

# **Report**

## **International Fact-finding Mission**

# **The death penalty in Thailand**

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**The opinions expressed in this document are those of the FIDH only and can not be attributed to the European Union.**

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## Foreword: Why mobilise against the Death Penalty

The FIDH strongly opposes the death penalty. The FIDH maintains that the death penalty contradicts the very essence of the notion of human dignity and liberty; furthermore, it has by now proven its utter uselessness as a deterrent. Hence neither principles nor utilitarian considerations can justify upholding capital punishment.

### 1. The death penalty contradicts human dignity and liberty

Human rights and human dignity are now universally acknowledged as the supreme principles and as absolute norms in any politically organised society. The death penalty directly contradicts this very premise and is based on a misconception of justice.

**Justice is based on freedom and dignity:** a criminal can and should be punished because s/he freely committed an act disruptive of the legal order. It is the very reason why children, or insane persons cannot be held responsible for their actions in a criminal justice system. The death penalty is a contradiction in terms, since it means that at the very moment of conviction, when the criminal is held responsible, and is thus considered as having acted freely and consciously, s/he is being denied this very freedom because the death penalty is irreversible. Human freedom is indeed also defined as the possibility to change and improve the orientation of one's existence.

The irreversibility of the death penalty contradicts the idea that criminals can be rehabilitated and resocialised. The irreversibility of the death penalty thus simply contradicts the notion of freedom and dignity.

The irreversibility argument has another aspect. Even in the most sophisticated legal system, garnished with the strongest array of judicial safeguards and guarantees of due process, the possibility of miscarriages of justice always remains. Capital punishment can result in the execution of innocent people. This is the very reason why Governor Ryan decided to impose a moratorium in Illinois, after having discovered that thirteen detainees awaiting execution were innocent of the crimes they had been accused of, and decided in January 2003, to commute 167 death sentences to life imprisonment. The report of the Commission stressed that: *"no system, given human nature and frailties, could ever be devised or constructed that would work perfectly and guarantee*

*absolutely that no innocent person is ever again sentenced to death."* In this case, "society as a whole - i.e. all of us - in whose name the verdict was reached becomes collectively guilty because its justice system has made the supreme injustice possible" said R. Badinter, French Minister of Justice, in 1981. For a society as a whole, accepting the possibility of condemning innocent people to death flies in the face of its core principles of inalienable human dignity, and of the mere concept of justice.

**Justice is based on human rights guarantees:** the existence of human rights guarantees is the distinctive character of a reliable judicial system; notably, these include the guarantees arising from the right to a fair trial - including e.g. the rejection of proofs obtained through torture or other inhuman treatments. In that perspective, the FIDH is convinced that the full respect of those human rights guarantees and the rejection of legally sanctioned violence are at the core of the credibility of any criminal justice system. Justice, especially when the gravest crimes are concerned and life is at stake, should not rely on chance and fortune; an individual's life should not depend on random elements such as the jury selection, media pressure, the competence of a defence attorney, etc... The rejection of inhuman sentences, and first and foremost the death penalty, clearly contributes to building a judicial system on principles acceptable universally, in which vengeance has no place and that the population as a whole can trust.

The **"death row phenomenon"** refers to the conditions of detention of a person condemned to capital punishment while awaiting the execution of the sentence. Those conditions of detention - due notably to the very long duration of detention, to the total isolation in individual cells, to the uncertainty of the moment of the execution, to deprivation of contacts with the outside world, including sometimes family members and legal counsel - often amount to inhuman treatment.

**Justice is fundamentally different from vengeance.** The death penalty is nothing but a remnant of an old system based on vengeance: that s/he who has taken a life should suffer from the same fate. If applied consistently, this would mean stealing from the stealer, torturing the torturer, raping the rapist. Justice has risen above such a traditional notion of punishment by adopting a principle of a symbolic, yet proportional sanction to the harm done - fines, imprisonment, etc., which preserves the dignity of both victim and culprit.

Furthermore, **the FIDH does not believe in the supposed necessity of the death penalty out of regard for the victims and their relatives.** The FIDH reaffirms that the victims' right to justice and compensation is fundamental in a balanced and fair justice system, and that solemn and public confirmation by a jurisdiction of criminal responsibility and the suffering of the victim plays an important role in order to substitute the need for vengeance ("judicial truth"). But the FIDH nonetheless holds that answering this call for justice by the death penalty serves only to relieve the basest emotional cries for vengeance, and does not serve the cause of justice and dignity (even that of the victims) as a whole. Paradoxically, the victims' dignity is itself better served by rising above vengeance. The victim's status of civil party in the criminal procedure contributes to answering his/her imperious need to be recognised as a victim. Providing psychological support and financial compensation to the victims also contributes to their feeling that justice has been done and that private vengeance is unnecessary and would have no added value. In light of those elements, the need of victims to vengeance as an argument in favour of the death penalty appears irrelevant.

Eventually, the FIDH notes that the death penalty is used in a discriminatory way, e.g. in the USA, where it particularly affects ethnic minorities, or in Saudi Arabia where foreigners are its first victims.

## 2. The death penalty is useless

Among the most common arguments in favour of the death penalty, one hears that of its usefulness: the death penalty supposedly protects society from its most dangerous elements, and acts as a deterrent for future criminals. None of these arguments can be held to have any validity, as has been proven again and again.

**1. Is the death penalty a protective element for society?** It does not appear so: not only are societies which enact capital punishment usually no less protected from crime than societies which do not, but other sanctions are available in order to protect society, notably imprisonment: protection of society does not imply the physical elimination of criminals. In addition, it can be argued that the precautions taken to avoid suicide by death row inmates demonstrate that the physical elimination of the criminal is not the main aim of death penalty: what seems to matter is that the sanction is executed against the consent of the criminal.

2. With regard to the **exemplarity** of the death penalty or other cruel punishments, their efficiency as deterrents for criminality

has repeatedly been proved wrong. All systematic studies show that death penalty never contributes to lowering the crime rate, anywhere. In Canada for example, the homicide rate per 100,000 population fell from a peak of **3.09** in 1975, the year before the abolition of the death penalty for murder, to **2.41** in 1980. In 2000, whereas police in the United States reported **5.5** homicides for every 100,000 population, the Canadian police reported a rate of **1.8**.

The most recent survey of research on this subject, conducted by Roger Hood for the United Nations in 1988 and updated in 2002, concluded that "the fact that the statistics... continue to point in the same direction is persuasive evidence that countries need not fear sudden and serious changes in the curve of crime if they reduce their reliance upon the death penalty<sup>1</sup>".

This should obviously not come as a surprise: a criminal does not commit a crime by calculating the possible sanction, and by thinking that he will get a life sentence rather than the death penalty. Furthermore, as Beccaria noted in the 18<sup>th</sup> century, "it seems absurd that the laws, which are the expression of the public will, and which hate and punish murder, should themselves commit one, and that to deter citizens from murder, they should decree a public murder".

Finally, the FIDH notes that the death penalty is very often a barometer of the general human rights situation in the countries concerned: it proves to be a reliable indicator of the level of respect for human rights, as for example is the case with regard to the situation of human rights defenders.

## 3. Arguments from international human rights law

The evolution of international law tends towards the abolition of the death penalty: the Rome Statute of the International Criminal Court and the UN Security Council resolutions establishing the International Criminal Tribunals for the Former Yugoslavia and for Rwanda do not provide for the death penalty in the range of sanctions although those jurisdictions have been established to try the most serious crimes.

Specific international and regional instruments have been adopted which aim at the abolition of the capital punishment: the UN second optional protocol to the ICCPR aiming at the abolition of the death penalty, the Protocol to the American Convention on Human Rights to abolish the death penalty (Organisation of American States), the Protocol 6 and the new

Protocol 13 to the European Convention on Human Rights (Council of Europe). The Guidelines to EU Policy Towards Third Countries on the Death Penalty, adopted by the European Union on 29 June 1998 stress that one of the EU objectives is "to work towards the universal abolition of the death penalty as a strongly held policy view agreed by all EU member states". Moreover, "the objectives of the European Union are, where the death penalty still exists, to call for its use to be progressively restricted and to insist that it be carried out according to minimum standards (...). The EU will make these objectives known as an integral part of its human rights policy". The newly adopted EU Charter of fundamental rights also states that "no one shall be condemned to the death penalty, or executed".

At the universal level, even if the ICCPR expressly provides for the death penalty as an exception to the right to life and surrounds it by a series of specific safeguards, the General comment adopted by the Committee in charge of the interpretation of the Covenant states very clearly that article 6 on the right to life "refers generally to abolition in terms which strongly suggest that abolition is desirable... all measures of abolition should be considered as progress in the enjoyment of the right to life".

Moreover, in its resolution 1745 of 16 May 1973, the Economic and Social Council invited the Secretary General to submit to it, at five-year intervals, periodic updated and analytical reports on capital punishment. In its resolution 1995/57 of 28 July 1995, the Council recommended that the quinquennial reports of the Secretary-General should also cover the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty<sup>2</sup>.

Every year since 1997, the UN Commission on Human Rights calls upon all states that still maintain the death penalty "to establish a moratorium on executions, with a view to completely abolishing the death penalty"<sup>3</sup>.

On 8 December 1977, the UN General Assembly also adopted a resolution on capital punishment stating that "the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment"<sup>4</sup>.

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1. Roger Hood, *The Death Penalty: A Worldwide Perspective*, Oxford University Press, third edition, 2002, p. 214

2. ECOSOC resolution 1984/50 of 25 May 1984.

3. See notably resol. 2002/77, 2001/68, 2000/65 and 1999/61.

4. UNGA resol. 32/61, 8 Dec. 1977, para 1.

## Introduction and Background to the Death Penalty in Thailand

### 1. Introduction

In the framework of its involvement in the international campaign for the abolition of the death penalty throughout the world, the FIDH carries out international missions of investigation in states where this inhumane penalty is still being applied.

These missions pursue four aims: (1) to stigmatise this inhuman punishment. 80 countries have abolished the death penalty in law, 15 have abolished it for all but exceptional crimes such as war crimes, and 23 countries can be considered abolitionist de facto: they retain the death penalty in law but have not carried out any executions for ten years or more; (2) to show that generally, prisoners who have been condemned or executed throughout the world did not benefit from the right to a fair trial, as enshrined in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights. This makes their state-sanctioned executions all the more unacceptable. These missions of investigation also aim at (3) shedding light on and denouncing the treatment of death row inmates from conviction to execution; the situation of these inmates often amounts to a "cruel, inhuman and degrading treatment", prohibited by international human rights law. (4) By carrying such missions of investigation, the FIDH seeks to formulate recommendations to the relevant State authorities of the country concerned as well as to other relevant actors, in a spirit of dialogue in order to support their efforts in favour of the abolition of the death penalty or, as a first step, in favour of the adoption of a moratorium on executions.

The present report is the result of an international mission of investigation focused on the death penalty and the administration of criminal justice, by three FIDH delegates, Siobhan Ni Chulachain, Barrister-at-Law, of Ireland and FIDH Vice-President, Sinapan Samidoray, of Singapore, President of the Think Centre and Julie Morizet of France, lawyer - carried out in Thailand from 1 to 10 August 2004. The present report has been drafted jointly with UCL, the Union for Civil Liberty, FIDH member organisation in Thailand, whom the FIDH would like to thank sincerely for its support for the mission. The FIDH and UCL also thank Forum Asia for its valuable cooperation during the mission.

The FIDH would like to thank the Thai authorities for their cooperation. The meetings with the Ministry of Justice, the

Office of Attorney General and the Department of Correction were particularly fruitful. The mission was also authorized to visit the Bang Kwang prison, where all those sentenced to death are detained, as well as the Chambers of Execution in the Bang Kwang prison and the Central Women Correctional Institute. However, the mission regrets the refusal of the Bang Kwang prison authorities to allow the mission to visit death row. The Prison Officials expressed the opinion that the minimum conditions for security were not reached, given the psychological state of mind of the death row inmates who were awaiting the pardon of the King on the occasion of the 72<sup>nd</sup> birthday of the Queen on 12 August 2004. Likewise, the mission deeply regrets the refusal of the police authorities to meet with the mission, despite numerous requests by the FIDH and UCL. Such an interview would have been of the utmost importance, given the information received by the mission on the treatment of the suspects in police stations.

The mission met with a total of over 30 individuals, including members of the legal profession (including the Thai Law Society of Thailand, the President of the Court of Appeal), the National Human Rights Commission, the media, civil society, members of Parliament, death row inmates and families of death row inmates<sup>5</sup>.

The views of these individuals range from support for the complete abolition of the death penalty to a demand for the retention and implementation of the death penalty. The general opinion of the persons met by the mission was that public opinion is still very much in favour of the death penalty. The war on drugs initiated by the current government seems to have further strengthened this state of mind. However, it is worth noting that no significant opinion polls on the issue of the death penalty have been carried out to date in Thailand.

The administration of the death penalty in Thailand is carried out amid a growing climate of violations of human rights. As the first report of the National Human Rights Commission (NHRC) puts it, "human rights abuses have worsened over the past three years in a 'culture of authoritarianism' under Prime Minister Thaksin Shinawatra<sup>6</sup>". It mentions "117 cases of human rights violations in 2002 and 460 last year [in 2003], mostly during the war on drugs<sup>7</sup>".

During the war on drugs, launched in February 2003 by the government, 42,000 people were placed on government "blacklists" as suspected drug traffickers or users. 2,500



suspected "drug traffickers" were summarily killed without fair trials under the principles of democracy and rule of law<sup>8</sup>", according to the report of the NHRC. No cases have yet been filed with the Rights and Liberties Protection Department - which was the body set up by the Prime Minister to investigate extrajudicial killings nor has the Attorney General's Office been notified of any cases- the police investigating extrajudicial killings are required to notify both of these bodies - a reflection of the climate of impunity prevailing in the country regarding human rights abuses committed by the police.

The war on drugs also worsened the situation of human rights defenders: the Special Representative of the Secretary-General on the situation of human rights defenders stressed in her report that "defenders reported that in some districts police officers had compiled a "blacklist" of individuals (including community and hill tribe leaders, who had been critical of the police human rights record) and used this list as the basis for their action to meet a quota under the anti-drugs campaign"<sup>9</sup>. The situation of human rights defenders from Burma also raises serious concern. The Special Representative on the situation of human rights defenders mentioned in the report following her mission to Thailand in May 2003 the "general difficulties faced by human rights defenders from Myanmar in the context of their peaceful human rights work"<sup>10</sup>. The FIDH also reacted to that situation<sup>11</sup>.

Since January 2004, the Southern Muslim-dominated provinces have experienced widespread violence between Islamic groups and the military and the police, which resulted on 28 April 2004 in more than 100 deaths in unclear circumstances. New violence erupted in October 2004 with another 84 deaths being reported. Those people were killed on the occasion of an intervention by the Thai security forces to disperse about 3,000 Muslim protesters. Six persons were reportedly killed during the intervention while, according to official sources, 78 people died suffocated after being arrested and packed in police trucks. This is the most serious violence in Southern Thailand since last April.

The FIDH and UCL believe that the maintenance of the death penalty participates in this climate of authoritarianism. In this regard, the number of people under sentence of death had reportedly nearly tripled between January and December 2003 to nearly 1,000<sup>12</sup>. The answers given to a questionnaire sent to 100 death row inmates revealed that, out of the 54 persons who answered, 35 i.e. almost 65% of them had been sentenced to death on drug cases<sup>13</sup>. Three of the first four persons to be executed by lethal injection on 12 December 2003, Boonlue Nakprasit, Panthapong Sinthusung and Wibul

Panasutha, were sentenced for the production of amphetamine tablets (see below).

Moreover, the mission noticed that the death penalty may be carried out with insufficient judicial safeguards and the conditions of detention of the inmates may amount to cruel, inhuman and degrading treatment.

A total of 323 executions were carried out in Thailand between the years 1935 - 2003, although there were effective moratoria in place from 1935 to 1950 and again from 1988 to 1995. The application of the death penalty and the method of execution varied according to the period. In modern times, 51 criminal offences in total<sup>14</sup>, including offences against the state and serious drug offences can result in the imposition of the death penalty. Execution methods have also evolved from cruel and gruesome ways of executing condemned convicts to public beheading and later, to death by firing squad. In October 2003, the method of execution was changed to lethal injection, considered as more humane (see below).

## 2. History of the Death Penalty in Thailand

The Royal Decree on Criminal Offences and Prosecutions or Phra Aiyakarn-Aya Luang, came into effect in Buddhist Era (B.E.) 1895 (or 1352 A.D.) stipulating many offences to be punishable by beheading, including inter alia offences against the Royal administration, exploitation of citizens, harbouring fugitives, resisting arrest, falsification of arrest warrants, alteration of testimony, and failing to carry out orders resulting in damage to official functions.

In B.E. 1978 (1435), the category of offences attracting the death penalty was widened in accordance with the Royal Decree on Armed Rebellion, otherwise known as Phra Aiyakarn-krabod-Suk, to include sedition, rebellion, conspiracy to assassinate or dethrone the King, armed attack of the capital city, royal palaces, residence of a governor, murder of monks or robbery of a temple or living quarters of monks, subjecting monks or lay citizens to inhumane treatment or torture, patricide, acts of indecency against Buddha or sacrilegious acts and various crimes against children. The Decree contained a long list of barbaric methods of execution, including inter alia, cracking open the skull and filling it with red, hot pieces of metal, lynching, pouring boiling oil over the head of condemned person, and allowing starving dogs tear the condemned person apart. In B.E. 2451 (1908), beheading became the method of execution in accordance with Article 13 of the Criminal Code.

## The death penalty in Thailand

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Until B.E. 2477 (1934), prisoners who were condemned to death were executed by beheading. However, in that year, Prime Minister Phraya Phahol-Phayahasena proposed to the Cabinet that the death penalty might be lifted. Subsequently, a panel of experts was appointed to study the issue and to come up with recommendations: its final recommendation was that although it was not timely to lift the death penalty in Thailand, beheading should be replaced by a new and more humane method of execution, either the electric chair or the firing squad.

In B.E. 2477 (1934), the Royal Thai Government decided to amend Article 13 of the Criminal Code to change the method of execution from beheading to death by shooting with a gun. The government justified this change before the House of Parliament on the basis that "execution by beheading was clearly inhumane, a shockingly appalling experience to the condemned prisoner, executioner and officials supervising the execution. Very often, the condemned person went through a torturous process. Some of the executioners were not even properly trained and therefore unqualified to carry out the task correctly. They often missed a clean chop causing a painful and torturous death because the executioner missed the marked point on the neck but chopping the head instead, leaving the condemned prisoner suffering from a painful and inhumane death. In addition, the pre-execution procedures added on to the psychological torture of the condemned prisoner. Some of them were driven to the point of mental breakdown or near-breakdown before facing death at the beheading ground. The high cost of preparation and actual execution with a full fee paid to the executioner appeared to be unnecessarily high. In view of this, the proposed death by firing seemed to be much less costly and much more humane as afore-mentioned. To say the least, a death by firing is not as ghastly as beheading, while much less complicated preparation is required. No ritual dance and ceremonial music are needed in case of death by firing. The condemned prisoner has only to be blindfolded. It is thus deemed most appropriate to adopt the new method of execution..."<sup>15</sup>.

After extensive debate about the lifting or abolition of the death penalty, the Parliament decided to adopt the Amendment as proposed by the government. Proponents of the abolition of the death penalty argued that it is an irreversible sentence, that it is inhumane to deprive another human being of life, and that the death penalty has not been established as a deterrent to serious crime. Those in favour of the maintenance of the death penalty argued that it was an effective deterrent, that even with the death penalty in existence, hideous crimes were committed and that even worse crimes would be committed if it were lifted, that some crimes were so heinous that they could only be appropriately punished by the death penalty.

Although the parliament decided to retain the death penalty, a de facto moratorium was put in place. However, in B.E. 2499 (1956), a new Criminal Code was promulgated by Parliament as part of a rehaul of the legislative system. The new Code which came into force on January 1, B.E. 2500 (1957), provides for the imposition of the death penalty for 31 different offences, including offences committed against the security of the Kingdom, against the administrative system, against the justice system, offences against public safety, sexual offences, offences against life and physical safety, against individual freedom and property, coercion, demanding for ransom, extortion or robbery.

Prior to 2003, prisoners were executed by firing squad, having been placed behind a screen, tied to a pole and blindfolded, holding a bunch of flowers, joss-sticks and candle as part of the final rite. The executioner would then ask for forgiveness from the prisoner. A target was painted on the screen which was placed between the prisoner and the sub-machine gun stand thus allowing the executioner to pull the trigger and fire the hail of bullets through the bulls-eye marking, without seeing his real target.

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5. See Annex 1.

6. See *The Bangkok Post*, "Govt taken to task for rights abuse", 5 August 2004.

7. See *The Bangkok Post*, "Human rights report released", Thongbai Thongpao, 8 August 2004.

8. See *The Bangkok Post*, 5 August 2004.

9. E/CN.4/2004/94/Add.1, *Promotion and Protection of Human Rights: Human Rights Defenders, Report submitted by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Mission to Thailand*, 12 March 2004, para. 54.

10. E/CN.4/2004/94/Add.1, para. 57.

11. See FIDH Open Letter to the Prime Minister of Thailand, Mr Thaksin Shinawatra, 30 January 2003.

12. Amnesty international Annual Report 2004, see <http://web.amnesty.org/report2004/tha-summary-eng>.

13. Questionnaire sent by Somsri Hananuntasuk, in a thesis submitted for a master thesis to the Office of Human Rights Studies and Social Development, Mahidol University, 2002.

14. 31 offences in the Criminal Code, 16 in the Military Criminal Code, 3 Drugs offences (under the Narcotics Act) and 1 Arms offences (under the Firearms Act).

15. The justification for the change is quoted in the amendment to the Criminal Code.

## Perspectives Regarding the Death Penalty in Thailand

### 1. The Thai Context: The War on Drugs

The most worrying fact may be that the death penalty is apparently not considered a pressing issue in Thailand: public opinion is said to be mainly in favour of its maintenance and neither the media, the authorities, the NGOs nor religious authorities have yet taken a firm position towards its abolition. The utmost importance given to the war on drugs may be partly responsible for this absence of reaction.

In practice, the death penalty has been enforced in accordance with the provisions of the law in each respective period of Thailand's legal and administrative history. In fact, the provision on death penalty has evolved with the change of time and development of the socio-political history. For instance, possession of Methamphetamine was previously considered as possession of a type of hallucinogenic drug, but later was considered as a serious offence such as possession of heroin. Subsequently, a large number of big dealers or traffickers of Methamphetamine (locally named "Crazy Drug") have been penalized with the maximum penalty of execution, the same penalty as possession of heroin. Such imposition of the heaviest penalty was praised for a while but it soon proved that execution was not and could not serve as the best deterrent to the hideous crime of trafficking and possession of large quantities of Methamphetamine. This realization came as more cases of Methamphetamine abuses and addictions were reported and became a widespread and obvious social problem. Subsequently, more and more people began to realize that imposition of the death penalty has proved to be ineffective against the trafficking and dealing of hard drugs. In fact, Methamphetamine trafficking hit a record high. This development has convinced a greater number of concerned people that execution may not, after all, be the solution to trafficking and dealing of drugs.

Although there have been some debates in Thailand on the deterrent effect of the death penalty with regard to the trafficking of Methamphetamine, public opinion still believes that authority and more specifically the death penalty is a good method to fight against drug trafficking. The popularity of the war on drugs, based mainly on authoritarianism and repression, is telling in this regard. Hence, it is very difficult to dissociate the question of the death penalty from drug issues in the Thai context.

### 2. Current Debates

#### a. Public Opinion

The death penalty is widely perceived as the heaviest penalty, permanently preventing a person from committing any more crime. All the persons met by the mission stressed that public opinion was widely in favour of the maintenance of the death penalty. According to the retentionists met by the mission, the purpose of this penalty is first to protect society and second to "teach the accused a lesson". They indicated that it also plays a preventive role and helped to educate prisoners to understand that society cannot be put at risk. Finally, they argued that it is was also in the interest of the victims of crime who have no possibility of redress for those crimes. It was even said to the mission that the move from execution by firing squad to lethal injection was opposed by part of public opinion, who were of the opinion that lethal injection was "too soft" compared to the crimes committed.

In this regard, it was often mentioned to the mission that both the media and the government were playing a key role in the formation of the public opinion. As stated below, they tend to present repression and the death penalty as the only means of combating criminality and drug trafficking.

However, it is worth noting that, apart from some TV broadcasts where polls on the death penalty were carried out, there has been no overall opinion poll on the issue. The mission believes that the position of public opinion is not as straightforward as it may seem.

First, public opinion may not be homogenous: some of the persons met believed that the more educated part of the population would be more in favour of the abolition of the death penalty, whereas the other part retains the idea of revenge. However, the mission met persons of low education who were in favour of abolishing the death penalty.

Moreover, despite the fact that the death penalty has a long history in the Kingdom of Thailand, legal provisions on the death penalty and the methods and procedures have been periodically revised and changed over the years. Since laws are initiated, drafted and adopted by people, laws can be amended and penalties lifted by people.

The first serious attempt to deal with the question of whether

or not the death penalty in Thailand should be lifted was made when Gen. Phahol-Phayuha-Sena became the 2nd Prime Minister after the first Democratic Revolution, transforming Thailand from the rule of absolute monarchy to constitutional monarchy. He was praised for his initiative in setting up an ad hoc Committee to study the advantages and disadvantages of the death penalty in Thailand. Later the findings were submitted to the Extraordinary House Committee, resulting in a series of hot debates. Actually, it was part of the overall attempt to introduce legal reform at the time. In B.E. 2477 (1934), the issue was formally raised in the House of Parliament whether or not the death penalty should be lifted. It was in fact a ground breaking situation, when the general public was confronted with this particular issue after many years of informal discussions in concerned circles. Almost immediately, the public was divided into two main schools of thought; one deemed it most appropriate to do away with the death penalty once and for all, while the other camp took an unshakable position that the death penalty must be maintained at all cost.

As mentioned in the parliamentary debate in 1934, pressed by mounting strong reaction from conservative quarters, the anti-death penalty movement gathered more momentum by launching a public campaign on this issue, essentially to rally for more support among the general public. Notwithstanding this, the issue was kept pending without any final outcome, while the public in general has not yet rallied to one side or another.

The issue was raised again among the members of the drafting Assembly of the 1997 Constitution. According to the Minister of Justice, the abolition of the death penalty would not imply a revision of the current Constitution, which states under section 31 that "A person shall enjoy the right and liberty in his or her life and person. A torture, brutal act, or punishment by a cruel or inhumane means shall not be permitted; provided, however, that punishment by death penalty as provided by law shall not be deemed the punishment by a cruel or inhumane means under this paragraph." Section 31 does not provide that the death penalty be mandatory or even optional, which means that a revision of the Constitution would not be necessary in order to abolish the capital punishment.

Moreover, public opinion might favour the abolition of the death penalty if the latter was not regarded as the only sentence available for the most serious crimes. In this regard, the mission felt that there was a need to sensitize the public about the reformatory role of prison. Most persons who met the mission stated that they agreed in principle with the rehabilitation of prisoners, particularly drug addicts, who are generally treated

as patients rather than criminals wherever possible. There is a Bill at drafting stage to allow for the suspension of sentences for non-serious drug offences, which has been finished and will be submitted to next cabinet. It should be passed in 2005. According to this Bill, the prosecution process considers a case and orders the prosecution but the Court will take the fact of addiction into account when passing sentence.

Last but not least, it is worth recalling that Thailand has already gone through times of abolition de facto of the death penalty, notably between 1987 and 1995 when the King pardoned all the sentenced to death, which was not contested by public opinion. Moreover, the public opinion seems to have now accepted the shift from firing squad to lethal injection.

### **b. Prisoners themselves and their relatives**

Paradoxically, the position of death row inmates and their relatives with regard to the death penalty is not straightforward. According to the wife of a death row inmate, her husband is now totally in favour of the abolition of the death penalty. However, she herself agrees with the death penalty for drug offences and is in favour of lethal injection as a means for execution. But she also asserted that the death penalty was often imposed on innocent people. Rather than the abolition of the death penalty, she would like the justice system to be improved in order to avoid miscarriages of justice.

A death row inmate interviewed by the mission said that he agreed with the death penalty before his conviction. He now both agrees in some cases and disagrees in others. He is in favour of the capital punishment as a deterrent for serious crime like rape, murder or for drugs mafia and for those who threaten security and the Government. First-time offenders should not face the death penalty. He believes that his brother, who was arrested with him for drug trafficking and was a repeat offender, should have been sentenced to death. He also thinks that the general level of education is low in Thailand and that people should be educated on human rights issues in order to be able to seek help from human rights NGOs.

The mother of another death row inmate met by the mission said that she used to be in favour of the death penalty for rapists. She is now against it and would like to join a campaign for the abolition of the death penalty. She believes that the change to lethal injection is better but is still not a good solution.

### c. Influence of the Media

Under section 39 of the 1997 Constitution, the media are supposedly free from political pressure<sup>16</sup>. However, the mission received reports that the government were using their economic power to influence indirectly the media. This is further denounced by the 1st report of the National Human Rights Commission<sup>17</sup>, which suggested that "the prime minister was using his position to favour his family's businesses while curbing critical media by threatening their advertising revenue or getting his friends to buy them out<sup>18</sup>".

The self-censorship it implies may explain why the media do not often mention the issue of the death penalty. Some of the persons met by the mission also stated that the media have a strong and negative position with regard to the death penalty, tending to justify it. Moreover, journalists often carry angry reports when judges reduce capital sentences to life or order the release of prisoners. According to a member of Parliament, the media tend to present repression, violence, notably in the context of the war on drugs, as the only way to solve problems and are hence partly responsible for the position of the public opinion in this regard.

### d. The Position of the Legal Profession

The Legal Profession seems to be divided on the issue on the death penalty. Contradictory positions were reported to the mission: although there is reportedly not much debate among academics on the death penalty, discussions among academics, policy makers and criminologists about alternatives to the death penalty are under way.

The mission met with two judges who had been confronted with the death penalty. Judge Vicha Mahakun, although not personally in favour of it, had to impose the death penalty in the case of murders and mutilations of Burmese migrant workers. He took the decision as a last resort, and finds that it is a decision even more difficult to make when the police publishes evidence of guilt prior to trial. He also thinks that it is not easy to "educate the public opinion" on this issue. The Minister of Justice is also a former judge, but has never imposed the death penalty as a judge.

As such, the Law Society of Thailand is opposed to the death penalty<sup>19</sup>. Their attitude is known only through informal contact and exchange of opinion, there has been no official statement in that regard.

### e. The Authorities

Again, the death penalty is not considered a pressing issue by the politicians. And few of them are in favour of its abolition.

It was repeatedly stated to the mission that both the abolition of the death penalty for juvenile offenders and the change of method to lethal injection were important steps towards the abolition, enabling the government to gauge the reaction of the public opinion on this issue. This progressive approach is based on the idea that the public opinion is not mature yet for the abolition of the death penalty.

According to the Deputy Attorney General, there is also an ongoing discussion about limiting the categories of offences for which the death penalty can be imposed. To his opinion, attention must be paid to the cultural background of each country and international law must be adapted to suit the environment. However, no concrete attempts to reduce the scope of the offences for which the death penalty can be imposed was brought to the attention of the mission.

The Authorities remain ambiguous: although they claim to test the public on the idea the abolition, the mission was also told that the maintenance of the death penalty enabled the government to present it as a solution to the lack of security in the country. It participates to the authoritarian trend of this government, which tends to favour repression rather than prevention. It might explain why the Authorities were willing to show executions on television - an attempt which was withdrawn because of the negative reaction of the audience - and why they showed one of the condemned prisoners on television while making his last phone call to his family when the first executions by lethal injections took place. Through these attempts, the government may also want to test the so-called "deterrent" effect of the death penalty in society.

In this context, the FIDH and UCL believe that the forthcoming UN Congress on Crime Prevention and Criminal Justice, which is to be held in Bangkok in April 2005, is a good occasion for the Thai Authorities to clarify their position towards the death penalty. The Conference will also give the opportunity for Thailand to share its experience with other countries in South-East Asia and in the world.

### f. The National Human Rights Commission

The National Human Rights Commission was established under Section 199 and 200 of the 1997 Constitution with the mandate to promote and protect the human rights



## The death penalty in Thailand

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guaranteed by the Constitution, domestic legislation and other international treaties to which Thailand is a party.

Composed of 11 members, it has the power "to examine and report the commission or omission of acts which violate human rights (...) and propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action<sup>20</sup>". The first report of the NHRC, which covers the last three years and was made public in July 2004, notably mentions that, "although the incumbent Constitution led to changes or progress in the legal system, peoples from all walks of life still faced injustice in judicial processes or had no access to them. They were taken advantage of through state policies or by state officials or people with a higher status who exploit the judicial process to threaten or breach the rights and freedoms of other people".

However, the NHRC has not yet taken an official position with regard to the death penalty, although all the Commissioners are said to be abolitionists. The issue of the death penalty as such is not raised in its 1st report. According to the two Commissioners met by the mission, the strength of the Government as well as the popularity of the war on drugs make the work of the NHRC particularly difficult, notably on the issue of the death penalty. There is however a will to consider the death penalty in the future, notably to study its so-called deterrent effect.

### g. Abolitionist movements/NGOs

Although all human rights NGOs are reportedly against the death penalty, there is no strong abolitionist movement in Thailand and no organization works specifically on the treatment of prisoners and the issue of the death penalty.

Public opinion in Thailand is not generally in favour of the work of human rights NGOs, and there have been strong reactions when Thai NGOs denounced the extrajudicial killings committed during the war on drugs. The attempts of the government undermine the work done by NGOs<sup>21</sup> combined with public opinion with regard to the death penalty might explain why human rights NGOs have been reluctant so far to take a strong stance on this issue.

### h. Religious authorities

Thailand is a Buddhist country with close to 300,000 monks and where more than 90 percent of the population practice a form of Buddhism. Nowadays, there are three main forms of Buddhism, namely, Theravada, Mahayana, and Vajrayana.

The Thai practice Theravada Buddhism. Buddhism seems to have some influence on the national legal system although the government is now secular.

The Buddhist view of human reality is based on the pancasila which is a set of rules for good conduct and spiritual well being. The first key rule is abstaining from taking life. The four other rules are: abstaining from taking what is not given, abstaining from sexual misconduct, abstaining from false speech and abstaining from intoxicants.

Abstaining from suppressing a life motivates the growth of compassion (karuna) for all beings. All life is to be treasured - even those beings that have not valued the lives of others. A person who commits murder or the most heinous acts remains a human being.

This belief encourages nonviolence [ahimsa], peace and vegetarianism. Ahimsa leads to deeds [karma] which are good [non-violent]. But there are also bad deeds [karma] like violent acts (killings). We accumulate or create karma from our own actions.

Buddhism as a religion promoting non-violence should be against the death penalty and all forms of cruel punishment. Dhammapada<sup>22</sup>, chapter 10: "Everyone fears punishment; everyone fears death, just as you do. Therefore do not kill or cause to kill. Everyone fears punishment; everyone loves life, as you do. Therefore do not kill or cause to kill."

This points to a Buddhist notion of rehabilitation. Naturally, rehabilitation and capital punishment are mutually exclusive concepts. Rehabilitation enables the convicted criminal to realize his or her mistakes and to attempt to avoid them in the future.

Although the death penalty appears contrary to Buddhism, the Buddhist authorities in Thailand have no official position on the death penalty. Three reasons may explain this fact: (1) The monks, coming mostly from rural backgrounds, may have mindsets and attitudes similar to the majority of the people who seems to favour the death penalty. (2) Moreover, the political authorities strictly control the Buddhist administration. The 1902 Sangha Act provided that the Buddhist administration was under the authority of the Ecclesiastical Council, with central power in Bangkok. The Sangha Act reinforced the feudal mindset of the court, and monks who followed the king's dictates were held in higher esteem than those who worked with the villagers. Since 1932, the supreme patriarch is the chief of Buddhist monks and is

appointed by the King. He holds the absolute power to govern the whole monastic community and to direct all ecclesiastical affairs. The State, through the King, has the sole power to bestow the ecclesiastical titles to monks. The 1992 Sangha Act ensures that the state has control over the people through the monks and temples. Under section 106 of the Constitution<sup>23</sup>, the monks do not have the right to vote. A recent law forbids the Monks to make political statements. Hence, it might be difficult for Buddhist authorities to take a political position which contradicts the policy followed by the government. (3) In addition, the monk met by the mission stated that he lacked information on the death penalty in Thailand, and would be very willing to work on this issue should he receive more information from human rights organizations.

The FIDH and UCL believe that Monks may play a key role on this issue. Most of the persons who met with the mission were of the view that an official Buddhist position against the death penalty may have a strong and positive influence on the population.

### 3. Conclusion

The position of public opinion plays a key role with regard to the issue of the death penalty. The mission found that, more often than not, the stated opposition of public opinion to the abolition of the death penalty is used as a pretext by the authorities to retain the death penalty in the criminal justice system. The position of the authorities is ambiguous in this regard. The recent abolition in law of the death penalty for juvenile offenders and the shift from execution by firing squad to lethal injection both in October 2003 have been presented to the mission as means to test the public reaction towards abolition. But the government's emphasis on repression in the context of the war on drugs, widely disseminated through the

media, tends to encourage the idea among the electorate that violence, repression and hence the death penalty are the only means to solve the problems faced by Thai society.

This context makes the work of national Human Rights NGOs, the NHRC and more broad-based abolitionists particularly difficult, as they have to face a reluctant audience. But it also makes such actions towards the abolition all the more decisive. The FIDH and UCL believe that there is still a room for action and that the Authorities, as well as the other actors involved in the issue, should take a stronger stance with regard to the abolition of the death penalty.

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16. See section 39 (1) : "A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise, and make expression by other means", (4): "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.", (6): "No grant of money or other properties shall be made by the State as subsidies to private newspapers or other mass media."

17. See above.

18. See *The Bangkok Post*, "Govt taken to task for rights abuse", 5 August 2004

19. The Law Society of Thailand is a professional association gathering the lawyers.

20. Section 200 (1) of the Constitution

21. As noted by the UN Special representative of the Secretary general on human rights defenders : " The Special Representative notes with concern reports that senior State authorities have made highly critical statements against NGOs ", E/CN.4/2004/94/Add.1, para 24.

22. An anthology of verses attributed to the Buddha, which has long been recognized as one of the masterpieces of early Buddhist literature. **The Dhammapada, A Collection of Verses**. Translated by F. Max Müller. Sacred Books of the East, Vol. 10. Oxford: Oxford University Press, 1881, 36-40.

23. "A person under any of the following prohibitions on the election day is disfranchised: ...(2) being a Buddhist priest, novice, monk or clergy..."

## International legal framework

### 1. The United Nations

Thailand ratified the 1966 International Covenant on Civil and Political Rights (ICCPR) in 1997.

Article 6 of the ICCPR recalls the inherent right to life for every human being. It provides that in countries which have not abolished the death penalty, its application should only be imposed for the most serious crimes. General Comment on Article 6 of the ICCPR clearly indicates that States Party must move towards the abolition of the death penalty: "the article also refers generally to abolition in terms which strongly suggest that abolition is desirable". The Committee concludes that all measures of abolition should be considered as "progress in the enjoyment of the right to life".

As a State Party to the ICCPR, Thailand has the obligation to report to the monitoring body, the Human Rights Committee, to address concerns raised by the Committee and to take remedial steps to conform domestic legislation with its international treaty obligations.

To date, Thailand has just submitted its first report to the Human Rights Committee, which will be considered by the Committee in 2005<sup>24</sup>.

Moreover, the **UN Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty** specify a number of safeguards regarding the procedural guarantees that should necessarily accompany the pronouncement of a death penalty sentence. It notably specifies that "capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts<sup>25</sup>" and that "the right of anyone suspected or charged with a crime for which capital punishment may be imposed [to have] access to adequate legal assistance at all stages of the legal proceeding<sup>26</sup>". Other UN instruments are relevant with regard to the conditions of detentions of inmates, which apply notably to death row inmates<sup>27</sup>.

### 2. Regional Standards

Asia is the only region in the world where no regional human rights mechanism has been set up, either at a regional nor at sub-regional level. Hence, the Association of South East Asian Nations (ASEAN<sup>28</sup>) has not developed a human rights regional

strategy. The issue of the death penalty has never been raised in this framework. The FIDH deeply regrets this lack of involvement on the sub-regional level, all the more so, as 8 ASEAN countries out of 10 practice the death penalty.

The only organization which deals with the death penalty at regional level is the Asia Pacific Forum of National Human Rights Institutions<sup>29</sup>. It published a reference report on the death penalty in December 2000 which developed three main issues:

- States should abolish the death penalty; the Council urged States to move towards de facto, and eventual de jure abolition of the death penalty
- Until then the death penalty should only be applied for the most serious crimes
- Safeguards surrounding its administration should rely on the provisions developed on the international level, notably in the ICCPR and its Second Optional Protocol, the Convention on the Rights of the Child and the Convention Against Torture.

### 3. The European Union

The EU is engaged in a multilateral dialogue with Thailand through the EU and ASEAN partnership. Political dialogue between the EU and ASEAN takes place at regular Ministerial Meetings. During the 14th EU-ASEAN Ministerial Meeting, held in Brussels on 27-28 January 2003, the participants agreed to "develop a comprehensive and balanced agenda for the future", among which the "promotion of dialogue on issues of common concern, such as democracy, good governance, human rights and the rule of law" were considered priorities<sup>30</sup>. The FIDH and UCL deeply regret that, despite the fact that, as mentioned above, 8 ASEAN countries out of 10 practice the death penalty, no public mention was made on this issue in the Joint Chair Statement. This is not in line with the EU Guidelines on the Death Penalty adopted by the EU in June 1998 which state that "where relevant, the European Union will raise the issue of the death penalty in its dialogue with third countries".

The EU is also engaged in a multilateral dialogue with Thailand through the ASEM process. The ASEM process began in 1996 with the first Asia-Europe Summit in Bangkok, which brought together the Heads of State and Government of ten Asian countries (Brunei, China, Indonesia, Japan, South Korea, Malaysia, the Philippines, Singapore, Thailand, and Vietnam) and of the fifteen Member States of the EU. The



summit established an ongoing process, based notably on summit-level meetings every second year and regular ministerial meetings. The ASEM 5 Summit was held in Hanoi between in October 2004 with the participation of 39 partners. It marked ASEM's enlargement to the ten new EU Member States as well as to three new countries from the Asean region (Cambodia, Laos and Burma/Myanmar) that were not yet part of the process. Here again, the final Chairman Statement resulting from the Summit does not make any reference to the death penalty.

On the occasion of that Summit, the EU and Thailand confirmed their intent to launch official negotiations for the conclusion of a bilateral Partnership and Co-operation Agreement between them. The negotiations of such an Agreement - which will necessarily include, as all EU agreements with third countries, a human rights clause - should be used by the EU in order to raise its concern regarding the use of the death penalty in Thailand.

It should also be noted that in March 2001, the EC-Thailand Senior Official Meeting agreed to enhance bilateral relations, notably through the organization of "an annual substantive meeting between the Thai Foreign Minister and the External Relations Commissioner". The FIDH and UCL strongly believe that the issue of the death penalty in Thailand, as well as, more broadly, the issue of human rights in Thailand, should be systematically raised by such meetings, in accordance with the EU guidelines on the death penalty and the Communication on The EU's Role in Promoting Human Rights and Democratisation in Third Countries of May 2001<sup>31</sup>.

#### 4. The International Criminal Court (ICC)

The Statute of the International Criminal Court, which entered into force on 1 July 2002, does not include the death penalty in its list of applicable penalties; this is consistent with the

recent evolution in international criminal law (see the Statutes of the ad hoc / international criminal tribunals in particular). Thailand signed the Rome Statute of the ICC on 2 October 2002. The prospect of seeing Thailand joining the movement of the 97 states party to the ICC is encouraging, and creates the hope of an evolution, by chain reaction, towards abolition, even if, when it comes to sentences applicable by a national jurisdiction, the ICC Statute does not affect the application by States of penalties prescribed by their national law (article 80).

Indeed, while the death penalty is not provided for the most serious crimes covered by the ICC Statute - crimes against humanity, war crimes and genocide (as well as crime of aggression once a definition will have been adopted) - it seems logical that steps be taken in order to suppress that penalty for other crimes as well.

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24. CCPR/C/THAI/2004/1, Initial report, Thailand, Human Rights Committee, 2 August 2004.

25. Para 4.

26. Para. 5.

27. - UN Basic Principles for the Treatment of Prisoners (UNGA resol. 45/111 of 14 December 1990),

- UN Body of principles for the protection of all persons under any form of detention or imprisonment (UNGA res. 43/173 of 9 December 1988),

- Standard minimum rules for the treatment of prisoners (Ecosoc res. 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977).

28. The ASEAN is composed of Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

29. The Forum is composed of 12 full member institutions from Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, the Philippines, Republic of Korea, Sri Lanka and Thailand - see <http://www.asiapacificforum.net>

30. 14th EU-ASEAN Ministerial Meeting, Joint Co-Chairmen's Statement, para. 26, see [http://europa.eu.int/comm/external\\_relations/asean/intro/14mmstat.htm](http://europa.eu.int/comm/external_relations/asean/intro/14mmstat.htm)

31. See [http://europa.eu.int/comm/external\\_relations/human\\_rights/adp/guide\\_en.htm](http://europa.eu.int/comm/external_relations/human_rights/adp/guide_en.htm) and [http://europa.eu.int/comm/external\\_relations/human\\_rights/doc/com01\\_252\\_en.pdf](http://europa.eu.int/comm/external_relations/human_rights/doc/com01_252_en.pdf)

## Thai Constitution and Domestic Legislation

### 1. The death penalty and the 1997 Constitution

Section 31 of the Thai Constitution of 1997 provides that: "A person shall enjoy the right and liberty in his or her life and person. A torture, brutal act, or punishment by a cruel or inhumane means shall not be permitted; provided, however, that punishment by death penalty as provided by law shall not be deemed the punishment by a cruel or inhumane means under this paragraph."

This means that the Thai Constitution expressly admits the death penalty as an exception to the right to life and specifies that it cannot be considered as a violation of the prohibition of torture and inhuman treatments. However, Section 31 does not provide that the death penalty be mandatory or even optional, which means that a revision of the Constitution would not be necessary in order to abolish the capital punishment.

### 2. Crimes punishable by the Death Penalty in the domestic legislation

#### a. Under the Criminal Code and other Specific Acts

The Thai Criminal Code dates from B.E. 2499 (1956). A very wide range of offences potentially attract the death penalty. It permits the imposition of the death penalty for a total of 31 different offences. Some are common knowledge, such as serious drug offences and offences against the Crown, others are less well known and include arson resulting in death, taking of bribes. In practice, the death penalty is generally imposed by the Courts in cases of drug trafficking and murder.

The code provides for the imposition of the death penalty for the following offences:

#### **Offences concerning the security of the Kingdom.**

- Attempted assassination of the King or assassination of the King.
- Assault against the King or against the freedom and liberty of the King.
- Assassination of the King, the Queen, the Royal Crown Prince/Princess or the Regent acting on behalf of His Majesty the King.
- Assault against the Queen, the Royal Crown Prince/Princess or against the freedom and liberty of the Regent acting on behalf of the King.

#### **Offences committed against the internal security of the Kingdom.**

- Sedition or Rebellion.

#### **Offences committed against the external security of the Kingdom.**

- Causing the Kingdom or any part of the Kingdom to come under the sovereignty of a foreign state or country or weakening or undermining the independence of the state.
- Any offence committed by a Thai national or citizen taking up arms or operating against Thailand or by joining or conspiring with the enemy against Thailand.
- Collaborating or patronizing the enemy in time of war against the state or providing assistance to the war efforts of the enemy, i.e., providing labour or skills to the war efforts of the enemy in building military camps, digging trenches, building airfields, joining the production of armed vehicles or any type of vehicles, building roads and/or bridges, making communication gear and equipment, military tools and equipment, providing logistics, food supplies and provisions to the enemy, participating in the construction of military installations or naval bases or dock and pier or providing other facilities in time of war to be used by enemy, allowing such facilities to fall into the hands of the enemy, instigating unrest among our own troops so that they would abandon their duties of defending the country against the enemy or become rebellious against our own government or sovereignty or instigating unrest among the ranks of our own soldiers and troops, becoming draft dodgers or violating rules and regulations imposed during wartime against enemy spies or infiltrators, proving any type of assistance or any form of support or collaboration to the enemy, enabling the enemy to gain the upper hand during wartime, or to add to the war effort of the enemy.
- Any offence committed to make it possible for the enemy or unclassified people to have access to classified information or documents, jeopardizing the national security and the public safety in time of war, or adding to the enemy's war efforts or to serve the interest of the enemy.
- Any offence committed by causing detrimental incidents both from within and without.

#### **Offences committed against good international relations**

- Murder or attempted murder of a foreign head of state, king, queen, crown prince/princess or representative of a foreign state, which has good relations with the Kingdom of Thailand.

### Offences committed against the administrative system

- Any offence committed against official titles and capacities.
- Abuse of power or authority by an official.
- Asking, demanding or taking bribes.

### Offences committed against the justice system

- Any offence committed by officials within the justice system by demanding bribes.
- Any offence committed by officials within the justice system demanding bribes before assuming his/her position and capacity.

### Offences committed against public safety

- Arson, causing death and injuries to people.
- Arson on private or public property, school, ship or boat or raft, living quarters, floating storage, production facilities, theatre, auditorium, public building, public hall reserved for religious ceremonies and/or rituals, train station, airport, parking lot for both private and public vehicles, steamed boat or petrol-engine boat, airplanes or locomotives public transportation.
- Causing an explosion resulting in death and serious injuries.
- Causing explosion resulting in damage to property or loss of property.

### Sexual offences

- Rape of a woman resulting in death.
- Rape of a girl resulting in serious injury and/or death.
- Any act of indecency against a minor of 15 years old or older resulting in death.
- Any act of indecency against a minor younger than 15 years of age resulting in death.
- Procuring, recruiting, luring, enticing or coercing a woman or minor for any act of indecency.

### Offences against life and physical safety

- Murder with intent.

### Offences against individual freedom

- Restriction or deprivation of freedom of movement of any individual or forced confinement resulting in the death of such a person.
- Slavery and human trafficking in and/or out of the Kingdom resulting in the death of such person.
- Demanding ransom for any abducted or kidnapped person.

### Offences against property

- Robbery, causing death on the part of any victim or others.
- Coercion, demanding for ransom, extortion or robbery.

In addition to the death penalty as stipulated in the Criminal Code, some individual statutes provide for the imposition of the death penalty. Under the **Narcotics Act** (B.E.) 2522 (1979) - and subsequent amendments in B.E. 2545 (2002), the death penalty can be imposed for offences including the manufacturing, importing or exporting narcotics classified as category or type 1 for sale or commercial purposes, possession of more than 20 grammes of category or type 1 narcotics, and use of deception, coercion, intimidation, physical threat, dark influence to force any woman or under aged girl or victim to take narcotics.

Illegal use of firearms or explosives attracts the death penalty in accordance with the **Firearms and Accessories, Explosives, Fireworks and Other Equivalence, Act** B.E. 2490 (1947), as amended in B.E. 2542 (1999).

### b. Under the Military Criminal Code

Under the Military Criminal Code, the death penalty can be imposed for 16 further offences, as set out below:

- An offence committed by any released prisoner of war returning to active combat duty.
- Functioning as the enemy of the Throne, assuming false identity to serve as an enemy spy, infiltrating the ranks of military or spying on military installations and/or operations.
- Knowingly providing assistance to the war efforts of the enemy or an enemy spy, who has infiltrated and operated in a restricted military zone or installation.
- Recruiting or enticing people to serve and protect the interest of the enemy.
- Failure to command to the full in fighting against the enemy or capitulating to the enemy by surrendering the troops, fort, camp, battleship, or official installation to the enemy.
- Instigating insubordination or forcing military commanding officers to order his/her troops to act against their will in surrendering to the enemy.
- An offence committed by a naval officer, serving in his/her capacity as a commanding officer, who decided, without due justifications, to disengage the enemy during a pursuing naval battle.
- The abandonment or destruction by military personnel of military property or military gears, equipment, weapons, supplies or military wares in face of the enemy.
- Desertion of duty in face of enemy.
- Failure to follow orders given by a commanding officer in face of the enemy.
- Refusing to follow orders or resisting orders given by a commanding officer in the face of the enemy.
- Assaulting a guard on duty in front of the enemy.

- Assaulting a commanding officer in face of enemy.
- Initiating or organizing, in face of enemy, a conspiracy with a group of 5 persons or more, adopting armed threats or armed assault or creating public unrest in the country.
- Initiating or carrying out an armed rebellion, with one person or more, in face of the enemy.
- Undermining the effectiveness of troops, as part of an overall conspiracy or strategic plan to overthrow the government or to change the existing political system or the war economy of national armed forces.

Article 6 of the ICCPR recalls the inherent right to life for every human being. It provides that in countries which have not abolished the death penalty, it should only be imposed for the most serious crimes. The General Comment on Article 6 of the ICCPR clearly indicates that States Party must tend to abolish the death penalty: "the article also refers generally to abolition in terms which strongly suggest that abolition is desirable". The Committee concludes that all measures of abolition should be considered as "progress in the enjoyment of the right to life".

The General Comment also stresses that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure". The UN Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty<sup>32</sup> specify that it should be understood that the scope of the expression "most serious crimes" "should not go beyond intentional crimes with lethal or other extremely grave consequences" (para. 1).

The FIDH and UCL consider that although in practice the death penalty is only imposed for what Thailand considers to be the most serious crimes<sup>33</sup>, some drug offences, which do not necessarily have "lethal or other extremely grave consequences" may not be among the most serious crimes according to the UN Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty. The FIDH and UCL consider that Thailand should diminish the number of offences attracting the death penalty, since for the time being, capital punishment can be imposed for a total of more than 50 offences.

### **3. Imposition of the death penalty on vulnerable people**

In Thailand, the death penalty is not imposed on pregnant women, minors or mentally ill persons, which is in compliance with article 6.5 of the ICCPR, according to which "sentence of death shall not be imposed for crimes committed by persons

below eighteen years of age and shall not be carried out on pregnant women", and para. 3 of the UN Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty, which states that "persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane".

#### **a. Execution of Condemned Pregnant Prisoners**

Article 247, Para. 2 of the Criminal Procedures Code provides that "Any condemned prisoner, who is pregnant, shall not be executed during her pregnancy. A temporary stay of execution shall be in effect until the pregnancy is over or a child is born". The standard execution procedures also require that any condemned woman prisoner is subjected to a pregnancy examination.

#### **b. Execution of Condemned Minors (under 18 Years of Age)**

Although it was not used in practice against prisoners under the age of 20, the death penalty existed de jure for juveniles over the age of 17 until the reform of the law in October, 2003.

In 2003, Thailand amended section 76 of the Criminal Code which was inconsistent with Article 6.5 of the ICCPR<sup>34</sup>: the death penalty and life sentence were commuted and/or lifted for an under age offender, who committed the crime when under 18 years of age. This amendment also conforms with article 37 (a) of the 1989 Convention on the Rights of the Child (CRC), which Thailand ratified in 1992<sup>35</sup>. The current laws prohibit any imposition of execution or life imprisonment of a minor, who was under 18 years at the time the crime was committed. Where an offender who is under 18 has committed a crime punishable with the death sentence or life imprisonment, the penalty is automatically commuted to 50 years imprisonment. In effect, under the CRC neither the death penalty nor life imprisonment without parole should be imposed on any child or minor under 18 years of age.

#### **c. Execution of Mentally Unsound Prisoners**

Execution of mentally unsound persons is prohibited in Thailand. The current law provides that "Any condemned prisoner proved to be mentally unsound prior to the execution schedule, shall be given a "Temporary Stay Order" until his mental status is re-examined and proved to be normal and

sound... And if his/her mental health is proved to be normal again after one full year of treatment after the passing of the final court judgment, the death penalty shall be commuted to life imprisonment".

This means that :

- a. If the mentally unsound prisoner recovers in less than one year then execution follows;
- b. If the mentally unsound prisoner recovers after one year then death penalty is commuted;
- c. If the mentally unsound prisoner does not recover after one year then no execution takes place.

The law requires prison officials to conduct thorough examination on the mental status of each and every prisoner condemned to the death penalty, who has exhausted the application procedures for the Royal Pardon.

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32. Adopted by Economic and Social Council resolution 1984/50 of 25 May 1984.

33. See CCPR/C/THA/2004/1, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Initial Report, Thailand*, para. 158

34. "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women."

35. "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment or nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age".

### The Right to a Fair Trial

Although the formal judicial process which leads to the imposition of the death penalty in Thailand is theoretically in accordance with the international legal standards, the way it is implemented in practice remains particularly worrying. Indeed, discrimination, difficulty in accessing lawyers, the conditions of detention in police station as well as in prison and the widespread corruption of the police may lead to serious violations of human rights.

In this regard, the context of the war on drugs may have been detrimental to the judicial proceedings. During the war on drugs, the government asked every police station to write a list of persons involved in drug offences. The government gave the police officers 15 days to hand in the list. The number of names on the list were to be reduced by 25% by the end of the first month, 50% by the end of the 2<sup>nd</sup> month and the lists were to be empty by the end of April<sup>36</sup>. Such a policy did not allow for proper investigations and led to abuses. People were encouraged to denounce each other. The police threatened arrested persons with charges of possession of amphetamines in order to extract "admissions" of possession of marijuana. Moreover, it seems likely to have worsened the practice of torture, cruel, inhuman and degrading treatment in police custody in order to force confessions.

The survey carried out among 100 death penalty prisoners reveals that the poor and uneducated are over-represented<sup>37</sup>. Out of 49 answers received to the question on the level of education of the prisoners, 19 prisoners had gone only to primary school, and none of them had attended university. 21 prisoners out of 52 declared they came from poor families. These results confirm the information given to the mission with regard to discrimination in the judicial system in general and with regard to the death penalty in particular.

#### 1. Prosecution Procedures

Once a complaint of criminal activity has been made to the police, an investigation is carried out and the police file is sent to the public prosecutor's office - this provides an in-built sense of checks and balances in the prosecution system. The public prosecutor (the Attorney General) takes the decision whether to prosecute or not. There may be a conflict of opinion about whether or not to submit the files to Court - this creates checks and balances between prosecutors and the police.

It is the duty of the prosecutor based on internal mechanisms for assessing cases to submit a report to his senior who in turn, can report to his senior. After a prosecution has been directed, the Order is reviewed by the Governor in the provinces or by the Commander-in-Chief of the police in Bangkok. If they do not agree with the decision to prosecute, a second opinion can be put on the file, which will return to the top rank of the Attorney General's office for a final decision on whether to prosecute or not.

The Act of Division of Criminal Cases, 1983 provides for the review of criminal cases by the Courts, based on international standards. If the Attorney General decides not to prosecute, it is open to the victim of the offence to file a prosecution with the Court.

Public prosecutors get involved in enquiries in the juvenile and family courts division, where they interview witnesses and victims in sex abuse cases. The public prosecutor plays a role in protecting victims of sexual abuse by participating in the inquiry, involving teams of psychologists, social workers and lawyers and by co-operating with NGOs and in particular victim support NGOs. The Attorney General prefers to use female professionals in cases involving juveniles and/or sexual abuse, believing that they generally have a better approach to questioning than police. The mission received positive feedback about the role and professionalism of prosecutors in such cases.

The top executive prosecution body is the public prosecution commission, which consists of 15 experts, some from the Parliament, the others are nominated by the offices of the Attorney General in the regions of Thailand. They are appointed by the Government. The procedure is established under legislation and the Commission is attached to the Attorney General's office. A similar commission exists to scrutinize the judiciary. The Commission monitors the prosecution system and has wide disciplinary powers against any officer involved in corruption - up to and including dismissal. The salary of the Attorney General is almost the same as that for the ordinary judges of the Supreme Court. Providing a decent salary is one mechanism which reduces the risk of corruption within the prosecution system.

However, the mission received general complaints of corruption in the early stages of the prosecution system, particularly complaints of police corruption. The FIDH and UCL



deeply regret that the police authorities declined to meet with the mission members. The Attorney General's office was also subjected to some criticism of corruption. A wife of a prisoner sentenced to death testified that the public prosecutor offered her to pay 100,000 Baths<sup>38</sup>, and he would drop the charges of murder against her husband. Before the Appeal trial, the prosecutor again offered her to pay a sum of money<sup>39</sup> to drop the charges. The Assistant Attorney General met with mission members and denied the existence of such corruption, explaining that mechanisms to prevent corruption exist.

A solution currently contemplated in Thailand is that the police be concerned only with the arrest procedure, while the questioning and investigation be carried out by a Public Prosecutor. Extensive legislation is also being put in place against corruption in public service.

Public prosecutors and other officials from the Ministry of the Interior, including a doctor, must be present at post-mortem examinations where a State author is involved in a killing. This is being applied in practice. The Attorney General's office is also involved in investigations into deaths in custody.

## 2. Arrest

Under Section 237 of the Constitution, a person may not be arrested or detained in connection with a criminal offence without an order or a warrant of the Court unless caught in flagrante delicto or where there is such other necessity for an arrest without warrant as provided by law.

The arrested person must be notified of the charge and details of such arrest immediately and be given an opportunity to inform, at the earliest convenience, a relative, or another person of the detainee's choice of the arrest.

Section 243 of the Constitution protects the privilege against self-incrimination, categorically stating "a person has the right not to make a statement incriminating himself or herself which may result in criminal prosecution being taken against him or her".

Detainees must be brought before a Court within 48 hours of arriving at the police station in order for the court to consider whether there are reasonable grounds in law for the detention of the arrested person. Exceptions exist in the event of unavoidable necessity as provided by law. Under the Thai Criminal Procedure Code, arrested persons must be brought before a judge within 48 hours, and if the inquiry has not been

completed, then once every seven days for an extension of seven days up to a total of 84 days when charges must be made or the prisoner released.

Thailand, in an interpretative declaration expressed upon accession to the ICCPR specified with respect to article 9, paragraph 3 of the Covenant that "In case it is necessary for the purpose of conducting the inquiry, or there arises any other necessity, the period of forty-eight hours may be extended as long as such necessity persists, but in no case shall it be longer than seven days". Thailand acknowledged in its report<sup>40</sup> before the Human Rights Committee that the Thai Criminal Procedure Code was not in line with the Covenant in this regard. Paragraph 3, article 9 of the ICCPR states that "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law". General Comment 8 on Article 9 of the Covenant specifies that "delays must not exceed a few days" (para. 2).

The FIDH and UCL believe that the Thai Criminal Procedure Code should be amended in order to comply with article 9 of the ICCPR. It has indeed been reported to the mission that the time spent in police custody was used by police officers in order to force confessions through use of torture, cruel, inhuman or degrading treatment.

The mission met the mother of a death row inmate who was arrested on the 1 January 2001 in the Nontaburi province for possession of amphetamines. He had 100,000 tablets in the car, but was also convicted for possession of other tablets he helped the police to find in other places. According to his mother, he confessed to the crime under torture. She said that the police "broke his head" during the arrest, pointed a gun at him and asked "do you want to live or die?".

The mission also met with a death row inmate who was arrested for possession of 199,500 pills of amphetamines, found in a hotel room where he met with his brother. He claimed to know nothing about the drug. While in police custody, he claimed to have been tortured by the police who bound his eyes and cuffed his hands behind his back. He was kicked and punched and confessed in order to survive.

An English-speaking prisoner convicted of manslaughter and sentenced to 13 years and 4 months claimed the police punched him, attached electrodes to his body and placed a plastic bag over his head causing him to pass out. He signed a confession in Thai, a language he did not understand, fearing for his life.

### 3. Legal assistance

#### a. Access to Persons Detained in Police Stations before they are charged

Section 239 of the Thai Constitution, provides: " A person being kept in custody, detained or imprisoned has the right to see and consult his or her advocate in private and receive a visit as may be appropriate." Despite this Constitutional protection for the right to access to a lawyer while in a police station, there is no legislative obligation on police to inform a detainee (except for juvenile detainees) of this right. The mission received reports of police using this omission as a way around the constitutional right and failing to inform detainees of their right to see a lawyer and take advice. Section 241 further provides that an accused person is entitled to have a lawyer present during interviews and the right to inspect or require a copy of the statements made during the inquiry or documents pertaining thereto once a prosecution is initiated.

A practical difficulty also arises: the State does not remunerate lawyers for attending police stations to advise clients. The Law Society<sup>41</sup> provides lawyers who attend at police stations for free at high cost to the Society. Only junior lawyers are available and willing to do this generally.

The UN Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty specify the right of anyone suspected or charged with a crime for which capital punishment may be imposed to have access to adequate legal assistance at all stages of the legal proceeding<sup>42</sup>.

The FIDH and UCL consequently consider that legislation should be passed requiring the police to specifically inform a prisoner of his right to access to a lawyer and prohibiting the commencement of questioning until a detainee has seen a lawyer. An effective enforcement mechanism should be included in such legislation - such as the nullity of part or all of the proceedings.

In addition, attendance at police stations should be remunerated by the State to a sufficient level to render such duties attractive to practitioners so that more lawyers will be willing to assume such duties, thereby ensuring availability of suitably-qualified lawyers when required.

A more rigorous procedure appears to apply for juveniles. They must have a legal advisor, social worker and representative of the attorney general's office present during

questioning. The procedural law provides for that up to the age of 18.

#### b. Access to a lawyer after the convict has been charged

Every accused person is entitled to a lawyer. Under Section 242 of the Thai Constitution, an accused person has the right to receive legal aid from the State, in the form of a Court appointed lawyer or, in the case of a person being kept in custody or detained not being able to find an advocate, the State shall render assistance by providing an advocate without delay. Where the accused cannot afford a lawyer, the Court will appoint a lawyer to the case at the expense of the State.

In practice, this has been identified as a weak link in the chain of a fair trial, both by professionals and by persons who had been through the trial process. The Court appoints lawyers from a list of those registered with the Courts. Under the current system, most lawyers who are registered are junior lawyers who are seeking to build up a practice and, as such, they lack experience. One prisoner indicated that his lawyer was either unsure of appropriate objections which could be made in the course of the trial or unwilling to incur the wrath of the Court by making objections. The mission received reports indicating that court-appointed lawyers are not always given sufficient time to investigate or prepare cases.

In many cases, poor people prefer to "confess" and try to negotiate shorter sentences rather than run the risk of receiving a death sentence. This has many advantages for the system in terms of saving public money and time but the mission is very concerned about the large number of reports of persons confessing to crimes they told the mission they had not committed. Clearly, an improvement in the level of legal representation available would minimize the risk of miscarriages of justice.

The Law Society suggested to the mission that a system which involved the maintenance of a list of lawyers willing to undertake such cases by the Law Society would be preferable. The judiciary should then contact the Law Society when it is necessary to appoint lawyers for assistance in order to ask the Law Society's support in identifying appropriate lawyers. The mission believes this change could have a potentially beneficial impact on the justice system and recommends that the Minister for Justice resources such a reform.

Part of the difficulty with the system lies in the inadequate level of remuneration attaching to Court-appointed defence



briefs. Private lawyers charge much higher fees for defence work than the State pays under the legal aid scheme. The level of "reward" was increased in 2003 and at present is BHT30,000<sup>43</sup> maximum for a case which could attract the death penalty - this is the highest amount paid for legally aided cases but it remains much lower than fees in private cases. This amount would be regarded as sufficient if a case lasted one year but cases involving the death penalty usually go through all three Court levels and last much longer than one year - usually, an accused has the right to the same lawyer the whole way through the legal process. The Law Society would like to see the amount being increased to BHT150,000<sup>44</sup>. The mission raised this question with the Minister for Justice who said that negotiations were under way with the Law Society in order to guarantee the legal aid. That guarantee is now in place but, in practice, has not yet been extended throughout the country.

The FIDH and UCL are convinced that some of the increased costs would be recouped as a result of more efficient trials and appeals and that it would be in the interests of justice.

The difficulties in accessing a lawyer contravene paragraph 5 of the UN Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty which recalls "the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings". That situation is also contrary to article 14 of the ICCPR regarding the right to a legal counsel<sup>45</sup>.

#### 4. Access to Translators

It has been said to the mission by a foreign prisoner (English speaking) that he was not able to access a translator; this is in contradiction with article 14 (f) of the ICCPR, which states that "everyone shall be entitled to (...) have the free assistance of an interpreter if he cannot understand or speak the language used in court". The prisoner said that he signed a confession in Thai while he could not speak this language. The evidence and proceedings at his trial was interpreted by a journalist who was present in Court.

#### 5. Remand Prisoners

Under the Thai Constitution, Section 239 allows for the speedy processing of applications for bail which can only be refused on grounds set forth in legislation. Excessive bail must not be demanded. There is a right to appeal against refusal of bail. The accused must be informed of such

grounds without delay. Accused persons who are refused bail can be remanded by the Courts for up to 84 days before the first trial hearing. Any further remands must be approved by the Courts.

Under international law, remand prisoners should be detained separately from convicted prisoners. In the women's' prison, this separation of convicted and remand prisoners does not seem to be implemented. This is in contravention of Article 10 (2a) of the ICCPR, according to which "accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate for their status as unconvicted persons".

In the women's prison, video conferencing facilities are available linking up to courtrooms for remand hearings: the lawyers are in Court, each inmate is called one by one. The mission is not aware of how generally available this technology is but was not shown any such facility at Bang Kwang Prison. Prisoners attend Court personally for trial hearings. Female prisoners do not wear chains when attending Court but male prisoners do.

#### 6. The criminal trial

Under Section 241 of the Constitution, an accused has the right to a speedy, continuous and fair trial. Section 272 provides for three levels of Court: Courts of First Instance, Court of Appeal and the Supreme Court of Justice. There is a right to trial by a Court of First Instance. After trial by the Court of First Instance, an appeal can be filed with the Court of Appeal. A further level of appeal exists to the Supreme Court.

The Constitution (Section 274) provides for the establishment of a Judicial Commission of the Courts of Justice. The appointment and removal from office of judges is approved by the Judicial Commission before being tendered to the King. Likewise, promotion, salary increases and punishment of judges must be approved by the Commission.

Under Section 236 of the Constitution, a criminal case is heard and determined by a quorum of judges. A judge who did not hear a case cannot give judgment in that case unless there is an unavoidable necessity. This has had a positive impact on the quality of judicial hearing. In the death penalty cases, three judges sit in criminal trials and there is no right to trial by jury.

The presumption of innocence applies in criminal trials in Thailand and the burden of proving guilt is on the prosecution.

The mission received mixed reports about the conduct of trials in this regard and is of the opinion that it merits further study, particularly in the provinces, where the reported procedures seem to fall short of those envisaged in domestic and international law.

In theory, any statement obtained as a consequence of an inducement, a promise, threat, deceit, torture, physical force, or any other unlawful act is deemed inadmissible in evidence in accordance with Section 243 of the Constitution. In addition, a prisoner under investigation has the right to ask to see a doctor and when the police deliver the prisoner to a jail, the jail carries out a medical examination and should record bruises and injuries. However, in practice, it is difficult to prove duress and the court may not accept the word of the accused against that of the police.

A prisoner recounted that he did not think of asking for a lawyer when arrested and was not informed of his right to one by police. He told the mission that he was tortured by the police who bound his eyes and cuffed his hands behind his back and he was kicked and punched. A plastic bag was put over his head and he thought he was going to suffocate<sup>46</sup>. When he complained to the Court, the judge asked to see the bruises but they were gone at that stage. In the absence of evidence of torture the Court accepted his confession. He met his court-appointed lawyer twice before the trial.

Principle 7.1. of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment , "States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints". This means that the Thai authorities should enquire into any allegations of torture.

The mission is concerned about the extremely broad application of the concept of guilt by association in death penalty cases. It appears that the concept of complicity is widely relied upon in the war against drugs. The mission heard an account of a case where drugs were found in a car and all the people were arrested and another case where a nephew used a motorbike to transport drugs and his uncle was also arrested. This broad interpretation of the concept of guilt by association may contravene the UN Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty, para. 4: "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts".

To the same extent, the mission is worried by the re-enactment process. One of the prisoners told the mission that the photos taken during the re-enactment, showing him with blood on his shirt and trousers were considered as evidence before the Court. It may contravene para. 4 of the UN Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty, as well as the right not to be compelled to testify against oneself, as set forth in General Comment 13 on article 14 of the ICCPR (para. 14), General Comment 20 on article 7 of the ICCPR (para 12) and the UN Body of Principles for the Protection of All Persons under Any Form of Detention of Imprisonment (para. 21).

The re-enactment process has an immense effect on public opinion. It is often widely reported in the newspapers in prominent cases and seems to be taken as proof of guilt and proof of police prowess in solving cases.

## **7. Remedies available against the death penalty sentences**

### **a. Appeal Against the Imposition of the Death Sentence**

It is open to the Courts of First Instance to impose the death sentence for any of the offences listed above. However, where the Court does so, it is open to the convicted person to appeal the sentence to the Court of Appeal. A further appeal is also possible to the Supreme Court. Where no appeal is filed by the prisoner against the imposition of the death sentence or a life sentence by a Court of First Instance, the Court itself must refer the case and the sentence to the Court of Appeal for review - this is obligatory under the Criminal Procedures Code (Article 245).

This is in accordance with para. 6 of the UN Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty, which states that "anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory". In accordance with para. 8 of the UN safeguards, which specifies that "capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence", the case shall be pending until the Court of Appeal hands down its final decision to the Court of First Instance, either to uphold the decision or otherwise, as stipulated in the Criminal Procedures Code, Article 245, Para.2.

Until the Court of Appeal delivers its final decision to the Court of First Instance either upholding or overturning the sentence,

the sentence is not finalized. This is provided for by Article 245, Para. 2 of the Criminal Procedures Code. Once the final decision is handed down by the Court of Appeal, the Court of First Instance issues a formal Court Order handing the convicted person over to the Commander of a prison, together with a specific Execution Order.

This is not the end of the road, however. Even after the Execution Order is delivered to the Prison Commander, the condemned prisoner cannot be immediately executed. Article 262 specifically provides that the condemned prisoner on death row is entitled to file an Application for Royal Pardon, a form of Dika (Court of Appeal), within 60 days of the judgment.

### **b. The Constitutional (Supreme) Court**

An appeal to the Constitutional Court can be made only if there is a challenge to an element of the Constitution. The Constitutional Court will not hear a point of evidence or a questioning of judges' decisions. This is the function of the appeals court. In practice there are no appeals to the Constitutional Court in death penalty cases.

### **c. The Royal Pardon**

There is a specific aspect to the use of the death penalty in Thailand: in any case where a convicted person is sentenced to death, he may petition the King for mercy and the King may commute his sentence by virtue of a Royal Pardon. This individual petition is the first type of application for Royal Pardon.

The second application for the Royal Pardon involves a general pardon. In practice, the vast majority of persons who are sentenced to death benefit from the Royal Pardon.

If the application for Royal Pardon or Dika is turned down within or before 60 days, the execution can then be carried out. In practice, an application for Royal Pardon operates as a stay on the death sentence and pending the King's decision, no execution is carried out. This is provided for by Article 247, Para. 1 of the Criminal Procedures Code which provides that "Any execution shall not be carried out as ordered by the Court, until all procedures as stipulated in the said Code on Royal Pardon are fully exhausted". Consequently, prisoners cannot be executed while awaiting a reply to a petition for a royal pardon. This is in conformity with para. 7 of the UN Safeguards, which states that "anyone sentenced to death shall have the right to seek pardon, or commutation of

sentence; pardon or commutation of sentence may be granted in all cases of capital punishment".

### **- General Pardon**

On special occasions of national celebration, the King may apply a Royal Pardon en masse. This general pardon is part of the Royal tradition and practice and is an expression of His Majesty's compassion towards his subjects, i.e., releasing prisoners from suffering or reducing prison terms, etc. This collective or group pardon applies to all prisoners whose sentences have been finalized by the Courts. However, recently, it seems that drug offenders who were convicted after 2000 are considered as "unqualified" for a Royal Pardon. A declaration of general Pardon is made by way of promulgation of a Royal Decree on the special occasion being celebrated.

While the mission was present in Thailand, the Queen's 72nd birthday was celebrated on the 12th August; 72 being a very auspicious year in the Buddhist calendar, many prisoners benefited from the Royal Pardon. All capital punishment penalties passed before 1999 were commuted to life sentence. For more recent penalties there was no commutation for those condemned for the production and selling of drugs. All other cases were commuted. The numbers are not known as prisons have not yet reported the figures upon finalisation of the present report (December 2004). According to Mr Nathee Chitsawang; Director-General of the Department of Corrections, there were 971 death row inmates - 855 males and 116 females - awaiting appeal before the appeal Court or the Supreme Court. Any person who did not benefit from the mass pardon is still entitled to file an individual petition for pardon. Only one application for a Pardon may be made by a prisoner.

### **- Individual Applications for Royal Pardon**

According to the Ministerial Rules of the Ministry of Justice on Criteria and Execution Procedures, B.E.2546 (2003), it is the duty of the authorized prison official to inform the condemned person of the right to apply for a Royal Pardon. The official must ask the condemned person if he or she would like to exercise his/her right to file an Application for Royal Pardon. If the prisoner chooses to seek a Royal Pardon, the prison officials shall arrange for necessary support in doing so. In practice, more educated prisoners in the prison assist applicants in filling out the application form.

When an individual application for a Royal Pardon is filed, it must be submitted to the Minister of Justice within 60 days from the final decision of the Supreme Court as required by

Article 259 of the Criminal Procedures Code. By letter of the law, execution may take place after the 60 days. However this time limit is not strictly adhered to in practice, for example, where there is a delay in submitting the request for pardon, the request may be submitted outside the 60 days, if the condemned has not been executed. Where the condemned person is currently confined in a prison, the application is filed with the Prison Commander who must pass it on to the Minister of Justice.

The Minister of Justice recommends acceptance or not to the King. The results of the King's decision are conveyed to a Board (joint committee) made up of: a Governor of Province (presently Bangkok to which all death penalty prisoners are sent), a Representative of the Court and a Representative of Attorney General. Their function appears to be to issue the order to the prisons relating to any change in status of the prisoner.

The mission has been told that the joint committee can also carry out investigations and ask information to the correctional department on the cases of the prisoners who filed an application for royal pardon. However, the granting of the royal pardon remains at the discretion of the King and no systematic or public rules are applied in this regard.

Thailand already experienced a *de facto* moratorium between 1987 and 1995, when all the death row inmates have been pardoned by the King. The FIDH and UCL are convinced that the granting of the pardon of the King to all the prisoners sentenced to death (*de facto* moratorium) would be a first and significant step towards a moratorium *de jure* and abolition. The adoption of a moratorium on executions would strengthen and systematise the current trend of avoiding executions through a nearly systematic Royal Pardon. It would be a step in the direction indicated by Article 6 of the ICCPR.

### d. Retrials

When the defendant can prove the existence of new and strong evidence, a retrial is possible before the Criminal Court (i.e. not an Appeal Court, or the Supreme Court). However, retrials remain very rare.

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36. Interview with, Mr Vasant PANICH and Assistant Pr Jaran DITAPICHAH Human Rights Commissioner.

37. Questionnaire sent by Somsri Hananuntasuk, in the framework of a thesis submitted for a master thesis to Office of Human Rights Studies and Social Development, Mahidol University, 2002.

38. Approx. 2000 euros.

39. Approx. 20000 euros.

40. *Ibid.*

41. The Law Society is the body representing the legal profession, equivalent to the Bar association.

42. Para. 5.

43. Approx. □ 600.

44. Approx. □ 3,000.

45. Article 14 para 3.d : " In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it".

46. See above.

## Conditions of Detention and of Execution

### 1. Conditions in Prisons

#### a. General conditions of detention

Thai prisons are grievously over-crowded: in total, there were about 195,000 inmates in Thai prisons at the time of the mission, excluding juveniles (for whom the corrections department is not responsible). 40,000 of the total were women<sup>47</sup>.

These overcrowded conditions contravene Article 10 of the ICCPR which states that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" and para.10 of the UN Standard Minimum Rules for the Treatment of Prisoners<sup>48</sup> which states that "All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation". The FIDH and UCL also recall the "Missions and responsibilities of

the Department of Corrections" as set forth on its website<sup>49</sup>, which are, notably: "to provide institutional environment that is consistent with the United Nations Standard Minimum Rules for the Treatment of prisoners and related recommendations so far as existing circumstances allow", "to reduce overcrowding encouraging the use of various alternative non-imprisonment programs for the offenders who are not suitable for institutional confinement".

At the time of the mission, there were 9,000 foreign prisoners in Thai jails, including approx 5,000 Burmese, 2,000 Cambodian, 1,000 Lao, 300 Malaysian, 100 Singaporeans, 300 Nigerians<sup>50</sup>. In total, there were prisoners from 99 countries, reflecting the transitory aspect of Thailand's location and its strategic position in Asia. Many of those foreign prisoners were illegal workers and immigrants. 22 countries have prisoner transfer treaties which activate either 4 or 8 years into sentence, depending on the country. According to the Department of Corrections, the only foreigners on death row at the time of the mission were Burmese.

**Table 1: Correctional Manpower<sup>51</sup>**

Year	Prison staff	Total Staff	Inmates	Prison Staff : Inmates Ratio
1992	9,127	9,597	73,309	1:8
1993	9,143	9,613	90,307	1:10
1994	8,392	9,230	103,329	1:12
1995	8,499	9,273	111,725	1:13
1996	9,116	9,717	103,202	1:11
1997	9,908	10,460	130,997	1:13
1998	10,955	11,507	170,490	1:15
1999	10,955	11,507	205,340	1:18
2000	10,191	10,832	219,176	1:22
2001	10,008	10,573	247,865	1:25
2002	11,002	11,550	257,196	1:23

Officially, the mission was told that there is no problem with violence in prisons as prisoners are on their best behaviour, hoping for early release or royal pardon. The mission was told that where a prisoner misbehaves, he can be punished by being moved to another section. Officially, violence by prison wardens is not encouraged, if for no other reason than a practical one - officers would quickly lose control which would be extremely dangerous in a situation where the prisoners outnumber the officers. They try to use positive methods to encourage good behaviour and release. The mission was told that there are almost no complaints of violence by officers. However, the mission received accounts from prisoners of officers ruling by fear as well as worrying accounts of the use of violence and abuse of prisoners.

Such treatment - if confirmed - is a clear contravention of Article 10 of the ICCPR which states that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". The mission was told that there exists a little-used complaints mechanism - a box for letters of complaint - and that it was also open to prisoners to write to NGOs, the Human Rights Commission, MPs, Minister for Justice, or the Ombudsman but that prisoners do not do so, for fear of reprisals from the correctional officers.

Prisoners are entitled to visits three times a week, once each day on the three days assigned for visits. Visits take place in the visiting room, a long corridor, which is divided into sections. There is a net screen between visitors and prisoners which maintains a distance of around 2m between prisoners and visitors and they cannot touch. There is no division between one prisoner with his visitors and the next and both must shout to make themselves heard. The mission witnessed visits in the prison and was struck by the noise and lack of privacy for prisoners receiving family visits, which it deplores. Generally, prisoners wear their own clothes but prison shirts are doled out for visits; however, there are not enough so prisoners are often obliged to don shirts worn by prisoners who had visitors earlier in the day.

Private facilities are available for legal visits and mail to lawyers is not censored although mail to families is.

According to prison officials, solitary confinement is not used although there are single cells in most prisons; again, according to the corrections department, many foreigners are in single cells by choice as they prefer to get away from large numbers of prisoners. In particular, Westerners prefer to be alone. Normally single cells are intended for securing the

highest security prisoners. Prisoners held in such cells by choice can come out for eating, exercise and baths. According to one detainee met by the mission, it seems however that sometimes at least, solitary confinement without bedding is used to discipline prisoners.

The mission received information about the sale of drugs in prison by prison wardens and about prisoners found in possession of drugs being punished.

There are "trustee" prisoners in the prisons who have more privileges and freedom than ordinary prisoners. The mission was told that it is possible to purchase a "trusteeship" and that trustees often beat up and chastise other prisoners - a sort of reinforcement for inadequate staffing. The mission also heard reports that in some prisons in the provinces, trustees even carry batons. The mission is of the view that the system of "trustees" contravenes para. 28 (1) of the UN Standard Minimum Rules for the Treatment of Prisoners which states that "no prisoner shall be employed, in the service of the institution, in any disciplinary activity".

In prison in Thailand, money talks. Prisoners pay for everything - bedrolls, lightbulbs, fans, televisions. There is often not enough food for all the prisoners, allegations of theft within the system are rife. The mission heard reports of there not even being enough plates and cutlery to go around. Inmates require money to be sent by their families and the mission received reports of staff pilfering a percentage (between 5% and 20%) of money sent.

Prison food was unanimously reported to be inedible. In most prisons, the wives of the prison wardens cook better food and sell it to those with money. In other prisons, the inmates can buy food in the prison shop and cook it themselves. This contravenes Article 10 of the ICCPR which states that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". Nor does it comply with para. 20 of the UN Standard Minimum Rules for the Treatment of Prisoners, according to which every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served and drinking water shall be available to every prisoner whenever he needs it.

### **b. The Bank Kwang Prison**

There were 6,386 prisoners in Bang Kwang prison on the day the mission visited it, although the prison's maximum capacity



is 4,000. There were 665 foreign prisoners from 44 different countries. All the prisoners are serving long-term sentences, ranging from 30 years to the death penalty. 50% of prisoners are serving sentences for drugs. There are 6 buildings, one for prisoners aged 18-25 years old. The oldest prisoner is 70, there are 138 prisoners aged between 60-70. There are 386 officers.

The mission was shown a large cell (20m x 20m) where 43 prisoners sleep head to feet with a small passageway in between. They have approximately 70-80cm<sup>2</sup> per person. The cells are in raised buildings and have open windows which are barred and covered with mosquito nets. Basic sanitary facilities are in the corner of the cell, one toilet in full view of the other prisoners. There are ceiling fans in the cell. Prisoners are allowed collective showers every day or at least a ration of 5 bowls of water to wash.

The mission noticed a large uncovered mound of grain beside the kitchen on the ground. Many birds were pecking at it, similarly birds were pecking at what appeared to be an infill of refuse about 200m away. This gives rise to concerns with regard to the health risk involved. The mission was not then surprised to receive reports of the prison rice being poor quality, full of grit and sand.

### **Building and Facilities<sup>52</sup>**

1. The prison is divided into 13 separate sections.
2. Total compound area 80 acres.
3. Intended capacity for Bang - kwang Central Prison was about 4,000 inmates.
4. 25 work shops.
5. One auditorium.
6. One hospital.
7. 11 dormitories and 11 dining halls.
8. Outside walls are 2,406 metres long, 6 metres high and 1 metre beneath the ground equipped with high voltage wires.
9. Inside walls of each section are 1,298 metres long, 6 metres high equipped with barbed wires

### **c. The Central Women Correctional Institution**

The Central Women Correctional Institution is one of the women's prisons in Thailand, located in Bangkok. According to Ms Pacharaporn SAROBHAS, Director of Social Welfare Division, Central Women Correctional Institution, 113 of the 116 women sentenced to death in Thailand are detained in this prison. Most were awaiting appeals before the Court of appeal or the Supreme Court while 5 were awaiting royal pardon when the FIDH mission visited the prison<sup>53</sup>.

The prison is desperately overcrowded; there is capacity for 3,000 inmates and there were 5,084 inmates on the day of the FIDH visit (10th August, 2004). At the peak of the war on drugs, there were around 8,000 inmates. There are around 141 inmates per big cell, 1 locker each, there is an open shower big enough for 30 inmates at a time, 2 showers a day are allowed. According to Ms Pacharaporn SAROBHAS, the oldest inmate is 83, about 300 inmates are aged over 60. No juveniles are detained there. About 20 inmates are HIV positive.

All the 203 correctional officers are women. There are 1,703 inmates in the reception centre under 19 officers. Video surveillance is used to compensate for staff shortages.

According to Ms Pacharaporn SAROBHAS, many of the women just needed money and were consequently driven to perpetrate criminal acts. Most of the women who are in prison for drug dealing are not dealers but are hired by crime organisations and they accept the money in order to keep their families. The elderly inmates often allege that they did not commit any crime, that they lived in slums and a member of the family kept drugs in the house. When the police come, they arrest the owners too, many did not know there were drugs there. Some women are from broken families, or are drug addicts who turn to dealing to feed their own habits.

### **Buildings and facilities<sup>54</sup>**

There are two administration buildings, five dormitories, four workshops for dress making, one dining hall with capacity of 700 inmates, one kitchen, one canteen, an education building with a library, and education school for adults and a hair-dressing training room, a nursing home, with capacity of 30 beds, a laundry factory a control unit, and a visitors reception building.

There are no separate cells in the women's prison, but collective cells; there are small fences between wings but no big walls.

There is a medical unit under construction, which will have 300 beds. It will contain specialised dormitories for elderly women and pregnant women as well as women with babies. There are prisoners working on the construction of that unit. It has been paid for by donations from Luang Da Mahabua, a popular monk, since there is no Government budget in that regard.

There is some concern regarding registration of births in prison. Women who are due to give birth are escorted to

hospital by 4 guards, who are not allowed into the delivery suite, many attempts are made to escape. The new medical centre will cater for mothers recovering from birth but women will continue to attend outside maternity facilities when giving birth. By law, children can be kept for up to 3 years in prison but in practice, children are only kept for one year.

There is a vocational training programme with cooking and baking. Prisoners who are near release run a restaurant not far from the prison. There is also a beauty salon and a traditional Thai massage salon. 50% of profits are returned to the prisoners who work there, who are generally close to release. Some women continue to work there after their release. Half of the women on the vocational training programme are inmates and half are ex-inmates.

The library has education facilities, sewing activities, a library, painting classes, and computers. However, these facilities appeared grossly inadequate for the numbers detained in the prison. There is music therapy, including a choir, garden décor and Buddhist meditation. Classes are held in corridors as there is no space for them. Prisoners are encouraged to work; the mission saw women working at sewing, embroidery, making silk flowers and designing clothes. Again, they were working in desperately overcrowded conditions. Twice a year, their work is sold in a market outside the prison and half the profit for handiwork sold is given back to the prisoner. Prisoners in the kitchen work in 2 shifts, the first shift works from 2am to cook breakfast for 7am, the second group starts work at 8am to cook lunch and dinner.

In the prison itself, there is a private room for consultations with lawyers, most inmates have Court appointed lawyers. The mission did not see the general visiting area.

### **d. Prisoners on death row**

Prisoners on death row are held in the same general conditions as ordinary prisoners, except that they wear leg chains 24 hours a day. As stated above, at the time of the FIDH mission, there were 971 inmates on death row, 855 males and 116 females. All of the male prisoners on death row are in Bang Kwang prison (877), while women on the death row are detained with ordinary women prisoners. The males are held under strict security, there is a small number of officers in relation to the number of prisoners (20 officers in total).

The prisoners wear leg chains 24 hours a day, their ankles are chained to each other, allowing prisoners to walk. Chains are

worn to Court when prisoners carry the chains in their hands. Prisoners believe that the size of the chains relates to the quantity of drugs and that people with money can pay to wear lighter chains. The use of shackles 24 hours a day on death row inmates contravenes para 33 of the UN Standard Minimum Rules for the Treatment of Prisoners according to which "chains or irons shall not be used as restraints". Para. 34 further states that: 'the patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary'. Moreover, the chains restrict prisoners from proper exercise and sport, in contravention of para. 21 (2) of the UN Standard Minimum Rules for the Treatment of Prisoners which states that "young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise". The FIDH and UCL believe that the use of shackles 24 hours a day amounts to cruel, degrading and inhuman statement, forbidden by article 7 of the ICCPR. The Human Rights Committee General Comment no. 20 on article 7 specifies that "the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure". Principle 6 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment recalls that "no person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment."

In one big cell, there are around 10 -15 men (5m x 10m), they sleep there and eat outside, there are toilets and washbasins in the cells. They are allowed a shower every day. There is a space for exercise near the canteen where basketball can be played for about 30 minutes every day. In their cell, prisoners play cards and they can watch television.

Death row inmates are allowed out of their cell every day at 8am for breakfast until 2.30pm. Prisoners are then locked in until the next day and are allowed to bring food into the cells if they wish. The maximum outdoor time is 5 hours a day.

Prisoners can cook their own food (which can be purchased in the prison shop) or eat prison food.

For prisoners from outside Bangkok, family visits are infrequent, some get no visitors.



The mission received reports of high levels of mental illness and was told that doctors do attend to such prisoners. No information was given however on whether or not mentally insane convicts have been executed in the past.

The mission was also told that freedom of religious practice is respected within the prison.

## 2. The Execution Process

Since 1935, 316 men and 3 women have been executed in Thailand; no juveniles were ever executed in practice although before 2003 the law allowed for the execution of persons who were over the age of 17 when the crime was committed.

In the past, executions were carried out at 6am. Now once the decision on the application for Royal Pardon arrives from the King, the prisoner is executed the same day at 6pm. At the time of the execution, the prisoner is fetched from his cell and informed of the negative decision - he is not informed in advance.

In B.E. 2546 (2003), an amendment to Article 19 [Article 13 in the previous Criminal Code] of the Criminal Code was passed, which came into force on October 19, B.E.2546 (2003), which changed the method of execution from death by firing squad to "death by lethal injection".

Since the method of execution changed on December 22, B.E. 2546 (2003), 4 condemned prisoners have been executed by lethal injection on 12 December 2003. The Ministry of Justice has officially issued Ministerial Regulations on Criteria and Execution Procedures of Condemned Prisoners, together with the Criminal Procedures Code, stipulating the execution procedures as detailed below.

### a. Execution Location or Site

Under Article 247, para.3 of the Criminal Procedure Code, an "execution shall duly be carried out at the place and time deemed most appropriate by the competent officials". Currently, the execution site is designated at the Bang Kwang Central Prison being a location of convenience, budget saving and based on security reasons: all death row inmates whose sentence is finalized are generally kept in the top security zone inside Bang Kwang, otherwise known as the "Condemned Zone".

The mission visited the execution chamber used until now, both for executions by firing squad and for the four executions

of Boonlue Nakprasit, 46 Panthapong Sinthusung, 41, Wibul Panasutha, 49, and Panom Thongchanglek carried out on 12 December 2003 by lethal injection. The mission was also shown the new execution chamber where future executions will be carried out. It is bigger, with facilities for the execution committee and for the media. The new chamber is air-conditioned (see below).

The original execution chamber consists of one room only. The execution committee and the media were not able to enter the chamber and watched proceedings through the window. The mission saw the guns used in the past for executions and the previous procedure was explained: the prisoner was seated on a wooden seat behind a screen, upon which a target was painted. The executioners would focus on the target - there were two guns, one would be loaded with blanks.

### b. Execution Committee

An Execution Committee officiates over and witnesses executions. This Committee is composed of the Commander of the Prison, who is the Chair of the committee and the following members: the Provincial Governor or his representative, the provincial Public Prosecutor or his representative, a senior Prison Official or Senior Warden of prison where the execution takes place, a representative from the Correction Dept and the Commander of the Local Police Station or his representative.

### c. Identity Verification to avoid executing wrong person and death verification

In order to avoid the execution of innocent persons, the Ministry of Justice issued Ministerial Rules and Regulations on Criteria and Execution Procedures for Condemned Prisoners, B.E.2546 (2003), which are set out in detail below.

Once the Court of First Instance or Court of Appeal has passed the judgment condemning the defendant to the death penalty and the convict is subsequently taken to the prison, the prison officials shall arrange for 6 sets of 4 x 6 identity photographs of the condemned prisoner, consisting of 6 sets of half-length, frontal mug-shot and both right and left profiles. Each set of photographs is pasted on a single sheet of paper, showing the complete identity of the condemned prisoner, i.e., name, surname, crime committed, Red Case No., the Court which passed the final judgment, and the date on which the photo was taken. Each and every photo is verified and signed by a prison official. In addition, 3 copies of

## The death penalty in Thailand

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the fingerprints of both the right and left hands of the condemned person are produced, along with a sheet identifying any identifiable birthmark, or physical marks on his/her body.

Sets of the ID photos along with the finger-prints record are distributed to the Criminal Records Division of the Office of National Police (1 set), the Police Case Officer (1 set), the Court of First Instance (2 sets), the Corrections Dept (1 set) and the Prison (1 set).

Once the death penalty is imposed by the Court and the condemned prisoner is escorted back to the prison, the prison officials again take identity photos, fingerprints sheet and other details of identification of the condemned prisoner, including birthmarks if any. Details on the court case, such as the name of the court and the date on which the final judgment was passed are recorded. One copy of these ID documents is kept at the prison, while the others are delivered to the Corrections Department for distribution as detailed above.

This ensures final or double verification as part of the execution procedures, enabling the presiding judge(s), the Police Case Officer, Criminal Records Division of the Office of National Police to make the final verification and send them to the Department of Corrections, where they are stored indefinitely.

Prior to the execution, the Chairperson of the Execution Committee and the committee members verify again the filed photos and fingerprints sent by the Department of Corrections and cross-check them with the filed photos and fingerprints kept by the prison. Fingerprints are considered the strongest evidence while ID photos are used as supplementary evidence.

In addition, the Criminal Records Division of the Office of the National Police dispatches an officer to obtain the fingerprints of the condemned person, both before and after the execution. Three copies of these fingerprints are produced for the purpose of cross checking with those fingerprints kept by the Criminal Records Division in plain view of the Execution Committee. Once the verification is satisfactorily completed, the Execution Committee and the Police Officer from the Criminal Records Division sign the fingerprints sheet or fingerprints record.

After the execution, one set of the fingerprints is kept at the Bang Kwang Prison, one in the Department of Corrections

and one in the Criminal Records Division of the National Police Office.

The official physician and the Execution Committee file a joint report on the execution and formally pronounce the death of the prisoner in the presence of witnesses.

The remains of the executed person must be kept by the prison authorities in the compound of the prison for at least 12 hours. Once the mandatory period is over, the official physician and the prison commander conduct a joint verification of the death and file a death verification report. The prison authority is also required to file a report on the execution carried out. Both reports are sent to the Ministry of Justice.

### **d. Rights of the prisoners condemned to capital punishment**

The prison officials are required by law to ask the condemned person to choose a person who will take care of his/her private belongings or property. The prisoner may indicate in writing if he/she wishes to take care of his belongings. If the prisoner is illiterate, the declaration is written by a prison official and read to the convict for approval. The declaration is signed by the prisoner or a fingerprint is used as an evidence of the prisoner's approval. Two persons verify the authenticity of the signature/or fingerprint

In the event of the prisoner wishing to write a farewell letter or to send his/her message to someone or to telephone a relative or anyone or wishes to do something in particular, which the prison authority deems permissible, that last wish is granted. However, sending any message or talking to anyone on telephone is subject to the discretion of the Execution Committee. If permission is granted, a specially arranged telephone or communication equipment and system is installed for this purpose. The mission was told that around the time of the passing of the legislation changing the method of execution, one news channel broadcasted images of a prisoner making his last telephone call.

The prisoner is entitled to a last meal, which will be that requested by the prisoner where appropriate and possible. Prior to the execution, the condemned is given time to perform an appropriate religious rite or whatever spiritual rite he requests. Executions are strictly prohibited on official national holidays, auspicious holidays, Buddhist religious days or important religious holidays in the religious faith of the condemned person.

Then the prisoner is brought to the execution chamber, where he will be executed at 6pm.

### **e. Methods and Procedures of Execution**

In 2003, Thailand amended article 19 of the Criminal Code and changed the execution by firing squad to execution by lethal injection. The mission was told that such a change allows Thailand to be in accordance with Article 7 of the ICCPR, as explained by the Human Rights Committee General Comment 20, para. 6, which states that "the death penalty must be carried out in such a way as to cause the least possible physical and mental suffering".

The standard procedures require a group of at least 3 prison officials to obtain the lethal substance or poisonous substance from a designated hospital or a medical facility run by the Corrections Department, provided that the head of the team shall be a senior officer of no lower than the rank of C-7.

The prison authority is responsible for obtaining the necessary equipment for the administration of the lethal injection. The Pharmacist of the designated hospital or a medical facility under the supervision of the Corrections Department is the only person authorized to fill the injection equipment with the lethal or poisonous substance and seal it securely. This sealing is a legal requirement for the lawfulness of the execution and the signature of the pharmacist must be affixed over the seal. The procedures also call for this seal on the injection tool containing the lethal substance or poison to be broken in front of the Execution Committee.

The prison authority is responsible for making necessary arrangement regarding the execution chamber, acquiring proper injection equipment for injecting lethal substance or poison into the vein of the condemned person. At least two prison officials are assigned to administer the injection and they must assist in such preparations.

When the time has come, the prison authority arranges for specially chosen security guards to be at all stations and to be on high and full alert to ensure proper and successful execution. When the precautionary measures and security arrangement are put in place, the condemned prisoner is brought to the execution chamber. The prisoner lies on a pre-arranged bed and is tied to the bed as a precautionary measure against any physical resistance or violent reaction.

Prison officials assigned by the Prison Commander prepare the equipment and tools for the execution. The execution team pierces the vein of the prisoner with a needle which is connected to the tube which is linked to the container of lethal substance. The procedures also call for a setting up of a heart signal monitor before attaching the signal detectors to vital points of the condemned person.

Monitors are arranged in the execution chamber facing the Execution Committee and witnesses are seated in the adjacent room. Upon receipt of the signal, the assigned prison official injects the lethal substance or poison into the tube linking to the needle already pierced in the vein of the condemned person. The procedures are carried out in the presence of and are witnessed by the Execution Committee.

Once the condemned is properly verified as dead by execution, the prison authority notifies the next of kin or chosen relative if the relatives are waiting to take the remains. If no one has come to claim the remains, the prison authority proceeds with cremation or burial as it deems appropriate.

The authorities argue that the change of method to lethal injection occurred as it is more humane - the body is not damaged. The prisoner is given 3 injections, the first is a sleeping medicine. The second is a muscle relaxant, the third is to stop breathing. This way the person does not shake or cry out. A doctor certifies death. This takes place in an air conditioned room.

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47. Figures obtained from the Corrections department.

48. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

49. <http://www.correct.go.th/mission.htm>

50. Figures given by the Director-General of the Department of Corrections

51. Department of Corrections website, <http://www.correct.go.th/statis.htm>

52. See Department of Corrections website, <http://www.correct.go.th/brief.htm>

53. The names and numbers of death row prisoners who benefitted from the Royal pardon of August 2004 had not yet been made public at the time of the finalisation of the present report.

54. *Ibid.*

## Conclusions and Recommendations

### Conclusions: perspectives on the death penalty in Thailand

The present report shows that, although the formal judicial process which leads to the imposition of the death penalty is theoretically in accordance with the international legal standards, serious miscarriages of justice can result in condemnations to the capital punishment. By lasting up to 84 days, the long police custody creates conditions that favour possible cruel, inhuman and degrading treatments. The difficult access to legal aid, both during police custody and the trial process, does not provide sufficient safeguards that the rights of the defence are fully respected. The conditions of detention in prisons, and notably the fact that death row inmates are chained 24 hours a day, may amount to torture and cruel, inhuman, and degrading treatment.

The current government disseminates a culture of authoritarianism notably through its policy with regard to drug trafficking and social unrest in the South. By doing so, it contributes to shape a public opinion said to be massively in favour of the death penalty. It makes the work of national human rights NGOs, the National Human Rights Commission and other organizations committed to the abolition of the death penalty both more difficult and more important.

There are still, however, reasons to consider that Thailand might adopt a moratorium on executions as a first step towards the abolition of capital punishment. First, the FIDH and UCL acknowledge the efforts made by the government to comply by its international obligations, notably through the abolition in law of the death penalty for juvenile offenders. Moreover, the granting of the royal pardon to a vast majority of prisoners condemned to death, together with the previous existence of a de facto moratorium on executions show that the imposition of a new moratorium on executions is far from being impossible in the near future. In this regard, the FIDH and UCL believe that the pressure that Buddhist authorities, the National Human Rights Commission, national human rights NGOs, MPs and political parties can make on the Authorities towards the abolition of the death penalty may be decisive.

### Recommendations to the Thai Government and legislator

#### - Specific recommendations on the death penalty

To adopt a moratorium on execution of the capital

punishment, with the final aim being its abolition. In this regard, the FIDH and UCL recall the Thai authorities that Thailand already experienced a de facto moratorium between 1987 and 1995, when all death row inmates were pardoned by the King. The FIDH and UCL are convinced that the systematic granting of the pardon of the King to all the prisoners sentenced to death would be a first and significant step towards a moratorium de jure and abolition.

As a first step towards the adoption of a moratorium on executions, to reduce the number of crimes punished by the death penalty in order to ensure that it is applied only for the most serious crimes. Such a legislative modification should be applied immediately to the persons who have been condemned on the basis of that modified legislation (in conformity with paragraph 2 of the UN Safeguards).

To organise campaigns of sensitisation for the public on international human rights standards and on the limited efficiency of the death penalty in deterring crime, rather than invoking the reluctance of the public opinion to get rid of the death penalty.

To ratify the Second Optional Protocol to the ICCPR aiming at the universal abolition of the death penalty

#### - Recommendations on the administration of criminal justice

1. To limit by law the time prisoners can be held in police custody in order to comply with its obligation under the ICCPR and other international standards regarding conditions of detention.
2. To facilitate the access to lawyers at every stage of the proceedings by improving the legal aid system through the appointment of senior lawyers and the increasing of their emoluments, both at police stations and after charging.
3. To comply with its obligations under section 241 of the Constitution which states that "at the inquiry stage, the suspect has the right to have an advocate or a person of his or her confidence attend and listen to interrogations". To this end, to pass legislation requiring the police to specifically inform a prisoner of his right to access to a lawyer and prohibiting the commencement of questioning until a detainee has seen a lawyer. An effective enforcement mechanism should be included in such legislation.
4. To increase the budget allocated to the correctional department in order to limit the overcrowding of the prisons, to increase the prisons' staff and put an end to the system of "trustees" inside prisons.
5. To increase and improve training for judges, prosecutors,

policemen and wardens (prison staff) in international human rights law.

6. To take all the necessary measure to curb corruption, particularly in police stations and in prisons.

7. To ratify the U.N. Convention Against Torture.

8. To ratify the Statute of the International Criminal Court.

### **- Recommendations to civil society**

The FIDH and UCL call upon the national human rights NGOs to sensitise the public opinion, the government and the legislator on the issue of the death penalty and more broadly on the conditions of detention in Thailand.

The FIDH and UCL also urge the Law Society of Thailand as well as the Buddhist authorities to adopt a public stance against the death penalty.

### **- Recommendations to the National Human Rights Commission**

To endorse the guidelines set forth by the Asian-Pacific Forum of National Human Rights Institutions and raise the question of the death penalty.

### **- Recommendations to the European Union**

1. The issue of the death penalty in Thailand, as well as, more broadly, the issue of human rights in Thailand, should be raised at all occasions between the EU and Thailand, in accordance with the EU Guidelines on the death penalty and the May 2001 Commission Communication.

2. The issue of the death penalty should be specifically dealt with in the framework of the EU-ASEAN as well as in the ASEM political dialogues.

3. When bilateral negotiations of the Partnership and Co-operation Agreement will be launched between the EU and Thailand, the EU should use the channels offered by the negotiations in order to raise the issue of the death penalty.

## Appendix 1: Persons met by the mission

### 1. Authorities

Mr Phongthep THEPKANJANA, Minister of Justice

Mr Pacharaporn SAROBHAS, Director of Social Welfare Division, Ministry of Justice

Ms Pitikan SITHIDEJ, Director of Rights and Liberties Promotion Division, Ministry of Justice

Mr Nathi JISAWANG, Permanent Secretary of Correction Department

Mr Thaworn SENNEAM, MP Songkla Province, Chairman Standing Committee on Justice and Human Rights, House of Representatives

Mr Somphon WONGCHANGLAW, Advisor, House Standing Committee on Justice and Human Rights, House of Representatives

Mr Vasant PANICH, Commissioner, National Human Rights Commission of Thailand

Assistant Pr Jaran DITAPICHAJ, Commissioner, National Human Rights Commission of Thailand

Ms Pacharaporn SAROBHAS, Director of Social Welfare Division, Central Women Correctional Institution

Pr Vicha MAHAKUN, President of the Court of Appeal

Mr Awat CHAMCHALERM, Deputy Attorney General


### 2. Civil society

Mr Gothom, ARYA Secretary General of Forum Asia

Ms Chalida TAJAROENSUK, Protection Program Director, Asia Forum for Human Rights and Development

Ms Pornpen KHONGKACHONKIET, Women's Rights Project Coordinator and South East Asia Coordinator, Asia Forum for Human Rights and Development

Ms Somsri Hananuntasuk, Coordinator, Asian Network for Free Elections, Chair of Amnesty International Thailand

Mr Sanphasit KOOMPRAPHANT, President of the Centre for the Protection of Children's Right Foundation, President of the National Human Rights Committee (Federation of Thai Human Rights Association) 

Ms Anongporn THANACHAIY, Vice-President, Foreign Affairs Law, Law Society of Thailand

Mr Bamrung TANCHITTIWATANA, Vice-President, Policy and Planning Law Society of Thailand

Professor of Law Khitisak

Ms Pasudee KEETAWORANART, President, Thai Journalists Association

Pr Vitit MUNTARBHORN, Professor of International Law, Special Rapporteur on Human Rights in North Korea

Mahachulalongkornrajavidyalaya University (Monk)

Mr Thongbai THONGPAO, Lawyer 

### 3. Prisoners and their families

Ms Kamolwan KANWIBOON, wife of Mr Tharadol THAIGED, sentenced to death 

Ven. PHRASRIPARIYATTIMOLI (Somchai Kusalacitto), Deputy Rector for Foreign Affairs,

Seksan Mahamontol, sentenced to death, Bangkokwan Prison

Mother of Jaturong TIENKRUE, sentenced to death (commuted in life sentence)

Colin Martin, prisoner

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- a) Mobilise the international community
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FIDH facilitates each year the access and use of existing international mechanisms to more than 200 representatives of its member organisations and supports their activities on a daily basis. FIDH also aims to protect human rights defenders.



**Union for Civil Liberty**  
**109 Suthisarnwinichai Rd., Samsennok,**  
**Huaykwang, Bangkok 10320**  
**Tel. (66 2) 275-4231-3**  
**Fax. (66 2) 275-4230**

The Union for Civil Liberty was founded on November 24, 1973 immediately after the October 14 popular uprising which overthrew the then Thanom-prapas dictatorial regime. As an independent, non-governmental organisation, UCL was established by a group of democratic-minded students, academics, lawyers and citizens from various professions who were firmly committed to civil rights and liberties in Thai society.

Its objectives are to promote a democratic system in Thai society; to provide assistance to the public against violations of human rights and basic freedom; to raise the level of consciousness on civil rights and liberties throughout Thailand in order to promote effective community actions; and to safeguard and protect the civil rights and liberties of citizens with legal measures. All these objectives are being worked on in collaboration with like-minded organisations and associations.

In the past years, UCL has given a concrete echo to this commitment, carrying out various activities like legal service, dissemination of legal knowledge and information related to civil rights and liberties to the public, campaigns against unjust legislation, promotion of people's organisations and citizens groups to safeguard human rights, and paralegal training.

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Editor: Antoine Bernard

Authors of this report : Siobhan Ni Chulachain, Sinapan Samidoray, Julie Morizet.

Coordination of this report : Isabelle Brachet

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