

HUMAN RIGHTS AND HUMAN DEVELOPMENT: THAILAND COUNTRY STUDY

Vitit Muntarbhorn

Contents:

Introduction:

- a) Overview
- b) National Response

Situation:

- a) General Trends
- b) Civil and Political rights
- c) Economic, Social and Cultural rights
- d) Development and Environment

Milestones:

- a) Laws
- b) Policies
- c) Programmes
- d) Mechanisms
- e) Resources
- f) Information / Indicators
- g) Practices

Challenges:

- a) National-International Framework
- b) State Actors
- c) Human Rights Institutions / Personnel
- d) NGOs / Civil Society
- e) Media
- f) Private Sector
- g) Other Catalysts

Targets for Specific Action:

- a) Poverty, Equity and Ecology
- b) Democratisation and Good Governance
- c) Justice System
- d) Women's Rights
- e) Child Rights
- f) Disability and HIV/AIDS
- g) Workers
- h) Refugees and Displaced Persons
- i) Minority and Indigenous Communities

Directions:

- a) Preventive Measures
- b) Remedial Measures
- c) Participatory Measures

Introduction:

a) Overview

The roots of human rights can be found in Thai society, as elsewhere, in age-old traditions.¹ Various religions prevalent in Thai society, including Buddhism, provide the moral and ethical underpinnings for the considerate treatment of human beings. The rise of Thailand as a nation state also attests to various origins of human rights. For example, in the Middle Ages during the Sukothai era, there was a royal stone inscription, which called for the humane treatment of prisoners of war and advocated the freedom to travel and to trade. At the pinnacle of society was the King, who could be called upon to render justice by the sounding of a bell by ordinary citizens at the royal palace.

From another angle, Thailand's history has been a witness to various vicissitudes concerning human rights. The demise of absolute monarchy and the advent of the country's first Constitution in 1932 did not genuinely lead to a democratic society. Various coups d'etat subjected the country to decades of military rule or rule by civilian governments backed by the military until 1992. It was only in that year that the country reverted to full-fledged democracy. In 1997, the country's first truly democratic Constitution was adopted.

On the economic front, in the decade preceding 1997, Thailand experienced record national economic growth and the development process in the country was positive on many fronts, e.g. record Gross Domestic Product (GDP) growth and reduction of poverty in many areas. Yet that national growth was always somewhat illusory in that wealth remained in the hands of the few.² July 1997 witnessed an enormous crash, which led to dire consequences for the whole country. This was due to a variety of factors, including over expenditure especially by the private sector, too much access to loans without adequate collateral, speculation in land and other dealings, huge debts, and lack of financial transparency. The profligacy of parts of the private sector led to the disintegration of public confidence in the national economy. As a result, the economic bubble burst with the rapid depreciation of the national currency, extensive bankruptcies, massive unemployment, increase in poverty and negative national growth. Since that time, the country has been undergoing a painful, albeit necessary, restructuring process with the backing of a massive loan from the International Monetary Fund. In 1999, the situation was improving gradually with a return to positive national growth.³

One of the intriguing lessons of this traumatic period for Thailand is that partly as a result of the economic crash of 1997, the general population called for the passage of a new people-based Constitution. Several parliamentarians who had initially been against the Constitution yielded to public pressure and ultimately did not block the adoption of this new social contract. Ironically perhaps, the plight of the national economy had a positive impact on political changes: it accelerated the passage of the new Constitution as part of the national catharsis and acted as a catalyst for broader promotion of human rights.⁴ This is living proof of the fact that economics, politics, and social pressures are inextricably intertwined. There is thus a key nexus between civil, political, economic, social and cultural rights.

b) National Response

The pivotal instrument as a national response for fostering human rights and human development in Thailand today is the new Constitution.⁵ Section 4 of this instrument stipulates the notion of 'human dignity' as the basis of human rights in Thailand and as an overarching principle governing society. Part III of the Constitution provides for a variety of rights and freedoms of the Thai people. These include: equality between persons, including non-discrimination between the genders; the right to life; the presumption of innocence; the right to privacy; freedom of religion, association and expression; the right to receive 12 years of education; the right to property; the right to receive health care; the right of children against violence and injustice; the right of the elderly to State assistance; the right of access to public information; the right of persons in cooperation with the State and the community to protect the environment; the right to consumer protection; the right to take action against public authorities; and the right to use peaceful means against those who subvert the Constitution.

Part V of the Constitution stipulates various national policies with impacts on both human rights and human development. These include the need to promote people's participation, including in relation to environmental protection; the need to decentralise; the need to distribute income; the need to have appropriate possession of land and land use systems; and support for a free market economy.

Unlike past Constitutions, the current Constitution goes beyond the guarantee of rights to stipulate that these rights and freedoms can be invoked directly in the courts to question actions violating the Constitution. Unlike past Constitutions which tended to constrain the enjoyment of rights by subjecting them to the need for other laws to implement them, many of the new provisions in this Constitution are immediately applicable without the need for other laws to concretise them. Whereas past Constitutions tended to subject the enjoyment of rights to various broad "clawback" provisions or constraints such as national security,⁶ the current Constitution imposes limits on these constraints - the latter must not undermine the substance of the rights enunciated.

However, the key test for these laudable intentions is always the implementation process. This depends very much upon responsive laws, policies, programmes, mechanisms, resources, and effective practices at the national and local levels. In this regard, various challenges facing the guarantees of rights and freedoms are noted below.

Situation:

a) General Trends

Human rights as a national priority has been gaining ground increasingly in Thai society. This is a welcome trend. Several decades ago, the term 'human rights' itself would have given rise to a degree of mistrust and hesitation among many circles in Thai society. However, it is now much more acceptable nationally and locally. The fact that the notion of human rights holds a key place in the new Constitution ensures that it has become a much more legitimate concern for the whole of society.

The cross-sectoral components covering civil, political, economic, social and cultural rights indicate a strong sense of interdependence between human rights and human development. Promotion of civil and political rights such as freedom of expression is inadequate unless promotion of economic, social and cultural rights such as an adequate standard of living is also guaranteed. All of these rights contribute strongly to human development, which also calls for a comprehensive and sustainable process.

Yet there are some inherent difficulties which should not be overlooked. First, there has always been a tendency among several circles to emphasise human duties rather than human rights.⁷ The rationale of human rights as entitlements advocated to the State and other power groups for accountability and responsiveness was not always well established in Thai society, although it is now more acceptable. Second, even under the new Constitution, there is a pervasive lobby which perceives human rights as the rights of the Thai people rather than the rights of all persons irrespective of nationality and other origin.

In the current Constitution, this is exemplified by the title to the section on rights, which refers to the Thai people rather than to all persons.⁸ This differs from the international setting, which advocates that human rights are the rights of all persons, irrespective of their origins. However, in various parts of the Constitution, the latter notion is provided for in the term 'human dignity' which covers all persons - Thais and non-Thais.⁹ Several sections of the Constitution confirm this basis of non-discrimination. For instance, Part VIII of the Constitution concerning the judiciary is of benefit to Thais and non-Thais. It provides guarantees for all accused persons in relation to the justice system, such as access to the courts within 48 hours of being apprehended for an alleged offence.

Third, while the current Constitution calls for a more equitable response to human development, the development process in the country has long been unbalanced. National development has been shaped greatly by five-year national economic and social development plans. While the current 8th National Economic and Social Development Plan (1997-2001) takes a more human centred and participatory mindset,¹⁰ the early plans were top-down and centralised in approach, geared towards macro-economic development based upon GDP and large-scale projects in the hope that national wealth would filter down to the general population. Initially, they failed to cater to small-scale, microscopic development more attuned to the needs and realities of the populace: this has now been rectified to some extent. While 'equity' policies to redistribute income and resources in the form of student loans and free medical help for the poor have enjoyed some success in the educational and health field, the record on other fronts - land distribution, for example, leaves much to be desired.

Fourth, there has always been the issue of lax law and policy implementation, despite the noble intentions behind many laws and policies. This has been due in part to a lack of transparency, corruption and the pervasive patronage system from the local level upwards that allows some people to enjoy privileges while others are denied their rights.

Fifth, while the notion of people's participation has been gaining ground in recent years, the role of civil society, including non-governmental organisations (NGOs), has not always been appreciated by the authorities. However, the role of civil society emerged prominently in 1992, since it was members of the civil society who dislodged the military regime and paved the way for democracy. It

was followed up with the participatory drafting process of the new Constitution. The text was actually drafted not by parliamentarians but by an independent Constitution Drafting Committee representing civil society. Prior to its adoption, public hearings involving different parts of the country and different sectors attested to the importance of civil society as a key force in the promotion of human rights and human development.

b) Civil and Political Rights

A key event for the protection of these rights was the return to democracy in 1992, when the military junta relinquished its hold on governmental power. Since then, the country has enjoyed free elections as part of the right to self-determination. Various reforms have broadened or are broadening the enjoyment of civil and political rights, especially through the influence of the new Constitution, including the following:

* new nationality laws to guarantee gender equality in the acquisition of nationality by those of Thai parentage, i.e. the child of a Thai father or a Thai mother has the right to acquire Thai nationality. Previously only the child of a Thai father could do so;¹¹

- guaranteed access to legal assistance;
- new freedom of information legislation to provide broader access to public information;
- potential reform of legislation on state enterprises to allow them to form trade unions;
- potential reform of printing legislation to liberalise press freedom;
- potential reform of the laws concerning mass media frequencies to ensure that there is an independent national agency to allocate these frequencies as a part of national heritage;
- potential reform of the anti-Communism legislation which allows for the possibility of preventive detention for long periods without trial;
- potential reform of the criminal justice system and the judicial process to provide more guarantees for the accused;
- accession to the International Covenant on Civil and Political Rights.

However, there remain various constraints on the enjoyment of civil and political rights, especially age-old notions of national security. Freedom of expression is hampered by some laws, which limit press freedoms, while television and radio are not free from State influence. There is also a broad law on lèse-majesté. Freedom of association in the form of trade unions has been enjoyed to a limited extent. There are still relatively few trade unions by comparison with the work force. Military governments of the past always looked upon trade unions with mistrust, thereby seeking to suppress rather than enhance them. On another front, the general practice has been favourable towards a humane approach in regard to non-nationals to some extent. For instance, those seeking asylum in the country have been granted temporary refuge and have, in most cases, not been pushed back to areas of danger. However, there is still official reticence in recognising the rights of refugees and in tackling the issue of statelessness expeditiously.

With regard to access to formal institutions such as the judiciary for redress and related remedies in the case of human rights violations, there is still a geographical, mental and financial gap between ordinary people and State officials. To take action in courts, litigants generally have to have locus standi, i.e. they must be directly affected by the case. Thailand does not yet recognise 'class actions' whereby members of the public, including NGOs, can litigate in the public interest even though they are not directly affected by the facts of the case. The two exceptions, which currently allow such class actions are in relation to environmental, and consumer protection law.

The new Constitution improves safeguards in the administration of justice, such as fast access to the courts when a person is arrested and due process of law. For instance, access to courts within 48 hours of being arrested is now guaranteed and the accused has a right to legal representation. However, various practices are still substandard, notably the use of leg-chains and capital punishment.

Areas needing improvement for the future include the following:

- the need to promote quality law enforcement personnel and transparency;
- the need to permit 'class actions' for civil society to litigate on behalf of the public;
- the need to promote more freedom of expression, association and access to information;
- the need to foster a stronger trade union system;
- the need to protect those seeking refuge in the country;
- the need to prevent extra-judicial executions and the need to promote due process of law;
- the need to improve the treatment of suspects and detainees, e.g. the need to abolish the use of leg chains;
- the need to find alternatives to capital punishment and to reform the law that permits such punishment for those of seventeen years of age and above;
- the need to ensure access to legal assistance from the time of arrest;
- the need to foster an accessible, expeditious, transparent and inexpensive judicial process;
- the need to explore community service programmes as an alternative to imprisonment for wrongdoers.

c) Economic, Social and Cultural rights

The situation in the economic, social and cultural fields was bright on many fronts prior to the 1997 economic crash. Thailand saw a broad reduction of poverty in many parts of the country, high enrolment at school, declining infant mortality (at least until the advent of HIV/AIDS), wide religious freedom, social security for workers, and improved guarantees for the rights of women and children in several areas. Various reforms in the 1990s paved the way for better promotion of economic, social and cultural rights, including the following:

- introduction of social security law and fund for workers;
- new prostitution laws that punish intermediaries rather than the prostitute and laws to combat trafficking in women and children;

- provision of six years compulsory schooling extended to cover twelve years of basic education under the new Constitution;
- loans to help students go to school and medical help for the poor;
- accession to the International Covenant on Economic, Social and Cultural Rights.

However, the economic crash has aggravated and or highlighted various defects; vestiges of poverty; extensive income disparity; child prostitution; child labour; violence against women and children; exploitation of migrant labour; ambivalence towards some cultural aspects of minority and indigenous communities such as religion and language; deprivations in slums; rural underdevelopment; and discrimination against those with HIV/AIDS. Areas needing improvement for the future include the following:

- the need for extensive social welfare laws and provisions to help those in need;
- the need to prevent violence against women and children;
- the need to promote more pluralism to include minority and indigenous cultures;
- the need to help those in slums and underdeveloped rural areas through employment and other opportunities;
- the need to eliminate poverty, reduce income disparity and share land and other resources more equitably;
- the need for humane treatment of those with HIV/AIDS and to overcome discrimination against them;
- the need to promote more protection not only of local workers but also migrants from other countries.

d) Development and Environment

The link between sustainable development and the environment has emerged strongly in recent years, especially with the evident increase of environmental damage and the depletion of natural resources. Environmental concerns have come increasingly to the fore in Thai society, and this has led to greater public mobilisation on this issue. There have been some positive developments including the following:

- passage of environmental legislation stipulating the 'polluter pays' principle;¹²
- greater mobilisation of the community for environmental protection, especially the emergence of strong environmental NGOs as part of the human rights and human development lobby;
- recognition of the right of the community to protect the environment under the new Constitution;
- some environmental impact assessment of projects to avoid environmental harm;
- advocacy for more public hearings prior to decision-making concerning environmental projects;
- incorporation of environmental planning into the national development planning process.

However, key obstacles include poverty, skewed income distribution, distorted allocation of natural resources, and their relationship with environmental damage. Action for the future should include the following:

- the need for a community forest law which provides for the right of the community to inhabit forest lands, recognising them as forests and acting as protectors of these forests;
- the need for law and policies to protect local wisdom, including knowledge of herbal medicines, from exploitation from the outside;
- the need for more environmental impact assessment from the perspective of impacts on people, and issues like displacement of communities by construction of projects like dams;
- the need to provide effective compensation and alternative livelihoods for those displaced by environmental projects;
- the need for more public hearings on environmental projects to ensure public participation prior to decision-making;
- the need for preparedness and management for natural disaster mitigation.

Milestones:

There have been a number of milestones in the promotion of human rights and its linkage with human development in recent years. They can be discerned from this categorisation.

a) Laws

Various commendable laws which have been promulgated during the past decade have already been noted. The pinnacle of these laws must be the new Constitution. It does not simply embody a variety of rights: it introduces new mechanisms as monitors against the abuse of power, notably the national human rights committee discussed below. There are also built-in safeguards against corruption: the provision that all cabinet members must declare their assets prior to taking office as well as after termination of office; the provision that cabinet members must relinquish their parliamentary status if they are appointed cabinet members; the possibility of 50,000 people petitioning to review the status of parliamentarians; the establishment of an anti-corruption commission and new courts with power to oversee politicians.

The task now is to properly implement the good intentions of the Constitution. Arguably, a more specific law may need to be enacted against the various forms of discrimination which may take place, e.g. in relation to gender, social and political origins. Intriguingly, there is the irony that while various economic laws are expedited through Parliament in a relatively short period of time, e.g. the laws to provide financial restructuring in relation to the economic crisis, laws providing for the needs of the poor, e.g. the draft social welfare law and draft community forest law, take a much longer period. This is conditioned by the prevalence of differential power bases.

b) Policies

While there have been national development plans for many years, the country is now drafting its first national human rights plan, headed by a former Prime Minister. The trend suggested by this

draft plan is to target various laws and measures which are deficient for action, and to enhance the reform process. There are also specific groups needing protection singled out for attention, e.g. women, children, stateless persons, displaced persons and refugees, minorities, the elderly, those with disability, those with HIV/AIDS, prisoners and others affected by the criminal justice system, and human rights defenders. A key message will be to call upon the relevant State agencies to take action to reform those laws and practices which are in breach of human rights. A time frame will also be suggested for the attainment of some of these goals.

There already exist many specific plans which need to be highlighted, e.g. a national plan against child sexual exploitation and a national plan on the issue of child labour. Again, the challenge is effective implementation.

c) Programmes

There are many good examples of human rights programmes available, although more can and should be done. In the area of human rights education, for example, most universities now offer courses on human rights, and one university recently innovated by introducing a Masters Degree Programme on human rights. Public authorities ranging from the military to the civil service have introduced courses on human rights. The Thai Foreign Ministry organised a national seminar on human rights and the business sector in 1998, calling for more corporate governance in favour of human rights. More recently, the Ministry and the Office of the United Nations High Commissioner for Human Rights organised a regional workshop on the development of national human rights action plans. On another front, NGO activities on human rights have flourished due to the democratic process in the country, and many of them are involved in key human rights programmes, such as training, education and research.

Questions remain concerning access to, and the scope and quality of these programmes. How to create an attitude and behaviour responsive to international human rights principles such as non-discrimination, while not forgetting local wisdom, remains a constant challenge.

d) Mechanisms

Traditional formal mechanisms such as courts of law already exist that may help to protect human rights and to promote human development. In recent years, Parliament has taken up the issue of human rights more specifically by establishing a standing commission on human rights in the House of Representatives, and there is also a parallel ad hoc body in the Senate. These bodies have provided avenues for the public to share information with Parliament. At times, the standing commission / committee of the lower house has acted as an investigator and mediator in human rights-related cases, e.g. concerning displacement through dam construction and employment disputes.

It is important to note that the new Constitution has led to the establishment of a Constitutional Court to decide on conflicts between national laws and practices and the Constitution. Recently, it made a decision to disqualify a Member of Parliament from his seat as he had used fraudulent documents to acquire his parliamentary status. It has also ruled in favour of the Government's new

State Enterprise Corporatisation Bill, which will allow the sale of state enterprises to foreigners, a move disliked by some sectors of Thai society.

A law to establish a new national human rights commission was passed towards the end of 1999.¹³ The process of drafting the law on this mechanism was eye opening for many reasons. One lobby close to State authorities tried to place the commission under the Prime Minister or the Minister of Justice. Civil society members countered this by claiming that such a structure would impede the work of the commission in that the commission would not be independent and free from interference by the executive branch of government. A compromise led to the attachment of this commission to the upper house of Parliament. A key concern is to ensure that this committee is both independent in its operations and pluralistic in composition, with representation from women and disadvantaged groups in society. A test for the future will be to implement well the roles already designated for the commission under section 200 of the Constitution, including the following:

- examine and report on human rights violations in accordance with Thailand's international obligations;
- suggest reform of laws and regulations to Parliament and the Cabinet to promote and protect human rights;
- promote human rights education;
- promote the cooperation between government agencies, NGOs and other organisations concerning human rights;
- prepare annual reports on the national human rights situation for submission to Parliament.

Other mechanisms with impacts on human rights have emerged or are in the process of emerging, offering checks-and-balances against abuse of power. These include the national election commission to ensure that national and local elections are free and fair; ombudspersons to investigate maladministration of justice by public authorities; administrative courts to provide faster remedies in disputes between citizens and State authorities; and an independent counter-corruption commission to scrutinise and counter malpractices by State officials. A national audit agency will also be established to ensure transparency of State expenditure.

A key challenge is access to the victims, as well effective preventive measures and expeditious remedies.

e) Resources

National budgets have obviously been affected critically by the current economic crisis in the form of cutbacks or slow-down of disbursements. The authorities have tried to not reduce expenditure on basic services such as education and health, and efforts to create a social investment fund to help generate income and alternative livelihoods have met with support from the World Bank, the Asian Development Bank and bilateral donors such as Japan. An interesting alternative viewpoint posited by several NGOs is that the country should borrow less from abroad and try to be more self-reliant.

The provision of safety nets for those in need is a key concern, and help need not always be in material form on the basis of national budgets. Even in crisis times, non-material inputs are important, and NGOs often help by doing voluntary work to aid those in vulnerable positions. Spiritual inputs and interactions should not be forgotten as part of the development process.

f) Information / Indicators

The information base is important to mobilise programming, and Thailand has had, for many years, basic minimum needs indicators: 'Jor Por Tor', influenced more by a needs-based rather than a rights-based approach. These indicators call upon local communities to provide information to the State authorities on how their needs are satisfied, e.g. with respect to health and sanitation facilities and access to education. This information would be channelled to the relevant ministries for follow-up action in relation to programming. This goes hand in hand with the five-year national economic and social development plans. Currently, there are thirty nine indicators structured under the following headings¹⁴:

- good health;
- shelter;
- comprehensive education;
- contented family;
- good income;
- willingness to develop;
- ethics;
- promotion of the environment.

Examples of these indicators include qualitative goals such as the number of women who have access to medical help before and after birth; the number of children vaccinated against basic diseases; enrolment in compulsory education; family income of not less than average of 20,000 baht (just over 500 USD) per capita per annum; exercise of the right to vote; care of the elderly; family help in protecting the environment.

There have also been suggestions for more group-specific indicators such as those on women and children, although these have yet to be implemented.

Are there possibilities for benchmarks with a rights-based approach? A positive answer may be logical at this point in time, especially as a national human rights action plan is being drafted, but the details need to be worked out in future. Although the plan has not touched directly upon indicators, one indicator which could grow organically from the plan is to what extent its targets are met within a time frame, e.g. law reform on a particular issue, say, with a two-year time frame.

A key concern is to promote the vision that a rights-based approach is one which is based on entitlement - that which we should have, and not that which others are willing to give to us on the basis of charity or needs measured by others for us. Equally important, it implies that there should be non-discrimination in fulfilling the targets; for instant, access to primary education is the right not only of Thai children but all children on Thai territory, irrespective of nationality and other origin.

g) Practices

Various good practices may be identified from the above and related experiences. The process of drafting the new Constitution was itself a good practice - it was participatory and involved many people from all walks of life. New mechanisms such as the national human rights commission are emerging and various human rights programmes, such as through education and training, already exist and can be maximised. However, there is still the ambiguous area where various parts of the Thai Constitution seem to protect the Thai people rather than all persons on the basis of non-discrimination.

Laws for human rights promotion and protection need to be complemented by policies, programmes, mechanisms and resources, and these are found to some extent in Thailand, notably the emerging national human rights plan and various law reforms which have already taken place. However, responsive enforcement is the key, and this is not always strong in Thailand. There is also the need to convey the message that human rights go hand in hand with the promotion of sustainable development, democracy, peace, environmental protection and good governance, especially the need for a clean government and a transparent implementation process.

Challenges:

a) National-International Framework

The relationship between the national and international framework on human rights poses a consistent challenge to Thailand. In the past, there was a degree of hesitation to become a party to international human rights treaties or to abide by those instruments. However, the country voted for the 1948 Universal Declaration of Human Rights, the 1986 Declaration on the Right to Development, and the 1993 Vienna Declaration and Programme of Action of the World Conference on Human Rights.

Gradually, the country has become more ready to adhere to human rights treaties, and this trend is welcome. Yet upon accession, there is a tendency to enter a variety of reservations to indicate non-acceptance of various rights or to make interpretative declarations indicating divergences, potential or actual, between national law and international human rights standards. Currently, the country is a party to these major human rights treaties:

- the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- the 1989 Convention on the Rights of the Child (CRC);
- the 1966 International Covenant on Civil and Political Rights (ICCPR);
- the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Several of the reservations to these treaties have already been withdrawn, but the remaining reservations and declarations indicate various difficulties as follows:

1. CEDAW reservations on:

- the rights of women with respect to non-discrimination in family law;
- access to the world court to settle disputes.

2. CRC reservations on:

- the right to acquire nationality;
- the rights of the refugee child.

3. ICPR declarations on:

- the meaning of self-determination;
- expeditious access to courts;
- capital punishment including for those of seventeen years of age and above;
- the meaning of war .

4. IESCR declaration on:

- the meaning of self-determination.

b) State Actors

A key catalyst in the promotion and protection of human rights is the plurality of State actors, including law enforcers such as the police, the military and the judiciary. At times there is a tenuous line between protector and violator. While there are many good State actors, some sectors need capacity-building to respond more concretely to human rights and human development. Others are simply abusers who need to be sanctioned by law and practice. However, the victims are often faced with a culture of impunity whereby those responsible for crimes are not brought to justice. This is exemplified by a long history of self-amnesty decrees passed by military governments to exempt themselves from responsibility for consequences of coups d'etat staged by them.

Courts have been unwilling to challenge the validity of such laws. For instance, in 1999, on appeal, the judiciary confirmed the lower court's decision against the claim for damages lodged by the relatives of civilians harmed by military personnel in May 1992.¹⁵ At that time, there were street demonstrations staged by civilians against military rule, and many persons were killed or disappeared as a result of the clash between the military and civilians. Even though the military surrendered power subsequently to a civilian administration, they have not been held to account for the bloodshed of the period.

The military also enjoyed impunity for all coups prior to the 1991 coup.

c) Human Rights Institutions / Personnel

As noted above, various mechanisms already exist on human rights promotion and protection, including the human rights commission / committee in Parliament. There is also a Constitutional Court and the rest of the judiciary. What is their impact?

From the human rights angle, their impact as a whole has been limited in the sense that it is often difficult to bring the violators of human rights to justice. Many of the personnel of these institutions have never been trained in human rights and have not been exposed to the international framework of human rights. The Thai legal system is also a dualistic system, which does not automatically accept the application of international law unless it is transformed by law into Thai law. This has meant that courts do not generally apply international treaties at the national and local levels unless there is implementing legislation or unless it is proven that the principles of those treaties are already found in national law.

There is thus much more room for training and capacity-building of these institutions and related personnel to respond to international human rights standards, while not forgetting local wisdom. There is also a need to enable ordinary people to participate more extensively in the administration of justice, for example as lay magistrates and assessors.

How will the recent law to establish a new human rights commission help? Expectations are high, especially as there has been an enormous public debate on the subject. In effect, it should be said that the commission is not a court, and that expectations concerning its role should be realistic. It will have a key role as a promoter, educator, monitor, investigator, influencer of human rights, and as an exposé of human rights violations, while not being able to render binding judgements. Its impact will be through social pressure for accountability rather than legal sanctions. However, it will need a sustained process based upon a strong secretariat and information base. It will also need a supportive environment, especially access by NGOs and other actors who defend human rights.

d) NGOs / Civil Society

Thailand already has an active NGO community and civil society acting as mobilisers of human development and as human rights watchdogs. It is a credit to the country that there is freedom of expression and association which enables concerned persons to group up as NGOs for the defence of human rights. At times, however, there is a divide between NGOs and the authorities. Some government sources have the tendency to make the controversial claim that NGOs inflate their reports for increased foreign funding.

Significantly, NGOs often intervene directly to protect the victims and seek redress. They have also begun to monitor the human rights situation more consistently. In 1996, for instance, a coalition of NGOs - the Coordinating Committee of Human Rights Organisations of Thailand - produced a relatively comprehensive human rights situation report of Thailand.¹⁶ An update is due soon. They have also been involved in the preparation of the national report under CEDAW and CRC, as well as the drafting of the law concerning the national human rights commission and the national human rights action plan. However, access of NGOs to the drafting of the initial national report under the ICPR has been limited and needs to be expanded. The process of drafting the initial report under the ICESCR has yet to begin.

This sector is a key component in human rights protection and promotion, especially as a check-and-balance against abuse of power, which often emerges from State actors. It enjoys a variety of roles with respect to advocacy, social mobilisation, reform, monitoring and intervention to protect the victims.

e) Media

Thailand has an active press. It enjoys much freedom and provides a constructive and critical avenue to monitor the work of State actors and others which have impacts on human rights. In principle, television and radio are still hampered by State control, although a system of licensing has enabled the private sector to run programmes which provide for a degree of liberal and critical thinking.¹⁷ This setting is supposed to be liberalised further under the new Constitution, which prohibits the closure of printing presses in the exercise of freedom of expression and which stipulates that mass media frequencies belong to the people. Antiquated laws, such as the printing legislation which allows State authorities to close down printing presses, and the various television- and radio-related laws which impose a state monopoly on the sector, still needed to be reformed in this regard.

f) Private Sector

The private sector has a potential role as both a promoter and abuser of human rights. The latter role is visible in the dark forces and criminal elements that hamper the effective implementation of law and policy. After all, who owns the sweatshops where child labourers are kept or the brothels where young girls are incarcerated, if not the seedy side of the private sector?

However, the private sector has much to contribute to human rights promotion and protection through monitoring situations, exerting constructive peer pressure, helping to implement the law, and adopting self-regulation mechanisms such as codes of ethics for the enhancement of conduct respectful of human rights. For instance, some members of the tourist industry have joined a campaign against child sexual exploitation. Some have come together to form the Thailand Business Coalition on AIDS to promote a humane workplace policy on AIDS. This includes no forced testing for HIV/AIDS, promotion of safety precautions such as condom use, provision of counselling and support facilities, and non-discrimination at the workplace.

Yet there remains the challenge of what to do with the not-so-good private sector, such as those elements which are involved in crime. This has been made more complex by the growth of trans-border crimes such as human trafficking. It necessitates more in-country and cross-border cooperation not only between the good parts of the private sector but also between law enforcement authorities and civil society, to stem the tide of criminality.

g) Other Catalysts

There are other catalysts for human rights who should not be forgotten. In many cases, there are volunteers who do not necessarily belong to organisations, who help to promote and protect human rights. The role of intergovernmental organisations, such as those related to the United Nations and regional organisations, also needs to be promoted in relation to human development

and human rights. For example, the Office of the UN High Commissioner for Human Rights has organised activities with Thailand and the Asia-Pacific region, with emphasis on four areas [18](#):

- development of national human rights plans;
- development of national human rights institutions such as human rights committees / commissions;
- development of human rights education;
- promotion of the economic, social and cultural rights and the right to development.

Today, the United Nations Children's Fund (UNICEF) deals increasingly with child rights issues and supports the national process of monitoring under the CRC. The International Labour Organisation (ILO) does both advocacy and programming work on labour rights. The Office of the United Nations High Commissioner for Refugees (UNHCR) does both protection and assistance work for asylum-seekers, as well as the promotion of international refugee law. It is timely that the United Nations Development Programme (UNDP) is now providing more support for the realisation of economic, social and cultural rights and the right to development in terms of advocacy, social mobilisation and action-oriented measures for review and reform.[19](#)

Targets for Specific Action:

a) Poverty, Equity and Ecology

While poverty was recognised as being in decline prior to the economic crash of 1997, the latter has led to a resurgence of poverty and unemployment. Recent data related to the basic minimum needs indicators noted above from the Ministry of Interior indicates that while the national goal is to ensure that at least 70% of the population should enjoy average incomes of 20,000 baht per capita per annum, only 49.8% of the population were in such position in 1998.[20](#) The poorest parts are the North and Northeastern provinces of Thailand.

National economic and social development plans have also recognised the increasing gap between the rich and the poor. Some 60% of the national wealth is in the hands of some 20% of the population.[21](#) While the topmost echelons are getting richer, the poorest are getting poorer in relative terms as part of a lack of equity / social justice.

The effects of poverty and the lack of equity were attenuated to some extent prior to 1997 by more emphasis on rural development and some social welfare measures such as student loans and medical care for the poor. However, important structural issues such as the reallocation of resources, especially land holdings, were not responded to adequately. In addition, the question of ecology and environmental protection emerged strongly in the 1980s and 1990s. The 1997 crash has aggravated matters, although attenuated to some extent by a social investment fund to provide loans to those in need. Major structural issues, not yet adequately attended to, include the following:

- the need for redistribution of land, especially through a progressive taxation system to enable sharing of land between the rich and the poor;
- the need to enable poor communities to inhabit forest lands, to recognise them as community forests and to act as protectors of these forests;
- the need to institute a national system of social welfare to help those in need, including through family support schemes;
- the need to cater to the needs of those in slums by the provision of basic services, job opportunities, opportunities for land sharing, and in the case of displacement, alternative land and livelihoods;
- the need to help those who are jobless by more training and job opportunities, supported by access to skills, credit, marketing and small scale industrialisation;
- the need to sustain rural development in the face of industrialisation;
- the need for more environmental protection through effective implementation of existing laws and policies, more public hearings and impact assessment, and compensation for victims affected by environmental damage.

b) Democratisation and Good Governance

The process of democratisation is a broad-based challenge that starts with the family, that reaches out to the locality, and that extends to the national and international settings. As noted above, Thailand has been enjoying the fruition of this process at the national level, especially through the new Constitution. The link with the local level is seen in that there has been a trend towards more decentralisation, especially by empowering local administrative bodies to have more decision making power in using local taxes for the purpose of local development. Previously, the green light had to come from the central administration in Bangkok.

More powers have been devolved to the two key entities at this level - the Tambon (sub-district) Council and the Local Administrative Organs (the main difference between the former and the latter is that the income of the latter is more than that of the former).

Yet, the move towards decentralisation needs to be maximised in terms of concrete participatory results. At the local level in many parts of the country, the various key entities remain the bastion of vested interests rather than representing the populace broadly. There have also been a number of difficulties with local elections affecting municipalities, with allegations of corruption and vote-buying. There is the persistent challenge of good governance, especially clean government at all levels. Targets for the future should include the following:

- the need to ensure that decentralisation is coupled with transparency and accountability;
- the need for more monitoring of local and other entities by state institutions such as the courts, the national counter-corruption commission, the election commission, and civil society watchdogs;
- the need for local and other entities to consult the public more broadly concerning local and other projects;
- the need to ensure that local and other resources are used for the public benefit rather than personal gain;

- the need for more open planning and decision-making by local and other entities;
- the need to foster a variety of mechanisms as checks-and-balances against corruption and lack of transparency.

c) Justice System

Basically, the judicial system is three-tiered in Thailand. There are the courts of first instance divided into magistrates' courts and provincial courts, with upper tiers in the form of courts of appeal and a Supreme Court. There are also a variety of special courts such as the juvenile and family courts to deal with family cases and those concerning juvenile offenders, labour courts, and the newly introduced system of taxation and intellectual property courts. While most courts are primarily staffed by professionals in the form of the judicial profession, some courts are open to the participation of civilians as lay magistrates, notably the special courts mentioned.

However, the judicial system is hampered by opacity and a backlog of cases. There is limited publication of court decisions. While Supreme Court cases are selectively published and made available to the public, the decisions at the other levels are hardly published at all. The public is reticent to comment on court cases for fear of being charged for contempt of court. The new Constitution indicates various reforms including the need to establish administrative courts to make the process quicker for cases between State authorities and the people.

The issue of transparency has also been raised with regard to the existing judicial system. For instance, the new Constitution requires that only those judges who take part in the case may render judgement concerning the case. The new Constitutional Court has also set a good precedent by publishing all its judgements and being open to public scrutiny.

With regard to other law enforcers who have impacts on the justice system, the new Constitution establishes more checks-and-balances against abuse of power by officials. For instance, while previously it was the police who had the power to issue arrest warrants, under the new law, it is the courts which have such power. The accused also has the right to legal assistance and to be taken to court within 48 hours of being apprehended. Various laws which conflict with this provision, such as the anti-Communist legislation, which allows lengthy preventive detention, have yet to be reformed. Various practices which conflict with international standards, such as the use of leg chains and capital punishment, deserve review and reform.

There is the reality that while the new Constitution recognises the right to seek bail, the poor are always disadvantaged in their access to bail, so a bail fund may be needed in future. In those provinces without juvenile and family courts, there is also the likelihood that juvenile offenders will be tried by adult courts and procedures which are not necessarily sensitive to them.

Needed improvements include the following:

- the need for more participation by civilians in the administration of justice;
- the need to train the judicial profession and law enforcers on human rights;
- the need to raise national laws and practices to international standards concerning the administration of justice;

- the need to promote transparency and to counter corruption by more careful selection of personnel and improved incentives in the justice system;
- the need to publish court decisions at all levels and to exempt comment on court decisions from the threat of contempt of court;
- the need to ensure fair treatment for all and to establish a bail fund to help those in need;
- the need to reform laws and practices which are in breach of the Constitution and international standards.

d) Women's Rights

The status of women in Thailand has improved gradually. A seminal moment was Thailand's accession to CEDAW in the 1980s and the preparation of Thailand's first and subsequent reports under CEDAW for international scrutiny.²² The past few decades have seen notable reforms to overcome instances of discrimination, such as the previous prohibition against women from becoming judges, village headmen, sub-district officials, and generals. When Thailand became a party to CEDAW, it entered seven reservations indicating that it was not yet ready to guarantee the full range of women's rights.

Those reservations included the provision concerning equal access to public office, the right to enter into a contract, the right to nationality, the right to equality in employment, the right of access to education, the right to equality in family matters, and the possibility of using the International Court of Justice to settle disputes. Due to the reforms which have taken place, all the reservations have been withdrawn with the exception of the last two reservations.

The principal impediment to equality between men and women is often the lax implementation in practice rather than the law itself. However, there are also discrepancies in law, especially in the field of family law. For example, while it is possible for a man to sue for divorce on the basis of adultery by his wife, the law imposes more conditions on a woman seeking divorce. She has to prove more than simple adultery - she has to show that the husband has been treating the other woman as though she were his wife (in effect, this would demand a public appearance rather than a clandestine relationship). In the case of an engagement, the male fiancé has a right of action against a man who has sexual relations with his fiancée. However, there is no remedy for the female fiancée against a woman who has sexual relations with her fiancé. With respect to nationality, a Thai male who marries a foreigner can seek Thai nationality automatically for the latter - the situation is different for a Thai woman who marries a foreigner.

The legislation concerning names currently obliges a woman to use her married name and the offspring of the marriage to use the father's name. There is also a regulation, which obliges women to use different prefixes to differentiate between single status and unmarried status, while there is no such obligation for men. An unmarried woman has to use the prefix of Nangsaio, while a married woman has to use the prefix of Nang. A married or an unmarried man is simply a Nai. Conversely, an interestingly legislative anomaly is that while there is an offence of rape against women, no such offence exists when this act takes place against a man. There is also no offence of rape committed by a husband against his wife.

There are a variety of new laws to protect women. The new Constitution stipulates equality between men and women. New employment, anti-prostitution and anti-trafficking legislation have been adopted in recent years. The results include the Employment Protection Act 1998 with the provision that sexual harassment in employment is now illegal. The Act for the Prevention and Suppression of Prostitution 1997 provides that the position of the prostitute is decriminalised to some extent with the aim of punishing the procurer rather than the prostitute. The Act concerning Measures to Prevent and Suppress the Trafficking in Women and Children 1998 adds that the trafficking in women and children - girls and boys - is now illegal.

However, enforcement remains weak on several fronts, and violence against women is rife. The prostitution trade is still a major problem, especially with women and children trafficked from neighbouring countries. The equality provision in the Constitution has yet to be tested in the courts, and there is a lobby which feels that it would be better to have a more specific law against discrimination.

Of course, while many reforms have taken place, there remain many forms of discrimination in practice. On the political front, while women can be elected members of parliament, there is still a paucity of women parliamentarians and cabinet members.

In other areas affecting women, poverty remains a pervasive concern for many women. While the law guarantees equal access to education, the rate of illiteracy is higher among women than men. Some educational institutions also impose a quota to limit access by women. Opportunities in a variety of forms of education should be broadened. On the employment front, the double or triple tasks imposed upon women - i.e. child rearing, employment and housework, make enormous demands on women's time and health. In employment situations, despite laws guaranteeing equal pay between men and women for equal work, the situation is often the contrary. With regard to health services, there are difficulties faced by those of a lower economic stratum in their access to health services. The abortion laws are also restrictive in Thailand. Abortion is illegal except in two situations: when there has been rape and when it is for the mother's health.

Areas of reform for the future include the following:

- the need to reform family law to ensure equality between men and women;
- the need to promote more effective law and policy enforcement on the basis of non-discrimination;
- the need to counter violence against women and to protect women from abuse and exploitation;
- the need to foster more women's participation at all levels, including in political and decision-making positions;
- the need to provide opportunities for income generation and support systems for women to cope with the different demands of life;
- the need to broaden educational access to women;
- the need to ensure equality of treatment in employment;
- the need to promote access to health services.

e) Child Rights

The profile of child rights was raised markedly in the early 1990s when Thailand became a party to the CRC. At the time of accession, Thailand entered three reservations to indicate a degree of reticence towards the right of the child to acquire a nationality; the rights of refugee children; and the right of the child to an education sensitive to his / her indigenous culture. The third reservation has been withdrawn, as the educational policy is now in favour of internationalisation that also opens the door towards indigenous culture. However, the two other reservations remain primarily because of the fear that non-nationals, especially refugee children, would impose inordinate demands on Thai law, including the grant of Thai nationality.²³

While a number of national laws and policies pertain to children, Thailand does not yet have a comprehensive Children's Code to cover broad aspects of child rights. A number of laws affecting children are also antiquated and need to be reformed, e.g. various revolutionary announcements from past military governments.

In reality, the situation concerning children has improved on several fronts. Infant mortality was in decline for many years prior to the advent of HIV/AIDS, and there has been extensive vaccination against basic diseases. However, these achievements in child survival are being undermined by the threat of HIV/AIDS. With respect to child development, access to primary school is high, at over 90%.²⁴ However, child protection issues are critical, and these involve primarily situations of violence, abuse, neglect and exploitation.

In this regard, there have been some notable improvements. For instance, the recent employment protection legislation raised the minimum age of employment from the previous 13 years of age to 15. The new law against prostitution seeks to protect those under 18 absolutely against sexual exploitation, irrespective of the child's consent. The customer is now criminally liable where he / she has sex with those under 18 years of age, and there are severe penalties. With regard to the law against the trafficking in women and children, there are more severe penalties against the violators. There is also an innovative provision to treat children as victims in cross-border cases, rather than as illegal immigrants.

In 1999, this was further concretised by a memorandum of understanding between government agencies and NGOs to place these victims in the care of social welfare systems and not the immigration jail. The year also witnessed the passage of a new criminal procedure law to allow the videotaping of child witnesses in criminal cases (so as to avoid multiple questioning of the child victim / witness, which can lead to re-traumatisation of the child); as well as the possibility of taking early depositions of the child's evidence.

Despite these developments, law enforcement leaves much to be desired and a number of children are still victimised by violence. The scenario has become more complicated due to the cross-border nature of such violence, especially trafficking for labour and sexual purposes. The phenomenon is also plagued by adults who use children to sell drugs and as instruments of crime.

Child protection issues involve other groups such as the children who have to face the juvenile justice system, street children, refugee and displaced children, the children of minorities and indigenous communities, and children with disability. With regard to the first group mentioned, while family / juvenile courts exist in parts of the country to deal with these cases, in those

provinces where these courts do not exist, juvenile offenders are dealt with in adult courts which are not necessarily sensitive to them. In the case of the latter, they might also be subjected to adult penalties such as imprisonment in adult courts, as opposed to child / youth facilities. Corporal punishment remains a concern in both public and private institutions.

With regard to street children, while a variety of services are available to help them, the root causes of their plight have yet to be dealt with more effectively. These are often linked with the economic plight of families and migration. At times, it is adults who use the street children to earn money. Services also need to be more attuned to the needs of the children. For instance, while drop-in facilities to help the children are welcome, street children often need a 24-hour facility or night facility rather than an exclusively day-time facility. Schooling may need to be more flexible, e.g. the possibility of street-based schools with flexible hours.

With regard to refugee children, state authorities prefer to call them displaced children rather than refugee children. This is partly because Thailand has not acceded to the 1951 Refugee Convention and the 1967 Protocol discussed below. There is a tendency to classify them as illegal immigrants entering the country in breach of the national immigration law. However, temporary refuge is allowed for most cases. In general, local settlement in Thailand is not allowed unless there are ethnic links with Thailand. The solutions adopted by the authorities are thus resettlement in other countries or voluntary repatriation, with temporary refuge as a transitory measure.

With regard to minority and indigenous children, there are issues ranging from statelessness to cultural practices. A number of them, especially in the hill tribes in northern Thailand, are still stateless, even though born in Thailand. National law and policy have attenuated this position by granting those who are stateless access to primary education. On a positive front, the national curriculum allows for a share of the curriculum to be in local languages, thus opening the door to minority and indigenous culture. Yet there is uncertainty concerning the process by which those who are stateless would acquire certificates of performance at school and how they can further their studies beyond primary education.

In relation to children with disabilities, there is room for a more inclusive policy to cater to their needs, including access to education and other facilities. Regrettably, there is still discrimination against those with disabilities, and various facilities are insensitive to them, e.g. lack of ramps for wheelchairs.

On another front, while verbally most people would agree with the need for child participation, the practice is often deficient. This is hampered by the cultural stereotype that 'children should be seen and not heard'.

Areas needing future reforms include the following:

- the need to reform antiquated laws and ensure their consistency with the CRC;
- the need to adopt a comprehensive Children's Code on the basis of the CRC;
- the need to enforce more effectively laws and policies which are child-sensitive;
- the need to take stronger action against violence, abuse, exploitation and neglect of children;

- the need for more preventive and remedial action, including more campaigns against drug abuse and law enforcement against crime;
- the need to reform the juvenile justice system in keeping with international standards;
- the need to enhance services for children and their families in economic difficulties, including street children;
- the need to deal humanely with refugee and displaced children and not to treat them as illegal immigrants but as victims;
- the need to respond to the issue of statelessness expeditiously;
- the need to liberalise the law , policy and practice towards minority and indigenous children;
- the need to adopt a more inclusive policy towards those with disabilities;
- the need to provide more avenues for child participation.

f) Disability and AIDS

The right of those with disabilities to receive help from the State is guaranteed under the current Constitution. It is bolstered by the Rehabilitation of Those with Disabilities Act 1991, which provides for State facilities to help those with disabilities and the establishment of a fund for them. There is a system of registration which should enable the State to provide direct assistance. Previously, those with various forms of disabilities were prevented from voting in national elections. This has now been reformed.

Yet, various discrepancies exist. These include various forms of discrimination against those with disabilities, inadequate facilities, and limited access to the wherewithal of life. Examples include the lack of ramps from pavements already mentioned, limited availability of schools which adopt policies to include those with disabilities in conjunction with other students, poor job opportunities, and limited social welfare assistance. The 1991 law itself needs to be reformed, as there is a discriminatory provision which allows employers to reject those with disabilities if the former makes a financial contribution to the fund for those with disabilities.

With regard to the situation of HIV/AIDS, there are a very large number of people infected and affected by the disease. To Thailand's credit, the national policy on the issue is based upon a humane approach with emphasis on voluntary testing and counselling for HIV/AIDS, non-discrimination, safety precautions, and support facilities. This has led to a decline in the rate of infections, although the numbers are still large. In practice, there remain various impediments such as forced testing, discrimination, and limited access to medical care, especially the anti-retroviral drugs which can help to slow down the spread of the disease.

Areas needing reform for the future include the following:

- the need to revise the legislation on disabilities to ensure effective access to State assistance and eliminate discrimination, in addition to effective implementation;
- the need for more facilities sensitive to those with disabilities;
- the need to counter discrimination against those with HIV/AIDS;

- the need to provide more access to assistance for those with HIV/AIDS, including medical care and relevant medicine.

g) Workers

There are two groups of workers at stake: Thai workers and migrant workers. Basic minimum wages and the principle of equal pay for equal work, irrespective of gender and national origin, have been on the books for many years. The law concerning the protection of workers' rights has improved in recent years on some fronts. The Employment Protection Act mentioned above, for example, provides for more protection of young workers against exploitation, and sexual harassment is forbidden under this law. For several years now, there has existed a social security fund for employees, to which employers, employees and the State contribute. This provides a degree of social insurance for workers and their families in relation to illnesses, accidents and old age. There is also a Provident Fund to help workers save for their later years.

However, there are various shortcomings. First, during Thailand's undemocratic era, government policy was to repress rather than foster freedom of association and collective bargaining in the form of trade unions and their federations. Second, state enterprises are still unable to establish trade unions, as this right was taken away from them after the coup d'etat of 1991 and has yet to be restored. Third, employment protection and benefits tend to cover those in the formal sector, basically medium and large scale industries. The informal sector, especially small-scale industries and the agricultural sector, generally falls outside the application of labour law.

Fourth, training and capacity building of the labour force is still limited. As Thailand moves towards more high technology industries, it is increasingly found that there is a lack of skilled manpower to respond. This is in spite of the current economic crisis which has made many people jobless.

Fifth, enforcement is still weak on many fronts, as witnessed by persistent criticisms of child labour and other forms of labour exploitation in the country. Sixth, there is the challenge of a massive group of foreign migrant labourers from neighbouring countries.

With regard to these migrant labourers, many of them have entered the country illegally and undertake low-paid jobs often shunned by the Thai workforce. A key root cause of this migration is poverty in their country of origin. Often they are exploited and do not receive the basic minimum wages, even though by Thai labour law they should do so. Currently, there is a government-sanctioned drive to push them back to their country of origin, leading to some harsh realities. Safety of return to their countries of origin is not ensured, and in some cases where they are deported, they find their way back into Thailand again. The situation is rendered more complex by the fact that in recent years, there has been extensive cross-border trafficking of workers from neighbouring countries into Thailand and from Thailand into other countries. The most tragic cases are often the women and children who end up in sweatshops and brothels.

Areas needing reform for the future include the following:

- the need to effectively implement labour law to protect employees from exploitation and provide more access to social security;

- the need to liberalise freedom of association, including the possibility of state enterprises to set up their trade unions, and collective bargaining;
- the need to promote humane treatment of migrant workers, local and foreign;
- in the case of foreign migrant workers, the need to ensure that their basic rights are respected without discrimination, and to guarantee safety in the process of return to their country of origin;
- the need to counter the trafficking of human beings into the work force.

h) Refugees and Displaced Persons

In Thai law and policy, the term 'refugees' is not generally used. This is to prevent any formal affiliation with the international treaties on refugees to which Thailand has not acceded. Locally, those seeking refuge in Thailand tend to be called displaced persons or illegal immigrants.²⁵

The country has witnessed the passage of a huge number of those seeking refuge from neighbouring countries for the past few decades. Currently, there are some 100,000 Burmese who have sought refuge and are on Thai territory. Despite the technicality in Thai law which views them as illegal immigrants subject to the possibility of deportation, the general policy is to accord them temporary refuge, and they are not generally pushed back to their country of origin from which they have fled.

However, their position is often precarious. At times, their camps are too near the border, where there is fighting. At times, they are viewed as depleting Thailand's resources. While the country grants them temporary refuge, there is no policy to grant them permanent settlement in this country, unless there are some ethnic links. Thailand still sees third-country resettlement and voluntary repatriation as the maximum solutions. While there have been longstanding discussions on whether the country should accede to the 1951 Refugee Convention and its 1967 Protocol, key policy-makers have consistently rejected the idea of accession.

Areas of reform for the future include the following:

- the need to retain a humane policy towards those seeking refuge in Thailand and adhere to international standards;
- the need to ensure their physical safety and not to push them back to areas of danger;
- the need to promote a variety of solutions for those seeking refuge; in the case of repatriation to the country of origin, this needs to be done on the basis of voluntariness and safety;
- the need to help local populations living near those seeking refuge in the country so as to avoid discrimination and antipathy.

i) Minority and Indigenous Communities

Hill tribes in Northern Thailand form the main group of minorities in Thailand. While government policy in the past few decades has been to access this group and help them to develop, many are still on the periphery of the development process. State policy has become more open to their

culture. This is seen by the recognition that a proportion of education can be in ethnic languages catering to these groups. In practice, there remain several difficulties. First, many are still stateless and are awaiting Thai nationality. Second, their traditional nomadic existence is having to change, implying pressures on livelihoods and occupations. Third, environmental concerns may at times conflict with traditional practices. Fourth, the geographical distance between these communities and State services is often formidable.

On another front, there is the Muslim community which constitutes the majority population in Southern Thailand: they are indigenous to the land. A key concern for this group has been to seek greater political participation and to protect their culture, especially religion, language and dress. At times, there have been conflicts on these matters, and there have had to be substantial negotiations between policy-makers and community leaders for compromises. While Muslim law prevails in the four Southern provinces of Thailand with respect to family matters, there is also a lobby which wishes to see the application of such law to all Muslims wherever they are in Thailand.

Areas needing reform for the future include:

- the need to grant nationality more expeditiously to hill tribes in the country;
- the need to counter discrimination against minorities and indigenous communities;
- the need to respect the culture of minorities and indigenous communities in keeping with international standards;
- the need to counter negative traditional practices, such as early and / or forced marriages;
- the need to foster greater participation of minorities and indigenous communities in the political life of the country.

Directions:

As the country enters the new millennium, the following directions will become increasingly pertinent to the pursuit of human rights and human development:

a) Preventive Measures

- more anti-poverty programmes in the form of access to education, employment, skills development, income generation, access to credit and technology, and livelihood opportunities;
- more social safety nets in the form of effective help for groups in need;
- more equitable distribution of income and resources;
- more action to promote a sustainable development process and environmental protection;
- more human rights education and training for law enforcers and members of the public to nurture a culture of human rights;
- more reforms of laws, policies and practices which inhibit the enjoyment of human rights and which impede human development;

- more recognition of civil society members, including NGOs, in monitoring against abuses;
- more mechanisms to ensure government transparency and good governance.

b) Remedial Measures

- more access to human rights and related mechanisms / personnel to seek redress in the case of human rights violations;
- more possibilities for 'class actions' on behalf of the public interest against transgressors;
- more reforms to improve the justice system to make it less expensive, more participatory, less opaque, and more sensitive to human rights and human development;
- more safeguards for accountability and compensation against impunity;
- more effective law and policy enforcement against criminal elements and human rights violators.

c) Participatory Measures

- more accession to international human rights treaties and more effective implementation of international standards at the national and local levels, while upholding local wisdom;
- more withdrawals of reservations entered to these treaties;
- more empowerment of civil society members, including NGOs, as advocates and protectors of human rights and promoters of human development;
- more decentralisation and devolution of powers to localities as entry points for the promotion of human rights and human development;
- more social mobilisation of the public to foster human rights and human development;
- more involvement of marginalised groups in planning, implementing and evaluating programmes of concern to them;
- more protection for human rights defenders;
- more popular participation in the development process as part of broad-based democracy from the grassroots level upward to the national level.

Vitit Muntarbhorn is a Professor at the Faculty of Law, Chulalongkorn University, Bangkok. He was formerly UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. This study covers the human rights situation in Thailand till the end of 1999 and was prepared for UNDP.

Notes

1 For general reading, see: V.Muntarbhorn and C.Taylor, *Roads to Democracy: Human Rights and Democratic Development in Thailand* (Montreal: Centre International des Droits de la Personne et du Developpement Democratique, 1994); The Co-ordinating Committee of Human Rights Organizations of Thailand (CCHROT), *Human Rights in Thailand: Report 1996* (Bangkok: CCHROT, 1997); CCHROT, *Human Rights* (Bangkok: CCHROT, 1997) (in Thai and English); Human Rights Watch, *Human Rights Watch World Report 1999* (New York: Human Rights Watch, 1998), pp. 211-214.

2 This has been acknowledged officially, e.g. in the various National Economic and Social Development Plans. See further: National Economic and Social Development Board, *The Eighth National Economic and Social Development*

- Plan (1997-2001) (Bangkok: National Economic and Social Development Board, 1996), p.1. (In Thai)
- 3 Bangkok Post, Mid Year Economic Review (Bangkok: Bangkok Post, 1999).
- 4 See further, UNDP, Human Development Report of Thailand 1999 (Bangkok: UNDP, 1999) and M. Jampa, Introduction to the Constitution of 1997 (Bangkok: Nittitham Press, 1999) (in Thai).
- 5 The Office of the Council of State, Constitution of the Kingdom of Thailand (1997) (Bangkok: The Council of State, 1998). (English translation)
- 6 See further, V.Muntarbhorn, "Human Rights in Thailand", in L.Palmier (ed.), State and Law in Eastern Asia (Aldershot: Dartmouth Press, 1993), pp.103-140.
- 7 Ibid.
- 8 Chapter III of the 1997 Constitution is titled "Rights and Liberties of the Thai People" (emphasis added by the author). Op.cit. note 5.
- 9 Section 4 of the 1997 Constitution states as follows: "The human dignity, rights and liberties of the people shall be protected." Ibid.
- 10 Op.cit. note 2.
- 11 Two nationality laws of Thailand were promulgated in 1992 to this effect.
- 12 The Act for the Promotion and Protection of the Quality of the National Environment was promulgated in 1992 to this effect.
- 13 Royal Gazette, Volume 116, Part 118 (25 November 1999), pp.1-13. (In Thai)
- 14 Ministry of Interior, Report of the Quality of Life of the Thai People (Bangkok: Ministry of Interior, 1999), pp.2-4. (In Thai)
- 15 Dika (Supreme Court) Decision No.2015/2019 (22 April 1999). (In Thai)
- 16 Human Rights in Thailand: Report 1996, op. cit. note 1.
- 17 See further, V.Muntarbhorn, Mass Media Laws and Regulations in Thailand (Singapore: Asia Media Information and Communication Centre, 1998).
- 18 See further, Conclusions of the Inter-Sessional Workshop, Workshop on the Development of National Plans of Action for the Promotion and Protection of Human Rights in the Asia-Pacific Region, Bangkok ,5-7 July 1999: <http://www.unhchr.ch/html1/menu6/bgkcncis.htm>.
- 19 UNDP, op. cit. note 4.
- 20 Op. cit. note 14, p.41.
- 21 Op.cit. note 2.
- 22 See further: National Commission on Women's Affairs, Thailand's Combined Second and Third Report to the Committee on the Elimination of All Forms of Discrimination against Women (Bangkok: National Commission on Women's Affairs, Office of the Prime Minister, 1996).
- 23 See further, Initial Reports of State Parties Due in 1994: Addendum - Thailand, UN Doc. CRC/C/11/Add.13 (September 1996).
- 24 Ibid., para.342.
- 25 V. Muntarbhorn, The Status of Refugees in Asia (Oxford: Clarendon Press, 1992), pp.125-41.