

THRJ

Thailand Human Rights Journal

Volume 1, 2003

Human Rights and Thai Democracy

- The role of the National Human Rights Commission/*Saneh Chamarik*
 Thailand on the road to democracy/*Seksan Prasertkul*
 The case of violence related to the Thai-Malaysian Gas Pipeline Project/*NHRC*
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 The weak People's Constitution/*Wanida Tantiwithayapithak*
 Tai Ban Research/*Malee Traisawasdichai Lang*



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Preface

Choochai Supawongse

The *Thailand Human Rights Journal* serves as a forum for information, opinions, academic research, and practical experience on human rights issues for dissemination to the academic community, human rights workers, and educational institutions as one way to strengthen and protect human rights in Thailand. The Office of the National Human Rights Commission publishes the *THRJ* in four Thai-language issues and one English-language issue a year. This English issue contains major articles translated from the Thai issues, documents from the Commission, and other original contributions, all of which together give a picture of the human rights situation and major events related to human rights in Thailand over the past year.

The year 2003 is a special year in that it marks thirty years of 14 October 1973 when students and people rose up and sacrificed their lives to oppose a dictatorial government and demand democracy. The subsequent incidents of 6 October 1976 and May 1992 have also contributed to a massive change in Thai society. At least, I have observed change in five key aspects.

First, the civil and political rights of the Thai people, as well as their human dignity, have become more recognised and respected.

Second, people have been successful in ridding the society of a dictatorial military government, but they have got a 'democracy of interests' dominated by other powerful groups in its place.

Third, the popular struggles opened up public space which became fertile ground for the growth of civil society organizations including groups, associations, foundations, forums, NGOs, local community organizations, and business organizations for society.

Fourth, people united to demand the new Constitution of 1997 and to take part in the drafting process. This charter is a major tool for reforming politics both now and into the future. It is the first constitution which provides for a public sphere as part of participatory

democracy. It created many new independent organizations, including the National Human Rights Commission.

Fifth, despite such democratic change, the gap between rich and poor has grown steadily wider. This widening gap is evidence of the continuing violations of economic, social and cultural rights, including the right to development, and the rights of communities over their natural resource base.

Let me expound a little on each of these five points.

The current constitution is the legacy of the struggle for democracy in Thailand over the past thirty years. The whole population had opportunities to contribute to the drafting process, resulting in Section 4 which states that "The human dignity, right and liberty of the people shall be protected." This clause symbolises the spirit of the constitution, and this spirit of respect for the human dignity of others suffuses every clause including clauses 199 and 200 which set out the mechanism to strengthen and protect human rights through the device of the National Human Rights Commission.

Thirty years of democratic development leading up to the promulgation of the 1997 Constitution have enabled the Thai people to acquire more civil and political rights. Yet, political rights are still not evenly distributed in society. Those with the economic power to occupy the political arena are able to monopolise political rights, while the mass of the people do little more than legitimate this situation through the electoral system. Hence we have an elective government which is representative of some major interest groups in the country, while the majority of people are dazzled by populist policies which appear to answer their needs. But some groups are becoming dissatisfied with this system, and have begun organising to claim petty rights in everyday life through public forums, public hearings, struggles for public space, struggles to challenge the monopolisation of news media, and so on. This trend of small-scale demands by certain groups, by certain peoples sharing a similar problem, and by certain localities will gradually expand in the future, resulting in a wider and stronger people's political space and more participatory democracy. This will challenge the 'democracy of interests' which now dominates. This may take time. But the end-result will be a profound change in Thai society in the future.

The respect for civil rights in Thailand has improved to a certain extent, but they are still constantly violated in the judicial process, and the people most responsible for such violations are the police. Among the 679 petitions which the NHRC received in 2003 (January-September), 60 per cent concerned violations in the judicial process. Some relevant government agencies have initiated attempts to reform the judicial process, but the problems are too difficult and too complex to be overcome only by state agencies. Thai society as a whole needs to put its weight behind a drive for comprehensive reform in the judicial process in the future.

The widening gap between rich and poor over the past thirty years is a clear indicator of the continued, serious violation of economic rights including the right to development and community rights over the natural resources which they rely on but which are being competed away by other groups in society on a major scale. This widening gap should be read as a warning sign of the potential for crisis and social violence if this problem is not tackled as an urgent priority.

In truth the violation of human rights in Thailand partly results from the unbalanced structure of society which shapes policy-making, the distribution of the national budget, laws and regulations of all kinds. This unbalanced structure in turn is partly shaped by Thailand's relations with the institutions of global government such as the WTO, IMF and World Bank. In brief, we face a new colonialism in the guise of trade liberalization and financial liberalization which place poor and developing countries at great disadvantage. We need to consider how we can create immunity for our society against these forces so that we have some options over the extent of liberalisation. Some areas may need to be liberalised, but others need to be reserved. Otherwise, it will place us at a great disadvantage. The financial crisis which followed on from financial liberalisation should be a stern lesson for Thailand.

In fact, we can learn from life science about the cell, the smallest unit of life. The cell wall has the ability to open up and absorb material which is beneficial, but block and expel material which is toxic or non-beneficial.

The challenge for Thai society is how to develop the ability to compete in the liberal economic system on the one hand, while on the other hand preserving the rights of the people, especially the little people whose rights are most vulnerable in a competitive environment. Principally this means finding ways to protect the natural resources, which serve as the foundations of their way-of-life and livelihood, from the depredations of the economic elite, transnational capital, and the international institutions under the cloak of free market competition. It is imperative for Thai society to develop the possibility of alternative economic systems which answer the needs and aspirations of different groups in society, and which distribute the benefits of development much more widely and much more equitably. Rather than a system in which the competition to accumulate capital leads to exploitation of others, social violence, cultural destruction, and the violation of rights of many kinds, we need a system which allows people to escape from poverty, to choose a way-of-life which makes them content, and to contribute to society and culture.

In other words, we need a truly participatory democracy which respects the dignity of humanity and which provides space for people to choose their own economic way of life rather than a 'democracy of interests' which fosters dog-eat-dog competitiveness as at present.

This issue of the *Thailand Human Rights Journal* presents a range of different issues which reflect the current state of democracy, development and human rights in Thailand today.

Human rights and Thai democracy

Chris Baker

However, the gap between the newly-acquired rights and liberties as written into the constitution, and the reality of power of enforcement still very much remains.... More often than not, rights and liberties are nonchalantly ignored under popularly elected parliamentary rule. The state of affairs seems not much different from the previous authoritarian one (Sanee Chamarik, 'The Role of the National Human Rights Commission of Thailand', in this volume).

Thailand's first National Human Rights Commission (NHRC) was conceived in the Constitution of 1997, and came into being in July 2001. This *Thailand Human Rights Journal* was launched as part of the NHRC's duties according to the Constitution (clause 200) "to promote education, researches and the dissemination of knowledge on human rights". The guiding principles in selecting articles for this annual English-language volume of the *THRJ* have been to include: translations of key articles from the four Thai issues;¹ important documents from the NHRC; research and opinion on "hot" human rights issues in Thailand; and background articles on the broader context and debates surrounding human rights issues.

The quotation from the Chairman of the NHRC at the head of this editorial highlights a paradox to which many of the articles in this volume refer. The 1997 charter which is labelled the "People's Constitution" and widely celebrated as the most liberal and ambitious that Thailand has ever had is now six years old and as fully operational as it probably ever will be. Under this constitution, a government has been elected with a stronger popular mandate than any predecessor. Both the general level of education in the Thai population, and the exposure to the world of knowledge and information, have increased very rapidly in the past few years. Yet, the past two to three years have been marked by a string of confrontations between government authorities on the one side, and rights advocates and sometimes the NHRC on the other. Moreover, a casual observer might feel that the popular support for the

human rights side is on the downward trend.

Among these confrontations, one of the most violent occurred in Hat Yai in December 2002 when police broke up a demonstration by protesters against the Thai-Malaysian gas pipeline. This was the third clash over this project. The government initially monopolised the news media with an assertion that the protest had been violent and “anarchic”. However a video shot independently during the incident was subsequently widely circulated and suggested a very different interpretation—namely, unprovoked aggression by the police. The NHRC’s investigation of this incident, of which the summary is included in this volume, found that several constitutional rights had been violated. However, the government manoeuvred to avoid receiving this NHRC report on grounds the issue is *sub judice*. Meanwhile those arrested during the incident still await trial, the protest against the project continues, and even as this editorial is being written, another small clash has been reported from the site.

Over the past three years there has been a handful of incidents arising out of the plans laid by the Bangkok Municipality and the national Tourist Authority to redesign parts of the city’s historical core, largely in the hope of attracting tourists. The most recent of these incidents concerns the Pom (Fort) Mahakan community whose land is designated for conversion into a public park. Both the area and community are small, but the area is historically significant and the community possibly unique. Their efforts to preserve their own community by proposing an alternative design caught the attention of Michael Herzfeld, professor of anthropology at Harvard University, currently engaged in research on Bangkok’s communities. He not only contributes his view of the community and the conflict to this volume, but has appeared in Bangkok courts as an expert witness in cases brought as part of the community’s defence. So far this legal strategy has not borne fruit, and the community’s future is still threatened. As he points out in his article below, the struggle at Pom Mahakan is a classic confrontation between “power” and “rights”. The Bangkok authorities are anxious to impose their authority at all costs. They also wish to impose a “modern” concept of “order”, and try to portray the local communities who will be displaced as inherently “disorderly” and thus undeserving of their rights.

The wastewater project for Thailand’s most industrialised province (Samut Prakan, on the capital’s outskirts) raised a stench of corruption long before it had the chance to process any polluted material. Again it was local people, including Dawan Jantharatdi who has co-authored the account in this volume, who brought the Khlong Dan project to public attention in the hope they could save their own communities from the project’s impact. To its credit, the current government halted the project and has launched a bunch of investigations. But the political interests involved in the project make it very difficult to be optimistic about the outcome. So far the investigations have proceeded slowly and, as the article below

indicates, the chances that the government will be tempted to complete the project, however flawed, remain very high.

Of all the many local protests to protect communities' rights to exist and retain their own way of life, the most prominent over the last decade and a half has been the protest against the Pak Mun dam in the lower northeastern region. Since the dam was completed almost a decade ago, local fishing communities have continued to insist that wrecking a river, its fisheries, and their livelihood is too large a price to pay for a very meagre amount of electricity. They have demanded the dam's gates be opened. The authorities have been extremely reluctant to accept this argument both because of the investment sunk in the dam, and because of the precedent such a decision would create. Again to its great credit, the current government agreed to open the gates for an experimental year while research was carried out. In addition to the studies by academic and professional institutions, the fishing communities carried out their own project on the disarming grounds that they knew much more about the river and its fish than anybody else. Malee Traisawasdichai Lang reviews the research in this issue. Apart from the fact the study is an extraordinarily detailed and knowledgeable account of a river, its ecology, and its social role, the research is also a dramatic innovation in the negotiation between the state and local communities. Already, this innovation has been copied by other communities engaged in similar negotiations with the authorities. The tragedy in the case of Pak Mun is that at the end of the experimental year, the government took its decision on the future of the dam without referring to this study or even the research the government had commissioned itself from academic institutions.

Factory workers are another form of community whose rights often come under threat. Philip J. Robertson Jr recounts how the workers in a Bangkok garment factory had their basic labour rights threatened by a management intent on undermining union organisation as part of cost-cutting. The union was able to challenge management in the official system of labour tribunals, and win legal victories, but still faced the problem that implementing these legal decisions would be difficult. However, the union and its local allies also approached the National Human Rights Commission which investigated the case and ruled that labour rights had certainly been violated. With the help of this ruling, the union and its allies were able to mount an international campaign to embarrass the international brands who subcontract to the Bangkok factory, and oblige them to intervene on behalf of the workforce.

Perhaps the most startling human rights issue of the past year arose out of the government's "final war" against the methamphetamine trade, launched in February 2003. In six weeks, the government itself publicised that some 2,700 people were shot dead (though since then the numbers have become much vaguer). However these deaths are explained, they clearly involved a large-scale violation of human rights. Yet at the same time, the public support for the campaign—at least among those who respond to opinion pollsters—has been

large. In this issue, Jaran Cosananund threads his way through the complex issues and implications of this spate of killings and the public reaction to them. He wonders whether most people don't care about human rights at all because they have no meaning for themselves. Ordinary people in Thai society, especially the poor, expect the police and judicial system to be corrupt or biased against them. They are used to having their own rights violated. They face violence in their everyday lives as a matter of course. What difference then are they likely to see between a proper judicial punishment on the one hand, and an extra-judicial killing on the other? Where is the magic in such ideas as human rights, human dignity, and the rule of law if there are no rational reasons for ordinary people to value them? In Jaran's words, "It is hardly surprising that people who face crime problems should be prepared to sacrifice or ignore human rights principles, and reject the value of human rights in general, on grounds they lack any real significance and are too much of a luxury for their society."

One segment of the population that bore the brunt of this anti-drug campaign were hill peoples whose homes lie close to the routes along which methamphetamines travel from their foreign place of manufacture into the Thai market. This has not been the only rights issue involving hill peoples over recent months. While the drug killings were very high-profile and rather short-term, the two pieces below on the Akha point to a more concealed and more sustained use of violence against hill peoples. There have also been problems over Thai nationality, particularly at Mae Ai in Chiang Rai where local officials summarily withdrew Thai nationality status from 1,243 people. Phunthip Kanchanachittra Saisoonthorn has been involved with efforts to sort out this situation, and in this volume contributes an analysis of the legal issues involved. Her main point is that the prejudices evident in the way the authorities implement nationality policy can only multiply the human problems in the future. Also in the hills, Yos Santasombat takes a deep look at the way the state encroaches on traditional rights to land usage, and how communities are fighting back by mobilising the political potential of ethnicity.

A common theme across the events of Khlong Dan, Mahakan Fort, the Bangkok garment factory, Pak Mun dam, the Thai-Malaysian gas pipeline, the Mae Ai hill peoples, and the petty victims of the drug war are the difficulties faced by ordinary people and local communities in the face of state power. Several of the other articles in this volume reflect on why there should be such an imbalance.

Cholthira Satyawadhna begins from the well-known point that the community rights which have been enshrined in several key clauses of the 1997 constitution have no support by either legislation or institutions. Pasuk Phongpaichit argues that, in the case of the big government projects, which are at the root of many of these disputes over local rights, the state still tries to operate in the old era when it undeniably had the power of the gun on its side and could treat all the nation's resources as if they were the exclusive property of the state. Kamol

Kamoltrakul and Witayakorn Chiengkul both argue that globalization contributes powerfully to the destruction of local rights, particularly through the growing ability of transnational companies to enclose resources and annul customary rights once associated with those resources.

Jaran Cosananund asks, intriguingly, whether the conception of a society or civil society is not only weak but getting weaker in Thailand (and elsewhere) as people become more oppressed by the problems of the world and respond by egotistical self-defence with no interest in the rights and hardships of others. He also wonders whether the current government's mix of nationalism and populism both exploits and promotes this trend in its own interests.

Kavi Chongkittavorn and I both look at the role of Thailand's media in the interplay between state and people over recent decades. It has been a roller-coaster story, in which the most recent direction seems to have been downward. Over the 1980s and 1990s, the print media (and to a lesser extent, some broadcast) carved out a role as "watchdogs" over the use of state power, and as a platform for protest and opinion. The Constitution of 1997 promised to be a milestone in advancing that role. Media professionals devoted themselves to reforming the media internally to be more worthy of their growing responsibility. But the combined effect of the 1997 economic crisis on media as a business, the charter's provisions to engineer more "stable" government, and the installation of an unusually strong and determined government from January 2001, has totally altered the balance between state and media. The press is perhaps more intimidated, managed, and controlled than it has been since the famously reactionary government of 1976-1977.

In the middle of these struggles, Thailand has just marked the thirtieth anniversary of one of the milestones of its modern history—the 14 October 1973 student uprising against military dictatorship. Even the celebration of this event was complicated by clashes with authorities over rights to territory. The celebrants wanted to use Sanam Luang on grounds it was one of the key sites of the original event. The Bangkok Municipality withheld permission on grounds the area was being beautified for the APEC meeting starting a few days later. As a result, the celebration was a bit confused and subdued. The fact that the Bangkok mayor, Samak Sundaravej, had been a high-profile opponent of the student movement, especially in 1976, hinted how much the old authoritarianism still has a residue in the modern democratic state.

But Seksan Prasertkul suggests there are also new reasons why the huge imbalance of power remains between the state and the ordinary person. As one of the leaders of the 14 October 1973 event, he delivered the speech to commemorate the thirtieth anniversary, which appears here in translation in full. In surveying three decades of political change, he identifies three main reasons which have contributed to this imbalance: the extreme inequality of income which has grown steadily worse under "development"; the capture of electoral democracy by

business; and the impact of globalization which both exaggerates the existing inequalities of income and power, and undermines the state's abilities to truly help its own people. As a result, he suggests, "the disadvantaged feel that the nation is a social contract which the rulers and the privileged have ripped up and thrown away".

The string of human rights problems presented in the essays in this volume, and the array of explanations for why such problems should persist in modern Thailand, might lead to a bleak conclusion. But one other theme running through most of the articles is a common sense of embattled optimism. Seksan begins his anniversary speech by reminding us how much has been gained since 1973, and ends it with the conviction that Thailand's democracy can be improved. Saneh Chamarik and Vitit Muntarbhorn show how the institutional infrastructure for protecting human rights is improving both inside the country and in the region. Jaran Cosananund sees a Buddhist route beyond the current fragmentation of social consciousness. Valai na Pombejr endorses the long-term value of education on human rights. And several of the writers—Yos, Cholthira, Pasuk, Herzfeld, McDaniel—retain faith in the capacity of local communities to assert themselves by a range of different strategies. Seksan ends his review of the thirty years since 14 October 1973, "My final conclusion today is that our democracy still has problems but the route to solving them still lies along the democratic path."

Notes

- ¹ The first Thai issue of 2003 was themed on "The crisis of community rights", and Cholthira Satyawadhana's article in this issue is summarised from her contributions to that volume. Phunthip Kanchanachitra Saisoontorn's article below is translated from her article in the second Thai issue on "Children, youth and the family: hope and heart of Thai society". The article by Sukan and Dawan on Khlong Dan, by Kamol Kamoltrakul on globalization, and by Witayakorn Chiengkul on poverty, all originally appeared in the third Thai issue on "Economic, social and cultural rights". Jaran Cosananund's article on human rights and the drug war in this issue is translated from the fourth Thai issue on "Human rights and the judicial process". The full contents of all four Thai-language issues are listed at the back of this volume.

The role of the National Human Rights Commission of Thailand^{*}

Saneh Chamarik

Preliminary remarks

On behalf of the Thai NHRC, let me first join in expressing our gratitude for the continuing efforts of the Friedrich Naumann Stiftung in promoting human rights dialogues, and for giving us the opportunity to take part in this particular inter-regional forum. As a newcomer with somewhat different background and incidence of human rights problems, one indeed expects in this process of consultation not only to learn, but also to be heard. Out of this process of mutual learning, a concrete programme of cooperation and coordination could then be arrived at for the common purpose of human rights protection and promotion.

In discussing the role of national human rights commissions, it is extremely important to bear in mind three basic points of common understanding. These are inter-related. First is the question of the nature and reality of human rights itself. Notwithstanding universality as a matter of principle, human rights are concerned with the moral claims or ideas and practices *created by people to legitimate particular interests in particular historical, social, and economic circumstances*. To put it strictly on empirical ground, human rights constitute the straightforward result of people's aspirations and struggles, and are hardly characteristic of any specific culture or tradition.¹ As a matter of fact, such struggles are precisely what did actually happen in the great liberal revolutions over two centuries ago in the course of modernization in the West, and which in turn inspire the ideal of freedom and democracy around the world.

Secondly, this simple truth about human rights further means that, along with universality, there is bound to be proliferation and inter-relatedness of rights and liberties, as

^{*} Presented at the Conference on National and Regional Systems for the Promotion and Protection of Human Rights, organized by the Friedrich Naumann Stiftung, Strasbourg, France, 7-11 October 2002.

well as obligations, in a great variety of forms and substances under specific historical, social, and economic circumstances. This is well reflected in the increasing number of international human rights instruments created by the democratically inspired part of the UN. It is an ongoing and never-ending process.² And lately, the UN General Assembly has come up with the Millennium Declaration 2000, summing up various aspects of human predicaments within a global and common purview, thus broadening the scope and perspective of human rights promotion and protection even further, along with the issues of development, poverty, and environment.

And finally, there need not be discrepancies and contradictions between universality or generality and the specificity or diversity inherent in human rights discourse. Indeed, in order for the dialogue to be meaningful, it must be in the spirit of mutual learning based on the shared principle of human dignity and fundamental freedom. To start with, all the ambivalence and controversy concerning both cultural essentialism and relativism should by now be put to rest. Cultural essentialism claimed a monopoly on the definition of human rights, while relativism denied the universality of human aspirations for freedom. The two, thus far, can only indulge in self-styled futile polemics, and actually get us nowhere. Worse still, this controversy brings about retrogressive and destructive politics of human rights the world over, East and West, North and South. We are witnessing today, in particular, the abuse and distortion of the cherished ideal of individual liberties and property rights on the one hand, and on the other hand, the authoritarian claim of development priorities over freedom and democracy. Both turn against humanity and nature.³ As we are all well aware, human society has gone through the process of economic development and globalization for a long time under adverse conditions and at great human and social costs. And then abruptly came along the self-proclaimed war on terrorism and, along with it, the threat and potential loss to the cause of human rights.⁴ It is indeed high time to earnestly and collectively put things right, conceptually and practically.

One only hopes that these considerations would get a reasonable hearing in an international forum such as this. They are certainly relevant and should serve as a background to our mutual interest and purposeful dialogue with the firm conviction that people's rights and liberties indeed hold the key to the future. This is what we should have in mind in coping with the status and role of national human rights commissions as well as the prospect for a regional mechanism in Southeast Asia and elsewhere. The case of Thailand to be presented here is no exception. For, after all, human rights commissions or any other mechanisms simply do not exist and perform in a vacuum, void of economic, political, social, and cultural contexts.

Background

The NHRC is the first of its kind in Thailand and only just a little over one year old, being established on July 2001. It is created under the 1997 Constitution, popularly dubbed the People's Constitution, something equivalent to the "People's Power" slogan during the anti-Marcos uprising in the 1980s Philippine. It is still in its formative stage. On top of the assigned tasks and function set by law,⁵ a strategic plan and programme of action needs to be worked out. This plan has to take into account the historical and circumstantial background, the state of knowledge and situation of human rights, the question of how to get organized both within and in relation to society at large, etc. A brief account of the background leading up to the People's Constitution and NHRC may well be in order here, to begin with.

Upon reflection, the Constitution is largely the end result and consequence of ongoing socio-economic transformation ever since Thailand, under military dictatorship in the early 1960s, stepped into development, industrialization and their related predicaments, just like many other developing countries. The initiative significantly came from the World Bank and the IMF, the twin global politico-economic Leviathan of the post-war era. That brought about structural changes and the rise of urban middle classes, along with widespread poverty and rural marginalization, as well as degradation of natural resources. All this is a well-known global phenomenon; there is no need for further elaboration here. Suffice it to say that growth-oriented development and related public policy is the root cause of human sufferings and flagrant encroachment on the basic right to livelihood and self-development. It is a great pity that these simple economic, social and cultural rights are still not counted as human rights, and that therefore responsibility to uphold them can be evaded by the global powers-that-be, especially within the "liberal" circle of historic freedom fighting states themselves.⁶ Anyhow, within a short span of time in the early 1970s, there occurred mass uprisings under the combined forces of new middle classes and student movements. The fall of the junta and military disunity led to coup after coup, which was somehow followed by gradual transition to civilian rule around the late 1980s. Then, another outdated and short-lived military coup in 1991 provoked another massive revolt among the urban middle classes, popularly known as Black May, the following year. This time around, the whole country exerted enormous pressure demanding political reform. "Reform" became a catchword reflecting the rising and restless expectations among Thai people at all levels of society. It turned explosive to the critical point that old-time politicians were obliged, however reluctantly and half-heartedly, to bend to the popular will to have created a new and reform-spirited Constitution.

However, the gap between the newly-acquired rights and liberties as written into the Constitution, and the reality of power of enforcement still very much remains. Such a political predicament vividly reminds one of the late Sir Josiah Crosby, British Ambassador at the time

of the 1932 Revolution, who articulated a grave concern for democracy without the force of public opinion.⁷ More often than not, rights and liberties are nonchalantly ignored under popularly elected parliamentary rule. The state of affairs seems not much different from the previous authoritarian one. The big difference is that the people now are so articulate and much better aware and inquisitive about what is going on in the country and the world outside. Besides, increasing numbers of non-governmental and civil society groups, as well as all sorts of mass media, act collectively and often aggressively as watchdogs against any wrongdoings on the part of the power that be.

This is roughly the position the Thai NHRC finds itself in. It took a fairly long and complicated process to get the whole 11-member Commission elected by a selection committee, adopted by the Senate, and then royally appointed. The composition of the selection committee is interesting. Its 27 members include four from state agencies, five from academic institutions, ten from private organizations, five from political parties, and three from public media. Each nomination must be passed by votes of not less than three-quarters of all the members. Then in the Senate, each nominated individual must be elected through secret ballot by more than half of the total number of Senators (200), with a proviso that account must be taken as to the participation of women and men.⁸ This is how the Thai NHRC came into being. The whole idea is to have a Commission with as broad a representation as possible of the society's viewpoints. On the whole, it can fairly be said that non-governmental organizations and civil society groups carried considerable weight in the selection stage and thereafter. This is well reflected in the composition of the current NHRC itself.

The task ahead

Mention has already been made of the reform spirit of the "People's Constitution", even though somewhat against the will of political-cum-business careerists. At stake are the enormous vested interests which are rapidly expanding as the whole country has been undergoing top-down economic development and globalization. In such a political predicament, it is of no surprise that this particular Constitution is generally understood to have been created out of distrust for the old-time style of corrupt money politics, and that the solution to these money politics is to be found in promoting "people's politics" as a balancing force. Hence the specific attention attached to the common people's rights and active participation at this critical juncture of Thai political and economic transformation. At least on paper, this appears to be the case, as the Constitution's preamble states that the draft was created

With the essential substance lying in promoting and protecting rights and liberties of the people, providing for public participation in the governance and inspecting the exercise of State power.

It is also the first time in Thai constitutional history that the first chapter on General Provisions states that, “The human dignity, right and liberty of the people shall be protected.” And this is followed by Section 5: “The Thai people, irrespective of their origins, sexes or religions, shall enjoy equal protection under this Constitution.” So from the NHRC’s perspective, it can obviously be inferred that human rights are *the guiding principle* and criterion for appraising and examining the legitimate exercise of power of all the three sovereign branches of governance and other state agencies. The question of principle is well clarified by the provisions under Chapter 3, “Rights and Liberties of the Thai People”, Section 27:

Rights and liberties recognized by this Constitution expressly, by implication or by decisions of the Constitutional Court shall be protected and directly binding on the National Assembly, the Council of Ministers, Courts and other State organs in enacting, applying and interpreting laws.

And by Chapter 5, “Directive Principles of State Policies”, Section 75:

The State shall ensure the compliance with the law, protect the rights and liberties of a person, provide efficient administration of justice and serve justice to the people expediently and equally and organize an efficient system of public administration and other State affairs to meet people’s demand.

The State shall allocate adequate budgets for the independent administration of the Election Commission, the Ombudsmen, the National Human Rights Commission, the Constitutional Court, the Courts of Justice, the Administrative Courts, the National Counter Corruption Commission, and the State Audit Commission.

The last paragraph is cited in full here in order to present an overview of expected “public participation in the governance and inspecting the exercise of State power” from the various angles of State’s activities, as provided by law. The NHRC serves as one among the newly-created independent institutions. Unlike all the others, though, it does not have the authority to pass judgment or impose penalty on anybody. This is correct, however. Its real task is basically to see that the State authorities concerned do their proper jobs, and along with that to assume an enabling role in promoting social learning and awareness. For this purpose, the NHRC attaches great value and importance to education, research and the dissemination of knowledge on human rights. These are of course prescribed by the Constitution as part of the NHRC’s functions. But the point is to make it a proactive approach to the whole task of human rights promotion and protection. For, despite the NHRC’s official status as a State agency, it is strongly believed that its effectiveness rests in the last analysis with the society as a whole. All this means that the NHRC is to organize itself in such a way as to serve not only as rights defender, but also as social-learning promoter. That is why we take upon ourselves the task and working principle to serve as part and parcel of society, not apart from it. That is to say, to be open, transparent, and accessible to the public at large.

Before going further into the question of how to go about fulfilling our job as intended, one most significant point needs to be brought to attention here for the benefit of mutual learning and understanding. Earlier on, mention has already been made of the nature and reality of human rights in a great variety of specific contexts and circumstances that bring about human aspirations for freedom. The universality of human rights is indeed dynamically created out of this plurality. In other words, what we are really looking for is unity in diversity, and certainly not an authoritarian or totalitarian brand of universality where only might makes right. Thailand is one such case, like many others that have been going through decades of globally imposed economic development, as we all know. One can of course keep arguing without end as to the merits and demerits of development and globalization. The real and ultimate question, nevertheless, is how the real people fare in their varying social and cultural contexts—that is to say, in terms of human life and blood, not GDP as an end in itself. And that gives rise to an entirely new dimension of human rights problems.

At this point of human history, then, it is indeed high time to seriously raise the question of the impact of development and globalization. Indeed, as Helle Degn succinctly remarks in this very forum, it is not just the question of economic crime and corruption that is being involved. Even more significantly, development and globalization bring in their wake adverse repercussions on natural resources and the environment and thus on the integrity of human rights.⁹ The whole world now keeps talking on this issue, though somewhat on high moral grounds. Few, even among “human rights defenders” themselves, actually realize how intimately the life and blood of common people is involved in the issue of natural resources and environment. This is most obviously the case with those rural peoples and communities in tropical resource-based regions. Southeast Asia is one such prime example. Unfortunately, it is something overlooked within the ranks of ASEAN leaders. Or if ever appreciated, it is merely in terms of immediate trade and commercial gains, in the fashion of top-down globalization, and as always at great human and social costs. Such a state of affairs is obviously and directly concerned with the question of the right to livelihood and self-reliant development. One wonders if and to what extent this question could serve as the common basis for cooperation and coordination under whatever regional mechanism we have been talking about.

The 1997 Thai Constitution, somehow, is more or less a reflection of attempts to rectify such an untoward state of affairs. It is for this very reason that the idea and practice of community rights is being put forward and stipulated into law, again under both Chapter 3 on “Rights and Liberties of the Thai People” and under Chapter 5 on “Directive Principles of Fundamental State Policies respectively, as follow.

Section 46: Persons so assembling as to be a traditional community shall have the right to conserve or restore their customs, local knowledge, arts or good culture of their community and of the nation and participate in the management, maintenance,

preservation and utilization of natural resources and the environment in a balanced and sustainable fashion, as provided by law.

Section 56: The right of a person to participate with the State and communities in the preservation and utilization of natural resources and biological diversity and in the protection, promotion and preservation of the quality of the environment for normal and consistent livelihood in the environment which is not hazardous to his or her health or sanitary condition, welfare or quality of life, shall be protected, as provided by law.

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

Section 59: A person shall have the right to receive information, explanation and reason from a State agency, State enterprise or local government organization before permission is given for the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or her or a local community and shall have the right to express his or her hearing procedure, as provided by law.

Section 79: The State shall promote and encourage public participation in the preservation, maintenance and balanced utilization of natural resources and biological diversity and in the promotion, maintenance and protection of the quality of the environment in accordance with the sustainable development principle as well as the control and elimination of pollution affecting public health, sanitary conditions, welfare, and quality of life.

The idea of community rights would sound inconceivable and illegitimate to the mind-set of cultural essentialism, as referred to at the beginning of this presentation. Never mind about that. Community rights, like all others in human history, arise out of the struggles against oppressions under a great variety of specific circumstances. Their creation is as simple as human nature itself. What we have been facing now is the fundamental question of development and globalization that needs to be urgently and thoroughly re-examined and set in its proper perspective. The same is true with community rights presented here. They are by no means a ready-made formula. Even though they are built into the everyday life in traditional communities and recognized by the Constitution, they are still in the process of evolving in the face of the changing world around. Neither do they necessarily mean communities or collectivities taking precedence over individuals. That would amount to turning the clock back, and be bound to fail. Traditional communities too, for all their highly valuable knowledge and wisdom, direly need to learn to keep up with the times, and change while sustaining their integrity. Individual rights and liberties obviously constitute a most vital part of this learning process. Only such rights and liberties should belong to an individual or

person-in-community,¹⁰ and certainly not the individual in a vacuum and in absolute isolation as is the case today.

Institution building and networking

What has been said points to a real need for a certain rethinking about the changing state and dimension of human rights in the globalizing world. So along with the day-to-day functions set out by law, supposedly the same everywhere under the Paris Principles, the Thai NHRC finds itself obliged to take into account the changing circumstances and common people's rising aspirations for freedom. A point has already been made about the intended pro-active and enabling role to serve as social-learning promoter as part and parcel of society, not apart from it. In this very sense, the NHRC conceives of itself as an integral part of the process of *social institution* building. It is not for its own sake as State agency, but for the ultimate purpose of strengthening the Thai society and people as a whole to develop along the common path of freedom and progress. If what is called "human rights culture" building is to mean anything at all, this is it. It is the question of how a mutual sense of belonging is to be created between the NHRC and the public at large. That is why, at this formative stage, a great deal of attention is being attached to the way the NHRC is to organize itself and interrelate with society. One best conceivable way is to have the whole operating system organized through multi-tiered networking.

The main idea is to set up a sort of built-in process in which people from various walks of life can participate. The task of human rights promotion and protection is not to be left to the bureaucratic mechanism alone. That in itself would most likely defeat the whole purpose of having the NHRC *as an open institution for social learning*. The first tier of networking has now been settled, at least for the beginning stage. It could be called a tripartite coordinating mechanism, consisting of Commissioners, secretariat officers, and citizens. The last but not least could be selected from academic communities, NGOs, civil society groups, workers, farmers, or other professional and vocational groups, who are deemed qualified as human rights defenders. The whole thing is organized and divided into a number of sub-Commissions according to the subject matters involved and each is being equipped with a degree of legal authority in performing its duties. What is particularly significant about this first tier of networking is that all the three parties concerned are to make joint preliminary decisions on how to proceed with the cases or policy studies assigned them. The final decision and responsibility rests of course with the NHRC, according to the Constitution. All this is roughly how the process is being worked out. The following list of sub-Commissions demonstrates the scope and scale of problems and issues being taken up by the current Thai NHRC.

Group 1: Coordinating sub-Commission on Human Rights Protection:

- Human Rights Protection sub-Commission 1,
- Human Rights Protection sub-Commission 2,
- Human Rights Protection sub-Commission 3.

Group 2: Coordinating sub-Commission on Law and Judicial Process:

- Law sub-Commission,
- Judicial Process sub-Commission.

Group 3: Coordinating sub-Commission on Social Affairs:

- Sub-Commission on Media and Social Relations,
- Sub-Commission on Education and Development,
- Sub-Commission on Human Rights Education,
- Sub-Commission on Health and Environment,
- Sub-Commission on Children, Youth, and Family.

Group 4: Coordinating sub-Commission on Natural Resource Base:

- Sub-Commission on Technology and Intellectual Property,
- Sub-Commission on Energy, Industry, and Environment,
- Sub-Commission on Tropical Forests and Bio-Diversity,
- Sub-Commission on Marine Resources,
- Sub-Commission on Land and Water.

On top of all these, there are other sub-Commissions dealing with specific cases on wide-ranging issues such as refugees, ethnic groups, HIV patients, delinquents, labour, land disputes, including disputes arising from public projects like expressways, electric plants, gas pipelines, etc. Needless to say, all the sub-Commissions and subject matters involved are closely inter-related. That is why there needs to be grouping of the sub-Commissions concerned for coordination, and of course the whole process comes under the NHRC's ultimate decision and responsibility.

The first tier of networking as described contains within itself the second tier, as most sub-Commission members, if not all, have their own professional or civil society networks to begin with, such as Universities, Law Society of Thailand, the NGO Coordinating Committee on Rural Development (NGO-CORD), Civil Liberty Union Association, Human Rights Coordination Committee, Women's Rights Groups, Youth and Children Rights Groups, Forum Asia, etc. So while the first-tier tripartite networking directly takes part in the process of decision making, the second one could be called upon for consultation and advice on matters at issue, or even help in investigation of specific cases with a certain degree of authority.

As for the rest of networking, it is still in progress. As a matter of fact, this is intended to serve as the open-end and built-in process of the NHRC's performance. The idea is to keep in touch with various civic and vocational groups at all levels of society, both urban and rural.

This is to be two-way traffic, and a continuing process of mutual learning. And here, the task of research, education and dissemination is to play a major role: i.e., to keep the public informed and taking part in the social sanction and enforcement of human rights promotion and protection.

One thing to be particularly stressed is that the Thai NHRC's considerable interest in the matters of public policy and long-term development of human rights culture does not mean at all that less attention will be given to the day-to-day human rights violations which abound. On the contrary, it is well understood and agreed upon within the current NHRC that every complaint or known case will be taken up and progressed beyond the remedial measures for specific cases. That is to say, all the cases that have gone through the sub-Commissions concerned will be registered and taken up for study or research with a view to legal reform, or rectification of public policy if necessary. In dealing with matters of public policy, it is also understood that the NHRC takes it as a rule not to interfere with the Government's decision making in carrying out its executive authority. The NHRC is to be concerned strictly with the question of human rights violations as prescribed by the Constitution, such as the right of expression, the right to be informed, the right to participate in public hearings, etc. If the law and policy execution turn out to be unjust or inappropriate, then a change or correction is to be recommended accordingly.

Summing up: regional perspective

Thai society, like many other fellow Southeast Asian neighbours, has been going through structural changes under the adverse impact of economic development and globalization during the past four decades. Notwithstanding attempts at democratic reforms under the forces of popular uprisings in the 1970s and 1990s leading up to the current People's Constitution of 1997, the legacy of authoritarianism traditionally built into the "bureaucratic polity", in political scientist Fred Riggs' jargon, still very much remains. So also do the widespread problems of human rights violations. The state of affairs has worsened and become more complex since the 1970s when the Thai economy was further integrated into the global economic and financial orbit of neo-liberalism, with the World Bank, IMF, and WTO as the tools of expansionism and domination. At the behest of the so-called Washington Consensus, Thailand has been forced to come under the politico-economic formula for further economic globalization: liberalization, deregulation, and privatization. Indeed, the whole of Southeast Asia has fallen under the same predicament. This makes human rights problems a great deal more complex in terms of causes and effects. What is common to all the countries in this region, in fact the whole world, is that the issues of economic, social, and cultural rights assume a most prominent place in the work of all human rights defenders and advocates. As a matter of fact, economic, social, and cultural rights are closely inter-related with civil and

political rights. The ones more often than not lead to the others, as amply demonstrated in numerous cases of human rights violations in Thailand. These concrete experiences indeed clarify the indivisibility, inter-relatedness, and interdependence of all human rights. Any NHRC or regional mechanism anywhere has to keep this reality in mind in carrying out the task of human rights promotion and protection, if it is not intended to fail in its task.

Furthermore, even the economic, social, and cultural rights themselves assume quite a different meaning in a rural and resource-based society like Thailand, and for that matter Southeast Asia as a whole. While in industrial societies economic and social rights rely on welfare state measures as solutions, in rural and resource-based contexts, people aspire mainly to rights of self-reliance and self-determination. This is indeed true to the spirit of liberal tenet, by the way. This is what is being meant by “community rights” as stipulated under the current “reform” Constitution of Thailand. Surely, it also has a certain relevance elsewhere. If so, the regional human rights mechanism could have something concrete and in common to start with. What is particularly important in this proposition is that it all starts with the people, having little if anything to do with the question of State sovereignty which more often than not stands in the way of working towards human rights and fundamental freedom.

Notes

¹ Tony Evans, ‘Introduction: power, hegemony and universality of human rights’, in Tony Evans, ed., *Human Rights Fifty Years On*, Manchester University Press, 1998, p. 4; Heiner Bielefeld, ‘Western versus Islamic human rights conception? A critique of cultural essentialism in the discussion of human rights’, *Political Theory* 28 (1), February 2000, pp. 96-7.

² As Jacques Maritain observes: ‘No declaration of human rights will ever be exhaustive and final. It will ever go hand-in-hand with the state of moral consciousness and civilization at a given moment in history.’ Cited in Joseph A. Camilleri, ‘Human rights, cultural diversity and conflict resolution: the Asia Pacific context’, *Pacific Review* 6 (2), 1994, p. 20.

³ For example, Edward Herman, ‘Immiseration and human rights’, *Third World Resurgence* 58, June 1995, p. 41; Vandana Shiva, ‘The enclosure of the commons’, *Third World Resurgence* 84, 1997, p. 6; Lee Kuan Yew’s address to an annual conference organized by the Philippines Business Council in Manila, and President Fidel Ramos’ response, *The Nation*, Bangkok, 21 November 1992.

⁴ In Mary Robinson’s view, ‘If human rights are respected ... conflict, terrorism and war can be prevented.’ *Boston Globe*, 3 September 2002.

⁵ The Constitution of the Kingdom of Thailand B.E. 2440 (1997), Section 200: ‘The National Human Rights Commission has the powers and duties as follow:

(1) to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action.

In the case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceeding;

- (2) to propose to the National Assembly and the Council of Ministers policies and recommendations with regard to the revision of laws, rules or regulations for the purpose of promoting human rights;
- (3) to promote education, researches and the dissemination of knowledge on human rights;
- (4) to promote co-operation and co-ordination among Government agencies, private organizations, and other organizations in the field of human rights;
- (5) to prepare an annual report for the appraisal of situation in the sphere of human rights in the country and submit it to the National Assembly;
- (6) other powers and duties as provided by law.

“In the performance of duties, the National Human Rights Commission shall also have regard to the interests of the country and the public.

“The National Human Rights Commission has the power to demand relevant documents or evidence from any person or summon any person to give statements of fact including other powers for the purpose of performing its duties as provided by law”

⁶ Professor Edward Herman of Wharton School, interestingly and succinctly, has this to say: “Doesn’t a growth process in which large numbers are immiserated while a small elite prospers necessarily entail serious human rights violations? In liberal theory, and in the definitions used by the major human rights organizations of the West: No. Human rights are political and personal rights ...; they do not include economic rights to subsistence, education, health care, housing and employment. Thus if immiseration follows from the normal workings of the market system, based on the economic power of private organizations and banks and with the help of the IMF, World Bank, US government, and nominally democratic regime like Mexico or Chile, no human rights are involved.” Herman, ‘Immiseration and Human Rights’.

⁷ Josiah Crosby, *Siam: The Crossroads*, London, Hollis and Carter Ltd., 1945, pp. 89-90, 152-3.

⁸ National Human Rights Commission Act, B.E. 2542 (1999), Section 8.

⁹ Helle Degn, Commissioner of the Council of the Baltic Sea States on Democratic Development, in presentation on National Human Rights Institutions: Europe, Strasbourg Conference, 8 October 2002.

¹⁰ Herman E. Daly and John B. Cobb, Jr., ed., *For the Common Good: Redirecting the Economy toward Community, the Environment, and a Sustainable Future*, Green Print, 1990, pp. 161-5.

Thailand on the road to democracy: a review of problems and solutions*

Seksan Prasertkul

Friends, ladies and gentlemen.

Today is the 30th anniversary of the 14 October struggle. This is an appropriate opportunity for us to meet and review the state of the country's democracy.

But before I present my views, let me pay my respects to the heroism of those who lost their lives in the struggle, and thank those who have honoured me with the invitation to speak on this meaningful occasion.

In my view, past judgements about the value and meaning of the struggle for democracy in October 1973 have tended to one or other of two extreme positions.

The first views 14 October as the event which gave birth to the democracy we now have, and hence portrays it as a great and unique event. This view also tends to see representative democracy and formal democratic institutions as the final goal of all political development.

The second judgement points out that the democratic system and parliamentary institutions resulting from 14 October have become the political platform of a minority, and argues that the struggles by students and people thirty years ago were so riddled with errors and failings that they simply became a tool for the business elite to wrest power away from the bureaucratic elite.

In my view, these two extreme judgements each contain some truth, but as a result of prejudice or bias, each strays beyond the truth also.

The uprising against dictatorship by students and people in October 1973 must surely be accepted by any standard of judgement as a major event on a scale not seen before or since

* Speech delivered on the occasion of thirty years of 14 October 1973 at the 14 October memorial, Khok Wua intersection, on 14 October 2003. Translated by Chris Baker.

in Thailand's modern history.

The greatness of 14 October is not simply measured by the huge numbers of people who participated, but also by the brave spirit which united them like brothers and sisters in the face of life-threatening dangers. Masses of people voluntarily joined the movement to show the force of their numbers, and to make it clear they could no longer tolerate living under an autocracy.

If we don't count such a movement as a great event then it will be hard to find anything in the world which we can call a great event.

However, the vanguard of the 14 October struggle was just young people from the universities. They lacked maturity and political experience. After they had felled the dictatorship, they had no direct part in the establishment of democracy.

In the situation after 14 October, many other political forces and groups were at work in Thai society. It is in the nature of power relations that whenever an old power centre collapses, there is competition for power within the elite, and various interest groups assert themselves. In such a situation, it is not right to blame only the students who could not control the situation. Other social forces with more experience were no more successful in guiding Thailand's political course towards equilibrium.

It's wrong to say that the student movement which escalated after the 14 October events was blind to the business elite's move to seize the democratic platform. The truth is the exact opposite. They could see that trend from the start, and aligned themselves on the side of the disadvantaged classes, especially the workers and peasants facing hardships in the countryside, in the hope that democracy would open up political space for people at the grassroots as well.

But certainly the movement among young people at that time was not totally in line with reality. Several times they relied on their pureness of heart and ideological fervour as a substitute for analysis of practical problems in a practical way. When such errors accumulated, the movement ultimately was weakened.

Among all the weaknesses of the student movement in the period after 14 October, one decisive mistake in my view was that they overestimated the democratic forces. In reality the Thai capitalist class and middle class of that time were not very attached to democracy. They were ready to revert to authoritarianism as soon as they felt their interests were under threat.

That is the social origins of the massacre on 6 October 1976.

Hence to sum up, the uprising by students and people against dictatorship in 1973 was a great event which deserves a place of honour in our memory of the past. It displayed the wishes of a broad spectrum of the Thai people to be a democratic country in which people have rights, freedoms and social justice.

That being said, the course of democracy over the past thirty years is a completely different issue. In other words, the state of Thai democracy at the present day was not determined by 14 October alone. There were many other events and many other factors which have shaped its present form.

Friends, ladies and gentlemen.

Taking the 14 October event as a major milestone in Thai history, how much has our country improved over the past thirty years? Have politics and government become sufficiently democratic?

These questions cannot be answered in black and white because in truth there have been both gains and losses.

On the issue of democracy we should probably admit that things have improved, at least in comparison to the state of dictatorship prior to 14 October. The Thai people now have more rights and freedoms of political expression. Governments are now set up by elections as a matter of course. Those in authority can no longer use violence against people at will.

Yet we did not reach today's position by chance but through continuous popular pressure. That was why the bloodbath of 6 October 1976 could not block progress towards democracy as the bureaucratic ruling classes hoped. By 1978 we were back on the democratic path.

The armed struggle which the Communist Party of Thailand launched and the students joined had a major part in forcing the Thai state to change direction. Even though that struggle ultimately collapsed because of changes in the international situation and errors by the revolutionary movement itself, indirectly it forced the Thai state to shift towards democracy. That is an undeniable fact and one factor in determining the course which Thai society has since taken.

The revival of authoritarianism in 1991 and the people's opposition in 1992 have also contributed to the present situation. So too have the people's politics of grassroots groups and NGOs, the monitoring of power-holders by public intellectuals, and the criticism of government by the press.

These are all major factors which have pushed Thai society in the direction of democracy

But do problems remain, and does democracy itself have to be subjected to scrutiny?

The answer is that Thai democracy so far has not been able to solve many of the country's major problems especially poverty, the lack of social justice, and an education system whose purpose is not really about learning.

In my opinion, the fact that Thai democracy has failed society to this extent is a result of three main factors, namely:

1. an uneven development strategy;
2. the inadequacy of the parliamentary system;
3. the impact of globalization.

In fact these three factors are closely interrelated, but allow me to expand on each separately for the purpose of clarity.

First, the country's development strategy. We can agree that all elective governments have upheld centralized economic and social planning, and centralized power over the administration of resources.

This development strategy is the ongoing legacy of the capitalist industrial development initiated by dictatorial governments since 1961 and continued down to the present. This strategy has been followed for over 40 years. It has created such great inequality that different groups of people almost seem to belong to different countries.

The current poverty line is set at a monthly per capita income of just over 800 baht. Almost ten million people are still below that line. Besides, those with incomes only a little above this line cannot be considered well-off. We have to conclude that the urban-biased capitalist industrial development strategy has left no less than half the country plunged in poverty.

Further, the gap between rich and poor has got steadily wider. According to one economist's latest research, the poor today have a lower share of total income than around thirty years ago, while the rich have a larger share.

In concrete terms, the share of national income of the bottom 20 per cent of the Thai population has dropped from 6 per cent in 1975/6 to 3.9 per cent today, while the share of the top 20 per cent has increased from 49.2 per cent to 57.8 per cent.

Rearranging these same data, the disparity between the income of the richest and the poorest has grown from 8.1 times to 14.9 times. If we compare just the top and bottom 10 per cent, the disparity is 27 times.¹

Moreover, these figures do not show the whole truth, because the definition of the top 10 or 20 per cent includes both the billionaires and the ordinary middle class. Incredible as it may seem, the real degree of income inequality among the Thai population is even wider than that by many times. For example, there are over 40 million bank deposit accounts but some 70 per cent of the total value of these deposits is held in just 500,000 accounts.² A rough calculation based on the assumption that each person has one account shows that, amazingly, 70 per cent of all bank deposits belong to less than one per cent of the Thai population.

The situation of the majority of people in this country is not a matter in doubt.

Certainly we cannot hold society responsible for the poverty of each individual. But when half of the country's population is poor, that is not a matter of chance and not only a

problem of individuals. It is a structural problem with major consequences for politics and government.

The establishment of representative government in a society where most are poor and disadvantaged means primarily that political competition is concentrated within a narrow elite which has the economic qualifications to enter the political arena, while people of the lower classes serve only as foundations for the legitimacy of the electoral system. As a result, those seeking a better life have to attach themselves to patronage networks, but these networks do not have room for everybody, and they do not reflect a political system in which sovereignty lies with the people.

Yet, suppose we accept that political power and elites always go together. Suppose we imagine that fair and open competition among members of the elite will result in the selection of good people of quality to govern the country. But reality is not always like that.

The worst thing that has happened to Thai democracy is that politicians who come from the wealthy classes but lack morality, culture and even knowledge of government administration have taken advantage of the people's poverty, purchased their voting rights with dirty money, and transformed the democracy for which people spilt their blood in 1973 into a power auction among those with money.

This has been the situation from the promulgation of the constitution of 1978 until the promulgation of the political reform charter of 1997. In sum, for almost twenty of the past thirty years, Thai democracy has been a political arena for only a few thousand people who compete among themselves to dominate the remainder of the people.

Certainly not all politicians are despicable. Many are good, capable people deserving of respect. But we cannot deny that the electoral system has not created space for the majority of the population. It has not been a political "free market" as its advocates claim.

For many years past, the Thai parliament has been filled with members from the privileged classes—mostly businessmen or professional politicians closely associated with businessmen. For example, in the composition of the Assembly in 1996, 87 per cent of the members were businessmen or professional politicians, while agriculturists were just 2 per cent.³

To put it very directly, even after the political reforms of the 1997 constitution, the composition of the Thai parliament has not changed in the direction of distributing seats more to the lower classes. As with the problem of income distribution, the situation may actually have got worse.

In the Assembly elected in 2001, businessmen, ex-bureaucrats, lawyers and professional politicians together occupy 453 of the 500 seats.⁴ This means that 90.2 per cent of MPs come from various segments of the elite, while only 3.2 per cent are agriculturists and only 2.8 per cent are wage workers.

There is also the matter of the Senate which is now elected but under qualifications which favour the elite rather than the lower classes. Thus bureaucrats, businessmen and various high-level professionals together amount to 90 per cent of all Senators, while only 4 per cent are agriculturists, very similar to their proportion of the lower house.⁵

In sum, representative politics or electoral politics are definitely not an arena for the poor and underprivileged majority of the people.

Now to the second point.

Besides the fact that the uneven development strategy automatically excludes the majority of people from the arena of political competition and the possibility of affecting government policy-making, the parliamentary system itself has limited capacity to meet the needs of the people.

One important reason why this should be lies in the fact that for the past thirty years elective governments have continued to govern society through the old bureaucratic system. As a result, political liberalization is about the process of selecting the country's rulers, yet the system of government remains bureaucratic, and relations between state and society are still authoritarian.

It's well-known that the centralization of power in the bureaucratic system was contrived to serve the absolute power of government in the past, and institutionalized prior to democracy. It is a system of power designed to control society rather than to respond to the demands of various groups of people. Nowadays as a result of the growth of civil society, government officials show more respect to people in the course of their duties, but basically these power relations have not changed. Power is top-down, and the people cannot participate in it or monitor it.

Democracy by its very nature does not go well with centralization of governmental power and systems of social control. The state's own mechanisms delay and obstruct attempts to respond to social demands. Thus, logically and rationally, democratic politicians from the start should have quickly reformed the country's bureaucratic system to tear down the walls between themselves and the people and open up more space for the working of the representative system.

However, in reality for most of the past thirty years the politicians revolving through the various Cabinets have preserved this old centralized system of administration and used it to the benefit of their own patronage networks. The country's administrative system has become the source of the huge benefits that politicians ride upon. This system has the power to control, direct and manage the nation's resources including the administration of the national budget of several billion baht a year, and the power to make laws and regulations which wreak both good and harm on people's lives.

As I said above, because of its economic and social foundations, parliamentary democracy reflects the privileged position of a minority. The more it can dominate the old power mechanism, the less it can respond to the majority of the people, and the more it evades social scrutiny.

Hence it is no surprise that demonstrations and protests by various groups have proliferated, even though in theory people throughout the country have their own representatives in the centre of power. For example there were 170 people's demonstrations in 1990, increasing to 754 in 1995.⁶

From 1978 through to the elections under the 1997 constitution, stories of corruption and dishonesty by people holding public office have become a regular and scandalous part of the news. So too have stories about vote-buying and dishonest electoral practices. International academics who study Thailand have dubbed Thai democracy as "money politics"⁷ meaning a system of using money to buy power, and using power to make money.

This situation was the source of demands for political reform which emerged after the events of Black May 1992 and bore fruit in the constitution of 1997.

But how far will the political reforms along the lines of the 1997 constitution help the Thai parliamentary system to develop and improve? I think we are still a long way away from the idea of truly increasing the people's power.

Of course, the Election Commission has had a part in cleaning up the process of parliamentary elections. Of course, the existence of the Constitutional Court is useful for monitoring the quality and performance of those in public office. But we should probably admit that this current constitution concentrates more on how to select those holding office rather than how to disperse political opportunity to all groups of the population and all classes. This can be seen from the figures of the elite's dominating proportion in the parliament which I presented above.

To be very direct, the current constitution's provision requiring electoral candidates to have a tertiary degree amounts to confining the market of political competition within the elite, since most Thai have never had a chance to study to that level.

In addition, the research of a reputable academic⁸ found that the political reform constitution is deliberately biased in favour of large political parties and a system of few parties—further reducing the range of views represented in parliament. Besides, the provisions of the constitution also predetermine guidelines for government social policy.

This same research shows that people have to make a heavy investment to gain their rights to political participation, and hence these rights are difficult to realise in practice, especially the provisions requiring 50,000 signatures to propose legislation or propose someone's removal from political office.

Apart from the National Human Rights Commission which has responsibility in cases

where people's rights are violated, most of the independent organizations which were designed as checks-and-balances on politicians, cannot truly perform their duties and may have been taken over by politicians themselves. Laws to increase the people's power, such as those on public hearings and on community rights, still have not been passed even though the constitution is already over five years old.

Hence, to the question whether past political reform has increased the power and opportunities of the majority of people to participate in policy making, the short answer is no. Participation may even have been reduced as a result of the creation of the big party system and the increased power of the executive under the current constitution's framework.

And yet...

The problem of the Thai people's lack of true power under the parliamentary system is not only the result of economic conditions and political and administrative structures. There are also external factors which are violent and pervasive, and which combine with the internal factors to increase the people's political disadvantages.

These factors are generally called globalization, and this is the third main issue I must address.

What is globalization? Many of you may believe quite honestly that it means the increased contact among humanity without the obstruction of national boundaries or political ideologies—an era when people have open minds about ethnicity, religion and culture, and see the whole world as one living space.

For sure, this is a beautiful idea. There is a bright side of globalization in the borderless relations between peoples of different countries, made possible by communications technology. Networks spanning peoples of different nationalities and ethnicities now work to solve problems of the environment, epidemic disease, war and peace, human rights and social justice, and so on. These show that humanity today has a sense of its common fate.

But there is another side. We must admit that the biggest motive force in globalization is world capitalism with its core of transnational capital, the western great powers, and the international capitalist institutions such as the World Bank, World Trade Organization (WTO) and International Monetary Fund (IMF). This motive force can be both violently intrusive and deeply corrosive. In whatever form it takes, its aim is to submit the whole world to the conditions of the free market.

That being said, we should not see globalization as something new. In the late nineteenth and early twentieth centuries, the world underwent a major transformation due to the colonialism of the western capitalist countries operating under the flag of "free trade", just like today.

In that era, the reaction among the peoples invaded was to unite as nation-states on

the western model, and use the power framework of the nation-state to build a capitalist economy in their own countries.

Capitalist development and accumulation within a nation-state framework continued for several decades until most people had forgotten that in essence capitalism is a borderless system from the start. The old capitalist groups in the west accepted “national capitalisms” because on the one hand they themselves continued to use the nation-state framework to protect whatever markets they could dominate, and because on the other the Cold War which lingered through the second half of the twentieth century forced them to accommodate imperfect capitalisms in all the minor countries for political reasons—to attain victory in the competition of ideologies.

This explains why capitalist globalization revived after the end of the Cold War. The collapse of the socialist camp allowed the world market for trade and investment to expand rapidly. Transnational companies found that staying confined within their mother country or the areas with which they were familiar no longer delivered them the highest profits. Once there was an imperative to expand overseas, they found that the framework and conventions of the nation-state—or “national capitalism” overseen by a state—were a major obstacle.

In the case of Thailand, the entry of globalized capital has had drastic effects on economic and political relations, and on society. These effects can be categorised into three major problems.

The first problem is the decline of the ideal and ideology of the nation. Basically it had never taken a firm grip in Thailand. As the idea of a borderless world and the reality of borderless economic relations gained in influence, the attachment to the nation as the source of interests in which all people share—a sacred motherland—has faded away and lost its underpinnings.

How could our imagination of the nation decline so quickly? The easy answer is that we never really loved one another. But a more systematic answer must be that the extreme disparity in the society is the major reason. How can we unite closely together against foreigners when what we refer to as the national interest is really in the hands of a minority, and the majority have been abandoned to wallow in perpetual poverty?

For this reason the rise of new nationalism after the bubble crisis of 1997 was an utter failure. Nobody at all among the disadvantaged was moved by the collapse of the billionaires. The farmers did not feel that the heaven which vanished for the businessmen and the middle class was a heaven for them.

In addition, nobody could be certain that Thai businessmen and the associated Thai middle class were really a patriotic force. They were the people who had opened the door to the inflow of transnational capital in the first place. They led the country into the bubble

economy. They more than any others had the economic advantages. They imported foreign culture and took to international consumerism so quickly that mentally they virtually removed themselves from the nation and became rootless people, with no attachments to anybody.

When those who had got the greatest benefit from development carried out in the name of the nation no longer felt attached to the nation, it was difficult for them to tell the rest of the people to accept sacrifices and burdens for the sake of the nation's future progress.

In fact, the decline of the ideal and ideology of the nation is not a problem only of culture or consciousness, but is a big problem associated with the legitimacy of the state and the political system.

Past development by government planning rested on the assumption that there existed a big communal institution called the nation which the state looked after. But forty years of centralised development planning has divided Thailand into two societies which are different from one another and highly unequal in every aspect and every particular. The more that the society of the advantaged merges itself into the borderless economy and culture, the more the discourse of national interest loses any content and legitimacy in the society of those disadvantaged and abandoned.

Hence it is not strange that local communities, who find the resources on which they live are seized by state projects or private firms, no longer swallow claims about the national interest. Protests against government policies by tiny groups scattered throughout the lower ranks of society have become a widespread phenomenon. Social power has created continuous political pressure.

In this situation, the tradition of claiming the nation as a source of legitimacy for the use of power faces a major crisis. Not only the advantaged feel that the framework of thinking about national interest is too narrow to respond to their interests and fantasies, but the disadvantaged feel that the nation is a social contract which the rulers and the privileged have ripped up and thrown away.

The second problem. Apart from eroding and opening up rifts in nationhood, globalization further widens the class division within Thai society. This is very dangerous. The problem already existed, but globalized capital aggravates it by blocking routes to a solution. In the end this may lead to political and social violence.

Why do I see the world in such a bad light? To be honest, I have no bias against globalization, and if there are people who want to see Thai society united and peaceful, then I should certainly be counted among them.

But reality is that this problem arises in any territory where capitalist globalization comes to dominate. It is making the income disparity among the peoples of the world into a terrible time bomb which may have more explosive power than an ordinary bomb.

Today capitalist globalization has put 82.7 per cent of the combined income of the world's population into the hands of the richest 20 per cent, while the lowest 20 per cent have just 1.4 per cent.⁹ So I have real cause to be worried.

The reason I think capitalist globalization will further widen the disparity in Thai society is not only because of the inflow of transnational capital for investment and speculation. The main thing is that capitalist globalization has the definite intention to reorganise Thai society completely to comply with the rules of the free market, or in other words, the system of capitalist competition.

The idea of capitalist globalization stems from neo-liberalism which wants to see the whole world run by private enterprise, with the state confined to a regulatory role. The state will have no responsibility for managing resources or things of value in society. Everything will be left to the market mechanism. Efficiency in production and fairness in distribution will be the supposed results.

In the era since the Cold War, globalized capital, working through the international capitalist institutions such as the IMF, WTO and World Bank, has tried to force countries to accept this idea more and more. At the level of the nation-state, this means opening borders in all respects including free trade, free finance, free foreign investment, free labour, privatization, and the abolition of all old laws which are obstacles to the profit-seeking of investors.

In the case of Thailand, neo-liberalism has been able to charm some segments of the business elite because in the past the Thai state protected certain large capital groups and business families so much it could be said there was no true free competition.

In addition, the idea of capitalist globalization is tied up with certain kinds of political reform such as political transparency, good governance, and the building of civil society. These ideas have captivated the elite and the middle class with some degree of education because they despised the past use of political power for corruption or personal business advantage.

However, we need to understand the real core of globalization style development where everything is framed by the iron law of letting the market decide. When this law is applied in a society with such huge disparities in buying power and capital ownership, it is easy to guess whether the disparities will widen or shrink.

Liberalizing everything and using the world market mechanism to decide everything will not only deprive those who work as wage labour of their bargaining power, and cause the rural poor to lose out. Even domestic capital and some parts of the middle class will have no guarantee of survival.

What will happen when electricity, tap water, and even water used in agriculture become goods with prices which fluctuate according to the market mechanism? What will happen if higher education and medical care become totally commercialized? What will

happen when the labour market, both skilled and unskilled, both body and brain, is opened up for people of all nationalities? What will happen when Thailand's land and other resources become products in a world-level free market? What will happen in future if a Thai person's life is valued only in money?

It's possible that when we reach that stage, the meaning of existence for a Thai will have been reduced to dealing in products and services in the market in the status of a consumer or investor. And that situation can be called nothing but the destruction of the cultural and spiritual foundations of life.

The third problem. Besides the problem of political legitimacy which takes the nation as its origin, and the problem of social inequality aggravated by the free market system, capitalist globalization has affected Thai democracy directly in the area of the government's freedom in policy-making and people's participation in policy-making.

Certainly, given the rapidly changing state of the world, we cannot conclude that transnational capital's economic domination of various countries amounts to a loss of political sovereignty. Perhaps there is a new conception of the sovereignty of a nation-state which either voluntarily enters the system of "globocracy", or forms a cooperative grouping with other states in the same region.

But what is clear is that the way influential institutions like the IMF, WTO and World Bank lay down basic and fixed economic rules, and the Thai government makes laws to conform to them, amounts to closing down space for various classes in Thai society to participate in making policy to deal with real situations and the specific problems of various groups.

In my opinion, this is a very big issue. Not only are people sick with different illnesses all being given the same kind of medicine, but from a democratic viewpoint various kinds of power are being transferred away from the people into new hands. Big issues for the country are being decided by external institutions and forces, while people inside the country have less and less ability to decide their own fate.

On first principles, democracy differs from authoritarianism in many respects but especially in that power derives from the people, and only then may be entrusted to certain groups to serve as their representatives, but only temporarily and under the condition that power will not be used against the people themselves. People have the right to participate in government, monitor its workings, and take part in the process of making policies which affect them.

That being said, we can see that the intrusion of capitalist globalization and its accommodation by the Thai state has instantly made our democracy almost worthless, even though we have the rights to elect the members of various political institutions. Do not

imagine it is only the people who now cannot make policy; the rulers also are no longer sure whether they have the freedom to make policies which deviate from the wishes of external influences.

For sure, speaking only about the area of governing Thai society, we must admit that the state still has full power to enforce laws and issue rewards and punishments to those inside the country. But the fact this is so throws up concern whether the current Thai state is using its power inside the country to command Thai society to follow the policies of globalized capital, and is relying on capitalist globalization to come in and help solve Thailand's problems.

In truth, day by day we find more and more that the "Thai interests" which the state is looking after are not only the interests of a minority inside the country, but are metamorphosing into the interests of transnational companies.

At first, the Thai business circle thought it could use the liberalized financial system of capitalist globalization to make short-term profits without paying proper attention to strengthening the production base and knowledge base of technology. As a result, the large inflow of money was used for luxury consumption. It has been claimed that in 1995 alone, Thais bought watches and jewelry to a value of 7 billion baht, threw away 80 billion baht on foreign travel, and spent 10 billion baht on sending their children to study overseas.¹⁰

For these reasons, the stampede to borrow money overseas in the 1985-1995 decade gave rise to the so-called economic bubble which was an economy based on borrowed money rather than on any foundations in real production. In 1996 Thailand had debts both domestic and overseas of 355.6 billion US dollars, equivalent to 197.9 per cent of GDP.¹¹ Eventually there was a tendency for loans to go unserviced, resulting in loss of credibility in the capital markets and, in the end, the currency crisis of July 1997 which was the starting point for many awful things which followed.

These events prove that the belief of the Thai capitalist class that it could harvest the benefits of capitalist globalization on the one hand, while retaining the old-style Thai state on the other, turned out to be a complete dream. The bubble crisis of 1997 opened up opportunities for the world capitalist institutions such as the IMF to pile in with demands for Thailand to pass many laws in line with neo-liberalism. Further, in exchange for the loans which the Thai government had to take to solve the country's predicament which got more and more disastrous from then on, transnational companies were allowed in to Thailand to buy up businesses and assets freely so that today we almost cannot identify who the nation's property truly belongs to, and when we talk about the growth of the Thai economy as measured by the rate of GDP, what country's wealth is really increasing?

Friends, ladies and gentlemen.

I must apologise for leading you on such a long journey to survey the state of Thai

democracy, but without it, we might have overlooked the problems of politics and government, and concluded that Thailand's problems are only economic, and if the growth rate were to increase, everything would be fine.

All that I have said can be summarized in a single sentence: the representative democracy we have is inadequate to care for society as a whole, and even more inadequate to rescue Thailand from its many crises.

I use the word "inadequate" rather than a more negative word because I still see the good side of the parliament, the importance of elections for filling public office, and the value of the rights and freedoms that we have. I even think that some politicians and several members of the upper class have good intentions. But I still stand by the word "inadequate", because of all the problems I have mentioned from the start. Given the circumstances we face, I don't think the parliamentary process alone can completely wipe out the hardships that exist in Thailand. We must widen the democratic frame beyond simply electing people into positions of power and leaving the people as passive objects of government.

Certainly, along this path we must adjust and improve our idea of democracy. For a start, we must shift the way we think about what legitimates the use of power—away from abstract appeals to the nation, towards a concrete popular consensus. This will mean redefining the common interest to accord with fundamental realities. Given that the nation's wealth has been so unequally distributed all along, and given that now a significant proportion is under foreign control, using the discourse of the nation to create legitimacy for various government projects and policies may further exaggerate the injustices in Thai society. I hardly need to remind you that the interests of a minority can be obscured by appeals to the common interest.

In addition, we should probably accept that in the current era the interests of the people are infinitely more diverse and varied, and hence can sometimes conflict with one another. So it is no easy matter to refer to the common interest in a precise way. Even an elective government has no right to define of its own free will what the common interest is. It has to consider the concrete needs of various interest groups.

To put it plainly, in Thailand's modern history, loose appeals to the nation have tended to be a discourse of authoritarianism rather than of democracy.

This needs to change. Those in power must stop using election victory as the basis for legitimising all decisions. They must learn how to build consensus to serve as ongoing legitimacy for the deployment of power. On big issues which affect certain groups of people, those in power must listen to the opinions of those involved, and try to find a balanced solution. Sometimes they must be prepared to back down from a decision already taken when the opposition to it has real force.

Consensus and legitimacy from elections are not the same thing as consensus and

legitimacy in the use of power. Although a government is elected, it can still make mistakes if it does not solicit opinions from the people.

I venture that one of the main tasks of leaders in a democracy is not just issuing commands from top-down, but being adept at raising issues for debate within civil society, and then synthesising all the various opinions into decision-making.

Next...

Apart from changing ideas about legitimacy and consensus in the use of power, another matter that urgently needs change is the extension of democracy to the people at the grassroots so they can directly participate in solving problems to do with livelihood and improvement in their own quality of life.

This does not mean that we need to create representative institutions in every clump of grass right down to the level of the village and the tambon. Extending democracy in a structural way like this may be necessary and helpful in solving problems at some levels. But it is not the main route for really giving power to the people.

From past experience, we can probably conclude that representative democracy and the electoral process for filling public office are basically a democracy of the upper class. If we extend elections to the locality, the local upper class will come to control the institutions which are created rather than the general mass of the lower class. In these circumstances, the most the poor can do is sit and wait for patronage support, both official and unofficial.

However, the patronage networks which have dominated Thai democracy for a long time at all levels have proved incapable of raising people out of hardship. I hardly need to say that they only increase the people's weakness and dependence on these sources of patronage. This pattern of relations will never help people at the grassroots to stand on their own feet and claim the freedom which is their birthright.

For this reason, grassroots democracy should not be understood to mean extending elective institutions to every nook and cranny, but rather increasing the people's rights to participate in politics and government—in other words, direct democracy in which people have some measure of power without the intervention of representatives.

The poor don't want to hold public office. They don't want to found political parties to compete in the parliament. They do need the rights to manage natural resources, the rights to conserve their culture and environment, and other rights which free their lives from outside encroachment and enable their communities to be self-reliant.

In truth, we have talked of these matters for a long time, but it's time to state very clearly that this is the only way to oppose the intrusion of globalized capital. At this time we should not forget that transnational capital has already co-opted some segments of Thai society, and aims in future to seize control of resources in Thailand by drafting these

priceless things into the world market, or else processing them in large-scale capitalist production.

What then will happen to those who traditionally make a living from this resource base? And who will care about this way of life and these natural resources except the local communities in the countryside?

Thus, extending democratic rights to the mass at the grassroots is not only a way to create conditions for improving the lives of the poor and disadvantaged, but also a way to preserve the assets of the nation for the future. We should redefine the word nation, not as something vague and abstract, but in the sense of a “community of communities”.

Lastly...

Another thing that needs change is that we must stop designing national economic plans with one single strategy, or in other words, stop using centralized state power to lay down the country's development strategy without leaving space for many other alternatives in society.

Statistics, figures and facts indicate how far the state's past use of power in this respect has resulted in utterly uneven development and great concentration of income and assets. This has not only affected the democratic system, but also threatens the survival of huge numbers of people and closes off their opportunities to have a good life.

Nowadays, it is not only money capital that is in the hands of a minority, but also basic factors of production such as land, most of which is under the ultimate control of just 10 per cent of the people, who generally have not used this land in any productive way, while around 1.5 million farming families with no fewer than 5 million members have no land or not enough to make a living.¹²

In my opinion, the main point about uneven development lies not in mistakes in planning alone, but in the monopoly power over determining economic policy which is a legacy from the authoritarian system to the democratic one.

Our country is already one state, two societies. If we continue the centralized approach to development, and open the door wide for globalized capital to enter and dominate, the disadvantaged part of the Thai population will be battered even more and will sink even deeper until it is beyond hope of recovery.

Sometimes I think there remains only one possible way to escape this disaster, that is, urgently to open up many more alternatives for development by not submitting solely to the dictates and mechanisms of capital.

Saying this does not mean that I am proposing we should rise up and totally oppose globalized capital. In reality, I don't think that option exists any more. It is no longer possible for any country to have an isolated economy.

What I want to propose is a development policy that is not limited to the mainstream approach but has enough diversity to accommodate the variety of peoples in different areas, enough diversity that people can have lives that are “good” according to criteria which are not necessarily the same.

For those with enough potential, free competition may inspire their imagination and their creative power to produce things and have a way of life which is correct and fair.

But forcing those who are weak and disadvantaged into competing under a single set of rules against people much stronger than themselves is certainly not fair but rather is a form of injustice disguised by discourses of beautiful sounding words. Competition in the economy and society is a very different kind of competition from that of sports because there are no prizes for the losers, not even any care for those that are injured and left by the wayside.

In truth, we may not be able to create a society in which all people are equal in ownership of assets, but at least we should not throw away the hope of building a society in which people can be equal as human beings.

Whatever may be said, material property is not something of such eternal importance. Beyond the primary conditions of ensuring most people have proper food and shelter, the things that are more important than accumulating profits are peace and happiness in society, advances in various dimensions of culture, spiritual depth, and understanding the value and meaning of being in this world only temporarily.

Certainly the diversity I refer to implies conflict with decision-making on everything by the market mechanism, and implies obstructions to the flow and accumulation of profits by capital, because it will mean that in some areas of the country investors will not be able to enter and compete away the resources, and in some places the Thai people might not adopt the way-of-life of free competition but rather something based on cooperation and sharing.

Such diversity and alternatives in development cannot come about unless we accept participation by the people in economic policy-making which affects their communities, accept local people applying their own wisdom to improve their own lives, accept decentralisation of power over development planning equal to the decentralisation of political power, and agree to place limits on the scope of governmental power and the domination of capital.

Friends, ladies and gentlemen.

Thirty years ago, when we rose up against authoritarianism, the dreams of a huge number of people focused on the desire to have elections for those who govern the country. But our imagination was not limited to that. If my memory is still working properly, I can say that we also dreamt of justice, peace and happiness in society in the belief that these should be intrinsic to democracy.

Until today, although many things have not materialised, I am still confident that the

spirit of the October struggle is not something outdated. Quite the opposite. It has been the constant dream of the mass of humanity for a long time that they will be able to live in the world without being oppressed, under material conditions sufficient for human life in all respects, with opportunities open for them to pursue the value and meaning of their own lives.

The fact that Thai society has not yet reached that point is not something I attribute to the failings of any one person, class, or group in particular, but because everything moves according to real causes. But that is not an excuse which allows us to overlook the suffering and hardship that still exist. I think the duty of us all is to pool our efforts to create such a society in the future.

My final conclusion today is that our democracy still has problems but the route to solving them still lies along the democratic path.

Thank you for paying me the honour of listening.

Long live the spirit of 14 October.

Notes

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- ³ Official statistics.
- ⁴ Election Commission of Thailand.
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- ⁶ Praphat Pintobtaeng, *Kanmuang bon thong thanon: 99 wan samatcha khon jon* (Politics on the Street: Ninety-nine Days of the Assembly of the Poor), Bangkok: Krirk University, 1998.
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- ¹¹ Withayakon Chiangkun et al, *Wikrit sethakit thai: phon krathop jak kan rap ngoenkhai IMF lae thang ook samrap prachachon*, Bangkok: Praphansat, 1998.
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Summary report on the Thai-Malaysian Gas Pipeline Project

National Human Rights Commission

On 20 December 2002, a day before the Thai-Malaysian joint cabinet meeting was held at the JB Hotel in Hat Yai District, Songkhla Province, a violent incident arose from the protest against the Thai-Malaysian Gas Pipeline Project and affected the rights and freedoms guaranteed by the Constitution. The National Human Rights Commission of Thailand (NHRC) therefore appointed a Sub-Committee to study and investigate the case. The Sub-Committee now concluded its report which was approved by the NHRC. The summary of the report is as follows.

Background

The previous government approved the implementation of the Thai-Malaysian Gas Pipeline Project without meaningful people's participation in the Environmental Impact Assessment (EIA) and public hearings as stipulated by the 1997 Constitution. In this light, the NHRC conducted a survey of the impacts of the project in all aspects, then twice gave recommendations to the government. The NHRC recommended that the project should be reviewed to solve related problems in accordance with the Constitution, but the government has not given any response or explanation. The protesters, who had assembled long before at Lan Hoi Siap in Jana District, Songkhla Province, requested to submit a petitioning letter again to the Prime Minister at the JB Hotel.

The co-ordination with the protesters who travelled from Jana to meet the Prime Minister was made by Mr. Watcharapun Chankajorn in his capacity as member of the Coordinating and Monitoring Committee of the Prime Minister Secretariat. He had previously acted as a mediator between the government and the protesters. However, his role was not recognised by the government this time since he was not officially appointed. Subsequently, there was no clear agreement on the area where the assembly should take place. While

the protesters wanted to use a public space which is 150 metres from the hotel, the authorities demanded that they should stay near the Krung Thai Bank, which was further away. Hence, in the absence of anybody to officially act as a go-between, the originally peaceful demonstration turned into unnecessary confrontation.

Summary of the fact-finding before, during and after the violent incident

On their way from Jana to Hat Yai, the protesters were stopped by the police officers at Na-Mom District, Songkhla Province. They had to remain at this spot for two hours before a deal was settled. The police officers eventually agreed to accompany the protesters to Hat Yai at 8 p.m., but not along the route earlier agreed between the protesters and Mr. Chankajorn. Instead, the protestors were left on Jutibun-Sung Memorial Road, finding themselves face to face with a line-up of police officers behind barricades. The protesters then stopped, had their meal and practised their Muslim ritual of Lamad, while awaiting for the result of negotiations between Mr. Chankajorn and the government representatives concerning the appropriate place of assembly. During this time, another batch of police was deployed in front of the barricades and given a signal to disperse the assembly. The officers used their shields and batons in the dispersal, resulting in injuries on both sides. In the clash, the police officers arrested and detained twelve NGOs members, who were denied opportunity to meet and consult their lawyers, and have their lawyers attend interrogations according to law. The police officers did not either inform their relatives of the detention place, or allow the relatives to visit the detainees. Later on, the police charged these twelve people with several criminal offences, and brought the lawsuit against them at the Judicial Court of Songkhla Province.

Considering details of the incident, the Sub-Committee concluded its opinions with the NHRC's approval as follows:

1. The government's denial of people's opportunity to participate in the process of decision-making related to a project concerning management, maintenance and sustainable exploitation of natural resources and environment does not comply with Sections 46, 56, 58, 59, 60, 76 and 79 of the Constitution.

2. The government's use of force to disperse the peaceful and unarmed assembly causing injuries and property damage, while failing to provide reasonable evidence to prove the protesters attempted to force their way through barricades, is considered disproportionate, exceeding the minimum extent necessary, and unjust. Such act contradicts Sections 31, 44 and 48 of the Constitution.

3. The police officers' failure to notify the arrested persons of the charges and details of the arrest, the denial of their rights to meet and consult their lawyers, the failure to inform relatives of the arrested persons at the earliest convenience, the denial of the relatives' right to

visit, and the denial of their lawyers' attendance at the interrogations, constitute violation of the rights of arrested and accused persons as stipulated under Sections 237, 239 and 241 of the Constitution.

Recommendations

1. As an immediate remedial measure for the inflicted protesters whose rights were violated, the government should, within 30 days, give compensation for the injury to body, mind and damaged property, and cease any legal action against them.

2. As a measure to prevent the recurrence of an incident which violates the rights and freedoms guaranteed in the Constitution, the NHRC appeals to the government once again to appoint an independent committee to investigate the whole incident, to adopt the basic rules and practices with due respect for people's right to peaceful assembly under the Constitution, to clearly identify the role of officers at policy, command and operating levels, and to take due sanction against the responsible officers, if any.

In conducting investigation of the incident, the NHRC well recognises the important role and responsibility of the government, as well as officers at all levels, to keep law and order. Nevertheless, the NHRC earnestly wishes that their performance and their treatment of the people be righteous, legitimate, and in compliance with the rule of law and the spirit of the Constitution, so as to preserve national unity.

11 June 2003

Children with problems of proving rights to Thai nationality*

Phunthip Kanchanachittra Saisoonthorn

This article is about the body of knowledge of one researcher who entered the ivory tower equipped with beautiful western legal knowledge and ended up working in real Thailand with a hybrid western-Thai legal knowledge.¹

The background is as follows. When I had to teach Private International Law, I had to do research within that discipline.² But from my experience in doing that research, I found that children are one group of individuals who face great problems in establishing their right to personal status under Thai law, and may find their rights in natural law, which are respected as human rights and an aspect of human dignity, are violated.³

Problems over personal legal status which children face in Thailand can be divided into four categories:⁴ a) rootless children; b) orphans born in Thailand whose parents are unknown; c) children of stateless or nationality-less parents; d) children who have Thai nationality but are denied the rights of Thai nationality by state officials.

Rootless children

In the case of rootless children, it is not known whether or not they were born in Thailand; whether or not their parents had Thai nationality; whether by birth they have connection by *ius soli*⁵ with any state; or whether by birth they have connection by *ius sanguinis*⁶ with any state.

According to the general principle of nationality law accepted internationally, an individual may by right of birth acquire nationality in a state with which that individual has some connection by birth.

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In the first instance, a person may have nationality by birth under *ius sanguinis* from the parents' nation-state. The process of acquiring such nationality should be automatic in law because descent is a natural matter. If the father is a bird, the child is a bird. If the father has Thai nationality, then the child acquires Thai nationality naturally, that is Thai nationality by *ius sanguinis* from the father.⁷ Nationality acquired by *ius sanguinis* thus cannot be withdrawn, just as blood cannot be withdrawn from the human body without destroying human life.⁸

In the second instance, a person may acquire nationality by birth through *ius soli* from the state governing the territory where that person is born. The process of acquiring such nationality may be automatic in law or as a result of application, as governed by the domestic laws of the nation-state, since the connection between a person and the territory of a state is not a natural matter but according to the disposition of that state.⁹

In the case of a rootless child, we may not know whether the child in fact has a connection with any state, and hence may not be able to determine the child's nationality by birth. As a result the child becomes a *nationality-less person*, and if the state where the child is found does not grant right of entry and right of residence then the child also becomes a *person without domicile*, and in the end a *stateless person*.

However a nationality-less child need not become a *stateless person* if there is a state prepared to grant *right of residence*. This grant implies that this state is prepared to assume the status of that person's *state of domicile*. The child may then establish a home in that state's territory, have a legal domicile there, and have a right to apply for civil registration in that state and eventually become a *citizen*. The child may lack nationality but is not a *stateless person*. The child has the single disadvantage of being considered as an alien by every country in the world.

Hence when there is no factual information on the background of a rootless child, the child may be unable to acquire nationality from any state, and if the child is not granted residence by any country, will become a *stateless person*. In that case, the child cannot establish a home in any country of the world, is an alien in every state, is an illegal immigrant in every country, and is a criminal in every territory.

At present, although Thailand is signatory of several international conventions which bind Thailand to uphold basic human rights of the child without discrimination according to nationality, race, or other status, there is a significant number of stateless children in Thailand. These children face difficulties establishing their basic human rights, and often have their rights violated.¹⁰

To solve the problems of rootless children, which are problems created by lack of knowledge of the basic facts, we have to make certain legal assumptions. The problem which arises is whether to make assumptions which are favourable or unfavourable to the child. There are three possibilities.

1. Assume the parents had Thai nationality, in which case the child may acquire Thai nationality automatically under *ius sanguinis*. This assumption is most favourable to the child.
2. Assume the child was born in Thailand, in which case the child may acquire Thai nationality under *ius soli*. This assumption again is most favourable to the child. But whether this will happen automatically in law, or will require a ruling by the Minister of Interior, depends on whether or not the parents were aliens with permanent resident status. So we have to make a second assumption which has two possibilities: a) the assumption more favourable to the child is that the parents had permanent residence in which case the child may acquire Thai nationality automatically by *ius soli* in law; b) the assumption less favourable to the child is that the parents did not have permanent residence in Thailand, in which case the child may not acquire Thai nationality automatically under *ius soli*, but must depend on a ruling by the Minister of Interior under principles for granting nationality laid down by the Cabinet. This nationality will thus be *Thai nationality by ius soli through a ruling of the Interior Ministry*.

If the child is granted neither Thai nationality nor residence, the child may still have domicile in Thailand under private law as a result of being found in Thailand. In this case, the child's personal status in law is governed by Thai private law, under which the Thai state is the state of domicile of the child according to such private law.¹¹ That means the problems of establishing personal status, of legal capacity, and of terminating personal status fall under Thai civil law, that is, the civil and commercial code.

Although rootless children are accorded great sympathy in Thai society, the trend of government policy is very unclear. Problems are solved by taking a sympathetic attitude, but without establishing clear rules and principles which everyone can understand and follow. Implementation should be based on a neutral attitude, logical approach, and clear procedure.

Although rootless children are found in both urban and rural areas, since the numbers are quite small, they have not drawn the attention of international non-government organization (NGOs) in the same way as stateless and nationality-less persons on the borders (see below). However, the subcommittee on children without nationality established under the Senate committee on women, children and the aged by resolution 3/2545 on 20 March 2002 is studying policies to solve these problems and ways to extend legal help to rootless children.¹²

Orphans born in Thailand of unknown parents

The second issue concerns orphans who are known to have been born in Thailand but whose parents are unknown and hence also the nationality of the parents is unknown.

In this case we know the children have a connection to Thailand under *ius soli*, but we do not know if they have a connection to any state under *ius sanguinis*. In this case, the child cannot prove right to Thai nationality automatically under *ius sanguinis* because it is not known if the parents had Thai nationality. The child also cannot prove right to Thai nationality automatically under *ius soli* because it is not known whether the parents had permanent residence in Thailand. So again, the resolution depends on assumptions about facts which are unknown.

As noted above, according to general principles of nationality law accepted internationally, an individual may by right of birth acquire nationality in a state with which that individual has some connection by birth. But in the case of orphans born in Thailand of unknown parents, it is not known whether the child has a connection with any state under *ius sanguinis*. In that case, the child may still qualify for Thai nationality under *ius soli* if: a) the child was born in Thailand of parents with permanent residence status in Thailand; or b) the parents were born in Thailand before 26 February 1965 of parents who were themselves born in Thailand.

In fact, the nationality, residence status and birth details of the parents are not known. As a result, if the assumptions made are not favourable to the child, the child may not acquire Thai nationality and may become a *nationality-less person*.

And if the child is not granted *right of entry and residence* by the state governing the territory where the child is found, the child will also become a *person without domicile*, and ultimately a *stateless person*.

To solve this problem, legal assumptions have to be made about the parents. There are three possibilities, from the most to the least favourable to the child:

1. Assume the parents had Thai nationality, in which case the child acquires Thai nationality automatically by *ius sanguinis*.
2. Assume the parents were aliens with permanent residence status in Thailand under immigration law, in which case the child acquires Thai nationality automatically by *ius soli*. But the Thai state has the authority to withdraw this nationality if the child later acts in a way prejudicial to the state and society, or abandons Thailand, or neglects Thai nationality.¹³
3. Assume the parents were aliens without permanent residence in Thailand, in which case the child has the right to apply for Thai nationality by birth under *ius soli* only through a ruling by the Minister of Interior under the principles for granting nationality laid down by the Cabinet. This nationality will be *Thai nationality by ius soli through a ruling of the Interior Ministry*.

However, as in the case of rootless children, orphans born in Thailand of unknown parents who are not granted either Thai nationality or residence may still have domicile in

Thailand under private law because they were found in Thailand. This means their personal status in private law is governed by the law of Thailand which is the state of domicile of the child according to such private law.¹⁴

It is evident that children born in Thailand have more connection with Thailand than rootless children. Although their parents are unknown, their birthplace is known, their life is rooted in Thailand, and their home is in Thailand. Yet the state has not realised these children's problems over the lack of nationality and domicile under the public law of the child, and hence the children are not recognised by law. This should be corrected quickly by first according the children temporary right of residence. Without considering whether or not the child is an illegal alien, granting temporary right of residence is enough to give the child the status of a *temporary citizen*. The child then has the right to apply for house registration under Thai law,¹⁵ and though may not qualify for Thai nationality, will still have the right of personal status in Thai law, and can receive identification documentation under Thai law. The child may then face some barriers to exercising basic human rights in Thailand but not great ones.

Subsequently, when it is established that the child conducts life in a way favourable to Thailand, which means the child assimilates with Thai society and culture, there is a policy to grant nationality. So there is a route under existing Thai law to accept an orphan in this situation as a Thai national, so that the descendants need not become stateless or nationality-less persons like their forebears.¹⁶

Today if the Ministry of Interior, which is the body in charge of this matter, were to make only a small beginning to establish policy for children who are stateless and nationality-less because they lack parents born in Thailand, it would be a step towards a result of great benefit for children.

The subcommittee on children without nationality established under the Senate committee on women, children and the aged by resolution 3/2545 on 20 March 2002 is also studying policies to solve the problems and ways to extend legal help to children in this situation.

Children of stateless or nationality-less parents

The problem of statelessness may arise from real events or from points of law. It can be seen that the problems of rootless children and orphans born in Thailand arise from *lack of knowledge of the facts* about the parents or the place of birth. But in the case of a child of stateless or nationality-less persons, the facts underlying the child's rights are known, but the problems arise from points of law.

When parents have neither nationality or permanent residence in any country, they have no political connection with any state. If the parents have no civil registration in any country of the world, the children are *stateless persons* just like their parents. The problem

does not arise because of lack of knowledge but because of a crisis in the life of the parents which also affects the children.

At present, at the Thai-Burmese border, there are many children who have problems over their status in Thai law. As a result of ethnic conflict inside Burma,¹⁷ many stateless and nationality-less persons from Burma have migrated into Thailand. These people have no point of connection to Thailand by birth. So it is normal that they have no Thai nationality. They have also not been granted right of residence in Thailand, and have the status as stateless persons in Thailand.

Children born *outside* Thailand of stateless and nationality-less parents face the possibility of themselves becoming stateless and nationality-less aliens in the future.

In the case of children born *inside* Thailand of stateless and nationality-less parents who were born *outside* Thailand, if the parents entered Thailand without permission under Thai immigration law since 11 July 1927, their children have the standing of stateless and nationality-less aliens like their parents.

But a child born *inside* Thailand before 26 February 1992 of stateless and nationality-less parents who were born *inside* Thailand have automatic right to Thai nationality. This is because the Thai legislature has accepted that the third generation born in Thailand from immigrant forebears has been assimilated into Thai society.¹⁸ But children born since 26 February 1992 do not have this automatic right. Their chance of attaining Thai nationality depends on current government policy in the form of a Cabinet resolution.¹⁹ So children of the same parents born at different times may have a different status.²⁰

To solve the problems of children who are stateless in Thailand because their parents were stateless also, we need to review the relevant laws which afford three possible solutions: a) granting temporary residence;²¹ b) granting permanent residence;²² c) granting nationality.²³

The situation is similar to that of orphans born in Thailand of unknown parents.²⁴ But in this case the trend of government policy is much clearer than in the two instances above. There are several Cabinet resolutions which have followed a consistent line.²⁵ This allows NGOs to play a role in solving the problem of stateless and nationality-less children in Thailand. The remaining problem is the resistance and tardiness in converting policy into practice. In a clear example from 2000, the Thai government adopted a policy of granting legitimate personal status in Thai law to Burmese refugees who are nationality-less people to whom the Thai government has granted right of temporary residence in Thailand since around 1976. This group are called the holders of pink cards. But over the past three years, there has been no process to implement this policy seriously. Children of parents in this situation are thus affected by the crisis in the lives of their parents, and lack nationality even though the Thai state has a policy to grant them a better personal status in law.

Thailand has many policies and laws to solve the problems of stateless persons in

various situations. In reviewing the laws which are both favourable and unfavourable to stateless children,²⁶ some may be praised as real attempts to solve the problems,²⁷ while others may be criticised as creating stateless children in Thailand.²⁸

Research is still needed to improve the laws and policies on this issue.²⁹ Children who have a problem over their personal status in law because their parents are stateless and nationality-less often come from minority groups and from rural areas. They lack access to education and economic opportunities, and may be disadvantaged by the prejudice of people in the society.

Children who have Thai nationality but who are denied the rights of Thai nationality by state officials

The fourth problem concerns children of people with Thai nationality who are denied the rights of Thai nationality by Thai state officials.

According to Thai nationality law concerning ordinary persons, it is clear that a child may acquire Thai nationality automatically if facts can be legally established that the child was either: a) born of a rightful father with Thai nationality; or b) born of a mother with Thai nationality; or c) born in Thailand before 26 February 1992 of parents born in Thailand; or d) born in Thailand of parents with permanent residence status in Thailand.

Hence it would seem difficult for someone with a connection to Thailand by birth to become a nationality-less person, but in reality this problem sometimes arises in Thai society.

In the writer's experience, there are many children who experience problems proving their personal status in law. Even though they have clear evidence of their status as *Thai nationals by birth*, and even though the evidence is what the law requires, they are not granted their personal status in official record. Or even though they are recorded as Thai nationals, they are given the status of aliens. This happens quite often among people living in the hills, who officials call highlanders.³⁰

In my experience as a researcher and as someone providing legal assistance, people with Thai nationality by law and with the evidence to prove it often become aliens in the perception of officials who deny their Thai nationality. The reasons are rather varied.³¹

Ordinary persons who have no connection with any state except Thailand are denied the rights of Thai nationality and are made nationality-less by Thailand, the only state with which they have relations. People in this situation may be children or adults, or children born inside the country of parents who lack nationality because the Thai state has denied their rights of Thai nationality.

As a result the children lack nationality until they can prove their Thai nationality by law. And if they fail to prove their personal status in law, they become nationality-less aliens.³²

At present it seems that the practice of the Department of Local Administration (DOLA) is that when the proof of a person's status in Thai law is not accepted by the sub-district (*amphoe*) or ward (*khut*), that person is considered an alien, as can be seen in the case of the 1,243 villagers of Mae Ai whose names were withdrawn from the civil registration record in February 2002.³³ The Thai officials placed the burden of proof of their legitimate personal status in Thai law on the persons whom the officials had rendered as aliens. Providing this proof would be difficult and incur considerable costs to engage experts.

Poor people must apply for help from the Law Society which has a committee on human rights of ethnic groups, nationality-less persons, and refugees, established by resolution 289/2544 of 2 November 2001, to look after this matter.

However, this situation could be solved by using the courts to sue the government to accept their right to nationality, following the examples of the migrant Vietnamese³⁴ and those of Chinese nationality³⁵ settled in Thailand before 1957 who used this method.

Solving the problem of the personal status in law of children in this situation falls within the scope of two committees of the National Human Rights Commission (NHRC), namely the committee to study and review problems of ethnic minorities according to the NHRC resolution 17/2545 of 29 March 2002, and the committee on children, youth and the family, according to resolution 54/2545 of 5 July 2002. The first of these committees should seek solutions for the families of the children, and the second seek solutions for the children themselves.

On some occasions DOLA is motivated to solve problems of people of Thai nationality who are denied the rights of Thai nationality by its own officials. It has even instituted special regulations,³⁶ such as the Central Office of Registration's regulation on reviewing the civil registration of highlanders in 2000. But since then, in 2003, DOLA has reverted to the idea of revoking this regulation. Hence the problem of the legal status of highlanders who have Thai nationality by law but are denied the rights of Thai nationality is not yet settled, and the problem of people lacking civil registration will linger in the future.

Final remarks

Difficulties which result in children and youth becoming unidentified persons. From documentary research and from personal experience, the process of proving personal status under Thai law has many difficulties which give cause for concern.

The first difficulty is that those involved lack knowledge of nationality law. In 2000, I devoted myself to studying why people of Thai nationality failed to acquire civil registration. I found that those who had the authority to determine the nationality of ordinary persons lacked knowledge of Thai nationality law. This problem was found among officials, academics and the people themselves. In this situation, the process was not efficient or

effective. The best way to solve this problem is to educate people on the law concerning their own rights to nationality. At present the process of teaching rights is a project which various social development funding agencies consider very important, since if villagers and communities know about their own rights, the process will not be blocked. It might be slow but will not collapse because of no supporting budget.

The second difficulty is that those involved do not have a good attitude to those whose nationality is under scrutiny. Besides the lack of knowledge among the children, families and those taking care of the children, there is a problem of prejudice among officials. In many places, the officials presuppose that the children are aliens, or may be a danger to state and society, even though there is no factual basis to conclude the child is a threat to state and society. Changing the attitude of the officials who have authority of reviewing the children's personal status in law is an important and urgent matter.

A third difficulty arises from the difficulty of understanding the complexity of the situation that has to be proved. Proving the connection between the state and an individual is difficult, especially when the facts concerned are events which happened many decades ago. Proving the facts according to the principles laid down by law and policy is very difficult. It requires experts in establishing identification from the viewpoint of law, social studies, anthropology and history. Failure to understand the problems leads to wrong decision-making, which in turn creates great disadvantage for children and youth who are designated as aliens, for example the withdrawal of 1,243 people from the civil registration in Amphoe Mae Ai. The problems of villagers and communities living along the Thai-Burmese border have not yet been studied.³⁷

Besides, the complexity of the problem may create openings for corrupt intervention on behalf of people who do not have legitimate personal status in law to fake the rights to legal status, or in local terms, *fake their identity*.

Solving the above problems requires a planned, systematic and sustained approach to close the opportunities for corruption or error. At the same time, multidisciplinary knowledge must be brought to bear in proving the children's right to personal status in law.

A fourth difficulty arises from problems of using legal process. Individuals who seek justice through the courts must have high or middling economic status, and good education. The number of court cases is rather few, and those who use this method generally get a just result, even though the written law on these matters is not clear and has principles and content which often conflict with the principles of human rights. Thus, academics who teach law in the classroom may not realise that there are many other people in Thailand who suffer great hardship through the denial of their rights to legitimate personal status in Thai law, even though they have a true connection with the country.

Around 1996, many people read my research and encouraged me to pay attention to

the situation of stateless and nationality-less persons among certain groups in Thailand. In reality, those people acquired personal legitimate status in Thai law because they had real connections with Thailand. But they were poor and lacked education. They could not enter the portals of the courts of justice on their own. If we are to grant them justice, we have to go towards them. And would we, as theoretical academics, do such a thing?

The consequences on children of denial of nationality. The experience of researching personal status in Thai law has made me understand that many children face barriers in receiving development because they are not granted legitimate personal status in Thai law, or are not accorded legal status in Thai law by any state in the world.³⁸

In cases where a child's legal status cannot yet be proved, a temporary expedient should be invoked, that is to grant the child the basic human rights of a) the right to have documents of proof; b) right to education; c) right to health; d) right to work; and e) right to found a family.

Reviewing the situation in Thailand shows that many children who cannot prove their personal status in Thai law are denied access to these basic human rights. And those who often violate the child's rights are the government organizations involved. It is usually understood that Thai law can deny people these human rights on grounds that the person does not have the identity documents issued by the Thai state. In truth, Thai law cannot limit or withhold these rights, since all these rights are rights which accrue to every person by nature. The case that happens with many children is the denial of the child's right to education or to receive certificates of education.

The solution of this problem is similar to others, that is, the attitudes of people who deal with the child must be changed; people who volunteer to take care of the child must be educated; and ways must be found to shift the thinking of the country's leaders to create policies which are efficient in solving the problems of the child.

Lack of volunteers to aid children gain legitimate legal status. Currently Thailand cannot be said to be free of children who are stateless and nationality-less, but there is a "medicine" which can be used to treat this "disease" with certainty, only there are currently not enough volunteers to apply this medicine to the children who are suffering the pain.

The establishment of the NHRC as a constitutional body should be a mechanism to strengthen and encourage those working on human rights. In many countries, the formation of independent institutions which come from the people but which have authority from the highest law of the land, such as the NHRC, has rapidly changed the situation of violation of human rights. We should hope that Thailand has the same experience.

Realistic thinking on helping children with problems of legal status. In an age when human dignity is upheld by the constitution, the country and all the organs of government cannot ignore the problem of statelessness.

According to the evolution of modern legal thinking, the problem of statelessness can be solved by granting nationality of any state in the world, or by granting right of residence in any state in the world. However, the reality must be accepted that it is not possible to distribute Thai nationality to every stateless person who appears in Thailand. According to the general principle of international law, nationality is a sign of a true connection between the state and the individual. Granting Thai nationality to any stateless person must depend on their being some data which show a true connection between that person and Thailand. Thus granting nationality to a child who has difficulty in proving identity according to Thai law should allow the possibility that the child may be able to supply clearer proof of the connection to Thailand in the future.³⁹

To deal with the problem of the human rights of children and youth in Thai society who have difficulty in establishing their legitimate personal status in Thai law, a first principle should be to grant the right of residence in Thailand which affords sufficient legitimate personal status in law for the child to develop and acquire the basic rights necessary for development of the child's quality of life.⁴⁰

Lastly, I hope that children and youth today who face problems of identification under Thai law should not be left in this situation until they become adults. And their children should not face the same problems which the parents faced in their youth. I hope that I and Thai society feel hardship and pain equal to that of the children and youth who suffer from being denied legitimate status in law only because they have no root or no parents or their parents are stateless or nationality-less or presumed to be aliens. If things are as I hope, there should be no children and youth in Thai society who suffer this hardship and pain.

Notes

¹ I hope this article will encourage more volunteers to work on solving the problems of stateless and nationality-less children, so that children in Thailand suffer less from these problems.

² Which meant study on four issues: a) management of people across countries; b) the situation of people across countries; c) conflicts among laws; and d) resolution of disputes between individuals across countries.

³ Phunthip Kanchanachittra Saisoonthorn, 'Thasna khong nak kotmai to panha kan dai sanchat thai nai patjuban (Current attitudes of lawyers to problems of acquiring nationality)', paper presented to seminar on 'Nationality law: problems and solutions', Bangkok, 23 March 1991; 'But khong ying thai lae chai tang dao ja mi sanchat thai ru mai (Will a child of a Thai woman and alien man have Thai nationality?)',

- Warasan Satritthai*, 7:3 (1991); ‘Sithi khong dek thi ja mi sanchat thai (Right of a child to Thai nationality)’, in: *Khwaam ru kotmai yaowachon pu yaowachon* (Knowledge of law on youth for youth), (Thammasat University, Faculty of Law, 1991); Supreme Court Judgement 979/1990 concerning Thai nationality of children of people from whom Thai nationality was withheld by Revolutionary Order 337, in: *Warasan Nitthisat Thammasat* (Thammasat Law Review), 21:2 (1991); Supreme Court Judgement 2901/1992, in: *Kotmai sanchat thai: lak kotmai thi plianplaeng* (Thai nationality law in change), Bangkok: Winyachon, 1993; Supreme Court Judgement 1450/1992, Thai nationality of child of mother from whom Thai nationality was withheld by Announcement of the Revolutionary Group 337 and a Thai father, following 26 February 1992, in *Warasan Nitthisat Thammasat* (Thammasat Law Review), 24:3 (1994).
- ⁴ This is a summary of research under two projects: a) study of effect on human rights of people without nationality in Thailand, sponsored by Professor Kaneung Leuchai Fund, Faculty of Law, Thammasat University; and b) research on stateless and nationality-less people in Thailand, approach to legitimate solution under international law, under the social management project, Faculty of Law, Thammasat University.
- ⁵ *Ius soli*, literally “right of soil”, meaning a right acquired by connection to a territory, especially the right to nationality in the country where one was born.
- ⁶ *Ius sanguinis*, literally “right of blood”, meaning a right acquired through the blood connection to parents, especially the right to acquire the nationality of one’s parents.
- ⁷ Phunthip Kanchanachittra Saisoonthorn, *Wiwatthanakan khong kotmai wa duai kan dai sanchat thai doi lak sup sai lohith jak bida* (Evolution of law on gaining Thai nationality by *ius sanguinis* from the father) (Bangkok: Thammasat University, Faculty of Law, 1998).
- ⁸ Phunthip Kanchanachittra Saisoonthorn, ‘Krabuankan khong rat nai kan khuap khum khon thai thi mi ongprakop tang dao (State procedure for controlling Thai people who have connections to a foreign state)’, article for 50th annual Rapi volume, Faculty of Law, Thammasat University, 1998.
- ⁹ Phunthip Kanchanachittra Saisoonthorn, ‘Sathanaphap khong khon thai doi lak dindaen (Situation of Thai people by *ius soli*)’, research paper presented to the curriculum extension committee, Thammasat University, 1992; ‘Wiwatthanakan khong naew khwaam kit wa duai sanchat thai doi lak dindaen (Evolution of thinking on Thai nationality by *ius soli*)’, paper presented to Thammasat annual academic seminar, 1989.
- ¹⁰ Anchali Kitthonphaibun, Orawan Rotsangwan, Suwanni Khemjaroen, Arya Chinworakamon, and Phunthip Kanchanachittra Saisoonthorn, ‘Phon krathop dan sithi manusyachon to khon rai sanchat nai prathet thai (Human rights impact on stateless people in Thailand)’, research report under Professor Kaneung Luchai Fund, Faculty of Law, Thammasat University, presented at seminar on Thailand research on migration between countries under globalization, 24 June 2002, Chulalongkorn University.
- ¹¹ Clause 10 of Act Concerning Conflict Among Laws, 1938, which reads “Ability and inability of a person will be according to the nationality law of that person”; along with clause 6, paragraph 4 of the same act which reads “for a person without nationality, apply the law of domicile applicable to that person; if the person’s domicile is not known, apply the law of the country where that person has domicile.”
- ¹² See report of the subcommittee studying methods to solve problems of stateless children, under the Senate committee on women, youth and the aged.
- ¹³ Phunthip Kanchanachittra Saisoonthorn, ‘Krabuankan khong rat’.
- ¹⁴ See note 11.

- ¹⁵ Clause 37 of Act on Registration of Citizens, 1991, and clause 17 of Act on Immigration, 1979.
- ¹⁶ Phunthip Kanchanachittra Saisoonthorn, 'Kan yom rap hai khon tang dao phasom klom kleun nai sangkhom thai: kho samruat jak kotmai panha lae thang leuk nayobai (Assimilation of aliens in Thai society: survey of laws, problems and policy alternatives)', paper presented to Thai Khadi Research Institute, Thammasat University, 2000.
- ¹⁷ Phunthip Kanchanachittra Saisoonthorn, 'Klum phu phlat thin sanchat phama: dua yang khong matrakan khajat panha khon rai rat thi prathet thai chai nai kan jatkan panha khwam rai sanchat khong chon klum noi jak prathet phama thi klom kleun laoe kap sangkhom lae watthanatham thai (Burmese refugees: example of method to deal with stateless persons which Thailand uses to manage problem of lack of nationality of minority people from Burma who have assimilated already with Thai society and culture)', article for annual Rapi memorial volume, 2002, Faculty of Law, Thammasat University.
- ¹⁸ Phunthip Kanchanachittra Saisoonthorn, 'Sathanaphap ... lak dindaen'; 'Kan yom rap'; 'Sathanaphap nai thang kotmai khong chon klum noi nai prathet thai (Legal situation of minority groups in Thailand)', research presented to Thailand Research Fund, 1998.
- ¹⁹ Clause 7 supplementary section 2 of Act on Nationality, 1954, which was amended and extended by clause 11 section 2 of Act on Nationality (Second Version), 1992.
- ²⁰ Phunthip Kanchanachittra Saisoonthorn, *Kotmai sanchat thai: phon krathop to thung phu thi koet kon lae lang wan thi kotmai chabap mai mi phon bankhap chai* (Thai nationality law: impact on those born before and after promulgation of the new act) (Bangkok: Nithitham, 1992); 'Kan kae khai kotmai sanchat thai nai phi pho so 2535 (Amendment of Thai nationality law, 1992)', document for Institute for Development of Judicial Officials, Ministry of Justice, 1992.
- ²¹ Using authority under clauses 17 and 34 of Act on Immigration, 1979.
- ²² Using authority under clauses 17 and 40-51 of Act on Immigration, 1979.
- ²³ See note 19.
- ²⁴ Report of the subcommittee to study problems of proving the personal standing of highlanders, according to the Cabinet resolution 1/2542 of 11 May 1999.
- ²⁵ Phunthip Kanchanachittra Saisoonthorn, 'Sathanaphap ... chon klum noi'; 'Sanchat thai doi kan plaeng sanchat (Thai nationality by adoption)', research presented to Thai Khadi Research Institute, Thammasat University, 2000; 'Chon klum noi nai prathet thai (Minorities in Thailand)', study report of subcommittee on human rights problems, established by Senate resolution 10, 5 February 1999.
- ²⁶ Phunthip Kanchanachittra Saisoonthorn, *Ruam bot banyat haeng kotmai thai wa duai sanchat thai khong bukkhon thammada dang dae adit jon tung patjaban* (Collected articles on Thai nationality law of ordinary persons from the past to the present) (Bangkok: Winyachon, 1996, fifth reprint, 2002).
- ²⁷ Clause 28 of Act on Immigration, 1950, and clause 17 of Act on Immigration, 1979.
- ²⁸ For instance, Revolutionary Group Announcement 337 of 13 December 1972, and clause 7 supplementary section 3 of Act on Nationality, 1956, which was amended and extended by Act on Immigration (second version), 1991.
- ²⁹ Phunthip, 'Raingan pramoen sathanakan sithi manusyachon khong klum chatiphan (Report on human rights situation of ethnic groups)', presented to subcommittee on social issues, NHRC, 13 November 2002.
- ³⁰ In reality, hill people had witnesses in the community that they were born in Thailand of parents born in Thailand, and thus qualified for Thai nationality by law without need to apply, but when they were not guaranteed by the village headman, the district officer (*nai amphoe*) refused to register them as Thai

nationals. This procedure enabled the village headman to demand a fee from those applying for Thai nationality.

³¹ See note 29.

³² Phunthip, 'Kan yom rap'.

³³ Phunthip Kanchanachittra Saisoonthorn, 'Khwaam rai sanchat khong chao ban tha ton: panha lae naew thang kan kae khai (Lack of nationality of Tha Ton villagers: problem and solution)', paper presented by senator Duenjai Deethes to the Senate on 25 September 2002.

³⁴ Supreme Court Judgement 979/1990 concerning Thai nationality of children of people from whom Thai nationality was withheld by Revolutionary Order 337, in: *Warasan Nitthisat Thammasat* (Thammasat Law Review), 21:2 (1991).

³⁵ Note at end of Supreme Court Judgement 2467/2538, in *High Court Judgements 1995*, vol. 10, Ministry of Justice, pp. 164-73.

³⁶ See note 29.

³⁷ See note 33.

³⁸ Which can happen in three situations: a) someone with Thai nationality; b) an alien who has received permission to enter the country legitimately; and c) an alien who has received permission to reside according to law, even though the entry into the country was illegal.

³⁹ As can be seen from the example of Thailand's policy around 1954 to grant temporary residence without granting legal right of immigration to former Chinese nationalist soldiers who sought political asylum in the north of Thailand, and eventually to grant them Thai nationality in 1980 and 1992.

⁴⁰ Which are: a) right to education; b) right to health; c) right not to be expelled from Thailand were it to represent a threat to life and limb; d) right to establish a family legitimately under Thai law; e) right to seek an honest living; and f) right of access to the judicial system in the event rights are violated.

Human rights and the war on drugs: problems of conception, consciousness and social responsibility*

Jaran Cosananund

The seriousness of the drug problem and the war of drug suppression

This government maintains that drugs are damaging national security... have already done a great deal of damage to Thailand... today the nation's youth has been very badly damaged.

We are entering the age of the knowledge society but the brains of the nation's youth are being destroyed... today we are giving all agencies two weeks to prepare themselves.

Even though the drug sellers can hear this, they must prepare themselves either to give up the trade or not to give it up. If they don't give it up, there's a chance they will be dealt with in every way, both body and soul... We have to send a signal for them to stop. The sellers will get nothing more from it except risk to their lives, and the risk of being arrested and bankrupted by having their assets seized. Whenever the chances of profiting from crime exceed the chance of being punished, or the punishment is not heavy enough, there will be people who choose to make a living by crime without thinking about good and evil, right and wrong. (The prime minister's announcements of the policy to prevent and suppress drugs, Meeting Hall, Ratchapat Suan Dusit, Tuesday 14 January 2003).

If we accept the statistics of the International Narcotics Control Board (INCB) as relayed by the Ministry of Foreign Affairs, Thailand with three million users of *ya ba* (methamphetamines) has the highest rate of drug usage in the world in proportion to population.¹ *Ya ba* has been perceived as a very serious threat to Thai society, especially because of its effect on public safety, the family, and youth.

Ya ba and the *ya ba* trade have many implications for rights, including: threat to the right of life and person of the users themselves and to people close to them; violation of the rights of women who are raped by people under the influence of the drug; threat to the right

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to security of the family which is the basic unit of society; violation of the rights of children and youth who are victims of drug traders as clearly stated in the convention on children's rights which focuses on protecting children from drugs (clause 33), and protecting children from being sexually exploited in any form (clause 34) such as being lured into child prostitution or willingly selling sexual services in exchange for money to buy *ya ba*; violation of many prisoners' rights as a result of the overcrowding of jails where the majority of convicts are jailed for cases involving *ya ba*;² and finally the large amount of budget which the state devotes to *ya ba* suppression resulting in reduction of support for various economic and social rights which also require considerable budget. The *ya ba* trade is thus perceived as a major threat to society, and a serious crime with widespread consequences. From the experience of other societies which have faced similar situations, there are people who view the drug trade as a universal crime. Hence the Declaration of Quito, issued by a meeting among the presidents of Latin American countries in Ecuador in 1984, defined the trade in drugs as a "crime against humanity" with many implications in the field of law.³

The seriousness of the *ya ba* problem and its significant implications for human rights and basic rights, as stated above, provide strong justification for resolute and concerted suppressive measures to eradicate the problem before it escalates further and destroys Thai society. The first major steps in the war to suppress drugs began from January 2003 when the prime minister, Thaksin Shinawatra, issued Order 29/2546 laying down a drug suppression policy. A national command centre for drug suppression was established with General Chavalit Yongchaiyudh, deputy prime minister, as chairman. In general, the major principles of the campaign were based on a strong rationale distilled from knowledge and experience. They included creating a network of strong communities to reduce the number of drug users, a rehabilitation programme for users, and finally suppression of the production and trade.

After a three month campaign of intensive drug suppression, the society in general appeared satisfied with the result which was highly successful in the areas of rehabilitation and suppression, resulting in an unprecedented reduction in the usage and trade of *ya ba*. Yet at the same time, some people questioned whether these major successes had been purchased at very high costs, and whether the successes justified such costs, especially given uncertainty whether the results would turn out to be short-term or long-term. This "final war on drugs" which the government launched in earnest from February 2003 has had many consequences. There are issues over the lack of legitimacy of the "black lists" of those involved in drugs—both over how they were composed, and how those whose names appeared on these lists were treated. Some contended these amounted to death lists or lists of people being framed, with a serious impact on their right to life, personal rights, and individual right to dignity. The most important issue, which is the direct concern of this paper, is the number of drug traders who were shot dead either in the form of extrajudicial killings by state officials, or what state

agencies described as “pre-emptive killing” among drug traders (meaning one trader killed another to pre-empt the victim giving information which would implicate the murderer in the event the murderer was arrested by the police). In total around 2,000 people died in the space of the three months of the policy of intensive suppression.

These events raised serious concerns among academics, those interested in human rights, and even opposition politicians. Many did not believe that this large number of killings was lawful (in the case of extrajudicial killing), and did not believe that these were “pre-emptive killing” of drug traders by drug traders, but more likely “assassinations” of drug traders (or those believed to be drug traders) by state officials, or with the involvement of state officials, acting on signals coming from a higher level. There was a belief that producers and traders of *ya ba* deserve to die, or a belief that drug suppression had to be ruthless with drug traders since they themselves were ruthless with other people. Even if, as the government maintained, these were (almost totally) “pre-emptive killings” among drug traders themselves, the police should still arrest murder suspects (within the twenty years allowed by the statute of limitations), and set up committees to investigate these unusual deaths. The unusually high number of pre-emptive killings beginning from the date the war on drugs was launched suggests the suppression policy may have put pressure on state officials to reduce the number of traders on their black lists by a given proportion (25 per cent). The true facts of the pre-emptive killings are unknown as often no details of the killing have been given. There are no progress reports by the police about arrests of those responsible for pre-emptive killings. As a result of these doubts and suspicions, relatives of the deceased sent many petitions. These doubts and suspicions also weakened the government’s case that it was innocent of the accusations made by academics and those interested in human rights.

Human dignity, human rights and the assassination of drug traders

From the viewpoint of those interested in human rights or lawyers concerned about justice, events which appear to involve the assassination of thousands of sellers of *ya ba* are massive violations of principles, values, human rights, basic social ethics, the rule of law, and the constitution. The key question is whether the state fails to see the importance of these principles and values, and why such a situation should have arisen in Thai society which has a favourable image for human rights when compared to other countries in the same region.

The principle of human dignity in the ideology of human rights upholds the dignity of every human being whether rich or poor, male or female, innocent or suspect or guilty. The assassination of people thought to be involved in a crime amounts to a clear denial of human dignity. Power is being used to assassinate individuals in a covert way. They are assumed to be guilty and given no chance to argue their case or clear themselves of suspicion. The state wrongly assumes they have no right to dignity as a human being, and thus feels no

compunction to treat them according to the dictates of the law or judicial process in the same way as people in general.

The illegitimate assassinations of people, which arise as a consequences of such way of thinking, can be considered a violation of many human rights including the right to life and person; the right to be free of torture or brutal punishment; right to fair and equal treatment from an independent court in legal process; and the right to be treated as innocent until proven guilty when accused of a criminal offence. These basic human rights appear in the universal declaration on human rights, international covenant on civil and political rights (which the Thai state has signed and ratified), and in Thailand's current constitution. Upholding and protecting these key rights is thus not just conforming to foreign practice or affecting traditions of thought which have no origins in Thai culture (as the state sometimes claims), but maintaining international principles which have the status of international law binding on the Thai state, and following the highest law of the land which all parties have to respect and obey. The provisions of the constitution (clause 26) clearly require the use of power by all government agencies to take into consideration human dignity, rights and freedoms. Otherwise, the constitution is of no more value than a scrap of paper

Or has this already come about in Thai society of today....

In addition, the fact that some parts of the highest law of the land have been violated through these assassinations has implications for the liberal ideology of law or the rule of law under a legal state which governs through the supremacy of just law over and above the power of any individual. These implications may lead to a collapse of faith in law both within the country and outside.

There is a further issue concerning the errors which can easily happen (and may already have happened) from the use of such illicit power against innocent people who have no connection at all with drugs. Is it not surprising that a government which likes to claim it has a long-term vision for the country cannot see these potential long-term consequences? If indeed it was the government which gave the signals for these assassinations, or supported them, as many people believe, are we effectively in the process of sacrificing vital legal principles in the hope of an immediate success in suppressing drugs?

Problems in the thought process of those wielding state power

In confronting this policy of drug suppression which conflicts with the principle and ideology of law, several critics have emphasised that they agree with the policy of resolute drug suppression but do not agree with the methods which are illegitimate.

This criticism is directed against the fundamental assumptions of the state's approach to the drug problem. The government seems oblivious to the significance of the "principles" or "methods" used, even though they are just as important as the desired result. The state

concentrates on the “outcome” or “objective” of the policy rather than the correctness or legitimacy of the method used. Possibly the state believes that its actions are ethically correct because they are judged on the criterion of the “outcome” which is the peace and happiness of a society which is free of drugs. It may be that deep down the state believes that the pre-emptive killings established “justice” in society in accordance with the utilitarian principle that any “outcome” which results in the greatest “happiness” of the greatest number is justified.⁴ In utilitarian ethics, the correctness of a decision is judged by its outcome, not by reference to any fixed principles or values such as human dignity or the natural rights of individuals. However, the desired outcome is not a simple matter as there are extenuating issues: is the expected outcome truly sustainable; is it perfect in itself; does it create other negative outcomes which in the long run may have more negative results than the immediate outcome which seems so worth celebrating?

The ethics of human rights and the ethics of utilitarianism

This conflict over the principles for adjudicating the value or correctness of any action is a problem of ethics which has existed for a long time. It is a conflict between two types of social ethics, namely the ethics of human rights and the ethics of utilitarianism. Behind this conflict between ethical systems lie two different conceptions of the nature of man, the value of the individual, and approaches to evaluating individual actions and social developments.⁵

Over two centuries ago, when America began to declare its independence from being a British colonial territory, these two ethical systems came into conflict both intellectual and real. The US Declaration of Independence in 1776 enshrines the key principle of equality between individuals and the supremacy of man’s inalienable natural rights, that is, the rights to life, liberty and the pursuit of happiness. It also asserts that government is established on the basis of popular consent in order to guarantee the security of these rights. However, three months before the official appearance of this Declaration of Independence, in his first book called *A Fragment of Government*, Jeremy Bentham, a British legal philosopher and important social reformer, announced the principle of utilitarianism to the world. He argued that both government and limitations on the power of government must be scrutinised and evaluated by reference to “the greatest good of the greatest number”, not by reference to individual rights, and certainly not by reference to things claimed to be the natural rights of man (which have developed into the human rights of the present day).

Within the same year, Bentham lambasted the general idea of inalienable natural rights. He believed the theory of natural rights should be totally rejected, partly because of illogicalities and inconsistencies within the theory itself, and partly because the theory, although intellectually appealing, would be dangerous in practice as it could be used to oppose the use of government power in any form. Bentham raised the sarcastic example that if the

right to the pursuit of happiness was an inalienable right, why were thieves obstructed from pursuing their own happiness through robbery, murderers prevented from pursuing their own happiness through murder, and rebels prevented from pursuing their own happiness through rebellion. Similarly in the book, *Anarchical Fallacies*, which Bentham wrote as a reaction against the French Declaration of the Rights of Man and of Citizens in 1791, he continued to criticise the idea of human rights partly for being “nonsense” and partly for being anarchical and hence a threat to all governments, good or bad. He believed governments came into being not because man had rights prior to the existence of government which government had to uphold, but because without law and government man could not have rights or indeed anything at all. The criterion for judging whether a government was good or bad was not natural rights but the general happiness of those governed.

This philosophical conflict has continued since 1776. The key difference between these two ways of thought lies in the fact that utilitarians emphasise the “maximising and collective principle” that government should maximise the net collective happiness of all the people under its rule, while advocates of natural rights or human rights (as they became) emphasise the “distributive and individualising principle” that gives priority to the specific fundamental benefits (i.e. various rights) of each individual under the government.⁶ Within this basic conflict, there seems to be an unbridgeable gap between advocates of pure utilitarianism and advocates of natural or basic human rights. The pure utilitarians hold that the maximisation of collective happiness is the criterion of the highest value, while the advocates of natural rights give priority to the principle of protecting the happiness of the individual in each case, and accept this may be a constraint on the maximisation of collective happiness on the utilitarian principle.

At the intellectual level, the two sides have argued against one another fiercely. Bentham criticised the advocates of natural or human rights both on grounds of theoretical inconsistency and on grounds of anarchism, while the advocates of human rights counter-criticised the utilitarians on many issues including their attention to outcomes rather than principles, their failure to accord any intrinsic value to man, and their failure to pay any sincere attention to the issue of differences between individuals (who might define happiness differently). In particular, the rights advocates argued that the importance utilitarians placed on collective happiness rather than humanity or human dignity might be used to justify actions which sacrificed individuals (or their rights and benefits) in circumstances where it could be argued that the general happiness experienced some net gain or became more certain and secure. They warned that these limitations in the utilitarian approach raised the possibility of the tyranny of a majority over a minority just as dangerous as the tyranny of an oligarchic or oppressive government. A major contemporary philosopher, John Rawls, has had to make the point that although the pursuit of the general happiness in practice is the necessary task of any

legitimate government, yet it should be carried out within a framework which honours the fundamental freedoms and interest of the individual. This is an important approach to the rights of the individual.

The differences between the two theories, and especially the weaknesses which seem to exist on both sides, make it seem that neither can claim to be perfect. Maybe because of that, there is still a range of different opinions. Nevertheless since the late twentieth century, belief in human rights has become the mainstream with a dominating influence on ethics and on international politics. Even so, at present there are many incidents which are violations of human rights but governments claim these incidents were necessary for the general happiness of society. Given the background of many social problems, demands for human rights are more important and urgent than the measures to increase maximum utility of society. Nevertheless there may still be some people who question the efficiency of applying human rights ethics, or who doubt the claims for success in the promotion and protection of human rights. There are many cases in which utilitarianism seems to be used as justification for sacrificing human rights. Many governments claim they need to sacrifice or overlook human rights in specific situations and for limited periods of time in order to achieve something reckoned to be a social goal. These goals are sometimes defined in the name of development, the general happiness, security, or the peace and orderliness of society. In the past, human rights have often been sacrificed or traded-off against goals considered to be of some social value, especially in socialist states, or authoritarian states in the Third World. In some cases, the reasoning seems to have been sincere. But in the majority of such cases, the state seems simply to have been acting to preserve state power more than anything else, with consequences much worse than the avowed social goals.

The violence of the war on drugs and the ethical confusion of utilitarianism

Let us return to the realities of the war on drugs in Thai society, and assume that the government is adopting a utilitarian approach to justice, either temporarily or for the long term. Perhaps the government sincerely believes in utilitarian social ethics and these ethics lie behind the unofficial use of violence to suppress drugs. But there is still a possibility that the government is simply using these ethical principles as a means to create legitimacy, or to conceal things, rather than applying utilitarian principle in a correct and appropriate way. We need to compare the government's confused thinking against the ideas of some major utilitarians who had an intellectual influence and prominent role on criminology during the eighteenth and nineteenth centuries such as Cesare Beccaria and Jeremy Bentham.

Beccaria was the pioneer of the eighteenth-century classical school of criminology which had a strong influence on reforms in the judicial process and western criminal law over

the following two centuries. He believed that the main central and determining principle for making law is the principle of creating the maximum happiness for the maximum number of people. In addition to this utilitarian principle, Beccaria believed that man by nature possessed free will, reason, and a purposive approach to life governed by hedonism or the pleasure-pain principle, namely that man in general (who has free will and the capacity to use reason) will choose an action which results in pleasure for himself and will avoid actions which result in pain. This conception of human nature underpins certain key methods for preventing and suppressing crime: penalties should be sufficiently harsh to serve as a deterrent against others contemplating criminal actions; to do so, the severity of penalties must be proportionate to the severity of the crime; and the judicial process must be efficient to ensure that penalties are not only appropriately severe, but also arrive quickly, and with a high degree of certainty. Only under such conditions, will the punishment have the required deterrent effect. In the same way as Beccaria, Bentham's utilitarian hedonism stressed that punishments must be determined for each type of crime with appropriate severity so that the pain or damage suffered would outweigh the happiness or benefit gained from performing the criminal act. In summary, both Beccaria and Bentham believed that the severity, speed and certainty of punishments were vital to prevent and suppress crime through the device of creating fear and convincing potential criminals that it is not worth committing the crime.⁷

The ideas of Beccaria, Bentham and the classical school of criminology continue to have influence down to the present day, including influence on other legal theories such as choice theory, neo-classical theory, deterrence theory, and economic theory.⁸ For example, economic theory retains the idea that people in general have free will, and go through a process of deciding whether or not they dare to commit a crime by rational evaluation of the maximum benefit and minimum loss. The rational criminal wants a low investment and a high return. Hence if the state is so aggressive in suppression that the individual sees no profit from crime, or perceives there to be a high investment and high risk (meaning arrest, injury, or loss of life), then the individual will be afraid to commit the crime.⁹

Is this, then, the basic criminological thinking behind the present government's intensive drug suppression policy? The announcement of the policy and several other statements by government on the subject of drug suppression display support for using violent measures of all forms against drug traders on grounds that the outcome will create more benefit for the people. At the same time, these violent measures can be taken as "punishments", heavy and violent enough to generate fear or a climate of fear, resulting in a "higher investment cost" of carrying out illegal business connected with drugs. In short, the "punishments" are designed to deter others along the lines of the Thai proverb, "slitting the chicken's throat to impress the monkey". It is highly possible that in the view of those wielding power and among many of the population whose opinions have been captured by surveys, the measures

to maximise the investment cost for producers and traders of drugs were very appropriate to the situation, given the seriousness of the drug epidemic and its various evil consequences, the failure of previous suppression efforts (including use of the death penalty) which only tended to increase the problem.

Even so, while this approach and its violent measures may seem to have the backing of utilitarian criminology theory and ethics, in reality the theory may have been interpreted or adapted in ways that appear rational yet are flawed. The essential bases of the theory are the concept of man's free will and utilitarianism. Many have criticised the theory and these two essential elements. Some argue against the idea that man by nature has free will on grounds that man's actions are largely determined by various factors including biological, economic, social and cultural ones. Some oppose utilitarianism from a standpoint of Kantian ethics or strict ethical principles. These objections have appeared in philosophical writing for a long time, and continue to appear, and it is not necessary to present them in detail. The main point to be made here is that using the utilitarian principles of criminological theory and ethics to justify extreme violence against drug traders, even as a temporary exception, may be a flawed and illogical extension of the theory.

Beccaria and Bentham were both major judicial reformers with a secure stance in legal ethics. Both placed the law on a high pedestal, and believed in the principle that "without law there can be no crime and no punishment". Both also opposed the arbitrary use of power to tyrannise people. Both opposed punishments so violent and brutal that they create terrible and unacceptable pain. Significantly Bentham, even though he clearly disagreed violently with natural or human rights and despised them as nonsense on stilts, yet in many practical instances he aligned himself with advocates of human rights to protect human life from the arbitrary power of the state. Even more significantly, both Beccaria and Bentham took a stance against the death penalty on grounds it is a primitive, ruthless and unacceptable use of violence. Beccaria believed that the death penalty was against the principle of a social contract on grounds that nobody could entrust his right to life, or the right to end his life, to the state. He also believed the death penalty created undue alarm and weakened people's moral sense.¹⁰ If such leading criminologists felt that the death penalty carried out in accordance with law was illegitimate and unacceptable, by implication extra-legal or non-legal execution would be even more decisively unacceptable in their view. However, we should add that the classical theory or philosophy which developed later and is often called neo-classic theory, changed to accept the death penalty as a legitimate form of severe punishment with deterrent effect. Even so, no theory rationalised support for the use of violence or assassination outside the bounds of law or the rule of law.

Approaches which appeal to the "outcome" to justify the pre-emptive killings ignore the fact that the "method" used is not legitimate under basic criminology. Yet, can the state

claim this is a matter of interpretation on which there may be differences of opinion? Take the example of America's use of the atomic bombs at Hiroshima and Nagasaki. Although this might seem to be a ruthless and highly primitive method which took the lives of a great number of innocent people, yet it led to the desired outcome which was Japan's surrender. In truth there are many who oppose this use of the atomic bomb on grounds of ethics. Many believe that Japan's surrender was already inevitable without this bombing. Besides, can the state claim that the war against drugs is truly a state of "war" in which all forms of violence can be used to destroy the enemy, like a major surgical operation which necessarily involves some spillage of blood? There are issues over the definition of war which is a state of conflict on a wide scale which can take many forms—civil war, war between states, or the war against terrorism. But all these involve more than one side using weaponry to destroy one another, not the use of violence by a single side. In the end, use of the term "war" is a discourse to create legitimacy for the use of violence. It is often done in a metaphorical way to support the use of excessive violence, in such common phrases as the war on crime or war on corruption.

The war on drugs in America: the model for violating rights and its failure

Using the discourse of a war on drugs to support a violent campaign of suppression is not something new invented by the Thai state. Many countries with drug problems have declared war in the same way, including great powers like the USA which has severe drug problems and which declared a war on drugs in this way since the 1980s in the era of President Richard Nixon and several subsequent presidents. Those selling drugs were labelled as a form of terrorist, namely narcoterrorists. This declaration of a war on drugs by the US government, apart from using up a massive budget, also had consequences for the judicial system which was flooded with drug cases. The workload of judges increased with consequences for the processing and judging of lawsuits in general. Prisons were overloaded with drug convicts. The black market for drugs expanded, involving widespread corruption of public officials. Most importantly, the US war on drugs led to violations of civil rights, and the rights to life and person of a large number of people including body searches for drugs, detention for investigation, phone tapping, illegal collection of evidence, denial of bail, and excessive seizure of assets.¹¹

Since the 1980s both the US government and the broader society have supported a resolute approach to drug suppression including readiness to sacrifice certain things in the course of the drug war, and acceptance of special measures in drug suppression. In essence they have accepted that the end has come to justify the means. In addition, the violation of rights spread to Third World countries in Latin America which were pressured by the US government to follow plans to eradicate drugs through destruction of drug crops such as coca

leaf and marijuana. The war on drugs which included attempts to eradicate drugs at their place of origin in this way led to support for the use of various special chemicals to destroy crops with damaging effects on the bodily health of a large number of people in Latin America. This brought forth the criticism that such measures amounted to “eco-bio-genocide”, and the US courts of justice themselves judged that these crop destruction programmes were in violation of the constitution, and sent down rulings limiting the use of these chemicals.¹²

In the view of some western academics, the declaration of a “war on drugs” in the US was flawed right from the start by the choice of words which trapped the campaign into using language coloured with the meanings of war and placing emphasis on guns, violence, and oppression. These academics argued that such discourse is a form of communication which is inappropriate for managing the drug problem.¹³ In the case of Thai society, it is worth thinking how far the declaration of a “final war on drugs” communicates the wrong messages and meanings to both government officials and the society in general right from the start.

In the US case, academics who study the drug problem such as Erich Goode have criticised the grant of excessive powers to drug suppression officials including passing laws allowing police to break down the doors of houses belonging to people suspected of having drugs, and designating the death penalty for drug addicts and traders so that an arrest amounts to a death penalty. Goode argues that while such measures may contain the drug problem, they amount to a violent and unprecedented attack on justice and civil liberties.¹⁴ This issue which Goode raises concerns the costs or damages which are incurred as the price of achieving what many people believe is success through violent drug suppression. The question is whether we need a drug-free society so much that we are prepared to overlook other problems and values in the society; whether we are prepared to go along with the sort of violent emotion of some high-level officials (in the US) who proposed to execute or behead every drug trader, on the grounds that we are in a state of war (on drugs) and that these traders are destroying our children and youth.¹⁵ Sometimes Thai society does indeed seem to be prepared for such things. While Americans are ready to sacrifice some principles, they have not gone so far as to exchange principles and values which the society cares about for an outcome which has no guarantee of sustainability. In 1988 the US passed an Anti-Drug Abuse Act which set out the target of a “drug-free America” by 1995, and a policy of “zero-tolerance” in drug suppression activity. This policy was based on the idea that the liberties of the individual did not include the right to do damage to oneself and to the society, and hence there should be no further social tolerance for drug traders (not so different from Thailand’s declaration of a final war on drugs). Yet the US is still full of drug problems both in terms of quality and quantity, with volumes increasing as prices fall. In addition, the US has passed further laws increasing the severity of punishment, including the death penalty for large-scale drug traders. The Thai state and society should study the lessons from the American war on drugs before celebrating the

apparent success that has resulted from the use of extreme violence.

The Thai state and nationalism

Let us return to examining the Thai state's current way of thinking. The first thing to be emphasised is that the present Thai state is not very taken with the principles of human rights, even though the government is saddled with the people's constitution which enshrines human rights and the principle of human dignity. Yet analysis of the government's own statements shows that the Thai state tends to support nationalism, crude pragmatism that narrowly concentrates on immediate results, and its own interpretations of utilitarianism which all conflict with the universalism of human rights

Nationalism is immediately evident in the names of the political parties at the core of the current government. Many statements by the prime minister show he believes that nationalism is an important factor for building a nation, and that the success of capitalism in democratic countries has often been built around a core of nationalism.¹⁶ The issue to be considered is whether supporting nationalism will result in a violent and sustained conflict with human rights, in the same way that support for "Asian values" was introduced to oppose human rights and create legitimacy for the violation of human rights.

The universalist principle of human rights emphasises human equality and human dignity, irrespective of nationality and ethnicity, with the ultimate aim of creating a "human family" based on brotherhood. This is a very different way of thinking from nationalism which basically emphasises the importance of the nation and its members when compared to foreigners and minorities.

The large number of ethnic wars or incidents of ethnic cleansing which have taken place are partially connected to this kind of ethnicism, especially when nationalist feeling is elevated to an irrational level of "chauvinism" or ultra-nationalism of a cultural or ethnic type. Extreme or ultra-nationalism has often been adopted by dictatorial leaders as a tool of ideological domination, including the suppression and violation of human rights. Nationalism can seem primitive and awful when compared to the principles and values of human rights.

Even though nationalism and human rights represent two fundamentally different ways of thinking, in the real world we should not separate them as black and white. For a start, we should accept that nationalism comes in many different forms. There are benign forms of nationalism like simple patriotism which have completely different values from extreme forms of chauvinism. Then there is the civil nationalism which is often adopted by the bourgeoisie or middle class. This differs again from the narrower forms of ethnic, linguistic or cultural nationalism, and even bureaucratic nationalism.¹⁷

Certainly, extreme chauvinism or dictatorial nationalism cannot coexist with human rights. But patriotism, patriotic movements to protect a motherland, and nationalist

movements to gain independence from the domination and oppression of a foreign power, get powerful support from the principles of human rights. In practical terms, one key point of human rights is the right to self-determination which is at the basis of patriotic and nationalist movements against colonialism and foreign domination. In the past many nationalist movements in Africa, Latin America and Asia referred to this right to self-determination in their claims for freedom from western imperialism. But history shows ironically that, after these movements had won victory and escaped from colonial rule following the second world war, the newly independent countries in many cases were ruled under oppressive dictatorial systems for a long time, as if the only thing that had changed was from a foreign oppressor to a local one. Such political histories in many Third World territories have contributed to the negative image of nationalism from the viewpoint of human rights. Of course, nationalism does not necessarily coincide with dictatorship or authoritarianism. In the west itself the process of creating a modern nation-state relied on nationalism to some extent to bring about unity. But it is significant that during the drafting of the Declaration of Human Rights, which was subject to concerted philosophical debate, the western countries tended to support nationalism and the protection of national sovereignty as much as possible, to the point of excluding from the declaration the right to petition against the violation of human rights, especially to the UN, the right to rebel (against tyranny), and the rights of national minorities.¹⁸

In the final analysis, we can probably say that human rights are not opposed to all forms of nationalism. Some dimensions of human rights support or can coexist with nationalism on the common point of seeking freedom from domination. Yet human rights are opposed to extreme ethnic or cultural nationalism, chauvinism, and aggressive forms of nationalism which give support to the violation of the human rights of others. However, although some forms of nationalism can coexist with human rights, in the actual practice of several states nationalism takes priority over human rights. Nationalism may have been embedded in the thinking and feeling of people for a long time. Even though a state may espouse an open liberalism, in actual practice it will appeal to the "national interest" rather than to universalism or human rights.¹⁹ This is one major factor which creates a gap between human rights in ideal and reality, and gives rise to "lip service" or "double standards" when it comes to human rights.

The key problem of Thai society at present is what sort of nationalism we are experiencing. Is it really "Thai love Thai", or loving only some Thai who agree with (all) the policies of the government? If we take a positive view, then it may be really a patriotic nationalism or civic nationalism which can coexist with human rights. When such nationalism is found in western nation-states, it generally supports the rule of law. Thus while the Thai state places importance on positive nationalism over and above human rights, it should not use

nationalism to justify exceptions to the rule of law in the exercise of power. If the state is behind the pre-emptive killings as claimed, such state crime cannot be legitimated on grounds of nationalism.

Problems over the conception and consciousness of human rights in Thai society

The use of extreme violence in drug suppression would seem to be opposed on grounds of law, human rights, and various ethical ideas. Advocates of human rights claim they agree with drug suppression but disagree with the method of suppression in the form of pre-emptive killing. They call for respect for the human dignity and human rights of everybody without exception, whether or not they are drug producers or traders. They call for the state to exercise its power with respect for the rule of law or due process of law. Yet a large number of people in the society, including monks, give their approval and support to the government's suppressive measures carried out in a violent atmosphere.²⁰ In addition, the human rights side comes under criticism for being obstructive, and for supporting or protecting the drug traders rather than thinking of the suffering and huge damage caused by these criminals. An opinion survey conducted in Bangkok by Ramkhamhaeng University research and development centre's public polling department (which is similar to results from other polls) found that a majority of 79.4 per cent agreed with the violent method of suppressing *ya ba*, and believed that the pre-emptive killings had the greatest effect in aiding the arrest and charging of small traders. The Thaksin government scored its highest approval ratings for solving drug problems (higher than for its support for business, and solving problems of poverty).²¹ The result from this opinion poll which should make Thai advocates of human rights most subdued concerns the "human rights of drug traders" where 60.3 per cent of the sample felt that *ya ba* traders should not be left alive because they caused great damage to the lives of others, while a minority of 39.7 per cent felt the traders should be allowed to live because there was a chance they could reform themselves. The major point is that a majority of 64.4 per cent of the sample felt that advocates of human rights should not call for justice for drug traders.²²

Of course these results may not reflect the real opinions of people throughout the country, and may contain errors on several points. But if we take an open-minded view of these results, however unfavourable they seem, they reflect several major problems in Thai society. The poll results reveal the limited knowledge and mistaken consciousness about human rights, which indicate the imperative need for education towards a better understanding. Thai people do not understand and do not accept the human dignity of those who do wrong in connection with drugs. This thinking may be connected with what some people believe is the mental culture of contemporary Thai as being crudely pragmatist and

over-emphasising immediate results rather than retaining some ideal principles. Politicians also talk repeatedly only about the dark side of drugs, scaring the middle class into accepting any measures even if they violate law and human rights.²³ Some believe that the success of the government's social programmes and populist policies in answering the immediate needs of the people have given rise to a new political structure in which people are satisfied with benefits they receive and don't care about violations of the rights of others—a political culture of self-interest, looking after oneself and the devil take the hindmost.²⁴ In this fascinating view, Thai society responds to fear or the satisfaction of immediate benefits, which reflects limitations in the consciousness of Thai society, and the state panders to this behaviour in the way it exercises its power.

From another angle, some analyse that Thai society's ethical development is still in an early stage at which people in general (both innocent and criminal) think only of their own egoistical interests. They take decisions in order to gain rewards and avoid punishments. In such circumstances, they are unable to imagine other options to solving the drug problem which might be more efficient than using violent measures to manipulate behaviour according to these crude ethical principles. Given this limited ethical development, creating a consciousness of respect for law or human values appears too difficult to achieve with any measure of success.²⁵

Yet such analysis of the level of ethical development is open to the criticism that it may be too generalised and too static. The fact that people in the society support the use of violent extralegal methods against one sort of wrongdoing, which they feel is a major threat to society, does not mean or prove that people will support the use of such methods for other kinds of crime or all kinds of crime. We should not simply interpret that people in this society do not respect the law with the result that violent and primitive methods have to be used to impose peace and order. Similarly, it is not necessarily true that the majority of people in the society have no belief at some level in the human values of themselves and others. More likely, the existing drug problem is so serious (at least, in people's perception) that self-interested people lack tolerance to wait for law and judicial process to take care of the problem in the usual way. This tallies with the statements by some ministers that we should not speak about justice or human rights in connection with those who sell *ya ba* because such people have done such damage to the society. However, the issue then arises that if we use the seriousness of the problem or the scale of the social damage as the criterion for revoking the application of law, justice and human rights for wrongdoers, we should also revoke these in the case of other serious crimes which create large social problems including corruption by officials, politicians, influential mafia people in various circles, and many kinds of economic crime. Were this indeed to come about, imagine the chaos, lack of law, social violence and fear which would shake the foundations of social peace and well-being.

The fact that the majority of people believe that drug traders have no right to life and should not be allowed to live further, and the fact they support violent policy, can thus be interpreted as a reflection of a consciousness or mental culture which prioritises self-interest. But can we go beyond this and suggest this may partially reflect the authoritarian culture that still survives, at least in residual form, in the consciousness of Thai society? Is it true that authoritarian culture, which is highly impressed with power, is an important factor making large numbers of people in the society unable to see that all people have equal human dignity, and hence be prepared to support violence against certain groups who are believed to lack human dignity? It is often said that a government is only as good as the people it rules. In a society where authoritarian culture is still present, it is not easy to gain acceptance for the human dignity and human rights of the honest mass of people; and even harder to gain acceptance for the human dignity of criminals or wrongdoers. The major obstacle to the acceptance of the human dignity of such people is deeply related to the metaphysical understanding about the natural state of humanity. It requires spiritually a measure of love and compassion to believe that every member of humanity is naturally endowed with reason and with conscience. It requires also a profound realisation of our own limitations and failings. A long time ago Kahlil Gibran issued this advice in beautiful poetic form in *The Prophet*.²⁶

Oftentimes have I heard you speak of one who commits a wrong as though he were not
 one of you, but a stranger unto you and an intruder upon your world.

But I say that even as the holy and the righteous cannot rise beyond the highest which
 is in each one of you,

So the wicked and the weak cannot fall lower than the lowest which is in you also...

So the wrong-doer cannot do wrong without the hidden will of you all.

The important question is, how far do people in general in Thai society realise and understand the issues raised above and yet keep quiet and hence give tacit consent to the violence which has arisen in the society.

Belief and disbelief in human rights

Under the economic and cultural structure of a capitalist society with a strongly individualistic way-of-life and competitiveness, it is very difficult for people to understand and accept the dignity of all humanity. Under these social conditions, an individual tends to accord value only to himself and those close to him, and to see “others” either as enemies and competitors or as inferior people who are often despised. The challenging question then is whether it is necessary for every person to believe in or accept the human dignity of all humanity. Anyone who believes in the principles of rights and freedoms in thinking should surely accept that the right to believe or disbelieve something is also an important human right.

If we return again to the philosophical debate, we must accept that many people do

not accept the philosophical foundations behind the ideology of human rights and human dignity. In the western world itself there are many people who believe in philosophies such as positivism, utilitarianism, Marxism or post-modernism which are oppose to the ideology or philosophy behind human rights.²⁷ It is conceivable, then, that people in general may be truly opposed to the thinking and belief about human dignity and human rights. Forcing them to believe in human dignity and human rights would appear to conflict in principle with the very spirit of the idea that man has the dignity and value in himself to come to the rational realisation of his own value. In the case of Thai society we can state similarly that Thai people have the right to believe or disbelieve in human dignity. However, the current constitution can be called a constitution of human dignity, and there is a large number of laws which protect various people's rights. Hence although someone has the right not to believe in human dignity, yet under the law he has to treat other people as if they have such dignity, and should not violate their human dignity. Anyone whose dignity is violated has the right under law to sue the violator. Similarly, people who do not believe in human dignity still have their own human dignity protected under the law, and if that dignity (in which they don't believe) is violated by someone else, they have the right to sue. Under the present constitution, human dignity is transformed into an important legal principle. From the angle of law enforcement, it makes no difference whether people believe or disbelieve in human dignity.

However, the situation under the constitution is rather different for those who exercise the power of the state. The constitution's clause 26 states that "In exercising powers of all State authorities, regard shall be had to human dignity..." While individuals may have the right not to believe in human dignity, those exercising the power of the state through various agencies cannot refuse to believe in human dignity or choose to believe in it only with respect to certain groups of people. According to this provision of the constitution, those exercising the power of the state must have high integrity in using that power, and must have a higher moral standard than the people in general. This idea lies behind the constitution's provisions about the qualification and disqualification of people assuming high political positions such as MPs, senators, ministers, or members of various independent bodies under the constitution.

This idealism or high moral aspiration in the constitution about the people who exercise the power of the state is consistent with the traditional legal and political philosophy of Thai society in the past when rulers were supposed to be people of higher integrity than the people in general; for examples kings were expected to adhere to the *totsaphit rachatham* (ten royal virtues), and were often believe to be *bodhisattva* (a Buddha-to-be).²⁸ Of course, in the real world the society's view of the ruling class may have deviated from this ideal picture. Indeed, today's society may view the moral standing of those exercising state power or politicians in exactly the opposite way as lower than that of the people in general. Yet whatever reasons there may be to explain this reversal, the law needs to enshrine this ideal

moral standing at least as a measure for scrutinising or criticising the abusive exercise of state power.

State crime and the problem of (illegitimate) popular justice

Let us return to analysis of the trend of social support for the violence of the pre-emptive killings. We have noted that these events may reflect problems or limitations in the acceptance of human rights, the level of mental development, and the survival of authoritarian culture. But this may not yet be a complete answer. So far we seem to be arguing that the roots of this phenomenon are to be found in the special nature of Thai society and its internal limitations. The intriguing question is why Thai society has this weakness, and whether Thai society alone has these limitations in mentality and culture.

A rough comparative study shows that extra-judicial executions, or the use of state power to execute enemies or suspects without legal legitimacy, appear in several societies. UN data on state assassinations indicate that such killings are usually political acts against those involved in political movements, advocates of human rights, journalists, or members of minority groups. Many dictatorial governments like to use such despicable methods to solve violent political conflicts. The Thai state used such violence in the dictatorial period and on the occasions of 14 October 1973 and 6 October 1976. The Sri Lanka government uses such violent methods on a broad scale to suppress the revolt by the Tamil or the minorities. In Nepal both the government and the Marxist rebels have used violent methods. Similarly the Israeli government has had an assassination policy against the Palestinians (who, unsurprisingly, have responded with suicide bombings against the Israelis). The US government has used the same methods against Al Qaeda terrorists.

At present there is a tendency for state murder to be used in many countries for social reasons as well as political reasons. Assassination is being used increasingly as a method to solve serious social problems or serious crime problems in countries of Latin America such as Honduras, Guatemala and Nicaragua. In data reported for 2002–2003, the governments of this group of countries undertook social cleansing campaigns using assassination of a large number of street children and youth.

As crime increases throughout the world, violent methods to suppress crime follow like a shadow, and conflicts between the violent and illegitimate use of state power on the one hand and the theory of human rights on the other are proliferating. The frightening issue is that the violent exercise of state power against criminals in the forms of torture, extra-judicial killing, and assassination seem to be largely accepted by the societies concerned. In Peru, a human rights worker who became a deputy interior minister admitted that the pressure to use “methods in violation of human rights” came not only from police officers (who often feel that attention to human rights is a major obstacle to dealing with crime efficiently), but also

from the ordinary people, and especially from the poor who are the group most likely to call for the use of violent methods against crime because the poor tend to be the victims of crime.²⁹ In a similar situation in southern Africa, in the face of a rise in violent crime, people began to agree with the police that human rights methods had become an obstacle in the way of police work and a device to protect criminals.

This tendency towards violence does not appear only in rather backward Third World countries. In great powers such as the US the same trend is visible, only (as far as we know) is not as intense or primitive. In the face of a spate of violent crime, the criminal justice process in the US, which places great importance on neo-classic criminological theory and strongly supports the idea of “law and order”, is strongly enforcing the law and imposing severe penalties including the death penalty to serve as a deterrent against crime. This has given birth to the idea that in special circumstances when crime poses a threat to public safety, the social benefit should have priority over individual rights. Hence in some surveys of public opinion, the majority support overriding the constitutional rights of defendants in criminal cases, and agree that the Supreme Court’s authority to limit the broad powers of the police in collecting evidence should be revoked.³⁰ This social atmosphere is not so different from that behind the opinion polls showing the majority of Americans support the US government’s wars in Afghanistan and Iraq in the wake of the attack of 11 September 2001 in which several thousand Americans died.

This emotional reaction among people in general in support of violence is certainly interrelated with serious problems which oppress people in contemporary society, giving rise to general feelings of fear and insecurity. Can we say that this fear and insecurity in society is associated with what many thinkers call the wounded collective consciousness of humanity amid the various crises of the contemporary world? Human beings living in a liberal and materialist social structure lack wisdom and cling to an old paradigm of life and society which is fragmented, alienated, and based on human self-centredness with no consciousness of the unity of humanity or “wholeness”. Deep down, the common global crisis is a crisis of consciousness which is the result of the limited development of any consciousness of humanity.³¹

However, this crisis is most visible and significant in many developing countries which have to wrestle with difficult economic, social and political problems as a matter of course. At the same time, the rise of crime, and governments’ tendency to respond by using power arbitrarily and inefficiently, erode people’s faith in democracy with deeply negative impact on public support for human rights. Thus in many cases, survey evidence shows there is considerable support for the use of illegitimate power to deal with crime.³² In many underdeveloped countries, people have given support and approval for the execution of serious criminals by informal or “kangaroo” courts which may be considered a form of “popular

justice” which conflicts with the formal justice system. Should we count the illegitimate use of violence by the state in the form of assassination of suspects, which in several cases is supported by society, as part of this trend of popular justice—which is an illicit form of justice which is abnormal and should be unacceptable in a civilised society?

The appearance in the modern age of things which seem like a regression to ancient and backward forms of justice, in a society which has developed a legal system and judicial process—does this signal something about the specific society, or is this evidence of the backwardness in the collective consciousness of human society? Our above search for the reasons behind the violence in the war on drugs in Thai society tended towards explanations based on the specific problem of Thai society. But after taking a broader comparative view of similar problems in other societies, we should revise this conclusion. At the same time, we still have to respond to the allegations that human rights are an obstacle to the suppression of crime, and that advocates of human rights protect the rights of criminals. All this in truth is not confined to Thai society but is replicated in other societies.

While Thai society has a problem of consciousness or culture, many other societies have the same limitations. If these problems are similar through many human societies, is it the limited consciousness of humanity which partly makes various governments tend to use power in a violent way?

The limitations of the human rights and judicial processes and the double standard of ethics of human rights in Thai society.

Advocates of human rights deny the allegations that they protect criminals and drug traders. They argue in general that the human rights side supports drug suppression but disapproves of the methods; it does not protect criminals but protects the human rights of every person whether an innocent or a wrongdoer. Against the allegation that human rights are an obstruction to suppression efforts, the human rights side responds that the inefficiency of the judicial process and problems of corruption in the administrative system are the real factors creating weakness and inefficiency in dealing with these major problems. Yet these explanations may not be enough to change society’s views on these allegations. The lack of faith or weak faith in human rights which lies behind these allegations may indeed have origins in the thinking and culture of Thai society, but we should still not deny the reality and seriousness of the crime and drug problems which, along with other serious economic and political problems, weigh down on ordinary people. These problems have come to serve as justification for rejecting human rights principles and criticising advocates of human rights without compromise.

In some respects, the gap between the advocates of human rights and the society may come from the human rights side. Advocates of human rights may have a limited, flawed, and

unbalanced approach to the violations of human rights related to the drug trade. They may focus too much on the violations of human rights by the authorities and on the breaches of proper criminal procedure, while failing to pay equal and critical attention to the violations perpetrated by the drug producers and traders (including the foreign minorities who are the main producers) which affect ordinary people on a very broad scale. They may also fail to pay enough concern to the hardships and pain of those who fall victim to drugs. In the past, the human rights movement came under criticism for focusing on the criminal justice system's violations of the rights of criminal suspects, but ignoring the rights of those who fell victims to crime. The current imbalance in the attention to the drug trade is similar. In the case of *ya ba* in Thai society, it is obvious that the numbers of victims or addicts, which run to millions, along with their families and others close to them, amount to a much larger figure than the number of producers and traders. This imbalance in the critique of human rights violations connected with *ya ba*, and the failure to pay attention to the fortunes of the victims of drugs (implying instead that an active campaign is needed to improve the economic and social conditions that force or induce people to become victims of the drug trade), are factors which makes the people side with the government and disagree with the use of human rights to monitor the state in a one-sided way.

In addition, the fact that people support state actions which may be criticised as violations of rights in this way, should not be explained only in terms of the people's limited acceptance of rights. We also need to look at people's attitudes to violence. In Thailand, the constitution (clause 31) provides for punishment by the death penalty and emphasises this "shall not be deemed punishment by a cruel or inhumane means". Human rights advocates have campaigned for the abolition of this death penalty on grounds it is a violation of the right to life. By implication, the death penalty imposed on a significant number of drug producers or traders in the past would be considered a violation of the right to life in the same way, even though it was carried out according to the provisions of the judicial process. In fact, studies have found no clear evidence that the death penalty is effective in dealing with the drug problem.³³ However, the principle of the right to life (which the constitution lays down but also provides exceptions) is not firmly and clearly accepted in the popular consciousness of Thai society. The distinction between "assassination" by state officials and the "death penalty" ("shoot to death" according to clause 19 of the criminal code before the recent amendment on the method of execution) handed down by a state officials, may not be so clearly marked in the consciousness of people who are surrounded and threatened by the drug problem, and who in their everyday lives have long been used to violence and violations of the right to life (within the process of law). In other words, people are not so conscious of the rights in the judicial process which are what truly distinguishes between assassination on the one hand and the death penalty (shoot to death) in accordance with law on the other. If this analysis is

acceptable, then there are many issues surrounding the death penalty, its legitimacy, and its utility which Thai society needs to confront and resolve, especially if we believe in the wisdom of viewing problems in a holistic and integrated way.

There is another implication arising from this failure to appreciate the importance of rights in the judicial process. From one angle, it can be interpreted that people are ready to “trade off” their rights in the judicial process (perhaps only temporarily) for an immediate result. But from another angle, perhaps there is a broader lack of faith in the judicial process or even the existing legal system as a whole. A large number of people are loath to enter into the judicial process because they believe it is expensive, time-consuming, unreliable, biased in favour of those with power or wealth, and riddled with corruption. In 1996, government intensified its effort to suppress *ya ba* by tightening up law enforcement and imposing heavier penalties, yet this totally failed to reduce the number of users and wrongdoers which in fact increased steadily. This failure must have confirmed people’s negative feelings about the efficacy of suppression through the normal judicial process, and strengthened their support for withdrawing rights under the judicial process from wrongdoers in drug cases.

However, this willingness to trade off rights or legal correctness for what is believed to be success in solving the society’s drug problem is likely to be specific: it applies only to those involved with drugs, and has a tendency to be temporary rather than permanent. In other words, those in society who agree with the assassinations or pre-emptive killings might not agree if such extra-legal methods were used against themselves or their own families or innocent people not involved with drugs. This conclusion suggests there is a double standard about the ethics of human rights in Thai society. People believe that the ownership of human rights belongs to the self, not to humanity in general. This flawed understanding of the key principle of human rights is an important issue for Thai society which greatly needs to develop its mentality in this respect if we hope for a culture of respect for human dignity to materialise in reality not just as lifeless words in the constitution.

The limited success of human rights in a society of fear and insecurity

However, the issue of faith and belief in human rights can be expanded beyond analysis of the specific limitation in consciousness and understanding of human rights in Thai society. There is a larger issue of the failure or limited success of human rights in liberal societies in general. Some believe that faith in human rights is related to the success in creating a society which has freedom, justice, peace, and human rights ideology as one important guiding principle. If the goal of such an ideal society has not materialised or is still distant, despite a rising trend of human rights advocacy, then clearly many sections of society have no belief in human rights or no confidence in their utility. Consider the present situation:

lip service is paid to human rights in the political arena; double standards apply everywhere; and human rights are not consistently supported either inside the country or in the international arena. It is hardly surprising that people who face crime problems should be prepared to sacrifice or ignore human rights principles, and reject the value of human rights in general, on grounds they lack any real significance and are too much of a luxury for their society.

Noticeably this attitude displaying lack of confidence in human rights is not limited to groups with a somewhat backward consciousness in the Third World. Among many critical and progressive academics in the western world, similar attitudes prevail and similar questions are raised. In modern legal theory, there is a school of critical legal studies, many of whose members have no faith in the importance of the existing rights system in liberal societies. These critics argue that the system of rights under law lacks a proper framework of enforcement; is not firm, certain and consistent; and is internally contradictory. They believe the protection of rights of individuals has many undesirable outcomes including exaggerating the importance and freedom of individuals above the needs of the community, encouraging isolated individualism, and ignoring the needs of individuals as members of a community. Moreover, concentrating on human rights distracts attention from the need for fundamental changes in the society's power structure.³⁴ There are some academics in this group who see rights as illusions or myths which have been established to conceal the basic inequalities in society, politics and economy.³⁵ Nevertheless these critics themselves come under criticism for being too extreme, nihilistic, potentially pro-tyranny, and insensitive to the positive aspect of rights in protecting the powerless and minorities—namely that rights help to generate self-respect and empowerment for the oppressed and the right-less.

The point is, the very real limitations and failings in the systems for protecting and enforcing human rights serve as justification for people having no confidence in the rights system, and raising questions about the success of the rights system as it exists in liberal societies. The phenomenon of pre-emptive killing (which seems to have the support of people in general who may not believe in the ethics of rights) is another outstanding proof of the failure of the rights system in Thai society. There are people who believe this phenomenon has made the constitution (human dignity version) into a scrap of paper. In truth there is no mechanism or efficient process for protecting citizens' rights according to the constitution and limiting the power of the state in practice.³⁶

How much truth there is in these criticisms and how long they will remain are issues worth considering further. In truth, the status of rights and enforcement of rights according to written law is no different from the status of the law in general or enforcement of the law in general which in the liberal world have many intrinsic limitations. The legal system or law in actuality lacks firmness and certainty, can be erratic and internally contradictory, and is affected by power relations, cultural factors, politics, and the contests for power and interests

which lie behind the law. Nevertheless, given the existing backwardness of the consciousness of humanity, we might not be able to come together as societies without the existence of law, but would find ourselves engaged in endless struggle and strife to achieve laws which are fair and enforcement which is more efficient. The failure to protect rights in one area does not necessarily imply failure to protect rights in other areas, or in all areas, where the social and political conditions vary.

The important task (long-term and perhaps endless) for human rights advocates is to make human rights a strong and visible force in society so that people in general comes to realise their value and role. Only then can human rights become part of the common consciousness of society. Only then will people oppose violations of human rights or exceptions to the enforcement of human rights, temporary or permanent, on various grounds of some necessity. As a first step, examples of injustice and human rights violation need to be exposed and explained so that understanding of human rights enters into the conscience and mentality of people in general. This will begin to overcome the limited consciousness of society and (may) make state power more restrained and considerate. Certainly this task will be beyond the resources of the advocates of human rights alone. It will need cooperation from other progressive forces in society to give rights more strength and salience. A culture of human dignity needs to be rooted in the main religious culture of the society.³⁷ Strong human rights networks and organisations need to be created. Access to information, and public space for expression, need to be freed from the constrictions of the monopoly power of state and capital.³⁸ However bringing these conditions into existence is a highly difficult task. Overcoming monopolistic economic power is especially difficult given the environment of globalisation. By the nature of their power, domestic capital and transnational capital are able to influence the definition of human rights to tally with their own interests.

As a result of these difficulties, human rights are an ideal which need time to prove their value, and even more time before people in general have such faith in human rights that they will no longer trade off human rights for short-term outcomes. Moreover, there are the larger issues, highlighted by spiritual thinkers, of the fear and insecurity in society which arise from a fragmented way of thinking, self-centredness, and limited collective consciousness of humanity. In fact, there seem to be two levels to the problem of realising the ideal of human rights in society. The first level arises from the fragility, limitation, or crisis in the collective consciousness of humanity. The second level arises from the practical weakness and inefficiency of mechanisms for protecting rights under law. Humanity is a long way away from achieving a collective consciousness of human society on the basis of wisdom, love and compassion among humanity. This will be a huge task, beyond the scope of human rights advocates in general, requiring all elements of society to realise the long-term mental evolution required. Yet at the same time, this is the fundamental answer to finding a

sustainable solution of the drug problem, and also the core of the most broad and complex task of human rights. Advocates of human rights must remain faithful to the philosophical basis rooted in the value and dignity of humanity which cannot be separated from the broad consciousness of love and compassion among humanity.

Conclusion: limitations of humanitarianism and society's common responsibilities

The “final war against drugs” in Thailand, which produced the discourse of pre-emptive killings, the loss of thousands of lives in a very short period of time, and a fierce debate among supporters and opponents, revealed many undesirable realities about the weaknesses and limitation of every element in Thai society. These weaknesses and limitations apply to state, society and even the human rights side itself, though in different measure. The government's approach, influenced by a mixture of authoritarianism, nationalism and crude pragmatism, undermined the rule of law, human rights, and the constitution, and resulted in events which many perceive to be violations of the rights to life and person, and the basic principles and values of society. The fact that society in general did not oppose this violence but perceived it as a form of popular justice is morally disturbing and indicates the weakness of the social mentality or collective consciousness. Criticism of the state's responsibility for violations of the rule of law and human rights were important but inadequate because they obscured the roots of several deeply interrelated problems. Although human rights advocates and academics played a creative role in criticising the policy of pre-emptive killing, they should reflect why human rights gained such limited success, and re-evaluate their limited sensitivity to the fortunes of a large number of people whose rights were violated as victims of the drug trade. While it is important to monitor and criticise the violations of human rights, it is necessary also to consider actively how social peace, justice and well-being can be achieved at the levels of family and nation, despite the enormous difficulties in the areas of both mentality and human resources. The immediate task must be to stress the importance of protecting the human rights of all involved, especially innocent victims who may have been murdered by the state. If the state was indeed responsible for the illegitimate exercise of violence, pressure should be seriously applied to achieve justice by bringing the state to account using the strict and straightforward application of legal standards.

The future is unpredictable. The long-term success or failure in the fight against drugs is uncertain. The failures in the war against drugs in the US should be a lesson to Thai society. In particular, owning up to the ignorance which exists in almost all parts of society is a prerequisite for facing up to the drug problem which has deep roots in Thai society's spiritual insecurity which is more and more linked to the weakening of the family, weakening of the community, and domination of consumerism.³⁹ Only when all parties (including ourselves)

own up to our limitations in understanding the issues thrown up by the war on drugs can we reach a peaceful point where the Buddhist virtues of *brahmavihara*—the four noble sentiments of loving kindness, compassion, empathy, and equanimity—come into play, and we can be generous to all parties which tried to play a role but within their own limitations and hence with both positive and negative results. We should have compassion and loving kindness towards the mistakes committed by some parties, and cultivate equanimity in the effort to uphold justice. While we are criticising one party for creating an empire of fear through its violent conduct of the war on drugs, we must be aware of the fear and insecurity which exists equally within ourselves, within the consciousness of those being criticised, and within the consciousness of the large number of people who support the use of violence as well. All of us walk in the darkness created by the limited collective consciousness and limited capacity to solve the complex problems which oppress us all, layer upon layer, to the point some of us stray from tolerance and react to problems in a way which is no different to the loss of self-control experienced by those who are victim of the very drugs which we are trying to deal with.

We need to have faith in the humanity of “all parties” associated with the problem; cultivate the virtues of loving kindness, compassion, empathy, and equanimity; and try to see the problem as an interconnected whole rather than a matter of separate and often polarised elements. Only then will we approach the wisdom leading towards solutions which bring real peace for all.

Notes

¹ Ministry for Foreign Affairs documents presenting the facts of the government’s policy of drug suppression to foreign ambassadors at a meeting in Thailand on 3 March 2003, cited in *Matichon*, 4 March 2003.

² Since 1996 when *ya ma* (horse drug or diligence drug) was renamed *ya ba* (mad drug) and suppression efforts were intensified, the statistics of the numbers imprisoned throughout the country increased from 103,202 to 243,327 in 2003 (data from the Corrections Department at www.corect.go.th/stat.htm) largely as a result of drug convictions, with severe implications for the survival and quality of life of prisoners (see Natti Jitsawang, ‘Sithi manusyachon khong phu tong khang rua khong nak thot prahan (Human rights of prisoners and those under the death penalty)’, *Matichon*, 24 January 2000). This also led to failure from the beginning to rehabilitate prisoners as a result of the impossibility of making a proper classification of prisoners according to penological principle.

³ Roso del Olmo, ‘Aerobiology and the war on drugs: a transnational crime’, in Michael J. Lynch, ed., *Radical Criminology* (Dartmouth: Aldershot, 1997), p. 401.

⁴ Kasian Tejapira, ‘Khwaam yutthitham baep prayotnakhon (Justice Interestville style)’, *Matichon*, 21

- February 2003; Steven Lukes, *The Curious Enlightenment of Professor Caritat* (London: Verso, 1966); Jaran Cosananund, *Nithipratya* (Legal philosophy) (Bangkok: Department of Textbooks and Study Materials, Ramkhamhaeng University, 1988), p. 412.
- ⁵ For detailed treatment of the difference between these two systems, see H. L. A. Hart, *Essays in Jurisprudence and Philosophy* (Oxford: Clarendon Press, 1983), pp. 181–97.
- ⁶ Hart, *Essays*, p. 182.
- ⁷ Sue Titus Reid, *Crime and Criminology* (Hinsdale: Dryden Press, 1976), pp. 107–11.
- ⁸ Larry J. Siegel, *Criminology* (Belmont: Wadsworth, 2000), p. 114; Frank Schmalleger, *Criminology Today* (Englewood: Prentice Hall, 1996), p. 142; Pornchai Khanthi et al., *Titsadi lae ngan vijai thang achanawitthaya* (Criminological theory and research) (Bangkok: Booknet, 2000), p. 21.
- ⁹ Pornchai, *Titsadi*, p. 24; Worakon Samkoset, ‘Sethasat athibai achanakam (Economic explanations of crime)’, *Matichon*, 5 February 2001.
- ¹⁰ Reid, *Crime and Criminology*, p. 109.
- ¹¹ For details, see James A. Inciardi (ed.), *The Drug Legalization Debate* (London: Sage Publications, 1991), pp. 102–12.
- ¹² Olmo, ‘Aerobiology’, pp. 404, 410. The governments of many Latin American countries were pressured to follow these drug eradication policies or they would be denied aid. Eventually US troops were sent to “assist” (interfere) with drug suppression in Bolivia in 1986 (p. 403). In the Ichao incident, President George Bush sent US troops to Panama in 1989 to arrest the national leader General Manuel Noriega and take him for trial in the US on grounds he was involved in the drug trade, where he was eventually sentenced to forty years imprisonment.
- ¹³ Schmalleger, *Criminology Today*, p. 382.
- ¹⁴ Erich Goode, *Drugs in American Society* (New York: McGraw-Hill, 1993), p. 387.
- ¹⁵ Goode, *Drugs in American Society*, p. 350.
- ¹⁶ See a recent example in *Matichon*, 29 May 2003 in which the prime minister in interview warned against becoming involved in the international “game” and ending up a slave; some Thais speak badly of their own country; the success of capitalism in democratic countries must have a core of nationalism. Emphasising the importance of nationalism in capitalism possibly came from the influence of Liah Greenfeld, *The Spirit of Capitalism: Nationalism and Economic Growth* (Harvard University Press, 2001).
- ¹⁷ The diversity of nationalism is covered in Thirayuth Boonmee, *Chatniyom lae langchatniyom* (Nationalism and postnationalism) (Bangkok: Saithan, 2003), pp. 58–78.
- ¹⁸ Jaran Cosananund, *Sitthi manusyachon rai phromdaen pratyat kotmai lae khwam ben jing dan sangkhom* (Borderless human rights: philosophy, law and social reality) (Bangkok: Nithitham, 2002), pp. 294, 376.
- ¹⁹ Thirayuth, *Chatniyom*, p. 163.
- ²⁰ A survey of opinions in the Thai Sangha about the violent suppression of drugs found that 70 per cent agreed with the government, cited in Santisuk Sophonsiri, ‘Phutthatat tai laeo? 10 phi thi than Phutthatat la sangkhan bai phutthaborisat thai sabai di yu rua (Buddhadasa is dead? Ten years since the death of Buddhadasa, how are Buddhist devotees doing)’, *Sekhiyatham*, July–September 2003, p. 78.
- ²¹ *Khao ramkhamhaeng* (Ramkhamhaeng news), 3–9 March, 10–16 March, 17–23 March 2003.
- ²² *Khao ramkhamhaeng* (Ramkhamhaeng news), 10–16 March 2003.
- ²³ Nithi Eoseewong, ‘Dan upasong khong ya septit (The demand for drugs)’, *Matichon*, 24 February, 2003; Nithi Eoseewong, ‘Phalang khong rathaban kap phalang khong sangkhom’ (Government power and

- society power), *Matichon*, 26 May 2003.
- ²⁴ Kasian Tejapira, 'Ratthamanun kap watthanatham kanmuang patipak patirup: (3) watthanatham thai kliat thai, songkhram yen lae tang mai kae (Constitution and the political culture of anti-reform: (3) the culture of Thai Hate Thai, the Cold War, and nobody gives a damn)', *Matichon*, 21 March 2003.
- ²⁵ Suraphot Tawisak, 'Sathana kan ka tatton sathon phatthanakan thang jaryatham khong sangkhom thai yangai (What do the preemptive killings reflect about the ethical development of Thai society)', *Matichon*, 28 March 2003.
- ²⁶ This translation from www.columbia.edu/~gm84/gibtable.htm.
- ²⁷ See details in Jaran, *Sitthi manusyachon rai phromdaen*, pp. 68-72, 140-52.
- ²⁸ Jaran Cosananund, *Pratya kotmai thai* (Thai legal philosophy) (Bangkok: Ramkhamhaeng University Press, 1998), pp. 91-7.
- ²⁹ Carlos Basombrio, 'A view from the inside', *Human Rights Dialogue*, Winter 2000, www.carnegiecouncil.org.
- ³⁰ Schmallegger, *Criminology Today*, pp. 155, 376.
- ³¹ See for example, Peter Russell, 'The evolution of consciousness', www.peterussell.com/scg/eoc.html; Duane Elgin, 'Collective consciousness and cultural healing' (1997), www.awakeningearth.org/reports/ccch/ccone.html; Prasan Tangjai, 'Wikkrit lok-wikkrit jit ruam haeng sangkhom (World crisis: Collective spiritual crisis of society)', *Thai Post*, 13 July 2003; Prawes Wasi, *Witi manut nai sattawat thi yisip-et su pop phum mai haeng kan phatthana* (The human way in the twenty-first century: towards a new world of development) (Bangkok: Sodsi-Saritwong Foundation, 2002), pp. 30-3, 39-43.
- ³² Rachel Neild, 'The new face of impunity', *Human Rights Dialogue*, 2, 8 (Winter 2000).
- ³³ Witun Eungpraphan, 'Thot prahan chiwit mai chai thang kae samrap kan laklop kha ya septit raingan jak kong kan nirathotkam sakon (The death penalty is not the cure for the spread of the drugs trade: report from Amnesty International)', *Klinik*, 12, 3 (1996), pp. 169-71.
- ³⁴ David Andrew Price, 'Taking rights cynically: a review of critical legal studies', *Cambridge Law Journal*, July 1989, pp. 273-4.
- ³⁵ Ian Ward, *An Introduction to Critical Legal Theory* (London: Cavendish Publishing, 1998), p. 157.
- ³⁶ Kasian Tejapira, 'Ratthamanun kap watthanatham', and see also Saneh Chamarik, 'Wikkrit ratthamanun 2540 khoe wibak kam khong phaendin (Crisis of the 1997 constitution is hard times for the country)', *Thailand Human Rights Journal*, 1, 1 (2003), pp. 139-44.
- ³⁷ Jaran Cosananund, *Ratthamanun 2540: jak saksi khwam ben manut su thammik sitthi manusyachon* (1997 constitution: from human dignity to dhammika/Buddhist human rights) (Bangkok: Nitthitham, 2001), pp. 128-30.
- ³⁸ Wira Sombun, 'Sua sitthi lae sakyaphap haeng sitthi (Media, rights and the potential of rights)', *Jotmai khao sitthi manusyachon*, 5 (May-July 2001), pp. 3-4.
- ³⁹ See details in Witayakorn Chiengkul, 'Tham songkhram kap ya septit tong chai panya mak kwa kamlang luan (War against drugs needs brain rather than brawn)', *Matichon*, 25 March 2003; Nithi Eoseewong, 'Dan upasong'.

Appendix: Rangsit Poll on the Government's Anti-Drug Campaign

On 7-14 March 2003, the Rangsit Poll of Rangsit University conducted a poll of 822 people about the government's drug campaign. It was not a probability sample, so the results are not representative, only indicative. The sample was recruited in Bangkok, the north, northeast and south, covering many levels of society, but overall is younger and better educated than the population in general. Of the total of 822, 40 % were students, 44 % had tertiary education and 74 % were in the age group 15-25.

1. What is your opinion of the government's anti-drug campaign involving black lists, pre-emptive killing, and extra-judicial killings?

Agree with it	72 %
Disagree with it	27 %
No answer	1 %

2. Do you think these three methods—black lists, pre-emptive killing, and extra-judicial killings—will truly be able to suppress drugs?

Yes	63 %
No	35 %
No answer	2 %

3. Do you consider the shooting dead of a 9-year old boy in the city centre and other child killings is a destruction of life and violation of human rights?

Yes	69 %
No	29 %
No answer	2 %

4. Should the Thaksin government continue its anti-drug campaign using the same methods as the past month in which 1,300 people have died (according to data of 5 March) by pre-emptive or extra-judicial killings?

Yes	76 %
No	24 %

5. Should the government continue its campaign using violent methods for another 55 days until the end of April?

Yes	67 %
No	32 %
No answer	2 %

Throughout the poll, the breakdowns by sex and occupation showed no major differences of opinion. Both males and females were in favour of the campaign, though males were more strongly in favour. Among occupational groups, police were most strongly in favour, and ordinary workers the least.

The struggle to protect villagers' rights: the case of Khlong Dan*

Sukran Rojanapaiwong and Dawan Chantarahesdee

The order to halt construction of the “Waste-water Management Project, Samut Prakan Pollution Control Area”, generally known as the Khlong Dan Waste-water Treatment Project on 24 February 2003 by the Minister for Natural Resources and the Environment, Praphat Panyachatrak, was a major victory for the people of Khlong Dan and Song Khlong following more than four years of continuous protest.

This project, carried out by the Department of Pollution Control under the Ministry of Science, Technology and Environment (now changed to the Ministry of Natural Resources and the Environment), has become the best-known waste-water project in Thailand and in Southeast Asia.

It can also be considered the project with the worst violation of people's and communities' rights.

The 1997 Constitution has been celebrated as Thailand's most democratic constitution. Its provisions include a wide range of rights and freedoms. The Khlong Dan Waste-water Project has violated at least five clauses, namely 50, 56, 58, 59 and 61.

From the point when the pristine area of Khlong Dan was designated as the site for this large-scale project, the rights of the people of Khlong Dan and neighbouring communities concerning the environment under Clause 56 were immediately violated. It was also clear that a project supposedly intended “for the sake of the environment” was likely to be a threat to the natural resources and environment in the area, with impacts on “the liberties to engage in an enterprise or an occupation” which are protected by Clause 50.

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In the course of the project there were omissions and commissions which violated the rights of people in the community in many ways, including “the right to get access to public information” under Clause 58; the “right to receive information, explanation and reason from a State agency” under Clause 59; and the “right to present a petition and to be informed of the result of its consideration” under Clause 61.

However, these violations did not go unchallenged, because the people of Khlong Dan and neighbouring communities came out to claim and protect the rights the Constitution had just granted them.

The right to information: the initial impulse

The main basis of the struggle over the Khlong Dan Waste-water Project is the demand for rights of access to information. The erection of a signboard alongside the Sukumwit highway in front of the construction site was the first information the villagers received that a construction project of some sort had begun and that it was instigated by a government agency. They began to look for information about the true nature of the project, thus beginning a process which finally led them to oppose it.

There is clear evidence that a large piece of land in Khlong Dan sub-district had been designated as the construction site of the largest waste-water treatment project in Asia since mid 1997 at the latest. But until the construction began on 20 February 1998 the people of Khlong Dan and neighbouring communities were not informed. The signboard erected in front of the project site was their first information.

This means that for two years and four months after the Cabinet approved this project in principle, no information at all was relayed to the people in the area.

However, the Pollution Control Department (PCD) claims that on 4 September 1997 the project was publicly inaugurated at the Samut Prakan Provincial Hall, attended by over 300 government officials and others. But this claim itself indicates that the inaugural event was very limited both in the sense of where it was held and the number of people who attended. The people of Khlong Dan and Song Khlong were not involved in any way.

The people of Khlong Dan and Song Khlong sub-districts began to look for information, and to demand a review process open to public participation. They also tried to delve deeply into the background of how the project evolved. They discovered that the project on “Management of waste-water in Samut Prakan pollution control area” which the PCD proposed and which was approved in principle by the National Environment Commission on 14 June 1995 and by the Cabinet on 17 October 1995 designated two waste-water treatment systems. The first would serve the area to the east of the Chaophraya River and would be located at Bang Pu Mai in Amphoe Muang on a plot of around 1,550 rai. The second would serve the area to the west of the river and would be located at Bang Pla Kot in Amphoe Samut

Chedi on a plot of 350 rai.

The investment for the whole project was 13,602 million baht or US\$ 544.4 million.

In addition, the Cabinet resolution recommended that the plan for the eastern portion should be adjusted and its capacity increased; that the project be opened to tender by private companies; that a committee be appointed to oversee this process; and that representatives of the Land Department participate in the acquisition of the required land.

Yet in the course of implementation, during the process of soliciting bids for the project on a turnkey basis, which took over a year and a half (December 1995 to August 1997), *the PCD decided to amalgamate the two systems into a single massive system located on the east bank*. The budget for the total turnkey project was also revised to 23,701 million baht, an increase of 10,089 million baht or 75 per cent (see table).

Table 1: Cost comparison before and after project revision

		before revision	after revision
1	Turnkey contract for east bank project	10,144	18,462
2	Turnkey contract for west bank project	2,722	4,493
3	Project management and construction supervisions	269	269
4	Wastewater and effluent monitoring	148	148
5	Industrial pollution prevention and technology transfer	323	323
6	Management fee	6	6
	Total	13,612	23,701

Unit: million baht

Source: PCD, February 1997

A plot of around 1,903 rai in Khlong Dan sub-district, Amphoe Bang Bo became the site of the waste-water treatment plant even though this area was not identified in any study and was 20 kilometres away from the site originally proposed.

This process *in toto* was conducted internally. It was not only the Khlong Dan communities who had no information. The Cabinet and the National Environment Commission were not informed in a clear and straightforward manner. The changes were concealed, especially the amalgamation of the two projects into one, and the relocation of the site to Khlong Dan.

In addition, there is no evidence of any study on the suitability and feasibility of the Khlong Dan site, or on potential impacts from the project.

Even though this was a large-scale project of great detail and complexity, a large amount of data was concealed. But from early 1999, the villagers came out to question and review the project, which brought much information out into the open, both from the

government agencies involved, from press investigations, from NGOs, and from some academics.

The decisions of the Senate and the Administrative Court to review the project also had an important influence in bringing government information which had been concealed out into the open.

So ultimately the villagers were able to expose the problematic nature of the project in a way which has not generally been the case.

The struggle for the right of access to information was the main issue at the early stage. It was also at the centre of every single struggle over other issues.

Demanding the right of participation to determine one's own future

The demands by the people of Khlong Dan and Song Khlong for participation were in evidence from the beginning. Their first gathering was held on 23 March 1999. One demand in the petition sent to the prime minister was: "that the people of Khlong Dan be allowed the right to express their opinions on this project within the process for soliciting public opinion specified by law, through public hearings prior to implementation of the project".¹ The petition referred to Clause 59 of the constitution in support of this demand.

But the response to this demand was delayed until the end of the year when Dr. Athit Urairat, minister of science, appointed a public hearing committee. Yet ultimately this decision was not implemented, and despite further petitions the government gave no response.

The PCD arranged two technical hearings to solicit technical opinions on the project in later 1999. Over twenty academics and waste-water experts attended the first session along with some journalists, but not a single villager from the area had the opportunity to attend. At the second session, villagers were admitted but only as observers.

Eventually however, a public hearing was organised, but at such a very late stage that decisions on the details of the project had already been taken, and the construction had commenced.

PCD explained to the Budget Bureau about the earlier absence of public hearings at the time of requesting payment for the land. The PCD said that this project had been approved by the Cabinet before the Cabinet passed a resolution on public hearings and before the Prime Minister's Office had issued regulations for public hearings. In addition, part of the budget came as a loan from the ADB and carried a penalty if the tranches of money were not used within a specified timetable. Also the contract signed with the contractor specified that the ownership of the land had to be transferred within 20 February 1998. Delaying the project so that a public hearing could be held before the land purchase would have detrimental consequences for the country and people.

This explanation, though apparently reasonable, clearly indicates that the PCD and

Science Ministry attributed little importance to public hearings since throughout implementation of the project no time at all was allowed for consultation, participation, or public review and opposition to the project.

Citing the Cabinet's original approval in principle of the project is not an adequate explanation. It also conflicts with the facts. The project plan which the Cabinet approved in late 1995 designated areas in Bang Pla Kot and Bang Pu Mai. As the PCD itself stated, the Cabinet resolution which acknowledged the relocation of the waste-water treatment plant to Khlong Dan was passed on 5 August 1997—*after the Prime Minister's Office had issued regulations on public hearings.*

If those in charge of this project had wanted to arrange public hearings to offer the people of Khlong Dan a chance to participate in determining their own lives, they still had more than a full year in which to do so.

But in truth, the opposite was the case. The contract that PCD signed with the project contractor included a condition that the title of the land at Khlong Dan had to be transferred within half a year.

Specifying such strict, fixed and time-bound conditions at every stage of the project made it almost impossible to implement the project in a measured and transparent fashion.

There is a further issue over the PCD's claim that the Khlong Dan Tambon Administration Organization (TAO) gave written permission for use of the land. The villagers discovered evidence that the list of signatures of those attending the meeting of the Khlong Dan TAO on 19 January 1998 on this issue includes 29 names, but the minutes state that all 39 members of the TAO voted on this issue, with 37 for and 2 against.

In addition, subsequently 22 of those whose signatures appear among those attending the meeting maintained there was no resolution concerning permission to use the land for the construction of a waste-water treatment plant.

Eventually a protest over this issue was sent both to the administration and to the ombudsman stating that *the letter from the chairman of the Khlong Dan TAO dated 20 January 1998 which PCD used when requesting release of the budget was a false document.*

Concern over human resources, the basis of life and livelihood

Concern over the environment and natural resources which underpin their livelihood and way-of-life is the principal issue which has made the villagers of Khlong Dan and Song Khlong unhappy with the project. The villagers state clearly that they do not oppose the project's purpose to deal with waste water, but they do object to the construction of the waste-water treatment plant in Khlong Dan because it is an area with a fragile natural environment, especially the coastal environment of estuarial mangrove of the upper Gulf of Thailand, which is a highly productive environment and the source of livelihood for the people

of both communities.

The rationale of this project is to solve pollution problems in order to revive the state of the environment. It comes under the government agency which is the country's only agency with direct responsibility for managing pollution. Yet there has been no study of the project's impact, either on the environment (EIA) or on society (SIA).

Yet as a result of the intensive demands of the villagers and their various allies, in early 2000 PCD commissioned a consultant company to study the environmental impact. Yet the report that resulted was labelled as a "Environmental Management Plan" since it was not carried out before construction was begun. Hence there has still been no EIA on this project up to the present day.

But the villagers' demands did not relent. The Industrial Works Department which had to issue the construction permit insisted that the project must first be approved through an EIA process. In response, the PCD sought and secured in early 2000 a legal ruling that waste water was not a pollutant or waste product as described in the Industry Ministry announcement no. 6 (1997) and no. 1 (1998), and hence the project did not fall within the definition which required an EIA.

However, a resolution by the Senate Subcommittee on the Environment, and the report of a fact-finding committee appointed by prime minister Thaksin Shinawatra, came down in opposition to this judgement, holding that this project requires an EIA, and the ruling of the Administrative Court that waste water is not a pollutant or waste product according to the Industry Ministry announcement "does not follow the intention of the law".²

The villagers petitioned various government offices and many other agencies to review the impact of the project on the environment and health. At the PCD's two Technical Hearings, academics and experts on waste-water treatment called attention to several problems and several likely effects on the environment.

One major impact is the issue of residues from the treatment process. The PCD has provided storage tanks to hold the waste for only five years without knowing the exact nature of the residues, or how they can be eliminated. The residues generated by such a treatment plant may contain toxic substances which will disperse into the environment, breeding and spreading disease.

The academics agreed that this project will certainly create a stench and will have an effect on people who live in the area around the project. Within a radius of two kilometres, there are several villages and eight schools.

The main effect which concerns villagers is pollution of the coastal environment. The waste-water treatment plant under construction at Khlong Dan will receive up to 525,000 cubic metres of waste water per day from households and industries. After treatment, the water will be released into the sea around Khlong Dan. The coastal environment and coastal

resources will be severely effected, especially from change in the salinity level of the sea water, and from suspension of heavy metals. The treatment process in this project will remove only BOD and suspended particles but is not capable of removing nitrogen, phosphorous, hydrocarbon, heavy metals, and toxic materials.

The way of life of the Khlong Dan and Song Khlong villagers depends heavily on the sea. If the sea changes so they cannot rely upon it, they will have to change their way of life.

Thus this project is a threat to the Khlong Dan community, and violates their rights to a good environment. It will destroy the productive resources on which they depend. The violation of these rights also leads to the violation of other rights including the right to health in both body and mind, the right to livelihood, the right to a safe and secure residence, and the right to choose a way of life and live in a community without being forced to move location.

The heart of the struggle by the villagers of Khlong Dan and Song Khlong is the protection of these rights.

The development of the opposition struggle

Despite the violation of the right to information and of the people's right to participation, the movement of the Khlong Dan and Song Khlong people began rather slowly, and after the construction of the project had already commenced. But once the villagers were aroused to find out what was going on in their homeplace, their struggle against the Khlong Dan Waste-water Project has revealed deep and extensive information about the nature of such large-scale projects.

For over four years, the people of Khlong Dan and Song Khlong were engaged in continuous struggle, requiring great effort and commitment. They were able to build a broad network with other parties. The highlight of this struggle was its success in unearthing and exposing hidden information.

Throughout the period of demanding that this problematic project be halted, the people of Khlong Dan and Song Khlong worked together to petition various government agencies involved, to demand more information, to demand explanation, to demand answers, and to demonstrate their opposition. They challenged the project both through the administration and through the process of law. Several times they gathered in demonstrations as a show of strength. Sometimes they were involved in confrontations, and faced violent reactions from workers involved in the construction.

The movement by these two communities began with demands to delay the construction and review the process. But once the villagers unearthed concealed information and understood more about the background of the project and the complexity of the interests involved, the movement developed into outright and committed opposition to the project. From there, the movement challenged the structure and the policy which lay behind the

project.

In the later stages, the focus of the movement was not on making demands or displaying opposition, but finding various ways to expose the problems. Representatives of Khlong Dan villagers participated in many academic forums, took part in a wide range of social activities, and teamed up with various organizations.

There was no response from the various agencies involved, in particular from the government bodies which oversee the project and have decision-making powers. However, the long protest by the two communities and their allies ultimately bore fruit, and played an important role in the broader people's movement.

Most importantly, the long protest brought the project to the attention of the general public and exposed the corruption in the process and the many consequences of the construction. Ultimately this was a major factor forcing the government to halt the construction, which by that time was 90 per cent complete, and to launch investigations of malpractice which are still in progress.

Many agencies force a review

The exposure of the lack of transparency in the project's procedures was a major achievement of the villagers' investigation of information and data, and was a major point which the villagers raised to oppose the project.

The exposure of the facts to the public and to government resulted in several interesting reactions.

1. The parliamentary subcommittee on administration, chaired by Kaeo Buasuwan, in its report presented to parliament on 30 March 2000, noted that this project is the largest of its kind in Thailand and in Southeast Asia, yet created major problems for people in the locality. In addition, the work of the agencies involved had not been systematic, and had been non-transparent on several points.

Hence the subcommittee recommended to parliament to review the impact of the project, and find a way to halt it in the meantime.

2. The Senate subcommittee on the environment, chaired by Phanat Thasniyanon, in its report presented on 26 April 2001, raised several issues which may be summarised as follows.

- a. The change of location from Bang Pu to Khlong Dan raised the cost without rationale.

- b. The construction of appropriately sized waste-water treatment plants dispersed throughout the communities and industrial areas would better fulfil the principle that those creating the pollution should be responsible for dealing with it, and would also require a smaller investment.

c. The project will have effects on the environment, coastal resources and local communities, especially those involved in fishing and coastal fish-farming.

d. The implementation of the project has infringed the law by not applying for a factory permit and not carrying out an environmental impact study

This subcommittee recommended that government reconsider the project, and should delay the construction in the meantime. The subcommittee also offered three solutions.

a. Cancel the project completely and apply the law strictly to force each factory to have its own waste-water treatment process.

b. Construct an appropriately sized waste-water treatment plans using the piping system already in place.

c. Government must recognise the importance of the people, local communities, and those affected, and must truly create the opportunity for them to acquire information, participate in policy making, finding alternative solutions, and taking decisions together with government at each stage.

3. As a result of villagers protesting continuously to ADB, the final report of the review board issued in late 2001 stated that the ADB had violated its own internal policies in several ways over the Khlong Dan Waste-water Treatment Project. These violations included: policy on additional loans for projects which exceed their budget; policy on internal ADB procedures; policy on involuntary relocation; policy on estimating social dimensions; policy on good governance; and policy on estimating environmental impact. In addition, ABD infringed some of its policies on project benefit analysis and economic assessment.

This report concluded that ADB made serious errors at the stages of project assessment, project approval, and project implementation of the Samut Prakan waste-water management project.

The review board added that the rights and benefits of the people whose way of life depends on fisheries would be affected since they would be prevented from operating in the economic exclusion zone. Also the rights and benefits of the people who operate fisheries outside this exclusion zone would be affected by the reduced salinity of the sea water and by toxic substances and heavy metals.³

Although the Project Management Department of ADB strongly rejected each of these points, and refused to make public admission of error, ADB as an organization cannot deny that there were failures in the ADB's role in the construction of the Khlong Dan waste-water treatment plant.

Government owns up to the problems but still hopes to continue and expand the project

As a result of the sustained demands from the people of Khlong Dan and Song

Khlóng, and of support within society, prime minister Thaksin Shinawatra appointed a fact-finding committee to support decision-making over this project on 18 October 2001. The committee was supposed to report back within 60 days, but later the committee asked for an extension of a further 120 days on grounds it had received no cooperation from PCD in providing documents.

The committee reported to the prime minister on 17 April 2002, and provided an additional summary on 1 May. On the following day, the prime minister went to inspect the project for himself.

The conclusion of this committee was that this project had been “irregular” throughout, beginning from the initial feasibility study, ADB loan, bidding process, land purchase, construction contract, and release of budget funds. This “irregularity” had affected technical considerations, government procedures, and project implementation. The end result had been waste with no benefit at several points.

Land had been purchased in excess of requirement resulting in loss of at least one billion baht. The piping system cost 5.4 billion baht more than it should have. The excess budget wasted in construction was almost 10 billion baht. These estimates of excess spending were made by comparison with other projects of the Industrial Works Department and Public Works Department.

In addition, the PCD’s conduct of the project under the control of the Science Ministry “in certain aspects did not accord with relevant laws, was in breach of contract, and failed to fulfil its duty to protect the national interests, resulting in loss and damage”.⁴

However, in its recommendations this committee advised that the PCD should complete the project and then conduct a further review. For this another national level committee should be appointed to review, monitor, and oversee the PCD’s conduct of the project. In addition the committee recommended that the PCD carry out an EIA, and also a study on the cost for reclaiming and recycling oil. In addition the steering committee should work with PCD to reduce the expenses of testing the system, bring it into operation within 3 years, and find options for modifying the treatment plant and piping system to bring them more into line with actual requirements.

After studying these recommendations, the government did nothing for a time until the bureaucratic reform when Praphat Panyachatrak became the first minister of natural resources and the environment. The process of reviewing the project then intensified and led eventually to the order suspending construction.

The lessons of Khlóng Dan for the struggle over rights

While the project violated the rights prescribed in several clauses of the Constitution, the opposition to the project by the people of Khlóng Dan and Song Khlóng was able to use

even more clauses of the Constitution to its advantage: the right of association (Clause 44), the rights of communities (Clause 56), rights over natural resources (Clause 56), rights of access to information (Clause 58), right of participation (Clauses 59 and 60), and the right to present a petition and be informed of the result within the appropriate time (Clause 61).

In other words, the people of Khlong Dan and Song Khlong used the correct procedures according to their constitutional rights and duties, and were able to achieve one of their aims, namely halting the construction of the project.

But it is still uncertain whether the tasks of assigning fault and cleaning up corruption, which are still in process, will reach a proper and fruitful conclusion. But the course of the project and the experience of the people's movement over Khlong Dan have great value in themselves as lessons about the process of learning to protect community rights. These lessons about both the violation of rights and the protection of rights can be summarised under three headings.

1. The violation of people's rights

The violation of people's rights in the case of the Khlong Dan waste-water treatment project began from the policy making procedures which had no place for people's participation at any stage from the proclamation of pollution control zones to drafting the waste water management plan. There is no regulation or operating procedure which requires consultation, or even public disclosure, for public projects in general, including the planning for various development projects.

In the process of implementation, the tendency to confine information inside government agencies and within the circles of those directly involved further prevents any kind of participation and leads to lack of transparency. Even those who will be directly disadvantaged have no opportunity to gain information. Hence there is no possibility of monitoring such a project, especially when the detailed implementation has many stages and requires a long period of time, such as the bidding process or the drafting of the turnkey contract for design and construction.

There is no mechanism to force government agencies engaged on matters which affect the interests of people in general to adopt a working procedure which is different from their normal practice.

This situation lends itself to monopolisation and illegitimate sharing of benefits.

2. Official means to protect people's rights

Besides the constitution which prescribes the people's rights in full, there are also other laws which support people's rights such as the Environment Protection Act, the prime minister's office regulations on public hearings of 1996, and on official malpractice of 1996. But these laws have weaknesses in practice. They are incomplete and have loopholes. They lack penalties, or the power of enforcement. As the provisions of the constitution are in the

form of principles with broad scope, implementing laws are required to activate these principles. In many cases such laws have not been legislated.

In general the duty to protect people's rights falls within the scope of the agencies of government. Hence this is a route for people to voice their demands or report their problems. The Constitution at the very least requires government agencies to give information and explanations.

At present there are many bodies which act as mechanisms for monitoring the working of government including the judicial process, the legislature and various independent bodies including various subcommittees of both the Assembly and Senate, Ombudsman, Administrative Court, National Human Rights Commission, and National Counter Corruption Commission.

3. Unofficial means to protect people's rights

The main force for protecting rights lies with the people themselves. But there are other supporting forces which have very important roles, especially NGOs. At present NGOs work in many different fields, especially in the area of protecting human rights directly, supporting human rights, and protecting the environment. These bodies can act as good allies of the people.

In the case of Khlong Dan, the people gained strong support from the media, especially from *Phujatkan* (Manager) daily which followed the issue closely and continuously, and carried investigative reports which were able to uncover concealed information.

In the same way, people involved in and knowledgeable about many parallel projects gave their cooperation and support to the process of protecting community rights. Support from the general public had an important part in the overall review process.

Notes

¹ Petition to prime minister Chuan Leekpai dated 22 March 1999 to review the waste-water treatment project.

² Prime Minister's Office minute dated 12 April 2002 concerning the progress report of the fact-finding committee to support decision-making on the waste-water management project in Samut Prakan pollution control area.

³ Report of the review committee on the Samut Prakan waste-water treatment project dated 14 December 2001.

⁴ Prime Minister's Office minute dated 12 April 2002 concerning the progress report of the fact-finding committee to support decision-making on the waste-water management project in Samut Prakan pollution control area.

Pom Mahakan: humanity and order in the historic center of Bangkok¹

Michael Herzfeld

On 24 January, 2003, the residents of Pom Mahakan (Mahakan Fort), were served with what threatened to be a terminal, three-month deadline to comply with the order to leave their home site. Their community nestles behind the fortified perimeter wall at the intersection of Rajadamnoen Avenue and Mahachai Street, in the lee of the Temple of the Golden Mount and fronting the historically significant Paan Fa pier and bridge, which, perhaps significantly for what follows, marks the upper perimeter of the main violence of spring, 1992 (see Klima 2002, 118).

The eviction order marked a particularly tense moment in what had already been more than a decade of struggle, litigation, protest, and harassment, as the residents tried to defend their right to remain on the site where they had emerged from a phase of great social difficulty as a vibrant, cohesive community with a remarkable sense of collective responsibility and mutual support. In the process, the residents have evolved a well-conceived land-sharing plan, in which, in exchange for the right to continue to live on approximately a quarter of the acreage, they propose to accept collective responsibility for its overall maintenance, for the creation of socially productive amenities such as dance and kick-boxing schools and craft production and display facilities as well as a variety of food stalls, and for the management of the important vernacular architecture threatened, no less than its inhabitants, by the official plan to turn the site into a grassy void—a so-called public park.

That project, conceived within the larger framework of the government-sponsored Rattanakosin Island Plan, would replace an inhabited communal space with a manicured twin to the park at Phra Sumen Fort, where natural vegetation was destroyed to make way for a formal park that increasingly attracts nocturnal vagrancy. Phra Sumen nicely illustrates the fundamental dilemma of the Bangkok Metropolitan Administration (BMA): charged with implementing a plan not of its own making, and inevitably responsible for addressing its social

consequences, the BMA must work with a newer central government that may well have its own doubts about the original vision.

The BMA has not responded creatively to the challenge. Following the plan rather than its own social policies, the BMA proposes to evict all 283 residents now remaining and to build a public park between the fortress walls and the canal. Senior BMA officials—it is important to identify the specific agency at work here, rather than criticizing a complex political and administrative entity as a whole—reject not only the residents' arguments, but the supporting objections of three entities with official international and national competence to judge the issues: the National Human Rights Commission; the United Nations Committee on Economic, Social and Cultural Rights (letter of 13 May; see Ploenpote 2003a); and the elected president of its own legislative council. To the first, the BMA bureaucracy offered only a harsh refusal to compromise; to the best of my knowledge it has not bothered to reply to the second; and to its own elected president it has not made any public response beyond a terse reiteration to the media of its intention to proceed with the eviction.

To the numerous professionally and ethically concerned academics—representing planning and architecture, history, archaeology, sociology, political science, tourist development studies and social anthropology—the BMA has similarly responded with stony silence. While the eviction has so far not gone forward, the wear and tear on the community's ability to survive and its interference with ordinary breadwinning activities, has been sustained only by the extremely visible and international nature of the support,² which includes the personal engagement of officials of various agencies connected with the Thai state, by volunteer work by students from several institutions, and by the seemingly indefatigable support of activists from a range of other communities in some of which Pom Mahakan residents had themselves lent a helping hand in the past. That support has in fact been remarkably consistent and well maintained, and has included the staging of two major conferences—one at Thammasat University on 31 May 2003 and one at Chulalongkorn University on 25 August of the same year (see reports in *The Nation* and *Khao Sod*)—at which the articulate self-defense of the residents meshed with the technical and legal knowledge of scholars with direct and practical knowledge of the community and its problems.

While historic conservation as such is not the principal focus of my attention here, it is worth noting that one concern regards the preservation of the old wooden houses at the site; at least one historic conservation official, speaking on condition of anonymity (itself an indication of the atmosphere?), warmly supported the idea that the best way of preserving these historic dwellings and of the site as a whole would be to encourage the land-sharing scheme proposed by the residents and rejected out of hand by the BMA. Not a few cultural critics have strongly argued for what is the most obviously sensible as well as humane solution (e.g., Chatree 2003; Sisak 2003; Suchit 2003).

In this instance, moreover, the defense of human rights converges with the preservation of cultural property at the level of national interest. Thus, conversations among conservation experts, Thai and international, has revealed deep concern that the BMA's present stand, beside its social implications, threatens the safety of a rare complex of vernacular architecture. These experts want the domestic architecture to be considered within the same framework of heritage policy as those monumental works, in Thailand comprising principally temples and palaces, to which conservation policy has often been disproportionately directed.

The shift in conservation priorities shows how far behind the development of public sentiment and knowledge the municipal authorities may have remained. The preference for temple and palace over vernacular architecture is itself the expression of an older structure of power, one that does not fare well within a system of democratic representation, but that often survives longer in the deeply entrenched habits of bureaucrats than their supposed masters in the legislative body would like. (There has been a great deal of complaint about the inapplicability of the term "*civil servants*" in this context.) It is instructive to compare the emergence of democratic decision-making as a way of life in Pom Mahakan—including an active commitment to the conservation and maintenance of historic sites that will have national as well as local resonance—with the bureaucratic refusal to engage the community in constructive dialogue; in the absence of any obvious alternative explanation, one may well wonder whether what officials most fear may in fact be the residents' increasingly enthusiastic knowledge and experience of representative participation.

Where collective decision-making is not the mode of operation, the exercise of power employs a highly destructive weapons, that of fear. Fear may in turn generate determination to persevere (see also Askew 2002, 155), but every communal decision ignored by the authorities is fraught with the corrosion of uncertainty. On 29 April 2003, the residents barricaded themselves in between the fortress wall and the canal, stretching a net across the canal to stop the authorities from attacking from the rear and blockading all the entrances to the physical space from Mahachai Street. Despite high tension, nothing happened that morning, and eventually the main entrance was reopened. Months later, the residents, aware of their legal responsibilities and wishing to demonstrate their responsible custodianship of the site and its access to the canal and associated transportation network, opened the other entrances, although they maintained an uneasy, round-the-clock watch that still continues. The BMA had presumably opted for prudence, since the community had not yet exhausted all legal processes.

When soldiers appeared at the site on 13 June, residents feared that the military visitors' goal might be to spy out the land (see Anon. 2003a). In fact, at least some police officials are more sympathetic to the residents' cause than the BMA would like, knowing as they do—and in spite of unofficial BMA claims to the contrary—that the community leadership

has made a strong commitment to keep drug-peddlers out of their space. But soldiers represented another level of authority altogether, and the BMA did nothing to reassure the community. In the end, the soldiers' arrival turned out to be a surveying exercise carried out, at least in part, for and under the supervision of the Fine Arts Department, which has responsibility for the maintenance and conservation of the actual fortress walls. Another, two-stage moment of tension thus occurred when the community lost its case in the Administrative Court in late August, but again nothing occurred at the site itself, and the community voted—with considerable trepidation—to reopen the subsidiary gates on the Mahachai Road. As of this writing, no further direct action has been taken, but the ceaseless psychological and economic toll of the continuing uncertainty plays havoc with the residents' lives.

It is worth noting that the vote to reopen the gates was taken after a lively public debate that illustrated how far the community has traveled on the road of democratic experience. Much of its confidence comes from the increasingly certain knowledge that disagreement does not necessarily convey either disrespect or hostility but is the essence of democratic cooperation, that the relative taciturnity of community women is giving way to a more assertive role (particularly in defense of broadly domestic interests), and that decisions can also be reversed quickly whenever necessary at one of the frequent public meetings of the community. Residents are proud of what this implies; while concepts of "development" (Thai *kaanpathanaa*) have quite variable political resonance (see, e.g., Fisher 1995; Gupta 1998), the residents of Pom Mahakan speak more easily of self-development (*kaan phathanaa tua eng*), a phrase that speaks volumes about their eagerness to enter the stream of modernity, but to do so on terms that leave them with their collective and personal self-respect intact. Their creation of a rotating credit fund, their community meetings, the leaders' evident tolerance of divergent opinions, and the skill with which the community converges to manage the occasional outbreak of abusive behavior (as in the very rare instances of public drunkenness) without humiliating the offender—all this demonstrates the residents' commitment to their vision of a place in the sun of a tolerant Thai modernity.

I have had the extraordinary privilege of watching this vital political and social sensibility grow. When I first arrived on the scene in March 2003, community leaders and supporting activists were staging a series of protests. The residents' major arguments for remaining were already well defined in cultural terms: they were the inhabitants of a set of "ancient" wooden houses built between the Second and Sixth Reigns; they represented "traditional" occupations, including the hand-manufacture of ascetics' images ("*ruesii* dolls") and bird-cages and food production and vending; they depended on their close association with the highly developed tourism of the area (which includes Khaosan Road) for a living; they had in some cases lived on the site for several generations; and they were loyal Thai

citizens who desired only to develop this site as a living tribute to national tradition.

The BMA countered that many of the inhabitants were not “original” to the site. This is a central theme in its arguments against the community, and rests on the notion that there should be some sense in which a single community, having installed itself on the site, had “always” retained its homogenous character. The BMA also pointed out that many of the inhabitants had already voluntarily accepted early installments of compensation for their displacement; this is true, but the residents complain that they were never given an adequate explanation of what was involved and would willingly return the money. Pointing out that few if any residents held documented legal title to their land, the BMA classified the majority as “squatters”—an action, denoted by the Thai term *buk ruk* (invasion), which the inhabitants reciprocally attribute to the BMA. Finally, the BMA argues that the public good would be better served by the construction of a public park, attractive to tourists and integral to the administration’s supposedly ecology-sensitive plan of expanding the green spaces within the city, than by the survival of a slum community allegedly plagued by drug problems and by petty criminality.³ We should note, however, that the BMA has never cited any tourism expert’s evidence that such a park would in fact attract interest, while officials have ignored foreigners’ views that an empty, uninhabited park in this secluded space would provide a perfect haven for, precisely, pushers and addicts.

In short, the confrontation has all the classic features of the worldwide battle between a majestically uninformed “high-modernist” vision of the ideal city and a socially responsible environmentalism that recognizes the social fabric as integral to the survival of city life. James C. Scott (1998) has written eloquently on this topic, pointing out that high-modernist models of order follow an aesthetic that treats the rhythms of everyday life as irrelevant to state attempts to simplify and thereby control the lives of its citizens. He also points out that such plans have usually failed. Their partial genesis in French urbanism can hardly be irrelevant to a scheme in which the Pom Mahakan community, and conceivably others along with it, are slated for removal in anticipation of the rebirth of Rajadamnoen Avenue as the much-touted “Champs Elysées of Asia.” Baron Haussmann would have been proud of the durability and geographical migration of his vision.

The high-modernist vision is also grounded in what some commentators have justly described in another context as “documentary legal fetishism.”⁴ This mode of argumentation, however, which is based on a literal understanding of what constitutes evidence of ownership, does not cover all the relevant issues. The BMA is not the undisputed sole owner of site, which is compounded of temple and private ownerships largely but not entirely now bought out by the BMA (none of it belongs to the Crown Property Bureau). The BMA invokes its responsibilities as the agency charged with implementing the Rattanakosin Island plan, a state project. But former BMA leaderships interpreted that charge more flexibly and with greater

concern for the social effects of intervention. There is also increasing evidence that the present BMA leadership's views do not always evolve in tandem with those of the central government, as we especially see in the discord over Bangkok Governor Samak Sundaravej's attempt to suppress the public commemoration of the 30th anniversary of the 14 October student uprising. Moreover, the new Constitution allows for increased latitude of legal interpretation, particularly inasmuch as it offers ways of challenging the documentary fetishism of older modes of governance.

A culturally flexible respect for human rights would in fact probably work in favor of the national authorities and of the Pom Mahakan residents alike. On 5 September 1999, the Thai state endorsed the United Nations convention according to which governments wishing to carry out evictions must show that these are the consequence of some compelling necessity and that all other possible avenues have been exhausted.⁵ That United Nations conventions are themselves often intended as culturally neutral, high-modernist constructions, in which there should therefore be no place for opportunistic pragmatism, might seem to disallow appeals on the grounds of cultural exceptionalism, especially in light of the state's own present orientation to efficiency-based models of governance. A literalist approach from either side produces only impasse: either the residents are in violation because they cannot prove documentary title, or the municipality risks forcing the state to violate its existing international commitments.

But this impasse is far from inevitable. The community has itself shown the way out, by adopting an approach that grounds human rights "in the shared moral spaces of everyday life" and "respond[s] to claims and entitlements not made in the language of legality" (Wilson and Mitchell 2003, 13). By proposing a land-sharing arrangement that would actually save the BMA the administrative headaches of oversight by managing what the residents have come to view as their segment of a national heritage (*moradok*), they have met the state's modernist rationalization of national tradition on its own terms; they have supported the central government's campaign against inefficiency and waste; and they have generated democratic procedures that remain deeply respectful of the Thai symbolic hierarchy. Like others before them (Askew 2002, 151), they have represented their willingness to compromise as quintessentially Thai; this probably explains some officials' defensive incantation that the residents are "obstinate" (*doe*)—to which residents retort, reasonably enough, that the obstinacy is all on the other side. Clearly, bureaucrats and residents actually understand each other well; they speak the same language of essentialism. But it would be ironic were the residents' well-crafted accommodation to succumb to narrowly bureaucratic interests. If it succeeds, it will demonstrate unequivocally that safeguarding the right of secure residence does not necessarily subject the state to policies made in the wealthiest capitals of the world.⁶

Leaving the specific application of the new constitutional provisions for human rights

to experts in jurisprudence, I am thus more concerned here to examine these rights in terms of the pragmatic interests of all the parties most directly concerned. One senior politician, now retired, sternly assured me that the Governor would in fact not be swayed by appeals to international law and that to attempt anything of the sort was therefore “not practical”—a fair, if depressing, assessment, on the available evidence. Nevertheless, all parties have an interest in asking what would cause the greater suffering, the greater benefit to society as a whole, and the least conflict with external forces. It may therefore be significant that the central government, as of this writing, had not yet expressed support or criticism of the BMA’s actions.



Thawatchai Woramakhun (left) explains the community plan to Samart Maluleem of the BMA on 29 July 2003. ©Cornelia Mayer Herzfeld.

The BMA, by contrast, seems intransigent. When, in early March 2003, the National Human Rights Commission ruled that the eviction would violate the residents’ human rights, a senior BMA representative retorted that the Commission had “no *power* to prevent” such action (*The Nation*, 4 March 2003; my emphasis). In other words, “*might is right*.” But matters are not so simple; appeals to older notions of power entail considerations of symbolism that conjoin images of Thainess with modernist conceits. Indeed, the resulting

discourse of purity, pollution, and cleansing distinctly recalls similarly traditionalizing experiments with social hygiene by such high-modernist regimes as that of Mussolini's Italy (see Horn 1994). This fascination with purity has been especially prominent in the Governor's pronouncements. It is not clear, however, that the elected state government necessarily endorses the responses of the conservative municipal leadership now in power.

Yet that leadership continues to refuse engagement. As Marc Askew has remarked,⁷ the public maintenance of order as this plays out in present-day Bangkok is itself a mode of generating power and legitimacy with deep historical roots. Thai state officialdom views the growing strength of local-level communal solidarity with unease (Askew 1994, 131-3); its development in the countryside, partially under middle-class and academic encouragement, has now permeated the social world of the urban poor, producing a rhetoric and a set of practices all designed to resist the imposition of a homogenizing order on their world. One can thus easily treat the present stand-off as resulting from the authorities' defense of structures and practices of the *sakdina* system, itself the foundation both of much present-day Thai administration and of the economic dominance of Bangkok itself (Askew 2002, 24-5). Viewed thus, the BMA's attempts to exact fearful respect appear to reconstitute older idioms of power.

But it is important not to confuse historical *explanation* with politically expedient *justification*. Pragmatic considerations should not allow space for the extremes of either high-handed, largely Western-inspired universalism or local exceptionalism. If intrusive universalism threatens the sovereignty of the modernist nation-state, special pleading on the grounds of local culture undercuts its claims to transparency and good governance and thus risks reclassification as corruption. Like the comparable institution of *rüşvet* in the post-Ottoman Balkans, clientelist practices now officially deemed corrupt have hardly vanished from the Thai scene (see Pasuk and Sungsidh 1996, 6; cf. Campbell 1964). Such hierarchical arrangements are also reflected in the BMA's refusal to heed the National Human Rights Commission over the Pom Mahakan controversy; such power perpetuates itself through the repetitious performance of high-handedness. (It is less clear that the unannounced but duly noted passage of a senior BMA bureaucrat from the main entrance to the Paan Fa pier was intended to intimidate the community, but its actual effect was to stir outrage at yet another official refusal to witness the community's extraordinary development; significantly, this was the same official who had insisted on characterizing the community as riddled with drug addiction and similarly dire social problems.)

The distinction between elected officials and unelected bureaucrats deserves comment. While the Governor of Bangkok is an elected official, most of those who have pronounced on the case are not, while the one elected BMA Council member (and indeed its current president), Samart Maluleem, who has expressed a public opinion strongly endorsed the residents' rights (see Anon. 2003b; Ploenpote 2003b). It is true that other elected officials,

in the past, have been critical of the community. None (to the best of my knowledge) has spoken out against the residents during the present phase, however, and this, I suggest, indicates a growing public realization (*krasae*, “current,” as one activist put it) that the media, already increasingly sympathetic to the community’s plight, now comprehensively reject the BMA’s position (see, notably, Anon. 2003c; Ploenpote 2003a; Pravit 2003a and 2003b). As a result, perhaps, public opinion seems increasingly unsympathetic to the continuing pattern of innuendo—a strategy that itself is arguably an actionable violation of rights.

The BMA’s attempt to portray Pom Mahakan as a source of disorder is thus in the throes of collapse. Order, important in Thai power relations, is also a cross-culturally recognizable aspect of classification (see, notably, Douglas 1966). What one group of social actors may treat as a polluting presence, others may treat as normal, or even as in some sense sacred. Bureaucrats try to manage the attribution of order and its inversion, often retroactively so as to suit their current policies. We can thus examine official policy as itself the cultural expression of a power dynamic, and its contestation as a political game in which the stakes are rights in the definition of cultural priorities and social rules. When Governor Samak, during the preparations for the 2003 APEC meeting, ordered the round-up of stray dogs and homeless people as belonging to a single class of polluting influences and thereby violating basic principles of Thai decorum (see Tambiah 1969), there were cries of outrage. The struggle at Pom Mahakan can therefore in some sense be seen as a struggle over whether the margins should be defined as polluting a clean image of Thainess (*khwaampenthai*) or as the hallowed survivor of massive foreign assaults on essential Thai identity. In the first instance, despite the specific echoes of *sakdina* hierarchy, the images deployed actually seem to come from largely Western sources of ideas about order. In terms of heritage politics, while there is again an appeal to an internationalized and largely Western-derived notion of heritage (on which, see Askew 1996), both the residents and their supporters have been able to appeal to notions of the Thainess of merit-making and respect for the ancestors. And, in an age in which some Buddhist leaders have enjoined ecological sensibility, the threat that the BMA might actually uproot sacred trees to build a park, much as it did at the Phra Sumen Fort, has a peculiarly anti-traditional resonance.

The emphasis of modernist notions of planning on organized green spaces that we see in official plans for developing Rattanakosin Island betrays, as Woranuch (2002) observes, a Western inspiration more suited to the servicing of tourism than to the needs of local residents. This fits a pattern of intensifying homogenization (see O’Connor 1990), against which the Pom Mahakan residents now offer to create a small monument to older ways of life. To the extent that it requires the wholesale displacement of population in favor of architectural splendor, it also conflicts with the policy enunciated by the BMA under the earlier, socially more attuned administration of Pichit Rattakul (see Bangkok Metropolitan

Administration n.d.).

When the Master Plan for the Rattanakosin Island originally appeared, initial reactions were varied, but critics complained from an early stage that it relied too heavily on an idiom of open spaces that did not represent Thai tradition. I do not intend here to enter the lists over what constitutes that tradition, or indeed what purposes such systematic essentializing might serve; these questions, which are both discursively problematic and politically sensitive, have a long history, ironically, in the concept of property-owning as the basis of personhood in the West (e.g., Handler 1985; see also Jackson 1995). The European origins of the idea of culture as a possession, today enshrined in the language of inheritance as *heritage*, actually suggest that the community's claims to a culturally emblematic status are in harmony with the vision of the national rather than of the municipal authorities, posing a strong counterweight to the BMA's invocation of the responsibility vested in it by the state through the Rattanakosin Island project.

Indeed, *moradok* ("heritage") has already been spatialized and rationalized as part of the state's expropriation of the familiar (see Askew 1996). The residents' appeal to a collective notion of *national* heritage and ancestorhood thus works effectively to portray the BMA as invasive and anti-traditionalist. Spirit shrines and sacred trees, for example, although the object of individual and kin-group reverence, are now largely understood as a collective property representing the ancestry of the Thai people as a whole; if the *municipal* authorities proceed, they would be guilty of disrespect and sacrilege at the *national* level, not merely against the community. The residents have thus shown that international human rights are compatible with a modern, state-oriented understanding of national tradition.

They have also emphasized that Thainess as the basis of their rights, and have displayed it in numerous dramatic forms. As has long been customary in Thai protests, they invoke the symbols of national legitimacy; a huge national flag faces the entrance area from within, and protests are always carried out under the benign gaze of the King's portrait. (By the same token, officials displayed deep irritation when it transpired that a copy of the residents' appeal to the United Nations was sent to the King.) Residents organized a lively homage to the Queen on the occasion of her birthday, complete with a firework display. No political party symbols appear either on such occasions or at protests, in marked contrast with what happens in many other countries; an ideology of transcendent unity prevails over partisan identities.

The BMA's arguments seem intentionally high-modernist and anti-traditionalist—a paradox, given the sense of *sakdina* attitudes lurking in its actions. One of its propositions deserves particularly careful analysis because, while it appears to invoke the aura of antiquity, it actually follows a demographic logic that has little to do with the fluid cultural boundaries and tributary arrangements of pre-twentieth century Thai polities (see Tambiah 1976, 121). This is the argument that the current population of Pom Mahakan is not composed of "original"

(*dang doem*) residents. There are several aspects to this claim, prominent among which is the contention, upheld by the Administrative Court, that the residents mostly lack documentary title to the land (see Ploenpote 2003c). Aboriginality has been a powerful weapon in indigenous rights movements. But that is not really what is at stake here. Bangkok is itself not particularly old in terms of Thai history; legitimacy often rests less on age than on connections with the royal foundation of the city.⁸ The BMA contends that the Pom Mahakan residents do not constitute a community as such, since they arrived at various times and from various places. There is, for example, one family of southern origin and Muslim religion; others came less than 40 years ago from communities closer to Bangkok, from Isaan, and elsewhere.

No one in the community denies this heterogeneity. On the contrary, it makes the Pom Mahakan community especially representative—indeed, a microcosm—of Bangkok. Communities that have a unitary history stretching back a hundred years or more do exist, but to make this a requirement for residential rights would still disqualify an alarmingly high proportion of the city's population. Nor does it make any sense in terms of social process. To the extent that the residents have been able to create a sense of community without prejudice of religion or place of origin, and to assume responsibility for the guardianship of buildings judged old or even “ancient” (*boraan*) in local terms, they exemplify adaptability that has long been upheld as a particular strength of Thai society.

Heterogeneity is only problematic for administrators, both because it complicates control (as Scott notes) and because it represents symbolic disorder. The BMA's concern with this issue must be read in the context of its repeated attempts to “cleanse” the appearance of Bangkok in a way that reflects supposedly international concepts of purity but simultaneously, as the residents acknowledge, perpetuates local structures of power (*amnaat*). One of the most dramatic such attempts was the clumsy concealment of slum dwellings in 1991 in anticipation of the World Bank meeting (see Klima 2002, 40); it backfired dramatically because foreign observers (especially journalists) could hardly avoid noticing the subterfuge. Such clumsiness often marks official attempts to shield “cultural intimacy” (Herzfeld 1997) from potential foreign critics, especially those thought to represent the globally dominant neoliberal successors to colonialism.

Such is the story of the “untidy,” “crowded” (*ae'ad*) community clustered behind the imposing white walls of Pom Mahakan. Official attempts to dislodge it reveal discomfort with the community's variegated history. The impossibility of establishing a common point of origin or documentary basis for the residents' claims enhances the picture of disorder, bureaucratically understood. But if we shift our angle of vision slightly, we perceive instead an emergent and robust sense of order. The community has exhibited remarkable *social* cohesion, suggesting that common origins and archival testimony may not be the best indicators of a community's ability to thrive.

To be sure, there is no clear chronological point of origin. But that is true of most urban societies, and indeed—official historiography notwithstanding—of most nations. Antiquity is sometimes useful, but it does not necessarily guarantee either security or recognition. Even if most inhabitants of modern Rome would point to the tiny local Jewish community's great antiquity and do occasionally speak of the Roman Jews as the guardians of the city's most ancient traditions, for example, few Romans would concede to the Jewish community the *exclusive* right to the Roman past; local recognition of its great age ultimately failed to protect it from the Nazi destruction. Many Romans joke about their rural origins, but that does not stop them either from claiming *romanità* while also conceding that it might easily be contested.

They have easily absorbed the distinctive local language idiom, social habits, and shared memories of the city. Thus it is with Bangkok, where, despite occasional hostility to later arrivals, we find no absolute chronological benchmark defining Bangkok identity (except the foundation of the city in 1782 or its refoundation four years later [Askew 2002, 16]) and no generic unwillingness to accept the residential rights of people with a variety of ethnic and religious backgrounds.

The heterogeneity of Pom Mahakan thus in fact makes it in some sense typically Bangkokian. The residents have also shown themselves adepts at the democratic participation officially promoted by the state. Their ambitious land-sharing scheme, rejected by the BMA, represents a genuinely collaborative effort in that direction, and their success in creating a public garden—recently defaced by the BMA, which, significantly, dumped garbage from the APEC festivities on the area and was then forced to promise to restore it to its pristine state—clearly displayed their ability to create and maintain a public space in trust for the city as a whole.

Rights are arguably less a matter of factuality than a moral commitment, one to which the modern, liberal, democratic state must be committed if it is to sustain its own logical coherence. By the same token, however, rights must be consistently applied, or they will make no sense. It makes no sense for a state to sign international conventions at the very moment at which subsidiary authorities, as here, act in violation of the principles enshrined therein. Such internal dissonance reinforces the impression that the central government does not endorse some of Bangkok Governor Samak's actions; this was strongly evident, for example, in its reaction to his attempt to suppress the public commemoration of the 14 October massacre. If, then, collective eviction is carried out by a local authority in defiance of a state's pledge to international agreements, the challenge to rights also threatens the legitimacy of the entire structure of authority.

Human rights include the right to protection from the use of fear as an instrument of power. In that sense, if the BMA's claim that the community suffers from drug problems that

could only be solved by removing it to another location could be validated, there might be an argument for doing precisely that. Evidence, however, has not been forthcoming. I first heard the accusations about drug abuse from a senior official of the BMA, who, having expressed warm support for my project of investigating the social aspects of the Rattanakosin Island Plan only a year earlier, advised me not to work with this community because it was so plagued with drugs and problems of domestic violence that I would hardly get a representative picture. These charges have not been repeated in public; indeed, a newspaper that a few years ago dared to level them at the community was taken to court and forced to apologize. That newspaper is now a strong supporter of the community, which is why residents refused to locate the incident more precisely in time and place or identify the journalists concerned. But its retraction and subsequent reversal of its attitude offers the BMA a good example for emulation. There is surely no necessary loss of authority in openly admitting to an incorrect assessment, whereas the use of innuendo to visiting scholars can only eventually result in the exposure of power tactics; this will be as counter-productive as building a wall to hide a slum from curious journalists.

The residents understand that power is the issue, and in this they fully share the analytic perspective of recent scholarly commentary on human rights (Wilson and Mitchell 2003, 5). Power inspires fear, which thereby increases power; the absence of transparent intent only enhances the effect. The soldiers who appeared at the site in June were apparently intending to carry out some survey work at the behest of the Fine Arts Department; the degree to which the BMA was actually involved in their arrival remains unclear. Such veiled, inchoate power generates fear. But to base authority on fear leads to questions of legitimacy within a constitutional democratic framework. Administrators seem to be trying to invoke a very different idiom of legitimacy through the unresponsive, implicit invocation of the structures of the *sakdina* system.

Unresponsiveness is in fact the BMA's favored weapon in this confrontation. Representatives of those engaged in organizing the Thammasat conference on 31 May, including myself, approached the BMA to discuss possible dates for the event. We were received by a very courteous official, who politely listened to our clear proposal that the BMA should try to send representatives to explain the administration's policy and reasoning. The date eventually selected on the basis of that meeting was intended to serve the BMA's convenience. Despite these efforts, it transpired that the BMA had sent no one; indeed, it hosted a major planning meeting on the same day. While it then seemed pointless to invite the BMA to participate in the conference at Chulalongkorn University, the authorities were presumably aware of this event, if only because of the extensive media coverage; once again, no BMA official stood up to speak. My attempts to contact senior officials were consistently rebuffed with the response, variously conveyed, that the Governor had already signed

the eviction order and so there was nothing to discuss. Despite this unpromising stand, in September a BMA official, speaking in public at an unrelated university event (in which I was also participating) did concede that there should be some renewed conversation with the residents.

The theme of “conversation” (*kaankhuykan*) is central to understanding the power dynamics here. Residents repeatedly complained that the senior BMA hierarchy “refused to discuss” (*mai yawm khuy*) the situation with them; the Thai term is indicative of the sense of standoff, in that residents’ response, repeated on numerous occasions and often following leaders’ exhortations to express their views openly and without fear of ill consequences flowing from disagreement, was, “The community will not surrender” (*chumchon mai yawm*). Thus, the standoff is conceptualized, as often happens on such occasions, as a situation in which the more powerful party fears direct negotiation with the residents because the legitimacy of its position rests on policy created at a still higher level, rather than on popular will. When challenged on this point, some BMA officials did say that residents had previously resisted talking with them, and this is a point that residents do not deny—arguing, however, that they were afraid of engaging in an unequal negotiation under conditions in which the transparency of the engagement could not be assured. They are now more confident of their ability to present a coherent case; is this what the officials fear? The recent international visibility of the Pom Mahakan case and the virtually unanimous support of the community by the media has palpably changed that situation, however, so that now it is the authorities who apparently fear to engage in a “conversation” the consequences of which might prove incompatible with decisions ostensibly already taken. They might also recall that the one key idiom of protest is itself billed as “conversation”: two speakers, each equipped with a microphone, engage in a public dialogue in which a resident answers a visitor’s leading questions about the cultural heritage and long history of the community and its struggles. On the occasion of my very first visit to Pom Mahakan, when I was still unaware of the details, I was invited to “converse” in this way; I accepted, but pointed out that I knew little of the background and would not unequivocally offer support unless I could first take stock of the residents’ cause and assess it for myself—a stand that seems to have assured me respect rather than resentment. It is clearly not the residents of Pom Mahakan who have cause to fear a detailed exposure of what has happened.

One argument invoked at several points by the BMA was the existence of a budget for the construction of the public park at Pom Mahakan. As at Phra Sumen, one specific goal was to “cut and trim and move out the original trees in order to open up the fort itself to clear visibility and concurrently to tie up the trees and decorate them so that they will be beautiful, shady, and pleasant.” The budgetary allocation for work on Pom Mahakan in 2003 was 18,760,000 baht, suggesting that the BMA intended to spend a considerable amount of money

on contractors' fees. The work, scheduled to begin on 1 October 2002, had not commenced a year later. By early September 2003, the residents' own park was clearly emerging; their birthday homage to the Queen was launched from the fortress walls, from which the residents—not the BMA, which had merely strung a set of fairy lights along it—had cleaned away the unsightly excess tree foliage. While budgetary allocations must be spent, lest they not be continued into the future, the residents' initiative has released a significant sum for more imaginative and efficient use. As a knowledgeable former BMA senior official assured me, such adjustments are legal as long as the broad categories of expenditure are maintained.

The budgetary allocation could therefore now be used to integrate the older houses, duly refurbished, into the structure of the public space; to rehabilitate the remaining dwellings and improve sanitation and other services (although it must be said that the residents have erected numerous signs enjoining cleanliness and maintained public hygiene to a degree that shames some of the city's more visible streets); and to set up the proposed kick-boxing school and other recreational areas—the residents' service to the cause of presenting lived Thai culture to an international tourist public. The creation of an organic relationship between park and community would rapidly lead to the latter's economic security, relieving the BMA of the increasing financial strain that relocation and its attendant problems would predictably generate and assuring it of growing prosperity and economic integration at the symbolic heart of the city. The present standoff not only violates the human rights of the Pom Mahakan residents specifically; it also arguably violates the economic and social rights—or at least reasonable expectations—of Bangkok's population as a whole.

The current policy depressingly reproduces Mussolini's policies in the center of Rome—arguably a more instructive parallel than Haussmann's Paris. Mussolini wanted to remove potentially subversive and “degenerate” populations from the ancient city center as part of a policy of public “cleansing,” while resuscitating the imperial grandeur of ancient Rome. His construction of a majestic avenue straight through the zone of the ancient forums swept aside an entire quarter.⁹ Seventy years later, the suburbs to which he exiled the displaced residents are festering grounds for drug abuse, underworld activity, deep poverty, political subversion and cultural separatism, and resentment ready to flare up in open rebellion against the despised state bureaucracy. It is hard to imagine that the BMA would dare cite this parallel in presenting its reasoning to the central government. One hopes, however, that the government, for its part, will recognize in time that the BMA's neglect of the residents' rights makes bad policy at the national and international levels.

The further irony of the situation as it now stands is that the land-sharing arrangement proposed by the residents, and rejected by the BMA, would work very much to the BMA's advantage. The residents do not claim rights in the whole area; moreover, they are eager to serve the larger community by tending to the park and its associated natural and cultural

features. The BMA has not yet suggested how it will staff the park's supervision. For an administration ostensibly so concerned with the issue of drugs, however, it exhibits a strange insensitivity to past history and the experience of other large cities worldwide: the creation of an empty, inadequately supervised space between a canal (an easily accessible waterway) and a very high, thick wall would offer multiple opportunities to dealers and their clients, especially at night. By the same token, tourists would shun this space; local residents would fearfully keep their children well away from the area. And such a succession of probable disasters would almost certainly depress the value of the surrounding land, much as has happened throughout the major cities of the United States and elsewhere. The residue of this policy would be a shameful monument to poor planning, neglect, and violation of the rights of the people of Bangkok.

If the authorities instead decided to proceed with the residents' plan, or at least with some modified version of it, they could reasonably claim that they had changed their minds once they realized that the community itself had changed, and that the community might never have changed so radically had it not been for the pressure that the present situation brought to bear on it. In that case, the residents' sufferings to date will at least not have been in vain, and the BMA would be able to claim credit for flexibility and imagination in the face of a rapidly changing situation.

Whatever happens, Pom Mahakan is now a visible sign on the map of political issues in Thailand and on the international roster of human rights concerns. Such transformations are by their very nature not reversible; the greater publicity that this situation has engendered in turn assures the residents of continuing world interest in their plight. They were initially surprised, even incredulous, that a community of fewer than 300 people would attract that kind of worldwide concern, and that respected scholars from several countries (including, especially, Thailand) would listen to their views as being the most deeply experiential testimony available. But the issues that they face do not concern them alone. The BMA has probably, and correctly, calculated that what happens at Pom Mahakan will affect the progression of events in the rest of the area covered by the Rattanakosin Island Plan. But what is it they really fear? If the BMA, in concert with the academics who have studied the Pom Mahakan situation from several angles, can determine a set of reasonable criteria for determining which communities have a right to remain in place, they may well discover that the residents of other communities would not be averse to negotiating an equally reasonable exit, with reasonable compensation.

In that case, all will benefit: the residents' socially generated rights will triumph over the arid legalism that may be the West's worst bequest to the rest of the world; the BMA will emerge as a champion of good governance; and Bangkok, currently one of the most undisciplined examples of urban planning in the world, will develop a distinctive style of

internally negotiated and democratically managed adaptation to the exigencies of Thai life in the modern era. Bangkok will then represent the principles of humane development to the rest of the world. And Pom Mahakan will stand as a tribute to the victory of decency in a world too often bereft of it. The authorities have already announced that there will be “no evictions” as a result of its latest plan for the beautification of the Rajadamnoen Avenue area (Anon. 2003d). Have they changed their minds? It is not yet too late to offer this gift to Bangkok and the world.

Notes

- ¹ I would like to thank Marc Askew and Charles Keyes for their helpfully insightful readings of an earlier draft of this essay. I am also grateful for the opportunity of initiating parts of the present discussion in *The Nation* (“The Global Importance of a Small Community,” 28 July 2003) and *Krungthep Thurakit* (ความสำคัญของชุมชนเล็ก, 13 August 2003).
- ² See, for example, the web site of the “Friends of Pom Mahakan International Committee”: <http://www3.telus.net/wiredup/>
- ³ This externally-directed commodification of Thai culture exemplifies the hegemonic pattern of “crypto-colonialism” in a late phase (Herzfeld 2002). Woranuch Charungratanapong (2002) has recognized it specifically in the architectural choices made in the Rattanakosin Island Project in the age of tourist consumerism. See also Peleggi 2002.
- ⁴ Wilson and Mitchell 2003, 10; Navaro-Yashin 2003. The rejection of asylum rights for people who come from states unrecognized by the host society, which thereby destroys legally with one hand what it has given politically with the other, is an extreme case; but, to anticipate my account here, for a Thai court to refuse title in the absence of formal documentation, long alien to vernacular Thai culture, exhibits the same logical weakness.
- ⁵ This was the International Covenant on Economic, Social and Cultural Rights; other conventions signed by Thailand, including that on Elimination of all Forms of Discrimination Against Women (9 August 1985) and Rights of the Child (27 March 1992), similarly proscribe forced eviction, especially in the absence of appropriate economic protection.
- ⁶ Wilson and Mitchell (2003, 13) rightly point out that culturally sensitive policies that do not offend local sovereignty are essential to the effective development of humanitarian projects.
- ⁷ Personal communication, 2003.
- ⁸ This is evidently more significant, in the larger scheme of the Thai national polity, than considerations of national or ethnic homogeneity; the Muslim community of nearby Baan Khrua, descendants of prisoners-of-war brought from Cambodia, were able to invoke the royal sanction whereby their community had originally been legitimated (see Askew 1996: 296) and perhaps also, as was suggested to me, to play on fears of inflaming Muslim minority anger. The pride with which most Thais speak today of the assimilationist tendencies of their society also suggests that the BMA’s invocation of “original” title will not fall on sympathetic ears in the wider public, and that in fact it conflicts with the long-term thrust of what many observers have come to regard as a remarkably successful policy orientation.

This abutted the area in which I conducted fieldwork in 1999–2000.

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Customary rights, ethnicity and the politics of location¹

Yos Santasombat

In the afternoon of 10 January 1999, a family of Lua swidden cultivators of Baan Toey, Phu Kha mountain of Nan province, northern Thailand, were confronted by Royal Forestry Department (RFD) officials on a paved road near the entrance to their village. Two men were taken to the nearby police station. They were subsequently charged with trespassing, occupying, and illegally practising slash-and-burn cultivation within a national park. They were detained at the police station for eight days and later released on bail after a large group of Lua peasants threatened to stage a massive rally in front of the district office.

This incident is by no means isolated. Powerful demands for resources, land and military control have threatened the autonomy and mobility of marginal cultural groups in once inaccessible places of tropical forests and rugged mountains. During the past decade, many ethnic minority groups in the northern highlands have been victimised under a militant conservation policy to protect watershed areas. In August 1990, twenty-four Karen of two villages in Doi Suthep national park were arrested for practising swidden agriculture in an area where they had lived for centuries. In 1991, the Hmong of Khun Klang village in Inthanon national park were forced to abandon their agricultural practice and were threatened with relocation. Since 1992, the RFD has strengthened its forest conservation policy by establishing more national parks and reforestation programs, and threatening more people with relocation. Forest conservation policy has become highly politicized and contested because RFD strictly enforces the policy on certain marginal groups, especially ethnic highlanders and poor lowlanders, while favouring the rich who invest in eucalyptus plantations and tourist resorts on forest land. In 1994, the RFD started to relocate the Mien villages of Mae San and Pha Daeng in Doi Luang national park, and stepped up relocation programs in various parts of the upper north.

The rapid expansion of conservation forests has threatened the security of tenure of local villagers who usually have only customary rights of access to land in the forests. Several

Karen villages in Mae Wang district of Chiang Mai, for instance, had their rotational swidden lands taken away for reforestation. The lack of any legal recognition of community rights and communal property regimes, allowed the RFD to establish new national parks and expand old ones, often encroaching upon and enclosing community forests which villages had been preserving for graveyards, watershed areas and multi-purpose communal woodland. Changes in forest conservation policy and its harsh implementation provoked so many disputes and conflicts that local villages have begun to form a network to protest against enclosure by the state (Anan 1998, 72-3).

This essay explores the relationship between customary rights, concepts of place, and the production of ethnic identity. The Lua peasantry on the one hand, and the RFD on the other, have different conceptions of rights over forest land, based on different conceptions of the meaning and usage of forest. The RFD deploys technologies of territorialization to assert its rights of control over the forest. This in turn gives rise to struggles in which ethnic identity is produced and reproduced. In this perspective, ethnic identity is the unstable, contingent reflection of a dialogue in which many voices are raised. Some voices may be more authoritative than others, possessing the power to enforce their interpretation of identities by attaching either benefits or liabilities to them. Yet the dialogue is ongoing; nobody really has the last word (Bisharat 1999, 204-5). This perspective joins the cultural politics of location to those of identity in terms of “contextualized political strategies”. Location or “ground for struggle”, then, becomes a chosen spatial metaphor for emphasising the situated practices that shape, but do not necessarily determine, the formation of identities and places.

The politics of location

The relocation and reforestation programmes are part of RFD’s use of spatial technologies of domination. The RFD produces space by imposing boundaries, differentiating between parcels of space, and controlling movement within and across different kinds of boundaries, assigned forest types, zones, and so on. These boundaries, forest types and zones are authorised spaces of domination. They are what Pile (1997, 3) called the “spatial practices of oppression”.

In addition to spatial technologies of domination, the RFD also uses brutal tactics to suppress the expression of cultural identity or opposition by indigenous groups. These tactics include the machinery of fear: surveillance, border guarding, controlling movement, dividing and ruling, pitching the lowlanders against the ethnic minority highlanders, and so on. State power is also mobilized through the imposition of a system of values—forest conservation for the entire nation, watershed areas protection for the common good—that the indigenous peoples must recognize, even while they might despise it.

The forestry officials and the Lua look at each other suspiciously; each needs to know

where the other is. Nevertheless, neither sees the other accurately; every contact between the officials and the indigenous is a falsehood. The officials have to figure out who it is they are oppressing. In one sense, their power is the power to control space, to occupy it and guarantee that hegemonic ideas about that space coincide with those of the nation and national identity. In order to impose and maintain control over people, they have to work out what exactly has to be suppressed and what does not, while not really understanding what is going on. The RFD officials seek to construct a nominal image to describe what the indigenous people are like, and then to denigrate them on the basis of those descriptions. The forms of knowledge through which officials come to know the indigenous, and significantly through which they become the wielders of power, are fantasies. They are built out of stories, anecdotes, misconceptions, lies, and so on—fantasies about the untamed hill peoples, shifting cultivation, the use of fire, opium production, and so on and so forth. These fantasies, however, serve to legitimise their power of exclusion.

The Lua, on the other hand, are in a different position. They have to recognize that the officials are more powerful, and this puts them in the position of having to *misrecognize* themselves (Bourdieu 1990, 16; 1991, 164) and their culture as having less value, because it is the RFD's values that have authority and give meaning, however fantastic. In a way, the indigenous are battered into place by fantasy about savagery, untamed hillbillies, illiteracy, animism, and so on, within powerful discourses on development and progress. Their images are formed in the imagination of the Thai state and the civilized majority.

Yet these powerful, dominant discourses do not have an unquestioned hegemony: Lua respond, reinterpret and challenge even as they accept and are shaped by these forms of discourse. It may, at first glance, appear that the powerful control space, and that the Lua are weak, passive and controlled. But as the arrested were charged, Lua began to fight back. The spatial practices of resistance, or what Mohanty (1987) calls a "politics of location", had begun.

In Mohanty's understanding, the politics of location involve not only a sense of belonging, of where one is in the world, but also the political definitions of the "grounds" on which struggles are to be fought. In this sense, location is more about the active constitution of the grounds on which political struggles are to be fought and the identities through which people come to adopt political stances, than with the latitude and longitude of experiences of circumscription, marginalization and exclusion (Pile 1997, 28). Moreover, location conveys a sense of having to take up positions in activism and struggle in order to change the plot of power. These locations cannot, however, be presumed in advance of activism and struggle. If politics is about making history, then it is also about changing space: political locations are constituted through the struggles that are supposedly fixed in them. Location is both the ground which defines struggle and a highly contested terrain, which cannot provide any secure

grounding for struggle (Pile 1997, 28). Thus, in the case of the Lua, ethnicity is not just uncovered but produced by their experience in the context of notions about unity and difference. Location is simultaneously about history, community, ethnicity, unity, and definitions of boundaries—of who occupies the same place and who does not. It is strategic, tactical and mobile.

In this sense, politics of location involve boundaries, movement and territorialisation. They are the spatialities of struggle within which ethnic identities are formed, boundaries are drawn and redrawn, history constructed and reconstructed, and resistance can be analysed as a reaction to the injurious effects of power relations.

The territorialization of ethnicity

The case of the Lua makes it necessary for us to rethink the question of roots in relation to ethnic identity and to the forms of its territorialization. Examining the question of roots in relation to ethnic identity illuminates the complexity of the ways in which people reconstruct, remember and lay claim to particular places as homelands and nations.

For instance, the Lua still remember a kingdom which could have been formed in the north of Thailand by Khun Luang Wilangka, the great Lua leader. The existence of this kingdom appears in chronicles written several centuries after the Tai Yuan had assured their domination over the region. In them we see the Lua *recognized as the first inhabitants and founders* of most of the towns and settlements of the north. The ancient Tai Yuan chronicles gives Doi Ngoen (Suthep) as the site of the former capital of the Lua founded prior to the creation of the Mon kingdom of Haripunjaya in the eighth century A.D. (Condominas 1990, 10–19).

Similarly, the Lua of Doi Phu Kha in Nan province still remember themselves to be *the first inhabitants* of the lowland areas in Woranakorn or Pua. A group of Tai Lue, forced to migrate en masse from Sipsong Panna more than two centuries ago, attained domination over the Lua country. The Lua subsequently fled to seek refuge in the hills of Doi Phu Kha and began the practice of rotational swidden agriculture because flat land suitable for wet rice cultivation was unavailable.

Territorial displacement is not, of course, new to northern Thailand. Peoples have always moved because of violence or personal desire. Groups were swept away as prisoners of war when their kings were defeated, the same way marginal groups are now evicted from their homes to pave the way for dam construction, forest conservation and other large scale government projects. In recent years, however, place is becoming more important, and politico-economic processes of spatial transformation and forest conservation undermine customary rights of residence and access to livelihood. It is under conditions of challenge and threat that identities are most vehemently and at times violently spatialized.

“Ground for struggle” in Doi Phu Kha

The hills of Doi Phu Kha are the result of the state-making project. Although its geographical location prevented extensive settlement, the area has since the mid-eighteenth century formed part of an internally complicated hierarchical power relations among various ethnic groups including the Lua, Tai Lue, and Tai Yuan lowlanders (Cholthira 1987, 24-8). “The valleys made the hills” (Scott 1999), and the Lua “not only live in marginal territory but they also occupy marginal land” (Hirsch 1990, 56).

Doi Phu Kha in Pua district of Nan province is now home to approximately 1,152 smallholder families of Lua peasants (some 13 official villages with 4,407 residents) spread across a vast area of rugged mountains, prime forest and steep river valleys, including more than 22,386 hectares of rotational swidden fields.

In multifarious ways, the forests and fallow fields are central to the successful practice of swidden agriculture. They are the prime sources of food, medicinal herbs, fodder and grazing ground. The Lua are also blessed by the abundance of *miang* (forest tea), *makwaen* and other non-timber forest products which are the major sources of cash income for the hill peasants. The dependence of the Lua on forest resources has been institutionalized through a variety of social and cultural mechanisms. Through religious beliefs, folklore and traditional practices, the village communities have drawn a protective ring around the forests and fallow fields.

Across the hills and steep valleys of Doi Phu Kha there exists a highly sophisticated system of conservancy that takes various forms. Hilltops are dedicated to local deities and the surrounding trees and small patches of forests are regarded as sacred ground. Many wooded areas are not of spontaneous growth and bears marks of the local practice of forest preservation; indeed the lushness of what is now Doi Phu Kha national park extending over mountain ranges and hillsides bears testimony to the care bestowed upon them by successive generations of the Lua and other indigenous groups. While no formal management system exists, practical protection is secured by customary limitations on users. In many patches of forest, there are rules that prohibit the falling of trees in gullies and water courses. These rules have an obvious role in stabilizing water flows and preventing landslides. Furthermore, with the planting of *miang*, *makwaen* and other tree species a fairly common phenomenon, the forests preserved within the local boundaries are zealously guarded by the villagers.

As this description of traditional conservation systems suggests, these hill peasants are primed for collective action. In contrast with many lowland villages in northern Thailand, internal differentiation among various social classes in Baan Toey is minimal. Traditional practice of land-sharing, close-knitted network among kin, and flexibility and openness in terms of land-use management mean there is no landless household in the village and very little disparity in terms of swidden landholdings or the size of farmland among different

classes. All households derive most of their subsistence needs from swidden agriculture. Wage labour plays only a minor role in total household income. Even though income inequalities are increasing and some peasant households become richer than others, social relations between them remain practically unchanged. Indebtedness is virtually non-existent. There is no transfer or extraction of surplus generated in the village economy. The Lua villagers lead a modest, traditional way of life, with very little conspicuous consumption. In contrast with lowland villagers, the Lua swiddeners of Doi Phu Kha are not increasingly drawn into commodity circuits in the sphere of exchange. On the contrary, it seems highly likely that most if not all village households are able to maintain and reproduce themselves independently of these circuits and they are still in control of strategic means of production and labour processes.

The absence of economic differences among local villagers greatly facilitates social solidarity, as do the ties of kinship shared by them. The Lua are representative of highland societies in which ecological constraints to the intensification and expansion of agriculture have resulted in an emphasis on the close regulation of the common property resources so crucial for the survival of the households. The detailed rules and regulations for the management and utilization of forests and fallow fields account in large measure for the stability and persistence of many mountain communities.

The village social structure is organized around the control and utilization of swidden lands. Swidden fields are held in common but household use-rights, established by previous use, are recognized and inheritable by descendants of the households. In practice, most if not all households return to the spot they cultivated during the previous rounds of swidden cultivation. Household use-rights to swiddens are often shared between siblings even after they are married.

The annual cycle of cultivation is informally regulated by practices designed to preserve the environment in which they live and earn a livelihood. For example, the Lua strictly forbid cutting trees on the ridge tops and along gullies and water courses in a conscious effort to preserve the watersheds and prevent soil erosion. When burning fields, the Lua are extremely careful to construct firebreaks and clear underbrush to protect other fallow fields. Field burning involves community coordination and cooperation because of the perceived dangers to the village and communal land resources. Swidden fields are not customarily cultivated for more than a single successive season since this encourages the growth of weeds. Fallow fields remain a vital source of food, animal fodder and medicinal plants, yielding up to 200 varieties (Kunstadter 1978, 91). An 8-10 year rotational cycle enables the field to return to peak fertility, and thus minimizes the area cultivated for a given yield. A shortening of the rotational cycle may lead to a change in forest regrowth from predominantly leafy species to grassy species, making further use of land for cultivation increasingly difficult.

In recent years, increasing pressure from the RFD is forcing the Lua in Doi Phu Kha

to shorten their cultivation-fallow cycle from 8-10 years to 3-5 years. Consequently, the average land holding in Baan Toey has declined markedly. Whereas each household traditionally had 8 to 10 swidden plots (each plot contained 1.6-2 hectares of farmland). Today, there has been a remarkable drop in the numbers down to 3 to 5 plots for each household. This change has had the predictable result of destabilizing subsistence security and may be leading to changes in the pattern of swidden practices. For instance, repeated use of swidden fields without a long fallow period has led to increasing problems of weed growth. Baan Toey's swiddeners have resorted to the use of spraying salted water in limiting weed growth. Increasing saline content and soil contamination may be one of the most important side effects of the use of salt in swidden agriculture in the coming years.

The fact that the Lua derive most of their livelihood from their own environment, that swidden agriculture is the most important base of their subsistence, and that fallow swiddens and other uncultivated portions of their environment make important contributions to the economy of the indigenous group reinforce their strong ties to the land. The annual cycle of cultivation is punctuated by ceremonies which dramatize the Lua's relationship to the territory of their swiddens. The "field" (*rai*) thus continues to be a spatial metaphor for emphasising the situated practices that shape the formation of Lua' identities in Doi Phu Kha.

The science of domination and the art of resistance

The landmark in the history of Thai forestry is undoubtedly the political reform programme of King Rama V during the time of colonial conquest in Southeast Asia. The forest department was created with the help of British experts in 1892 in order to maximize the commercial exploitation of the forest in northern Siam, and minimise the power and control of local lords.³ To oversee all teak logging concessions in the north, the Teak Conservation Act of 1898 and Forest Reservation Act of 1913 imposed state monopoly rights. A more comprehensive forest act in 1941 provided for the constitution of national reserved or protected forests. Since then, the national forestry policy has been guided by overemphasis on short-term economic benefits and a misconceived belief in the need to separate people and forest.

The techniques of scientific forestry were ideological tools designed to reorder both nature and customary use. Reserved forests were cut up into pieces and areas of forest deemed commercially profitable were granted as logging concessions. At a deeper epistemic level, the language of scientific forestry worked to justify the shift towards commercial working. The terms *mai mi kha* ("valuable woods") or *mai huang ham* ("restricted woods"), used mainly to refer to teaks and few other species, bear no relation to the ecological and other functions the species may perform for the surrounding communities. By a similar act of redefinition, based on a prior usurpation of legal ownership by the state, local forest users were designated the

enemies of scientific forestry. Thus *chao ban* (villagers, local people) and particularly *chao khao* (highlanders) became possible sources of injury to the forest in the same category as natural hazards and forest fires.⁴ Consequently, forestry policy was based on the assumption that local communities are not part of the ecological system, and that local people are the main cause of deforestation. This particular misconception has greatly undermined the traditional role and customary rights of local communities as guardians, custodians and managers of the forest.

Yet in practice, intrusion into the reserved forests was seldom strictly enforced at the local level until 1989 when the forest destruction and resulting environmental problems caused by many decades of extensive commercial logging and exploitation and massive expansion of agricultural land, led to a public outcry and a demand for a total logging ban. Yet still little was done to tackle factors contributing to the rapid destruction of the forest such as unbalanced growth between urban and rural sectors, skewed land distribution, insecure land tenure, unsustainable exploitation of forests for industrial timber production and export, and inappropriate policies of centralization and mismanagement of natural resources (Yos 1992, 107). Instead, the top priority became conservation.

New national parks, conservation forests, watershed areas, and reforestation programs were set up and expanded, often encroaching upon community forests and swidden fields. The RFD carefully regulated peasant access into these conservation zones, effectively revoking customary rights of access. Rotational swidden agriculture and the use of fire were outlawed. In the application of these techniques, considerations of control were paramount. Not surprisingly, the dislocation of agrarian practices that followed was to have far-reaching consequences. Conservation forests were closed to local communities which had traditionally protected and utilized the surrounding forest areas. Such closure was justified by the need for reforestation, watershed maintenance, and protection of biodiversity-rich areas. The practice of swidden agriculture was stopped or regulated on grounds that protection from fire was necessary to ensure the regeneration and growth to maturity of young saplings.

The loss of control over forests and swidden fields has been acutely felt by the hill peasants of Doi Phu Kha, leading to a deep sense of discontent. The lack of restriction in earlier decades had assured older inhabitants that they had rights to use the forest. Subsequent regulations—all very recent—appear as an abrupt encroachment upon their rights, culminating in the final acts of confiscation and arrest. Lung In, one of the Lua peasants who were arrested on 10 January 1999, said, “The RFD is taking away our forests and our rice fields. They are robbing us of our own property. We have been living here for hundreds of years.”

The RFD officials, on the other hand, claim that the Lua peasants were stubborn and disobedient: “We have repeatedly warned them that burning the forest areas in the national park is no longer acceptable. It is against the law, and we had to arrest them in order to teach

them a lesson”

The root cause of the conflict between RFD and highland peasants over forest rights thus lay in differing conceptions of property rights and ownership. According to the swidden cultivators, all forest land and swidden fields are communally owned and managed. Rights of individual household users are established by previous claim and utilization. Because the RFD paid no attention to the forest land and swidden fields, there exists strong historical justification for the popular notion that all forest land within the village boundaries is the property of the Lua.

The recurrent conflicts are a consequence of the struggle between the peasants and the RFD—the former to live, the latter to conquer. The takeover of the forests and their subsequent management, in the name of scientific forestry, are at once a denial of the state’s traditional obligations and a threat to the subsistence ethic (Scott 1976, 2) and security of the hill peasantry.

Initially, defiance of the hegemony of the forestry officials and state control on forests took direct forms. In 1997, the Lua of Doi Phu Kha staged a massive rally against the declaration of Doi Phu Kha national park. They managed to unite as a militant movement and even threatened to burn down the local national park office. This rebellious act is very similar to cases in India where forest dwellers attacked forestry officials (Haimendorf 1982, 90-2), the case of armed men disguised as women (*demoiselles*) attacking forest guards and police in the mountain region of Ariège in nineteenth century France (Sahlins 1994), the forest rebellion in Uttarakhand (Guha 2000, 187-9), and the Jharkhand and Chipko movements (Sengupta 1988, 111-12). Lately, however, the relationship between forest dwellers and the state has come to be mediated through NGOs and people’s groups. Through these organizations, the Lua articulate with great tenacity their need to subsist as peasants in the forest and demand access to forests and swidden fields. While the dialogue between them and the RFD is ongoing, the Lua continue to practise rotational swidden cultivation and use the forests in their everyday life.

The hegemony of the forest officials is eroded by other forms of resistance. In day-to-day contacts, the Lua accept the domination of forest officials, who are feared and respected. At the same time, the Lua may refuse to have anything to do with local forestry officials. Many Lua villagers, for instance, have been reluctant to work as wage labour for the national park office. When some Lua teenagers went to work on a local reforestation program, some of the elders forbade their children to work for the RFD. In the mind of the forest dwellers, forest areas which have been fenced off for regeneration or reforestation excite a deep sense of hostility.

In recent years, forests and swidden fields have become spaces of resistance in the sense that they have to be won by struggle. Communities of resistance come together through

the production of location, the redefinition of boundaries, and the formation of identity. A politics of place is thus undeniably also a politics of identity in which group boundaries are constantly being emplaced, repositioned, opened up and closed down. In the case of Doi Phu Kha, spaces of resistance are constituted through religious ritual.

Every year, on the second week of April, the Lua reproduce and redefine a sense of place and an expression of their locally internalized ethnic identity as a form of solidarity. Before the annual planting of the rice fields, the Lua propitiate the spirit of Chao Luang Pua, the most powerful local deity. Chao Luang Pua has a foundation legend which is connected with the story of the Lua's displacement from the lowland to the mountains of Doi Phu Kha. Lung Moon, a respected religious leader of Baan Toey, gave the following version of the legend, corroborated by other adepts:

A long time ago, Chao Luang Pua was a lowlander who lived in Ban Gam in the foothills of Doi Phu Kha. On the bank of the nearby river Pua that runs down from the mountain, there existed a Satoke stone, a sacred stone shaped like a small table. Local people shared a popular belief that the sacred stone had the power to protect its believers from wounds or accidents. As increasing numbers of lowlanders moved in and settled down, more forest land was cleared. Competition and conflict over land between the newcomers and the Lua who were the first inhabitants became more rampant. Then one year there was a flash flood resulting from forest depletion. The whole lowland area was under water. When the water receded, the villagers found that the sacred stone was missing. Many of them went downstream in search of the stone, but Chao Luang Pua, for some unknown reason, led a number of his men upstream in search of the sacred stone. He propitiated the spirits of the forest who are supposed to watch over the fortunes of the people to help him, and after weeks of searching, he found the sacred stone where it now lies, on a bank of a small tributary in Doi Phu Kha. Years later, the Lua fled to seek refuge on the hills of Doi Phu Kha and every year a sacrifice of a buffalo is offered to Chao Luang Pua who now watches over the fortunes of the Lua people.

As preamble to the main festivity, the Lua spend a week performing the *yum kwaen* ceremonies which partially serve the purpose of effecting a reconciliation between friends and relatives and reconstructing a sense of solidarity. All member of Ban Kok village parade to the home of Kao Jum (a religious practitioner) where they spend an entire day eating, drinking, singing and dancing with fellow villagers. The following day, a group of Lua people from Baan Kok travel to Baan June, another Lua village, where the *yum kwaen* feast is held, and the next days, the celebrations move to Baan Toey and so on round a circle of villages.

The *yum kwaen* ceremony is held in each and every Lua village in Doi Phu Kha with a belief that Chao Luang Pua will accompany them to give blessing to "his children". The ceremonies take place when a new agricultural calendar is about to begin. They provide, in effect, a discharge of all the ill feelings accumulated during the previous year, and reanimate the spirit of "communitas" (Turner 1969, 180). The ceremonies also serve to *re-establish their*

sense of place as the first inhabitants and rightful owners of the forests and swidden fields in Doi Phu Kha. When the *yum kwaen* ceremonies have been completed, the entire Lua community works together to prepare for the propitiation of Chao Luang Pua. The day before the propitiation, a spirit house is erected near the sacred Satoke stone, and the whole area is cleared and cleaned in order to symbolize the clearing of all hostilities among the Lua people. The entourage of religious practitioners and representatives of all the Lua villages are present at the sacred site where they spend the night with Chao Luang Pua. On the next day, the boundaries of the Lua people are redrawn in the prayer of Kao Jum as he makes the offering of a buffalo to Chao Luang Pua, the greatest of the local spirits:

We invite the Mother Earth, Chao Luang Pua, and the guardians of the hills, forests, and waters to come and join us at this sacred site. We, your humble children, are here to sacrifice an animal on your behalf. We have not forgotten you, so we beg you to come and accept our sacrifice. We have now cleared our forests and our fields and we beg you for protection and blessing.

In the reproduction of this ritual, the Lua unequivocally assert continuing rights of control and use of forest land in Doi Phu Kha. Through a mix of religious beliefs and ritual, they redraw a protective ring around the forest and around their ethnic group.

The continuity of the Lua world rests on continuity in their relationship with the forest. Scientific forestry threatens to disrupt this continuity, most obviously by denying access and by imposing an alien system of management on the forest. Opposition to the application of scientific forestry has to invoke an alternative system of use and of meanings. Peasant resistance has exposed conflicting conceptions of property and ownership, and conflicting conceptions of forest management and use. The two conflicting perspectives rest on fundamentally different conceptions of the forest, and on radically different systems of meanings.

In the Lua's search for alternative meanings, Doi Phu Kha is conceptualized as a site of struggle, a fiercely contested terrain of symbolic and material practices. It is not just a mountain, but a place, it invokes a sense of belonging, of where the Lua people are in the world, and it is the ground on which struggles against the RFD are to be fought. Doi Phu Kha is simultaneously about history, community, ethnicity and unity. It involves boundaries, movement and territorialization. It is a spatiality of struggle within which ethnic boundaries are drawn and redrawn, history constructed and reconstructed.

The Lua's assertions of their exclusive rights to territory are multivocally expressed through everyday forms of resistance, including their agricultural production and ritual performance. Their legitimate claims are based upon their status as the first inhabitants of Doi Phu Kha, their continuing residence, and the linkage between ethnic identity and local landscape. Their sense of place and ethnic identity, however, is not fixed and immobile. On the contrary, their space-identity formations are tactical and strategic, continually reproduced

based on sets of opposition between the Lua and multiple others, especially the RFD and the lowlanders.

Doi Phu Kha is produced through material and symbolic struggles. It is a ground for struggle and a spatial metaphor that has history woven into its very fabric. Resistance to scientific forestry and the RFD's use of spatial technologies of domination hinges critically on the social memory of the Lua's past displacement from the lowland areas. Their refusal to comply with the spatial practices of oppression is shaped by attachments to the specific site and hence their struggle for place and identity.

Conclusion

For many peasants on the margins, ethnic identity stands for a community, a safe place where there is no need to explain oneself to outsiders; it stands for home; more problematically, it can elicit a nostalgia for the good old days that never were, a nostalgia that elides exclusion, power relations and difference. Motifs of home, community and identity animate the practices of peoples on the margins (Kondo 1996, 97). Identity is the product of work, of struggle; it is inherently unstable, contextual; it has to be constantly re-evaluated in relation to critical political priorities; and it is the product of interpretation, based on constant attention to history (Martin and Mohanty 1986, 210).

Ethnic identity is not a commodity that is formed naturally as a by-product of descent, culture, and genetic transmission (Miron 1999, 80-1). Rather, *identity is relationally and situationally constructed and reconstructed across a shifting network of social relations through time*. The central point about understanding ethnic identity as relationally and situationally constructed (Yos 2001, 165-6) is that there is no personal ethnic identity apart from a relationship to other identities. Furthermore, the processes of identity formation within the social context of ethnicity are inseparable from the broader social relations of power and material and ideological structures. A postmodern concept of ethnic identity embraces consciousness of other groups. It also calls for social action through a constant reflexive monitoring of the intentions, motivations, and reasons that propel groups into action. The process of collective ethnic identity formation moves substantially beyond the notion of the autonomous modern self to embrace the recognition of *ethnicity as a contested cultural terrain* whose borders are constantly drawn and redrawn. This reboundarying assumes considerable degree of conflict over values and the shared sense of common purpose. Within this framework, conflict is elevated to a normative status.

The increasing recognition of the issue of ethnicity on a global scale creates an alternative identity politics that challenge the conventional notions of the political subject of late modernity. It also provides a social space within which marginal peasants can effectively challenge and destabilize the state.

Notes

- ¹ This essay is part of an ongoing research project on "Space, Power and Ethnic Identity" supported by Thailand Research Fund.
- ² Field research was carried out in *Baan Toey* from March 1999 to February 2000. Of all the 305 households in the villages of *Baan Toey Klang*, *Toey Kew Hen* and *Toey Huan Ngon*, an overview of 198 households was obtained in order to derive base-line indicators like landownership, size of farm operation, migration and indicators of social differentiation.
- ³ For detailed accounts of the history of the Royal Forestry Department and forestry policy in Thailand please see RFD (1971), Anchalee (1988), Filipchuk (1991) and Saneh and Yos (1993); for a comparative study of local and scientific concepts of forest classification, see Santita (1996).
- ⁴ There is without a doubt a basic contradiction in terms of state policies at work here. On the one hand, Thai society was basically an agrarian society. In the past when forests were abundant, local people farmed on forest land that they cleared to make their living. The state then encouraged and provided support to such practices by granting them land rights and land titles. Even after the opening up of the Thai economy to the world market over a hundred years ago, the state continued to support farmers to turn more forestland into farmland in order to produce surplus agricultural products for exports, and the revenue generated was spent on financing the modernization programmes. On the other hand, the RFD repeatedly made accusations that forest farmers were encroaching upon the forest reserves. Such official attitudes and practice of the RFD totally disregarded long-established local tradition and the fact that land clearance by local farmers had in fact been in response to government policies. His Majesty the King once said: "in forests designated and delineated by the authorities as reserved or restricted, there were people there already at the time of the delineation. It seems rather odd for us to enforce the reserved forest law on the people in the forest which became reserved only subsequently by the mere drawing of lines on pieces of paper. The problem arises in as much as, with the delineation done, these people became violators of the law. From the viewpoint of law, it is a violation, because the law was duly enacted; but according to natural law the violator of the law is he who drew the lines, because the people who had been in the forest previously possessed the rights of man, meaning that the authorities had encroached upon individuals and not individuals transgressing the law of the land" (Local Development Institute 1992, 22-3)

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The media in thirty years of Thai democracy

Chris Baker

In one of the first studies of Thai politics published in 1962, David Wilson wrote that ten to fifteen people “dominate the ruling class and the country as a whole”; another thousand people had some influence; and a wider “political public” amounting to 1 or 2 per cent of the population “interest themselves in the details of political activity” (Wilson 1962, 60-1). Thailand’s society, in Wilson’s view, was “relatively simple” and “relatively stable” (ix).

While Wilson might have been a bit wishful (three years later the government was engaged in a shooting war with the Communist Party of Thailand), his general implication was striking. It was possible to *imagine* that the political elite was tiny, and the mass of no political significance. Forty years later, things were very different. In one year (2000-1), most people trooped repeatedly to the polls to elect an MP, a senator, possibly their mayor and municipal councillors, and the members of the new Tambon Administrative Organizations. Well over half the urban population read a daily newspaper. Several participated in the phone-in programmes of political discussion on radio and TV. Street demonstrations had become commonplace, averaging over three a day. Rural protest groups were camped outside Government House throughout the late 1990s.

A social mirror

One of the most striking changes between 1973 and the present is the development of mass readership and mass viewership. By 1975, nine-tenths of the working population had at least primary education, but only 6 per cent or just over a million people had gained secondary or higher education. Since then, the numbers with secondary or higher education have multiplied almost ten times to 10 million. This still leaves 70 per cent of the working population with nothing better than primary education. But it means there is now an educated segment—a readership—of significant size. Even a small upcountry town now has at least one

shop with newspapers and magazines out the front, and a stock of several thousand pocket-books in the back. Because publishing costs are low, these books are cheap and widely bought. Literacy has boosted four main genres: the daily press and weekly news magazines; popular novels by writers like Tomayanti and Krisna Asokesin, which are mostly family dramas or historical tales; “real life” magazines including the sensationalist sub-genre exemplified by *Chiwit tong su* (Life’s struggles), and the feel-good type exemplified by *Ku sang ku som* (Perfect couple); and “how to” books on achieving success in business, love, health, anything. Strikingly, all four of these genres are about life as it is lived (or should be).

The expansion of viewership expanded soon after. In the 1970s, a fifth of urban households had a TV; by the late 1980s, almost every household did. In the early 1980s, about a fifth of rural households had a TV; by the late 1990, over 95 per cent did. Television took up some of the same genres as print, particularly the news, and the family dramas or historical tales converted into TV serials. Television also helped to mould a nation-wide star system of singers, actors, models, and, more recently, sports stars.

The mass print media and television now constitute a national mirror in which the whole society can see itself reflected. Before the emergence of this mirror, although people were told they were part of the same social unit (the “nation”), they had no way to see this. Because the media are virtually all produced in one place (Bangkok) and distributed nationwide, it is a remarkably unified mirror, with of course a distinct urban bias which sets aspirations. But the mirror reflects the variety of society, and the emergence of this mirror has been fundamental in overthrowing the conceit of a single, unified, and regimented “Thai culture” (Kasian 2002).

Traditions of the Thai press

The early history of the Thai press helped to mould two distinctive traditions.

First, in crucial periods, the press was shielded from the state by some special forms of immunity. The earliest papers were printed by missionaries, and the editors and writers were often protected under colonial extraterritoriality. In the 1910s and 1920s, when the press first became a political press challenging the absolutist order, some writers still enjoyed the protection of extraterritoriality, and others seem to have been sheltered by political sympathisers within the court. In the inter-war period, the expanding and revolutionist Chinese-language press was protected by patrons like Long Ju Tek who on one hand was involved in the *angyi* secret societies, and on the other had enough high-level contacts to be the building contractor for prestigious projects like Wat Benchamabophit and Lumpini Park. After the Second World War, the expansion of the left-wing press was sheltered by military leaders like Phao Sriyanon and financed by companies like Bangkok Bank.

Second, the state assembled a powerful arsenal of repressive tools which were applied

to writers and titles which did not enjoy these special forms of shelter. Bradley's first effort to issue a newspaper was closed down by the court within one year. After initially debating with his nationalist critics in the press, King Vajiravudh passed the first press law in 1917, and strengthened it in 1923. In this era, also, dissident journalists began to be harassed and sometimes killed. In the post Second World War era, both these trends increased. The Press Act (first passed in 1941) and the revived Anti-Communist Act (1952) were regularly used to close down papers and jail individual writers. Those killed included Ari Liwara, one of the biggest press owners of the era.

These two contradictory influences have given the Thai press a heroic tradition of resisting repression, but also a guerrilla-like style of operation for survival resembling Mao's instruction: "fight when you can win, move away when you can't win".

Brief history of the press since 1975

The student uprising of 1973 stimulated a big expansion and transformation of the press. In 1973 alone, 177 new licences were issued for newspapers (McCargo 2000). Most did not survive for long. But out of this era came at least two groups formed by people caught up in the political ferment. One set out to create a new "quality" paper, *Matichon*. The other began a more independent and aggressive English daily, *The Nation*. In 1980, the Matichon group launched a weekly news magazine, which was widely copied. After the economy began to boom in the mid-1980s, print ad revenues increased steadily at 25 to 35 per cent a year. With these revenues and expanding readership, groups like Nation and Matichon launched new titles, business papers, magazine departments and book publishing ventures. These widening portfolios provided the foundations for a whole new cadre of "public intellectuals" offering information and opinion. With its growing wealth, the press also became more confident, daring, and critical. In 1991, it was able to get rid of an old press censorship law. During the events of 1992, several papers defied military repression, and garnered great prestige. Through the mid 1990s, the press acted as a main form of opposition to the government, especially through scandalization of corrupt ministers and officials.

Many press owners, however, became greatly over-extended financially. The Manager group of Sondhi Limthongkul was the prime example. He had multiplied the titles under the Manager name in Thailand, launched a regional English daily from Hong Kong, brought up several magazine titles, invested in hotels in China, funded a research institute in Australia, and was dreaming of launching a satellite. Other press groups were not quite so expansive, but had ventured carelessly into the seemingly profitable sector of property development. Hence, the financial crisis of 1997, and especially the associated crash of the property bubble, scythed through the press owners. Hundreds of titles disappeared. The Manager group collapsed and Sondhi had to go into hiding from his creditors.

Brief history of TV since 1975

The state has always appreciated the power of the electronic media, and kept them under very tight control. By the 1980s, Thailand had four channels, two owned each by the government and the army. Both the government and army operated one channel directly, and leased the other to a private company. Programming content was controlled by government regulation as well as through informal controls.

In the post-1985 boom, TV also enjoyed a windfall of increased advertising revenues. To meet the increasingly sophisticated audience's demand for increasingly sophisticated programming, the regulations were eased somewhat. More programming, especially for news and current affairs, was bought from independent suppliers. This transferred some of the culture of the press and public intellectuals onto television. The Nation group began to supply news, features, and debate programmes to the government-run channels. The prominent academic and public intellectual Chirmsak Pinthong pioneered programmes which gave local people a voice in the electronic media, and which fostered debate on contentious social and political issues.

In the events of May 1992, the contrast between the military government's control over the electronic media, and the free press' defiance of repression, sparked fierce demands for liberalization of the airwaves. But the authorities were reluctant to comply. They allowed delay to take the heat out of the issue. They agreed eventually to the foundation of one independent commercial station (ITV) in 1996, but with an ownership structure which acted as a form of restraint: the Nation group, which provided the programming content, had only 1 per cent, while the majority share was held by the Crown Property Bureau. Still, ITV was innovative. Its news programming was less respectful of old hierarchies. Its current affairs shows gave space for a wider range of opinions, complete with phone-in queries and phone-polls. Its investigative journalism programmes, especially *Thot rahat* (Break the code), looked into issues like wholesale bribery of highway police, and politicians' relations with organized gangs of professional gunmen. Its feature programmes included screening of video records of recent historical events which had earlier been taboo.

But these innovations perhaps broke too many codes, while the 1997 crisis exposed ITV to the same vulnerability as the press. The station had not been running long enough to be profitable. The authorities took the opportunity of the station's failure to meet its concession payments to demand a restructuring of the capital, and ejection of the Nation group as the content providers.

Activists still hoped for further liberalization of the electronic media. The 1997 constitution included a provision to end the military-government monopoly by transferring responsibility for broadcasting frequencies to an independent commission:

Section 40. Transmission frequencies for radio or television broadcasting and radio telecommunication are national communication resources for public interest. There shall be an independent regulatory body having the duty to distribute the frequencies under paragraph one and supervise radio or television broadcasting and telecommunication businesses as provided by law. In carrying out the act under paragraph two, regard shall be had to utmost public benefit at national and local levels in education, culture, State security, and other public interests including fair and free competition.

Thaksin and the media

Through the 1990s, friction between politicians and media increased. The Chuan government (1992-5) was brought down by a land scandal (*SPK 4-01*) which the leading *Thai Rath* daily turned into a cause celebre. The Banharn government (1995-6) closed down Chirmsak Pinthong's *Mong tam mum* (Different perspectives) as "uncontrollable", and was in turn brought down in a rash of corruption scandals featured in the media. The Chavalit government (1996-7) set up a body to monitor all media on a day-to-day basis, and also resigned from office in a blizzard of press criticism.

From the start, Thaksin Shinawatra and his Thai Rak Thai party espoused a much more public style of politics than any predecessor, and hence were more dependent on the media. As chief adviser, Thaksin adopted Pansak Vinyaratn, who had begun his career as a scandalizing journalist and was aware of both the power and vulnerability of the media. Thaksin also attracted into his party Pracha Maleenont, head of the family company running the most popular TV Channel (3), and made him a cabinet minister.

In the restructuring of ITV in 1999, Thaksin bought a stake which eventually became a majority share (55 per cent). Just before the 2001 general election, journalists on the channel complained that Thaksin was interfering in its election reporting. Twenty-three were summarily sacked. The labour court ruled that the sacking was illegal, but ITV defied the court order to re-employ them (*Nation*, 27 September 2002). Subsequently, the channel's programming was changed to emphasise entertainment more than news.

Two of the companies providing independent current affairs programming to the government channels were ejected. Across all channels, news programming was shortened, and became lighter in content. Thaksin put a business colleague in charge of the Mass Communications Organization of Thailand, and demanded that stations broadcast "constructive news", meaning positive stories about the government (*Nation*, 7 November 2002). Whereas current affairs programmes had earlier carried lively debate and involved viewer participation by phone-in or phone-voting, by 2002 the only programmes left were interviews with ministers or permanent secretaries explaining government policies. During the government's campaign against methamphetamines launched in February 2003, the newscasters announced the numbers of "drug dealers killed by other drug dealers" as if this were unalloyed fact.

The 1997 constitution's mechanism for ending the control of electronic media by the government and army ran into opposition from the officials, generals, and concessionaires who operated the old system. The process for establishing the independent commission assigned to manage broadcast frequencies was buried in litigation. The Thaksin government made no effort to end this jam, which meant all electronic media remained under the control of the government, army, and Shinawatra family businesses.

The Thaksin government used several strategies to quieten the press. It revived previous military governments' tactic of calling in editors for friendly but intimidatory chats. It provided political journalists with facilities (snacks, phone lines, internet hookups) which they would be loath to put at risk. Thaksin demanded removal of political-beat reporters who were over-critical. Most effective was the manipulation of the large advertising budget commanded by government agencies and companies associated with the government. Critics estimated that this combined budget amounted to 60 percent of all press advertising. The press owners who had suffered financially during the crisis were especially vulnerable to this strategy. The head of the Thai Journalists Association commented:

With his abundant financial and staff resources, Thaksin can easily orchestrate the direction of news to his favour and curb media freedom in the most sophisticated ways... He has effectively silenced media by restricting advertisement from states bodies and enterprises.... As a result, he can map out long-term strategies and set agendas for the media, which consequently will lead to the so-called 'media-apartheid'-only pro-Thaksin media outlets will prosper (Kavi, 2001).

Thaksin also repeatedly asserted that attacks on himself or his government were attacks on the nation. He warned: "You media people have to believe me. Today, serving the country is more important than sending your news dispatches daily to your editors. Think before you do anything that damages the country." (*Nation*, 20 May 2003). In early 2003, government drafted a bill to subject all media to "ethical" monitoring by a council appointed by the premier, but had to abandon the project.

The Nation media group was one of the few to defy these pressures. In early 2002, executives of the Nation group discovered their bank accounts were being investigated by the Anti Money Laundering Office (AMLO), a new agency established to combat drugs and other crime. AMLO claimed to have launched the investigation on the strength of an anonymous letter alleging the Nation group was linked with a financial crime syndicate. The Nation secured a court injunction to halt the investigation. The government denied allegations that it had initiated the probe, but also established a committee which eventually absolved AMLO officials of any wrongdoing.

Thaksin also reacted angrily against critics voicing their opinions through the press. When Thirayuth Boonmi, a leader of the 1973 student uprising and prominent social commentator, drew attention to the government's authoritarianism, Thaksin snapped back that

“these people feel proud to be accorded quasi-hero status when in fact they have done nothing useful to society” (*Bangkok Post*, 7 January 2003). In response to a warning from Prawase Wasi, perhaps the single most prominent senior social activist of the era, Thaksin said: “He doesn’t understand and all he ever thinks is that he’s a cut above the rest” (*Bangkok Post*, 25 May 2003). After former premier Anand Panyarachun chided him gently, Thaksin said it was “too easy if one says something only in order to be perceived as a hero” and asked Anand to “be patient and stop talking” (*Nation*, 12 November 2002). In a more general reaction he argued that “Thai leaders and academics like to talk problems, not solutions”, and that “a lot of people feel like heroes when having a go at someone with their outdated opinions” (*Nation*, 4 December 2002). In May 2003, Thaksin talked about purging the universities:

The next step is that I will “hire” incompetent officials to stay at home. Some academics, for example, cannot teach and cannot make students analyse. Some researchers cannot research, but want to draft the constitution. These people will have to go and do not worry about them. We need to move our country ahead. (*Nation*, 21 May 2003)

Conclusion

It is only a slight exaggeration to say that the Thai media have been rapidly transformed from one of the more free and lively environments in Asia to a situation not unlike Moscow before 1989. In May 2003, Freedom House, a US-based non-profit organization, downgraded Thailand’s media from “free” to “partly free”, and noted that “journalists exercise an increasing level of self-censorship” (*Nation*, 2 May 2003). The head of the Thai Journalists Association said “State power... is applied to proprietors of publishing firms who subsequently put pressure on media operators who are their employees... This has caused the media to impose self-censorship to avoid problems” (*Bangkok Post*, 4 May 2003).

But there are reasons to retain some optimism. Two incidents bring this out.

In late 2001, as the consequences of the government’s tight controls on media became apparent, the *Nation* group realised that these controls gave them an opportunity to achieve one of their long-held ambitions: to launch a mass Thai-language daily, because the readership wanted something more than the government line. *Khom chat luk* (Sharp clear deep) was launched in October 2001, and quickly attained the third highest readership among dailies (but attracted far less advertising than its readership merited) (*Nation*, 2 February 2002).

In March 2003, a radio station was suddenly taken off the air after it had broadcast an interview in which a sacked cabinet minister (Purachai Piumsomkun) fiercely attacked the premier. The station normally broadcast a 24-hour participatory, public-service programme under the title *Ruam duai chuai kan* (Let’s help one another) which was specially popular among taxi-drivers. Immediately the city was flooded with fliers claiming the closure “throttled city people”, and a mass rally was planned. Within two days, the army had backed down, and

the station was restored (*Bangkok Post*, 3 and 4 March 2003).

The Thai press traditions of defiance and guerrilla tactics are not likely to be totally or easily erased. And the role of the media as a “social mirror” is something which means there is a growing sense of public ownership.

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Setting the facts straight: the critical role of the NHRC in a labor solidarity campaign

Philip S. Robertson Jr.

The successful struggle of the Gina Relations Workers Union (GRWU)¹ to overcome a systematic and at times, vicious anti-union campaign at the Gina Form Bra Company (GFB), Ltd.² is the brightest example in growing trend in the Thai labor movement to use creative new tactics, including building international solidarity with consumer and NGO campaigners overseas. After over two and a half years of struggle, which included GFB being the first ever labor case taken up by the National Human Rights Commission (NHRC) and a campaign by over a dozen international union organizations, labor NGOs, and consumer/student solidarity organizations, the GRWU signed a comprehensive collective bargaining agreement with GFB management on 9 July 2003. As part of the agreement, all court cases filed by the employer against the GRWU and its members were withdrawn, and 37 leading rank and file members who had been singled out and fired as long as two years before were reinstated with back pay in a settlement that totaled over 4 million baht (\$US 100,000). Furthermore, anti-union harassment ceased, and orders from overseas brands assured that by the middle of September 2003, all the workers were back at work.

The norm for labor disputes in Thailand since the Asian financial crisis has been firing of workers, destruction of unions that resist management efforts to erode job security or contract work out, and in some cases even employer orchestrated violence, as in the case of the Thai Grieng Textile union in Samut Prakan. In most cases, the workers lose, often decisively, managing only to secure a measure of the severance pay owed to them under the Labor Protection Act of 1998. Yet the GRWU bucked this trend, winning a decisive victory in its struggle to be treated with dignity and respect, and defeated a multi-faceted employer campaign to destroy the union. What led to this outcome?

One of the key decisions taken by the GRWU, in consultation with their advisor, Somsak "Maung" Plaiyoowong of the Thai Center for Labour Rights,³ was to take their case

to the National Human Rights Commission. The GFB case was the first one involving a labor dispute ever received and heard by the NHRC. This case, and others filed quickly following it,⁴ eventually led the NHRC to create a formal Subcommittee to Study and Investigate Labor Problems to receive complaints from labor. The Subcommittee is now chaired by Dr. Pradit Charoenthaitawee and includes Commissioner Sunee Chaiyarose and a number of prominent academics, lawyers, and experts on Thai labor.⁵

The purpose of this paper is to explore the real and significant impacts of the decision by the NHRC in this case. One of the most frequent criticisms of the NHRC heard in labor and NGO circles in Thailand is the Commission only has the power to recommend, and that its findings can be ignored with impunity by civil servants, ministers, and other policy-makers. The criticism boils down to an allegation that the NHRC is a “paper tiger” that can inconvenience and shame those who abuse human rights, but cannot concretely compel anyone to do anything. Yet in the case of the GFB, it was precisely the stature of the NHRC as an independent and respected government institution, and its comprehensive investigation to set the facts of the dispute straight, that enabled workers to realise their rights. Put simply, the NHRC decision (Sor Mor 0003/439, dated 17 September 2002), when finally translated into English for an international audience,⁶ served as a critical turning point in the GRWU’s struggle to have their human rights respected. The NHRC decision had a two-fold effect. First, it motivated international labor solidarity campaigners who became allies of the GRWU and mobilized their consumer supporter to get involved in the dispute. Second, it exposed how international brands (Gap, Victoria’s Secret/The Limited, La Senza, and Boutique Jacob) which sourced from GFB failed to ensure that the factory was treating workers fairly, in line with the written and widely publicized contracting procedures and policies of those international brands.

Senior civil servants at the Labour Ministry were initially unimpressed by the NHRC’s intervention. They told the author in early 2003 that they felt no compunction of any sort to follow the NHRC’s recommendations unless compelled by law. But what the Ministry and critics of the NHRC failed to appreciate was the existence of a much wider audience in the GFB debate than just the union, the employer, and Thai civil servant regulators.

One political theory of conflict and struggle posits that the outcome of any struggle between political actors depends on each sides’ success in mobilizing support for its cause from the outside “audience” of current or potential participants in the conflict. The Thai Center for Labour Rights and the American Center for International Labor Solidarity (ACILS), AFL-CIO,⁷ forecast that if the struggle was only restricted to national actors in Thailand, the union would lose. Therefore, a decision was taken to broaden the scope of the conflict, and bring in international audiences (labor solidarity campaigners, international brands) that could tilt the course of struggle in favor of the workers. It was the recognition of this fact by the

GRWU, and its local allies, that launched a new strategy of international campaigning, with the NHRC report of the GFB factory management's anti-union tactics serving as the heart of critique being sent out around the world.

Codes of conduct in the global garment industry

Yet that same political strategy assumes that a participant in the political conflict at hand can formulate a message that will appeal to the interests of various members of the "audience" to the conflict. This was possible because of changes in the international garment industry brought about by globalization. As the garment industry has become increasingly international in its production, supply chain management and monitoring of working conditions has become more and more important. Consumers in the US and Europe, the major markets for Thai produced garments, are increasingly sensitized to the working conditions in which the garments are made, and insist the garments they purchase are made by workers afforded their basic rights under national labor law and core international labor standards of the International Labor Organization (ILO). International clothing and footwear brands (such as Nike, Triumph International, and Tommy Hilfiger⁸), who have been found to be sourcing their product from factories where workers are poorly treated, have become targets for student, consumer and labor organizations campaigning for "clean clothes", and suffered significant damage to their brand names.

In response, these brands have promulgated a bewildering array of "codes of conduct" which they now compel factories to uphold when producing the particular brands' product. To varying extents, each brand then uses its code to trumpet to customers its commitment to fair wages and working conditions in production of their product, and to fend off criticism.⁹ Since brand name and image (which they spend millions of dollars to promote) is often these companies' most valuable asset, defending the integrity of that name can be a powerful motivator. For instance, Gap, one of the companies whose lingerie is produced by GFB, states clearly right at the beginning of its code of conduct that "Factories that produce goods for Gap Inc. shall operate in full compliance with the laws of their respective countries and with all other applicable laws, rules and regulations."¹⁰ The Gap code continues further to state that "Factories must treat all workers with respect and dignity" and "not engage in or permit psychological coercion or any other form of non-physical abuse." Most codes also provide for some protection of workers' rights to form a union. The Gap code states that "Workers are free to join associations of their own choosing. Factories must not interfere with workers who wish to lawfully and peacefully associate, organize or bargain collectively. The decision whether or not to do so should be made solely by the workers.... The factory does not threaten, penalize, restrict or interfere with workers lawful efforts to join associations of their own choosing."

The Limited, Co., the owner of the internationally renowned brand Victoria's Secret,

and the largest customer of GFB, also has a code of conduct which in many aspects parallels the Gap's code. It states clearly that the company "will not do business with companies or individuals that do not meet our standards". Among these standards are "Full compliance with all laws, rules and regulations applicable to the manufacture of products, the facilities where they are made." The code continues, "The lawful exercise of workers' rights of free association shall be respected and not restricted or interfered in, and workers lawfully exercising those rights shall not be threatened or penalized."¹¹

Two other customers of GFB, the Canadian lingerie brands La Senza and Boutique Jacob, did not have codes of conduct when the GFB dispute began. After receiving a barrage of well-deserved negative publicity for their decision to cease their orders to the factory, effectively running away from the problems of GFB, La Senza immediately developed its first ever code of conduct for factories producing its products.

Since these codes of conduct are developed by the various companies, there is of course some variation, but in almost all cases there is a requirement for the factory to fully comply with local laws, and to respect workers right to unionize. These are basic, minimum parts of the usual code of conduct. Importantly, the NHRC ruling accused the GFB management of wantonly and repeatedly violating both principles.

Background to the conflict

The GRWU received its formal union registration from the Ministry of Labor on 13 December 1994. The specific issues that prompted the workers to organize are the violations of labor law regularly seen in unorganized garment factories in Thailand such as failure to pay the minimum wage, forcing workers to do mandatory overtime, and failing to provide basic benefits (sick days, time off). The problems were exacerbated by a lack of understanding of Thai culture by the Hong Kong ownership, difficulties in communication, and the company's retaliation against the first attempt to organize. Finally, the factory owner, Andy Lau, agreed to negotiate and a first contract was concluded between the GRWU and the GFB on January 31, 1995. Following this initial, rocky start, an atmosphere of good labor relations was established between the GFB and the GRWU. Union membership grew to 1,014 out of approximately 1,200 workers, reflecting confidence in the union and the benefits it provided to its members. Several new contracts were successfully bargained between 1995 and 2001. A sophisticated, well-organized shop steward system, operating on each production line, ensured the GRWU received quality, real-time information on events in the factory.

Operations took place within the bounds of the labor law, with an empowered GRWU prepared to raise and solve problems. GFB successfully retained contracts for high end lingerie from world-leading brands like Victoria's Secret, reflecting the fact that the GRWU workers are a skilled and diligent work force.

The problems arose with a generational change in factory leadership. Andy Lau turned over control of GFB to his son, Gerard Lau, in March 2001. Gerard brought in an aggressive Thai management team led by Suthep Boui-salee (factory manager) and Rungrote Intapuang (personnel director). This team immediately moved to cut costs by eliminating some benefits and changing terms of employment¹² in a way that the GRWU viewed as being against the prevailing collective bargaining agreement. On 2 July, the GRWU filed a petition with the local Labour Ministry office, alleging GFB was acting in violation of the collective bargaining agreement, thereby kicking off the first of many legal battles that would characterize this dispute.

On 2 August 2001, the GFB fired 30 workers who had not completed their 120 days probationary period, and announced it intended to fire another 200 workers who were still in probationary status.¹³ Nineteen of these fired workers then petitioned the GRWU for assistance, and the GRWU intervened on their behalf to compel GFB management to pay 30 days pay in lieu of notice of termination (as required by the law), costing the GFB 2000-3000 baht per fired worker. Fired workers who wanted to return to GFB were told to apply to a manpower contractor, Bravo Supply Co., that GFB had just hired to provide it with workers.

While it remains unclear whether the decision to bring in the new management team was an effort to cut costs, or part of a larger union-busting program from the very start, it seems the new management team wanted to assert its absolute control of the factory. Increasingly, a panoply of hostile management tactics were used, including moving key union members between lines, and finally concentrating them in one area to keep them under better observation; using security guards to spy on union members; making phone calls to key union leaders to entice them with money to leave the union; threatening workers with firing if they did not resign from the union; and issuing anonymous flyers attacking the union.

Matters came to head on 16 August when GFB brought a Special Branch Police officer from Samut Prakan province (i.e. operating in Bangkok, outside his area of assignment) to arrest the top leaders of the GRWU on a false charge of running an illegal, underground lottery in the factory. Somboon Rodcharoen, the union's Treasurer, was arrested along with two other union members, and dragged to the Bang Khen police station for charging. The union President, Surat Toomjib, would also have been arrested but the policeman mistakenly arrested another worker who looked like Surat. Somboon was bailed out, and many months later the prosecutor declined to send the case to court on grounds of insufficient evidence. The GRWU rallied 800 workers to protest in front of the Labour Ministry on 20 August, and met with the Deputy Minister of Labor to call for government intervention to end the company's attacks on the union.

On 22 August, the GFB petitioned the Labor Court for the right to fire the other four core committee members of the GRWU.¹⁴ On 27 August, the GRWU officially put forward a

new set of collective bargaining demands to supercede the agreement which would shortly expire. GFB refused to bargain, and petitioned the Labour Ministry to investigate whether the representatives of the union had the right to bargain. On 30 August, the GRWU formally declared the existence of a "labor dispute" under the terms of the Labor Relations Act of 1975, compelling the entry of Ministry conciliators to resolve the dispute. On October 22 the Minister of Labor referred the dispute to the tripartite Labor Relations Committee¹⁵ for binding arbitration. The Committee announced its decision on 21 November, creating a new, binding terms of employment (generally favorable to the company) that would be in effect for one year.

Heartened by this generally favorable turn of events, the GFB management decided to break the back of the GRWU once and for all. On 8 December, 200 workers (all core union supporters) were gathered in the canteen area, and ordered not to sleep or talk to one other. Security guards and video cameras were put in place to monitor the workers, and anyone who violated the order was given a written reprimand. After a week of this harassment, the GFB fired 150 of the workers in the canteen, and demanded they file written letters of resignation before they could receive severance pay. Those who refused were told they would be given three successive warning letters, and then fired without eligibility for severance pay. One worker, Usaowadee Padongsat, who refused to take any payment was ordered to sit in the canteen every day until 28 December, when she was finally prevented from entering the company grounds.

The GRWU's response was to petition the Labour Ministry, exercise its rights under the law, and maintain unity in resistance. Critical to this strategy was the support of union advisor, Somsak Plaiyoowong, and his connections with the Law Society of Thailand, which takes pro bono cases. In the case of the 24 workers fired on 22 September, the GRWU filed a case against the company at the Labor Relations Committee, and won a decision for reinstatement (with back pay) on 4 January 2002. The GFB appealed to the Labor Court but the GRWU's excellent information and case preparation ensured it continually prevailed over the GFB in the courts. Yet winning cases in the courts in Thailand is often not sufficient, since it does not guarantee enforcement of the decision when a recalcitrant employer refuses to go along. Enforcing the Labor Relations Committee and Labor Court victories in the case of the 24 fired workers, the case of Somboon Rodcharoen, and the case of another 13 union members who were unjustly fired, needed an external boost that only an independent, impartial national government body and international pressure could provide.

The GRWU filed its case with the NHRC on 12 December 2001. This highly novel tactic proved extremely worthwhile. On 17 September 2002 the NHRC issued a damning opinion which found wholesale violations of human rights, labor law, the Constitution of 1997, and ILO conventions by the GFB management. In the case of the 150 fired workers who

had been confined to the canteen, the NHRC stated:

The examination found that all 150 rounded up employees were union members who were actively supporting demands and negotiation.... According to the company, the 150 workers had already expressed their will to resign.... Concurrently, the union and its members confirmed that no one had submitted resignation [sic] when they were called for the said gathering.... Later several meetings were organized to have them discuss resignation under pressure.... It is therefore obvious that the actions adopted by the company were intentionally planned to put pressure on those active union members, forcing them to resign. Moreover, it is aimed to intimidate union membership in the future which is a violation against Articles 121 and 122 under the Labor Relations Act B.E. 2518.¹⁶

Concerning the case of fired union GRWU officer Somboon, the NHRC found:

An official order was granted by the inquisitor and the public prosecutor to discharge the case on the grounds of inadequate evidence for gambling charges. The Central Labor Court had as well ruled that Miss Somboon was innocent for whom termination would not be allowed. The Company further lodged an appeal to the Supreme Court where it was rejected. The case was therefore finalized as of 11 February 2002. It was discovered that from 16 August 2001 until now the Company had temporarily suspended Miss Somboon for a week each time on an excuse that there was no appropriate position for her and damages might be caused for the Company. At the end of each suspension period when Miss Somboon reported to work, she was normally paid but not allowed to enter the Company premises.... The Sub-committee has considered the Company's excuse for a position to accommodate Miss Somboon unjustified since she is only one of 1,000 sewers without any supervisory or managerial assignment. As for the excuse that her entering to the Company's premises might cause damages, it is apparent that there is no supporting grounds. Therefore the Company's action has been viewed as an abuse of right with disregard of human dignity prescribed by the Constitution of the Thai Kingdom, B.E. 1997. It is an abnormal behavior of an employer not to allow any one employee to perform his or her best for the benefit of the enterprise. Such an action adopted by the employer has been observed as human devaluing and obstruction of career advancement as well as employment right spelt out in the contract. It is observed as victimization or discrimination against Miss Somboon as a union executive member and an employee committee member. Hence it is obstructing, restricting, or depriving of the union's rights as prescribed by the Labor Relations Act, B.E. 2518, Articles 52 and 121 respectively.¹⁷

The NHRC demanded immediate reinstatement of Somboon Rodcharoen, and also criticized efforts by GFB management to unilaterally impose a set of working conditions that had not been negotiated with the union, as required by the Labor Relations Act.

Mobilizing the international campaign

There is an old saying that "if a tree falls in a forest and no hears it, did it really fall?"

Prior to January 2003, few had heard of the abuses endured by the GRWU workers over the previous two years. One of the few that had was Transnationals Information Exchange-Asia (TIE-Asia),¹⁸ a regional labor rights NGO based in Sri Lanka that had already put out an appeal on its website and emailing list for activists to write to GFB management demanding an end to the anti-union campaign. A major European partner of TIE-Asia, the Clean Clothes Campaign,¹⁹ then picked up the call and began a series of letters to the brands and the GFB management. The core *modus operandi* of both these labor NGOs is to inform consumers and activists, who then write letters, emails, and faxes to both the offending factory's management, and to the international brands sourcing from that factory, urging them to end the abuses.

International labor campaigners²⁰ face several obstacles in generating consumer and public pressure which will compel international brands to enforce the "codes of conduct" which they publicly espouse. The first problem is ensuring that information from the factory is reliable and up to date. Usually the first tactic of factory management (and international brands) is to contest the veracity of the facts presented by the international campaigners. This problem can be called the "he said, she said" dilemma, where interpretation sometimes depends on who is doing the analysis, and factory management is constantly trying to spin the facts and use uncertainty to buy time (which is hurtful in many cases where workers have already been fired, and are forced to live on their meager savings). This problem is compounded by the reality that most struggles in the global South take place in languages other than English, and unions like the GRWU have limited capacity to put out updated information in a foreign language on their struggle.

A translation of the NHRC decision on GFB was circulated in the second week of January 2003 when the Fair Labor Association was sponsoring an international NGO consultation in Bangkok. The author and many key international labor solidarity campaigners were present, and the GFB case quickly became a cause célèbre. Advocacy by ACILS at that meeting, coupled with good information on the international brands sourcing from GFB, served to jump start an international campaign. The fact that GFB had been certified as complying with international standards by the Worldwide Responsible Apparel Production (WRAP), a brand sponsored monitoring system viewed with grave suspicion by campaigners, further heightened campaigners' interest in the case. Suddenly the international brands had a problem they had not counted on. Put simply, the NHRC set the facts straight, and provided clear recommendations for rectifying the situation. The campaigners took those recommendations, and publicized them worldwide.

Gap, Inc. quickly became a first target, in part because it has its own factory monitors in the Gap office in Thailand who appeared to have done little to solve the problems at GFB. Gap initially explained to campaigners that the company had "discussed these issues with

factory management” and that some of the issues are “under appeal to the Labor Court” (and that hence, Gap could not interfere).²¹ Under pressure, however, Gap headquarters staff studied the NHRC decision more closely. Ultimately, Gap played an important role in demanding and securing the reinstatement of Somboon Rodcharoen, once it was pointed out clearly that the Supreme Civil Court had upheld the dismissal of the case against Somboon, and hence continued refusal of GFB to allow her back into the factory was against both the spirit of the law and the decision of the courts. The unconditional return of Somboon to her prior position in the factory on 19 March 2003 served as a huge morale boost for the union. Her return was the first major indication that the international campaign was having an impact.

However, in terms of the percentage of orders in the factory, the biggest player was Victoria's Secret, which is owned by the Ohio-based garment conglomerate, The Limited. Unlike GAP, which has monitors on the ground in Thailand, The Limited employed a Washington DC consulting firm, Fontheim International, to investigate the situation. The appearance of the NHRC decision on the TIE-Asia web-site brought Fontheim out of the woodwork. In short order, the firm contacted the Clean Clothes Campaign, TIE-Asia, the First Secretary (Economic) at the US Embassy in Bangkok, and finally the author at ACILS, seeking clarification on key legal points raised in the NHRC decision. While the firm initially refused to disclose who their client was, the US garment union affiliate UNITE was able to ascertain behind the scenes that The Limited had hired them.

Yet it was difficult to assess initially what, if anything, The Limited was prepared to do to press GFB management. A strategic decision was taken to increase US based pressure on them (while maintaining continued pressure on Gap), with UNITE leading the way as a dialogue partner, trying to convince The Limited through Fontheim that this problem was not going to go away and that they had to deal with it. Meanwhile, other labor campaign organizations like the Campaign for Labor Rights, United Students Against Sweatshops, and the International Labor Rights Fund concentrated on raising the level of pressure by generating consumer letters to The Limited, and attacking its failure to act to help the GRWU.

The two Canadian lingerie brands, La Senza and Boutique Jacob, sent commercially hired auditors to examine the situation at GFB in February 2003 as they faced an onslaught of negative publicity and consumer pressure, generated very effectively by the Toronto-based Maquila Solidarity Network. When both companies tried to distance themselves from the problem by cutting their orders and running out of the factory, campaigners placed pickets in front of their stores in Canada.

Throughout, campaigners highlighted that the NHRC decision was the core of their argument that the brands were complicit in violating the human rights of workers.

Beating back GFB management's challenge of the facts

The NHRC decision was also critical in decisively defeating an ill-considered effort by GFB management, prompted by advice and assistance from the Employers Confederation of Thailand, to try and whitewash the situation by bringing in corrupt labor leaders led by the infamous Panus Tailuan of the National Congress of Thai Labor.

A letter to the international community, awkwardly titled the "Joint Statement of the National Bipartisan, Kingdom of Thailand" and describing itself as "a national recognized authority consisting of Thailand's Labour Union Leagues and the Employers' Confederation of Thailand" claimed that a comprehensive investigation had taken place "at the request of the GINA FORM management." The statement tried to blame the problems on disputes between unionized and non-unionized workers, and language differences between workers and GFB management (even though the Managing Director who was directing the anti-union campaign, and his key assistants, were all Thai). This whitewash campaign tried to claim impressive credentials. The National Bipartisan Statement was signed by Panus Tailuan (an affiliate of the World Confederation of Labor), as well as Pratueng Sangsung (President, Labor Congress of Thailand) and Somsak Duangrat (President, Thai Trade Union Congress), both of which are affiliates of the International Confederation of Free Trade Unions. The Employers Confederation of Thailand, the key instigator, had just succeeded in persuading GFB to join its organization, and Anantachai Kunanantakul, the Confederation's President Emeritus, signed the statement. Interestingly, the Employers' Confederation serves as the focal point in Thailand for the UN's primary corporate social responsibility initiative, the UN Global Compact. Yet it was none other than Siriwan Romchatthong, the Confederation's Executive Director, who sent the National Bipartisan Statement by email to the ILO and other respectable international organizations, claiming there were no problems at GFB.²²

The National Bipartisan Statement failed to make any significant inroads in the current of international opinion developing against the GFB management. The International Confederation of Free Trade Unions and World Confederation of Labor were dissuaded against intervening in response to the request of their Thai affiliates by putting the NHRC decision in their hands. In fact, the National Bipartisan Statement backfired on the union leaders who signed it since it undermined their credibility as trade union leaders with the interests of the workers at heart. Panus Tailuan tried to form a rump, yellow union (Gina Ruamjai Union) with the support of management but Gerard Lau publicly acknowledged later that it attracted only about 40 members.

The campaign succeeds and the international brands act decisively

Ultimately, in the battle for international credibility, the GRWU and its international allies won decisively. As pressure mounted on the international brands, The Limited and The

Gap got further involved in pushing GFB to comply with all aspects of their codes of conduct. In May and June 2003, it became clear that GFB was telling the brands it would comply with the codes and seek a settlement, yet on the ground management was threatening a factory closure and continuing to intimidate the workers. The brands, particularly The Limited, then decided to act decisively. The Limited set a deadline for GFB management to reach a new collective bargaining agreement with GRWU, and resolve all other outstanding issues to be resolved. Failure to comply would result in Victoria's Secret pulling orders from *all* the factories owned by GFB's parent company, the Hong Kong based Clover Group.²³ Facing the possibility of real financial ruin, the Clover Group moved to end the dispute quickly. It dismissed the anti-union Thai management team, reached a satisfactory collective bargaining agreement with GRWU, reinstated the dismissed workers, and promised to respect union rights in the future.

In any labor struggle, there are numerous actors, tactics, and stages of struggle. To go into all these is beyond the scope of this article. What is clear is that information matters, and the credibility of the messenger delivering the information matters. The involvement of the NHRC, as an independent agency of the Royal Thai Government, clearly defined the issues in the dispute, and laid the groundwork for an effective international solidarity campaign. While the NHRC decision may have not received the dignified response it should have from civil servants at the Labour Ministry, the high level of publicity generated by the NHRC's intervention helped ensure that the Ministry remained truly neutral and did not enter the dispute supporting the employer (as is too often the case with foreign invested factories in Thailand). The NHRC ruling also played a central role in the international campaign in support of GRWU because it was highly credible proof that GFB was not conforming to the "codes of conduct" of the international brand owners placing orders at the factory. The ruling made it difficult if not impossible for these international brand owners to use common evasive tactics such as challenging the credibility of the information presented by local unions and their supporters.

Notes

¹ The Gina Relations Workers Union office is located at 405/12 Bracha-utit 33 Road, Rasburana area, Rasburana district, Bangkok, tel/fax: (66-2) 973-0620.

² Gina Form Bra Company, Ltd., is located at 80/8 Moo 4, Ramintra 39 Lane, Ramintra Street, Anusaowaree area, Bang Khen district, Bangkok 10220, Thailand, tel: (66-2) 973-0860-4. According to documents filed with the Ministry of Commerce, Mr. Lau Wai Sing (Andy) is the owner, and Mr. Gerard Lau is Chairman of the company's Board of Directors. The company was first established in Thailand on 17 January 1985 in the Sathorn Road area in downtown Bangkok, and employed approximately 300

employees until it moved to its current location in 1994, when it quadrupled its work force.

- ³ The Thai Center for Labour Rights is led by Somsak “Maung” Plaiyoowong, and is located in Om Yai area of Nakhon Pathom province. Contact information is PO Box 59, Om Yai, Nakhon Pathom, 73160, tel: (09)131-5819, fax: (02) 810-9115, email: s_tlr@hotmail.com
- ⁴ Other recent labor cases heard by the NHRC include ones filed by the Bangchak Company Petroleum Employees Union, the Diamond Cliff Phuket Hotel Workers Union, Fair Textile Workers Union, and others—indicating clearly that workers believe that the NHRC has an important role in their campaigns for justice from their employers.
- ⁵ The Subcommittee to Study and Investigate Labor Problems is composed of eleven members. In addition to Professor Pradit and Khun Sunee, it includes Associate Professor Lae Dilokvidhyarat, Bundhit Thanachaisethavut, Associate Professor Malee Preukpongsawalee, Chalit Meesit, Banyat Klansuwan, Dula Bajachimwate, Pornapa Meechanat, Supawadee Petchalat, Suchitra Bonsungern.
- ⁶ An unofficial translation was contracted from JA Associates, a well-known translation firm with expertise in labor terms, by the American Center for International Labor Solidarity (ACILS), AFL-CIO, office in January 2003, and made freely available to concerned parties in the international labor solidarity community. The fact that this important document had to be translated into English by an outside organization on its own initiative raises a very important question: why does the NHRC fail to systematically translate important cases into English? If it is a budget issue, has the NHRC raised this issue with the Royal Thai Government policy-makers involved in setting the NHRC budget? Or if this is not a priority, why has the NHRC not more pro-actively sought outside partners (with budget) to help with translation of documents into English?
- ⁷ The American Center for International Labor Solidarity (ACILS), known colloquially as the Solidarity Center, is a non-profit organization headquartered in Washington DC which operates under the policy guidance of the AFL-CIO, the sole national labor congress of the United States. It has offices in approximately 30 countries around the world, and has operated in Thailand since 1975. The author was the Country Director of ACILS in Thailand during the time that these events occurred. Contact information: ACILS-Thailand, Kasemkij Building, 120 Silom Road, Suite 402, Bang Rak district, Bangkok 10500, tel: (02) 238-5335, fax: (02) 234-5809, email: acilsth@loxinfo.co.th. Author’s personal email: floppy@loxinfo.co.th.
- ⁸ Nike has been repeatedly targeted by international campaigners in Australia, Europe and North America for their lapses in ensuring the factories they contract with meet basic standards. Nike spokesperson, Tiger Woods, was surprised by a protest organized at the Shangri-la Hotel in Bangkok in November 2000 by the Thai Labor Campaign when he came to receive an honorary degree from Kasetsart University. The news from that protest was picked up by the international media and went around the world. Triumph International was damaged by their insistence on staying engaged in a joint-venture factory with the military regime of Burma, and finally was compelled to pull out of the country because of international campaign pressure. Tommy Hilfiger is facing the same pressure today for its decision to source product from factories in Mae Sot, on the Thai-Burma border, using illegal Burmese migrant workers who are paid a fraction of the minimum wage.
- ⁹ Even the Thai Ministry of Labor has decided to move towards this strategy, and has developed a Thai Labor Standard 8001 (TLS-8001) which it is encouraging manufacturers in Thailand to seek certification under a process similar to the much better known ISO certification process. The Ministry hopes to use this

the TLS-8001 to persuade overseas markets that Thailand is a responsible country which cares about workers rights, safety and health of employees, and other areas of concern to foreign companies sourcing products from Thailand.

¹⁰ *GAP Inc. Code of Vendor Conduct*, at www.gapinc.com.

¹¹ *Policies Relating to Labor Standards*, posted on The Limited, Co. web-site at <http://www.limited.com/who/stand/index2.jsp?content=labor>.

¹² Unilateral changes of the collective bargaining agreements are not permitted under Thai law, but in many cases, these agreements do not spell out all aspects of the conditions of employment since there is a presumption (based on law) that changes to the company's internal rules and regulations must be bargained with the union and thus cannot violate the terms of the agreement. GFB management in this case did not consult the union, and made changes such as eliminating a clause where workers had a "safety period" to arrive at work (no more than 15 minutes late) without losing their diligence benefit for the month. Other changes to company regulations made it easier to fire workers.

¹³ According to the Labor Protection Act of 1998, workers must be on the job at least 120 days before they become eligible for payment of severance pay when terminated.

¹⁴ Since the 4 union leaders—Surat Toomjib (president), Duangjai Muangtong (secretary-general), Boontim Cheudmee (public relations secretary), and Tasana Boonmee (welfare and benefits secretary)—were also part of the Workers Welfare Committee, a bi-partite panel required by the Labor Protection Act in factories with more than 50 workers, the employer could only fire them with the permission of the Labor Court.

¹⁵ The Labor Relations Committee is established by the Labor relations Act of 1975, and consists of equal numbers of government, employer and union representatives.

¹⁶ National Human Rights Commission, *The Sub-committee on Study and Examination of Gina Form Bra Co., Ltd. Labor Dispute*, Office of the National Commission on Human Rights, ref: Sor Mor 0003/439, September 17, 2002. Unofficial translation from Thai original by JA Associates, contracted by American Center for International Labor Solidarity (ACILS).

¹⁷ *Ibid.*

¹⁸ For more information on TIE-Asia, see www.tieasia.org.

¹⁹ The Clean Clothes Campaign is actually a network of national NGOs concerned about rights of garment workers and advocating for production of "clean clothes", i.e. garments produced in conditions with fair wages and benefits, where workers rights are respected. For more information, see www.cleanclothes.org.

²⁰ The author had extensive conversations, and received replies to a set of survey questions from several organizations that played central roles in the GRWU struggle including Kelly Dent (TIE-Asia), Lynda Yantz and Bob Jeffcott (Maquila Solidarity Network, Canada), Ineke Zeldenhurst and Nina Ascoly (Clean Clothes Campaign secretariat, Netherlands), James Treasure-Evans (War on Want, Great Britain), and Ginny Coughlin (UNITE!, USA). Many of the observations and analysis in this section on international campaigning comes from those discussions, and the author's personal experience in over a dozen international labor solidarity campaigns.

²¹ Letter of 5 February 2003, from Sean Ansett, Manager, Global Partnerships, Gap Inc., to Nina Ascoly of the Clean Clothes Campaign. Copy of the letter in possession of the author.

²² Email of 18 March 2003 with National Bipartisan statement attached from Siriwan Romchatthong to ILO officials, subsequently forwarded to the author by one of those ILO officials on 2 April 2003, now in the

possession of the author and can be produced for the examination of interested parties.

- ²³ According to campaigners from the Asia Monitoring Resource Center in Hong Kong, the Clover Group has factories in Cambodia, South Korea, Hong Kong, and mainland China.

Roadmap for an ASEAN Human Rights Mechanism*

Vitit Muntarbhorn

Introduction

It has been a long and winding road.

In 1993 the foreign ministers of the Association of Southeast Asian Nations (ASEAN) broached the possibility of establishing an (inter-governmental) mechanism on human rights for the region as follows:

[The foreign ministers] in support of the Vienna Declaration and Programme of Action (of the World Conference on Human Rights) agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights.

It is ten years on, since that seminal statement. Yet, no such mechanism has been established, and to date, ASEAN governments have not yet put forward ideas on the shape and substance of such a mechanism. It is thus high time to move from mere intention to more concretization.

Developments

The impetus for developing a regional inter-governmental human rights system was provided by the World Conference on Human Rights in 1993 which reiterated “the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist”. Since all ASEAN countries were represented at this World Conference, they were and are part of this momentum.

Subsequently ASEAN parliamentarians added their support to the impetus by their

* This study was prepared for the 3rd Workshop on the ASEAN Regional Mechanism on Human Rights, 27-9 May 2003, Bangkok.

adoption of the ASEAN Inter-Parliamentary Organization (AIPO) Declaration on Human Rights in 1993 stating that “it is likewise the task and responsibility of member states to establish an appropriate regional mechanism on human rights”.

After that period, from 1993 members of civil society started to discuss the steps towards a regional human rights mechanism and then formed themselves into a Working Group for an ASEAN Human Rights Mechanism to help suggest the form and content of an appropriate regional mechanism. This Working Group now has national working groups in six ASEAN countries (Indonesia, Malaysia, Cambodia, Singapore, Thailand and the Philippines), composed primarily of members of civil society, while the other four ASEAN countries (Myanmar, Lao People’s Democratic Republic, Vietnam and Brunei Darussalam) have national focal points—usually a government ministry has been identified as contact point on the issue. The Working Group has been meeting annually since 1996 with the ASEAN foreign ministers and its work has been mentioned in the annual communiqué issued by the Ministers since 1998.

Most recently, the foreign ministers made this statement in their communiqué at the 35th Ministerial Meeting in Bandar Seri Begawan 2002:

We recalled the decision made by the 26th ASEAN Ministerial Meeting to consider the establishment of an appropriate mechanism on human rights. In this regard, we noted the First and Second Workshops on the ASEAN Regional Mechanism on Human Rights hosted respectively by Indonesia from 5–6 July 2001 and the Philippines from 13–15 June 2002. We also noted the 9th ASEAN–International Institutes of Security and International Studies (ISIS) Colloquium on Human Rights, held from 23–24 February 2002, in Manila. We deemed that these efforts could contribute in enhancing the exchange of views among different sectors in ASEAN towards the realization of the concept of an ASEAN human rights mechanism. We also acknowledge the importance of continuing dialogue with the Working Group for an ASEAN Human Rights Mechanism.

The various workshops and colloquium referred to in the above communiqué are dealt with below.

At this juncture, other positive developments which provide added weight to the need for an ASEAN human rights mechanism and related activities can be noted as follows.

First, ASEAN countries are increasingly becoming parties to key international human rights treaties. All ASEAN countries have ratified the Convention on the Rights of the Child (CRC), while all but one are members of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In the past few years, more ASEAN countries have signed or acceded to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Very recently, Thailand acceded to the International Convention on the Elimination of All Forms of Racial Discrimination. A number of ASEAN countries have also signed or ratified the Rome Statute of the

International Criminal Court.

Second, in 1997 ASEAN adopted its ASEAN Vision 2020 which envisioned “vibrant and open ASEAN societies consistent with their respective national identities, where all people enjoy equitable access to opportunities for total human development”. This helps to reinforce the call for more human rights promotion and protection in ASEAN.

Third, at the Heads of Government Summit in Hanoi in 1998, the Hanoi Plan of Action was adopted which, for the first time, committed ASEAN countries to various human rights related activities, in particular:

- enhancing the exchange of information in the field of human rights in order to promote and protect all human rights and fundamental freedoms of all peoples in accordance with the United Nations (UN) Charter, the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action of the World Conference on Human Rights;
- working towards the full implementation of the CRC, CEDAW and other international instruments on women and children.

Fourth, all countries from ASEAN participate in the UN supported annual workshops on human rights in the Asia-Pacific region. The most recent workshop was convened in Islamabad in 2003. Despite cultural and other differences between countries, they all agree to take part in the “building blocks” approach supported by the Office of the UN High Commissioner for Human Rights (OHCHR) based upon four key activities: promotion of national human rights action plans; support for setting up national human rights institutions such as national human rights commissions; fostering of national human rights education; and the realization of economic, social and cultural rights and the right to development. ASEAN countries took part in a number of activities in 2002 ranging from workshops on human rights education and the administration of justice, to training programme for national human rights institutions.

Fifth, national human rights commissions are now found in four ASEAN countries (Philippines, Indonesia, Malaysia and Thailand), and they provide a key check and balance against abuse of power. These commissions have had to tackle very difficult issues ranging from extra-judicial killings to violations of labour rights, child rights and women’s rights. Importantly today, with the global concern against terrorism, there arise a host of issues linked with national security which also have to be dealt with sensitively by national human rights commissions. All four commissions mentioned are members of the Asia-Pacific Forum of National Human Rights Institutions which provides a joint forum for these commissions to meet annually with the other national commissions from the Asia-Pacific region and address issues of common concern. This forum also has an Advisory Council of Jurists, with a representative from each commission, to provide guidance on the development of human

rights-related law and practice. This Council has provided advice on the death penalty, child pornography on the Internet, and trafficking in women and children. Currently, it is considering the question of the rule of law and the impact of terrorism.

Sixth, while Track I in ASEAN concerns governmental cooperation in ASEAN, track II cooperation has also emerged between various think-tanks in the region with greater interest for human rights. An informal Track III process is also progressing, with emphasis on broad people's participation such as through the now annual ASEAN People's Assembly and the initiatives of the Working Group for an ASEAN Human Rights Mechanism.

What ASEAN Mechanism?

In the context of the above developments, the heart of the question is "What ASEAN mechanism?" both in form and content. In 2000 the Working Group for an ASEAN Human Rights Mechanism took the rather bold initiative of proposing the setting up of the ASEAN Human Rights Commission and submitted a draft agreement to the ASEAN foreign ministers to this effect. The underlying rationale has been stated as follows by the Working Group:

The Asian region, including ASEAN, is the sole region in the world without a [regional human rights] system. ASEAN has yet to establish a regional human rights mechanism pursuant to the ministerial statement of 1993.

The issue is most pertinent at a time when there is already much monitoring of human rights developments in ASEAN from organizations outside the ASEAN region, including the United Nations. The lack of an ASEAN mechanism implies that while the region is exposed to monitoring from sources outside the region, there are few opportunities for the region to take stock of human rights developments in the region from the standpoint of ASEAN. The establishment of an ASEAN human rights mechanism with governmental support should help to redress this situation so that the ASEAN perspective is better understood by outsiders. This should complement international human rights standards in the region.

As proposed by the Working Group, the ASEAN Human Rights Commission would have these features.

First, its role would be to promote and protect human rights in the ASEAN region—covering only those countries which become parties to the Agreement setting up the ASEAN Human Rights Commission. Ratification by at least three ASEAN countries is needed to bring the Agreement and Commission into operation.

Second, while there is no listing of substantive rights to be protected under the Agreement, the Agreement reiterates the international law on the issue by referring to relevant instruments such as the 1948 Universal Declaration on Human Rights, the 1986 UN Declaration on the Right to Development, the 1993 Vienna Declaration and Programme of Action of the World Conference on Human Rights, and the treaties to which the member

countries have acceded.

Third, the Commission is to have seven members who are to act independently, elected by the foreign ministers of the countries which are members of the Agreement, drawn from a list of candidates proposed by governments in consultation with civil society.

Fourth, the Commission members are elected for a single, non-renewable term of five years, bearing in mind gender balance.

Fifth, the functions of the Commission include the preparation of reports on human rights, investigations on its own initiative of human rights violations, and actions in response to petitions and communications from states, individuals and groups concerning allegations of human rights violations.

Sixth, the Commission is not a court of law and can only make recommendations. Access to the Commission is subject to the international law rules concerning exhaustion of local remedies before using the Commission, unless there is denial of justice at the national level (e.g. malfunctioning judicial system).

Seventh, where the Commission finds that there has been a violation of human rights, it can make recommendations as appropriate, and it must also publish its findings and send a report on the matter to the ministers of foreign affairs of the countries which have ratified the Agreement.

Eighth, the Commission can request the foreign ministers above to take appropriate action to ensure compliance with its recommendations. There can then be cross-referral to the heads of government of the member countries for final action to ensure compliance.

What has been the ASEAN reaction to this proposal? There has been no official reaction to the proposal in terms of a Yes or No. However, in 2001 in the annual ministerial communiqué, the ASEAN foreign ministers stated that “we agreed that ASEAN ISIS should also be involved in the discussions especially in the broader context of a People’s ASEAN”.

At the beginning of 2002, ASEAN ISIS organized a Colloquium on Human Rights where the idea of the ASEAN Human Rights Commission was introduced and discussed. A position is awaited from ASEAN ISIS on the issue of the proposed ASEAN Human Rights Commission.

Perhaps the best way to analyse the (lack of) response from the ASEAN governments on the issue is to watch the body language. The prolonged silence on the issue implies that the governments are not yet ready to opt for the ASEAN Human Rights Commission, at least in the short term. Other options may thus need to be tabled.

Milestones

Propitiously, the milestones with those other options are increasingly visible partly due to another series of discussion workshops of an informal tri-partite kind—with the

presence of government representatives, the Working Group for an ASEAN Human Rights Mechanism, and national human rights commissions from the ASEAN Region. In 2001, the Indonesian Foreign Ministry co-hosted for the first time this type of workshop in Jakarta. The Jakarta workshop began to assess other options including a more specific ASEAN mechanism on the rights of women and children, as well as more national activities such as the promotion of national human rights institutions, particularly national human rights commissions.

The message became clearer at the second workshop of this kind held in Manila in 2002 whose conclusions provided key directions which can perhaps be summarised that, while an end goal should be an ASEAN Human Rights Commission, a step by step approach should be taken in the meantime, with multi-track, multi-sectoral strategies pursued through interim arrangements and alternative courses of action.

The needed directions include:

- the establishment of an ASEAN Commission for the Promotion and Protection of the Rights of Women and Children;
- the need for a Plan of Action—with a time frame—on the possibility of establishing an ASEAN Human Rights Mechanism, coupled with activities such as human rights education, information exchange and training, enhanced cooperation between governments and civil society, and the creation of regional centres of excellence on human rights, e.g. ASEAN Institute(s) for Human Rights;
- the creation of interim thematic functional groups on issues of common concern such as the issue of human trafficking, the problem of terrorism and internal conflicts;
- the establishment of a focal point on the issue within ASEAN;
- the establishment of a Joint Working Group on the issue composed of governments and civil society, complemented by an ASEAN Eminent Persons Group as a think-tank to consider the potential ASEAN mechanism;
- the pursuit of activities complementing the aspiration for a regional human rights mechanism, e.g. creation of national human rights institutions, drafting national human rights action plans, and promotion of human rights education and poverty reduction;
- the encouragement of an informal network of existing national human rights institutions to exchange ideas and resources on human rights education, information, experiences and best practices;
- the promotion of human rights activities at the grassroots;
- the fostering of human rights awareness campaigns;
- the creation of national working groups for an ASEAN Human Rights Mechanism in all ASEAN countries;

- the crafting of the norms/standards behind the establishment of an ASEAN Human Rights Mechanism.

En passant, further impetus was provided for the concretization of ideas for an ASEAN human rights mechanism when, in a parallel tri-partite manner, representatives from ASEAN governments, national human rights institutions, the Working Group for an ASEAN Human Rights Mechanism, and other civil society groups met up with counterparts from other regions of the world to learn and share experiences in Strasbourg in October 2002 at the Conference on Regional Systems for the Protection of Human Rights. Guidance for the ASEAN region was provided by adopting a plan of action at Strasbourg embodying the following:

- A) Engaging governments:
 - prepare a draft concept paper for submission to ASEAN senior officials, providing the background for an ASEAN Human Rights Mechanism, with consideration of a possible ASEAN instrument on human rights based upon ASEAN countries' constitutions and the international instruments to which ASEAN are agreeable;
 - continue to engage ASEAN senior officials;
 - engage the heads of governments/states in ASEAN on the issue.
- B) Broadening the support base/constituency:
 - engage ASEAN parliamentarians (AIPO), the ASEAN People's Assembly, national human rights institutions, and civil society groups;
 - establish an Eminent Persons Group on human rights;
 - set up a Southeast Asian Centre for Human Rights to promote training, education, data and information collection, and exchange and capacity-building.
- C) Identifying new issues and challenges:
 - address new issues such as the impact of anti-terrorism legislation on human rights, and the relationship between the rule of law and foreign investments;
 - pay attention to violations of economic, social and cultural rights, especially the right to life and the right to development, in the context of globalization.
- D) Maintaining position vis-à-vis ASEAN:
 - build confidence on a step by step basis towards the formation of an ASEAN Human Rights Mechanism;
 - work towards reference to the issue in the annual Joint Communiqué of the ASEAN Ministers;
 - continue to organize workshops co-sponsored by ASEAN Governments.

In the above setting, it can be submitted that the idea of an ASEAN mechanism concerning women and children as the first step towards an ASEAN Human Rights Commission, is well worth exploring, especially as all ASEAN countries are parties to the CRC and most are parties to the CEDAW.

An ASEAN Commission for the Promotion and Protection of the Rights of Women and Children?

In considering the formation of any regional mechanism, including a specific mechanism on children and women, certain basic truths emerge comparatively from the globe, and lessons can be learnt from other regions with regional mechanisms. Their experience indicates the following premises behind the formation of such mechanisms:

1. The regional mechanism needs to promote and protect human rights in the region, and should act independently (of governments).
2. The regional mechanism should be inter-governmental based upon the commitment of member governments/states.
3. The mandate of the mechanism should be consistent with international human rights standards, while providing “value added” from the region and helping to enrich/raise those standards.
4. The mechanism should respect national mechanisms such as national courts and should act only where the national/local remedies, including the national courts, have been exhausted, unless there has been denial of justice from the latter.
5. The mechanism should (at least) provide access to member governments and individuals to seek redress against the other member governments.

What are the implications for a mechanism—a Commission—on the rights of women and children?

Importantly, it should be noted that ASEAN already has various activities directly or indirectly on these two issues, and even some mechanisms bearing on these issues. There is thus, from the outset, the need to avoid duplication and provide value added.

From the angle of women’s issues, in 1988 ASEAN adopted the Declaration on the Advancement of Women in the ASEAN Region, calling for a variety of activities including:

- promotion of women’s participation in all fields;
- integration of the concerns of women in national plans;
- promotion of women’s non-governmental organizations;
- harmonisation of views and positions concerning women.

Several activities have taken place throughout the years on women’s issues. An ASEAN Sub-Committee on Women has been established in the ASEAN framework. It has been emphasizing activities such as action against trafficking in and crimes of violence against women; implementation of the CEDAW; promoting programming on skills training for women; and mainstreaming gender issues into development programmes in ASEAN. Various reports on women’s advancement have been published under the ASEAN Sub-Committee on Women. Women’s rights are addressed to some extent under this structure. There is also to be a convergent programme on women’s and children’s concerns in relation to human trafficking.

From the angle of children's issues (defined, as by the CRC, as those under 18 years of age), ASEAN has adopted two regional instruments on children: the 1993 ASEAN Plan of Action for Children and the 2001 Declaration on the Commitments for Children in ASEAN. The former highlights cooperation for the survival, development and protection of children in ASEAN and calls for action against violence and abuse of children. It has led to the setting up of a network of ASEAN desk officers to interlink on the issue. The network consists of government personnel. The Plan of Action has resulted in the implementation of the ASEAN Early Child Care and Development project consisting of training of carers of children and capacity building.

The 2001 Declaration lays down ideas for future activities targeted to: address issues of hunger and poverty; encourage respect for children's rights through mutual sharing of information; provide opportunities for children with special needs; enable children to express their views; develop family support and family life education programmes; give attention to early childhood education; strengthen functional literacy and health care; protect children from violence, abuse, neglect, trafficking, exploitation, armed conflict and natural disasters; and establish a child-sensitive juvenile justice system. Thus child rights are also addressed under this Declaration, and there is some programming on child rights as above. However, there is no ASEAN Sub-Committee on Children; children's issues have been dealt with by the meetings involving ASEAN social development ministers and related personnel. The ASEAN Sub-Committee on Youth also overlaps with child rights at times, since it has addressed the issue of juvenile justice, but this Sub-Committee usually covers an older group.

From the angle of stocktaking, therefore, women's rights and children's rights are already dealt with to some extent by ASEAN, and there is a need to avoid "reinventing the wheel" while providing value added if a new ASEAN mechanism is to be set. From this angle, it can be submitted that a new ASEAN mechanism is necessary on women's rights and children's rights because of the following reasons.

- While the current structure of ASEAN has an ASEAN Sub-Committee on Women, an ASEAN Sub-Committee on Youth, a network of ASEAN desk officers on children, and meetings between ASEAN ministers of social development and related personnel on women and children, the structure is primarily one based upon government personnel. It is not independent of the governments.
- While the current structure of ASEAN, its various Declarations and programmes touch upon women's rights and children's rights to some extent, they are not focused on human rights and it is uncertain to what extent they act in keeping with international human rights standards, particularly the CEDAW and CRC.
- While the current structure has some monitoring on the issue, the monitoring is more oriented to general development and welfare concerns than to human rights.

- There is no system currently to accept complaints of breaches of women's rights and children's rights (or other rights) at the inter-governmental level in ASEAN and to provide effective remedies.
- There is no system accessible to women and children to help investigate allegations of breaches of their rights in the ASEAN setting.

Such challenges thus provide impetus for the call for an ASEAN Commission for the Promotion and Protection of the Rights of Women and Children.

Roadmap for an ASEAN Human Rights Mechanism:

The approach for the future should be based upon a plan of action which may be called "Roadmap for an ASEAN Human Rights Mechanism" with step-by-step activities and multi-tracks, in a given timeframe, drawn from the recommendations of the Manila Workshop and the other meetings mentioned above where ASEAN government representatives have come together to discuss concrete paths in cooperation with civil society actors.

This Roadmap should be taken up at the Bangkok Workshop to be co-organized by the Thai authorities in 2003 as the next stepping stone after the Manila Workshop.

The Roadmap for an ASEAN Human Rights Mechanism should be as follows:

1. In 2003, preferably at the time of the annual meeting of ASEAN Foreign Ministers, set up a Joint Working Group between government representatives and civil society, including the Working Group for an ASEAN Human Rights Mechanism and ASEAN ISIS, to examine the possibility of an ASEAN Human Rights Mechanism.
2. In 2003, with the blessing of ASEAN Governments, establish an Eminent Persons Group to complement the Joint Working Group mentioned and to provide the "think-tank" inputs for the options available and to submit a report on the issue to the proposed Joint Working Group and the ASEAN Foreign Ministers in 2004.
3. As an entry for the work of the above, explore the possibility of an ASEAN Commission for the Promotion and Protection of the Rights of Women and Children, supported by an ASEAN Convention on Women's Rights and the Rights of the Child as the normative framework for action, bearing in mind the following possible elements for such a Commission:
 - promotion and protection of women's rights and the rights of the child, with members of the regional Commission acting in an independent capacity;
 - establishment of an inter-governmental system, while opening the door to civil society participation and gender balance;
 - consistency with international human rights standards, while providing value added from the wisdom of the ASEAN region;

- respect for the principle of exhaustion of local remedies prior to access to the regional Commission in the framework of international law;
 - guarantee of access to the regional Commission by member governments and individuals to seek remedies in relation to the other member governments, with power to monitor and investigate allegations of breaches of women's rights and child rights.
4. Implement the above as a pathfinder towards a more comprehensive ASEAN Human Rights Commission to be set up in the framework of the existing ASEAN Vision 2020, enhanced by the Hanoi Plan of Action 1998.
 5. Support other activities for the promotion and protection of human rights in the ASEAN region complementing the above elements, e.g. formation and networking between national working groups on such mechanism, and between national human rights commissions, more human rights education and capacity building, and the fostering of good practices in implementing human rights standards regionally, nationally and locally, with strong civil society participation and people-to-people cooperation.

ASEAN human rights: prospects for convergence*

Saneh Chamarik

Madam Director General Atchara Suyanan of the Ministry of Foreign Affairs,
Distinguished Delegates, Friends, Ladies and Gentlemen

The 3rd Workshop on the ASEAN Mechanism on Human Rights is coming to its closing session. May I first of all, on behalf of the Thai NHRC, express our appreciation for your valuable participation in the past two long days of discussions. I myself have learned a good deal. After all the presentations and instructive dialogues together with questions and clarifications, I wish to speak my part that hopefully is something positive to furthering our common cause here.

In retrospect

When the NHRC of Thailand joined in the 2nd Workshop on ASEAN Human Rights Regional Mechanism in Manila last year, as a newcomer, what immediately came to mind was the dialogue of peace and transformation in the Asia-Pacific region some twenty years ago, in which I also took part. A substantial part of the dialogue focused specifically on Southeast Asia with a view to overcoming all the politico-military discrepancies and contradictions, as well as promoting cohesiveness and solidarity, within the region. The impressive record of the Southeast Asian peoples' resourcefulness and resilience was well taken note of in their long history of struggles for freedom and progress. It remained a question of how all these potential endogenous qualities could be mobilised with a collective sense of positive and creative regionalism. This was not only to serve as countervailing force vis-à-vis the untoward intrusion of external powers, but also positively to collaborate in the common task of

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socio-economic reconstruction. And along with that, re-conceptualizing the norms and practices of human rights and freedom in the global framework of peace, security, and justice. Then, thanks to the foresight of the leaders of the time, the non-military ASEAN of 1967 made the great and positive departure from the SEATO era of bipolar confrontation, thus paving the path for reconciliation and mutual trust.¹ But, as we all know, it was only after the collapse of the Berlin Wall and the Soviet Empire in early 1990 that the way was open for effective rapprochement among the Southeast Asian neighbours, and thus spontaneous entrance into the open arms of ASEAN.

My point of recalling our recent past is certainly not to revive all those previous nightmares of falling prey to the international politics of great powers' rivalries and domination. Those should absolutely be things of the past, with ASEAN as an institutional framework for creative and forward looking in the current world of rapid and radical change. A certain looking back, I believe, would greatly help to put our common task here in proper perspective. At this point, it is obvious that, in terms of both time and space, the dialogues on an ASEAN human rights mechanism that have persistently and progressively been going on ever since the 1997 ASEAN Vision 2000, are quite achievements in themselves—especially against the background of diversity and discrepancies that we are living with. For all this bold and continuing endeavour, and on behalf of the NHRC of Thailand, I should like to express our heartfelt gratitude and deep appreciation. Thanks also to all the initiatives taken in earnest response to the 1993 Vienna Declaration and Programme of Action, as kindly described in Professor Vitit Muntarbhorn's concept paper on Roadmap for an ASEAN Human Rights Mechanism, prepared particularly for this 3rd Workshop. With his clear mind, I must say, the paper greatly helps clarify for a newcomer like myself the relevant issues involved in international dealing. It is indeed encouraging to learn that the whole idea drew approval right from the beginning, at least on principle from all the parties concerned—governmental, academic, and civil society. If I am not mistaken, it is also embraced in the current Thai foreign policy with emphasis on elevating ASEAN onto “a higher plane of regionalism”, along with “citizen-centred policy” and “mutual trust and understanding, mutual benefits, cooperation and partnership not just between the relevant governments but, equally important, between respective peoples of those countries”, to quote Foreign Minister Dr. Surakiart Sathirathai's own words.² I do not know if this is in exact consonance with what the former ASEAN Foreign Ministers resolved in 1993, following the Vienna Declaration and Programme of Action. Hopefully, all this could be construed in a positive and creative manner towards the ultimate purpose of human rights protection and promotion. It is our job to pursue the matter further.

Towards people-to-people mutual learning

In the same vein and in spite of initial achievements, it is also important to bear in mind that the task of establishing a human rights regional mechanism is no simple matter. Saying this is not to minimise or dismiss the significance of the constructive steps and processes already taken up. In fact, a similar line of thought seems to be implied in Professor Vitit's concept paper. I simply try to draw attention to it and further elaborate the point for the benefit of making our task concretely meaningful to the people we always refer to. In short, we need to help instil a keen sense of belonging into the society at large.

Human rights, after all, are basically concerned with people truly as stake-holders. Not only that, however. They are also closely related to the problem of social transformation. That is why the whole thing must be seen as a process. The truth is human rights are not something gained or bestowed as free gifts. Historically, as we learn from the exemplary West itself, they always started out as moral claims by people in particular socio-economic contexts. There followed struggles with of course either success or failure, depending on the circumstances involved. The same is true with the celebrated civil and political liberties that were achieved in the historical West and gained worldwide acclaim. In a most significant sense, of course, they represent a certain universal value. That is only part of the whole story, nonetheless. For there are bound to be many others forthcoming as human societies keep undergoing changes, as we all are witnessing today. It all means that, as far as human rights are concerned, what is popularly called universal is unfortunately something imposed and therefore tends to become static or even prohibitive.³ Universality of human rights is clearly a dynamic phenomenon and keeps on proliferating, especially with regard to economic, social, and cultural matters, according to the dynamics of social change. Indeed, it is the essence of human and societal values. Unfortunately, they all are being dismissed as beyond the boundaries of legitimate human rights as defined in the Western world where property rights are cherished above everything else. What Professor Vitit terms "value-added" makes a lot of sense here, not just for some specific focus points as suggested, but also in broader perspective for the whole task of human rights protection and promotion for the Southeast Asian peoples who have had enormous changes forced upon them. Now that these peoples have gone through the historical struggles for freedom and self-determination, a new dimension of human rights is naturally bound to arise. All of which brings us to the substantive part of our mission while in the process of the current dialogues and consultations on the institutional framework.

All this is of course well in line with what Professor Vitit suggests in the very last paragraph of his paper, i.e., "Support other activities ... e.g. formation and networking More human rights education and capacity building, and the fostering of good practices in implementing human rights standards regionally, nationally and locally, with strong civil society participation and people-to-people cooperation". The point is that all these things can

very well proceed right away, pending the realization of the planned regional mechanism. As a matter of fact, currently quite a few projects of action and participatory research have been going on, geared to that effect. Academics and NGOs are increasingly aware of the need to collaborate with one another for the common purpose of people's empowerment. All this is a promising trend. Only that it still very much remains isolated and lacking in the coordinated resources to cope with problems. So something badly needs to be done about it. That would help lay a sort of infrastructural groundwork for the forthcoming institution. In the process, human rights culture and capability would gradually be developed. The point is that no institution can ever exist in a vacuum, or worse still, just for its own sake. It certainly is not the case with human rights and dignity at stake that we have been talking about all along. For, as the Thai NHRC's own experiences can tell, effective human rights protection and promotion depends in the final analysis on the society's capacity to defend itself. And this, I am sure, is true in all other countries. Otherwise, human rights institutions, so-called, would end up turning into an exclusive politics of elitism that serves no useful and positive purpose in terms of human progress.

So I would urge this forum, if I may, that this vital part of the concept paper be put on the agenda of action. To get the ball rolling, the national human rights commissions, academic communities, and civil society groups are to be mobilized into networking. Mind you, this is not just for the purpose of facilitating contacts or exchange of ideas and experiences for their own sake, but for real, concrete and relevant action. One would rather not to go into lists of activities involved here. But, to serve as the basis for *human rights capacity building*, a certain common groundwork could very well be looked into here, taking into account the perceived common needs of the Southeast Asian peoples.

First and foremost, promote freedom of thought and expression. This may sound commonplace enough! And of course we can take it for granted for the middle classes and those in the modern sector. But, believe me, it is vitally important in the context of our Southeast Asia where traditional authoritarianism prevails, especially among poor and marginalised people in both urban and rural areas. More often than not, they have been deprived of appropriate means of livelihood and self-development, as a result of the so-called economic development in which Western-styled industrialization takes the topmost priority. All this is well known and comes to be recognised by the international economic and financial institutions like the World Bank and the IMF. There is so much talk about poverty eradication and sustainable development lately, whatever these terms mean. But that is about all. From the standpoint of establishments, the solution could at best be seen in the manner of welfare, or lately "social safety nets" in the World Bank's jargon with holier-than-thou posture. All of which is in defence of the status quo.

In truth, poverty and marginalization are one fundamental problem of deprivation,

that is, deprivation of the people's *rights* of access to resources. Prime Minister Thaksin Shinawatra of Thailand for once did indeed talk about something like "transforming rights into capital", to the delight of listeners like myself. But the phrase somehow is being shifted to "transforming *assets* into capital" in the fashion of modern business ideology in the age of globalization. To take on an optimistic note, nonetheless, the two could be coordinated, thus enlarging the scope for public policy manoeuvre and performance. It significantly means that what is called public policy should not be left to mere one-sided top-down affairs. Meanwhile, it is patently lacking active and positive contributions from the bottom-up. It is symptomatic of the underdeveloped state of the body politic, no matter how much you gain in terms of the growth of GDP. Such is precisely the current state of our peoples in this part of the world, in actual fact the world over, as people are perforce to come under the development and globalization syndrome. Saying all this need not be anti-development and globalization, as too often falsely claimed. Only that democracy and development must go hand in hand to make human progress. It is certainly not the question of either one or the other. And here human rights have a vital contribution to make. So why be so afraid and unnecessarily suspicious of human freedom and progress?

Admittedly, I am somewhat long-winded here. I need to be, I am afraid. It is just to make a point how closely inter-related are civil and political rights on the one hand, and economic, social, and cultural rights on the other. Indeed, it is characteristic of tropical resource-based societies of Southeast Asia, where a community way of life together with open access to resources is the norm. We have already learned the adverse lessons of the enclosure movements in the midst of the Industrial Revolution in eighteenth century England. Similar things are happening in our tropical resource-based Southeast Asia, resulting in marginalization and deprivation among local communities and peoples. Unfortunately, this is not sufficiently understood among academics and even human rights defenders. For we tend to follow the norms and standards that have already been set from afar as if they were ready-made formulae. That is not so in real life, I am afraid. As already mentioned, human rights start out as moral claims of particular groups of people in particular historical contexts. This is the crux of the whole matter. Freedom of thought and expression is not just for the sake of exercising rights according to set standards, but essentially to articulate newly created moral claims that might even contradict the existing ones. Such claims can open up new dimensions of human rights in the world of rapid and radical change. What recently emerged as community rights is the notable case in point. These have now come to be recognised in the current Thai Constitution, for example, as a result of the effective and sustainable practices of community forestry in a good number of cases around the country.⁴ Naturally, these met with stiff obstruction from within the government bureaucracy, from good old-time academics, and from vested business interests. Right now a draft organic law on community forestry is still

suspended in the Parliament. At the global level, a UN Draft Declaration on the Rights of Indigenous Peoples (DDRIP) has now been completed and comes up for review and endorsement.⁵ Of course, legal recognition, national or international declarations, conventions, etc., are just the beginning and still have a long way to go, as far as human rights protection and promotion is concerned. But they objectively reflect the people's aspirations and claims that need to be seriously taken into account in the society and international community.

All this community talk is in obvious contradiction with the traditional individualism of the historical West, where it is strictly individual claims that count as legitimate human rights. But then that tradition is, from its inception, in contradiction with the reality of social life and co-existence with freedom, justice and peace. After all, human rights and dignity are not something incidental, but inherent in human nature itself. That is to say, people just cannot be expected to tolerate oppression and exploitation forever, but may oppose and fight to get their legitimate rights and place in society. And community is an integral part of human livelihood and identity no matter in what form: family, group, association, locality, nation, and what not. It is even more so in the case of resource-based communities and networks which are characteristic of our Southeast Asia. That is why the power-that-be must learn how to accommodate moral claims and demands for change. It does not at all mean that individualism as the touchstone of human rights is without any validity. But it is just one side of the coin, and, more often than not, puts creative social life and relationships in jeopardy, as we are all witnessing today.

Looking ahead

What I have said all along is certainly not entirely my own creation. In fact, if you may recall, it principally follows the spirit of what my Thai colleagues and myself have learned as newcomers from both the 2nd workshop in Manila and the Strasbourg meeting last year. This 3rd Workshop, I am happy to say, seems to reassure me of what I grasp from the previous dialogues. I am deeply thankful for all the valuable contributions in this forum. In this concluding presentation, I simply try to recollect and elaborate from our Thai experience and lessons, the major part of which is not far apart from those of our Southeast Asian neighbours. Hopefully, again, it could help clarify our position in response to Tan Sri Dato Harun who has just raised the doubt as to "who we are and in what direction to go".

Let me begin with the point of unity in diversity, repeatedly cited in Professor Vitit's presentation. The phrase "human rights variations" was raised by our Working Group's Co-Chairperson, Mr. Marzuki Darusman, and Dr. Hafid Abbas voiced concern about the region's vast diversifying elements. I would beg to draw your attention to our common ground in both geographical and historical terms. One does not have to elaborate on this point of reality among knowledgeable friends here. All this clearly constitutes quite a natural basis

upon which unity, and for that matter cooperation and even regional institutions, however called, could be created. Too often, we keep referring to “political will”. That is just the jargon of the old-fashioned kind of elitist politics. Of course, it still counts a great deal. But then shall we allow the dialogues of human rights and dignity to go down into a state of stagnation just because of outdated conservatism? Or worse still, because of what is lately emerging in the form of the neo-conservatives’ conspiracy bent on a unilateral and preemptive politico-military solution to the 9/11 incident and perceived terrorism.⁶ On our part as human defenders and promoters, be that as it may, shall we think of human rights merely as something antagonistic to the powers-that-be? I strongly believe that, with positive thinking, we can not only do a lot of service to the people we naturally have in mind, but also significantly contribute to the governments themselves in the most crucial task of conflict management and social transformation in an orderly manner. True human rights look to social order and security. What is really needed is human vision and mutual understanding. And that would greatly save our own societies from unnecessary chaos and enormous losses. As I have pointed out, we all share a good deal of common ground, both physically in terms of our resource base of bio-diversity, and culturally with regard to local traditional knowledge and the community way of life that makes sustainable development possible and feasible. In short, we have a sort of comparative advantage, to use the economist’s jargon, as the basis upon which to work on the creativity of human rights and dignity. So you can see, this is well in line with the point Marzuki Darusman raises about making the process of institution building—the ASEAN Human Rights Mechanism—“more relevant to the grassroots peoples and communities, so that they can enjoy the full range of human rights and dignity”. This is certainly not an empty ideal. But then it rests upon all of us to work out the process in our dialogue and related action.

Of course, we all share the concern of the current dilemma the whole world is facing, that is to say, the global impact of the 9/11 event and the war on terrorism. On top of our immediate concern with the increasingly precarious state of human rights, this inevitably brings us to the issue of the working status and future of the United Nations, the cornerstone of international human rights standards ever since the World War II holocaust. There is little we can do about it. It may not be a direct concern on our part, of course. But if we can possibly ever think of doing something at all, I should like, if I may, to add a little short note here. One just cannot help it, in view of the worldwide importance of the UN in the field of human and social development. To my mind, the UN should somehow stop dealing with the issue of war and peace that is by nature far beyond its control, and impossible to manage in face of the newly-emerged doctrine of military unilateralism. The UN should instead concentrate on the task of creative development to promote people’s capacity building that we have been concerned with all along. To be able to fulfil this mission, the UN also needs to find ways and

means to undergo democratic reforms. Could we contribute something to this effect, at least in ideas if not in action, as citizens of UN member states? Indeed, at this most critical moment in history, the world is really in bad and urgent need of constructive ideas and public opinion vis-à-vis a new form of arbitrariness and totalitarianism. Under such a fluid and ambivalent state of affairs, there is hardly, if at all, a place for human rights and dignity.

One more word of reminder about Professor Vitit's concept paper. Whatever its strengths and weaknesses, at the very least it manages to lay a groundwork for positive thinking and action above and beyond the negative politics of human rights that, more often than not, stands in the way of creative thinking and forward-looking dialogues. I hope you agree with me that this is the key to making our progress possible in the long run. I for one do not believe it is beyond the capacity of an intellectual forum such as this one to cope with the task at hand.

Finally, after all the fruitful and tireless dialogues in this 3rd Workshop, and on behalf of the Thai NHRC, I wish to express our sincere thanks to our two co-hosts: the Ministry of Foreign Affairs and the Regional Working Group on an ASEAN Human Rights Mechanism. It is indeed a privilege for us, the NHRC of Thailand, to be part of the mission. I also wish to extend our gratitude to all invited speakers and resource persons, especially Professor Vitit Muntabhorn for his most valuable contributions, and the very hard-working Secretariat Team for making this Workshop possible amidst many uncertainties. Last but not least, I wish to thank all of you, distinguished participants, for your great spirit of co-operation.

Now I wish to declare the Workshop closed.

Notes

- ¹ Saneh Chamarik, "Towards positive regionalism in Southeast Asia", paper delivered at the conference on Peace and Transformation in the Asia-Pacific Region, Yokohama, Kanagawa, Japan, 26-9 March 1984.
- ² Foreign Minister Dr. Surakiart Sathirathai's speech at the Foreign Correspondent Club of Thailand (FCCT), 20 May 2003.
- ³ In the classic statement by Jeremy Bentham, founder of utilitarianism in nineteenth century England: "Right ... is the child of law; from real laws come real rights; from imaginary laws, from laws of nature, fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come imaginary rights, a bastard brood of monsters." Cited in "The politics of human rights", *The Economist*, 18-24 August 2001, p. 9.
- ⁴ Constitution of Thailand B.E. 2540 (1997), Article 46: "Persons so assembling as to be a traditional community shall have the right to conserve or restore their customs, local knowledge, arts or good culture of their community and of the nation and participate in the management, maintenance, preservation and utilization of natural resources and the environment in a balanced and sustainable fashion, as provided by law."
- ⁵ Darrell A. Posey, *Traditional Resource Rights: International Instruments for Protection and Compensation*

for Indigenous Peoples and Local Communities, IUCN-The World Conservation Union, 1996, p. 28.

- ⁸ Joshua Muravchik, 'The neoconservatives unmasked', *International Herald Tribune*, 7 May 2003, p. 8; R. C. Longworth, "Pushing democracy down the world's throat", *Bangkok Post*, 28 April 2003, p. 7; Bill Clinton, "Agree with us or go to hell, that's not the way...", *Agence France-Presse*, as reproduced in *The Nation*, 17 April 2003, p.14A; Paul Krugman, "Presidential credibility: the rest of the world does not trust Bush", *International Herald Tribune*, 26 February 2003, p. 8.

Creating poverty by theft of the economic rights of the majority^{*}

Witayakorn Chiengkul

Most of Thai poverty is a recent creation

Prior to the growth of underdeveloped industrial capitalism over the last century or so, Thailand was a society of self-sufficient and rather abundant agriculture. Although there were differences of class and status, most people were not so poor they had nothing to eat. There are many records both domestic and foreign, such as Bishop Pallegoix, who lived in Siam from the 1830s to 1850s, who described Siam of that time in this way:

I do not know whether anywhere in the world there is an area equally fertile as Siam. Every year the silt of the Me Nam fertilizes the plain which almost without work furnishes a great quantity of excellent rice. It is not only sufficient to nourish the inhabitants but also to export to China and elsewhere.¹

Development on the lines of western industrial capitalism spread into self-sufficient agrarian countries like Thailand and many other countries of the South in the last century or more, creating a new form of poverty by many methods.

1. Farmers were encouraged to change from mixed, subsistence agriculture to market-oriented monoculture, making them neglect their own food sufficiency and the use of simple technology, and instead become increasingly dependent on cash and on monopolistic markets. Under capitalism, farmers fell into a disadvantaged position. They were forced to sell cheap and buy dear, exploit their own labour, and migrate away from their families in order have enough to eat and survive.

2. The rise of profit-oriented agricultural enterprise destroyed the community way-of-life based on common property ownership and cooperative usage of forest and other resources, and changed customs of usage rights into competition to bring resources under

^{*} Originally appeared in Thai in *Thailand Human Rights Journal* 1 (3), 2003. Translated by Chris Baker.

private ownership in order to maximise profit and consumption. Old systems of mutual cooperation described by academics as “social security or safety networks” disappeared, replaced by a way-of-life marked by risk, hardship, and individualism.

3. Industrial capitalist development, which focused on increasing production and profits, resulted in the destruction of forests, mangrove, marine resources, rivers, canals, lakes and other natural resources—the environment on which rural people once made their living. The forests which once served the rural people as a “supermarket” of free goods have been depleted over the past forty years of development planning to the extent of 90 million rai or 28 per cent of the country’s total area (see Table 1). Self-sufficient farmers have been sucked into capitalist industrial production as workers and consumers. The new production system depends on capital and the monopolistic market system over which most of the people have no control.

The modern ways of life and production under capitalist industrialization gives more income to those who produce for sale or for wages, but also forces them to buy more from the market (as inputs and consumption goods) than the old subsistence pattern. The middle and lower ranks of society find their expenses grow faster than their incomes. Farmers become renters and debtors. They have to work harder, yet face higher risks and bigger threats from pollution, and so their quality of life declines. They become poorer than when they were more self-reliant.

Modern poverty under which a large number of people lack the cash needed for an adequate livelihood is explained by mainstream economists in several ways:

1. Population increases while the resource base is limited.
2. Economic and social structure based on authoritarianism and patronage.
3. Low education leading to low productivity.

These explanations are partly true (in some countries, among some groups, at some levels) but do not tell the whole truth about the poor in today’s world, especially in Thailand.

Before the era of modern industrial capitalism, Thailand’s agriculture was highly productive, resulting in most of the rural population having access to the basic factors of production to provide themselves with food, shelter, clothing, and traditional medical care. They were comparatively better off than their modern equivalents who have to work for cash in order to buy the basic factors of production for their livelihood.

Modern poverty results from inability to earn enough cash to meet expenses. For the most part this situation has been created by monopolistic industrial capitalism which has destroyed natural resources, culture and former way of life—in other words, social and cultural capital. The development of industrial capitalism in peripheral countries is based on unfair competition which concentrates wealth in the hands of a few, but leaves the majority in a state

Table 1: Decline of forest area, by region (million rai)*

Region	Total area	Forest, 1961	As per cent	Forest 1998	Area destroyed	As per cent
North	106.02	72.67	68.5	45.66	27.01	43.1
Northeast	105.53	44.31	42.0	13.11	31.20	12.4
Centre	64.93	25.54	54.7	14.72	10.82	22.7
South	44.19	18.51	41.9	7.57	10.94	17.1
Total	320.69	171.01	53.3	81.07	89.94	25.3

Sources: Landsat; Department of Military Mapping; *Agricultural Statistics of Thailand, 2000/2001*.

* 2.5 rai is equal to 1 acre.

of poverty.

In money terms, people have more income than 30 to 40 years ago, but expenses have risen faster as a result of the average 5-6 per cent inflation over the period 1976-1999, and increasing cash needs to buy basic factors of production. This is modern poverty, related to the modern economic and social structure, which is totally different from poverty in the old agrarian economy.

Modern industrial capitalism has a positive side of creating the basic infrastructure of communications, health care, education, science and technology, and governmental support for production. As a result some groups in some countries experience a rising standard of living. But in countries like Thailand where the markets are monopolistic and competition unfair, the benefits accrue to the 20 per cent, mostly urban, who have access to key factors of production including education. The farmers, workers and petty producers who make up the remaining 80 per cent face poverty and debt. Their social and cultural capital, such as the ability of strong communities to look after their members, is destroyed. As a result, the inequality within society has increased (see Table 2).

The support for capitalist industrialization from the era of the first national development plan (1961-1966) created major changes in the production structure and employment—from self-reliance to market based, from agricultural employment to industry, trade and services. At the start of the planning era, 80 per cent of labour was still in agriculture. Forty years later under the Eighth Plan (1997-2002) this had fallen to 42.6 per cent, while 14.9 per cent is now in industrial wage labour, and another 12.3 per cent in commerce and services.

Most industrial workers are employed in small enterprises where the owners evade labour laws, and fail to provide legal levels of social protection. Some 4-5 million work in

Table 2: Income distribution by quintile.

Segment	1975/6	1986	1996	1999
Lowest 20%	6.1	4.6	4.2	3.8
2nd lowest 20%	9.7	7.9	7.5	7.1
Middle 20%	14.0	12.1	11.8	11.3
2nd highest 20%	21.0	19.9	19.9	19.3
Highest 20%	49.3	55.6	56.7	58.5
Gini ratio	0.426	0.500	0.515	0.533

Notes: Gini ratio measures degree of inequality, with higher figure denoting higher inequality.

Sources: Methi Krongkaew, 'Khwaam plian plaeng nai sapawa khwaam yak jon lae kan krajai rai dai nai prathet thai pi 2505/6 thung phi 2535 (Changes in poverty and income distribution in Thailand from 1962/3 to 1992'

independent petty enterprises such as petty traders, petty services (house work, cleaning etc.), drivers, recycling, food making, petty manufacture, artists, actors, singers, musicians, dancers, and so on, with rather low levels of income. Most face excess of expenses over income, and hence fall into debt for family expenses and upkeep.

Rural poverty

A survey of family income and expenditure in 2000 found that those in the rural areas who fell below the poverty line, defined as income of 840 baht per person per month (10,800 per person per year), amounted to 8.16 million, with over 62 per cent of this total in the northeast. Most of the rural poor make their primary living from farming. They can be divided into three groups:

1. Small land-holding farmers, both owners and renters, mostly with less than 5 rai of land. These constitute around half of all below the poverty line. They are poor because they get low prices for the crops they sell as a result of the monopolistic trade structure and downward world trend in agrarian prices. Most have debts, from both the formal and informal loan markets, used both for consumption and for investment in production.

2. Agricultural wage labour. They have no access to land, and no other production skills, and hence have to live from agricultural wage labour which is often temporary and unreliable. They constitute around 15 per cent of all those in poverty.

3. Non-agricultural wage labour and petty producers. They often have to seek different kinds of employment including home-based manufacture, petty trading, handicraft, or migration to urban work. They are highly vulnerable to changes in the overall economy, and were especially hit by the fall of urban employment in the post-1997 economic crisis.

Common features of all the rural poor are that they tend to have low education (only 4 years primary, on average), large families (over four members), and high numbers of dependents (children and aged).

One indicator of increasing poverty is the level of rural debt. The National Household Socioeconomic Survey by the National Statistical Office in 2000 found that the average debt per family had increased from 31,387 baht in 1994 to 65,590 baht in 2000, more than doubling in just six years. The rural families with the highest level of debts are those who rent land and thus have a higher level of expenses. The lowest level of debt is found among the landless labourers since they have less power to borrow (see Table 3).

Table 3: Average debt per rural household, 1994 and 2000

	Unit: baht*	
	1994	2000
Renters	22,863	153,221
Land owners	16,774	40,332
Agricultural labour	6,515	16,358
Total	31,387	65,690

Note: US\$ 1 was equal to 25 baht in 1994 and about 41-43 baht in 2000.

Urban poverty

Figures from the National Economic and Social Development Board (NESDB) show only 8.3 per cent of the urban population (0.74 million people) is below the poverty line. This figure is relatively low because it is a simple measure of those with income lower than a poverty line and takes no account of the quality of life. In fact, though urban incomes may be higher, the urban poor are not better off than their rural counterparts. Those living in slum and low income communities in Bangkok alone amount to around 5 million people. Most of the urban poor are farmers who have no land, or suffered crop failure, and can no longer make a living in the countryside. They have migrated to new urban work in industry, construction, vending, driving taxis or hired motorcycles, recycling. In such easy-entry occupations requiring low skill and little education, supply tends to exceed demand leading to low returns and impermanent employment.

Unskilled labour and petty independent producers live either in slum communities or cheap rented housing. Often these domiciles are highly insecure. Often they lack basic services including water supply, electricity which the residents must purchase at costs of up to two or three times the normal rate. Both home and workplace are likely to be polluted and have other health risks. The need to buy food and other necessities from urban markets makes the level of

expenses much higher than for rural counterparts.

In parallel with the promotion of monopolistic industrial capitalism, the number of slum communities has grown. In 1974, there were 881 locations in Bangkok housing 0.87 million households. In 1995, this had expanded to 1,246 locations with 1.5 million households. Similar growth was found in other large urban areas.

In 2000, the National Housing Authority made a survey of urban poverty using a wider definition of the urban area, and found 5,332 communities with 1.4 million households including around 5 million people.

The main problem for the urban poor is insecurity over housing, often resulting in forced resettlement. They also face lack of social services including health and education, poor environment, insecure incomes, difficulties in establishing proper legal status, high costs of informal credit, exposure to the drug trade, and insecurity of both life and property. Many problems intensified after the economic crisis of 1997 because of the fall in employment and incomes, forcing many children to drop out of education.

Table 4: Urban low-income households, 2000

Unit: baht^a

Region	Number of low-income communities	Number of low-income households
Bangkok (BMA)	1,495	288,991
Outer Bangkok	383	154,761
Centre	738	170,005
North	1,035	296,555
Northeast	1,322	379,860
South	359	106,515
Total	5,332	1,396,687

National Housing Authority, *Krongkan samruat chumchon phu mi rai dai noi nai muang pi 2543* (Survey of urban low income population, 2000).

Dog-eat-dog development increases poverty

The major reason why poverty tends to increase is the concentration of income and wealth. The top 20 per cent of the population has increased its share of national income from 49.3 per cent in 1975 to 58.5 per cent in 1999 (see Table 2). Meanwhile the bottom 40 per cent had only a 15.8 per cent share of national income in 1975, yet this had eroded further to just 10.9 per cent by 1999. Because the income distribution is so skewed, only the top 20 per cent has an income above the national average income per head of 3,508 baht per head. The remaining 80 per cent are below that average, and in some senses can all be counted among the poor.

The skew is also geographic. Bangkok and its adjacent provinces have just 13.1 per cent of the population, but generate 50.6 per cent of total production, and account for 75.1 per cent of all bank deposits, 66.4 per cent of all automobiles, and 53 per cent of all doctors. By contrast, the northeast has 34.7 per cent of the people but only 4.8 per cent of bank deposits and 12.7 per cent of doctors. The distribution of income, property and the provision of various services are all very highly skewed.

The approach to poverty alleviation by the government and mainstream economists relies on extending the capitalist, market-oriented economy to incorporate more and more of the population—for example by extending loans to farmers, founding a People's Bank to give small loans to the poor, creating village funds which can be used for local loans, increasing production for the market, developing economic infrastructure, developing the market system, developing education which emphasises commercial competition, and so on.

Under underdeveloped and monopolistic industrial capitalism, benefits accrue only to a minority of capitalists, bankers, large-scale entrepreneurs, and the hangers-on of politicians and local administrators. But it does not increase employment or make efficient use of domestic resources, because it concentrates more on foreign investment, exports, industrial development, and replacement of labour by machinery rather than on the development of the people inside the country.

The strategy which focuses on increasing incomes from market-oriented production focuses only on part of the problem, not the whole picture. The monopolistic economic and political structures which favour privileged groups, and the corruption and inefficiency of the bureaucracy, forces others to submit to the market-oriented production system and become dependent on capital and debt. But world capitalism is highly monopolistic and exploitative. The majority of the Thai population with low education, skill, and resources are not equipped to compete with transnational companies in the free market. So forcing them to compete under the thinking "let the fittest survive" or "dog eat dog" ensures that the "fittest", or the biggest dogs, benefit the most. Resources are ripped out of the country, and what remains falls mostly to the local rich.

This strategy for economic growth and poverty alleviation does not work for the majority of the poor because it does not alter the structures which are biased against them. Throwing money at the problems affects only the symptoms, not the causes. Meanwhile a much larger share of the budget is still used to support the rich, particularly by bailing out the mistakes made during the economic crisis. There is no plan for structural reforms to create a fairer and more democratic use of capital and other factors of production.

Sustainable poverty alleviation

New-style poverty is a structural problem of the whole society. Hence any effective

and sustainable solution has to change the structure—away from monopolistic capitalism towards cooperatives, public companies, and fair competition; away from high-cost market-oriented production towards more appropriate, self-reliant and sufficient economies.

A “sufficient economy” does not mean old-style subsistence, but reducing the degree of dependence on and domination by the world market; reducing luxury imports; emphasising exports with high local content of raw materials, labour and technology and hence high domestic value-added; reducing foreign investment in production with high import content; conserving and rehabilitating natural resources of forest, mangrove, rivers, and sea; new approach to managing public assets; building communities which are strong in both economy and mentality; developing community groups to work cooperatively and be able to help their own members.

The effective strategy for overcoming poverty is to reform the management of labour and resources to be fair and efficient; reform the taxation system to levy more from those who are rich and get more out of the country, such as through inheritance tax, wealth tax, and luxury goods tax, so that government has a budget to devote to the poor majority; reform the finance ministry to raise more by increasing the number of concessions for telecommunications, radio, TV and various state enterprises; reform the ownership and management of factors of production (land, capital, technology, education, access to market information, etc.) to be more widely distributed and equitable.

The development strategy should change from dependent and monopolist capitalism to a mixed system including capitalism with fair competition and democratic socialism, meaning the development of cooperatives and companies which the people truly own and control, along with strengthening small-scale entrepreneurs, concentrating on production for basic needs, and widening access to education, travel, and leisure. This is a development designed to improve the quality of life and contentment along the middle path, with less consumption and a simple lifestyle, rather than a target of ever-increasing production and consumption.

This new-style economic and social development planning (sufficient economy and democratic socialism) is not over-dependent on the world market and on foreign loans. Rather it mobilizes the domestic stock of capital, resources and people for the maximum benefit of the country; expands social security and social welfare including education, health, care of children and the aged, and the disadvantaged; conserves and rehabilitates the environment; and promotes art and culture. This strategy mainly uses domestic capital, resources and people.

At the same time there is need for social reforms in the areas of education, culture and the media, especially to encourage freedom of thinking and greater confidence in self-expression, belief in freedom and equality, and the end of dependence on patronage. Advertising which encourages consumerism should be reduced, while cultivating awareness of

man as a social animal, encouraging social cooperation rather than egoism, building awareness that the world's resources are limited and under threat, and hence consumption needs to be limited to needs rather than luxuries.

Solving poverty requires a totally new mental framework. Instead of showering people with loans which only increase indebtedness, competitiveness, and individualism, the strategy must be to create a better distribution of factors of production and encourage communal forms of production (groups, cooperatives, community enterprises) so that the majority of the people benefit in a sufficient way. Instead of fostering dog-eat-dog competitiveness which results in destruction of natural resources and exploitation of the weak by a strong minority, foster a communal and cooperative approach and sharing. Reforms in the management of the economy must aim for groups and communities to provide for the basic human needs sufficient for a healthy and contented life for the majority.

Notes

- ¹ J-B. Pallegoix, *Description of the Thai Kingdom of Siam*, tr. W. E. J. Tips (Bangkok: White Lotus, 2000 [1854]), p. 7.

Community rights as national strategy^{*}

Cholthira Satyawadhna

A research project on local community rights was carried out in various localities throughout Thailand. Through field research, the project collected data on community rights from both written and oral “documents” in the localities, including customs, rituals and everyday practice.

The project found that community rights are not something new in Thai society or in Asian societies in general. Over long periods, communities have accumulated experience in social organization. This experience is embedded in local traditions, customs and customary laws. These traditions and customs enshrine the rights of the community and of its various members. These rights, especially those relating to use of natural resources, are part of the communities’ everyday consciousness down to this day. These rights have enabled communities to maintain their livelihood, and survive in a self-reliant fashion, even in the context of crises on a national and global scale. Community rights are thus the foundations of the community, and the guiding principles of everyday practice. The conception and practice of community rights is similar across local communities within Thailand and elsewhere in Asia.

The current trend of globalization is creating a new world order, whose impact reaches right down to the level of the local community. Multinational companies are expanding their reach across national borders, and out from the cities into local areas. International institutions including the World Bank, IMF and WTO are dictating changes in national policy in the direction of liberalization, deregulation and privatization. Under this new regime, both capital and the state are able to exert greater control over natural resources such as land, water and forests. Such resources were the foundations of local communities’ livelihood. In many places, violent disputes have arisen between local communities on the one hand, and state and capital

^{*} Translated and edited by Chris Baker from articles in Thai in *Thailand Human Rights Journal* 1 (1), 2003.

on the other, over the rights to control and exploit these natural resources.

The invasions by state and capital provoked a new appreciation and new consciousness of the importance of rights for the defence of communities, self-reliance, biodiversity, and sustainable livelihoods. Local communities began to articulate their efforts at defence in the language of rights. Social movements have helped to create a “human rights culture” in the thinking of local communities. Activists and academics succeeded in writing a charter of human and other rights into chapter 3 of the Constitution of Thailand, 1997 on the rights and liberties of the Thai people.

Clauses 26, 27, 28, 29 define “human dignity, rights and liberties”. Clause 30 lays down that “men and women shall enjoy equal rights”, and forbids any discrimination “on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view”. Clause 31 guarantees everyone the “right and liberty in his or her life and person”. The rights which arise from local traditions are specifically underwritten by clauses 46, 56 and others related. Clause 46 guarantees that a “traditional community shall have the right to conserve or restore their customs, local knowledge, arts or good culture of their community and of the nation”. It also grants a “traditional community” the right to “participate in the management, maintenance, preservation and exploitation of natural resources and the environment in a balanced fashion”.

Hence community rights should not be violated as they are inscribed in the highest law of the land. But in practice, community rights are constantly violated. Moreover, the agency most often responsible for these violations is the government itself, through its habit of taking top-down decisions about the management of natural resources, and denying local communities the opportunity to participate in decision-making.

Ideally, government agencies need to adopt a new development paradigm, and “deconstruct” their old thinking about the role of different parties in “development”. Government agencies should realize that local community rights, and the local wisdom on which they are based, represent a form of social or cultural capital which enables the nation to resist the destructive power of globalization and survive the shocks which globalization causes, such as the recent 1997 economic crisis and its wide-ranging social and moral impact. Government agencies should open dialogue with local communities to jointly evolve a new paradigm which builds on this cultural capital, conforms to the constitution, follows the “human rights culture” of several conventions which the government has signed, and pursues the “rights-based” development which the UN propagates. This will not be easy. The transition will require great effort, and entail considerable pain.

At present there is no mechanism to realize the community rights inscribed in the constitution. There is also no consensus on the principles which might underlie such a

mechanism.

The principle that should be considered is the *right to self-determination*.

This principle does not imply the fragmentation of the national territory. Nor does it represent a retreat into the past. Rather, it proposes self-determination as a principle which can be used sensitively and creatively to find a better balance between community interests and national interests, and halts the current trend towards conflict and violence. It is a principle which can liberate local communities from the intrusion and domination by outside powers, and from the regular violation of local communities' rights and dignity. It is a strategy for developing the potential of individuals, communities, and the officials with whom they have to deal. It is a forward-looking concept to replace the top-down exercise of state power. It represents an adjustment of power relations, and a redistribution of the benefits of development for greater equity.

The idea of self-determination is a natural extension of the *culture of human rights* which has developed over the past decades in the struggles of local communities, and in the articulation of various social movements. The idea of self-determination can be a uniting principle—a flag—for many different local movements.

The principle of self-determination is simply that local communities have the right to manage themselves, their communities, their natural resources and environment, as already laid down by the constitution. The mechanisms to make this possible require further study, but some outline proposals can be offered.

As a first step, a neutral commission should be formed on the community right to self-determination. Ideally, this process should be initiated by the National Human Rights Commission as an independent constitutional body with responsibility for human rights. This commission should be composed of representatives from communities all over the country, including marginalized groups, and communities which are experiencing conflict over the management of local resources. Foreign representatives should be included as resource persons and as observers.

This commission should determine how to establish an agency at the national level with responsibility for over-seeing community self-determination, and the implementation of the relevant constitutional provisions. This office should then in turn appoint local committees with the primary responsibility to mediate between the state and local communities over issues of conflict. These local committees would have the duty to study and analyse problems, and present solutions to both government and local communities. Such a mechanism will help overcome the social tensions currently generated by big projects which violate community rights and fail to allow public participation in decision making.

1999 was the fiftieth anniversary of the international convention on human rights. This convention enshrined a vision of liberty, equality, justice, peace and dignity for all

members of the world community. The convention asserted that human rights and human dignity are the birthright of all, without exception, and cannot be violated.

In practice, improving human rights is a strategy for improving every aspect of humanity in every society. Improving the human rights and human dignity of any members of any society is a contribution to the betterment of that society. The history of humanity in general has been a history of liberation movements for liberty, equality and peace. But history in the current era shows that many people are forfeiting their rights and their dignity, particularly as a result of the processes of globalization. The first principle of human rights is the right to life and to livelihood. Enabling greater community self-determination is a strategy for improving those communities' ability to protect and expand their human rights, and in particular to secure their livelihood, and avoid violence in its many forms including the violence of poverty, the violence of environmental destruction, and the violence of political domination.

Why the decision-making process on big projects has to change

Pasuk Phongpaichit

Origins of the problem

In the past, government assumed the sole right to make decisions on large projects such as dams, power plants, waste disposal facilities, airports, major highways. It assumed that government had the right and duty to identify the “national interest” in such cases, and that it had no duty to consult with, explain to, or ask permission from other parties involved.

In making such decisions, government employed a relatively narrow assessment of the projects’ economic value as expressed in cost-benefit analysis. Very often, such assessments paid little or no attention to the loss of benefits suffered by people whose residence, way of life, quality of life, or health were in various ways prejudiced by the project.

Moreover these losses were often long-term losses of *livelihood* and *future opportunities*. Fishermen in the case of the Pak Mun dam lost their means of livelihood as freshwater fishermen. Other lost their land which had to be submerged in the flooded area. Villagers living near Mae Moh power plant, among other things, lost their good health and their asset base, as the price of their land fell to zero. A large number of villagers around the Bo Nok planned power plant feared they would lose out in as far as coastal fishing and tourism are concerned. And so on. Yet none of these people receive “sufficient compensation” due to them. Further it is debatable whether any compensation is truly “adequate”, as the value people attached to their loss differs from one person to the next. How can one monetise and compensate for “a way of life”?

Government could get away with this sort of treatment for two reasons. First, because people had little chance of effective resistance. The politics of the Cold War period did not give opportunity for people to voice their opinions and protests. The media lacked freedom to expose the issue, and assist the public in voicing their grievances and values. Second, because at that time, we were operating in a land rich situation. The availability of free land meant that

the best recourse for those affected was migration.

Very often too, the project assessments paid little or no attention to the long-term environmental damage. Again this appeared more tolerable as long as natural resources were not perceived to be under any serious threat. But the damage was real nonetheless.

Moreover the environmental impact might extend far beyond the immediate area of the project and the people immediately involved. For example, I as a member of the public feel the loss of over fifty rapids in the Mun river after the Pak Mun dam was built, even though I am not living near the area. I am sure many other people feel the same. The loss of one of Thailand's largest freshwater fisheries, a virtually free gift of protein from nature, is a permanent loss to society which will be very difficult (or very costly) to repair.

Like all non-transparent decision-making processes, this one fostered abuse. Private companies which supplied the inputs in terms of capital equipment, consultancy and raw materials lobbied for go-ahead decisions by the different departments in various ministries, sometimes offering bribes and commission fees to the officials and politicians concerned. Estimates were padded. Contractors paid backhanders to secure the assignment. Substandard materials were used. Fortunes were made on land speculation. Moreover, such abuses gradually became public, as rivals for the corruption traded counter-allegations.

These practices gave rise to the feeling that the use and management of natural resources are unfair, and devoid of the principles of social justice. Many little people are told to make their personal and community "sacrifice" for the benefits of the "nation". Yet those who directly benefit from the project (shareholders, investors, beneficiaries) are not required to pay the full value for the use of the valuable natural resources, which the "nation" may have to lose forever. Often also the attempts of the losers to express their grievances or their "values", which are deemed to be their natural rights, are not only ignored, but suppressed by various means, judicial and extra-judicial, and sometimes violently.

It is this feeling of unfairness and social injustice which is at the core of the conflicts, and which can divide and alienate people from one another.

Emergence of the problem

Over the last twenty years there has been a complete change in the opportunities for public expression. This has come about as a result of the collapse of the Cold War, the end of military dictatorship, the strengthening of parliament and other representative institutions, and the development of press freedom.

At the same time, there has been a general perception that Thailand has changed from a country in which natural resources were abundant to one in which resources are finite, threatened, and fragile. This perception has been formed both by direct local experience, and by increased sharing of information through a global movement of environmental concern.

Moreover, the perception of resources under threat has increased as urbanization has accelerated since the early 1980s, and as urban demands for natural resources (land, water) and urban output of pollution (air, noise, water) have vastly accelerated.

As one part of this strain on resources, people no longer have the opportunity of migrating away to avoid the impact of a big project on their livelihood, way of life, or quality of life.

As a result of the twin trends of resource pressure and political liberalization, more and more people have been moved to protest against big projects in order to defend their own livelihood, way of life, or quality of life. Indeed, for many people still at the periphery of organized formal politics, such impositions on their life have been a major politicising factor.

Failure to confront the problem

This process has been going on for a long time. The landmark protests against the Nam Choan dam project took place over fifteen years ago.¹ Government has adjusted to these changes. But there is a growing conviction that government has not changed with a full heart and full commitment.

Government has accepted the idea of environmental impact studies of projects, and has passed a major legislation designed to protect the environment. But there is a growing feeling that these moves have not prevented completion of big projects which inflict large environmental damage. The controversy over the Pak Mun dam makes this abundantly clear.² There is also growing evidence that this comes about because environmental impact assessments can be easily abused. Some consultant companies tend to give the project-owner a favourable report because they know this will increase their chance of gaining more commissions in the future. Some simply have too narrow a focus, such as the Pak Mun report which ignored over fifty stretches of rapids which would be flooded with disastrous results for fish breeding. Some are simply careless, such as the Bo Nok report which failed to identify a large coral reef. Some are accepted despite their inadequacy for reasons of international politics, such as the report on the impact of blasting the Mekhong River to create a shipping channel.

Besides, the definitions of environmental impact are rapidly changing and becoming more sophisticated. The conventions in current use concentrate very closely on the direct impact of the project. But large projects often have wider impacts whose effect will be felt in the future. Often they destroy environmental resources irrevocably. Often they deny the use of resources to people in the future. Perhaps they contribute in a small but additive way to the loss of biological diversity, the increase in global warming, or some other long-term environmental deterioration on a global scale. Such impacts are not assessed and computed in the cost-benefit analysis.

The government has adjusted to accept the principle of compensation to those whose livelihood is affected. But again the assessments have often been narrow, and the process has been grudgingly carried out. The assessment for compensation has often been a summary accounting of resources destroyed, with no accounting for the long-term loss of livelihood. Officials have resorted to subterfuge to deny compensation to some people in order to reduce the project costs. Promises of resettlement have often led to disappointment. Land was unavailable, already occupied, hopelessly inadequate for agriculture, or otherwise inappropriate. Grants to help people restore their way of life have been meagre.

The government has also adjusted somewhat to the principle that people must be informed and consulted about projects which will affect their lives and futures. But again the processes have often been carried out without full and sympathetic commitment. Project-owners try to manipulate local politics to ensure support for their objective. They mobilize money, influence and sometimes violence. The authorities have gradually come to accept that these procedures need to be formalized. But they remain reluctant to accept any strict process of public hearings. Ultimately they retain a paternalistic attitude and are reluctant completely to abandon the principle of bureaucratic right.

This reluctance to confront whole-heartedly the issues of environmental impact assessment, proper compensation, and proper procedures has led to a gradual decline of trust in the government authorities to handle decision-making on big projects. Projects are still built where the cost-benefit calculation is marginal, the environmental impact is not properly valued, compensation arrangements are mean, and consultation procedures are evaded. These facts inevitably create an impression that the projects are motivated not by a fair and proper assessment of the full costs and benefits, but by vested interests which have built up in the decision-making processes in the past. Government departments want to protect their reason for existence. Consultants want to ensure they are hired on future projects. Land speculators and contractors want to protect their sources of income.

As a result of the authorities' grudging and incomplete adjustment over a long period, there is now a wholesale challenge to the right and competence of government authorities to handle such projects. No large project can now escape challenge. Local affected groups have access to the knowledge and experience of those who have suffered from previous projects, and to the technical skills of people who have analysed the errors and omissions in previous projects.

At present authorities are tending to confront this new opposition by political means. In particular, they try to raise political support for their projects often through public relations, exaggerated promises to client groups, and techniques of divide and rule. But ultimately these are short-term strategies which only contribute to the longer-run decline of trust.

The way forward.

Participation by people from the beginning of the project initiatives is a must. But participation to be meaningful requires the Thai state, its technocracy and the middle class to change their attitude to accept the principles of participation, democracy, governance and accountability.

The principles of participation, social justice, legitimate methods of resource management further require rethinking about the true values of natural resources—not only immediate market values but also the sustainable values over the life of the resources; not only the principle of polluter pays but also user pays; rethinking about alternative methods of providing services; rethinking about a variety of different systems of ownership, management, and participation. The society must also provide participatory channels for people to voice their feelings. Accountability must be adhered to by all parties including government and technocrats.

While making good legal frameworks, and rules and regulations are important parts of the whole process, the change in the decision making process along democratic lines is even more fundamental. This can only be achieved within a democratic process where dissenting voices can find expression and be truly listened to, and where ways forward can be discussed and worked out with all parties participating.

Notes

¹ The Nam Choan project in the western forests was abandoned in 1989 after a long protest campaign.

² The Pak Mun dam project, sited close to the confluence of the Mun river with the Mae Khong, was completed in 1994 in defiance of strong protests by local communities and environmental groups. It has now become clear that the dam has done much damage to one of Thailand's richest sources of fresh water fish, and if the project had been properly assessed in terms of its real costs and benefits, it should never have been built.

Globalization and economic, social and cultural rights^{*}

Kamol Kamoltrakul

Globalization is an era of global market integration through the liberalization and deregulation of markets, trade, production, investment and capital flow. It refers primarily to the progressive elimination of barriers to trade and investment, as well as the unprecedented international mobility of capital. Globalization in an economic sense may be defined as the increasing interdependence of markets and production in different countries through trade in goods and services, cross-border flows of capital, and exchanges of technology.

Globalization has been accelerated by the rules and regulations of the World Trade Organization (WTO), such as the rules on National Treatment, Most Favoured Nation, and Trade Related Intellectual Property Rights (TRIPs). The policies and conditionalities of the World Bank (IBRD) and International Monetary Fund (IMF) regarding liberalization, privatisation, deregulation, and stabilization have also endangered the enjoyment of economic, social and cultural rights by creating more poverty and debt in developing countries.

Transnational companies

The most striking phenomenon of the age of globalization has been the expansion in the size, reach and power of transnational corporations (TNCs).

The number of TNCs has expanded from 7,000 in 1970 to 37,000 in 1990 and 53,000 in 1998.¹ Half of the world's hundred largest economies are now TNCs, not nation states with almost no developing country economies being larger than the fifty largest TNCs. The biggest TNCs have annual sales that exceed the output of most developing countries.

Two-thirds are based in just fourteen industrialized countries. TNCs have over 450,000 foreign affiliates worldwide. Of the 200 largest TNCs in the world, 172 have their world

^{*} Originally appeared in Thai in *Thailand Human Rights Journal* 1 (3), 2003. Translated by the author.

headquarters in the US, UK, France and Japan. The TNCs keep their headquarters there because they benefit from ties to their own national governments. Such benefits include tax breaks, favours from political leaders, links to education and training institutions, use of infrastructure, and the possibility of using state military or police in time of crisis.

TNCs account for eighty per cent of total world investments, and 1 per cent of TNCs now account for 50 per cent of world foreign direct investment. The WTO estimated in 1996 that fully two-thirds of all world trade occurs among TNCs.

In 1998, the top ten companies in pesticides controlled 85 per cent of the \$31 billion global market; the top ten telecommunications corporations controlled 86 per cent of the \$262 billion market. Only ten corporations control over half of global media.

The world's richest 350 billionaires have accumulated wealth equivalent to that of the 45 per cent of the poorest people in the world.

Economic, social and cultural rights

Amartya Sen,² winner of the Nobel Prize for economics, asserted that poverty is a cause *and* a consequence of human rights violations because it deprives the poor of the opportunity to enjoy economic, social and cultural rights, to increase their standard of living, and to have human security. Poverty is a consequence of the absence of the right to development in a meaningful sense, resulting in the loss of human rights to food, health, work, education and an adequate standard of living; these rights are violated by development policies based on growth but not equity.

The International Covenant on Economic, Social and Cultural Rights imposes on states the obligation to recognize the right to be free from hunger, the right to adequate food, and the right to gain and sustain an adequate standard of living (article 11). States are also under a generic obligation to maximize available resources with which to fulfill the rights recognized in the Covenant (article 2.1). But many states have failed to comply with this obligation.

The 1997 Thai Constitution has enshrined some of these rights:

Section 4. The human dignity, right and liberty of the people shall be protected.

Section 5. The Thai people, irrespective of their origins, sexes or religions, shall enjoy equal protection under this Constitution.

Section 50. A person shall enjoy the liberties to engage in an enterprise or an occupation and to undertake a fair and free competition.

Section 60. A person shall have the right to participate in the decision-making process of State officials in the performance of administrative functions which affect or may affect his or her rights and liberties, as provided by law.

Section 75. The State shall ensure the compliance with the law, protect the rights and liberties of a person, provide efficient administration of justice and serve justice to the people expediently and equally and organize an efficient system of public administration and other State affairs to meet people's demand.

Thailand realities

The situation in Thailand still falls considerably short of this ideal. In 1998, the National Economic and Social Development Board³ published these figures:

80 per cent of the population (50 million people) has a household income of less than US\$80 per head per month.

45 per cent of the population has a household income of less than US\$50 per head per month.

The average debt of each household is over US\$1,600

56 per cent of children have no opportunity to finish high school.

30 per cent of the residents in Bangkok live in slums

In 2001, the Thai Development Research Institute⁴ added these data:

The richest 20 per cent earn 58.5 per cent of the total income.

The poorest 20 per cent earn 4 per cent of the total income

Thailand has the sixth widest income distribution gap in the world.

Only 1.6 per cent of government investment benefits the most poor.

Only 0.07 per cent of private investment benefits the most poor.

Only 2.7 per cent of manufacturing exports benefit the most poor.

Only 7.4 per cent of agricultural exports benefit the most poor.

Conclusion

The destructive impacts on livelihood discussed above result from the strategy of globalization wherein the international financial institutions and the TNCs promote unconditional liberalization, deregulation of finance and capital markets, and privatization of state owned enterprises in developing countries. This allows TNCs to penetrate and dominate both the economics as well as the politics of developing countries without any barriers. It is not due to the "invisible hand" of the market or anonymous "global forces". It is due to conscious decisions made by capitalists within the structures and organization of TNCs to shift production, to cut orders, to demand lower production prices, and to use flexibility combined with their own structures of power and control to exploit the vulnerability of subcontractors.

Subcontractors secure their own drive for profit by passing this on to workers in the form of lay-off, lower wages and the fear and insecurity of hyper-vulnerability. What we need is globalization with a human face, a new paradigm of development to replace growth-centred development with people-centred development.

Notes

¹ UNCTAD, *World Investment Report*, 1998.

² Amartya Sen, *Development as Freedom* (New York: Oxford University Press, 1999).

³ NESDB, 'Impact of economic crisis on the standard of living in Thailand', *Indicators of Well-Being and Policy Analysis*, 2 (4), October 1998.

⁴ Thailand Development Research Institute, *Ekkasan prakob kan sammama wichakan prajam pi 2544 ruang yutthasat kan kajat panha khwam yak jon* (Papers from the 2001 annual seminar on strategy for eliminating poverty), November 2001.

Thai media: from watchdogs to lapdogs

Kavi Chongkittavorn

On 7 November 2003, the editorial staff of *The Nation* newspaper was sweating after one of its business reporters filed an exclusive report that family members of a key Cabinet minister of the Thaksin Shinawatra government now figured among the largest shareholders with almost 20 per cent of the shares in the Nation Multimedia Group (NMG), the publisher of *The Nation*. The nightmarish news came as a shock to the estimated 500 journalists working there as they had no clue about the acquisition. Since its stocks were listed publicly in 1988, the Nation's ownership has always been under the firm control of a group of investors who believe in a professional media. Now, Thai journalists have to come to grips with a new threat to media freedom in the form of new ownership.

This is a far cry from the long history of Thai media, which has followed the contours of Thai politics since the country switched from the absolute to constitutional monarchy in 1932. Thai journalists have become accustomed to criticizing Thai governments. They have often united and fought against measures to restrict the freedom of the press. They realize full well that they have to stand together or they would easily fall prey to political intimidation or control. Although almost every successive government, except in a short period after the October 1973 bloody revolution, has tried to limit media freedom, the Thai press was able to overcome these state-sanctioned intimidations and harassment. In the past three decades, media freedom has gradually progressed as Thai journalists have become more professional and the quality of their news coverage and analysis has improved. But the financial and economic crisis of 1997 has brought about large and rapid changes in economy and politics. Many journalists lost their jobs. Many media-owning companies were financially battered by the crisis. These financial difficulties have diminished the media's ability to function as an independent voice. While their management and editorial teams were struggling to keep their heads above the troubled waters, Thaksin Shinawatra won the election in 2001 by a landslide.

Media freedom has suffered as publishers and journalists have exercised censorship.

Reforming the media

Thailand's media history is filled with bloody headlines of journalists' struggles against political oppression and dictators, both civilian and military. In the era of military rule which began in the 1950s, the press was put under wraps. Journalists who were critical of prime minister Sarit Thanarat were thrown in jail; others were killed. The measure known as *Mathra 17* (clause 17) gave the authorities overwhelming power to revoke the printing licence of any newspaper which published statements offending the King or discrediting the government. Under the Thanom-Praphat regime (1963-73), press freedom was not much better but at least publishers could engage in tussles with the authorities; it was a game of give and take. At any particular time, journalists would propagate government policies to gain favours. But dramatic changes occurred after the popular 1973 revolution with burgeoning free press and freedom of expression. Thai media were highly thoughtful and provocative even though some of them were not very good.

Legislative reform on media was a slow process. At least 27 archaic laws of various shades and colours restricting a free press and freedom of expression are still operational. During the dictatorial years, these laws were used to crack down on the free press and imprison editors and journalists. From 1940 to 1980, approximately 120 journalists were killed with political motivation. Because of the political uncertainty and numerous coups, anti-press laws kept getting harsher. The most infamous laws were the Publishing and Printing Act of 1941 and the Revolutionary Decree No. 42 of 1976. Literally, they gave officials power to wipe out any newspaper from the news stands.

After years of media roller-coaster rides, Decree No. 42 was abolished in early 1991. This was subsequently hailed as a landmark political achievement. The consequence was obvious—a boost to free media and a meteoric growth of the media industry. This impetus further encouraged the Thai media to take up a watchdog role, but also to undertake commercial projects beyond their means and expertise—such as real estate and golf courses. Some papers were so serious about their watchdog role that they began behaving like opposition parties.

After the bloodshed of May 1992, legislative reform on media took a radical shift. Facing growing public criticism about the evil roles of state-owned media during the bloodbath, newly appointed Prime Minister Anand Panyarachun sought measures to reduce the state's authority to dictate the policy and content of government-owned electronic media. His government chose to highlight two issues—access and independent distribution of news.

Anand believed that if the public had more information and knew what the government was doing, they could judge the performance of government and officials better.

Indeed, if the public knew more about Anand's professional background and dedication, they would understand at once that it was absurd to brand him a communist (as happened in 1976). After almost seven years of debating and politicking including numerous public hearings, the Official Information Act BE 2540 was enacted in July 1997. Regarding unhampered news distribution, Anand wanted more competition between state-owned and private broadcasters to improve news quality. Television and radio broadcast had always been under the government's thumb and used to disseminate false news and information. Private and independent TV and radio programmes can better inform the public about societal changes without official intervention. This rationality gave rise to the establishment of iTV, the first independent TV station in 1996. That was the first step—a rather isolated one. Fortunately, Anand could step further and link his media platforms to wider reform when he was elected chairperson of a committee to draft the 1997 constitution.

Over recent decades, the media have served as society's watchdogs as the political system has undergone a major transformation. This role climaxed in the mid-1990s. In a way, the Thai media were very much part of the so-called People's Constitution of 1997. They mobilized the mass of the people to devote time and energy to the drafting process. They provided a much needed forum for inputs from all walks of life; between 1995 and 1997, the Thai newspapers were filled with views and comments from experts and laymen on constitutional reform. Close to one million opinions were submitted to the charter drafting committee. The governments in power at the time maintained some distance from the media and respected media freedom.

When the new constitution was promulgated in October 1997, it was a watershed in Thai political history. It included for the first time comprehensive provisions to protect media freedom and freedom of expression. The constitution has a total of 67 articles related to promoting and protecting individual rights and freedoms. Broadcast media now have the same freedoms that the print media have enjoyed for some time.

Institutional reform

The Public Relations Department and Mass Communications Organization of Thailand are the country's two key media institutions. Before the 1980s, all assistance and training from abroad went solely to these official organizations, which concentrated on individual rather than institutional capacity. Worse, the government media institutions also failed to channel their know-how to private individuals or independent media institutions. While the rest of the country has been affected by the information age, the government media institutions remain unperturbed.

Private media institutions are few but they are self-reliant. Although the first media organization, the Thai Journalists Association (formerly Reporters Association of Thailand),

was established in 1945, it has yet to represent all journalists. More than half of the 3,500 working journalists are not TJA members even though TJA has been fighting for press freedom incessantly and taking care of member's welfare. While the pressure from within the TJA is a bit lacking, the public expectation and pressure keep rising as ongoing political reform proceeds rapidly. The public became jaded by the sensational and irresponsible press. The government knew this weakness and wanted to reassert control over the press through a plan to set up a state-run press council. The project backfired. Continuous attempts to regulate the media and license journalists prompted publishers and editors from 25 newspapers to get their act together in July 1997. They established the National Press Council of Thailand. For the first time, the country had a press institute that enforces press ethics and professionalism. From 1997 to 2004, the public filed estimated 200 complaints with the council mainly on indecent use of photos, inflammatory publications and news distortions. The council made few uncontroversial decisions. It issued several warnings to the Thai media to adhere to professionalism and urged the government not to interfere with media freedom. To be credible, the council and its members drawn from leading newspapers need to be forthright and non-partisan.

In 2000, the Thai Broadcasters Association (TBA) was established to represent Thai broadcasters and to oppose any meddling on broadcasting regulations. This development has raised the level of broadcasting standard and professionalism in the eyes of print journalists. At least, they now fight for themselves—no longer under the TJA umbrella. For the first time, the Thai media encompass both print and broadcasting media. TJA and TBA have campaigned jointly to ensure that the NBC members are independent and do not represent business interest.

Some media professionals have taken an interest in professional reform. There is an urgent need to improve the quality of education in the 85 universities and colleges that teach courses including journalism. Lack of good teaching staff produces substandard graduates who fail to get jobs at desirable newspapers. To bridge the gap between academia and the profession, their representatives met in 1999 to work out a future plan for a media curriculum. Since then, this endeavour has intensified and produced good results. Potential journalists and media teachers have enjoyed more internships in various newspapers. In the past, media teachers had no experience or direct access to media outlets. They can now teach theories with practical application.

Crisis consequences

While the Thai media were relishing their role in democratic development, the Asian financial and economic crisis of July 1997 struck. The sudden devaluation of Thai currency raised the already high cost of imported newsprint. Advertising revenues slumped. Many non-media investments made by media companies during the boom years went bad

(especially property) and served as a drain on financial resources. A total of 3,000 journalists and media-related personnel lost their jobs. A dozen papers were closed down. Those papers that managed to survive had to cut down staff, reduce salaries, and urge employees to take early retirement. Newspapers became thinner to save on newsprint costs. Editorial and managerial staff constantly sat and planned together to ensure their papers would survive the economic hardship of the following day.

From 1997 to 2000, the turbulent Thai media were left untouched by the governments in power despite their vulnerability. Although the power-wielders detested the media, they chose not to meddle with them. After all, Thailand had just adopted a new Constitution, and democracy was booming. The government had some respect for the media's watchdog role. Intimidation of the media did occur sporadically but in an unsophisticated, uncoordinated and unsystematic manner.

But the crisis also introduced new owners to the Thai media. Beforehand, newspaper ownership had been dominated by a handful of families and retired journalists. Since 1997, politicians and vested interest groups have been able to buy into the Thai media on a scale never previously seen. They have introduced new editorial policies and new approaches to print journalism. They are more willing to compromise their editorial independence to ally with the powers that be. Thai journalists who were well-known for their independence found themselves marginalized as they had to struggle to survive. During the economic boom and excess of 1990s, journalists were very conscious of their democratic role. Now both publishers and journalists had to concentrate on survival.

From watchdogs to lapdogs

The Thaksin government, elected in January 2001, found the Thai media in a highly vulnerable state. It has made a systematic attempt to control, manage and "spin" the news. It has exploited the lack of consensus among Thai media and journalists to further divide the Thai media community. The first six months of Thaksin's premiership witnessed outrageous interference, especially in radio and TV.

At that time, Thaksin faced charges, brought by the National Counter Corruption Commission, that he had previously misreported his assets in successive statutory declarations. If found guilty by the Constitutional Court, he would be banned from political office for five years. This period tested the integrity and journalistic commitment of the Thai media. Amid growing anxiety over the country's political leadership, various publishers and editors took different views. While some of them were honest, other saw a golden opportunity to recover from the huge difficulties of the post-crisis era. Papers took a much more partisan line over this issue, and this practice continued even after Thaksin narrowly escaped from the assets charge.

During Thaksin's first year in power, the Thai Journalists Association recorded a phenomenal rise of physical abuses against Thai journalists. However, that trend declined markedly as Thaksin entered his second year, only to be replaced by more sophisticated political interference. Radio and TV programmes found to be a bit critical of the government were taken off the air. Lawsuits were launched against critics. In response to these pressures, papers became less critical. The Thai media morphed from watchdogs to lapdogs.

Papers on sale now have three types of view: neutral, pro- and anti-government. That trend has become the norm that Thai readers have to live with today. Previously the public could understand the political pulse of the day by glancing through the headlines of any newspaper, be it Thai or English. Today an average reader has to go through at least three papers to get the whole picture of headline news.

Not long ago, all mainstream media were mistrustful of official views. Their editors took their watchdog role seriously. Sometimes they temporarily lapsed into mad dogs. Almost all, however, shared a philosophy as well as political and economic outlook. They were so like-minded and unshakeable that they were notoriously called "the Fourth Estate". They met and acted on common strategies and measures to protect press freedom and improve their professionalism. Those things have gone. For nearly three years now publishers and editors have not met or engaged in any dialogue as a group about their journalistic missions. They have turned inward as if their problems could be solved in isolation. Suddenly, they are under attack from the so-called media domino effect. This phenomenon, which began in the business sector, has crept into other spheres. Sensing the longevity of the current leader and his intolerance for different opinions, more media proprietors have decided to swap their critical monitoring role for a fence-sitting position. Slowly, ads and other incentives start to come in.

Unfortunately, publicly listed media establishments are most vulnerable to hostile acts from outside. Under business pressure to perform better in the market, either from the shareholders or from personal ambition, the management teams have to improve profitability. New investors are unavoidable. But enlightened investors must be distinguished from bogus ones acting on the behalf of others. Ironically, family-owned newspapers, which used to be blamed for supporting dictators, today have more room to manoeuvre than public companies. When they change colour the readers easily notice because no corporate culture is at play. Sad but true, Thailand does not have a paper owned wholly by journalists who can determine their own future.

The conventional wisdom is that since the interests of well-established media outlets are huge and well entrenched, it is suicidal to be left alone in the cold to confront a powerful government. That is why smaller papers with fewer copies are more courageous in informing the public; but their days are numbered too.

The Thaksin government has failed to implement constitutional provisions related to

the promotion and protection of media freedom. Charter drafters had hoped that these provisions (see the excerpts from the constitution below) would result in more media reform, in particular, release of the broadcast media from state control. Article 40 stipulates that all broadcast frequencies belong to the public and must be allocated for public benefit. The charter required the government within three years to pass a law establishing an “independent regulatory body” to distribute frequencies and oversee the broadcasting business. This law was duly passed. But business and political interests have successfully delayed the selection of the members of the National Broadcasting Commission and hence delayed the enactment of the Broadcasting Law. The delay allows the government to exercise its authority without an oversight commission. In anticipation of the freedoms announced by the constitution, although alternative media such as community radio and local cable television channels have mushroomed. But government still considers these operations illegal. It is clear the government has no intention to proceed with media reform as mandated by article 40. As if to further deepen his own convictions, Thaksin declared on Constitution Day (10 December 2003) that “Democracy is just a tool, not our goal.”

Conclusion

As Thaksin is likely to remain in power for sometime to come, it is imperative for the Thai media to understand his sophisticated media strategies and catch up with his techniques of news management and spin. Otherwise, the media will serve as a propaganda tool for the government’s pre-set agenda. If this trend continues, the media will find itself restricted by a mixture of ever-tightening state controls and increasing self-imposed control through voluntary submission in exchange for economic rewards, overt or discreet. If that happens, it is likely that the number of papers will diminish, and the ownership become more consolidated. Owners will tend to cooperate with the government to ensure that their media play the role of national-building. Editors will be political appointees and Thai journalists will not be able to express their views. In the future, the biggest share holders of media companies are likely to be politicians or businessmen associated with the ruling party. By that time journalists will be entitled to different views, but they will be well advised to keep them to themselves.

As the mainstream media wither, alternative media such as community newspapers may be the way forward. Such papers in provincial areas that can report on and analyse national and local politics could survive with sufficient community support. Online newspapers could be new outlets too, but they would need sufficient online readers with a new habit.

Appendix: media-related provisions in the 1997 Constitution

Section 37. A person shall enjoy the liberty of communication by lawful means. The censorship, detention or disclosure of communication between persons including any other act disclosing a statement in the communication between persons shall not be made except by virtue of the provisions of the law specifically enacted for security of the State or maintaining public order or good morals.

Section 38. A person shall enjoy full liberty to profess a religion, a religious sect or creed, and observe religious precepts or exercise a form of worship in accordance with his or her belief; provided that it is not contrary to his or her civic duties, public order or good morals. In exercising the liberty referred to in paragraph one, a person is protected from any act of the State, which is derogatory to his or her rights or detrimental to his or her due benefits on the grounds of professing a religion, a religious sect or creed or observing religious precepts or exercising a form of worship in accordance with his or her different belief from that of others.

Section 39. A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise and make expression by other means. The restriction on liberty under paragraph one shall not be imposed except by virtue of the provisions of the law specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing the deterioration of the mind or health of the public. The closure of a pressing house or a radio or television station in deprivation of the liberty under this section shall not be made. The censorship by a competent official of news or articles before their publication in a newspaper, printed matter or radio or television broadcasting shall not be made except during the time when the country is in a state of war or armed conflict; provided that it must be made by virtue of the law enacted under the provisions of paragraph two. The owner of a newspaper or other mass media business shall be a Thai national as provided by law. No grant of money or other properties shall be made by the State as subsidies to private newspapers or other mass media.

Section 40. Transmission frequencies for radio or television broadcasting and radio telecommunication are national communication resources for public interest. There shall be an independent regulatory body having the duty to distribute the frequencies under paragraph one and supervise radio or television broadcasting and telecommunication businesses as provided by law. In carrying out the act under paragraph two, regard shall be had to utmost public benefit at national and local levels in education, culture, State security, and other public interests including fair and free competition.

Section 41. Officials or employees in a private sector undertaking newspaper or radio or television broadcasting businesses shall enjoy their liberties to present news and express their opinions under the constitutional restrictions without the mandate of any State agency,

State enterprise or the owner of such businesses; provided that it is not contrary to their professional ethics. Government officials, officials or employees of a State agency or State enterprise engaging in the radio or television broadcasting business enjoy the same liberties as those enjoyed by officials or employees under paragraph one.

Section 58. A person shall have the right to get access to public information in possession of a State agency, State enterprise or local government organization, unless the disclosure of such information shall affect the security of the State, public safety or interests of other persons which shall be protected as provided by law.

Section 59. A person shall have the right to receive information, explanation and reason from a State agency, State enterprise or local government organization before permission is given for the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or her or a local community and shall have the right to express his or her opinions on such matters in accordance with the public hearing procedure, as provided by law.

Some reflections on Human Rights education

Valai na Pombejr

For school teachers, Human Rights education means translating human rights principles into practical classroom experiences. Instructional materials are, for them, very essential in ensuring that Human Rights education serves its very purpose of inculcating respect for rights and human dignity, and awareness of responsibilities as national and global citizens. Training courses or seminars on Human Rights education are also essential and should be organized regularly for teachers so that they can promote Human Rights in their classrooms and schools.

After being involved in a Human Rights Education Project aimed at promoting Human Rights in schools, I wish to share the following reflections with Human Rights educators.

Teaching for Human Rights

Instead of teaching Human Rights or teaching about Human Rights, I would prefer, in particular at the school level, that the teaching be *for* Human Rights. This means that through a dynamic, holistic and integrative teaching/learning process, the teachers, administrators, school personnel, learners and their parents work together towards Human Rights (human dignity and rights, social justice and peace).

It is important to keep reminding ourselves that Human Rights education is a much wider concept than the study of legal and constitutional texts and mechanisms. Human Rights should permeate the whole school life—the ethos and organization of the school, as well as the content of the curriculum. Schools should show respect and consideration for all their members, encourage solidarity and promote dialogue. They should also provide students with opportunities for meaningful participation in the running of their school community. Schools are communities which can and should be an example of respect for the dignity of the

individual and for difference, for tolerance, and for equality of opportunity. Students should learn that all members of the school community are entitled to dignity and respect. It also means fair treatment irrespective of race, gender, age, social class or religion.

Awareness and understanding

Approaches to Human Rights education should lead to an understanding of, and sympathy for, the concept of dignity and rights, justice, equality, freedom, solidarity, peace and democracy. Human Rights education is required to raise students' *awareness* of human rights conditions around the world, to promote their *understanding* of the forces which create these conditions and those which can change them, and encourage their action rooted in a humane conception of justice and human dignity. These approaches are more expansive than those normally offered for instruction in traditional content areas. Although it contains all the traditional characteristics of academic study—knowledge to be acquired, communication and cognitive skills to be developed, and attitudes to be formed—but it also encourages students to reflect on what their human rights learning means for them personally and to translate their understanding and concern into value-based action.

Learner-centred

Approaches to Human Rights education will obviously differ in primary and secondary schools, but they should lead to an understanding of, and sympathy for concepts related to human dignity and rights. Concepts associated with Human Rights can and should be acquired at an early stage. Some of the more abstract concepts should, of course, be approached in later years of schooling.

The teacher-centred approach—where the responsibility largely rests on the teacher as expert and model, and the learner simply adopts a passive role, absorbing the material being handed down—should be discouraged and replaced by learner-centred orientation where a dynamic interaction occurs within the individual learner and teacher and between each other.

Multi-disciplinary

Human Rights education is multi-disciplinary in nature and touches every dimension of the human experience. Concepts such as justice, equality, liberty and freedom are neither discipline specific nor age specific. Therefore there is no educational reason to confine their study to social studies or any other single subject area. It should be infused into the curriculum in a variety of content areas and should utilize the different resources and perspectives available in the school.

Student exposure to and examination of human rights conditions around the world will activate their sense of human dignity and empathy. If students understand the concepts

and make the concerns their own, they are on the road to becoming active citizens in the global community.

Gender

Since Human Rights education is concerned to change the perception of the world and to prepare young people to play their part in changing the world, it must include issues of gender. Girls and boys must be educated in such a way as to enable girls to enjoy, to use and to safeguard their rights. It is important to emphasize that girls and women are entitled to the same civil and political, social, economic and cultural rights as boys and men, and that the rights claimed or guaranteed are available without discrimination.

Universal Declaration

An approach built on the Universal Declaration of Human Rights is very appropriate because the Universal Declaration of Human Rights is the most widely recognized international standard for a just world. This declaration asserts that every human being by the fact of his/her existence is entitled to the basic political, civil, social, economic and cultural rights included in the 30 articles. This declaration affirms the belief that we are all part of the human family and are all entitled to these basic rights regardless of who we are or where we happen to be born.

Teacher commitment

The effectiveness of Human Rights education depends, in fact, on the commitment, quality, skills and attitudes of individual teachers. In other words, Human Rights education at primary and secondary schools will not be developed unless teachers are first of all convinced of the need to teach Human Rights, and then given special training in the methods of such teaching. Human Rights education is difficult to put into practice. It calls for a multi-disciplinary approach (hence for understanding and cooperation between several teachers), a democratic school system (hence educational attitudes on the part of all adults), and a knowledge of legal principles and the fundamental texts proclaiming the universal nature of Human Rights. Training courses or seminars on Human Rights education should, therefore, be organized for teachers. It happens that teachers who attend training courses are motivated by them and, on their return to their schools, they embark on action projects aimed at generating awareness of Human Rights, or else teach Human Rights as part of their own subjects or as an aspect of moral/civic education.

Cultural values

In promoting Human Rights education, it is important to recognize the traditional and

cultural values of a country and its people. Although it is appropriate to build Human Rights education on the principles embodied in the Universal Declaration of Human Rights and to emphasize the “universal” nature of such rights, however, the Asian perspectives of the concept of Human Rights as well as other related values should also be taken into consideration.

In Thailand, for example, the concept of rights, justice, equality and independence is considered to be Western oriented and different from the Thai traditional and cultural values. Thus, it is difficult to make people understand such related Human Rights values. Let us take equality as an example. While Westerners have a strong sense of equality between all people, Thais have a greater and more defined sense of hierarchy. Thais are not brought up to believe that “all human beings are created equal”, but from the start they are taught to respect a person of a higher rank, status or authority. The concept of independence has also not been cherished in Thailand in the same way as in other western countries. Thai people have a strong sense that an individual is an integral part of a network of family relationships and obligations. Many Thais live within extended families of several generations. The older family members are free to offer advice and guidance or to criticize younger family members whether they are children or adults. This situation does not encourage independence but it reinforces interdependence.

It is therefore important to recognize the traditional and cultural background and values of the people to be trained in Human Rights education.

There are certain core traditional Thai values which are related to Human Rights and peace and should be recognized when discussing Human Rights. They are:

Loving-kindness, caring and sharing
Equanimity
Courtesy
Simplicity
Love for peace and harmony

In my Human Rights training sessions, I often introduce these values to the participants and encourage them to reflect upon these values and to relate them to Human Rights. For example, I would explain that loving-kindness, caring and sharing are Thai traditional values based on Buddhist teachings. Although Thai people give priority to such values, they are, however, more often practiced passively. One should manifest love and caring in a more active manner. There should be a willingness to do something to show one’s love and care for the less fortunate such as children and women inflicted by war, poverty and natural calamities, and share with them resources in the spirit of love and justice. The protection of the rights of children and women should be ensured so that all forms of

discrimination against them may be eliminated.

Simplicity is a way of life and a state of mind which enables us to overcome a desire for acquisition resulting in contentment and happiness. Intellectually, simplicity promotes serious thought untainted by prejudice, bias and constraint. I would then encourage the participants to discuss the meaning of prejudice or bias which may lead to discrimination and to violation of human rights.

Conclusion

These are my reflections and experiences concerning approaches and methods in teaching Human Rights. It is hoped that by working together, educators will be able to define how education systems, especially schools, can help to promote an active commitment to Human Rights.

The weak People's Constitution?

Wanida Tantiwithayapithak

Thailand's democracy movement began using constitutions as a way to change the structure of government, from the pre-existing system into a society with respect for rights, freedoms, and openings for greater self-government by the people themselves. Since 1932 we have had many different constitutions concluded as peace treaties with the groups who were fired to become the vanguard in changing the ruling class, from then down to the present day.

The Thai constitution of 1997 is considered a political reform charter, coming in the wake of the events of Black May 1992.

The current constitution clearly places a great deal of importance on people's rights, freedoms, and participation in the political system and in government. In addition, many independent bodies have been created to serve as mechanisms for scrutinising and monitoring state power. And yet, the spirit of the charter is being undermined by the economic structure of monopolistic capitalism which is expanding in Thai society at the present time. Because there was only half-hearted acceptance of true participation by the people in the Constitution Drafting Assembly (CDA), the charter allowed MPs to be elected on a party list, imposed a qualification that MPs must have a tertiary degree, and so on. This has enabled a big business group to seize the power of the state totally and completely in a short space of time. This is only one reason why this constitution has got bogged down. There is also the international situation or so-called globalisation, but I will not talk about that issue as it has been analysed by many other people on many other platforms.

Let me share with you my opinion from a different perspective.

* Adapted from the papers of the seminar on "Thai constitution bogged down", organized by Midnight University and Thammasat University, 29 November 2003 at Thammasat University, Tha Prachan campus; printed in *Fa dieo kan* 2, 1 (January–March 2004), translated by Chris Baker and Pasuk Phongpaichit.

The constitution as “alternative”

Thailand is located in a tropical monsoon environment in one of the most fertile regions of the world. The majority of the people are engaged in agriculture and have a way of life that is peaceful and contented. They rely on nature, and have developed their own complex and diverse culture. Most are still small-scale farmers. Because of the great natural fertility, they rely on nature for their day-to-day livelihood rather than on government. Hence government is just about the control and management of resources in accord with the wishes of those with power. Laws and regulations are issued about the collection of taxes, conscription of labour, reservation of state land, state acquisition of land, and so on. The people who have no power have the right and opportunity to bargain with the state, but must respect and abide by the various laws and regulations which the rulers lay down, whether or not they like it, but just in order to be able to continue their usual way of life.

Although several constitutions have defined the fundamental rights and freedoms of the people, in every era the rulers have paid no attention to these provisions, or feigned ignorance of them. As a result, the people's rights are regularly violated to the extent they are unable to make a living, their resources are seized, and they become completely bankrupted and bereft. Such people then unite to rise up in opposition to the state's actions, as in the opposition to dam building, to various large-scale projects, to the policies of land distribution, and so on. These are struggles which have no option, no alternative. The groups of people involved have to study their rights, both those that are natural rights and those inscribed in the constitution. Villagers have to use the legal points in the constitution as tools in their struggles, because they know well that they themselves have no bargaining power and there is no better alternative.

Tools of the powerless

When local people rise up, they understand very well that only by joining together very tightly and in large numbers will enable them to gain the ear of the rulers. But government has a model for dealing with this by “divide and rule”. Under this thinking, all government institutions constitute a single entity which enables state power to govern with force.

People's movements in the villages or in the city tend to be divided and crushed. Time and time again, they are violently suppressed, as can be seen in the news almost every day. This is done to repel resistance and to reconfirm the old idea that opposition to state power of any scale and strength cannot be allowed. As a result, we find a lot of people are prepared to surrender, and end up absolutely poor and lacking in human dignity. The numbers keep on increasing. Where does poverty come from in Thai society? Is it not from the failure and surrender of the large numbers of people who cannot unite to create their own bargaining power?

So the constitution is vital for those who lack bargaining power, because it is the only legitimate tool they can use to protect the livelihood of their family and their descendants.

Problems of urban poverty and labour

The development of industry results in people from the countryside being attracted or semi-forced to migrate to the cities, because industries and the public facilities provided for industrial investment are located in the cities. Many young men and women abandon their homes in the countryside to face the congestion of Bangkok or other cities. But the Thai state looks on such people as no more than one more tool used in production. There has never been any urban plan to create housing which is fitting for human value and human dignity. The slum dwellers and city workers who devote their energies and their lives to build the “civilised” city and large-scale industries live in places worse than those of the pet animals of those with money.

As a result, the community rights, citizens’ rights, and workers’ rights which are supposed to command official support, in fact have to be bargained over through struggle and the sacrifice of the flesh, blood and property of a large number of people. The rights written into the constitution came about after a long history of struggle by peasants, fishermen, small scale farmers, small scale traders, workers and the urban poor.

The way of peace

Even though constitutions have been in force in Thailand for over seventy years, the spirit of these constitutions has never been accepted by the rulers in any period at all. The path of Thai constitutions has been full of ups and downs, strewn with obstacles. In truth, the constitution is a tool with which the people can counter power and monitor state power. It is armour against the violations of fundamental human rights which the state regularly commits against the people who are weak and unable to unite for strength. Only forcible and full implementation of every clause of the constitution will ensure that people will live together peacefully. But that is only an ideal and dream which we must fight to realise.

Constitution without people

The middle class, which used to be the vanguard in the struggle for the constitution, has become passive and negligent about violations of the constitution, and sometimes comes out publicly in support of these violations, for example over the pre-emptive killings. I talked with friends who in the past had fought shoulder to shoulder in the struggle for democracy in Thailand. They said that dictatorship can also be a good thing; without it, development cannot happen. What does this show? It shows that in the view of these people and those of like mind, economic development has to come before democracy. Some groups of the middle class once

used democracy as a tool to develop their own economy. Some friends who went through the events of October now say that the actions of the present government are truly democratic, while the people's movements outside the parliamentary system are anarchistic. This means that the constitution written by the middle class is now being violated and trampled on by the middle class itself. Are the beatings of people opposed to the Thai-Malaysian gas pipeline and the Pak Mun dam efforts to protect the democracy of the middle class? Saneh Chamarik, the Chairman of the National Human Rights Commission, has even said: "there has been a coup against the constitution". I thus think that the statement in the constitution that the "sovereign power belongs to the Thai people" is no longer true, because the people as meant here no longer exists. The constitution, especially the provisions on election and the formation of governments, is just a tool for one group of people to blaze a trail to power. Once their excellencies have got what they want, they screw up the constitution and toss it away. In such a government, the main principle is not democracy but "me-ocracy", or in more sophisticated, terms, the "CEO" system. The adoption of the CEO approach amounts to the abolition of some clauses of the constitution.

But some parts of the Thai middle class are looking on with amazement at how their democracy has turned out. But this matters little as long as the stockmarket is rising, consumption is being stimulated, and the economy is picking up. Does this mean that the middle class no longer wants democracy, and that any government system is acceptable as long as more money can be earned? Or will in the future the Thai middle class again become a vanguard in the struggle for democracy for themselves and for the lower classes? This question is being raised by many people. But there is another part of the middle class which is unable to simply stand still and allow democracy and the constitution to be trampled on. They exist in different parts of Thai society, in many occupations. They are concerned about the crises of the present day over youth, environment, health, society, morals, community culture, or whatever used to be the armour to protect the peace and happiness of families and communities. All this armour is being destroyed.

The people's movement for democracy

The democracy movement moves ahead through successive waves that rise up and then die away. This has been the pattern for over seventy years. Through this process lessons have been accumulated. The movement has become more well-rounded as time goes by. We have accumulated a large number of democracy fighters who have experience. The lessons of the past are transferred to the next generation even though dictators always try to obstruct and undermine such actions.

At present the Thai state has been utterly adapted to serve the commercial interests of big business. Business and politics are integrated to serve monopolistic capitalism and

globalization. Clause 87 of the constitution stipulates that the government must “encourage a free economic system through market forces”. Capitalism has become strongly established in Thai society. Meanwhile, democratic forces are still confused which way Thai society should move. The dreams of having a progressive capitalism with mild socialism or a welfare state along the lines of Scandinavian countries have melted away in the stock market.

Capitalism has released a portion of the middle class from hard work and enabled them to become wealthy and capture state power to serve the businesses of themselves and their cronies.

At the same time, the struggle for democracy in Thailand has established deep roots among the lower classes of small farmers, small fishermen, workers, and the urban poor. Their struggles have thrown up the issues of community rights, workers rights, rights to housing, efforts to protect the natural environment, opposition to mega-projects which are the source of enormous wealth for urban businesses, struggles to expose corruption in public health, and policy corruption in telecommunications. NGO workers, academics and some mass media people work as coordinators, and bring information to public attention. They create formal and informal networks to press for changes in policy, such as the community forest networks' pressure for a Community Forest Act, and the workers' struggle for laws and a new institute for protecting safety and health in the work environment. People's movement have expanded at the grassroots, becoming a movement for direct democracy, parallel to representative democracy. Stronger organizations have been formed. Their weakness has been that they are too scattered, too dependent on the situation of each locality and each network. It has become very difficult to fight for structural change in a situation where big business has taken over politics and receives support from large transnational corporations. Social movement must have a strong base among the masses, and then work upwards to the national level. But to mobilise large numbers of people, a movement must revolve around one common principle which offers a structural solution for the problems of all the little groups in various different localities. The constitution is a good tool for this movement because it has legitimacy and because it evolved from historical processes which everyone accepts. But the fact that the constitution has been aborted and can no longer be used has become the most serious obstacle to the development of Thailand's democracy movement.

Extra-parliamentary movements have been surveyed, undermined, and easily destroyed. They were pre-empted before they could become well-established. So in future we must pay attention to the following points.

1. The movement must be varied, transparent, open to public scrutiny, and well coordinated with mass media in order to avoid misunderstandings and distortions. Every movement at every stage must be planned in detail, and systematic, taking into account its acceptability by the public. The use of media must be tailored to the circumstances, not

repetitive. The movement must seek alliances at every step of the way.

2. The base of support must be expanded. For example, the movements concerning alternative agriculture, community research, campaigns for a sufficient economy, and legal reforms are worthwhile investments because they have accumulated learnings and alliances. NGOs, academics, intellectuals and social activists must have a secure base to work from, and must constantly raise their own standards. They should not work superficially, such as by just supplying the data and statistics. The movement must create thinkers and activists at various levels to perpetuate the work in the long term. Building democracy is a long-term project.

3. It is correct to use the constitution in various issues, but it requires time and maturity of thought. Specific tasks need to be interlinked together. We have to learn at the global level, but work at the individual level, creating groups which have a common environment and culture

Conclusion

The Thai constitution did not float down from the sky. It was born from the movement of people who sacrificed flesh and blood in the struggles to obtain protection of rights, freedoms and social justice. The efforts to realise the spirit of constitution, namely the protection of rights, freedoms, and popular participation in government, are thus well worth the investment, or else the dream of a peaceful society and better quality of life will remain only a dream.

To drag the constitution out of the bog requires a strong people's movement. A weak people's movement will never manage to move the wheels which can drag the constitution and Thai democracy out of the bog. The creation of a strong popular base in each locality is still necessary to lay the foundation for a great people's movement in the future. History teaches us that if we are not properly prepared, we will miss the opportunities when they arise. The people will be robbed of their chance of victory, and the spoils will go to a handful of people every time. If we work only on the surface, we will never understand structural change. A lot of NGOs do not go down to the grassroots and work seriously for the masses. They concentrate on public debate about the new alternative society, without thinking why the alternative proposed for decades has not achieved any results. Some continue to live in the old way, rather than an alternative style. They still consume goods and energy in a spendthrift way. Some even live in luxury. We people who work for the new society must realise that we cannot have a luxurious society any more. For millions and millions of the world's people, the next year and the next decade mean only scarcity and hardship. They will not live a luxurious lifestyle even for one minute. If we can press for the written constitution to be realised in reality, especially the points about people's participation in the management of natural resources, then the dawn of real democracy should appear on the horizon, as for a long time past, the war to invade and seize natural resources has been the source of all crises

Tai Ban Research: local knowledge as negotiation in the policy process

Malee Traisawasdichai Lang¹

Tai Ban Research, *Mae mun: kan klab ma khong khon ha pla (Mother Moon: the return of the fishers)*, prepared by the Tai Ban Research Group under the Assembly of the Poor (Pak Moon dam Case), with support from the Southeast Asia River Network, 2002.

Introduction

In the midst of the contentious debate about the Pak Moon dam in Thailand, there is nothing more politically contested than struggles over knowledge. For over a decade, the war of words and contrasting discourses between the dam building agency and its pro-dam allies on the one hand and the anti-Pak Moon dam movement on the other has had enormous real consequences in Thai society. There are ambiguities and debates about what constitutes valid knowledge and who counts as the legitimate knower.

Obviously, at the backdrop of this public confusion lies the fact that the dam's disastrous impacts on local fishers in the remote Isan countryside of Ubon Ratchathani province could not reach the eyes of the urban middle class in both Bangkok and Ubon city itself, as well as the central bureaucrat elite and politicians alike. This blurred reality due to physical distance has become the arena in which the struggle of discourse between divergent claimants has taken place. Yet, there is also an asymmetry of power relations at work here that strategically determines which system of knowledge is considered valid in this contestation over what impact the dam has had on the fish resources and fisheries in the Moon River.² This power imbalance works in a way that explicitly privileges the knowledge of the professionals and experts who seem to have the authority to speak about the situation of the communities affected by the dam and to provide guidance on action to address the problem at issue.

However, the direct effect of this undisputed authority of the experts' knowledge is the systematic exclusion of other important form of knowledge—knowledge based on oral

tradition and intuitive and concrete experience of the knowers. It has been a common scene throughout the Pak Moon dam dispute that, during the recurrent negotiation processes, officials from the Electricity Generating Authority of Thailand (EGAT) and the Royal Fisheries Department tended to easily brush aside the fishers' accounts of the dam impacts while strictly adhering to their experts' studies and presenting their arguments with, at first glance, convincing figures and statistics based on scientific modes of analysis. In contrast, neither the fishers' traditional ecological knowledge nor their actual sufferings from the dam construction were acknowledged. Indeed, the prevalent stereotyped conception of who counts as a knower implies the superiority of experts' knowledge over the local fishers' concrete and experiential knowledge which has been skillfully portrayed by the bureaucrat elitists as trivial unproven complaints from the poor rural underclass.

This article thus takes a close look at the meaning that lies behind the new politics of the anti-Pak Moon dam movement through its recent production of counter-research—a grassroots innovation to develop a bottom-up study based on local knowledge and traditional practice of resource management as a means of negotiation in the decision making process.

Research from below

The counter-research produced by the Moon River fishers has come to be known as the Tai Ban Research.³ It has emerged from the local fishers' experience with the state bureaucrats' discrimination against their oral-based knowledge. In June 2001, the movement won a decision from the Thaksin government to open the dam's gates for one year as an experiment to find out the dam's costs and benefits. While the government commissioned Ubon Ratchathani University to conduct a ten-million baht study⁴ that would form the basis for its decision, the Moon River fishers also initiated their own research with the help of an NGO, the Southeast Asian River Network (Searin).

The production of this counter-research by the Moon River fishers was made possible by the strong, democratic, inclusive movement and well organized movement against the dam stretching back over more than a decade. Still, a vast learning process had to take place to produce a sound and valid study. This was a detailed and time-consuming process, involving trial and error before this local counter-research developed into a well-organized form. It originally dated back a year earlier before this landmark decision to open the dam for one year. It began in October 2000 when EGAT was forced to open the sluice gates temporarily for one and a half months because of the protestors' confrontation at the Government House combined with the urgency to save Ubon city from drowning. Excess flood water in the Pak Moon reservoir had to be released for reasons of safety and flood relief.

A small group of fishers together with Searin staff were working from their own pockets. Knowing that EGAT would close the dam anytime, they hurriedly began to collect

fish samples both by themselves and by buying big quantities of fish from other fishers.⁵ They took photographs and tried to identify the fish species by consulting available scientific literature about fish taxonomy in the Mekong basin. This documentation process took time and the heaps of fish they had bought for the research began to lose their freshness. The fishers and the NGO staff finally found a solution to save their investment by making traditional Isan fermented fish products and selling them to households in the nearby villages and at markets in several towns. Fortunately as a result of these sales, they lost only 10,000 baht—a lot less than they expected. And their very first attempt to do research bore some fruit. They were able to collect evidence of 99 fish species, confirming the diversity of fish in the Moon. The research also affirmed that fisheries in the Moon River depend on the replenishment of natural stock from the Mekong, and that fish migrate between the Mekong and the Moon if there is no engineering obstruction to block the fish path.

A more comprehensive research process resumed in June 2001 following the government's decision to open the dam for one year. The Tai Ban Research group was officially formed and the research methodology was reformulated from the previous experimental one. Instead of a small ad hoc group, the Tai Ban Research group now consists of 195 local researchers representing each of the 65 affected villages along the Moon River. The mobilization of local researchers was built on the organization of the anti-Pak Moon movement whose members were camping at the two protest villages at the dam site. The researchers in each village had the task of collecting fish samples in their villages and recording the data including fish name, size, the place where the fish was caught, and fish prey. When new fish species were found, the researchers would call in the research assistants, who were Searin staff, to take photographs. A monthly meeting was held to discuss the research progress and problems and to jointly identify details about fish characteristics, behaviour, habitat and lifecycle.

The scope of the Tai Ban Research later expanded beyond the subject of fish to cover five other key components: river plants and herbs; rapids and ecosystem; fishing methods and varieties of fishing gear; river bank farming; and social relations of the Moon River communities. In November 2002, the Tai Ban Research group launched two publications from its research findings. One is a book titled *The Moon and the Return of the Fishers*, and the other is a fish taxonomy of the Moon River with full detail about fish characteristics, behaviour, feeding, spawning patterns, and habitat.

These research findings are truly impressive. They detail the existing production systems of the Moon River communities prior to the dam construction. This information had hitherto not been documented and studied in the cost-benefit analysis for deciding whether the dam should be built. It confirms the previously unknown aspect of the Moon River communities as a “fish-based economy”.⁶ The depth of the local fishers' ecological

knowledge presented in the counter-research is striking. To mention just the Tai Ban fish study, 156 fish species returned to the Moon when the dam was open. Of these, 25 species were endemic to the Moon, and 123 were migratory fish from the Mekong, of which 97 species remained in the Moon as they could not migrate back in time before the water dropped. The studies documented two biological patterns: the feeding and spawning behaviour. There were 54 species feeding at the rapids, 33 in the whirlpools near the rapids, 69 in the pools below the rapids, 17 at the submerged reefs and shoals, and 35 in the tributaries of the Moon. Many of them could extend their habitat and feeding grounds to more than one type of habitat. There were 33 species spawning at the rapids, 25 species in the deep pool below the rapids, 40 species in the long stretch between two rapids, 22 species in the pool adjacent to the rapids, 24 species in caves in the shoals, 9 species in the submerged reefs, 15 species in the tributaries and 56 species in the riverbank's seasonally flooded forests. Some species have more than two types of spawning habitat. There were 18 endemic species relying solely on the rapids type of habitat.

In taking up this new struggle, the Moon River fishers were crossing over into the unfamiliar domain of research, assembling their wealth of local ecological knowledge and turning it into written text in the form of research findings. This text is visibly readable and tangibly communicable, yielding them a strategic negotiating tool. In making their own research, they have disrupted the existing dominant relations of knowledge and power, repositioning their status from that of objects of study (as in the studies by official researchers) to knowledge producers themselves. Research methodology, once exclusively used by experts, has been creatively manipulated and structurally twisted upside-down, setting new standards for research making with direct representation of the affected communities. It is now no longer outside experts but the local fishers—who have turned into local experts, researchers and knowledge producers—that set the terms of reference, formulate the research questions, select the research sites, collect samples, write the field notes, interpret the data, and verify the outcome of the research.

Valuing the Moon River

These local fishers' research findings are crafted from the fishers' own local knowledge plus scientific research methodology and the scientific techniques of taxonomy and mapping to locate the rapids. The findings have sharply contested those in the official research done by Ubon Ratchathani University, though not in a spirit of antagonism. Indeed, the fishers' counter-research has impressively produced much more comprehensive and well-rounded findings than the academics' expensive research. In the academics' research, the significance of fish biology is reduced to merely counting the number of fish species found in the Moon River. There are no details about fish biology and what affects the fishes' chances

of survival. There is no assessment of the ecosystem of the Moon River other than measuring the water quality in the river. Contrary to the scientists' findings, the local fishers' counter-research has detailed the return of traditional production systems and previously unknown rapids and eco-system of the Moon River. All of these were significant in sustaining the communities' needs prior to the dam construction and during the experimental opening of the dam.

The academics' research on social relations presented a sound analysis that explained the importance of fisheries for the river communities. But this crucial finding was, perhaps unintentionally, misused in the research's recommendations as the basis for explaining various scenarios of how to manage the Pak Moon dam.⁷ Rather than pointing directly to the disastrous impacts of the dam, this crucial information about the importance of fisheries was used to support the argument that sharing of the Moon River between the dam agency and the affected communities was possible by offering various choices for the dam management.⁸

The difference between the findings of the two research studies lies in their different conception of the value of the Moon River. The academics' research sees the Moon River as a territorial resource for which the right approach needs to be identified for efficiently exploiting its potential to produce electricity, water and fish to serve different users. This perspective then looks at how the one management technique of opening and shutting the dam will affect the complex living eco-system of the Moon River, and estimates how much the river can produce of each of the goods and services mentioned above under different management regimes.

The local fishers have very different ways of relating to the Moon River. Their statements reflect their intimate relationship based on love and respect for the Moon. Far from being a "territorial resource", their Moon River is a territory of social and ecological relations, which forms the basis of their ecological knowledge. The findings in their counter-research have shown the depth of their ecological knowledge which has developed out of their lifetime observation and direct interaction with the Moon River through everyday practice—fishing, socializing with other fisher folks, singing, telling stories, sightseeing, hosting guests, and holding cultural events and religious rituals.

This fierce contestation over meanings between the academy and the local fishers' research studies reflects one thing: the experts' knowledge, traditionally unchallenged, based on scientific and abstract logic is not necessarily relevant to the social reality which it is supposed to address and explain. In this contested zone, the local fishers' counter-research has shown that the concrete knowledge of the knowers better explains the social reality of which they are a part.

Validity of the Tai Ban Research

How was the Tai Ban Research validated? This question was important to the movement for two reasons. First, the local researchers relied on young intellectuals and Searin staff in the writing up process.⁹ Second, there was disagreement among local researchers about the interpretation of data, principally about fishes' names and characteristics. These limitations posed a challenge for the Tai Ban research campaign to overcome. Yet, the democratic culture that the local fishers had learned through a decade of collective struggle helped them to solve this deadlock. An idea came from the floor, suggesting the group set up a board of fisher experts, who would have the authority to approve the research work and settle disagreements arising during the research process. Twenty of the most skilled and knowledgeable fishers were elected on the merits of their fishing skill and knowledge of the Moon River ecology. They subsequently formed the board of fisher experts.

The creation of the board of fisher experts was intended to overcome problems of validation. The principle was that all data compilation and interpretation in the six study components had to be validated by the board of fisher experts before the drafting of the final report. However, there had to be some flexibility in this validation format for some of the study components. The studies on fish, rapids and ecosystem, as well as fishing methods and gear were directly validated by the board of fisher experts. The studies on herbs, plants, and river bank farming were based on less complex knowledge systems. Therefore, the local researchers formed their own specialized study groups to validate the interpretation of data compiled by research assistants. In this process, the assistants read the data and showed both the photographs and samples to the researchers. The researchers then corrected, added more data, and finally approved the research findings. The study component on culture and social relations was compiled by recording actual social relationships surrounding the river from story telling and actual cultural ceremonies throughout the year when the dam was open.

The Tai Ban research methodology was designed to be flexible, unstructured and open-ended. This allowed members to initiate ideas and complement others' idea in an atmosphere of egalitarian communal discussion without any hierarchical constraints. Another interesting characteristic was the movement's ability to create an inclusive organization from the perspective of the fisher experts. The criteria for electing the fisher experts were not based on language skill, wealth, education, or social and political status. Instead, they were based on their ecological knowledge and fishing skills. Such criteria pre-empted any struggle for status and leadership among the local researchers, reflecting genuine respect by members towards the elected fisher experts. This emphasis on fishers' knowledge in the research process facilitated the formation of a participatory forum for discussion in which the fishers could test each other's competency and sharpen their fishing skills. They used the forum to revive memories and lost knowledge which had been forced out of use for a decade.

Indeed, the creation of the board of fisher experts and the overall process of the Tai Ban Research represented a remarkable experiment in producing community-based research. It demonstrated how marginalized people can creatively develop a method to turn their local knowledge into a weapon that effectively counters and de-legitimises the experts' enterprise of research, and simultaneously opens up space for negotiating with the state on their own terms. This very process of crossing over into the domain of research—once solely occupied by the experts—required the local fishers to reinvent, reinterpret and reshape their local knowledge and to manipulate the experts' research technology and modern scientific techniques including taxonomy and mapping.

Of course, the body of knowledge produced by the local fishers' counter-research is not a discovery of absolute truth. Rather, like any other knowledge production, this body of knowledge is subject to challenge and to the possibility of being supplanted in the future by competing knowledge based on new evidence or superior theories.

However, this counter-research by the local fishers did not convince Prime Minister Thaksin to agree to the movement's demand to open the Pak Moon dam gates permanently. The dam remains today Southeast Asia's most unique dam with its "open-and-shut" operation system, in which the dam is open for four months a year in the rainy season. Nevertheless, the counter-research has accomplished something else. It has widened the social space for local fishers to insert their voice of difference into Thai public debate. In November 2002, the National Health and Social Research Council awarded Tai Ban the title of the best research of the year, boosting the morale and confidence within the Moon River fighters' movement. It was not the 100,000 baht prize that has kept them alive, but the society's valuation of their local knowledge which had been devalued and rejected.

Conclusion

The Moon River fishers' contestation of the terrain of knowledge politics represents a crisis of authority for the experts' knowledge and their traditional privileged social status. The subjects of research study are no longer passive and silent. By claiming the status of knowledge producers, the Moon River fishers are forging a linkage between their local knowledge and power. This latter element was once missing in their previous interaction with the state bureaucrats who privilege experts' knowledge based on scientific reasoning and positivist social analysis. The Moon fishers, whose voice hitherto has been deprived of authority, are no longer simply striving for acceptance within a hegemonic framework of experts' research. They have created a new politics of difference informed by their daily cultural practice and respect towards their river.

They have turned upside-down the subject-object relationship in the research process. Mainstream researchers treat their object of study—more precisely owners of local knowledge—as

informants. Their knowledge is portrayed as a static and fixed entity which the researchers can extract, code, reframe, and rewrite in academic language. Consequently, researchers take for granted that their research product is their own discovery of new knowledge. It represents a top-down approach in which the ownership of knowledge is transferred from the original knowledge owners to the outside knowledge reproducers. Conversely, the local fishers' counter-research takes as its starting point their own contextual circumstances—the complexities revolving around their everyday practice and communal management of the Moon River's fisheries resources. It is a bottom-up approach to the production of knowledge which, most importantly, has been collectively developed by the local fishers in the communities of the Moon River.

This very process of producing counter-research with its impressive and comprehensive findings has significantly challenged the stereotyped and stigmatized representation—created by the state bureaucrats and their allies—of the local fishers as a rural underclass which is greedy for money, poorly educated, and stubborn. Indeed, both the process of the counter-research and its product have freed the Isan fishers from this prison of stigma not only in the eyes of the public but also in their own eyes. It is clear that this time and energy-consuming learning process of making the counter-research has empowered these ordinary local fishers by equipping them with a tool to transform their oral ecological knowledge into written text in the form of research. This text has served as a bridge that crosses existing gaps in communication, linking the understanding of groups within society to the local fishers' situation. More importantly, it has given the movement a new political visibility. This collectively produced text has become a strategic tool for the local fishers in creating the space for dialogue and setting their own agenda to negotiate with the state in their ongoing struggle to reclaim the Moon River.

Symbolically, the Tai Ban Research marks the beginning of a new subaltern consciousness, a new means of resistance for people at the margins. What began as a tiny spark has today inspired other grassroots movements nationwide to develop their own communities' counter-research studies. This spontaneous emergence of many tiny counter-research studies, currently in the making, signifies a new politics of difference in which communities attempt to reposition their relations with the powerful state and its technology of power,¹⁰ namely the experts' knowledge and their research. They are creating a space on the basis of their traditional knowledge to enable them to enter into negotiation and to directly participate in decisions that affect their lives. The spontaneous emergence of a movement of community-based research, presently taking place in the North and Northeast, though still centering on the river management issue, resembles the formation of the community forest movement and its ongoing campaign for legal recognition of local management of forests.

Indeed, there is room to imagine how the community-based research movement will evolve and undergo modification amid this crucial and still unfolding struggle over knowledge. How can the movement begin to institutionalize its counter-research framework and insert itself into the formal decision making process? But, for sure, the enterprise of research can no longer be the exclusive domain of the experts. Rather, their role and their use of knowledge will from now on be constantly checked, challenged or even de-stabilized by the local knowledge producers through the assertion of their own ways of knowing, writing and reading histories and texts.

Notes

- ¹ This article, which forms part of my ongoing journey in writing up my Ph.D. thesis, has enormously benefited from dialogue, friendship and love from acquaintances, friends, family and the Moon River fighters. I cannot detail them all here, but I wish to mention some: Mukdawan, Fiat, Thin, Thum, Tek, Laa, Boon, Archarn Chayan Vadhanaphuti, Phi Mod, Phi Oang, Phi Ju, Phi Phin, Pho Sunthorn, Pho Fong, Pho Pong, Pho Uy, Pho Dam, Mae Roen, Jonathan Rigg (Durham, UK), and the Sydney front: Philip Hirsch, Phi Anucha, Andrew, Fiona, Chang and I-Ling. For the love I always gain: my mother and family in Thailand. For fieldwork grant: DANIDA and RUF. For an hour reading and constructive comment at the last minute, I have Torben Lang, my beloved, during our weekend reunion. This article could not have been completed without the help from my parents-in-law, Jens Otto Lang and Aase Mosumgaard, who spared their time to baby-sit my Helena. Most importantly, I thank the editor of this journal, Chris Baker, for patiently waiting for this article to come through. Responsibility for any errors remain mine alone.
- ² The author follows the spirit of the Mun River fighters to spell the Moon River with the “n” ending, juxtaposing it with the state’s spelling of the Pak Moon dam with the “l” ending. In the Lao-Isan dialect, the word “Moon” or originally “Moon Mang Sangkhaya” means inheritance which has been passed down from the ancestors to their children. The Moon River is, therefore, considered as the natural inheritance for the Lao-speaking Isan people that has, until recently, harmoniously sustained their life for generations (Tai Ban, 2002, p.2). The word, Mool, on the other hand, is a misspelling of the Isan vocabulary by the state at the centre which is based on the central standard Thai language of the Bangkok elitists.
- ³ The words “Tai Ban” literally mean villagers in Isan dialect. Thus, the term “Tai Ban research” means the villagers’ research.
- ⁴ Ubon Ratchathani University, *Project to Study Approaches to Restoration of the Ecology, Livelihood and Communities Receiving Impacts from Construction of the Pak Moon dam*, complete report, September 2002.
- ⁵ This section on the history prior to the formation of Tai Ban Research draws heavily on interviews with Chainarong Srethachua, Nattachote (Pui) and other Searin staff as well as the Tai Ban fishers during my ethnographic fieldwork in 2002.
- ⁶ See Nidhi Eoseewong on p. 6 of the Tai Ban research.
- ⁷ For analysis of the university research’s recommendations, see Malee Traisawasdichai Lang, “Negotiating for decision making space in the Mekong basin: towards rights-based international river basin planning”, paper for the international conference on From Water “Wars” to Water “Riots”: the Role of the Poor and

Implications for Water Management Institutions in Future Water Related Conflicts, organized by the Danish Institute for International Studies (DIIS) and DANIDA, Copenhagen, 3 December 2003.

⁸ Full analysis, see Malee, "Negotiating for decision making".

⁹ Most local researchers' ages range between 55 and 70 while only a small number of members are in their middle age. They are mostly from the older generations who attended school for no more than the literacy level. Remarkably throughout the anti-Pak Moon dam movement, many protestors were from the older generations who are too old to find wage-labour in Bangkok and other big cities. They have often helped to take care of the grandchildren, whose parents left home to work and send meagre remittance back to support the families since the dam was built. Thus, symbolically, the anti-Pak Moon struggle is a meaningful struggle by the elders to reclaim their river for their children in the hope that all family members who are scattered in various parts of the country since the advent of the dam will return to help restore their livelihood and rebuild their broken families and damaged communities to approximate what used to exist in the past.

¹⁰ Michel Foucault, "Governmentality", in Graham Burchell, Colin Gordon, and Peter Miller (eds.) *The Foucault Effect: Studies in Governmentality* (Chicago: University of Chicago Press, 1991).

Book Review



The Akha Journal of the Golden Triangle

1 (2), October 2003, edited by Matthew McDaniel

Reviewed by Jon Fernquest

In his new journal, Matthew McDaniel conveys in words and photos the hopelessness of the Akha hilltribe situation in Chiang Rai province as well as the beauty and value of their rich cultural heritage. This heritage has been evolving for thousands of years in harmony with the natural environment around it, but it is now threatened with extinction, at least in Thailand.

Along with extensive descriptions of Akha food, handicrafts, language and traditions, the *Journal* includes photos of the ornate village gates and spiritual healers that are quickly disappearing as US missionaries take over Akha villages. Important documents from the international debate on the human rights of indigenous people are also included as well as moving articles, one from New York's *Village Voice* magazine on Matthew's work (p. 118) and another one on language death.

Matthew is an activist and advocate for one specific hilltribe group, the Akha, so don't expect a completely objective evaluation that incorporates every possible viewpoint. He

sees a people, his own people, the Akha, being threatened. He is doing everything in his power to get the word out and find some help. Nominally he is an American; in reality he is an Akha, a white Akha. Not unlike Kevin Costner in the film *Dances with Wolves*, he has spoken the Akha language as his first language for years. He has an unwavering faith in Akha religious traditions and the highland agricultural way of life they are tied to. He farms rice and coffee with his Akha wife and three children in a remote village in the hills a couple of kilometers from the Burmese border. He sees the world through Akha eyes, but he is also a passionate participant in internet forums and debates.

So unlike most Akhas, he does not take it for granted that because they are poor and powerless they must inevitably be exploited by the well-known cast of characters with power and money that Matthew describes over and over again in his journal: the Thai police with their American funded “War on Drugs”, lack of transparency, quite visible wealth and quite invisible means of obtaining it; American and Chinese missionaries with ever increasing numbers of unregulated hilltribe “orphanages”; and finally the Thai forestry department, the official owner of all Akha land, a landlord who slowly but surely evicts its tenants permanently.

In recent years, as Matthew points out, orphanages have popped up all over Chiang Rai province. Their traditional function of raising children without parents has expanded. The precedent was set several years ago when an NGO worker with near police power went into a village and coerced a family to hand over their children to the custody of an NGO boarding school. As Matthew points out, when missionaries discovered how easy this was, everyone jumped on the bandwagon. When you have money and power, it is easy to coerce the poor and powerless into handing over their children.

NGOs can do things with other people’s children in Chiang Rai that only the courts and government social workers can do in the West. And to make it worse, the credentials of NGOs are often not thoroughly checked. While Matthew was eating dinner at my house recently, I translated from Thai the distraught phone call of a Thai neighbor of a Chinese orphanage in Mae Chan. She claimed that the children had told her they were being sexually abused and were under a threat of death if they revealed this to anyone. She was so scared that she fled her home to Bangkok. As Matthew observes, you don’t see whole families in missions, only children. He points out that according to international law, genocide, the destruction of an ethnic group and its culture, can result from “forcibly transferring children of the group to another group”. (p. 108) People who strive to do good like the missionaries can often do irreparable harm.

As Matthew observes: “The mission does not give the children jobs or land, but if they are moved out of the village they will soon enough have to shift for themselves, and there will be no land to go back to. They will have lost all the opportunity to be self-sufficient

mountain farmers which they would have learned in their traditional culture” (p. 104). So the children go to an orphanage, the next generation is not available to farm, households and ultimately the whole village ceases to exist, forestry moves in and plants pine over the village’s land. What remains of the village relocates to lowland squatter huts and they begin a life of earning minimal subsistence wages on large lowland plantations owned by Thais. Kind of like the IMF in reverse. Their health also suffers from living in the hot lowlands where the climate is different from the cool highlands they were accustomed to.

Sometimes the forestry department moves in and plants over a village’s land even while the village is still using it. The Thai government, through its forestry department, is the legal owner of the land and not just a custodian for the true historical moral-ethical owners, the hilltribes themselves. Sometimes forestry officials just arrest hilltribes for unauthorized farming and throw them in jail (p. 114). When Matthew finds out, he is soon there with his truck and won’t back down until justice is done.

Next month a photo exhibition opens at the Chiang Saen National Historical Museum. Included will be photos taken about 100 years ago by a French colonialist of a hilltribe in Cambodia that today no longer exists. As Matthew points out this was also the fate of the American Indians (pp. 156-9). In Thailand the picture may not be as bleak. There is still the future. Thailand is a democracy that allows critical thought and openly critical protest that often changes and improves Thailand in small but significant ways.

Over the years I’ve seen several NGO organizations in the Chiang Rai area, both Thai and missionary, follow the examples Matthew has provided in his work, ranging from village water and educational projects to local newsletters and awareness of the Akha heritage and image and how they have been exploited by others for their personal gain. Matthew’s hands-on grassroots work complements the groundbreaking scholarly work being done by Thai intellectuals like Yos Santasombat at Chiang Mai University (*see Biodiversity, Local Knowledge, and Sustainable Development, 2003*).

Although his rhetoric may be a little inflammatory for some, Matthew has given this journal all he has got. It is a fine addition to his other accomplishments which include a *National Geographic* special on the Akhas, preservation of the Akha oral traditions in written form, as well as work on human rights that made it to the *Bangkok Post* and ultimately to Amnesty International’s yearly report on Thailand. In this journal he has squeezed the last drip of tenacity and love for the Akha from his soul and I think he should be praised for what he has accomplished.

The Akha Journal costs Baht 350 in Thailand (US\$20 outside) including shipping and can be bought by credit card through <https://www.paypal.com/xclick/business=akha%40akha.org> or by postal money order from The Akha Heritage Foundation, PO Box 16, Mae Sai, Chiang Rai

57130. *Matthew McDaniel can be contacted at akha@akha.org.*

Some relevant websites:

The Akha Heritage Foundation: <http://www.akha.org>

Akha Heritage Site: <http://groups.yahoo.com/group/Akhaweeklyjournal>

Discussion: <http://groups.yahoo.com/group/akha>

Akha Genocide

Dear Friends:

Here is a letter I have sent to the US State Department regarding the US direct involvement in the destruction of the Akha people which can be identified as no less than a slow and not so slow genocide against them. The current numbers already define this situation. But they are comfortable numbers and events that many people can live with as compared to when CNN splashes video of machettes lopping off limbs and heads.

Contact the State Department and make your voice heard.

Matthew McDaniel

To the US State Department, Thailand Desk

With such a powerful drug eradication and enforcement program directed by the hand of the DEA for many years now in Thailand, aimed in a great part at hill tribe communities, while very little was done by comparison to alleviate poverty (the reason people sell the drugs in the first place), there must be very good data on the numbers of the Akha hill tribe held in Thai jails and prisons which should certainly illustrate a human rights crisis at the Embassy level. If that data currently isn't held, then I am sure that there are the means by which to discover it. A human rights probe would start at this point.

I would like to know if anyone in the Embassy section of Thailand has seen these numbers as to what they represent, if any one at the State Department level in Washington has seen them, and what will be said when such numbers are finally made public? People are already asking why some alternative method was not arranged to the current drug war against the hill tribe peoples? Why such a high percentage of Akhas are in prison as compared to their population and why no one shows any knowledge or concern of this?

The problem with the drug war aimed at the hill tribe peoples is firstly, that it is propaganda. The hill tribe is an easy scapegoat while army and police are not prosecuted, and

secondly that it reinforces the genocidal rage that the Thais have shown very clearly they are willing to unleash against the minorities.

When the State Department can note that the Thais are not doing enough about trafficking in children and women, while the State Department must also surely recognize that poverty is the hand that plays in this game, then how odd that they should fight the one, while increasing the other? With thousands of Akha in prison, how many children have been left in the lurch, how many families struggling to get enough coin for food. This is the fuel of prostitution!

When a part of all the children are in brothels, the other part in State Department sanctioned mission residential boarding schools (safe houses) and thousands in the jails and prisons as the case is right now as we speak, when will someone come along and say that we have genocide against these Akha people by the sheer burden of the numbers?

The proof that genocide is happening should already be a moot point. The Akha race, as a distinct cultural, religious and language identity cannot survive in Thailand under the current rules of engagement.

It is tragic that no one of foresight can see that the DEA role and the American missionary role, with its long connections to US intelligence gathering, are playing a dominant factor in policies that make this happen.

The Thais were never bent on converting all the hill tribes to Buddhism, and the Thais know that they benefit from the distinct hill tribe cultures. The Thais were never inclined to push the criminalisation of drugs in the same way that the US has pushed and funded them, yet have come to learn the wonderful way that the drug war (now combined with the war on terror) can be used to gain funding in the millions of dollars from the US and deprive the Akha of civil and human rights.

The current drug war mentality imported from the US and the current mission tactics of exploitation and removal of children from traditional villages stands out as the greatest threat to these people. If the hill tribe come to understand who played the dominant role in this, the Americans will have just that much more resentment against them.

There are many treaties and international laws on human rights that were designed specifically to prevent what is going on here in Thailand and protect indigenous peoples like the Akha from forced conversions and profiling.

The role of the DEA and the American missions in Thailand in increasing human rights problems would seem a logical place to start, and if one were to get bored then one could look at the application of forestry policy in Thailand that robs the Akha of their rice lands so that mono crop pine can be planted (supported with western help). We see once again that as under any other totalitarian regime, the peasants are expendable.

Americans should not be funding a drug war that has always profiled the hill tribes

nor should Americans be giving the nod to the ill-advised practice of removing tribal children from their communities under whatever guise.

I hope that you and others at the US Embassy are seriously considering the long term implications of these situations which are not supportive of human rights. The currently available information coming out of the prisons is very ugly.

Many Akha prisoners state that they were specifically entrapped by involvement of a DEA agent who requested that they go and find drugs for them and then arrested them and handed them over to the Thai police.

Matthew McDaniel
The Akha Foundation, Mae Sai, Chiang Rai

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Americans should not be funding a drug war that has always profiled the hill tribes

The fisherman's tears

The sounds of a sweet song, distant and soft
Drift over from the young fisherman.
Shrimp, oyster, crab and fish get fewer every day
If we don't band together, soon we'll have nothing to eat.
We cry and cry until there are no tears left
Just thinking of the time we had no debt,
Before we were poor.
Now we've been condemned and defamed.
Looking back, we used to have a livelihood.
Now we just have debts up to our ears.
So depressing to confront those who are stealing our livelihood.
We fear for our children and their children.
We blunder around looking for something to eat.
We have nowhere to turn, our luck has run out.
We cry so badly, so regularly.
There's nothing to eat and no one cares.
Our tears overflow the bay, they ebb and flow,
They surge, when we eat our hearts out, when we fish,
When we've paid the electricity bill and the water bill.
But we know we can't go on like this.
We'd like to run away, far from our fate—
Trawling nets, electric stunning, illegal encroachment.
We lament the loss of what we love
Because of people who have no heart.
We feel for our brothers and sisters
Who only want enough to eat from day to day.
We never thought there'd be such cruelty,
That they could do this to us without remorse.

Usen Khaothong

Contributors

Cholthira Satyawadhna is Professor and Director of the Research Institute at Rangsit University, Bangkok. She has a Ph.D. in anthropology from the Australian National University, Canberra, and has written widely on Thai literature, the anthropology of Thailand's and Southeast Asian indigenous peoples, their social and cultural history, and ethnohistory. She recently headed an extensive research project on local community rights in Thailand and Southeast Asia. Her most recent publications are, in English: *Community Rights in Thailand and Southeast Asia* (2000); in Thai: *The Social and Cultural History of Pai-Yue* [Southwestern China] (2001), *The Dynamics of Community Rights: An Anthropological Paradigm* (2002), *The Indigenous Community Rights of Lanna* [Northern Thailand] (2003).

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**National Human Rights Commission of Thailand
(2001-2007)**

Professor Saneh Chamarik (Chairperson)

Asst. Prof. Jaran Ditapichai

Khunying Chandhanee Santaputra

Naiyana Supapung

Professor (Emeritus) Pradit Chareonthaitawee

Vasant Panich

Asst. Prof. Suthin Nophaket

Sunee Chaiyarose

Surasee Kosolnavin

Khunying Ambhorn Meesook

Arporn Wongsang



Vision: The National Human Rights Commission is an institution with a commitment to create a culture of human rights as a way of life in the Thai society, which upholds human dignity, rights and liberties, as well as social justice.

Strategy 8: To support the social learning process with the purpose to raise public understanding, awareness, and recognition of human rights and human dignity.

(Strategic Plan of the National Human Rights Commission of Thailand, 2002-2007)