Roads to Death

4 Case Studies leading to Capital Punishment in Thai Criminal Justice

Union For Civil Liberty (UCL)

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Union for Civil Liberty

Preface

The four cases presented in this study are from four widely separated regions of rural Thailand. The cases were selected as examples of homicide and drug cases, for male and female accused, for Thai citizens, and for foreigners. The common criterion of selection was that all were for very poor defendants who relied largely on state appointed counsel. It was expected that such cases would best reveal weak points of legal procedure.

As editor I have found it difficult to make the presentations coherent. There appear inconsistencies, unanswered questions, and surreal details. Perhaps this would be true of any such account anywhere, a "Rashamon Effect"! The events described involve very simple untutored people with no experience of legal procedure and three of the cases were located in the remote countryside where there are undercurrents little known to the outsider. We have hints of other issues involved in the cases but as these were not raised in the trials we do not raise them either. Who knows what exchange of gossip occurred between the various actors in these rural dramas? We did not have the resources to investigate further. The cases are presented as they emerged in court proceedings with such background as may help the reader make a personal assessment whether the convictions appear acceptable or not.

There are no great revelations in these very everyday cases. Our intention was to examine how ordinary judicial procedure measured against the most strict standards required for capital conviction. We had at our disposal the court judgements. We interviewed the

prisoners themselves, their relatives, their lawyers, and to some extent the police, prosecutors, and judges. Most were open in their discussions but with reservations. From this material we have put together the present summaries.

The study is part of a one year project to promote abolition of the death penalty in Thailand. At the present time in Thailand there appear to be three starting points that could lead to abolition:

The conviction that human life is inviolable. 'Everyone has the right to life' (Article 3 of the Universal Declaration of Human Rights)

The realization that capital punishment in all its forms is to be rejected as 'cruel, inhuman and degrading' (Article 5 of the Universal Declaration of Human Rights)

The further realization that the criterion for sentence to death of 'clear and convincing evidence leaving no room for an alternative explanation of the facts' is hardly achievable in practice.

The cases we have studied address the issue of the third heading. Thai law also requires that a murder be committed with deliberation to incur the supreme penalty. If one admits consideration of the circumstances, the mentality, and the background of the accused as part of the 'facts', the condition of 'deliberation' becomes most problematic. The possibility of alternative explanation is what I refer to as the 'Rashamon Effect' after the film masterpiece of Akira Kurosawa who confounds us by giving conflicting and equally convincing visual depictions of a murder.

As for the death penalty imposed on drug related crimes, what can one say other than recall the opinion of the UNHCR Human Rights Committee that drug trafficking charges do not come under the ambit of 'most serious crimes' within the meaning of Article 6, Paragraph 2 of the International Covenant on Civil and Political Rights (Geneva, 28th July 2005) and should not be subject to the death penalty. Meanwhile 62 % of all prisoners currently condemned to death in Thailand are convicted on drug charges.

An introductory chapter gives the setting, a second chapter contains the case studies, a third chapter giving the reflections of Union for Civil Liberties lawyers is followed by the reactions of foreign commentators. Appendices contain a summary of Thai laws relating to the death penalty and outline the specific pattern of Thai criminal legal process.

The English language version of 'Roads to Death' will be presented at the 3rd World Congress on the Death Penalty in Paris, 1st to 3rd February. A somewhat more detailed Thai version will be published at the same time.

Danthong Breen
Union for Civil Liberty

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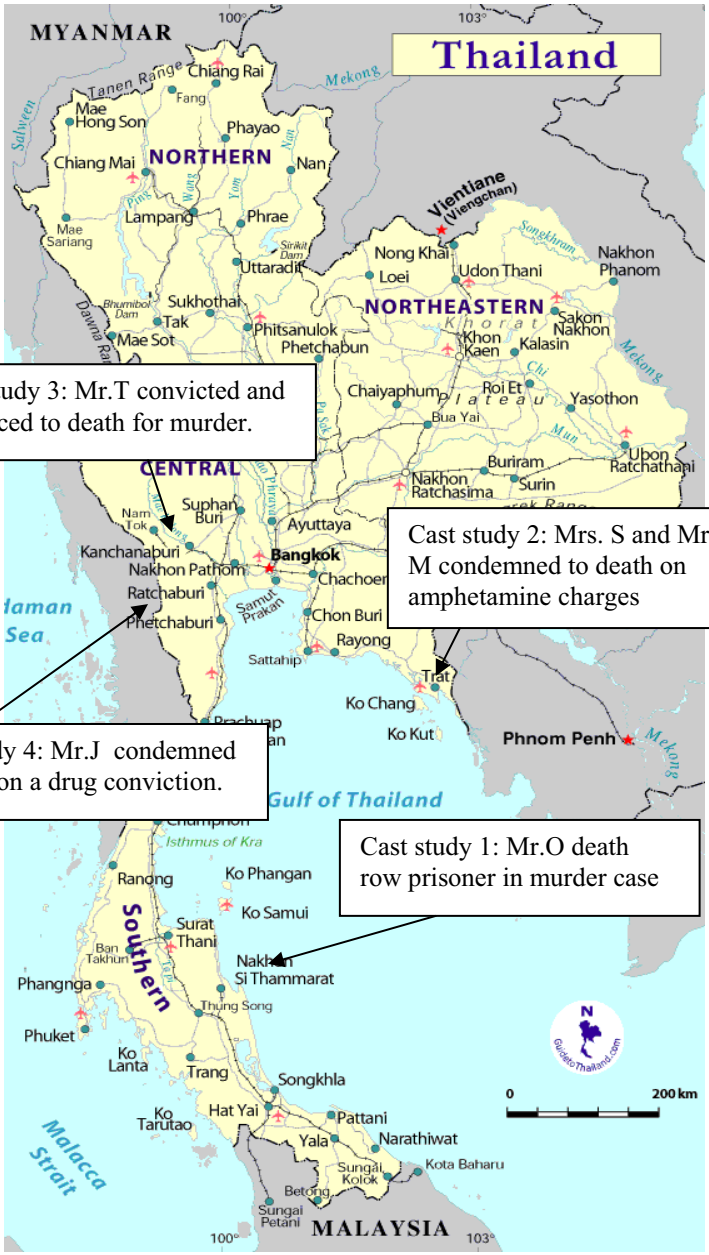

Cast study 3: Mr.T convicted and sentenced to death for murder.

Cast study 2: Mrs. S and Mrs. M condemned to death on amphetamine charges

Cast study 4: Mr.J condemned to death on a drug conviction.

Cast study 1: Mr.O death row prisoner in murder case

Chapter 1. Introduction

1. Basis of the Study

Capital Punishment is the most severe punishment of wrongdoing. Both imprisonment and execution are the most serious restriction on the human rights to life and freedom. When such punishments, and especially capital punishment, are inflicted by the State the judicial process must be strictly controlled and applied so that the truth emerges. Justice must be administered with efficiency and clarity. But in practice it appears that the judicial process, beginning from police action, prosecution, and the court proceedings which together are the instruments of law by which the government establishes justice in society and punishes wrongdoing, is still defective in many ways. From data established by the Office in charge of Rights and Freedom of the Ministry of Justice, it appears that in the year 2005 there were many cases where compensation had to be paid to accused persons who were later judged to be innocent. In 610 cases which came before the courts, complaints of wrongful charge were received in 355 cases and in 214 of these cases compensation amounting to 60 million baht was paid. From January to September in the year 2006 there were 354 cases of complaint and in 216 cases 58 million baht compensation were paid. From these figures we see that serious reform of the legal system is required.

Further evidence of shortcoming in the judicial system leading to capital punishment is contained in the testimony of a former convict on death row who had his sentence commuted to life imprisonment. The sentence was

further decreased by royal amnesty and he was released after 14 years of imprisonment. During his time of imprisonment he studied law and is now a practicing lawyer. He relates that over the years of imprisonment prisoners know each others cases intimately and are well aware who is really guilty of the charge against them and who is not. According to his estimate 12% of those convicted are innocent of the charge against them, 50% were involved in the crime but not to the extent that they deserved sentence to death. Approximately forty percent were guilty as charged and convicted. These figures correspond to the statistics of misjudgement already quoted and were confirmed by another lawyer who also spent 20 years in the maximum security prison.[1]

In the past, a serious miscarriage of justice which occurred in the Sherry Ann Duncan[2] case already drew attention to the urgent need for judicial reform. This case influenced provisions in the 1997 Constitution which did much to establish the rights of the people in the judicial system, to the extent that this Constitution became known as the People's Charter of Freedom.

The rights to justice of the people are also enshrined in the International Covenant on Civil and Political Rights to which Thailand acceded on 29th January 1997. This covenant establishes the procedures of criminal law and

[1] Pesan Onkard, Tanadech Kantachote in interview with Researchers

[2] Sherry Ann Duncan, a 16 year old Thai American, was murdered in August 1986. Shortly after the murder, four construction workers were arrested and sentenced to death on the basis of confessions forced by torture. When the Supreme Court found them innocent in 1993 two had already died in prison. A third died shortly after release. The police were ordered to pay 26 million baht in compensation to the sole survivor of those arrested and to relatives of the other three.

asserts the rights of the accused, defendants, and prisoners in many respects. But in practice the rights of the accused and defendants are seriously transgressed. This is especially true for suspects or defendants who are poor, without information or resources. In such cases guarantees for the protection of the human rights of suspects, defendants, or those imprisoned are not respected.

There are many reasons for this denial of rights to suspects, the accused, and the imprisoned. They originate partly in the attitude of officials administering the law and partly in that subjects of the law do not exert their rights, whether through ignorance or for other reasons, with the result that the system of criminal law is unjust in practice. The greatest failure occurs in not contesting charges effectively in court from the beginning with the assistance of a lawyer. What possibility of redress is there in cases leading to the death penalty after the sentence has been carried out, when justice and human rights have not been respected from the beginning and where the accused have not availed of the rights which are their due?

Such considerations are the motivation for the present study of cases of prisoners who have been condemned to death. We examine the application of criminal justice and the extent to which the human rights of the accused have been respected. We ask to what extent the administration of criminal justice requires reform and submit this study as a guide to issues which must be addressed.

2. Objectives of the Study

To investigate the human rights aspect of criminal justice according to Thai law in cases leading to the death penalty

To investigate the problems and obstacles encountered by government officials in criminal justice procedures relating to the death penalty

To investigate tendencies in the reform of laws and practice of government officials relating to the death penalty

To propose a programme for reform to the judicial system relating to capital punishment to those responsible

3. Extent of the study

In the present study, we examine the human rights aspect in criminal justice procedures for four cases which led to the death sentence. The first case relates to a homicide, the second relates to a drug offence involving two sisters of Khmer nationality. The third case again involves homicide while the fourth case is that of a man sentenced to death on a drug charge. To facilitate reference the cases are listed with the pseudonym assigned to the accused as follows:

Index of Case	Pseudonym of Accused	Charge
1	O	Homicide
2	S and M	Drug dealing
3	T	Homicide
4	J	Drug dealing

The investigation covered human rights issues for the person involved over the entire period of legal procedure from the stage of suspect, to that of accused, defendant, and being imprisoned. The human rights involved are those guaranteed by the Constitution of 1997 which in turn was inspired by the International Covenant on Civil and Political Rights. References to the Constitution throughout the study refer to the Constitution of 1997. It may be noted that Thai courts only refer to International Covenants insofar as they have been incorporated into the Thai legal system.

4. Methodology of the investigation

4.1 Study of the documentation of the trial, the judgements of the Court of First Instance, the Appeal Court, and the Supreme Court

4.2 Field study or interviews with the participants, the condemned prisoners for the four cases, lawyers, police, prosecutors, relatives of the condemned, and advisors.

Chapter 2 The Case Studies

Case Study 1:
Mr. O, Death Row Prisoner in Murder Case

Mr.O's profile

O, 30 years old, lived originally in Tung Yai district, Nakorn Sri Thammarat province, married, with a 4 year-old son. He has two sisters and three brothers. His mother is 57 years old. His father, N, is 60, and has 4 wives. O finished grade 6 at the primary school in his village. He worked with friends in a motorcycle garage, and was a hired laborer in rubber plantations. Concurrently, he continued to study in the Non-formal Education System and finished grade 9.

Background of the Murder Case

On 29 September 2000, at about 16.30 hours, Mrs. Y rode a motorcycle from home, with V, her nine year old youngest son on the pillion, to make phone calls at a public phone booth in the village. After finishing the calls, while she was mounting the motorcycle, and about to start, with her son already on the pillion, she was shot dead.

The police issued a warrant, and arrested O on first degree murder. The police related the incident as follows:

"On 29 September 2000, at about 16.30 hours, Mrs. Y rode a motorcycle, with her youngest son on the pillion, from home to make phone calls at a public phone booth in the village. She went inside the booth on the street side, and made a phone call to another son, but could not connect to

him. She sat down and waited to repeat the call. While she was waiting, she met a daughter of Mr. N, her new lover. She talked with the daughter for about 10 minutes, and the daughter parted for home. Mrs. Y went inside the booth, and made the call to her son. By then it was a little later than 18.00 hours. After finishing the conversation with her son, she came out of the booth. While she was mounting the motorcycle and about to start the engine, with her youngest son on the pillion, O came walking, approaching her from her rear left side. She asked O if he had eaten. He said yes, drew a pistol and shot at her, making the motorcycle fall to the ground. About one minute later, Mr. S, O's younger brother, drove a motorcycle to the scene, and drew a pistol, firing at Y while she was lying on her back until she was dead. The motive for the killing was that Y had a relationship with N, the father of O and S. They engaged in a sexual relationship at Y's place for about 4 to 5 months. That made N's wife and children angry." The police produced as proof of O's guilt the eye witness testimony by Y's youngest son of the shooting of his mother.

After O was arrested and denied the charge of murder, S turned himself in to the police. In court, S claimed that his brother had no part in the murder and that he himself was the only one who carried out the shooting. Subsequently S was sentenced to life imprisonment by the First, Appeal, and Supreme Courts. O denied the charge, and all three courts passed the death sentence against him. His case took 4 years from the time of arrest to reach the final verdict.

The research team has studied the case through to the final verdict, and makes the following comments:

1. Arrest and Detention

Section 237 of the Thai Constitution (B.E. 2540) provides that **"In a criminal case, no arrest and detention of a person may be made except where an order or a warrant of the Court is obtained, or where such person commits a flagrant offence or where there is such other necessity for an arrest without warrant as provided by law"**.

The arrested person shall, without delay, be notified of the charge and details of such arrest and shall be given an opportunity to inform, at the earliest convenience, his or her relative, or a person in his or her confidence, of the arrest. The arrested person being kept in custody shall be sent to the Court within forty eight hours from the time of his or her arrival at the office of the inquiry official, in order for the court to consider whether there is a reasonable ground under the law for the detention of the arrested person or not.

Section 87, paragraph 3 of the Criminal Procedure Code states that "In the case where the arrested person is not allowed provisional release, and if there is necessity to keep the arrested person for the purpose of completing the inquiry or the court prosecution, the alleged offender shall be sent to the court within forty-eight hours after he or she arrived at the office of the inquiry officials, and in accordance with Section 83, unless there is unavoidable necessity. In the case where the offence committed is

subject to a maximum punishment of more than ten years, with or without fine, the court has the power to grant several successive remands not exceeding twelve days each, but the total period shall not exceed eighty four days.

In this case study, the research team found that the murder was carried out on the 29th September 2000. The arrest warrant No. 63/2543 states that "……..at a little past 20.00 hours on the 5th January 2001, police officers came to know that the accused identified in the arrest warrant was hiding in a particular village and that he was about to return to his home. The police went to investigate and found a man having the same appearance as in the warrant. The police asked for his national ID card and found that he was the suspected person. The police then showed him the arrest warrant…."[3]

The researchers view that the issuing of the arrest warrant in this case was not in accordance with the Constitution because the police, not the court, issued the warrant. The Constitution had been in effect since 1997 but police claimed that the Criminal Procedural Code has not been amended accordingly.

During the arrest, the police showed the arrest warrant and informed the alleged offender of the charges. The alleged offender denied all the charges. In the interrogation process, the inquiry officers informed the alleged offender that he was charged with first degree

[3] Police Arrest Memo

murder, possession of a gun and ammunition without permission or reasonable cause.

After stating the charges, the police officers informed the alleged offender of his four rights, namely;
1. the right to private counsel with a lawyer
2. the right to have a lawyer or trusted person present during interrogation
3. the right to be visited by, or to have communication with, relatives as deemed appropriate
4. the right to prompt health care in case of illness.

The researchers found that in practice police officers just type those rights in the alleged offender's testimonial report to claim that they have followed the procedure. The accused did not understand his rights at all. It appears in the testimonial report that:

"……my testimony can be used to testify against me in the court and I have been informed of the rights of the alleged offender in accordance with the law….."

The researchers view that in this case the police did not pay much attention to the process of informing the alleged offender of his rights. If the police officers had explained to make Mr. O clearly understand his rights as an accused, he would have been able to exercise his rights to defend himself from the beginning to the full extent in the criminal procedure.

With regard to the detention of the arrested person, the police officers detained the accused for 3 days before presenting him to court. Although this was in accordance with the Criminal Procedure Code, it is against the Constitution which states that the arrested person being kept in custody shall be sent to the Court within forty eight hours from the time of his or her arrival at the office of the inquiry official. According to the detention record, "….the police officers detained the arrested person for three days from the 5th to the 7th January. But the interrogation had not yet finished. The police needed to interrogate 6 more witnesses. They thus asked for another 12 days extension of detention. They also asked to transfer the arrested person to the Thung Yai District Police Station. Altogether, availing of renewed detention orders the police detained the alleged offender in this case for 84 days….."[4]

The researchers confirmed that the police requested court orders to detain the accused for 84 days. The police claimed that they needed the time for further interrogation of the witnesses. However, there were only 8 witnesses 6 of whom were police testifying to the interrogation. The fact that the police themselves were the ones who issued the arrest warrant implies that they already had substantial evidence. There appears to be a transgression of the principle that the police can only detain a person for a period of time deemed necessary.

[4] Detention Record

2. Legal Assistance

2.1 Legal Assistance for the Accused

With regard to legal assistance for the accused, Section 239 of the Constitution provides that "A person being held 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." And Section 241 guarantees the right of the suspect to have an advocate or a person of his or her confidence attend and listen to interrogations. Section 7/1 of the Criminal Procedure Code requires the officers to inform the arrested person or the alleged offender in the first instance. It says that "the arrested person or the alleged offender who is kept in custody or detained has the right to meet privately and consult with his advocate"

Although international and domestic human rights standards clearly guarantee assistance of a lawyer, Mr. O, who is sentenced to death, was detained as an alleged offender without any chance to meet with or get assistance from a lawyer. The police officers recorded the response of the alleged offender as, *"The accused did not require a lawyer to be present during the interrogation. He allowed his sister, as the trusted person, to be present. The interrogation officers arranged for her presence during his interrogation"*. The accused insisted that the police officers did not inform him of his rights. Neither had he known how to get a lawyer. He said, *"At that time I did not care much. I know that I did nothing wrong. The police did not tell me*

about my rights or about what to do. If you talk about a lawyer, I do not know where to turn to."

In the researchers view the alleged offender in this case could not exercise his right to have a lawyer present during the interrogation because the police did not pay enough attention to get a lawyer to help the alleged offender. The police did not explain to the alleged offender the rights to which he was entitled. Moreover, the system to provide legal counsel to accused who are poor is not adequate. As a consequence, he missed the opportunity to get the assistance of a lawyer from the very beginning although this was a murder case subject to the death penalty.

2.2 Legal assistance to the defendant

Article 242 of the Constitution states that "any offender or defendant in a criminal case will be provided a lawyer by the state...". However, in this case it was O's mother who found a lawyer after the case had been brought to court. The lawyer had over 20 years of experience. The mother had to borrow money to hire the lawyer, as she was not confident in any lawyer the court would provide, saying "If I use the lawyer provided by the court, my son would surely be in jail because we would get an inexperienced and inactive person. The lawyer didn't request a high fee, so I decided to hire our own lawyer. At that time we didn't have much money. I had to borrow, but I worried more about my son".[5] Commenting on the lawyer's performance, the defendant said, "the lawyer didn't ask much, seldom visited

[5] Interview with the mother of the convicted

me. I think he didn't pay full attention".[6] The lawyer visited to question the defendant in the prison only a few times. In the lawyer's opinion, his task was to cross-examine the prosecutor's witnesses, discrediting them, and there was no need to bring many witnesses of the defendant to the hearing.

The research team found that the defendant refused the free service of legal assistance provided by the state because his mother believed that the state-provided lawyer would be inexperienced and lacking the will to pursue the case. They turned to hire a lawyer, and incurred a debt. This shows that the legal assistance cannot reach the poor, because they perceive it as not efficient enough to ensure the rights of defendants. After the First Court condemned him to death, the defendant was moved to Bang Kwang, a fortified prison for those convicted to long prison sentences or to the death penalty. The defendant decided to appoint a fellow prisoner as legal advisor in place of the lawyer, and he explained that "at first when I was arrested, I didn't think of anything much, as I believed I would be released. I believed in my innocence. I expected the police, the attorney and the court would give me justice. But, finally, I was given the death penalty. The lawyer rarely visited me. We had to pay. When I'm in this prison, I came to know senior convicts who know the laws. Some were lecturers. Some were soldiers, and police. They are knowledgeable, and I heard that they had helped several people get released. I trusted them and asked them to appeal for me. The lawyer also appealed. The court asked me which

[6] Interview with the convicted on 11 April 2006.

appeal I wished to choose. I said I chose the one by the fellow convict. There was little expense, just some cigarettes in payment."[7]

The fact that Mr. O was so confident and trusting that he chose the appeal written by his fellow prisoners, despite his own lawyer's version, was due to three reasons: no fee except for a pack of cigarettes; acquaintance with the "lawyers of the execution ward"[8] who used to be teachers, soldiers and police men, and were knowledgeable in law - that allowed more opportunity for conversations, compared to the sparse visits made by the lawyer; credibility built up by word of mouth among the convicted that "they have helped many people to be freed".[9] For all these reasons, "legal assistance of the execution ward"[10] gets more credibility and is chosen rather than legal office.

Certain officials at the prison supported this, as most convicted are poor and cannot afford a lawyer. In this way they can help each other without expense.

The research team considers that the appeal drawn up by the convicts placed Mr. O's case at risk of not attaining justice. It is possible that the convicted were equally knowledgeable and skilled, or knew more facts and details than the lawyer, but there must be a difference in degrees of professionalism, competence, and credibility.

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[7] Interview with the convicted on 11 April 2006.
[8] The researcher's own term.
[9] Regarding this claim, the researchers did not make an insight study to see the general outcome of cases prepared by fellow prisoners.
[10] The researcher's own term.

However, the existing legal assistance among the convicts points out that the state's legal assistance system is probably a complete failure.

3. Bail of the Accused or Defendant

Section 239 of the Constitution states that **"An application for a bail of the suspect or the accused in a criminal case mush be accepted for consideration without delay, and an excessive bail shall not be demanded. The refusal of a bail must be based upon the grounds specifically provided by law, and the suspect or the accused must be informed of such grounds without delay."**

Bail can be refused only when there is one of the following reasonable causes:
1. the accused or defendant will flee;
2. the accused or defendant will manipulate the evidence;
3. the accused or defendant will cause another harmful act;
4. the guarantor or the security offered is not reliable.

In considering provisional release, the court must consider the following factors: existing evidence; the circumstances of the case; the reliability of the guarantor or the securities offered; the potential that the accused or the defendant would flee; the potential damage or danger. In the case that the accused or the defendant is detained on a court order, the court can also take into consideration the objections of the inquiry officers, the public prosecutor, the plaintiff, or the victim.[11]

[11] Criminal Procedure Code, Section 108

The human rights principle of the bail or provisional release is *"provision of bail is guaranteed, refusal of bail is an exception."* In this case, Mr. O asked for bail from the First Court. The court granted the bail with security of land title documents of 11 *rai* and 250,000 Baht cash.

When the case came before the Appeal Court the prosecutor argued against the bail on the basis that "the witness is a child while the perpetrator is influential in the locality. If he is bailed out, the witness is potentially in danger….." The Appeal Court refused bail on the ground that "considering the seriousness of the charge and the circumstances of the case and the evidence, there is not reasonable ground for the temporary release of the defendant during the appeal".[12]

Mr. O had been on bail for more than a year during the first court trial. After receiving the death sentence from the First Court, the Appeal Court refused the bail during the Appeal Court's trial until the Supreme Court gave a death sentence. Up to the present, Mr. O has been detained in Bang Kwang prison.

4. Court Trial

Section 241 of the Constitution states that "In a criminal case, the suspect or the accused has the right to a speedy, continuous and fair inquiry or trial", while section 236 provides that "The hearing of a case requires a full quorum of judges. Any judge not sitting at the hearing of a case shall not give judgement or a decision in such a case,

[12] Order of the Appeal Court, Eight Region, No. 415/2545

except for the case of force majeure or any other unavoidable necessity as provided by law". For the First Court, there must be at least two judges in the quorum of criminal case, no more than one of them can be the court's permanent judge. For the Appeal Court, Regional Appeal Court and High Court, there must be at least three judges, according to article 26 and 27 of the Charter of the Court of Justice.[13]

In this case, Mr. O was arrested on the 5th January 2001. The First Court gave its ruling on the 24th May 2002. The Eighth Regional Appeal Court gave the ruling on the 31st December 2003. Judgment of the Supreme Court was given on 29th January 2005. The trial took altogether four years.

The researcher's view that the Constitution's provision for speedy, continuous and fair trial was not fulfilled. In this case, there was no continuous trial, resulting in the prolongation of the trial for four years.

In the trial of the First Court, the prosecutor charged the defendant with first degree murder. There were hearings of 8 prosecutor's witnesses. Among the eight witnesses, six of them were police officers who arrested and interrogated the defendant. Another witness was the deceased's 9 year old son. There were two witnesses on the defendant's side, only one of whom was called to testify. According to the witness, "on the date of murder, the first defendant was at Ms. P's place and was sleeping in her

[13] Provisional for Charter of the Court of Justice Act, B.E. 2543

house"[14] There was no hearing of a witness whom the defendant believed saw the murder and who was close to the crime scene although this witness' name was included in the witness list when it was submitted to the Court. The defendant was not satisfied with the lawyer about this.

In the court hearing, there was a full quorum of judges. There were two judges in the First Court and three judges each in the Appeal and High Courts.

The First Court ruled that, "the Court believes that the minor witness saw the perpetrators and could remember them. When the perpetrators shot the deceased, the motorcycle fell down. The minor witness, who fell with his face on the ground, could also see the second perpetrator. Three days after the incidents, the witness testified to the inquiry officers and provided correct extensive details of the clothing of the two perpetrators. He could also identify the defendants. The prosecutor also submitted a letter that the deceased wrote before her death. In that letter, the deceased stated that if she were murdered, the murderers would be the wife and children of her new husband. The argument of the defendant cannot overrule the evidence of the prosecutor. The Court rules that the first defendant is guilty according to Section 289(4) together with Section 83 of the Criminal Code. The defendant must be executed."[15]

The defendant's lawyer submitted an appeal with the main arguments that "in this case, the boy V, the son of the deceased claimed that he saw the perpetrators using a

[14] op.cit.
[15] op.cit.

pistol to shoot the deceased till death. But there are many causes for suspicion in the circumstance described by the witness. It cannot be proved beyond doubt that the witness saw and could remember the perpetrator who shot the deceased to death"[16]

Mr. O later asked a fellow prisoner to write an appeal for him. The main line of argument was that "since the punishment of this case is as high as the death penalty, the evidence and witness much be stable and beyond doubt or any suspicion. But after considering the evidence and witness as submitted by the prosecutor, we find only the boy V, who was nine years old at that time. He could testify in the Court with a degree of detail which is not normal. Moreover, he was not intimidated at all, but could look directly at the accused as if he was taught by someone to allege the involvement of the first defendant"[17]

From the study of the Court trial procedure, the researchers found that there were many limitations in the preparation for the court trial both by the lawyer and the defendant, especially in testimony of the defendant, in finding evidence to prove the incident, and in preparation of the witness to testify in court. These would definitely affect the efficiency of the prosecution for the benefit of the defendant.

[16] Appealed on 13 August 2002
[17] Appealed on 6 May 2003

5. Appeal for Clemency by the Death Row Prisoner

5.1 Appeal to Appeal and Supreme Court

Section 245 paragraph 2 of the Criminal Procedure Code states that "The Court of First Instance has the duty to send to the Appeal Court any file of the judgment inflicting punishment of death or imprisonment for life, where no appeal has been lodged against such judgment. Such judgment shall not become final unless it has been confirmed by the Appeal Court."

The Appeal Court[18] maintained the capital punishment ruling. The Supreme Court[19] also maintained the ruling. The researchers view that assistance from another prisoner in writing the appeal might be the most accessible and cheapest solution for the defendant, but could not guarantee the efficiency of the court trial.

5.2 Royal Pardon

Death row prisoners have right to request a royal pardon collectively or individually. On the 60th anniversary of the King's accession to the throne, there is a royal pardon. Mr. O is being examined whether he is qualified for this collective pardon. He has also submitted an individual request.

[18] Appeal Court ruling No. 2718 /2546
[19] Supreme Court ruling No. 8321 /2548

6. Treatment of Person with Death Sentence

The right not to be treated cruelly involves three major elements, namely;

1) use of instruments of restraint as a tool to humiliate, punish, or to avoid difficulties;

2) use of a weapon to injure the detainee;

3) Physical punishment and torture.

With regard to instruments of restraint, Section 14 of the Prison Act B.E. 2479 states that instruments of restraint are prohibited unless:

1) The person would potentially cause danger to his or another's life or body;

2) The person is mentally ill or insane and could cause danger to others;

3) The person could try to escape custody;

4) when traveling outside the prison, as seen necessary by the warden;

5) when the Ministry orders that it is necessary due to the prison condition or the local situation.

In Sub-section 4 and 5 of this Act, the prison's warden has the power to order and cancel the use of the instruments of restraint on the detainee.

The researchers found that O is shackled all the time. The shackle cannot be removed. It is 75 cm in diameter and is about 75 cm long. Being shackled, the detainees cannot practice normal activities. This is a form of torture. The researchers view that Bang Kwang prison is a prison of high security and with good control system. There is no need to shackle the prison inmates. Shackling is

a violation of human dignity and the right to physical integrity.

From the case study of Mr. O, the death row prisoner in a murder case, we found that the death row prisoner in this case does not get all the rights due in criminal procedure. There are limitations in the following procedures; information of the alleged person's rights; legal assistance by allowing the lawyer to attend the interrogation; assignment of legal counselor; the trial process; and treatment of the detainee. Most seriously, the whole process of truth proving in the court trial is deficient. As a consequence, the defendant lost the opportunity to efficiently prepare and proceed in the case.

There are three main problems in this case: firstly, poverty and lack of opportunity to learn and understand about the rights of the alleged defendant, accused and detained throughout the process of arrest, detention, court trial, and imprisonment; secondly, the police officers did not pay attention to or respect the rights of the defendant; thirdly, problems with the legal assistance that is supposed to be provided to people, to enable them to exercise their rights efficiently.
Grave doubts remain in relation to the conviction as a consequence of flaws in the trial procedure.

Case study 2:
Mrs. S and Mrs. M, condemned to death on amphetamine charges

Background of Mrs. S and Mrs. M

S. and M. are sisters of Cambodian nationality from Krajae Province in Cambodia. Their father is living in Cambodia while their mother has already died. There were eleven children in the family. S is 36 years old while M is 32. S studied in a Cambodian primary school to grade 4. She cultivated rice and vegetables until she was 23 years old when she came to work in Thailand. After working as a domestic servant for two years she began to bring Cambodian products for sale in Thailand. Seven years later she succeeded in opening a small shop in Had Lek, Trad Province. She is married to a Thai national who is a Cambodian by birth. They have no children.

Her younger sister M is also a Cambodian and studied to grade 5. She too came to Thailand as a domestic servant and small scale stall holder, with a monthly income of 2,000 to 3,000 baht. She is married and has one child. A month after the child was born she was arrested.

Events leading to their arrest

On 7th October, 1997, four persons were arrested by police of the drug division. The four included the two sisters, the husband of S, and a younger brother of the sisters. The evidence for their arrest was possession of 100,000 amphetamine tablets for illegal sale. The tablets

exceeded a statutory quantity of 100 grams of Category 1 drug, making the crime subject to the death sentence. The police alleged that on 3rd October 1997 an informer came to tell them of a drug operation operated by Mrs. S and her group who smuggled amphetamines from Cambodia for sale in Thailand. The drug suppression police requested the help of the undercover agent in setting a trap for the drug dealers. He was to contact the person selling amphetamines and to place an order for 100,000 tablets at a price of three million baht. The agent led police to the village of Had Lek in Trad Province to make the arrest. When the contact was made the agent pretending to buy the drug gave the money to the two sisters to count. Meanwhile the agent examined the material he was shown hidden in five biscuit boxes. He found the drug packed in plastic bags each containing 200 tablets to a total of 100,000 tablets. The police arrested the group comprising (1) the husband of S, (2) S, (3) her younger sister M, and (4) her younger brother. After the arrest the police brought all of them to the special operations section of the province to record the arrest. The evidence consisted of blue coloured amphetamine tablets packed in plastic bags. There were 497 such bags each containing 200 tablets or a total of approximately 100,000 tablets

The sisters S and M declared during the investigation and in the court proceedings that a naval officer owed them about 190,000 baht for purchases made in their shop. He sent another naval officer whom they had known for two years to settle the debt. This officer known to them as A brought the five biscuit boxes which he deposited with them and drove away. The court of first instance passed sentence of death on the two sisters and the

husband of S. The younger brother was released. The sentences were confirmed by the Appeal Court and the Supreme Court

The researchers have studied the course of this trial and propose the following observations:

1. Arrest and detention[20]

After declaring the charge the police are obliged to inform those arrested of four rights,

a. the right to meet and consult a lawyer in private

b. to request the presence of the lawyer or of another person whom they trust during interrogation

c. the right to a visit of a relative or to make contact with a relative

d. the right to receive hospital treatment if required

Before the promulgation of the Constitution on 11th October 1997 the police were allowed to issue their own arrest warrant in criminal cases. This power granted to the police by the Justice Ministry had led in the past to abuses of human rights during the period of interrogative detention. For this reason the Constitution laid down that a court order was required for arrests, with certain exceptions.

The researchers have found that the drug suppression officials had laid a plan to arrest the four accused by pretending to buy amphetamines from them. Such a transaction would constitute a flagrant crime allowing an arrest without a court warrant. At the time of arrest the police told the accused, " …. the drugs seized are

[20] See Case Study 1 for legal details

category 1 and are on the premises for illegal sale". However, the accused denied the charge throughout. The charge was again repeated to the accused by the police during interrogation.

Regarding informing the accused of their rights the method commonly used by the police is to print the information in a statement which is given to the accused for their signature. The notice given to the two sisters reads "The officials have informed me of three points of my rights, to which I attach my fingerprint on account of the fact that I cannot write Thai. Officials also informed me of the right to answer their questions or to remain silent and that any response I gave could be used as court evidence. I affirm that I can speak and understand Thai. I request the questioning to be in Thai".

However, the sisters S and M denied that they had been informed of any rights by the police. The researchers found that they had little knowledge or understanding of their rights. They also denied knowing that a drugs trial could result in the death penalty; "*we did not know that a drugs trial could result in the death penalty as in Cambodia there is no death penalty*"[21].

After the arrest the police arranged a press conference treating the case as important news. Newspapers and television stations from the central region and other parts of Thailand were represented. The researchers point out that this event was a transgression of human rights, contravening the presumption of innocence to suspects who had not yet been found guilty by the court.

[21] Comment made by Ms. S in interview, Central Women's Prison, 11th January 2006

As was allowed before the promulgation of the Constitution of 1997 on 11th October, the prisoners were held for the maximum of three days before being brought to court. They were also detained under court order for seven twelve day periods, or 84 days in all.

2. Legal Aid[22]

2.1 The provision of legal aid

The police carried out their interrogation on 8th October 1997 and again on 16th December 1997. By the time that the second interrogation was made the new constitution had already been promulgated. The accused were thus entitled to representation by a lawyer or to have a trusted person present during the interrogation. However, the researchers have found that the accused did not have access to a lawyer during their detention nor was any trusted person invited to be present at their interrogation. Thus they did not have the opportunity to get legal advice so that their defence in the case was defective.

After the prosecutor had submitted the case to the court a relative of the husband of S hired a lawyer for a sum of 100,000 baht. However the lawyer undertook the defence of S and her husband in the court of first instance only. According to the lawyer, "*... the relative of the husband of S engaged me after the arrest. At the time I requested a sum of 100,000 baht but received only 15,000 baht. I defended the case only in the court of first instance, I am not aware of what happened in the Appeal and Supreme Courts"*[23]

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[22] For legal details see Case 1

[23] Interview with lawyer of Ms S, 6th January 2006

In the opinion of S the lawyer did not provide the legal aid expected, perhaps because the payment was insufficient. She said that she did not know who he was, a friend of her husband had hired him . . . . .

As M could not afford a lawyer to defend her, she requested the court to provide a lawyer. The lawyer who undertook the defence of M declared "…I followed this case throughout. The case made big news in Trad Province. At the time of their arrest several newspapers, as well as television stations Channel 7 and ITV covered the story. The arrest on a drug charge involving 100,000 amphetamine tablets was considered the largest ever. Defendants one and two hired a lawyer, while I was appointed by the court to represent defendants three and four."

It is the opinion of the researcher that the provision of legal aid by the government in appointing a lawyer was not effective in practice, especially at the time of arrest and interrogation when no legal aid was available. The first time that the sisters met a lawyer was after the prosecutor had submitted the case to the court. Afterwards they met with the lawyers only one or two times.

After the two sisters had been condemned to death in the Court of First Instance the lawyer drew up the appeal. However, the accused did not accept the appeal composed by the lawyer but turned to fellow prisoners for help. They explained, "We were advised by a fellow inmate and entrusted her to write it for us. It was easier for us to communicate. We hardly met the lawyer and did not know what he was writing". At the same time the lawyer believed that there were points of law on which the case could be contested, "In consequence of the death sentence handed

down by the Court of First Instance I drew up an appeal to the Appeals Court, but the defendants chose to submit another appeal probably written by themselves with the advice of other prisoners. The court asked the accused which appeal they were submitting. When they presented their own appeal I withdrew the one which I had prepared and which I believed raised valid issues…"[24]

The researcher believes that the lack of trust of the accused either in the lawyer provided by the court or in the lawyer hired by one of them reflects on the quality of the service in the preparation of the witnesses and the evidence as well as the failure to provide detailed and constant legal advice to the accused. The payment of an appropriate legal fee is clearly an important factor in protecting the rights of accused who are poor and without resources, especially in trials subject to capital punishment.

3. The Provision of Bail[25]

Neither S nor M requested bail as they were Cambodians and had no security to offer. While the husband of S applied for bail it was refused as is the practice of the court for drug charges relating to more than 1000 amphetamine tablets. As a result they were detained throughout from the time they were first arrested until the Supreme Court confirmed the sentence. In summary, bail was refused because of the poverty of the defendants, the fact that they were Cambodian[26], and because the trial involved drugs.

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[24] Interview with lawyer of S on 6th January 2006
[25] See Case 1 for legal details
[26] lawyer for the third defendant

4. Procedure of the Case[27]

S and M were arrested on 7th October 1997, judgement was given in the Court of First Instance on the 3rd April 2001, in the Court of Appeal on 6th May 2003, and in the Supreme Court on 13th August 2004. The total period is seven years which is extremely long and during which the accused were detained throughout.

The researchers point out that the trial did not take place continually and that witnesses had to attend court in Bangkok as the arrest unit is based in Bangkok. At the level of the Court of First Instance the team of judges did not meet the legal requirement as confirmed by the lawyer of the accused, "I can confirm that in this case, whether in the Bangkok criminal court or the court of Trad Province, the court was presided over by a single judge. Two other judges came and signed their names later. Speaking truly, this practice is against court procedure. However, the accused did not avail of the right to call for a retrial because of an unlawful practice"[28].

During the court case the charge of the prosecutor may be summarised as follows, "On 3rd October 1997 an informer claimed that the accused and their associates who were engaged in trading had smuggled 100,000 amphetamine tablets into Thailand for sale at a price of 3,000,000 baht. The plan was made to arrest the group by the informer leading the police in disguise to pretend purchase of the drugs. On arriving at the place of purchase at about 17.00 hours they saw the accused 3 and 4 carrying

[27] See Case 1 for legal details

[28] Interview with court appointed lawyer for accused number 3 on 12th January 2006

5 plastic bags in each of which was a box of biscuits. The accused 1 and 2 were helping to stack the bags in the bedroom. On examining the material it was found that the biscuit boxes contained a total of 497 bags of 200 tablets each, amounting to 100,000 tablets. The police then revealed themselves and made the arrest".[29]

During the trial the prosecutor called on the arresting police as first hand witnesses.

The defence claimed that the accused managed a grocery store selling alcohol and foreign cigarettes, whether for cash or on account. A naval officer had incurred a debt amounting to 190,000 baht. He promised to clear the debt sending a subordinate to make the payment and leaving 5 plastic carrier bags which were stored in the bedroom. The court of first instance issued the judgement, "the fact that the accused helped to count the money handed over by the informer and brought the amphetamine tablets into the house storing them in the bedroom makes it credible that the accused knew from the beginning that the tablets were hidden among the biscuits. If they had not known and wanted to check the contents they could easily have done so in front of the house or anywhere else, without the need of accused 1 and 2 helping to carry the load into the bed room.

The three witnesses for the prosecution were police officers belonging to the drug suppression unit who corroborated each others testimony. They carried out their duties as officials and had not known the accused before.

[29] Judgement relating to case 419/2544

There was no reason that they would frame the accused falsely.

The account of the accused that they had been framed and the material brought to cause their arrest did not appear to match with the story of the naval officer who could not have brought the material to the house. There is also the great divergence between the value of the amphetamine tablets and the amount of the debt.

Therefore defendants 1, 2, and 3 were found guilty under the Drugs Act of 1979 and condemned to death.

5. Appeals Procedure

5.1 Appeal[30] and Supreme Courts[31]

As explained earlier S and M declined to use the appeal prepared by a lawyer, using instead the composition of another prisoner. Both courts confirmed the sentences of the lower court

5.2 Appeal for royal pardon

The appeal for a royal pardon may be made either as part of a general amnesty granted on particular auspicious occasions in which case the individual need not make a specific submission, or a condemned person may submit a personal appeal. An occasion for general amnesty occurred in 2006 with the celebration of the 60th year since the royal coronation. However there was a condition

[30] Case 706/2546
[31] Case 5044/2547

attached to the granting of amnesty that for those condemned on drug offences it was required that judgement had been made on or before 12th August 2004. As the sisters were sentenced on 13th August 2004 they did not qualify for the general amnesty. However, they availed of the right to submit personal appeals for which the result is not yet known at the time of writing.

6. Treatment of prisoners[32]

Unlike male prisoners condemned to death, female prisoners are not shackled. However their activities are restricted and they live continuously in a frightened and nervous state, "just now I heard a loud official announcement of names and I thought it might be a call to execution".

Conclusion

From a study of the case of S and M, two women condemned to death on an amphetamine drugs crime, it is seen that justice has not been done and that human rights have been transgressed on many issues. The most serious fault lies in failure to inform them in the initial stages of their rights, to have a lawyer present during the interrogation, to give access to proper legal advice, especially regarding the failure to have the required team of judges. All of these factors raise questions as to whether the trials of these accused were fair, both under domestic and international standards.

[32] see Case 1 for legal details

It has been government policy to mete out the most severe punishments as a deterrent to drug crimes. Government officials are given monetary rewards and promotion for their successes in the fight against drug crimes, which may induce them to fabricate cases to show their efficiency in solving crime and to win the rewards offered.

At present Ms. S is 36 years old, and she is not in good health. The stress of living under sentence of death is also affecting her mental health. Her sister, Ms. M, is in good physical and mental health, her dream is to see again her child in Cambodia whom she has not seen since the day of her arrest. The husband of S is also condemned to death and is imprisoned in Bang Kwang prison.

Case study 3:
Mr. T, convict sentenced to death for murder

Mr. T's profile

Mr. T, 30 years old, was a resident of Muang district of Kanchanaburi province. He is single, and has two siblings. His mother died long ago, and his father died in 2005, while he was serving his jail term in Bang Kwang prison. He finished grade 6, and was employed as a ranger by the Forestry Department, with a salary of 5,000 baht a month.

Background of the murder case

On February 10th, 2000, a resident in Ba Phrai village, Kanchanaburi province was killed with three gunshots at his home after returning from work. The man had just returned home on a motorbike on which his wife rode pillion. While the wife turned aside to take care of some matter her husband began to enter the house. The man's wife told the police that she saw T fire the shots. According to her, T had earlier quarreled with her husband after her husband had accused T of stealing his shoes[33].She added that T also believed that her husband had told the owner of a pine plantation that T and his friends had stolen pine trees, making T angry with the deceased.

The police arrested T on February 11th, 2000, on a street in the village, and charged him with first degree

[33] In Thailand shoes are taken off and left outside on entering a house

murder, unauthorized possession of a gun, and unauthorized carrying of a gun in towns, villages or on public paths.

T denied the charges from the time of his arrest, during interrogation, and at the court trial, claiming he was working on a farm with friends on the day of the murder.

The Court of First Instance found him guilty and sentenced him to death. This sentence was confirmed in the Appeal, and Supreme Courts

The research team proposes the following reflection:

1. Arrest and detention[34]

The crime took place on February 10th, 2000. The police were informed by the wife of the deceased that T was the culprit, and they arrested T on February 11th, 2000, without an arrest warrant issued by the court. According to T, " ...while [I] was driving a pick-up truck to work with a friend, more than 30 policemen intercepted and arrested me on a street in the village, citing the charges of killing with a gun, but without stating the rights of an accused…". However, after the arrest, the police brought a search warrant from the court to search for evidence in the house of D, a friend of the accused. T's father and siblings became aware of the arrest not long after the event, because it took place in open view in their village.

[34] See legal details in Case 1

The police detained T at the police station for one night, and then sent him to the provincial prison of Kanchanaburi. The police asked the court to detain the defendant for interrogation 7 times for periods of 12 days each, or 84 days in total. During the detention for interrogation, T requested bail, but was refused by the court.

The research team found that the police did not ask for an arrest warrant from the court to arrest T, but asked for a search warrant to search for evidence. The police sent the defendant to the court after one day to ask for permission to detain the defendant, in accordance with legal procedure. T was denied bail by the court, at the insistence of police who claimed fear of intimidation to witnesses. T has been detained since his arrest on February 11th, 2000 to the present.

Police interviewed only 9 witnesses in this case, concentrating on the single eye witness. In the opinion of the research team it was surely unnecessary to detain the defendant for 84 days during this interrogation. Since the police did not inform T of his right to legal counsel, T had no legal assistance from the beginning, resulting in the defense being inadequate.

2. Legal assistance[35]

2.1 Legal assistance to the accused

Article 239 of the Constitution states that:
"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."

Article 241 further states the right of the accused to have his lawyer or a trusted person attend the interrogation. And Article 7/1 of the Criminal Code stipulates that the arrested or accused be informed in the first place that "the arrested or accused detained has the right to see and consult his or her advocate in private"

The research team found that T had no opportunity to see and consult a lawyer in private, as he had not been aware of such rights nor was he informed of them. According to him, "..when arrested, I knew nothing. I was worried and afraid, and denied the charges all along. I believed I was framed. About one month before the arrest, while I was driving to work, a police inspector asked to search my car, but I refused, so he was upset. I knew all the policemen that came with the inspector…." Also, during interrogation by the police, there was no lawyer or trusted person. "..Besides the inspector and the lieutenant, no one else was present…", T said. [36]

[35] For legal details see Case 1
[36] Interview with T on April 10th, 2006, at Bang Kwang prison.

2.2 Legal assistance to defendants

T misunderstood that a lawyer who appeared to defend him in the trial was hired by his father. In fact, the lawyer was provided by the court. The lawyer has 15 years of experience, but rarely visited the defendant. T does not even remember the lawyer's name, as he visited only 2-3 times to question for facts.

In the Appeal Court, T asked fellow prisoners to write the appeal for a small fee. He followed the same course in appealing to the Supreme Court. "For the Supreme Court, many people helped to write. They were a lieutenant, a colonel, both police and military. I trusted them as they had helped in many cases. Being there (in Bang Kwang prison) we were intimate, and consulted each other, with or without payment."[37]

The research team found that T had legal assistance only after he was prosecuted, not from the beginning. Both in the late arrival of legal assistance and in the quality of service given, the system of legal assistance provided by the state is insufficient and inefficient, especially since this was a case of first degree murder subject to the death sentence.

T had confidence in his fellow prisoners, deciding to let them write the appeals, for two reasons: his close relationship with them and the facility of being able to consult them continually. He believed that they had successfully helped in other cases of capital punishment.

[37] Ibid

In the research team's view, T's refusal of the legal assistance provided by the court in preparing documentation for the Appeal and Supreme Courts indicates that there is much need of improvement in the system of state-provided legal assistance, particularly regarding the efficiency of lawyers.

3. Bail for the accused or defendants[38]

The police objected to T's request for bail and the application was denied by the court, for fear of witness intimidation. [39]

The research team found that T's father had tried to find assets to meet the cost of bail by hiring his neighbor's land title deed for 5,000 baht, in addition to his own money. T's father became indebted by this hiring of a land deed for bail, aggravating further his poverty. Meanwhile the court denied bail and T has been in detention throughout until the present.

4. Court Trial[40]

T was arrested by the police on 11th February 2000. Interrogation took 84 days. The prosecutor submitted the case to the court on 4th May 2000.[41] The First Court gave a ruling on 11th October 2002.[42] The Appeal Court gave its ruling on 8th August 2003[43], and the Supreme Court ruled

[38] Ibid
[39] Ibid
[40] Ibid.
[41] Black Case No. 2416/43
[42] Red Case No. 6742/2545
[43] Red Case No. 2278/2546

on 11th August 2005[44]. Altogether the court trial took more than 4 years.

The researchers view is that the interrogation and trial were not continuous as decreed by the Constitution and human rights principles.

In the First Court, there was a full quorum of judges (2 judges) in accordance with the law and human rights principles. The Appeal and Supreme Courts also had the requisite number of judges (3 judges).

The prosecutor accused the defendant of first degree murder, possession of a gun and bullets without a licence, and carrying a gun in town, village or public thoroughfare without permission. The deceased's wife was the principal witness. The defendant denied all the charges, claiming that he was farming with his friends at the time the murder took place. The First Court ruled that "…..According to the facts heard by the Court, on the evening of 10th February 2000, while the deceased and his wife were at their home, the wife heard two gun shots. The wife of the deceased looked in the direction of the source of the sound. She saw the defendant with a gun and heard another gun shot. The defendant was pointing a gun at the deceased at a range of 5 meters. The wife asked why he shot the deceased. The defendant did not reply and walked to a motorbike parked about 12-13 meters away from the house….." The Court ruled that the defendant was guilty of first degree murder and sentenced him to death[45].

[44] Red Case No. 4588/2548
[45] The verdict of Red Case No. 6742/2545

The research team views that in practice the limitation on legal assistance provided to Mr. T and the fact that he was detained all the time have affected the trial. The defendant could not fully prepare for the trial. This is crucial since this case is subject to the highest punishment of the death penalty.

5. The Appeals from Death Row[46]

5.1 Appeal Court and Supreme Court

T exercised his right to appeal the First Court's ruling entrusting a fellow prisoner in Bang Kwang Prison to write the appeal for him as mentioned in 2.2. The appeal tried to undermine the credibility of the witness. The Appeal Court ruled that "…….the appeal of the defendant is not reasonable. According to the facts heard, the defendant shot the deceased with a gun. It has also appeared from the prosecutor that the defendant and the deceased were in conflict before the event. On that day, the defendant waited for the deceased at his home. When the deceased was entering his home, the defendant shot him to death with a gun. Such action reveals that the defendant prepared the gun to shoot the deceased. It is considered to be a pre-planned action as ruled by the First Court. The Appeal Court of the 7th region agrees with that ruling. The appeal of the defendant is not sound. The Court maintains the death penalty….[47]"

The defendant also exercised his right to appeal to the Supreme Court. He again entrusted the preparation of

[46] Ibid.
[47] The verdict of Red Case No. 2278/2546, Appeal Court

the appeal document to fellow prisoners. The appeal tried once more to undermine the credibility of the witness and to insist on the defendant's alibi. It also focused on the fact that the defendant did not try to flee. The Supreme Court ruled that "…..the wife of the deceased, as witness, testified in the court hearing that the defendant was the one who shot the deceased. She claimed that the area was lit by electricity and that she was about 8 meters away from the deceased's body. When the wife heard two gun shots, she looked for the source of the sound. When she heard another gun shot, she saw the perpetrator holding a gun. Then the perpetrator walked towards her until he was about 2 meters away. The wife of the deceased asked the perpetrator why he killed the deceased. The perpetrator then walked away. This means that when the perpetrator fired the first two gun shots, the wife of the deceased did not see what happened. She could not see where the perpetrator was when he fired the two gun shots, nor could she see how he fired the gun. Thus the wife of the deceased did not testify regarding this aspect. Therefore, the testimony of the wife of the deceased does not contradict evidence that the inquiry officers produced in the mapping of the crime scene where they found the bullet case, or evidence relating to the wound of the deceased or conflict with assumptions about where the perpetrator was located. We need to consider mainly the testimony of the wife of the deceased that she heard the third gun shot and saw the perpetrator with a gun. After the perpetrator fired the last gun shot, the wife of the deceased testified that he walked closer until he was about two meters away from her. The perpetrator did not cover his face and he was someone known to the wife of the deceased. It is believed that the wife of the victim had the

opportunity to see the face of the perpetrator and to recognize him. After the police officers arrested the defendant, they showed the shirt the defendant wore on the day of the crime to the wife of the deceased. She testified during the interrogation process that it was the shirt the defendant wore on the day of the shooting. It is thus believed that the wife of the deceased clearly recognized this defendant. When the wife of the deceased saw that the defendant who shot her husband was someone she knew, she was in a dilemma to decide on how to inform the police of the case. She herself had not been hurt by the defendant. According to her testimony in response to a question of the prosecutor, she did not file the case against the defendant immediately because she was afraid that the defendant would also shoot her, and her children would be sent to an orphanage. The witness also replied to a question of the defendant's lawyer as to why she did not say who the perpetrator was when first questioned on the day of the murder, that she was still afraid of the defendant. This confirms that she did not identify the name of the perpetrator immediately. The fact that the wife of the deceased did not decide to tell the police officers or any other person on that day that the defendant was the perpetrator does not imply doubt as to whether she really saw the defendant shoot the deceased." (The witness revealed the identity of the person who shot her husband, during police questioning on the day after the killing) "Based on the witness for the prosecution, it is believed that the defendant was the one who used the gun to shoot the deceased. The circumstance of the defendant waiting at the deceased's home for him to come home from work indicates that the murder was planned. The defendant is

thus guilty of first degree murder as charged. The alibi of the defendant and the fact that he did not flee have not enough weight to counter the witness of the prosecutor. The appeal of the defendant has therefore failed. The Court maintains the death sentence….."[48]

The research team views that a lawyer is very important in court trials. Since the legal assistance provided to the defendant was not efficient, the defendant had to depend on fellow prisoners to prepare appeals. As a consequence, the appeal which is the final process might not conform with justice. The condemned man reflects "……I wish the Court had been more just and scrutinized the details more carefully…."[49]

5.2 Royal Pardon

The 60th anniversary of the King's accession to the throne is an occasion for Royal Pardon (B.E. 2549). Mr. T's profile fitted the requirements for a royal pardon[50] and his death sentence was commuted to life imprisonment.

6. Treatment of Person with Death Sentence[51]

T was permanently shackled until he received the royal pardon.

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[48] Supreme Court Verdict No. 4588/2548
[49] Ibid.
[50] Royal Decree on Royal Pardon (B.E. 2548) Section 7 stipulates that "under Section 8, 9, 10 and 11, the prisoner with finalized sentence who did not get royal pardon under Section 6 will get royal pardon as follows: 1) The death row prisoner will serve life imprisonment
[51] Ibid

The researchers found that the health of a shackled prisoner deteriorates because he cannot exercise or participate in other activities.

The research team views that 24 hour shackling of prisoners condemned to death violates human dignity and constitutes inhumane treatment of a death row prisoner.

The Right to be visited by and to communicate with Relatives and Outsiders

Concerning the right to be visited by relatives, Bang Kwan Prison has allocated visiting time from 1 pm to 3.30 pm on Tuesdays and Thursdays. Although allowed to meet with his relatives, Mr. T has very rarely received visits since the death of his father. His sisters are poor, and it costs a lot to pay a visit. If relatives brought him some provisions, his living condition would be better. Prisoners who do not have visitors and who depend wholly on what the prison provides live in very miserable conditions. T told that *"....when I was first in prison, and my father was still alive, he visited me quite often. My father passed away when I was here (Bang Kwang Prison). I could not go to his funeral. (T cried at this stage). After he died, my siblings visited me once in a while...."*

But in practice, the prisoner is not visited. The main reason is the poverty of the relatives. T's brother said that *"....I rarely visit him. I visited him often when he was in Kanchanaburi Prison. But after he was transferred to Bangkok, it cost a lot to pay a visit. We have much work to do so we rarely visit him...."*

From the case study of T, we found that this death row prisoner did not get all the rights due in criminal justice procedure. There were problems, for example, in informing him of the charge against him, in the interrogation procedure, in legal assistance provided to the accused, starting from attendance at the interrogation, with the result that the defendant missed the opportunity to prepare the case efficiently. The fact that T asked his fellow prisoners to write the appeal for him shows the failure and inefficiency of legal assistance.

The main reasons why T did not get all the rights in criminal procedure are: poverty, lack of knowledge, inadequate and inefficient legal assistance from the State, and lack of awareness of rights of the accused by government officers.

At present, Mr. T is 30 years old. He is healthy but anxious.

Case Study 4:
Mr. J, a prisoner condemned to death on an amphetamine drug conviction

Mr. J's Personal History

Mr. J is 32-years-old, the second of three siblings, and was a resident of Ban Pong District, Ratchaburi Province. He has a grade six education and used to earn his living driving a ten-wheeled truck. He is a divorcee with one son who is now fifteen years old with only a grade four education. The father and mother of the prisoner work at odd jobs.

Background of the case as presented by the Prosecutor during the trial

"In December, 1999, the police learned that Mr. P was the owner of amphetamine production factories in the province of Pathum Thani and in Mae Sai, Chiengrai, in an area bordering Myanmar. Mr. P would bring amphetamine tablets to Bangkok and have Mr. J sell them to big dealers. The police used an undercover agent to entrap the pair in a pretended drug purchase. On January 6th, 2000, the undercover agent asked to buy 10,000 amphetamine tablets for Bt. 450,000, and would take delivery at the parking area of the Mall Department Store, Ngamwong Wan branch. At the appointed time, J drove a car to the designated area and turned on the emergency light. The waiting police then arrested the accused and on searching his car found 10,000 amphetamine tablets in a paper bag on the passenger seat next to the driver and Bt. 380,000 in a paper box hidden in

the rear trunk. Mr. J took the police to his rented house in Pasee-charoen District where they found 1,080,000 amphetamine tablets in six black suitcases, a .32 automatic handgun, 2,000 amphetamine tablets in the pillow on his bed and two bags of amphetamine weighing nine kilograms in the kitchen. During the arrest and interrogation stage, the accused refused to admit his crime."

The admissions and denials made by J are complicated. While at first he refused to admit the crime despite the apparent strength of the evidence, he followed police instruction to copy in his own handwriting and sign a statement accepting responsibility for the drugs which they had drawn up for him. He claims that he signed unwillingly. During the trial in the Court of First Instance he admitted possession of the 10,000 amphetamine tablets found in the car at the time of his arrest. In the Court of Appeal he denied responsibility for all of the drugs.

In court, the accused pleaded not guilty. He maintained that he was Mr. P's driver and on the day of the incident, he collected Mr. P at his house. Mr. P brought a paper bag with him. After he let Mr. P off at the department store, he parked the car. About thirty minutes later, Mr. P called him on his cellular phone to come to meet him. However, when he arrived at the place, he was arrested by the police and assumed that Mr. P was also under arrest. He led the police to his rented house where they found the large quantity of drugs detailed above. In the trial he admitted possession of the 10,000 amphetamine tablets but denied all knowledge of the other quantities. During the arrest and interrogation stage, he denied the charge but the police made him sign a document against his will. The Court of First Instance sentenced him to death.

The accused appealed. The Appellate Court decided that "…The accused appealed for leniency because he had confessed during the arrest and interrogation stage. The court thinks that although the accused was arrested with 10,000 amphetamine tablets providing irrefutable evidence, he had admitted that there were more drugs at his house and took the police there to search for hidden drugs so that they found a further1,080,000 tablets. This showed that the accused was remorseful and was trying to abate the crime for leniency. Had the accused not taken the police to search for the tablets hidden in his rented house, the police would not have found another 1,080,000 tablets. The court deems the sentence should be reduced to life in prison…." The accused appealed to the Supreme Court but while the case was being reviewed, the accused withdrew his appeal so that the case could be terminated. On August 17th, 2004, the Supreme Court accepted the withdrawal of the appeal, released the case from the Supreme Court system, and ordered the accused jailed from the date that the accused withdrew his appeal and terminated the case.

The researchers have studied the justice process in this case from the death sentence to the life sentence and found the following interesting detailed issues:

The arrest and detention

The researchers founded that in this case the narcotic police planned to arrest Mr. J by pretending to buy the drugs on January 6th, 2000, which being a flagrant crime in action did not require arrest and search warrants from a court. At the time of arrest, the police didn't notify the accused of his crime but stated during the investigation that "…the accused conspired to have amphetamine tablets

for sale and sold them without permission, owned a gun and ammunitions without permission from the local registrar…" The accused confessed to the accusation during the arrest and interrogation stage. However, Mr. J stated the following: "…the confession was drafted by the police and they made me copy it in my own handwriting…"

Concerning the rights of the suspect, the researchers found that the suspect knew he had a right to testify or to refuse to do so, a right to have a lawyer present during the questioning and a right to meet his lawyer. However, the suspect was never informed of these rights. "…The police didn't tell me what rights I have. Why would they, since they would do anything to keep me in jail so that they could claim an achievement? When I was driving a ten-wheeled truck, I was interested in the news on the radio and knew what rights the constitution gives to people. I couldn't demand such rights because they didn't allow me to write it down. It would be useless…"

After the arrest, the police arranged a big press conference for newspapers and television stations, both from Bangkok and the provinces, where the accused was paraded. The researchers believe that such an act was a violation of the suspect's right of being presumed innocent until proven guilty. A suspect cannot be treated as guilty until a final guilty verdict has been reached by the courts.

In this case, the police detained the suspect for 84 days during questioning, detaining him with the Court's permission at the police station for 30 days before moving him to a prison.

2. Legal aid

Giving legal aid to the suspect

The researchers found that in the critical early stage after his arrest, Mr. J did not have a lawyer or any trusted person present during his interrogation and didn't have a chance to meet with or receive any assistance from a lawyer. This restricted his right to defend himself. As Mr. J stated, "…At that time, I told the investigator that I requested a lawyer to be present during questioning, but he said it was not necessary. During questioning, they threatened to arrest these and those persons to make me confess…"

2.2 Giving legal aid to the accused

After the prosecutor had submitted the case to the court, relatives of Mr. J hired a lawyer for him at a cost of Bt. 60,000 being forced to take out a loan using a plot of land as collateral. "…At that time, I didn't believe that a court appointed lawyer would help me and I hired a lawyer. My father and mother used their land to take out a loan to hire a lawyer. However, the lawyer did not pay attention to the case and didn't work wholeheartedly. There was no preparation for questioning witnesses and no actual questioning. When it was time for presenting witnesses for the accused, I asked for a court appointed lawyer and the court appointed one who replaced my original lawyer. The court appointed lawyer followed the case closely, always discussed things with me and always came to visit. He told me how he planned to fight the charge. It turned out that this lawyer worked better than the hired lawyer. He also

wrote the appeal. After the Appellate Court reduced the sentence, I decided to give him something although he didn't ask for anything.

The researchers found that in practice, the state's assistance in finding a lawyer at the time of arrest and interrogation stage did not exist and the suspect in this case, Mr. J, met a lawyer for the first time after the prosecutor had sent the case to the court. Hiring a lawyer created a great burden for Mr. J's family and the reason he didn't ask for an appointed lawyer was because he did not think that he would receive any legal help from one and that such a lawyer would not devote himself to the case. In the event, when Mr. J observed that the hired lawyer was not doing his job, made no preparation and didn't really question the state witnesses, he asked for a court appointed lawyer to present his witnesses for the defence. This lawyer paid attention and followed the case closely although he had not had much experience. His method of always discussing the defense approach with Mr. J earned him acceptance and trust. When the case was over, Mr. J gladly decided to pay him some compensation. "…It is known that a court appointed lawyer does not get much compensation although to defend a case needs preparation and incurs expenses. For example, I asked him to go meet these and those witnesses, and he went. I asked him to follow up on an issue in Prachuab Kirikan, and he went. The compensation from the court could not amount to much, so I gave him some money although he had not asked…"

3. Bail for the suspect or accused

Mr. J asked for bail after the prosecutor had presented the case to the court but the prosecutor objected and gave as reason that the case involved a big illegal drug operation. Also, several accomplices of the accused were still at large. If the accused was given bail, he might flee and affect the witnesses and evidence, or he might commit further crime to the detriment of society. In the end, the court refused bail and Mr. J remained in jail.

4.The trial

In this case, Mr. J was arrested on January 6th, 2000. The prosecutor forwarded the case to the court on March 31st, 2000. The lower court reached a verdict on February 7th, 2002. The Appellate Court gave its verdict on March 6th, 2003, and the Supreme Court approved the withdrawal of the appeal on April 28th, 2004. The total amount of time for the trial was over three years. While this was not a particularly long time, the accused was in jail throughout. The details of the case as presented by the Prosecutor have already been related in the section giving the background of the case.

The lower court gave a verdict which could be summarized as follows: …As for the assertion of the accused that he did not commit the crime and he was simply a driver of Mr. P, it could be seen that the undercover agent approached the accused to buy directly from him before the arrest took place. It also appeared that the accused owned the car and that the house where the amphetamine tablets were found was rented in his name.

The bank account of the accused was also found. The evidence and witnesses of the accused could not outweigh these.

The court therefore decided that the accused was guilty of possession of type 1 illegal drug with the intent to sell and sentenced him to death, guilty of an attempt to sell and sentenced him to life in prison, and guilty of possession of a firearm belonging to another and sentenced him to eight months in jail. The accused confessed during the arrest and questioning process because of the overwhelming evidence. His confession was not otherwise beneficial to the trial. The accused still pleaded not guilty showing his lack of remorse and therefore there was no basis for leniency.

The accused appealed deciding to deny completely any responsibility for the drugs found.

The Appellate Court reached a verdict which may be summarized as follows: …The facts of the case led to the belief that the accused conspired with another, whose case had not yet come to trial, to store amphetamine tablets, which are a type 1 illegal drug, with intent to sell. The drug amounted to 1,092,000 tablets which were calculated to be equal to 19,026.185 grams of pure substance. As for the plea of the accused for leniency on account of his confession during the arrest and questioning process, the court is of the opinion that although the accused was arrested with 10,000 tablets of amphetamine which constitute overwhelming evidence, the accused admitted that more amphetamine tablets were hidden in his house. He led the police to his house to search for the hidden drugs and 1,082,000 more tablets were found. This showed the accused was remorseful and was trying to abate his crime.

Had the accused not taken the police to search for the tablets hidden in his rented house, the police would not have found the additional 1,082,000 tablets. The court deemed it should reduce the sentence for possession with intent to sell as appropriate. The court did not agree with the lower court for not granting leniency. The appeal was accepted on this point and the sentence for possession of amphetamine tablets with intent to sell was reduced to life in prison.

In this case, Mr. J cited many witnesses but none agreed to take the stand for fear of asset seizure. Only the family of the accused took the stand. In the trial, Mr. J thought that "…In the lower court, I confessed to the 10,000 tablets but not to the 1,082,000 tablets. The court gave a death sentence so I decided to appeal by denying responsibility for the whole lot. It was strange that a partial confession was not considered a confession in the lower court, but when I denied responsibility for the total amount, the Appellate Court took it as a confession and reduced the sentence. It was strange…"

5. The appeal of a prisoner with death sentence

5.1 The appeal process

In actuality, Mr. J appealed and the Appellate Court reduced the sentence to life in prison. Mr. J appealed to the Supreme Court but while the case was being reviewed, the accused withdrew his appeal so that the case could be terminated.

5.2 The Royal petition process

Mr. J did not petition the King for a Royal pardon as a particular case because he was afraid that he would not receive a pardon because of the quantity of the drugs. However, in the Royal Jubilee Celebration of His Majesty the King in 2006, a Royal Decree of Pardon was passed in which Mr. J's sentence was reduced to 40 years in prison.

6. Treatment of a prisoner with death sentence

After the lower court gave a death sentence verdict, Mr. J was always shackled and was restricted to death row. However, after the Appellate Court reduced the sentence to life in prison, the chain was removed.

The researchers found that he was rarely visited by his family while jailed at Bang Kwang prison because of the large expense involved. In 2004, Mr. J was transferred to Kwao-bin Prison, Ratchaburi Province, which is a new prison for prisoners serving a maximum sentence of death. His relatives could then visit him more often.

At present, Mr. J is 36 years old, healthy in body and mind. He remains imprisoned at Kwao-bin Prison, Ratchaburi Province.

Chapter 3:
Conclusions and Recommendations

3.1 Summary

The five persons who were the subjects of the case studies range in age from 25 to 40 years old. Their level of education is low. Four of them studied to primary level and only one completed secondary level education. The poverty of their families forced them to leave school and find employment repairing motor cycles, engaging in small scale trading, working as hired labour in government projects, and as a lorry driver.

The rights to which they are entitled in cases of criminal law leading to capital punishment are guaranteed in the Constitution of 1997, in the Criminal Code, and in the rules of legal procedure, all of which follow international standards of respect for human rights. However, in practice there are problems and obstacles to the enjoyment of such rights at the levels of arrest and interrogation, as defendants, and during imprisonment. To present a convenient overall view, the data relating to human rights issues in the four cases are summarised in the following table.

Table Summarising Human Rights Related Issues in the Four Cases

Right in Criminal Justice	**Case O Homicide**	**Case S and M Drug Charge**	**Case T Homicide**	**Case J Drug Charge**
1. Arrest and initial detention	Arrest warrant unconstitutional	No warrant, faked police purchase avoiding need of warrant	No arrest warrant	No warrant, faked police purchase avoiding need of warrant
2. Arrested person informed of rights	Not informed	Not informed	Not informed	Not informed
3. Detention of arrested person	Initial detention for 3 days, detention on court order for 84 days	Initial detention for 3 days, detention on court order for 84 days	Initial detention for 1 day, detention on court order for 84 days	Detention for a total of 84 days on court order, 30 days in police custody, the remainder in prison

4.Legal Aid 4.1 During interrogation 4.2 During defence	None Lawyer hired by mother of defendant who borrowed money to do so. Defendant would not trust court appointed lawyer	None Relative hired by relative of S. M defended by court appointed lawyer	None Court appointed lawyer ineffective. Met with defendant only 2 or 3 times	None Lawyer hired by defendant ineffective in examination of witnesses. Defendant requested court appointed lawyer who was more satisfactory
5. Bail Application	Bail granted for over a year during trial in Court of First Instance. Bail refused during Appeal and Supreme Court hearings	Bail refused for lack of bail security. Husband of S offered bail security but request refused	Bail refused for fear of witness intimidation and police opposition	Bail refused

6. Court hearing	2 judges as required. Case lasts 4 years	Only one judge presides. Case lasts 6 years	2 judges as required. Case lasts 4 years	2 judges as required Case lasts 3 years
7. Appeal and Supreme Court hearings	Defendant appealed to both. Appeals written by fellow prisoners	Defendant appealed to both. Appeals written by fellow prisoners	Defendant appealed to both. Appeals written by fellow prisoners	Defendant appealed to Appeal Court where sentence was reduced to life imprisonment. Withdrew appeal to Supreme Court
8. Request for Royal Pardon	Convicted prisoner O is under consideration for general amnesty on occasion of	S and M do not qualify for general amnesty because of the date of their arrest was outside the period of	Sentence commuted to life imprisonment by general amnesty on occasion of 60th anniversary of royal coronation	Life sentence commuted to 40 years imprisonment by general

	6oth anniversary of royal coronation. He has also applied for an individual pardon. Result not yet known	validity. They have applied for individual pardon. Result not yet known		amnesty on occasion of 60th anniversary of royal coronation
9. Prison treatment	Prisoner shackled permanently	Women not shackled	Shackled continually until granted amnesty	Shackled until sentence changed to life imprisonment

As summarised in the above table the important areas of human rights abuse occurs under the following headings:

1. Arrest and initial detention

The most important abuse is that those arrested are not properly informed of their rights. In practice the police offer printed information regarding rights of arrested persons as a means of fulfilling legal requirements but the accused do not really understand what their rights are. The failure follows from the incorrect attitude of the police to human rights. They do not appreciate the importance of explaining their rights to uninformed persons, while the suspects themselves are ignorant of the basic rights that are their due.

The practice of detaining those arrested for 3 full days before charging them before the court is contrary to the constitutional requirement that they be charged within 48 hours. In the four case studies presented, all of those charged were detained during investigation for the maximum period of 84 days allowed by law. From a human rights perspective, detention during investigation should not extend beyond the minimum time required for the completion of the investigation.

2. Legal Aid

The greatest problem in legal procedure for those arrested for crimes subject to the death penalty is the lack of legal aid during the period of interrogation. In Case 1, Mr. O chose to have an older sister present during his interrogation. Mister J, Case 4, requested the presence of a

lawyer but the police did not respond to his request. In Cases 2 and 3, the sisters S and M, and Mr. T were unaware of their right to legal aid during interrogation. Suspects are most likely to be confused and frightened at the stage of interrogation after their arrest. The lack of legal direction at this stage gives advantage to the prosecution over the defence. In a strictly adversarial system of court hearing the consequences for the case of the defendant may be serious.

During the hearing of the Court of First Instance, Mr. O, Mrs. S, and Mr. J hired lawyers even though they could not pay them adequately, as they lacked confidence in the ability of court appointed lawyers. The choice they made illustrates the fact that the majority of defendants believe that court appointed lawyers do not adequately prepare nor contest the cases in court, nor consult with the accused. Only Mr. J acknowledged that the lawyer appointed to him by the court although limited in experience was preferable to the lawyer he had hired from the Law Office.

At the level of submitting appeals to the Appeals and Supreme Courts, the defendants, with the exception of Mr. J, relied on other prisoners to write the appeals. They explained their choice by referring to their lack of trust in lawyers appointed by the court and the inefficiency of the Government system of legal aid.

Such inefficiency stems from the dispersal among several sectors of the provision of legal aid to the public. The service is unsystematic and the stipend paid to lawyers is inadequate to attract skilled lawyers to undertake the cases in a serious manner. Nor does the system allow the defendant any choice in selecting a lawyer to defend them

in the way that medical schemes allow the patient to choose a doctor.

3. Trial Proceedings

The documents of the judgements of the Courts of First Appeal, of the Appeals Court and of the Supreme Court give a summary account of the evidence available in each case, of the arguments for prosecution and defence. For an assessment of the judicial process the researchers recommend a careful reading of the comments by foreign experts which are presented in the following chapter. Attention may be drawn especially to the following:

a: the need to corroborate the evidence of a single witness, particularly in the case where the witness is a nine year old child, as in the case of O

b: the relevance of background and circumstances in passing sentence, for instance:

(1) the case of O involves a family conflict where there are factors at play which involve emotional issues which would dilute deliberation.

(2) the case of S and M. One would query how two Khmer women who were indigent petty traders and without any previous conviction or criminal record could become involved in a major drugs deal.

(3) the case of T raises unanswered questions about the relationship between the accused, the victim, and the sole witness. It is remarkable in this case that witnesses to the character of T, who had a record of service to the community, were not called to give evidence.

(4) the case of J was chosen for study by default when data on another case were refused by the Department of Corrections. The case appears obvious but there are

glaring questions. How did the principal actor in the case, the owner of the amphetamine producing factory, disappear on the day of arrest and afterwards. If drug related crime is already not acceptable by the UNHRC as a crime subject to the death penalty, how much more so may one question the condemnation to death of the lesser partner in the crime?

That Thai courts are not oblivious to the matter of background is well illustrated by a recent case where a medical doctor and academic was charged with beating his wife to death with a golf club. The court took account of the fact that the accused was a person providing a significant service to society in imposing a suspended sentence of imprisonment. The public were influenced in favour of the sentence by the widely current opinion that the murdered person was a 'bad woman'.

The extraordinary stringency of visual witness was demonstrated in the trial of the son of a prominent politician on charges of shooting dead a policeman by ruling that while one witness had seen the accused fire the shot, and another bore testimony to hearing the gunshot, no witness had testified to both seeing the accused fire the shot and hearing the gunshot. The case was dismissed.

Such niceties were not raised in any of the cases we have studied.

c. the weakening of the justice system where writs for the important appeal courts are prepared by fellow prisoners of the accused.

4. The Practice of Shackling Condemned Prisoners

Those condemned to death are permanently shackled by chains welded to their ankles and which can weigh up to 15 kilograms. Such torturous treatment is

inhumane. It severely restricts ordinary activities such as bathing and sleeping, hinders any exercise and results in infected abrasions. The fact that all condemned prisoners, without exception or individual necessity, are shackled constitutes an added form of punishment to the death penalty itself. The practice has been roundly and unreservedly condemned by the Human Rights Committee of the United Nations Human Rights Commission[52].

5. Request for Royal Amnesty

The right to request a Royal Amnesty is an important part of Thai legal procedure. Either the Minister of Justice or the Cabinet may submit a request for a Royal pardon. The case studies reveal that Mr. T, Case 3 was granted a commutation of sentence from the death penalty to life imprisonment, while Mr. J, Case 4, was granted a reduction from a life sentence to 40 years imprisonment. The requests of the other three condemned have not yet received a response.

3.2 Recommendations

While respect for the human rights of individuals by the Criminal Justice system is affirmed by the Constitution and in Thai law, the protection of those rights in legal practice is not guaranteed. Deficiencies in Thai criminal justice are revealed in the case studies presented in this report to the extent that miscarriage of justice is likely. Based on their study, the researchers propose the following recommendations.

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[52] Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, CCPR/CO/84/THA, Section 16

No legal system however developed can ever meet the criterion of certainty of guilt which should be required for the imposition of the final, absolute, and irreversible punishment entailed in the death penalty. Certainly, the Thai justice system cannot claim to do so. Capital Punishment is a procedure in which contradictions are inherent. Foremost of all is the conflict with the absolute right to life enshrined in the Universal Declaration of Human Rights on which all civilised life is based in the modern world. Secondly, there is the increasing realisation that there is no process of execution which is not inhumane and cruel. But as a conclusion of this study we propose that the current Thai legal system does not guarantee a safe conviction to those put on trial for their lives.

For this reason our first recommendation is that Thailand take a stand with the majority of nations in the world by abandoning the punishment of the death penalty for all crimes and in all circumstances.

1. The National Police Service should proclaim in every police station in the country the rights of suspects. The proclamation should be displayed prominently and clearly in the view of those arrested, their relatives and friends, and all who enter a police station. Training should be provided on human rights in the criminal justice system to police at every level. Training seminars should extend over two days and there should be follow up refresher courses each year. Police who do not pass a test accompanying the training should not be allowed to participate in arrests or in the interrogation of suspects.

2. The Ministry of Justice should reform to exclude immediately the permanent shackling of all prisoners condemned to death.

3. The law legislating the investigation of cases, Article 87 of the Criminal Code which allows detention for up to 84 days for crimes subject to imprisonment of 10 or more years, should be reformed. The maximum period of 84 days should be reduced in proportion to the strength of the evidence available for the guilt of the suspect. In other words, arrest should only be authorised after significant evidence and witness testimony has already been gathered, so that the period required for further investigation can be lessened.

4. The Government should establish a policy of legal aid which provides lawyers throughout the country. An adequate budget must be provided or a fund for legal aid to the public be provided.

An independent organization at national level to manage the provision of legal aid should be established so that people everywhere have access to legal aid and the law may serve the function of protecting the people rather than controlling them.

5. The principle of requesting a Royal Amnesty should be extended to every case subject to the death penalty until it is replaced by life imprisonment.

Chapter 4. Comments of Foreign Experts

"O wad some Pow'r the giftie gie us
To see oursels as others see us!
It wad frae mony a blunder free us,
And foolish notion."
***Robert Burns* 1786**

The issue of the death penalty has become of world concern and the club of nations which have chosen abolition is growing. Since the trials of Nuremberg nations can no longer kill, torture, or dispossess their citizens with impunity and the process of law in each state comes under the critical review of others. In 2005 for the first time, in the trial of five police men involved in the abduction of a Thai lawyer, the Thai legal process came under close scrutiny by foreign human rights agencies who sent observers to the trial. Among the observers were a Judge, a United Nations legal expert, lawyers, and legal activists with long experience of legal procedure. They did not like what they saw and several issued severe criticisms of the procedure they observed.

Judges and legal systems tend to become a closed and self protecting enclave, protected by a prohibition on criticism of judicial decisions. In this context it may be interesting to consider the objective legal opinion of foreign legalists on trials which culminated in the death penalty in Thailand. The major commentators whose opinions are given below have visited Thailand. They are recognised legal experts, practicing criminal lawyers, or academics, whose profession demands legal objectivity. Their opinions are a rare and valuable contribution to an assessment of

Thai criminal justice in practice. Their opinion may give us the unique opportunity wished for by Scotland's national poet, "To see oursels as others see us". Their comments are quoted as received without editing. Comments were also made on the format of the case histories by Ms. Isabelle Brachet, Jurist and Head of Asia Desk in the International Federation for Human Rights, where there were ambiguities or lack of clarity, these suggestions were gratefully incorporated in editing the case studies.

Comments from Wah Piow Tan, a practicing senior partner in a London law firm. He has over ten years experience in Criminal Law practice in London.

Case Study 1:

Mr. O, Death Row Prisoner in Murder Case
W P Tan comments:

In this case, the central issue is whether Mr. O killed Mrs. Y. The prosecution case is that Mr. O had a motive, i.e. revenge as Y was having an affair with his father. Mr. O's defence was that "he was not there". The prosecution relied on the evidence of a 9 year old child who witnessed the shooting, and was said to have identified Mr. O.

The first defendant said that he was at Ms. P's place and "was sleeping in her house" at the material time.

The murder took place on the 29th September 2000, and Mr. O was arrested four months later. Mr. O's brother, Mr. S had already admitted to the killing, and had

exculpated Mr. O from any involvement. Nevertheless O was convicted and sentenced to death, while S was sentenced to life imprisonment.

The deceased had, before her death, expressed the view in the form of a letter that "if she were murdered, the murderers would be the wife and children of her new husband". O is one of the children of her "new husband", and that made him a natural suspect.

There are reasons to be concerned that the case relied solely on the eyewitness evidence of a 9 year old child who must be traumatized by the death of his mother.

For the trial to be fair, and to be sure that the conviction was safe, one would expect other evidence to corroborate that of the 9 year old child,

The conduct of the police in the course of the investigation does not instill confidence. The researcher makes adverse observations on the total disregard of the law by the police when dealing with the issue of the warrant for the arrest of O, his rights to legal advice at the time of the interrogation, and a host of other issues. In the circumstances, one may need to look more critically at what safeguards there were in place to ensure that the 9 year old witness was not subject to any undue influence when making his statement to the police.

The inadequacy of legal aid resulted in O's family not having any confidence in publicly funded lawyers. Yet, the family did not have adequate funds to properly instruct a

lawyer on a private basis. As a consequence, they fell between two stools, and it does appear that O was inadequately represented both during the initial trial, and during the appeal process.

The issue on the safety of relying on the evidence of a 9 year old child is one which requires careful consideration by an experienced lawyer, and the handling of such a witness may require expert opinion from a child psychiatrist. In the absence of adequate resources for the defence, one has reason to doubt the safety of the conviction.

Case Study 2:

Mrs. S and Mrs. M
Condemned to death on amphetamine charges
W P Tan's comments:

Mrs. S and Mrs. M together with the husband of S, and a younger brother were arrested for possession with intent to supply 100,000 amphetamine tablets, a Category 1 drug. On conviction, the penalty is death.

Following trial, the two sisters Mrs. S, Mrs. M and the husband were found guilty and sentenced to death, while the younger brother was acquitted,

The defence of S and M was total denial. They claimed that the drugs found in five biscuit tins in the bedroom were left behind by a naval officer who owed them 200,000 baht. They were not aware of the contents of the five biscuit tins.

This account was rejected by the court. In the five biscuit tins were the illegal drugs wrapped in plastic bags.
The arrest took place after the drugs trafficking suppression agency received intelligence about the sisters' alleged smuggling of illicit drugs from Cambodia, and set up a sting involving an agent placing an order for 100,000 tablets. The drugs found in the 5 biscuit tins amounted to the same quantity.

This was a high profile trial attracting a great deal of media attention as the amount of drugs seized was said to be the largest ever. Understandably in such high profile cases, the stakes are high for all involved, notably the careers of the officers, and even the judiciary.

One of the most serious breaches of the right to a fair trial in this case is that the Court of the First Instance which found them guilty might not be properly constituted as it was presided over by only one judge, when it should be at least two. The court appointed lawyer acting for the third defendant told the researcher that two other judges merely "came and signed their names". In the absence of a system of jury trial, a trial by at least two judges is a necessary safeguard, and this procedural irregularity alone should cast doubt on the safety of the conviction.

There is also another unsatisfactory feature in the case, and that is the fact that the two sisters are from Cambodia, with little education. Thai is not their first language and a fair trial should entail the right to have interpreters throughout the investigation and proceeding stages to ensure that they understood the procedures, the proceedings and their rights.

They were not offered one, and were in fact made to place their thumb prints on a document at the police station claiming that their rights were read to them and they understood.

In view of the denial by the sisters, one would have expected the police to carry out forensic tests on the plastic bags to discover fingerprint evidence, and to match them against those of the defendants.

The naval officer who brought the biscuit tins to the sisters would have left fingerprints on the biscuit tins; likewise the senior naval officer who was the debtor and who arranged for the delivery might also have left those fingerprints. The police held the sisters for 84 days, and between the arrests in 1997 and judgement in 2001, there was considerable time for the police to carry out the investigation.

Apart from the fingerprints of the defendants on the biscuit tins, were there fingerprints of others left on the biscuit tins, and in particular the plastic bags where the drugs were wrapped? If there were other fingerprints, were those of the naval officers? If the police were unaware of the identity of these naval officers, did they make investigation with the Navy who might have records of the fingerprints of naval officers in their employment. These are investigation one would expect the police to carry out in the course of an investigation.

This writer is not aware of any such investigation, which in my view, renders the verdict unsafe.

It is also not satisfactory that in the appeal stages, the defendants were relying on the "legal advice" of inmates rather than their own lawyers.

Case Study 3:

Mr. T, convicted and sentenced to death for murder.
W P Tan's comments:

The key issue in this case is one of identification. Mr. T was arrested the day after the murder. The identification was by the wife of the deceased, although she did not provide the information to the police at the first instant, ostensibly for fear of reprisal.

The defence case is that Mr. T was not involved in the murder, nor present at the scene at the material time. The defendant had alibi evidence suggesting that he was working with others at the material time. If the defendant was properly advised by a lawyer at the time of the arrest, the lawyer would press for key disclosures by the police, and would direct the police to interview relevant alibi witnesses, and preserve crucial forensic evidence.
Since the defendant had alibi witnesses, the police could have taken immediate steps to approach those witnesses to verify the account given by Mr. T during interview whilst in custody. The earlier this alibi evidence was obtained by the police, the greater would be the evidential value as that would minimize any doubts on the integrity of the alibi evidence.

The appeals were rejected notwithstanding the alibi evidence. There is no information available to this writer as to quality of the alibi evidence in support of Mr. T. In order to be sure whether the conviction was safe, one has to examine the alibi evidence, and scrutinize the basis of the rejection of the alibi evidence by the police, and the courts. Also one has to examine at what stage the police approached the alibi witnesses. The fact that Mr. T was remanded in custody for 84 days for "interrogation" does not reflect well on the police conduct. Mr. T was remanded for a disproportionably long period before charge, and the delay in their investigation might have prejudiced the defence.

If Mr. T was given his rights during the period in custody, and if there was an adequate system of legal aid, his defence lawyer would have, at the earliest opportunity, insisted that the police ought to conduct a forensic test on the shirt which was seized from Mr. T's house to examine if there were any deposits of gunpowder emanating from the firearm used to discharge the three bullets.
From the information available to me, it does not appear that the police carried out any such forensic test, nor was it demanded by the defence. It is my view that it is unsafe to rely solely on the deceased's wife "eye witness" account as she had provided an inconsistent statement earlier. Ideally her evidence should be corroborated with other evidence, such as a forensic test on the shirt.

The fact that the defendant owned a shirt of the same design as that worn by the alleged killer is, in my view, not conclusive as we do not have evidence as to the exclusivity

of the particular design. Furthermore, the identification procedure ought to be supervised by the defence team so as to avoid any procedural unfairness when the deceased wife "identified" the shirt of Mr. T as that worn by the killer. From the perspective of the European Convention of Human Rights, one can say that Mr. T was denied the right to a fair trial in that he was not provided with any legal representation at the investigation stage; inadequate representation during the trial stage, and no representation during the appeal stages.
Given the seriousness of the offence i.e. first degree murder, and the sentence of "death penalty" in the event of conviction, Mr. T should have available to him adequate funding to engage a lawyer and expert to conduct his defence. The absence of such professional involvement renders the decision unsafe.

Case Study 4:

Mr. J, a prisoner condemned to death on an amphetamine drug conviction

Now, on case 4, I have no comment because the defendant had admitted to a degree of involvement, albeit, as an employee. He is the fall guy in the organization, the front man who is the first to be shot. In any criminal jurisdiction, he will still be found guilty for the crime of conspiracy, and although in his case, he may be forced by poverty into taking up the high risk job, his criminality will be the same. The only grounds is in the area of mitigation on the sentencing, hence I made no comment for that reason.

Comments by Professor Thomas Geraghty, School of Law, Northwestern University, USA. Expert in Criminal Law

The death penalty case studies sent to me by the Union for Civil Liberties, Bangkok, Thailand, provide very useful lessons concerning the effects of failing to provide defendants with sufficient procedural safeguards. I am grateful for the opportunity to provide the following comments. My comments focus on the necessity of providing adequate legal counsel from arrest through the trial and appeals process, the importance of the creation of procedures to govern the interrogation of suspects that guarantee the voluntariness and accuracy of statements taken from the accused, the necessity of carefully evaluating the accuracy of eye-witness identifications, and the desirability of considering mitigation evidence.

I provide these comments based upon the experience of lawyers, prosecutors, and judges with death penalty cases in the United States, particularly our experience during the last 10 years, during which time we in the United States have become increasingly aware of the fallibility of our justice system in reaching accurate determinations of guilt/innocence and the appropriateness of death sentences in individual cases.

1. Effective Assistance of Counsel.

The cases described by the Union of Civil Liberties present a common theme: inadequate assistance of counsel. In none

of the cases described by the Union for Civil Liberties, was there adequate consultation between the defendants and their lawyers. In none of the cases described did the lawyers conduct an adequate investigation of the facts of the case, nor did they challenge the accuracy of the statements allegedly given to the police by their clients. In part, the poor performance of the lawyers in these cases seems to be tied to the failure of Thailand's legal system to recognize that specialized legal training is needed for lawyers who represent clients in capital cases and that high written standards of practice should be followed by lawyers who take on death penalty cases. These standards could be promulgated by the courts, by the bar, or by the government. Our experience in the United States is that the involvement of highly qualified and highly motivated defense lawyers in death penalty cases is absolutely critical to the just adjudication of these cases. To that end, local and national bar associations and the courts have issued standards as well as rules and regulations requiring the certification of lawyers eligible to represent defendants in capital cases. Certification requirements include requisite experience in trying criminal cases as well as training in substantive death penalty law, investigation, and trial technique.

Effective representation on appeal is also a necessity for a fair system. In the United States, we have learned that appellate and post-conviction review often reveals flaws in the fairness and accuracy of death penalty trials. I note that in the case studies provided by the Union for Civil Liberties, the defendants turned to fellow inmates for appellate representation, suggesting lack of availability of

qualified and motivated lawyers to represent them on appeal. Although our system of appellate representation in the United States is far from perfect, we have recognized that appellate representation (for the most part by government-funded appellate lawyers) contributes to the preparation of effective appeals. The case studies from Thailand suggest that such a system is much needed in Thailand's appellate proceedings.

2. The Interrogation Process

In the United States, we have become increasingly aware of the pitfalls associated with uncritical reliance upon confessions in establishing guilt. Our skepticism of the reliability of the interrogation process stems from the dynamic of the interrogation process, from the suggestibility of defendants subjected to the interrogation process, and from coercive tactics, both subtle and abusive, employed by police investigators. We have approached this problem in a number of ways. We have adopted procedures that are designed to ensure the voluntariness of confessions and to reduce the possibility of suggestion and coercion. Our courts examine the procedures followed prior to and during interrogations with great care. But these procedures have not always been successful in screening out unreliable confessions primarily because they do not provide a complete picture of what actually occurred during the interrogation. Even when required procedures are followed, unreliable confessions occur with unacceptable frequency.

There are a number of solutions to this problem. The most useful solution would be to video tape the interrogation process from beginning to end. A tape of an interrogation provides judges with all of the information necessary to determine whether an interrogation has been conducted properly, and, most importantly, whether the police account of the defendant's statement is an accurate reflection of what the defendant actually said during the interrogation. Without a video taped recording of a statement or confession, the court, the prosecutors, and the defense lawyers are inevitably compelled to rely on police accounts of what the defendant said or upon a summary statement signed or authorized by the defendant that does not reflect the entirety of what the defendant told the police. In this day of technological advance, the video taping of the entire interrogation is a relatively simple and inexpensive undertaking.

The appointment of defense counsel early-on in the arrest and prosecution process would also be a an important step. The case studies provided describe a process that does not allow defendants to consult with counsel for extended periods of time during the investigation. This process inevitably leads to exhaustion on the part of defendants and an inability to provide voluntary and accurate information to the police. After arrest, and after allowing for a brief period of investigation, defendants should be taken promptly to a court where defense counsel should be appointed. Thereafter, police contacts with the defendant should be made through defense counsel.

3. Eyewitness Testimony.

In several of the case studies provided, eyewitness identifications were crucial to conviction. As with the reliability of confessions, we in the United States have come to question the practice of unquestioning reliance upon eye-witness identifications. Much of the emerging skepticism is based on scientific research concerning the reliability of eye-witness examinations reinforced by cases in which eye-witnesses have been proven by scientific evidence (mostly DNA) to have been mistaken. Lawyers, judges, and prosecutors, especially those who are involved in death penalty cases, should be trained to evaluate the reliability of eyewitness testimony in accordance with the latest scientific research on the subject.

4. Mitigation Evidence

There was little or no discussion in the case studies provided regarding the background of the defendants who were sentenced to death. Before a court sentences a defendant to death, it is important to know whether there are mitigating factors which might dissuade a judge from imposing the death penalty. For example, has the defendant otherwise led an exemplary life? Did the use of drugs or alcohol influence the defendant's behavior? Was the defendant mentally or physically impaired at the time of the offense? Consideration of the appropriateness of the imposition of a death sentence should ideally include the facts of the crime and the circumstances and background of the defendant.

Comments by Siobhan Ni Chulachain, Practicing Barrister, Ireland

Overall, I thought cases 1, 2, & 3 were very good illustrations of the problems we had seen in Thailand[53], failures regarding the collation of evidence, over-reliance on confession evidence, inadequate lawyers, long appeals processes etc. Case 4 on the other hand contains cogent evidence of guilt, he was well-represented although his lawyer was inexperienced. On the other hand, his case illustrates the difficulties for visiting families when persons are detained in Bang Kwang and the contradictory approaches between the lower courts and the high courts.

Comments by Florence Belliver, Professor of Law, Paris, France

-She confirms that 84 days of questioning, additionally without proper legal counsel, is largely excessive. The recourse by T to a "false" lawyer to write his appeal witnesses well to the lack of proper legal representation.

-In section 4, she was surprised by the fact that the person was condemned to death on the basis of a single testimony - from the wife of the person who was killed. Such a testimony should be confirmed by additional evidence, and not result per se in a capital sentence.

[53] "The death penalty in Thailand" International Fact-finding Mission, FIDH publication, March 2005

The Supreme Court decision addressed this issue of the single testimony, and it may be useful that your team of researchers examine that point as well.

-why do the researchers insist so much on the insufficiency of the free legal aid system while the prisoner himself says that he trusted more the lawyer appointed by the court than the lawyer he had initially hired himself.

Maybe they could also address the issue of the value of the confession (it is frail, cf. clemency of the court amounting to arbitrariness when examining the confession).
-the question of whether or not J. was the main author of the crime or an accomplice, is an issue

Comments by Professor Takashi Takano, Attorney at Law

Waseda Law School
Tokyo, Japan

I agree with the researchers' view that in each case there were violations of the accused's due process rights, especially the right to have effective assistance of counsel during the pre-trial investigation. I did not know until reading your report that Thai Constitution stipulates the right of the suspect to have their counsel present at interrogation (Section 241). I hope this provision will be kept intact in the New Constitution of Thailand. As a criminal lawyer in Japan, I understand the situations in which there is a great gap between the law in text and the law in action. I believe the main causes of this situation are weak or non-independent judiciary and weak or non-aggressive criminal defense lawyering, both of which are common in Japan where this gap exist. We have basically the same problems.

While I think that the report is well written, I felt some uncertainty about the facts of the cases or evidence of the cases. I hope you can provide with additional analyses of evidence of the cases.

Appendix 1

The Rights of Persons Involved in Procedures of Criminal Law

The rights of suspects, defendants, and those convicted under criminal law are laid down in section 3 of the Constitution under the heading 'Rights and Freedoms of Thai People', articles 30 to 33, section 8 which deals with the Courts, Part 1, and articles 233 to 247. In the following summary of the important aspects of human rights which relate to the criminal code of law, the rights are referred to their constitutional basis. These rights have been incorporated into the legal code which is also quoted where it expands on or clarifies the constitutional basis.

1. The right to life and freedom

Article 30 of the Constitution affirms the right to life and freedom. Torture, cruelty, or inhumane punishment are forbidden. However the death penalty as prescribed by law is not considered to be a cruel or inhumane punishment as referred to in this article.

The arrest, imprisonment, or bodily search of a person, or restriction of liberty are prohibited other than by legal warrant.

Any action of arrest or imprisonment taken by officials cannot be imposed with violence in a way that affects the rights of the person by causing bodily harm or by damaging the wellbeing of the person.

2. The right to the presumption of innocence

Article 33 of the Constitution affirms that the suspect or accused has the right to the presumption of innocence. Until judgement is given that the person committed wrong that person must be treated as not having committed a crime. The use of instruments of restraint beyond what is necessary, or the presentation of the suspect to the press as a guilty person, are infringements of the right to be presumed innocent.

3. The right to due process of arrest

Article 237 of the Constitution prohibits arrest and imprisonment in a criminal case without an arrest warrant or court order, except when an illegal act is committed flagrantly, or if there is another necessary reason.
An arrest order may be issued:

1) when there is sufficient evidence that the person has committed a criminal act for which legal punishment is prescribed

2) there is sufficient evidence that the person committed a criminal act and there is reason to believe that the person may abscond, or interfere with witnesses, or cause further harm.

Article 238 of the Constitution prescribes that “In a criminal case, no arrest and detention of a person may be made except where an order or a warrant of the Court is obtained, or where such a person commits a flagrant offence or where there is such other necessity for an arrest without warrant as provided by law”
Rights associated with arrest or imprisonment are provided for in articles 31 and 35:

"No arrest, detention, or search of person, or act affecting right and liberty under paragraph one shall be made except by virtue of the law."
"A person is protected for his or her peaceful habitation in, and for possession of, his or her dwelling place. An entry into a dwelling place without consent of its possessor or the search thereof shall not be made except by virtue of the law."

In summary a person may be arrested only under the following conditions:

a) there is a warrant or court order
b) a flagrant offence has been committed
c) there is other necessity for the arrest, but such necessity must be provided for by law.

A search of a private habitation may be made, only
a) with the authorization of a court order
b) under special circumstances when a court order is not required

4. The right to be informed of the charge and details of the arrest

Article 237 of the Constitution decrees that a person arrested under criminal law must be informed of the charge and the details of the arrest without delay. There must be reasonable evidence that the person has committed the offence contained in the charge. It may be noted that the Constitution specifies that not only must the charge be specified but details of the arrest must be provided. A person arrested on a criminal charge should be informed of

the investigations made by officials, and the investigations which are under way.

5. The right that relatives of the arrested be informed

Article 237 of the Constitution decrees that a person arrested has the right that a relative or a trusted person be informed at the earliest convenience. This right is to assure justice to the suspect who may request the help of a relative in contesting his case or to contact a lawyer as a safeguard that his rights are not violated, such as by violence or hurt to his person.

6. The right to be informed of one's rights

Section 7/1 of the Criminal Code on the arrest and imprisonment procedure obliges officials to inform the arrested person's relatives or a trusted person of the fact of his arrest and the place of detention on the occasion of the arrest. The arrested person also has the following rights:

a) to meet with and consult a lawyer in private

b) to have a lawyer or a person he trusts to be present during his interrogation.

c) to be visited or to be in contact with relatives as appropriate.

The administrative officials or police who have custody of the arrested person, must inform that person from the beginning of his rights under section a) above.

7. The right to respond or not during investigation

The Constitution establishes the right of the accused not to respond to questioning to avoid providing matter with which he could be charged. Admissions made under

persuasion, threats, trickery, torture, the use of force, or unwillingly, may not be accepted as evidence.

8. The right to an interpreter when the accused cannot understand or speak Thai

Section 13 of the Criminal Code provides the right to an interpreter for the accused, defendants, or witnesses at the time of interrogation or trial.

9. The right to respond or not to the Court

The procedure of Criminal Law, section 165, decrees that when the official Prosecutor is the plaintiff, on the day that the defendant is presented to the court he should be given a copy of the charge. When the court is satisfied of the identity of the defendant, the charge should be read and explained. The defendant may be asked to plead guilty or not guilty, and how he intends to contest the case. The reply of the accused should be recorded. If the accused does not wish to respond the court should take note and continue procedure.

10. The right to medical care

Section 7/1 of the criminal Code affirms the right of the arrested or accused person to rapidly provided medical care when necessary.

11. The right to be brought before the Court within 48 hours

Article 237 of the Constitution affirms the right of a person who has been arrested and detained to be brought before the court within 48 hours of the time of arrest.

In charges against the Criminal Code subject to a prison sentence of ten or more years the Court has the power to extend imprisonment several times serially, but each extension should not exceed 12 days and in total should not exceed 84 days.

In respect to Sections 3 and 7 the accused has the right to appoint a lawyer to present opposing arguments and to question witnesses. If the accused is not represented by a lawyer because article 134/1 has not been acted on, the accused has the right to request the Court to appoint a lawyer. The appointed lawyer is entitled to payment and expenses as laid down in article 134/1 section 3.

12. The right to know the charge and receive an explanation

The section of the Criminal Code relevant to the knowledge and explanation of the charge is that already introduced above under the heading 2.9

13. The right to a court hearing in the presence of the accused

Section 172 of the Criminal Code decrees that the court proceedings and examination of witnesses take place in the presence of the accused, unless otherwise ordained.

14. Right to bail

Article 239 of the Constitution declares that a request for bail by a defendant must be considered quickly and the amount of bail proposed must not be excessive. A refusal to grant bail must be based on the provisions of law and the reason must be conveyed to the defendant without delay.

A refusal of bail by the Court of Appeal must be within the provisions of the law.

15. The right to private meeting with lawyers

Article 239 of the Constitution decrees that "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."

16. The right to appropriate visits

Article 239 of the Constitution decrees that a person being kept in custody has the right to receive visits as may be appropriate.

17. The right for a lawyer or other person to be present during interrogation

Article 241 paragraph 2 of the Constitution asserts the right of a suspect to have a lawyer or a person of trust present during interrogation.

According to Section 7/1 of Criminal Code Procedure, a person detained or imprisoned has the right that a lawyer or trusted person be present during interrogation. Section 134/4 decrees that in putting a question to the accused the investigating officials should tell the accused that he has the right to have a lawyer or a person he trusts present at the time of interrogation.

18. The right to have an interrogation and trial that are open, rapid, continuous, and fair.

a) An open trial

Criminal Code Procedure section 172 states in the first sentence "the trial and examination of witnesses shall be

held openly in the presence of the accused unless otherwise decreed".

b) A rapid, continuous and fair trial

Article 241 of the Constitution decrees, "In a criminal case, the suspect or the accused has the right to a speedy, continuous and fair inquiry or trial".

19. The right to inspect statements made by the accused during the inquiry

Article 241 of the Constitution decrees in the third paragraph, "An injured person or the accused in a criminal case has the right to inspect or require a copy of his or her statements made during the inquiry, or documents pertaining thereto, when the public prosecutor has taken prosecution as provided by law".

20. The right to a State appointed lawyer

Article 242 of the Constitution decrees that, "In a criminal case, the suspect or the accused has the right to receive aid from the State by providing an advocate as provided by law. In the case where a person being kept in custody or detained cannot find an advocate, the State shall render assistance by providing an advocate without delay".

Section 134 of the Criminal Court Procedure further decrees that in trials subject to the death penalty ….on the day that officials begin the interrogation they must ask whether the accused has a lawyer or not. If the accused does not have the services of a lawyer the State shall appoint one. The appointed lawyer shall be remunerated and be granted expenses according to rates decided by the Ministry of Justice with the agreement of the Ministry of Finance.

When a lawyer to the accused is appointed but the lawyer is unable to meet with the accused and has not informed the officials, or has informed the officials but has not come to meet with the accused at the appropriate time, the officials may continue with the interrogation but the absence of the lawyer must be noted in the record of the interrogation.

21. The right not to make self-incriminating statements

According to Article 243 of the Constitution the accused "has the right not to make a statement incriminating himself or herself which may result in criminal prosecution being taken against him or her".

Section 134/4 of the Criminal Procedure Code decrees that in taking statements from the accused the interrogating officials should inform the accused that he has the right to make or not make statements and that if he make a statement it may be used in evidence against him

22. The right to trial before a full quorum of judges

Article 236 of the Constitution decrees, "The hearing of a case requires a full quorum of judges. Any judge not sitting at the hearing of a case shall not give judgement or a decision on such a case, except for the case of *force majeure* or any other unavoidable necessity as provided by law".

Section 26 of Court of Justice Procedure lays down that in a Court of First Instance two judges are required and that not more than one judge should be a habitual judge. The panel of judges must consist of judges with the authority to judge civil or criminal cases.

Section 27 of the same Procedure decrees that in the Appeals Court and the Supreme Court a quorum of at least three judges with authority to pass judgement is required.

23. The right to request a retrial

The object of a retrial is to revoke an incorrect judgement whether as to the truth of the matter or in the evidence given. This can occur when it is newly proved that the defendant is innocent.

Article 247 of the Constitution decrees, “In the case where any person was inflicted with a criminal punishment by a final judgment, such person, an interested person, or the public prosecutor may submit a motion for a review of the case. If it appears in the judgment of the Court reviewing the case that he or she did not commit the offence, such person or his or her heir shall be entitled to appropriate compensation, expenses and the recovery of any right lost by virtue of the judgment upon the conditions and in the manner provided by law.”

The reasons for such a review are listed in section 5 of the Act on the Review of Criminal Cases:

1) The evidence of a witness on which judgement was based was judged in a later trial to have been false or at variance with the truth.

2) The evidence of a witness other than that in section 1 above which the Court used in passing judgement has been shown in a later judgement to have been mistaken, or false, or at variance with the truth

3) There is new and clear evidence which is important to the case showing that the person sentenced in a criminal trial did not commit a crime.

24. The rights of a person condemned to death

In the event that a death sentence is imposed execution must be carried out with the minimum of pain and suffering to the condemned person.

Section245 of the Criminal Code Procedure decrees that the Court of First Instance must send the file of the case carrying the death penalty or life imprisonment to the Appeals Court and the judgment will not yet be concluded until it is confirmed by the Appeals Court.

Section 247 of the Criminal Code Procedure decrees that the sentence of a criminal Court carrying the death sentence must be carried out as decreed in the current Procedure.

A woman sentenced to death who is pregnant must be allowed to give birth before the sentence is carried out.

Section 248 decrees that the death sentence of a convicted person who becomes mentally ill before execution must be postponed until he recovers. When recovery has taken place the Court has the power to suspend section 46 of the criminal law code. If the person suffering the mental disorder recovers after one year from the time of judgement the death sentence is commuted to life imprisonment.

Section 259 of the Criminal Code Procedure decrees that a person on whom sentence has been passed or a person associated with the convicted person, when the case is finished a request for clemency may be submitted to the King with the recommendation of the Minister of Justice.

25. The rights of imprisoned persons

The right to receive visits, to contact relatives and outsiders

25.1 A Government Act of 1936 decrees that imprisoned persons may receive visits or contact persons outside, especially a lawyer

25.2 The right to submit a complaint is decreed by the same act which confirms the right of the prisoner to submit a complaint to prison officials, to the Governor of the prison, to the Minister, or to the King.

25.3 The right to health care, and hospital treatment.

Government Act of the year 2006 decrees that a prisoner who is ill or a woman prisoner who is pregnant shall receive the required hospital treatment.
When the doctor overseeing the health of prisoners declares that a prisoner who is ill is unlikely to recover in the prison hospital the Governor of the jail shall allow that prisoner to be treated elsewhere outside the prison under whatever conditions are considered appropriate.

25.4 The right to sufficient food
The minimum standard for prisoners is as follows:
Every prisoner shall receive at regular times the food allotted by the prison. Such food should be sufficient to preserve health and bodily strength. It should be properly cooked and served.

A supply of drinking water should be continually available to prisoners

25.5 The right not to be treated cruelly
There are three aspects to cruel treatment:

1) The use of instruments of restraint, to humiliate, to punish, or to cause difficulty to the prisoner

2) The use of weapons against the prisoner

3) The use of disciplinary punishment and inflicting bodily torture by the use of instruments of restraint.

The use of instruments of restraint is forbidden by Article 14 of the 1936 Government Act except in the following cases:

a) the person is likely to endanger himself or others
b) the person is subject to a mental disorder or instability which could endanger others
c) the person is likely to escape
d) when the person must be controlled outside the prison and the use of restraints appears appropriate to those in charge
e) when an order is made by the Minister that the use of instruments of restraint is justified by prison or local conditions

Apart from the conditions listed under d) and e) above the wardens shall have the power to order or cancel the use of instruments of restraint.

The use of weapons against prisoners is regulated by Article 16 of the 1936 Act, "the use of weapons by prison staff other than fire arms against prisoners is limited as follows:

a) to counter an escape or attempt to escape and the use of weapons is the only resort

b) when several prisoners cause confusion or attempt to use force to open or break down the doors or wall of the prison

c) when it appears that prisoners are using force to cause harm to staff or to others.

Article 17 of the 1936 Act allows prison staff to use fire arms in the following cases:

1) a prisoner refuses to lay down a weapon when ordered by staff to do so

2) when a prisoner is escaping and refuses to stop when ordered to do so by prison staff or cannot otherwise be captured

3) when three or more prisoners are causing confusion or attempting to open or break down prison doors or walls, or are causing injury to prison staff or others, refusing to stop when so ordered by prison staff. When an official in authority is present firearms may be used only on the order of that official.

Appendix 2

Criminal Justice in Thailand
Prapun Naigowit

The Basis of Thai Criminal Justice

Thai criminal justice stems from a civil law oriented system, therefore, all legislation is codified in the form of a "Code", such as "The Criminal Procedure Code". In practice, however, the Thai criminal justice, like its counterparts in many jurisdictions, cannot be said to belong to one particular system, but is actually the mixed outcome of a long history, influenced partly by the concept of civil law, partly by common law, and partly by original Thai ancient tradition.

To avoid ambiguity Thailand chose to enact a clearly seen law like that of France which conforms to the tradition and way of thinking of the former Thai system. In doing this, Thailand also relied on the format used in some other countries such as Germany and Japan. However, to keep balance of power as well as to seek for the most suitable form for the country, Thailand sent many students to study law in England. Most of them became judges and quite firmly affiliated to the "common law" concept. In ruling on cases, they established many precedents upon the notion of common law which are still strictly upheld by present judges and sometimes become a problematic issue even today among law enforcement authorities and those concerned with criminal justice in Thailand.

Prosecution and Investigation

Unlike its counterpart in many countries, the public prosecution service in Thailand does not participate in an investigation at the outset. According to the Criminal Procedure Code, which was drafted upon the long history of conflict and compromise between civil law and common law concepts, the investigation is initiated and conducted substantially by the police. The public prosecutor begins his or her role after receiving the investigation file from the police. Additional investigation may be conducted if the public prosecutor decides that evidence contained in the investigation file is unclear or insufficient for the issuance of prosecution or non-prosecution orders, but of course it will be conducted by the police not the public prosecutor. Another option as stipulated by the law is to examine the witness directly by the public prosecutor with the presence of the police inquiry official. In such a case the public prosecutor has power to direct the police to bring before him any witness for interrogation.

The only one prosecutor who has a direct power to investigate is the Attorney General or, if there is no Attorney General at the moment, the Acting Attorney General if an offence is allegedly committed outside the territory of Thailand. In such a case, the Attorney General can conduct or directly surveillance the investigation of the case himself as enshrined in Article 20 of the Criminal Procedure Code. The Attorney General is also empowered to delegate this authority to an inquiry official, as he thinks appropriate.

Since the public prosecutor does not take part in the investigation at the outset as already mentioned, problems

sometimes occur with regard to the question of miscarriage of justice and malpractice of the authorities concerned. Several cases including one which occurred recently involved proceeding against the wrong accused and caused the unlucky victims of the imperfect process of fact finding to suffer for a long period before they was proved innocent. This aroused large scale public scepticism towards the current system whereby the police monopolize investigatory power. The tendency to check and balance police investigation is becoming more and more apparent. The most obvious example is the recent development of juvenile criminal justice. Investigation of criminal cases whereby a child is the victim or the offender is no longer allowed to be conducted by the police alone. Examination of a young victim or offender must be carried out with the presence of the public prosecutor, a social worker, a psychologist, etc. in order to guarantee justice and fairness. The Attorney General has also now set up the policy to have the public prosecutor participate in the investigation of cases taking place outside the territory of Thailand.

Judicial and Court system

In Thailand the court does not play any role in investigation and there is no examining judge to conduct investigation at the pretrial stage as in some European countries. Fact finding process for the judiciary in the Thai system is conducted mainly through the examination and cross-examination of the witnesses giving testimony as well as through the adducing of evidence by the prosecutor and the defence attorney. However, the Criminal Procedure Code gives authority to the judge to question the witness

directly during the trial as well as to summon a witness to testify before the court. The judge is also vested with a quite broad power to give weight to the evidences as to their admissibility or creditability. Anyhow, the court could not adjudicate the case beyond the indictment of the prosecutor.

Judge is a career-oriented position. This means that the recruitment of the judge, like that of the public prosecutor, is by competitive examination. There is neither elected judge nor jury in the Thai system. All charges are mostly initiated directly by the public prosecutor. However, the victim is also allowed to institute a criminal case in parallel with the public prosecutor. This is to say the public prosecutor in Thailand does not monopolize prosecution. Theoretically speaking, the court is entitled to conduct a preliminary review to establish a prima facie for every indictment. In practice, however, the court will do this only in the case instituted by the private victim of the crime not in the case prosecuted by the public prosecutor.

The Process of Appeal.

In line with the judiciary system of most countries, a process of appeal to the higher court against the verdict of the lower court by the disadvantaged party is also available in Thai criminal justice. In this regard, the appeal against the judgement of the Criminal Court of Thailand or other courts of first instance trying criminal cases shall be made to the Court of Appeal or the Regional Court of Appeal as the case may be. The appeal against the judgement of the Court of Appeal or The Regional Court of Appeal shall be

made to the Supreme Court, which is the final resort of judicial review.

Neither every case nor every issue is allowed to be appealed to the Court of Appeal, the Regional Court of Appeal, or the Supreme Court. Whether a particular case can be appealed or not depends upon certain elements, namely, whether it is the prosecutor or the accused who makes the appeal; whether it is an issue of facts or an issue of laws; the severity of the penalty for such an offence, and how severely the penalty is imposed. According to the Criminal Procedure Code of Thailand, the accused seems to get more privilege in making appeal than the prosecutor. It is clearly spelled out in Article 193 bis of the Criminal Procedure Code that no appeal against the verdict of the court of the first instance (the lower court) in the issue of fact is allowed in the criminal case whereby the alleged offence is punishable by imprisonment not exceeding three years, or fine not more than sixty thousand baht, unless the appellant is the accused who faced the verdict of imprisonment or detention, or was judged guilty but the punishment or the determination of the punishment is temporarily postponed or a fine amounted to more than one thousand baht. It is obvious that the issue of facts has narrower room for appeal than the issue of law. Appeal to the Supreme Court for the final judicial verdict either in the issue of facts or the issue of laws is even more limited. This is perhaps because of two reasons. One is to give credit to the Appellate courts and the other is to prevent the delay of case settlement. Of course, it is undeniable that to delay means to refuse justice, and the longer the delay is the more justice is refused.

Note added by editor

In Thailand court procedure is strictly adversarial and intervention by the judge appears largely restricted to asking for clarification when required

Note on Adversarial and Inquisitorial Systems:

The adversarial system leaves it to the parties to the legal dispute to decide what facts and legal issues need to be brought into evidence or proven at trial. The judge acts as a passive or neutral umpire in the fact-finding process, whose primary role is to assure both parties are playing fairly, following the procedural and evidentiary rules of the fact-finding game (e.g. hearsay, admissibility of evidence, etc.)

The inquisitorial system gives a more active or interventional role to the judge in the fact-finding process. The judge has a role in the fact-finding and can compel evidence to be brought before the court – call witnesses, etc.

In the adversarial system, only the parties can call witnesses, not the judge. The parties manage the litigation.

In the inquisitorial system the judge also has a role in managing the litigation.

DB

The Union for Civil Liberty (UCL)

The Union for Civil Liberty was founded on 24th November, 1973, immediately after a popular rising on October 14th which overthrew the Thanom-Prapas dictatorial regime. UCL, an independent, non-governmental organization, 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.

Following a bloody massacre on 6th October, 1976, and the re-imposition of martial law, UCL was forced to suspend its activities. After the promulgation of a new Constitution guaranteeing civil liberties in December 1978 UCL could resume operation.

UCL is a membership organization, open to all who wish to participate and join in upholding the principles of human rights and working for the benefit of the under-privileged and disadvantaged sections of society. It neither seeks political power nor aligns itself with any political group.

In the past years UCL has been actively involved in the promotion and protection of civil rights and liberties in Thai society. It has undertaken this task through legal aid, dissemination of legal knowledge to the public, campaigns against unjust legislation, and the promotion of people's organizations and citizens groups to safeguard human rights

Objectives

1. To study and disseminate knowledge and information of civil rights and liberties in order to promote a democratic system in Thai society.

2. To provide general services to the public against violations of civil rights and basic freedoms

3. To collaborate with like-minded organizations and associations in human rights work.

4. To raise the level of consciousness on civil rights and liberties of the people throughout Thailand so that actions at community level can be undertaken effectively.

5. To safeguard and protect the civil rights and liberties of citizens with legal measures.

6. To protect the rights of consumers, to ensure a clean and healthy environment, and to conserve the ecological inheritance of the people.

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