of travelling, liberty of making a choice of residence and liberty of travelling abroad as he may wish. However, due to state security reasons, there are certain restrictions in travelling in the country, moving and making choice of residence in Thailand. This applies to certain groups of people who do not have Thai nationality, namely, groups of people who have migrated into Thailand such as Vietnamese and Chinese expatriates, people who have stayed in Thailand for a long time but have not yet held a Thai nationality, people who travelled into Thailand illegally, such as from the People Democratic Republic of Laos, Cambodia and Vietnam. Thailand has cooperated with the United Nations in building living quarters. Therefore pending their relocation to third countries, these people shall have limitations of liberty to travel both locally and to travel outside the country. In order to travel they must first get the permission from the local authority. This is to ensure order and also for the reason of security of the country.

322. In addition, certain types of people may also be restricted. They include persons imprisoned by a division of a Thai Court or a foreign court, persons who are under an arrest warrant of a state agency or under probation according to the law on probation or persons who are under a provisional release under conditions set by the court or who are alleged under an offence of the Securities and Exchange Act (1992). These people's liberty to travel outside Thailand shall therefore be limited.

323. Section 12(1) of the Immigration Act (1979) prohibits travelling into Thailand foreigners who does not have a passport or document used in place of a rightful and valid passport or does not receive a checking and stamping on his passport or a document used in place of a passport by the Thai embassy or consul in foreign countries or the Ministry of Foreign Affairs.

324. Any one who is believed to be harmful to the society or shall cause harm to peace, or safety of the people or security of the Kingdom or a person for whom the officials of a foreign country has issued a warrant of arrest shall not be permitted to come into the Kingdom. This is under the limitation of the law on immigration (Section 12 (7)).

325. A person who is believed to come into the Kingdom or travel abroad to be prostitute, to traffic women or children, to traffic harmful narcotics, to evade customs, or to carry out other activities which are against public order or good morals of the people, shall not be permitted by an official of the state to travel abroad or to come into the Kingdom. And in the case of a single woman who wants to travel abroad, shall receive a guarantee from the government or shall be interviewed to satisfy that she will not travel abroad in order to be a prostitute or to commit illegal acts abroad (Section 12 (8)).

326. The Ministry of Interior through the Commissioner-General of the Royal Thai Police has the authority to identify a person who is not allowed to enter the country and to establish measures for checking immigrants. However, he does not have the authority to control the travelling of legal immigrants except in the matters of travelling into country to work and the registration of foreigners. The Immigration Act (1979) does not allow a foreigner to come into the country to work as a labourer or as an unskilled worker without knowledge or technical experience (Section 12).

327. In the year 1997 when the country's economy was growing, the Council of Ministers passed a resolution to allow foreigners to work as labourers through registration. The officials have the power to consider and allow foreigners to stay in a place that they see appropriate during the screening process. The foreigners have to promise that they will come to see the officer. This can be done by requiring or not requiring a guarantee (Section 19).

**Immigration for seeking a residence in the Kingdom**

328. According to the Immigration Act (1979), a foreigner has the right to apply for a permit to have a residence in the Kingdom as follows:

(a) Submitting an application before travelling into the Kingdom by following the procedures provided under Section 41 of the Immigration Act; or

(b) Submitting an application after getting a permission of temporary living in the Kingdom and following procedures provided in Section 45 of the Immigration Act;

(c) The authorized officials consider the application to determine when a foreigner is allowed to have a residence in the Kingdom.

329. Section 41 of the Immigration Act (1979) requires that permission shall be given by the committee for screening of immigrants. The committee consists of the Permanent Secretary for Interior as the chairperson, the Permanent Secretary for Foreign Affairs, the Police Commissioner-General, the Director-General of the Labour Department, the Attorney General, the Secretary General of the Board of Investment, the Secretary General of the National Security Council, the Director of the Tourism Authority of Thailand, and the Chief of Immigration Bureau.

330. When the committee has given permission with an approval of the Minister of Interior, this falls under the condition that the number of permit shall not exceed the number announced by the Minister of Interior under Section 90 and the said foreigner shall already received a certificate of residence.

331. The determination of number of the foreigner to come to have residence in the Kingdom is under Section 40, which stated that the Minister of Interior with an approval of the cabinet has the authority to specify the yearly number of foreigners who will have residences in the Kingdom. The number of foreigners in a year has a limit of not over 100 per nationality and that of stateless people are not over 50 per year. However, certain type of persons, as provided under Section 42 and 43, shall not be under the said announcement of the Minister.

332. And at present Thailand has been preparing a bill to provide an opportunity for foreigners to carry out more business in Thailand namely the Bill on the Business of Aliens It is a law to repeal the Announcement No. 281 of the Revolutionary Party (1972), which strictly limited the right of foreigner to do business in Thailand. The bill is proposed to be consistent with the policy of WTO, which wants the member countries to open up the country for a free trade and MFN treatment. But the draft Bill has both supporters and protestors in a large scale.

**The right to travel into one's country**

333. According to Section 36 of the Constitution of the Kingdom of Thailand and the Immigration Act (1979), no person of Thai nationality shall be deported or prohibited from entering the Kingdom.

**Article 13**

**Deportation of foreigner by a decision under law**

334. Foreigners who legally travel into the country shall have the right and be protected by law. Foreigners can be sent back under the following laws:

(a) Immigration Act (1979);

(b) Fixation of Price of Goods and Anti Monopoly Act (1979);

(c) Deportation Act (1956);

(d) Deportation Act (No. 3) (1978).

335. Regarding the Immigration Act (1979), a foreigner shall be deported if he has come in without permission or come in with permission but the permission expired and he has over-stayed or he has come into the Kingdom with a permission but the permission has already been withdrawn.

336. Migrants from neighbouring countries are regarded as illegal immigrants in accordance with Section 12 of the Immigration Act (1979). A foreigner entering the Kingdom illegally shall be punished as an illegal migrant. However, in the past Thailand did not strictly enforce the said law to migrants or persons illegally entering the country because the government declared in its policy to the national assembly in the year 1980 that an important principle of humanitarian consideration would be adopted to give assistance to migrants in parallel with the sovereignty and security of the country. However, the focus is on solely allowing temporary stay for the migrants and will help them to return to home country or third country as soon as possible.

337. Thailand has solved the problems of refugees who migrated from Indochina (Cambodia, Vietnam and Lao PDR) as follows:

> Immigrants and refugees escaped from fighting in Cambodia are divided into three groups. The first group, 15,173 people, fled from the communist regime into Thai territory since 1975. The second group, about 100,000 people, fled from the Vietnamese invasion of Phnom Pehn on 7 January 1979. These two groups had been assisted by the United Nations High Commission on Refugees (UNHCR) to resettle in third countries under agreements between the countries concerned and UNHCR. The third group, around 370,000 Cambodians, fled to Thai border when the Vietnamese military carried out a major raid against the resisting groups in the late year 1984. For the third group, UNHCR had sent all of them to their motherland on 7 May 1993. This is done in accordance with the Memorandum of Understanding between the Thai Government, the National Council of Cambodia and UNHCR.

338. After the coup d'état in Cambodia in July 1998, the escapees from fighting in Cambodia had again fled into Thailand. And later on there were fighting between the Cambodia military and the force of Prince Ranaridh at Osmed. This caused thousands of Cambodians to flee into Thai territory in Kabcheung District, Surin Province. After that many thousands of Cambodians, in an area controlled by the Khmer rouge, had escaped from the town of Allongweng that later was captured by the government force. There were a total of 64,000 Cambodians who fled into Phusing District of Srisaket Province.

339. The Thai government arranged 2 tripartite meetings between Thailand, Cambodia and UNHCR to solve the problems on 27 April 1998 and 15 February 1999 respectively. At the first meeting in Bangkok there was an agreement to send 64,000 escapees living in Thailand to their motherland under the principle of voluntarily return of the Paris Peace Agreement. However, at that time, Cambodia was preparing for an election and the Khmer Rouge still had influence in an area of Thai-Cambodian border. It was therefore not possible to send the escapees back. As a result, the escapees were left in two areas of Thai territory at (1) the areas of Phunoi, Baan Na Tambon, Phusing District of Srisaket Province and (2) the areas of Chong Khao Ploo, Muang District of Trad Province. Pending for the second tripartite meeting of Thai-Cambodia-UNHCR, there were escapees who voluntarily return to their homeland.

340. At the second tripartite Thai-Cambodia-UNHCR meeting on 15 February 1999 in Phnom Penh, the matter of sending the remaining 18,000 escapees back to Cambodia before raining season was considered. It was emphasized on the safety and voluntary return as well as the assistance from the world community and UNHCR given to the repatriation process and reintegration into society based on the principle of sharing international borders. Moreover, there were discussions on finding solutions to the remaining problems especially the problems of land mine at Thai-Cambodian borders and a repair of 3 temporary shelters in Thailand. And the meeting agreed to keep this tripartite-cooperation as a forum for consultation and monitoring of issues related to reintegration assistance. Later, the Thai government cooperated with UNHCR and Cambodia in sending the escapees back to home country.

**Vietnamese migrants**

341. After the political change in Vietnam in 1975, there were 160,239 Vietnamese migrants entering into Thailand. Thailand followed the comprehensive Plan of Action for solving the problems of Indochinese migrants. The Plan was approved at the international meeting on problems of Indo-Chinese migrants on 13-14 June 1989. The plan has set commitments for every related parties to carry out. They are (1) The countries of origins of the problems shall stop their people from moving outside the country illegally and shall receive their people who are not genuine migrants back to the country (2) Countries of first reception shall give provisional asylum according to humanitarian principles and shall organize an interrogation of migrants for classification and (3) Third Countries shall take in Vietnamese who passed the interrogation and classification and receive genuine migrants to settle down in their countries.

342. Up to September 1995, Thailand and UNHCR were able to send 145,777 Vietnamese to settle in third countries and 11,923 Vietnamese voluntarily return to Vietnam. There are 5,199 Vietnamese migrants left in Thailand. All related parties agreed to send them back under the Orderly Return Programme which was another alternative in addition to the voluntary return.

343. Thailand cooperated with Vietnam and UNHCR to formulate a tripartite memorandum of understanding between Thailand-Vietnam-UNHCR on 26 December 1995. And all Vietnamese migrants were repatriated to their homeland between 29 June 1993 and February 1997.

**Laotian migrants**

344. Since the political change in Laos in 1975, there were 259,930 Laotian migrants entering Thailand. Thailand did not have a policy of allowing the migrants to settle permanently. However, Thailand allowed them to stay temporarily for humanitarian reasons during the wait for resettlement in a third country or returning to their own country. Thailand in cooperation with the United Nations High Commissioner for Refugees sent 320,836 Laotian migrants to settle in third countries and sent 128,201 Laotian migrants to home country. The number of those who are left in Thailand was 1,350 persons.

345. The solution to the problem of Laotian migrants in the first period was directed toward sending them to a third country. However, in a later period, there were few countries interested in receiving Laotian migrants, therefore the solution was directed towards a voluntary return of the remaining to Laos. This was done through a tripartite cooperation of Thailand-Laos-UNHCR by organizing a tripartite meeting of Thailand-Laos-UNHCR for eight times to set up principles and methods in returning Laotians back to home country voluntarily.

346. However, in the past the return of Laotians was not successful. It did not meet the set target because of various problems. There were rumours of forcing migrants to travel back; the migrants were afraid that the travelling was not convenient and also that various countries and international organizations were still not able to give aids to support the migrants to the extent which responded sufficiently to the needs of Laos. And the most important cause of the failure was the news that the United States of America shall again take in the Mong hill tribe people to settle in their country. This caused the majority of migrants to continue living in the migrant center.

347. For this reason, the Thai government allowed the United States to carry out the process to receive the Laotians from Ban Na Po center to settle in the United States once more between April-September 1996. This was the last operation. After the process ended the United States received 2,762 Laotians. This caused a leftover Laotian of 1,350 persons at Ban Na Po. All three parties (Thailand-Laos-UNHCR) agreed to have a check of the status. If after the check he or she has a status of genuine migrant he or she would become a screened-in migrant. UNHCR will look for a third country to receive the screened-in migrants. And if after the checking, there are screened-out migrants, Laos agreed to accept them under the voluntary repatriation programme and the organized return program.

348. The Ministry of Interior set up an appeal committee to consider the migrant status of 1,350 Laotians left in Thailand. The result was 182 Laotian migrants were screened in and 1,164 were screened out.

349. Subsequently, there was a tripartite meeting of Thailand-Laos-UNHCR at the technical level in Bangkok on 6 November 1998 to solve the problem permanently under the tripartite framework to follow the comprehensive plan of action by which UNHCR would continue giving assistance on returning Laotians back to their motherland and on their integration into society. However, Laos insisted that it would accept only those migrants who travelled back voluntarily. The resolution of this problem progressed very slowly. A tripartite meeting of Thailand-Laos-UNHCR was later held at Vientien, at which the Ministers of Foreign Affairs of Thailand and Laos head their respective delegations. The meeting considered the guideline for repatriation of screened out migrants at Ban Na Po center under the Comprehensive Plan of Action by determining that those "not protesting the return" be included as a criteria in addition to the voluntary return. A Joint Statement was issued in order to accelerate the return process with the aim to have all repatriated by the end of November 1999. In so doing, a tripartite technical committee was set up to consider the action plan.

350. At the tripartite technical meeting in Bangkok on 4 August 1999, the three parties formulated an action plan and later on the first group of 282 Laotians were returned on 28 September 1999.

351. The revocation of permit for foreigners to stay in the Kingdom can be divided into two cases:

(a) The revocation of permit for foreigners to stay in the Kingdom temporarily: If a foreigner has a behaviour which is illegal and the circumstances calls for a revocation, the Police Commissioner-General or the committee for consideration of immigrant have the power to revoke the permit. In the case the revocation was done by the Police Commissioner-General, the foreigner has the right to appeal to the committee for consideration of immigrant within 48 hours counting from the time he knew about the order. The order of the committee for consideration of immigrant shall be final, therefore, the foreigner has no right to appeal the order issued by the committee for consideration of immigrant;

(b) The revocation of a permit for foreigner to have a residence in the Kingdom: A foreigner who has a behaviour against the law, forbidden character or did not follow the regulations set by the committee for consideration of immigrant, the Police Commissioner-General shall have the power to propose the matter to the committee for consideration of immigrant. If the committee is of the opinion that his permit of residence should be revoked, the committee shall recommend the Minister of Interior to revoke the permit and this is considered as the final decision (Immigration Act, Section 53).

352. The mentioned case of revoking order for a residence permitted under Section 53 shows that there are three levels of investigation of fact and consideration. Therefore, even though the foreigner does not have an opportunity to appeal for a review of the cause of the revocation, there are sufficient reviews on this matter.

353. According to Paragraph 2 of Section 59 of the Immigration Act, if officials decide to send the above-mentioned foreigner out of the Kingdom, and if investigation is required in order to do so, Sections 19 and 20 shall be applied mutatis mutandis. This means the officials may

detain the foreigner for inquiry or set him free on a guarantee. However, the foreigner has to report or meet the official at an appointed time and date for questioning. The detention shall not be over 48 hours. If an extension of detention is necessary, it should not more than 7 days. If the required extension is longer than 7 days a permission of a court is needed for each detention not over 12 days.

354. In the case there is an order for sending a foreigner back, during the waiting for such return, paragraph 3 of Section 54 provides that the official has the power to allow the person to stay at any place but the foreigner has to see the official at the specified time, date and place. But this is done with a guarantee or a guarantee plus bail. And the official may detain the foreigner at a place for a period of time as deemed necessary.

**Deportation**

355. Article 5 of the Deportation Act (1956) provides on the return of a foreigner when there is a necessity or for the sake of public order or good morals, the Minister of Interior has the right to order the deportation of a foreigner as he deems fit. But if there is a change of circumstances he may revoke the deportation order. The foreigner to be deported must not be a Thai by birth.

356. Section 6 of the Deportation Act (No. 3) (1978) provide on the process of return that once there is an order to deport a certain person, the Minister of Interior or the officials assigned by the Minister shall issue an order to arrest and detain that person at any place until the deportation is carried out according to the order of deportation.

357. While waiting for the order of the Minister to deport a person, the Senior Administrative Official or police may arrest or detain the person in advance. In this case the provisions of the Criminal Procedure Code on arrest and detain shall be applied mutatis mutandis.

358. Section 7 of the Deportation Act provides that it is not allowed to deport a person before 15 days counting from the day the order to deport has been informed to the deportee and in the case of appeal, the deportation shall be put on hold until the Prime Minister has made his order.

359. The last paragraph of Section 6 of the Deportation Act (No. 3) also provides that when the deportee is detained in order to wait for deportation, there is a case which the deportee may requests the Minister to send him to any area to carry his occupation instead of keeping him in a detention area. The Minister shall make an order as he deems fit and thereby he may require the deportee to have a guarantee or bail or make a written probation and to report at an appointed place and time but not over six months at a time.

360. The deportee has the right to appeal to the Prime Minister and ask for a revocation of the deportation order or to request to be sent abroad but he has to make the appeal within 7 days counting from the day he knew of the deportation order. The Prime Minister has power to revoke the deportation order, order for a respite or order the deportee to carry his or her occupation at a certain location in place of deportation. And he may instruct that a written probation shall be made.

361. There is no law forbidding a foreigner should he wish to submit facts and evidence to the concerned authorities. He also has the right to have advisors or a person to process the matter for him.

362. In addition, the Fixation of Price of Goods and Anti-monopoly Act (1979) provides that should the court rule that a foreigner has committed an offence under the Act such as fixing a lower price for goods or hoarding the controlled goods or causing a monopoly or limiting competition in trade unfairly committed the offence, it shall also have the power to deport that person (Section 45 of the Fixation of Price of Goods and Anti-monopoly Act).

363. As such a foreigner who enter Thailand may be expelled only when there is a ruling achieved through law and the person has the right to ask for a review and may protest such a ruling. This is consistent with Article 13 of the Covenant in all respects.

**Article 14**

364. The equality of persons is provided under Section 30 of the Constitution of the Kingdom of Thailand that:

> "All persons are equal before the law and shall enjoy equal protection under the law.
>
> Men and women shall enjoy equal rights.
>
> Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted.
>
> Measures determined by the State in order to eliminate obstacle to or to promote persons' ability to exercise their rights and liberties as other persons shall not be deemed as unjust discrimination under paragraph three."

365. Section 233 of the Constitution provides also:

> "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."
>
> And Section 236 provides:
>
> "The hearing of a case requires a full quorum of judges. Any judge not sitting at the hearing of a case shall not give judgement or a decision of such case, except for the case of force majeure or any other unavoidable necessity as provided by law."

366. Formerly there are only judicial courts and military courts in Thailand. The present Constitution has provided for two more kinds of court namely, the Constitutional Court and the Administrative Court. It also set up a special chamber in the Supreme Court that is the Criminal Division for Persons Holding Political Position.

**The Constitutional Court**

367. The Constitutional Court shall decide on whether a law is in conflict with the Constitution or on the power of various organs under the Constitution. The hearing of the Constitutional Court shall be held in public and the parties concerned shall have the right to express their opinions before the ruling is made on the case. The parties also have rights to ask for the inspection of the documents which are related to the party asking for such an inspection. The court also allows a party to make a protest on a certain judge or certain judges of the Constitutional Court. The decision or order of the Constitutional Court shall be with reasoning (Section 269 of the Constitution).

**The Administrative Court**

368. The Administrative Court shall hear and decide cases which are between the government, governmental agencies or governmental agencies and the private party or the dispute between governmental agencies resulting from the action or inaction provided by law.

**The Constitutional Court**

369. The Constitutional Court has begun its operation and has decided several constitutional cases. Whereas the Administrative Court has not been set up yet by the time which this report is being written.

370. The independence of the Court is guaranteed by the Constitution in paragraphs 1 and 2 of Section 249 provides:

> "Judges are independent in the trial and adjudication of cases in accordance with the Constitution and the law.
>
> The trial and adjudication by judges shall not be subject to hierarchical supervision."

**The Judicial Court**

371. At present, judicial courts are not attached to the Ministry of Justice. They have independence in hearing and deciding cases. The Ministry of Justice only works as a secretarial unit which supports the work of the courts both in the matter of financial management and supporting personnel management.

372. Judges have to pass the selection examination organized by the Ministry of Justice. From thereon they have to go through a training of assistant judge for at least one year before they can perform the duties of a judge.

373. Judges have independence in performing their duties. In the management of the cases, each judge shall look after the file of the cases assigned to him in the matter of hearing. In deciding cases he shall seek assistance of other judges in forming a quorum. In the court of first instance there shall be a judge to form a quorum. In the Courts of Appeal and the Supreme Court there shall be three judges in the quorum.

374. The management of cases or management of the docket shall be made by the chief justice of the Court who distributes the cases to be handled by each judge. The superior who is the Chief Justice of the court shall not have power to instruct judge to act according to the wish of the Chief Justice. But he may merely express his dissenting opinion. And the Constitution (1997) has set up a new judicial system to guarantee its independence and neutrality, being free from the executive. This is provided under Section 273 which provides that the appointment and removal of judges shall first be approved by the Judicial Commission and then the matter shall be informed to the King (who shall grant a proclamation accordingly).

375. The promotion, the increase of salaries, and the punishment of judges shall be approved by the Judicial Commission. In carrying out this the Judicial Commission has set up subcommittees for each level of court to propose opinions for further consideration.

376. The Judicial Commission consists of the President of the Supreme Court as its chairman and qualified judges from each level of court, altogether 12 members; there are judges in each level of courts and they are voted by judges of all levels; in addition another two qualified members who are not and have never been judicial officials and have been elected by the Senate.

377. In addition the Judicial Courts shall be separated from the Ministry of Justice in the near future. There shall be a secretarial office of the Judicial Courts which is an independent unit, directly under the President of the Supreme Court and the Office of Judiciary shall have independence in personnel management, budgetary affairs, and other matters. This is by virtue of the provision of Sections 274-275 of the Constitution. At the moment the law to implement the said provisions of the Constitution is being drafted.

378. In the matter of training of judges, the Institute of Judicial Officials Development is responsible for the training of judges to acquire up to date legal knowledge, international law included. There was a training on the International Covenant on Civil and Political Rights. Judges must be well versed in human rights. There are several cases where the rights of the alleged are reconfirmed according to the principles of human rights.

**Open judicial process**

379. Under the Criminal Procedure Code, the trial and taking of evidence in a criminal case shall be done in open court and in the presence of the accused unless the law has provided otherwise (Section 172).

380. However, the court may, by its own motion or on the application of either party, order that the trial be held on camera, provided that it is in the interest of public order or good morals, or in order to prevent the disclosure of secrets concerning the security of the state to the public (Section 177). In any event, the plaintiff and the accused including their lawyers, and interested persons who are permitted by the court shall have the right to stay in the hearing chamber.

381. The reading of the judgement shall be read in open court on the day the trial is over or within three days from such date unless there is a suitable ground in postponing the reading (Section 182).

382. After the judgement has been handled down, the parties or interested persons have the right to photocopy or make a copy of the judgement. And the mass media have the right to ask permission from the court to make a copy of the judgement in order to publish it. The media have right to hear any trial which is not held on camera. But they may not televise or take picture in the court room.

383. The trial of the cases related to children and juvenile shall always be held on camera to protect the interest of the children or juvenile concerned in particular (Act on Establishment of Juvenile and Family Courts and Procedure (1991) Sections 73 and 79).

**The right of the alleged or the accused to be presumed innocent**

384. Section 33 of the Constitution provides:

> "The suspect or the accused in a criminal case shall be presumed innocent.
>
> Before the passing of a final judgement convicting a person of having committed an offence, such person shall not be treated as a convict."

385. The last paragraph of Section 165 of the Criminal Procedure Code provides "… before the acceptance of the change, the accused shall not be treated as such" and in proving the guilt of the accused in every case, the prosecutor shall have the duty to prove that there is an offence and the accused is the offender (Section 174). If there is a reasonable doubt on whether the accused has committed the offence or not, the benefit of doubt shall be given to the accused (Section 227).

386. These are the principles of law applied by the court which have a very long standing.

**The right to equal minimum protection**

387. Section 134 of the Criminal Procedure Code provides on the inquiry of the alleged as follows:

> "When the alleged offender is summoned or brought or appears voluntarily before the inquiry official or when a person appearing before him happens to be the alleged offender, the inquiry official shall ask his name, surname, nationality, protection, parentage, age, profession, place of residence and place of birth, and inform him of the offence charged, and he shall be made aware that whatever he shall say may be used as evidence against him in his trial. Any statement voluntarily made by him shall be noted down. If the alleged offender is unwilling to make any statement, this shall also be noted down."

388. For the alleged who are foreigners the law provides that an interpreter shall be provided for the alleged who cannot understand Thai language and the procedure in the court as provides in Section 13 as follows:

> "The inquiry, preliminary examination or trial shall be made in Thai; but if it is necessary to translate Thai into a foreign language or foreign language into Thai, an interpreter shall be required."

389. When there is an interpreter to interpret a plea, testimony or other matters, such interpreter must interpret correctly. The interpreter must take an oath or make an affirmation that he shall perform his duty conscientiously without adding to or suppressing anything from what he interprets.

390. The interpreter shall affix his signature on the translation.

391. In the case where the injured person, alleged offender, accused or witness cannot speak or understand the Thai language and have no interpreter, the inquiry official, Public Prosecutor or Court shall procure an interpreter for him without delay.

392. The inquiry official, Public Prosecutor or Court shall pay allowances to the interpreter according to the Rule prescribed by the Ministry of Interior, the office of the Highest Public Prosecution or the Ministry of Justice, as the case may be, with the approval of the Ministry of Finance."

393. At present the Ministry of Justice has seek cooperation from non-governmental organization and the education institute to provide volunteer interpreters to the alleged foreigners. They receive remuneration under the regulation of the Ministry of Justice.

**The right to prepare for defense**

394. The right to prepare for defense of the accused is at present provided in paragraph 3 of Section 239 that the person being kept in custody, detained, or imprisoned has the right to consult his or her advocate in private and receive visits as may be appropriate. In addition the regulation on processing a case of the Department of Police has specified that the police or inquiry official shall reasonably facilitate the meeting between the alleged and his or her advocate in private.

395. In addition, the interrogation of the alleged at the inquiry stage is being governed by paragraph 2 of Section 241 of the Constitution which provides that the alleged or the suspect has the right to have an advocate or a person of his or her confidence attend and listen to the interrogation. This is in order to prevent any deception or forcing to cause the suspect or the alleged to answer without his own will. The accused in a criminal case has the right to inspect or make a copy of his or her statement when the public prosecutor has already submitted his case to the court. Also, the accused and the interested person has the right to know a summary of evidence in this inquiry stage and the opinion of the public prosecutor in making order for the case (Paragraphs 3 and 4 of Section 241 of the Constitution).

396. For the right of the accused in receiving assistance from an advocate, Section 8 of the Criminal Procedure Code provides that the accused shall have the right to appoint an advocate during the preliminary examination, the right to talk to his advocate or would-be advocate in private, the right to inspect the file of the preliminary examination or trial or to make copies and to inspect the evidence and to make copies or photographs thereof.

397. Regarding the legal aid to the alleged or accused Section 242 of the Constitution provides:

> "In a criminal case, the suspect or the accused has the right to receive an aid from the State by providing an advocate as provided by law. In the case where a person being kept in custody or detained cannot find an advocate, the State shall render assistance by providing an advocate without delay."

398. Section 173 Criminal Procedure Code provides:

> "In the case of offences punishable with death, the Court, before commencing the trial, shall ask the accused whether he has a counsel or not; if he has none, the Court shall appoint one for him.
>
> In the case of the offences punishable with imprisonment or in the case of the accused not exceeding eighteen years of age on the day as he is instituted to the Court, the Court, before commencing the trial, shall ask the accused whether he has a counsel or not; if he has none and requires one, the Court shall appoint one for him.
>
> The Court shall pay the gratuity and expense according to the Rule of the Ministry of Justice to the counsel appointed as this Section."

399. Section 55 of the Act on Organization of Military Court (1956) provides that the military court shall provide legal aid to the accused in the military court and there is a department which is responsible for providing an advocate upon order of the military court.

**The right to examine the witness testifying against oneself**

400. Under the Criminal Procedure Code an accused has the right to inspect the file and evidence of the prosecutor (Section 8). In the case of evidence at the inquiry which the accused does not have right to examine in the court, the court shall consider them as corroborative evidence and shall not have much weight in sentencing the accused to be guilty.

401. In addition, Section 15 of the Criminal Procedure Code brings the Civil Procedure to apply to criminal cases in a mutatis mutandis manner. That means if a witness testifies against the party summoning the witness that party may ask the permission from the court to cross examine that witness as if he is the witness summoned by the other party.

**The right to trail without unnecessary delay**

402. Paragraph 1 of Section 241 of the Constitution provides:

> "In a criminal case, the suspect or the accused has the right to a speedy, continuous and fair inquiry or trial.
>
> At the inquiry stage, the suspect has the right to have an advocate or a person of his or her confidence attend and listen to interrogations.

An injured person or the accused in a criminal case has the right to inspect or require a copy of his or her statements made during the inquiry or documents pertaining thereto when the public prosecutor has taken prosecution as provided by law.

In a criminal case for which the public prosecutor issues a final non-prosecution order, an injured person, the suspect or an interested person has the right to know a summary of evidence together with the opinion of the inquiry official and the public prosecutor with respect to the making of the order for the case, as provided by law."

403. At present one has to accept that there are delays in the criminal process no matter at the inquiry, indictment or trial in the court. Thailand recognises the problems and has been trying to revise and rectify them.

**Prohibition of testifying against oneself**

404. Section 243 of the Constitution provides:

"A person has the right not to make a statement incriminating himself or herself which may result in criminal prosecution being taken against him or her.

Any statement of a person obtained from inducement, a promise, threat, deceit, torture, physical force, or any other unlawful act shall be inadmissible in evidence."

405. In addition, the Criminal Procedure Code also provides on the protection of the witness that he is not bound to answer questions which may directly or indirectly incriminate himself when there is such a question, the court shall warn the witness.

**The right of the child and juvenile in criminal case**

406. In the case when the accused is a child or juvenile the Act on Establishment of Juvenile and Family Court and Procedure (1991) provides under Sections 72 and 78 that the trial of criminal cases which the accused are children or juveniles shall be carried out in a room which is not a regular hearing chamber and shall be done on camera. And only the persons related to the case shall have the right to attend and hear the trial.

407. In the trial the court shall take the age, history, behaviour, intellectual ability, education and formation, health, mental condition, habit, occupation and status of the accused including all the circumstances of the accused and those of his or her parents, guardian and the person who the accused has lived with or who gives him education or job shall also be considered.

408. At present, there has been the promulgation of an amendment to the Criminal Procedure Code (No. 20) (1999). The substance of the said law is to revise the method of inquiring the injured and a child witness of not over 18 years in the court. It also requires that there shall be a psychiatrist, social welfare worker, the person requested by the child or the public prosecutor to attend the interrogation of the child.

409. In the trial of a child or juvenile case the law requires the court to consider the welfare and future of the child or juvenile which should focus on reforming them rather than aiming at punishment. And in the trial and sentencing a child or juvenile the court shall consider the character, health and mental condition of the child or juvenile and shall penalize, change the penalty or apply the method for child and juvenile to suit the child or juvenile and his behaviour in each particular case, even if the child or juvenile committed the offence in conjunction with others (Section 82).

**The right to appeal to higher courts**

410. Under the conditions of the respective laws, convicted persons in criminal cases in both judicial and military courts have a right to appeal to the Supreme Court or Supreme Military Court.

**The right to reopen a case**

411. Section 247 of the Constitution provides:

> "In the case where any person was inflicted with a criminal punishment by a final judgement, such person, an interested person, or the public prosecutor may submit a motion for a review of the case. If it appears in the judgement of the Court reviewing the case that he or she did not commit the offence, such person or his or her heir shall be entitled to appropriate compensation, expenses and the recovery of any right lost by virtue of the judgement upon the conditions and in the manner provided by law."

412. Nowadays the reopening of a case shall be in accordance with the Act on Reopening of a Criminal Case (1983) and Section 14 of the said law provides for the return of property, money, or compensation calculated on a daily basis plus the interest of which if sentenced for capital punishment and the penalty was carried out, a compensation of not more than 200,000 Baht shall be given. If the punished is a juvenile the court shall punish reasonably.

413. And the said reopening of criminal case can be carried out in both the civil court and the military court.

**The right of the accused who is ruled innocent**

414. Section 246 of the Constitution provides:

> "Any person who has become the accused in a criminal case and has been detained during the trial shall, if it appears from the final judgement of that case that the accused did not commit the offence or the act of the accused does not constitute an offence, be entitled to appropriate compensation, expenses and the recovery of any right lost on account of that incident, upon the conditions and in the manner provided by law."

415. While this report is being written there is no Thai law promulgated on this matter. But the promulgation of such a law shall be accelerated in order to be consistent with the Constitution. This is according to the report under paragraph 130.

**The right of victims of crime**

416. Section 245 of the Constitution provides to recognize the right of the victims of crime that they shall be protected and they shall receive appropriate treatment and necessary and reasonable compensation from the state as provided by law.

417. This principle on rights of the victim of crime is a new principle in Thailand in order to protect the right of the alleged, accused, convicted and victim of crime in an equal manner as provided by Section 30 of the Constitution.

418. At present, the Ministry of Justice has proposed a Bill on Remuneration of the Injured and the compensation and Expenses for the Accused in a Criminal Case to the government. This bill has a major principle to set up a compensatory fund for the injured in a criminal case and the indicted. For, at present, the injured, who have been victims of crime are in a difficult position, as they have to help themselves in claiming for damages from the offenders. At times, the official could not arrest the offenders or the offenders lack the means to recompense the victims of crime. In addition, the arrest of the alleged or the accused may go wrong. When the cases came to the end, the alleged or the accused were found to be not guilty but they have been detained or have received other damages during the process of the case. In the past this has to be carried out by the person affected themselves. Therefore, the government should take part in responsibility for the damage caused. This is according to Section 246 of the Constitution.

**The right not to be punished twice for the same crime**

419. One shall not be tried or punished again for an offence which the person has already been convicted. This principle is a legal principle well entrenched in the Criminal Procedure Code. The Code provides in Section 39 (4):

> "The right to institute a criminal prosecution extinguished … (4) by a final judgement in reference to the offence for which the prosecution has been instituted."

420. Whereas those who already received punishment outside of the country under certain type of cases shall never be punished again (The Penal Code Sections 10 and 11).

421. In the case the offender committed the offence in Thailand or committed the offence which the Penal Code considers as if committed in the Kingdom and he was indicted in a foreign country by the request of the Thai government, the Penal Code forbids punishing that offender in the Kingdom again if there is a final judgement of the court in the foreign country to acquit the person or the court in the foreign country convicted and punished him and he has served the penalty.

**Article 15**

422. For the criminal liability of a person, there are provisions in the Constitution and the Penal Code which give protection under the general principle of law that the law with a criminal punishment shall not have a retrospective effect to the facts or events which occurred before the

date which the law comes into force. Apart from this there are provisions of law which require the application of law in the past which is beneficial to the offender. That is to say if the law at the time of the offence differs from the law applied thereafter the beneficial law shall be applied to the offender. To wit, Section 32 of the Constitution provides:

> "No person shall be inflicted with a criminal punishment unless he or she has committed an act which the law in force at the time of commission provides to be an offence and imposes a punishment therefor, and the punishment to be inflicted on such person shall not be heavier than that provided by the law in force at the time of the commission of the offence."

423. Paragraph 1 of Section 2 of the Penal Code provides:

> "A person shall be criminally punished only when the act done by him is provided to be an offence and the punishment is defined by the law in force at the time of the committing of the offence and the punishment to be inflicted upon the offender shall be that provided by law."

424. The Supreme Court or the Dika Court, which is the highest judicial court, has decided on two occasions that a law with criminal penalty is unconstitutional for it is a law which has retrospective effect. They are decisions Dika 1/2489 (1946) and Dika 921/2536 (1993).

425. And Article 3 of the Penal Code provides:

> "If the law in force at the time of committing the offence is different from that in force after the time of committing the offence, the law which is, in any way, more favourable to the offender shall be applied, unless the case is final. But, in the case where it is final:
>
> (a) If the offender has not yet undergone the punishment, or is undergoing the punishment, and the punishment determined by the judgement is heavier than that provided by the law afterwards, when it appears to the Court from the file of the case, or when the offender, the legal representative or guardian of such person, or the Public Prosecutor makes a request, the Court shall re-determine the punishment according to the law as provided afterwards. In re-determining the punishment by the Court, if it appears that the offender has undergone a part of the punishment, the Court, when having regard to the punishment as provided by the law afterwards, may, if it thinks fit, determine less punishment than the minimum punishment as provided by the law afterwards, if any, or if it is of opinion that the punishment already undergone by the offender is sufficient, the Court may release the offender;
>
> (b) If the Court has passed the judgement of death upon the offender, but, according to the law as provided afterwards, the punishment to be inflicted upon the offender is not as high as death, the execution of the offender shall be suspended, and it shall be deemed that the punishment of death according to the judgement has been changed to be the highest punishment to be inflicted according to the law as provided afterwards."

426. The Supreme Court of Thailand has confirmed this principle in the Decision Dika No. 470/2525 (1983) by determining that the accused committed an offence of having narcotic in possession in order to sell and distribute before the Narcotics Act (1979) came into force. The punishment shall be according to the old law. And in this case it is an inherent character of the case. The Supreme Court has the power to decide for the other defendant who did not appeal to the Supreme Court.

**Article 16**

427. Under the general principle of law in Thailand every person has the right to be recognized as a person under the law by getting protection of rights and liberties under law and can exercise his rights and liberties according to the conditions and principles provided by law. In the case there is a violation of rights or liberties he shall receive the protection through the judicial process of the State and other necessary measures to remedy the damage occurred to him as provided by law.

428. And Section 29 of the Constitution provides:

> "The restriction of such rights and liberties as recognised by the Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties.
>
> The law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provision of the Constitution authorising its enactment shall also be mentioned therein …"

**Article 17**

429. The Constitution provides on protection of the personal liberty of a person or the right to privacy in Section 34 which provides:

> "A person's family rights, dignity, reputation or the right of privacy shall be protected.
>
> The assertion or circulation of a statement or picture in any manner whatsoever to the public, which violates or affects a person's family rights, dignity, reputation or the right of privacy, shall not be made except for the case which is beneficial to the public."

430. And Section 35 provides:

> "A person shall enjoy the liberty of dwelling.
>
> A person is protected for his or her peaceful habitation in and for possession of his or her dwelling place. The entry into a dwelling place without consent of its possessor or the search thereof shall not be made except by virtue of the law."

431. Section 37 provides:

> "A person shall enjoy the liberty of communication by lawful means.
>
> The censorship, detention or disclosure of communication between persons including any other act disclosing a statement in the communication between persons shall not be made except by virtue of the provisions of the law specifically enacted for security of the State or maintaining public order or good morals."

432. The intervention or interference of privacy of a person in Thailand can arise out of the action of an ordinary person, a juristic person or the State.

433. The interference by a natural person or a juristic person are for example, taking photographs by stealth, tapping telephone conversation, tracking by a private detective or a mass medium, and collection of private data in a computer or data bank etc.

434. The interference by the state are, for example, to search, inquiry for the sake of enforcement of various laws, inspection and search done on letters or documents send to the alleged or accused in a criminal case during an inquiry or a court hearing under Section 105 of the Criminal Procedure Code (1934) including the censorship done on letters and goods of the detainee under the Corrections Act (1936). However, the intervention by the State can be done when the provision of law authorizes the state to do so.

435. At present Thailand does not have a law to specifically protect right to privacy. The protection is done by general principle of law, for example:

(a) Under Section 420 of the Civil and Commercial Code the breach of privacy can be considered as a violation of one of the rights under Section 420 and Section 421 provides that the exercise of rights which merely cause damage to other persons is an abuse of right and considered to be illegal such as stalking, taking photograph by stealth, recording the voice of speech which cause nuisance to the one whose rights are violated.

436. Therefore, a person who is damaged from the tort on privacy may exercise his right under the above said law to take a tort case to the court on account of breach of right of privacy like other general tort. The court may order the defendant to stop breaching the right of privacy and pay compensation when the plaintiff can prove to the court that there is a violation of right and how the damage comes about.

437. However, the breach of privacy right usually causes nuisance to the mind but the precedent of the decisions of the Supreme Court of Thailand, the court has not set a pure mental damage without any physical damage. The court fixes mental damage only when there is also a physical harm.

**Laws with a penalty**

438. The Telegraph Telephone Act (1934) provides that wire-tapping is an offence under Section 24.

439. Section 105 of the Criminal Procedure Code provides that a court order is needed to seek a restraint order for letters, post cards, publications, and other documents sent by post or telegraph when these items belong to the alleged or the accused. But Section 105 did not provided for the telephone wire-tapping. Therefore, anyone including the governmental officers who carry out a wire tapping shall be guilty. In the past there has been attempts of the government to propose a bill to empower the governmental offices to tap the telephone conversation of the people on account of the security of the State or to keep law and order or good morals of the public, and requires the high level administrator to have right to authorize the tapping of telephone. But it encountered protest from all walks of life for it shall violate the liberty of the people, therefore the plan for proposing the law was finally put on hold.

440. The censoring of the mail of the imprisoned to keep order and to prevent the causing of troubles shall be according to the Corrections Act (1936) and the Ministerial Regulations of the Ministry of Interior issued under Section 58 of the Corrections Act.

441. In the collection of personal data in the form of facts and figures which is considered to be secrets and meant for national statistics, any one who exposes or publishes without due authority shall be guilty under Section 21 and 24 of the National Statistic Act.

442. Those who carry out certain professions have a duty to keep confidential information of other people. For example a medical doctor who practices medicine must not expose the confidential information of the patient or the sick, even in the event of death of the patient. This is according to the Rules of the Medical Council on the Keeping of Ethics for the Medical Profession No. 9 under Chapter 3. These rules were set up by the Medical Council.

443. The Ministerial Regulations of the Ministry of Public Health on Etiquette of the Medical Professions under the Practice of Art of Healing Act (1936) which provides for a similar text as follows:

> "The practitioner of Medical Professional shall not reveal the secrets of the patient which he or she knew by the practice of medical profession except with the consent of the patient or when he has to act according to law or by duty."

444. For lawyers, they also have to keep the secrets of his client. This is governed by the Advocates Act (1985). Lawyers shall have to follow the regulations on etiquette of advocacy. A lawyer who breaches the etiquette shall encounter three kinds of penalty i.e. probation, forbidden to act as advocate for a fixed period but not over three years and struck from the roster of advocates.

445. In addition Section 323 of the Penal Code provides on the Offence of revealing the secrets of other by certain type of people as follows:

> "Whoever knows or acquires a private secret of another person by reason of his functions as a competent official or his profession as a medical practitioner, pharmacist, druggist, midwife, nursing attendant, priest, advocate, lawyer or auditor, or by reason of being an assistant in such profession, and then discloses such private secret in a manner likely to cause injury to any person, shall be punished with imprisonment not exceeding six months or fine not exceeding one thousand baht, or both.

> A person undergoing training and instruction in the profession mentioned in the first paragraph has known or acquired the private secret of another person in the training and instruction in such profession, and discloses such private secret in a manner likely to cause injury to any person, shall be liable to the same punishment."

446. Those who are violated on his right of privacy can raise it as a basis to exercise his rights or to litigate in the court. This is according to paragraph 2 of Section 28 of the Constitution which provides:

> "A person whose rights and liberties recognised by this Constitution are violated can invoke the provisions of this Constitution to bring a lawsuit or to defend himself or herself in the court."

447. There has also been more interest in protecting the right of privacy in Thailand. This can be seen from the promulgation of the Official Information Act (1977) which gives rights to the people in requesting to know about the official information unless it is a data on private matters of others.

**Article 18**

448. Section 38 of the Constitution provides:

> "A person shall enjoy full liberty to profess a religion, 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 religion, 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."

449. The said liberties have direct connection to freedom of one's belief and other thought including the freedom of expression of the said freedom. This is consistent with the freedom of expression of opinions under paragraph 1 of Section 39 of the Constitution which provides:

> "A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise, and make expression by other means."

450. The freedom to adopt a religion or to express a religious belief in Thailand can be carried out by oneself or together with other people in the community and the expression of religious belief can be shown to the public or to do it privately.

451. The freedom to express religious belief or one's belief shall include paying homage to idol, place, or a symbol under the teaching of one's belief. The practice and performance of religious ceremonies, dressing according to the religious usages and custom and the use of

specific language of the group of people who follows the same religion, freedom in choosing a religious leader, priests and religion teachers, the freedom to set up religious school to teach religion and the freedom to publish and distribute religious teachings. Thailand has so far given the said freedom to express in religious matters all along like the freedom to dress according to religious usage and custom. The Land Traffic Act (1979) provides in Section 122 that each rider of a motor cycle and the passenger shall have to put on a safety helmet but it also provides an exception for priest and novice of Buddhist religion or the followers of any other religions or doctrine who use cloth to make a turban according to the custom. They are not required to put on a helmet.

452. Thailand allows its citizens and foreigners to follow and propagate religion for a thousand years or more. This can be seen from the historical evidence of Buddhism, Hinduism, Brahmin religion, Christianity until the time of Sukhothai era and throughout until the Sriayuthaya period and until now.

453. Though around 80 % of Thai population are Buddhists, every constitutions of Thailand did not provide that Buddhism is a national religion. This is to avoid separation and discrimination. In addition Paragraph 3 of Section 30 of the Constitution forbids any unfair discrimination on account of difference in religious believes as mentioned in the report on Article 2.

454. At present, religions which are recognized to be under the patronage of the government are Buddhism, Islam, Christianity, Brahmanism, Hinduism, and Sikh. This is according to the Regulation of the Department of Religious of the Ministry of Education on Religious Organizations B.E. 2512 (1969) revised (No. 2), B.E.2525 (1982). By the regulation, the government facilitates those who carry out their religious ceremonies and rectifies obstacles in the operation of all religious organizations. And it also gives assistance to staying in Thailand of a religious authority by issuing a regulation of the Department of Religion on the issuance of a certification letter for the extension of a visa for foreign religious propagator, B.E. 2523 (1980).

455. However, Section 38 of the Constitution does not give protection to the exercise of freedom in following religion and religious expression which are against the duty of a citizen and the public order or morals. Therefore, if any religion has a circumstance which may cause rift between religious organizations no matter they are of the same or different groups of religion or have a circumstance of propagating its teaching which is contrary to the civic duties and the good custom of the Thai people, Thailand shall not give recognition and patronage to such a group of religious creed.

456. The freedom to profess: a religion and religious expression are also protected by the Penal Code. The Penal Code provides on offences on religion to protect the religious freedom in Section 206-208 as follows:

(a) Section 206 “Whoever does, by any means whatever, to an object or place of religious worship of any group of persons in a manner likely to insult such religion, shall be punished with imprisonment of one to seven years or fine of two thousand to fourteen thousand baht, or both”;

(b) Section 207 “Whoever causes a disturbance at an assembly of followers of a religion lawfully engaged at the time of meeting in religious worship or performing religious ceremonies, shall be punished with imprisonment not exceeding one year or fine not exceeding two thousand baht, or both”;

(c) Section 208 “Whoever wrongfully dresses, or uses a symbol manifesting that he is a Buddhist priest or novice, holy man or clergyman of any religion in order to make the other person to believe that he is such person shall be punished with imprisonment not exceeding one year or fine not exceeding two thousand baht, or both”.

457. The management on the governing of the Buddhist church or the Sangkha in Thailand is under the Buddhist Brotherhood Act (1962). A person who wishes to be ordained to be a monk in Buddhism shall not violate the said law. These is a decision of the Supreme Court dated 15 June 1998 which convicted an accused and sentenced him to an imprisonment for violating Section 208 of the Penal Code.

458. Therefore, a monk must follow strictly the Buddhist Brotherhood Act (1962) and the Penal Code. Certain acts like, to set up a new Buddhist Section in Thailand illegally, or to be ordained by violating the conditions of law are considered an exercise of religious freedom which is against paragraph 2 of Section 38 and an offence punishable under the Buddhist Brotherhood Act (1962) or the Penal Code.

459. Regarding to dissemination of religious and morals education to children in Thailand, there are Buddhism Sunday of Schools which teach all branches of Buddhist knowledge and foreign languages and the schools have been advancing.

460. The Buddhist Sunday Schools in the Buddhist temples are under the patronage of the Department of Religion. In Bangkok, there are around 44 schools and approximately another 800 schools are in the province.

461. Regarding the schools set up by other religions like Christianity, Islam, and Hinduism for general education, they also allow students of other religions to attend and there is no regulation of any school forcing the student of other religion to carry out the religious ceremonies or switch to profess the religion of the schools.

462. And the students who follows Islam and study in a private school which teach Islam or other general education institute which enrolled Islamic students, wish to dress according to the religious belief; the Ministry of Education has issued the Regulation of the Ministry of Education on the Uniform of Students (No. 2) 1967 giving the right to dress according to religious belief to the said students.

463. It can be said that Thailand has given a broad spectrum of religious rights to every persons for a very long time without any conflict or rift between those various religions. And the discrimination on account of religion does not exist in Thailand.

**Article 19**

464. Every person has the right to hold his or her opinions without interference and the right to freedom of expression which includes freedom to seek and receive information. But there are certain limitations by law on the grounds of security and public order or good morals.

465. The Constitution provides in Section 39 as follows:

> "A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise, and make expression by other means.
>
> The restriction on liberty under paragraph one shall not be imposed except by virtue of the provisions of the law specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing the deterioration of the mind or health of the public.
>
> The closure of a pressing house or a radio or television station in deprivation of the liberty under this section shall not be made.
>
> The censorship by a competent official of news or articles before their publication in a newspaper, printed matter or radio or television broadcasting shall not be made except during the time when the country is in a state of war or armed conflict; provided that it must be made by virtue of the law enacted under the provisions of paragraph two.
>
> …"

466. In the democratic system of government, people are considered to be the owner of sovereignty. They have the right to check and have opinion on the administration of the government and its agencies and officials freely. The people need to receive the necessary information from the government in order to check effectively the government's performance. Especially when a great number of the policies of the government directly affect the right, liberty, or the interest of the people. The people therefore need to have access to information and various news which directly affect them. Therefore, Section 58 of the Constitution provides:

> "A person shall have the right to get access to public information in possession of a State agency, State enterprise or local government organisation, unless the disclosure of such information shall affect the security of the State, public safety or interests of other persons which shall be protected as provided by law."

467. The Official Information Act (1997) was promulgated in compliance with Section 58 of the Constitution of the Kingdom of Thailand by giving rights of access to official information to the people and it provides for two major methods:

(a) Section 7 of the Act provides that the government shall submit for publication in the Royal Gazette the following news and information:

(i) The structure and organization in implementation of work;

(ii) A summary of the main mission and mandate and the method of implementation of work;

(iii) Points of access to information or advice in communicating with the governmental agencies;

(iv) Rules, Cabinet decisions, regulations, orders, circulars, plan, policy on interpretation especially those intended to be a rule for implementation by related private sector;

(v) Other information as specified by the committee.

Any information which has been widely published and circulated, the publication in the Royal Gazette citing that publication shall be considered to fulfil the provision of above said paragraph 1. Government agencies shall collect and organize information under paragraph 1 of section 7 to circulate by sale or distribution at the location of the concerned government agencies as appropriate. The information under Section 7 (4) which has not been published in the Royal Gazette shall not be enforced against a person in the manner which is disadvantageous to him unless the person had prior knowledge of the information for a considerable period of time (Section 8);

(b) The requirement on the part of government to provide the following minimum information for the people to see under the principles and methods set by the Official Information Committee:

(i) The decision which directly affects non-state parties including dissenting opinion and the orders related to the said decisions;

(ii) The policy or the interpretation which does not fall into the categories that requires publication in the Royal Gazette under Section 7(1);

(iii) Work plan, project and the annual budget of the ongoing year;

(iv) Manuals or orders which are related to the ways which the state officials carry out their work which affect the right of the private party;

(v) The publications that are referred to in Section 7, paragraph 2;

(vi) Concession contracts, contracts which have monopoly characteristics or joint venture in which the private party participates in carrying out public services;

(vii) The decision of the Cabinet or the decision of a committee appointed by law or the Cabinet. In this case the name of the academic reports, factual reports on the information used in the consideration shall also be included;

(viii) Other information as the committee may prescribe.

468. In the information which are accessible by the public under paragraph one, should there be any part which is forbidden to be released under Section 14 or 15 it shall be erased, severed or handled in any other manner in order not to release that portion of information.

469. A person, whether his interest is affected or not, has the right to see the copy or ask for a certified copy of the above said information. In the appropriate case the government agencies by the approval of the Committee may set the criteria in collecting fees for the said matter.

470. When the law on access to information was promulgated, a large number of people have requested information and certain matters have been brought to the consideration of the committee to see whether it can be revealed or not. For example in 1998, the parents of a child who did not succeed in the entrance examination of a governmental school have doubt on the result of the marking of the school which may cause unfair treatment to their child have applied to the committee to instruct the school to reveal the marks of all who sat in the examination. And the committee ordered the school to revealed marks of every child sat in that examination to the parents. The instruction of the committee becomes a precedent for other governmental agencies to follow in the future.

471. At present, there are several laws in Thailand which indirectly affect the exercise of freedom of expression. For example, the Martial Law Act (1914), Section 12, provides "When there is a necessity to keep order without any danger from outside of or within the Kingdom, there shall be a Royal Proclamation for applying the Martial Law as a whole or certain sections of it or certain parts of a section or sections, including to set conditions in applying those provision in a part of the Kingdom or throughout the Kingdom. And once it is proclaimed to be applied at a certain time or at a certain place, the provisions in any act or law which is in contrary to the Martial Law which is being applied, such provisions shall ceased to have force and the provisions of the Martial Law shall be applied in their place."

472. Section 6 provides "In the region which the Martial Law is proclaimed to be applied; the Military officials shall have authority over the civil officials in matters related to the fighting, the extinguishing, suppressing or keeping order and the civil officials shall follows the needs of the military officials."

473. Section 9 provides "The searching, there shall be power to search as follows:

(a) To censor news, letters, telegraphs, packages or other items, being send from or going to the region which martial law is being applied to;

(b) To censor books, publications, newspaper, posters, verse or poems.

474. And Section 11 of the Martial Law Act provides that "The officials shall have authority to forbid the following:

(a) To forbid the issuance, sale or distribution of newspaper, publication, photo, magazine, verse or poem;

(b) To forbid to advertise, showing of entertainment, receiving or transmitting radio, broadcasted radio, or broadcasted television.

475. The Act on Administration in Emergency Situation (1952), Section 3, provides "In this Act 'Emergency Situation' means situation which may be harmful to the security or safety of the kingdom, or may cause the country to be in crisis, fighting situation or war situation as shall be announced."

476. Section 4 provides "The provisions of this Act shall be applied only when the critical situation has been announced. The announcement of critical situation shall be announced all over the country or only in any district as the necessity of the circumstance may require."

477. Section 9 provides "The Minister have power to announce in order to prohibit any person to carry out advertisement or publish any document which the text published or to be published shall affect the security or safety of the kingdom or shall be a disturbance to the public order of the people."

478. Section 11 provides "If any person has a behaviour which is doubtful on whether he has colluded with foreigners to carry out any act which is harmful to the country the Minister shall have power to instruct to censor letter or other documents of his."

479. The National Intelligence Agency Act (1985), Section 3, gives power to the Minister in combating terrorism in all forms which affect the security of the nation by providing that:

> "The intelligence through communication means the use of technique and the operation of method of the communication equipment to intercept communication by radio signal in order to acquire news related to the movement of other country or a terrorism organization which may affect the national security …"

480. Apart from many laws, given as examples above, there still are several regulations and rules of the government which have results in limiting the exercise of academic freedom in an indirect manner. Especially the seeking of information from the government like the Regulation on National Safety (1974) which specifies various practices and regulation of certain governmental agencies to keep the national safety.

481. In the past the government had measures to censor pictures and sound to be broadcast through television stations of the government since 1979. This is done by the Committee or the Administration of Radio and Television, which was set up by the Council of Ministers. But later on the censorship of the committee was abolished.

482. By the above mentioned provisions of Section 39 of the Constitution and the Act on Official Information (1997), the protection of the exercise of freedom of expression of the people in Thailand has been brought about in line with Article 19 of the Covenant.

483. The Ministry of Interior has started to make a survey on all laws which may be in contrary with the freedom of expression of the people under Section 39 of the Constitution in order to seek ways to repeal or revise them to ensure consistency with the Constitution, for example the Press Act (1941).

484. The Cabinet has approved the Bill on Registration of the Press which once in force shall supersede the former Press Act (1941).

**Article 20**

485. Thailand has always had a constructive policy towards its neighbouring countries and other countries. This can be seen from Section 74 of the Constitution which provides:

> "The State shall promote friendly relations with other countries and adopt the principle of non-discrimination."

486. Therefore, any propaganda for war is an illegal act in Thailand. The only exception is when there is an aggression from other country and there is a need to mobilize the people to help and cooperate in the national defense which is a legal action under international law. Thailand has made a statement to this effect to the United Nations when it applied to become a member of this Covenant.

487. The advocacy of national, racial, or religious hatred which constitutes incitement to discrimination, hostility and violence is forbidden under paragraph 3 Section 30 of the Constitution of Thailand. This is already dealt with under the report on Article 2. And the person whose right is violated by the action in contrary to paragraph 3 of Section 30 of Constitution shall always have right to raise paragraph 2 of Section 28 of the Constitution to exercise his right through court or raise a defense in the court.

**Article 21**

488. Thailand has long recognized the principle of protection of freedom to assemble peacefully. In a democratic system of government, peaceful assembly is fundamental to the exercise of right to assemble to exchange opinions and to express the will in certain matters which are related to the interest of the people with a view of bringing to the attention of the State. This said freedom is also consistent with other rights under the Constitution, for example the freedom of expression, freedom of speech, freedom of movement, freedom to write, freedom of publication and distribution of documents, right to petition and others. The state also has to refrain from all forms of interference with the peaceful assembly and shall facilitate the said

assembling of the people. This can be seen from paragraph 1 of Section 44 of the Constitution which provides: "A person shall enjoy the liberty to assemble peacefully and without arms."

489. However, the peaceful assembly of the people under paragraph 1 of Section 44 may fall under certain restrictions of the law for the public interest; therefore, paragraph 2 of Section 44 provides:

> "The restriction on such liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for the case of public assembling and for securing public convenience in the use of public places or for maintaining public order during the time when the country is in a state of war, or when a state of emergency or martial law is declared."

490. At present there are several laws in which the right to peaceful assembly under paragraph 2 of Section 44 is limited, for example:

(a) The facilitation of the people in using a public place. The Land Traffics Act (1979), which protects the right of the people to travel on the street, prohibits a march which obstructs traffic or any action on the walkway or street which obstructs others in travelling about without a good reason and there must be permission from the competent traffic officials to use the route for a march to be legal;

(b) The prevention of the noise nuisance. The Publicity by Amplifier Control Act (1950) may be applied in the case of use of an amplifier in an assembly which may cause nuisance to the general public. The permission from the officials to use an amplifier which specifies the time and place in using an amplifier and should the noise cause too much nuisance the competent officials may instruct the assembly to lower the volume;

(c) The prevention and alleviation of public disaster. The Civil Defense Act (1979) authorises civilians to prevent and provide relief from public disasters and terrorism which intends to destroy the property of the people or the state by organizing a national civil defense committee chaired by the Minister of Interior in order to formulate disaster prevention plan. Therefore, should the march or the assemblage of people risks public safety the state can apply certain preventive measures. But in practice, this law has never been invoked in the handling of any march or assemblage;

(d) The proclamation of state of emergency:

(i) The Act on Public Administration in Emergency (1956). This act authorises civilians namely the Prime Minister and the Minister of Interior to proclaim a state of emergency and once it is proclaimed the Minister of Interior has power to appoint officers to maintain peace and order and has the power to forbid public assemblage at any place in the country, to announce a curfew, and to forbid the publication or print any document affecting the security or safety of the country;

(ii) Martial Law Act (1914). In case of necessity to maintain peace and order of the country and to prevent harm from internal or external source in time of abnormalcy, a proclamation on application of martial law can be made as a whole or only certain sections throughout the country or in certain specific areas. Once the martial law is proclaimed, should there be a situation of war or civil disobedience, the military officials has authority to issue order to limit the freedom to assemble of the people by forbidding any assemblage of five persons or more and to issue an order of curfew;

(e) Other cases. The Penal Code which is a general law of the country provides about offence related to illegal assemblage and penalize those act for example, the offence on undermining the internal peace (Section 116), offence on instigating strike (Section 117), offence on assemblage of ten or more people in order to cause a breach of the peace of the country (Section 215-216) and offence on obstruction of the public way for land traffic (Section 385).

491. From the texts of the above said laws, one can see that Thailand has recognized in the Constitution the freedom of the people to assemble peacefully and the limitations of the said freedom shall be strictly done by the power of a law as provided in the Constitution.

492. However, in Thailand there have been many incidents of violence between state officials and the people who exercise their freedom to assemble. Therefore, Thailand has given importance on abolition or revision of certain laws which have an effect of limiting the freedom to assemble of the people. And on 12 September 1992, the Cabinet has resolved that the governmental agencies which have authority to use weapons shall give education on basic human rights to their staff including to give knowledge on freedom of peaceful assembly. And it calls for an acceleration in giving correct knowledge and understanding on freedom to assemble peacefully to the people too.

## Article 22

493. Thailand recognises this freedom of association in several laws for example, the Constitution of the Kingdom of Thailand, the Civil and Commercial Code, book 1, chapter 2, part 2. on association, Labor Relation Act (1975), Act on Relation of Public Enterprise Officers (1991) and the Political Parties Act (1991).

494. In the report on this article, the matter is being considered under 4 major areas i.e.:

A. Freedom of association;

B. Association with special objectives;

C. Freedom to form a political party;

D. Freedom to join a labour union.

**Freedom of association**

*General association*

495. The freedom to form a general association is already recognized under Section 45 of the Constitution which provides that:

> "A person shall enjoy the liberty to unite and form an association, a union, league, cooperative, farmer group, private organisation or any other group.
>
> The restriction on such liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for protecting the common interest of the public, maintaining public order or good morals or preventing economic monopoly."

496. The regulation of an Association as provided in paragraph 2 of Section 45 can be broken into two steps namely at the formation phase of the association and at the operation phase of the association.

*The formation of association*

497. The freedom to form a general association is governed by the Civil and Commercial Code which gives the people the right to form an association to carry out activities in a continuing manner and not for seeking profit or sharing of receipts. A minimum of three members of the association is required to submit an application in writing to the local registrar at site of the headquarters of the association together with the by-laws of the association, and the list of the names of the directors, their residence and occupation. The registrar shall check the by-laws and the objectives of the Association to see that they are not contrary to law or public good morals, not harmful to the peace of the public or the security of the state and the directors to have a status and behaviour which is proper in carrying out the objectives of the association.

498. Once the above said criteria are met, the registrar shall register and issue a certificate of registration to them. In the case the registrar issues an order not to register, the applicants have a right to appeal to the Minister of the Interior.

499. Once registered the association shall have a status of juristic person which have right and duties according to the provisions of the Civil and Commercial Code and other laws within the objective of the association, the provisions of laws and by-laws of the association. This includes the right to bring a case to the court or to make petition in civil, criminal and administrative action.

*The operation of the association*

500. In addition to the general limitation provided under Section 63 of the Constitution which forbids a person to exercise right and liberty under the Constitution to overthrow a democratic government with the King as Head of State under the Constitution or to acquire power to rule the country by any means which is not in accordance with the modes provided in the Constitution, the Civil and Commercial Code has given power to the registrar to regulate the operation of the association in certain matters, they are.

501. The appointment of a new board of directors or a change of a director of the association, if the registrar has the opinion that certain directors of the association have a status or behaviour which is not suitable for carrying out the objective of the association, the registrar may refrain from registering that director by informing the reasons to the association within 60 days counting from the date of the submission of registration. In such a case the association have a right to appeal to the Minister of the Interior.

502. The registrar has the right to strike out the name of the association from the register in the following cases:

(a) When it appears after the registration that the objectives of the Association is contrary to law or good morals of the public or can be harmful to the peace of the public or the security of the State and the registrar has ordered for its revision but the association does not follow within the time specified by the registrar;

(b) When it appears that the operation of the association is contrary to law or good morals of the public or harmful to the public order or the security of the state;

(c) When an association cease its operation for two years or more;

(d) When the association allow and or let other people who is not a director of the association to carry out the activities of the association;

(e) When the association has less than ten members for a continuous period of over two years.

503. In the above cases the registrar shall promptly inform the association of the order of dissolution together with the reasons as well as its announcement in the Royal Gazette. A director or at least three members of the association have the right to appeal the order of the registrar with the Minister of Interior.

**Association with special objective**

504. The State has a policy of promoting the operation of private organizations or associations which have an objective of operating in a specific area to help carry out work which is useful to the public. Therefore, there are laws to recognize and to protect as a special case like private organization under the Improvement and Conservation of National Environmental Quality Act (1992), Consumer Protection Act (1979), Labor Relations Act (1975) and Relations of Public Enterprise Officers Act (1991).

505. Sections 199-200 of the constitution stipulates the establishment of a human rights commission and the promulgation of organic law or the operation method of the commission. The Human Rights Commission Act (1999) was subsequently enacted and contains a provision which recognize the right of the people to form a juristic person to carry out human rights matters and the state shall provide support to its operation.

506. However, there are at least seven existing non-governmental organizations formed as associations and operate specifically in the field of human rights. The said associations operate in the field of development related to human rights and have active roles in the protection and promotion of human rights. This can be seen from the role of the said associations in pushing for the establishment of a human rights commission in the present constitution for the first time.

**The freedom to form a political party**

507. With regards to political parties, Section 47 of the Constitution recognises the right of a person to form a political party. Political parties are mechanisms in building the political will of the people with the state as guarantor. The state has power in ensuring that the formation and operation of political parties are consistent with the basic principles of the democratic regime of government with the King as Head of State as follows:

> "A person shall enjoy the liberty to unite and form a political party for the purpose of making political will of the people and carrying out political activities in fulfilment of such will through the democratic regime of government with the King as Head of the State as provided in this Constitution.
>
> The internal organisation, management and regulations of a political party shall be consistent with fundamental principles of the democratic regime of government with the King as Head of the State.
>
> Members of the House of Representatives who are members of a political party, members of the Executive Committee of a political party, or members of a political party, of not less than the number prescribed by the organic law on political parties shall, if of the opinion that their political party's resolution or regulation on any matter is contrary to the status and performance of duties of a member of the House of Representatives under this Constitution or contrary to or inconsistent with fundamental principles of the democratic regime of government with the King as Head of the State, have the right to refer it to the Constitutional Court for decision thereon.
>
> In the case where the Constitutional Court decides that such resolution or regulation is contrary to or inconsistent with fundamental principles of the democratic regime of government with the King as Head of the State, such resolution or regulation shall lapse."

508. Therefore one can see that the present constitution has given importance to political parties by providing about it separately in another section and gives right to form political parties without providing any limitation on it. This is to allow an easier formation of political parties. However the formation and operation of political parties shall be under general limitations such as the exercise of other rights under the Constitution. That is it shall not be an exercise of right to overthrow the democratic regime of government with the King as Head of State or to seize the power to govern the country; otherwise the political party concerned may be instructed to stop its operation or it may be ordered to be dissolved.

509. The Act on Political Parties (1981) which is revised by the Act on Political Parties (No. 2) (1993) provides for the formation, registration of a political party, operation, dissolution of a political party and the merger of political parties. The Act specifies that the Minister of Interior shall be in charge of the Act and has power to issue ministerial rules in order to act according to the said Act.

510. In addition, the Act also provides for a political party registrar office which is under the Ministry of Interior, having the duties to accept the application for registration, control, check the operation of political parties, and act in accordance with this Act. However, the exercise of power of the registrar under this law is different from the control of general association because political parties are associations that may have direct effect on politics. Therefore, there shall be special steps in taking certain actions.

**Freedom to join a labour union**

511. Paragraph 1 of Section 45 of the Constitution recognises the freedom to unite and form an association, a union or a league to protect one's interest. Thailand promulgated the Labour Relations Act (1975) which gives right to form association of employers, federation of employers association and the council of employers organizations and the Act gives employees the right to form labour unions, federation of labour unions and the council of employees organisation. Whereas the officers of public enterprises have the Act on Relations of Public Enterprise Officers (1991) giving them the right to form an association. And there are several public enterprises which carry out public utilities and public services for the people. The Act provides on the relations between the officers of public enterprise and the state and give protection to their rights and interests in a manner which is different from that of the relation between employers and employees in private enterprises.

512. Thailand, a member of the International Labour Organization, has not ratified the Convention Concerning Freedom of Association and Protection of the Right to Organize (1948) for it considers that the present economic and social conditions still are not congenial to fully follow the commitments under the Convention. When the conditions in the future permit, Thailand would give its ratification to the Convention.

513. And for civil servants and officers of the state, the exercise of their rights and liberties shall be in accordance with Section 64 of the Constitution of the Kingdom of Thailand.

**Article 23**

514. Thai society gives great importance to the family system as it is seen as the best source for human resource development. A person coming from a warm family, where the father and the mother are much in love and united, education is encouraged and good physical and mental health nurtured, would tend to be a person of quality and have good potentiality to build happiness, prosperity and advancement for the society.

**The development of the family institution**

515. The 8th National Economic and Social Development Plan (1997-2001) gives special, importance to the development of potentiality of Thai people by specifying in Part two (The Development of Potentiality of Thai People). One of the passages says:

> "The development of Thailand in the past emphasized on economic development by using human as a tool or factor of the production in order to respond to the need for development to achieve economic growth without considering the value of human being and the development of potentiality of human to have knowledge, ability, experience in carrying an occupation and the ability to adapt oneself to live in the ever changing society which changes rather fast. Therefore, though Thailand is successful in reaching the target in economic growth rather well but the result of the development has caused several important problems especially the problem of distribution of income, the problem of deterioration of environment and natural resource and problem on safety in life and property which affect the quality of life of Thai people and the development of the country in the longer run.
>
> The development of potentiality of the preferable human shall be done by developing every one to the limit of his potentiality in physical, mind, ability and experience to make them to be a good person being virtuous having good health and participating in social and economic development efficiently. They should also have conscience and role in looking after the natural resource, environment and good culture both at the national and domestic level. This shall help in making the development of the country to be balanced, and sustainable on the basis of Thai cultural endowment."

516. And the said plan has specified the objectives and strategies in developing the potentiality of the Thai People as following:

> **"1. Objective**
>
> 1.1. To develop the potentiality of the people by enhancing their spirit to be a good person, being virtuous, having good conscience toward the society.
>
> 1.2 To develop every person to be able to analyse on the basis of reason, having a continuous life long learning, a broad vision having a higher efficiency in the production process, being consistent with the fast social and economic change.
>
> 1.3 To promote the people to have good health for every one, being knowledgeable to understand, and capable of protecting oneself and one's family from disease and able to look after the health of oneself and one's family efficiently.
>
> **2. Goals**
>
> 2.1 Thai people should have a right size family and the distribution of population shall be consistent with the potentiality and opportunity in developing in the region etc."

517. It is obvious that the ability of the nation to develop to achieve advancement shall be coupled with the development of the potentiality of the Thai people and to achieve the objective of the development of the potentiality of the Thai people as specified in the objectives and goals of the National Economic and Social Development Plan (No. 8) (1997-2001) mentioned above. The family institution has a great and direct role in implementing the plan to achieve success efficiently.

518. Therefore, Thailand has given importance to the development of various necessary measures in both legislative and executive branches to build up the family institution so that it shall respond to the development of the nation in the future.

519. The Council of Ministers resolved on 26 August 1999 approving the policies and plans in the development of the family institution so that various agencies shall bring them to form direction and activities to build the family institution to achieve security and to promote the people to understand and realize the importance of the family institution.

**Protection of family under article 23 (1)**

520. The right under this article of the Covenant is recognized and protected by the provisions of the Constitution and the Civil and Commercial Code of Thailand. Paragraph 1 of Section 34 and paragraph 1 of Section 80 of the Constitution of the Kingdom of Thailand provides as follows:

> Section 34 "A person's family rights, dignity, reputation or the right of privacy shall be protected …"
>
> Section 80 "The State shall protect and develop children and the youth, promote the equality between women and men, and create, reinforce and develop family integrity and the strength of communities …"

**The formation of legal family**

521. Under Thai law "family" has a specific meaning to include only the man and the woman who are married as husband and wife and their sons and daughters. The Civil and Commercial Code divides its provisions on family into three titles. First, title is the marriage which provides on engagement, conditions of marriage; relations between husband and wife and the termination of marriage. Second, title relates to relations between parents or guardians and the child. Third, title deals with support which indicate of the extent of family under Thai law.

**Marriage under law**

522. Under Section 1457 of the Civil and Commercial Code there shall be a marriage only when there is registration of the marriage. The marriage, entered into abroad between Thais or one of the couple is a Thai, shall be done according to the form specified under the Thai law or the law of that country. In the case that registration is done according to Thai law, it is the Thai consul or diplomatic officer who carries out the registration.

523. A marriage without registration prior to 1 October 1935, the date which Book 5 Family of the Civil and Commercial Code came into force, shall be considered a legal marriage.

**To stay and live as husband and wife without registration**

524. Even though a marriage can be done by registration, the law does not forbid a religious or ceremonial common law marriage done according to custom but the said marriage shall have effect as a legal marriage only when it is registered.

525. In the case of common law marriages after 1 October 1935, which Book Five of the Civil and Commercial Code came into force, the law does not recognize them to be legal. Therefore, common law marriage brings about neither a relationship of husband and wife nor the relation in property of husband and wife.

526. However, for the sake of equity, should the Supreme Court decide that the property earned by common effort of the man and woman living together is a common property of both then they have equal share in property as in partners in a partnership. But if it is a property which one of them earns separately the property shall belong to that party alone. The other party may not have a share of it.

**Child born out of wedlock**

527. According to Section 1546, a child born of a woman who is not married to a man shall be considered to be the legitimate child of the woman alone. A man even though having stayed with the woman openly and actually fathered the child shall not be considered the legal father of that child.

528. However, a child born out of unregistered couple shall be a legitimate child of the father when the father and mother have registered thereafter, or the father has registered the child to recognise him as his child or a court has decided that he is the legitimate child of the man. But these are not retroactive, the legitimization of the child shall be effective:

1. From the date of marriage, in the case the father and mother registered later on;

2. From the date of registration made by the father in the case a legitimization is registered by the father;

3. From the date of final decision in the case the court decided that the child is the legitimate child of the man.

529. For the right to inherit, the law provided that the illegitimate child recognized by the father shall have the right to inherit like a legitimate child.

530. A child in the womb of his mother while his father died shall also have the right to inherit should he be born and survive if the man who is the father treated the mother while she was pregnant in the way a husband shall treat his wife and child. The child shall be a descendent like a legitimate child.

531. However, an illegitimate child may cause him to lose the rights mentioned above and other rights, for example right to have share in the welfare money of the deceased father which shall go to his descendants because the devolved lump sum pension is not a part of the estate. The Act on the Pension of Civil Servant (No. 14) (1983) gives right to illegitimate child decided

by a court to be a legitimate child of the deceased father by providing an additional definition to the term "heir who has right" in Section 4 to also mean a child whom the court decided to be a legitimate child of the deceased. The child must submit the case to the court to seek legitimization before or within one year counting from the date of the death of the father or counting from the date which he knew or should have known the death of his father. This is a better protection for the right of the child.

532. From the above-said importance of the family institution, Thailand has courts which have jurisdiction to try and decide cases on family matters since 1954. And at present the Act on Establishment of Juvenile and Family Courts and Procedure (1991) is such a law.

533. Section 11 of the said law provides that the Juvenile and Family Courts have jurisdiction to try, decide, or order in civil cases which are submitted or petitioned to the court or any act related to a juvenile or a family as the case may be which are governed by the Civil and Commercial Code. The courts shall decide or order cases on the child or juvenile according to the provision of laws which has given the jurisdiction to the Juvenile and Family Court. The procedure of the courts differs from that of the general civil cases in order to protect the child and juvenile.

534. Therefore, one can see that the State has given much protection to the family institution which is consistent with this Article of the Covenant.

**The statistics on status of marriage and divorce under the Central Juvenile and Family Court**

| Year | Marriage | Divorce | Legitimization | Adoption | Termination of adoption |
|---|---|---|---|---|---|
| 2 542 (1999) | 61 | 527 | 262 | 79 | 5 |
| 2 543 (2000) | 69 | 479 | 226 | 89 | 6 |
| 2 544 (2001) | 72 | 659 | 251 | 94 | 6 |

**Family planning**

535. On birth control, the 8th National Economic and Social Development plan (1997-2001) takes the policy of reproduction health as the main policy in developing the potentiality of human and the Ministry of Public Health has set the major guidelines on family planning as follows:

1. Promote the spouse to have children according to their wish, potentiality of the family in order that the family shall be a warm and healthy family.

2. The operation of family planning in the general area shall be consistent with the situation in each provincial area.

3. Promote and accelerate the operation of family planning in the area which still has a high total reproduction rate like the communities in mountainous areas of the south.

4. The exemption on family planning fee shall be made only in the area of acceleration of family planning and for those who have small income or when otherwise considered to be appropriate.

5. To expand the cooperation with the private sector to a greater extent.

6. Planning for a regular and continuing public relations on family planning.

7. To study and research on new and more suitable method of family planning.

8. To study on the form of the higher participation male in the family planning.

**Situation of family planning in comparison to the goal in 8th development plan (1997-2001)**

| Indicator | Total for the country | Northern | Central | North-Eastern | Southern | Total |
|---|---|---|---|---|---|---|
| Rate of family planning | 77.0 | 83.8 | 80.5 | 78.5 | 73.0 | 79.2 |
| Rate of permanent family planning | 34.0 | 18.8 | 25.5 | 29.0 | 15.0 | 23.8 |
| Fertility rate of less than 20 years female | 10.0 | 8.7 | 9.4 | 9.2 | 8.1 | 9.0 |
| Rate of women having not over 2 living offspring | 75.0 | 86.8 | 75.7 | 77.0 | 66.2 | 77.2 |

*Source*: The evaluation of the result of promotion of health under the 8th of Social and Economic Development.

536. Even though Thailand has carried out the policy on birth control to the extent of having a very successful family planning and being well praised by international community, the said policy is somewhat equitable and based on a consensual basis. It is no compulsory. Therefore the married couple can choose to have a child or not as the ability of the family may allow.

**The prevention and solution of the problem of HIV/AIDS**

537. One of the major problems which affects the family institution is the problem of the spreading of HIV/AIDS which results in divorces or deaths of the breadwinners of families which directly affect the raising of children in the long run. Mothers infected with HIV/AIDS while pregnant may pass on the virus to the foetus which will add to further social problems. According to the statistics of the Ministry of Public Health in 1998, it was found that the number of the population infected with HIV/AIDS, both having shown symptoms and have not shown symptoms yet, stands around 700,000-900,000 persons and the Institute of Demographic and Social Research of the Mahidol University has carried out a research and reported that in the

year 1999 Thailand shall have 354, 345 under 12 years old children, born from mothers who contacted HIVS; for the year 2000, the estimation of is at 354,345 born from mothers who contacted HIVS.

538. Thailand has rigorously campaigned to prevent and to resolve the HIV/AIDS problem which have seriously affected the family institution. This can be seen from the National Economical Social Development Plan (No. 8) (1997-2001) which specifies the guidelines for the development, a part of which says:

> "2.3 The development and reform of the system of operation in prevention and resolving HIVS Problem.
>
> (1) To enhance the potentiality of the general population and the specific target groups by appropriate measures to create concern and to change the risk-prone behaviour which result in the spread of HIVS.
>
> (2) To create economic and social environment to become congenial to prevention and solution to HIVS problems by the creation of job in the provinces, the promotion of appropriate recreation and the campaign against the media and entertainment which arouse sexual behaviour.
>
> (3) To promote health and give care and treatment to HIVS patients widely and appropriately by emphasizing the enhancement of the potentiality of the personnel in all levels of clinics. This includes the increase of potentiality of the community and the family in taking care of HIVS patient.
>
> (4) To reduce social and economic impact of the contact of and falling ill by HIVS for example the training of occupations which are suitable to the conditions of HIVS patients and the provision of social welfare for HIVS patients and their families which cannot support themselves."

539. In addition the national operation plan for prevention and solution to problem of HIV/AIDS for the budget year of 1998-2001 under the national plan for prevention and solution to HIVS problem 1997-2001 of the national committee on prevention and solution to problem on HIVS (published in September 1998) has specified that families and communities are special target groups in the work plan for protection and solution of HIVS. This is done by designing a project to build up the ability in the prevention and solution of HIVS by providing a budget of 7.6% of the total expenses under the budget.

**Right to marry and have family under article 23 (2)**

540. The rights to marry and have family of man and woman are governed by Section 1448 of the Civil and Commercial Code which provides that only a person of fully 17 years or more may marry unless there is a reasonable cause such as in the case of a pregnant woman the court may permit her to marry before 17 years old. And in the case a marriage is carried out legally, Section 20 of the Civil and Commercial Code specifies that the child shall be of age in order to let the person have legal ability to work for his living and can be responsible for his family.

541. Ordinarily when a minor marries he or she must have the prior consent of his or her parents. This is to protect the minor. However, the law further provides that if there is no one to give the consent or there is one but he or she refuses to give his or her consent or is not in a condition which allows he or she to give the required consent or by circumstances, the consent may not be asked, the minor may submit his or her petition to a court to ask for the consent for marriage.

542. Thailand has tried to promote and facilitate legal marriages even for those Thais who are in remote area. For example, in 1996 there was a group marriage of the minority hill tribes people for 1,560 couples in Mae Sai District of Chiang Rai Province and 8,010 couples in Mae Ramat District of Tak Province and Hott District of Chiang Mai Province.

543. The right to marry may be limited in certain cases when the marriage is between a civil servant or officer of a state agency and a refugee or displaced person. The Cabinet's decision forbidding such a marriage as suggested by the National Security Council is considered as a policy of the government as stated by the letter SOR Ror 0202/Wor 79 dated 24 May 1977. This is because the government has the view that a displaced person or refugee is a person who came into Thailand illegally and stayed provisionally during the time waiting for sending back. In order to avoid the problem of disunity of the family in the when a civil servant is ordered to move or the displaced person or refugee is being sent back to his or her country or sent to a third country. And the civil servant should be careful in having contact or relationship with such a person. The Department of Local Administration later issued a letter Mor Thor 0313/Wor1092, dated 17 March 1981 ordering strict following of the decision and should there be any violation it would be considered as a serious disciplinary offence. This is due to the problem of a large number of displaced persons flowing into Thailand in a very large number.

544. However, such a prohibition is for civil servants but it is not entirely absolute. Should the civil servant or the officer of the state agency insists to register their marriage, legally the registrar has to record their marriage. The prohibition is enforceable through disciplinary action only and it is a prohibition which the state can carry out legally as provided under Section 64 of the Constitution which limit the exercise of right and liberties of the civil servant and the officer of the governmental agencies.

**The protection of right to marry under article 23 (3)**

545. For the conditions of marriage, the Civil and Commercial Code provides many conditions such as a man and a woman can marry only when they consent to become husband and wife and the consent must be expressed openly in front of a registrar by requiring the registrar to record such a consent. In addition, Section 1438 of the Civil and Commercial Code also provides clearly that although there is an engagement before the marriage, the engagement is not a cause for the court to enforce a person to marry and should there be a penalty agreement on the breach of engagement contract, such an agreement is null and void. This is to confirm the principle that a marriage is done only by the consent of both the man and the woman in order to become husband and wife.

546. Apart from the condition of consent, a marriage may not be carried out on other accounts such as if the spouse is an insane person or being ordered by the court to become incapable or a close relative of a direct lineage or being brother and sister or half-brother and half-sister or the marrying couple is an adopter and the adoptee or one of them have a spouse by the time of the marriage.

547. In addition, a marriage must be carried out between a man and a woman by birth. In the case of a man having had a sex change operation and claims that his body and mind are perfectly female and lodge a petition to revise the details in the household register from a man to be a woman and ask for a registering of his marriage to a male under Thai law, the Central Registration Office of the Department Local Administration of Ministry of Interior have ruled that the marriage cannot be registered. This is according to the Supreme Court Decision Dika 157/2524 (1981) and the Letter of the Ministry of Interior Mor Thor 0313/14802 dated 23 November 1972.

548. In the case conditions of legal marriage exist, the registrar always has to register the marriage. The registrar may not cite the order of the government or other causes not provided by law to refuse to register the marriage. This case has been decided by the Supreme Court Decision Dika 580/2527 (1984) setting a clear precedent that when there is an application for registration of marriage the registrar must register it. Under Section 10 of the Act on Family Registration (1935) a refusal of registration can be done only when the marriage is not according to the conditions provided by the Civil and Commercial Code, the order or regulation of Ministry of Interior which add the condition by forbidding the registrar to register the marriage between a Thai and a foreign woman who has not yet got an identification card for foreigner without a law authorizing such an order or regulations may not be applied to the general public for they are not law. Therefore the registration must be carried out according to the wish of the couple. Therefore, one can see that under Thai law a person has full freedom to marry according to the law unless it is a case limited by law.

549. Apart from the right to marry legally, a person shall have a right to have a family. Thai law recognise the right of a person to have a family by explicitly providing that husband and wife shall live together like a couple except when the cohabitation shall be harmful to the baby or mind or shall destroy the happiness of the husband or wife then the spouse who may be harmed may petition the Court to order a separation a mensa et thoro during the existence of those causes.

550. In addition, husband and wife shall help support each other as their ability and status allow. And if one of the spouses adjudicated to be incompetent or quasi-incompetent the other by virtue of law shall be his or her guardian or curator. The right to have a family shall include the freedom to have children as they may wish. There is no law or official regulations limiting the freedom to have children.

**The protection of the married couple and the family under article 23 (4)**

551. The equality of right and duties of the married couple may be considered in three stages namely the right and duties from the marriage, the right and duties during the marriage and the right and duties after the termination of the marriage.

**The equality of right and duties from the marriage**

552. By principle, the marriage does not cause equality in rights and duties of the spouse. However, there are certain observation as follows:

*The acquisition of nationality*

553. A marriage does not, by itself, effect the nationality of his or her spouse. That is a woman or man who is married shall not automatically lose or gain a nationality on account of the marriage. However, the Nationality Act (1992) gives a right to a Thai woman who is married to a foreigner to have the nationality of her husband according to the law on nationality of her husband. If she wants to give up her Thai nationality, she shall express her wish to the authority through the form and by the method as provided in the Ministerial Regulations. This is a matter of the desire of that woman to abandon her Thai nationality or not. And the law still gives a right to a Thai woman who abandoned her nationality in the case of being married to a foreigner under Section 13; if the marriage is terminated on any account, she has the right to resume Thai nationality.

554. In the case of a foreign woman who is married to a Thai, if she wishes to acquire a Thai nationality, she may apply to the competent authority by using a form and following the methods as provided in the Ministerial Regulation for a consideration for conferring her a Thai nationality. This is a specific right given to foreign women and there are those who perceive this as contrary to the principle of equality and being a discrimination. Therefore, in 1996 the Council of Ministers, resolved to give the same right to a foreign man who is married to a Thai woman, and assigned the related or governmental agencies to consider the pros and cons of such a revision of the said law. At this moment it is still pending and there has not been any revision of law to confer such a right to foreign men.

*The use of family name*

555. Under Sections 12-14 of the Family Name Act (1962), a married woman shall use the family name of her husband, this is a custom which goes back as far as 1913 when the Act on Naming a Family Name was promulgated. When a woman becomes a widow by a divorce she shall resume her maiden name and a woman who becomes widow out of the death of her husband, shall use the family name of her husband, later on in (1987) there was a revision of the said act to allow a widow by account of the death of her husband to have a choice to use her maiden name or the family name of her late husband. This is being criticized for causing inequality. However, at present the Council of Ministers has made a resolution to revise the said Family Name Act (1962) to allow a woman to have choice to use a family name in a manner equal to a man.

*The holding of title in land*

556. Under the Land Code, an expatriate cannot hold title in land (except the case of a condominium). But it often appears that a foreigner has exercised the right of a Thai in purchasing a piece of land. Therefore, there is a prohibition or registering the transfer of title of

land to a Thai who is married to a foreigner. This is a prohibition on both sexes and being consistent with the principle of equality. But in practice, there is a criticism that such a prohibition has affected women more than men for the status of marriage of women can be easily seen in the word come before her name i.e. Mrs. whereas a married Thai male has no change in the title.

557. Therefore, the Cabinet has resolved to revise several laws such as the Land Code and the Condominium Act, to allow foreigners to hold title in immovables.

558. Now there is an Act for Revising the Land Code (No. 8) (1999) to confer right to hold land title to foreigners who invest in Thailand.

*Parental power*

559. A person who has a child shall continue to have his or her parental power on that child when he or she is married. The marriage does not effect a change in parental power.

**The equality of right and duties during the marriage**

560. The equality of rights and duties during the marriage can be considered in many respects as follows:

(a) The choice of domicile or residence. Under Book 5 (Family) of the Civil and Commercial Code, it was formerly provided that the husband shall be the head of the spouses and shall choose a residence and a married woman shall take the domicile of her husband as her domicile, later on there was a campaign for equal rights between man and woman, therefore there was a revision of law by repealing the said provision. This results in the duty of the husband and the wife to consult each other in choosing a domicile or residence by the approval of both parties by taking the interest of the family into consideration;

(b) Household management and provision of necessary items for the family. Section 1482 of the Civil and Commercial Code gives either of the married couple to manage household affairs and to provide the necessities of the family to suit their status by providing that the expenses of such a management would bind the marriage property and the personal properties of both parties even though it is the case where either the husband or wife is the sole manager of the common marriage property. However, if the husband or wife manage the household affairs or provide the necessities of the family and thereby causes value loss, the other spouse may apply to the Court to forbid or limit his or her power;

(c) Provision of education to children. Under Book 5 (Family) of the Civil and Commercial Code, parents shall, during the minority of their children, raise their children and provide proper education for them. And they are bound to maintain their *sui generis* children when they are infirm and unable to earn their living. And if one of the spouses carries out the said activities and causes obligations, such obligations are point and several for the spouses;

(d) Title in property and management of property. Under Book 5 (Family) of the Civil and Commercial Code, the property of the husband and wife can be divided into two kinds, namely, personal property which are the properties of each of the spouse and that spouse has power to manage alone and marriage property which are the common properties of the spouses

which either of them can manage without the consent of the other except certain important management or the disposal of rights on such properties require the consent of the other spouse or a common management. This reflects that the man and woman are equal in the management of marriage property;

(e) The exercise of parental power. According to the law, man and woman, as spouses, has equal right in exercising the parental power.

**Equality in right and duties after the termination of marriage**

561. Thai law gives equality to the couple after the termination of marriage as follows:

(a) Property and responsibility in obligations. Under Book 5 (Family) of the Civil and Commercial Code, the marriage can be terminated by several causes, namely, the death of one of the married couple, the void of marriage, and the divorce. In all termination of the marriage, the law divides the property and liability in joint obligations into equal shares. Therefore, it is obvious that the married couple, man and woman, is equal in rights, duties and responsibilities when the marriage is terminated;

(b) The protection of the child. In case of termination of marriage the law provides for parental power and maintenance of the child to give protection to the child in each particular case as follows:

(i) The case of a void marriage. In the case a marriage is void, the agreement between the couple to the effect that who shall exercise the parental power on a particular child shall be put in writing. If the agreement is not reached, the court shall decide. In making such a decision, the court has power to remove the parental power of a spouse under section 1582 of the Civil and Commercial Code and may instruct a third party to be a guardian. In doing so, the court shall take the happiness and interest of the particular child into consideration;

(ii) The case of a divorce. In the case of a divorce by consent, the law provides that the husband and wife shall make an agreement in writing to specify who shall be applying parental power to a particular child. If the agreement cannot be reached or there is no such an agreement, the court shall decide and the couple shall state in the divorce agreement regarding the cost of child raising, and whether it shall be both parties or one of the spouses who shall be the patron of the child. In the case of a divorce by a court decision, the court which tries the divorce case shall decide on who shall exercise the parental power on each child. In making the decision if the court sees that there is a cause to withdraw the parental power of a particular spouse under Section 1582, the court shall withdraw the parental power of the spouse and shall appoint a third party to be the guardian. In doing so, the court shall mainly take the happiness and interest of the child into consideration. In case of a divorce by a court decision, when the divorce agreement did not specify details on the upbringing of the child, the law provides that the court may determine the cost of the upbringing;

(c) The case of revocation of marriage. The law provides that the provisions on divorce by decision shall also apply to the cases when marriage is revoked by a court decision. This also applies to the parental power and the upbringing of the child;

(d) The case of the death of a spouse. In the case that one of the spouses has died, the other spouse shall exercise the parental power to raise the child.

562. In addition, in carrying out a family case, the law provides that it shall be under the jurisdiction of a Juvenile and Family Court, which gives special attention to the protection of the child, and the family.

563. As mentioned above, one can see that Thailand attaches great importance to the family institution and protects the right of a person to set up a family. It also promotes the equality of men and women who are married to each other, during the time of the marriage as well as after the termination of the marriage, which is consistent with Article 23.

564. However, the Constitution of the Kingdom of Thailand has given liberty to its citizens to profess any religion. should the couple follow Islam they shall be governed by the Act on Application of Islamic Law in the Provinces of Pattani, Narathiwas, Yala, and Satul (1946) regarding family and inheritance.

## Article 24

### The protection of the rights of a child under article 24 (1)

565. Under Section 30 of the Constitution, every child has the right to be protected by various necessary measures as required by the status of minor without any discrimination on account of ethnic, colour of skin, sex, language, religion, race, community property or birth.

566. Thai laws use the word “child” in various places and its meaning varies according to the purpose of each law. For example, the Penal Code uses the word “child” for a person who is not over fourteen years (Section 73-74); whereas the Act on Establishment of the Juvenile and Family Courts and Procedure (1991) has provided a special meaning of a child to mean a person who is over seven years but not yet over fourteen years, and a “juvenile” to mean a person who is over fourteen years but not yet fully eighteen years respectively.

567. In addition, the Civil and Commercial Code refers to a minor by aiming at a person who is not twenty years old and is not yet legally married (Sections 19-20), thus not fully capable under the law.

568. And Thailand has also signed the accession to the Convention on the Rights of the Child on 12 February 1992. Under the Convention, the age of a child is being provided to mean a person who is under eighteen years.

569. Therefore, to allow a broad meaning for the word “child” to cover persons which Thai laws give special protection in this part, the word “child” shall mean a person who is under twenty years like a minor under Thai Law except the case in which the law has given a specific definition otherwise or specifies the word in other manner.

570. The numbers of child population for the year 1998 are as follows:

Persons (age 0-14 years) male 6,603,084 female 6,683,454 total 13,241,583;

Persons (age 14-25 years) male 5,473,135 female 5,323,546 total 10,798,591.

571. The average death rate for babies (under 1 year) is at 2.1% (1995). The percentile of the death of children (1-14 years) is 2% 1.03% (1995). The percentile of the death of children (15-24 years) is at 3.3% (1995).

572. Thailand has made 3 reservations on the Convention of the Rights of the Child. They are Article 7 on nationality, Article 22 on the status of refugees, Article 29 on education. The said convention came into effect in Thailand since 26 April 1992. As a result, Thailand recognises and protects the rights of the child in various matters as stated in the said convention. This task is being carried out by the Board on Promotion and Coordination of Juvenile Affairs and the National Youth Bureau. They are responsible for implementing the policy and planning, coordinating, monitoring and evaluating programmes for child and juvenile development of the country. They are the agencies that are responsible for the implementation of this Convention. In this regard, the National Youth Bureau has set up a child and juvenile information center which is responsible for the database and research on child and juvenile, which is used for the developmental plan on child and juvenile at the macro and micro levels.

573. Later on, Thailand withdrew the reservation on Article 29, effective since April 11 1997. This is another step toward the development of the protection of the rights of the child in Thailand. In addition, Thailand has accepted the World Declaration on Survival, Protection and Development of the Child and has also prepared an action plan for the said declaration for the period of five years (1990-1995).

**Problems of children in poor families**

574. At present there are agencies, both public and private sectors, that give assistance to children and families. They are:

- The Ministry of Education through the Office of the National Primary Education Commission initiated a project of providing lunch for poor students in various schools throughout the country.

- The Ministry of Public Health has made assistance card and health card to assist on health matters.

575. Private agencies have provided assistance to children in many forms like financial assistance, or assistance in kind such as materials, lodging and educational assistance.

**Problems related to displaced children and children of displaced persons from neighbouring countries of Thailand**

576. Thailand has problems related to children from neighbouring countries such as Cambodia, Laos, Vietnam and Myanmar. These are problems which have been in existence for a long period of time during 1950-1980, when refugees and displaced persons from Vietnam,

Laos and Cambodia flooded into Thailand in large amount. Some of them are repatriated as in the case of Cambodians, resulting from a tri-partite agreement among Thailand, Cambodia and UNHCR in 1991. However, there are still children under 15 years old who are refugees and displaced persons. These are 2,203 Laotians and 1,367 Vietnamese (1995).

577. Around 1990, there were refugees and displaced persons from Myanmar coming into Thailand in great amount. Among these, there were 39,000 children under the age of fifteen. In addition, there are around 160 refugees and displaced persons from Afghanistan, Iran and Sri Lanka, among them are also children.

578. Even though Thailand has not signed the Convention on Status of Refugees 1951 and the Protocol on Status of Refugees 1967, Thailand has given protection and assistance to refugees and displaced children under humanitarian principles. They have been given basic necessities such as food, medicine, health care, including pre-primary and primary education and vocational training.

**Development of child and juvenile**

579. There are many governmental agencies which are in charge of development of child and juvenile including the suppressing of crime committed by child and juvenile. In the Office of the Prime Minister there are 24 divisions in 6 bureaus and 1 department. And there are agencies, under various names, in the Ministry of Defense, Ministry of Interior, Ministry of Justice, Ministry of Labour and Social Welfare, Ministry of Science Technology and Environment, Ministry of Education, Ministry of Public Health, Ministry of Industry, University Bureau and Office of the Attorney General. In addition there are 113 private sector agencies in child and juvenile development which are working in the area of development of child and juvenile.

**Problem on protection of child welfare**

580. The Public Welfare Department of the Ministry of Labour and Social Welfare has carried out two important matters. They are:

1. The protection of welfare of children who act improperly, for example street children, and beggars who gather and cause nuisance in public place including ill-behaved children whose parents cannot control them etc.

2. The protection of children who are not well raised, for example children who are abused, children who are exploited by being sold, being forced to beg, being forced to traffic drugs, being forced to become prostitute, or being exploited to work unfairly.

581. There are three methods of child welfare protection, namely:

(a) <u>Protective measures</u>

- To dispatch mobile units to give counselling on child and family problems including giving knowledge on child raising.

- To give advice on child and family problems.

- To campaign on child protection by producing educational media for the purpose of preventing and rectifying child problems in order to be published in newspaper and to be broadcast on national radio stations.

- To arrange campaigns that aim at life improvement and increase of life experience for disadvantaged children, in cooperation with business organization.

(b) Rectification measures

- To conduct surveys and help street children, child beggars and children who have unsuitable behaviour.

- To receive children at the First Reception Home and the Child Welfare Protection Home.

- To follow up on the behaviour of children who left the First Reception Home.

- To check the passport of children from birth up to fourteen years old according to the Cabinet's decision dated 18 May 1997 on Measures for Preventing Sale of Children.

- To extend the Child Welfare Protection service to the provinces under the program of child welfare protection and the program on emergency home for children and families.

- To coordinate with the public sector and the private sector by organizing a network of organizations to help children.

**Abandoned children**

582. Thailand also faces the problem of abandoned children. The figure of reception of children into the case of 21 child welfare homes under the Department of Public Welfare are as follows:

| Re | Budgetary years | | |
|---|---|---|---|
| | 1999 | 2000 | 2001 |
| Number of abandoned children | 750 | 625 | 614 |

583. The Department of Public Welfare has arranged its activities in this matter into two branches, namely:

(a) Problems prevention:

(i) To provide assistance to children in the families in the form of advice, fund for starting occupation, scholarship and medical expenses. In the 2001 budgetary year, there are 99,842 families which received assistance. The total number of children assisted is 187,432;

(ii) To provide primary services to persons who need welfare assistance by engaging social welfare worker to give advice and counselling;

(iii) To promote and develop pre school child care center with an aim to assist children from 0-6 years. The Department of Public Welfare has provided assistance both in academic affairs and organizing day care center and private welfare institutes especially for disadvantaged children in the congested communities, business establishment, and construction sites in the urban areas;

(iv) The Public Welfare Department has a policy to promote and support the participation of all parties concerned, in the enhancement of the public sector in organizing welfare centers for mutual assistance at the village level;

(b) Rectification of problems:

(i) Foster family. The Department of Public Welfare has selected families that wish to take children into provisional care and organized social welfare workers to follow up and visit these families periodically. The Department provides financial assistance or other assistance. In the 1991 budgetary year there are 1,151 children under the care of foster homes, 119 of them are abandoned children;

(ii) Adoption of children. The Department of Public Welfare has set up a Committee for Child Adoption to consider the adoption application. A center for child adoption had also been set up as a secretariat and to be the central unit in receiving and considering the application of Thais and foreigners who wish to adopt a child. In addition, there are another 4 private child welfare agencies which are licensed to consider adoption applications. In the budgetary year of 1995, 3,649 applications for adoption have been approved;

(iii) The reception of children into the care of welfare homes. At present, the Department of Public Welfare has given care to 8, 128 children per year in various welfare homes. They are taken under the care of the Department on various accounts, namely, lack of parents, broken home, poverty, migration, beggar families, displacement, behavioural problems, job seekers who changed their minds and wish to go home, and abandoned children.

584. In this regard, the Department of Public Welfare puts an emphasis on coordination with the private sector in the development of children and juvenile. It can be said that the Department has received very good cooperation from the public and private sectors, especially, UNICEF. The Department is the leading agency to seek assistance from UNICEF. This is being done in the form of a committee consisting of several agencies from both public and private sectors.

**The problem of children who are abused and violated**

585. At present there are 7 major public and private agencies and other 35 public and private agencies working as a network to help children who are treated cruelly or abused. The outcome is successful and satisfactory to help.

**Street children**

586. The Department of Public Welfare coordinates with the public and private sectors by setting up a network to assist street children, rectify the problems as they arise and to seek guidelines for child problems. The network consists of 15 organizations, both public and private. The activities and the results of the network for street children are as follows:

(a) The development of street children. Activities in this regard include camping, sports, micro crime suppression unit, study trips, rights of the child forum;

(b) Preventive works on child problem. The department had conducted many activities such as campaigning through the mass media, conducting studies on the situations of child problem in various places, in cooperation with the office of the National Education Commission, in order to set up a sub-committee to form policies and plans for education of street children. In addition, the department had organized seminars, took domestic and foreign study trips, conducted academic training for personnel who works with street children, and organized camping activities for workers and street children;

(c) Strengthening member agencies. This is done through the distribution of Network newsletter, coordination on financial assistance, and field trips to meet member agencies.

**Problems on education**

587. The Constitution of the Kingdom of Thailand (1997) provides the protection of the right to education as follows:

> Section 43 "A person shall enjoy an equal right to receive the fundamental education for the duration of not less than twelve years which shall be provided by the State thoroughly, up to the quality, and without charge.
>
> In providing education by the State, regard shall be had to participation of local government organisations and the private sector as provided by law."
>
> The provision of education by professional organisations and the private sector under the supervision of the State shall be protected as provided by law."

588. And Sections 10 and 17 of the National Education Act (1999) provides on measures to protect the rights and opportunities of children to receive education according to the Constitution as follows:

Section 10 "In the education administration, an individual shall be provided with equal rights and opportunity in receiving sufficient and good quality basic education for the period of no less than 12 years at the expense of the state.

Individuals who suffer from physical, mental, wisdom, emotional, social, communication and learning deficiencies; handicapped, disabled persons or persons who are incapable of self-reliance; persons without guardian or under privileged persons shall be entitled to the right and opportunity to receive basic education on a special basis.

Education for disabled persons under paragraph two shall be provided free-of-charge right from birth or from the time of disability. Such persons shall be entitled to receive all necessary facility, medical/materials, services and any other assistance in education in accordance with the rules and criteria set forth in the Ministerial Regulations.

Education administration for the gifted/talented persons shall be provided with the appropriate methodology taking into account the ability of said person."

Section 17 "There shall be the compulsory education for a period of nine years. The child who approaches seven years of age shall commence his/her study in the basic education establishment until reaching sixteen years of age, unless he has successfully passed the examination of the ninth grade of the compulsory education.

589. The classification of students according to their level of education for the academic year of 1998 is as follows:

Primary education 97.71%;

Junior High Secondary Education 79.93%;

Senior High Secondary Education 49.53%;

Higher Education 33.37%;

Rate of further education at the secondary education level;

Junior High 91.02%;

Senior High 89.90%.

590. For stateless children, children without house registration and children of displaced persons who may have problems with providing documents when applying to various education institutions, the Ministry of Education has eliminated obstacles which may affect the right to education of the said children. The ministry had issued the Regulation of the Ministry of Education on Evidence of Date of Birth in Enrolling Students into Education Institutions (1992), which came into force since 11 February 1992. This allows for the use of other evidences, for example, a certifying letter on the birth of the child; a registration of illegal immigrant made by a district or a province in the case of a hill tribe person or illegal immigrant, or a memorandum on

the history of the child as provided by the Ministry of Education instead of a birth certificate. This regulation applies to street children, children who follow their parents to work in other places and, neglected children in the welfare homes.

591. In addition, the Ministry of Interior has conducted a project to provide hill tribe students with higher education in universities. The Department of Public Welfare has set up 97 child care centers, 8 provisional schools and cooperate with agencies under the Ministry of Education to bring education services to hill tribe communities who shall enter the ordinary educational system with the knowledge of the Thai language. From the evaluation of the result of the work and the cooperation with other units carried out by the Division of Economic Preparation Planning of the Office of the National Economic and Social Development Board, it has been found that the hill tribe children finished secondary education at 17.32%, primary education at 51.19% and have lower than primary education at 27.82% (in the year 2002 there were 376,000 hill tribe children).

**Problem of children and juvenile conducting criminal offences**

592. In the year of 1993 the figures on children committing offences and improper behaviour are as follows:

- Improper behaviour 3,413;
- Problematic children who were sent to welfare home 155;
- Children having committed offence and indicted at the Justice and Family Courts 2,678;
- Convicted children 2,539.

593. The Penal Code provides on the criminal liability of children by looking at the age of the child. If the child is not over seven years he shall not be punished, a child between 7 and 14 years old shall not be punished but the court may admonish or hand him over to parents to look after by imposing certain restrictions. For those children who are over fourteen but not yet over seventeen years of age, the court shall consider whether it is expedient to punish him or not. If the court deems it expedient to punish him, the court shall reduce the scale of the punishment by one half.

594. Regarding the trial of a criminal case whereby the offender is a child, the Act on Establishment of Juvenile and Family Courts and Procedure 1997 have set up special courts, namely, the Juvenile and Family Courts.

595. At present there are 29 Juvenile and Family Courts which have jurisdiction over criminal cases in which a child or juvenile who is less than eighteen years old is alleged of an offence. Under the said law there must be a quorum of two judges and two associate judges, one of whom must be a female.

596. Regarding the procedure of the trial, at present, there has been a revision of the Criminal Procedure Code to provide special procedure relating to a child whether when he is under restraint or is being detained prior to the trial. The Observation and Protection Centers have

been set up to look after children under inquiry or trial. They provide education, and training for children and juvenile who are under detention, and also assist and rehabilitate children and juvenile during detention and after the release. These are being carried out by the director of the Observation and Protection Center with the assistance of medical doctors, psychiatrists, psychologists, probation officers, social workers, teachers and other officials.

597. The Department of Public Welfare has certain measures to help those children who are forced labour and exploited as follows:

1. To receive information from good citizen, agencies or organizations from both public and private sectors when a child is treated unfairly in labour relation or is restrained, detained or cruelly treated.

2. To coordinate and investigate on facts in a tripartite mission comprising of the Department of Welfare and Labour Protection, The Royal Thai Police and the Department of Public Welfare at the factory the building where the incident occurred;

3. To carry out the duty of each unit when it has been found that a factory has been set up illegally or there has been an exploitation of child labour, a breach of labour law on wages and the occurrence of an incident which may effect the well-being and welfare of the employees.

598. In addition, the Department of Public Welfare through its Division on Protection of Child Welfare has assisted children by emphasizing the preventive works. This is being carried out by giving counselling on child problems and family problems to the parents or guardians, the children and concerned officials such as social welfare workers and the child welfare officials. These officials organize activities to change the behaviour of children and improve the children's quality of life. They also campaign to prevent problems of children by preparing activities for public relations through the media so that the children could be promptly taken out of bad situations. They will then be sent to welfare institutions where they will be rehabilitated. They would also be receiving education, vocational training as well as protection, giving them better opportunities to receive a fair trial on cases such as punishment on an offender who committed crime against children and the claim for wages from the employers. The parents of the child shall be contacted to retrieve the child for further care. The family will be informed on proper welfare and the need of each child. Each family would also receive the necessary assistance, funding to start an occupation, including advice and counselling on how to raise a child. These are being carried out to bring financial security to the family and bring to the family the potentiality in looking after the member of the family.

**The figures of assistance given to exploited child labours**

| Budgetary year | Times | Number of children | Boys | Girls | Number of establishments |
|---|---|---|---|---|---|
| 1992 | 10 | 110 | 66 | 44 | 10 |
| 1993 | 4 | 65 | 36 | 29 | 5 |
| 1994 | 7 | 33 | 14 | 9 | 7 |
| 1995 | 4 | 29 | 12 | 17 | 4 |
| 1996 | 3 | 3 | 1 | 1 | 3 |

599. The following ill treatment are considered as offences:

1. Unfair use of labour;

2. Restraint, detention and oppression of labour;

3. Setting-up of a factory without a license;

4. Non-provision of health and safety measures in the workplace as provided by law;

5. Exploitation of child labour.

**Provision of health services to children and juvenile**

600. The Ministry of Public Health and other agencies have provided free health service to children and juvenile in the following ways:

(a) Health Service in time of sickness. From birth until 12 years old a child shall receive free health service from a state health center or hospital;

(b) School Health Service. School children in the primary and secondary schools shall receive necessary health protection and health promotion services. The services include diagnosis of sickness and abnormality, immunization, provision of reading glasses, and hearing aid to students, prevention and cure of sickness which becomes a health problem like thalassemia, the observation on growth and rectification of the symptom of below standard body weight and the dissemination of health knowledge;

(c) Provision of milk, as supplementary diet, to students in primary schools on a daily basis, the whole year round;

(d) Health service and provision of milk to students in remote areas shall be under the care of the border-patrol police.

601. For those children and juvenile in remote areas, the Ministry of Public Health has created the second phase (1997-2001) of the Development Plan for Child and Juvenile in the Remote Area as initiated by Her Royal Highness Princess Sirindhorn. This aims at improving the quality of life for children and juveniles in remote areas. In addition, the Ministry of Interior has prepared a development plan for school health works. For example, in 1996, the following services have been provided to students:

(a) Provision of medical supplies to 305,000 students in 484 schools, at a budget of 1,222,000 baht;

(b) Provision of health services to 177,300 students in 484 primary and secondary schools at a budget of 5,319,000 baht.

**The reduction of infant mortality rate**

602. Thailand has measures or projects running in 75 provinces called "Safe Motherhood". The activities of the projects are:

1. Reduction of lack of oxygen during delivery;

2. Care during delivery;

3. Care before delivery (reducing the risk during pregnancy).

603. Supplementary diet shall be given to pregnant women and to babies according to their age, and the development of each child. The Department of Public Health shall give out coupons for supplementary diet to pregnant women who have problems of lack of nutrients.

**Measures to prevent sale of children**

604. The Cabinet's decision on Measures to Prevent Sale of Children instructed concerned agencies to carry out the following.

605. The Ministry of Public Health, the Ministry of Defense, the Ministry of Interior, the University Bureau and the Bangkok Metropolitan Administration shall inform hospitals and, Mother and Child Health Centers under their agencies; private clinics licensed by the Ministry of Public Health that have received children into their care including that they shall not give away these children to foster families or those who applied for adoption. They shall send these children to the Bureau of Children, Youth, Vulnerable Groups, Persons with Disability and the Elderly, Ministry of Social Development and Human Security within six months so that the Department could give them proper care and assistance as they may require.

606. The Ministry of Foreign Affairs shall inform the Ministry of Social Development and Human Security when there is an application for a passport of a newly born up to 14 year old child who will be travelling without being accompanied by his or her parent, with an aim to be adopted by a foreigner or when it is suspected that the child is being sent for such purpose. The Bureau of Children, Youth, Vulnerable Groups, Persons with Disability and the Elderly shall investigate the facts in detail and send its opinion to the Ministry of Social Development and Human Security. If the Ministry of Social Development and Human Security is of the opinion that the passport of a certain child should not be issued, the Ministry of Foreign Affairs shall hold back the issuance of the passport until further facts or evidence is provided to the satisfaction of the Ministry of Social Development and Human Security. The Ministry Social Development and Human Security shall then informed the change of opinion to the Ministry of Foreign Affairs.

607. In the case of an application for passport of a newly born to a fourteen year old child who was adopted in Thailand, the Ministry of Foreign Affair shall inform the Ministry of Social Development and Human Security and send related documents to the Ministry of Social Development and Human Security so that the Department of Public Welfare may check the authenticity of the documents with the Bangkok Metropolitan Administration or Department of

Local Administration. The Ministry of Interior shall then inform the result to the Ministry of Foreign Affairs. If all or a part of the adoption documents is forged, the Ministry of Foreign Affairs shall seize the issuance of the passport.

**The role of the non-governmental organizations in the Protection of Rights of the Child under the Convention on Rights of the Child**

608. The Non-Governmental Organizations which are working in the area of children can be divided into five categories:

1. A domestic organization which is legally registered and has a legal personality in the form of a foundation or an association such as Children Foundation, Foundation for Children Development, the Council of Children and Juvenile Development Organization and the Child Welfare Association of Thailand;

2. Non-registered domestic organizations, established to carry out certain specific activities or being a part of other organizations. They aim at mobility in carrying out work and named in various manners according to their missions, for example, project group, community working group like Children Affairs Workers and For Children Group;

3. Foreign organizations which have offices in Thailand and are legally registered under Thai law, for example the Christian Children's Fund Foundation in Thailand; and the World Vision Foundation of Thailand;

4. Foreign organizations which are not registered under the Thai law and are branches of foreign organizations which are not registered as a legal entity. However, they have signed certain contracts or agreements in carrying out their work with certain governmental agencies like the Organization for Child Assistance of Thailand and Pearl S. Buck Organization of Thailand;

5. Private organizations set up by governmental agencies to allow mobility in working with the government. These organizations have high capacity in mobilizing resources for they are supported by the government.

609. Non-governmental organizations working in the area of children and juvenile can be divided into categories according to their objectives as follows:

| | | |
|---|---|---|
| 1. | Health, mental health and nutrition | 32 organizations |
| 2. | Family, social and community development | 39 organizations |
| 3. | Education and vocational training | 46 organizations |
| 4. | Ethics, virtue, religion and culture | 24 organizations |
| 5. | Law, rights, protection | 6 organizations |
| | Total | 147 organizations |

610. The role of the non-governmental organizations in the protection of rights of the child:

1. Monitor and conduct research on situation of rights of the child;

2. Investigate and report on seriousness of the situation of violation of child rights;

3. Follow up and help abused children in legal aid and litigation in a thorough manner. The work in this area still lacks the supporting legal status;

4. Disseminate knowledge on rights of the child and activities of the international organizations;

5. Mobilize pressure groups that are interested in rights of the child and push for action at the levels of government and international organizations;

6. Suggest and cooperate with concerned agencies in supporting children to acquire their basic rights;

7. Cooperate with the national planning mechanisms and have part in the planning for protection and development of children, such as the participation of NGOs in the 1st National Assembly on Child Development, the Workshop on Principal Action Plan for the Declaration for Children, and the Planning on Children and Juvenile Affairs in consistent with the sixth and seventh economic and social development plans.

611. From the above said information, one can see that the Thai law has given broad and genuine protection to children. The National Commission on Promotion and Coordination of Children Affairs has drafted a bill, which will ensure the protection of rights of the child to become more efficient.

**The protection of rights of the child under article 24 (2)**

612. The Act for Registration of Inhabitants (1991) provides that it shall be the duty of the head of the household or either one of the parents to inform the birth to the registrar of the district in which the birth has taken place, within fifteen days counting from the date of birth. In doing so, the person who helped to deliver the child or the one who gave the medical care shall also issue a certificate of birth to the person that informs the concerned district.

613. In addition, when one finds an abandoned newly born or young baby, the law requires the person to immediately bring the baby to an administrative official, police or public welfare official. After the administrative official or police has received the child, the official shall record the reception and take the child to a public welfare official. Once the child is received by the public welfare official the official shall inform the registrar who shall issue a birth certificate to the informer as evidence of birth. In doing so, the registrar shall record the information and fact as much as possible.

614. As for a birth outside the country, the Thai Consul or the official of the embassy assigned by the Minister of Foreign Affairs shall act as the registrar, and the informer shall inform the consulate or the embassy in that country. If there are no embassy or consulate present in the country, the informer may use the evidence of birth issued by the government of the country that

the birth took place, translated and certified by the Ministry of Foreign Affairs, as acceptable evidence of birth. The law further provides that the District Registrar and the Local Registrar shall have the duty to prepare the registration of birth.

615. Under the law, every child shall have the right to have a name and family name.

616. Section 1561 of the Civil and Commercial Code provides that a child has the right to use the family name of his father. And if his father is unknown, he has a right to use the family name of his mother. In case a child is born out of wedlock, the law regards that he is the legitimate child of his mother, he therefore shall have the right to use the family name of his mother.

**The protection of rights of the child under article 24 (3)**

617. Formerly the granting of Thai nationality is under the provision of the Nationality Act (1992). A child may acquire the Thai nationality by jus sanguine after his father or by jus soli for being born in Thailand under Section 7 of the said Act. A person who would be granted the Thai nationality would have to be:

(1) A person born of a father of Thai nationality whether within or outside the Kingdom of Thailand;

(2) A person born outside the Kingdom of Thailand of a mother of Thai nationality though whose lawful father is unknown or has no nationality;

(3) A person born within the Kingdom of Thailand.

618. The announcement No. 337 of the Revolutionary Party (1972) revoked the Thai nationalities of persons born in the Kingdom of Thailand of a foreign father or of a foreign mother, whose lawful father is unknown and whose father or mother was:

(1) Given the leniency for temporary residence in the Kingdom of Thailand as a special case;

(2) Permitted to stay temporary in the Kingdom of Thailand;

(3) Entering and residing in the Kingdom of Thailand without permission under Thai immigration law;

unless the Minister of Interior shall see otherwise and order otherwise.

619. In 1992, a revised version of the Nationality Act gave descendants of Thai fathers or mothers the rights to acquire Thai nationality by jus sanguine whether he or she is born in or outside of the Kingdom of Thailand. The children of such a person shall acquire Thai

nationality, except those persons under Paragraph 1 of Section 7 BIS, which provides that a person who was born in Thailand of foreign parents and at the time of birth, his lawful father or his father were not married to his mother, or that his mother was:

(1) Given leniency for temporary residence in the Kingdom of Thailand;

(2) Permitted to stay temporary in the Kingdom of Thailand;

(3) Entered into the Kingdom of Thailand without permission under the immigration law

unless the Minister (of Interior) shall grant Thai nationality on a special basis under the principles set by the Cabinet.

620. The revision of the law is useful in reducing problems of stateless children which may occur when a child is born in Thailand from foreign parents under the said Section 7 BIS and did not acquire the nationality of their parents, or that the parents are stateless.

621. Under the principles applied by the Ministry of Interior, a minority group refers to persons who does not have Thai nationality but are temporarily residing in Thailand because of various reasons such as illegal migrations.

622. Whether a child born of this person shall acquire the Thai nationality, depends on whether the father or the mother is of Thai nationality. The child shall then acquire Thai nationality after his father or mother as mentioned above.

623. However, Thailand is trying to resolve the problem of stateless children in order to become more consistent with Article 24 of the Covenant.

## Article 25

### Right to vote

624. The Thai political system arrived at another important turning point when there was a proposal for a political reform because the majority of the people are in the opinion that politics and governments in the past are not congenial to the development of the country. Finally there was an amendment to the 1991 Constitution to allow the appointment of the Members of the Constitution Parliament to draft a new constitution which came into force on 11 October 1997.

625. Under the said Constitution, Thailand is governed under a democratic regime with the King as Head of the State. The National Assembly consisted of the House of Representatives and the Senate. Persons who are not less than eighteen years of age on 1st January of the year of election shall have the right to vote. The House of Representatives consists of five hundred members, one hundred of whom are from the election on a party-list basis and four hundred of

whom are from the election on a constituency basis. The term of the House of Representative is four years from the election day. The Senate, on the other hand, consists of two hundred members who are to be elected by the people, and shall have the term of six years.

626. The principles appear in the 1997 Constitution indicate that there are changes and revision in various matters by giving emphasis on increasing the rights and duties of the citizen.

**Right to participate in the conduct of public affairs**

627. Right to participate in the conduct of public affairs, directly or through their freely elected representative, has increased the participation of the people in politics and the government to a greater extent as follows:

(a) 50,000 people with voting rights are able to submit a motion to propose laws on rights, liberties and basic principles in the forming of state policies;

(b) 50,000 people with voting rights are able to submit a motion to remove the Prime Minister, Ministers, members of the House of Representatives, senators, President of the Court or the Attorney-General, if there is substantial proof of corruption;

(c) Vote in a referendum when the Cabinet seeks the opinion of the people;

(d) Increase the participation of the people in the local government and provide self government to the people without affecting the interests and unity of the country as a whole, under the following conditions:

(i) Members of the local assembly shall be elected, however the head of the sub-district and head of the village can hold their positions in the Sub District Administration Organization until there is an election of the members of the Council of Sub-District Administration Organization;

(ii) Local administrators can either be directly elected or be approved by the local legislatures;

(iii) Provinces that are ready shall have local governments as seen appropriate by the Government and the National Assembly;

(iv) Local mechanisms shall be independent with regards to authorities, finance, taxes, including staff and personnel management;

(v) People in local governmental areas shall have the right to remove the administrators and members of the local assembly;

(vi) Half of the population may enlist to propose local legislation;

(vii) Local government organizations shall have the duty of maintaining and preserving arts, culture, customs, local wisdom, education and natural resources as well as environment.

**Right to inspect the exercise of State power**

628. Section 214 of the Constitution further provides the people with rights to participate in state affairs directly or via the House of Representatives, members of which have been freely elected. It also gives the people the right to check the work in state affairs. When the Cabinet is of the opinion that an issue may affect national or public interest, the Prime Minister with the approval of the Cabinet may consult the President of the House of Representatives and the President of the Senate, in order to call for a referendum and publish it in the Government Gazette. Voters of not less than fifty thousand in number may submit a petition to the President of the Senate to request the Senate to vote for the removal of the Prime Minister or Ministers from office. In addition, voters of not less than fifty thousand in number may submit a petition to the President of the National Assembly asking the National Assembly to consider laws as prescribed in chapter 3 of the Constitution on the Rights and Duties of the Thai People and Chapter 5 on the Directive Principles of Fundamental State Policies of the Constitution.

629. With regard to local government, if persons, having the right to vote in an election in any local government organisation, of not less that three-fourths of the number of the voters who are present to cast ballot consider that any member of the local assembly or any administrator of that local government organisation is not suitable to remain in office, such member or administrator shall vacate the office, as provided by law.

630. In running the state affairs, the Administrative Organisation of the State Act (1991) (under Section 4, 7 10, 11, 20, 21, 51 and 70) has divided the administration of the country in to three categories, they are:

1.1 Central Administration;

1.2 Provincial Administration;

1.3 Local Administration.

631. The Central Administration consists of the Office of the Prime Minister, Ministries, Bureau and Departments which are under the supervision of the Prime Minister, Ministers and Director Generals. The qualifications of the Prime Minister and Ministers are provided in the Constitution.

632. The Provincial Administration consists of provinces and districts which are under the supervision of Governors and heads of districts. These positions are civil service posts and are appointed by the Ministry of Interior, which is part of the Central Administration.

633. Local Administration consists of Provincial Administration Organizations, Municipalities, Sanitary Administration and other local administration as provided by the law such as Sub district Administration Organization and villages. There is currently more decentralization of power, therefore there are more and more Sub District Administration Organizations being set up through direct election in the localities.

**The participation of the people in the Central Administration**

634. The Constitution of the Kingdom of Thailand provides on the appointment and qualifications of the Prime Minister and Ministers as follows: The King appoints the Prime Minister and not more than thirty five Ministers, to constitute the Cabinet having the duties to carry out the administration of the State affairs. The Prime Minister must be appointed from members of the House of Representatives or persons who have been members of the House of Representatives but whose membership has terminated during the term of the same House.

635. Under the provision of the Constitution, the Cabinet shall consist of the Prime Minister and Ministers. The Constitution provides that the House of Representatives shall consider and approve the person to be appointed as Prime Minister. The resolution of the House approving the appointment shall be passed by the votes of more than one-half. The passing of the resolution shall be by open votes.

636. The Prime Minister and Ministers cannot, at the same time, be members of House of Representatives or Members of the Senate.

637. A member of the House of Representative who has been appointed as Prime Minister or Ministers shall vacate office on the day following the date on which thirty days, from the date of issuance of the appointing Royal Command, has elapsed.

638. Since the Constitution provides that the Council of Ministers shall administer the country, which is in consistent with Article 25 (a) of the Covenant, the Prime Minister shall be the Chairman of the Cabinet and shall have similar qualifications to those of a candidate in an election of members of the House of Representatives:

(1) Being of a Thai nationality by birth;

(2) Being not less than twenty five years of age on the election day;

(3) Having graduated with not lower than a Bachelor's degree or its equivalent except for the case of having been a member of the House of Representatives or a senator before;

(4) Being a member of any and only one political party, for a consecutive period of not less than ninety days, up to the date of applying for candidacy in an election;

Etc.

639. A Minister must possess the following qualifications and must not be under any of the prohibitions as follows:

(1) Being of Thai nationality by birth;

(2) Being not less than thirty five years of age;

(3) Having graduated with not lower than a Bachelor's degree or its equivalent;

Etc.

640. In addition, a Minister shall not be a Government official holding a permanent position or receiving a salary except that of a political official.

641. The Council of Ministers which will assume the administration of the State affairs must state its policies to the National Assembly within fifteen days from the date it takes office provided that no vote of confidence shall be passed. Ministers shall carry out the administration of the State affairs in accordance with the provisions of the Constitution, laws, and policies, and shall be responsible individually to the House of Representatives for the performance of their duties and shall also be responsible collectively to the National Assembly for the general policies of the Council of Ministers.

**Political participation of women**

642. Thailand is a party to the Convention on Political Rights of Women. However, the participation of women in the administration of the State especially in the higher echelon like Ministers is comparatively quite minimal. This may be the result of the fact that the assuming of administrative posts is directed by the political party or parties forming the Government. There are few women who take administrative posts in political parties, hindering them from making decisions and forming policies.

643. The limited roles of women does not mean that women are being left out. But it is the result of fewer participation of women in comparison to the participation of men in the political arena. The statistics of the general election held on 17 November 1996 shows that out of 2,310 candidates there are only 360 female candidates and out of the total 393 elected candidate there are only 22 female. Under the present government of Pol. Lt. Col. Thaksin Shinawatra who assumed the post of Prime Minister on February 9 B.E.2544 (2001), only three women hold positions in the Cabinet.

644. It is worth noting that the trend shows that the change of the role of women in politics has been slow compared to the role of Thai women in the economic field. This may be caused by the Thai attitude that leading roles belong to men, is entrenched in the Thai society. Such an attitude is a major obstacle to the progress of the participation of women in politics, which results in very few women assuming political posts. Another fact is that politics is regarded as a non attractive career. It is more or less a matter of revolutionists. It therefore does not attract women to participate in politics as much as it should.

**Participation in the local government**

645. The Constitution provides that the state shall give autonomy to each locality under the principle of self-government according to the will of the people. Any locality which has a character suitable for self-government shall have the right to be formed as a local government organization as provided by law.

646. All local government organizations shall have autonomy in laying down policies for their governance, administration, personnel administration, finance and fiscal matters and shall have their own specific authority.

647. Local government organizations shall have a local assembly and local administrative committee or local administrators. Members of a local assembly shall be elected. While a local administrative committee or local administrators shall be directly elected by the people or by approval of the local assembly. An election of members of local assembly and the local administrative committee or local administrators shall be made by direct suffrage and secret ballot. Members of a local assembly, local administrative committee or local administrators shall hold office for the period of four years.

648. There have always been regular substantial changes in the local governments. These changes have increased the political power of the Thai people especially those in the rural areas. By virtue of the Act on Sub-district Administration Organization (1994), the process of decentralization of power to the locality has begun to replace the appointment of officials from the central government.

649. The statistics at the end of 1995 shows that there are less than 1,000 Sub-districts from the total number of 6,000 which were satisfied with the requirements of the election. In the year of 1996, 2,143 sub-districts in 71 provinces that carried out elections. It is expected that within a few years from now, every sub district shall hold their own elections. There were 88,378 male candidates and 9,665 (9.9%) female candidates in local elections in 1996, out of which 8% or 3,389 female were elected from the total of 42,730 elected candidates.

650. An important obstacle for women in assuming the posts in local administration is the negative attitude or bias against the role of the women in politics. Another obstacle is that women in rural areas tend to receive less education than men, because they haven to be engaged with household functions. This inevitably reduces the chance of women in assuming positions of head of village or head of sub-district.

**Article 26**

651. The content of Article 26 is similar to that of Article 30 of the Constitution of the Kingdom of Thailand which is applicable to everyone. The government officials and every government agencies shall absolutely not carry out matters which are discriminatory and should there be any discriminatory action and thereby contrary to Section 30 of the Constitution and Article 26 of the Covenant, Section 28 provides in paragraph 2 that:

> "The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience."

652. Thailand has initiated to draft a legislation to forbid discrimination in order to be consistent with Article 26 of the Covenant. A subcommittee under the Committee to commemorate the 50th Anniversary of the Universal Declaration of Human Rights was set up in

order to review Thai laws to better implement the Universal Declaration of Human Rights and other international human rights conventions. A Bill on Unfair Discrimination against Persons is being sent to the Council of Ministers for consideration.

653. Measures against discrimination has already been mentioned in detail under Article 2 of the report.

## Article 27

### The condition of the problem

654. The minorities which means groups of people which belongs to ethnicity, language, religion, custom and beliefs which are different from that of the majority of the country. This problem of minorities is a problem arose in many countries and not limited to Thailand alone. Actually this problem has arisen at the same time or in parallel to the birth of the country. For, at present, most of the countries are the result of the annexation of territories of small states in the past. It is an annexation of ethnic groups which has different ethnic, language, religions, customs and beliefs. Also the migration of different ethnic groups has happened ever since the ancient time until now. And it is a factor which caused the country to compose of different ethnic groups which differs from the majority of the country. They, thereby, become minorities.

### The minority groups in Thailand

655. There are several minorities groups which moved to Thailand for a long time and Thailand has set regulations to control them in residing areas, the registration of household, and has carried out the mother on the status of the descendants of those persons. The major minority groups are:

(a) Vietnamese migrants. They are Vietnamese who fled the suppression of the French government in 1945-1946 and illegally migrated to Thailand at 13 provinces, namely, Nakhorn Phanom, Mukdaharn, Udornthani, Nong Khai, Ubon Rajthani, Yasothorn, Prachin Buri, Sakol Nakorn, Pattalung, Nongbua Lamphu, Sa Kaew and Amnat Charoen;

(b) Former soldiers of the Kua Min Tang and the Moslem Chinese or “Chin Hor”. The former soldiers of Kua Min Tang are the former soldiers of the 93rd infantry of Taiwan who fled the suppression of Communist China through Burma and came to live in Thailand in 1950-1956 at Chiang Mai, Chiang Rai and Mae Hong Son. The civil Moslem Chinese are the Chinese who are families of the former Chinese elders who moved to Thailand since 1954-1962 and live in Chiang Mai, Chiang Rai, and Mae Hong Son;

(c) Free Moslem Chinese. They are the Chinese who claim that they are relatives of the former Chinese soldiers of the Kua Min Tang and the Civil Moslem Chinese who immigrated illegally to Thailand since 1962-1989. They live in Chiang Mai, Chiang Rai and Mae Hong Son;

(d) Former Chinese Communist Guerilla of Malaya. They are granted leniency to live in the area of Yala, Songkhla and Narathiwat;

(e) Thai Lue. They are an ethnic group who migrated to Thailand from the Sib-Song Pan-Na or Sib-Song Chu-Thai in Yun Nan, China. They reside mostly in the provinces of Chiang Rai and Pha Yao in Thailand;

(f) Ethnic Thai from Kong Island. They moved from Cambodia to live in the area of Trat province;

(g) Displaced persons of Burmese Nationality who are Ethnic Thai. They are granted leniency to live in the provinces of Tak, Prachuap Khirikhan, Chumphon, and Ranong;

(h) Highlanders. This includes hill tribes and other groups which live with the hill tribes in the highlands. There are nine (sic) major tribes namely, Karen, Mong, Muser, Yao, Akha, Lisu, Lua and Khamu. They live in 20 provinces, namely, Mae Hong Son, Chiang Rai, Chiang Mai, Lampang, Lamphun, Phrae, Nan, Phayao, Tak, Sukhothai, Kamphengphet, Phitsanulok, Phetchabun, Loei, Uthaithani, Kanchanaburi, Suphanburi, Ratchaburi, Phetchaburi and Prachaup Kiri Khan;

(i) Displaced Burmese nationals. They are several racial groups who migrated from Burma to live in Thailand before March 1976. They live in the nine provinces namely, Chiang Rai, Chiang Mai, Tak, Mae Hong Son, Ratchaburi, Prachaup Khiri Khan, Chumphon, Kanchanaburi and Ranong;

(j) Illegal migrants from Burma (Having a permanent residence). They are people who lived in Burma and illegally migrated to Thailand after 9 March 1976 and have a permanent resident in Thailand in the 10 (sic) provinces similar to the displaced Burmese Nationals;

(k) Victims of armed conflict. They are illegal migrants who came to Thailand since 1984 mostly for the reason that the Burmese government used force to suppress the minority groups in Burma, like Khaya, Shan, Karen, and Mon. The Thai government has arranged asylum at the border strips and given primary assistance under the humanitarian principles and has regarded these people as illegal immigrants;

(l) Nepalese migrants. They are Nepalese who lived in Burma and moved to Thong Pha Phum in Kanchana Buri Province during World War II.

**The cultural attachment and the professing of religion of the minority groups**

656. The Constitution of the Kingdom of Thailand also has a provision on the recognition of human dignity under Section 14 which stipulates that "The human dignity, right and liberty of the people shall be protected." Regarding the right of the indigenous community in conserving and restore their customs, local wisdom, arts, or good culture, the Constitution provides under Section 46 that "Persons who gathered to become a local community have the right to conserve and restore, custom, local wisdom and good arts and good cultures." This is testimony to the protection of the right to conserve and restore customs, local wisdom, arts and good culture of minority groups in Thailand.

657. Regarding the professing of religious and the practice of religious ceremonies Section 38 of the Constitution of the Kingdom of Thailand provides:

> "A person shall enjoy full liberty to profess a religion, 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 religion, 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."

658. In practice, the Thai Government has given rights and liberties to minority groups, especially the right to profess religions. At present a large number of the hill tribes people profess Buddhism and increasingly send their sons to be ordained as novice and monks in various temples and a number of hill tribes people has professed Christianity. The Thai government has given opportunity for the missionaries of various countries to carry out their mission for the minority groups in Thailand as per the National Security Council Note No. 0502/4208 dated 23 December 1997.

**Granting of nationality to migrants**

659. The Thai Government has a clear cut policy in giving the status of foreigners to first generation legal migrants of four groups namely Vietnamese migrants, former soldiers of Kua Min Tang and Civil Moslem Chinese Muslims, former Communist guerrillas of Malay Chinese and Thai Lue ethnic group. For their descendants who are born in Thailand, the government has a policy of granting them Thai nationalities.

660. The government also has a policy of naturalization for the other two groups namely, the ethnic Thai migrants from Kong Island of Cambodia and the displaced Burmese persons of Thai ethnicity.

661. The government is yet to have a clear policy on three other groups i.e. the free Chinese Moslem, the displaced Burmese nationals and the Nepalese migrants.

**Vietnamese migrants**

662. On 17 March 1992, the Cabinet approved the national security policy on Vietnamese migrants 1992-1994 as proposed by the Office of the National Security Council. The implementation of the policy composed of the following criteria, namely:

> (1) To assimilate the Vietnamese migrants into the Thai society and to let the Vietnamese migrants live in Thailand in an orderly manner, cause no harm, and be allegiant to the major institutions of the nation;

(2) To accelerate the granting of Thai nationality to the second and third generation of the Vietnamese migrants;

(3) To give the status of legal migrant to first generation Vietnamese migrants who migrated illegally during 1945-1946.

663. In solving the problem of Vietnamese migrants the government grants nationality by following the Nationality Act (No. 2) (1992) and the principles set by the Cabinet. As a result of the reform of registration of migrants, it shows that there are 35,095 Vietnamese migrants. Out of that number 28,696 persons are second and third generation. The number of first generation is 6,399 persons.

664. The various agencies such as Ministry of Interior, the 114 Joint Operation Center under the Internal Security Operation Center, the Department of Local Administration and the Provinces cooperate in screening the qualifications and the evidential information of the second and third generation Vietnamese migrants who applied for Thai Nationality in the 13 provinces. It turns out that at present there are 25,304 persons who are granted Thai nationality. They can be broken down as follows:

(1) The second generation Vietnamese migrants who are half-Thai; 3,470 of them get Thai nationality automatically in 1992 by virtue of Section 7 (1) (2) of the Nationality Act (No. 2) (1992);

(2) The second and third generation Vietnamese migrants; 21,894 of them are granted Thai nationality under the principles and methods specified by the Minister of Interior and Section 7 bis of the Nationality Act (No. 2) (1992) during 1993-1999.

665. At present there are still 3,558 second and third generations Vietnamese migrants who have not yet received Thai nationality and are under the consideration of the concerned Committee and the Ministry of Interior.

666. The Vietnamese migrants of the first generation, there are only 1,273 of them who get identity and for legal immigrant. There are 5123 persons who have yet to receive the Identity Card.

667. The problem of Vietnamese migrants should be resolved by the year 2000. This can be carried out with the cooperation of the relevant agencies as provided for in the National Security Policy on Vietnamese migrants 1998-2000 and it is expected to assimilate the Vietnamese migrants to allow them to stay and live in the Thai society calmly and feel allegiance to national institutions.

**Hill Tribes**

668. Hill Tribes are minorities who resides in the hilly forest areas that are highlands in the North. They are composed of nine tribes (Karen, Mong, Yao, Muser, Lisu, Akha, Thin, Lua, and Khamu). The population of hill tribes is around 0.8 million. There are groups which originally

live in Thailand and groups which moved from outside of the country. Some of them have not received Thai nationality. In the past, the government had a policy of setting up a government system and specify the status of person to become clear under the law and regulations or conditions of the government by carrying out the following measures:

(a) To consider to fill in the caption or Thai nationality for the hill tribe people. It is an implementation of the regulations of the Ministry of Interior on consideration in order to fill in the caption on Thai nationality in the household registration for hill tribes. The said regulations has been revised and reformed to allow higher suitability especially there has been a reform to allow easier certification. At present, it is being carried out under the regulation of the central registration for the consideration to fill the caption on Thai nationality for the hill tribe Thai 1992 and 1996. The implementation of this matter is to give opportunity to the hill tribe people who were born in Thailand but still have not got a Thai nationality for they are being left out in the census. They can submit a petition for filling in the Thai nationality into the form of household registration as long as they have other specific qualifications required by the government for example, being a person who makes his living honestly, not being a grower of narcotic plants and being communicative in Thai. The data up to 1992 indicates that there are 210,000 hill tribes people who are registered as Thai citizens amounting to 26% of the total 774,316 hill tribe persons as surveyed by the Thai Government (The details of the regulation appears in the attachment). The implementing of filling in Thai nationality for the hill tribe people has been rather slow for there are certain limitations, namely; first, nationality is an important matter for it involves rights and duties of a person, therefore it must be carried out with care and due consideration must be paid to law and regulations; second most of the areas are frontier regions which are difficult to reach, normally there are people of all types who keep coming in and going out, the proof of identity and evidence are difficult to come by;

(b) The consideration on giving the status of foreigner to hill tribe people who migrated from foreign countries. As some of the hill tribe people are illegal migrants and having resided in Thailand for a rather long period of time (the Department of Local Administration has surveyed and has made a registry and identity card for the said highlanders as of 1990-1991 amounting to 247,775 persons). The government has considered it suitable to provide them a legal migrant status under the stateless category as the Department of Local Administration therefore has carried out under the program on consideration in granting the status of foreigner to hill tribe migrants who came from foreign countries. This is done with an aim to allow the hill tribe people who have immigrated for a very long time and has resided in order to have a permanent occupation and have allegiance to the country and abide by the law. This project also meant for the benefit of looking after and knowing the identity of persons. The said project is being carried out in 20 provinces and targeted 98,549 persons in a period of 7 years. It began in 1997 at Chiang Rai the first among the twenty provinces (The details on the project and the qualifications of the applicant for the status of a foreigners are as appeared in the attachments). The children of hill tribes people who were born after their parents received the status of legal migrants would inherently get Thai nationalities.

**Former soldiers of Kua Min Tang and Moslem Chinese migrants**

*Nature of the problem*

669. The former soldiers of Kua Min Tang (KMT) had travelled through Burma and headed to Thailand in 1949 because the Chinese Communist Party won and occupied China. The KMT soldiers and families in Thailand comprise 6,320 persons.

670. A number of Moslem Chinese migrants who are members of the families of KMT soldiers and other Yunnanese who are against the communist's regime had migrated to escape danger. They migrated and accompanied the KMT soldiers to northern Thailand during the period of 1953-1961. The government granted a leniency to allow the Moslem Chinese migrants to live in certain districts in Chiang Mai, Chiang Rai and Mae Hong Son provinces. The figure is 7,899 persons.

671. In addition, to the KMT soldiers and the Moslem Chinese migrants, there is another group of Moslem Chinese who are not listed in the household registry. They may be new illegal migrants who came to stay with their relatives in villages of the former KMT soldiers and Moslem Chinese migrants or some of them may not be listed as a result of non-conclusive census. From the census of the Ministry of Interior there are around 16,500 persons under this group of Muslim Chinese migrants who live in areas of Chiang Mai, Chiang Rai, Payao, Mae Hong Son, Mae Sod, and the Pob Phra Branch of District of Tak province.

672. The problem arose from the fact that the Thai government had difficulties in accessing the concerned areas and exercising its control over the former KMT soldiers and Moslem Chinese migrants who came in during 1961-1969. They caused many problems, for example, the problem on control, the problem of swindling of forest, the problem of minorities, and the problem of narcotic drugs.

*Governmental solutions to the problem*

673. The National Security Council, by its resolution of 24 June 1970, instructed the front-line units of the Supreme Command Headquarters to cooperate with other related agencies in considering the problem and to set various measures in the operation of disarming the former KMT soldiers and to transform the former KMT soldiers left in this northern part of Thailand into civil residents and to set up villages for them to stay in the assigned areas.

674. The Cabinet's decision of 6 October 1970 approved the staying of former KMT soldiers in Thailand as migrants. These people have been helpful in assisting in the fight against communists at the village of Doi Yao, Doi Pha Moan and Doi Laung of Chiang Rai province. For the said reason the government had made it a policy to consider granting those former KMT soldiers who have committed useful acts for the government legal immigrant status or Thai nationality on a case by case basis as set by the Cabinet's decision of 30 May 1978. Around 3,000 have been nationalized thus far.

675. The Cabinet on 12 June 1984 has decided that for Chinese migrants who could not travel back to China, the Ministry of Interior shall be responsible in making a census and a registry which included the children of those people and that the status of foreigner should be given to

these people like the former KMT soldiers and their families and to consider renewing Thai nationality for children of Moslem Chinese migrants and former KMT soldiers whose nationality were revoked under the Announcement No. 337 of the Revolutionary Party. These are being carried out under the regulations and methods specified by the Ministry of Interior.

676. Former KMT soldiers and Moslem Chinese migrants can carry out 27 kinds of occupation as ruled by the Announcement of the Ministry of Interior which is based on Section 12 of the Working of Aliens Act (1978) specifying the occupations that foreigners are permitted to work in.

677. The Cabinet's decision of 17 December 1988 approved the proposal of the National Security Council to apply the regulations on registration and control of former KMT soldiers and Moslem Chinese migrants to the free Moslem Chinese migrants who stay in the village of the former KMT soldiers and in the areas designated by the Ministry of Interior. The Ministry of Interior shall register and issue them identity cards.

678. The government has carried out naturalization for former KMT soldiers who are left behind and have not yet been naturalized as well as renewing the nationality of children of Moslem Chinese migrants and former KMT soldiers. This is carried out according to the provision of regulations and methods as the committee on granting of nationality may decide. At present there are 6,853 of them and the Minister of Interior granted 3,000 of them the status of legal immigrants.

679. In sum, the measures carried out by the government for the former KMT soldiers since 1970 were to grant leniency. At that time it was to grant them Thai nationality in special cases upon consideration that the said former KMT soldiers have assisted the government in the fight against communist guerrillas. But after 1984 it has been recognized that there are still those Moslem Chinese migrants and former KMT soldiers who did not those assist the government in fighting against the communist guerrillas. Therefore, the Cabinet decided to grant them merely the status of foreigner according to provisions of law. Their children who are born in Thailand may acquire Thai nationality according to law, regulations and methods provided by the government.

680. The reason for the government to grant Thai nationality and the status of foreigner to former KMT soldiers and the Moslem Chinese migrants is that it has been considered and decided that, in practice, these people cannot be pushed back to China for they have, out of fear, fled the communist regime in China for a very long period of time.

681. In comparison to the Vietnamese migrants, some are followers of communism, who are granted leniency to stay in the Thai society and Thai nationality have been granted to some of their descendants; the former KMT soldiers and Moslem Chinese migrants are not granted any status. They would have no way out. Therefore the government has considered and ruled that if they want to have Thai nationality or the status of foreigner they must comply with certain conditions i.e. Thai language, allegiance to the country and institutions so that they can stay in the Thai society without any problem. This is more useful than to separate them from the rest of the society. Once such a solution is available, if these people want to have a Thai nationality they must follow the methods and steps. For those who do not follow the steps they will not be granted Thai nationality or the status of foreigner.

**Illegal Burmese entrants**

*Nature of the problem*

682. Due to the internal problem of political conflicts and economic slump of Burma, a large number of Burmese people have illegally entered Thailand. At present there are more than 0.6 million of them. They can be categorized as follows:

(1) For the displaced Burmese who entered after 9 March 1976, the government shall make up a roster, a registry of history and identity cards by specifying control areas in 10 provinces bordering Burma, and 27 occupations as provided by law. There are a total of 47,735 persons;

(2) Illegal Burmese entrants who entered after 9 March 1976 are considered to be illegal immigrants and shall be sent back when the situation allows. But at the moment their return cannot be carried out and they have settled in Thailand. The government has made a registry of their background and issued them identity cards. There are a total of 101,845 persons;

(3) Since 1984 there has been an influx of Burmese displaced persons who had fled fighting in Burma. The Burmese government has severely suppressed various minority groups causing displaced persons who fled across the border. They total 97,000 persons. The Thai government has provided them with temporary shelter along the border and has given them primary assistance under humanitarian principles. They are considered to be illegal immigrants;

(4) Economic migrants. They are also considered to be illegal immigrants but the government has a policy of granting leniency to them in order for them to work in certain areas and in certain occupations. They number 0.4 million;

(5) Burmese Students. After several protests against the military junta and the political upheaval in 1988, around 2,500 Burmese students fled to live in Thailand and have the status of illegal immigrant. 553 of them stayed at the Maneeloy village at Pak Thor district in Ratchaburi province. There were 1,261 Burmese students who travelled to third countries. They went to U.S.A, France, Canada and Australia.

683. The causes for fleeing into Thailand consists of the following factors:

(a) Major factors are: economic hardships, difficult living conditions, insufficient income, non-democratic government and suppression of minorities;

(b) Other factors. The relationship between relatives who entered Thailand, the need of labour in Thailand, ease of movement for there is no control by Burma whereas the controls by the Thai officials are somewhat slackened.

684. Thailand is affected as follows:

(1) The violation of sovereignty at the border;

(2) The problem of drug trafficking. There is trafficking of narcotics from the production source into Thailand under the support of the displaced Burmese and illegal Burmese immigrants;

(3) Relations with Burma. The illegal Burmese entrants reside at the Thai-Burmese border and have connection with the forces of the minorities in order to give various assistance. This causes the Burmese Government to suspect that Thailand has given support to those minority groups.

*The solutions made by the Government*

685. The Cabinet's decision of 11 March B.E.2521 (1978) provides that officials in the area prevent the forces of Burmese minority groups from operating in Thailand. If they find such operations, they shall bar and push them out of the Kingdom immediately by using necessary and suitable measures. For those displaced civilians who are scattered at the border area, the government shall grant leniency to them so that they can live in the Thai territory provisionally in the specified areas along the Thai-Burmese border.

686. The Cabinet's decision of 17 March B.E.2535 (1992) set measures against illegal Burmese entrants. Those Burmese labourers are allowed work at the first stage in four provinces namely, Ranong, Kanchanaburi, Tak and Chiang Rai for there are necessities in certain occupations and there are controlling and penalizing measures to be applied seriously to those evader.

687. The Resolution of the National Security Council dated 23 February B.E.2535 (1992). The resolution provided short-term and long-term solution to problems of illegal entrants. In short-term solutions there shall be an acceleration of implementation of existing policies and measures in a strict and continuous manner like the prevention of illegal entry, the leniency granted to employ necessary labour as provided by the resolution of the Cabinet dated 17 March B.E.2535 (1992), to arrange communication for the border watch, and to carry out public relations to build comprehension among the employees and the people. The long term measures are the labour employment, the development of Thai labour and to promote investment in the neighbouring countries.

688. The government has the following guidelines for the Non-Governmental Organizations:

(a) Organizations should be small in size and work in such a way which is consistent with the policies of the government;

(b) Give assistance to the Government as necessary;

(c) No publicity on the assistance;

(d) Assist only the civilians who flee into the country such as in the case of UNHCR assistance given to the Mon at the Hlockny village in Burma.

689. The National Security Council has made a resolution on 16 March B.E.2536 (1993) to govern the following Guidelines for Burma and Burmese minorities:

(a) To maintain the communication with the Burmese at both the governmental level and the local level in order to provide negotiation channels to build understanding and cooperation at various levels in cases such as the Karens living abroad who use Thailand as a corridor to third countries and caused suspects and fears of the Burmese government in opening a border check point;

(b) To build understanding among the international community on the standing of Thailand in giving humanitarian assistance to person displaced by fighting like the case of overseas Karen, Mon and Karen who have escaped the fighting into the Thai territory. The Thai government has given humanitarian assistance and when the situation in the area is safe. There shall be facilitation for returning home with the help of philanthropic organizations. And international organization like UNHCR has asked the office of the Secretary General of the Prime Minister to assist and the Prime Minister has given instructions to organize a trip for officials of various embassies to visit the frontier areas to learn about first-hand information;

(c) To assist the persons displaced by fighting on a humanitarian basis and to give leniency to the Non Governmental Organizations so that they can go and give necessary assistance and when the situation is sufficiently safe, to facilitate their return immediately;

(d) To let the Ministry of Interior set up provisional asylum in Tak and Mae Hong Son province, bar political movement or the use of Thai soil as an operation base and to prevent persons from escaping the controlled areas in order to work;

(e) To increase safety measures in the provisional asylum areas in order to prevent the armed force in Burma from coming into Thailand in order to operate which is a violation of Thai sovereignty;

(f) To set up a project for setting up villages for border security in areas along the border from Umphang District, PopPhra District, Mae Sod District, Mae Ramat District and Tha Song Yang District to bring about border security in the longer run under a comprehensive strategy;

(g) To let the intelligence units follow the movement of the persons displaced by fighting including those Burmese students to prevent them from carrying out any action which may affect the public order and the relations with Burma.

690. The Government adapted the following guidelines for treating the persons displaced by fighting:

(a) By the beginning of May 1995 the Karen force from Burma (DKBA) has invaded and set fire in the receiving area of the Tha Song Yang District Tak Province at the villages of Mae Ta Woh (Huay Ma Noke) and Ka Moh Loe Koh with an aim to force the Karens living in the receiving areas to return to Burma. This operation of DKBA is a violation of Thai sovereignty. The victory of DKBA caused the number of persons displaced by fighting to increase to over ninety thousand;

(b) The National Security Council organized a meeting of related agencies on 5 July 1995 and drew the following conclusions (per the resolution of the National Security Council dated 22 July B.E.2538 (1995):

- To reduce the asylum areas in:

  (1) Tak province at the Tha Song Yang District which shall be reduced to two asylums at Mae Lah and So Gro village whereas in the Mae Ra Mat district, Mae Sod district and Pobphra districts there shall remain one asylum per each district;

  (2) Mae Hong Son province at two asylums in Baan Mae La Ma Luang village of Sob Moei District and Baan Khun Mae Gong Kha of Mae Sarieng district.

- To send persons displaced by fighting back home by proposing that the Burmese government receive them back and induce the Burmese government to invite international organizations to go in and assist these people in Burma;

- To oversee and keep safety by keeping a registry and to control them in the specified areas and see that there is a strict maintenance of safety;

- To permit NGOs and international organizations to go in.

691. At present there are an increasing number of illegal entrants from the People's Republic of China, India, Pakistan and Sri Lanka who come to seek job or stay in order to enter a third country illegally and this causes great problems to Thailand like the commission of crime e.g. drugs trafficking, extortion, abduction and ransom demand, the trafficking of illegal immigrants, the counterfeit of documents, prostitution, etc in the form of organized crime or international crime. This causes difficulty in suppression and job-loss for the Thais. Therefore Thailand has set up the following measures:

(a) Strict implementation of the Immigration Act against the Chinese illegal entrants;

(b) Stricter control of visa applications by nationals of India, Pakistan and Sri Lanka at the immigration check points.

692. From the said facts on minority groups one can see that Thailand has to bear a very heavy burden to support and protect minorities in the present situation of economic slow down. And Thailand has exercised great effort to treat every minority group positively on account of humanitarian cause and consistent with this Covenant to the furthest extent possible.

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