



## Recent Developments of Legal System in Thailand

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This paper is divided into four parts. Firstly, an overview of legal system in Thailand will be briefly explained. The next section will focus on several legal frameworks which should be highlighted. In this part, recent developments of Thailand's legal and institutional frameworks regarding good governance and transparency strengthening, and rights and liberties protection will be clarified. Then, I would like to draw more attention to Thailand's role on setting international standards and norms. Finally, this article will end with conclusions and recommendations. However, according to the word limit, the primary focus of this paper is on the developments of the Thai legal system during 2004 - 2009, rather than the factors which push such developments on or off such as globalization, pressures from developed countries, or complicated political situations in this country.

### 1. Brief background of legal system in Thailand

#### Historical overview

Since the 12<sup>th</sup> century, Sukothai period, the Thai legal system has continuously been formed step by step.<sup>1</sup> Later, during the colonialism, many "modern" Thai laws were very much influenced by European continental "civil law", especially when the four major codes (the Civil and Commercial Code, the Penal Code, the Civil Procedure Code, and the Criminal Procedure Code) were being drafted.<sup>2</sup> However, the intrusion of "common law" can be also found in this legal system particularly in matters of statutory interpretation and rules of evidence. Moreover, although there is no formal acceptance of the doctrine of binding "precedent" as found in "common law" systems, lower courts tend to follow earlier decisions of higher courts.<sup>3</sup>

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<sup>1</sup>B. Uwanno and S. Sathirathai, "Introduction to the Thai legal system," in Legal systems in the ASEAN Region (Bangkok, Amarin Printing Group Co., Ltd., 1978) pp. 75 – 80.

<sup>2</sup> V. Muntarbhorn, The Challenge of Law: legal cooperation among ASEAN countries (Bangkok, Institute of Security and International Studies, Chulalongkorn University, 1987) p. 76. and C. Sison (ed.), "Thai Legal System: Historical review," in Constitutional and Legal Systems of ASEAN countries, (Manila, The Academy of ASEAN Law and Jurisprudence, University of the Philippines Law Complex) p. 313.

<sup>3</sup> V. Muntarbhorn, *supra*, n. 2, at 79.



While the western systems seem to be largely imported in the system, traditional laws, such as Muslim law, still exist.<sup>4</sup> In marriage and inheritance cases involving Muslims in the four southern provinces of Thailand – Pattani, Satun, Yala, Narathiwat, Muslim law applies.<sup>5</sup>

#### Sources of the Thai law

In order to have more understanding on the Thai legal system, sources of Thai law, namely legislation, customs, general principle of law, judicial decisions, and opinions of legal scholars, should be mentioned. Shortly, the first and the most important source of Thai law is the legislation. Indeed, since the change of an absolute monarchy to a constitutional monarchy in 1932, the constitution of Thailand is the supreme law of the land. Then, apart from the four major codes mentioned above, the King, with the recommendation and consent of the Parliament, can pass Acts having the force of law. Moreover, within scopes under the enabling Acts, the executive branch can issue subordinate legislative categorized as royal decrees, ministerial regulations, etc.<sup>6</sup> Last but not least, it should be noted that the role of the rest sources of law is quite limited in this system.

#### International treaties

According to the enforcement of international treaties in the system, Thai law has adopted the dualist theory. Principally, a treaty comes a part of Thai law when the Parliament passes an act to enforce that particular treaty. Otherwise, the application of the treaty will not be honored in the Thai courts and will only bind the government as an executive agreement with foreign countries.<sup>7</sup>

## **2. Highlighted legal frameworks**

During 2004 - 2009, there were almost a thousand of Thai laws enacted. The most important one is the Seventeenth Constitution of the Kingdom of Thailand (2007). In fact, many scholars frequently point that the sixteenth one (1997) known as the People's Constitution was overturned by a coup in 2006. In addition, the present one seems to be a reaction against the previous Governments which was embroiled in perceived or real conflict of interests. However, the Constitution has created some interesting innovations such as the notion of the rule of law is included; the powers of the independent

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<sup>4</sup> Ibid, p. 76.

<sup>5</sup> Ibid.

<sup>6</sup> B. Uwanoo and S. Sathirathai, *supra*, n.1, at 80-82.

<sup>7</sup> Ibid, p. 82.



organizations are expanded; and many provisions on human rights are given more details than ever.<sup>8</sup>

The reasons why the areas of good governance and transparency strengthening and rights and liberties protection have been underlined are, firstly, in both areas, various legislation have been modified and set up. Next, not only the legal frameworks have been developed but also the in-charge institutions have been empowered or reorganized. Lastly, the aspiring standards of the set of legislation have been framed by relevant international treaties.

### **2.1 Good governance and transparency strengthening**

#### The Constitution

Actually, the issue of anti-corruption was also highly concerned in the earlier constitutions, in particular, the 1997 one. However, the 2007 Constitution has created some interesting innovations in order to strengthen the good governance and transparency in the country, as follows;<sup>9</sup>

- The inclusion of the notion of rule of law: in carrying out their functions, Parliament, the Cabinet, the courts and other institutions under the Constitution and governmental organs must abide by the rule of law.<sup>10</sup> From civil society's point of view, for the boarder and newer implementation of the word "rule of law" mentioning, the principle of good governance should be covered.<sup>11</sup>

- Limits imposed on the executive branch of Government, especially the top-notch of the executive branch: for example, a person elected as Prim Minister cannot stay in power for more than eight years;<sup>12</sup> the Premier, the spouse and under-aged children must declare their assets fully, and they are not allowed to have a hand in companies, especially those in the media and telecommunication industry;<sup>13</sup> and one fifth of parliamentarians can propose a no-confidence vote against the Prime Minister (a lower number than the two-fifth rule under the 2007 Constitution).<sup>14</sup>

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<sup>8</sup> V. Muntabhorn, "Deconstructing Thailand 's (New) Eighteenth Constitution," *Thailand Law Journal*, 2009, Spring Issue 1, Volume 12, p. 1.

<sup>9</sup> V. Muntabhorn, *supra*, n. 8, at 1, and V. Muntabhorn, "Rule of law and the constitution: a stress test for this country," *Bangkok Post*, 23 May 2009.

<sup>10</sup> Section 3 of the 2007 Constitution of the Kingdom of Thailand

<sup>11</sup> V. Muntabhorn, *supra*, n. 9.

<sup>12</sup> Section 171 of the 2007 Constitution of the Kingdom of Thailand

<sup>13</sup> Section 265, 269 and 48 of the 2007 Constitution of the Kingdom of Thailand

<sup>14</sup> Section 158 of the 2007 Constitution of the Kingdom of Thailand



- Powers of the independent agencies to protect people: the Ombudsperson will be able to scrutinize the conduct of parliamentarians and other political office-holders for ethical purposes.<sup>15</sup>

- Powers of the courts and judges: high ranking judges will sit in various selection committees to vet candidates for key organs such as the Senate and independent agencies, such as the Counter Corruption Commission and the Election Commission.

- Participation of people in order to question politicians, submit laws and seek transparency in Government: for example, a minimum of ten people will be able to propose a new law, as compared with fifty thousand under the sixteenth Constitution;<sup>16</sup> a minimum of twenty thousand persons will be able to petition the Senate to dismiss the Prime Minister and other officeholders;<sup>17</sup> and local Government bodies will have to submit their plans and related budgets to the local people, as well report their implementation for scrutiny.<sup>18</sup>

#### The latest institution to combat corruption

In the past, the duty to investigate corruption problems among MPs, senators, cabinet members, and high government officials, including the members of the independent government bodies and law courts mainly belonged to the National Counter Corruption Commission (NCCC).<sup>19</sup> However, for more effective achievement, the Public Sector Anti-Corruption Commission (PSACC) was recently established under the Administrative Measures to preventing and combating corruption 2008.<sup>20</sup> The duty of new institution is focusing on the case committed by the general government officers.

#### The United Nations Convention against Corruption (UNCAC)

Apart from the developments mentioned above, there are still something needs to be done because Thailand is preparing to ratify UNCAC, the main set of international standards to combat corruption. In order to complete the gaps between the domestic legal frameworks and the UNCAC standard, several proposed bills are waiting for approvals from the Parliament, for example;

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<sup>15</sup> Section 244 of the 2007 Constitution of the Kingdom of Thailand

<sup>16</sup> Section 163 of the 2007 Constitution of the Kingdom of Thailand

<sup>17</sup> Section 164 of the 2007 Constitution of the Kingdom of Thailand

<sup>18</sup> Section 281 – 290 of the 2007 Constitution of the Kingdom of Thailand

<sup>19</sup> P. Phongpaichit, “Good Governance: Thailand’s experience”, paper for Asia Pacific Finance Association (APFA) annual conference, Bangkok, July 2001, p. 4.

<sup>20</sup> See [http://www.pacc.go.th/page\\_about\\_us.php](http://www.pacc.go.th/page_about_us.php)

- According to the term “public official”, the definition under Thai penal law is narrower than provided in Article 2 of the UNCAC. The term has been interpreted to cover only Thai officials. Therefore, at present, the act of giving a bribe to a foreign public official cannot be punished.<sup>21</sup>

- There is still a gap in the case of giving a bribe to a witness (Article 25(a) of the UNCAC)<sup>22</sup>

- The international co-operation in locating the proceeds of corruption and extradition are provided only on the basis of reciprocity.<sup>23</sup>

## **2.2 Rights and liberties protection**

Thailand is now party to seven core international human rights instruments namely; Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and Convention on the Rights of Persons with Disabilities (CPRD). As a result, the Government is strongly committed to the fulfillment of the obligations under such conventions by continually establishing various legal and institutional frameworks.

### Rights of the child

The Promotion of Child and Youth Development Act 2007 contributes directly to the promotion of programmes and activities for children and youth at all levels.<sup>24</sup>

### Women’s rights

The Name Act (2004 Amendment) grants married women the right to choose a family name<sup>25</sup> whether the surname of the husband or to retain their original surname.

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<sup>21</sup> “Criminalization, issues in the investigation and prosecution of corruption, handling of assets, mutual legal assistance and extradition,” a report of the tenth international training course on the criminal justice response to corruption, pp. 192-193.

<sup>22</sup> Ibid, p.193.

<sup>23</sup> Ibid, pp.195-196.

<sup>24</sup> Ministry of Foreign Affairs, Thailand’s contributions, commitments and voluntary pledges to the promotion and protection of human rights: Election to the Human Rights Council for the term 2010 – 2013.

<sup>25</sup> Committee on the Elimination of Discrimination against Women, thirteenth session 3 February 2006, Concluding comments of the Committee on the Elimination of Discrimination against Women: Thailand, CEDAW/C/TH/CO/5, p.2.



The Female Title Act 2008 allows married or divorced women to choose titles as Miss or Mrs.

The Civil Code Amendment Act (No. 16) 2007 provides women with equal rights to claim for divorce and compensation.

The Protection of Victims of Violence in Family Act 2007 establishes the definition of domestic violence, and provides compensation and rehabilitation for the victims and means to protect victims from domestic violence.

The Criminal Code Amendment Act (No.19), 2007 expands the definition of rape to cover raping of people of all sexes, all types of sexual penetration, and criminalization of marital rape and imposes more severe penalties on offenders who engaged in all forms of rape and sexual abuse. It should be noted the bill gives a broader definition of rape to cover female offenders and homosexual rapists.<sup>26</sup>

The Criminal Procedure Code Amendment Act 2007 suspends imprisonment sentence imposed on an offender who is pregnant or raising a child under the age of three and confines pregnant offenders or offenders with children under three years old in a suitable place other than prisons during a period of suspension.<sup>27</sup>

#### Combating human trafficking

The Anti-Trafficking in Persons Act 2008 would enable Thailand to deal with problem more effectively than before. Trafficking in persons involves the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force for the purpose of exploitation. Moreover, whoever commits an offence of trafficking in persons will face a jail term of between four and fifteen years and a fine of between 80,000 and one million baht, while shelter and other necessities including physical, psycho-social, legal educational, and health care provided to victims.<sup>28</sup> Lastly, the law has formed the Anti-trafficking in Persons Committee, chaired by the Prime Minister to offer recommendations to the Cabinet concerning the policy on prevention and suppression of trafficking in persons.<sup>29</sup>

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<sup>26</sup> Mathawee, "Thailand outlaws marital rape," Pattaya Daily News, 22 June 2007

<sup>27</sup> Ministry of Foreign Affairs, *supra*, n. 24.

<sup>28</sup> Ministry of Foreign Affairs, *supra*, n. 24.

<sup>29</sup> The Government Public Relations Department, "Thailand's First Anti-Trafficking in Persons Act Has Come into Force," Inside Thailand, 10 June, 2008, <<http://thailand.prd.go.th/print.php?id=3495&type=inside>>, accessed 24 June 2009.



### Migrants

The Labour Protection Act 2008 guarantees registered migrants the same rights as Thai workers which include minimum wage equal to Thai labour, holiday and sick leave from work, overtime wages, clean accommodation and basic health insurance as well as basic education for their children.

The Employment of Aliens Act, 2008 ensures that after a migrant worker passes a physical health examination certified by the Ministry of Public health, he/she will receive a health insurance card, which must then be presented, with other relevant documents, to the Ministry of Labour when applying for a work permit. The Act also imposes heavier penalties in employers who engaged in human trafficking and forced labour.<sup>30</sup>

### Minorities

The Constitution guarantees the right to traditional local communities to enjoy their own culture and traditions and right to preserve natural resources and local environment and these communities as collectives will be entitled to take action in courts.<sup>31</sup>

The Civil Registration Act 2008 provides all children born in Thailand with the rights to birth registration, including stateless children. This would further result in their entitlement to basic health services and education as well as in obtaining permission for temporary residence in the country without an illegal status.

The Nationality Act, 2008 provides the right to nationality to stateless people who were born in Thailand including their offspring. The Act stipulates that in granting Thai nationality to a person, consideration must be based both in the interests of national security and human rights, the first time that the human rights dimension has been taken into account in this respect. The Act also facilitates the process of obtaining Thai nationality by empowering the district officers to grant approvals whereas in the past such approvals had to be granted by the Minister of Interior alone. Outreach efforts have been undertaken to promote awareness regarding the right to birth registration and the right to citizenship of the highland minorities.<sup>32</sup>

### Person with Disabilities

The Persons with Disabilities' Quality of life Promotion Act 2007 is a comprehensive rights-based law for persons with disabilities and contains a strong anti-discrimination section.

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<sup>30</sup> Ministry of Foreign Affairs, *supra*, n. 24.

<sup>31</sup> Section 66 - 67 of the 2007 Constitution of the Kingdom of Thailand

<sup>32</sup> Ministry of Foreign Affairs, *supra*, n. 24.

The Persons with Disabilities Education Act, 2008 is intended for persons with disabilities to be able to access education services and other resources at all levels and to improve the Thai educational system to enhance their quality of life and independent living through empowerment.<sup>33</sup>

#### Freedom of speech and expression

The Printing Act 2007 repealed the 1941 Printing Act that authorized state officials to control the printed media and prohibit its distribution. It also lifted all censorship provisions contained in the previous Act.

#### Consumer protection

The Act on Court Proceedings for Consumer Protection 2008 or “Consumer Cases Act” provides rules governing court proceeding. The simple, quick and cheap proceedings and the power of the court to award a boarder range of damages will get rid of obstacles for consumers in initiating an action against a business.<sup>34</sup> Under this law, the burden of proof falls on the defendants, who are required to prove in court that alleged damage was not a result of their negligence.<sup>35</sup>

The Act on Liability for Injuries from Unsafe Products 2008 or “Product Liability Act” aims to provide adequate protection to consumers from damages sustained as a result of unsafe products.<sup>36</sup>

#### Complaints procedures

In general, among other innovations, many rights in the Constitution can directly be applied in the courts without the need to have other law. Moreover, individuals are now able to access the Constitutional Court directly to question the constitutionality of laws.<sup>37</sup> In addition, the National Human Rights Commission is currently able to take cases directly to court, in its own name and on behalf of the victims.<sup>38</sup>

#### The ratifying of the other core international human rights treaties

There are two more core international human rights instruments which Thailand have not ratified yet, which are the International Convention for the Protection of All Persons Enforced Disappearance (ICED) and the International Convention on the Protection of the

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<sup>33</sup> Ministry of Foreign Affairs, *supra*, n. 24.

<sup>34</sup> C. Supvoranid, “New era of Thai consumer protection,” (Bangkok) 12 January 2009.

<sup>35</sup> S. Glahan, “Consumer law bares its teeth: now the aggrieved have a real chance of fighting for their rights”, Bangkok Post, 3 March 2009.

<sup>36</sup> C. Supvoranid, *supra*, n. 34.

<sup>37</sup> Section 212 of the 2007 Constitution of the Kingdom of Thailand

<sup>38</sup> Section 257 of the 2007 Constitution of the Kingdom of Thailand



Rights of All Members of their Families (ICRMW). Fortunately, the Government has attempted to consider the possibility for Thailand to be their Member State.

### **3. Thailand's role in setting international standards**

At this moment, Thailand's ambition is not only trying to improve our legal and institutional standards, but also taking a role in setting up international standards for all mankind. So that, the starting point is Thailand's proposal on the draft "United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders" (the draft Rules).

The draft Rules originates from a project called "ELFI" (Enhancing Lives of Female Inmates) which is the initiative of Her Royal Highness Princess Bajrakitiyabha, who has a keen interest in helping and supporting disadvantaged female inmates in the criminal justice system. Accordingly, the Ministry of Justice assigned the Office of Justice Affairs as an implementing agency for the ELFI Project.<sup>39</sup>

The ELFI Project is based on the premise that the applicable international rules on prison regime, that is, the 1995 United Nations Standard Minimum Rules for the Treatment of Prisoners have been existence for more than 50 years. During the time, the problem of women prisoners was not as serious as it is in the present. Therefore, Thailand deems it timely and appropriate to push forward this project internationally.<sup>40</sup>

The importance of ELFI project is that it emphasizes the development of the treatment of women prisons in the correctional system by raising international awareness. It is not only that Thailand would benefit from this project, but also it would encourage the world community to improve the treatment of women prisoners to be in line with the international human rights regime, which has increasingly embraced the gender sensitive approach.<sup>41</sup>

The proposal of Thailand on the draft Rules is not intended to create the differences between men and women prisoners, but to create a gender equality approach to the treatment. Moreover, the Rules are not intended to replace or amend the 1995 Standard Minimum Rules for the Treatment of Prisoners, but they aim to create an internationally accepted point of reference on the treatment of women prisoners for prison authorities worldwide, especially in its relation to gender differences and unmet needs of women. Additionally, the Rules are not intended to grant women prisoners more privileges or a

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<sup>39</sup> Ministry of Justice, Thailand, Background paper on the draft "United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders", 2008, pp. 2-3.

<sup>40</sup> Ministry of Justice, Thailand, supra, n. 34, at 2-3.

<sup>41</sup> Ibid.



better treatment than those of their male counterparts, but they aim to narrow the gap of negligence so that the specific needs of women prisoners can be fulfilled.<sup>42</sup>

The draft Rules place great emphasis on gender sensitive issues and specific needs of women. The texts had been derived from various studies and researches on the treatment of women prisoners in many countries, including a number of existing international principles and rules that are related to this issue. The draft Rules are divided into 4 parts:

Part 1 Rules of General Application – covers the general management of institutions which applies to all categories of women deprived of their liberty, including criminal or civil, untried or convicted women prisoners, as well as women subject to security measures or corrective measures;<sup>43</sup>

Part 2 Rules Applicable to Special Categories – contains rules on classification and treatments of the special categories of inmates; for example, inmates who were victims of violence, pregnant inmates, and ethnic and racial minorities or indigenous inmates. This part is also separated into 2 sub-sections namely Section A: Prisoners under Sentence, and Section B: Prisoners under Arrest or Awaiting Trial. Nevertheless, the Rules under Section A shall be equally applicable to the category of prisoners dealt with in Section B, provided they do not conflict with the rules governing that category of women and are for their benefit;<sup>44</sup>

Part 3 Non-custodial Measures – apply to women offenders who committed such petty offence and those who have unsuitable physical factors to be custodial such as, young female offenders and pregnant women. This part of the rules can be enforced since proceeding of inquiry to post-sentencing stages of the criminal justice process; and<sup>45</sup>

Part 4 Research, Planning, Evaluation and Raising Public Awareness – aim at encouraging research and analysis of behaviors of women that often lead to their offences, including the impact of parental detention and imprisoned mother on the physical and psychological development of children, and etc. Additionally, it is equally important to raise public awareness on this issue by actively engage with the media community. All these matters are part of process to return good person to society.<sup>46</sup>

By proposing the draft United Nations Rules, Thailand does not claim to be a model for the successful treatment of women prisoners. There is certainly room for improvement at our

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<sup>42</sup> Ibid.

<sup>43</sup> Ministry of Justice, Thailand, *supra*, n. 39, at 2.

<sup>44</sup> Ibid, p. 3.

<sup>45</sup> Ibid, p. 3.

<sup>46</sup> Ibid.



end. Recognizing the importance and urgency of the issue, however, Thailand is simply trying to collect researches and best practices from many countries, including the United Nations, and putting them together in a package proposal, which we think would be supported as the new set of international standards and norms. Accordingly, we hope to be able to form an alliance of like-minded countries in order to move this proposal towards a successful path.<sup>47</sup>

#### **4. Conclusions and recommendations**

All in all, this article is trying to take a snap shot of the satisfactory developments of legal system in Thailand during 2004 - 2009. As it has been clarify, the history has given an idea that the system was formed by the influence of the western systems altogether with the traditional laws. At present, there are significant improvements on the two areas of laws which are the good governance and transparency strengthening and rights and liberties protection. In each area, the linkages between international and domestic laws appear. Lastly, it is a remarkable role of Thailand to uplift the treatment of women prisoners to international standards by proposing the draft “United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders”.

However, it is even more important for Thailand to learn about what else is needed be done. In this paper, it is quite challenged for the Government so as to prepare relevant and acceptable legal frameworks to support the ratifying of the conventions mentioned above, which are UNCAC, ICRMW, and ICED, as soon as possible. Finally, although the effectiveness of enforcing the laws has not been considered at this time, it is truly an unavoidable key factor to guarantee the sustainability of the development of Thai legal system.

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<sup>47</sup> Ibid, pp. 2-3.