

**Thailand's Supplementary Clarifications
to the Human Rights Committee
as part of Thailand's Presentation of its Initial Report
under the International Covenant on Civil and Political Rights
19-20 July 2005**

1. Clarifications on the right to vote at an election and the right to be a candidate in an election of Members of the House of Representatives

According to Section 105 of the present Thai Constitution, a person has a right to vote at an election if he/she has the following qualifications:

1. Being of Thai nationality; provided that a person who has acquired Thai nationality by naturalisation must hold Thai nationality for not less than five years;
2. Being not less than eighteen years of age on 1st January of the year of the election; and
3. Having his or her name appear in the house registration in the constituency for not less than ninety days up to the date of the election.

A person with any of the following on the election day is disfranchised (Section 106):

1. Being of unsound mind or of mental illness;
2. Being a Buddhist monk, novice, priest or clergy;
3. Being detained by an order of the Court or by a lawful order;
4. Having the right to vote revoked.

A person has a right to be a candidate in an election of Members of the House of Representatives if he/she has the following qualifications (Section 107):

1. Being of Thai nationality by birth;
2. Being not less than twenty five years of age on the election day;
3. Having graduated with at least Bachelor's degree or its equivalent unless he/she has ever been a member of the House of Representatives or a member of the Senate;
4. Being a member of any one political party for a consecutive period of not less than ninety days up to the date of registering to run as a candidate in that election;
5. A candidate in an election on a constituency basis shall also possess any of the following qualifications:

(a) Having his or her name resistered in the house registration in a province where he or she stands for election for a consecutive period of not less than one year up to the date of resistering to run as a candidate in that election;

(b) Having been a member of the House of Representatives in a province where he or she stands for election, a member of a local assembly or a member of a local administration of that province;

(c) Being born in the province where he or she stands for election;

(d) Having previously studied for a consecutive period of not less than two academic years at an education institution situated in the province where he or she stands for election;

(e) Having served in government service or having had his or her name registered in the house registration for a consecutive period of not less than two years in the province where he or she stands for election.

A person with any of the following shall have no right to be a candidate in an election of Members of the House of Representatives (Section 109) :

1. Being addicted to illicit drugs;
2. Being an undischarged bankrupt;
3. Being disfranchised under Section 106 (1), (2) or (4);
4. Having been sentenced by a judgment to imprisonment and still being detained by an order of the Court;
5. Having been from prison for a period of less than five years on the election day after being sentenced by a judgment to imprisonment for a term of two years or more, except for an offence committed through negligence;
6. Having been expelled, dismissed or removed from government service, a State agency or a State enterprise on the ground of dishonest performance of duties or corruption;
7. Having been subject to a judgment or an order of the Court to confiscate his or her assets for the State on the ground of his/her unaccountable wealthiness or unaccountable increased assets;
8. Being in a Government official holding a permanent or salaried position which is not a political office;
9. Being a member of a local assembly or a local administrator;
10. Being a senator;
11. Being an official or employee of a State agency, State enterprise or local government organization, or some other government official;
12. Being an Election Commissioner, an Ombudsman, a member of the National Human Right Commission, a judge of the Constitutional Court, a judge of an Administrative Court, a member of the National Counter Corruption Commission or a member of the State Audit Commission;
13. Being under the prohibition from holding a political position under Section 295 provides: "Any person holding a political position who intentionally fails to submit the account showing assets and liabilities and the supporting documents as provided in this Constitution or intentionally submits the same with false statements or conceals the facts which should be revealed shall vacate office as from the date of expiration of the time limit for the submission under section 292 or as from the date such act is discovered, as the case may be, and such person shall be prohibited from holding any political position for five years as from the date of the vacation of office."
14. Having been removed from office by a resolution of the Senate under Section 307, provided that, from the date of the resolution to the election day, a period of five years has not elapsed.

2. Training Program on Human Rights for Judges of Courts of Justice

- 1.) Thai Courts of Justice have continuously paid serious attention to educating and training their judges on the issue of human rights even before Thailand became party to the ICCPR. The Judicial Training Institute (JTI), recently operated by the Office of the Judiciary, has been established for 30 years and is responsible for training judges and judicial officers of the Courts. The JTI has to provide at least 11 mandatory training programmes¹ for all levels of judges on a yearly basis and also many tutorials on various matters necessary for their career. Under the provisions of the *Act on Judicial Regulations of Courts of Justice B.E. 2543 (2000)*, judges shall enroll in such training programmes and tutorials and are required to meet the standards set by the Judicial Administration Commission. Human rights protection, both in the theoretical and practical aspects, has always been determined by the Commission as a prerequisite in most of those core curriculums, particularly the training programmes for judge trainees, judges of courts of first instance, chief judges of courts of first instance, and seniors judges, and tutorials for justices of courts of appeal, justices of the Supreme Court and others.
- 2.) *The Act on Judicial Regulations of Courts of Justice B.E. 2543 (2000)* provides that before appointing someone a judge trainee or promoting someone to be a judge in a higher position, the Judicial Commission must evaluate his/her competency, responsibility, honesty, and other qualifications. Such evaluations will be done through the training programmes, tutorials and actual practices in court trials. Hence, the person's knowledge and ability to implement human rights principles will be assessed by the mentioned authority.
- 3.) Some details with regard to the human rights protection programmes for judges of the Courts of Justice provided by the JTI in 2003 – 2005 are as follows:
 - Each year, the JTI provides 4 major training programs which includes lectures on human rights protection under international and domestic legal obligations for about 900 judges from different levels of courts;
 - The lectures relates to several aspects of human rights protection; for instance, protection of the injured persons, witnesses, arrested persons and defendants in criminal cases by the Court, roles and duties of the Court in protecting human rights under Thai and international laws, supervision by the Court of state officials' acts, etc;
 - The lecturers of such courses are invited from several sources; for instance, justices of the Supreme Court, the Chairman of the National Human Rights Commission, professors from universities and others who are well educated and have worked very closely in protecting human rights.

¹ The 11 programmes consist of training programmes for judge trainees, junior judges, judges of the courts of first instance, chief judges of the courts of first instance, justices of the courts of appeal, presiding justices of the courts of appeals, justices of the Supreme Court, presiding justices of the Supreme Court, research judges of the high courts, judges in specialized courts, and senior judges.

3. Rights of Members of the Hill Tribes

3.1 Clarification on Thailand's explanation to question 25 (section on the right of persons belonging to the hill tribes to citizenship-page 29) regarding the legal status of children born from hill tribe parents who entered Thailand before 1 January 1995 before they receive legal migrant status in accordance with the two cabinet decisions.

All children born in Thailand of hill tribe parents who entered Thailand before 4 October 1985 will obtain Thai nationality regardless of their parents' legal status in Thailand at the time when they were born.

Therefore, the category of persons as described in item (1) under the section on the right to citizenship (page 29) would better read, "those who entered Thailand before 4 October 1985 (60,000) were provided by Cabinet resolution of 2000 with a legal migrant status for the first generation, upon approval of the Minister of Interior. Their children who were born in Thailand are entitled to Thai nationality, upon approval of the Minister of Interior."

3.2 The issuance of Identification Cards to Hill Tribes

Category 1: Highlanders – These people are hill tribes and minority groups living on high lands in 20 provinces: Chiang Mai, Chiang Rai, Mae Hong Son, Lamphun, Lampang, Phayao, Tak, Sukhothai, Nan, Kamphaeng Phet, Phrae, Phitsanulok, Phatchabun, Uthai Thani, Kanchanaburi, Suphan Buri, Ratchaburi, Phetchaburi and Prachuap Khiri Khan. A Cabinet resolution has granted them a status. ID cards are of blue colour.

Category 2: Thongluang Tribe – This group resides in two provinces - Phrae and Nan in the north. A Cabinet resolution has granted them a status. Their ID cards are of blue colour.

Information about the rights of these groups of people had been provided in Thailand's additional written reply to questions number 6 and 25 which were submitted to HRC on 18 July 2005.

3.3 Regulations concerning appeals of decisions on determination of status of members of the hill tribe groups residing in Thailand

The Central Registration Bureau under the Ministry of Interior has issued a regulation concerning the "determination of the status of hill tribe population residing in Thailand who possess qualifications as prescribed in the Nationality Act" which stipulates the following steps for appeals:

1. In case the Chief District Officer does not approve the request for nationality to any person possessing all the prescribed qualifications, the said person could appeal against that decision with the District Appeal Committee within one month from the date he or she was informed of the order in writing from the Central Registration Bureau or the Local Registration Office. If the appeal is not made within the said period, it shall be considered that the right to appeal has terminated.

2. The appeal has to be made in writing using the format prescribed at the annex of this regulation and has to be submitted to the local registration officer in the sub-district where the applicant has submitted a request for nationality.

After receiving the appeal, the registration officer shall examine the appeal and decide, within 7 days, whether or not to accept it.

In case the registration officer refuses to accept the appeal, he shall clarify the reason for not accepting and also inform the applicant in writing.

In case the registration officer accepts the appeal, he shall send that appeal to the District Appeal Committee within 10 days.

District Appeal Committee

3. Once the registration officer has accepted the appeal, he shall recommend to the Chief District Officer to appoint a District Appeal Committee within 5 days. The Committee comprises the following:

- (1) One member who is an expert appointed by the applicant;
- (2) One member who is an expert appointed by the Chief District Officer;
- (3) Assistant Chief of District serves both as a member and secretary to the Committee.

The said appointed members shall decide among themselves who will be the Chairman of the Committee.

The Secretary of the Committee is obliged to call a meeting within 15 days after the appointment order has been issued.

A 2/3 majority decision of the Committee shall be considered as the final decision. The Committee shall finish its consideration within 30 days and, and if there is a reason of real necessity, it could extend its consideration not more than twice, and each time for a period of not more than 15 days. The Committee shall then inform its decision in writing to the Chief District Officer who, after having received it, has to implement that decision within 5 days by informing the registration officer to act accordingly.

Both the Chief of District and the applicant could file an appeal against the Committee's decision with a higher body, which is the Provincial Appeal Committee. The appeal shall be made in writing, using the form attached at the annex of the Regulation, and submitted within 1 month to the local registration officer in the sub-district where the applicant has filed a request for nationality. If the appeal has not been made within that period, it is considered that the right to appeal has terminated.

Provincial Appeal Committee

This Committee shall be appointed by the Provincial Governor and comprise the following:

- (1) Deputy Governor as Chairman of the Committee;
- (2) Two academics who are experts in specific fields as members;
- (3) Chief of Administration Branch as member and secretary;
- (4) Deputy Chief of Administration Branch as member and Assistant-Secretary.

After having received the appeal, the registration officer has to submit it to the Committee within 5 days. The Secretary of the Committee is obliged to call a meeting within 15 days after having received the appeal. If based on clear factual evidences, the decision of the Committee is considered final. However, if based on legal consideration, the decision could be appealed within 1 month with a higher body, that is the Central Appeal Committee.

Central Appeal Committee

This Committee shall be appointed by the Director of the Central Registration Bureau and comprise the following:

- (1) Deputy Director of the Central Registration Bureau as Chairman of the Committee;
- (2) Assistant Director of the Central Registration Bureau as member;

- (3) Three academics who are experts in specific fields as members;
- (4) Chief of the Registration of Minority Groups as member;
- (5) Chief of the Minority Groups' Legal Affairs and Regulations Branch as member and secretary.

After having received the appeal, the registration officer has to submit it to the Committee within 5 days. The Secretary of the Committee is obliged to call a meeting within 15 days after having received the appeal. The decision of the Committee is considered final and shall be informed to the Provincial Governor in writing, so that the latter could inform the Chief of District.

4. The Impact of Free Trade Agreements (FTA) on rights as guaranteed in the ICCPR

The Royal Thai Government has put human and social development at the forefront of its policy agenda. Such priority is well reflected in FTA negotiations between Thailand and its trading partners. There are clauses and exceptions included in the FTA agreements that protect interests of Thai citizens. In many cases, the competition of imported goods created by FTA agreements help raise both farmers' and public agencies' productivity. At the same time, the Government has set aside a large amount of emergency fund to assist local farmers during the transitional period. As for concerns raised on the impact of FTA agreements on civil and political rights of the Thai public, the Royal Thai Government wishes to clarify as follows:

1. Extension of patents and undisclosed information about anti-retroviral drugs under the US-Thailand FTA agreement raise a possibility of monopoly in anti-retroviral drugs.

- The negotiations on pharmaceutical licences have not yet begun. The concerns raised on this matter by some NGOs rely on information based on US FTA agreements with other countries, which extend patent protection and include classified information. Such similar arrangement is unacceptable to the Royal Thai Government as it would raise the price of medicines.

- The Thai negotiators have reminded the US partners that outcomes of FTA agreements should not contradict with or undermine the benefits Thailand receive from other agreements, especially from the WTO's TRIPS agreement (Doha Ministerial Declaration on TRIPS – Public Health). The Doha Declaration gives the rights to use safeguard measures against pharmaceutical licences such as patent enforcement measures, usage by the state, and duplicate imports.

- Mr. Robert Zoellick, US Deputy Secretary of States, also assured Dr. Kantathi Suphamongkhon, Minister of Foreign Affairs of Thailand, during their recent meeting on 4 May 2005 that the Thai-US FTA would not have any impact on the price of anti-retroviral drugs imported from the US. The FTA agreements that the US signed with other countries includes exception clauses with regard to health and medicine for curing contagious and serious diseases.

- Moreover, FTA negotiations have no effect on protection of drug licences. In case of the delay in issuing licences, the period of protection will be extended accordingly.

2. Tariff reduction of agricultural products under FTAs might negatively affect Thai farmers, hence violating their right to life (Article 6 of the ICCPR).

- The Ministry of Commerce pays serious attention to prevention of adverse effects on Thai farmers from tariff reduction under FTAs.

- The Government also adjusts dates of scheduled tariff reduction according to the readiness for import competition of each product. Under the Thailand-China FTA, the Ministry will put off the beginning date of 0% tariff reduction scheduled for some products to 5 to 10 years. Instead of 0% tariff reduction, tariffs of highly sensitive products will remain up to 50% (after reduction) until 1 January 2015. Products that have quotas under the WTO Agreement such as onions, garlic, potatoes, coconuts, and dried longans will face 0% tariff only if the amount of imports is within quotas. Out-of-quota imports will face higher tariff rates.

- For the Thailand-US FTA, agricultural products have not been negotiated yet. When it is negotiated, the Royal Thai Government will apply the same criteria as

applied in the FTA agreements concluded with other countries, i.e. putting the interest of Thai farmers first. When products are not ready for liberalization, the Thai side would ask for extension in order to allow Thai farmers an opportunity to improve their capacity to compete.

- The Royal Thai Government has set up a four-year National Strategic Plan (2005-2008) for adjustment to cope with economic competition. Under the Plan, the Ministry of Agriculture and other agencies will assist Thai farmers in coming up with coherent production, product diversification, and marketing plans.

- Although FTAs may expose Thai farmers to import competition, it has also turned crises into opportunities. There may be transitional costs of FTAs. Parts of the problem lie however with inefficient production of Thai farmers, which raises domestic prices for consumers. FTAs, on the positive side, will prompt Thai farmers as well as government agencies to hasten research and development aimed at raising productivity of Thai farmers. The government has set aside a 10 billion Baht (approx. 41 Baht = 1 US Dollar) fund (1 billion Baht per year over the next ten years) for the Ministry of Agriculture during this transitional period. Projects include the restructuring of the agricultural sector, upgrading production efficiency, development of products, and value-adding production. At the moment, the Ministry has received 100 million Baht, which will be dispersed to farmers once clear guidelines for utilizing the fund has been set.

- Thailand's trade negotiation process is based on Thai people's interests. The government has been doing its best to ensure transparency of and participation by parties concerned in the process. It has arranged periodic consultation among the public, academics, non-governmental organizations, both public and private sectors.

- So far the Ministry of Commerce has organized over 20 round-table discussions in addition to consultations with producers and exporters of agricultural and industrial products. The Ministry targets individual product groups and has had regular consultations with more than 30 groups.

- The Parliament is also involved closely with the FTA negotiation process. Both Members of Parliament and Senators offer comments and suggestions on various FTAs under negotiation. Senate and House committees regularly invite officials from the Ministry of Commerce and other relevant agencies to testify and provide updates on FTAs. To date, there have been more than 80 hearings.

- The Ministry of Foreign Affairs also increases participation from social groups by organizing seminars, giving opportunities to private sectors and the general public to voice their opinions on FTA agreements. For example, over the course of Thai-Japanese FTA negotiations, the Ministry has organized a number of roundtable discussions with the private sector. Since January 2005, there have been four discussions between the Ministry and local companies. The Ministry also organized a public seminar in order to solicit public opinions. The Ministry plans to organize additional public hearings for the Thai-US FTA negotiations.

5. The Cases of Ill-Treatment by Police Officers on Mr. Anake Yingnuk and others, Mr. Metta Saipan and a friend and Mr. Ekkawat Srimanta

It was alleged that Police Lieutenant Colonel Suebsuk Phinsaeng, head of the Phra Nakorn Sri Ayutthaya Police Station Crime Suppression Unit, who was dismissed from office pending the outcome of the investigation in the above cases has now returned to active duty. Thailand would like to make the following clarifications:

1. Police Lieutenant Colonel Suebsuk Pinsaeng had not yet taken up his post at the Phra Nakorn Sri Ayutthaya Police Station at the time when Mr. Metta Saiphan allegedly received ill-treatment on 30 March 2004. Investigation, however, continues with regard to other officers allegedly involved in the case concerning Mr. Anake Yingnuk and others.

2. In the case concerning Mr. Ekawat Srimanta, Police Lieutenant Colonel Suebsuk Pinsaeng and another police officer have been charged with the infliction of bodily harm to Mr. Ekawat Srimanta and these offenders were dismissed from office pending the outcome of the investigation. Since the crimes were committed by State officials acting in their official capacity, the cases against them were submitted to the Office of the National Counter Corruption Commission (NCCC) for further investigation in accordance with Section 89 of the Counter Corruption Act of 1999.

Subsequently, Police Lieutenant Colonel Suebsuk Pinsaeng appealed to the Police Sub-Committee of Appeal. After consideration, the Sub-Committee overturned the dismissal order and ordered his return to duty while awaiting the outcome of the investigation (Sub-Committee order no. 272/2547, 1 December 2004). However, due to procedural matters, Police Lieutenant Colonel Suebsuk Pinsaeng is still awaiting the confirmation of his return to duty and *as of 26 July 2005* he has not yet resumed his official duty.

6. The Arrest and Detention of Suspected Persons under the Emergency Decree on Government Administration in State of Emergency, B.E. 2548

The power of arrest and detention of suspected persons under the Emergency Decree on Government Administration in States of Emergency, B. E. 2548 applies only in the case of a Serious State of Emergency as defined by Section 11 of the Decree and is subject to the condition that its use is restricted to the extent necessary to prevent such persons from committing an act or participating in the commission of any act which may cause a serious situation or to engender cooperation in the termination of the serious situation. Section 12 of the Decree also stipulates the following safeguards against the misuse of such power:

- a leave of the Court of competent jurisdiction or the Criminal Court must be applied for and obtained before the competent official can arrest and detain the suspected persons;
- the suspected persons can be detained for up to seven days only and in case where further detention is necessary in light of the emergency situation, a leave of the Court to extend such detention must be obtained. In any case, such extension is permissible only for a period of up to seven days at a time and not exceeding the total period of thirty days. Any detention beyond this period, if required, must be proceeded under the Criminal Procedure Code;
- the suspected persons are to be detained in a designated place, which is not a police station, detention centre, penal institution or prison;
- the suspected persons are not to be treated as convicts; and
- a report on the arrest and detention of the suspected persons for submission to the Court issuing the order must be filed by the competent authority and its copy deposited at the competent authority's office and made accessible to the relatives of the suspected persons during the entire period of detention.

Further safeguards as provided for in the Announcement under Section 11 of the Emergency Decree on Government Administration in States of Emergency, B. E. 2548 and aimed at making the implementation of the provision of the aforementioned Section 12 of the Decree effective are as follows:

- in applying for a leave of the Court of competent jurisdiction or the Criminal Court, Section 59 of the Criminal Procedural Code may be applied;
- the report on the arrest and detention of the suspected persons must contain the details of
 - (1) the name and position of the arresting and/or detaining officials;
 - (2) the name of the arrested and/or detained persons;
 - (3) the reason for the arrest and/or detention as well as the circumstances therefor as deemed appropriate;
 - (4) the place of detention; and
 - (5) at least 2 witnesses of the arrest and/or detention

In case where there is a change of the place of detention, the provisions of (1) (2) (3) and (4) above must be followed;

- detained persons cannot be chained or detained in a jail and shall not be subject to harsh treatment; and
- the arrest and detention of the suspected persons must strictly comply with the law and the protection of rights and liberties.

However, it is the Royal Thai Government's intention to resort to the power given in the Decree only in extremely exceptional circumstances. The independent National Reconciliation Commission, shared by former Prime Minister Anand Panyarachun and the Government agreed that the Decree must exist and will be applied only when absolutely in exceptional need and both the Government and the Commission agreed that peaceful means continues to be the Government's highest priority in dealing with the situation in the three Southern Provinces of Thailand.
